



JEDA

UNIVERSITY OF PORT HARCOURT

Journal of Education in Developing Areas

Vol. 24, No.3 November, 2016

PUBLISHED BY

THE FACULTY OF EDUCATION

UNIVERSITY OF PORT HARCOURT,

PORT HARCOURT, NIGERIA

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AN EVALUATION OF THE CONSTITUTIONALITY OF THE JURISDICTIONS AND POWERS OF THE NIGERIAN FOOTBALL FEDERATION IN THE SETTELEMNT OF FOOTBALL-RELATED DISPUTES.

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Abstract

As sport has fully grown over the years in terms of economic assessment, there has been an equivalent development in sports-related disputes. The development in commercial value of sport makes the stakes greater than before. Since sport is contractual in nature, there are obligations imposed both on sports men and women and those involved in the agreement. Therefore, where a party has refused to perform his or her own side of the obligations, there must be a means of enforcing them. Similarly, when disputes arise, there must be a channel of resolving them and this in fact symbolizes a fundamental code on which any society or business blooms. It is on this premise that this paper seeks to examine the role of the Nigerian Football Federation in the settlement of football disputes and the constitutionality of her powers and jurisdictions. To achieve this, the paper adopts a content analysis research method. This involved an analysis of the constitutionality of the law empowering the Nigerian Football Federation to settle football-related disputes in Nigeria. On this note, practicable recommendations were made to further enhance settlement of disputes in the Nigerian football leagues.

Introduction

Sport is a huge business which accounts for more than 3 per cent of the global trade and 1 per cent of the combined GNP of the 15 member states of the European Union (EU) (UK Department of Culture Media and Sport, 2002). In the EU alone, more than 2 million jobs relating directly or indirectly to sport have been made (Carter, 2004). In the UK, consumer spending on sport annually has reached a staggering £12 billion. It is not unexpected, therefore, that sport-related disputes are increasing considering the amount of money at stake.Sport affects us all. It can boost (or dampen) the spirit of the entire nations. It arouses passion, dedication and distinction in individuals (Nafziger, 2004). Sport touches the lives of spectators, athletes, officials and sport organizations at all levels. However, there is a darker side to this universality. Sport has developedinto a significant part of the world economy, and consequently, the risks for all persons involved have increased and as such, disputes have become unavoidable (Findlay, 2005). At the one side of the spectrum there are parties, such as international sports federations, which have grown into influential players, with domination over their own sports. At the other end of the spectrum, there are the athletes or the players who as individuals, may be significantly disadvantaged by the discrepancies in resources and power between themselves and their respective sports organizations.

Yet, it is the players who devote enormous amounts of time and energy into excelling at their respective sports. From this perception, disputes over issues such as team selection and eligibility, transfer of players and payment of allowances and salary or wages as the case may be have important and perhaps life-long consequences (Oschütz, 2001-2002). Historically, the determination of sports-related disputes have been inconsistent and often ineffective. Until the late 1990's, it could be contended that a degree of disorder reigned, as an overlapping yet unrelated array of international, national, governmental and non-governmental institutions attempted to resolve disputes in sport with little regard for the consistency of outcome from one case to another, however similar the circumstances (Haslip, 2000-2001). Athletes' rights, as well as the principles of natural justice and due process, were often ignored. Parties to proceedings, especially unrepresented athletes, found themselves facing their federation or organization in the dual role of adversary and adjudicator. As a result of this, various countries in the world have established institution at national level to manage and run sport activities for the purpose of providing dispute resolution and education for the sporting community at a national level (Locklear, 2003).

As with some other parts of the world, In Nigeria, football is the most dominant sport and has advanced from a simpleactivity to a means of economic empowerment. Based on a suggestion by the *Fédération Internationale de Football Association* (FIFA) in 2004, the Nigerian Football League (NFL) became acknowledged as a professional football league. As in other parts of the world, the number of football-related disputes in Nigeria havesignificantly increased in recent years and with it the ever-increasing need for an efficient football dispute resolution mechanism. It is against this background that the Nigerian Football Association now the Nigerian Football Federation is established to run and manage football activities in Nigeria. Therefore, this paper seeks to examine the role of the Nigerian Football Federation in the settlement of disputes and the constitutionality of its jurisdictions and powers. On this note, this paper is divided into six major parts and its introduction sets the tone of the paper is the first part. The second part examines the contractual nature of sport since issue of football is contractual agreements between the players and their respective clubs. The third part examines disputes resolution in sport generally with specific attention on football. The fourth part looks into the role of the Nigerian Football Federation in the settlement of football-related disputes in Nigeria. The fifth part examines the constitutionality or otherwise of the right of players to seek redress from the ordinary court. The last part represent the conclusion.

The Private Contractual Nature of Sport

Majority of sports organizations are voluntary associations, private in nature and are not regulated bypublic establishments exercising legislative powers. As a result, most disputes relating to sports groups are administered bycontractual rules or principles(Ian Blackshaw, 2003). Different legal systems and doctrines may be applied to several sports and athletes. Everycountry and indeed each sport, is different and this has made it an enormous task to successfully bring together a different number of rules, legal systems, opinions, philosophies of law, and goals. Furthermore, the nature of sport makes speedy dispute resolution a necessity (Kevan, and Cottrell, 2002). As a result, disputes relating to sports are more and

more resolved byarbitration panels.In this respect, sports organizations either use their own arbitration panel or submit their disputes to the Court of Arbitration for Sports (CAS).

The CAS was established on April 6, 1983, at an IOC session in New Delhi, and since that time has dealt with sports-specific disputes of a private nature (Foster, 2003). The court has provided a place for the sports federations and the world's athletes to settle their disagreements through a single, self-governing and accomplished sports resolution body that is capable of constantly applying the rules of different sports organizations worldwide (Reeb, 2002).

The CAS provides a unifying institution that can assist to help deliver sport back to its origins. It has be seen as the unifying body that guaranteesjustice and integrity in sport by solid legal control and the administration of varied laws and philosophies. In this respect, the CAS is in the process of coming up with universal principles that will soon be broadly recognized as the *lex sportiva.*In spite of the development and success of the CAS, some International Federations ("IFs") have not consented to use the CAS for dispute resolution. For instance, the International Amateur Athletic Federation ("IAAF") and Federation Internationale de Football Association ("FIFA") choose to have their own competing body of adjudicative experts (Adetunji, 2011). The difficulty with such IF based sport specific arbitration panels is that they have not developed a universal rules of sports jurisprudence. However, a proper assessment of both systems will demonstrate that CAShas developed into an independent body, while the IF's arbitration panels are burdened by problems inherent to internal sport specific panels. Whatever the merits of these different adjudicative panels, they are all established bycontractual agreement to arbitrate disputes when they arise (Hollis, 1995). This consensual basis to the arbitration mechanism must be kept in mind when analyzing decisions. Sports arbitrations only exist because the athlete, the national governing body ("N.G.B."), and others in the sport world have agreed to be bound by arbitration and the outcome of the case.

Dispute Resolution in Football

Sport has steadily become a big commercial enterprise in Africa. This growth is no surprise as sport throughout the world has undergone significant commercialization, and estimations claim that world sport now constitutes more than three per cent of world trade (McLaren, 2001). This significant commercialization of sport has brought with it an increase in competition and regulation. Inevitably, there has also been an increase in disputes in sport, making true the cliché that 'where there is money to be made and lost, litigation is never far away.' The disputes that arise in sport are varied and wide ranging, and include commercial disputes, disputes relating to the rules of and participation in sport and employment related disputes (Barnes, 1996). These disputes can be resolved through a plethora of processes. The dispute resolution processes are mainly litigation in the courts or outside the courts through Alternative Dispute Resolution ("ADR") mechanisms (Raber, 1998). ADR has now become the mainstream form of dispute resolution in sport related disputes across the world. However, one of the key reasons is the need by sportspersons and sports federations to avoid washing their filth in public, thus trying their best to resolve their disputes within the sporting family. Consequently, most sporting codes – both National Sports Federations ("NSFs") and International Sports Federations ("ISFs") prescribe in their rules or regulations that disputes be resolved through ADR processes rather than through the courts (Falet, 2009).

Football, in particular South African professional football, is one of the sporting codes that have rules or regulations that prescribe that disputes amongst participants in the sport be resolved through ADR rather than the courts. For instance, the Statutes of the *Fédération Internationale de Football Association* ("FIFA") all enjoin participants in football to have their disputes resolved through ADR. ADR has been resorted to over the years by parties by agreement or in some instances, and very common in sport, as a result of the rules or regulations of NSFs or ISFs that prescribe that any disputes that arise amongst participants in the sport be resolved through ADR rather the courts (Kaidal, 2013). In football, FIFA requires all its affiliates, NSFs, to incorporate a clause to this effect in their rules. The main reasons that make ADR preferable over the courts are that ADR is generally quicker, more flexible, less expensive, and confidential, in some instances a win - win situation as parties compromise, maintain and preserve business relations, and is conducted by people with expertise and experience in the relevant field of sport.

In some countries sports related disputes are resolved through centralized sports dispute resolution tribunals. Good examples are Ireland and England where tribunals such as the Dispute Resolution Authority (DRA) of the Gaelic Athletic Association (GAA), Just Sport Ireland and Sports Resolution UK are centralized tribunals that deal with sport related disputes (Lalkaka, 1999). The jurisdiction of Just Sport Ireland, for example, is confirmed in the rules or regulations of various NSFs in Ireland. The rules or regulations of the NSFs prescribe that any dispute arising as a result of participation or amongst participants in that sporting code should be referred to Just Sport Ireland for resolution or determination (UN Inter-Agency Task Force on Sport for Development and Peace, 2013). Without a competent means of internal dispute resolution, more and more cases would have to be referred to the courts and the tendency of court rulings to have abrupt and profound impact on sporting rules portends a relegation of the concept of self-regulation that sports governing bodies thrive on. In order to stem the problems associated with the taking of football disputes to the courts and to promote the specialized dispute resolution mechanism operational in football, the rules and regulations of the world football regulatory body, FIFA stipulate that recourse to ordinary courts of law is generally prohibited (United Nations, 2007). FIFA further requires its members i.e. national football associations to insert a clause in their statutes or regulations prohibiting disputes, including those involving leagues, members of leagues, clubs, members of clubs, players, officials and other association officials, from being taken to ordinary courts of law; rather provision should be made for arbitration.

Article 68(2) of FIFA Statutes generally prohibits recourse to ordinary courts of law as a means of resolving football-related disputes, providing that in "recourse to ordinary courts of law is prohibited unless specifically provided for in the FIFA regulations. Recourse to ordinary courts of law for all types of provisional measures is also prohibited.

With regard to the internal dispute resolution channels, especially contractual or employment-related disputes, the first point of call for an aggrieved party should be the National Dispute Resolution Chamber (NDRC). For this purpose, FIFA requires national associations to insert a clause in their statutes or regulations prohibiting football disputes from being taken to the ordinary courts of law, unless specifically provided for by FIFA regulations or binding legal provisions; rather, such disputes should be taken to a recognized independent and duly constituted arbitration tribunal or to the CAS.

NFF and Dispute Resolution

Parties have been prohibited under the FIFA Statutes from referring disputes to the ordinary court. Therefore, governing bodies at national levels are expected to establish own arbitration mechanism for the determination of such football-related disputes (Ian Blackshaw, 2003). Being a recognized member of CAF and FIFA, the Nigeria Football Federation (NFF) is responsible for the organization and supervision of football in Nigeria. To meet this obligation, the NFF Statute has made provisions for the establishment of arbitral tribunal. A brief analysis of relevant provisions of this statute is sacrosanct.

Article 4:

3. NFF shall provide the necessary institutional means to resolve any internal dispute that may arise between Members, Clubs, Officials and Players of NFF.

Article 68:

NFF shall establish an Arbitration Tribunal which shall deal with all internal national disputes between NFF, its members, players, officials, match and players agent that do not fall under jurisdiction of its judicial bodies. The Executive Committee shall draw up special regulations regarding the composition, jurisdiction, procedural rules of this Arbitration Tribunal

Article 69

1. NFF, its Members, Players, Officials and match and player's agents will not take any dispute to Ordinary Courts unless specifically provided for in these Statutes and FIFA regulations. Any disagreement shall be submitted to the jurisdiction of FIFA, CAF, WAFU or NFF.

2. NFF shall have jurisdiction on internal national disputes i.e. disputes between parties belonging to NFF. FIFA shall have jurisdiction on international disputes i.e. disputes between parties belonging to different Associations and/or Confederations.

A cursory look at the provisions of Article 4(3) and Article 68 show that the two articles are speaking in like terms. The only difference between the two is that while article 4 is general in nature, article 68 has defined the general provision of article 4. This is so because the necessary institution mentioned in article 4 has been narrowed down in article 68. That is, to establish arbitral tribunal which stand for the necessary institution mentioned in article 4. Article 69 has given NFF the jurisdiction to resolve disagreement between its member, players, officials, and player's agent. Another important aspect of the provision of article 69 is that from the wording of that provision, disputant parties are given the liberty to make a choice whether to refer their case to NFF or CAF or FIFA. This means that both FIFIA, CAF and NFF has jurisdiction to resolve internal dispute arising from Nigeria football. As commendable as the provisions of article 4, 68 and 69 are, there is a major question which the NFF statute fails to clarify. For instance, the question is whether both the NFF and the Arbitral tribunal mentioned article 68 can exercise concurrent jurisdiction with respect to internal dispute. It is very clear from the wording of article 68 and 69 that the functions of NFF and the expected arbitral tribunal are the same. It is suggested that the NFF can exercise appellate jurisdiction from the decision of the arbitral tribunal. Therefore, there is the need for the NFF Statutes to clarify this aspect.

One major setback affecting football dispute resolution in Nigeria is thatcurrently the NFF is yet to fulfil its obligation in article 68 of the NFF Statutes to establish the Arbitral Tribunal. This is notwithstandingnumerousrequests for its creation in order to decide the severalunsettled football disputes in the country. In fact, FIFA in 2007 released a circular to its member associations condemning the fact that only a few member associations had created an adjudicatory body to arbitrate over disputes between players and clubs to ease the responsibility on the FIFA DRC and ease the procedure of resolution settlement. To this end, the world regulatory body approved the NDRC Standard Regulations to guide national associations in establishing and implementing their own dispute resolution mechanisms (Kelvin, 2014).

Examining the Constitutionality of Prohibiting Recourse to the Ordinary Court

The Constitution of the Federal Republic of Nigeria is the supreme law of the land. This has three implications. First is that the constitution is supreme over all other laws. Secondly, all subjects in Nigeria must abide to the dictate of the Constitution. Thirdly, any law that is inconsistence with the constitutional provisions will to the extent of its inconsistency be regarded as null and void and of no effect. The Constitution is the ground norm. That is, it is the source through which all other laws derive their validity. Both the FIFA Statutes and the NFF Statutes contain stipulated provision that bar players and clubs from seeking redress from the ordinary court. Therefore, it is imperative to examine the constitutionality or otherwise of this provision. For a proper analysis, it is necessary to reproduce the provisions:

Article 68(2) of FIFA Statutes provides as follows:

> *Recourse to ordinary courts of law is prohibited unless specifically provided for in the FIFA regulations. Recourse to ordinary courts of law for all types of provisional measures is also prohibited.*

Article 69 of NFF Statutes states in a like term that:

> *NFF, its Members, Players, Officials and match and player's agents will not take any dispute to Ordinary Courts unless specifically provided for in these Statutes and FIFA regulations. Any disagreement shall be submitted to the jurisdiction of FIFA, CAF, WAFU or NFF.*

The above provisions generally prohibit recourse to ordinary courts of law as a means of resolving football-related disputes. These provisions will be analysed in relation to judicial powers as stated in the Constitution. The Constitution in section 6(6) (b) provides that:

> *The judicial powers shall extend to all matters between persons, or between government or authority and to any person in Nigeria, and to all actions and proceedings relating thereto for the determination of any question as to the civil rights and obligations of that person.*

This is a broad provision with no exemption. The court is given power to try all cases and all disputes between persons. The expression 'persons' here is not limited to natural persons. It includes artificial persons such as corporate bodies and football clubs since they can sue and be sued in their own name. The Constitution has not exempted any dispute from the jurisdiction of the court. The last part of the provision ".....and to all actions and proceedings relating thereto for the determination of any question as to the civil rights and obligations of that person" shows that the court has power to try all disputes or actions. Therefore, going by the provision of section 1(3) of the Constitution which makes any law inconsistence with the constitutional provisions to be null and void, the provisions of article 69 of the NFF Statutes and article 68(2) of the FIFA Statutes are null and void. The implication of this is that players, player's agent, officials and football clubs can refer football-related disputes to the ordinary court. This is in view of the provision of section 6(6)(b) which gives the court the general power to adjudicate on all matters.

To give effect to the above NFF's and FIFA's Statutes within the confine of the constitutional provision, there will be the need to constitutional amendments. In the alternative, the Constitution can be amended to include provision for the establishment of a separate court to try football-related disputes. Better still, since issue of football falls within concurrent matter with which both the federal and states government can legislate, a willing state can establish a special court to try football-related disputes. However, such court will be a subordinate or an inferior court to the High Court. This is in view of that fact that the Constitution has listed the superior court of records in Nigeria under section 6(5) and as such, courts not listed in that section will be regarded as inferior court. Finally, article 68(2) of the FIFA Statutes and article 69 of the NFF Statutes are unconstitutional in nature and as such, they have no binding effect on players. They are ouster clause which tends to overthrow the constitutional power of the court.

Conclusion

Since Nigeria football federation operates its activities within the context of the country legal framework and coupled with the facts that, the NFF statues has no constitution backing from the Nigeria National Assembly, it then behooves on football federation to have rethink in allowing ordinary court to adjudicate in football maters in the country. In the same vein, in order to allow for natural and quick dispensation of justice the football house should give room for disputed parties to seek redress in the ordinary court without sanctions. Equally very germane too, is the need for memorandum of understanding between FIFA,CAF and NFF with the Nigeria judicial authority on the imperativeness of quick hearing and dispensation of all football related matters

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