

Oluwafemi Emmanuel Olowononi (PhD, LL.M, BL) is a Barrister, Solicitor and Notary Public of the Supreme Court of Nigeria; Football Agent; Sport Disputes Arbitrator and Senior Lecturer, Corporate Law Department, Nigerian Law School, Headquarters, Abuja, FCT. immafemi@yahoo.com

LEGAL ANALYSIS OF RULES OF FOOTBALL TRANSFER MARKET AND LESSONS FOR AFRICA

This paper takes a detailed examination of football transfer market with the essential underpinning principles and philosophical justifications of the rules of the market. It examines rules such as use of transfer window, issuance of work permit, individual Football Federation clearance rules, contractual stability rules, training compensation system rule, solidarity mechanism with nationality restrictions put in place by FIFA and concludes that many of these rules are restrictive with legal hiccup.

The paper observes that International football is organized in a hierarchical pyramid structure, with FIFA on top of the pyramid. However, FIFA is a private association operating under Swiss law and has its base in Zurich. It organizes international competitions like the World Cup and sets up rules and regulations which are to be followed by the actors further down in the hierarchy. As FIFA is exercising monopoly power over football, it is treated as a quasi-public body, hence, using its independency in a way that generates controversies and in contradiction to federation member countries municipal laws.

The article considers these controversies with applicable examples in the football transfer market vis-à-vis the issues arising from the global football to the Nigerian football industry and concludes with suggestions and symmetry between FIFA and the Federations.

INTRODUCTION

Football industry is a highly sophisticated subset of the sport industry with the transfer market as its most commercialized sector.¹ The game of football has been transformed to commercialized activity in which financial investors support teams with the aim of making financial profit and operate a ruthless business operation.²

FOOTBALL CONTRACT AND TRANSFER MARKET

The transfer market in the football industry operates on football transfer contract. Football transfer contract is a term used to describe the legal contractual issues at work in the football industry.³ Football transfer contract is contract drawn with terms and clauses covering diverse areas of law such as contract, sports law, entertainment law, tort, criminal law, commercial law, intellectual property, labour law, law and arbitration.⁴ The development of the concept of transfer market and

¹ E.O. Olowononi, "Football Contract Disputes: Legal Pitfalls and Prospect" (2016) Vol. 1 (Issue 1) Miyetti Quarterly Law Review, p.93; see E. Lord & M.A. Stein, "Social Rights and The Relational Value of The Rights to Participate in Sport, Recreation, and Play" (2009) 27 Boston University International Law Journal 249

² See J. Walvin, "The Only Game: Football in Our Times" (London: Pearson Education, 2001). While the idea of saying "a ruthless business" may be a bit exaggerated; this writer does agree with the author because of the billions of dollars involved, the various sponsorship deals and merchandising, television rights, endorsement, advertisement, licensing, subversions and other numerous commercial activities. Player transfers, sales of gadgets, souvenirs and tickets, matches, sales of broadcasting rights, player salaries and member fees are all examples of economic activities within the football sphere which all carry economic implications. Hence, it leaves no doubt that sports and economics overlap.

³ For the meaning of contract, see the Nigerian cases of *Niger Progress Ltd v. North East Line Corporation* (1989) NSCC P12. Also see the case of *Neka B.B.B. Manufacturing Co. Ltd v. A.C.B. Ltd* (2004) 2 NWLR (pt.858) 521; see also, E.O. Olowononi, "Is What is Good for the Goose also Good for the Gander?: A Diagnostics Appraisal of the FIFA's Proscription of Third Party Ownership of Professional Footballers' Rights" (2018) Kampala International University Journal of Social Sciences <http://www.ijhumas.com/ojs/index.php/kiujoss/article/download/446/417/> Accessed 12 December 2020

⁴ There seems to be no consensus among scholars as to whether sports law is a separate body of law or the general application of law. See D. Timothy, *What is Sports Law?* (2001) 11 Marquette Sport Law Review 211; See also, L. Halgreen, "European Sports Law; A Comparative Analysis of the European and American Models of Sports"

transfer contract in the football industry may be traced to the emergence of professionalism in football, media scrutiny, commercialization of football, impact of law and modern realities.⁵

Football transfer contracts go beyond an arrangement between players and club as it reflects many spheres of football such as players' transfer, licensing, sponsorship, endorsement, merchandising, image rights, broadcasting arrangements, advertisement, insurance, kits and apparels manufacturing, collective bargaining agreement, discipline, loan, players and clubs' obligations, restraint of trade, privacy rights, defamation, football regulations and football arbitration.⁶

The transfer market is the arrangement through which players move from one club to another either within the same continent or intercontinental through the FIFA international transfer system. The system therefore allows clubs to buy and sell players. The transfer market in the football industry is economic exchange in every sense.⁷ The process is comparable to a typical sale transaction that involves a selling football club negotiating and agreeing on a fee with the buying club, the

(2004) pp.23-32 <<http://www.ssm.com/abstract=1625919>> accessed on 23 January, 2020; for further reading see E.O. Olowononi, "Football Contract Disputes: Legal Pitfalls and Prospect" op cit (n 1)p.95

⁵ Christopher B. Carbot, "Comment, The odd couple: Stadium Naming Nights Mitigating the Public-Private Stadium Finance Debate", (2009)4 Florida International University Law Review 515; see also Douglas E. Abrams, "Sports in the Courts: The role of Sports References in Judicial Opinions", (2010)17 Villanova Sports & Entertainment Law Journal 1; see Jeremy A. Wale, "Adequate Protection of Professional Athletes' Publicity Rights: a Federal Statute is the Only Answer", (2009)11 Thomas M. Cooley Journal Of Practical & Clinical Law 245; see also, E.O. Olowononi, "Is What is Good for the Goose also Good for the Gander?: A Diagnostics Appraisal of the FIFA's Proscription of Third Party Ownership of Professional Footballers' Rights" op cit (n 3)

⁶ See also Bankole Sodipo, "Football Contracts" in Lere Fashola and Demola Soile-Balogun (eds) *The Law, the State and the Challenges of Nation Building* (legal Blitz publications, 2008) p.185; see also, E.O. Olowononi "Career Opportunities in the Global Sport Industry for Lawyers and Challenges of Nigeria Legal Profession"(Reading in Contemporary Law and Policy Issues: Essays in Hononur of Dr., The Honourable Justice Iche N. Ndu), (2013)p.400

⁷ see Margaret MacDonald, 'Transfers, Contracts and Personhood - An Anthropological Perspective' (Feb,2003) International Sports Law Review pp. 3- 10

player and his agent subject to medical fitness pass and other contractual terms. The player signs the transfer contract with the financial benefits.

JUSTIFICATION FOR THE FOOTBALL TRANSFER MARKET

The introduction of the transfer market in the football industry is evidence of the regulation of football over the years, media scrutiny, commercialization of the game of football and impact of FIFA hegemony.⁸

In examining the philosophical justification for the advent of football transfer market, this paper observes that there is still divided opinion as to whether the transfer market operates to the benefit of clubs, football federation, fans or the players.⁹

The argument in support of transfer market is usually on the ground that the game of football is a team work and the competition in a league is as a frozen entity. Therefore, it is contended that teams must be regulated market with reference to time in a season that players may be added to the squad. In this regards, therefore tailored made transfer time, financial fair play and other concepts were introduced.

Another justification for the introduction of the transfer market in the football industry is the need for cooperation in the competition that exists between teams cannot be overemphasized for success of the entire league. Take for instance, if only certain teams are allowed the right to best players while other to second-best

⁸ ibid

⁹Gardiner, Simon and Welch, Roger, "The Contractual Dynamics of Team Stability Versus Player Mobility: Who Rules 'The Beautiful Game', (2007) Entertainment and Sports Law Journal electronic copy available at https://go.warwick.ac.uk/eslj/issues/volume5/number1/gardiner_welch accessed on the 14th March, 2020.

players on the playing field, fans may lose interest in the league and the teams and the football federation will suffer for it.¹⁰

It is this argument that leads to some limitations, restrictive measures and constraints on player transfer fees as well as the total amount in a season under the financial fair rule in the football industry that a club may spend in acquiring players.¹¹

The argument therefore and the justification for the transfer market is the fact the system ensures team stability without unnecessary constraint on player mobility. In this sense, there is a balance to the interest and right of players to move and also a balance to the desire of clubs to plan for the football season. Also, the fans are able to predict with high accuracy the availability of player or otherwise consider as an idol in a club for a particular season in purchasing the season long tickets of the club.

Over the years, limitations on the players' rights to freely move from one team to another, issue of third party ownership over a player in a transfer deal, transfer fees

¹⁰ Real Madrid Football Club broke its own world transfer market record by paying €94 million for Cristiano Ronaldo, just a week after paying €65 million for Brazilian star Kaká from AC Milan, <https://www.vbrazil.com/culture/sports/football/player/kaka.html> accessed 13 October, 2020; see also, "Are Footballers Worth it? The Value of Transfer in the Spanish Football League" (2009) <https://www.frotier-economics.com> accessed 13 October, 2020; in 2013 Real Madrid paid a world Record Fee of 100 million Euro for Gareth Bale, eclipsing the previous Record Fee of 94 million Euro the Club Hitherto Paid for Cristiano Ronaldo in 2009. https://wikipedia.org/wiki/Gareth_Bale accessed 11 October, 2020; see also, Eden Hazard Transfer to Real Madrid for the Sum of 140 million Euro plus add-ons <https://www.goal.com/en/news/hazard-set-to-complete-real-madrid-move-as-chelsea-accept/136esnbli75ur1l8khdz0vxq6> accessed on 13 October, 2020. See also The Contractual Dynamics of Team Stability Versus Player Mobility: 'Who Rules the Beautiful Game?' https://www.researchgate.net/publication/251276410_The_Contractual_Dynamics_of_Team_Stability_Versus_Player_Mobility_Who_Rules_The_Beautiful_Game? Accessed 13 December, 2020

¹¹ See for further reading Joseph P.B. "Antitrust and Sports: Must Competition on the Field Displace Competition in the Marketplace?"(1993) vol.60 Tennessee Law Review pp.263-294, 278.

payment, issue of contract jumping, tapping of player etc. have occasioned litigation.¹²

SELECTED CONTROVERSIAL RULES IN THE TRANSFER MARKET

In achieving the objectives identified above, FIFA introduces the transfer window rule. The transfer window rule permits players to terminate their contracts only at the end of the football season; otherwise the club is able to hold on to a player's registration so that the player is unable to play for the new club that he has joined. This transfer window was introduced 2002/2003 football season in Europe by UEFA with negotiation and collaboration of UEFA, FIFA and the European Union EU. Today, the rule applies in all confederations with little variations here and there to suit peculiarities and federations existing legal framework. In Europe, the transfer window is opened in January which is mid-season and second from the start of the close of the season to the end of the month of August.

The introduction of the transfer window is criticized because clubs that may have to rely on the flexibility to buy, sell or loan players whenever needed for football or financial reasons are estoppel from doing so despite commercial expediency. It is that such clubs have to wait till the opening of the transfer window. Therefore, it may be concluded that the rule will affect financial health of weak clubs.

However on the other hand, the rule brings certainty for the fans in following their favorite player for the season knowing very well that the player will be there till the opening of the next transfer window. This is no doubt helps the fans to

¹²Williams B. 'Professional Footballers' Rights: Is a Complete Prohibition Necessary?' (2008) Texas Review of Entertainment and Sports Law, 2008. The issue of third party ownership of players' economic rights after the attracted international attention in aftermath of the Carlos Tevez transfer scandal at West Ham United in the English Premier League. The Tevez scandal caused the Premier League and FIFA to ban third party ownership.

purchase tickets ahead and be committed to the club. It enables clubs to also plan, adjust and build around existing player subject only to the unforeseen circumstance such as unexpected injury to a player. On the part of the player, it brings predictability and full concentration especially in the era of media speculations and other distraction if transfer were to be on a daily basis.

Another controversial rule in the transfer market in football industry is issue of holding to a player transfer contract even after the expiration of his contract with the club. Before the case of *ASBL Union Royale Belge des Societes deFootball Association & others v Jean-Marc Bosman*,¹³ the last football club to hold a player's registration could demand a suitable transfer fee in order to release their registration even after the expiration of the contract of the footballer.

After the case, FIFA prohibited Clubs from holding on to the registration where the contract has expired.¹⁴ Moreover players are expressly permitted to sign a pre-contract agreement to join another club within the last 6 months of their existing contract.¹⁵ The court held succinctly:

“In the view of the considerable social importance of sporting activities and in particular football in the Community, the aims of maintaining a balance between

¹³ [1996] 1 CMLR 645 (Case C-415/93).

¹⁴ Op cit (n 13) Article 13. See also E.O. Olowononi “Football Contract Disputes: Legal Pitfalls and Prospect” op cit (n 1) p.100

¹⁵ Article 18 para 3 FIFA Regulations for the Status and Transfer of Players 2005 version. The new FIFA Regulations 2020 make no express provision for this though different leagues still recognize the right of players to start negotiation 6 months to the end of their contract. See also, Nationality Based Playing Quotas and the International Transfer System Post-Bosma https://www.researchgate.net/publication/303537688_Nationality_Based_Playing_Quotas_and_the_International_Transfer_System_Post-Bosman Accessed 12 December 2020

*the clubs by preserving a certain degree of equality and uncertainty as to results and of encouraging the recruitment and training of young players must be accepted as legitimate”.*¹⁶

In the case of Webster, the player entered into employment contract with Heart of Midlothian FC.¹⁷ He terminated his contract with the club in July 2006 when he tendered his resignation. In August 2006, Webster entered into another contract with Wigan Athletic. Wigan therefore applied for the release of Webster’s International Transfer Certificate (“ITC”) from the Scottish Football Association through the English football federation. Hearts opposed the transfer and the matter was referred by the SFA to FIFA.¹⁸

Another controversial issue in the football transfer market is the issue of third party ownership of professional footballers’ rights.¹⁹ This practice involves a professional footballer signing a contract with a third party whereby the third party finances the player's development and professional growth in the football industry in consideration for the rights to participate in the player's transfer fee.²⁰ It was the saga that trailed the transfer of Carlos Tevez and Javier Mascherano in the English

¹⁶ *ibid*

¹⁷ Matt Scott, 'Webster Wins Landmark Ruling Over Contract' *The Guardian* (London 30 January, 2008) <https://www.theguardian.com/sport/2008/jan/31/rugbyunion> accessed 13 October, 2020.

¹⁸ On 1st September 2006, a single judge from the FIFA Players’ Status Committee, Mr Gerhard Mayer-Vorfelder, issued his decision that the transfer was ratified. It was determined that Webster had terminated his employment outside Article 17’s ‘Protected Period’ (i.e. the three year two year period) and that as a result of such compliance, the International Transfer Certificate should be released to the FA.

¹⁹ Burgess Williams, 'The Fate of Third Party Ownership of Professional Footballers' "Rights: Is a Complete Prohibition Necessary?" 2008 *Texas Review of Entertainment and Sports Law* pp. 79 – 101.

²⁰ See E.O. Olowononi, "Is What is Good for the Goose also Good for the Gander?: A Diagnostics Appraisal of the FIFA’s Proscription of Third Party Ownership of Professional Footballers’ Rights” *op cit* (n 3) ;

premiership that brought third party ownership of professional footballers to media scrutiny, academic discourse and legal analysis.²¹

FIFA reacted to the scandal by enacting Article 18b.²² The amendment took effect for the 2008-2009 season, and states,

Before registering a player for a club the board will need to be satisfied there exists no agreements with third parties under which such third parties continue to own any registration or economic rights or the like in the player following registration.

FIFA threatens disciplinary measures for any clubs that fail to abide by Article 18.²³ Therefore, clubs entering into contracts where a third party holds the economic rights of a player could be subject to penalties such as playing a match without spectators, deduction of points, demotion to the lower league and expulsion from the league.

Contract-jumping is another controversial issue in the football transfer market globally.²⁴ The issue of contract jumping was subjected to media scrutiny and legal analysis when in 1999 football season Nicolas Anelka announced his intention to terminate unilaterally his existing contract with Arsenal Football Club. Anelka had four more years of his contract to run and Arsenal was not prepared to release him

²¹ See E.O. Olowononi "Football Contract Disputes: Legal Pitfalls and Prospect" op cit (n 1) p103

²² Op cit (n 13) Article 18ter of which prevent any club from entering into contracts where a third party could influence it; FIFA equally prohibit clubs from authorizing third parties to enter into transfer or employment contract.

²³ Ibid; see also, E.O. Olowononi, "Is What is Good for the Goose also Good for the Gander?: A Diagnostics Appraisal of the FIFA's Proscription of Third Party Ownership of Professional Footballers' Rights" op cit (n 3)

²⁴ E.O. Olowononi "Football Contract Disputes: Legal Pitfalls and Prospect" op cit (n 1)p107

from his binding contractual obligations except with the payment of exorbitant transfer fee.²⁵

It is observed that fixed-term and fairly long contract is the standard in professional football unlike amateur arrangement.²⁶ This is a mechanism for tying a valuable and on-the rise player to a club for a fairly long time. It is conceded that it is absolutely possible for clubs and players to enter into contracts for short periods to the extent of contract on a match by match basis.

Unfortunately for Anelka, the football transfer system operates a rule that provides that the club that holds the registration for a player under contract is not required to release that registration until and if a transfer fee has been agreed. Therefore, it is submitted that even if Anelka had walked out on his contractual obligations with Arsenal football club, he would not have been able to play for any other club until the expiration of the terms and years of his contract.

It does appear that this FIFA Rules is more liberal than that existing under the English contract law and many commonwealth countries. This is because a player is given the right to terminate his contract under certain circumstances even if the club still wishes it to continue.

In practice, however, we contend that the typical position is more restrictive. This is because the FIFA Rules only permit players to terminate their contracts at the end of a football season..... Ozil saga

²⁵ The Contractual Dynamics of Team Stability Versus Player Mobility: 'Who Rules the Beautiful Game?' https://www.researchgate.net/publication/251276410_The_Contractual_Dynamics_of_Team_Stability_Versus_Player_Mobility_Who_Rules_'The_Beautiful_Game'? Accessed 13 December 2020

²⁶ For further reading on

The rule permits club to hold on to a player's registration so that the player is unable to play for the new club that he has joined. Under contract law, employees are able unilaterally to terminate their employment contracts at any time provided is able to pay the equivalent of any damages that a court is likely to award for the breach of contract involved and subject to contractual terms such as restraint of trade and non-disclosure.

The courts has power to grant injunctions restraining an employee from terminating the employment in breach of contract where that contract contains a term preventing the employee from working in relevant line of business for anyone else during the currency of the contract provided there was a contractual agreement.

It is a fundamental legal principle that courts will not compel performance of a contract of employment or any contract which involves the provision of personal services.²⁷ Therefore injunctions will not be granted where the effect is in practice to compel performance of a contract.²⁸ This makes it very difficult to secure injunctions in the context of sport unless the sports participant is in a position to earn an equally remunerative living by other means, such as advertising or television work, for the duration of his contract. The reluctance to grant injunctions is reinforced by the principle that courts will decline to grant injunctions in circumstances where damages can be regarded as an adequate remedy.²⁹

²⁷Ever since the case of *Warner Brothers Pictures Incorporated v Nelson* [1937] KB 209, where the actress Bette Davies (unsuccessfully) sought to break her contract with her film studio it has been clear that this principle applies to the entertainment industry. See also, The Contractual Dynamics of Team Stability Versus Player Mobility: 'Who Rules the Beautiful Game?' https://www.researchgate.net/publication/251276410_The_Contractual_Dynamics_of_Team_Stability_Versus_Player_Mobility_Who_Rules_The_Beautiful_Game?

²⁸As exemplified by the decision in *Page One Records Ltd v Britton* [1968] 1 WLR 157

²⁹However, recent case law demonstrates a very strong reluctance on the part of modern judges to follow the example of the court in *Nelson* which did grant an injunction to Warner Brothers. In *Warren v Mendy* [1989]

Contract tapping is another controversial issue in the football transfer market that generates issues and legal discourse.³⁰ The rule provides that a club wishing to engage the services of a player who is at present under contract with another club shall, before commencing any negotiations with that player, be obliged to inform his club in writing of its interest. The rule provides for sanction against an offending club.³¹ The rule makes it a punishable offence for any club to directly or indirectly attempt to induce any players of another club with a view to offering employment without the consent of the other club.³²

This issue was examined in the case of Ashley Cole and Chelsea FC. The Chelsea football club was fined by the Premier League (FAPL) for breach of this rule. It was said that the Chelsea football club approached Ashley Cole directly and induced him with mouthwatering fees to terminate his contract with Arsenal for a move to Chelsea football club.³³ Today, the rule is succinctly captured in particular under the FA Hand Book Rule C1.14.2 (b). It provides that:

1WLR 853, the Court of Appeal refused an injunction to restrain the defendant from inducing boxer Nigel Benn to break his contract with his manager by participating in a match arranged by the defendant. The court held that it was unrealistic to conclude that a boxer could choose between his sport and alternative employment. This case was cited and followed by the High Court in *Subaru Tecnica International Inc v Burns & Others* (2001) WL1479740. The court refused an injunction which would have prevented Richard Burns, the 2001 World Rally Champion, from breaking his contract with Subaru by driving for Peugeot.

³⁰ E.O. Olowononi "Football Contract Disputes: Legal Pitfalls and Prospect" op cit (n 1)p108

³¹ Op cit (n 1) Article 17 para 5

³² See for instance, Article 2.6 of the Rules and Regulations of the Nigeria National League 2010/2011 Season.

³³ See for instance <<https://www.premierleague.com/en/files/publications>> accessed on the 13th October, 2020.

*“the Player may not be approached by any other Club, or Club Official of any other Club, or any person with a view to inducing the Player to leave the Club for which the Player is registered, except with the written permission of that Club”*³⁴

This rule applies to all players under a contract and even to a player out of contract if his current club has offered him a new contract that he has not rejected. Otherwise, unless a player has the consent of his current club to approach other domestic clubs, the player is to wait until a current season is over. The validity of what is now Rule C1.10.9 has been accepted, at least implicitly, by the English courts as of today.³⁵

It is our contention that players are seriously inhibited by this rule as against the clubs. Therefore, it is not expected that clubs will sue against a rule which seems to give them leverage. Yet again, the essential question is why should footballers be treated any differently to employees in general under employment and contract law? Most employees, including those on fixed term contracts, are not restrained in any way, or at any time, from seeking to negotiate a contract with a prospective employer either on the expiry of a current contract, or with a view to the buying out of that contract. However it is expected that players may rise against the rule in the nearest future.

In short, it may be argued that Rule C1.10.9 constitutes an invalid restraint of trade that is contrary to public policy. Additionally, it could be argued that the rule is an unjustifiable constraint on a player’s freedom of movement under Article 39.³⁶

³⁴ Rule C1.14.2(b)

³⁵Christian Ziege (*Middlesbrough Football & Athletic Co v Liverpool Football & Athletic Grounds plc* [2002] EWCA Civ. 1929. In this case a Commission of Inquiry appointed by the Football Association Premier League (FAPL) found that both Liverpool FC and the player Christian Zeige were in breach of Premier League Rules prohibiting clubs approaching players still under contract, or vice-versa, and also prohibiting players from disclosing confidential terms in their contracts to other persons

³⁶ op cit (n 22); see E.O. Olowononi “Football Contract Disputes: Legal Pitfalls and Prospect” op cit (n 1)p.110

The latter contention is reinforced by the fact that other leagues in Europe do not have an equivalent of Rule K.5 (now Rule C1.10.9). It is even argued that the rule is contrary to EU law.³⁷

With respect to arguments as to whether the Rule is reasonable and thus a valid restraint, it can be argued that, as explained above, other mechanisms to curtail the freedom of movement of valuable employees such as the use of ‘garden leave’ provisions and post-employment restraints are used by employers and upheld as valid by the courts. Moreover, players enjoy significantly high salaries and untypical security of employment during the currency of their contracts.³⁸

Footballers are paid handsomely and earn hugely even when injured or when not selected, and for these reasons players especially towards the end of their careers preferred long term contracts as such is in their interests than those of their clubs. Rule C1.10.9 constitutes an effective device in maintaining respect for subsisting contracts. Overall, there is an analogy between the operation of the Rule and using contractual mechanisms to protect other proprietary interests such as trade secrets and goodwill. It is equally argued that the rule is necessary for competitive integrity, contractual and team stability and competitive balance.³⁹ It has even been argued that the rule is also advantageous to the fans as contract stability is not just an issue for club and player but also for supporters who have paid significant sums

³⁷Lloyd Freeburn, “European football’s Home-grown Players Rules and Nationality Discrimination under the European Community Treaty” (2009) 20 Marquette Sports Law Review 177. The legal advice provided to FIFPro by its lawyer Wil van Megen suggests that the rule is against European law

³⁸ See *Home Counties Dairies Ltd v Skilton* [1970] 1 ALL ER 1227 and *White (Marion) v Francis* [1972] ALL ER 857. 25 The garden leave provisions were enforced in the football industry in the case of *Crystal Palace v Bruce* (2002) QBD (unreported).

³⁹Duru J. “This Field is Our Field: Foreign Players, Domestic Leagues, and the Unlawful Racial Manipulation of American Sport” (2010), 84 Tulane Law Review 613.

of money for their season tickets in the anticipation that particular star players will, in accordance with their contracts, be with their club for the coming season.⁴⁰

It is our contention that the rule should provide for distinction and be selectively applied. As the Rule stands, no distinction is made between a player whose contract has several years to run and a player who is in the last year of his contract and is free to move on expiry of it. It is our contention that the latter need to establish his prospects both with his current club and prospective new clubs to advance his football career.

LEGAL ISSUES ARISING AND CONCLUSION

Firstly, this work examined the issue of player right, team stability and players' mobility vis-à-vis football transfer window. The Court held in Bosman's case that the aims of maintaining a balance between the clubs is by preserving a certain degree of equality and uncertainty as to results and of encouraging the recruitment and training of young players.

These are practices which many outsiders measuring them against the law of the land might perceive of as akin to slavery, yet when considered as internal issues they have traditionally been accepted by players, fans, teams, leagues, and the legal profession as simply being part and fun of the game. It is often said that, in professional sport, the money players make justifies their lack of freedom. Arguments in support of windows are predicated on the reality that team sport is seasonal and clubs need to plan for that period considering not only the available resources but also the various competition, marketability and setting priorities

⁴⁰Gardiner, Simon and Welch, Roger, "The Contractual Dynamics of Team Stability Versus Player Mobility: Who Rules 'The Beautiful Game'?", (2007) Entertainment and Sports Law Journal.

right. The transfer window system promotes competitive balance between clubs which is partially determined by clubs being able to restrict the movement of. At certain points in the season when cups and league matters such as promotion and relegation are determined, the need for restrictions on transfers and temporary loans can be more readily justified. Indeed. It can be argued that transfer windows similarly support the requirements of team stability by creating some notion of equal purchasing strength between clubs by limiting when purchases can be made. Additionally, it works to reinforce the stability of players' contracts.⁴¹

Also, what becomes apparent is that there is tendency in sport to keep things internal. There is reluctance in going out of the bounds of rules and regulations of a sport when seeking to resolve dispute. An example is the case of physical violence, antitrust issues, fundamental rights and many others.

The nature of FIFA⁴² rules which governs extensively transfer market in the football industry in all continents of the globe without deference to National sovereignty and the disparity in the development of the game across the various continents must be reconsidered as well as other rules. Take for instance, does the FIFA rule which oblige clubs to release players under contract to national federations without payment to play in matches, as well as the unilateral and restrictive fixing of the international calendar of matches, constitute illegal restrictions of competition, or abuses of a dominant position, or obstacles to the exercise of fundamental freedoms conferred by the various rules of law of nation members? It is submitted that good relation whether in sport, politics, family,

⁴¹ There are similar views on this.

⁴² The dominant nature of FIFA is presently under threat from various pressure groups such as the G-14. The G-14 is a pressure group representing 18 Europe's most powerful football clubs

business or anywhere for that matter require more than just a rigid structure of rules.⁴³

As for the rules that Contract Player, either by himself or any Person on his behalf, shall not either directly or indirectly make any approach to another club (s) without having obtained the prior written consent of his club; it is hard for this writer to see how this rule can be anything other than an unreasonable restraint or disproportionate restriction on freedom of movement of players. However, with the adoption of the FIFA Rules by the different federations and domestic leagues the issue of termination of contract by either player or club as being laid to rest as both club and player can mutually terminate the contract on sporting just cause⁴⁴ or 6 months before the expiration of their contract which enables such player to approach potential suitors (clubs) that may have interest in the service of such player.

In respect of the issue of contract-jumping, we have noted earlier that it is a fundamental legal principle that courts will not compel performance of a contract of employment or any contract which involves the provision of personal services. This trite law cannot be better celebrated than in the sport industry that requires not only personal services but as well as player's personality, individuality, goodwill

⁴³ The G-14 made a case against the FIFA in respect of the French defender Eric Abidal of then Olympique Lyon who was laid off for four months after he broke his foot during international friendly against Costa Rica in November 2005; also Abdelmajid Oulmers of the Royal Sporting Charleroi FC who was laid off for eight months as a result of an injury sustained in the course of an international friendly against Burkina Faso in November 2004; See generally H. Andrew and P. Edwards, "G-14 Scores Against FIFA"(2007) International Sport Law Review Pg 1 - 4

⁴⁴The meaning of sporting just cause is not defined and there is clearly scope and possibilities for different interpretations at the level of national courts. However, for the purposes of international transfers only, Article 15 of the FIFA rules stipulates that sporting just cause includes failure to involve an 'established Professional' in more than 10% of a club's official matches.

and sacrifices. While this paper will not support opening of gate for contract-jumping; it is humbly submitted that the symmetry lies in buying-out- clause.⁴⁵

We also noted the issue of third party ownership interest of a player and the outright ban of same by FIFA. We suggest regulation of the system rather than proscription of it. The system work especially in the developing countries as young players are developed, exposed and their careers financed by the third party in anticipation of financial reward. It is purely business and so be it. FIFA decision to ban the system can only be seen as an attempt and battle to maintain its hegemony and autonomy.⁴⁶ It is suggested that FIFA may insist on total disclosure of third party ownership interest in any transfer deal, short term deals and allowing confederation members to take a stand considering the efficacy, mutuality and economic reality of their distinct continent. The game is too advanced; take for instance in Europe if compare with Africa. What is good for the goose may not always be good for the gender

Football is about competition. Clubs must be encouraged, if they are going to have youth development programmes, to be able to pick out young boys and girls and develop their talents, skills and knowledge of the game.⁴⁷ For instance in Nigerian Premier League, Article 1.8(1) of the Rules and Regulations mandates each team to raise a feeder teams. The whole idea is to create a pipeline whereby talents can graduate from such clubs feeder team to the main team thereby maintaining youth development and sustainability.⁴⁸

⁴⁵ This is a sum stipulated as mutually agreed between the player and the club as payable to trigger contract jumping and contract release. It is otherwise called contract release clause. Take for instance the recent transfer of Villas-Boas from FC Porto to Chelsea Football Club. For further reading see "Chelsea Grab the New Mourinho" Complete Sports vol. 17, Thursday June 23rd, 2011 pg. 1

⁴⁶ This is more so after the big blow of the ruling of the ECJ European Court of Justice in the case of Bosman. See also "Tevez Row Fuels Taylor fears over Football Slavery" AIPS July 2009.

⁴⁷ For instance in Nigerian Premier League, Article 1.8(1) of the Rules and Regulations.

⁴⁸ *ibid*

If they later choose to change clubs and environment, which may be inevitable it is imperative to have a system whereby proper, prompt, adequate and effective compensation is paid. While a move to ban the transfer of under-18s may appeal on a superficial level, thereby negating the predatory instincts of rich powerful clubs, it is not a situation that is legally enforceable in many other industries⁴⁹. We must strive to balance the specificity of sport encouraging recruitment and training of young players while thus maintaining a competitive balance between clubs.

⁴⁹ One proposed solution - sponsored by the former UEFA's President Michael Platini and former President FIFA's Sepp Blatter - is a blanket international ban on player transfers under the age of 18.