

CAS 2023/A/10065 Khaled Abdullah Al-Husseini, Mandil Saad Al-Hadab & Turki Makmi Al-Dhufiri v. Youssef Karim Al-Anzi, Habas Miteb Al-Shammari, Abdullah Hajjaj Al-Alati & Abdulaziz Awaid Al-Anazi

ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

Sole Arbitrator: Mr. Steven Bainbridge, Lawyer, Dubai, United Arab Emirates

in the arbitration between

- 1/ Khaled Abdullah Al-Husseini, Kuwait**
- 2/ Mandil Saad Al-Hadab, Kuwait**
- 3/ Turki Makmi Al-Dhufiri, Kuwait**

Appellants

and

- 1/ Youssef Karim Al-Anzi, Kuwait**
- 2/ Habas Miteb Al-Shammari, Kuwait**
- 3/ Abdullah Hajjaj Al-Alati, Kuwait**
- 4/ Abdulaziz Awaid Al-Anazi, Kuwait**

First and Fourth Respondents represented by Mr Ali Abbes and Mr Mohamed Rokbani, Attorneys-at-Law in Monastir, Tunisia; Third Respondent represented by Ms Mutlaq Aljadei and Ms Sara Alhajali, Attorneys-at-Law in Safat, Kuwait

Respondents

I. Parties

1. Mr Khaled Abdullah Al-Husseini (the “First Appellant”) is the winner of the elections of the Board of Directors of Al-Jahra Sports Club (the “Club”), a football club registered with the Kuwaiti Football Federation, that took place on 1 December 2023 (the “Elections”), which appointed him as the Chairman of the Club. Mr Mandil Saad Al-Hadab (the “Second Appellant”) and Mr Turki Makmi Al-Dhufiri (the “Third Appellant”) are both Members of the Club’s Electoral Committee of 2 December 2018, which was declared void by the Award of the Kuwaiti National Sport Arbitral Tribunal (“NSAT”).
2. Mr Youssef Karim Al-Anzi (the “First Respondent”), Mr Habas Miteb Al-Shammari (the “Second Respondent”), Mr Abdullah Hajjaj Al-Alati (the “Third Respondent”) and Mr Abdulaziz Awaid Al-Anazi (the “Fourth Respondent”), are all members of the Club and were unsuccessful in the Elections.
3. The present appeal was also directed against Mr Aziz Salem Al-Dhayidi, who has sadly passed away during these proceedings and, therefore, the Appellants withdrew the Appeal against him .
4. At all relevant times for these proceedings, the Club played in the Kuwait Premier League, which is the highest league in professional football in Kuwait.
5. The Appellants and the Respondents are jointly referred to as the “Parties”.

II. Factual Background

A. Background Facts

6. Below is a summary of the relevant facts and allegations based on the Parties’ written submissions, pleadings and submissions at the hearing. Additional facts and allegations found in the Parties’ written submissions, pleadings and evidence may be set out, where relevant, in connection with the legal discussion that follows. While the Sole Arbitrator has considered all the facts, allegations, legal arguments and evidence submitted by the Parties in the present proceedings, he refers in his Award only to the submissions and evidence he considers necessary to explain his reasoning.

B. The Electoral Committee History

7. Law number 87 of year 2017 was ratified and promulgated on 4 December 2017 (the “Law”). Article 28 of the Law states:

“The general assembly of the Sports Club shall form, at its first meeting, an electoral committee from among its members, which shall be responsible for organizing and supervising the elections from the call for election until the announcement of the result.”

As well as monitoring the validity of the holding of the ordinary and extraordinary assembly of the Club and auditing their minutes, without any member of the electoral committee having the right to discuss or vote...”

8. On 2 December 2018, the Club held a general extraordinary assembly, during which it:
 - a. approved the amendments of the Law and amended its articles of association with the same model provided by the Law, Article 12 of the articles being the one that incorporated Article 28 of the Law.; and
 - b. appointed an electoral committee comprised of the following members: (1) Mater Al Shammari; (2) Turki Dhofiri; (3) Abdullah Alanzi; (4) Salah Chammari; and (5) Mendil Ahdab (the “2018 Electoral Committee”)
9. The new articles of association of the Club were then published in the official Journal of Kuwait on 9 December 2018 (i.e., one week after of the appointment of the 2018 Electoral Committee).
10. Subsequently, on 20 May 2019, the general assembly of the Club appointed a new electoral committee composed of the following members: (1) Abdulah Alanzi; (2) Ali Shammari; (3) Abdellatif Alshehri; (4) Salah Ajmi; (5) Ibrahim Shammari (the “2019 Electoral Committee”).
11. However, the Kuwaiti Public Authority of Sports’ (“PAS”) refused to recognise the 2019 Electoral Committee.
12. In 2021, three members of the 2018 Electoral Committee lost their membership in the Club and then recovered their membership as a Club member but not as members of the 2018 Electoral Committee.
13. An electoral general assembly was held on 12 January 2023, which was called, supervised and announced by:
 - a. two members of the 2018 Electoral Committee, being Abdulah Alanzi (who is also part of the 2019 Electoral Committee) and Mendil Ahdab;
 - b. 12 members from the governmental legislative and Fatwa;
 - c. 12 members from PAS.

III. Proceedings before NSAT

14. The Fourth Respondent submitted to NSAT on 17 January 2023¹ a claim against Mr Abdullah Khalaf Al-Anazi and the Second Appellant.² On 4 May 2023, Arbitration Request No. 20230312001 was joined to Arbitration Request No. 2023011700.³
15. NSAT Arbitration No. 20230312001 was brought by the First, Second and Third Respondents (together with Mr Aziz Salem Al-Dhayidi, now deceased) against the Director General of PAS, Mr Abdullah Khalaf Al-Anazi and Mr Ali Faihan Al-Shammari.⁴
16. NSAT Arbitration Nos. 20230117001 or 20230312001 both requested, *inter alia*, the invalidation of the convening of the ordinary general assembly of the Club held 12 January 2023 and the resulting elections of the Board of Directors of the Club held on the same date.
17. This was granted by the Award issued by Kuwait NSAT on 4 September 2023 (the **First Award**), where, for each of NSAT Arbitration Nos. 20230117001 and 20230312001 the Tribunal ruled:

“To admit the arbitration request and rule to invalidate the procedures of the convening of the general assembly held on 12/01/2023 and the elections held and their consequences.”
18. As for its rationale in the Award, the NSAT Tribunal determined that:
 - a. the 2018 Electoral Committee did not have any legal capacity because the Club’s articles of association had only been published and implemented on 9 December 2018 (7 days after the Club’s general assembly was held which formed the electoral committee); and
 - b. the 2019 Electoral Committee did have legal capacity but had three of its members dismissed who were improperly substituted by members of the Public Authority of Sports and the Department of Fatwa and Legislations in the Council of Ministers.
19. Subsequently, on 20 September 2023, the Respondents made a written request to NSAT to correct *“a material error contained in the grounds for the ruling issued in the*

¹ The First Respondent subsequently joined as an intervening litigant.

² The Third Appellant subsequently joined as a joining litigant.

³ Two other arbitrations were also joined in May 2023, being Arbitration Request Nos 20230213001 20230501001, but these do not form part of this appeal.

⁴ The First Appellant subsequently joined as a joining litigant (together with other persons not relevant to these proceedings).

Arbitration Award... in accordance with Article (43)- [NSAT] Procedural Rules” (the “Application to Correct”).

20. The basis for the Application to Correct was that the Award confused the 2018 Electoral Committee with the 2019 Electoral Committee, as it was in fact the former that called, supervised and announced the 12 January 2023 elections, and the one that had three members removed and then subsequently reinstated after a separate arbitration.
21. Specifically, the Application to Correct stated that the original Award wrongly stated (at paragraphs 6 – 9, page 23) that the 2019 Electoral Committee had three members removed and thus the actions it took were null, void and of no legal effect (such as calling for elections of the Board or requesting assistance from persons outside the Club), when the Board should instead have called a general assembly to complete the members of the electoral committee.
22. The Application to Correct was granted and the NSAT Tribunal’s Amended Award was issued on 2 October 2023, on the basis of Article 43 of the Procedural Rules of NSAT “*regarding correcting material errors contained in arbitration awards and considering them an integral part of the arbitration award*” (the “**Amended Award Decision**”). The Tribunal therefore ruled:

“1. Accept the request in form.

2. Correct the material error contained in pages (23) and (24) of the grounds for the arbitration award by modifying the date of the formation of the committee to be 02/12/2018, instead of 20/05/2019, as stated in the claimants' request.

3. This correction shall have no effect on the final outcome of the arbitration award.”

IV. Proceedings before the Court of Arbitration for Sport

23. On 15 October 2023, in accordance with Article R48 of the CAS Code, the Appellants filed a Statement of Appeal against the Amended Award “*and consequently against the whole Award in so far as it involved a drastic changes of the reasoning of award and involving cases nos. (2023117001 and 20230312001) and against those who had filed them*”. The Appellants also requested a stay of the execution of the NSAT Award until a final decision is made by CAS under R37 of the CAS Code.
24. In their Statement of Appeal, the Appellants requested the case be submitted to a sole arbitrator and proposed three names.
25. The Appeal Brief was filed on 22 October 2023, within the period of extension previously granted and otherwise compliant with Article R51 of the CAS Code.

26. On 26 October 2023, the CAS Court Office confirmed receipt of the Statement of Appeal and the Appeal Brief, and at the same time served the Respondents with both. The Respondents were:
 - a. invited to file an Answer within 20 days, in accordance with Article R55 of the Code;
 - b. reminded of the requirements of Article R31 of the Code concerning the filing of written submissions;
 - c. invited to inform the CAS Court office whether they agree to the appointment of a sole arbitrator and/or to one of the names proposed by the Appellants; and
 - d. invited to respond to the Appellants' application for provisional measures within ten days of this letter.
27. On 30 October 2023, the CAS Court Office acknowledged receipt of the First and Fourth Respondents' letter of the same date which included their comments on the Appellants' request for provisional measures. The CAS Court Office also noted the First and Fourth Respondent's request for the dispute to be governed by a panel of three CAS Members.
28. Also on 30 October 2023, the First and Fourth Respondents filed a letter to CAS
 - a. requesting a panel of three arbitrators be appointed due to the special circumstances of the appeal; and
 - b. responding to the Appellants request for a provisional measure and requesting that it be rejected.
29. On 1 November 2023, the First and Fourth Respondents filed a further letter notifying CAS of alleged forum shopping being undertaken by the Appellants and reiterating their request for the provisional measure to be rejected.
30. On 17 November 2023, the CAS Court Office:
 - a. informed the Parties of the Division President's decision to refer the dispute to a sole arbitrator to be selected by the Division President without taking into consideration the proposals made by the Appellants, and;
 - b. noted that only the First and Fourth Respondents filed comments in relation to the Appellants' request for provisional measures and confirmed that this issue will be decided by the Division President.
31. On 19 November 2023, the Appellants requested that the request for provisional measures be brought before the Sole Arbitrator directly and not decided by the Division President.

32. Also on 4 December 2023, the CAS Court Office informed the Parties, on behalf of the Deputy President of the CAS Appeals Arbitration Division, that the arbitral tribunal appointed to decide the dispute is constituted as follows:

Sole Arbitrator: Mr Steven Bainbridge, Attorney-at-Law in Dubai, United Arab Emirates

33. On 3 January 2024, the Sole Arbitrator rejected the Request for a Stay of the Appealed Decision.

34. On 8 January 2024, the Respondents' filed their Answers, in accordance with Article R55 of the Code and within the relevant deadline.

35. On 22 January 2024, CAS Court Office informed the Parties of the decision of the Sole Arbitrator, after consultation with the Parties, to hold a hearing, with an in-person hearing being the preferred choice of the Parties. After difficulties encountered to secure a date for an in-person hearing within short time, the Sole Arbitrator, after consultation with the Parties, decided to proceed with a hearing by video.

36. On 21 February 2024, the CAS Court Office circulated an Order of Procedure, which was signed by the Appellants and the Respondents, by counterparts on or about 24 February 2024, without any reservation.

37. On 29 February 2024, a hearing was held by video-conference. In addition to the Sole Arbitrator and Mr Giovanni Maria Fares (CAS Counsel), the following persons attended the video-hearing:

For the Appellant:

- Mr Khaled Jarallah Al-Husseini, the First Appellant
- Mr Mandil Saad Al-Hadab, the Second Appellant
- Mr Mohammad Marafi, Translator

For the Respondents:

- Mr Ali Abbas, Counsel for First and Fourth Respondents
- Ms Sara Jamal Alhajali, Counsel for Second and Third Respondents.

38. At the outset of the hearing, the First Appellant informed that he would be also representing the Third Appellant.

39. Furthermore, all Parties confirmed that they had no objection as to the constitution and composition of the Arbitral tribunal.

40. The Parties were given full opportunity to present their cases, submit their arguments in opening and closing statements, and to answer the questions posed by the members of the Panel.
41. Before the hearing was concluded, the Parties expressly stated that they had no objection to the procedure adopted by the Sole Arbitrator and that their right to be heard had been respected.

V. SUBMISSIONS OF THE PARTIES

A. The Appellants

42. The Appellants' submissions, in essence, may be summarised as follows.
43. The main arguments of the Appellants are the following:
 - a. the NSAT Award was unlawfully amended by NSAT Tribunal the after its notification; and
 - b. the elections were called, conducted, and supervised by the 2018 Electoral Committee.
44. The Appellants argue that the Application was not a correction of a material error under Article 43 of the Procedural Rules of NSAT, encompassing "*clerical, typographical, or arithmetical errors ... or any other purely material errors*", but rather a substantive correction of the Arbitral Chamber's error in understanding the facts, and therefore the NSAT Tribunal's decision to issue a Amended Award was an error in procedure which should lead to the invalidity of the Award. The Appellants argued at the hearing that the Amended Award represents a fundamental correction of the award and changes the whole meaning and effect the Award.
45. As set out above, the NSAT Tribunal's Award (prior to the Amended Award) held both the 2018 Electoral Committee and the 2019 Electoral Committee to be invalid because:
 - a. the 2018 Electoral Committee did not have any legal capacity because the Club's articles of association had only been published and implemented on 9 December 2018 (7 days after the Club's general assembly was held which formed the electoral committee); and
 - b. the 2019 Electoral Committee did have legal capacity but had three of its members dismissed who were improperly substituted by members of the Public Authority of Sports and the Department of Fatwa and Legislations in the Council of Ministers.
46. Therefore, the Respondents made the Application to Correct on the basis that the Award confused the 2018 Electoral Committee with the 2019 Electoral Committee, as it was in

fact the former that called, supervised and announced the 12 January 2023 elections, and the one that had three members removed and then subsequently reinstated after a separate arbitration.

47. As to paragraph 45.a above, the Appellants argue that the NSAT Tribunal misinterpreted the law because, *inter alia*, Article 28 of the Law has supremacy over the Club's articles and grants the general assembly the right to form an electoral committee. Therefore, the NSAT Award erred in assuming that the 2018 Electoral Committee was invalid because it had been formed before the promulgation of the articles.
48. As to paragraph 45.b above, the Appellants state that the 2019 Electoral Committee did have legal capacity because it was contrary to Article 23 of the Club's articles, which required one year to have passed since the 2018 Electoral Committee before another electoral committee could be formed. Additionally, the PAS refused to recognise the 2019 Electoral Committee, apparently for the same reason.
49. The Appellants elaborated upon the rationale behind the PAS's decision at the hearing, reiterating the position as set out under Article 23 of the Club's articles "*It is not permissible to convene an extraordinary general assembly to consider a matter previously decided upon by a decision of a similar assembly until one calendar year has passed from the date on which it was decided*".
50. Further, the Appellants state that by invalidating the 2018 Electoral Committee and the elections of the new Board on 12 January 2023, the NSAT Award created a "*lacuna*" in the Club because:
 - a. It left no body capable of administering the Club, convening a general assembly to form a new electoral committee to call for a general assembly meeting to elect a new Board; and
 - b. as there is no Board, there is no one capable of convening a general assembly to form an electoral committee.
51. The Appellants argue that this "*vicious circle*" threatens to cause severe damage to Club, players, games and employees. When asked at the hearing what the result would be if the Tribunal were to find in the Appellants favour, given the NSAT Award prior to the amendment noted other defects in procedure with regards to the election of the 2018 Electoral Committee, the Appellants provided the following details on the situation within the Club that the Appellants attest have been ongoing since November 2023:
 - a. salaries of employees and players have not been paid;
 - b. the official procedures for Kuwaiti authorities to issue visas for foreign employees/players are suspended; and

- c. the coach of the first team of the Club has been denied a permit to be with the team on the bench, so is having to provide instructions to the team from the stands.
52. At the hearing, the Appellants provided a background of sports regulation in Kuwait starting from its suspension by the International Olympic Committee and other major sports bodies in 2015 for government interference in sports. As part of the lifting of the suspension, Kuwait was to implement legislation to ensure compliance with the Olympic Charter and provide a roadmap for clubs to escape government interference. Therefore, the Law was implemented in 2017, Article 28 being the relevant part for this dispute (set out above at paragraph 7).
53. The Appellants explained that in light of the suspension that Kuwaiti clubs had endured, the Board of Directors of the majority of the clubs in Kuwait had seen their term/mandate expire by the time the Law was implemented. The Appellants seemed to acknowledge that, according to Article 28 of the Law, the Club should have first approved the amendments of the Law and amended its articles of association, and then subsequently and once the Club's new articles had been published, at its first general assembly meeting the Club should have appointed an electoral committee. However, the Appellants say that many clubs in Kuwait proceeded as the Club did, by amending their articles of association and appointing an electoral committee at the same meeting, with the new articles of association being published only thereafter. Therefore, the Appellants argued that if the NSAT Award is to stand then many of the clubs in Kuwait will be affected and it will "*put the whole of sport in Kuwait in chaos*".⁵
54. The Appellants also stated at the hearing that:
- a. the Respondents were all candidates in the 12 January 2023 elections and dealt with the hybrid 2018 electoral committee when they registered their candidacy, and did not raise any objections at the time, nor in the build up to the elections taking place; and
 - b. although the Respondents argue (as I will deal with later) that a new Board of Directors is now in place at the Club, anyone can put in writing that they are the Board of Directors, but what really matters is whether such Board has the authority to take the necessary actions.
55. The Appellants concluded their closing statement at the hearing by stressing that the NSAT Award created chaos by invalidating both the 2018 Electoral Committee and the 2019 Electoral Committee, in that it created a situation where no one is capable of running the Club. Therefore, the Appellants argue that it is clear that the NSAT Tribunal

⁵ Quote from hearing.

misunderstood the case. The Appellants said an award from CAS in their favour would “*correct the situation*” outlined above and “*be for the benefit of the club itself*”.⁶

56. On this basis, the Appellants submit the following prayers for relief:

1- To consider this statement of appeal admissible.

2- The Appealed award shall be annulled.

3- In any case, the respondents shall bear the costs of the arbitration and it shall contribute to the legal fees incurred by Appellant at an amount of at least CHF 20,000.”

B. The Respondents

The First and Fourth Respondents

57. The First and Fourth Respondents argue that “[t]he main issue to be resolved in this case is to decide if the elected general assembly of 12/01/2023 was called, supervised, and directed by a legal independent electoral committee or not”. They attest that “the general elective assembly of 12/01/2023 was unlawfully held and organized by a null committee” and “the amendment of the award after a request of arbitration was legal”.
58. The First and Fourth Respondents’ submissions can, in essence, be summarised as below.
59. At the hearing, the First and Fourth Respondents also provided certain background on the regulation of sports in Kuwait, from sanctions imposed by the International Olympic Committee and FIFA in 2015 up to the promulgation of the Law, according to which, they explained, all statutes of football clubs in Kuwait were harmonised to provide independence from governmental interference and to consolidate good governance in the structure of clubs and through independent electoral committees.
60. Specifically, they noted that all Kuwaiti clubs were supposed to amend their statutes to implement the Law, whilst Article 28 of the Law requires that an independent electoral committee be appointed by the *first* club’s general *ordinary* assembly. However, in the instant case, the Club organised an *extraordinary* general assembly on 2 December 2018 not only to amend the Club’s articles to ensure compliance with the Law, but also to appoint the 2018 Electoral Committee. These new articles of the Club were published in the official Kuwaiti journal on 9 December 2018, becoming effective and in force then (Article 12 of the articles being the one that incorporated the abovementioned part of the Law).

⁶ Quote from hearing.

61. Therefore, the First and Fourth Respondents' argue that the appointment of the 2018 Electoral Committee was null and void because:
 - a. it was made *before* the new articles had entered into force, coming into force being something which can only take place upon the publication of the articles in the official Kuwaiti journal (something which took place only one week later, on 9 December 2018); and
 - b. the election was done by general *extraordinary* assembly and not an *ordinary* general assembly.
62. Furthermore, the First and Fourth Respondents argued that the Appellants wrongly stated in the Appeal Brief that the 2018 Electoral Committee called, supervised and announced the electoral assembly of 2023, the implication being that it did so with all five of its members. However, as outlined above, the electoral assembly of 2023 was called by only two members of the 2018 Electoral Committee, as the remaining three had lost their membership in the Club in 2021 and had recovered their memberships as Club members only, but not as members of the 2018 Electoral Committee.
63. As outlined above, in addition to the two members of the 2018 Electoral Committee, the electoral general assembly of 2023 was called, supervised and announced by 12 members from the governmental legislative and Fatwa and 12 members from PAS. The First and Fourth Respondents allege that such a hybrid committee was chosen by the Board of Directors of the Club at the time together with PAS, and that such a process represented a clear unlawful interference of government representatives in the Club.
64. Further, even if the 2018 Electoral Committee had acted with a quorum and had been validly appointed, such committee would have ceased to exist after the appointment of the 2019 Electoral Committee, which itself has never been dissolved or annulled.
65. The First and Fourth Respondents argue that PAS's refusal to recognise the appointment of the 2019 committee is "*a total disrespect of the principle of political neutrality and [the Law] which doesn't allow any governmental interference in the sportive clubs and federations*". Such interference is also prohibited by the Olympic Charter (which is "*unanimously applied by all the sports judicial bodies*") and which is expressly referred to in Article 4 of the Law ("*the articles of association shall be consistent with the Olympic Charter...*"). Therefore, such governmental interference is unlawful, and the refusal of PAS had no impact or effect on the validity of the 2019 Electoral Committee. As a result, it was the 2019 Electoral Committee that had the right to call and supervise the electoral general assembly of 2023.
66. As to the Appellants claim at the hearing that the Respondents did not raise any objections at the time of the 12 January 2023 elections, the First and Fourth Respondents stated in response that the reason that led the Respondents to challenge the elected general

assembly of 12 January 2023 before NSAT was the various and multiple issues during the process which were facilitated by the supervising hybrid electoral committee. The Respondents also made some oral statements as to the how the 12 January 2023 elections were conducted, including votes being counted in respect of members who were absent (either because they were deceased or because they were outside of Kuwait) and a lack of organisation due to a large volume of members trying to participate but only two members of the hybrid committee being on site. These statements are not supported by evidence and so I will not consider them, but I do not consider them as relevant in making my decision, in any event.

67. The First and Fourth Respondents argue that the amendment of the NSAT Award was legal on the basis that it is clear and indisputable that the elective committee that lost three of its members was in fact the 2018 Electoral Committee and not the 2019 Electoral Committee. Therefore, they contend, the NSAT Tribunal amended its material error without any substantive effect on the result of the Award.
68. Finally, the First and Fourth Respondents flagged that pursuant to a meeting of the Club's general assembly that took place on 15 February 2024, the Club now has an elected and permanent Board of Directors. Therefore, the outcome of this arbitration before CAS will not impact the legality of the current Board of Directors, especially since the Club is not a party to this arbitration.
69. On this basis, the First and Fourth Respondents submit the following prayers for relief:

“1. To dismiss the appeal.

2. To confirm the decision issued by Kuwait NSAT Award rendered on 04 September 2023 and corrected on 02 October 2019 (cases ref. no 20230117001 – 20230213001-20230312001 and 20230501001).

3. The arbitration costs to be carried out by the Appellants.

4. To oblige the Appellants, to contribute to the first and fourth respondent's advocacy costs which will be evaluated according to the sole arbitrator discretion.”

The Second and Third Respondents

70. The arguments advanced by the [Second and Third] Respondents largely overlap with those made by the First and Fourth Respondents, as summarised above. For this reason, we shall set forth below additional or varied arguments advanced by the [Second and Third] Respondents which can be summarised as follows.
71. Article 19 of the Club's articles states what an extraordinary general assembly shall consider and the items for consideration expressly do not include the formation of an electoral committee. The [Second and Third] Respondents argue this confirms that the

extraordinary general assembly does not have the jurisdiction to form the electoral committee.

72. Further, as outlined above, PAS did not approve the 2019 Electoral Committee on the basis of a violation of Article 23 of the Club's articles. However, Article 23 of the Club's articles states that "*It is not permissible to convene an extraordinary general assembly to consider a matter previously decided upon by a decision of a similar assembly until one calendar year has passed from the date on which it was decided*". Therefore, the text of the article prohibits the holding two *extraordinary* general assemblies within one year, but the 2019 Electoral Committee was formed by an ordinary general assembly meeting.
73. The Appellants' claim that the Award created a "*lacuna*" is rejected by the [Second and Third] Respondents for reasons already articulated above and the fact that the Law and the articles state that "*[t]he General Assembly is the highest authority in legislation within the club*" and PAS may not interfere in the Club's affairs in any way. Therefore, the 2019 Electoral Committee has complied with its duties by holding an extraordinary general assembly meeting in accordance with Article 20 of the Club's articles in order to form a valid temporary committee to act as a temporary Board of Directors (which temporary Board has now been replaced by the permanent Board, as outlined above).
74. As to the Appellants claim that many of the clubs in Kuwait also proceeded as the Club did, by amending their articles of association and appointing an electoral committee at the same meeting, with the new articles of association being published only thereafter, the [Second and Third] Respondents argue that this was not the case, but even if it were, such a factual dynamic would not cure the clear non-compliance with the required legal process.
75. As to whether there was a material error, the [Second and Third] Respondents argue that Article 43 of the Procedural Rules of NSAT shows that the NSAT Award issued on 4 September 2023 was marred by a clear material error, which the NSAT Tribunal was asked to correct and did so correct. The [Second and Third] Respondents argue that what confirms that the error was nothing but a purely material error in the date of the formation of the electoral committee for the Club and not an error in the arbitral NSAT Tribunal's understanding of the facts of the dispute, is clear in the facts upon which the NSAT Tribunal based its reasons - all of which referred to the electoral committee formed in 2018 and not 2019.
76. On this basis, the [Second and Third] Respondents submit the following prayers for relief:
- First:*** *The Appeal of the Appellants shall be dismissed in its entirety.*
- Second:*** *Appellants shall bear the costs of the arbitration in front of CAS.*

Third: Appellants shall pay the Respondents under solidary obligation the legal fees and expenses incurred in connection with the proceedings before the CAS in an amount based on the expenses as will provide by Respondents.”

VI. Jurisdiction

77. Article R47 of the Code provides as follows:

“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 or as the parties have concluded a specific arbitration agreement 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.”

78. Article 45 of NSAT Procedural Rules provides as follows:

“Arbitration awards issued by the Chambers of Arbitration Commission shall be considered writ of execution, and shall be final and binding on the parties to the dispute as soon as they are signed by the Chairman of the Board of Directors of the National Sports Arbitration Tribunal (NSAT), without prejudice to the right of appeal before the Court of Arbitration for Sport (CAS) in accordance with the regulations and rules related to the jurisdiction of CAS, as well as the rules of jurisdiction related to international sports federations”

79. Furthermore, the jurisdiction of the CAS is not contested and is further confirmed by the Order of Procedure duly signed by the Parties and affirmed at the hearing.

80. It follows that CAS has jurisdiction to adjudicate and decide on the present dispute.

VII. Admissibility

81. Article R49 of the Code provides as follows:

“In the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, or of a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against. After having consulted the parties, the Division President may refuse to entertain an appeal if it is manifestly late.”

82. The NSAT Award was issued on 4 September 2023 and served to the Appellants on 18 September 2023 but was later amended on 2 October 2023. The Appellants delivered their Statement of Appeal to CAS on 15 October 2023, thus within the time limit of 21 days set by Article R49 of the Code.

83. The admissibility of the Appeal is not contested by the Respondents.

84. It follows that the Appeal is admissible.

VIII. Applicable Law

85. Article R58 of the Code provides as follows:

“The Panel shall decide the dispute according to the applicable regulations and the rules of law chosen by the parties or, in the absence of such a choice, according to the law of the country in which the federation, association or sports-related body which has issued the challenged decision is domiciled or according to the rules of law, the application of which the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision.”

86. The Appellants stated the following in the Statement of Appeal:

“Pursuant to art. R58 of the CAS Code, Kuwait laws in particular Sport Law 87 /2017, Statute of Al-Jahra Club (Articles of Association), and Decree Law No. 38/1980 promulgating Civil and Commercial Procedural Law (Arbitration Chapter) and, additionally, Swiss law.”

87. The First and Fourth Respondents stated the following in the statement of Defence:

“we kindly ask the sole arbitrator to apply the Kuwaiti law of 87/2017, the Swiss law and The Olympic principle of political neutrality.”

88. The Second and Third Respondents did not comment on the applicable law.

89. Based on the above, the Sole Arbitrator finds that the dispute shall be primarily governed by the laws of Kuwait (including the Club’s articles of association) and, subsidiarily, by Swiss law, as the *lex arbitri*, as submitted by the Appellants, without any objection from the Respondents. As far as necessary, the Sole Arbitrator will consider other rules of law (such as the Olympic Charter, as suggested by the Appellants), where and if applicable.

IX. Merits

90. The main issues to be resolved by the Sole Arbitrator are:

- A) Whether the NSAT Tribunal’s Amended Award was an error in procedure leading to an invalidity of the Award
- B) The validity of the 2018 Electoral Committee

C) Whether indirect governance and instability issues concerning the Club are relevant to the submissions of the Parties

A. Whether the NSAT Tribunal's decision to issue an Amended Award was an error in procedure that should lead to the invalidity of the NSAT Award

91. The Sole Arbitrator must decide whether the NSAT Tribunal's error in the Award (which was corrected by the Amended Award) was an error capable of correction under Article 43 of the Procedural Rules of NSAT, or if such error represents an error in the NSAT Tribunal's understanding of the facts of the case.
92. After the issuance of the Award but before the Amended Award, in respect of Arbitration Request No. 20230312001, the Tribunal held each of the 2018 Electoral Committee and the 2019 Electoral Committee to be invalid (for the reasons outlined in paragraph 18), with its reasoning dealing with each of those committees in turn. The Tribunal then concluded by invalidating the election procedures conducted by the 2019 Election Committee as a result of the absence of three of its members.
93. In the Amended Award, the NSAT Tribunal simply stated that the reference to the 2019 Electoral Committee be replaced with the 2018 Electoral Committee at pages 23 and 24 of the Award. However, once those corrections were made, the wording of the NSAT Award was perhaps not entirely without need for careful consideration.
94. As a result of the Amended Award, the NSAT Tribunal's reasoning for invalidating the 2019 Election Committee was reassigned to the 2018 Electoral Committee. Therefore, the effect of the Amended Award was to create an additional reason as to why the 2018 Electoral Committee was invalid, leaving no reason as to why the 2019 Electoral Committee was invalid, rather than including a direct statement as to the impact of the Amended Award on the 2019 Electoral Committee. Nevertheless, after the Amended Award the conclusion in the Award remained clear that the election procedures conducted by the 2018 Election Committee were invalidated as a result of the absence of three of its members, without expressly referencing the other reason why the 2018 Election Committee was invalid (namely that the Club's articles of association, on which the general assembly purported to form the 2018 Electoral Committee, were published and implemented only a full 7 days *after* the Club's general assembly).
95. Due regard must also be given to the NSAT Tribunal's decision to issue the Amended Award under Article 43 of the Procedural Rules of NSAT, as this is a clear indication that they did understand the facts of the case and simply made a "*material error*" capable of correction under Article 43.
96. In summary, the Sole Arbitrator does not view the NSAT Tribunal's error and ensuing Amended Award as suggesting a broader error of the NSAT Tribunal that means they must have misunderstood the facts of the case. For the reasons outlined above, the Sole

Arbitrator does not agree that the Amended Award represents a fundamental correction of the Award that changes its meaning and effect. As a consequence, the Appellants' Appeal shall be dismissed.

97. That said, the Sole Arbitrator notes that, regardless of the correctness of NSAT's actions, the Appellants' position would in any event remain unchanged. In fact, the Sole Arbitrator observes that the First Award was not (validly) challenged by the Appellants. Even assuming that NSAT's correction of the Award was unlawful, *quod non*, the relief sought would not benefit the Appellants' position: If the Sole Arbitrator were to conclude that the Amended Award should be set aside, this would effectively restore the First Award, including its findings—namely, the invalidation of the General Assembly held on 12 January 2023 (which, in any case are the same as the Amended Award).
98. In addition, since the Appellants also submit, in a rather unclear manner, arguments which support the validity of the 2018 Electoral Committee (and, consequently, of the General Assembly), the Sole Arbitrator observes that the Appellants' failure to challenge the First Award also prevents the Sole Arbitrator to make any conclusion as to the validity of the 2018 Electoral Committee, respectively of the General Assembly of 12 January 2023. In fact, despite the Sole Arbitrator's power to review the case *de novo*, the Sole Arbitrator is in any event bound by the conclusion of the Parties. Here, the Appellants have concluded for the annulment of the Amended Award, since “[a]mending the reasons of a final Award is illegal once the Award becomes final and binding on its parties”. The Appellants have, therefore, defined the scope of the present proceedings, which shall exclusively deal with the issue of the correction of the First Award by NSAT. Any discussions as to the underlying issue of the Amended Award, respectively the First Award, fall beyond the scope of the present proceedings, and, as such, the Sole Arbitrator cannot make any ruling in this respect.
99. Be that as it may, for the sole sake of completeness and regardless of the above findings that the Appeal shall be dismissed, the Sole Arbitrator is content that the 2018 Electoral Committee was invalid on the basis that:
 - a. the Club's articles of association were published and implemented on 9 December 2018, which was 7 days after the Club's general assembly, which formed the 2018 Electoral Committee, was held); and
 - b. three of its members had been dismissed and improperly substituted by members of the Public Authority of Sports and the Department of Fatwa and Legislations in the Council of Ministers.
100. In contrast, the Sole Arbitrator is content that the 2019 Electoral Committee was properly convened and possessed the right to call, supervise and announce the 12 January 2023 elections.

B. Conclusion

101. Based on the above findings, the Sole Arbitrator concludes that the Appeal shall be dismissed in full.

X. Costs

(...).

DECISION

The Court of Arbitration for Sport rules that:

1. The appeal filed by Mr. Khaled Abdullah Al-Husseini, Mr. Mandil Saad Al-Hadab and Mr. Turki Makmi Al-Dhufiri on 15 October 2023 against Mr. Youssef Karim Al-Anzi, Mr. Habas Miteb Al-Shammari, Mr. Abdullah Hajjaj Al-Alati and Mr. Abdulaziz Awaid Al-Anazi in relation to the Decision of 2 October 2023 is dismissed.
2. (...).
3. (...).
4. All other motions or prayers for relief are dismissed.

Seat of arbitration: Lausanne, Switzerland

Operative part of the Arbitral Award issue on 14 August 2024

Date of the reasoned Arbitral Award: 26 February 2025

THE COURT OF ARBITRATION FOR SPORT

Steven Bainbridge
Sole Arbitrator