

IN THE DISCIPLINARY ENQUIRY

between:

CRICKET SOUTH AFRICA

Employer

and

GERALD MAJOLA

Employee

FINDING ON SANCTION

Introduction

- 1 On 17 October 2012 I delivered written findings on the charges that have been brought against Mr Majola. I found him guilty on all nine complaints.
- 2 It is now necessary for me to determine a fitting sanction having regard to those findings, the interests of CSA, the interests of Mr Majola (to the extent that I am able to, given that he withdrew from these proceedings on 10 October 2012), as well as the relevant legal principles.
- 3 In order to provide an adequate summary of the main findings for the purpose of arriving at a finding in respect of the sanction, it will be sufficient for me to reproduce here a set of conclusions to which I had come concerning his conduct in relation to the bonus payments and to the travel expenses.¹

The IPL bonus

- 3.1 While acting as CEO for CSA and in the context of a contract that he had concluded on behalf of CSA, Mr Majola negotiated large bonuses for himself and Don McIntosh, as well as lesser bonuses for the CSA staff. In so doing, he wittingly placed himself in a situation that constituted a manifest conflict of interest. To satisfy his fiduciary duties, it was required of him that he

¹ These conclusions are contained in paragraphs 78 to 92 of the main findings.

should first have obtained the authority of the CSA Board to negotiate these bonuses and for them to be retained by himself and the other beneficiaries.

- 3.2 Mr Majola thereafter failed in any meaningful way to disclose the bonus that he received. It is clear that the disclosure made at the meeting of 10 July 2009 was not a disclosure by him of *his* receipt of a bonus. The limited disclosure he made on that date in respect of “*my staff*” was in itself misleading. An honest man would have been acutely aware of the fact that he was *de facto* concealing his own substantial bonus payment. It is significant that he does not rely on what he said at this meeting as a defence in his plea.
- 3.3 The evidence is abundantly clear that no bonus whatsoever could have been received by Mr Majola, in accordance with the governing processes and policies, without it first having been considered and approved by Remco, which would then report it to the Board as a recommendation. The IPL bonus was neither referred to Remco, nor to the Board.
- 3.4 The bonus was not disclosed to any financial sub-committee (Finco or Remco), nor was it otherwise disclosed in accordance with proper accounting principles. To the contrary, the bonus transaction was dealt with in the accounts of CSA in a manner that was calculated to avoid its detection.
- 3.5 Until the discovery of the bonuses by Mr Don Thomas², the Board of CSA and its sub-committees had been entirely unaware of the bonus transaction and hence had no knowledge of the amount thereof. It would have remained permanently undetected had Mr Thomas not done his audit.
- 3.6 Despite many opportunities, Mr Majola failed to disclose the bonus when he had a clear and ongoing duty to do so.
- 3.7 Even worse, Mr Majola expressly lied about it, avowing more than once that he “*had not received a cent*”. In so doing he *inter alia* directly misled the Minister and Deputy Minister and, in turn, allowed Parliament to be similarly misled.
- 3.8 In the same way, Mr Majola not only allowed but encouraged a destructive disagreement to be fomented between CSA and the GCB³, whilst he knew full well that it was premised on a dishonest assertion by him that he had received no money at all from the IPL for himself.
- 3.9 In general, his conduct in relation to the bonuses, his continued denial of any wrongdoing, his active part in events that have brought disruption and division within cricket, and his avoidance of a prompt resolution of the matter through due and prescribed processes, have materially contributed to bringing CSA – and the sport of cricket in this country – into disrepute.

The ICC Champions Trophy bonus

- 3.10 The conclusions to which I have come regarding Mr Majola’s conduct *vis-à-vis* the IPL bonus are equally applicable to the ICC Champions Trophy

² Mr Thomas is the accountant who carried out an internal audit in July 2010 and discovered the bonus payments and travel expense irregularities.

³ Gauteng Cricket Board.

bonus.

- 3.11 In particular, it is again patently clear that Mr Majola had a clear duty to disclose the bonuses but entirely failed so to do. His bonus has in the same way been the subject of dissimulation on his part. Equally, he similarly had no authority to negotiate, receive or retain such bonus payment. None of these bonus payments had been placed before Remco or the Board.
- 3.12 His conduct in respect of the ICC bonuses reflects the same violations of his fiduciary duties and gives rise to the same conclusion in respect of his overall conduct that he has brought CSA into disrepute.

The travel expenses

- 3.13 The evidence of Professor Van Wyk, Ms Fubu and Ms Klein conclusively shows that Mr Majola claimed or received payments or enjoyed travel benefits for himself and his wife that were not business related. That has been proved in respect of all the items in Annexure “A” to the charge sheet. Had these expenses not been detected by Mr Thomas they would have remained as charges to the expenses of CSA and would effectively have disappeared when the financial statements were signed off.
- 3.14 There are a number of distinct travel items. The inference is inescapable that they were all made at the instance of Mr Majola, for his personal use and that of his wife. In my judgment, they were plainly arranged by him in the full knowledge that they were not for business trips and that the costs would end up being absorbed by CSA.
- 3.15 It follows that his conduct falls directly within the category of dishonesty, of a rank degree. It is at the same time evident to me that these travel items reflect a willingness on Mr Majola’s part to abuse his office and the trust that had been placed in him regarding the utilisation of his travel budget.

Evidence on the impact of Mr Majola’s conduct

- 4 A hearing on the issue of the sanction was held on 18 October 2012 at which Mr Jacques Faul (the acting CEO of CSA) gave telephonic evidence, after which Mr Redding presented submissions.⁴ Mr Faul’s career as a senior office bearer in cricket dates from 2003, when he became CEO of North West cricket. He has been in equivalent positions also with the Highveld Lions. He has also previously performed corporate and governance functions on committees of CSA. He is more than acquainted with the administration of cricket in South Africa and, in particular, with the vulnerability of CSA to commercial and image issues. He has familiarised himself with the findings delivered by me on 17 October and, I am satisfied, was well placed to present to me the views of CSA on the implications of those findings.

⁴ Mr Majola and his team were informed of this hearing and invited to attend in order to present evidence and/or submissions on the question of sanction. There was no attendance by them.

- 5 Mr Faul stressed that it was of vital importance that all parties within and without CSA should have full confidence and trust in its CEO. He pointed to various illustrations of this:
- 5.1 The CEO is authorised to and enters into a variety of multi-million rand contracts on behalf of CSA. It is essential that CSA and its Board should have no doubts as to whether tasks of that kind are being honestly and properly performed.
- 5.2 Conversely, it is equally essential that the other contracting party or parties should have the same level of confidence and trust.
- 5.3 Of especial importance are local and international contracts dealing with broadcasting rights, this being a major source of revenue for CSA.
- 5.4 It is now CSA's experience that major contracts are drawn up with the inclusion of an 'exit clause' which would entitle the other party to terminate the contract in the event of corporate governance issues arising within CSA. It follows that CSA cannot afford for there to be any future uncertainty about the observance of its corporate governance standards.
- 5.5 Sponsorship contracts are also of great importance for CSA. The drawn out and unresolved allegations about Mr Majola having irregularly received bonus payments and travel benefits has had a serious impact on this. Potential sponsors will simply not enter into arrangements where there is a risk that their name or brand will become tarnished as a result of a situation arising that is comparable to that which has arisen out of Mr Majola's conduct. Such sponsors will not support CSA if he were to remain in office.
- 5.6 In general, the CEO is the public face of the organisation. He has to project and uphold the integrity and character of CSA. Mr Majola has done the opposite and this has dealt a heavy blow to CSA and to cricket.

- 5.7 The general level of contractual engagements and related interaction with CSA had fallen when Mr Majola's bonus and travel expense issues became known. They started to pick up again after he was suspended on 17 March 2012 pending the institution of an independent disciplinary enquiry. If he were now to return to his office, that positive trend would come to an end.
- 5.8 As matters stand, it is Mr Faul's view that the corporate community had lost trust in Mr Majola and thus also in CSA. It was imperative that a connection between Mr Majola and the organisation should not be restored.
- 5.9 Within CSA in its broad sense, including amateur cricket (which receives an annual allocation of R60 million from CSA), disciplinary matters ultimately fall under the jurisdiction of the CEO. He must therefore be respected as a fit and proper person to be both the bearer and the enforcer of the standard of conduct that one would wish to see at the heart of this sport. When that CEO is himself compromised in consequence of his conduct, he can in no way play that role with any credibility.
- 5.10 Finally, said Mr Faul, cricket is to be seen as a national asset and its funds should be managed in the same way as public money; trust is of the essence.
- 6 Having regard to all the factors enumerated by him, Mr Faul was convinced that there was no prospect at all that an employment relationship could be continued with Mr Majola. That was so as far as CSA as an organisation was concerned, as far as its Board was concerned, and as far as interaction with the leadership of the affiliates across the country was concerned.
- 7 I refer also to aspects of the evidence given by Dr Nyoka and Mr Harris in the course of the hearing on the merits of the charges. Although they testified before I made and delivered my findings, the basis upon which they gave their views remains intact and is directly relevant to the determination of an appropriate sanction. I accordingly have regard to it:

- 7.1 Dr Nyoka was explicit that it was his view that Mr Majola's conduct had been very damaging of the sport of cricket and the role of CSA. There had been lies. Divisions had resulted. The GCB was still feeling the destructive impact of what had happened. There had been no contrition and no remorse. He had tendered no apology to the people of this country and all those who have been affected by what he has done. Even at this stage there is no recognition by him of the significant damage that he has done. In Dr Nyoka's view, Mr Majola has brought shame to the office of the CEO of CSA. He is not fit to hold it.
- 7.2 Mr Harris was equally explicit on this and roundly stated that Mr Majola's conduct had brought CSA into disrepute. Although Mr Majola had built up a good record and had reason to be proud of what he had done, he had allowed himself to become blinded by money and to lose his ethical perspective. Mr Harris pointed also to the conduct of Mr Majola after the report by Mr Thomas, where he had frustrated attempts to deal with the entire matter promptly. The effect of this was to make CSA very unattractive from the point of view of a potential sponsor given the continuing governance problems and uncertainties. The whole of cricket administration had been undermined and Mr Majola was continuing to set a bad example.

Assessment of the implications of Mr Majola's conduct

- 8 The conclusions set out above amount to findings of grave misconduct on the part of Mr Majola. Coursing through them all is an element of dishonesty which has presented itself in various ways, ranging from deliberate concealment to the uttering of outright lies and the abuse of travel expense privileges. The conduct underpinning the complaints also have this in common: they were directed towards securing financial benefits for Mr Majola to which he was not entitled, at the expense of his employer and with manifest disregard for the fiduciary duties that he owed CSA.
- 9 It is an aggravating factor that Mr Majola was willing to compromise the relationship between CSA and the GCB which was in my view intended at least in part to divert scrutiny from the fact of his clandestine bonus arrangements. This translated directly

to the prejudice of cricket administration and the interests of cricket supporters. That was a most unfortunate development for cricket and one that Mr Majola was prepared to bring about for his own selfish ends.

10 In his submissions on the sanction, Mr Redding argued that Mr Majola's conduct both before and after the establishment of this disciplinary process has continued to evince an obstructive and uncooperative attitude to CSA. In particular, he has failed to take part in the hearing on the merits of the charges against him. I agree with that submission. Although Mr Majola has stated that he wants the opportunity to clear his name, he has avoided doing so when provided with an independent forum at which he could squarely have challenged the allegations against him.

11 Mr Majola has occupied the office of CEO for a good many years. I have no doubt that he is fully aware of the extent of the fiduciary duties that such position entails and that an especially high level of trust and confidence is applicable to a CEO. If allegations of the kind that I have dealt with in this case had arisen against an executive one rung below Mr Majola, it is inconceivable that he would not have ensured full and prompt disciplinary action. The same standard is applicable to him. Corporate governance criteria require that a person occupying a high level executive post has a duty to see to it that allegations of misconduct against him, which if left unresolved will taint the essential trust attached to his post, are indeed properly clarified one way or the other. Mr Majola apparently does not subscribe to that approach. This must weigh against him in a decision as to whether he should be permitted to resume his functions as CEO of CSA.

Mr Majola's circumstances

12 In reaching a fair conclusion on sanction it is necessary also to give full weight to pertinent circumstances of the employee who has been found guilty of misconduct. In this instance, a number of such considerations are to be found in the Nicholson Report⁵ and I take the liberty of drawing on them⁶:

⁵ See generally paragraphs 21 to 29 of the Report.

⁶ To a material extent the themes that follow were reflected in the evidence before me of Dr Nyoka and Mr Harris.

- 12.1 *“... Majola took over the helm of South African Cricket after a long period of dominance by whites. He comes from a family that was steeped in sport and he and his brother Khaya achieved the highest honours in “non-white” cricket as it was known. Their family also distinguished themselves in the struggle to rid the country of Apartheid in sport.*
- 12.2 *“The game was administered by whites and virtually all national and provincial players were white. Majola assumed the position of CEO in a fast changing institution which was wrestling with vast exponential growth, encompassing the development of one day cricket and the arrival of the twenty-twenty variety.*
- 12.3 *“By and large Majola and his team dealt very competently with the challenges presented by the new changes to the commercial and institutional nature of cricket. He explained in some detail the five pillars of the vision for CSA which included: excellence, development, transformation, sustainability and brand promotion.*
- 12.4 *“Majola was the architect of the vision and was very keen to carry it out as speedily and efficiently as possible ...*
- 12.5 *“Much of the evidence presented to us praised Majola and his staff for managing such large events as the IPL at such short notice....”*
- 13 To these considerations must be added the facts that Mr Majola had been in the service of the UCBSA and then CSA for some nine years before the bonus transactions arose. His disciplinary record is unblemished. Before his departure from these proceedings I was able to form a sense of him as a personable and lively individual.
- 14 Positive though the above features are, they are heavily outweighed by the content and consequences of the dishonest conduct of which Mr Majola has made himself guilty. I concur with Mr Reddings’s submission to me that this is not an instance where there has been a limited lack of judgment or a transient aberration. Rather, his conduct was concerted and accompanied by systematic deceit and falsehood. Such conduct is fundamentally destructive of an employment relationship. When, as in this case, it has arisen at the very highest employee level, there can no longer be the trust and confidence that is of its very essence. The relationship must come to an

end. I have considered whether there is an acceptable lesser alternative. Plainly, there is none.⁷

- 15 It is also so that Mr Majola has at no stage shown any remorse or contrition in respect of his conduct. He has given no indication of which I am aware that he has appreciated the true nature of his conduct and, likewise, he has evidently not accepted any wrongdoing on his part. As a result, a prolonged and corrosive situation of uncertainty has been in place at CSA. As the CEO he had a duty to prevent that. These factors too weigh against any prospect that a properly functioning employment relationship could be resumed.⁸

Conclusions

- 16 In the course of the argument on the special plea the question was debated whether any finding on sanction that I might make would be final or whether it would be referred to the Board for its consideration and decision. Mr Soni submitted that it would have to go to the Board, on the basis that Mr Majola's contract of employment dated 25 October 2000 stated that "*the Board may be entitled to terminate the executive's employment summarily ...*"⁹ However, as Mr Redding pointed out, that contract was the one entered into with the UCBSA and it was superseded by different terms when Mr Majola took up the post of CEO of CSA. In any event, when the Board took its decision regarding this process, it specifically adopted paragraph 344 of the Nicholson Report which expressly contemplated that the independent chairperson would if appropriate "*mete out a sanction*". Moreover, given the history of this matter, it would in my judgment be quite undesirable for this case to revert to the Board for a final pronouncement. I therefore conclude that the finding that I make on the sanction will be final, subject of course to Mr Majola's right to challenge it in the manner provided for in the applicable laws.

⁷ See for instance *Standard Bank of South Africa Ltd v CCMA & others* [1998] 6 BLLR 622 (LC) at paragraphs [38] to [40]; *Shoprite Checkers (Pty) Ltd v CCMA & others* (2008) 29 ILJ 2581 (LAC) at paragraphs [16] to [21].

⁸ See the review of authorities dealing with the absence of remorse and related deliberations in *Theewaterskloof Municipality v South African Local Government Bargaining Council (Western Cape Division) & others* (2010) 31 ILJ 2475 (LC) at [27] to [30] and [37].

⁹ Paragraph 3.

- 17 Having regard to the considerations outlined above it is my conclusion that the sanction of summary dismissal is clearly appropriate in this case.
- 18 It is accordingly my determination that Mr Gerald Majola is dismissed from his service with Cricket South Africa, with immediate effect.

Electronically issued – original signed

KAREL TIP SC
Chairperson

Chambers
19 October 2012