

SUPREME COURT OF SEYCHELLES

Reportable

[2022] SCSC 1022

CS22/2021

In the matter between:

SEYCHELLES SWIMMING ASSOCIATION
(rep. by Basil Hoareau)

APPELLANT

and

REGISTRAR OF ASSOCIATIONS
(rep. by Ketlynn Marie)

RESPONDENT

Neutral Citation: *Seychelles Swimming Association vs. Registrar of Associations* [2022] SCSC
1022... CS22/2021

Before: Dodin J

Heard:

Delivered: 24th November 2022

JUDGMENT

DODIN J

- [1] The Appellant, an association duly registered under the Registration of Associations Act was given notice by the Registrar of Associations to show cause as to why its name should not be struck off the Register of Associations. The Appellant, being dissatisfied with the notice, appeal to the Court raising the following grounds in its memorandum of appeal:

“1. The Respondent erred in coming to the decision to order the striking of the Appellant off the Register of Associations (hereinafter the decision) in that-

- i. *The Respondent erred in coming to the decision without having instituted an inquiry into the affairs and conduct of the Appellant;*
 - ii. *The Respondent came to the decision without having conducted an investigation into the affairs and conduct of the Appellant;*
 - iii. *There was no evidence or facts upon which the Respondent could have reasonably come to the decision;*
 - iv. *The Respondent took into account irrelevant matters in coming to the decision;*
 - v. *The Respondent came to the decision arbitrarily and in a bias manner, so as to apply pressure on the present executive committee, of the Appellant, to resign; and*
 - vi. *The decision of the Respondent has been taken in cahoots with the Minister for Youth, Sport and Family.*
2. *The Respondent has served the notice, informing the Appellant that the Respondent intends to strike the Appellant off the Register of Associations, without complying with all the mandatory requirements of the law.*

B. Relief

The Appellant hereby prays the Supreme Court to allow its appeal and to quash the decision and the Respondent's decision to serve the notice - mentioned in ground number 2 above - on the Appellant.

- [2] Learned counsel for the Respondent submitted that this appeal has been brought by the Appellant in regards to a notice that was served upon the Appellant pursuant to section 17(1) of the Registration of Associations Act ("the Notice"). The Notice informed the Appellant that the Respondent intends to strike the Appellant association off the register of associations. The Appellant has now exercised its right under section 17(2) to bring an appeal against the Notice. The Court on such an appeal must consider such an

appeal and may, pursuant to section 17(2), make any order it shall think fit. By order dated 23rd March 2022, the Court directed that the appeal be dealt with by the parties filing written submissions by 30 March 2022. The Respondent's position is that the appeal has been misconceived, raises no arguable ground of appeal and should, therefore, be dismissed in its entirety by the Court.

- [3] Learned counsel for the Appellant made the following written submission in support of the appeal:

"Ground 1 (i)

" The Respondent erred in coming to the decision without having instituted an inquiry into the affairs and conduct of the Appellant".

Section 15 of the Registration of Association Act (hereinafter the Act), inter alia, reads –

"15 (1) [T]he Registrar –

(a) may, if he has reasonable grounds to believe that the registration of an association under this Act has been obtained by fraud or mistake, or that a registered association exists for an illegal purpose, or has wilfully infringed any of its rules or any provisions of this Act, or has in any way misapplied its funds, or is not functioning; and

(b) shall, upon the written application of one – tenth of the total number of the members of a registered association;

call for all accounts, books and documents relating to such association and institute an inquiry into the affairs and conduct of such association, whether relating to matters which occurred before or after the coming into

force of this Act, and may hear evidence on oath in connection with such inquiry.

“15 (2) – [T]he provision of sections 12, 13, 14 and 15 of the Commissions of Inquiry Act shall, for the purpose of such inquiry, apply mutatis mutandis”.

Section 17 (1) of the Act provides –

“[I]n the event of the Registrar being satisfied, as the result of any investigation into the affairs and conduct of a registered association, that the association should be struck off the register, he shall, with the approval of the Minister cause a notice to be served upon the secretary of the association informing him that he intends to strike the association off the register for reasons to be set out in the notice”.

It is submitted that section 15 of the Act should be read together with section 17. It is a statutory rule of interpretation that the intention of the legislature must be found by reading the statute as a whole. In Canada Sugar refining Co. v/s R (1898) A.C 735, Lord Davey observed that –

“[E]very clause of a statute should be construed with reference to the context and other clauses of the Act, so as, as far as possible, to make a consistent enactment of the whole statute or series of statute relating to the subject matter (refer to pp 100 of Craies on Statute Law which is annexed hereto as Annexure A1).

In Colquhoun vs Brooks (1889) 14 App. Cas. 493, Lord Herschell stated –

“[I]t is beyond dispute, too, that we are entitled, and indeed bound, when construing the terms of any provision found in a statute, to consider any

other parts of the Act which throw light on the intention of the legislature, and which may serve to show that the particular provision ought not to be construed as it would be alone and apart from the rest of the Act". (refer to Annexure A1).

In D. Sanjeevayya v/s Election Tribunal, Andhra Pradesh, AIR 1967 SC 1211, the Indian Supreme Court applied the principle that a statute has to be read as a whole – in interpreting section 150 of the Representation of the People Act, 1951, which requires that on the happening of a casual vacancy 'the Election Commission shall, by a notification in the Official Gazette call upon the Assembly Constituency concerned to elect a person for the purpose of filling the vacancy', the Supreme Court pointed out that the section cannot be read in isolation without reference to Part III of the Act which prescribes the machinery for calling in question the election of a returned candidate. It was held that on a reading of all these provisions together the duty of the Election Commission to hold a bye-election on resignation of a member imposed by section 150 need to be discharged forthwith if the election of that member has been called in question by an election petition in which the petitioner has also claimed a relief that he should be deemed to be duly elected; and that the Election Commission can wait the final adjudication of the election petition for if the petitioner succeeds in getting the declaration that he has been duly elected, there would be no necessity of holding any bye-election (refer to the judgment which is annexed thereto as Annexure A2).

Section 15 (1) of the Act allows the Respondent, subject to the requirements of the Act being satisfied, to institute an inquiry into the affairs and conduct of an association.

Section 17 (1) of the Act provides that in the event of the Respondent being satisfied, as a result of any investigation into the affairs and conduct of an

association, that the association should be struck off the register, the Respondent with the approval of the Minister shall cause a notice to be issued to the secretary of the association.

Despite section 15 (1) of the Act using the term “inquiry” and section 17 (1) using the term “investigation”, yet both terms are used in relation to the affairs and conduct of an association. Indeed in Cambridge Dictionary the word investigation is defined as, “carry out a systematic or formal inquiry to discover and examine the facts so as to establish the truth”.

It is submitted that section 17 cannot be read in isolation with section 15 of the Act. A reading of the two provisions together indicates that a notice can be issued under section 17 (1) of the Act solely if the Respondent has conducted an inquiry in accordance with section 15 of the Act and sections 12, 13, 14 and 15 of the Commission of Inquiry Act.

In the present case the Respondent did not institute and conduct an inquiry into the affairs and conduct of the Appellant and accordingly the Respondent could not issue the notice, under section 17 (1) of the Act, to strike the Appellant off the register (hereinafter the notice).

Ground 1 (ii)

“(ii) the Respondent came to the decision without having conducted an investigation into the affairs and conduct of the Appellant”.

This ground is in the alternative to Ground 1 (i). In other words this ground is considering section 17 of the Act on its own.

A close reading of section 17 (1) reveals that –

- (a) the Respondent can only issue a notice under section 17 (1), subsequent to an investigation into the affairs and conduct of an association. The term investigation implies that the Respondent must have conducted a formal probe into the affairs and conduct of an association and has factually ascertained its findings. The definition of the word investigation in the Cambridge Dictionary is relevant (refer to paragraph 2.0 above);*
- (b) the Respondent must set out in the notice the reasons for the decision to strike the association off the register;*
- (c) the Respondent must be satisfied that the affairs and conduct of the association is such that it ought be struck off the register; and*
- (d) the Respondent must have obtained the approval of the Minister, prior to issuing a notice in accordance with section 17 (1) of the Act. It is implied by section 17 (1) that the approval must be a written approval.*

It is submitted that the Respondent did not conduct any investigation into the affairs and conduct of the association. Apart from taking into account certain straightforward matters which were on records such as the alleged non-filing of accounts for the years 2006 – 2008 and receiving certain complaints from unidentified individuals, the Respondent did not conduct a probe into the affairs and conduct of the Appellant. The term “affairs and conduct” connotes that the investigation must be in respect of the business, activity, running, dealings and management of the Association. This was not done in the present case.

The notice, issued by the Respondent under section 17 (1) of the Act, does not make reference to any investigation which had been conducted by the Respondent into the affairs and conduct of the Appellant.

Furthermore, the notice is proof that no investigation was conducted into the affairs of the Appellant by the Respondent. This is established by the following –

(a) the last paragraph of page 1 of the notice states –

“[W]e would like to state that per our letters we also addressed concerns, which were delayed to us from persons associated with the associations. We would like to clarify that it is not the role of the Registrar to intervene in internal matters of an association, however when we have gone through the nature of concerns being communicated we have determined that they are of a nature which necessitates that we address with the members of the executive committee as they also raised issues of non-compliance. We did not communicate these to the members but until to date the association has made no effort to address them and if it has made the effort this has not been communicated to us. We would like to refer to the below as communicated;

(b) in the third paragraph on page 2 of the notice it is stated –

“[C]larifications were therefore sought to establish whether there was any merit in the complaints being made, in regards to the points listed above and the fact that the rights of certain members of the association were affected in relation to the above points. Until to date we have not received any communication in relation to the above”.

(c) the above statements reveal that –

(a) the Respondent had not ascertained whether the persons who made the complaints were members of the associations and whether the complaints had any merits. If the Respondent had conducted an investigation into the

affairs and conduct of the Appellant, they ought to have ascertained the above matters. The fact that the Respondent had not ascertained any of the above issues, is proof that the Respondent had not probed into the affairs and conduct of the Appellant but had instead only sought for clarifications;

(b) in the penultimate paragraph of the notice the Respondent states –

“[A]fter we have considered all the communications which we have had with the association and the records available and the period of time given to the association to comply with the Registration of Associations Act, we would like to inform you that in accordance with section 17 of the Registration of Associations Act, that we are giving you Notice of the intention to strike the association off the register”.

(c) the above-referred paragraph merely refers to communication between the Appellant and Respondent and to records available to the Respondent. There is no mention of any investigation that had been carried out by the Respondent into the affairs and conduct of the Appellant.

Moreover, the records produced in respect of the appeal (hereinafter the records) reveal that all the Respondent had done was sent letters to the Appellant in addition to a meeting held between the Respondent and the Appellant. The records do not reveal that the Respondent conducted any investigation into the affairs and conduct of the Appellant. The Respondent merely sought for clarification and that was the case even at the meeting conducted on 20 November 2019. If the Respondent had conducted an investigation into the affairs and conduct of the Appellant, the records would have contained a report relating to the investigation and of the findings of the Respondent.

Since the Respondent had not conducted any investigation into the affairs and conduct of the Appellant, the Respondent could not have issued the notice.

Ground 1 (iii)

“(iii) there was no evidence or facts upon which the Respondent could have reasonably come to the decision.

It is submitted, that there was no evidence or facts upon which the Respondent could have been satisfied that the Appellant should be struck off the register. One of the reasons, relied upon by the Respondent to strike the Appellant off the register, is the purported failure of the Appellant to furnish certain documents to the Respondent. These documents and information were supposed to be furnished to the Respondent by the secretary of the Appellant, in accordance with section 12 of the Act. The mere failure to furnish these documents cannot on its own be a ground to strike the Appellant off the register. Indeed, section 12 (1) of the Act makes it an offence for the secretary of an association to fail to furnish the required documents and information. Consequently, the Respondent ought to have caused a criminal offence to be instituted against the Secretary of the Appellant rather than taking the decision to strike the Appellant off the register.

Furthermore, the documents which allegedly had not been furnished were in respect of the years 2006 – 2008 and 2003 to 2014 and not in respect of the more recent years.

It is clear from a reading of section 17 (1) of the Act, that the Respondent can come to the decision to strike an association off the register solely if the affairs and conduct of the association so dictate. It is submitted that in

the present case, there was no evidence or facts upon which the Respondent could have reasonably come to the conclusion that the Appellant ought to be struck off the register.

Ground 1 (iv)

“(iv) the Respondent took into account irrelevant matters in coming to the decision”.

In the last two paragraphs of page two of the notice, the Respondent made reference to the fact that the present Executive Committee of the Appellant had undertaken to step down, at a meeting held between the Appellant and the Minister, on 6 April 2021. The Respondent continued by stating that the present Executive Committee has failed to step down, contrary to their undertaking.

It is apt to quote the last paragraph of page two of the notice, which reads thus –

“[O]ur understanding is that there was an undertaking and as communicated above we had representatives from the Office of the Registrar of Associations who were present at the meeting, again until today we are yet to receive any feedback. The Registrar is the authority in regards to issues of compliance under the Registration of Associating Act and if the members of the executive committee had any issues, in regards to the undertaking which was made these should have been communicated to the Registrar. This again reinforces the concerns, which we have in regards to the willingness of the members of the executive committee to address such matters which are considered to be of great importance for the association and all its members”. (emphasis is mine).

It is clear from the last two paragraphs of page two of the notice – especially the last sentence of the last paragraph of page two – that the Respondent took into account the failure of the present Executive Committee of the Appellant to resign, contrary to the undertaking that they had given to the Minister on 6 April 2021, in coming to the decision to strike the Appellant off the register. It is obvious that if the present Executive Committee had stepped down, the Respondent would not have taken the decision to strike the Appellant off the register. If the Respondent had not taken into account the above-referred matter, in taking the decision to strike the Appellant off the register, the Respondent would not have referred to the undertaking given by the Executive Committee.

The Respondent could not and should not have taken into account the fact that the present Executive Committee of the Appellant had not stepped down, in coming to its decision. It was within the prerogative of the present Executive Committee to decide whether or not to step down and the Appellant cannot be penalised simply because its present Executive Committee has refused to step down.

In addition, the Respondent attached too much weight to the failure of the Appellant to furnish the documents and information required by section 12 of the Act. The arguments advanced at paragraph 4 above are adopted for the purpose of this ground of appeal.

Ground 1 (v)

“(v) the Respondent came to decision arbitrarily and in basis in a bias manner, so as to apply pressure on the present executive committee, of the Appellant, to resign”.

As argued at paragraph 5 above, the Respondent in coming to its decision, took into account the fact that the present executive committee of the Appellant has failed to resign, contrary to the undertaking given to the Minister. The arguments advanced at paragraph 5 above are repeated.

Ground 1 (vi)

“(vi) the decision of the Respondent has been taken in cahoots with the Minister for Youth, Sport and family”.

The arguments advanced in paragraph 5 above are adopted for the purpose of this ground of appeal.

Second Ground of Appeal

“[T]he Respondent has served the notice, informing the Appellant that the Respondent intends to strike the Appellant off the Register of Associations, without complying with all the mandatory requirements of the law”.

Section 17 (1) of the Act provides that the Respondent can issue a notice under the said section, only with the approval of the Minister. Section 17 (1) makes it mandatory and imperative that the Respondent obtains the approval of the Minister prior to issuing a notice under the said section.

It is trite laws that a statute does not only contains express provisions but also implied provisions. The words “approval of the Minister” implies the following –

- (a) that the approval must be in writing so that it can be proven that such approval was indeed obtained; and*

(b) the fact that the approval was obtained must not only be stated in the notice issued by the Respondent, but a copy of the approval ought to be attached to the notice.

In the present case the notice has been served on the secretary of the Appellant without the approval of the Minister having been obtained. Firstly the notice does not state that the approval of the Minister had been obtained prior to the Appellant issuing the notice. Secondly there was no written approval of the Minister attached to the notice.

In addition the records produce as part of the appeal do not disclose that the approval of the Minister was obtained. Surely if the Minister's approval had been obtained, that would have been part of the records. In any event, the records do not disclose that the Appellant requested for the Minister's approval. A request for such approval ought to have been made in writing and should have set out all the necessary facts, so as to enable the Minister to exercise his/her decision – whether or not to grant the approval – judiciously. All the above is not present from the records and is evidence that not only was the approval not granted by the Minister, but that no approval was sought.

Since the mandatory approval of the Minister was not obtained, the notice was clearly illegal, null void and without any legal basis.

Conclusion

The Appellant hereby prays the Supreme Court to allow its appeal and to quash the decision of the Respondent to serve the notice.

[4] The following submission in reply was made by the Respondent:

1. *The Respondent is responsible for ensuring that registered associations comply with their obligations under the Registration of Associations Act and has certain powers in enquiry and investigation under the Act. In the present matter, the Respondent undertook certain inquiries and made investigations into the conduct and affairs of the Appellant pursuant to sections 15 and 16 of the Registration of Associations Act. The Respondent carried out the inquiries due to the Appellant's failure to comply with their obligations under the Registration of Associations Act.*
2. *Below is the list of inquiries conducted by the Respondent:*

On 26th November 2008, a letter was sent to the Appellant requesting them to submit the Audited Income and Expenditure Account for the years of 2006 and 2007 and the list of officers for the same years.

On 9th April 2009, a letter was sent to remind the Appellant that they have not submitted their audited accounts for the year 2006, 2007 and 2008 and to do the necessities for its submission.

On 7th April 2010, another reminder was sent to the Appellant informing them that they have failed to submit their Audited Income and Expenditure Account of the Association for the years 2006 to 2009.

On 19th May 2011, a letter was sent to the Appellant requesting that they submit the Audited Income and Expenditure Account of the Association for the years 2006 to 2009.

On 3rd March 2012, the Respondent sent a letter to the Appellant requesting that the Appellant submits the association's Financial Statements for the years 2006 to 2010.

On 30th September 2019, the Respondent sent a letter outlining all the breaches of the Registration of Associations Act and requested that the Appellant addresses all these issues.

On 20th November 2019, a meeting was held between the Appellant's chairperson, the Appellant's Secretary, the Registrar of Association and an officer of the Registration Officer.

- 3. As part of these inquiries, the Respondent sought information from the Appellant.*
- 4. The Respondent, having completed her inquiries, was satisfied that there were grounds for striking the Appellant association off the register of associations and therefore, sought the approval of the appropriate Minister pursuant to section 17(1) of the Registration of Associations Act, to issue the Notice to the Appellant.*
- 5. The appropriate Minister for these purposes is the President of Seychelles. The President provided approval on 20th April 2021 and the Respondent proceeded to issue the Notice to the Appellant on the 7th July 2021. The Notice served stated the following:*

The failures of the Appellant to comply with obligations under the Registration of Association Act.

The concerns expressed by its own club members.

The outcome of meeting held with the Minister for Youth, Sport and Family.

The outcome of meeting held with the Registrar of Associations.

The intention to strike the association off the register.

Their right of appeal.

6. The appeal was brought in time on 6th September 2021.

Ground (i): The Respondent erred in coming to the decision without having instituted an inquiry into the affairs and conduct of the Appellant

By this ground of appeal, the Appellant argues that the Respondent failed to conduct an inquiry into the affairs and conduct of the Appellant prior to issuing the Notice.

This ground of appeal turns on whether the Respondent, in the present matter, undertook an inquiry under section 15(1) of the Registration of Associations Act section 15(1) states that the Registrar:

- (a) may, if he has reasonable grounds to believe that the registration of an association under this Act has been obtained by fraud or mistake, or that a registered association exists for an illegal purpose, or has wilfully infringed any of its rules or any provisions of this Act, or has in any way misapplied its funds, or is not functioning; and
- (b) shall, upon the written application of one-tenth of the total number of the members of a registered association, call for all accounts, books and documents relating to such association and institute an inquiry into the affairs and conduct of such association, whether relating to matters which occurred before or after the coming into force of this Act, and may hear evidence on oath in connection with such inquiry.

As a preliminary matter, the Respondent does not read section 17 of the Registration of Associations Act as requiring the Registrar to have undertaken an inquiry prior to moving to issue a notice of strike off. Rather, section 17(1) states where the Registrar is satisfied, as the result of any investigation into the affairs and conduct of a registered

association, she may then issue such a notice. The reference to “any investigation” means that a notice could, arguably, be issued following information requests being issued under section 16. It is not, contrary to the Appellant’s argument, a prerequisite for an inquiry under section 15 to have been carried out in order for a notice to be issued under section 17(1).

In any event and notwithstanding the foregoing point, the Respondent in this matter did, in fact, undertake an inquiry into the conduct and affairs of the Appellant’s Association. This is evidenced by the letters dated 30th September 2019 and 14th January 2020, both of which addressed the continuous breaches by the Appellant of its obligations and duties under the Registration of Associations Act. The Appellant failed, ignored and/or wilfully refused to respond to the letters.

As a result of the forgoing, the Respondent is of the view that, first, it was not a requirement for an inquiry to have taken place as long as investigations were carried out under the Registration of Associations Act prior to the Notice being issued, and secondly and in any event, the Respondent did, in fact, make the necessary inquiries about the affairs and conduct of the Appellant after the Appellant had infringe the provisions of the Registrations of Associations Act. For these reasons, this ground of appeal should be dismissed as it is premised on an erroneous legal and factual basis.

Ground (ii): The Respondent came to the decision without having conducted an investigation into the affairs and conduct of the Appellant

Section 17(1) of the Registration of Associations provides as follows:

“In the event of the Registrar being satisfied, as the result of any investigation into the affairs and conduct of a registered association, that the association should be struck off the register,

he shall, with the approval of the Minister cause a notice to be served upon the secretary of the association informing him that he intends to strike the association off the register for reasons to be set out in the notice.”

It is clear from the factual background set out above that the Respondent undertook inquiries and necessary investigations into the conduct and affairs of the Appellant association between 2019 and 2020. In particular, the letter of 30th September 2019 made clear the alleged breaches and invited the Appellant to provide a response. Moreover, the minutes of the meeting dated 20th November 2019, which was conducted in the presence of Mr. David Vidot, the Chairperson of the SSA, and the Secretary of SSA, Mrs. Payet, make clear that the following points were discussed:

The alleged breach of section 5(3) of the Registration of Association Act.

The legality of the members who were appointed to the association.

The fact that the updated list of office bearers had not been submitted by the Appellant to the Respondent.

The alleged breach of section 12 of the Registration of Associations Act, given that financial statements for the years 2006 to 2008 and 2010 had not been filed with the Respondent.

The complaints that had been made to the Registrar of Associations by their own members.

A further letter was sent by the Respondent to the Appellant on 14th January 2020, addressing the continuing breaches the Respondent had identified.

In the light of the above, it is difficult to see how the Appellant can maintain that no investigations were carried out pursuant to section 17(1) of the Registration of Associations Act.

In the Respondent's view, this ground of appeal is therefore clearly misconceived and bound to fail, given that the factual background demonstrates clearly that an investigation was, in fact, undertaken in relation to the Appellant association, such that the Respondent acted in accordance with the statutory requirements placed upon her when she concluded that the Notice should be issued. She was satisfied, having undertaken the inquiries and investigations described above, that there were grounds to issue a notice of intention to strike the Appellant off the register of associations once those inquiries and investigations were completed. As such, there is no error in the decision-making process on this basis and Court should therefore dismiss this ground of appeal.

Ground (iii): There was no evidence or facts upon which the Respondent could have reasonably come to the decision

Section 12(1) of the Registration of Associations Act provides that "the secretary of every registered association shall, before the thirty-first day of January in each year, or when and as often as so requested by the Registrar, furnish to the Registrar, a return of the names and addresses of the officers of the association, and an audited account of the yearly revenue and expenditure, and of the assets and liabilities of the association in such form as the Registrar may require".

It is a fait that the Appellant failed to discharge its obligation under the law. In the present matter, the Appellant failed to submit the following documents to the Respondent:

The Audited Income and Expenditure Accounts for the years 2006 to 2010.

Financial Statement for the years 2006 to 2008 and 2010.

An updated list of office bearers along with copies of their identification.

The minutes of the Annual General meetings for the years 2003 to 2015.

Having failed to provide the above-mentioned documents to the Respondent, the Respondent called upon the secretary, or treasurer or other office-bearer of any association, to produce these document, relying on the power contained in section 16(1), which provides that "The Registrar may, when and as often as he may deem necessary, call upon the secretary, or treasurer or other office-bearer of any association, to produce to him at such time and place as he may determine any book or document in the custody of such secretary, treasurer or other office-bearer, as the case may be".

Despite the attempt by the Respondent to obtain the documents required, the Appellant did not submit any of the documents requested. Instead, the Appellant told the Respondent that she could do whatever she wants during the meeting held on the 20th November 2019.

In failing to provide documents, the Appellant continuously breached the Registration of Associations Act and, in doing so, failed to comply with, and committed offences under, section 12 and 16 of the Registration of Associations Act.

As a result of the foregoing, there is no merit in this ground of appeal and the Court should dismiss it accordingly.

Ground (iv): The Respondent took into account irrelevant matters in coming to the decision

The Appellant has failed to properly particularise this ground of appeal. Whilst the Appellant seeks to allege that the Respondent took into account irrelevant considerations, the Appellant has failed to identify what irrelevant considerations were, as a matter of fact, taken into account by the Respondent. The ground of appeal should therefore be dismissed in its entirety.

For the avoidance of doubt and to the extent that this ground is linked to Grounds (v) and/or (vi), it is misconceived and denied by the Respondent.

Ground (v): The Respondent came to the decision arbitrarily and in a bias manner so as to apply pressure on the present executive committee, of the Appellant, to resign

It is clear from Notice that the “minded to” decision by the Respondent was based on the numerous statutory breaches by the Appellant and the concerns brought by their own members.

Moreover, the Respondent gave the Appellant ample time to address all the statutory breaches that were put to it during the inquiries and investigation stage leading up to the decision to issue the Notice. In fact, some of the breaches identified by the Respondent occurred as far back as 2006, which, in the Respondent’s view, demonstrates that there has been a measure of leniency applied to the Appellant.

There is no evidence of any bias, arbitrariness or other improper conduct on the part of the Respondent before the Court and, as such, this ground of appeal should be dismissed.

Ground (vi): The decision has been taken in cahoots with the Minister for Youth, Sport and Family

The Respondent denies that the decision to issue the Notice was taken “in cahoots with”, or was influenced by, the Minister for Youth, Sport and Family. The Registrar undertook her statutory role appropriately, undertaking the necessary inquiries and investigations into the Appellant association, before coming to a view that a notice of intention to strike the Appellant off the register of associations should be issued. She then sought approval for that decision from the President, as the Minister responsible for giving such approval under section 17(1) of the Registration of Associations Act.

Whilst the Respondent accepts that a meeting was held on the 6th April 2021 with the Appellant, its member and the Ministry for Youth, Sport and Family, the purpose of that meeting was to provide the Appellant and the its members with an opportunity to address the compliance status of the association and to find a way forward for the association. However, and as noted above, the decision to issue the Notice was taken in a proper and lawful manner, with the approval of the President being sought in the appropriate way. It was not taken, as alleged by the Appellant, in cahoots with the Minister for Youth, Sport and Family. This ground should therefore be dismissed by the Court.

Ground (vii): The Respondent has served the notice, informing the Appellant that the Respondent intends to strike the Appellant off the Register of Associations, without complying with all the mandatory requirements of the law.

The Appellant has not demonstrates which alleged, mandatory requirements of the law have not been complied with. If the argument is that no inquiry or investigation was carried out, this has been addressed above. If there are other errors of procedure that the

Appellant is seeking to challenge, the Respondent is of the view that this ground of appeal adds little or nothing to those already pleaded above. The shopping list of misconceived and poorly particularised grounds of appeal that have been advanced by the Appellant demonstrates the inherent weakness in this appeal and the Respondent is of the view that this ground should be dismissed summarily, and without further consideration, given the failure to explain the basis upon which it is premised.

Conclusion

On analysis of the law and the facts of this matter and having regard to the grounds of appeal advanced by the Appellant, it is submitted that:

- a. The mandatory requirements of section 17(1) of the Registration of Associations Act were followed in order for the Respondent to issue a notice of intention to strike the Appellant association off the register of association, in that:*
 - (i) The Respondent was satisfied after having undertaken inquiries and investigations into the affairs and conduct of the association that there were sufficient grounds to move to issue the Notice.*
 - (ii) Proper and lawful approval was sought from the Minister of Legal Affairs.*
 - (iii) The secretary of the Appellant was then served with the Notice, which informed them that the Respondent intends to strike the association off the register and the Notice outlined the reasons for this decision.*
- b. The decision to strike off the Appellant was not braised or unlawful in any other way as alleged by the Appellant. It was issued following repeated failures by the Appellant to comply with the numerous*

statutory requirements and as a result of complaints raised by its own members.

- c. *Should the Court consider it necessary, the Respondent would be amenable to a short hearing to develop the arguments set out in these written submissions, or to deal with any matters the Court may wish to raise orally with counsel."*

[5] The Court is satisfied that the matters in controversy between the Appellant and the Respondent have been sufficiently canvassed and argued by both learned counsel in their lengthy submissions above which have been reproduced almost in their entirety. The matters which this Court has to determine are:

1. Whether the Registrar of Association has complied with sections 17 and 15 of the Registration of Associations Act before issuing the association with notice to show cause why its name should not be struck-off the register; and
2. If the answer to 1. above is in the negative;
 - i. Whether the decision to issue the said notice was fatal rendering the notice null and void; and
 - ii. Considering all the circumstances of the case, was the decision to issue the notice justified or lacked objective factual basis.

[6] As both learned counsel have stated in their submissions, the relevant provisions of the Registration of Associations Act pertinent to this appeal are sections 12, 15 and 17 of the Act.

12 (1) The secretary of every registered association shall, before the thirty-first day of January in each year, or when and as often as so requested by the Registrar, furnish to the Registrar, a return of the names and addresses of the officers of the association, and an audited account of

the yearly revenue and expenditure, and of the assets and liabilities, of the association in such form as the Registrar may require:

Provided that any change occurring in the place of office or among the officers of a registered association shall, from time, be notified to the Registrar within fourteen days of such change.

(2) Non-compliance with the provisions of subsection (1) shall be an offence, and the secretary of the registered association concerned shall, on conviction, be liable to a fine not exceeding twenty five rupees for every day during which the default continues.

15 (1) The Registrar

(a) may, if he has reasonable grounds to believe that the registration of an association under this Act has been obtained by fraud or mistake, or that a registered association exists for an illegal purpose, or has wilfully infringed any of its rules or any provisions of this Act, or has in any way misapplied its funds, or is not functioning; and

(b) shall, upon the written application of one tenth of the total number of the members of a registered association, call for all accounts, books and documents relating to such association and institute an inquiry into the affairs and conduct of such association, whether relating to matters which occurred before or after the coming into force of this Act, and may hear evidence on oath in connection with such inquiry.

(2) The provision of sections 12, 13, 14 and 15 of the Commissions of Inquiry Act shall, for the purpose of such inquiry, apply mutatis mutandis.

(3) The Registrar shall thereafter draw up and forward a report of his findings, together with his recommendations, to the Minister who may make such order in the matter as he may think fit.

(4) Without prejudice to the provisions of the preceding subsections, the Registrar may at any reasonable time, either by himself or through an officer deputed by him in that behalf, check the books of any registered association and its bank and cash balances.

(5)

17 (1) In the event of the Registrar being satisfied, as the result of any investigation into the affairs and conduct of a registered association, that the association should be struck off the register, he shall, with the approval of the Minister cause a notice to be served upon the secretary of the association informing him that he intends to strike the association off the register for reasons to be set out in the notice.

(2) The association may, within a period of two months after the receipt by its secretary of such notice from the Registrar appeal to the Supreme Court against the decision to order the striking of the association off the register and show cause why the name of the association should not be struck off, and on any such appeal the Supreme Court may make such order as it shall think fit.

(3) If within two months of the receipt by the secretary of an association of the above mentioned notice from the Registrar, the association has not appealed to the Supreme Court, or if any appeal made by the association under subsection (2) has been dismissed, the Registrar shall strike the association off the register. [All emphasis mine].

[7] The Respondent's contention is that this appeal has been misconceived, raises no arguable ground of appeal and for these two reasons be dismissed. However, the Respondent agrees that the Appellant's appeal are in compliance with section 17(2) of the Registration of Associations Act, in terms of the Appellant's right to appeal and the procedures and time frame allowed. The Respondent appears to reach that conclusion from the following facts:

- On 26th November 2008, a letter was sent to the Appellant requesting them to submit the Audited Income and Expenditure Account for the years of 2006 and 2007 and the list of officers for the same years.
- On 9th April 2009, a letter was sent to remind the Appellant that they have not submitted their audited accounts for the year 2006, 2007 and 2008 and to do the necessities for its submission.
- On 7th April 2010, another reminder was sent to the Appellant informing them that they have failed to submit their Audited

Income and Expenditure Account of the Association for the years 2006 to 2009.

- On 19th May 2011, a letter was sent to the Appellant requesting that they submit the Audited Income and Expenditure Account of the Association for the years 2006 to 2009.
- On 3rd March 2012, the Respondent sent a letter to the Appellant requesting that the Appellant submits the association's Financial Statements for the years 2006 to 2010.
- On 30th September 2019, the Respondent sent a letter outlining all the breaches of the Registration of Associations Act and requested that the Appellant addresses all these issues.
- On 20th November 2019, a meeting was held between the Appellant's chairperson the Appellant's Secretary, the Registrar of Association and an officer of the Registration Officer.

The Respondent contends that the above exchanges and meeting were sufficient to consist an inquiry into the affairs of the association.

- [8] The Appellant's contention is that above queries, requests and meeting do not amount to an inquiry as intended by section 17 read with section 15 of the Registration of Associations Act. Learned counsel for the Appellant is right up to the point that section 17 must be read together with section 15 of the Act. I am also in agreement that an inquiry is required, and a report of the inquiry together with recommendations shall be submitted to the Minister who may then make such order as the Minister deems fit. Then it follows that any decision to strike-off must be with the approval of the Minister. The Appellant however contends that an investigation or inquiry must be "formal" and although the Appellant did not elaborate what is to be considered a formal inquiry, learned counsel gave an insight in his submission that the Registrar should have looked

into the “*affairs and conduct*” [which] *connotes that the investigation must be in respect of the business, activity, running, dealings and management of the Association.*”

- [9] The definition given by learned counsel for the Appellant by Cambridge Dictionary is that the word investigation is defined as to “*carry out a systematic or formal inquiry to discover and examine the facts so as to establish the truth*”. Indeed the Merriam-Webster dictionary defines investigation as “*to observe or study by close examination and systematic inquiry*”. None offer any assistance as to the modus operandi to be used to achieve a proper inquiry. The Registration of Associations Act does not venture any further into defining the mode of the inquiry. Sections 12, 13, 14 and 15 of the Commissions of Inquiry Act only apply to the summoning of witnesses or calling for documents, the manner of taking evidence and fees that may be payable to witnesses. I am therefore of the firm opinion that the inquiry envisaged by the Act is not by necessity always be a public inquiry with the calling of witnesses and taking of sworn testimony and formal admission of exhibits.
- [10] It is my considered view that the discretion lies with the Registrar as to whether calling for documents, records and meeting with the representative of the association would suffice to obtain sufficient evidence for the Registrar to make an informed report with recommendation to the Minister. I therefore conclude that the Registrar has acted in compliance to the provisions of sections 15 and 17 of the Registration of Associations Act. As to whether the Executive committee had been pressured by the Registrar to resign, although such doing would be irregular, I find it irrelevant to the present appeal since it had no bearing on the issues that concerned the Registrar, which were the failure to file minutes of general meetings, failure to file audited accounts and complaints filed by members.
- [11] I further note that the relevant parent Minister responsible for the Registration Division under which falls the Registrar of Association is the President and not the Minister responsible for sports. Consequently, I find that ground 1(vi) of appeal that “*the decision of the Respondent has been taken in cahoots with the Minister for Youth, Sport and Family*”, not holding enough credibility and does not reflect the true procedures followed

by the Respondent as there is clear approval of the President dated 20th April 2021 at folio M3 of the internal memo of 19th March 2021.

- [12] Consequently, I determine that ground 1 and all its sub-grounds i to vi have not been established to the satisfaction of the Court so as to sufficiently impugn the decision of the Respondent to issue the notice in contention. Hence ground 1 of appeal is dismissed in its entirety.
- [13] With respect to ground 2, the contention that there was no formal approval of the Minister has been dealt with in detail above. It follows that ground 2 cannot be sustained for the same reason that the approval was properly sought and given by the President, being the responsible minister on the 20th April 2021. This ground of appeal is therefore also dismissed.
- [14] This appeal is therefore dismissed in its entirety and the notice of intention to strike-off the Appellant's association issued by the Respondent is upheld accordingly.
- [15] I make no order for costs.

Signed, dated and delivered at Ile du Port on 24th day of November 2022.



G. Dodin J