

**THE EASTERN CARRIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE**

**SAINT CHRISTOPHER AND NEVIS
SAINT CHRISTOPHER CIRCUIT**

SKBHCV2024/0046

In the matter of an application for injunctive relief by Jeffrey Hazel, Eden Alistair Edwards, Samuel Phipps, Samuel Alex Claxton and St. Clair Morris pursuant to section 26 of the Eastern Caribbean Supreme Court (St. Christopher and Nevis) Act Cap 3.11 and Part 17 of the CPR, 2023

and

In the matter of an application by Jeffrey Hazel, Eden Alistair Edwards, Samuel Phipps, Samuel Alex Claxton and St. Clair Morris for Judicial Review of a decision made by the St. Kitts-Nevis Football Association on the 14th March, 2024, pursuant to Part 56 of the CPR, 2023

BETWEEN:

[1] JEFFREY HAZEL
[2] EDEN ALISTAIR EDWARDS
[3] SAMUEL PHIPPS
[4] SAMUEL ALEX CLAXTON
[5] ST. CLAIR MORRIS

Claimants

and

THE ST. KITTS-NEVIS FOOTBALL ASSOCIATION

Defendant

Appearances:

Ms. Rénal Edwards for the Claimants

Mr. Glenford Hamilton with him Mr. Johsiah Imo for the Defendant

2026: January 30;
April 27.

JUDGMENT

- [1] **GILL, J.:** On January 30, 2026, this court ruled that the defendant, the St. Kitts-Nevis Football Association is amenable to judicial review.¹ Consequently, the matter proceeded to trial on the said date. The claimants seek judicial review of the defendant's decision to ban them from participating in football related activities in the Federation for alleged contravention of its rules.

Background

- [2] At all material times, the claimants were football coaches and members of the defendant, the St. Kitts-Nevis Football Association ("SKNFA" or "the defendant"). SKNFA is incorporated under and pursuant to the St. Kitts and Nevis Football (Incorporation) Act.² In November 2022, the claimants were contracted by the defendant as coaching educators. The claimants alleged that they were not compensated by the defendant for their services as agreed.
- [3] As a result, the claimants instituted proceedings against the defendant in the Magistrate's Court to recover the sums they claimed were due and owing to them for the services provided. The defendant found this to be in breach of its Statutes and, upon receiving summonses to appear in the Magistrate's Court, issued letters (on its letter-head which included its executive members, and signed by its General Secretary) to the claimants stating as follows:

*"This communication serves to address a contravention of the St. Kitts-Nevis Football Association Statutes. The St. Kitts-Nevis Football Association (SKNFA) is in receipt of a Summons to appear in the Magistrates Court Suit SKBMCV2023/ filed by you on 10 [or 11] January 2024. As outlined in **Article 58(1)** of the St. Kitts-Nevis Football Association Statutes, and I quote "Disputes within SKNFA or disputes affecting Members of SKNFA, leagues, members of leagues, clubs, members of clubs, players and officials may only be referred in the last instance (i.e. after exhaustion of all internal channels within SKNFA) to CAS, which shall settle the dispute definitively to the exclusion of any ordinary court, unless expressly prohibited by the legislation in St. Kitts & Nevis." In light of the non-observance of **Article 58(1)** of the SKNFA Statutes and the matter listed to be addressed in Civil Court, please be advised that effective*

¹ SKBHCV2024/0046, delivered January 30, 2026

² Cap. 23.27 of the Laws of Saint Christopher and Nevis

immediately in accordance with Disciplinary Measures Article 57 (2f), you are banned on taking part in any football-related activity pending a resolution to this matter.”

- [4] The defendant also communicated this information to all of its member clubs by way of a memorandum of the same date.
- [5] The claimants made several attempts through their counsel to have the decision rescinded. The defendant did not oblige.
- [6] As a result, the claimants sought and obtained interim relief staying the decision of the defendant pending the final determination of these proceedings on its merits or until further order of the court.
- [7] On 5th April 2024, the claimants filed a fixed date claim seeking the following:
 - a) A declaration that the implementation of the disciplinary sanction was in breach of the rules of natural justice, without due process and/or with procedural impropriety and/or procedural irregularity.
 - b) A declaration that the decision of the defendant contained in its letter dated March 14, 2024, to ban the claimants from taking part in any football related activity pending the resolution of the matter with immediate effect was ultra vires, null void and of no effect.
 - c) A declaration that the defendant acted with bad faith and/or bias and/or with improper motive when it imposed a disciplinary sanction on the claimants.
 - d) An order of certiorari to move this Honourable Court to quash the decision of the defendant contained in its letter dated March 14, 2024 to ban the claimants from taking part in any football related activity pending the resolution of the matter with immediate effect, on the grounds of procedural irregularity; breach of natural justice, due process and procedural fairness; illegality; irrationality; and bias, bad faith and improper motive.
 - e) Such further and/or other relief as this Court may think fit; and
 - f) Costs.

- [8] On the return date for the interim injunction on April 18, 2024, it was discharged consequent upon the defendant's undertaking to uphold the status quo and not to implement the decision.

Issues

- [9] The issues in this case are:
- i. Whether the decision of the defendant to ban the claimants is ultra vires, illegal, null and void and of no effect;
 - ii. Whether the implementation of the ban was in breach of the rules of natural justice, with procedural impropriety/irregularity, irrationality;
 - iii. Whether the defendant acted with bad faith and/or bias when it imposed the ban.

Claimants' submissions

- [10] The claimants' case is that the disciplinary action imposed upon them by the letter dated March 14, 2024 was unlawful, procedurally improper, irrational, and infected with bias. They submit that judicial review is concerned not with the decision being challenged or its correctness but rather with the legal validity of the decision-making process. It is not an appeal from the decision but a review of the manner in which the decision was made. The grounds upon which one can challenge the legal validity of a decision-making process in judicial review proceedings are now trite and were identified by Thom J, as she then was, in the case of **Otto Sam v Tyrone Burke et al**,³ where Her Ladyship quoted from Lord Diplock in the case of **Council of Civil Service Unions v Minister for the Civil Service**.⁴ The grounds include illegality, irrationality and procedural impropriety.

- a. **Illegality (unlawfulness)** - the decision maker must understand correctly the law that regulates his decision-making power and must give effect to it.
- b. **Irrationality (unreasonableness)** – referred to as Wednesbury

³Claim No. 399 of 2010 (Saint Vincent and the Grenadines), delivered January 30, 2012, at para. 9

⁴ [1985] AC 374

unreasonableness.⁵ This applies to decisions which are so outrageous in its defiance of logic or accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it.

- c. ***Procedural impropriety/unfairness/irregularity*** – failure to observe the basic principles of natural justice or failure to act with procedural fairness towards a person who will be affected by the decision. This includes the failure to observe procedural rules that are expressly laid down in the legislative instrument by which its jurisdiction is conferred even where such failure does not involve any denial of natural justice.

[11] In addition to the abovementioned grounds, the claimants also rely on the grounds of bias, bad faith and improper motive.

[12] The claimants submit that should the court find that the decision was ultra vires, that is sufficient for it to be quashed without addressing the procedural impropriety and/or procedural irregularity, bias and irrationality.

Illegality/unlawfulness

[13] The power to impose sanctions is governed by the Statutes and the Disciplinary and Ethics Code. Article 55(2) of the Statutes of SKNFA provides:

The Disciplinary and Ethics Committee may pronounce the sanctions described in these Statutes and the Disciplinary Code and Ethics Code of the SKNFA on Members, officials, players, clubs, licensed match agents and intermediaries.

[14] The claimants point out that the impugned decision is one from the Executive Body of the defendant which does not have the power either under the Statutes or the Disciplinary and Ethics Code or any other instrument to pronounce such a sanction.

⁵ See *Associated Provincial Picture House Ltd v Wednesbury Corp.* (1947) 2 All ER 680; [1948] 1 KB 223

[15] The claimants deduce that this fact is undisputed by the defendant. At paragraph 21 of the claimants' affidavit in support of their fixed date claim form, the claimants deposed that:

"We are advised by Counsel Edwards and verily believe to be true that the SKNFA and/or its General Secretary does not have the power to decide on or impose sanctions. According to Article 55 of the statutes, discipline is in the remit of the Disciplinary Committee."

[16] In response to this paragraph, the defendant states in its affidavit at paragraph 36:

"Paragraph 21 is denied insofar as it purports to indicate that the ban was imposed by the General Secretary of the Defendant. Rather, the General Secretary communicated the imposition of the ban to the Claimants."

[17] The claimants contend that the defendant has not denied that it does not have the power to decide on or impose sanctions, and this amounts to an admission.

[18] The claimants note that Article 55(3) provides that the powers of Congress and the Council with regard to the suspension and expulsion of Members are not affected. The claimants submit, however, that the impugned decision was neither a suspension nor an expulsion (which are governed by Articles 17 and 18) and as such, Article 55(3) does not operate.

[19] The claimants maintain that the decision to ban the claimants was not a decision of the Disciplinary and Ethics Committee. The decision came from the defendant itself through its General Secretary. The decision was therefore ultra vires and/or in excess of its jurisdiction and/or in excess of the powers conferred on the defendant by the Statutes and/or the Disciplinary and Ethics Code, and the claimants ask the court to quash it.

[20] Notwithstanding the fact that the decision can be quashed solely on the above ground, in the event they are wrong, the claimants have addressed the other grounds.

Procedural Impropriety/Irregularity

- [21] The claimants point out that it is undisputed that the defendant implemented the disciplinary sanction without informing the claimants of the case against them and without the claimants being afforded an opportunity to be heard or put their case forward. At paragraphs 25 and 28 of the defendant's affidavit, the defendant admits that it instituted the ban without informing the claimants that there were any allegations or charges laid against them and without the claimants being heard. The claimants contend that this, in and of itself, renders the disciplinary sanction void.
- [22] The claimants counter the defendant's submission that the procedural impropriety/irregularity/unfairness was cured when it invited the claimants to a hearing of the Disciplinary Committee which the claimants did not attend. Whilst they admit that they were invited to a hearing of the Disciplinary Committee by the defendant, the claimants submit that the procedure employed in so doing was in breach of the principles of procedural fairness and due process as well as the Statutes of the defendant.
- [23] By email to the claimants on April 23, 2024 (after the claimants' claim had been filed on April 5, 2024 and after the defendants' undertaking on April 18, 2024) at 4:21 p.m., the defendant sent a letter (signed by its General Secretary) to the claimants which stated as follows:

"Dear Messrs,

Kindly note that by summoning the St. Kitts-Nevis Football Association to the Magistrates Court, you breached Article 58 (1) of the SKNFA Statutes:

Article 58 Arbitration

1 Disputes within SKNFA or disputes affecting Members of SKNFA, leagues, members of leagues, clubs, members of clubs, players and officials may only be referred in the last instance (i.e. after exhaustion of all internal channels within SKNFA) to CAS, which shall settle the dispute definitively to the exclusion of any ordinary court, unless expressly prohibited by the legislation in St Kitts & Nevis.

In this regard, kindly note that you have been summoned to the SKNFA Disciplinary & Ethics Committee. You are to appear before the SKNFA Disciplinary & Ethics Committee tomorrow, Wednesday 24th April, 2024 at

5:15 p.m. at the SKNFA Football House.

Your urgent attention to the above is greatly appreciated.”

- [24] The claimants explain that they took issue with this correspondence for a number of reasons. First, the defendant failed to act with procedural fairness in not giving the claimants sufficient notice or in the alternative, the notice given was wholly inadequate. The claimants were notified after business hours for a meeting that was scheduled to take place in twenty-five hours.
- [25] In addition to the common law requirement of adequate notice, the Disciplinary and Ethics Code at Rules 70.3 and 70.4 provide that meetings shall be convened at least 2 days in advance save for in the case of urgent matters, in which case a meeting may be convened immediately. The notice provided to the claimants was in breach of the provision requiring the 2-day notice; this matter was not urgent and as such the exception could not be engaged.
- [26] Secondly, the claimants were not notified of any charges or allegations made against them upon which the Disciplinary and Ethics Committee could adjudicate. Again, procedural fairness and due process required that the claimants be informed of the full particulars of the charges, complaint or allegation against them and any evidence in support. Further, the Disciplinary and Ethics Code at Rule 84.4 provides that the parties shall be notified of the opening of proceedings and the possible rule violation save and except for safety and security purposes or where such disclosure would interfere with the conduct of the investigation.
- [27] The claimants were not notified of the opening of proceedings and the possible rule violation or provided with any other disclosure and there is no evidence that the exceptions applied in these circumstances. The defendant concluded that the claimants were in breach of Article 58(1), rather than informing the claimants of a possible violation of the said Article, and summoned them to a hearing.
- [28] Thirdly, Rule 86.4 provides that all communications including notifications of proceedings against a member, club or individual should be addressed to the

Association (the defendant) who must then inform the member, club or individual. The claimants were not provided with any communication from the Disciplinary and Ethics Committee.

- [29] The claimants, through their counsel, communicated these objections to the defendant by letter dated April 24, 2024. However, there was no further communication from the defendant.

Irrationality

- [30] The claimants submit that the defendant acted so unreasonably that no reasonable authority would have made the decision, failed to take into account relevant matters and acted in a disproportionate manner. The defendant sought to punish the claimants for exercising their right to approach the court in circumstances where the defendant was in breach of its contractual obligations. Further, the defendant failed to take into account that the claimants did so, not as members of clubs or of the SKNFA but rather as employees or independent contractors who had been employed to provide a service and therefore were not bound by the Statutes.
- [31] In these circumstances, the claimants submit that no reasonable authority who applied its mind to the question to be decided would have made a decision to discipline the claimants much less to impose the extreme measure of banning them from all football-related activity, which meant that the claimants could not as much as observe a football match.

Bias

- [32] The claimants note cases where bias has been defined by our courts as 'an attitude of mind which prevents a judge from making an objective determination of the issues he has to resolve.'⁶ Put another way, bias occurs where there was a predisposition

⁶See *Vance Amory v Thomas Sharpe* HCVAP 2009/013 (Nevis); *Hon. Shawn K. Richards v The Constituency Boundaries Commission and The Attorney General* (unreported) SKBHCV2009/0159; *Hon. Shawn K. Richards et al v The Constituency Boundaries Commission et al* SKBHCV2013/0241

to favour or disfavour a party or result, in a manner that is wrongful and which can lead to a denial of judicial imperative of impartiality in the particular matter. The fundamental principle governing the rule against bias is that a man may not be a judge in his own cause.⁷

[33] In general, bias may fall into two categories: cases of actual bias and cases where the circumstances give rise to a presumption of bias - apparent bias. Actual bias may arise in a variety of causes, such as where the judge or other decision maker has a direct interest in the proceedings or its outcome or desire to decide a case one way or the other regardless of the legal merits or reaches a final conclusion before being in possession of all the relevant evidence and arguments.⁸

[34] Apart from actual bias, a decision maker may also be affected by apparent bias, that is, a presumption of bias. The claimants note that our courts have accepted the modern law of apparent bias as was definitively stated by Lord Hope in the *oft cited* case of **Porter v Magill**⁹ where His Lordship opined:

“The question is whether the fair minded and informed observer having considered the facts, would conclude that there was a real possibility that the tribunal was biased.”

[35] In the case of **Vance Amory v Thomas Sharpe**¹⁰, Baptiste JA cited the case of **Flaherty v National Greyhound Racing Club Ltd**¹¹ where Scott Baker LJ stated that the test for apparent bias is two-staged. The court must first ascertain all the circumstances bearing on the suggestion that the tribunal was biased, then ask itself whether those circumstances would lead a fair-minded and informed observer to conclude there was a real possibility that the tribunal was biased. Baptiste JA went on to hold that an allegation of apparent bias must be decided on the facts and circumstances of the individual case including the nature of the issue to be decided.

⁷See *R v Bow Street Metropolitan Stipendiary Magistrate and others ex parte Pinochet Ugarte (No. 2)* [1999] 1 All ER 577 at c - e

⁸ *Ibid* at 586 f

⁹ [2002] 2 AC 357 at para. 103

¹⁰ HCVAP 2009/013 (Saint Christopher and Nevis, Nevis Circuit)

¹¹ [2005] EWCA Civ 1117 at para. 27

- [36] The claimants submit that on the facts and circumstances of this case, there was actual bias as well as apparent bias. First, the uncontroverted evidence is that the defendant through its Executive Body imposed the purported sanction. It is also uncontroverted that the defendant through its Executive Body was the complainant whose allegation that the claimants breached Article 58(1) brought about the purported sanction. In stark defiance of the fundamental principle governing the rule against bias, the Executive Body which was the complainant also acted as the judge in its own cause.
- [37] Further, the claimants allege that the Executive Body was biased in that it had a vested interest in the outcome. It had a desire to determine the matter against the claimants in that it had to ensure that what it concluded was a contravention of the Statutes was “addressed” as outlined in its March 14, 2014 letter.
- [38] Further or in the alternative, the claimants submit that a fair minded and well-informed observer having the facts in this matter would conclude that there was a possibility that the Executive Body was infected with bias. This, the claimants submit, is in breach of the common law rule against bias.
- [39] The claimants conclude that in light of the foregoing, the decision of the defendant contained in the letter dated March 14, 2024 ought to be reviewed and quashed and the claimants ought to be granted the relief sought in their fixed date claim form.

Defendant’s submissions

Judicial Review as a mechanism of last resort

- [40] First, the defendant stresses that under Rule 56.3(4)(f) of the Eastern Caribbean Supreme Court Civil Procedure Rules (Revised Edition) 2023 (“the CPR”), when a fixed date claim form is filed seeking judicial review, the affidavit in support must state whether an alternative form of redress exists and, if so, why an application for an administrative order is more appropriate or why the alternative has not been pursued.

- [41] The defendant cites Halsbury's Laws of England,¹² under the heading "Barriers to Judicial Review" which reads:

"The courts in their discretion will not normally make the remedy of judicial review available where there is an alternative remedy by way of appeal or internal complaints procedure or where some other body has exclusive jurisdiction in respect of the dispute. However, judicial review may be granted in exceptional circumstances such as where the alternative statutory remedy is 'nowhere near so convenient, beneficial and effectual' or 'where there is no other equally effective or convenient remedy'.

Where an alternative procedure is not equally effective so as to cause the court to decline judicial review the court may still insist that the procedure is exhausted before proceedings are started since judicial review is a remedy of last resort. If proceedings have been started then they may be stayed to give the alternative procedure an opportunity to run to a conclusion."

- [42] The defendant cites the Australian case of **Calvin v Carr and others**¹³ where the Privy Council emphasised the need for judicial restraint in matters of domestic disputes.

- [43] It also cites **Brandt v Commissioner of Police and others**,¹⁴ where the Privy Council found that "administrative proceedings are an abuse of the court's process in the absence of some feature 'which, at least arguably, indicates that the means of legal redress otherwise available'...would not be adequate."

Internal remedies available

- [44] The defendant refers to section 84.2 of the Disciplinary and Ethics Code of the St. Kitts- Nevis Football Association which provides:

Any person or body may report any conduct considered incompatible with this code or any other SKNFA regulation(s). Such complaints shall be made in writing and include any available evidence. There is no entitlement for proceedings to be opened following the submission of a complaint.

¹² Volume 61 A (2023)

¹³ [1979] 2 All ER 440 at 449 b

¹⁴ [2021] UKPC 12 at para. 41

- [45] The claimants pleaded at paragraph 32 of their affidavit in support of the fixed date claim form, that they “believe to be true that no alternative form of redress” is available to them.
- [46] However, the defendant submits that section 84.2 of the Disciplinary and Ethics Code provides an avenue of recourse, which was not utilised.
- [47] While this court has determined that the defendant is amenable to judicial review, the defendant submits that amenability does not dispense with the requirement to exhaust alternative remedies.
- [48] The defendant further contends that submissions to the Court of Arbitration for Sport (CAS) are not confined to the reviews of the Disciplinary or Appeals Committee.
- [49] Therefore, if this court finds as a fact that the claimants had no recourse to the Appeals Committee because the ban did not originate from the Disciplinary Committee, the defendant submits that the claimants were nevertheless empowered, at all times to
- a) use the procedure contained in section 84.2 and then/or
 - b) complain to CAS directly.
- [50] The defendant submits that the claimants were under a duty to state whether any alternative form of redress exists, and if so, why an application for an administrative order is more appropriate or why the alternative has not been pursued. The claimants have pleaded neither. The defendant alleges that the claimants have not acknowledged the existence of the internal mechanisms, nor have they demonstrated why it would be ineffective, inconvenient, or inadequate.
- [51] The defendant submits further that this failure is fatal to the application for judicial review as Rule 56.3(4)(f) of the CPR is phrased in mandatory terms.
- [52] Hence, notwithstanding the court’s finding that the SKNFA is amenable to judicial review, the defendant submits that the mechanism remains one of last resort, after

the exhaustion of alternative remedies, unless that mechanism is not convenient or effective, as properly articulated by Halsbury's.

Domestic disputes and arbitration

[53] The defendant argues that this is precisely the type of matter contemplated in **Calvin v Carr**: a domestic dispute within a voluntary association, governed by agreed internal rules and procedures. In the absence of demonstrated exceptional circumstances, the defendant contends that this court ought not to trouble itself with the dispute. The alternative internal mechanisms were available, have not been exhausted, and may still be pursued.

[54] The defendant refers to the case of **The Fédération Internationale De Football Association v Trinidad and Tobago Football Association**¹⁵ where proceedings filed in breach of Article 67 of the Association's Constitution were struck out as ultra vires. Article 67 of the TTFA Constitution provides:

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.

[55] The Court of Appeal held that filing proceedings in court was null, void and of no effect, reinforcing that CAS clauses are binding and typical in football governance.

[56] Similarly, the defendant maintains that the SKNFA and its members are bound to CAS in respect of any disputes. The defendant submits that these proceedings are a breach of the said articles and are therefore ultra vires, null and void and should be dismissed.

¹⁵ Civil Appeal No. P225 of 2020

Exceptions to procedure

Urgency

[57] The defendant submits that urgency may justify relaxing fairness requirements. De Smith's Judicial Review recognises exceptions where rights may be excluded in exceptional circumstances.¹⁶

[58] In **Dellway Investments Ltd and others v National Asset Management Agency**,¹⁷ the Supreme Court of Ireland held:

“There are exceptions to the general principles as to rights. A right may be excluded in exceptional circumstances. Thus a right may be excluded if there is a great urgency in the circumstances. These are usually situations where there is a need for extraordinary expedition.”

[59] The defendant cites a 1918 decision of the Privy Council in an appeal from the Supreme Court of Trinidad and Tobago - **De Verteuil v Knaggs**,¹⁸ where Lord Parmoor stated:

“ Their Lordships are of opinion that in making such an inquiry there is, apart from special circumstances, a duty of giving to any person against whom the complaint is made a fair opportunity to make any relevant statement which he may desire to bring forward and a fair opportunity to correct or controvert any relevant statement brought forward to his prejudice. It must, however, be borne in mind that there may be special circumstances which would justify a Governor, acting in good faith, to take action even if he did not give an opportunity to the person affected to make any relevant statement, or to correct or controvert any relevant statement brought forward to his prejudice. For instance, a decision may have to be given on an emergency, when promptitude is of great importance; or there might be obstructive conduct on the part of the person affected.”

Preliminary hearings and decisions

[60] In **Lewis v Heffer and others**,¹⁹ Lord Denning distinguished punitive suspension from interim administrative suspensions, noting the rules of natural justice do not

¹⁶ 7th Edition, Sweet & Maxwell (2013), 487 at para. 8-026

¹⁷ [2011] 4 IR 1 at 226 at para. 116 of the judgment of Murray CJ

¹⁸ [1918] AC 557 at 560 - 561

¹⁹ [1978] 1 WLR 1061 at 1073 A - D

apply to suspensions made as a holding operation pending inquiries. His Lordship opined:

“Those words apply, no doubt, to suspensions which are inflicted by way of punishment, as for instance when a member of the Bar is suspended from practice for six months, or when a solicitor is suspended from practice. But they do not apply to suspensions which are made, as a holding operation, pending enquiries.... No one, so far as I know, has ever questioned such a suspension on the ground that it could not be done unless he is given notice of the charge and an opportunity of defending himself, and so forth. The suspension in such a case is merely done by way of good administration. A situation has arisen in which something must be done at once. The work of the department or the office is being affected by rumours and suspicions. The others will not trust the man. In order to get back to proper work, the man is suspended. At that stage the rules of natural justice do not apply.”

- [61] I have highlighted the first part of the quotation which, notably, was omitted by the defendant in its submissions. The “words” referred to the applicability of natural justice to a process of suspension.

Availability of subsequent fair hearing

- [62] De Smith’s Judicial Review confirms that the common law permits an authority to make decisions which do not comply fully with procedural fairness if the person affected has recourse to a further hearing or appeal which itself provides fairness. It is stated:

“In general, it is increasingly the case that the courts will not intervene on grounds of procedural unfairness where the procedurally unfair decision is subject to correction by a procedure which has proper procedural safeguards. In *Calvin v Carr*, the Privy Council doubted that there was a general rule that a failure to fairness at the initial hearing is not to be cured by procedurally correct appeal; in particular, it was suggested, a more latitudinarian attitude should be taken towards proceedings of domestic tribunals whose authority is derived from the consensual rules of a voluntary association.”²⁰

²⁰ 7th Edition, Sweet & Maxwell (2013), 492 at para. 8-033

- [63] The defendant contends that the ban was instituted on the advice of FIFA's General Counsel, as pleaded in paragraph 25 of its affidavit, evidencing that the decision was not arbitrary but informed by the governing international body.
- [64] The defendant explains that the letters dated March 14th and March 16th, 2024 respectively, expressly stated that the ban was imposed "pending a resolution of the matter", thus it was a preliminary or interim measure rather than a final determination.
- [65] The defendant alleges that the claimants' contention that the ban was ultra vires is unsustainable. Section 84(d) of the Disciplinary and Ethics Code expressly provides that proceedings may be opened by the SKNFA judicial bodies or secretariat on the basis of a motivated request from the Executive Committee or General Secretary. The defendant submits that the preliminary initiation of proceedings therefore fell squarely within the governing framework.
- [66] The defendant contends that the interim measure was followed by steps to convene a properly constituted hearing before the Disciplinary and Ethics Committee. Although it may be argued that this was done after the claimants approached the court, the defendant maintains that judicial review is a means of last resort. Hence, the defendant submits that where an internal mechanism exists and is capable of affording a fair hearing, the orthodox approach in administrative law is for the court to permit that process to run its course, consistent with **Calvin v Carr** and the principles articulated in Halsbury's and De Smith's.
- [67] The claimants' refusal to attend the said scheduled hearing was upon the basis they were to be notified of and provided with full particulars of the charges against them, as is necessary pursuant to the rules of natural justice, due process and procedural fairness. The claimants cited principles of procedural fairness, claiming that they were to receive adequate notice of the said hearing. However, the defendant contends that the circumstances were urgent and exceptional. Additionally, Rule

70.4 of the Disciplinary and Ethics Code expressly contemplates abridged notice where urgency so requires.

[68] In any event, the defendant submits that the initial letter dated March 14, 2024, expressly set out the allegation of breach of Article 58(1) and insists that the claimants were therefore aware of the nature of the charges from that date. The defendant argues that whether the allegations were ultimately sustainable is not the issue at this stage. The material point, it submits, is that the claimants were afforded an opportunity to be heard before the Disciplinary and Ethics Committee and to contest the alleged breach but declined to avail themselves of that internal process.

[69] The defendant posits that SKNFA, as a subsidiary of FIFA, bears a duty to uphold not only its own integrity but also that of the international federation. In that context, the defendant contends that the interim ban was not punitive in nature but a protective administrative step designed to safeguard institutional reputation and ongoing investments pending proper adjudication.

[70] In all the circumstances, the defendant submits that there existed exceptional and urgent conditions warranting immediate action. The measure taken was temporary, protective, and followed by an opportunity for a full hearing. Accordingly, the defendant submits that the approach adopted did not constitute a breach of procedural fairness or natural justice but rather fell squarely within the recognised common law exceptions grounded in urgency and good administration.

[71] Further, the initiation of proceedings done under section 84(d) was intra vires and could have been challenged internally but was not.

Bad faith, bias and improper motive must be pleaded and proved by the claimant

[72] The defendant cites De Smith's Judicial Review where it is stated:

“ Fundamental to the legitimacy of public decision-making is the principle that official decisions should not be infected with improper motives such as fraud, or dishonesty malice or personal self-interest....

Bad faith is a serious allegation which attracts a heavy burden.”²¹

[73] In **Joseph Marius v Dominic Leonty (Police Officer) and the Attorney General of Saint Lucia**,²² the court noted the case of **Marcano v Attorney General**²³ as cited by the Court of Appeal.²⁴ In that Trinidad and Tobago case, Collymore J observed:

“The keystone upon which the exercise of all public functions rest, as all the authorities show is good faith. The existence of bad faith in the exercise of any administrative function is sufficient warrant for the court to say that that is an improper exercise and so is unlawful. (See *The Matter of L.J. Williams v. Percival Smith and the Attorney General* No. 176/78). The onus rests upon the applicant to show bad faith, and that in the absence of anything to the contrary, the Authority must be presumed to be acting properly.”

[74] A decision may be invalidated if actual bias on the part of the decision maker is proved.

[75] The defendant asserts that the legal maxim of *affirmanti non neganti incumbit probatio* places the burden of proof lies upon him who affirms, here the party alleging bias, not him who denies.

[76] The defendant submits that the claimants in their affidavit have neither pleaded nor proved anything that establishes any ill-will being demonstrated against the claimants.

[77] The defendant further submits that in the circumstances, the ban was merely initiated pending resolution of the matter and there is no evidence before the court that there was any malice demonstrated.

[78] The defendant submits that such allegations have a high burden of proof which cannot merely be inferred but properly pleaded and proven which is not the case here.

²¹ 7th Edition, Sweet & Maxwell (2013), 290, 292 at paras. 5-087, 5-089

²² SLUHCv2021/0233 at para. 14

²³ 21TT 1985 HC 63

²⁴ See *Fast Kaz Auto Supplies Limited et al v The Attorney General* SLUHCvAP2018/0040 at para.62

- [79] The defendant contends that as articulated in **Joseph Marius**, any authority exercising an administrative function is presumed to be acting properly in the absence of anything pleaded to the contrary. The defendant alleges that this presumption has not been rebutted in this case.
- [80] The defendant summarises that judicial review is a remedy of last resort, grounded in the well-established principle that an applicant must first exhaust all available alternative remedies before invoking the supervisory jurisdiction of the court.
- [81] It maintains that the claimants have, and at all material times had, internal avenues of recourse within the Association which were neither pursued nor exhausted. In those circumstances, the defendant submits that the present application is premature.
- [82] The defendant further submits that the decision to impose the ban was not ultra vires. Additionally, the procedure adopted was not unfair in the circumstances of this case. While the principles of natural justice are fundamental, it is well recognised that urgency and exceptional circumstances may justify a departure from the full display of procedural safeguards, particularly where immediate action is required to preserve the integrity of an institution. In the present matter, the urgency and exceptional nature of the situation necessitated prompt interim action. This position is further crystallised in the Rules of the Association.
- [83] The defendant submits that the impugned decision was preliminary in nature. It was not a final determination of rights but a temporary administrative measure, taken in good faith and in furtherance of good governance. The decision was grounded not only in urgency and exceptional circumstances, but also in the need to protect the integrity, reputation, and financial standing of the Association. Further, there is no evidence of bias, improper motive, or ill will. The decision was taken bona fide, rationally, and for proper purposes.

[84] In light of the foregoing, the defendant submits that this is not a matter with which the court ought to trouble itself with, as the claimants have failed to exhaust adequate internal remedies; the decision was intra vires; the procedure adopted was justified in the circumstances; and no procedural impropriety, nor bias has been established.

Claimants' reply submissions

Judicial Review as a mechanism of last resort

[85] The claimants maintain that there was no alternative form of redress available to them before instituting judicial review proceedings. This court, in its decision on the preliminary issue raised by the defendant, has found in favour of the claimants on this point [see paragraphs 49 and 50 of the judgment].

[86] Notwithstanding this, the defendant continues to submit that the claimants have not “dispensed with the requirement to exhaust alternative remedies” in that the claimants could have complained to the Disciplinary and Ethics Committee and/or complained directly to CAS. The claimants disagree.

[87] At the outset, the claimants submit that they have no absolute duty to exhaust other rights before instituting public law proceedings especially where those remedies are unable to address the alleged infractions of public rights. Further, the court’s supervisory jurisdiction is not ousted simply because there is an alternative remedy available.

[88] They rely on the holding of Actie J in the case of **George Robinson v Grenada Olympic Committee Inc**²⁵ where Her Ladyship stated:

“A number of public law remedies are sought by the claimant, and there is no absolute duty for a party to exhaust other rights before instituting public law proceedings, especially where the alternative remedies are unable to address some of the alleged infractions of public rights.”

²⁵ GDAHCV2014/0325, delivered May 31, 2022, at para. 45

[89] In coming to this conclusion, Actie J relied on the holding of Blenman J, as she then was, in **Gary Nelson v the Attorney General et al.**²⁶ Blenman J stated:

“Mr. Nelson has sought a number of public law remedies. I do not hold the view that Mr. Nelson was obligated to appeal to the Public Service Appeal Board instead of filing the claim for Judicial Review. **The law has moved on and there is no absolute duty to exhaust his other rights before instituting public law proceedings; this is particularly so where as in the case at bar, the private law remedies that may be available to a complainant are unable to address some of the alleged infractions of public rights.**” (*Emphasis added*)

[90] On this point, the Privy Council in **Calvin v Carr**,²⁷ the Board stated:

“Finally there are cases in New Zealand. Denton's case has already been referred to; it was reviewed together with other New Zealand cases by the Court of Appeal in Reid v Rowley, a case concerned with trotting. **The decision was that an appeal to a domestic or administrative tribunal does not normally cure a breach of natural justice by a tribunal of the first instance so as to oust the jurisdiction of the courts to redress such breaches, but the exercise of such a right of appeal is a matter that may be taken into account by the courts in considering the grant of discretionary remedies.** ... In general their Lordships find that the approach of that case is in line with that sought to be made in this judgment. ... It may be that the court adopted a more reserved attitude as regards the effect, after a denial or breach of natural justice at first instance, of a full examination on appeal. In one passage it said:

‘... the conferment of wide powers on a domestic or statutory appeal tribunal, including power to rehear the evidence orally, is not enough to insulate the appellate jurisdiction automatically from the effects of a failure of natural justice at first instance.’

Their Lordships agree, and have given their reasons for concluding, that in this field there is not automatic rule.” (*Emphasis added*)

[91] The claimants contend that the Privy Council case of **Brandt v Commissioner of Police and others**²⁸ on which the defendant relies is distinguishable in that, the claimant therein was seeking constitutional relief. At paragraph 35 of the judgment, the Board stated:

“First, to seek constitutional relief where there is a parallel legal remedy will be an abuse of the court's process in the absence of some feature “which,

²⁶ ANUHCv2008/0552 at para. 51

²⁷ [1979] 2 All ER 440 at 450 e – 451 e

²⁸ [2021] UKPC 12

at least arguably, indicates that the means of legal redress otherwise available would not be adequate.”

- [92] The claimants assert that the holding therefore does not apply to all administrative proceedings as submitted by the defendant, but to proceedings seeking Constitutional relief, which the case at bar is not.
- [93] Even if (which is denied by the claimants) this holding applied to the case at bar, they submit that (i) there is no automatic rule for the claimants to exhaust all alternative remedies before approaching the court to seek public law remedies; (ii) there is no parallel legal remedy, a finding which this court has already made and which finding has not been appealed; and (iii) the alternative remedies suggested by the defendant could not have addressed the substantial breaches of the claimants’ public rights.

The Disciplinary and Ethics Committee was not an available or adequate remedy

- [94] The claimants submit that the defendant’s argument that the claimants could have referred the impugned decision to the Disciplinary and Ethics Committee is novel but does not assist the defendant. The offences on which the Disciplinary and Ethics Committee has the power to adjudicate are listed in Chapter III of the Disciplinary and Ethics Code. The list does not include breaches of natural justice, procedural irregularity or acting without the requisite power.
- [95] Even if (which is denied) the claimants could have reported the Executive Body to the Disciplinary and Ethics Committee, the claimants point out that none of the sanctions which the Committee could impose are sufficient to address the infractions of the claimants’ public rights. The Committee does not have the power to rescind a decision and would only be able to impose one of the sanctions listed in Article 57 on the members of the Executive Body. The result of this would be that the impugned decision would remain in effect. This fact supports the claimants’ submission that the Executive Body cannot be taken to the Disciplinary and Ethics Committee on the issues which the claimants have raised herein or at all. The

claimants assert that a report to the Disciplinary and Ethics Committee pursuant to Rule 84.2 of the Disciplinary and Ethics Code is therefore not an alternative mechanism to judicial review proceedings as submitted by the defendant.

- [96] The claimants allege that the defendant incorrectly asserts that they did not plead whether or not there was an alternative form of redress. The claimants direct the court's attention to paragraph 32 of their affidavit in support of their fixed date claim form where they pleaded that there is no alternative form of redress, given that the impugned decision could not be appealed to the Appeals Committee. The claimants therefore submit that they have satisfied the requirement in CPR 56.3(4)(f).

No direct appeal to CAS was possible

- [97] The claimants allege that the defendant has now moved the goal post by submitting that the claimants could have appealed directly to CAS, their previous submission being that the claimants ought to have appealed to the Appeals Committee, and then to CAS. The claimants contend that much like the previous submission, this submission is also without merit. Article 58 of the Statutes provides that disputes can only be referred to CAS in the "last instance". Last instance is defined in the said Article as being after "exhaustion of all internal channels within SKNFA". This court has held in its decision on the preliminary issue at paragraph 50 of its judgment that *"There is no provision for any internal channels for persons in the position of the claimants to pursue."*

- [98] This court has also held at paragraph 54 of its judgment on the preliminary issue that the case of **Fédération Internationale de Football Association v Trinidad and Tobago Football Association** can be distinguished from the case at bar on the basis that the TTFA's Constitution provided an avenue to appeal decisions of FIFA to CAS whereas in the claimants' case, there is no such avenue provided by the Statutes for an appeal against the decision of the defendant (whether to CAS or otherwise).

[99] Therefore, the claimants maintain that their claim for judicial review is properly before the court.

Exceptions to procedure

[100] Under this head, the claimants first submit that given that the defendant did not have the power to impose sanctions, it cannot rely on there being exceptions to the procedural requirements and principles of natural justice. In any event, they submit that in the case at bar, there were no circumstances which required any of the exceptions to be applied.

[101] The defendant relies on learning in its submissions that state that urgency and exceptional or special circumstances are general exceptions which warrant the relaxation of the principles of fairness. The claimants allege that the defendant, however, has not outlined to this court any circumstances in this case which were urgent or which were exceptional or special, warranting the need to do away with procedural fairness and the claimants submit it is because there are no such circumstances; an argument for expedition and/or urgency is not borne out by the facts of this case.

[102] The claimants illustrate with an example in the case of **Dellway Investments Ltd and others v National Asset Management Agency**²⁹ (cited by the defendant) where the court relied on the landmark Irish Supreme Court case of **O'Callaghan v Commissioners of Public Works in Ireland**³⁰ in holding that there are exceptions to general principles as to rights. In **O'Callaghan**, the plaintiff had instructed a contractor to recommence ploughing a field which threatened a historical monument. The defendant, the Commissioner of Public Works, intervened and made a preservation order. The court held that there was an emergency which was created by the plaintiff's own actions and had the Commissioners hesitated in acting as they did, a monument which they were duty bound to preserve would have been

²⁹ [2011] 4 IR 1

³⁰ [1985] IRLM 364

seriously damaged or destroyed. The court further held that it was not possible to contact the plaintiff as his address was not known to the Commissioners until some time later.

[103] In **Dellway** however, the court held that the facts before it did not fall within the category of emergency such as in **O’Callaghan** so as to prevent persons whose rights would be affected from being heard by the defendant. Likewise, in the case of **De Verteuil** (also cited by the defendant), the Privy Council did not find any special circumstances such as emergency or obstructive conduct on the part of the person affected which would justify the taking of action without consulting the person to be affected.

[104] The claimants submit that the facts of the case at bar did not fall within the category of emergency nor were there any special circumstances so as to exclude the claimants’ rights.

[105] Further, the claimants explain that Rule 90 of the Disciplinary and Ethics Code provides that before the Disciplinary and Ethics Committee issues a final decision, the parties are entitled to submit their position, to present evidence and to inspect evidence to be considered by the Committee which may be restricted in exceptional circumstances such as when confidential matters need to be safeguarded or witnesses need to be protected or required to establish the elements of the proceedings. This rule recognises that the claimants, if brought before the Disciplinary and Ethics Committee, are entitled to fairness and natural justice save for in exceptional circumstances which the claimants submit do not arise in this case.

The ban was punitive, not administrative

[106] The defendant also submits that the sanction imposed was a preliminary or interim measure rather than a final determination and that the “interim ban was not punitive in nature but a protective administrative step designed to safeguard institutional reputation and ongoing investments pending proper adjudication”. The claimants

disagree and submit that had the defendant wished to “safeguard institutional reputation” and not punish the claimants, it would have paid the claimants the sums due to them upon receiving the summonses, as opposed to banning them from all football related activity. Instead, the defendant imposed the ban and four days later, sent cheques for payments of a portion of the sums that were being claimed by the claimants.

[107] The claimants further assert that there is no evidence that the claimants being able to partake in football related activity whilst the magisterial claims were pending damaged the defendant’s institutional reputation or ongoing investments. Still further, the claims have been resolved, yet the defendant has not withdrawn the impugned decision but has seen this matter through to trial.

[108] The claimants further submit that the case of **Lewis v Heffer and others**³¹ can be distinguished. First, the sanction imposed herein was not a suspension. Suspensions are provided for in Article 17 of the Statutes. The defendant did not act pursuant to this Article but purported to impose a ban from all football related activity pursuant to Article 57(2)(f), which the claimants submit differs from a suspension. Secondly, the ban instituted herein was not one pending inquiry imposed solely as a matter of good administration, or in other words, during the stages of preliminary investigations. In **Lewis v Heffer**, committees and officers were suspended pending an inquiry into the affairs of the party and it was held that natural justice was not required in these circumstances. Another example of this given by the court is where irregularities are disclosed in a government department or a business house and a person is suspended on full pay pending inquiries. The inference here is that the suspended person is suspected to be the cause of the irregularities and his suspension is as a means to prevent any further irregularities. There are no such circumstances in the case at bar; the claimants were not banned pending further investigations nor were there preliminary proceedings being carried out by the defendant. Rather, the ban was inflicted as a way of punishment much like the

³¹ [1978] 1 WLR 1061

example given in **Lewis v Heffer** of a solicitor suspended from practice, and therefore the rules of natural justice applied.

Internal inconsistencies in the defendant's case

- [109] In its submissions, the defendant seemingly suggests that the March 14, 2024 letter was a request for the opening of disciplinary proceedings against the claimants. The claimants allege that this submission is disingenuous at best. First, the said letter unequivocally imposes a sanction on the claimants which fact the defendant admits in its affidavit. Nowhere in the said letter does the defendant inform the claimants that they will be, or have been, referred to the Disciplinary and Ethics Committee or that proceedings have been opened against them as required by Rule 86.4 of the Disciplinary and Ethics Code.
- [110] The claimants further allege that the defendant's submission that the ban was one pending further investigation is inconsistent with its submission that the March 14, 2024 was a request for disciplinary proceedings to be opened. The claimants assert that these submissions are mutually exclusive; it is either the ban was pending an inquiry after which inquiry it may be determined that further proceedings are to be brought against the claimants, or the communication was a request to the Disciplinary and Ethics Committee for the proceedings to be commenced, as the two cannot be true at the same time.
- [111] The claimants submit that being informed or advised by FIFA does not assist the defendant in defeating the claims at bar. The claimants contend that the defendant is well aware that it is governed by its Statutes first and foremost. Further, Counsel for the claimants wrote to the defendant pointing out that it could not sanction the claimants and that even if it could, the proper procedure had not been followed. Notwithstanding this, the defendant refused to withdraw the impugned decision.
- [112] In response to the submissions on the steps taken to convene a properly constituted hearing before the Disciplinary and Ethics Committee, the claimants continue to rely

on their original closing submissions. In addition, the claimants point out that at the time that the defendant purported to refer the claimants to the Disciplinary and Ethics Committee, the defendant had not withdrawn the March 14, 2024 letter. It therefore stands that the claimants were being referred to the Committee for an alleged infraction for which there had already been a sanction imposed, albeit improperly.

[113] The claimants also submit that the defendant cannot on one hand submit that it followed the proper procedure (paragraph 27 of the defendant's affidavit) and on the other hand advance the argument that it sought to correct the "procedurally unfair decision" (paragraph 28). They charge that the defendant cannot approbate and reprobate at the same time. It is either it did not do anything wrong or it did something wrong which it sought to correct; the two cannot be true at the same time.

[114] The claimants therefore maintain that the defendant breached their rights to natural justice and procedural fairness. The decision did not fall within the common law exceptions or the exceptions provided by the Disciplinary and Ethics Code. Further, the defendant acted ultra vires and there were no alternative remedies.

Bad faith, bias, improper motive

[115] With respect to the defendant's reliance on the case of **Joseph Marius v Dominic Leonty**,³² the claimants point out that in that case, the Civil Code of St. Lucia was being examined and applied. In the Federation, there are no similar provisions in our legislation. As such, the case of **Joseph Marius** can be distinguished from the case at bar.

[116] The claimants maintain therefore that their claim ought to be granted as prayed.

Defendant's reply submissions

[117] The defendant's reply addresses the claimants' submissions on bias. It relies on its primary submissions in full but deems it necessary to supplement, rebut and exhaust

³² SLUHCv2021/0233

the law on bias.

Bias

- [118] As it relates to actual bias, the defendant maintains that actual bias has not been made out as the claimants have neither pleaded and/or proved any such bias. The defendant re-emphasises that an allegation of actual bias carries a heavy burden of proof, which must be discharged by the claimants.
- [119] In the context of St. Kitts and Nevis, the fair minded and informed observer was described in the case of **Hon. Shawn Richards et al v The Constituency Boundaries Commission et al**.³³ “The question then is whether the fair minded and informed Kittitian or Nevisian in Independence Square in Basseterre would conclude that there was a real possibility of bias.”
- [120] The defendant points out that since the decision in **Porter v Magill**,³⁴ the England and Wales Court of Appeal held in **Condron v National Assembly for Wales**,³⁵ that, in applying the test for apparent bias, the court must consider all the circumstances appearing from the material before it, and not merely the facts known to the objector or to the hypothetical observer at the time of the decision. This position was also adopted by our Court of Appeal in **Vance Amory v Thomas Sharpe**.³⁶
- [121] Against that legal framework, the defendant submits that the material before this court clearly establishes that, in the given context, the ban imposed was preliminary in nature rather than a final determination and was implemented for the purpose of protecting the integrity and financial standing of the St. Kitts and Nevis Football Association. As outlined in the defendant’s initial submissions, the decision was taken under the advisement of FIFA.

³³ SKBHCV2013/0241 at para. 48

³⁴ [2002] 2 AC 357

³⁵ [2006] EWCA Civ 1573

³⁶ HCVAP 2009/013 (Saint Christopher and Nevis (Nevis Circuit))

- [122] Accordingly, the defendant submits that when the totality of the circumstances and the material before the court are considered holistically, there is nothing to suggest that the impugned decision was motivated by bias. On the contrary, the evidence demonstrates that the defendant acted in a manner necessary to safeguard the institutional integrity and regulatory standing of the Association and its relationship with FIFA.
- [123] Further, the defendant submits that the present case is distinguishable from **Vance Amory v Thomas Sharpe**, where the surrounding political context played a significant role in the court's finding of apparent bias, per the fair minded and informed test, against Mr. Amory. No such circumstances arise in the case at bar. The ban was imposed pursuant to external regulatory advice and for the legitimate purpose of protecting the integrity of the relevant institutions.
- [124] In those circumstances, and in the absence of any material capable of establishing either actual bias or a real possibility of apparent bias, the defendant submits that the claimants' allegation of bias cannot succeed.
- [125] The defendant conclusively submits that the absence of bias further supports the applicability of the common law exceptions in the case at bar.

Court's Analysis

Judicial Review as a remedy of last resort

- [126] The defendant's first submission is that judicial review is inappropriate because the claimants failed to exhaust internal remedies. Rule 56.3(4)(f) of the CPR requires an affidavit in support of a fixed date claim form to state whether alternative remedies exist and, if so, why they were not pursued. The defendant contends that the claimants did not comply with this requirement.
- [127] I accept that judicial review is not intended to supplant internal mechanisms of

redress. In **Calvin v Carr and others**,³⁷ Lord Wilberforce explained the rationale:

“While flagrant cases of injustice, including corruption or bias, must always be firmly dealt with by the Courts, the tendency in their Lordships’ opinion in matters of domestic disputes **should be to leave these to be settled by the agreed methods without requiring the formalities of judicial processes to be introduced.**” (*Emphasis added*)

[128] The defendant argues that the claimants should have pursued internal remedies under section 84.2 of the SKNFA Disciplinary and Ethics Code, or alternatively, referred the matter to the Court of Arbitration for Sport (CAS).

[129] However, the principle is not absolute. Halsbury’s Laws of England,³⁸ under “Barriers to Judicial Review,” states:

“The courts in their discretion will not normally make the remedy of judicial review available where there is an alternative remedy by way of appeal or internal complaints procedure or **where some other body has exclusive jurisdiction in respect of the dispute.** However, judicial review may be granted in exceptional circumstances such as where the alternative statutory remedy is nowhere near so convenient, beneficial and effectual’...”

[130] I accept the defendant’s submission that notwithstanding that I have already ruled that the defendant is amenable to judicial review, amenability does not dispense with the requirement to exhaust alternative remedies. While amenability to judicial review has already been determined by this court, the defendant is entitled to press this submission.

[131] The court must therefore assess whether the claimants had any meaningful internal remedy. Article 55(2) of the SKNFA Statutes vests disciplinary powers in the Disciplinary and Ethics Committee. The sanction was imposed by the Executive Body of the defendant itself, not the Disciplinary and Ethics Committee, and thus the claimants had no recourse to the Appeals Committee. Section 84.2 of the Disciplinary and Ethics Code permits complaints but does not guarantee proceedings will be opened. In these circumstances, the internal mechanism was neither convenient nor effective. As recognised in Halsbury’s Laws of England,

³⁷ [1979] 2 All ER 440 at 449 b

³⁸ Volume 61A (2023)

judicial review may be granted where the alternative procedure is “nowhere near so convenient, beneficial and effectual.” I am satisfied that this case falls within that exception.

[132] In my view, the defendant’s reliance on CAS is misplaced. Article 58(1) requires exhaustion of internal channels before referral to CAS. If the sanction was imposed unlawfully by the wrong body, there were no valid internal channels to exhaust. In these circumstances, judicial review is therefore appropriate.

[133] I note that in **The Fédération Internationale De Football Association v Trinidad and Tobago Football Association**,³⁹ the Trinidad and Tobago Court of Appeal struck out proceedings filed in breach of Article 67 of the TTFA Constitution, which required referral to CAS. However, that case involved a valid disciplinary decision subject to CAS jurisdiction. Here, the impugned decision was imposed by a body lacking jurisdiction. In my respectful view, the analogy is therefore misapplied by the defendant.

[134] The claimants were entitled to approach the court directly because the sanction was imposed by a body lacking jurisdiction. Judicial review is not barred.

[135] I accept the defendant’s submission that the claimants’ affidavit in support of their fixed date claim form did not fully comply with Rule 56.3(4)(f) of the CPR. The Rule is expressed in mandatory terms and requires an applicant to state whether an alternative form of redress exists, and if so, why judicial review is more appropriate or why the alternative has not been pursued.

[136] The claimants merely asserted that “no alternative form of redress exists” without engaging with the internal complaints procedure under section 84.2 of the Disciplinary and Ethics Code or the possibility of recourse to CAS. On a strict reading, this omission constitutes a breach of Rule 56.3(4)(f).

³⁹ Civil Appeal No. P225 of 2020

[137] However, I am satisfied that this defect is not fatal to the claim. The evidence demonstrates that the impugned ban did not originate from the Disciplinary Committee, and therefore the internal remedies were ineffective or unavailable. In these circumstances, judicial review was the only convenient and effectual remedy.

[138] Accordingly, while the claimants' affidavit was procedurally deficient, in the interests of justice, I exercise my discretion to excuse the non-compliance. Judicial review remains appropriate in light of the substantive unlawfulness of the defendant's decision.

Illegality and ultra vires

[139] The claimants' primary submission is that the impugned sanction was imposed by the Executive Body of the SKNFA, which lacked jurisdiction under the Statutes. Article 55(2) provides:

"The Disciplinary and Ethics Committee may pronounce the sanctions described in these Statutes and the Disciplinary Code and Ethics Code of the SKNFA on Members, officials, players, clubs, licensed match agents and intermediaries."

[140] The claimants argue that this provision vests disciplinary authority exclusively in the Disciplinary and Ethics Committee. The Executive Body, by contrast, is not empowered to impose sanctions. Article 55(3) preserves the powers of Congress and Council with regard to suspension and expulsion of Members, but the impugned decision was neither a suspension nor an expulsion.

[141] The defendant's affidavit admits that the General Secretary merely communicated the sanction, but does not deny that the Executive Body imposed it. This amounts to an admission that the sanction did not emanate from the proper body.

[142] The principle of legality requires that powers be exercised only by the body to which they are conferred. In **Council of Civil Service Unions v Minister for the Civil Service**,⁴⁰ Lord Diplock explained that illegality means that the decision-maker must

⁴⁰ [1985] AC 374

understand correctly the law that regulates his decision-making power and must give effect to it.

[143] In **Dr. Shaelle Durand v The Medical and Dental Council**⁴¹ Cenac-Phulgence J, as she then was, stated:

“Illegality arises where a decision maker who must correctly understand the law that regulates his or her decision-making power and must give effect to it fails to do so. Illegality also includes ultra vires acts and errors of law. An action or decision is said to be tainted with illegality if:

- (a) It was purportedly taken under legislation which does not contain the requisite power; or
- (b) It was purportedly taken under legislation which contains precise limits on the circumstances in which a power or duty can be used, and the action or decision in question either exceeds these limits or fails to perform the power or duty in a proper way.

In **Blackstone's Civil Practice 2004**, the learned authors state that an alternative way of analyzing illegality is as an error in law. This is where a public body makes a decision based upon an incorrect interpretation of the law.”

[144] Applying these principles, I find that the defendant acted outside its remit. The sanction was imposed ultra vires and is unlawful. It is *void ab initio*.

[145] The defendant's reliance on Article 58(1) is misplaced. That provision governs referral of disputes to CAS after exhaustion of internal channels. It does not confer disciplinary powers on the Executive Body of the defendant.

[146] I rule that the sanction was therefore imposed ultra vires and is unlawful. On this ground alone, the decision must be quashed.

Procedural Impropriety

[147] Even if jurisdiction existed, the process adopted by the defendant was procedurally unfair. The claimants were banned without notice of allegations, without disclosure

⁴¹ SLUHCv2015/0562 at paras. 22 - 23

of particulars, and without an opportunity to be heard. The defendant admits this in its affidavit.

[148] In **Dr. Shaelle Durand v The Medical and Dental Council**,⁴² the court stated:

“Procedural impropriety is said to be concerned with the procedure by which a decision is reached, not the ultimate outcome. In order to prove procedural impropriety, the applicant must show that the decision was reached in an unfair manner. If there is no statutory framework which expressly stipulates the relevant procedural requirements, there are two applicable common law rules under this head, namely:

(a) The rule against bias; and

(b) The right to a fair hearing whereby those affected by the decision are entitled to know what the case is against them and to have a proper opportunity to put their case forward.”

[149] The defendant submits that any procedural unfairness was cured by the subsequent invitation to the Disciplinary Committee. I reject this submission. The invitation was issued after proceedings had already been filed, after business hours, to a disciplinary hearing for the following day, contrary to Rules 70.3 and 70.4 of the Disciplinary and Ethics Code, requiring two days’ notice absent urgency. No urgency was demonstrated. Moreover, the claimants were not provided with particulars of charges or disclosure of evidence. The purported cure was itself procedurally defective and cannot validate the original unlawful sanction.

[150] Rule 70.3 provides:

Meetings shall be convened at least two days in advance save for in the case of urgent matters, in which case a meeting may be convened immediately.

[151] Rule 70.4 reinforces this requirement. The defendant relies on **De Verteuil v Knaggs**⁴³ where the Privy Council recognised that in “special circumstances” of genuine emergency, prompt action may be taken without affording a fair hearing. It also relies on the Irish decision in **Dellway Investments Ltd and others v National**

⁴² SLUHCv2015/0562 at para. 32

⁴³ [1918] AC 557

Asset Management Agency,⁴⁴ where the court held that a right may be excluded in “exceptional circumstances”, if there is a “great urgency” in the circumstances. I find that no such circumstances existed in the present case. The claimants’ summonses to attend at the Magistrate’s Court did not present an immediate threat to the functioning of the SKNFA or to public order. The defendant’s invocation of urgency was therefore misplaced. The defendant failed to demonstrate urgency. The notice was therefore inadequate.

- [152] The claimants were not informed of charges or provided disclosure, contrary to Rule 84.4. That rule provides:

The parties shall be notified of the opening of proceedings and the possible rule violation save and except for safety and security purposes or where such disclosure would interfere with the conduct of the investigation.

- [153] The claimants were summoned on the basis of a concluded finding of breach, not a possible violation. This deprived them of the right to know the case against them and to respond.

- [154] Rule 86.4 provides:

All communications concerning a SKNFA member... (including notifications of proceedings against them and the issuing of the decisions taken by the SKFNA’s judicial bodies) are addressed to the association or club concerned, which must then inform the club or the individual in person.

- [155] The claimants were not provided with any communication from the Disciplinary and Ethics Committee. Instead, the Executive Body communicated the sanction directly. This was contrary to the Code.

- [156] Procedural fairness requires adequate notice, disclosure, and the opportunity to be heard. In this case, none was afforded. The procedural impropriety is therefore manifest.

- [157] Accordingly, I conclude that the process adopted was in breach of the principles of

⁴⁴ [2011] 4 IR 1

natural justice and the defendant's own Statutes and Code. The sanction is void for procedural impropriety.

Irrationality

[158] The claimants further contend that the sanction imposed upon them was irrational, unreasonable, and disproportionate. Judicial review recognises irrationality as a distinct ground of challenge, often referred to as "Wednesbury unreasonableness."

[159] In **Associated Provincial Picture Houses Ltd v Wednesbury Corporation**,⁴⁵ Lord Greene MR explained that if a decision on a competent matter is so unreasonable that no reasonable authority could ever have come to it, then the courts can interfere, but to prove a case of that kind requires something overwhelming.

[160] This principle was refined by Lord Diplock in **Council of Civil Service Unions v Minister for the Civil Service**⁴⁶ where His Lordship described irrationality as a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it.

[161] In **Dr. Shaelle Durand v The Medical and Dental Council**,⁴⁷ the court explained:
"A decision may be tainted with irrationality where the decision making body allegedly:

- (a) acted for an improper purpose;
- (b) acted with bad faith;
- (c) fettered its discretion;
- (d) improperly delegated its functions;
- (e) reached a conclusion which no body properly directing itself on the relevant law and acting reasonably could have reached;
- (f) failed to take into account relevant matters or took into account irrelevant matters;
- (g) abused its powers; or possibly;
- (h) acted in a disproportionate manner."

⁴⁵ [1948] 1 KB 223 at 229

⁴⁶ [1985] AC 374

⁴⁷ SLUHCV2015/0562 at para. 27

- [162] The claimants submit that banning them from all football-related activity, including mere attendance at matches, for instituting proceedings to recover contractual sums owed, meets this threshold. They argue that the defendant acted for an improper purpose, failed to take into account relevant matters, and took into account irrelevant matters.
- [163] I agree. The defendant failed to consider that the claimants acted as contractors enforcing contractual rights, not as members bound by the Statutes. Punishing them for approaching the Magistrate's Court was an abuse of power. The measure was extreme and disproportionate. The sanction prevented the claimants from engaging in any football-related activity whatsoever, including observing matches. Such a sweeping prohibition was unnecessary to achieve any legitimate objective.
- [164] The principle of proportionality, increasingly recognised in administrative law, requires that measures taken by a public body be no more restrictive than necessary to achieve a legitimate aim. Proportionality is applied as a refinement of irrationality.
- [165] The claimants' contractual dispute over unpaid compensation was properly within the jurisdiction of the ordinary courts. Article 58(1) of the SKNFA Statutes restricts members from referring internal disputes to ordinary courts before exhausting internal remedies. However, to my mind, the claimants' action was not an "internal dispute" within the meaning of the Statutes. It amounted to a civil claim for breach of contract. This further demonstrates irrationality.
- [166] Because the claimants' resort to the Magistrate's Court was a lawful exercise of their contractual rights, it was irrelevant to the defendant's disciplinary jurisdiction. Treating this lawful act as misconduct was a misdirection in law and an improper consideration.
- [167] In my view, by basing the sanction on this irrelevant factor, the defendant reached a conclusion that no reasonable authority could have reached. The sweeping ban, preventing the claimants from even attending football matches, was

disproportionate and irrational.

[168] Accordingly, I conclude that the sanction was irrational, unreasonable, and disproportionate.

Bias

[169] The final ground advanced by the claimants is that the impugned decision was infected with bias. The rule against bias is a fundamental principle of natural justice. It is expressed in the maxim *nemo iudex in causa sua* — no one should be a judge in his own cause.

[170] In **R v Bow Street Metropolitan Stipendiary Magistrate and others, ex parte Pinochet Ugarte (No. 2)**,⁴⁸ Lord Browne-Wilkinson opined:

“The fundamental principle is that a man may not be a judge in his own cause. This principle, as developed by the courts, has two very similar but not identical implications. First it may be applied literally: if a judge is in fact a party to the litigation or has a financial or proprietary interest in its outcome then he is indeed sitting as a judge in his own cause. In that case, the mere fact that he is a party to the action or has a financial or proprietary interest in its outcome is sufficient to cause his automatic disqualification. The second application of the principle is where a judge is not a party to the suit and does not have a financial interest in its outcome, but in some other way his conduct or behaviour may give rise to a suspicion that he is not impartial, for example because of his friendship with a party. This second type of case is not strictly speaking an application of the principle that a man must not be judge in his own cause, since the judge will not normally be himself benefiting, but providing a benefit for another by failing to be impartial.”

[171] On actual bias, Lord Browne-Wilkinson continued:

“... once it is shown that the judge is himself a party to the cause, or has a relevant interest in its subject matter, he is disqualified without any investigation into whether there was a likelihood or suspicion of bias.”⁴⁹

[172] On apparent bias, Lord Hope in **Porter v Magill**⁵⁰ laid down:

“The question is whether the fair minded and informed observer having considered the facts, would conclude that there was a real possibility that

⁴⁸[1999] 1 All ER 577 at 586 c - e

⁴⁹ [1999] 1 All ER 577 at 586 f

⁵⁰ [2002] 2 AC 357 at para. 103

the tribunal was biased.”

[173] In the case of **Vance Amory v Thomas Sharpe**⁵¹, Baptiste JA cited the case of **Flaherty v National Greyhound Racing Club Ltd**⁵² where Scott Baker LJ stated that the test for apparent bias is two-staged. The court must first ascertain all the circumstances bearing on the suggestion that the tribunal was biased, then ask itself whether those circumstances would lead a fair minded and informed observer to conclude there was a real possibility that the tribunal was biased. Baptiste JA went on to hold that an allegation of apparent bias must be decided on the facts and circumstances of the individual case including the nature of the issue to be decided.⁵³

[174] Baptiste JA then considered authorities on the attributes of a fair minded and well-informed observer. Lord Hope in **Gillies (AP) v Secretary of State for Work and Pensions**⁵⁴ stated:

“The fair minded and informed observer can be assumed to have access to all the facts that are capable of being known by members of the public generally, bearing in mind that it is the appearance that these facts give rise to that matters, not what is in the mind of a particular judge or tribunal member who is under scrutiny. It is to be assumed ... that the observer is neither complacent nor unduly sensitive or suspicious when he examines the facts that he can look at. It is to be assumed too that he is able to distinguish between what is relevant and what is irrelevant, and that he is able when exercising his judgment to decide what weight should be given to the facts that are relevant.”

[175] The claimants submit that the Executive Body acted as both complainant and adjudicator. It alleged breach of Article 58(1) and then imposed the sanction. This dual role is the very situation prohibited by the rule against bias.

⁵¹ HCVAP 2009/013 (Saint Christopher and Nevis, (Nevis Circuit)

⁵² [2005] EWCA Civ 1117 at para. 27

⁵³ See *Locabail (U.K.) Ltd. and Another v Bayfield Properties Ltd. and Another* [2000] QB 451, 480 at para. 25

⁵⁴ [2006] 1 All ER 731 at para. 17

Actual Bias

- [176] The authorities establish that allegations of actual bias impose a heavy burden of proof upon the party asserting it. The principle is well-settled: actual bias must be shown by cogent evidence, not mere suspicion or inference.
- [177] In this case, the claimants contend that the defendant acted as both complainant and adjudicator, thereby “judging in its own cause.” They rely on the March 14, 2024, letter which expressly stated that the claimants had contravened Article 58(1) and imposed an immediate ban. The claimants argue that this demonstrates a vested interest in ensuring the defendant’s own allegation was “addressed”, amounting to actual bias.
- [178] The difficulty for the claimants lies in the sufficiency of their evidence. While the correspondence shows that the Executive Body initiated and communicated the sanction, the defendant maintains that the General Secretary merely transmitted the decision, and that subsequent recourse to the Disciplinary and Ethics Committee was available. The claimants have not adduced independent evidence of personal animus, pecuniary interest, or pre-determination beyond the structural overlap of roles.
- [179] Authorities such as **Porter v McGill** and **Vance Amory v Thomas Sharpe** confirm that apparent bias may be inferred from the circumstances, but actual bias requires proof of a direct interest or improper motive. The claimants’ submissions, though forceful, rest primarily on inference from institutional conduct rather than demonstrate evidence of predisposition or personal interest.
- [180] Accordingly, I find that the heavy burden of proving actual bias has not been discharged. The claimants have not shown that the Executive Body was motivated by personal hostility, financial interest, or a pre-determined outcome. They have not met the stringent evidential threshold to establish actual bias.

Apparent Bias

- [181] In **Porter v Magill**,⁵⁵ Lord Hope explained that the question is whether the fair-minded and informed observer, having considered the facts, would conclude that there was a real possibility that the tribunal was biased.
- [182] In **Vance Amory v Thomas Sharpe**,⁵⁶ the Court of Appeal applied this test and reiterated that an allegation of apparent bias must be decided on the facts and circumstances of the individual case including the nature of the issue to be decided. The court must consider whether the fair-minded and informed observer, having considered the facts, would conclude that there was a real possibility of bias.
- [183] The claimants submit that the Executive Body of the defendant acted both as complainant and adjudicator. It was the Executive Body that alleged the claimants had breached Article 58(1), and it was the same body that imposed the sanction. The claimants argue that this dual role offends the fundamental principle that no man may be a judge in his own cause.
- [184] These circumstances give rise to a legitimate concern. The letter of March 14, 2024, not only communicated but also concluded that the claimants were in breach and imposed an immediate ban. I am of the view that a fair minded and informed observer, apprised of these facts, would reasonably apprehend that the Executive Body lacked partiality.
- [185] The defendant contends that subsequent recourse to the Disciplinary and Ethics Committee was available, and that the claimants were invited to attend a hearing. However, I note that the initial decision was made and communicated without notice, particulars of charges, or disclosure. The later invitation did not cure the perception that the Executive Body had already prejudged the matter.

⁵⁵ [2002] 2 AC 357 at para. 103

⁵⁶ HCVAP 2009/013

- [186] Applying the two-stage test articulated in **Flaherty v National Greyhound Racing Club**,⁵⁷ the court must first ascertain the circumstances bearing on the suggestion of bias, and then consider whether those circumstances would lead a fair minded observer to conclude that there was a real possibility of bias. On the facts before the court, the overlap of roles, the absence of procedural safeguards, and the Executive Body's vested interest in vindicating its own Statutes, all point to a real possibility of bias.
- [187] Therefore, I find that while actual bias has not been proved, the circumstances establish apparent bias. The impugned decision is tainted by a breach of the rule against bias, and this ground of review is made out.
- [188] Bias, whether actual or apparent, vitiates the decision. It is not necessary to prove that the outcome was affected; the mere existence of bias disqualifies the decision-maker.
- [189] I acknowledge the defendant's submission that the impugned decision was taken following advice received from FIFA. That fact, however, does not insulate the decision from scrutiny under the rule against bias.
- [190] Bias in law arises not from the source of advice but from the structure of the decision-making process. The uncontroverted evidence is that the Executive Body of the defendant both alleged the breach of Article 58(1) and imposed the sanction. In so doing, it acted as complainant and adjudicator in its own cause.
- [191] Even if FIFA's advice was neutral, the Executive Body's dual role created a real possibility of bias. In my view, a fair minded observer, considering all the circumstances, would conclude that the defendant was not impartial.
- [192] Accordingly, I find that the defendant's reliance on FIFA's advice does not cure the defect. The decision remained infected with bias because the Executive Body had

⁵⁷ [2005] EWCA Civ 1117

a vested interest in enforcing its own Statutes while simultaneously adjudicating upon the alleged breach.

Conclusion

[193] I am of the view that the impugned decision of the defendant contained in its letter dated March 14, 2024, to the claimants was ultra vires, unlawful, null and void and of no effect. The Executive Body of the defendant SKNFA had no jurisdiction under its Statutes or the Disciplinary and Ethics Code to impose disciplinary sanctions.

[194] Even if jurisdiction had existed, the procedure adopted was fatally defective. The claimants were not informed of any charges, were afforded no opportunity to be heard, and were summoned to a hearing in breach of the statutory notice requirements. This amounted to a denial of natural justice and procedural fairness.

[195] The sanction was also irrational and disproportionate. The defendant sought to punish the claimants for exercising their right to seek redress in the Magistrate's Court, in circumstances where they were acting as contractors rather than members bound by the Statutes. No reasonable authority could have imposed such a sweeping ban.

[196] I further find that the decision was infected with apparent bias. The Executive Body acted as both complainant and adjudicator, thereby violating the fundamental principle that no man may be a judge in his own cause. A fair minded and informed observer would conclude that there was at least a real possibility of bias.

[197] In light of these findings, I hold that the defendant's decision was unlawful on multiple grounds and cannot stand. Judicial review is therefore the appropriate remedy notwithstanding the defendant's submissions on internal redress.

Costs

[198] There is no reason to depart from the general rule in this case. The claimants are entitled to their costs.

Order

[199] It is hereby ordered that:

- 1) The decision of the defendant contained in its letter dated March 14, 2024, banning the claimants from football-related activities is quashed.
- 2) A declaration is granted that the said decision was ultra vires, unlawful, procedurally improper, irrational, and infected with bias.
- 3) The defendant shall pay the claimants' costs, to be assessed if not agreed within twenty-one days.

[200] I thank Counsel for the parties for their most useful submissions.

Tamara Gill
High Court Judge

By the Court

Registrar