

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG LOCAL DIVISION, JOHANNESBURG)

CASE NO: 18413/2018

(1) REPORTABLE: *yes*

(2) OF INTEREST TO OTHER JUDGES: *yes*

02 / 7 / 2018
DATE

[Signature]
SIGNATURE

In the matter between:

AJAX CAPE TOWN FOOTBALL CLUB

First Applicant

TENDAI PASSION NDORO

Second Applicant

And

MOKHARI, WILLIAM N.O.

First Respondent

NATIONAL SOCCER LEAGUE

Second Respondent

THE SOUTH AFRICAN FOOTBALL ASSOCIATION

Third Respondent

JOMO COSMOS FOOTBALL CLUB

Fourth Respondent

BLACK LEOPARDS FOOTBALL CLUB	Fifth Respondent
AMAZULU FOOTBALL CLUB	Sixth Respondent
BAROKA FOOTBALL CLUB	Seventh Respondent
BIDVEST WITS FOOTBALL CLUB	Eighth Respondent
BLOEMFONTEIN CELTIC FOOTBALL CLUB	Ninth Respondent
CAPE TOWN CITY FOOTBALL CLUB	Tenth Respondent
CHIPPA UNITED FOOTBALL CLUB	Eleventh Respondent
FREE STATE STARS FOOTBALL CLUB	Twelfth Respondent
LAMONTVILLE GOLDEN ARROWS FOOTBALL CLUB	Thirteenth Respondent
KAIZER CHIEFS FOOTBALL CLUB	Fourteenth Respondent
MAMELODI SUNDOWNS FOOTBALL CLUB	Fifteenth Respondent
MARITZBURG UNITED FOOTBALL CLUB	Sixteenth Respondent
ORLANDO PIRATES FOOTBALL CLUB	Seventeenth Respondent
PLATINUM STARS FOOTBALL CLUB	Eighteenth Respondent
POLOKWANE CITY FOOTBALL CLUB	Nineteenth Respondent
SUPERSPORT UNITED FOOTBALL CLUB	Twentieth Respondent

JUDGMENT

FISHER J:

Introduction

[1] Football or, as we South Africans like to call it, “soccer” is a tactical game. It seems that this is not only applicable on the field. This case is one of a series of matters which has been fought over the Premier Soccer League for approximately the last 6 months.

[2] The dispute which is at the center of this football imbroglio involves the eligibility of the second applicant, a soccer player, Mr. Ndoro, to have played in official matches for the

first applicant, Ajax in the 2017/2018 football season. The season officially came to its end in June 2018 but the placings on the League table are still in dispute.

[3] The second respondent, the National Soccer League (NSL) is the body responsible for administering professional football in South Africa. It contends that Mr. Ndoro was ineligible to play the official games that he did and that Ajax must thus forfeit the games in which he played which Ajax won or drew.

[4] This is the result of the most recent internal process, being the arbitration award handed down by William Mr. Mokhari SC (Mr. Mokhari) in expedited disciplinary proceedings instituted by the NSL. Mr. Mokhari found that Mr. Ndoro was not eligible to play the games in issue and imposed a sanction of forfeiture in respect of each game won or drawn.

[5] Ajax argues that the consequences to it that arise from such award are “*cataclysmic*”. It takes Ajax from fifteenth place on the league table to sixteenth place. This has the result that Ajax is automatically relegated to the lower league, the National First Division League and deprived of a place in the promotion play- off games¹.

[6] Ajax and Mr. Ndoro seek, *inter alia*, the review and setting aside of Mr. Mokhari's award. They hope thereby to preserve Ajax's original ranking on the league table.

[7] The change in rankings occasioned by the award of Mr. Mokhari has a knock-on effect. It affects the positioning and thus the rights of other teams in the League. SuperSport United is currently in the top eight teams in the League. This means that it will participate in the “*Top 8*” Competition which starts at the beginning of the new season and runs to October 2018. It alleges that it has employed substantial resources in preparing for this event. AmaZulu, initially placed eighth but as a result of the imposition of the forfeiture in respect of the Ajax and SuperSport match, it was demoted to ninth position. In the event of the Applicants obtaining the relief they seek, the effect for Polokwane City would be that it would be demoted by two positions to number 14 in the table and would lose points. Platinum Stars has been involved in the dispute from the outset and has thus incurred legal costs which it wants addressed here.

¹ In terms of rules 7.3.1 and 7.3.2 of the NSL rules the club finishing in 15th position on the Premier Division league table, the club finishing in the 2nd position on the National First Division league table, and the club finishing in the 3rd position on the National First division league table take part in a promotional play-off, the winner of which may participate in the Premier Division league in the following season.

[8] All the clubs mentioned participated in the application, each seeking review relief with the aim of curing their own particular predicaments caused by the purported reconfiguration of the league table pursuant to the Mr. Mokhari award. There can be no doubt that the positions of a number of respondent clubs who have not participated in the matter are also affected.

Background and Other Factual Information

[9] Professional football in South Africa and internationally is governed by a complex system of institutions and rules. The *Fédération Internationale de Football Association* or FIFA controls and regulates professional football worldwide. The third respondent, SAFA is a member of FIFA. The second applicant, the NSL is a special member of SAFA and controls and regulates professional football in South Africa in accordance with the prescripts of FIFA and SAFA. FIFA and SAFA each have their own set of governing instruments. The NSL's governing instrument, the NSL Handbook, makes it clear that the NSL is subject to the SAFA and FIFA statutes.² The NSL administers football competitions in two divisions – the Premier Division and the National First Division of the professional league. The clubs which compete in the league are all members of the NSL and subject to its rules and governance.

[10] The NSL, its member clubs and their players are subject to a hierarchy of FIFA, SAFA, and NSL rules, with FIFA at its apex. Central to the arguments in this matter is that the governing statutes of FIFA, SAFA, and the NSL distinguish between types of proceedings, each with its own decision-making body: Disputes about the status of players are determined by a Player Status Committee (“PSC”); all other disputes are determined by a Dispute Resolution Chamber (“DRC”); and disciplinary proceedings are determined by a Disciplinary Committee (“DC”).

[11] This decision-making structure is expressly duplicated in SAFA and in the NSL in that they are obliged, to adopt FIFA's structures and procedures. Thus, all members resolve disputes and carry out their disciplinary function in accordance with the same procedures and structures.

² Article 4.3 of the NSL Handbook provides that “*The [NSL] promotes, administers, controls, governs and regulates all professional football in South Africa in accordance with the prescripts of FIFA, CAF, and SAFA ... and in accordance with this NSL Handbook*”.

[12] The FIFA Regulations on the Status and Transfer of Players (*"the FIFA regulations"*) regulate the international transfer of players between associations and have direct application in the determination of eligibility to compete. Article 5 of the FIFA regulations, deals with the eligibility to compete worldwide and it applies to all members. It is important to the matter at hand, so I quote it in full:

"Registration:

1. *A player must be registered at an association to play for a club as either a professional or an amateur in accordance with the provisions of Article 2. Only registered players are eligible to participate in organised football. By the act of registering, a player agrees to abide by the statutes and regulations of FIFA, the confederations and the associations.*

2. *A player may only be registered with one club at a time*

3. *Players may be registered with a maximum of three clubs during one season. During this period, the player is only eligible to play official matches for two clubs. As an exception to this rule, a player moving between two clubs belonging to associations with overlapping seasons (i.e. start of the season in summer/autumn as opposed to winter/spring) may be eligible to play in official matches for a third club during the relevant season, provided he has fully complied with his contractual obligations towards his previous clubs. Equally, the provisions relating to the registration periods (Article 6) as well as to the minimum length of a contract (Article 18 paragraph 2) must be respected.*

4. *Under all circumstances, due consideration must be given to the sporting integrity of the competition. In particular, a player may not play official matches for more than two clubs competing in the same national championship or cup during the same season, subject to stricter individual competition regulations of member associations."* (Emphasis added")

[13] Eligibility to compete is seminal in all sport for obvious reasons. If the rules of the game dictate that you may not play, you don't get the trophy – even if you compete and win. This is inherent in the fairness component of the game. Thus, playing when ineligible is singled out in the FIFA Regulations as one of the most grievous forms of misconduct. The liability for this is strict and forfeiture of the game is imposed as a mandatory sentence in the

FIFA and SAFA statutes.³ There was an argument raised by Amazulu to the effect that this mandatory sanction is not mirrored in the NSL Handbook and thus was not applicable to the arbitration. It is not necessary for me to decide this point, but it would seem to be anomalous and contrary to the purpose of the structure and the position of the NSL therein if this were the case.

[14] The facts which led up to this dispute about eligibility are as follows. On 19 August 2017, Mr. Ndoro played for Orlando Pirates in an official match against Chippa United as part of the ABSA Premier League. On 24 August 2017, Mr. Ndoro transferred from Orlando Pirates to Al-Faisaly in Saudi Arabia. Mr. Ndoro played in official league matches for Al-Faisaly between September and December 2017. In January 2018, Mr. Ndoro transferred from Al-Faisaly to Ajax where he was registered once again with the NSL. Mr Ndoro joined Ajax half-way through the 2017/2018 soccer season. He played two games for Ajax in the NSL⁴.

[15] It is thus not in contention that Mr Ndoro played for three clubs in the season. If all three clubs had been part of the NSL, there would have been no discernable basis for Ajax to field him. The applicants seek, however, to rely on the exception in Article 5.3 which reliance brings into play an international dimension: The question of the eligibility to play in different seasons in different seasonal zones and the compliance with contractual obligations of foreign clubs.

[16] It is this foreign feature of the dispute which has led to the jurisdictional challenges which have been employed in the legal wrangling of the past months.

[17] In late January 2018 it became clear that the eligibility of Mr. Ndoro to compete was in dispute. The applicants purported to clarify Mr. Ndoro's eligibility in what was the first foray into the administrative structures of the NSL and SAFA. They stopped fielding Mr. Ndoro

³ Article 55.1 of the SAFA Code (which mirrors Article 55.1 of the FIFA Code) provides that: *"If a player takes part in an official match despite being ineligible, his team will be sanctioned by forfeiting the match (cf. art. 31) and paying a minimum fine of ZAR 6,000."*

Article 31, headed "forfeit", provides that: *"(1). Teams sanctioned with a forfeit are considered to have lost the match by 3—0. (2). If the goal difference at the end of the match in question is greater than 3- 0, the result on the pitch is upheld."*

In terms of Article 7.1, fault is irrelevant to the question whether there has been an infringement of Article 55. Article 7.1 provides: *"Unless otherwise specified, infringements are punishable regardless of whether they have been committed deliberately or negligently."*

⁴ On 12 January 2018 Ajax played Platinum Stars and won 3-0 and on 20 January 2018 Ajax played Cape Town City and lost 1-0.

and approached the NSL's DRC for a declaration as to Mr. Ndoro's eligibility. The DRC on 31 January 2018 ruled, against a jurisdictional challenge, that it had jurisdiction to resolve the matter and ruled further that FIFA's Regulation 5.3 did not prevent Ajax from fielding Mr. Ndoro.

[18] The NSL immediately lodged an internal appeal against the DRC ruling. In the meantime, however Ajax, buoyed by the result it had scored in the DRC and a provision in the rules to the effect that an appeal does not have suspensive effect, except with regard to orders to pay a sum of money,⁵ continued to field Mr. Ndoro. He played five further matches amidst a chorus of disapproval and protest from other clubs.⁶

[19] On 26 March 2018 and after some delay (which the opposing respondents attribute to the applicants) the appeal against the DRC's ruling served before Nazeer Mr. Cassim SC (Mr. Cassim), who sat as a SAFA Arbitration Tribunal under the SAFA statutes⁷.

[20] Mr. Cassim found that the DRC did not have jurisdiction to entertain this dispute and that it should be decided by the PSC as it involved a matter of status. The award of the DRC was thus set aside. Mr. Cassim added that, for the integrity of the game, it was imperative that a determinative finding on the issue be obtained from FIFA as soon as possible. He directed that certain steps be taken with a view to achieving this expeditiously. It was suggested also by Mr. Cassim that Mr. Ndoro should not be fielded pending the finding in an expected review of his award.

[21] Play of the League Tournament continued as scheduled. Ajax and Mr. Ndoro, now hamstrung by Mr. Cassim's award and determinations, played a new angle: An urgent application was brought by them in this court before Sutherland J in which they sought to review and set aside the award of Mr. Cassim and for an interim order interdicting the NLS from stopping Mr. Ndoro from playing. The application for interim relief was dismissed on 03 April 2018.

⁵ FIFA Art 124 of the DC Code; SAFA Art 125

⁶ On 4 February 2018 Ajax played Polokwane City and drew 1-1; on 10 February Ajax played Orlando Pirates and lost 1-0; on 25 February Ajax played Golden Arrows and lost 1-0; on 28 February Ajax played SuperSport and won 2-0; on 04 March Ajax played Bloemfontein Celtic and lost 1-0.

⁷ In terms of Article 23.9 of the NSL constitution read with Article 71 of the SAFA statutes and appeal of a decision of the DRC lies to the Arbitration Tribunal which is constituted by an SC appointed by SAFA.

[22] The review of Mr. Cassim's award was set down to be heard urgently before Unterhalter J and on 24 April 2018 it was dismissed in *Ndoro and Another v SAFA and Others*⁸. The learned Judge agreed with the conclusion reached by Mr. Cassim that the DRC had no jurisdiction to hear the matter – albeit for reasons which differed from those of Mr. Cassim. It was found, in essence, that the DRC did not enjoy jurisdiction over status matters which FIFA had prescribed in its regulations would be heard by the PSC; that the eligibility issue in this case was such a status matter; and that thus only the PSC could determine it⁹.

[23] On 3 May 2018, and approximately a week after the handing down of judgment in *Ndoro*, the NSL pursued disciplinary charges against Ajax and Mr. Ndoro in respect of 5 matches which had been played notwithstanding Mr. Ndoro being ineligible¹⁰.

[24] Mr. Mokhari was appointed as arbitrator in these proceedings. The proceedings came before Mr. Mokhari on 14 May 2018. He found Ajax and Ndoro guilty on all charges. In respect of the three games which Ajax won or drew (against Platinum Stars, Polokwane, and Supersport) Ajax was deemed to have lost these 3-0. This had the result that Ajax was automatically relegated to the National First Division, having previously held fifteenth position and thus with an entitlement to participate in the play-off games.

[25] The first play-off game took place on 16 May 2018. On the same day, Ajax and Ndoro launched another urgent application seeking the urgent review of the award of Mr. Mokhari and interim relief, this time to stop the play-off games from proceeding. The application for interim relief came before Keightley J in this court. The learned Judge refused the urgent interdictory relief but acknowledged that the main application for review of the award of Mr. Mokhari should be dealt with urgently.

[26] The review application was then allocated an urgent date for hearing and now comes before me. As at the allocated date the season and play-offs had already come to an end.

This Application for Review

[27] Given the domestic and judicial legal processes which have been engaged, positions in the league table are subject to determination off the field by resort to law and dispute settlement. All parties are however agreed that certainty and finality of decisions

⁸ case number 2018/12906 GLD (marked reportable)

⁹ Ndoro at [79]

¹⁰ The NSL's CEO invoked rule 63.1 which allows for the urgent to escalation of disciplinary proceedings to the highest decision making disciplinary tribunal

have particular importance in the context of football. The “*Beautiful Game*”¹¹ was meant to be played on the pitch.

[28] There are thus aspects of urgency which remain notwithstanding the seasons closure. Ultimately, the sooner the league table is settled the better for all parties and the public interest. I find that the matter should be determined as one of urgency.

[29] In *Ndoro*, Unterhalter J held that decisions of the SAFA Arbitration Tribunal are administrative action which are reviewable under the Promotion of Administrative Justice Act 3 of 2000 (“PAJA”). There is no dispute that Mr. Mokhari’s arbitration award is also of the nature which falls to be reviewed in terms of PAJA. The reasoning of Unterhalter J, for a large part, concentrated on the public interest aspect of the game which remains an important consideration in these proceedings.

[30] The applicants argue that, in finding that he had the jurisdiction to deal with the issue of player eligibility, Mr. Mokhari committed a material error of law. They rely on Article 29.2.2 of the Handbook that provides that:

“any dispute regarding the status of a player involved in an international transfer will be settled by the FIFA Players’ Status Committee” .

[31] They rely further on the authority of *Ndoro* and specifically on the finding that the issue of Mr. Ndoro’s eligibility had to be determined by the PSC.

[32] The NSL contends that this finding in *Ndoro* is of limited application in the present context. It argues that the regulatory machinery imposed by FIFA creates a division between dispute resolution processes on the one hand and disciplinary processes on the other. It seeks to make much of this division, which it describes as a “*bright line*” drawn between these two types of structures. It argues that this is a vital distinction because the jurisdiction of the tribunals is determined by the nature of the proceedings (i.e. dispute resolution versus disciplinary) regardless of the disputes which might arise in the proceedings. It seeks to distinguish *Ndoro* on the basis that it dealt only with jurisdiction in a dispute resolution process.

[33] Central to the NSL argument is Article 25.4 of the FIFA regulations which provides:

¹¹ Attrib. – Pele (Edson Arantes do Nascimento) - Brazilian Professional Footballer

“If there is reason to believe that a case raises a disciplinary issue, [the dispute resolution tribunal concerned] shall submit the file to the Disciplinary Committee together with a request for the commencement of disciplinary proceedings in accordance with the FIFA Disciplinary Code.”

[34] The NSL puts this provision at the center of the administrative process of the FIFA structure. It says that this provision should be interpreted to mean that, whenever a matter is disciplinary in nature, the relevant disciplinary tribunal has the jurisdiction to deal with it regardless of the fact that it involves the determination of a status matter, over which the PSC has exclusive jurisdiction. This means, it argues, that Mr. Mokhari sitting as he was as a disciplinary tribunal has jurisdiction to determine the matter. In fact, it argues that the DC is the only body that has such jurisdiction.

[35] In relation to the findings in *Ndoro*, it argues that this case had to do only with the determination of which dispute resolution tribunal had jurisdiction. It argues that the findings in *Ndoro* hold no sway in relation to the jurisdiction of the disciplinary committee under Mr. Mokhari.

[36] It thus argues that Article 25.4 of the Handbook, (and its equivalent provisions in the FIFA and SAFA structures) operate to qualify the limiting provision in Article 29.2 to the effect that status matters involving an international component must be determined by the PSC.

[37] In my view, Article 25.4 is not open to this construction. All that Article 25.4 does is provide for the referral of a disciplinary issue which arises as part of the dispute resolution process to the disciplinary tribunal having jurisdiction. Obviously, in the course of deciding disputes, matters relating to the misconduct of the parties will often arise. This does not, as the NSL suggests, have the effect that jurisdiction is then wrested from the dispute resolution tribunal and vested exclusively in the disciplinary tribunal. This would be untenable. Indeed, it may be at an advanced stage of the dispute resolution proceedings that the disciplinary issue arises. All that it means is that the dispute resolution tribunal is not visited with the task of deciding issues of a disciplinary nature which may emerge from or in the course of the determination of disputes.

[38] It must be borne in mind that the procedure for instituting a disciplinary inquiry is potentially time consuming in the normal course. The referral of a disciplinary issue from the dispute resolution body makes sense. It cuts through preliminary requirements for the bringing of disciplinary proceedings because it allows for a direct referral from the dispute resolution tribunal. This construction follows from a reading of the Articles and a purposive approach with reference to the objects of the structure.

[39] The facts of this matter are a clear demonstration of the operation of the provision. The PSC has sole jurisdiction to determine the eligibility of Mr Ndoro. If, pursuant to such determination, it emerges that there has been misconduct, then it is not for the PSC to determine the disciplinary consequences which flow from such finding. It is also in the interests of the game that such misconduct be dealt with from a disciplinary perspective, and it may be that, in the absence of such a provision, no disciplinary process would ever be brought by those having standing in the normal course.

[40] The matter must be referred by the PSC to the disciplinary tribunal having jurisdiction and not dealt with in its own DC. This is dealt with in Article 76 of the FIFA regulations which limits the jurisdiction of FIFA's DC to breaches of FIFA's Regulations "*which do not come under the jurisdiction of another body*". This makes sense because the disciplinary aspect is sent back to the national body, where it properly belongs.

[41] I now turn to consider the argument of the NLS that the *Ndoro* case is distinguishable in that its findings are confined to a dispute resolution process and have no application in a disciplinary context.

[42] Reference to the reasoning in *Ndoro* however shows the contrary. The finding of jurisdiction was not limited to the type of process at hand but was found by the learned Judge to have application generally and as a central prescript within the structure as a whole.

[43] Unterhalter J found that the fact that FIFA should decide the issue of status where there is an international element makes sense because the restriction on eligibility at issue is a FIFA regulation, and the jurisdictional limitation "*follows the provenance of the substantive rule*"¹². Clearly then, the finding is that it is the international nature of the issue that determines the jurisdiction and not the nature of the tribunal hearing the matter. The point made is that this is an instance of deference within the hierarchical structure¹³.

¹² Ndoro at [69]

¹³ Id at [78]

[44] From a practical perspective, FIFA retains jurisdiction over disputes of this kind because its dispute settlement bodies are appropriate to adjudicate these matters because the national structures do not have the same expertise. This point was also made in *Ndoro*.

[45] In a further practical vein, *Ndoro* raised the fact that if a national member could invest jurisdiction in its structure which is potentially at odds with what FIFA has determined, this could lead to incongruity. Such potential is demonstrated by the facts of this case in that, if the NSC is correct in its construction, the PSC and Mr. Mokhari could make determinations as to Mr. Ndoro's eligibility which are at odds. This lack of harmony within the structure could not have been countenanced by the rule makers. Unterhalter J had the following to say on this score¹⁴:

"The Handbook recognizes the institutional hierarchical structure of football. The NSL is a member of SAFA, and SAFA is an affiliate of FIFA that seeks amongst other things to respect the statutes of FIFA and prevent their infringement.¹⁵ This hierarchy is important because the powers enjoyed by the NSL devolve from or, at the very least, must be congruent with the supremacy of the Statutes of FIFA and SAFA. I shall refer to this as the hierarchy principle."

[46] The FIFA model advisedly creates a system which does not allow for the adjudication and determination of matters by one FIFA member of matters relating to another FIFA member. The principle of deference within the structure means that, although members have the right to a measure of self-determination within the rules established by them at national level, this province ends where the consideration of another foreign member's interests enter the sphere of consideration. In this case the apex jurisdiction assumes precedence. This cannot be undermined by any particular arrangement of dispute determination machinery employed by the national member – even if this falls in with the particular construction favoured by FIFA.

[47] Thus, the clear ratio of *Ndoro* is that the NSL (regardless of the type of proceedings) does not have the jurisdiction to deal with the eligibility of Mr. Ndoro – because the jurisdiction to decide the issue vests solely with the FIFA PSC. I am in respectful agreement with this finding.

¹⁴ *Id* at [78]

¹⁵ Article 2.6 of the SAFA Statutes.

Conclusion and Remedy

[48] I, thus, find that Mr. Mokhari did not have the jurisdiction to determine the issue of Mr. Ndoro's eligibility to be fielded in the affected matches.

[49] The process that should follow is that the dispute should be brought before the PSC by any party having standing. This would include the applicants, other member clubs, and SAFA. The PSC, if it decides that Mr. Ndoro was ineligible to play should, by operation of its Article 25.4, refer the matter to the national DC. It is agreed by all parties that reference to the PSC should be a relatively expeditious process. Indeed, the NLS and Ajax each level recrimination at the other for failing to take this direct route in the first place.

[50] The assumption of jurisdiction by Mr. Mokhari before such finding of the PSC had been made was premature. Because Mr. Mokhari was not able to determine the central point leading to his award and purported to do so, I find that his award should be set aside on the basis that he committed a material error of law.

[51] Various other arguments were raised by the applicants and the opposing respondents. All were based on a finding by this court that Mr. Mokhari had jurisdiction to determine Mr. Ndoro's eligibility. It is thus not necessary for me to decide these issues.

[52] It was sought on behalf of the applicants that, in the event of the award being set aside, I grant an order declaring that Ajax finished in fifteenth place in the Premier Soccer League Table and an order declaring that the promotion play-offs are invalid. Mr. Arendse argues on behalf of the applicants that this, in any event, is the *status quo* which will revert on the setting aside of the award. If this were indeed the case it is difficult to understand why the orders were sought at all.

[53] I agree with Ms. Hofmeyr who argued on behalf of Supersport that these would amount to orders of substitution. The eligibility of Mr. Ndoro remains undetermined and thus there is no basis for such a ruling.

[54] The Board of Governors, as the supreme decision making organ of the NSL has wide powers. It may do "*do any act or thing as may be required to give effect to the objects ,and exercise the powers of the League as set out in the NSL Handbook*". It may be that these powers could be invoked to do what is necessary to bring the league table into line with fair

play should this be required once the issue of eligibility has been finally determined. I need however make no finding in regard to such powers.

[55] In all the circumstances, in my view, the best remedy available is simply to declare the law in relation to the jurisdiction.

[56] Given the interests involved and more especially the public interest, it is hoped that, with this, the parties can be relied on to take the steps available to them to bring finality to the 2017/2018 league table. All parties are agreed that certainty and finality of decisions have great importance in football. However, in this case such principles must yield to fairness and adherence to the structural integrity of the system. It is nonetheless imperative that there be co-operation to obtain a resolution as quickly as possible.

Costs

[57] It was noted by Unterhalter J in *Ndoro* that the parties had, until the matter came before him, accepted that the determination of their disputes concerned matters of public interest and were of general importance for determining the supervisory jurisdiction of the courts over the regulation of professional football and had thus not insisted on an award of costs.¹⁶ He saw no reason why this approach should not extend to the case before him and thus ordered that each party pay their own costs. I share his view in relation to this matter. I thus find it fitting that each party pay their own costs

Order

I make the following order:

1. The award of Mr. Mokhari SC is set aside.
2. It is declared that the issue of the eligibility of Mr. Ndoro to have played in the 2017/2018 season of the Premier League may only be decided by the FIFA Player Status Committee.

¹⁶ At [81]



FISHER J
HIGH COURT JUDGE
GAUTENG LOCAL DIVISION

Date of Hearing: 14- 15 June 2018

Judgment Delivered: 2 July 2018

APPEARANCES:

For the Applicants	: Adv N Arendse SC with Adv D Borgstrom
Instructed by	: AJ Tappenden and Co.
For the Second Respondent	: Adv MR. MR. MOKHARI Trengove SC and Adv M Kriegler SC with Adv S Tshikila
Instructed by	: DMS Attorneys.
For the Sixth Respondent	: Adv A Rubens SC with Adv A Ayayee
Instructed by	: Murphy's Attorneys.
For the Eighteenth Respondent	: Adv M Witz
Instructed by	: Witz Calicchio, Isakow and Shapiro Attorneys.
For the Twentieth Respondent	: Adv K Hofmeyr with Adv C McConnachie.
Instructed by	: Webber Wentzel Attorneys.