

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CLAIM NO. HCV 2007/04263

BETWEEN	CRAIG BUTLER (President Stony Hill Phoenix All Star Football Club on behalf of himself and all the members)	CLAIMANT
AND	KINGSTON & ST. ANDREW FOOTBALL ASSOCIATION	FIRST DEFENDANT
AND	AMBASSADOR A. B. STEWART STEPHENSON (President of the Kingston and St. Andrew Football Association on behalf of himself and the members of the Association)	SECOND DEFENDANT
AND	JEROME SPENCER (Assistant General Secretary of the Kingston and St. Andrew Football Association on behalf of himself and the members of the Association)	THIRD DEFENDANT

IN CHAMBERS

Sherry-Ann McGregor instructed by Nunes Scholefield DeLeon and Company
for the claimant

Jacqueline Cummings instructed by Archer Cummings and Company for the
second and third defendants

October 27, 31 and November 1, 2007
INTERIM INJUNCTION, MANDATORY INJUNCTION,
UNINCORPORATED ASSOCIATIONS, OUSTER CLAUSE

SYKES J.

1. Mr. Craig Butler loves football. His commitment to the sport is undoubted. He has invested time, money and effort. He focuses on youth football. To say that he is merely passionate about the game would do him an injustice. He appears to pursue the game with evangelical fervour. He has been involved in football for over thirty years beginning with his days as a player and continuing now as coach, club president, mentor and guide. He is the President of Stony Hill Phoenix All Star Football Club ("Phoenix") and he has brought this notice of application for injunctions and other orders.

2. For the purposes of this case, only the application for injunctions is relevant. The injunctions were granted without notice on Friday, October 26, 2007. The injunctions were further considered on Saturday, October 27, 2007. The inter partes hearing began on October 27 and has continued to October 31. The injunctions were dissolved and these are the reasons for discharging them.

3. I should point out that the claim form has not yet been issued but I have been assured by Miss McGregor that the primary remedy that will be sought in the claim is a declaration from the court that Phoenix is entitled to play in the various leagues because it is an affiliate of the Kingston and St. Andrew Football Association ("KSAFA"). She is relying heavily on letters written by KSAFA to her client. These letters will be referred to in this judgment.

4. Mr. Butler is also a man aggrieved. Aggrieved by what he perceives to be the volte face of KSAFA. He is saying that he was assured not once, not twice, but three times by KSAFA that his club was guaranteed to be the affiliate from the Stony Hill community that would represent the community in the Syd Bartlett league, a competition run by KSAFA.

5. The injunctions granted on Friday, October 26, 2007 were in the following terms:

- a. an interim injunction to restrain the defendants by themselves directors/members, servants, agents or otherwise howsoever from commencing the Syd Bartlett Football Competition/League (2007) for a period of twenty eight (28) days from the date of this order.

- b. an interim injunction restraining the defendants by themselves, their servants, agents or otherwise howsoever from in any manner directly or indirectly from taking steps to commence, organising or signalling play for any of the football matches in the said Syd Bartlett Football Competition/League (2007) for a period of twenty eight (28) days from the date of this order.
- c. an interim injunction be granted restraining the defendants by themselves their servants, agents or otherwise howsoever from prohibiting preventing or otherwise barring the Phoenix All Star Football Club (also known as Stony Hill Phoenix Football Club) from participating in the Syd Bartlett Football Competition/League (2007).

6. The first two injunctions are prohibitory while the third is mandatory. Let me set out the allegations.

The protagonists

7. I have already spoken about Mr. Butler. Let me say more about the rest of the litigants. KSAFA is an unincorporated body which organises football in the parishes of Kingston and St. Andrew, hence the acronym KSAFA. It is an affiliate of the Jamaica Football Federation Limited ("JFF"), a company that has overall charge for the development of football in Jamaica. The JFF is recognised, internationally, as the body responsible for organising, promoting and managing the affairs of Jamaican football. JFF is an affiliate of the Fédération Internationale de Football Association, more commonly known as FIFA. This affiliation is an important fact because Miss Cummings suggested that the court should decline jurisdiction over this matter because of rule 33 (a) of the JFF's rules. This rule, according to Miss Cummings, was necessary because FIFA demands that its affiliates settle disputes within the FIFA mechanism which excludes the civil courts of countries of the respective affiliates. This point will be developed later, but I should make it clear that I do not accept Miss Cummings' proposition.

8. Ambassador Stephenson ("the Ambassador") is the President of KSAFA and Mr. Jerome Spencer is the Assistant General Secretary of the association. Mr. Spencer was named in place of Mr. David Hunt, the General

Secretary, who died quite unexpectedly, on the morning of October 26, 2007, the date the application was filed.

9. There is also a Mr. Livingston Cain who is reputed to be the President of the Stony Hill Football Club. The other important figure is Mr. Andrew Gallimore, the Member of Parliament for the Stony Hill area.

The context

10. As far as possible, I shall make every attempt to restrict my summary to the undisputed facts. KSAFA, as stated, organises football in the parishes of Kingston and St. Andrew. There are competitions organised directly by KSAFA and others which are organised with the blessing of KSAFA. The competitions accommodate a number of age groups, ranging from under 13 to adult. The competition that is in view at the moment is the Syd Bartlett competition which is named after the outstanding Jamaican footballer of the 1960s. This is an adult competition. Those who saw him play claim he was the best footballer of his generation.

11. The Syd Bartlett competition is organised on a community basis, that is to say, each team in the competition has to represent a community. There are no free standing teams. Each community can only be represented by one team. KSAFA sets out the criteria for recognising teams to play in this competition. The current rules are the 2004/2006 rules and regulations issued by KSAFA. These rules also apply to nine competitions organised directly by KSAFA. Rule 1 of the rules states the criteria that clubs must meet in order to be recognised by KSAFA and thereby become eligible to participate in KSAFA competitions. There are twelve criteria. One of the critical criteria is found at rule 1 (c) which reads: *[The club] must be the sole Club (sic) representing the designated ... Syd Bartlett League area.* KSAFA is saying, in this case, that there are two clubs vying to represent the Stony Hill community - Phoenix and the Stony Hill Football Club. The stage for conflict was set.

12. Mr. Butler is desirous of having his young charges play in the Syd Bartlett league. It is a league that is important for developing footballers even though in the public's eyes it is not as prestigious a competition as, for example, the National Premier League. It is the division three of Kingston and St. Andrew football. The winner of the Syd Bartlett league progresses to the Major League which itself is the stepping stone to the all island National Premier League. Many of the national players are drawn from the National Premier League and it is well known that many of them have

progressed through the ranks from Syd Bartlett through to the National Premier League. It is clear therefore that participation in the Syd Bartlett competition is no small matter.

13. The current saga began with an innocuous letter, dated January 3, 2007, Mr. Butler wrote to KSAFA informing KSAFA of the difficulties he was having transferring his players from Barbican to Constant Spring. KSAFA responded by letter dated January 12, 2007. Mr. Butler was told, among other things, that his complaint would be dealt with by named persons in KSAFA.

14. It appears that at some point Mr. Butler was told that the Stony Hill area was not represented by any football club. By all appearances the club was well received by members of the community including the police and members of the business community. There are letters from a number of persons indicating that they have no difficulty with Phoenix being the club representing the Stony Hill community. I should note that for ten years up to and including 2007 there was no team representing the Stony Hill area.

15. On March 2, 2007, two letters were sent to Mr. Butler. One signed on behalf of the General Secretary, the now deceased Mr. David Hunt, and the other signed on behalf of Mr. Spencer, the Assistant General Secretary. The General Secretary's letter opens with the information that at a council meeting of KSAFA held on March 1, 2007, KSAFA approved the participation of Phoenix in the 2006/07 under 13, under 15 and under 17 competitions. Then comes this paragraph: *Provided that your Club (sic) successfully completes the three (3) competitions, the Council will approve your application for affiliation to the organisation and entry into the Syd Bartlett Competition* (my emphasis). Council, here, refers to the management body of KSAFA. According to the KSAFA rules, the Council is the highest decision making body of KSAFA other than the annual general meeting or emergency general meeting. The Council runs the organisation between the annual general meetings and is authorised to make decisions for and on behalf of the members of KSAFA. The letter from the Assistant General Secretary reads in material parts: *Your successful participation in these competitions [under 13, under 15 and under 17] will result in your affiliation to KSAFA and entry into the 2007/2008 Syd Bartlett Competition* (my emphasis). The letter stated that KSAFA's competition rules and regulations were enclosed. It is my understanding that the use of the adverb *successfully* by the General Secretary in his letter and the use of the adjective *successful* by the Assistant General

Secretary did not mean that Phoenix must win the respective competitions. I understood that KSAFA was testing the ability of Phoenix to sustain itself throughout a competition. It would be undesirable to have in the Syd Bartlett competition a team that might fall by the way side as the competition progressed.

16. Not even Mrs. Malaprop could mangle these letters sufficiently to prevent an obtuse reader from understanding their import. At one point during the hearing Miss Cummings sought to suggest that the letters were sent out without proper authority. She eventually abandoned this position because it would be difficult to convince any reasonable person, in the circumstances of this case, that two letters from the same organisation on such a vital issue were sent out without proper authorization. She attempted to say this because both letters were signed by someone on behalf of the General Secretary and Assistant General Secretary. Her submission on this point was made more difficult because each letter indicated at the end that it was copied to the President of KSAFA who to date has not said in his affidavit that he did not know of or did not receive these letters. On the face of it, the letters sent out on behalf of the General Secretary and the Assistant General Secretary had the sanction of the President. Success in this submission would require the combination of extraordinary advocacy and an exceptionally credulous judge, none of which was present in this inter partes hearing. Miss Cummings' next inhospitable port of call was to suggest that the letters did not mean what they clearly said. These submissions are clearly untenable. It is obvious that KSAFA made a clear and unambiguous representation to Phoenix. KSAFA did say that successful completion of the specified competitions would (not might) result in affiliation.

17. Mr. Butler, as a reasonable person, would have been entitled to conclude that there were no rivals for the Stony Hill franchise and that his club would be the recognised affiliate from Stony Hill once he acted in accordance with the letters of March 2, 2007. Miss Cummings raised another untenable argument on this point. She submitted that the letter from the Assistant General Secretary said that KSAFA's competition rules and regulations were enclosed therefore Mr. Butler would have known of the twelve criteria stated by KSAFA for affiliation and therefore he would have known that he could not rely on the letters of March 2, 2007. This argument is unacceptable because it is always open to any organisation to waive the strict requirements of its rules in order to admit members. If KSAFA, through its authorised officers took this position, then it cannot

be that KSAFA can now change the basis of the negotiation when the other party has acted on the express representation made to him. If, as Miss Cummings has suggested that the letters might involve a breach of KSAFA's own rules that is not a matter that concerns Mr. Butler, the person to whom the representation was made. Any breach of the rules would be an internal matter for KSAFA. If KSAFA felt that its officers erred then it is open to KSAFA to take whatever action it feels appropriate, within the rules of KSAFA and the rules of natural justice, against those officers.

18. After these letters were written, Mr. Livingston Cain by letter dated April 5, 2007, wrote to KSAFA indicating that he wished to organise football in the Stony Hill area. On the evidence presented so far, there is no evidence that Mr. Cain had organised and participated in any KSAFA run or affiliated competition in the last decade. In short, at the time of his application to KSAFA there is no evidence that Mr. Cain had demonstrated the capacity or ability to organise and sustain a team for the duration of any KSAFA run or affiliated competition. In sharp contrast, Mr. Butler had passed the test set by KSAFA in the letters of March 2, 2007. He participated in the relevant competitions for the 2006/2007 football year. None of his teams dropped out of their respective competitions. On the face of it, Phoenix had demonstrated its ability to organise and sustain teams in three competitions. As the saying goes, he who is faithful in small things has demonstrated an objective basis for being entrusted with greater things.

19. Phoenix's anticipated Syd Bartlett debut has now been put in doubt. Mr. Livingston Cain was apparently of the view that his club, Stony Hill Football Club should represent the Stony Hill community. He made contact with KSAFA. It is not clear what he was told by KSAFA but he felt that he need to enlist the energies of the Member of Parliament, Mr. Andrew Gallimore.

20. Mr. Gallimore made a telephone call to and also wrote to KSAFA. That letter was not exhibited but KSAFA's response was placed before the court. KSAFA's response to Mr. Gallimore's letter is captured in a letter dated May 7, 2007, from the Assistant General Secretary. It reads in material parts: *The Association received an application from Mr. Craig Butler to have the Stony Hill franchise re-affiliated to KSAFA under the name Stony Hill Phoenix Football Club. Mr. Butler was able to satisfy the Association's eligibility requirements, in that he submitted letters from*

the police, educational institutions and other members of the Stony Hill community indicating that the Stony Hill Phoenix Football Club was recognised within the Stony Hill community. Mr. Butler was therefore granted the Stony Hill franchise (my emphasis). The letter was copied to the President of KSAFA, the First Vice President of KSAFA, the General Secretary, the Competitions Committee Chairman of KSAFA and Messieurs Cain and Butler. This is the third letter relied on by Miss McGregor in support of her submission that the injunctions should continue. This letter, like the previous two, is not capable of misunderstanding. One would have thought that this letter would have settled the issue but this was not to be.

21. Mr. Cain found KSAFA's position unacceptable and persisted in his efforts to secure the Stony Hill franchise. This persistence bore some fruit. KSAFA came up with the solution of an Interim Management Committee ("IMC"). The plan was that Messieurs Cain and Butler were to work together to form one club to represent the Stony Hill area. Meetings were proposed to bring about the merger. The plan failed. Messieurs Butler and Cain were not able to overcome the obstacles that separated them.

22. KSAFA sent out a memorandum dated August 30, 2007 to all the clubs indicating the date of registration for the Syd Bartlett competition. The memorandum showed that Phoenix would be registered on October 1, 2007 for the Syd Bartlett league. The Ambassador says in his affidavit that this memorandum was sent out on the premise that the Messieurs Cain and Butler would have overcome their difficulties and register as one club. This explanation by the Ambassador suggests the optimism of diplomats rather than the realities on the ground. By the end of July 2007, both Messieurs Cain and Butler had declared that a merger was impossible and that they could not work together. In fact, the IMC met once. This was on June 26, 2007 when Messieurs Butler and Cain attended. Others were in attendance. At that meeting Mr. Butler conceded two significant issues. First, he agreed that Mr. Cain's club could nominate a coach to work along with him. Second, it was agreed that Mr. Cain would send players for training for the under 13 and under 17 competitions. These players would practice alongside Phoenix players of the same age group. Mr. Cain failed to keep his end of the bargain. He did not send the coach and he failed to send the players. As it turned out, Mr. Cain did not register any of his club's players with KSAFA. This meant that none of his club's players were eligible to play in the under 13 competition. As we now know, Phoenix did participate. This led to a protest from Mr. Cain that Phoenix participated in the under 13 competition without any of his club's players.

23. Another meeting was set for July 4, 2007, but it was not held because Mr. Cain failed to attend although Mr. Butler was present. KSAFA insisted that Mr. Butler, who had proven his reliability in the lesser competitions, work with Mr. Cain who, based on the evidence put before the court, did not supply a coach as agreed or have his players registered with KSAFA so that they could play in the under 13 competition. One can well understand Mr. Butler's consternation. He undoubtedly was flummoxed by KSAFA's stance. On October 1, 2007 when Mr. Butler turned up to register his club he was told that he would not be allowed to register. It was this act by KSAFA that led to the application for the interim injunctions.

24. An important fact in this case is that the Syd Bartlett league would have started on October 27, 2007, but for the death of KSAFA's General Secretary. There are nine other teams in the competition which have prepared to play in the league and are expecting to display their skills. Corporate sponsors have come forward to assist in defraying the costs of running the league.

25. With this background I am now able to deal with the submissions made by each counsel. I shall take Miss Cummings' jurisdiction point first.

Jurisdiction of the courts

26. As indicated earlier, Miss Cummings said that the court does not have jurisdiction. She relies on rule 33 (a) of the JFF by laws which reads:

Parish Associations, Minor Association (sic) and their Affiliates and/or institutions and members shall not be permitted to bring before a Court of Justice, dispute(s) with the Federation or other Associations, Affiliates and/or institutions or members; and must agree to submit any such dispute(s) to an Arbitration by common sent.

27. This is a remarkable clause. It seeks to prevent an individual or body of citizens from exercising one of the fundamental human rights given to all citizens in a constitutional democracy. It does not say that other means of resolution should be tried before resorting to the courts. It purports to prohibit persons from coming before courts established by law and enshrined in the Constitution of Jamaica. It also purports to compel person to go to arbitration. This rule does not appear in any of KSAFA's rules presented to the court. According to Miss Cummings this rule is apart of

KSAFA's rules because KSAFA is an affiliate of the JFF and therefore must abide by JFF's by laws. She adds that JFF's position is informed by its membership of FIFA which has a clause to the same effect regarding FIFA's affiliates. Therefore, she submits, this court has no jurisdiction to hear this dispute. The submission is just as astonishing as the clause.

28. It seems to me that this submission strikes at the very foundation of the rule of law. Section 20 (2) of the Constitution of Jamaica is predicated on the proposition that any citizen can approach the courts to have a legal issue settled by the court. I am not aware of any legal principle by which a person can be forced to give up a fundamental human right, namely, access to the courts of Jamaica - a right guaranteed by the Constitution of Jamaica in order to be a member of an unincorporated body. A citizen cannot be forced to contract out of fundamental rights as a condition of membership of any organisation. These are rights that the Constitution says every person must have whether he wants them or not. Waiving a right is not the same as being told you cannot exercise the right at all if you wish to be a member of an organisation. If Miss Cummings' underlying proposition is correct, namely, in order to be a member of an association the association can demand that the applicant gives up a fundamental human right as distinct from delaying the exercise of the right, then that would be opening the gate way to abuse and tyranny. This is not to say that KSAFA, JFF and FIFA are abusive and tyrannical associations but the road to abuse often begins with the exclusion of independent scrutiny particularly judicial scrutiny.

29. It may be said that the fundamental human rights can only be infringed by the state and not by private citizens. Whatever may be the position in other countries such an argument in Jamaica is not sustainable in light of Carberry J.A.'s exposition in *Grant v DPP* 30 W.I.R. 246, 274g - 275d. His Lordship indicated that while he accepted that fundamental human rights may be infringed by the State, he also accepted that a private citizen may also be guilty of breaches of those rights. He stated that some rights are more likely to be breached by the private citizens than by the State. Carberry J.A. reserved the question of whether the same constitutional remedies that are available against the State would be available against the private citizen. JFF's membership of FIFA which is a private organisation cannot have the effect of overriding the Constitution of Jamaica. Such a proposition is not just untenable; it is a legal impossibility.

30. The time has come when the law needs to take a closer look at unincorporated associations which are projected as benign voluntary associations but in fact have a significant impact on not just the lives of their members but the society as a whole. There is no doubt that KSAFA is an influential body in the organisation of football in the parishes of Kingston and St. Andrew. So too is the JFF regarding island wide football competitions. The reality is that KSAFA and the JFF are de facto monopolies regarding the organisation of football in Kingston and St. Andrew and Jamaica. These are two bodies that have acquired control over a significant leisure activity of Jamaicans. Can it be right that organisations that have become monopolies in the organisation of any sport in Jamaica be excluded from judicial scrutiny? Lord Denning's observation, in another context about the committees of a trade union, is equally applicable here. His Lordship said in *Breen v. A.E.U.* [1971] 2 Q.B. 175, 190:

These committees are domestic bodies which control the destinies of thousands. They have quite as much power as the statutory bodies of which I have been speaking. They can make or mar a man by their decisions. Not only by expelling him from membership, but also by refusing to admit him as a member: or, it may be, by a refusal to grant a licence or to give their approval. Often their rules are framed so as to give them a discretion. They then claim that it is an unfettered discretion with which the courts have no right to interfere. They go too far. They claim too much. ... Their rules are said to be a contract between the members and the unions. So be it. If they are a contract, then it is an implied term that the discretion should be exercised fairly. But the rules are in reality more than a contract. They are a legislative code laid down ... to be obeyed by the members. This code should be subject to control by the courts just as much as a code laid down by Parliament itself. If the rules set up a domestic body and give it a discretion, it is to be implied that the body must exercise its discretion fairly. Even though its functions are not judicial or quasi-judicial, but only administrative, still it must act fairly. Should it not do so, the courts can review its decision, just as [they] can review the decision of a statutory body. The courts cannot grant the prerogative writs such as certiorari and mandamus against domestic bodies, but they can grant declarations and injunctions which are the modern machinery for enforcing administrative law."

31. Many of these unincorporated sporting bodies have the capacity to make or break any sportsman. If the sportsman is not a favoured son or daughter he or she may be penalised unfairly and when he or she seeks redress from the courts, the organisation says, "This is an internal matter. The courts cannot be involved. This is a voluntary organisation and we can decide who becomes a member. The courts cannot impose a member on us." Those familiar with these kinds of cases will realise that the dispute often times involves action by the association that may deprive the sportsman of an opportunity to parade his skills. Many of the dispute involve the decision making process of these organisations. He may also be prevented from pursuing a professional career. Thus it is really unrealistic for the courts to look at these sporting organisations as benign groups that have no power. In almost all these cases damages will never be an adequate remedy. The power to admit members may well determine whether a person has an opportunity to perform his chosen skill. The decision of the association may even end a career.

32. If Miss Cummings meant to say that the courts have exercised restraint in intervening in the affairs of an unincorporated body then that is undoubtedly true and I have no difficulty with that. But if she really meant that there are no circumstances in which a court can intervene in the affairs of an unincorporated body then I cannot share that position. The days of ouster clauses are long passed, dead and buried. It follows that I do not accept Miss Cummings' submission. This court has jurisdiction to hear this matter.

Prohibitory injunctions

33. I shall deal with the legal principles applicable to prohibitory injunctions in the circumstances of this case. As recently as this year the Court of Appeal of Jamaica, in *Karlene Henry v Burns Gayle* S.C.C.A. 79/06 (delivered April 27, 2007), stated that the House of Lords decision of *American Cyanamid v Ethicon* [1975] A.C. 396 "laid down the guidelines along which a learned trial judge should proceed" (see page 5). However, it has come to be recognised that Lord Diplock's formulations in *American Cyanamid* cannot be applied to all situations without modification. Lord Diplock himself recognised this in *N.W.L. Ltd v Woods* [1979] 1 W.L.R. 1294. His Lordship said at page 1306 - 1307:

My Lords, when properly understood, there is in my view nothing in the decision of this House in American

Cyanamid Co. v. Ethicon Ltd. [1975] A.C. 396 to suggest that in considering whether or not to grant an interlocutory injunction the judge ought not to give full weight to all the practical realities of the situation to which the injunction will apply. ...

34. The Court of Appeal of England and Wales in *Cayne v Global Natural Resources plc* [1984] 1 All ER 225 appreciated that a rigid application of *American Cyanamid* may be inappropriate in some instances. Eveleigh L.J. at page 231:

Having asked myself the various questions referred to in Cyanamid, I have reached the conclusion that this case is one that the court has to approach on a broad principle: what can the court do in its best endeavour to avoid injustice?

35. Kerr L.J. in the same case was more explicit. At page 233 he said:

I do not regard this case as one which falls within the mould of the decision of the House of Lords in American Cyanamid v Ethicon Ltd. ...

36. Lord Justice Kerr continued at pages 233 - 234:

It may well be self-evident that the decision in Cyanamid cannot be treated as laying down rules of law which are applicable to all cases in which an interlocutory injunction is claimed, but it may be helpful to mention two matters in this regard. First, a literal application of the well-known passage in the speech of Lord Diplock (see [1975] 1 All ER 504, at 510, [1975] AC 396 at 408) would lead to the result whenever a plaintiff puts forward a serious issue to be tried, and whenever he is able to show that any inconvenience, let alone injustice, to the defendant by the grant of the injunction is capable of being compensated in damages against the plaintiff's cross-undertaking, the court would be bound to grant an injunction. This was virtually the plaintiff's submission to this court, but it cannot possibly have been Lord Diplock's intention. The question whether the defendant can be adequately compensated in damages normally only arises if the case is in fact taken to trial by the plaintiff. True, if the

plaintiff does not do so, the defendant could still claim damages against the plaintiff's cross-undertaking on the ground that no injunction should ever have been granted. But this is no answer, since it is for the plaintiff to make out the case for the exercise of the court's discretion in his favour; and in any event, defendants rarely proceed to a trial of issues whose investigation they had not sought, but were concerned to resist. The test for the application of Cyanamid is therefore, whether the case is one where the court can see that it is likely to go to trial at the instance of the plaintiff, and whether the grant of an injunction is therefore appropriate or not, as a way of holding the situation in the interim. (My emphasis)

37. The third member of the court May L.J. said at page 236:

I think that one must be very careful to apply the relevant passages from Lord Diplock's familiar speech in the Cyanamid case not as rules but only guidelines, which is what I am certain Lord Diplock intended them to be.

38. May L.J. went on to state quite explicitly that in the particular case he was not concerned with the weight of either side's case. He indicated that the question is whether the grant or refusal will effectively dispose of the action in favour of the successful party. *Cayne* was applied by the Court of Appeal of Jamaica in *Miller v Cruickshank* (1986) 44 W.I.R. 319 which has not been overruled of the subject of adverse comment by the Court of Appeal or the Judicial Committee of the Privy Council.

39. The point then is that whenever an application is made for an interim injunction in cases of this nature all the circumstances of the case must be examined. Lord Diplock's pronouncements in *American Cyanamid* although coming from an eminent judge are guidelines and not a statutory edict. The cases referred to above were cases in which the granting of the injunction would have determined the matter against the defendant. One of the underlying themes in *Cayne* was that granting the injunction would have prevented the defendant from refuting the claimant's evidence in a trial. There would be a denial of one of the elementary principles of natural justice, namely, a de facto adverse decision without presenting the defendant with a proper opportunity to meet the case against him.

40. Regarding mandatory injunctions, the standard that the claimant has to meet at the interlocutory stage is indeed a high one. There are not many reported cases in which claimants have successfully secured a mandatory injunction at the pre-trial stage. The applicable legal principles are stated in the judgment of Megarry J. (as he was at the time) in *Shepherd Homes Ltd v Sandham* [1970] 3 W.L.R. 348. It has been accepted as correct in this jurisdiction (see *Esso Standard Oil S.A. Ltd v Lloyd Chan* (1988) 25 J.L.R. 110).

Application of law

41. I shall dispose of the mandatory injunction first. The claimant, in effect, is asking that I compel KSAFA to admit Phoenix in the Syd Bartlett league. Were I to do that he would receive his remedy without a trial. It would have the effect of granting summary judgment at a time when there are still contested issues of fact, one of them being whether Phoenix is as yet an affiliate of KSAFA. The letters referred to earlier indicate that Phoenix was guaranteed to be an affiliate once the stated conditions were met. However, KSAFA is saying that, despite the content of the letters, subsequent events which were communicated to Mr. Butler prevented KSAFA from fulfilling the promise. Further, there is no unequivocal evidence that KSAFA actually granted affiliation status to Phoenix. It appears that Mr. Butler has a promise from KSAFA that his club would be accepted as an affiliate if he met the conditions stated in the March 2 letters. There is evidence that he has in fact done the things specified in the letters of March 2, 2007. At present what we seem to have is an unfulfilled promise. Can a court compel an unincorporated body to accept a person as a member and permit that person to compete in tournaments organised by the association if that person has acted on the representations made to it by that association? This would be one of the questions to be determined in a trial. Mr. Butler's case has not met the stringent standard for the granting of a mandatory injunction at this stage. Whether to grant the remedy or not depends on full examination of the relevant law that cannot be undertaken at this stage.

42. I come to the prohibitory injunctions. Miss McGregor is asking that I stop the Syd Bartlett competition. She submits that if Phoenix does not participate in the competition then the players would be deprived of an opportunity to put on display their skill and football acumen. She added that they might be deprived of scholarship opportunities and a chance to progress to the higher leagues and possibly represent Jamaica. Miss McGregor also submitted that her client had expended time and money

because of the representations made to him by KSAFA. If Phoenix is not in the league then he would lose his investment in the club. There was also the question of sponsors who were contacted. This raises the additional question of whether Mr. Butler could recover damages from KSAFA. This too requires reflection after full argument when the case is fully ventilated and findings of fact made.

43. On the other side of the coin KSAFA has pointed to the fact that nine other clubs are waiting to play in the competition. Those teams, like Mr. Butler, have spent time, money and effort to prepare for the league. KSAFA has secured sponsors who are expecting to reap the maximum benefit from their sponsorship.

44. The Syd Bartlett competition should have begun on October 27. It has been rescheduled to begin any time now. It is not possible to have a trial in this matter before the competition begins. The defendants would be deprived of an opportunity to present their case. The claimant would have effectively prevented KSAFA from staging a tournament involving nine teams which are not part of this dispute. The injustice to them in my view would be greater than any injustice to the claimant. This is part of the practical realities which the court must have in view. Miss McGregor said that the other teams are not parties to the action. That is true but they would be adversely affected in a manner which would be out of proportion to any adverse impact on the claimant. Delaying the start of the competition would be a greater injustice than permitting it to begin without Phoenix. In a sense, it comes down to where the least injustice lies in a context where there may be injustice to both sides.

45. The claimant may feel that KSAFA has not dealt with him fairly. He may feel, with good reason, that KSAFA made a promise to him which they now seek to get out of because of the protestations of Mr. Cain. Despite my sympathy for him I have to apply the law as I understand it and decline to extend the injunctions.

Conclusion

46. Prohibitory and mandatory injunctions discharged with costs to the second and third defendant to be agreed or taxed.