IN THE HIGH COURT OF SOUTH AFRICA

KWAZULU-NATAL DIVISION, PIETERMARITZBURG

SERVICE COPY

CASE NO: 12353/24P

In the matter between:

THE MEMBERS OF THE COMRADES MARATHON ASSOCIATION Applicant

and

REGISTRAR OF THE HIGH COURT
KWAZULU-NATAL HIGH COURT
PIETERMARITZBURG
2024 -10- 09 02
REPUBLIC OF SOUTH AFRICA
PRIVATE BAG X9014, PIETERMARITZBURG, 3200
REGISTRAR OF THE HIGH COURT

THE COMRADES MARATHON ASSOCIATION First Respondent

KWAZULU-NATAL ATHELETICS Second Respondent

FILING NOTICE

TO: **THE REGISTRAR OF THE HIGH COURT**
PIETERMARITZBURG

AND TO: **MC NAUGHT & COMPANY**

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WITHOUT PREJUDICE

RECEIVED A COPY HEREOF ON

THIS 9th DAY OF October 2024

02:20 STOWELL & CO.

AND TO: **HAY & SCOTT ATTORNEYS**

FIRST RESPONDENT'S ATTORNEYS

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Pietermaritzburg

Tel: 033 342 4800

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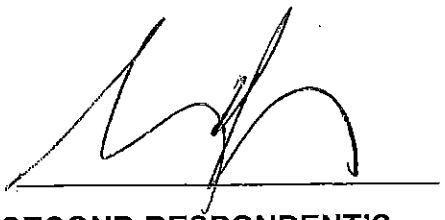
Ref: Paul Hay

SIRS,

KINDLY TAKE NOTICE that the Second Respondent hereby files their Answering Affidavit evenly herewith.

DATED AND SIGNED AT PIETERMARITZBURG ON THIS 9TH DAY OF OCTOBER 2024.



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IN THE HIGH COURT OF SOUTH AFRICA

KWAZULU-NATAL DIVISION, PIETERMARITZBURG

CASE NO: 12353/24P

In the matter of:

THE MEMBERS OF THE COMRADES MARATHON ASSOCIATION Applicants

and

THE COMRADES MARATHON ASSOCIATION First Respondent

KWAZULU-NATAL ATHLETICS Second Respondent

SECOND RESPONDENT'S ANSWERING AFFIDAVIT

I,

WILLIE STEVE MKASI

do hereby state the following under oath:

1 I am an adult male, and an admitted non-practicing attorney of this honourable court. I am the President of the second respondent and duly authorised to oppose this application on behalf of the second respondent, which shall hereafter be referred to as "**KZNA**".

2 Save where appears otherwise from the context, the contents of this affidavit fall within my knowledge and are, to the best of my knowledge, are true and correct. Where I make legal submissions, I do so on the basis of the advice of my legal practitioners, which advice I believe to be true and correct.

3 I depose to this affidavit in answer to the founding affidavit of the applicants, in which they purportedly sought an interim interdict pending a review application that was to be brought within 30 days of the date of "the finalisation of this application".

4 The application was brought on extreme urgency. Papers were served on the respondents on the evening of 13 August 2024, not even a day before the matter was due to go to court. As I explain below, this was done *mala fide* in an attempt to prevent the respondents from being able to meaningfully reply to the application.

5 The respondents were accordingly not afforded a proper opportunity to present their case before Court. This was highlighted in the answering affidavit that was prepared on a couple of hours consultation and filed on 14 August 2024 by the second respondent and which was expressed to the Court on that day.

6 Despite the above, and despite the submission of the second respondent that both this matter and the meeting of the first respondent (the "**CMA**") that was due to be held on 15 August 2024 should (and could) be postponed, the Court granted a rule *nisi*, which operates as an interim interdict against the respondents. A copy of this order is annexed hereto marked "WSM1".

7 Remarkably, to date, the applicants have not filed their review application, even though there is no reason for them to have delayed filing this application. This is contrary to the requirement that an application for judicial review be brought without unreasonable delay, as is set out in section 7(1) of the Promotion of Administrative Justice Act 3 of 2000 ("**PAJA**").

The interim order is a *brutum fulmen* and the applicants lack *locus standi*

8 The second respondent will request the court on the return day to postpone this application to the first available opposed motion day to consider this application as an urgent or prioritised matter in that:

8.1 Aside from the fact that the meeting of 15 August 2024, which was held by CMA, could not in law proceed because of inadequate notice, the court lacked authority to grant the interim order as its effect conflicted with the applicable regulatory framework.

8.2 The National Sport and Recreation Act 110 of 1998 (the "**Act**") provides for the:

> "promotion and development of sport and recreation and the co-ordination of the relationships between Sport and Recreation South Africa and the Sports Confederation, national federations and other agencies; to provide for measures aimed at correcting imbalances in sport and recreation; to provide for dispute resolution mechanisms in sport and recreation; to empower the Minister to make regulations and to provide for matters connected therewith."

8.3 Section 6 of the Act provides for national federations and KZNA is the sole responsible representative of the national federation (being Athletics

South Africa) in this province. The CMA is a member of KZNA. KZNA is bound to the terms of the Act. Section 13 of the Act provides as follows:

"13 **Dispute Resolution**

(1)(a) Every sport or recreation body must, in accordance with its internal procedure and remedies provided for in its constitution, resolve any dispute arising among its members or with its governing body.

(b) The sport or recreation body must notify the Minister in writing of any dispute contemplated in paragraph (a) as soon it become aware of such dispute.

2(a) Where the dispute cannot be resolved in terms of subsection (1), any member of the sport or recreation body in question who feels aggrieved, or the sport or recreation body itself, may submit the dispute to the Sports Confederation.

(b) The Sports Confederation must notify the Minister in writing of any dispute submitted to it in terms of paragraph (a).

(3) The Sports Confederation must, in relation to any dispute referred to in subsection (1) or (2) —

(a) notify the relevant parties of the allegations;

(b) invite the parties to make representations to it;

(c) convene where necessary an inquiry into the dispute; and

(d) in accordance with the provisions of the Promotion of Administrative Justice Act, 2000 (Act 3 of 2000), notify the parties of the decision.

(4) The Sports Confederation may, at any time, of its own accord, cause an investigation to be undertaken to ascertain the truth within a sport or recreation body, where allegations of—

(a) any malpractice of any kind, including corruption, in the administration;

(b) any serious or disruptive divisions between f actions of the membership of the sport or recreation body; or

(c) continuation or maintenance of any institutionalised system or practice of discrimination based on gender, race, religion or creed, or violation of the rights and freedoms of individuals or any law,

Have been made and may ask the Minister to approach the President of the Republic to appoint a commission of inquiry referred to in section 84 (2) of the Constitution.

(5)(a) Subject to paragraph (b), the Minister may, after consultation with the relevant MEC if applicable, intervene—

(i) in any dispute, alleged mismanagement, or any other related matter in sport or recreation that is likely to bring a sport or recreational activity into disrepute; or

(ii) in any non compliance with guidelines or policies issued in terms of section 13A or any measures taken to protect or advance persons or categories of persons, disadvantaged by unfair discrimination as contemplated in section 9 (2) of the Constitution;

By referring the matter for mediation or issuing a directive, as the case may be.

(b) The Minister may not —

(i) intervene if the dispute or mismanagement in question has been referred to the Sports Confederation for resolution, unless the Sports Confederation fails to resolve such dispute within a reasonable time; and

(ii) interfere in matters relating to the selection of teams, administration of sport and appointment of, or termination of the service of, the executive members of the sport or recreation body.

(c) If a national federation fails to adhere to a decision of the mediator or directive issued by the Minister as referred to paragraph (a), the Minister may—

(i) direct Sport and Recreation South Africa to refrain from funding such federation;

(ii) notify the national federation in writing that it will not be recognised by Sport and Recreation South Africa; and

(iii) publish his or her decision as contemplated in subparagraphs (i) and (ii) in the Gazette.

(6) Before issuing a directive under subsection 5 (a) the Minister must, by written notice—

(a) notify the relevant parties of the allegations and of his or her intention to issue a directive; and

(b) give the parties a reasonable opportunity to respond to the notice.

(7) The Sports Confederation must, on request by the Minister, submit its recommendations for the resolution of the problem contemplated in subsection (5) (a).

(8) Subject to the Promotion of Administrative Justice Act, 2000 (Act 3 of 2000), and without derogating from the rights of the affected parties, a decision taken in terms of subsection (5) shall be binding on the parties."

8.4 The learned Judge pre-judged the mediation process and the decision-making process of the Minister under the Act. In this respect the Court unduly trespassed upon the terrain of the other branches of government and infringed the principle of the separation of powers.

Locus standi

9 The applicants' complaint or cause of action lies against the CMA. If the applicants are unhappy with the CMA giving effect to the resolutions of KZNA, they qua members of the CMA ought to pursue the matter with the CMA. They have no locus standi (nor any direct link) to challenge the decisions of the KZNA.

10 The applicants could theoretically persuade CMA not to adopt the resolutions. If they do so, then it would be up to KZNA to take the appropriate steps against the CMA within the confines of the regulatory framework.

11 Thus the interim order is *prima facie* unlawful and with respect this illegality should not be permitted to be perpetuated.

12 I respectfully submit that the rule *nisi* should accordingly be discharged with costs on an attorney and client scale. Given the fact that the other applicants may not have authorised this application on a properly informed basis, it is submitted that Mr Mark Leathers, who is one of the applicants, should pay the costs of the respondents. The impropriety of the application that was brought warrants a punitive costs order.

The application was not properly authorised by the applicants

13 The application is allegedly brought in the name of the 76 applicants whose names appear in schedule "A" to the founding papers. The powers of attorney signed by these applicants are annexed to the founding papers as annexures "B".

14 Notwithstanding the powers of attorney that were filed, it is doubtful that the application was properly and genuinely authorised by all of the applicants.

15 Before bringing this application, Mr Leathers embarked on a social media campaign to rally support for this application and to encourage persons to join the proceedings as applicants. A screengrab of a post on Facebook, dated, 13 August 2024, is annexed hereto marked "WSM2". at the bottom of this post the following note is made:

> "NOTE: There is no cost – all work is being done pro bono."

16 It is unknown when Mr Leathers commenced this social media campaign. It is also unknown whether, upon any persons indicating their interest in joining these

proceedings, these persons were warned about the prospect of an adverse costs order being made against them.

17 It is respectfully submitted that in bringing this social media campaign and in calling for applicants in this manner, Mr Leathers as an attorney is guilty of touting, which is prohibited under article 18.22 of the LPC Code of Conduct. In essence he is abusing his position as an attorney and soliciting for work to push a political agenda within the CMA, rather than bringing this application on a genuine or *bona fide* basis.

18 Insofar as the second respondent is successful in these proceedings, it is unlikely that it will be able to recover costs from the other alleged applicants, who may not have signed the powers of attorney on a properly informed, or properly consensual, basis.

19 It is accordingly respectfully submitted that a costs order should be granted against Mr Leathers in his capacity as an applicant in these proceedings, particularly because he appears to have been the driving force of these proceedings.

The applicants should have relied on the internal dispute resolution mechanisms of the KZNA

20 In the light of the provisions of section 13(1)(a) of the National Sport and Recreation Act 110 of 1998 as well as the relevant provisions of the constitutions of KZNA and the CMA, this matter should have been dealt with in terms of the

dispute resolution mechanisms of KZNA. It should not have been referred to court.

21 Clause 30 of the KZNA Constitution provides as follows:

> "30.1 Any dispute between members, or between an athlete and a member, or between individuals, or between a member or individual and any constituent substructure of KZNA, however arising, which cannot be resolved by the persons involved, shall be referred to the Board for mediation.
>
> 30.2 Any dispute matter of a material or serious nature that cannot be resolved by mediation shall be referred to arbitration by the Sports Dispute Resolution Forum of the Kwazulu-Natal Provincial Government, to be dealt with in accordance with the Rules of that Forum."

22 Clause 32 of the CMA constitution provides that:

> "All disputes between a member and an athlete, or between an athlete and the CMA, however they may arise, shall be referred to KZNA to be dealt with in accordance with the Constitution, rules and regulations of IAAF, ASA, and KZNA."

23 IAAF has changed its name and is now known as World Athletics. It is the international body regulating the sport of athletics.

24 The above provisions are not accidental. As shown above, section 13 of the Act requires the internal resolution of disputes within a sport. The rationale for this is that, because sports are dependent on sponsorships and private funding, the reputations of sporting bodies and entities are sensitive. Disputes should be resolved internally to avoid either warding off would-be sponsors, or causing disinvestment by existing sponsors.

25 Seen in this light, section 13(1)(a) of the National Sport and Recreation Act requires every sport or recreation body to resolve any dispute arising among its members in accordance with its internal procedure. Where this is not possible, the dispute may be submitted to the Sports Confederation (in this instance Athletics South Africa, referred to herein as "**ASA**").

26 The constitution of the CMA likewise requires the resolution of this matter through the internal mechanisms of KZNA. This is clear from clause 32 of its constitution, which provides that:

> "all disputes between a member and an athlete, or between an athlete and the CMA, however they may arise, shall be referred to KZNA to be dealt with in accordance with the Constitution, rules and regulations of IAAF, ASA and KZNA".

27 The applicants took no steps to resolve the dispute in accordance with clause 30 of the KZNA Constitution, even though they were clearly obliged to do so. They also took no step to refer the matter to ASA for resolution.

28 The applicants cannot rely on urgency. Had they taken the appropriate internal dispute resolution processes, the matter could have been resolved on a more expeditious basis than by referring the matter to Court. As was explained before this Court, and as will be set out again below, it was also possible for the CMA to postpone its special general meeting (SGM) so as to allow the dispute to be ventilated properly.

29 Indeed, given the nature of the dispute, the failure to postpone the SGM may have serious consequences. If the applicants are ultimately unsuccessful in the review application that they allegedly intend bringing, then the resolutions made

in the first respondent's SGM will be susceptible to being declared invalid and set aside as a result as well.

30 As was noted in my previous affidavit, the SGM was at any rate brought on short notice. It was unconstitutional and the resolutions taken at that meeting were unlawful and should be set aside.

31 Seen in this light, the applicants should have exhausted the remedies provided for in the KZNA constitution.

The applicants do not meet the requirements for an interim interdict

32 In bringing an application for an interim interdict, the applicants were obliged to show this Court that they had a *prima facie* right, a reasonable apprehension of irreparable harm to his right, and that there was no satisfactory alternative remedy open to them other than an interdict.

33 It is clear from the applicants' founding affidavit that the irreparable harm that they apprehended related to the SGM that was due to be held on 15 August 2024. The applicants do not disclose any other threat to their alleged rights.

34 Put in other words, the only threat to the applicants' rights against which an interim interdict needed to be granted, was the SGM due to be held on 15 August 2024.

35 Given that the SGM meeting has now been held, there is no remaining threat to the applicants' rights. The need for the interim interdict has fallen away and is no longer necessary. The rule *nisi* should be discharged on this basis alone.

36 Furthermore, there was always a suitable alternative remedy to the applicants, which they, and this Court, ignored. The SGM of the CMA should have simply been postponed. There was nothing to suggest that this could not be done, and this would have been a satisfactory and less invasive remedy than the one ordered by this Court.

37 The postponement of the SGM would not have been a matter of mere convenience. The SGM was called on 25 July 2024 when the notice calling for the SGM was published. This notice is annexed to the founding papers as annexure "F2". Paragraph 2.4 of this notice clearly provides for the amendment of the CMA constitution, a matter that is regulated under clause 36 of the CMA constitution. This meeting was due to be held on 15 August – less than the 30-day requirement of clause 36.1 of the CMA constitution. The SGM could not have, and should not have, proceeded on 15 August 2024 in any event.

38 In other words, there was no need for an interim interdict to protect the rights of the applicants – the SGM was at any rate invalid. In terms of the CMA constitution, it should have been postponed.

39 This would have sufficiently protected the rights of the applicants. It would have also allowed for the matter to be referred to the internal dispute resolution mechanisms under the KZNA constitution.

40 Seen in this light, the rule *nisi* should be discharged.

The applicants have unreasonably delayed in bringing the review application

41 In terms of the order of this Court, interim relief was granted to the applicants pending the finalisation of a review application that they were required to bring within 30 days of the "finalisation of this application".

42 The proper meaning of this Court's order is not clear. In particular, it is unclear whether the applicants were granted an interim-interim order, and were only required to bring their review application 30 days after the return date contemplated in the rule *nisi* has been reached and the rule *nisi* had been confirmed, or whether the applicants were required to bring their review application within 30 days of the date of this Court's order on 14 August 2024.

43 The latter interpretation would accord with the principle that review applications should be brought without unreasonable delay. If the latter interpretation of the Court order is correct, then the rule *nisi* has lapsed as the applicants have failed to bring the review application within the required time. The rule *nisi* therefore falls to be discharged.

44 If the former interpretation is adopted, however, the applicants have unreasonably delayed in bringing their application, and should be non-suited as a result.

45 Section 7(1) of PAJA provides that a review application must be brought without unreasonable delay. The applicants have been aware of the decisions of KZNA since 7 August 2024. Almost two months have elapsed since this date. The applicants are already legally represented and had sufficient opportunity to

prepare and bring a review application. In light of the fact that the applicants had already brought an urgent application, it should be self-evident that they had sufficient information before them to launch the review application.

46 The failure to bring the review application is therefore inexplicable. It would appear that the only reason why the applicants have not brought a review application is because they were hoping that KZNA would file a further affidavit in this matter that would give the applicants a tactical advantage. Except for this, there could be no reason why the applicants have failed to file a review application to date. The review application has therefore not been brought within a reasonable time. The applicants' attempt to secure an undue advantage should be deplored.

47 Seen in this light, it is appropriate to discharge the rule *nisi*.

The rule *nisi* pre-judges the merits of the review application

48 Paragraph 1.2 of the order of this Court provides for the following declaratory orders:

48.1 That the CMA is not a club as defined in, or contemplated by, KZNA's constitution;

48.2 That the CMA is an associate member as defined in KZNA's constitution;

48.3 The domicile rule contained in Rule 5 of the ASA Domestic Competition Rules does not apply to non-athletes or to persons outside of their participation in athletics events; and

48.4 KZNA has no lawful or constitutional right "to dictate to the first respondent as regards its internal policies, procedures, governance or membership".

49 The issue that the applicants wish to take on review are the resolutions made by KZNA relating to the applicability of the domicile rule to the CMA and the persons responsible for its administration.

50 Paragraph 1.2 of the order impermissibly enters into the merits of the review that the applicants allegedly intend to bring. In effect, if these declaratory orders are made final in effect, then there is nothing left for the review court to determine. This is because the declaratory orders would effectively deem the resolutions of KZNA unlawful, and require them to be set aside.

51 In granting an interim order, this Court may not enter into the merits of the review application. It should not make an order that predetermines the outcome of the review application.

52 It bears mention that paragraph 1.2 of the Court's order is not needed to protect any of the applicants' rights pending the outcome of the review application. It serves only to predetermine the outcome of the review.

53 Seen in this light, at the very least, paragraph 1.2 of this Court's order should be discharged.

Application to supplement papers

54 KZNA has already filed an answering affidavit before this Court. It is not ordinarily entitled to file a second answering affidavit.

55 It is submitted that this Court is empowered in its discretion to allow KZNA to file a further answering affidavit to supplement its initial affidavit if it is in the interests of justice to do so.

56 It is respectfully submitted that it is in the interests of justice to allow KZNA to file a further answering affidavit in the circumstances of this matter.

57 This application was first brought against KZNA on extreme urgency. KZNA was required to file an answering affidavit overnight, and, to its extreme prejudice, did so. In that affidavit KZNA reserved its right to supplement its answering affidavit in due course.

58 In light of the extremely curtailed time periods, KZNA was not able to properly consult with its legal representatives or to ensure that its position was adequately set out in its affidavit.

59 This affidavit seeks to set out KZNA's position in respect of this matter in full. It has been prepared with sufficient time to ensure that it accurately and comprehensively captures KZNA's position. KZNA would be severely prejudiced if it were not permitted to place a full version of its case before this Court.

60 On the other hand, the applicants suffer no prejudice. They may file a replying affidavit, if necessary. The applicants indeed appear to have assumed that the respondents would supplement their papers.

61 It is accordingly submitted that this Court should allow KZNA to supplement its papers with this affidavit.

***Ad seriatum* response**

62 **Ad paragraph 1**

The contents of this paragraph are admitted.

63 **Ad paragraph 2**

63.1 The contents of this paragraph are denied.

63.2 The names of the applicants set out in schedule "A" were obtained by way of a flash social media campaign. It is highly doubtful that these applicants are aware of the true issues in this application, or that they are even aware of the risks of litigation, including the risk of a costs order sought against them.

63.3 It is accordingly submitted that this application should be treated as one brought only by Mr Leathers and not by the other applicants.

64 **Ad paragraphs 3 – 4**

It is denied that the applicants are entitled to the relief that they seek, or that the facts set out in the founding affidavit are all true and correct.

65 **Ad paragraph 5**

65.1 The contents of this paragraph are denied.

65.2 It is specifically denied, for the reasons set out above, that the so-called applicants have genuinely authorised these proceedings.

65.3 In the light of the resolution adopted by KZNA, not all of the persons set out in Schedule "A" are in fact eligible to retain membership under the CMA.

66 **Ad paragraphs 6 – 9**

The contents of these paragraphs are admitted.

67 **Ad paragraphs 10 – 13**

67.1 The contents of this paragraph are admitted.

67.2 The resolutions were taken by KZNA on 7 August 2024. Under clause 30.1 of its constitution, CMA is obliged to follow the resolutions of KZNA.

67.3 While the merits of the resolutions taken by KZNA are a matter for determination before the review Court, the resolutions were taken to give effect to the domicile rule of ASA (which binds KZNA) and to ensure that

the leadership and the administration of the CMA remained localised. This would ensure that the benefits flowing from the Comrades Marathon would flow back into athletics within the province. This is in accordance with the requirements of the ASA and of World Athletics. At a *prima facie* level, the resolutions of KZNA are lawful and valid.

67.4 It is clear that the applicants were aware of the KZNA resolutions having been taken when these were first reported on 7 August 2024. Despite being aware of these resolutions, the applicants chose to wait for the last minute before bringing this application. They have also, to date, not brought a review application.

67.5 There is nothing to suggest that the applicants themselves raised their concerns either with the CMA or with KZNA in accordance with the dispute resolution mechanisms provided for in the KZNA constitution.

68 **Ad paragraphs 14 – 15**

68.1 The contents of these paragraphs are admitted.

68.2 It is unknown why the applicants chose to wait until 12 August 2024 when they were at that point aware of the resolutions taken by KZNA for almost a week.

69 **Ad paragraph 16**

69.1 The contents of this paragraph are denied.

69.2 The applicants chose to delay in bringing an application timeously. They were aware of the resolution since 7 August 2024 and took no steps to resolve the dispute until 12 August 2024.

69.3 I respectfully submit that this was done deliberately to prevent the respondents from being able to meaningfully answer the application.

70 **Ad paragraphs 17 – 19**

The contents of these paragraphs are admitted.

71 **Ad paragraphs 21 – 23**

71.1 The contents of these paragraphs are admitted.

71.2 It is again notable that the applicants waited until the eleventh hour before taking any steps to resolve the dispute they had with the CMA.

71.3 No letter of demand was sent to KZNA.

72 **Ad paragraph 24**

The contents of this paragraph are admitted insofar as they accord with the CMA constitution.

73 **Ad paragraph 25**

73.1 The contents of this paragraph are denied. It is at any rate a matter to be determined by the review court and it is unnecessary for this Court to enter into this debate.

73.2 In the light of the resolutions taken by KZNA, it is not necessary to determine the category of CMA's membership. The resolutions themselves bind CMA, which is subject to the rules and regulations of KZNA.

74 **Ad paragraph 26**

74.1 The contents of this paragraph are admitted.

74.2 Membership however is not limited only to athletes. Administrators, coaches, and technical officials must also be members of KZNA and ASA and are subject to its disciplinary code. The domicile rule applies to these categories as well.

75 **Ad paragraph 27**

75.1 The contents of this paragraph are denied. This is again a matter for determination by the review court.

75.2 The resolutions made by KZNA bind the CMA. Insofar as the applicants seek to review those resolutions, they ought to bring a review application to that effect. The classification of CMA's membership is irrelevant in the light of the resolutions taken by KZNA.

76 **Ad paragraphs 28 – 29**

76.1 The contents of these paragraphs are admitted.

76.2 The resolutions of KZNA are not merely the enforcement of the domicile rule. They are a ruling in their own right that deal with the interests of athletics within the province of KwaZulu-Natal.

76.3 Those resolutions are valid and binding until set aside. The respondents are required to follow the process set out in section 13 of the Act to resolve this dispute.

77 **Ad paragraph 30**

77.1 Despite the best efforts of my attorneys, it has not been possible to obtain a copy of this judgment. No comment can therefore be made about this.

77.2 This remark is at any rate irrelevant to these proceedings, because here KZNA has made resolutions that are binding on the CMA in accordance with clause 30 of the CMA's constitution.

77.3 Insofar as the suggestion is made that the CMA is not bound by the directives of KZNA, that fails to recognise the CMA's own constitution, as well as the fact that it is a member of KZNA. The CMA, as a matter of fact and law, is bound by the rules of the KZNA, which include its resolutions.

77.4 The allegations contained in this paragraph are accordingly denied.

78 **Ad paragraph 31**

78.1 The contents of this paragraph are denied for the reasons set out above.

78.2 At any rate, this is a matter for the review court, if a review application is ever brought in respect of this issue.

79 **Ad paragraphs 32 – 33**

The contents of these paragraphs are admitted.

80 **Ad paragraph 34**

The contents of this paragraph are denied.

81 Ad paragraph 35

81.1 The rationality of the KZNA's resolutions is a subject to be dealt with by the review court, if the applicants bring a review application.

81.2 The CMA itself is a member of KZNA, and KZNA exercises authority over the CMA. It is on this basis that the KZNA's resolutions are binding on the CMA.

81.3 The rules of the ASA, including the domicile rule, are applicable to the CMA and its members.

82 **Ad paragraphs 36 – 38**

The contents of these paragraphs are admitted.

83 **Ad paragraph 39**

83.1 The merits of the KZNA resolution are the subject of the review application, if the applicants ever bring such an application.

83.2 It is accordingly unnecessary for me to deal with this paragraph.

84 **Ad paragraphs 40 – 41**

84.1 The CMA is subject to the rules of KZNA. Its membership, its constitution, and the rights it confers upon its members, must be in accordance with those rules.

84.2 Insofar as the applicants wish to challenge the KZNA resolutions, they must follow the appropriate channels to do so.

85 **Ad paragraphs 42 – 44**

85.1 The contents of these paragraphs are admitted.

85.2 CMA remains subject to the rules and regulations of KZNA.

86 **Ad paragraphs 45 – 46**

86.1 The CMA is obliged under clause 30 of its constitution to apply the rules of KZNA. This includes its resolutions. The motives of the CMA board are therefore irrelevant.

86.2 Any issue of due process is a matter to be dealt with on review, if the applicants choose to bring such an application.

87 **Ad paragraph 47**

87.1 It is noted that this is the relief sought by the applicant, and the relief that was granted by this court by way of a rule *nisi*.

87.2 It is denied that the applicants were entitled to this relief.

88 **Ad paragraph 48**

More than two months have elapsed since the applicants were aware of the KZNA resolutions. To date, no review application has been brought. This constitutes an unreasonable delay.

89 **Ad paragraphs 49 – 52**

89.1 The contents of these paragraphs are denied.

89.2 The CMA is a member of, and is subject to the rules and regulations of, KZNA.

89.3 KZNA has the power to impose requirements on the CMA's membership in the interest of the sport of athletics in the province.

89.4 The applicants' rights exist within this framework. If they wish to have the KZNA resolutions set aside, they must bring the necessary application to do so.

90 **Ad paragraphs 53 – 56**

90.1 It is notable that the extent of the irreparable harm that concerned the applicants is the SGM that was due to be held on 15 August 2024.

90.2 This meeting was invalid as insufficient notice was given. The meeting should have been postponed.

90.3 Given that the meeting has already been held, there is no other basis for which an interim order should be maintained in favour of the applicants. They have not disclosed any other fear of irreparable harm extending beyond the SGM of 15 August 2024.

90.4 Seen in this light, the rule *nisi* should be discharged.

91 **Ad paragraphs 57 – 58**

91.1 The contents of these paragraphs are denied.

91.2 The rule *nisi* frustrates KZNA, as the custodian of the sport of athletics within the province of KwaZulu-Natal, from carrying out its public function. The balance of convenience does not favour the applicants.

91.3 Insofar as the balance of convenience did favour the applicants, there is nothing in the papers to suggest that this extends beyond the SGM of 15 August 2024.

91.4 Seen in this light, the applicants no longer need the protection of an interim interdict. It should be discharged.

92 **Ad paragraph 59**

92.1 The contents of this paragraph are denied. This is a matter for the review court to determine.

92.2 The resolutions of KZNA were taken for a valid and compelling purpose. They were lawful in the light of the fact that CMA is a member of KZNA and is bound by the rules and regulations of KZNA.

92.3 Seen in this light, the applicants do not have strong prospects of success on review.

93 **Ad paragraph 60**

The contents of this paragraph are denied for the reasons set out above.

94 **Ad paragraphs 61 – 62**

94.1 The contents of these paragraphs are denied.

94.2 A suitable alternative remedy would have been to postpone the SGM.

95 **Ad paragraphs 63 – 67**

95.1 The contents of these paragraphs are denied.

95.2 The application was urgent only because of the applicants' inaction until the last minute. This self-created urgency cannot be condoned.

95.3 At any rate, the meeting of 15 August 2024 was called on short notice. It should not have proceeded.

Conclusion

96 It is respectfully submitted that the rule *nisi* should be discharged for the reasons set out above. Mr Leathers should be ordered to pay the costs thereof on a punitive scale, together with the costs of two counsel.

WHEREFORE, the second respondent submits that this matter be dismissed with costs at an attorney and client scale.

DEPONENT

I hereby certify that the Deponent has acknowledged that that he knows and understands the contents of this affidavit which was signed and sworn to before me at LADYBRAND on this 09TH day of **OCTOBER 2024** and the Regulations contained in Government Notice R1258 and R1648 of 21 July 1977 respectively, having been complied with.

COMMISSIONER OF OATHS

Ek sertifiseer dat bostaande verklaring my afgeneem is en dat hy/sy vertroue met die inhoud hiervan verklaring is voor my gesweer/bevestig en verklaarder se handtekening/merk/duimafdruk is in my teenwoordigheid geplaas.

I certify that the above statement was taken by me and that the deponent has acknowledged that he/she knows and understands the content of the statement. This statement was sworn to/affirmed before me and deponent's signature/mark/thumbprint was placed thereon in my presence.

To at LADYBRAND on 24-10-09 om/at 10 : 10

(HANDTEKENING KOMMISSARIS VAN EDE)
(SIGNATURE COMMISSIONER OF OATHS)

JOSEPH KHAHLISO MOFOKENG
VOLLE VOORNAME EN VAN IN DRUKSKRIF
FULL FIRST NAMES AND SURNAME IN BLOCK LETTERS

178 ROAD
BESIGHEIDSADRES (STRAAT ADRES)
BUSINESS ADDRESS (STREET ADDRESS)

MASERU BRIDGE POE

LT. COLONEL
RANG/RANK

SA POLISIEDIENS
SA POLICE SERVICE

SUID AFRIKAANSE POLISIE DIENS
Maseru Bridge Border Post
2024 -10- 09
SOUTH AFRICAN POLICE SERVICES

"WSM 1"

IN THE HIGH COURT OF SOUTH AFRICA
KWAZULU-NATAL DIVISION, PIETERMARITZBURG

CASE NUMBER. 12353/24P

AT PIETERMARITZBURG ON THIS 14TH DAY OF AUGUST 2024
BEFORE THE HONOURABLE JUDGE MOSSOP

In the matter between:

THE MEMBERS OF THE COMRADES MARATHON ASSOCIATION — APPLICANTS

and

THE COMRADES MARATHON ASSOCIATION — FIRST RESPONDENT
KWAZULU NATAL ATHLETICS — SECOND RESPONDENT

UPON reading the Notice of Motion and the other documents filed of record and after having heard counsel:

IT IS ORDERED, THAT:

1. A Rule *nisi* be and is hereby issued calling upon the Respondents to show cause, if any, on the 23rd day of October 2024, at 09h30 or so soon thereafter as Counsel may be heard, why an order should not be granted in the following terms: –

   1.1 That, pending finalization of an application to review and set aside the following resolutions of the Second Respondent taken on 7 August 2024, namely that:

"15.1 *Membership of a club is limited by the domicillium rule. Due to the fact that CMA is a Special Member of KZNA, the Executive Board of KZNA resolves that the membership of CMA should be limited to people who are domiciled within the jurisdiction of KZNA*

15.3 *Where CMA has existing members who come from other countries or provinces, their membership shall be retained as volunteers who may participate as observers at its Annual General or any other meetings but may not participate in the strategic direction (discussions) of the CMA and therefore may not speak or vote at such meetings. These members shall be allowed to attend all members socials; and/or participate in the staging of the race as volunteers" (the "KZNA Resolutions"),*

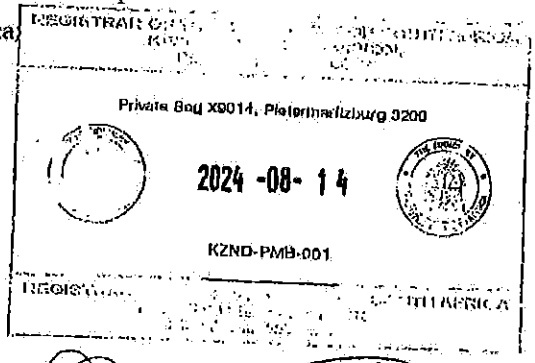
the First and/or Second Respondents be immediately interdicted and restrained from curtailing the membership rights of the First Respondent's members, as contained in clause 9 of the CMA Constitution, in any way, specifically but not limited to their right to participate in all affairs of the First Respondent and to vote at any General Meeting, including but not limited to the Special General Meeting scheduled for 15 August 2024;

1.2 That a declarator be issued that:—

1.2.1 the First Respondent is not a club as defined in and/or contemplated by the Second Respondent's Constitution;

1.2.2 the First Respondent is an associate member as defined in and/or contemplated by the Second Respondent's Constitution;

1.2.3 the Domicile Rule as contained in Rule 5 of the Athletics South Africa Domestic Competition Rules does not apply to non-athletes and/or persons outside of their participation in athletics events hosted under the auspices of, or in affiliation with, Athletics South Africa;



1.2.4 the Second Respondent has no lawful and/or constitutional right to dictate to the First Respondent as regards its internal policies, procedures, governance or membership;

1.3 That the Respondents are ordered, jointly and severally, to pay the costs of this Application on a scale as between attorney and client, including the costs of two counsel, where so employed, on scale C;

2. That the relief set out in paragraph 1.1 above shall operate as an interim order with immediate effect pending the final outcome of this application;

3. That the Applicants are directed to lodge their application to review and set aside the resolutions within 30 (thirty) days of the finalization of this application.

BY ORDER OF THE COURT

R J JOOSTE
REGISTRAR
14.8.24

Stowell & Company

Private Bag X9014, Pietermaritzburg 3200

2024 -08- 14

KZNO-PMB-001

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← The Running Mann's post

The Running Mann
7h ·

URGENT CALL FOR CMA MEMBERS:
[Update: Over 100 PoAs received - the lawyers are busy finalising the submission for a hearing either tomorrow afternoon or Thursday morning. Thanks to everyone who took the time complete and return the form.]

Attorney Mark Leathers will be making an urgent application in the High Court tomorrow to revoke the CMA's draconian and illegal 'locals only' voting / speaking rule.

He needs a minimum of 25 CMA members in good standing to complete and sign a Power of Attorney form so that he can represent our interests. Please message me your email address if you'd like to be included. You can also email me on therunningmann@gmail.com and I will forward.

NOTE: There is no cost - all work is being done pro bono.

#comradescapture

Phumeza Bobotyana and 139 others

140 65 25

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Cheryl Winn
cherylwinn@mweb.co.za

4 hrs 8