[2024] JMCA Civ 40

JAMAICA

IN THE COURT OF APPEAL

BEFORE: THE HON MRS JUSTICE MCDONALD-BISHOP JA
THE HON MR JUSTICE BROWN JA
THE HON MRS JUSTICE G FRASER JA (AG)

SUPREME COURT CIVIL APPEAL NO COA2024CV00017

BETWEEN	**PATRICIA GAREL (PRESIDENT OF BEACH SOCCER JAMAICA)**	**APPELLANT**
AND	**JAMAICA FOOTBALL FEDERATION**	**RESPONDENT**

Hugh Wildman instructed by Hugh Wildman & Co for the appellant

Mrs Kaysian Kennedy-Sherman, Ms Simone Gooden and Ms Allodine Groves instructed by TWP for the respondent

13 March and 29 November 2024

Civil Procedure - Injunction - Principles to be applied - Whether a mini trial was conducted - Whether there was a serious issue to be tried - Whether interim mandatory injunction should be granted where it decides the issue - Exercise of discretion by judge at first instance

MCDONALD-BISHOP JA

[1] I have read, in draft, the reasons for judgment of G Fraser JA (Ag). They accord with my reasons for concurring with the decision of the court as detailed in para. [3] below, and there is nothing I could usefully add.

BROWN JA

[2] I, too, have read in draft the reasons for judgment of my sister G Fraser JA (Ag) and agree with her reasoning and conclusion.

G FRASER JA (AG)

Introduction

[3] On 13 March 2024, after considering this appeal by Patricia Garel ('the appellant'), against the decision of Carr J ('the learned judge'), who, on 9 February 2024, refused to extend an interim injunction granted in favour of the appellant on 12 January 2024, by Thomas J, this court made the following orders:

> "1. The appeal is dismissed.
>
> 2. The order of Carr J made on 9 February 2024 is affirmed.
>
> 3. Costs to the respondent, to be agreed or taxed."

We promised then to furnish the written reasons for our decision; this is in fulfilment of that promise.

The background

[4] To provide context for this appeal, it is important to briefly summarise the genesis of the dispute between the parties that led them to seek the court's intervention. The appellant, who styled herself as the president of Beach Soccer Jamaica ('BSJ'), filed this appeal on behalf of BSJ, which was registered under the Business Names Act on 18 September 2023.

[5] The respondent, the Jamaica Football Federation ('JFF'), is a company limited by guarantee in Jamaica and formed for an unlimited period with its headquarters at 20 St Lucia Crescent, Kingston 5. JFF is a member of the Fédération Internationale de Football Association ('FIFA'), the Confederation of North Central America and Caribbean Association Football Association ('CONCACAF'), and the Caribbean Football Union ('CFU'). The objectives of the JFF, among other things, are to improve the game of football, organise competitions in association football, futsal, and beach soccer at the national level, and manage international sporting relations connected with those games.

[6] The appellant filed a fixed date claim form ('FDCF') on 30 January 2024, seeking several declarations as to the membership status of BSJ within the provision of section 12 of the JFF's constitution. In addition, the appellant sought an order to compel JFF to "allow the [appellant], representing [BSJ]], to participate in the elections, to be convened by the [JFF], to determine the person who is the [sic] be the chairman of the said [JFF]".

[7] Before filing the FDCF, the appellant, on 10 January 2024, filed a notice of application for mandatory injunction accompanied by a supporting affidavit and an affidavit of urgency, both of even date. The appellant, further, on 12 January 2024, filed an amended notice of application for an interim injunction seeking an order "postponing the election of the [JFF] to elect officers to the said [JFF], to be convened on the 14th January, 2024, pending the hearing and determination of the [appellant's] claim against the [JFF]". This amended application was supported by another affidavit dated 12 January 2024.

[8] In her affidavits, the appellant accretively averred that BSJ "is a limited liability company registered with the Companies Office of Jamaica", and she had been the president of BSJ before the promulgation of the JFF's "new constitution" in December 2022. The appellant also averred that BSJ is an affiliate under Article 12 Pillar 3 of the constitution and that by the said promulgation, BSJ became a member of the JFF and was treated as such. As a member of the JFF, according to the appellant, BSJ "is qualified to participate in any election to determine the composition of the [JFF]". Notwithstanding this posture, on 19 September 2023, the appellant had applied to the JFF to become a member of that organisation.

[9] The appellant communicated with the JFF via emails as to BSJ's eligibility to participate in the election, which was slated for 14 January 2024. However, she was informed that "another body subsequently created on October 18, 2023, under the name Beach Football Association of Jamaica Limited… was given recognition by the [JFF] to represent Beach Football in Jamaica, and to have voting rights". The decision to exclude BSJ, according to the appellant, was never communicated to her, despite the submission

of "all necessary information as requested by the [JFF] for [the appellant] to be duly recognised as the body representing [BSJ]".

[10] According to the appellant, when she became aware of the JFF's position that BSJ was not qualified to vote as an affiliate since it did not meet the requirements to vote, on 6 November 2023, she resubmitted documents for the registration of BSJ as a member of the JFF. The appellant, on 8 November 2023, was informed that the resubmitted documentation was received and would be presented to the board of directors for consideration.

[11] The appellant's application for an injunction came up for hearing on 12 January 2024 before Thomas J, who granted the order in terms of the application. The interim injunction was granted for 28 days, until 9 February 2024, pending a hearing on whether the interim injunction should "remain in effect until the determination of the claim". Thomas J also made orders for the JFF to file an affidavit in response and for skeletal submissions and authorities to be filed by 26 January 2024.

[12] Mr Dennis Chung, the General Secretary of the JFF, in compliance with the orders made by Thomas J, filed an affidavit on 24 January 2024 in response to the appellant's affidavits. Mr Chung, on the JFF's behalf, disagreed that the appellant was ever a member of JFF or had any voting entitlements. Mr Chung generally opposed the continuation of the interim injunction.

[13] On 9 February 2024, at the scheduled hearing for the extension of the interim injunction, the learned judge noted that the name "Beach Soccer Jamaica" was not listed in Article 12, Pillar 3 of the JFF's constitution, but rather "Beach Football Association". She was persuaded by the affidavit evidence of Mr Chung that the appellant had not completed the registration and application process on behalf of BSJ so that it could be regarded as a member of the JFF. The learned judge found that while the appellant had applied for membership within the JFF, BSJ was not yet a member. The learned judge concluded that there was "no evidence contained in the affidavit of [the appellant] that

satisfies me that Beach Soccer was a member of JFF, which is the requirement under the JFF constitution which would entitle them to vote [sic]". Accordingly, the learned judge found that the appellant's failure to satisfy the criterion that there was a serious issue to be tried meant that the injunction ought not to be granted and, therefore, there was no need to consider the other criteria for the grant of an injunction set out in **American Cyanamid Co v Ethicon Ltd** [1975] 1 ALL ER 504 ('**American Cyanamid**'). The learned judge also scheduled 23 April 2024 as the first hearing of the FDCF.

[14] The effect of the learned judge's refusal to extend the interim injunction meant that the JFF was free to convene its annual general meeting and election.

The proceedings in the court below

[15] The learned judge, in determining whether to extend the interim injunction previously granted to the appellant, acknowledged that she was "guided by the principles outlined in the case of **American Cyanamid v. Ethicon** restated in **NCB v. Olint**". In her minute of reasons, she set out the principles she observed as "a) [i]s there a serious question or issue to be tried, b) [a]re damages an adequate remedy and c) [w]here does the balance of convenience lie". The learned judge noted that it was only where doubt existed as to the first and second factors ((a) and (b) above) that the court then needed to determine the issue of the balance of convenience.

[16] After considering the application, the affidavit evidence, and the claim filed by the appellant, the learned judge found that there was no serious issue to be tried, and, as such, she did not need to consider the remaining principles.

[17] This court had the benefit of the learned judge's reasons for not granting the interim injunction in the form of a minute of reasons of her oral decision, wherein she indicated that the affidavit evidence and submissions informed her decision. The learned judge reasoned, on the evidence before her, that BSJ was not a member of the JFF nor had the appellant completed the application process for BSJ to become a member thereof. She further observed that Article 12, on which the appellant relied in stating BSJ's

acknowledged membership, spoke to the Beach Football Association and not Beach Soccer Jamaica.

The appeal

[18] Aggrieved by the learned judge's decision, the appellant, on 12 February 2024, filed a notice of appeal, in which she complained that the learned judge erred with findings of fact and law. The following were the challenged findings of fact:

> "i. The Appellant does not qualify under Section 12, Pillar 3 of the Constitution of the [JFF], as the named body representing Beach Football Association.
>
> ii. The Appellant failed to demonstrate on the affidavit evidence, that she has satisfied the requirements for membership under the Constitution of the [JFF].
>
> iii. The minutes of the meeting of the Appellant predates the registration of the Appellant, as a member of the JFF.
>
> iv. The Appellant's application to be registered as a member of the [JFF], was incomplete."

The finding of law challenged was:

> "i. There is no serious issue to be tried"

[19] In furtherance of the appeal, the appellant listed eight grounds of appeal, enumerated below:

> "1. The learned trial judge erred in law, in failing to appreciate that there was a serious question to be tried, as to whether the Appellant is the legitimate body representing beach soccer, or beach football, in Jamaica, under Article 12, Pillar 3, of the constitution of the [JFF].
>
> 2. The learned trial judge failed to appreciate that the term Beach Football Association as stated under the constitution represents a category under pillar 3, of the said constitution, and that the Appellant was accepted

by the Respondent as the legitimate body representing that category.

3. The learned trial judge erred in law, in failing to appreciate that in determining whether there was a serious issue to be tried, it is not within her province to embark on a mini-trial, based on the affidavit evidence.

4. The learned trial judge erred in law, in failing to appreciate that on the evidence the Appellant was recognised by the [JFF] for over 5 years, as the legitimate body representing Beach Soccer under the Constitution of the [JFF].

5. The learned trial judge erred in law in failing to appreciate, that on the Appellant's affidavit, the Appellant had demonstrated that the Appellant had submitted all the relevant documentation to the [JFF] for registration, as a member of the [JFF], and there was no communication from the [JFF] to the Appellant, that the said application was incomplete.

6. The learned trial Judge erred in law, in failing to appreciate that on the very affidavit evidence of the [JFF], that she alluded to, the Appellant had completed the application process before the [JFF], as demonstrated in the very affidavit of Mr. Dennis Chung, who represents the [JFF], and was never informed that the application was incomplete.

7. The learned trial judge erred in law, in failing to appreciate that it was not at this stage that the question of whether those issues of fact that had arisen on the affidavit had to be resolved.

8. The learned trial judge erred in law, in failing to appreciate that the principles governing the granting of an interim injunction did not require her to make findings of fact as to whether the Appellant had satisfied all the requirements to be a member of the [JFF].

The issues

[20] Notwithstanding the eight grounds of appeal filed by the appellant, this court considered that given the material facts outlined above and having reviewed the notice and grounds of appeal and the submissions of counsel, the seminal issue for its determination was whether the learned judge erred in law and fact by conducting a mini-trial and in finding that the appellant had failed to establish that there was a serious issue to be tried. I have, therefore, adopted an issue-based approach instead of trying to dissect each ground of appeal, which would result in considerable overlap and repetition.

The submissions

The appellant's submissions

[21] Counsel, Mr Hugh Wildman ('Mr Wildman'), for the appellant, submitted that the learned judge fell into grave error in her refusal to extend the interim injunction. Mr Wildman argued that the learned judge, in seeking to resolve the factual issues, initiated a mini-trial of the issues by referring to the affidavit evidence before her. A procedure he said, that was not permissible in the court's consideration of an application for an interim injunction. He submitted that in doing so, the learned judge misapplied the principles enunciated in **American Cyanamid**. Mr Wildman further argued that the authorities were clear that the duty of the learned judge, at that stage, was to examine the evidence to determine whether there was a serious issue to be tired. Once this determination was made, the learned judge would then consider the other principles stated in **American Cyanamid**.

[22] Mr Wildman posited that the learned judge wrongly concluded that the appellant failed to discharge her burden when she took into consideration the perceived conflict between the affidavit evidence of Mr Chung for the JFF and that of the appellant. Counsel contended that the issues regarding conflicting evidence that the learned judge attempted to resolve on the affidavit evidence should only be determined at trial, where the parties are permitted to cross-examine witnesses. It was also submitted that on perusal of the affidavit evidence, it could be determined that the learned judge erred in

findings of fact. In this regard, counsel made particular reference to paras. 17 to 19 of the appellant's affidavit dated 12 February 2024, which was a reference to the resubmission of BSJ's membership application to the JFF. He contended that the evidence showed that the appellant had, in fact, "completed the application process, and submitted all the relevant documentation to the [JFF], and there was no corresponding response from the [JFF], to the Appellant, that the process was incomplete". It was, therefore, pellucid that the learned judge wrongly concluded that the appellant had not completed the registration for BSJ to be an affiliate of the respondent. Additionally, Mr Wildman submitted that the affidavit of Mr Chung on behalf of the JFF showed that documentation referred to in the appellant's affidavit was sent to the JFF, and a response of "All is in order" was given. This, counsel said, was an indication to the appellant that the registration process was completed, and BSJ had achieved member status.

[23] Mr Wildman asserted that BSJ is properly registered under the Companies Act of Jamaica and had been recognised for approximately five years as the body representing beach football or soccer in Jamaica. Counsel asserted that the remark of the learned judge referring to the distinction between "Beach Football and Beach Soccer" was misconceived since the labelled name was unimportant once it signified the group under the constitution. Therefore, the learned judge failed to recognise that beach football represented a category under the JFF's constitution, and as such, only one entity could fill that category.

[24] In support of the submission that BSJ had *locus standi* as a member of the JFF, counsel on behalf of the appellant relied on the case of **Finnigan and Another v New Zealand Rugby Football Union (Incorporated) and others** [1986] LRC (Const) 877 ('**Finnigan**'). Mr Wildman submitted that the case established that the sufficiency of the appellant's interest was to be adjudicated relative to the subject matter, and the case further established that "it is often desirable to leave the decision of standing to the trial, where there is a prima facie case of standing, or real doubt as stated in the Inland Revenue case". Counsel further asserted that this authority highlighted that it had been

recognised that a person affected by the decision of an incorporated association that controls a sport had standing, even if he is not a member or in a contractual relationship. Once it was established that the club members were linked to the union by a chain of contracts, the appellant was a part of the structure of the whole organisation and not a mere busybody.

[25] According to Mr Wildman, BSJ had standing based on the authority of **Finnigan**, as such, the appellant had the authority to bring the claim on BSJ's behalf. Therefore, the learned judge was, in the circumstances, he said, wrong in her refusal to extend the interim injunction. The appellant had demonstrated that for over five years, BSJ had been acting and recognised by the JFF as the body representing beach football in Jamaica and was qualified to do so under Article 12 of the JFF's constitution.

[26] Mr Wildman submitted that without an interim injunction, the appellant would face irreparable damage if the JFF proceeded with its election without affording BSJ the right to vote. This damage, Mr Wildman contended, was one for which money could not compensate, a fact, he said, the learned judge failed to appreciate.

The respondent's submissions

[27] Counsel Mrs Kaysian Kennedy-Sherman ('Mrs Kennedy-Sherman') for the respondent in opposing the appeal relied on the oft-cited authorities of **Hadmor Productions Ltd and others v Hamilton and others** [1982] 1 All ER 1042 ('**Hadmor Productions Ltd**') and **The Attorney General of Jamaica v John Mackay** [2012] JMCA App 1 ('**The AG v MacKay**') as to the jurisdiction of this court to interfere or overturn the decision of a judge where the judge exercised discretion in granting or refusing an interlocutory application. Mrs Kennedy-Sherman submitted that the appellant failed to establish that the learned judge had no sufficient basis to properly exercise her discretion when she refused to extend the interim injunction. In this regard, Mrs Kenny-Sherman submitted that the learned judge was correct in discharging the interim injunction as the requisite test had not been satisfied. Further, she reiterated that this appeal must be in keeping with the test established by the authorities.

[28] Mrs Kennedy-Sherman accepted that the principles as to whether to grant an interlocutory injunction were as enunciated in the often-cited case of **American Cyanamid** and reaffirmed in **National Commercial Bank Jamaica Limited v Olint Corp Limited** [2009] UKPC 16 ('**NCB v Olint**'). Counsel, however, contended that the appellant failed to present the court with any evidence referable to Article 12 of the JFF's constitution to support its averment that the [JFF] had accepted BSJ as the legitimate body representing the group of beach football in Jamaica. Mrs Kennedy-Sherman submitted further that the learned judge was correct in her finding that there was no serious issue to be tried, grounded by her assessment of the law and factual circumstances of the claim.

[29] In advancing her submission, Mrs Kennedy-Sherman highlighted that the directive of JFF's constitution was that only members of the JFF were eligible to vote. Therefore, for the learned judge to assess whether there was a serious issue to be tried, she had to consider JFF's constitution. The appellant, counsel maintained, failed to adduce evidence in support of its position that all necessary documentation for its registration as a member was submitted to the JFF and/or that the board of directors had approved the application, and the appellant was consequently inducted as a member.

[30] Mrs Kennedy-Sherman submitted that the appellant had demonstrably failed to meet the threshold test for injunctive relief and that an interlocutory injunction may be granted only to protect or assert a legal or equitable right that could be enforced by a final judgment. Counsel also posited that notwithstanding the argument of the appellant that the learned judge had conducted a mini-trial in making her determination, she acted within the scope of her jurisdiction by relying on the affidavit evidence to ascertain whether the appellant had satisfied the first criteria to obtain an interim order as laid down by **American Cyanamid**.

Analysis

The standard of review of the learned judge's decision

[31] The learned judge was exercising a discretion granted to her pursuant to section 49(h) of the Judicature (Supreme Court) Act, to grant an injunction by an interlocutory order, as the justice and convenience of the case required. This court was being asked to set aside the decision of the learned judge on the basis that she had fallen "into grave error in discontinuing the interim injunction granted by her sister Judge…".

[32] The critical issue that this court had to determine was whether the learned judge erred in discharging the interim injunction. We approached the issue by firstly examining the orders made by the learned judge and secondly determining whether she had the jurisdiction to make the orders she did. We also contemplated whether, in coming to her decision, the learned judge considered irrelevant factors and failed to consider those that would have been relevant to her decision.

[33] Therefore, in the circumstances of this case, I embraced as correct Mrs Kennedy-Sherman's reiteration of the guiding principles gleaned from the seminal judgment of Lord Diplock in **Hadmor Productions Ltd**, which were endorsed by this court and which have been recognised and referred to in several judgments, for instance, **The AG v Mackay**. The relevant para. [20] per Morrison JA (as he then was), states:

> "This court will therefore only set aside the exercise of a discretion by a judge on an interlocutory application on the ground that it was based on a misunderstanding by the judge of the law or of the evidence before him, or on an inference - that particular facts existed or did not exist - which can be shown to be demonstrably wrong, or where the judge's decision 'is so aberrant that it must be set aside on the ground that no judge regardful of his duty to act judicially could have reached it'."

[34] The principles enunciated in that line of cases speak to when an appellate court may interfere with the exercise of the discretion of a judge of the court below. The appellate court is not permitted to set aside the decision of the first instance judge merely

due to its disagreement with it or that it would have decided differently. The appellate court may only interfere if it finds that the discretion was informed by a misunderstanding of the evidence or misapplication of the law, as well as if the court below erred by drawing an inference of fact that is demonstrably wrong., Therefore, I examined the decision of the learned judge , bearing in mind the guidance and principles enunciated in **The AG v MacKay**.

Whether the learned judge conducted a mini trial

[35] In light of the appellant's submissions, the central issue in the appeal appeared to be the assertion that the learned judge conducted a mini-trial to ascertain whether there was a serious issue to be tried, leading to an erroneous order. Mr Wildman criticised the judge's method in reaching her decision, arguing that her approach was inappropriate for an interim application. He also claimed that the learned judge misapplied the principles enunciated in **American Cyanamid** and that her primary responsibility was to assess whether the evidence revealed a serious issue to be tried, and no more.

[36] There was, however, no disagreement between the parties regarding the applicable law in this area. Therefore, I have only referenced the landmark cases of **American Cyanamid** and **NCB v Olint** for a clear explanation of the principles that guide the court in determining whether to grant or deny injunctive relief. Based on those principles, our first task was to assess whether the appellant had demonstrated that there was a serious issue to be tried. If this requirement was not met, the appeal would fail from the outset.

[37] Concerning this criterion of a serious issue to be tried, Lord Diplock in **American Cyanamid**, at page 510, stated that:

> "…The court no doubt must be satisfied that the claim is not frivolous or vexatious; in other words, that there is a serious question to be tried.
>
> It is no part of the court's function at this stage of the litigation to try to resolve conflicts of evidence on affidavit as to facts

> on which the claims of either party may ultimately depend nor to decide difficult questions of law which call for detailed argument and mature considerations. These are matters to be dealt with at the trial… So unless the material available to the court at the hearing of the application for an interlocutory injunction fails to disclose that the plaintiff has any real prospect of succeeding in his claim for a permanent injunction at the trial, the court should go on to consider whether the balance of convenience lies in favour of granting or refusing the interlocutory relief that is sought."

[38] This court accepted that the seminal issue that the learned judge had to decide was whether the appellant had established a "serious issue to be tried". This was tantamount to saying the case should "not be frivolous or vexatious". On this issue, I took Lord Diplock's canonical statement of the law in **American Cyanamid** as the starting point. As will be recalled, Lord Diplock revisited and ultimately rejected the notion that an applicant for an interlocutory injunction was obliged to show a *prima facie* case on the substantive claim as a necessary pre-condition to the grant of relief. Nonetheless, a court must however be satisfied that the evidence relied on at least supported a viable claim.

[39] To find that there was a serious question to be tried, the learned judge would have had to be satisfied that the matters raised in the appellant's FDCF were not frivolous or vexatious and that the appellant's application for an interim injunction disclosed that it had a real prospect of succeeding in its claim for a permanent injunction at the trial.

[40] In order for the learned judge to properly evaluate whether the appellant had met the established criteria, it was necessary for her to consider the pleadings and evidence presented before her within the framework of the governing principles of law in order to determine whether the injunction should be granted. Mrs Kennedy Sherman contended that the judge's approach was correct and cited the case of **Lorgay Construction & Equipment Company Limited and Lorin C Gayle v Jamaica Redevelopment Foundation Inc** (unreported), Supreme Court, Jamaica, Claim No 2009HCV4293, judgment delivered 2 September 2009. In that case, McDonald-Bishop J (as she then was) postulated in para. 21:

> "In order to make a determination as to whether there is a serious issue to be tried, I think it absolutely necessary to examine the substance of the claim being pursued against the defendant. It is the pleadings that do indicate the issues to be determined at trial and it is from them, in conjunction with the evidence adduced in support of the application, that one would be able to conclude at this interlocutory stage whether there are serious issues to be tried."

[41] I embraced that enunciation as a correct statement of the law. Accordingly, to find that there was a serious question to be tried, the learned judge was entitled to consider not only the affidavit evidence but also the averments in the FDCF. She needed to be convinced, based on the evidence presented, that the issues raised in the appellant's FDCF were neither frivolous nor vexatious and that there was a serious issue to be tried.

[42] It was observed that the evidence or documentation provided by the appellant to support her claim was plagued by inconsistencies. There were significant disagreements between the appellant's evidence and that of Mr Chung. In the circumstances, there was merit in Mr Wildman's submission that perceived differences in the evidence of witnesses were usually properly dealt with at trial, where witnesses could be cross-examined, and so on. However, rule 8.9 of the Civil Procedure Rules, 2002 ('CPR') requires that the "claimant must include in the claim form or in the particulars of claim a statement of all the facts on which the claim relies" and must also "annex a copy of any document which the claimant considers is necessary to his or her case". It was, therefore, incumbent on the appellant to have set out her case fully and accurately when she filed her FDCF and applied for the interim injunction. Supporting documents and affidavit evidence are expected to contain relevant and reliable information so that the court is enabled to make an informed decision.

[43] That being said, where, as in this case, the empirical evidence relied upon by the appellant did not support her claim, no opportunity for cross-examination or re-examination at trial would have changed the conclusions that the learned judge arrived at or the outcome of the application. Clearly, the appellant was unable to overcome the

first hurdle by demonstrating that her claim was a viable one with serious issues to be determined at trial. The learned judge, having concluded that the appellant had failed to establish a real issue to be tried, was entirely correct in her decision not to consider any of the other factors as formulated in **American Cyanamid** as there was no utility in doing so.

[44] Despite Mr Wildman's argument that the learned judge improperly conducted a mini-trial (a point that is not conceded), this court may deny an appeal if, upon reviewing the case, it determines that the appeal lacked merit. If the appeal was indeed without merit, it would serve no purpose to allow the appeal solely because the learned judge had utilised an incorrect procedure, especially if her decision was appropriate in all the circumstances. Granting a mandatory injunction in this case would have effectively meant providing the appellant with a right and relief she was not entitled to. There is no merit in the contention that the learned judge conducted a mini-trial and fell into error in doing so.

[45] In the premises, I was satisfied that the learned judge adopted the correct procedure when she heard the appellant's application.

Whether there was a serious issue to be tried

[46] In determining whether there was a serious issue to be tried, the seminal issue that the learned judge had to determine was whether BSJ was eligible to participate in the JFF's election process. The appellant had repeatedly averred that BSJ was a member of the JFF and had alternatively stated that BSJ was "an affiliate of the [JFF]" and, therefore, "qualified to participate in any election to determine the composition of the [JFF]". Since only members of the body were eligible to vote under the JFF's constitution, a clinical interrogation of the JFF's constitution was necessary. It was incumbent, therefore, for the learned judge to make such an assessment because only then could she have determined whether there was a serious question to be tried. I, therefore, agreed with Mrs Kennedy-Sherman's submission that the appellant's averment that the JFF had accepted BSJ as the legitimate body representing the group of beach football in

Jamaica was contingent upon the appellant presenting the learned judge with evidence referable to Article 12 of the JFF's constitution to support her claim.

[47] We began our assessment by looking at Article 12 of the constitution, where the membership of the JFF was listed. Article 12 designated members of JFF to be "registered bodies and domiciled in Jamaica". Categories of members were listed as: Pillar 1 – the 13 parish associations; Pillar 2 - men and women tier 1 and 2 clubs; and Pillar 3 - several specified associations. There was, indeed, a "Beach Football Association" listed under Pillar 3, but this could not have been in reference to BSJ specifically because, according to the undisputed evidence of Mr Chung, "[a]t the time of the constitution coming into force on December 20, 2022, there was no Beach Football Association registered and domiciled in Jamaica. Subsequently, Beach Soccer Jamaica was registered as a sole proprietorship, under the Business Names Act, on 18th September, 2023". It was not lost upon this court that it was on 19 September 2023 that BSJ first submitted its application for membership; this was the day following its name registration with the Companies Office of Jamaica.

[48] It appeared, therefore, that at the time the constitution came into being, BSJ could not have met the qualification criteria for membership. Accordingly, the learned judge would have been on firm footing in determining that the minutes on which the appellant relied preceded the registration of BSJ at the Companies Office and were not, therefore, evidence of the existence of BSJ's membership.

[49] Another relevant factor that the learned judge was within her remit to consider was the fact that the respondent's constitution defined a member as "a legal person that has been admitted into membership of JFF by the Congress". BSJ did not apply for membership until 19 September 2023, as evidenced by a letter signed by Mr Antonio Bell, General Secretary of BSJ. The letter was addressed to Mr Chung and headed "Application For Membership - Beach Soccer Jamaica". Significantly, there was no evidence proffered by the appellant indicating that the appropriate body ('Congress') had conferred member status on BSJ as provided under Article 11 of the constitution. Furthermore, Article 11 (2)

provided that "[a]dmission may be granted if the applicant fulfils the requirements of JFF in accordance with this Constitution".

[50] Article 13 listed some 14 mandatory documents or items that must be furnished by an applicant to obtain admission. Although the appellant was adamant that BSJ had fulfilled all necessary criteria, amended documents were submitted on 6 November 2023, still pursuing potential membership with the JFF. However, by this time, another association, coincidentally a member of the JFF, named the Beach Football Association (not to be confused with the sports category of the same name under Article 12 Pillar 3), had successfully attained membership within the JFF and, accordingly, the right to represent beach football in Jamaica and associated voting rights. The appellant expressed her ire that the JFF had not notified her that the documentation submitted on behalf of BSJ was incomplete. As far as the evidence goes, there was no obligation on the JFF to do so. Furthermore, Mr Chung's undisputed evidence before the learned judge was that the appellant was informed that the application process was competitive. Therefore, the onus was on the appellant to submit an early application that fulfilled all the criteria. In those circumstances, it was not unreasonable that the learned judge would have given consideration and weight to Mr Chung's affidavit evidence in her determination as to whether there was a serious question to be tried.

[51] In para. 25 of the appellant's affidavit dated 12 January 2024, she averred that:

> "25. The Applicant is very concerned that approaching the election, the [JFF] has not indicated to the Applicant, that the Applicant will be duly recognised as the body representing beach football in Jamaica, with full voting rights."

[52] The above assertion appeared to be an acute awareness that JFF had not acknowledged BSJ as a member of its body. It was, therefore, surprising that in the succeeding para. of the said affidavit, the appellant complained that:

> "27. This is a clear breach of Article 12 of the Constitution of the [JFF], which specifically recognises that Beach Soccer is

> an established member of the [JFF], with full voting rights to determine the composition of the [JFF]."

[53] A closer examination of Article 12 of the Constitution rendered this assertion dubious as to BSJ's status as a member of the JFF. The reference to "Beach Football Association" is not a designation of any particular body representing beach football, but it is rather an umbrella reference to the sport of beach football. This was so appreciated by the appellant as in the written submissions made on her behalf, Mr Wildman contended that "[t]he learned trial judge failed to recognize in her reasons, that Beach Football or Beach Soccer, represents a category under the constitution, therefore, only one entity can fill that category. The designated name is of no moment, once it represents that category under the constitution". In any event, the appellant's averments were flawed since no voting rights were conferred by Article 12. Voting rights and other rights of membership were instead conferred by Articles 14 and 15 of the JFF's constitution.

[54] Contrary to the appellant's complaint, there was no evidence to support her averment that BSJ had been recognised by the JFF for over five years as "the legitimate body representing Beach Soccer under the constitution of the [JFF]". In support of her complaint, the appellant sought to rely on the JFF's minutes of an extraordinary congress held on 24 September 2023, wherein three representatives from BSJ were in attendance. The appellant had apparently equated the presence of BSJ's three representatives with membership status. However, the said minutes on which the appellant relied (referred to as exhibit PG1) clearly listed the category of persons present at the meeting, including parish delegates, club delegates, parish observers, and those "[i]n [a]ttendance". The names of BSJ's three representatives were listed under the category designating attendees. In my view, that categorisation indicated that BSJ's representatives were no more than mere invitees. An excerpt of the said minutes, as set out below, strengthens that perception of BSJ's status at the time of the meeting. Starting at line 175, it was indicated that:

> "Associations, or Pillar 3 (Interest Groups), were invited to attend the proceedings but would not be eligible to vote,

> according to General Secretary Chung. He said that there is a procedure in place by virtue of Articles 13 and 14 of the Constitution and reminded the associations that Article 13 note 2 lists the requirements that must be included with the membership application. He proceeded to advise the members that the Board of Directors will review the applications following receipt of the required items, and that the applications will subsequently be forwarded to Congress for approval. As soon as approval is granted, the association will be admitted as members, and they will have the right to vote immediately. He encouraged everyone to read Article 14 of the Constitution."

When the minutes were reviewed in conjunction with the JFF's constitution, it became even clearer that the appellant's claim that BSJ was recognised by the JFF as the representative body for beach soccer or granted member status, was unfounded. Instead, the minutes and the constitution referenced by the appellant supported the interpretation that BSJ was merely an invitee.

[55] In her affidavit dated 29 January 2024, the appellant expressed the view that BSJ was already a member and qualified to vote, so the submission of documentation to the board "for eligibility to participate in the election, is otiose…". In para. 29, she further averred that:

> "What the Constitution speaks to is that entities or bodies who wish to **become a new member of the [JFF]**, are the ones who are required to submit documentation to the Board for membership of the [JFF] . This does not apply to the Claimant, who is already an existing member, like the other existing members, such as the parish associations." (Emphasis added)

[56] The JFF's constitution did not substantiate the appellant's foregoing contention. Article 13 dealt with "admission" and provided that "[a]ny legal person wishing to become a Member of JFF shall apply in writing to the general secretariat of JFF" and further provided for the submission of documents and declarations. Article 11 dealt with "[a]dmission, suspension and expulsion". Nowhere in that Article was there a mention of "new members". Article 14 provided for "[r]equest and procedure for application". In

Article 14.3, it was stated that "[t]he new Member shall acquire membership rights and duties as soon as it has been admitted. Its delegates are eligible to vote and be elected with immediate effect". Whilst it is true that Article 14.3 mentioned "new Member", this must be read in conjunction with the preceding subsections, which stated that:

> "Article 14 – Request and procedure for application
>
> 1 The procedure for admission shall be regulated by special regulations approved by the Board of Directors.
>
> 2 The Board of Directors shall request that the Congress either admit an applicant or not. The applicant may state the reasons for its application to the Congress.
>
> 3 …"

It is clear that Article 14 was intended to govern admissions generally, and the word "new Member" in 14.3 neither added nor subtracted anything from the application process.

[57] The appellant's continued insistence that BSJ was already a member of the JFF and, therefore, did not need to comply with the application process could be viewed as a blatant disregard of Article 83 of the constitution, the same constitution on which the appellant heavily relied. Article 83 stated as follows:

> "Article 83 Transitional provisions
>
> 2 The Members as defined under art. 12 of this Constitution, shall be granted a period of 6 months, as from the adoption of this Constitution, to comply with the mandatory requirements stipulated in art. 13 par. 2, as well as art. 16 par. 1 f), g), j), n) and o) of this Constitution. Any Member which does not comply with all of these requirements within the aforementioned timeframe, shall automatically lose its right to vote at the Congress and the delegate(s) of the Member in question shall not be taken into account when establishing the quorum. The Member in question shall only regain its right to vote at the Congress once it has fully complied with its obligations as mentioned in this paragraph.

3 …"

[58] By virtue of Article 82, the constitution was adopted at the Congress held in the parish of Manchester on 20 December 2022 and came into force on that same day. The former articles of association were repealed, and all the old laws pertaining to the JFF ceased to have effect "immediately after the approval of this Constitution". Therefore, even if this court were to accept that BSJ had been previously treated as a member or had enjoyed member status, its failure to comply with the provisions of Article 83 would have meant an automatic loss of that member status. In September 2023, when BSJ first submitted its application for membership, even had it been a member prior to 20 December 2022, that status would have been lost, and the six-month grace period to rectify its status and retain its voting rights would have been determined. The only method by which membership and voting rights could have been regained was to comply with the provisions of Articles 13 and 16. BSJ failed to submit an application until 19 September 2023.

[59] The documents resubmitted on 6 November 2023 were apparently still not fully compliant with the mandatory requirements of Article 13, as according to Mr Chung's undisputed evidence, "[d]espite this resubmission it is still clear that same is incomplete as Article 13.2 requires a 'copy of the minutes of its last Congress or constitutional meeting' and the minutes submitted to the JFF as a part of its application is for an organization called 'Jamaica Beach Soccer Cup'…".

[60] Mr Wildman contended that on the evidence, it was pellucid the learned judge wrongly concluded that the appellant had not completed its registration as an affiliate of the JFF. Additionally, he submitted that Mr Chung acknowledged that said documentation was received by the JFF, and a response of "All is in order" was given. This response, counsel said, was an indication to the appellant that the registration process was completed and BSJ was a member. Even if it is agreed that the JFF's response was an indication that the registration process was completed, I cannot agree that the response was capable of supporting a meaning that there was an automatic admission of BSJ as a

member. This view finds support in Article 11 of the constitution, which vested the powers of admission to the Congress and not to Mr Chung or even the board of directors.

[61] Given the explicit provisions of JFF's constitution, concerning membership admission, the appellant's reasoning demonstrated a significant misunderstanding of both the constitution and the implications of the declarations sought in the FDCF. While Article 14 grants voting rights to members, the opposite also holds true; without membership, there is no corresponding right to vote.

Conclusion

[62] The learned judge's conclusions were justified when she made the finding that the appellant had failed to satisfy her that BSJ was a member of the JFF, "which is the requirement under the JFF constitution which would entitle them to vote". I agreed with the JFF that the appellant had provided no tangible evidence that BSJ was at all material times a member of the JFF and, therefore, was entitled to vote at the scheduled election. On the contrary, the appellant's averments were indeed undermined by the very minutes and constitution on which she sought to rely. On the other hand, the largely undisputed evidence proffered by Mr Chung, on behalf of the JFF, tended to a reasonable and inescapable conclusion that the appellant knew that BSJ was not a member of the JFF and had not been accorded voting rights. This was owing to BSJ's failure to complete the application process in a timely manner and in accordance with the constitutional provisions governing the JFF.

[63] I determined that the judge was right in concluding that there was no serious issue to be tried, based on her evaluation of the law and the factual circumstances of the case. After reviewing the same evidence, I also arrived at a similar conclusion. Since there were no serious questions to be tried requiring further consideration, and the available evidence on which the appellant relied was sufficiently complete, this court could not regard the appellant's complaints to be meritorious as there was no justifiable reason to overturn the learned judge's decision to deny the continuation of the interim injunction.

This conclusion was found to be determinative of the appeal and accordingly, I concurred in the orders detailed in para. [3] above.