
Undermining the Rule of Law in the Western Cape Nedbank Cup Debacle

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12 December 2025

For weeks now, the unfolding dispute between Santos FC and the Western Cape Football Association over the Nedbank Cup qualification process has drawn intense public scrutiny. Bewildered supporters have watched as the club — one of the most storied in South African football — has remained side-lined despite clear directives from both the ordinary courts and SAFA's own Arbitration Tribunal.

To appreciate the gravity of the situation, let us look at the basics. Santos FC qualified, on the field, for participation in the SAFA leg of the Nedbank Cup. When Western Cape Football Association vindictively kicked them out of the ABC Motsepe League, jeopardising their chances of participating in the Nedbank Cup, Santos attempted to pursue SAFA's internal remedies and sought relief through arbitration, which SAFA failed to facilitate. After appealing to the courts, SAFA was forced to facilitate the arbitration.

The Arbitrator's directive was unequivocal: Western Cape Football Association violated their own rules, and ordered that Santos must be reinstated to the ABC Motsepe League and allowed to participate in the Nedbank Cup playoffs. Yet, Western Cape

Football Association has unlawfully refused to comply.

With a looming deadline of 18 December to submit the SAFA-leg winners of the Nedbank Cup Final 32, Western Cape Football Association's bizarre refusal to schedule Santos in the competition has generated widespread anger and confusion. It has become increasingly evident that the officials responsible for administering the competition refuse to implement the Arbitrator's order under the false pretence that they had the right and standing to appeal his decision.

It is hard to believe that the Western Cape administrators do not understand their own rules and their place in the football ecosystem, so let's demonstrate why this is such a profound breach of football governance by examining the legal foundations of the sport's regulatory system.



Understanding the Regulatory Framework

SAFA, like most sporting bodies in South Africa, is a voluntary association. Its authority does not derive from statute, but from contract. The Constitution of SAFA serves as the binding agreement between the association and its members, and its

rules on dispute resolution sit at the heart of that agreement. They reflect a long-established legal principle: voluntary associations are free to regulate their own affairs, but they are also required to scrupulously adhere to their own rules. Courts have consistently held that decisions of voluntary associations must follow their internal procedures and must be lawful, rational and procedurally fair.

SAFA's dispute-resolution structure recognises these principles. It requires disputes to be resolved internally; it mandates arbitration before a tribunal that is independent in function; and its competitions rules declare that arbitration awards are final and binding, subject only to appeal to the Court of Arbitration for Sport (CAS) in Switzerland. Arbitration is not a suggestion; it is a constitutionally entrenched requirement. The rationale is simple: sport demands finality. Competitions cannot be held hostage by endless appeals and internal politics.

In the Santos matter, the Arbitration Tribunal issued a clear ruling. Under ordinary circumstances, this should have brought closure to the dispute. Instead, Western Cape Football Association's persistent refusal to comply has highlighted a deeper issue: a misunderstanding, or a blatant disregard, of the legal status of SAFA's internal structures.

SAFA's Provincial Structures — including Western Cape Football Association — are administrative arms of the association, not independent legal entities. They have no juristic personality, no independent constitutional standing, and no right to sue or be sued. Their authority is delegated to them by SAFA National and is strictly limited

to what the Constitution permits. South African courts have addressed similar situations for decades. Internal organs of a voluntary association cannot act as if they are separate legal persons. Substructures within a sports body do not acquire standing merely because they are cited in proceedings.

This principle is central to the current dispute. Western Cape Football Association cannot claim the rights of a legal person to appeal because it is not one. Even if named in arbitration documents, the law is categorical: citation does not create legal personality. In practice, this means that Western Cape Football Association cannot be a true "party" capable of lodging an appeal.

This aligns perfectly with international sports jurisprudence. CAS has repeatedly ruled that internal committees or organs of federations cannot appeal arbitration decisions. CAS has held that only clubs, players, national associations and other recognised legal persons may appeal. Internal units — whether leagues, committees or provincial bodies — cannot. The reasoning is straightforward: appeals require a legally recognised appellant, and internal bodies lacking constitutional or statutory standing cannot fulfil that role.

The broader consequence is deeply significant. If Western Cape Football Association were somehow permitted to appeal, SAFA would effectively be appealing against itself. Since the Arbitration Tribunal is SAFA's own creation, an appeal by one of its internal coordinating arms would amount to SAFA challenging the decision of a tribunal that it appointed under its own Constitution. Such a scenario is legally incoherent. CAS has

recognised that and will typically only accept an appeal from a governing body on grounds of procedural violations or if the arbitration panel acted beyond its mandate.

In the language of international sports law, Article 17.5 of the SAFA Competitions Uniform Rules, which prohibits recourse to the ordinary courts and mandates referral to the Court of Arbitration for Sport (CAS), may properly be characterised as a *pathological arbitration clause*. It conflicts directly with Section 38 of the provisions of the South African Constitution and Article 59.3 of the SAFA Statutes, thereby producing an inherently irrational outcome: it treats CAS simultaneously as the final stage of SAFA's internal dispute-resolution mechanism and as an independent, external arbitral authority. This conflation is incompatible with the fundamental principles governing arbitral jurisdiction.

Article 59.3 of the SAFA Constitution, expressly permits the referral of matters to a court of law, subject to the Constitution of the Republic of South Africa, and allows for urgent relief where such relief cannot be obtained through SAFA's internal dispute-resolution mechanisms.

Article R47 of the CAS Code underscores this distinction by providing that: "An appeal against the decision of a federation, association or sports-related body may be filed with the CAS insofar as the statutes or regulations of the said body so provide ... and insofar as the Appellant has exhausted the legal remedies available to him prior to the appeal, in accordance with the statutes or regulations of the said sports-related body."

The condition precedent in Article R47 is that an Appellant must have exhausted internal legal remedies before referring a matter to CAS. The SAFA provision is therefore illogical and is rendered pathological in nature. It also runs counter to established South African law on the matter of ousting the jurisdiction of South African courts of law.

However, SAFA proceeded — erroneously and without due regard for its own constitutional framework — to amend its Competitions Uniform Rules to impose an absolute prohibition on recourse to ordinary courts of law, purportedly on the basis of what it perceived to be a blanket prohibition under FIFA regulations, and in contradiction with its own constitution.

Moreover, the relevant FIFA provision operates subject to a suspensive condition — one that is already fully accommodated by Article 59.3 of the SAFA Statutes.

FIFA's prohibition (Art. 41.3 of the FIFA Statutes) on referrals to courts of law ends at arbitration. It does not mandate referrals to CAS; it merely requires arbitration as a final internal step and recognition of CAS awards by all its member associations; and its rules are rightfully silent on whether CAS is the final stage of the dispute resolution mechanism. Even CAS decisions are subject to review by Swiss courts.

The applicable law in appeals to CAS is the constitution/regulations of the entity whose decision is being appealed against. The subsidiary applicable law in appeals to CAS is the law of the country in which the entity whose decision is being appealed is based. So, even CAS cannot escape South African law.

This blanket ban therefore violates established CAS, FIFA and South African jurisprudence. In particular, both CAS and FIFA are prohibited by Swiss law from requiring the implementation of such a comprehensive ban in its member associations. Swiss law, in turn, is subject to the European Convention on Human Rights (Article 6, in this case).

The Consequences of Ignoring Legal Rulings

The ongoing refusal to implement the arbitration award also undermines the constitutional obligations of SAFA National. As the sole juristic person within the SAFA structure at national level, SAFA is responsible for ensuring that arbitration outcomes are enforced. Its failure to intervene decisively risks breaching the very rules that hold the organisation together and exposes it to potential review by courts, as well as adverse scrutiny from FIFA and CAS, which insist on compliance with independent arbitration frameworks.

For Santos FC, the harm is immediate and tangible. The club has complied with every requirement placed before it, succeeded in every forum it approached, and yet was excluded from a competition in which it had earned the right to participate. This is a fundamental denial of fair administrative action. For supporters, the situation is equally disheartening. They see a club obeying the rules, only to be blocked by administrators who appear to treat constitutional obligations as optional.

But beyond Santos, South African football itself is on trial. The principles at stake are not obscure technicalities; they are the pillars upon which sport governance rests. According to Santos FC, the SAFA CEO

claimed that the national association had no powers to intervene in a stream of a SAFA league. If arbitration awards can be ignored, if internal bodies can claim powers they do not possess, and if the rule of law can be brushed aside when inconvenient, then every club, every supporter and every competition becomes vulnerable to administrative misconduct.

The solution remains both simple and urgent. The Arbitration Tribunal's ruling is final and binding. Santos FC must be included in the Nedbank Cup, and Western Cape Football Association must comply with the directives issued. SAFA National must enforce its own Constitution, not merely in words but in practice. Anything less would signal to the football community that rules are subordinate to internal politics, and that the governance of the sport can be bent at will.

South African football deserves better. Supporters deserve transparency. Clubs deserve fairness. And the integrity of the game demands adherence to the principles that govern it. The Santos FC matter is no longer just a dispute about a cup fixture. It has become a test of whether SAFA's commitment to the rule of law is genuine — or merely written on paper.

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