

SAMUKELISO MOYO  
and  
LEWIS MASUNDA  
versus  
ATHLETICS ZIMBABWE

HIGH COURT OF ZIMBABWE  
SMITH J,  
HARARE, 8 and 13 November, 2002

Mr *Magwaliba* for applicants  
Mr *Fitches* for respondent

SMITH J: The facts in this case are mostly common cause. The applicants are professional athletes. They are members of sports clubs that are indirectly affiliated to the respondent, which is the association that is registered in terms of s 29 of the Sports and Recreation Commission Act [Chapter 25:15] (hereinafter referred to as "the Act") in respect of the sport of athletics. The respondent (hereinafter referred to as "AZ") was registered in June 2002. Initially, the association that controlled athletics in this country was the Amateur Athletics Association of Zimbabwe (hereinafter referred to as "AAAZ"). That body was deregistered in December 2001 by the Sports and Recreation Commission (hereinafter referred to as "the SRC"). Soon after its deregistration the applicants participated in the New Years Eve marathon in Angola. On their return from Angola AAAZ demanded payment of 10% of their prize money. However, after the deregistration of AAAZ, the SRC appointed a body, known as the Interim Committee, to administer athletics, pending the establishment of a body to replace AAAZ. The Interim Committee drew up a constitution for a new association, elections were held and eventually AZ came into existence and was registered.

The Interim Committee demanded that the applicants pay it 10% of the prize money that they had won in Angola. When the applicants failed to comply with the demand, the Interim Committee resolved that unless the applicants paid the levy they

were suspended from participating in national and international meets sanctioned by the Interim Committee until February 28, 2002. If they did not pay by that date, they would be barred from taking part in national and international meets organised and sanctioned by the Interim Committee until their case was reviewed by AZ.

On 17 October 2002 the applicants filed an application seeking an order setting aside their continued suspension by AZ from participating in athletic contests (case No HC 9316/02). The applicants then filed this urgent application on 6 November seeking an order that they be permitted to participate in athletic contests pending the determination of case No HC 9316/02. They contend that the Interim Committee was not lawfully in office as it had not been appointed by the Minister responsible for the administration of the Act, and therefore their suspension is a nullity. Furthermore, as the suspension is a penalty, they should have been afforded an opportunity to be heard. Finally they averred that, following the intervention of the International Association of Athletics Federations through its area representative for Southern Africa, Mr Cheune, the suspensions were lifted.

The applicants wished to participate in the Gutu Half-Marathon on 5 October 2002. AZ refused to allow them to do so. The first applicant withdrew but the second applicant entered and she came second. However, when the results were announced it was announced that she had been disqualified. No reasons were given. The applicants consider the matter to be one of urgency because there are contests coming up on 9 November and in December which they would like to take part in. AZ submits that the matter should not be treated as an urgent application because the applicants were suspended on 9 February 2002 and have not been allowed to take part in contests since then. They have had eight months in which to institute legal proceedings but have not done so until now. The need to act arose on 9 February.

The response by the applicants is that initially they did not want to act confrontationally by way of legal proceedings. They wanted to proceed by way of dialogue. That is why the International Association of Athletics Federations was approached. That body sent its representative for Southern Africa, Mr Cheune, to Zimbabwe to try to resolve the dispute. They were informed that Mr Cheune, in a letter dated 5 September 2002, had advised that the suspension of the applicants were lifted with immediate effect and that they should not pay the 10% levy. However, AZ insisted that the suspensions would only be lifted when the 10% levy was paid. Because of the attitude adopted by AZ, they had no option but to resort to litigation.

I agree that the matter should be treated as one of urgency. In my opinion, the position changed after Mr Cheune wrote the letter saying that the suspensions of the applicants were lifted unconditionally. The applicants have already missed the contest that was to be held on 9 November. Clearly they are very keen to take part in the contests which are to take place in December.

As regards the legality of AZ, there is an application pending before HUNGWE J in which AAAZ, under its new name Zimbabwe Athletics Federation, is challenging the legality of AZ - case No HC 5497/02. It would be wrong for me to make any finding at this stage as to the lawfulness of AZ and its registration by the SRC. I do not consider it to be necessary for me to do so in order to resolve the dispute with which I am seized.

According to the applicants, when arrangements were made for them to take part in the race in Angola last year, it was AAAZ which made all the arrangements for them to do so. It was AAAZ that secured their tickets to go to Angola, and paid for their visas, vaccinations and travel expenses to Harare. However AZ claims that it, as the Interim Committee, had sent them to Angola. In a letter dated 27 December 2001

to the Director-General of the SRC, purporting to be from the Interim Secretary-General of the Amateur Athletics Association of Zimbabwe, the writer submitted the names of the athletes who were to compete in the New Years Eve race in Angola and said "the Association has cleared them on the understanding that they will remit ten percent of their winnings to the mother body on their return". The applicants say that both AAAZ and the Interim Committee wanted to be paid the levy and they did not know which one should be paid.

Section 30 (2) of the Act provides that where the Board of the SRC has directed the Director-General to strike an association from the register, the Minister may appoint a committee to administer the affairs of the association concerned. Presumably the Interim Committee was appointed in terms of this provision. Subsection (3) of s 30 of the Act provides that a committee appointed in terms of that section shall have all the rights, duties and responsibilities of the governing body it has displaced, but it is answerable to the Board of the SRC and not to the members of the national association concerned. Subsection (4) of s 30 of the Act then provides that where a committee has been appointed, the name of the national association concerned shall, if it has been struck off the register, be restored to the register. Paragraph (b) of that subsection requires that the committee shall, as soon as practicable, take steps for the appointment of a new governing body of the association concerned in accordance with the constitution and rules of the association. It would appear, therefore, that a committee appointed in terms of s 30 of the Act is not a separate persona with its own corporate status. It merely replaces the governing body of the association concerned. Therefore, when the Interim Committee demanded payment of the 10% levy from the applicants, that payment was due to AAAZ and not to the Interim Committee. Once the Interim Committee was appointed, since its

function was to take over the reins of AAZ, the SRC should have restored AAZ to the register in terms of s 30(4) of the Act. The fact that AAZ was deregistered does not mean that it ceased to exist. It still continued in being as a corporate body by virtue of its constitution. It is its constitution that gives it corporate status, not the fact of registration.

I accept that, in terms of clause 11(h) of the Constitution of AZ, the association has power "to set percentage fees due to it from athletes' winnings from competitions organized on an Association to Association invitation basis". However that can only apply in relation to competitions where AZ is a party thereto or has been invited to send participants. For the New Years Eve marathon in Angola last year, the invitation must have been sent to AAAZ. It could not have been sent to AZ because AZ was not in existence at that time. AZ cannot demand the levy in respect of competitions held before it came into existence. Even if AZ is the successor to the Interim Committee, there is nothing in the papers which indicates that it has the authority to collect monies owed to the Interim Committee. Since the Interim Committee did not have corporate status, no levy would be payable to it. That being the case, AZ has no right to suspend any athlete on the grounds that the athlete has not paid any levy due to the Interim Committee.

It is ordered that -

1. Pending the determination of the application in case No HC 9316/02, the respondent shall treat the applicants as though their suspensions have been lifted and shall permit them to take part in any athletics competition arranged by or under the auspices of AZ or of any other national association in respect of which AZ has received an invitation

to participate, subject to their compliance with any conditions fixed by

AZ for athletes in general.

2. The respondent pay the applicant's costs.

*Magwaliba, Matutue & Kuririra* legal practitioners for applicants  
*Gill, Godlonton & Gerrans*, legal practitioners for respondent