

# Who Can Be Suspended and Under What Conditions?



**SUSPENDED**



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By Dennis A. Mumble

*Suspensions of individuals are the most common form of discipline meted out by executive committees around the country – yet, no such authority exists anywhere in the SAFA Statutes or the Standard Statutes. It must be clearly understood that the pre-2022 versions of the SAFA Statutes, Rules and Regulations made no provision for a person to be suspended by any executive committee. Article 70 of the 2018 SAFA Statutes drew a firm boundary around the types of sanctions that could be imposed on persons that fall under the jurisdiction of the Association. It states who can be suspended, but not by whom.*

The disciplinary measures in Article 70 are:

- 70.1 for natural and legal persons:
  - 70.1.1 a warning;
  - 70.1.2 a reprimand;
  - 70.1.3 a fine;
  - 70.1.4 the return of awards.
- 70.2 for natural persons:
  - 70.2.1 a caution;
  - 70.2.2 an expulsion;
  - 70.2.3 a match suspension;
  - 70.2.4 a ban from the dressing rooms and/or the substitutes' bench;
  - 70.2.5 a ban from entering a stadium;
  - 70.2.6 a ban on taking part in any football-related activity.
- 70.3 for legal persons:
  - 70.3.1 a transfer ban;
  - 70.3.2 playing a match without spectators;
  - 70.3.3 playing a match on neutral territory;
  - 70.3.4 a ban on playing in a particular stadium;

- 70.3.5 annulment of the result of the match;
- 70.3.6 expulsion;
- 70.3.7 a forfeit;
- 70.3.8 deduction of points;
- 70.3.9 relegation to a lower division.

Article 70 of the 2018 SAFA Statutes has been renumbered as Article 58 in the 2022 edition with no linguistic changes. However, the provisions of the Regional Standard Statutes and the LFA Standard Statutes have not changed and remain as referenced throughout this book. As will be seen below in the provisions of the SAFA Disciplinary Code, Article 70.2 of the 2018 Statutes above refers to sanctions for sporting misconduct and not for general administrative misconduct.

In truth, suspensions of natural persons were strictly limited to misconduct surrounding sporting matters (as opposed to administrative matters) such as instances related to the period leading up to, during, and after matches in accordance with the provisions of the SAFA Disciplinary Code. In terms of Article 19 of the SAFA Disciplinary Code, “*suspension is imposed in terms of matches, days or months. Unless otherwise specified, it may not exceed twenty-four matches or twenty-four months*”.

Therefore, to avoid confusion in the sanctions regime, suspensions arise out of attempts to influence the outcome of a match or competition or as a result of an automatic expulsion from the field of play or multiple cautions in a match/es, involvement in a brawl, inciting hatred or violence, discrimination in the context of a stadium environment, provoking the public

during a match, forgery of match-related documents, threats against or coercion of match officials, etc.

In line with the *nulla poena sine lege clara* principle, Article 11 of the SAFA Disciplinary Code prescribes the following penalties applicable to natural persons:

11. The following sanctions are applicable only to natural persons:
  - i. caution;
  - ii. expulsion;
  - iii. match suspension;
  - iv. ban from dressing rooms and/or substitutes' bench;
  - v. ban from entering a stadium;
  - vi. ban on taking part in any football-related activity.

This sanction has easily been the most abused in South African football for many years. The SAFA Secretariat was forced to issue circulars to all SAFA Members in 2015 and 2016 cautioning executive committees against imposing suspensions against persons because of its obvious irregularity. This practice still appears widespread, as highlighted in the case abstracts in this book.

In view of Article 11 of the Disciplinary Code and Article 70.2 of the 2018 SAFA Statutes, even disciplinary committees are precluded from imposing suspensions on natural persons. Yet, suspensions abound in football circles and have been invoked as *inveterata consuetudo* ("chronic habit") by administrators. But, chronic habit does not oust jurisdiction of the Statutes or Regulations, as CAS pointed out in *de Lima v FIFA* (2011).

In an interesting development that may have implications for how suspensions of persons may have to be dealt with where it may be allowed in the future (it does not

currently exist in South African football, except in the 2022 national SAFA Statutes), the South Gauteng High Court issued a ruling in a case that dealt mainly with *audi alteram partem* rights of accused persons. In *Magashule v Ramaphosa & Others* the court drew a distinction between a *precautionary suspension* and a *punitive suspension* (the principle is important here, not the context):

*a decision in terms of Rule 25.70, whatever its characterisation may be (disciplinary or precautionary), is not a disciplinary proceeding and does not trigger the application of Appendix 3, simply because it falls within the matrix of Rule 25. It could never have been contemplated that fair trial procedures can automatically have application outside of the setting of a trial or a hearing. By their very nature, the specific fair trial guarantees which Mr Magashule relies upon, by reference to Appendix 3, are designed for and can only have practical application in a trial or in disciplinary proceedings.<sup>1</sup>*

Like SAFA, the African National Congress is a voluntary organisation. However, it has a detailed provision in its constitution that allows for its executive committee to suspend a person under various conditions. One of the conditions is if an office bearer is indicted on corruption charges, then a temporary suspension must be imposed.

The court made a distinction between a precautionary suspension and a suspension. It reasoned that a precautionary suspension was not causally connected to a disciplinary process in the ANC constitution and therefore was not punitive. The purpose of the precautionary suspension was in the interests of the ANC to address the risk which, on the facts, it faced.

<sup>1</sup> *Elias Sekgobela v Cyril Ramaphosa, Jessie Duarte and the African National Congress*, High

Court of South Africa, Gauteng Local Division, 9 July 2021, Case No. 2021/23795, para. 101

The court referenced *Long v South African Breweries (Pty) Ltd*, a Constitutional Court ruling where “*the Constitutional Court upheld the decision of the Labour Court that an employer was not required to give an employee an opportunity to make representation prior to a precautionary suspension*”.<sup>2</sup>

The implications for football arising out of this case is that a precautionary suspension that is not causally connected to a disciplinary process is not punitive in nature in view of the absence of a disciplinary objective of the particular Article in the ANC constitution. If it was punitive in nature, the *audi alteram partem* rights of the accused needed to be activated at the disciplinary hearing.

However, the court was also careful to add that “*even when a voluntary association deals internally with the regulation of participation including the suspension of a member, it is not at liberty to do as it pleases. It must still act lawfully.*”<sup>3</sup>

There is no rule in SAFA that allows an executive committee to suspend a natural or legal person (only a match suspension arising out of competition rules is possible for sporting matters). Even after including the new provision in the 2022 SAFA Statutes to suspend a person, the Association is still obliged to act within the bounds of the law.

The most widely used – and abused – sanction in South African football is not even a legal sanction!!!

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<sup>2</sup> *Long v South African Breweries (Pty) Ltd and Others* [2019] ZACC 7; (2019) 40 ILJ 965 (CC) at paras

24-25, para. 186

<sup>3</sup> *Op. cit.*, para. 144