

**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

2025: November 7;
2026: January 30.

RULING

- [1] **GILL, J.:** Football coaches seek judicial review of their Association’s decision to ban them from participating in football related activities for alleged contravention of its rules. The Association says it is not amenable to judicial review.

Overview

- [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.¹
- [3] A contractual dispute arose between the parties and the claimants instituted proceedings against SKNFA in the Magistrate’s Court.
- [4] SKNFA found this to be in violation of its rules and imposed a ban on the claimants, preventing them from participating in football related activities. Each claimant received a letter dated 14th March 2024 from the General Secretary of the defendant 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 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.”*

¹ Cap. 23.27 of the Laws of Saint Christopher and Nevis

[5] Following correspondence with the claimants' attorneys and SKNFA, being aggrieved, 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.

[6] The defendant asks the court to dismiss the claim on the preliminary point that the case at bar is a domestic dispute, falling outside the scope of public law, and therefore not amenable to judicial review.

[7] The claimants assert that SKNFA is subject to judicial review given its public function of promoting, regulating and organising football in St. Kitts and Nevis at regional and international football competitions.

Issue

[8] The court is required to determine the preliminary point as to whether SKNFA is amenable to judicial review.

The Saint Kitts and Nevis Football Association (Incorporation) Act

[9] Sections 2, 3 and 9(1) of the Act provide as follows:

Incorporation.

2. *The Saint Kitts and Nevis Football Association (hereinafter referred to as “the Association”) shall be and is hereby created a body corporate with perpetual succession and a common seal, and capable of suing and being sued in its corporate name.*

Aims and objectives of the Association.

3. *The aims and objectives of the Association are—*

- (a) to regulate and control the conduct of Football in Saint Kitts and Nevis (under the Federation Internationale de Football Association System) and to provide playing fields and conveniences in connection therewith;*
- (b) to promote local and inter-territorial matches and to provide prizes or awards to participants thereof; and*
- (c) to foster and promote the playing of football under the said system and to become members of or affiliated to Associations having similar objectives.*

Power to make rules.

9. (1) *The Association shall have power to make such rules as they may deem necessary or expedient or convenient 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 and from time to time to alter, vary, revoke or repeal such rules.*

Statutes of the SKNFA

[10] The following Articles of the Statutes of SKFNA (2023 Edition) (with emphasis added) are relevant. CAS means the Court of Arbitration for Sport (Switzerland).

Article 9 Conduct of bodies, officials and others

1 *All bodies and officials of SKNFA shall observe the Statutes, regulations, directives, decisions and the Code of Ethics of FIFA, of Concacaf, of CFU and of SKNFA in their activities.*

- 2 *Every person and organisation involved in the game of association football, futsal and beach soccer in the territory of St. Kitts-Nevis is obliged to observe the Statutes and regulations of FIFA, of Concacaf, of CFU, of SKNFA and any other relevant statutes, as well as the principles of fair play, loyalty, integrity and sportsmanship.*

Article 11 **Admission, suspension and expulsion**

- 1 *The Congress shall decide whether to admit, suspend or expel a Member.*

Article 13 **Admission**

- 1 *Any legal person wishing to become a Member of SKNFA shall apply in writing to the general secretariat of SKNFA.*
- 2 *The application must be accompanied by the following mandatory items:*

...

d) a declaration that it will refer in the last instance (i.e. after exhaustion of all internal channels within SKNFA) any dispute of national dimension arising from or related to the Statutes, regulations, directives and decisions of SKNFA only to an independent and duly constituted arbitration tribunal which shall definitively settle the dispute to the exclusion of any ordinary court, unless expressly prohibited by the legislation in force in St. Kitts and Nevis.

...

f) a declaration that it recognizes the jurisdiction of CAS, as specified in the Statutes of FIFA and of Concacaf, and its decisions;

Article 16 **Members' obligations**

- 1 *The Members of the SKNFA have the following obligations:*

a) To comply fully with the Statutes, regulations, directives and decisions of FIFA, Concacaf, CFU and SKNFA at all times and to ensure that these are also respected by its members;

...

*(g) to adopt a statutory clause specifying that any dispute of national dimension arising from or related to the Statutes, regulations, directives and decisions of SKNFA may only be referred in the last instance (i.e. **after exhaustion of all internal channels within SKNFA**) to **CAS, which shall definitely settle the dispute to the exclusion of any ordinary court, unless expressly***

prohibited by the legislation in force in St Kitts & Nevis;

Article 56 Appeal Committee

- 1 *The function of the Appeal Committee shall be governed by the Disciplinary Code and Ethics Code of SKNFA and shall consist of a chairperson, a deputy chairperson and the number of members deemed necessary as determined in the Disciplinary and Ethics Code and Electoral Code.*
- 2 ***The Appeal Committee is responsible for hearing appeals against the decisions from the Disciplinary and Ethics Committee and the Electoral Committee that are not declared final by the relevant regulations of SKNFA.***
- 3 ***Decisions pronounced by the Appeal Committee may only be referred to CAS in accordance with the provisions in these 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.*

SKFNA's submissions

- [11] The defendant's position is that sporting bodies such as SKNFA, otherwise called Sports Governing Bodies (SGBs), are not amenable to judicial review, which is the principal mechanism through which the courts exercise supervisory jurisdiction over public bodies or those which exercise public duties.
- [12] The defendant submits that the claimants, by virtue of their roles and affiliation with their respective clubs, were members of SKNFA and subject to the rules and regulations of SKNFA.
- [13] In support of its contention, the defendant cites the Jockey Club cases of **R v**

Disciplinary Committee of the Jockey Club ex parte Aga Khan,² and R v Disciplinary Committee of the Jockey Club ex parte Massingberd-Mundy³ which held that these bodies are not amenable to the jurisdiction of domestic courts. In **ex parte Aga Khan**, which the defendant cites as the leading case as it relates to whether SGBs are amenable to judicial review, Sir Thomas Bingham MR stated:

“I have little hesitation in accepting the applicant's contention that the Jockey Club effectively regulates a significant national activity, exercising powers which affect the public and are exercised in the interest of the public. I am willing to accept that if the Jockey Club did not regulate this activity the government would probably be driven to create a public body to do so.

But the Jockey Club is not in its origin, its history, its constitution or its membership a public body... **while the Jockey Club's powers may be described as, in many ways, public they are in no sense governmental...**

...the powers which the Jockey Club exercises over those who (like the applicant) agree to be bound by the Rules of Racing derive from the agreement of the parties and give rise to private rights on which effective action for a declaration, an injunction and damages can be based without resort to judicial review. It would, in my opinion, be contrary to sound and long-standing principle to extend the remedy of judicial review to such a case.” (Emphasis added)

[14] In that case, Farquharson LJ also discussed the following⁴:

“This dichotomy was recognised by this court in *Law v National Greyhound Racing Club Ltd* [1983] 3 All ER 300, [1983] 1 WLR 1302, which on its facts bears some similarity to the present appeal....

Lawton LJ said ([1983] 3 All ER 300 at 303, [1983] 1 WLR 1302 at 1307):

'In my judgment, such powers as the stewards had to suspend the plaintiff's licence were derived from a contract between him and the defendants. This was so for all who took part in greyhound racing in stadiums licensed by the defendants. A stewards' inquiry under the defendants' rules of racing concerned only those who voluntarily submitted themselves to the stewards' jurisdiction. **There was no public element in the jurisdiction itself. Its exercise, however, could have consequences from which the**

² [1993] 2 All ER 853 at 866 j – 867 a - e

³ [1993] 2 All ER 207

⁴ Ibid at 868 j; 869 c - e, and j; 870 c - e

public benefited, as for example by the stamping out of malpractices, and from which individuals might have their rights restricted by, for example, being prevented from employing a trainer whose licence has been suspended. **Consequences affecting the public generally can flow from the decisions of many domestic tribunals. In the past the courts have always refused to use the orders of certiorari to review the decisions of domestic tribunals.'**

...

The references to underpinning by the state and potential governmental interest derive from the decision of this court in *R v Panel on Take-overs and Mergers, ex p Datafin plc (Norton Opax plc intervening)* [1987] 1 All ER 564, [1987] QB 815...

... the court rejected the argument that the sole test of whether such a body was susceptible to judicial review was its source of power, and held it was entitled to consider such factors as the nature of the power. Donaldson MR said ([1987] 1 All ER 564 at 577, [1987] QB 815 at 838):

'In all the reports it is possible to find enumerations of factors giving rise to the jurisdiction, but it is a fatal error to regard the presence of all those factors as essential or as being exclusive of other factors. Possibly the only essential elements are what can be described as a public element, which can take many different forms, **and the exclusion from the jurisdiction of bodies whose sole source of power is a consensual submission to its jurisdiction.'**

Understandably the decision in *Datafin* involved some development of the law relating to judicial review but, bearing in mind the concluding words of the citation just made, the court did not question the decision in *Law v National Greyhound Racing Club Ltd*, which was cited to it in argument." (*Emphasis added*)

- [15] The defendant also relies on the judgment of our High Court in **La Clery Football League v St. Lucia Football Association**.⁵ In determining whether the decisions of the St. Lucia Football Association were subject to judicial review, Cottle J ruled:
- "Mr. Fraser cited the case of **R. v. Panel on Take-Overs and Mergers, ex parte Datafin** [1987] 1 All ER 563.

⁵ SLUHCv2008/0224, delivered March 20, 2008, at page 5

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

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

[16] In **Barbados Cricket Association et al v Pierce**,⁶ Williams CJ adopted the position in **ex parte Aga Khan** and declared:

“The *Datafin* case cannot assist Wanderers. The nature of the functions of the BCA which are under challenge in this case are in no way comparable to those of the *Panel* in that case. The dispute in this case is about the interpretation of the rules of the Fire Cup competition and whether Wanderers should go into the quarter finals of the Competition. **Moreover the source of BCA's power to determine the dispute is not the private Act which incorporated the association and made consequential provision but the rules of the association of which the cricket clubs are members and which enabled them to participate in the Fire Cup competition.**

A more apt comparison would be between the BCA and the Jockey Club of Great Britain at the time of the latter's dispute with the Aga Khan as reported in *R v. Jockey Club, ex p. Aga Khan* already cited above, ...

Notwithstanding the exclusive control which the jockey club exercised over horse racing in Great Britain, it was held not to be amenable to judicial review. In contrast, the BCA has never had sole control over cricket in Barbados, it being common knowledge that for many years another body (The Barbados Cricket League) has organized cricket competitions in Barbados concurrently with the BCA: indeed the BCA's very Act of

⁶ BB 1999 CA 8; 57 WIR 29

incorporation had and has built-in restrictions on its powers and authority, in that section 4 provides inter alia that its bye-laws, ordinances, rules and regulations “shall not in any manner affect any other person or persons but those who are or may become members of the association.” It follows, a fortiori, that the BCA is likewise not amenable to judicial review.”

[17] Additionally, the defendant points out that in football cases such as **R v Football Association Ltd, ex parte Football League Ltd**,⁷ the English Courts have held that the English Football Association is not amenable to judicial review either in general or more particularly, at the instigation of the League with whom it was contractually bound.

[18] The defendant asserts that these rulings mirror that of the Privy Council in the Australian case of **Calvin v Carr et al**,⁸ where the appellant sought, inter alia, a declaration that his purported disqualification from the Australian Jockey Club and the dismissal of his appeal were void on the grounds that the stewards had failed to observe the rules of natural justice or fairness and their decision was therefore invalid. The appellant sought an injunction restraining the respondent from giving effect to the disqualification imposed on the appellant under the rules and regulations of the Australian Jockey Club. In delivering the judgment of the Board, Lord Wilberforce opined:

“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.”

[19] This *ratio decidendi* informed the basis of the decision that the defendant/respondent was not amenable to the formalities of judicial process.

[20] The defendant in the case at bar submits that this authoritative approach of the Privy Council is binding on St. Kitts and Nevis and those Caribbean courts that submit to its jurisdiction.

⁷ [1993] 2 All ER 833

⁸ Privy Council Appeal No. 5 of 1978; [1979] UKPC 1 [1979] 2 All ER 440 at 449 b

[21] Additionally, the defendant cites the English Court of Appeal case of **Law v National Greyhound Racing Ltd**⁹ (dealt with by Farquharson LJ in **ex parte Aga Khan**) which reflected this approach. It held: “The jurisdiction which the court had ... to grant an injunction or declaration on an application for judicial review was confined to the review of activities of a public nature as opposed to those of a purely private or domestic nature... Since the stewards’ authority to suspend the plaintiff’s license derived solely from a contract between him and the defendants there was no public element in their jurisdiction as such (although the public might be affected) and therefore their decision was not reviewable by prerogative order.”

[22] The defendant submits that the leading Caribbean case as it relates to football associations is **Fédération Internationale de Football Association v Trinidad and Tobago Football Association**.¹⁰ FIFA appealed a procedural decision of the High Court concerning its removal of the TTFA’s elected executive and replacement with a normalisation committee. FIFA took this action due to concerns over the TTFA’s governance, financial state, and lack of internal controls, appointing four members of its own choosing to manage the Association. The TTFA initially challenged the decision before the Court of Arbitration for Sport (CAS) but later withdrew the appeal, alleging that FIFA had shown no willingness to proceed. They also raised concerns about apparent institutional bias, particularly CAS’s requirement that the TTFA pay the full advance costs of arbitration. The TTFA then initiated proceedings in the High Court, which ruled in its favour. However, on appeal, that decision was overturned on the following basis as stated by Bereaux JA at paragraph 29 of the judgment which, in part, reads:

“She erred for several reasons [T]he judge appeared to rely on the decision of **Keith Look Loy v TTFA, CV2018-03080 [Lok Loy v. Gabriel]** for the proposition that the TTFA being incorporated by statute cannot oust the jurisdiction of the courts. But in my judgment that was not the *ratio decidendi* in that decision. In any event I am not persuaded that the *ratio decidendi* in that case is correct. It is true that the fact of incorporation by an Act of Parliament may be a factor in deciding

⁹ [1983] 3 All ER 300

¹⁰ Civil Appeal No. P225 of 2020

whether the corporation is susceptible to judicial review. But such reviewability turns on the nature of the function of the corporation. The fact of incorporation by an Act of Parliament is not enough. ... Further, there is no rule of law which prohibits a corporation incorporated by an Act of Parliament from submitting to a jurisdiction of a foreign tribunal. Whether it can do so or not will turn on the express terms of the legislation itself. That is to say, it is the legislation itself which must expressly prohibit it.

... Article 67 of the TTFA's Constitution required that any such question be taken to CAS. That is to say, whether the FIFA decision of 17th March, 2020 was final or not is a matter entirely to be pursued before CAS by TTFA. It is not the business of the High Court or the Court of Appeal."

- [23] The defendant submits that no such prohibition exists under the St. Kitts and Nevis Football Association (Incorporation) Act. To the contrary, section 9(1) of the Act expressly empowers SKNFA to make its own rules. Accordingly, SKNFA regulates its own affairs and is permitted under the Act to do so domestically.
- [24] As members of SKNFA, the claimants were always subject to the provisions of Article 58 of SKNFA's Statutes that "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".
- [25] The defendant alleges that to have approached the courts of St. Kitts and Nevis and in particular, the Magistrate's Court without first satisfying the provisions of Article 58(1) amounted to a fundamental and substantial breach of the Rules of SKNFA. It submits that if there was dissatisfaction with the ruling of SKNFA, then the appropriate measure was to first apply to the Appeal Committee and then to CAS. There is no sufficient reason why the matter should not have been appealed to the Appeal Committee and then to CAS before any approach was made to the local courts. This was the agreement between all the parties and the understanding

as far as disputes within the organisation are concerned.

[26] The defendant submits that the Appeal Committee generally, and CAS specifically, constitute the most appropriate fora for the ventilation of sports related disputes. They are equipped with the machinery and competence to dispense justice in a contextualised manner to the nuanced area of Sports Law.

[27] The defendant states that in any event, this case at bar ought to have been stayed until the correct procedure was followed given the developments so far. The defendant submits that the only plausible finding would be that this is not a matter that should trouble the court as this falls within the ambit of a domestic dispute, outside the scope of public law, and therefore not amenable to judicial review. Accordingly, the claim should be struck out.

The claimants' submissions

[28] The claimants submit that the defendant is subject to judicial review given its public function of promoting, regulating and organising football in St. Kitts and Nevis, and its exclusive authority for the representation of St. Kitts and Nevis at regional and international football competitions.

[29] Given the public nature of the fundamental aspects and responsibilities of the defendant and its national representative character which is monopolistic in nature, in that the defendant is the only body in which these responsibilities are vested, the claimants submit that the defendant is a *de facto* public body and as such is susceptible to the judicial review of its decisions. The claimants set out the following in support of their submission that the defendant is a *de facto* public body:

- a. But for the existence of the defendant, the government would have regulated football activity;
- b. The government has acquiesced the power to regulate football and all related activity to the defendant; and
- c. The defendant, through its selection of athletes and coaches to represent

the Federation in regional and international competitions as well as its organisation of major national competitions, performs acts in which the general public has an interest.

[30] For this submission, the claimants rely on the case of **George Robinson v Grenada Olympic Committee Inc.**¹¹. In that case, counsel for the defendant, the Grenada National Olympic Committee, argued that its decisions were not susceptible to judicial review. At paragraphs 26 to 30 of the judgment, Actie J stated:

“[26] In any event, the court is of the view that the defendant is susceptible to judicial review. The availability of judicial review depends on the source of the decision maker’s powers to make the decision in question, and the nature of that decision. The question is whether the body is carrying out a public law function.

[27] In **R (Beer trading as Hammer Trout Farm) v Hampshire Farmers’ Market Limited** the Court of Appeal held that unless the source of the power of a decision-maker originating from statute or prerogative clearly provided the answer, the question whether a decision was amenable to judicial review required careful consideration of the nature of the power and function to be exercised to see whether the decision had a sufficient public element, flavour or character to bring it within the purview of public law.

[28] Although a non-profit company, the defendant is the National Olympic Committee for the state of Grenada, and through the Olympic Charter 2013, is tasked with certain public functions such as: (1) To promote the fundamental principles and values of Olympism in their countries...; and (2) To ensure the observance of the Olympic Charter in their countries.

[29] National Olympic Committees further have the exclusive authority for the representation of their respective countries at the Olympic Games, and at regional, continental or world multi-sports competitions patronized by the International Olympic Committee.

[30] Consequently, given the public nature of the above fundamental aspects and responsibilities of the defendant, and its national representative character, the court finds that the defendant is susceptible to the judicial review of its decisions.”

¹¹ GDAHCV2014/0325

- [31] Applying this test in the case at bar, the claimants submit that the defendant's decisions are susceptible to judicial review and that the court's jurisdiction cannot be ousted by the parties.
- [32] The claimants point out that courts in the region have also held that judicial review extends to decisions of sporting bodies if they act irregularly, oppressively and unfairly.
- [33] The claimants posit that it is from the rigid UK system which comes the principle that sporting organisations are not susceptible to judicial review. First, the claimants submit that this position is not binding on this court. Secondly, this position has, however, been subject to criticism and there are decisions of the UK lower courts which suggest that this principle, merits reconsideration.
- [34] In the case of **R v Disciplinary Committee of the Jockey Club, ex parte Massingberd-Mundy**¹² the court expressed that had this area of law been free from authority, it would have concluded that the Jockey Club was a body susceptible to judicial review. At page 222 a to f, and j, Roch J stated (obiter):
- “If the matter were free of authority, I would have reached the conclusion that the Jockey Club was a body susceptible to judicial review. It is a body created under the royal prerogative by royal charter with the objects of –
- ‘carrying on and developing its work and functions and discharging its responsibilities under such regulations and with such powers as to [Her Majesty The Queen] might appear expedient.’
- The objects for which the Jockey Club was incorporated in 1970 were inter alia, these:
- '(ii) to take over the activities connected with the control and regulation of horse-racing throughout [the] United Kingdom of Great Britain and Northern Ireland heretofore carried on by the Old Club and to undertake all such responsibilities and activities as may be necessary or convenient for the proper conduct and due encouragement of horse-racing howsoever carried on and whether or not of a kind heretofore controlled or regulated by the Old Club;
- (iii) to make, print and publish rules, regulations, advices and directions for the proper conduct of horse-racing, race-meetings

¹²[1993] 2 All ER 207

and racehorse-training and to take all necessary steps for the communication and enforcement thereof;

(iv) to encourage and foster the breeding of bloodstock whether by means of races or otherwise;

(v) to organise and participate in schemes or arrangements for the assistance and relief of persons employed in any capacity connected with horse-racing and being in need of assistance or relief whether by virtue of poverty, sickness, injury or otherwise and of the dependants howsoever related of such persons as aforesaid whether currently or formerly employed as aforesaid and if formerly so employed whether living or deceased and to act as Trustee whether alone or jointly with other persons of any Charitable Body administering or providing such assistance and relief .. '

Thus the Jockey Club holds a position of major national importance. Further, it has near monopolistic powers in an area in which the public generally have an interest and in which many persons earn their livelihoods.

...

Thus in the absence of authority I would have concluded in this case that the Jockey Club was a public or similar authority whose actions under the power conferred on them by royal charter should be subject to the supervisory jurisdiction which the courts exercise under s 31 of the Supreme Court Act 1981 and RSC Ord 53." (*Emphasis added*)

[35] Similarly, in the case of **R v Jockey Club, ex parte RAM Racecourses Ltd.**¹³ the court expressed that had it not been bound by a decision of the superior court, it would have allowed judicial review. At page 244 c, the court stated (obiter):

"Nevertheless at the end of the day I am unable to say that I am convinced that the decision of this court in *R v Disciplinary Committee of the Jockey Club, ex p Massingberd-Mundy* (1989) [1993] 2 All ER 207 was wrong. It is quite clear that it was not in any way per incuriam, the court having given careful consideration to *Law's* case and, we are told, other extensive citations of authority. **But for this authority I should have held that the decisions of the Jockey Club in this case were amenable to judicial review.**" (*Emphasis added*)

[36] The claimants maintain that the defendant holds a position of major national importance, and further that it has monopolistic powers in an area (football and football related activity) in which the public generally has an interest. The claimants

¹³ [1993] 2 All ER 225

submit therefore that it is a public or similar authority whose actions are subject to the supervisory jurisdiction of the court and which supervisory jurisdiction cannot be ousted by the parties.

[37] In any event, the claimants submit that there was no avenue for them to appeal the impugned decision. The decision which is being challenged in the case at bar did not derive from the Disciplinary Committee but rather was a decision from the Executive Body of the defendant. The claimants submit that the Executive Body did not have the power to pronounce such a sanction (see Article 55 (2) of the Statutes) and in any event, the Statutes of the defendant do not provide a mechanism for appeals from decisions of the Executive Body. Articles 56(2) and 56(3) provide that the Appeal Committee is responsible for hearing appeals against decisions from the Disciplinary and Ethics Committee and the Electoral Committee that are not declared final by the relevant regulations of SKNFA, and that decisions pronounced by the Appeal Committee may only be referred in the last instance to CAS.

[38] The claimants submit that they could not have appealed to the Appeal Committee as there was no procedure or jurisdiction for same provided by Article 56. Article 56(2) restricts the jurisdiction of the Appeal Committee to hearing appeals against decisions from the Disciplinary and Ethics Committee, which the impugned decision was not.

[39] Further, the claimants argue that they could not refer the dispute to Arbitration before CAS as Article 58 provides that disputes can only so be referred in the “last instance”. Last instance is defined in the Article as being after “exhaustion of all internal channels within SKNFA”. However, the claimants allege that there is a lacuna as there are no internal channels within the SKNFA in the claimants’ circumstances.

[40] The claimants point out that Ventose J, as he then was, dealt with a similar issue involving the defendant. In the case of **SOL Island Auto Conaree Football Club**

et al v St. Kitts-Nevis Football Association¹⁴, His Lordship granted leave for judicial review despite the Association's submissions that there was an alternative mechanism for dispute resolution. In so granting, he found that although there was an alternative mechanism outlined in the Statutes, there was a vacuum as the relevant tribunal had not been established. Ventose J, in the preamble to his order, stated:

***“AND UPON NOTING** that Article 62 mandates that any dispute not subject to the jurisdiction of the judicial bodies, shall be dealt with by an Arbitration Tribunal **AND UPON FURTHER NOTING** the evidence of the Respondent that the Respondent has not created an Arbitration Tribunal as mandated by Article 62 ("Currently, there is no sitting Arbitral Tribunal") AND that the evidence of the Respondent was that when in the past "arbitration was invoked" those disputes were "arbitrated by the St. Kitts Nevis National Olympics Committee. This has been the practice":*

AND UPON** the court being of the view that any arbitration between members of SKNFA and SKNFA is governed only by Article 62 and the Arbitration Tribunal to be established by that Article **AND** that since no such Arbitration Tribunal has been established by the Respondent **AND that the jurisdiction of the court is not ousted since the alternative remedy of arbitration contemplated by Article 62 does not exist since the Respondent, as stated in its evidence, has not to date established the Arbitration Tribunal;

...

***AND UPON** the court agreeing with the Respondent that Articles 62 and 63 "outline alternative mechanism to settle disputes arising between the Respondent and all member" **BUT THAT** they provide the only mechanism by which arbitration must take place under the Statute **AND that since the Arbitration Tribunal has not been created by the Respondent, there is no such mechanism by which the Applicants can seek that alternative remedy to which they must resort before approaching the court AND that it is the failure by the Respondent to create the Arbitration Tribunal pursuant to Article 62 that has created this vacuum, which has provided the avenue by which the Applicants can properly approach the court without regard to Articles 62 and 63;...**" (Emphasis added)*

[41] The claimants submit that the same principles can be applied to the case at bar in that, whilst there are alternative mechanisms in the Statutes, these mechanisms do

¹⁴ SKBHCV2019/0138

not apply to the claimants and as such, there is a vacuum which has provided an avenue by which the claimants can properly approach the court, which has jurisdiction to address breaches of natural justice.

[42] The claimants point out that this analysis which was done in the TTFA case was not done in the case of **La Clery Football League v St. Lucia Football Association**. Further, in that case, the defendant was a private body whereas the claimants submit that the defendant herein is a de facto public body given the public nature of the fundamental aspects and responsibilities of the defendant and its national representative character, which is monopolistic in nature in that the defendant is the only body in which these responsibilities are vested.

[43] The claimants maintain that the defendant is amenable to judicial review.

Discussion and disposition

[44] SKNFA was incorporated by an Act of Parliament. It is a body corporate created by government. The Saint Kitts and Nevis Football Association (Incorporation) Act prescribes the aims and objectives of the defendant – to regulate and control football in St. Kitts and Nevis; to provide playing fields; to promote local and inter-territorial matches and to provide prizes or awards to the participants thereof; and to foster and promote the playing of football. By the Act, the government of St. Kitts and Nevis has empowered the SKNFA to carry out clearly public functions. The government has created a public body to regulate football and football related activities in the Federation, a situation clearly distinguishable from the Jockey Club cases relied on by the defendant.

[45] Section 9 of the Act empowers the SKNFA to make such rules as it deems necessary for, inter alia, the discharge of its duties, powers and functions. The SKNFA Statutes constitute such rules, which must be in furtherance of the aims and objectives set out in the Act.

[46] Although the Statutes require internal dispute resolution, given the public nature of the functions of the defendant, I am of the view that it is amenable to judicial review.

The fundamental public functions of SKNFA derive from the Act of Parliament, giving rise to public rights. The defendant is well within its power to regulate its own dispute resolution mechanisms. However, in light of its public functions, the court retains the power to review its decisions.

[47] Further, although monopoly or control over a sport is not the determinative factor as to whether a sports governing body is a public body, it is certainly a factor to be taken into consideration. The defendant counters the claimants' assertion that its national representative character is monopolistic in nature. The defendant avers that there is no monopolistic control by SKNFA of football in the Federation of St. Kitts and Nevis. In support of this contention, it states that the Department of Sports, a government entity, exercises control over all school related football activities, and posits that while SKNFA's influence is significant, it is not absolute. To my mind, the control over school related football activities cannot be compared with the wide and overarching national and inter-territorial functions of the defendant. As submitted by the claimants, the defendant exercises exclusive authority for the representation of St. Kitts and Nevis at regional and international football competitions. In fact, in my view, the defendant's submission that a government department has responsibility for an aspect of football in the Federation gives credence to the conclusion that the defendant is a public body. Given the totality and extent of the public functions and responsibilities of the defendant, the monopolistic nature of its control cannot be denied.

[48] The dispute in this case concerns the claimants' challenge to the authority of the defendant to ban the claimants for alleged breach of its Statutes.

[49] The crux of this matter is that the defendant did not institute disciplinary proceedings against the claimants for their alleged breach of Article 58 of the Statutes of SKNFA. The decision to take the disciplinary measure to ban the claimants was effected by letters to each claimant from the General Secretary of the defendant. In these circumstances, the question is what was the avenue for the claimants to challenge the decision of the defendant to ban them. The defendant submits that the claimants

ought to have appealed first to the Appeal Committee, and then to CAS. At the hearing of the preliminary point, learned counsel for the defendant contended, “Any decision with which you are disciplined, you can appeal to the Appeal Committee.” Respectfully, I do not agree.

[50] In my view, this submission of the defendant is successfully countered by the claimants. Article 56 of the Statutes clearly provides that the Appeal Committee is responsible for hearing decisions from the Disciplinary and Ethics Committee and the Electoral Committee. 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. There was no disciplinary hearing in accordance with the Disciplinary and Ethics Code of SKNFA (referred to in Article 55 of the Statutes). There is no provision for any internal channels for persons in the position of the claimants to pursue.

[51] By their fixed date claim, the claimants are challenging the decision of the defendant as, inter alia, in breach of the rules of natural justice, procedurally irregular, without due process and illegal. Several cases from this region have determined that sporting bodies are amenable to judicial review where they are in breach of the rules of natural justice. In **Saint Catherine Cricket Club and Melbourne Cricket Club v Jamaica Cricket Association Limited**,¹⁵ at paragraph 9, Mangatal J noted:

“Both sides are in agreement that the court has authority to interpret Rules and also to review the decisions reached by bodies such as the J.C.A. if there has been a breach of natural justice. Reference was made to the authorities of Lee v. Showman’s Guild of Great Britain [1952] 2 Q.B. 329, Baker v. Jones [1954] 2 All E.R. 553, Griffith v. Barbados Cricket Association (1989) 24 Barb. LR 108, and The Board of Alexandra School v. the Barbados Cricket Association (unreported) No. 2277/2003 January 28, 2004). They agree that the Court’s authority to decide on these types of issues cannot be ousted by the parties or draftsmen of the Rules.”

[52] I note here that the defendant points out that paragraph 9 was not what was held in the case. What was held is seen at paragraph 54 which reads:

“... In my judgment, the authorities clearly demonstrate that Manchester

¹⁵ Claim No. 03147 of 2009 (Supreme Court of Judicature of Jamaica)

C.C. would have a right to be heard before the Committee decided what form of sanction was to be imposed because Manchester C.C. would be a party directly affected by the J.C.A.'s decision. However, the Claimants here are not in the same position. They would only be indirectly affected, or as Ms. Wong puts it in her submissions, "they would only be an incidental beneficiary if Manchester C.C. was required to forfeit its title" – or points. The decision to be taken will impact upon other Clubs in the Competition, because by definition, they are competing against each other for "the spoils". **However, a contractual relationship exists between the J.C.A. and its members and amongst each other. The Claimants and other members of the J.C.A. are bound by the terms of the J.C.A.'s Memorandum and Articles of Association.** ... The Board therefore has every right to carry out its functions free from enquiry and is not required to hear from competing parties in the Competition as to how it should exercise its discretion in respect of another participant... The Board has not therefore acted in breach of the principles of natural justice by not affording the Claimants a prior hearing to deciding on the appropriate manner in which to sanction Manchester C.C.'s breach." (*Emphasis added*)

[53] In **The Board of Management of Alexandra School v The Barbados Cricket Association**,¹⁶ at paragraphs 23 – 29, the court stated:

"[23] Sports especially cricket, plays a pivotal role in the lives of many Barbadians. Those who administer sporting organisations must recognise that they must observe the basic principles of natural justice. They cannot deliberate in secret, and then pronounce their decisions expecting them to be accepted unquestionably. A provision such as Rule 22 of the Barbados Cricket Association's Rules will not insulate their procedure from judicial scrutiny. Mr. Yearwood for the Applicant submitted that in spite of Rule 22 which in effect seeks to oust the jurisdiction of the court, the Barbados Cricket Association is bound to observe the rules of natural justice.

[24] The question as to whether the Barbados Cricket Association can by its rules oust the jurisdiction of the Court, was addressed in *Griffith vs. Barbados Cricket Association et al* (1989)24 Barb. LR 108. Williams CJ in that case, in considering the effect of the said Rule 22 cited with approval the cases of *Lee vs. Showman's Guild of Great Britain* (1952) 2 QB 329 and *Baker vs. Jones* 1954 2 AER 553.

[25] In *Lee's* case Romer LJ stated at page 354:

"The proper tribunals for the determination of legal disputes in this country are the courts and they are the only tribunals which by training and experience and assisted by proper qualified advocates are fitted for the task." The courts jealously uphold and safeguard the *prima facie* privilege

¹⁶¹⁶ No. 2277/2003, (Supreme Court of Judicature), Barbados

of every man to report to them for the determination and enforcement of his legal rights.”

[26] In *Baker vs. Jones Lynskey J* said at page 58:

“The parties can make a tribunal or council the final arbiter on questions of fact but though they can leave questions of law to the decision of a tribunal, they cannot prevent its decision being examined by the courts.”

[27] In conclusion the Chief Justice stated in *Griffith vs. Barbados Cricket Association* at page 125:

“To hold that Rule 22 makes the Board or the Association the ultimate arbiter of the law would be contrary to the cases. Such an interpretation would make the regulation repugnant to the law of Barbados.”

[28] Since the members of the Barbados Cricket Association have agreed among themselves to vest the authority in the Board to interpret its rules and regulations, that body has every right to carry out its functions free of enquiry and the Courts will not seek to usurp the authority of the Board. **If, however, in carrying out these functions the Board breaches its contractual relations with its members to allow them a hearing in cases of disputes, or if it fails to observe the common law principles of natural justice, an aggrieved person to whom the rules apply may seek the assistance of the court.**

[29] Even if the Board of the Barbados Cricket Association has the sole right to interpret the rules it does not have the right to apply them in a manner which adversely affects those who are bound by the rules without having given such persons the opportunity to be heard.” (*Emphasis added*)

- [54] I agree with the claimants’ submission that the case of **Fédération Internationale de Football Association v Trinidad and Tobago Football Association** can be distinguished from the case at bar. In that case TTFA brought a court action against a decision of FIFA. However, its Constitution provided that any appeal against a decision passed by FIFA, CONCACAF or the leagues should be heard by CAS. This provision provided an appeal avenue for decisions of FIFA, whereas in the claimants’ case, there is no avenue provided by the Statutes for an appeal against a decision of the defendant. I am of the view that a further distinction arises in light of the statement of Bereaux JA that the fact of incorporation may be a factor in deciding whether a body is susceptible to judicial review, but that such reviewability turns on the nature of the function of that body. I have already ruled that SKNFA carries out public functions.

[55] The defendant relies on the opinion of the Board in the Privy Council case of **Calvin v Carr**¹⁷ that the tendency “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”. The claimants point out that the Board did not leave the issues before it to be settled by the agreed methods, but went on to examine the facts and found that the proper procedure had been followed and therefore, there was no proper basis for the court to interfere.

[56] In the said judgment, the Board examined a number of cases which addressed matters similar to the case before it. At page 450 of the judgment, 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.**” (*Emphasis added*)

[57] This position of the Board is in keeping with the holdings in **Saint Catherine Cricket Club and Melbourne Cricket Club v Jamaica Cricket Association Limited** and **The Board of Alexandra School v The Barbados Cricket Association**.

Conclusion

[58] The defendant contends that if aggrieved by its decision to discipline them, the claimants ought to have exhausted all internal channels, the first being an appeal to the Appeal Committee. By the defendant’s Statutes, Appeals to that committee come from the Disciplinary and Ethics Committee. The decision to implement the disciplinary sanction of the ban on the claimants did not come from the Disciplinary Committee. Therefore, the claimants are within their rights to challenge the decision

¹⁷ [1979] 2 All ER 440

of the defendant by way of judicial review. If the members of the defendant have consented or contracted to abide by its internal rules governing dispute resolution, and the defendant carries out its functions in accordance with those rules, there is no need for the courts to intervene. However, if one alleges that the defendant has breached the prescribed procedure, acted illegally, in breach of the rules of natural justice, that person or persons may apply to the court for relief. This is exactly what the claimants have done, and given the public functions of the defendant, I rule that they are in the correct forum. SKNFA is amenable to judicial review.

Tamara Gill
High Court Judge

By the Court

Registrar