

IN THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
(CIVIL)

SAINT LUCIA

CLAIM NO. SLUHCV2008/0224

BETWEEN:

LA CLERY FOOTBALL LEAGUE

Applicant

and

ST. LUCIA FOOTBALL ASSOCIATION

Respondent

Appearances :

Mr. Horace Fraser for the Applicant

Mr. Bryan Stephen for the Respondent

2008: March 13;
March 20.

JUDGMENT

[1] COTTLE, J.: The Applicant seeks leave to apply for judicial review of the Respondent's decision to allow the Castries Football Council and the Marchand Football League to vote at the Respondent's Congress in November 2007.

[2] The Applicant is not a natural or legal person. It is an unincorporated entity. It has no statutory existence. The Respondent is similarly challenged. Both bodies are concerned with the administration and promulgation of the game of football in St. Lucia.

[3] The Respondent has a constitution which serves as its charter document. The Applicant may also have a constitution. That is still unclear. Under the

Constitution of the Respondent (the St. Lucia Football Association). Membership is of two types, full membership and Associate membership. The Applicants are presumably full members although this is not revealed in the sole affidavit in support of the application for leave which has been filed. For the purposes of this application, I will assume that they are full members. The St. Lucia Football Association Constitution provides that its congress shall be the supreme authority and legislative body of the St. Lucia Football Association. Full members of the St. Lucia Football Association are permitted to vote at Congress. However, Article 3 (5) of the Constitution reads as follows:

“Affiliates must take part in competitions organized by the Association.

Any Affiliate which does not participate in at least two (2) competitions of the Association in any given year shall be suspended from voting at meetings of the Association and Congress until it has fulfilled its obligations in this respect.”

The term affiliate is not defined and appears to include full members.

[4] A congress of the St. Lucia Football Association was held on 3rd November, 2007. Elections were to be held. The returning officer noted that none of the full members of the St. Lucia Football Association would be eligible to vote at the congress if the constitution of the St. Lucia Football Association were to be adhered to strictly. Articles 4 (2) and 4 (3) which I reproduce; set out conditions of membership.

(2) District Football Leagues or other such Bodies applying for full membership of the Association, shall submit to the Secretary of the Association:

- (a) An written application
 - (b) An undertaking to conform to the Rules and Regulations of the Association and to observe the Laws of the game in force with the Association
 - (c) The names of its officers and address for correspondence, and the nominees as its representative at Association Meeting
 - (d) A copy of the Constitution of the League
 - (e) A list of clubs which form the League and copies of their constitutions
 - (f) The application fee prescribed by the Association
- (3) A full member is affiliated to the Association on the following conditions:
- (a) That it subjects itself to Constitution, Statues, regulations and decisions of FIFA, CONCACAF, CFU and the Association
 - (b) That it submits to the General Secretary of the Association on or before 1st February in each year, a return giving:
 - i. the name of the member
 - ii. the names of its officers and address for correspondence
 - iii. an up to date copy of its constitution
 - iv. a list of clubs and players in its membership and copies of their constitutions
 - v. a report of its Annual General Meeting
 - vi. application for continuance of the League
 - vii. programme of football activities

- (c) it pays on or before the first day of February of each year an annual subscription fee of such amount as the Executive may determine from time to time. New members shall pay their initial subscription within seven (7) days of Membership.

Other articles which affected the eligibility of members to vote at Congress were 15 (3) and 15 (4).

[5] Faced with this situation the representatives of the affiliates of the St. Lucia Football Association present at the Congress decided that all full members who had paid their dues would be permitted to vote. Elections were held on this basis. The applicant participated but objected to the participation of Marchand and Castries on the basis that Article 3 (5) of the Constitution prohibited them from voting. A majority of those present at the congress thought otherwise.

[6] Again, invoking the constitution the Applicants sought to have the matter referred to arbitration as a dispute, the Respondents have refused, on the grounds that there was no dispute. There was only a decision of the congress and the proper and only forum to vary the decision of the congress in accordance with Article 6 (8).

Several issues thus fall to be considered:

(1) What is the effect of the absence of legal personality in the parties?

Under CPR 2000 Part 56.2 an application for judicial review may be made by any person, group or body including any body or group acting at the request of a person or persons with sufficient locus standi. However Part 56.2 must be read in conjunction with part 21 which permits the Court to appoint representative parties. The point was taken before Sylvester J. in the

Grenada case CIDA HCV 2001/0551 Fontenoy United Football Club et al v Grenada Football Association et al at para [30] of the judgment the learned Judge disposes of the issue shortly holding that the parties being unincorporated, non statutory domestic bodies could only sue and be sued through representatives. This defect can be cured upon a proper application to the Court. I do not consider it fatal to the application.

(2) Are the decisions of the St. Lucia Football Association subject to Judicial Review ?

Mr. Fraser cited the case of R. V. Panel on Take-Overs and Mergers, ex parte Datafin [1987] 1 All ER 563.

That case concerned a self regulating unincorporated association. The panel on Take-Overs had no statutory, common law or prerogative powers. The Court of Appeal held that to answer the question the Court was not confined to considering the source of the panel's powers and duties but could also look to their nature. Accordingly, since the duty imposed on the panel was a public duty and the panel was exercising public law functions, the Court had jurisdiction to entertain an application for judicial review of the panel's decisions.

I do not believe that the situation of the St. Lucia Football Association is analogous. The panel on Take-Overs, while it had no coercive powers, could refer an offending party to a regulatory body which did have statutory coercive powers. The St. Lucia Football Association is a private body. They are entitled to arrange their internal rules and regulations as they wish. They operate by consensus. I do not consider that the decisions of the St. Lucia Football Association are subject to judicial review.

[7] In the event that I am wrong in this analysis, I turn to consider whether leave should be granted to the Applicant.

[8] I do not think that leave should be granted to seek judicial review. The decision complained of was clearly made in circumstances where the St. Lucia Football Association faced a crisis. It could not proceed if all of the provisions of its constitution were observed. That constitution has no force of law and the members of the St. Lucia Football Association were free to decide that in the circumstances they would modify the qualifications they required of members to permit them to vote. I see nothing unreasonable in this decision as to do otherwise would lead to the ridiculous situation where no action could be taken at all. In effect there would be no St. Lucia Football Association.

[9] I thus refuse the application for leave as its grant would serve no useful purpose. I make no Order as to costs. There is no one on whom such an Order can be enforced.

BRIAN S. COTTLE
HIGH COURT JUDGE