

THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No. **CV2020-01208**

**BETWEEN**

**THE TRINIDAD AND TOBAGO FOOTBALL ASSOCIATION**

Claimant

AND

**THE FEDERATION INTERNATIONALE DE FOOTBALL ASSOCIATION**

Defendant

**Before the Hon. Madam Justice C. Gobin**

Date of Delivery: Tuesday 13 October 2020

Appearances: -

Dr. Emir Crowne, Mr. Matthew Gayle, instructed by Mr. Jason Jones Attorney at law for the Claimant

Mr. Christopher Hamel-Smith SC, Mr. Jonathan Walker, instructed by Ms. Cherie Gopie Attorney at law for the Defendant

## **DECISION**

### **The Claim**

1. By this action the Trinidad and Tobago Football Association (TTFA) seeks a declaration against the Federation Internationale De Football Association (FIFA) that the decision of the Defendant dated 17/03/2020 to remove its executive from office to appoint a Normalisation Committee to run its affairs is incompatible with the TTFA Act no 17 of 1982 and illegal void and no effect.

### **The Facts**

2. I shall begin by rehearsing in some detail the material facts which were set out in my previous ruling in this matter on 13/08/2020, to give context to this decision.

3. The TTFA is a body corporate established under the Laws of Trinidad and Tobago by the Trinidad and Tobago Football Association (Incorporation) Act, No. 17 of 1982 (“The Act”).

4. One of the aims and objectives under Section 3(a) of the Act is:

*“3(a) To regulate and control the conduct of Football in Trinidad and Tobago (under the Federation Internationale de Football Association System) and to provide playing fields and conveniences in connection therewith”.*

5. Section 4 of the Act provides:

*“The affairs of the Association shall be managed by a General Council whose, election powers and procedures shall be prescribed in The Constitution and the Rules of the Association”.*

6. The power to make rules is vested under Section 8 (1) which states:

*“The Association shall have power to make such rules as they may deem necessary or expedient for the proper conduct and Management of the Affairs of the Association and its members and for the discharge of its duties, powers and functions from time to time to alter, amend, vary, revoke or repeal such rules”.*

7. Pursuant to the power granted under Section 8 (1), TTFA has made rules which have been incorporated into its Constitution, the latest version of which was adopted and ratified on 24/11/2019. The Constitution establishes a comprehensive organisational structure made up of several bodies of which the supreme and legislative body is the General Meeting (I take this to be the General Council), and the Board of Directors is the Executive body.

8. Pursuant to the express power granted under Section (4) of the Act, TTFA has enacted rules which provide for a democratic process for elections. TTFA held its constitutionality due elections on 24/11/2019 as a result of which the following persons were among those elected by the General Meeting to the Board of Directors:-

Mr. William Wallace	-	President
Mr. Clynt Taylor	-	First Vice President
Ms. Susan Joseph-Warrick	-	Second Vice President
Mr. Joseph Sam Phillip	-	Third Vice President

### **FIFA**

9. FIFA is an association registered under Swiss Law in Zurich. It is the international governing body for the Sport of Association Football. FIFA is comprised of members who, in turn, are the national associations for their respective countries. National associations are grouped into 6 confederations. Membership of a confederation is a prerequisite to FIFA membership. TTFA is a member of the Confederation of North, Central America and the Caribbean Football (CONCACAF).
  
10. TTFA has since 1964 (prior to incorporation) been a member of FIFA as the association that represents Trinidad and Tobago. It is this membership that entitles Trinidad and Tobago to participate in international tournaments and matches against the national teams of other member associations of FIFA. The entitlement of our clubs to participate in regional tournaments is derived from the TTFA's membership of FIFA and its regional confederation CONCACAF.
  
11. The nature of the relationship between FIFA and the TTFA is contractual. The legal framework for FIFA's relationship with its member associations is set out in its Statutes, regulations, directives and decisions of FIFA (as well as Swiss Law). The FIFA Statutes are FIFA's constitution and they set out the terms and conditions of each individual association's membership.
  
12. Among FIFA's stated objectives are –
  - “2(a) To improve the game of football constantly and promote it globally in the light of its unifying educational, cultural and humanitarian values as well as to use its efforts to ensure that the game of association football is available to and resourced for all who wish to participate regardless of gender or age.*

*2(d) To control every type of association football by taking appropriate steps to prevent infringements of the statutes, regulations or decisions of FIFA or of The Laws of the Game”.*

13. To achieve these and its other objectives, FIFA provides funding and programmes which are designed to provide FIFA’s member associations such as TTFA to build and develop a foundation for the growth of football. The conditions under which FIFA provides funding to its member associations are set out in specific regulations. A breach of regulations may lead to sanctions as set out in FIFA Statutes.

14. As a condition of membership of FIFA, all member associations including TTFA agree to be bound by FIFA Statutes. The extent of FIFA’s control of the affairs of TTFA can be seen from the following provisions in TTFA’s constitution -

15. The Constitution provides among the objectives of TTFA –

*“2(e) To respect and prevent any infringement of the statutes, regulations, directives and decisions of FIFA, CONCACAF, CFU and TTFA as well as the Laws of the game and to ensure that these are also respected by its members”.*

Act (7) provides –

*“The bodies and officials of TTFA must observe the statutes, regulations, directives, decisions and Code of Ethics of FIFA, CONCACAF, CFU and TTFA in their activities”.*

16. Among the statutes that TTFA has consented to observe is FIFA Statute 57 which mandates recognition of the Court of Arbitration for Sport (CAS) and obligations relating to dispute resolution as follows:

*57(1) FIFA recognises the Independent Court of Arbitration for sport (CAS) with headquarters in Lausanne (Switzerland) to resolve disputes between FIFA, member associations, confederations, leagues, clubs, players, officials, intermediators and licensed match agents.*

17. FIFA has gone further with the imposition of obligations relating to dispute resolution.

*Article 59 provides -*

- 1) *The confederations, members associations and leagues shall agree to recognise CAS as an independent judicial authority and to ensure that their members, affiliated players and officials comply with the decisions passed by CAS. The same obligation shall apply to intermediaries and licensed match agents.*
- 2) **Recourse to ordinary courts of law is prohibited unless specifically provided for in the FIFA regulations. Recourse to ordinary courts of law for all types of provisional measures is also prohibited.**
- 3) **The associations shall insert a clause in their statutes or regulations, stipulating that it is prohibited to take disputes in the association or disputes affecting leagues, members of leagues, clubs, members of clubs, players, officials and other association officials to ordinary courts of law unless the FIFA regulations or binding legal provisions specifically provide for or stipulate recourse to ordinary courts of law. Instead of recourse to ordinary courts of law, provision shall be made for arbitration. Such disputes shall be taken to an independent and duly constituted arbitration tribunal recognised under the rules of the association of confederation or to CAS.**  
**The associations shall also ensure that this stipulation is implemented in the association, if necessary by imposing a binding obligation on its members. The associations shall impose sanctions on any party that fails to respect this obligation and ensure that any appeal against such sanctions shall likewise be strictly submitted to arbitration, and not to ordinary courts of law.**  
(emphasis added)

18. In accordance with FIFA's dictates above, by Articles 65 and 67 of its own constitution, TTFA expressly incorporated similar provisions through the following –

*Article 65*

- 1) *Disputes in the Association or disputes affecting Leagues, members of Leagues, Clubs, members of Clubs, Players, Officials and Officials of other Associations, shall not be submitted to Ordinary Courts, unless the FIFA regulations, this Constitution or binding legal provisions specifically provide for or stipulate recourse to Ordinary Courts.*
- 2) *Instead, such disputes as specified in par. 1 shall be taken to an independent Arbitration Tribunal created by TTFA. The Board of Directors shall issue special regulations regarding the composition, jurisdiction and procedural rules of this Arbitration Tribunal.*

- 3) *As long as such Arbitration Tribunal has not been duly installed by TTFA and recognised by the General Meeting, any dispute of national dimension may only be referred in the last instance to CAS.*

*Article 67*

- 1) *In accordance with the relevant provisions of the FIFA Statutes, any appeal against a final and binding decision passed by FIFA, CONCACAF or the leagues shall be heard by the CAS, unless another Arbitration Tribunal has jurisdiction in accordance with art.69. CAS shall not, however, hear appeals on violations of the Laws of the Game, and suspensions of up to four matches or up to three months (with the exception of doping decisions).*
- 2) *TTFA shall ensure its full compliance and that of all those subject to its jurisdiction with any final decision passed by a FIFA body, by a CONCACAF body, by the Arbitration Tribunal recognised by TTFA or by the CAS.*

**Articles 8(2) NORMALISATION**

19. Under the terms of its membership contract, TTFA also agreed to be bound by Article 8(2) of FIFA statutes which provides for the appointment of normalisation committee in these terms:

*8 (2) Executive bodies of member associations may under exceptional circumstances be removed from office by the Council in consultation with the relevant confederation and replaced by a normalisation committee for a specific period of time.*

This litigation comes out of FIFA's purported exercise of its power under Article 8(2).

**The Appointment of the Normalisation Committee**

20. Sometime in February 2020, and just about three months after TTFA's November 2019 elections, a delegation of FIFA officials visited Trinidad and Tobago. It met with the duly and newly elected TTFA executive officers. By letter dated 17/03/2020 FIFA's Secretary General, Fatma Samoura notified TTFA of a decision of the Bureau of the Council to appoint a normalisation committee under Article 8(2). The letter made reference to the visit of the delegation and alleged FIFA's concern about TTFA's financial management and governance. The excerpts which follow indicate the extent of the intrusive power FIFA assumed over the TTFA under the normalisation power. The Secretary General wrote:

*"Under these serious circumstances, and in accordance with Article 8 paragraph 2 of the FIFA Statutes (which foresees that executive bodies of member associations*

may, under exceptional circumstances, be removed from office by the FIFA Council in consultation with the relevant confederation and replaced by a normalisation committee for a specific period of time), the Bureau of the Council decided, on 17 March 2020, to appoint a normalisation committee for the TTFA.

Its mandate includes the following tasks:

- **To run TTFA daily affairs;**
- **To establish a debt repayment plan that is implementable by the TTFA;**
- **To review and amend TTFA statutes (and other regulations where necessary) and to ensure their compliance with the FIFA Statutes and requirements before duly submitting them for approval to the TTFA congress; and**
- **To organise and conduct elections of a new TTFA Executive Committee for a four-year mandate.**

The normalisation committee would be composed of an adequate number of members to be appointed by the FIFA administration, in consultation with CONCACAF. Although those eventually appointed for the normalisation committee will assume their duties with immediate effect, all members of the normalisation committee will have to pass an eligibility check to be carried out by the FIFA Review Committee in accordance with the FIFA Governance Regulations.

The normalisation committee will act as an electoral committee whose decisions are final and binding, and none of its members will be eligible for any of the open positions in the TTFA elections under any circumstances, including in the event that their mandate as a member of the normalisation committee has been revoked or that they resign from their position. The specified period of time during which the normalisation committee will perform its functions will expire as soon as it has fulfilled all of its assigned tasks, but no later than twenty-four months after its members have been officially appointed by the FIFA Administration. The exact date for the normalisation committee to complete its mandate will be communicated by the FIFA administration once its members have been appointed”.

21. In his affidavit of 15<sup>th</sup> June 2020, Mr. Mosengo Omba explained why the process under Article 8(2) was set in motion. He stated:

*“Prior to 2019 FIFA randomly selected 20% of their member associations and confederations to undergo a central FIFA programme audit. In 2018, the TTFA was randomly selected for the central review programme. Coming out of that audit FIFA was concerned by the high level of debt that the TTFA had accumulated and was of the view that there were serious governance issues at the TTFA. However, the TTFA was due to hold elections for a new Executive Committee and FIFA’s general practice is to not interfere in governance matters involving member associations during electoral years so as to avoid giving the impression that FIFA is taking the side of any candidate for the position of President of that member association. In keeping*

*with this general practice, FIFA therefore held its hand on taking any action so as to allow an opportunity for those elections to take place and for any new Executive Committee to begin to address these serious issues”.*

22. TTFA filed an appeal to the CAS under its Article 67 of its constitution. The arbitration did not proceed. FIFA refused to pay its share of costs of appeal upfront and the CAS administrators allowed it to flout the rules. Indeed they indicated that it was not FIFA’s practice to pay its share of the costs. I have already decided that arbitration would not have been the appropriate forum and that in any case FIFA has demonstrated that it is not ready and willing to do all things necessary to the proper conduct of the arbitration. On 18/05/2020 I granted permission to issue and serve the proceedings out of the jurisdiction. The proceedings were served.
23. On 15/06/2020 the Defendant filed a notice of application to inter alia strike out the action and or a stay of the proceedings. On 08/07/2020 while this application was pending FIFA issued the following statement:

*“FIFA does not, and will never, accept the jurisdiction of a local court in Trinidad & Tobago to decide on the legality of the appointment of the Normalisation Committee currently appointed to run football in the territory.*

*For the avoidance of doubt, FIFA only recognises the authority and jurisdiction of the Court of Arbitration for Sport (CAS) in these matters. Any dispute regarding the appointment of the Normalisation Committee falls squarely within the jurisdiction of the CAS, and CAS alone.*

*“United TTFA” itself previously went to CAS and then unilaterally withdrew from the CAS process.*

*For the sake of completeness, it should be noted that the mediation FIFA previously agreed to with “United TTFA” would never have dealt with the legality of the appointment of the Normalisation Committee and would only have covered some costs related issues. This mediation will not go ahead now in any event, owing to the failure of the lawyers of “United TTFA” to keep the matter confidential, in line with their professional and ethical obligations”.(emphasis added)*



24. On 13/08/2020 I dismissed the Defendant's notice of application and extended the time for the filing of the Defence by 21 days instead of the 28 days extension that had been sought by the Defendant.

**Events following the dismissal of FIFA's notice/Trial Directions**

25. FIFA appealed the ruling on 20/08/2020. It did not seek a stay of the directions limiting the time for filing of the defence before the Court of Appeal. On the same day it issued the following statement:

*"FIFA is today lodging an appeal against the decision of the Trinidad and Tobago High Court issued last week to proceed with a claim from the former leadership of the Trinidad and Tobago Football Association (TTFA) against the decision of the Bureau of the FIFA Council in March 2020 to appoint a normalisation committee for the TTFA.*

*This appeal is a formal step, and as football's world governing body, FIFA further insists that the only recognised path to resolve such dispute is the Court of Arbitration for Sports (CAS). The recognition of the CAS as the correct forum in which to hear the dispute is in accordance with the FIFA Statutes that all 211 FIFA member associations have agreed to, as well as in agreement with TTFA's own statutes on this matter.*

*The insistence of the TTFA former leadership to bring this matter to a local court instead of the established dispute resolution forum at CAS greatly endangers the overall football structure in the country and endangers the position of Trinidad and Tobago football internationally.*

*The absence of a resolution that is in line with the statutes of both FIFA and TTFA will result in the matter being brought to the attention of the relevant FIFA bodies for consideration and potential further action. (emphasis added)*

26. FIFA restated its refusal to recognise the authority of the Courts of this country. The intimation that the lodging of the appeal "is a formal step", informed my understanding of its position on the application before me. In the course of case management I extended FIFA's defence deadline on two occasions. On the latter one it was brought to my attention that the procedural appeal (filed only as a formal step) was listed for 19/10/2020. I proceeded to give directions for "a trial" in default of defence.

27. On 13/09/2020 I heard FIFA's further application for a stay of the proceedings pending the Appeal. I refused the application and extended the time for the defence by a further five days. I proceeded to give directions for the trial 09/10/2020 in the event that FIFA should fail to meet the new deadline. At that hearing the contents of FIFA's statements of 08/07/2020 and 13/07/2020 were brought to the attention of the Court. Mr. Hamel-Smith SC was unable to indicate if there had been any change in FIFA's position. I considered his inability or refusal to assure that FIFA would respect the decision of our Court, relevant to the exercise of my discretion. I indicated my view that I believed FIFA was making a mockery of the proceedings by seeking to invoke the overriding objectives of the Civil Proceedings Rules (CPR) to secure a deferral of the trial, while it continued to reject the authority of the Court. Since it had proclaimed that the filing of the appeal was a "formal step" only, I concluded that it was trifling with the Court.

### **The Trial**

28. On the morning of the trial and two days after it had made a similar application by email which I had rejected, FIFA again sought an adjournment of the trial. It relied on a change in circumstances which was this. FIFA had on 24/09/2020 suspended the TTFA. It contended that as a consequence of the suspension, the Normalisation Committee was no longer in charge, there was therefore no urgency for the matter to proceed. A letter was produced which was written by FIFA on 06/10/2020 to the chairman of the Normalisation Committee which showed otherwise. It was ironical that this could be advanced as a ground for an adjournment. The suspension was engineered by FIFA. If anything it made the determination of the proceedings in my view more urgent. In response to a direct question, Mr. Hamel-Smith was still unable to indicate that FIFA would respect any ruling of the Court. I refused the adjournment.

29. The position taken by FIFA was disappointing. Respect for the rule of law, declarations of the Court, and the administration of justice, are fundamental to our civilisation. In societies that respect the rule of law and understand the importance of it, Courts expect that rulings would

be respected even where parties do not agree with the outcome. That expectation is not be lowered because of the nature of the litigation or the power of the parties or the political or financial stakes involved. Indeed the more contentious the litigation, the greater the imperative for respectful compliance.

30. Two cases come to mind in which the reports record Counsel's indication that the client would abide by the Court's rulings. These are not usually considered necessary. I believe the reports record them only to underscore the point that this is the basis on which the administration of justice and the rule of law survive, if it were otherwise Court rulings would be in vain. **R (on the application of Miller) v The Prime Minister Cherry & Ors [2019] UKSC 41** was a case in which the issue was whether the advice given by the Prime Minister Mr. Boris Johnson to her Majesty the Queen on 25/27 August 2019 that Parliament should be prorogued to a date between 9/12 September – 14 October 2019 was lawful. The Court ruled against the Prime Minister. In her judgment (paragraph 70) Lady Hale noted "Counsel for the Prime Minister has indicated that he will take all necessary steps to comply with the terms of any declaration made by the Court and we expect him to do so". Following the ruling the Prime Minister announced his strenuous disagreement with the Court's decision but indicated his respect for the process of the Court.

31. In **Greig and Ors v Insole and Others; World Series PTY Ltd [1978] 3 All ER 449** the dispute arose out of the ban, both at county level by the TCCB and at the International level by the ICC against all players contracted to play in Mr. Kerry Packer's World Series Cricket. The players sought a declaration that the changes to the rules by the ICC and the TCCB were ultra vires and in restraint of trade. A separate action was brought against the TCCB and the ICC in the name of World Series Cricket seeking a similar declaration. **Slade J** ruled in favour of Mr. Packer and the players. The report on the case records that Mr. Kempster QC on behalf of the defendants indicated that, subject to any appeal the TCCB and the ICC would abide by any declaration which the Court saw fit to make.

32. To return to the proceedings, FIFA had elected to file no defence in the matter, it had ignored two extensions. It did not elect to file a “without prejudice defence”. It did not apply to the Court of Appeal for a stay of the directions fixing the trial date. Its failure to file a defence within the time fixed by the Court entitled the Claimant to judgment. But this was not the kind of claim in which the Court could simply proceed to enter a default judgment. The “trial” had been fixed in the event that FIFA maintained its refusal to file a defence. It was to allow the Court the opportunity to receive evidence and further legal submissions to assist me in determining whether the Claimant had established its case for the declaration and was entitled to a summary judgment.

33. The failure to file a defence notwithstanding, Senior Counsel for the Defendant was invited to assist the Court on the law. Counsel declined the invitation to participate. The trial proceeded on the unchallenged evidence of the Claimant which was contained in several affidavits filed in the course of the proceedings, as well as a further affidavit which I invited for the production of the suspension notice. While the issue of suspension was not before the Court, I considered that the evidence contained in the notice may have been relevant to issues of conduct and credibility.

### **The Issues**

34. The issues which remained to be determined at the trial were:

- 1) Whether the purported appointment of the Normalisation Committee was lawful.
- 2) Whether FIFA Statute 8(2) is compatible with TFA Act no. 17 of 1982.
- 3) Whether in any case FIFA has complied with its own statutes in the purported appointment of the Normalisation Committee. Whether there were exceptional circumstances to justify the invocation of FIFA Statute 8(2).
- 4) Whether on the evidence in the case the Decision to appoint a Normalisation Committee was reasonable and made in good faith.

All affidavits previously filed were treated as evidence which I accepted.

### Issues (1) and (2)

35. The TTFA incorporated by Statute. It is trite that a statutory corporation has only those powers granted to it by statute. In **Communities Economic Development Fund v Canadian Pickles Corporation and Others [1992] LRC Comm 589**, a case cited by the Defendant in support of its submissions, the following basic propositions were affirmed in the judgment of Iacobucci ,J:

- 1) The presumption at common law is that a corporation created by or under a statute has only those powers which are expressly or impliedly granted to them.
- 2) To the extent that a corporation acts beyond its powers, its actions are ultra vires and invalid. Assessing the limits of the powers of a corporation created by or under a statute is a question of the interpretation of the statute.
- 3) Where the doctrine of ultra vires has been abolished by statute for business corporations [as in Canada] (and this does not apply here) the doctrine applies with respect to corporations created by special act and for a public purpose. This protects the public interest because a corporation created for a specific purpose by an act of the legislature ought not to have the power to do things not in furtherance of that purpose. This principle is more applicable to the TTFA Act.

36. The TTFA Act vests the power and responsibility for the Management of the TTFA in the Executive Board of Directors and prescribes how that administrative body is to be elected. Elections are to be conducted in accordance with procedures prescribed in the Constitution and rules of the Association. Normalisation effectively permits the removal of a body elected in accordance with the provisions of the Act, and the transfer of powers vested under Statute to a Committee through a process which is outside of the election process established by the statute. It is illegal. In its operation, normalisation necessarily requires TTFA to contract out of its duties and responsibilities under the TTFA Act and under its Rules. There is a well-established principle that a public right is not overridden by the agreements of private persons.

**Brooms Legal Maxims 10<sup>th</sup> Edition** cites the Latin maxim, *pacta privata juri publico derogare non possunt*. Its meaning is explained in **Phillip v Innis 4 CL F:**

“If the thing stipulated for is itself contrary to Law, the paction by which the executions of the illegal act is stipulated must be held to be intrinsically null.

I consider the principle applicable. The agreement to submit to normalisation is illegal and null and void because it violates it.

### **Justification/Exceptional Circumstances**

37. Even assuming that FIFA’s Normalisation Statute (8) was valid under our law (and it is not) it is only activated in “exceptional circumstances”. There is no definition as to what amounts to exceptional circumstances. The rule essentially gives FIFA a free hand. The absence of a definition does not however limit my ability to consider the circumstances of it and to determine the lawfulness of FIFA’s actions. I have considered the evidence and have come to the conclusion that the decision to invoke normalisation was unwarranted and indefensible.

38. FIFA’s justification for the decision is to be found in the affidavit of 15/06/2020 Mr. Veron Monsengo-Omba, Chief Member Associations Officer and most Senior Manager in FIFA’s member associations Officer as well as in the notice of Normalisation which was issued under the hand of the Secretary, Ms. Samoura. Mr. Monsengo-Omba stated:

(25) Prior to 2019 FIFA randomly selected 20% of their member associations and confederations to undergo a central FIFA programme audit. In 2018, the TTFA was randomly selected for the central review programme. Coming out of that audit FIFA was concerned by the high level of debt that the TTFA had accumulated and was of the view that there were serious governance issues at the TTFA. However, the TTFA was due to hold elections for a new Executive Committee and FIFA’s general practice is to not interfere in governance matters involving member associations during electoral years so as to avoid giving the impression that FIFA is taking the side of any candidate for the position

of President of that member association. In keeping with this general practice, FIFA therefore held its hand on taking any action so as to allow an opportunity for those elections to take place and for any new Executive Committee to begin to address these serious issues.

39. The unchallenged evidence of the Claimant, and this is supported by Mr. Monsengo-Omba's statement above, is that the alarming state of affairs which FIFA claimed warranted the normalisation, had existed well before the new Board was installed. If these were exceptional circumstances in FIFA's assessment then they were not brought about by the actions of the new Board. As a matter of basic fairness, the new Board ought not to have been penalised with so extreme an action as removal, because of a situation which it inherited, when FIFA was at all times well aware of the history. Mr. Monsengo-Omba's explanation as to why it waited until after the election to take action and then to move against the new Board, is unconvincing. There is no evidence to contradict the Claimant's evidence contained in the affidavits of Mr. Wallace and Mr. Tull that the new Board had in fact begun to address the serious issues.
40. The evidence established that upon assuming office, and with no formal handing over from its predecessors, it did attempt to address them. Its actions included setting up a Finance Committee whose expertise was applied to examining TTFA's financial structure. As a result it produced a comprehensive report which confirmed the absence of clear controls and structures in the Financial Operations.
41. It received a FIFA/CONCACAF mission which arrived in Trinidad and Tobago on 26/02/20. The report was presented to the Mission. The parties discussed plans to deal with the historic debt which they claimed had dramatically increased from TT \$16 million in 2015, to \$50 million at the date of elections. After the Claimant's plans were produced and this is undenied the representatives indicated "this was 50% of their mission complete". To its astonishment normalisation was invoked less than three (3) weeks later.

42. The timing of removal of the new board after the troubling financial management had been allowed to continue and fester even with FIFA's annual audits and oversight, makes Mr. Monsengo-Omba's claim that FIFA held its hand until after November elections to allow an opportunity for the incoming Board to address the serious issues even less credible. On any assessment it clearly did not allow a sufficient opportunity if it moved to normalize after a mere four months.
43. When Mr. Monsengo-Omba's explanation is viewed against the claimant's evidence, it has to be rejected. If, as he claims, FIFA held its hand in taking action so as to avoid giving the impression that it was taking the side of any candidate "in an electoral year" then the haste with which it moved to unseat the new Board established the opposite.
44. Its normalisation notice issued by Fatima Samoura, FIFA's General Secretary established in my view that there was an oblique motive. First it confirmed that what in FIFA's view justified the intervention by Normalization, predated the assumption of office of the new Board. What was far more telling was that it indicated among the tasks included in the Normalisation Committee's mandate was - "to organise and conduct elections of a new TTFA Executive Committee for a four year mandate". The TTFA Act provides for the elections of officers. FIFA has no power to interfere with or override our sovereign Laws. The mandate however put paid to its claim that FIFA does not interfere in governance matters during electoral years. This action of arrogating an invasive power to essentially direct the holding of fresh elections in violation of the provisions of the TTFA Act, established that contrary to its declared position, it was directly engaging in the governance of the TTFA by seeking to remove the newly elected board. On the evidence, I find that the decision to activate the normalisation was improper and made in bad faith. The conclusion that it was a contrivance to subvert the outcome of the November 24<sup>th</sup> elections is in my view inescapable. In the end it defeated the will of the persons who had elected the new Board into office. In the circumstances FIFA's claim that it remains neutral in matters of politics (within the sport) is demonstrated to be patently false.



### **FIFA's insistence on CAS**

45. Since early on the issue of the incompatibility of 8(2) with the TTFA Act was identified as the core legal issue in this case. FIFA has continued to reject the validity of this justiciable issue. It has been obdurate in its insistence that this is a matter for CAS as prescribed by FIFA Statute 57 and 59 which were adopted by TTFA and by TTFA agreeing to be bound. I believe it has reiterated this position in every single communication it issued in the course of these proceedings including the suspension notice of 24/09/2020. The notice stated:

*"The Bureau of the FIFA Council today suspended the Trinidad and Tobago Football Association (TTFA) with immediate effect due to rave violations of the FIFA Statutes.*

*The suspension was prompted by the former leadership of the TTFA lodging a claim before a local court in Trinidad and Tobago in order to contest the decision of the FIFA Council to appoint a normalisation committee for the TTFA. This course of action was in direct breach of article 59 of the FIFA Statutes, which expressly prohibits recourse to ordinary courts unless specifically provided for in the FIFA regulations.*

*A normalisation committee was installed by the FIFA Council after it was established that the former leadership of the TTFA had engaged in various acts of serious mismanagement. The decision of the former leadership to go to a local court to contest the appointment of the normalisation committee jeopardizes not only the future of football in Trinidad and Tobago but also endangers the overall global football governance structure, which relies on the Court of Arbitration for Sport (CAS) as the exclusive forum for resolving disputes of this nature.*

*The relevant parties were initially given until 16 September to withdraw the case but failed to do so. This deadline was then extended until 23 September, which was not respected either.*

*In the circumstances, the Bureau of the FIFA Council has decided to suspend the TTFA.*

*This suspension will only be lifted when the TTFA fully complies with its obligations as a member of FIFA including recognising the legitimacy of the appointed normalisation committee and bringing its own statues into the line with the FIFA Statutes.* (Emphasis added)

46. Even as it finally imposed the threatened sanction, FIFA was clear and unequivocal in its refusal to accept the jurisdiction of local Courts. It disclosed that in its view the decision to go to a

local court jeopardises the overall global football governance structure. It made clear that TTFA was suffering the consequences of a decision to access the Courts. If this policy of FIFA's is to be effective then it can only mean that FIFA does not recognise the Courts and the judicial systems in any of its 212 member states. This, in the Courts view is an astonishing position for any entity, however powerful to adopt especially, one that has control over world football, or for that matter any other sport.

47. As for its insistence on submission to the CAS in accordance with its rules, FIFA assumes wrongly that statute 59 effectively blocks all access by its members to courts in their sovereign states. Agreements to submit to arbitration or designated tribunals are not uncommon in the sporting world and in other areas of commercial activity such as for example in the construction industry. By such agreements parties do not deny the jurisdiction of the Courts and the rule of law, rather they agree that the Courts would generally hold the parties to the agreement and the courts generally decline jurisdiction. But there are some cases in which the Court will not hold the parties to their agreement and I have already decided that this is one of them.

48. If it is the case as FIFA continues to insist that it will not accept the jurisdiction of the Court of any member country, and that CAS is the only dispute resolution forum that it will recognise then, given what the evidence has disclosed and which it has not denied, that FIFA generally does not comply with a basic rule regarding the payment its share of the costs of arbitration, even when its non-compliance can have the effect of denying parties access to the arbitration process, (as it did in this case) then there is every danger that FIFA will become a law unto itself if it hasn't already become one.

49. The suspension notice ended with a further demand for TTFA to bring its rules in line with FIFA statutes. FIFA is surely aware of the extent to which the TTFA rules already comply with its own. It has all times had to approve them. In every material respect and insofar as they are applicable, TTFA has enacted rules which mirror FIFA Statutes. FIFA has now taken to making repeated demands accompanied by threats to TTFA, most recently through its normalisation

Committee to amend its rules to “bring them in line with FIFA Statutes”. There is no lacuna. The futility of these threats and demands should by now have become obvious. TTFA simply cannot deliver. The only amendment that can produce the result that FIFA commands is an amendment to the TTFA Act, and if it insists on blocking access to our Courts in favour of the CAS, then it should be put on notice there might be Constitutional hurdles.

50. These findings are enough to dispose of this case but I am constrained to make some further remarks. Throughout these proceedings FIFA has persistently paraded its disdain for the authority of our local Courts. In doing so it has demonstrated a disregard for the rule of law. The Defendant’s conduct regrettably calls into question the sincerity of its vaunted commitment to achieving its objectives to promote integrity, fair play, and friendly relations in society for humanitarian objectives as well as its commitment to respecting internationally recognised human rights and striving to protect them. Disregard for the rule of law is inconsistent with these objectives.

51. More egregiously, throughout, it sustained an unrelenting campaign against the TTFA, the overt aim of which was to force it a litigant before the Courts of this country to withdraw its case. Its threats were pointed. It is well settled that conduct which is calculated to impair access to the court is punishable as a contempt of Court. In **Attorney General v Times Newspapers [1974] A.C 273 at 309 Lord Diplock** said:

“All citizens should have unhindered access to the constitutionally established Courts of criminal or civil jurisdiction for the determination of disputes as to their legal rights and liabilities”.

The Defendant conducted its campaign while it remained ensconced in its home in Zurich and as a result will probably manage to escape the consequences of its unlawful behaviour. Were it otherwise, it may well have attracted the exercise of coercive powers of the Court.

52. FIFA’s threats throughout were widely publicised and it encouraged from many quarters pressure and clamour for the Claimant to comply with FIFA’s demands. On the 27/08/2020 the Honourable Minister of Sport and Community Development, Mrs. Shamfa Cudjoe convened a

meeting with Mr. Hadad (Chairman of the Normalisation Committee) and other persons. Following the meeting, a request was made by several clubs and delegates of TTFA's membership for an Extra Ordinary General Meeting under the Rules. The letter was addressed to Mr. Hadad as Chairman of the Normalisation Committee. The specific items for the proposed agenda for this EGM were:

- 1) *"Recognition of the FIFA Normalisation committee as the Executive Body of the TTFA.*
- 2) *To instruct attorneys on record 'allegedly acting for and on behalf of the TTFA to withdraw the action against FIFA forthwith, failing which the Normalisation Committee will appoint attorneys at law who shall be instructed to withdrawal (sic) proceedings against FIFA'".*

53. The Claimant has asked me to find that these interventions were orchestrated by agents of the Defendant to undermine the proceedings but I am not prepared to ascribe improper motives to the Honourable Minister for her intervention to "find a way forward" nor indeed to the delegates who requested the EGM. These were concerned parties who would not have been cognizant of the negative legal implications of their actions, which I do believe were well intended. The same cannot be said for Mr. Hadad. On the evidence I am however left in no doubt that Mr. Hadad, as FIFA's appointee was actively encouraging the campaign of pressure on the Claimant and this gentleman's conduct is harder to ignore. I find that he in his role as Chairman of the Normalisation Committee deliberately engaged in conduct that was calculated to subvert the adjudication of the Claimant's claim. His actions prompted the claimant to seek injunctive relief. FIFA did not resist the application.

54. I am not insensitive to the anguish that this saga has wreaked on our nation. Our government, all sports administrators, clubs, players, aspiring footballers, young people, fans, I daresay the entire population is rightly concerned about the future of the sport. The request for the EGM identified the following grave and devastating consequences that the members who requested the meeting feared the fraternity would suffer if TTFA did not withdraw the action.

- i. Youth National teams to Senior National teams cannot participate in any international football competition including friendlies (No FIFA MA will be allowed to have any games with TTFA on all levels

- a) Players would not have the opportunity to compete in the FIFA World Cup Qualifiers and some players will be forced into retirement
- b) Marketability of players will be affected, no international caps. Also, players interested in playing in the international leagues may not meet the requirements of a percentage of games played for the national team over the stipulated two-year period.
- c) Youth National players will not be afforded the scouting opportunities at these qualifying matches which also affords them the ability to build CV by having Trinidad and Tobago National team appearances.
- ii. No Club Championship Competition. Local clubs will not be allowed to compete in the CONCACAF Champions League. No Platform for local talent to be seen.
- iii. There may be no opportunity for referee appointments, match commissioner appointments at any international tournament including any football related appointment.
- iv. No Coaching courses. No refereeing courses, no management courses, no match commissioner courses, no media courses. Additionally, we will not have access to development programs from FIFA, CONCACAF, CFU.
- v. Youth teams will not be able to travel to complete in sanctioned club tournaments outside of Trinidad and Tobago i.e. Dallas Cup.
- vi. Scholarship opportunities. Players who play at CONCACAF U7/U21 tournaments are positioned to have top college recruiters watching those tournaments as it is a high-level competition with many young talented players on one event. Our young males and females will be impacted.

55. The repercussions are worrying. One can therefore sympathize with the views of the many persons who believe that such far reaching consequences should be avoided, perhaps at all costs. The wisdom of the challenge by the Claimants of the actions of FIFA is not for the Court. But it has to be said that the law expects the TTFA to do what its statutory duty requires even the face of unlawful pressure. **Simon LJ in R v Coventry City Council, ex p Phoneix Aviation [1995] 3 All ER 37 at 62** said:

*'One thread runs consistently throughout all the case law: the recognition that public authorities must beware of surrendering to the dictates of unlawful pressure groups. The implications of such surrender for the rule of law can hardly be exaggerated. But it is one thing to respond to unlawful threats, quite another to submit to them- the difference, though perhaps difficult to define, will generally be easy to recognise. Tempting though it may sometimes be for public authorities to yield too readily to threats of*

*disruption, they must expect the courts to review any such decision with particular rigour-this not an area where they can be permitted a wide measure of discretion. As when fundamental human rights are in play, the courts will adopt a more interventionist role.'*

56. In the circumstances, the TTFA's actions of seeking redress before the Court was perhaps the only appropriate response which avoided capitulating to the demands of FIFA and thereby elevating the status of FIFA statutes above the laws passed by our Parliament.

**Disposition**

57. There shall be judgment for the Claimant.

- i. The Court declares that the removal of the duly elected executive on 17/3/20 by the defendant is illegal null and void and of no effect.
- ii. The Court declares that the appointment of a normalisation committee to interfere in the affairs of the TTFA is null and void and of no effect.
- iii. The Court declares that FIFA statute 8(2) is inconsistent with the provisions of the TTFA Act no. 17 of 1982.
- iv. The Court declares that the decision of the Defendant dated 17/3/20 to appoint a normalisation committee was made in bad faith and for an improper and illegal motive.
- v. The Defendant will pay the Claimant's costs of the action to be assessed by this Court.

**Carol Gobin**

**Judge**

