



**TAS / CAS**

TRIBUNAL ARBITRAL DU SPORT  
COURT OF ARBITRATION FOR SPORT  
TRIBUNAL ARBITRAL DEL DEPORTE

**CAS 2023/A/9986 Kuwaiti Sport Club for Deaf, Anwar Munif Al Harbi & Hamad Mohamed Al Marri v. Maher Mohamed Al Ghannam et al.**

## **ARBITRAL AWARD**

**delivered by the**

### **COURT OF ARBITRATION FOR SPORT**

**sitting in the following composition:**

Sole Arbitrator: Mr Omar **Ongaro**, Legal Counsel in Dübendorf, Switzerland

**in the arbitration between**

(1) **Kuwaiti Sport Club for Deaf**, Kuwait

(2) **Anwar Munif Al Harbi**, Kuwait

(3) **Hamad Mohamed Al Marri**, Kuwait

All represented by Mr Nasr Eldin Azzam and Mr Meshal Owayed Alshammari, Attorneys-at-Law in Cairo, Egypt

**Appellants**

**and**

(1) **Maher Mohamed Al Ghannam**, Kuwait

(2) **Ahmed Ali Al-Kandari**, Kuwait

(3) **Fuhaid Mohamed Fuhaid Al-Ajaimi**, Kuwait

(4) **Mohamed Ali Al-Kandari**, Kuwait

All represented by Mr Mutlaq Aljadei and Ms Sara Alhajali, Attorneys-at-Law in Safat, Kuwait

**First to fourth Respondents**

**and**

(5) **The Public Authority for Sport in Kuwait**, Kuwait

**Fifth Respondent**

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**I. THE PARTIES**

1. The Kuwaiti Sport Club for Deaf (the “Club” or the “First Appellant”) is a sports club with its registered office in Rawda, Kuwait. The Club promotes sports and physical activities for individuals in Kuwait who are deaf or hard of hearing.
2. Anwar Munif Al Harbi (the “Second Appellant”) was elected on 15 January 2023 to be Chairman of the Club’s Board of Directors (“BOD”) for the 2023 to 2027 session.
3. Hamad Mohamed Al Marri (the “Third Appellant”) is the former Chairman of the Club’s BOD, who preceded the Second Appellant as Chairman.
4. In this Award, the First, Second and Third Appellant are jointly referred to as the “Appellants”.
5. Maher Mohamed Al-Ghannam (the “First Respondent”), Ahmed Ali Al-Kandari (the “Second Respondent”), Fuhaid Mohamed Fuhaid Al-Ajaimi (the “Third Respondent”) and Mohamed Ali Al-Kandari (the “Fourth Respondent”) are members of the Club’s General Assembly. In this Award, they are jointly referred to as the “Respondents”.
6. The Public Authority for Sport in Kuwait (the “Fifth Respondent” or “PAS”) is a governmental body in Kuwait, in charge of the development of the sports activity in the country, by harnessing all possibilities and available sports systems. It also represents the status of the State of Kuwait in the local, regional and international forums.
7. In this Award, the Appellants and the Respondents are jointly referred to as the “Parties”.

**II. THE DECISION AND ISSUE ON APPEAL**

8. The Appellants’ appeal relates to a decision rendered by the Kuwaiti National Sports Arbitration Tribunal (the “NSAT”) on 7 August 2023 (the “Appealed Decision”).
9. In the Appealed Decision, the NSAT held that the Club had complied with the correct procedure in revoking the Respondents’ memberships of the Club. However, the NSAT found that revoking the memberships of the Respondents was disproportionate to the offences attributed to them. Therefore, it declared the Club’s decision to revoke the memberships of the Respondents invalid and ordered the Club to include their names on the approved list of the General Assembly.
10. Equally, the NSAT declared the elections for the Club’s BOD for the 2023 to 2027 session held on 15 January 2023 (the “Elections”) invalid and it ordered that the electoral process be repeated.
11. The Appellants are challenging the Appealed Decision in these proceedings.

**III. FACTUAL BACKGROUND**

12. Below is a summary of the relevant facts and allegations based on the Parties’ written submissions and the CAS case file. References to additional facts and allegations found in the

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Parties' written submissions and evidence will be made, where relevant, in connection with the legal analysis 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 deems necessary to explain his reasoning.

**A. A. Background**

13. The Appellants allege that, in the lead up to the Elections, the Respondents attempted to disrupt the activities of the Club, filed fake complaints against the Club and spread false rumours intended to damage the reputation of the Appellants.
14. In particular, the Appellants allege that the Respondents spread false rumours that the Appellants had received financial benefits from trips to Umrah they had organised for the Club's members, as well as false rumours relating to: (a) the transparency of the Appellants; and (b) the veracity of financial information declared by the Appellants to the Club's members.
15. For their part, the Respondents deny that they committed any of the violations alleged by the Appellants.

**B. B. The First, Second and Third Respondents**

16. As regards the First, Second and Third Respondents, the Appellants claim that:
  - The Club invited those individuals to attend investigations into their alleged offences. As the notices of investigation are not dated, it is not clear from the Parties' submissions when this occurred.
  - The First and Second Respondents' investigations were scheduled for 11 December 2021. Neither the First Respondent nor the Second Respondent attended. The investigations were thus re-scheduled for 18 December 2021. The First Respondent and the Second Respondent again did not attend.
  - The Third Respondent's investigation was first scheduled for 28 April 2022 and was then re-scheduled for 17 May 2022. The Third Respondent did not attend on either occasion.
  - The Club thus found that the First, Second and Third Respondents had admitted the charges brought against them and revoked their memberships of the Club. Neither from the Parties' submissions, nor from the documents that have been filed it is clear when this occurred. In light of the notification of the PAS (cf. next bullet point), it must have happened prior to 9 June 2022.
  - On 9 June 2022, the PAS notified the Club that it did not object to the First, Second and Third Respondents' memberships being revoked.
17. In contrast, the First, Second and Third Respondents claim that:
  - They were not notified of the Club's investigations.

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- They were not notified of the Club's decision to revoke their memberships by registered letter as required by Article 54 of the Club's Articles of Association.
- Following the revocation of their memberships, they made a complaint to PAS regarding their dismissal from the Club.
- Further to that complaint, on 28 November 2022, the PAS informed the Club that it did not approve of the sanctions imposed on the First, Second and Third Respondents on the basis that they were disproportionate.
- Their applications to stand as candidates in the Elections were rejected, notwithstanding that they met the conditions for candidacy.

**C. C. The Fourth Respondent**

18. As regards the Fourth Respondent, the Appellants claim that:

- By letter dated 19 April 2021, the Club invited the Fourth Respondent to attend an investigation into his alleged offences, which was scheduled for 24 April 2021. The Fourth Respondent did not attend the scheduled investigation.
- The investigation was thus re-scheduled for 28 April 2021. The Fourth Respondent did not attend.
- The investigation was re-scheduled for a second time for 5 May 2021. The Fourth Respondent again failed to attend.
- On 22 May 2021, the Club revoked the Fourth Respondent's membership of the Club on the basis that he had waived his right to contest the Club's findings as regards the alleged offences and to provide an explanation thereto.

19. Conversely, the Fourth Respondent claims that:

- He was not notified of the Club's investigation.
- He was not notified of the Club's decision to revoke his membership by registered letter as required by Article 54 of the Club's Articles of Association.
- On 8 December 2022, he paid the nomination fee for the Elections and was thus included in the list of candidates for the Club's BOD.
- He only became aware that his membership of the Club had purportedly been revoked when he was removed from the list of candidates for the Club's BOD shortly before the Elections.

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**D. D. Proceedings before the NSAT**

20. On 9 January 2023, the Respondents filed a Request for Arbitration before the NSAT by which they challenged the Club's decision to revoke their memberships. A remote hearing was held before the NSAT on 10 May 2023. The Third Respondent filed further written submissions thereafter, and evidentiary proceedings were closed and the case reserved for judgement on 9 July 2023.
21. On 7 August 2023, the NSAT rendered the Appealed Decision, which was subsequently notified to the Parties with grounds on 31 August 2023.
22. In the Appealed Decision, the NSAT held that the Club had complied with the correct procedure in revoking the memberships of the Respondents. However, the NSAT found that revoking the memberships of the Respondents was disproportionate to the offences attributed to them. The NSAT thus:
  - Declared that the Club's decision to revoke the memberships of the Respondents was invalid and ordered the Club to include their names on the approved list of the General Assembly.
  - Declared that the Elections were invalid and ordered that the electoral process be repeated.
  - Ordered the Third Appellant to pay KWD 1'500.00 in respect of the costs of the NSAT proceedings and KWD 3'000.00 in respect of the Respondents' costs.

**IV. THE PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT**

23. On 19 September 2023, the Appellants filed their Statement of Appeal against the Respondents and the PAS with the Court of Arbitration for Sport (the "CAS"), against the Appealed Decision of 7 August 2023, in accordance with Article R48 of the Code of Sports-related Arbitration, edition February 2023 (the "CAS Code"). The Statement of Appeal contained a request for the Appealed Decision to be stayed with immediate effect pending the CAS' decision on the merits of the appeal.
24. On 21 September 2023, pursuant to Article R37 of the CAS Code, the CAS Court Office invited the Respondents and the PAS to file their positions with respect to the Appellants' request for a stay within 10 days.
25. On the same day, as per Article R41.3 of the CAS Code, the CAS Court Office invited the NSAT, as the authority that issued the Appealed Decision, to state whether it intended to participate as a party in the present proceedings.
26. On 25 September 2023, the NSAT informed the CAS Court Office that it did not intend to become a party in the present arbitration proceedings.

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27. By letter dated 1 October 2023, the Respondents filed their answer to the Appellants' request for a stay. The Fifth Respondent did not file any submissions in relation to the Appellants' request for a stay.
28. On 25 October 2023, the Fifth Respondent requested to be excluded from the present proceedings.
29. On 31 October 2023, the Appellants filed their Appeal Brief in accordance with Article R51 of the CAS Code.
30. On 1 November 2023, the CAS Court Office, pursuant to Article R54 of the CAS Code and on behalf of the Deputy President of the CAS Appeals Arbitration Division, informed the Parties that the Sole Arbitrator appointed to decide the present case was constituted as follows:

Sole Arbitrator: Mr Omar Ongaro, Legal Counsel in Dübendorf, Switzerland

31. On 13 November 2023, the Appellants informed the CAS Court Office of their intention to maintain the PAS in the proceedings. Subsequently, the latter's participation in the present procedure was confirmed by the CAS Court Office.
32. On 14 November 2023, having considered the Parties' written submissions in relation to the Appellants' application for a stay of the Appealed Decision, the Sole Arbitrator dismissed the application.
33. On 21 November 2023, the Respondents filed their Answer to the Appeal in accordance with Article R55 of the CAS Code. The Fifth Respondent did not file an Answer to the Appeal Brief.
34. By means of communications dated 20 December 2023 and 1 January 2024 respectively, the Respondents and the Appellants requested a hearing in this matter.
35. Subsequently, various exchanges of correspondence between the Parties and the CAS Court Office relating to the date and the place of the hearing occurred. Despite best efforts, it was not possible to find a common agreement on these points during several months.
36. In view of the particular circumstances, in particular the fact that none of the Parties actively followed up with respect to the hearing and that the Sole Arbitrator considered himself sufficiently well-informed to decide the present dispute, the CAS Court Office, on 30 September 2024, informed the Parties that the Sole Arbitrator would render his decision without holding a hearing.
37. On 28 January 2025, the CAS Court Office provided the Parties with an Order of Procedure and requested them to sign and return it by 4 February 2025. The Order of Procedure was duly signed by the Respondents, except for the PAS. Despite several reminders, the Appellants did not sign the Order of Procedure. However, on 25 February 2025, the Appellants were informed that, in the absence of any indication to the contrary, it would be deemed that they had no objections to the Order of Procedure. The Appellants remained silent.

**V. SUBMISSIONS OF THE PARTIES**

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38. This section of the Award does not contain an exhaustive list of the Parties' contentions, its aim being to provide a summary of the substance of the Parties' main arguments. In considering and deciding upon the Appellants' appeal in this Award, the Sole Arbitrator has accounted for and carefully considered all of the submissions made and evidence adduced by the Parties, including allegations and arguments not mentioned in this section of the Award or in the discussion of the claims below.

**A. The Appellants' Position**

39. In their Appeal Brief, the Appellants submitted the following requests for relief:

- "1. To accept this appeal against the Appealed Decision of the NSAT.*
- 2. To adopt an award annulling (sic!) Appealed Decision and declaring that:*
  - 2.1. The Club's imposed disciplinary sanction of revoking the First, Second, Third, and Fourth Respondents' memberships is confirmed; or*
  - 2.2. Alternatively, should the Sole Arbitrator find that the Club's imposed disciplinary sanction of revoking any of the First, Second, Third, and Fourth Respondents' memberships (sic!) disproportionate, to mitigate it to a three-year suspension.*
  - 2.3. Alternatively, should the Sole Arbitrator decides (sic!) to set-aside the Club's decision to revoke the First, Second, Third, and Fourth Respondents' memberships at the Club, or to mitigate it to a temporary suspension that ends before the upcoming elections, the First, Second, Third, and Fourth Respondents shall still be anyways ineligible to take part in the upcoming elections for lacking the necessary ethics and morals as sufficiently explained herein.*
  - 2.4. To rule that the First, Second, Third, and Fourth Respondents shall bear all the costs of the present Appeal in full.*
  - 2.5. To rule with anything that the Sole Arbitrator may deem appropriate."*

40. The Appellants' submissions in support of their appeal against the Appealed Decision, in essence, may be summarised as follows:

**i. The Respondents failed to summon the Club and the Second Appellant before the NSAT**

41. First, the Appellants submit that:

- The Respondents failed to summon the Club and the Second Appellant before the NSAT.
- The Club and the Second Appellant had significant interest in the NSAT proceedings, such that it was mandatory for them to be summoned.
- Accordingly, the Respondents claim before the NSAT must be dismissed, and the Appellants' appeal before the CAS must be upheld.

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**ii. The Third Appellant had no standing to be sued before the NSAT**

42. Second, the Appellants cite CAS jurisprudence (CAS 2020/A/7092 & CAS 2018/A/5888), which provides that: (a) the issue of which parties have standing to be sued is a matter of the merits of an appeal, rather than a matter of admissibility; and (b) where there is a lack of standing to be sued, the appeal must be dismissed on the merits.
43. Further to that jurisprudence, the Appellants submit that:
- The NSAT claim was directed against the Third Appellant on the basis that he was the Chairman of the Club's BOD.
  - However, the Third Appellant was actually not the Chairman of the Club's BOD.
  - In any event, even if the Third Appellant was the Chairman of the Club's BOD, the Third Appellant has a separate legal personality to the Club.
  - The NSAT claim should thus have been directed against the Club, rather than against the Third Appellant.
  - As the NSAT claim was not directed against the Club, it should have been dismissed as the Third Appellant had no standing to be sued, and the Appellants' appeal before the CAS must be upheld.

**iii. The Club complied with the required procedures in imposing sanctions against the Respondents**

44. Third, the Appellants submit that the Club complied with the required procedures in revoking the Respondents' memberships of the Club.
45. In support of their position, the Appellants claim that the Respondents waived their right to be heard by failing to attend the investigations organised by the Club. In this regard, the Appellants note, with reference to CAS 2017/A/5277, that, under Swiss law, a right may be waived voluntarily unless certain limited exceptions apply. The Appellants' position is that none of the exceptions are applicable in the present case.
46. The Appellants also note, again with reference to CAS 2017/A/5277, that a waiver of rights does not need to be explicit or to take any particular form, such that the Respondents' failure to attend their respective investigations can, and indeed does, amount to a waiver of their right to be heard.
47. Moreover, the Appellants emphasise that, at first instance, the NSAT found that the Club had complied with the required procedural steps when revoking the Respondents' memberships. The Appellants argue that CAS cannot "*rule anything contrary to the Appealed Decision that goes against the Appellants' interest as it will put the Appellants in a position worse than they had before filing the present appeal*". In this regard, the Appellants rely upon CAS 2018/A/5929, which provides, at paragraph 5 that:



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*“It is a well-established principle that the legal situation of an appealing party shall not be worsened as a result of the appeal. [...] Therefore, even if the lower instance erred in applying correctly the relevant provision of the applicable regulations this cannot be held against and to the detriment of an appellant, and although, with reference to that relevant provision of the applicable regulations, it could have been the proper sanction to be imposed on the appellant already by the lower instance, the appeal committee is not allowed, on its own initiative and in addition to dismissing the appeal, to impose an additional sanction upon the appellant.”*

**iv. The sanctions imposed by the Club were proportionate**

48. Fourth, the Appellants submit that the Club’s revocation of the Respondents’ memberships was a proportionate response to their (alleged) violations, which are summarised at paragraphs 13 and 14 above.
49. Specifically, the Appellants argue that the sanctions were proportionate because the alleged violations:
- Brought the Appellants’ into disrepute.
  - Undermined the Appellants’ integrity and honesty.
  - Were intended to give the Respondents an unfair advantage in the Elections.
  - Were difficult to remedy, given that the Club’s members are deaf.
  - Were repeated on numerous occasions, which is an aggravating factor.
50. The Appellants place particular weight on the first of those arguments, noting that they suggest, with reference to CAS 2007/A/1291, that *“CAS accepts in principle that once an act of bringing into disrepute is committed, the (sic!) lifetime expulsion shall always be proportionate and appropriate”*.

**v. If the Sole Arbitrator finds that the sanctions are disproportionate, the sanctions should be mitigated rather than annulled**

51. Fifth, the Appellants submit, in the alternative, that, if the sanctions are found to be disproportionate, they should be mitigated to temporary suspensions, rather than annulled in their entirety, such that the Respondents will be prevented from participating in the elections should they be repeated.

**vi. If the Sole Arbitrator finds that the sanctions should be set aside or mitigated, the Respondents should still not be permitted to take part in the elections**

52. Sixth, the Appellants submit, in the further alternative, that, if the sanctions are set aside on the basis that they are disproportionate, or if the sanctions are mitigated such that the Respondents could participate in the repeated elections, the Respondents should still be ineligible to participate in the repeated elections in any event.

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53. The Appellants' reasoning in this regard is as follows:

- By failing to attend the investigations, the Respondents tacitly accepted the charges brought against them.
- The Respondents are seeking to be elected president of the Club.
- The role of president is a position which must be occupied by an individual with high ethical and moral standards (cf. CAS 2019/A/6517 and CAS 2018/A/5545).
- The Respondents lack such standards, given their tacit acceptance of the charges against them. They thus must be deemed ineligible to participate in the repeated elections.

**vii. The Third Appellant was prevented from nominating an arbitrator before the NSAT**

54. Finally, the Appellants submit that the Third Appellant was not properly notified of the Respondents' claim before the NSAT.

55. Specifically, they claim that: (a) the e-mail notifying the Third Appellant of the NSAT claim was sent to an e-mail account that the Third Appellant does not use; and (b) the Third Appellant was thus denied the opportunity to nominate an arbitrator.

**B. The Respondents' Position**

56. In their Answer to the Appeal, dated 21 November 2023, the Respondents submitted the following requests 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 the Respondent's (sic!)."*

57. The Respondents' Answer may, in essence, be summarised as follows:

**a. The Third Appellant's alleged lack of standing to be sued before the NSAT**

58. The Respondents reject the Appellants' claim that the Third Appellant had no standing to be sued before the NSAT. In this regard, they note that:

- At the time the NSAT claim was filed, the Third Appellant was the Chairman of the Club's BOD; and
- The Chairman of the Club's BOD is the legal representative of the Club, such that it was correct for the NSAT claim to be directed against him.

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59. In support of this position, the Respondents cite Article 39.1 of the Club's Articles of Association, which provides that:

*"The Chairman of the Board of Directors is responsible for [...] representing the Club before the judiciary and other authorities."*

b. **The alleged failure to summon the Club and the Second Appellant before the NSAT**

60. The Respondents dispute that there was a failure to summon the Club and the Second Appellant before the NSAT. In this regard, they note that:

- The NSAT claim was filed prior to the Second Appellant being elected Chairman of the Club's BOD. Upon being elected Chairman, the Second Appellant became the Club's new legal representative and was thus required to have knowledge of the NSAT claim;
- All letters from the NSAT regarding the case were sent to the Club;
- The Club, the Second Appellant and the Third Appellant filed written submissions in the NSAT proceedings; and
- The Club, the Second Appellant and the Third Appellant were all represented by the same counsel at the hearing before the NSAT.

c. **The Club failed to comply with the required procedures in imposing sanctions against the Respondents**

61. The Respondents submit that the Club failed to comply with the required procedures in revoking their memberships of the Club.
62. They first claim that they did not commit the violations with which they have been charged. In support of this position, they note that the Appellants have not provided any proof of the alleged violations. They also speculate that the decision to revoke their memberships was a plot by the Third Appellant to consolidate his control of the Club.
63. The Respondents also claim that they were not notified by registered letter of the investigations against them or the decisions to revoke their memberships of the Club, as required by Article 54 of the Club's Articles of Association. In support of this position, they note that no evidence has been filed which establishes that the Club complied with the notification requirements set out in the aforementioned provision. They further note that:
- On 8 December 2022, the Fourth Respondent paid the fee required to participate in the Elections, notwithstanding that his membership was allegedly revoked on 21 May 2021; and
  - It would have been illogical for him to pay the fee to participate in the Elections if he knew that he was no longer a member of the Club.

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d. **The sanctions imposed by the Club were not proportionate**

64. As regards the proportionality of the sanctions, the Respondents' primary position is that they did not commit the alleged violations, such that it is not appropriate to impose any sanctions upon them.
65. The Respondents' secondary position is that, even if they are held to have committed the alleged violations, the sanctions imposed are disproportionate. In this regard, they note that the revocation of their memberships of the Club was the maximum sanction that could be imposed pursuant to Article 54 of the Club's Articles of Association. They submit that one of the other applicable sanctions – those being to draw attention, a warning or preventing the member from entering the Club for a maximum period of six months – would have been more appropriate.

e. **Mitigation of the sanctions**

66. As regards the Appellants' argument that, if the sanctions are found to be disproportionate, they should be mitigated to temporary suspensions, rather than annulled in their entirety, the Respondents emphasise and reiterate that they did not commit the alleged violations. As such, they submit that the Appellants' argument in this regard must be dismissed.

f. **If the Sole Arbitrator finds that the sanctions should be set aside or mitigated, the Respondents must be permitted to take part in the Elections**

67. The Respondents maintain that the Appellants' submission that the Respondents should be ineligible to participate in the repeated elections even if the sanctions are set aside or mitigated is without legal basis.
68. In particular, they submit that Article 54 of the Club's Articles of Association does not allow the Club to deprive a member of their right to participate in elections, so long as the member meets the conditions for candidacy. Accordingly, they submit that the Appellants' argument in this regard must be dismissed.

g. **The Third Appellant was not prevented from nominating an arbitrator before the NSAT**

69. Finally, the Respondents submit that the Appellants' claim that the Third Appellant was prevented from nominating an arbitrator before the NSAT must be dismissed for the following reasons:
- A representative of the NSAT attempted to notify the Third Appellant of the NSAT claim by attending the Club's headquarters. However, the Third Appellant refused to receive the notification.
  - The Third Appellant was also notified of the NSAT claim electronically via the Club's e-mail address.
  - The Third Appellant was thus aware of the claim and gave up his right to nominate an arbitrator by choosing not to participate in the NSAT proceedings of his own free will.

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**C. The Fifth Respondents' Position**

70. As mentioned at paragraph 33 above, the Fifth Respondent did not file an Answer to the Appeal Brief.

**VI. JURISDICTION**

71. Article R47 para. 1 of the CAS Code provides that:

*“An appeal against the decision of a federation, association or sports-related body may be filed with CAS if the statutes or regulations of the said body so provide or if the parties have concluded a specific arbitration agreement and if the Appellant has exhausted the legal remedies available to it prior to the appeal, in accordance with the statutes or regulations of that body.”*

72. In the absence of a specific arbitration agreement between the Parties, in order for the CAS to have jurisdiction to hear an appeal, the statutes or regulations of the sports-related body from whose decision the appeal is being made must expressly recognise the CAS as an arbitral body of appeal.

73. Article 45 of the of the NSAT Statutes provides that:

*“The Decisions of the NSAT shall be deemed as final and binding on the parties of the dispute upon signing them by the Chairman of the NSAT and that is without prejudice to the right of appealing them before the CAS according to the rules and regulations pertinent to the jurisdiction of the CAS and the jurisdiction provisions pertinent to the international sports federations”.*

74. The decisions of the NSAT are thus final in accordance with Article R47 of the CAS Code.

75. It follows, therefore, that the above requirements are fulfilled. Moreover, the jurisdiction of the CAS is not contested by any of the Parties. On the contrary, the Parties confirmed the jurisdiction of the CAS by signing their respective Order of Procedure. As a result, CAS has jurisdiction to decide on the present dispute.

**VII. ADMISSIBILITY**

76. Article R49 of the CAS Code provides that:

*“In the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, or in a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against.”*

77. The NSAT Statutes do not set any time limit for a possible appeal to CAS. They limit themselves to state that an appeal shall be lodged *“according to the rules and regulations pertinent to the jurisdiction of the CAS”* (cf. Article 45 of the NSAT Statutes).

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78. It is not disputed that the Appealed Decision was communicated to the Parties with grounds on 31 August 2023. The Appellants filed their Statement of Appeal on 19 September 2023, i.e., within the prescribed 21 day time limit. The Appellants also complied with all other requirements of Article R48 of the CAS Code, including the payment of the CAS Court Office fee.
79. The Sole Arbitrator, therefore, holds that the appeal is admissible.

**VIII. APPLICABLE LAW**

80. Article R58 of the CAS Code provides as follows:

*“The Panel shall decide the dispute according to the applicable regulations and, subsidiarily, to the rules of law chosen by the parties or, in absence of such 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 that the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision.”*

81. No submissions have been made as to the rules of law chosen by the Parties. Accordingly, the Sole Arbitrator shall decide the dispute according to the Club’s Articles of Association, those being the applicable regulations, and, subsidiarily to Kuwaiti law, Kuwait being the jurisdiction in which the NSAT is domiciled.
82. In addition to the Club’s Articles of Association and Kuwaiti law, certain general principles of law, which have become part of the so-called *lex sportiva* are also of potential application.
83. The applicability of these principles in sports disputes does not depend only on the regulations or the law applicable to the material dispute. Instead, these principles are to be applied in addition to and, if necessary, over and above the rules (cf. CAS 98/200, para. 156; CAS 2008/O/1455, para. 16-21; CAS 2009/A/1768, para. 5.2). The Sole Arbitrator will reference the applicable principles and CAS jurisprudence where relevant below.

**IX. MERITS**

84. The relevant questions that the Sole Arbitrator needs to address in this appeal in order to reach his judgement, can be grouped into the following issues:
- A. What is the effect, if any, of the alleged procedural defects in the NSAT proceedings?
  - B. Have the Appellants established that the Respondents committed the alleged violations and that the correct procedures were followed in imposing the sanctions?
  - C. What sanctions, if any, are appropriate?
85. Each of those questions are addressed in turn in the subsections that follow.
- A. What is the effect, if any, of the alleged procedural defects in the NSAT proceedings?**

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86. As set out above, the Appellants allege that there were the following procedural defects in the NSAT proceedings:
- The Respondents failed to summon the Club and the Second Appellant before the NSAT;
  - The Third Appellant had no standing to be sued before the NSAT; and
  - The Third Appellant was prevented from nominating an arbitrator before the NSAT.
87. The Appellants submit that those alleged procedural defects mean that the claim before the NSAT should have been dismissed, and the present appeal must, therefore, be upheld.
88. For their part, the Respondents dispute that the proceedings before the NSAT were in any way procedurally defective.
89. As to the effect of the alleged procedural defects, the Sole Arbitrator recalls that, pursuant to Article R57 para. 1 of the CAS Code, the CAS has full power to review the facts and the law of each case on appeal *de novo*. CAS panels have consistently held that the *de novo* nature of the review cures any alleged procedural defects in the previous instance proceedings (cf. CAS 96/156, p. 61; CAS 2001/4A/45, para. 8; CAS 2023/A/9230, para. 117 and 153).
90. Accordingly, without passing judgement on whether there were in fact procedural defects in the NSAT proceedings, the Sole Arbitrator finds that any alleged procedural defect that may have occurred or appeared before the NSAT, are in any case cured by the present appeal proceedings.
- B. Have the Appellants established that the Respondents committed the alleged violations and that the correct procedures were followed in imposing the sanctions?**
91. Before assessing whether the violations alleged against the Respondents have been made out and whether the correct procedures were followed in imposing the sanctions, the Sole Arbitrator considers it necessary to briefly address the burden and standard of proof.
92. As regards the burden of proof, well-established CAS jurisprudence provides that “*in CAS arbitration, any party wishing to prevail on a disputed issue must discharge its burden of proof, i.e. it must meet the onus to substantiate its allegations and to affirmatively prove the facts on which it relies with respect to that issue. In other words, the party which asserts facts to support its rights has the burden of establishing them .... The Code sets forth an adversarial system of arbitral justice, rather than an inquisitorial one. Hence, if a party wishes to establish some facts and persuade the deciding body, it must actively substantiate its allegations with convincing evidence*” (cf. CAS 2003/A/506, para. 54; CAS 2009/A/1810 & 1811, para. 46; CAS 2009/A/1975, para. 71ff; CAS 2014/A/3546, para. 7.3).
93. As regards the standard of proof, in the absence of any standard of proof being set out in the applicable regulations, the Sole Arbitrator finds that the general standard of proof applied in disciplinary proceedings before CAS is to be applied, i.e., comfortable satisfaction. The standard of comfortable satisfaction has been consistently upheld in CAS jurisprudence

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regarding disciplinary cases and has been defined as being greater than a mere balance of probability but less than proof beyond a reasonable doubt (cf. CAS 2014/A/3625; CAS 2009/A/1920; CAS 2013/A/3258; CAS 2010/A/2267; CAS 2010/A/2172).

94. In view of the above, the Sole Arbitrator concludes that the Appellants have the burden of proving the alleged violations to the standard of comfortable satisfaction.
95. The Sole Arbitrator does not consider that the Appellants have filed sufficient evidence to discharge that burden. In this regard, he emphasises that the Appellants have failed to adequately particularise the alleged violations, let alone to provide any evidence thereof. Instead, the Appellants have simply asserted that:

*While the elections for the BOD of the Club (for the electoral period 2023 – 2027) was approaching, the First, Second, Third, and Fourth Respondents tried many times to induce the Club's members to distract the Club's and the First Appellant's proper work and performance by filing fake complaints against them, in addition to spreading rumors (sic!) with the intentions of defaming and harming the reputations of the Club and the Second Appellant as explained hereinunder.*

*Those rumors (sic!) included: spreading fake news that the Club and the Second Appellant are getting financial benefits from Umrah trips they provide to the members (an accusation against the Club's and the Second Appellant's integrity and honor (sic!)), in addition to fake news about the Club's and the Second Appellant's transparency and truthfulness of the financial information they declare and announce to the Club's members.*

96. Given the nature of the allegations, one would expect the Appellants to have been able to provide at least some documentary evidence of the same, e.g. copies of the fake complaints filed against them or testimonies from other Club members who were approached by the Respondents with respective statements. However, as mentioned above, no such evidence at all has been provided. Under the circumstances, the respective assertions from the Appellants remain mere allegations without any form of documentary evidence, which would corroborate them.
97. Similarly, there is also insufficient evidence to determine whether the Club complied with the relevant procedures in imposing the sanctions. From the documents on file, it appears that the Respondents' memberships were revoked pursuant to Article 8(A) of the Club's Statutes. The latter have, however, not been filed, so it is not possible for the Sole Arbitrator to determine whether the Club acted in accordance with the cited provisions.
98. Moreover, given the CAS' *de novo* power of review, the Sole Arbitrator is not in a position to simply accept the circumstance that the NSAT found that the Club had complied with the relevant procedures in imposing the sanctions, without having been provided with respective evidence that would allow him to form his own opinion.
99. The Sole Arbitrator also finds that his conclusion does not contradict the Appellants' submission, based on CAS 2018/A/5929, that, in the absence of a counter-appeal, the legal situation of an appealing party cannot be worsened as a result of an appeal. That submission does not stand up to scrutiny because the Appellants' legal situation is not made any worse by



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the finding that the Appellants' have not discharged the burden of proving that the Club complied with the relevant procedures in imposing the sanctions. Instead, their legal situation remains the same in that the sanctions are unlawful, albeit on different, additional, grounds.

100. Accordingly, the Sole Arbitrator concludes that the Appellants have failed to establish to his comfortable satisfaction that the Respondents committed the alleged violations or that the correct procedures were followed in imposing the sanctions.

**C. What sanctions, if any, are appropriate?**

101. In view of the above, and in particular of the fact that the Appellants have failed to establish that the alleged violations have been made out, the Sole Arbitrator finds that it is not appropriate for any sanctions to be imposed against the Respondents.
102. For completeness, the Sole Arbitrator notes that this finding renders the issue of whether the sanctions are proportionate moot. As such, the Sole Arbitrator does not address the Parties' submissions in that regard.

**D. Conclusions**

103. In summary, it must be concluded that any possible procedural defect in the NSAT proceedings was cured by present arbitration procedure, due to the latter's *de novo* nature. The Appellants did not discharge their burden to prove that the alleged violations had indeed been committed by the Respondents, nor that the applicable procedures were complied with when imposing the sanctions. Consequently, there is no reason that would justify the imposition of any sanction at all on the Respondents.
104. As a result, the decision of the NSAT needs to be confirmed in its entirety.

**X. COSTS**

(...)

\* \* \* \* \*

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## **ON THESE GROUNDS**

### **The Court of Arbitration for Sport rules that:**

1. The appeal filed on 19 September 2023 by the Kuwaiti Sport Club for Deaf, Anwar Munif Al Harbi and Hamad Mohamed Al Marri against the decision rendered on 7 August 2023 by the Kuwaiti National Sports Arbitration Tribunal is dismissed.
2. The decision issued on 7 August 2023 by the Kuwaiti National Sports Arbitration Tribunal is confirmed.
3. (...).
4. (...).
5. All other and further motions or prayers for relief are dismissed.

Seat of the arbitration: Lausanne (Switzerland)

Date of the award: 1 May 2025

## **THE COURT OF ARBITRATION FOR SPORT**

Omar Ongaro  
Sole Arbitrator