

INTERVIEW WITH SPORTS LAW GURU PROF. IAN BLACKSHAW

interview by *Samuel Muthomi**

Profile

An International Sports Lawyer and holds a number of visiting Professorships in UK, European and South African Universities. He is a member of the Court of Arbitration for Sport (CAS) and of the Arbitration and Mediation Panels of the UK Sports Dispute Resolution Panel. He has practised widely, both nationally and internationally, and written many articles in British and Foreign Legal Journals on sports marketing issues and the resolving of international sports disputes by mediation amongst many other major publications.

1. What attracted you to pursuing a career in sports law bearing in mind that this is a relatively new discipline and has only started emerging maybe in the last 20 years?

Many years ago, I joined The Coca-Cola Company in London as the in-house legal counsel for Northern Europe. I was appointed because of my expertise and practice in intellectual property law. Evidently, Coca-Cola has been a pioneer in the field of sports sponsorship, sponsoring many major sports events, including the Olympic Games, of which it is one of the top sponsors. This experience gave me the opportunity to become professionally involved in the field of sports marketing at the national, regional and international levels. I naturally developed and maintained an interest in, and have kept abreast with legal developments in this field. In fact, I have been a pioneer myself - in many ways - in the development and evolution of international sports law as a legal discipline, which, as you quite rightly state, has gathered momentum in the last twenty years or so, particularly spearheaded by the work of the Court of Arbitration for Sport (CAS) in Lausanne, Switzerland, founded in 1983 and operational in 1984, of which I am a member.

* Sports Lawyer, Nairobi. Date: 24/5/2011.

2. What is the role of a sports lawyer in the relatively unchartered African terrain?
The role of a sports lawyer in Africa is the same as elsewhere in the world - sport is a global phenomenon. A sport lawyer therefore has a duty to represent sports bodies and sports persons in their legal affairs, which embrace contracts, regulatory, disciplinary, intellectual property rights, broadcasting and new media, sponsorship and other forms of sports marketing of sports events, sports teams and individuals. I must add that sports law is wide, evolving and exciting field of legal practice, as sport has become a global industry in its own right worth more than 3% of world trade. In other words, mega bucks!
3. How has Africa contributed to the Sports Law jurisprudence?
To my knowledge, this is through a number of cases brought before and decided by the CAS, which, over its more than twenty-six years of operation, is contributing to a discreet body of sports law – a so-called ‘*Lex Sportiva*’.
4. Hosting major sporting events in Africa requires enormous government support. What role can the government play in terms of enacting and implementing sports (events) related legislation?
The role of governments generally, is to create the legislative framework in which businesses can be established and flourish, and this also applies - in no small measure - to the business of sport. The legal climate has to be sports-friendly and supportive. The political will has to be there and also public financial resources have to be allocated to the promotion of sport, especially in a social and health context.
5. Issues of misconduct and safety concerns have reared its ugly head in the African sporting scene. What’s your take especially in the case of football hooliganism?
Football hooliganism is contrary to the aims and enjoyment of sport and minorities engaging in such anti-social and unsporting activities should not be allowed to undermine the integrity of sport. Strong legal measures supported by the state are needed.
6. Doping is a common occurrence in the sporting realm. What is the role of sports bodies in a rather unguarded realm?
Their aim is quite clear: to work towards drug-free sport, especially through the World Anti Doping Agency, whose motto is: ‘play true’!
7. Sporting disputes in Africa and government interference are more often than not the norm of the African sporting scene. Is self-regulation of sports in Africa a rather far-fetched idea?

No, like everything else in life, this is something which takes time and persistence in this cause will ultimately be rewarded.

8. Many of the rich oil nations in the Arab world have in the recent past tapped into the wealth of talent in Africa by giving monetary incentives in exchange for sports men and women to change their nationalities and represent them. What is the best way to curb such practices?
Sport, as I mentioned earlier, is now big business, and market economics will always prevail, so, in my view, it is difficult, if not impossible, to do anything to stop these trends, other than, perhaps, providing equivalent or better financial conditions at home for local athletes. Funding is always a problem.
9. What is the best approach in creating sound financial management in African sporting institutions bearing in mind that most are not self-sustaining?
Maybe through national lotteries and the distribution and allocation of their incomes to ‘good causes’, such as sport. The UK national lottery is contributing substantially towards the costs of staging the 2012 Olympics in London.
10. Sports related lotteries have been touted as a potential means of raising funds to run sports bodies and events. What are the dangers and how can we learn and nurture such opportunities?
See my answer to the previous question and perhaps take a leaf out of the UK’s book.
11. What is the correlation between tax waivers and sporting events and what other incentive can African states give in attracting and hosting international sporting events?
Major sports bodies, such as FIFA, require complete tax waivers from countries as one of the criteria for awarding the bids to countries to host their events, such as the World Cup. Also, legislation needs to be passed to protect the intellectual property rights of sports bodies in their events from infringers, especially so-called ‘ambush marketers’.
12. What is the role of WIPO and National Governing Bodies (NGBs) in protecting intellectual property rights in the sporting realm? What would you propose is the best way forward?
National Sports Governing Bodies are charged with the responsibility of safeguarding the intellectual property rights in their sports and sporting events. Likewise, WIPO, through its Arbitration and Mediation Centre, based in Geneva, Switzerland, of which I am also a member, can protect sports-related intellectual property rights, especially in relation to sports domain name disputes, particularly so-called cases of ‘cyber squatting’. See www.wipo.int.

13. Why is it that most African sports personalities have not been able to exploit their image rights?
I really am not in a position to answer that question. Perhaps, there is a lack of commercial awareness and legal expertise in this area.
14. Is the time ripe for the African continent to set up a sports council (similar to the Sports Minister's Council under the European model) under the umbrella of the African Union? What are the potential implications of setting up the sports council?
It would seem so. But, as mentioned above, there has to be political will and funding supporting such a venture, if it is to be successful.
15. Is it feasible for Africa to develop a sports model and what are the advantage and disadvantages of such an approach in relation to other models such as the European Model?
The European pyramidal model of sport seems to be working well, but depends on the autonomy of the sports bodies for its success, which, in turn, depend upon their sustainable financing. Of course, this is also a cultural matter.
16. What is the role of arbitration in resolving sports disputes as seen by the Court of Arbitration of Sport (CAS)? Should the local courts be the courts of first instance or should CAS be seen as the court of last result?
Both the ordinary courts, especially where injunctive relief is required, and the CAS have a role to play in the settlement of sports-related disputes. For the sporting world, the CAS is fast becoming what its founders intended it to be: 'the supreme court of world sport'.
17. Being an author of many books and articles, what is your advice to aspiring sports lawyers?
Do what you have done and take a master's degree in sport; and also continue researching, writing and practising in this exciting and ever-evolving field of sports law!