IN THE HIGH COURT OF SOUTH AFRICA

(GAUTENG DIVISION, PRETORIA)

DELETE WHICHEVER IS NOT APPLICABLE

(1) REPORTABLE: YES.

(2) OF INTEREST TO OTHER JUDGES: NO.

(3) REVISED.

07 July 2025
DATE **SIGNATURE**

Case Number: 2025-054266

In the matter between:

ROYAL AM FOOTBALL CLUB (PTY) LTD Applicant

and

THE NATIONAL SOCCER LEAGUE First Respondent

THE BOARD OF GOVERNORS OF NATIONAL SOCCER LEAGUE Second Respondent

WILLEM JACOBUS VENTER N.O. Third Respondent

(IN HIS CAPACITY AS *CURATOR BONIS* OF ROYAL AM FOOTBALL CLUB (PTY) LTD)

COMMISSIONER FOR THE SOUTH AFRICAN REVENUE SERVICE Fourth Respondent

This judgment was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to the Parties/their legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date for handing down is deemed to be 07 July 2025.

JUDGMENT

Summary: *Whether the termination of the applicant's membership as a Member Club of the National Soccer League (NSL aka PSL) was unlawful, and should be reviewed and set aside. Whether the NSL Board of Governors had the powers under the NSL Constitution to terminate the applicant's membership with the NSL*.

SELEKA AJ

Introduction

[1] The Applicant in this review application is Royal AM Football Club (Pty) Ltd, a private company with registration number 2019/412459/07. It seeks in the main, an order to declare as unlawful and invalid, and to review and set aside, a decision of the First and/or Second Respondent terminating the Applicant's membership as a football club with the First Respondent. The Applicant also seeks ancillary relief to refer the termination decision back to the First Respondent for determination by the First Respondent or the Second Respondent, and that any decision taken to give effect to the termination decision also be reviewed and set aside.

[2] The Applicant has cited four Respondents, namely the National Soccer League, commonly known as the Premier Soccer League ("the PSL"), the Board of Governors of PSL ("the BoG"), Jaco Venter N.O. and the Commissioner for the South African Revenue ("SARS"), but seeks relief only against the First and Second Respondents,

namely PSL and the BoG. The Third and Fourth Respondents have been cited only insofar as they may have an interest in the matter, but also to keep them up to date with matters involving the Applicant.

[3] The reason for this last statement is that on 21 November 2024, SARS applied for and obtained a preservation order in terms of section 163 of the Tax Administration Act 28 of 2011 against the Applicant and twenty-two other Respondents, in the High Court, Kwazulu-Natal Local Division. The preservation order applies in respect of all realisable assets of the Applicant and the twenty-two others. The order applies with immediate effect pending the return date. The original return date has been extended to 09 July 2025, and the matter is still pending.

[4] The preservation order also appointed the Third Respondent herein, Mr Jaco Venter, as the *curator bonis* in whom the rights, title and interest in all the assets of the Applicant and twenty-two others immediately vested, including, but not limited to, any shareholding, loan accounts, movable and immovable assets.

[5] The preservation order confers fairly wide powers on the curator which I do not propose to reproduce in this judgment. Reference to a few of those powers will suffice. The curator is authorised to take transfer, into his name, of the shares held by the Applicant and twenty-two others, and to have all such powers of a shareholder and member, including to hold shareholder's or member's meeting, and to remove and appoint directors. The curator is authorised to take control of all bank accounts held in the name of the Applicant and the twenty-two others in order to manage the flow of funds and ensure that the value of the Applicant's and twenty-two others' assets are maintained. In the result, no one, except the curator may deal with the Applicant's assets or do so without the curator's prior written consent. These powers continue to apply to secure the collection of tax against the Applicant and twenty-two others, until their tax debts to SARS are settled in full.

[6] The preservation order also contemplates authority for the curator to sell, by means of an auction or out of hand sales, the assets of the Applicant and twenty-two

others to meet their tax debt. This authority is subject to the Tax Administration Act entitling the Applicant to instruct the curator to sell the assets.

[7] On 17 February 2025 and by agreement between the curator and the Applicant's management, the curator applied for and obtained a Court Order permitting him to sell the Applicant's assets in order to preserve the maximum value of those assets. The order to sell includes disposing of the Applicant's rights, title and interest as owner of the "Royal AM FC", as well as the right to participate in particular divisions of PSL or in any competition of PSL. The sale will be subject to the prior approval of PSL in terms of its NSL Handbook.

[8] The curator has put the Applicant up for sale, but has to date not been able to find a suitable buyer. The Court Order to sell still applies, and the Applicant and twenty-two others remain precluded from entering into any agreement for the dissipation or encumbrance of their assets without the curator's prior written consent.

Facts giving rise to this application

[9] The facts giving rise to this application are largely common cause, and culminated into the impugned decision of the BoG on 10 April 2025, terminating the Applicant's membership with PSL.

[10] The Applicant became a member club of PSL in 2021, thereby subjecting itself to PSL's regulatory and governing instruments, such as the NSL Constitution, comprising the NSL Handbook and NSL Rules, the NSL Compliance Manual and the NSL Induction Manual. For present purposes, the NSL Handbook and the NSL Rules are the more relevant documents.

[11] Upon its establishment and registration in 2019, the Applicant had two directors, namely Andile Mpisane and Shauwn Mabongy Flora-Junior Mkhize. They both resigned as directors on 22 June 2023, and one Mr Shamish Sadab was appointed the sole director of the Applicant.

[12] The said change in directorship coincided with the change in shareholding in the Applicant, from 100% by the Shandi Trust to 38% shareholding by Shamish Sadab, 20% each by Flora Junior Kanye Mpisane and Mizandy Aliya Mpisane, 10% each by Coco Mpisane and Messiah Shauwn Mpisane, and only 2% by the Shandi Trust.

[13] It is common cause that these changes were made without notification to PSL and without its prior written approval, as required by Article 14.2 of the NSL Handbook, to which I shall refer later in this judgment.

[14] Mr Sadab would later resign as the sole shareholder of the Applicant on 01 April 2025 and Dr Mkhize appointed as director on the same day. Dr Mkhize is the deponent to the Applicant's affidavits in this application, and describes herself as a businesswoman and the President and sole director of the Applicant. When the change in directorship again took place in April 2025, neither the curator nor PSL was informed. By this time, only the curator could, in terms of the preservation order, remove and appoint directors for the Applicant.

FIFA registration bans

[15] On two different occasions and in the space of 6 months, the Applicant received two FIFA registration bans, one in July 2023 and the other in January 2024. Each ban was in respect of a registered international player, one Samir Nurkovic, whose salary the Applicant had failed to pay and, the other, Ricardo dos Santos Nascimento, whose employment contract the Applicant had prematurely terminated without just cause and had also failed to pay him remuneration for two months as the Applicant had undertaken. FIFA upheld the claims of these two players in two separate awards pursuant to which the registration bans were imposed on 03 July 2023 and 15 January 2024 respectively.

[16] The two bans precluded the Applicant from registering new international players, as well as new players at national level, until the Applicant had paid the amounts due to the players in full.

[17] On 01 July 2024, the Applicant submitted its application for renewal of its membership with PSL. It stated in that application that Dr Mkhize and Mr Andile Mpisane were the directors of the Applicant. This information was incorrect because, as already mentioned, the two had resigned as directors, more than a year before (on 22 June 2023), and Mr Sadab was the Applicant's sole director since then and at the time of the renewal application.

[18] On 01 October 2024, the Applicant informed PSL that the Applicant was unable to meet its obligations in respect of the MultiChoice Diski Challenge Competition.

[19] On 21 November 2024, the Applicant was placed under curatorship in terms of the preservation order already mentioned.

[20] On 16 December 2024, PSL was notified of the preservation order by the curator.

[21] On 03 January 2025, the Applicant's management informed PSL that it would be extremely impossible for the Applicant to honour its fixture against Chippa United FC that had been scheduled for 11 January 2025. It is appropriate to quote relevant portions of the email communication from the Applicant to PSL:

> "Having considered the present situation wherein we find ourselves as a team, it would be extremely impossible to honour the match against Chippa United on the 11th in Port Elizabeth. As we speak, the players and staff have not been paid their salaries by the curator and travelling arrangements have not been paid for. The players and staff have not returned to work because of the non-

payment of their salaries. We have engaged the curator several times trying to reason with him to make payments without any success.

It is becoming clear that even if the players were to be paid by Tuesday or whatever time, they will not be physically and mentally ready to play. This is beyond our control and we have done everything to ask the curator to perform his duties as per the preservation order to no success. Even Mr Murphy tried to make him to understand but the man just did not want to do anything. Based on the aforesaid reasons, we are requesting the League to postpone our match whilst we find a solution to this situation."

[22] Whilst Dr Mkhize concedes that the Applicant could not meet its commitments in respect of the match against Chippa United FC due to, what she alleges in the Applicant's founding affidavit, were difficulties arising from the appointment of the curator, she nonetheless seeks to paint a different picture from the one apparent from the contemporaneous email above. Dr Mkhize alleges, *inter alia*, that–

"the Applicant's team was at all material times ready and in a position to play the game against Chippa United FC. Flights for the players were already booked and paid for. These costs were paid before the curator became involved."

[23] Dr Mkhize's allegation is clearly at odds with the message conveyed in the contemporaneous email above. Save for the alleged non-payment of salaries for the players, the email did not mention that the Applicant's team was at all material times ready and in a position to play. According to the email, the players and staff had not returned to work because of non-payment of their salaries.

[24] For his part, the curator says he was not aware of the said email and had in fact made payment of salaries for the players and employees on 09 December 2024. He

denies all adverse allegations made against him and points to, *inter alia*, a severe cashflow deficit in the Applicant's finances, making it impossible to meet Applicant's monthly operational expenses.

[25] PSL responded on the same day to the email above, explaining that fixture postponements could only be considered in exceptional circumstances and that, under normal circumstances, the failure to pay salaries and/or make travel arrangements would not be a basis for an application to postpone. However, in order not to inconvenience other parties, PSL reluctantly agreed to postpone the fixture with Chippa United FC, but called upon the Applicant and the curator to provide assurances that the Applicant would meet its playing commitments as fixtured for the rest of the season.

Letter of Comfort

[26] Various urgent meetings ensued between parties, called by the PSL Executive Committee ("Exco") and attended by the curator and the Applicant's management, with the view to resolving the issues between the curator and the Applicant's management, specifically causing the Applicant not to meet its obligations to PSL. These meetings culminated into an undertaking made by the Applicant's management to provide PSL with firm and unequivocal assurances that the Applicant would be able to meet its playing commitments for the rest of the season. It was agreed that the assurances would be given in the form of a letter of comfort, to be provided by 17 January 2025, prior to another Applicant's fixture against Orlando Pirates FC on 23 January 2025.

[27] The said undertaking was, therefore, made on the back of the Applicant's failure to meet its commitment to play against Chippa United FC and its alleged inability to meet its obligations to PSL due to the curator. According to the Applicant, only the curator could issue a letter of comfort.

[28] From the facts, it is apparent that the curator was prepared to issue such letter only if satisfied that the Applicant's financial position would be improved to permit for the assurances to be made that the Applicant would honour its fixtures obligations to PSL. The issuance of the letter was therefore contingent upon cooperation and agreement between the curator and the Applicant's management regarding the Applicant's financial position and availability of funds.

[29] The parties could not find each other, and the curator refused to provide a letter of comfort due to the lack of reliable and accurate information regarding, *inter alia*, the Applicant's financials and operations, and the lack of cooperation by the Applicant's management regarding funding.

[30] Having not received a letter of comfort, PSL resolved on 22 January 2025 to cancelled the Applicant's fixture against Orlando Pirates FC, that had been scheduled for 23 January 2025, and to suspend the rest of the Applicant's fixtures for the season

[31] Quite belatedly in the replying affidavit, Dr Mkhize seeks to contend that the letter of comfort is not a requirement under the NSL Handbook. This may well be so, however the parties had agreed, as already mentioned, that there was a need for the Applicant to provide firm and unequivocal assurances that it would meet its playing commitments for the rest of the season. Those assurances were to be provided in a letter of comfort, to which the Applicant had agreed.

[32] Further engagements between PSL, the Applicant's management and the curator did not bear fruit. The impasse between the Applicant's management and the curator simply deepened.

[33] Consequently, on 30 January 2025, the Applicant brought an urgent application seeking mandatory relief against the curator to issue a letter of comfort, alternatively, against PSL to permit the Applicant to play the rest of its fixtures ("mandamus application").

[34] The urgent application was struck off the roll for lack of urgency, with costs in favour of the curator and SARS. PSL did not seek costs. It was in this application that PSL learned of the change in directorship and shareholding in the Applicant, dating back to 22 June 2023. The information was contained in SARS's court papers.

[35] The Applicant subsequently withdrew the "mandamus" application, on 03 March 2025, and never pursued it. Accordingly, its impasse with the curator remains to this day.

[36] With that application aborted, so was the alternative relief sought against PSL to permit the Applicant to play the rest of its suspended fixtures for the season. More importantly, however, is that the impasse between the Applicant's management and the curator has inevitably prolonged the Applicant's inability to meet its obligations to PSL. After all, the Applicant's management blames this inability on the curator. It alleges that the Applicant was able to and did fulfil its obligations to PSL prior to being placed under curatorship, and that the curator is the sole reason for the Applicant's troubles with PSL.

[37] The curator has denied these allegations and presented evidence to show that the inability stems from the deficiencies he found within the Applicants environment, which are partly the reasons why the Applicant was placed under curatorship in the first place. He blames the Applicant's management for failing to cooperate with him and to provide reliable financial and other information. He points out that he had requested several meetings with the Applicant's sole director at the time, Mr Sadab, all to no avail.

[38] However, the dispute between the curator and the Applicant's management is not before me, and so is the Applicant's unhappiness with the suspension of its remaining fixtures by PSL. The Applicant had the opportunity to pursue these issues in the "mandamus" application it abandoned in March 2025, but failed to do so.

<u>PSL's steps towards termination of Applicant's membership</u>

[39] The events above caused the PSL Exco to address a letter, dated 10 February 2025, to both the Applicant and the curator, calling upon the Applicant to submit written representations, by close of business on 14 February 2025, why Exco should not make a recommendation to the PSL BoG to cancel the Applicant's membership with PSL on the grounds of contravention of the provisions of Articles 10.14, 10.16 and 14.6 of the NSL Constitution.

[40] On 14 February 2025, both the curator and the Applicant's management submitted separate written representations. The Applicant's management submitted further representations on 21 February 2025, following a meeting with PSL and the curator on 19 February 2025.

[41] It is significant that in both the curator's representations and the Applicant's representations there was commonality in regard to the Applicant's prevailing precarious financial position, on account of which the two parties agreed that the most viable option to resolving that financial position was to urgently identify a prospective purchaser for the Applicant. It was pursuant to this agreement that the curator applied for and obtained, on 17 February 2025, the court order to sell the Applicant.

[42] On 24 February 2025, the Applicant's management informed the PSL Exco, in a meeting, that the Applicant would no longer participate in the Nedbank Cup. In the same meeting, the curator advised that he had not been able to sell the Applicant and asked for more time until 26 February 2025. In his report dated 01 April 2025, the curator reported on this and other matters to PSL, and stated that the Applicant's financial position has not changed since 09 January 2025.

[43] The Applicant had requested Exco to postpone making a termination recommendation to the BoG, pending the outcome of its "mandamus" application, struck off the roll for lack of urgency on 05 February 2025. Whereas Exco had agreed to postpone making the recommendation, the Applicant subsequently withdrew the application on 03 March 2025, as already mentioned.

[44] In the meantime, the deteriorating relationship between the Applicant's management and the curator seemed to reach a pinnacle point when, on 10 March 2025, the Applicant's management brought another urgent application against the curator and SARS, this time, to set aside the preservation order, alternatively, to take away the curator's powers. The order was not given. Instead, the preservation order was extended to 09 July 2025, with the parties allowed to file further papers.

[45] Exco ultimately decided, on 02 April 2025, to make a recommendation to the BoG for cancellation of the Applicant's membership with PSL on the grounds that the Applicant–

[45.1] was unable to fulfil its obligations to PSL (Article 10.16);

[45.2] had misrepresented material information regarding directorship in the Applicant in its renewal application on 01 July 2024 (Article 10.14), and

[45.3] had transferred shares in contravention of Article 14.6 of the NSL Handbook.

[46] Exco provided both the Applicant's management and the curator with a notice of the recommendation and issued a notice calling for an urgent special meeting of the BoG on 10 April 2025.

[47] The notice for the urgent special meeting of the BoG recorded essentially one agenda item, "to consider Exco's recommendation that the Applicant's membership be cancelled pursuant to Articles 10.16 and/or 10.14 and/or 14.6", and thereafter to make a decision. That was the business for the BoG special meeting, at which the Applicant's representative, Dr Mkhize, was permitted to make oral representations and address the BoG on the issue. She was also permitted to submit further documents at the meeting. Both her and the curator fielded questions from the BoG members,

before they were asked to recuse themselves for the BoG to deliberate and decide on the matter.

[48] The decision took place by way of voting, on a ballot paper, making a cross against “Yes” in favour of termination or against “No”, as indication of being against termination. Members of the BoG voted 149 against 37 in favour of termination/cancellation of the Applicant’s membership with PSL.

[49] The Applicant was formally notified of this decision on 15 April 2025. It is this decision which the Applicant seeks to have reviewed and set aside, and declared unlawful, in the present application.

Contravention of Article 14.6

[50] It is appropriate to begin my consideration of this issue by reference to the provisions of Article 14.1 and 14.2 of the NSL Handbook, which read:

> “14 Acquisition and Ownership of a Club
>
> 14.1 The Controlling interest or shareholding in a Member Club or entity that controls a Member Club, or the right to participate in a particular division of the League, or its membership of the League can only be sold, transferred or disposed of, directly or indirectly, in compliance with this Article, and in compliance with Article 18 bis of the FIFA Regulations on the Status and Transfer of Players.
>
> 14.2 Any proposed sale, transfer or disposition contemplated in this Article, or any transaction directly or indirectly having any of the effects referred to, must be submitted to the Executive Committee for prior written approval.”

[51] The Applicant does not dispute that it has, in contravention of Article 14.2, failed to notify PSL of the change in directorship and shareholding, and to obtain Exco's prior written approval for that change, back in June 2023. It contends that, notwithstanding the change in the controlling interest and shareholding, such a change is not a ground on which its membership with PSL could be cancelled under Article 14.6.

[52] Dr Mkhize alleges that Mr Sadab held shares only as a nominee for the purpose of funding and to increase the Applicant's revenue, as he has relationships with international clubs and international organisations. She avers that the Applicant had intentions to expand internationally, to sell and acquire players, and Mr Sadab was vested with the shares as nominee to allow him to conduct business internationally on behalf of the Applicant without the need for constant authorisation.

[53] It is inconceivable how this objective could be achieved when the first FIFA registration ban, imposed on 03 July 2023, had been made pursuant to a FIFA award already passed on 27 April 2023 and communicated to both the Applicant and the claimant player on 09 May 2023. Mr Sadab became the sole director and a 38% shareholder in the Applicant not long thereafter, on 22 June 2023. The registration ban was finally imposed on 03 July 2023, precluding the Applicant from registering new international and national players.

[54] In any event, the proffered reasons, for Mr Sadab's involvement, are irrelevant to the issue under consideration. The question is not whether the Applicant had good reasons for making the change, but whether the change in the Applicant's controlling interest and shareholding was made without the prior written approval of the PSL Exco. The answer is in the affirmative, and the Applicant does not contend otherwise.

[55] As already mentioned, the Applicant's contention is that, notwithstanding its failure to comply, Article 14.6 only contemplates termination of the sale, or transfer or disposition concerned, but not of the membership.

[56] I do not agree. Article 14.6 of the NSL Handbook reads:

> *"Should any sale, transfer or disposition take place in contravention of this Article, the Executive Committee will immediately upon the matter coming to its attention recommend to the Board of Governors that the Membership concerned or the registration of any person or entity directly or indirectly involved in the transaction be cancelled or terminated, and that appropriate disciplinary action be taken where necessary."*

[57] It is trite that whatever the nature of the document, consideration must be given to the language used in the light of the ordinary rules of grammar and syntax. Judges must be alert to, and guard against, the temptation to substitute what they regard as reasonable, sensible or businesslike for the words actually used. The inevitable point of departure is the language of the provision itself.[1]

[58] Article 14.6 is, in my view, clear that a recommendation may be made for cancellation or termination of, *inter alia*, *"the Membership concerned"*, and that appropriate disciplinary action be taken where necessary. If Article 14.6 was intended to cancel or reverse, as was argued for the Applicant, only the underlying sale or transfer or disposition, it would have stated so. The wording could easily have been formulated differently to read: "to recommend that such sale, transfer or disposition be cancelled or terminated", instead of "that the Membership concerned be cancelled or terminated". The interpretation contended for on behalf of the Applicant is therefore rejected as inconsistent with the plain wording of Article 14.6.

[59] It is significant that it is not a requirement that disciplinary action first be taken before Exco makes a recommendation as envisaged in Article 14.6. In fact, it is the

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[1] *Natal Joint Municipal Pension Fund v Endumeni Municipality* 2012 (4) SA 593 (SCA) para 18.

other way round. Exco's recommendation may include that disciplinary action be taken where necessary. This may well be in instances where only the registration of a person or entity, directly or indirectly involved in the transaction is recommended for cancellation or termination.

Contravention of Article 10.14

[60] When the Applicant applied for renewal of its membership with PSL on 01 July 2024, it failed to disclose the change in directorship and shareholding, despite these changes having taken place more than a year before the renewal application. The explanation by Dr Mkhize, that she relied on the CIPC document from which the change had not yet been effected, is untenable and rejected.

[61] Firstly, the date on which the Companies and Intellectual Property Commission ("CIPC") updated its records is not the date on which the concerned change in directorship took place. The change took place on 22 June 2023 and the registration on CIPC was only made more than a year later, on 26 July 2024. The Companies Act 71 of 2008 is clear a person becomes a director upon appointment and acceptance of that person's written consent,[2] and that the appointment or resignation of a director is effective on acceptance, and notification thereof should be provided to the CIPC within 10 days thereafter.[3] As businesswoman, a director and the President of the Applicant, Dr Mkhize would have known of this position. In any event, her claim of ignorance is no excuse. For it is trite that:

[2] Companies Act 71 of 2008, s66(7):
"A person becomes entitled to serve as a director of a company when that person-
(a) has been appointed or elected in accordance with this Part, or holds an office, title, designation or similar status entitling that person to be an ex officio director of the company, subject to subsection (5)(a); and
(b) has delivered to the company a written consent to serve as its director."

[3] Companies Act 71 of 2008, s70(6): *"Every company must file a notice within 10 business days after a person becomes or ceases to be a director of the company"*.

> *"Strong demands are placed, by comparison, on all those engaged in trades, occupations or activities which are legally regulated and known by them to be. They are expected to learn the rules and obliged to make the effort."*[4]

[62] Secondly, I have noted that the change in directorship was made simultaneously with the change in the controlling interest and shareholding in the Applicant, which could not have been made without Exco's prior written approval, as required by Article 14.2. This was the starting point of disclosure to PSL. In my assessment, therefore, the submission of incorrect information in the renewal application was made in furtherance of the act to conceal the true facts from PSL, which the Applicant's management had failed to disclose back in June 2023.

[63] The purported reasons for international expansion fail to explain why Exco's prior written approval was not sought. Therefore, I find that the incorrect information in the renewal application constituted a calculated misrepresentation of material information, as envisaged in Article 10.14 of the NSL Handbook.

[64] Article 10.14 reads:

> "The membership of a Member Club may, upon recommendation by the Executive Committee, be cancelled by the Board of Governors if it is found that the Member Club has misrepresented material information either in its initial application or any subsequent application for renewal."

[65] It was contended on behalf of the Applicant that the word "found" in this Article means "found" or "a finding" by a Disciplinary Committee ("DC") contemplated in the NSL Handbook. The contention is that even if there was a misrepresentation, neither Exco nor the BoG has the powers under the NSL Handbook to make any finding in relation to misconduct. Only the DC, the argument went, has the powers to make such

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[4] *S v Waglines (Pty) Ltd & Another* 1986 (4) SA 1135 (N) at 1146B.

a finding, whereafter Exco would be entitled to recommend to the BoG cancellation of membership.

[66] This contention can at best be described as clutching at straws. There is no requirement in Article 10.14 that a DC should first make a finding before Exco can make a recommendation to the BoG for cancellation of membership. A disciplinary process as envisaged in the NSL Handbook is not a prerequisite to an Exco recommendation for cancellation of membership based on contravention of Article 10.14.

[67] Provisions dealing with disciplinary matters before the DC are quite extensive and prescriptive in terms of the procedure before, during and after a disciplinary process. The DC is, in terms of the NSL Handbook, an independent Judicial Tribunal (Article 22.1) whose sanctions are, unless otherwise stated, immediately effective upon pronouncement, and not dependent on written confirmation by the prosecutor (Rule 57.16).

[68] Decisions of the DC are appealable to SAFA and follow a process as prescribed in the SAFA Disciplinary Code (Article 24). The recommendations that Exco is empowered to make in Article 10 are not contemplated in the disciplinary provisions of the NSL Constitution. The provisions of Article 10 are also not made to apply subject to the outcome of a disciplinary action.

[69] The BoG is, in terms of the NSL Constitution, the supreme decision-making organ of PSL, comprised by chairpersons of the Member Clubs or duly appointed Member Club Officials (Article 16.1). The BoG has the power and authority to do any act or thing as may be required to give effect to the objects the PSL Constitution, and to exercise the powers of the League (PSL) as set out in the NSL Handbook (Article 16.2).

[70] The chairperson of PSL is empowered to chair meetings of the BoG and to prescribe the procedure to be adopted at any BoG meeting (Articles 32.5 and 32.7).

[71] I have considered the provisions of the NSL Handbook and, save for a recommendation by Exco in the Articles already mentioned, there is no other prescribed requirement to be met before the BoG makes a decision on Exco's recommendation for termination of membership of a Member Club.

Procedural Unfairness

[72] The Applicant seeks to impugn the procedure followed at the BoG meeting on 10 April 2025, on several grounds. One is that the Applicant's representative was precluded from participating in the deliberations and voting at the meeting. It is common cause that the deliberation and voting stages of the meeting followed after the Applicant had been afforded the opportunity to make representations both in writing and orally, and to respond to questions raised by the BoG members.

[73] The Applicant says it should have been allowed to participate in the deliberations and the vote, otherwise the process is irregular. It relies for this submission on Article 28.1 of the NSL Handbook in terms of which, "Duly authorised representatives of Member Clubs will be entitled to attend and vote at all meetings of the BoG".

[74] The Applicant also contends that documents were exchanged during the BoG deliberations to which the Applicant was not privy and that members of the BoG and Exco were conflicted and should not have participated in the BoG meeting, as they stood to benefit by acquiring the Applicant's players without a payment, and that those whose Members Clubs were facing relegation, would have been motivated to vote in favour of termination of the Applicant's membership in order to save their clubs from relegation.

[75] I find no merits in these contentions. Procedural fairness required no more than that the Applicant be given a fair opportunity to make representations, firstly to Exco, as to why Exco should not make a recommendation to the BoG for termination of the

Applicant's membership and, secondly, to the BoG as to why the BoG should not accept such a recommendation. There is no basis in law for the Applicant to seek participation in the BoG deliberations and decision-making on a matter involving the Applicant's breach of the Handbook. There is no such entitlement in law, nor in the NSL Constitution.

[76] As already mentioned, the NSL Handbook empowers the chairperson of the BoG meeting to prescribe the process to be adopted at any BoG meeting (Article 32.7). The Applicant has not challenged this provision, and the process to excuse the Applicant from the deliberations and voting would find justification in this provision. None of the authorities cited by the Applicant support the proposition that the Applicant was entitled to participate in the BoG deliberations and to vote on whether or not its membership with PSL should be terminated.

[77] The Applicant has voluntarily associated with PSL and subscribed to its governance documents. As a Member Club, the Applicant would no doubt have had a representative on the BoG, as envisaged in Article 16.1 of the NSL Handbook. The Applicant knows that the BoG functions by way of Member Clubs or their duly appointed officials. The NSL Handbook does not provide otherwise.

[78] PSL is a voluntary association of football clubs that have agreed to come together under a specific regulatory regime and structure. It is inevitable that these clubs will have an interest in each other's players. Clearly, the Member Clubs, who continue to associate with PSL, do not seem to view this as a conflict of interest. That this is the environment in which the Applicant and other Member Clubs operate, admits of no controversy. However, the purchasing of players or relegation of clubs was not the issue at the BoG meeting herein concerned.

[79] As regards the documents allegedly exchanged during the BoG deliberations, PSL's answer is that the documents were already provided to the Applicant throughout the extensive process followed by Exco in the period before the BoG meeting on 10 April 2025. In reply, Dr Mkhize, alleges that her point in this regard was the failure by

the BoG to allow the Applicant to respond to the questions and concerns raised after the Applicant was ejected from the meeting. She alleges that this is what makes the vote procedurally unfair.

[80] Therefore, the issue is not that documents unknown to the Applicant were shared with the BoG, but that the Applicant was not permitted to participate in the BoG deliberations. I have already dealt with this issue above and the contention is rejected for the reasons already stated.

Failure to give reasons

[81] Further, Dr Mkhize complains that, despite the request for reasons, the Applicant was not given reasons for the BoG decision terminating the Applicant's membership with PSL. Reliance was placed on the Promotion of Administrative Justice 3 of 2000 ("PAJA") for this point.

[82] Assuming that the BoG decision is reviewable under PAJA, section 5 of PAJA entitles a person whose rights have been affected by an administrative action to ask for reasons from the administrator. The administrator is then enjoined to provide reasons in writing for the administrative action within 90 days of receipt of the request.

[83] If the administrator fails to provide reasons, section 5(3) provides an answer to what should happen. This section states:

> "(3) If an administrator fails to furnish adequate reasons for an administrative action it must, subject to subsection (4) and in the absence of proof to the contrary, be presumed in any proceedings for judicial review that the administrative action was taken without good reason."

[84] The consequence for failing to provide reasons or adequate reasons, is the presumption that the decision was taken without good reasons. This is a presumption

to be made in judicial review proceedings, such as the present, unless proof to the contrary is provided.

[85] For the reasons above, I could not make such a presumption in this case, as PSL has, in my judgment, presented evidence of valid and adequate reasons for the BoG's decision terminating the Applicant's membership with PSL. I find that even under common law, I would arrive at the same conclusion.

Inability to meet obligations

[86] PSL Member Clubs are bound by the NSL Handbook and required to meet their obligations to PSL (Article 10.2). It is common cause that the Handbook is not only a governance document, but also an agreement and a set of commitments that Member Clubs give to each other and to PSL. Those obligations include participating in fixtures scheduled by PSL (Rule 9.3), and only in exceptional circumstances may PSL postpone a match at any time prior to the start of the match (Rule 9.4).

[87] Should a Member Club not be able to fulfil its obligations to the League (PSL), Exco may recommend cancellation of its membership to the BoG (Article 10.16).

[88] Dr Mkhize states, in the founding affidavit, that the facts regarding the Applicant's inability to fulfil its obligations to the League (PSL) are well within PSL's knowledge and have been so for some time. This statement, in my view, embodies a concession that the Applicant is unable to meet its obligations with PSL and that this has been position for some time.

[89] Dr Mkhize seems to rely, for the said statement, on what she immediately sets out thereafter as a litany of allegations against the curator since his appointment in terms of the preservation order obtained by SARS on 21 November 2024. I have already referred to those allegations, which are strenuously denied by the curator. That conflict is, already mentioned, not an issue before me, nor is the validity or otherwise of the curator's appointment.

[90] However, the ongoing dispute between the Applicant's management and the curator has significant relevance to the Applicant's ability to fulfil its obligations to PSL. For as long as that dispute remains, there seems to be no prospects of the Applicant meeting its obligations to PSL; a factor that triggered Exco's invocation of Article 10.16.

[91] I note that the Applicant's inability to meet its obligations did not in fact begin in November 2024, following the appointment of the curator. As already mentioned, on 01 October 2024, the Applicant notified PSL that the Applicant was unable to meet its obligations in respect of the MultiChoice Diski Challenge Competition.

[92] In the result, Article 10.16 was correctly invoked by the PSL Exco. Exco's recommendation under this Article is also not conditional upon an outcome of a disciplinary action.

[93] Reliance on Rule 15.2 of the PSL Rules, for a lenient sanction, does not avail the Applicant. The Rule applies where a match is not played due to the late or non-arrival of a team or both teams, in which event the offending Member Club would be charged with misconduct. If found guilty of misconduct in terms of Rule 15.2, the Member Club receives the sanction of a "walk-over", which is a score of 3 – 0 (three-nil) in favour of the innocent team, unless the DC considers a different sanction to be more appropriate.

[94] The circumstances envisaged in Rule 15.2 do not arise in the present case and, therefore, the Rule finds no application in this case.

[95] The mere fact that the BoG did not vote on each ground of violation separately is, in my judgment, of no consequence. The Applicant was, on the facts, liable for termination on each and all of the three grounds put before the BoG. This was not a disciplinary hearing.

[96] Before I conclude, I need to say something about at least two aspects of concern in this matter, relating to the change in directorship and the failure to provide unredacted documents.

Change in Directorship

[97] As apparent from the preservation order above, from 21 November 2024 only the curator had the powers to remove and appoint directors for the Applicant. No one else could do so.

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[98] However, unbeknown to the curator, Mr Sadab resigned as the Applicant's director on 01 April 2025 and Dr Mkhize was purportedly appointed as a director. Without the curator's involvement, this was clearly in violation of the preservation order, which is binding on Dr Mkhize, as the first respondent in that matter.

[99] Dr Mkhize carries on regardless of this violation, as if she has done nothing wrong. She attacks and finds fault with every respondent, but herself and the Applicant's Management. In the meantime, she approaches the Court, in the name of the Applicant, with dirty hands. I take a dim view of this conduct.

Failure to provide unredacted documents

[100] Dr Mkhize's conduct is exacerbated by her failure to provide unredacted documents pertaining to an averment she made in the Applicant's founding affidavit, that the Applicant (whilst under curatorship) continued to pay salaries of its players, despite PSL stopping to pay the discretionary grant. This averment triggered a Rule 35(12) notice calling for unredacted copies of the annexures attached to the Applicant's founding affidavit as proof of the alleged payment.

[101] The documents were not produced, and Counsel for the Applicant was content to disclose from the Bar, only at the end of argument before the Court, that it was a third party that had paid salaries for the Applicant's players and not the Applicant itself.

Therefore, Dr Mkhize's allegation that it was the Applicant itself that continued to pay salaries for its players was clearly false.

[102] In addition, such payments were made in violation of the preservation order, as they were made without the curator's knowledge and/or involvement, and without the funds first being deposited into the Applicant's bank account that is under the management of the curator in terms of the preservation court order.

[103] This is certainly not the way in which to approach the Court for assistance.

Conclusion

[104] Consequently, I find no reason to overturn the BoG's decision terminating the Applicant's membership with PSL.

[105] I agree that costs should follow the course, as was argued before me. It was also argued, on behalf of the Applicant, that even if the Applicant is not successful, the costs to be awarded in favour of the First and Second Respondents should be reduced, as they have delivered an unnecessarily lengthy answering affidavit. The answering affidavit is over 160 pages long, excluding the annexures. The Applicant's founding affidavit is only 39 pages long.

[106] The Applicant's heads of argument do not cite any authority for me to exercise the discretion contended for against the First and Second Respondents. I am aware of authorities criticising lengthy replying affidavits,[5] but not answering affidavits. In any event, the quantum of costs to be recovered will finally be determined at taxation. However, I do not think that this matter was so complicated as to warrant costs on Scale C, as contended for in PSL's heads of argument.

[5] *Minister of Police v Kati* 2024 JDR 2081 (ECM) (15 May 2024) paras 14 & 15 (*as yet unreported*), as well as the authorities cited therein.

[107] I find that the curator was justified in delivering an answering affidavit to defend himself against adverse allegations made against him in the founding affidavit and to assist the Court in its assessment of the issues in this application, even though no relief was sought against him. Had the curator asked for costs against the Applicant, I would have been prepared to grant such order. SARS did not participate in the proceedings.

[108] In the result, I make the following order:

1. The application is dismissed with costs in favour of the First and Second Respondents, including costs associated with the Rule 35(12) notice.

2. The costs are to include costs of two Counsel.

P.G. SELEKA

ACTING JUDGE OF THE HIGH COURT

CASE NO: 2025-054266

HEARD ON: 26 June 2025

FOR THE APPLICANT: ADV. C. ERASMUS SC
ADV. K. NAIDOO

INSTRUCTED BY: Nefuri Attorneys

FOR THE 1ST AND 2ND RESPONDENTS: ADV. A. FRANKLIN SC
ADV. M. DE BEER

INSTRUCTED BY: Webber Wentzel

FOR THE 3RD RESPONDENT: ADV. E.M. COETZEE SC

INSTRUCTED BY: Vuyo Mabuntana VZLR Inc

DATE OF JUDGMENT: 07 July 2025