



TAS / CAS

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

CAS 2024/A/10878 Lennox Ogutu v. Kenyan Football Association

ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

Sole Arbitrator: Mr Frans M. de Weger, Attorney-at-Law, Haarlem, The Netherlands

in the arbitration between

Mr Lennox Ogutu, Kenya

Represented by Mr Anthony Mottais, Attorney-at-Law at Derby Avocats, Caen, France

- Appellant -

and

Kenyan Football Association, Nairobi, Kenya

- Respondent -

*** * * * ***

I. PARTIES

1. Mr Lennox Ogutu (the “Appellant” or the “Player”) is a professional football player of Kenyan nationality.
2. The Kenyan Football Association (the “Respondent” or “KFA”) is the national football association of Kenya, which has its seat in Nairobi, Kenya. It is affiliated with the Confédération Africaine de Football (the “CAF”) and the Fédération Internationale de Football Association (the “FIFA”).
3. The Player and the KFA are hereinafter jointly referred to as the “Parties”.

II. INTRODUCTION

4. These proceedings revolve around the absence of a final decision in a disciplinary case against the Appellant, concerning allegations of match-fixing.
5. In the present proceedings, the Appellant requests the CAS to declare that the Respondent’s alleged refusal to deal with the disciplinary case against the Appellant constitutes a denial of justice and requests the CAS to lift and annul the decision for suspension next to a financial claim for damages, whereas the Respondent challenges the jurisdiction of the CAS, since it alleges that the Appellant failed to exhaust the KFA’s internal legal remedies before appealing to CAS, and requests the CAS to refer the matter to the Appeals Committee of the KFA.

III. FACTUAL BACKGROUND

6. Below is a summary of the main relevant facts, as established on the basis of the submissions of the Parties and the evidence examined in the course of the proceedings. This background information is given for the sole purpose of providing a synopsis of the matter in dispute. Additional facts may be set out, where relevant, in connection with the legal discussion.

A. Background Facts

7. On 17 November 2022, the Player signed an employment agreement with the Kenyan professional football club Mathare United Football Club (“Mathare”), valid from 17 November 2022 until the end of the 2022/2023 sporting season (the “Employment Agreement”).
8. Article 7, para. 1, as stipulated in ‘PART I’ of the Employment Agreement, reads as follows:

“All remuneration to which the Player is or may be entitled will be set out in this agreement and be signed by the parties and the witness. In the event of any dispute the remuneration set out in the agreement will be exclusively deemed to be the full entitlement of the Player. All emoluments due to the Player will only be paid directly to the Player.”

9. Article 1, as stipulated in ‘PART 2’ of the Employment Agreement, reads as follows:

*“(a) A salary of **Ksh 45,000,-** [the amount is handwritten] per month consisting of **30%** for at least **20 hours** of community service approved by the Club per month and **70%** for attending all Club training sessions.
(b) Players signing a contract for a period longer than one season will receive in subsequent years the same bonuses and be subject to the same minimum fines concerning Professional Conduct as specified in Part 2 and Part 4 respectively in the new agreements signed with new players for those years.
(c) Players are responsible for their own income tax, social security and other government levies.”*

10. In February 2023, Mathare received a letter regarding allegations of match-fixing involving the Player. In such letter, dated 6 February 2023, the Head of the KFA Integrity Department informed Mathare of investigations on the Player and his provisional suspension. The letter provides as follows:

[...]

Football Kenya Federation is in receipt of reports alleging that the two players are involved in match fixing practices in the Kenyan game. The players are;

- 1. **Lennox Ogutu (KFA006839)***
- 2. [...]*

KFA wishes to inform your good office that it has opened investigations into the allegations touching on both players and requests you furnish the KFA Integrity Department with the official contact details inclusive of known email addresses and telephone numbers of Mr. Ogutu and [...] through integrity@footballkenya.org.

*Meanwhile, in an effort to protect the integrity of the game during this investigation period, we wish to inform you that we have regrettably suspended **both Mr. Ogutu and [...]** from all football related activities until the matter is concluded. As players registered with your club, kindly inform **Mr. Ogutu and [...]** of this suspension.*

[...]”

11. On 3 July 2023, the Player sent an email to FIFA Players’ Status Department, requesting its intervention, since the KFA had not been in contact with the Player since the imposition of his provisional suspension on 6 February 2023.

12. On 7 November 2023, the Player’s counsel sent a letter to the KFA, seeking an update on the status of the disciplinary proceedings and requested the lifting of the provisional suspension imposed on the Player. The letter reads as follows:

[...]

By letter dated 6 February 2023, you suspended my client from playing football pending the outcome of an investigation on match-fixing allegations while you investigated suspected.

My client tells me that he has always contested these facts.

To date, 8 months later, my client still has no news of these proceedings.

He has neither been called before a disciplinary committee nor received any definitive final sanction.

A provisional suspension cannot be allowed to last for an indefinite period length of time, unless it is considered to be a disguised sanction, with no procedure and no adversarial process, which would breach the principle of due process and give rise to a claim for compensation from my client.

For your information, and as a relevant analogy since it is a text of reference, article 53.1 of the FIFA Disciplinary Regulations stipulates that a provisional measure may only be imposed for a period of 90 days.

I would therefore be grateful if you could inform me of the status of these proceedings and lift my client's provisional suspension.

[...]

13. On 8 January 2024, the Player's counsel sent a reminder to the KFA, and reads:

“[...]

Except a mistaken, I didn't receive any answer to my letter sent by the email below.

It is not acceptable to keep a player on precautionary suspension without any disciplinary procedure or investigation.

[...]

14. On 9 March 2024, the Player's counsel sent another letter to the KFA, reiterating the request for an update on the status of the disciplinary proceedings against the Player. The letter states as follows:

“[...]

I am following up my letter of last November and my reminder of 8 January 2024 (attached).

We have still not received any response from you, either positive or negative.

This attitude is tantamount to a denial of justice as defined by the CAS.

For memory, by letter dated 6 February 2023, you suspended my client from playing football pending the outcome of an investigation on match-fixing allegations while you investigated suspected.

My client tells me that he has always contested these facts.

To date, more one year later, my client still has no news of these proceedings.

He has neither been called before a disciplinary committee nor received any definitive final sanction.

A provisional suspension cannot be allowed to last for an indefinite period length of time, unless it is considered to be a disguised sanction, with no procedure and no adversarial process, which would breach the principle of due process and give rise to a claim for compensation from my client.

For your information, and as a relevant analogy since it is a text of reference, article 53.1 of the FIFA Disciplinary Regulations stipulates that a provisional measure may only be imposed for a period of 90 days.

I would therefore be grateful if you could inform me on the status of these proceedings and lift my client's provisional suspension.

If you do not reply within a fortnight, we will definitely consider that your Federation is guilty of a denial of justice and we will therefore refer the matter to CAS in order to compensate my client for his loss.

[...]"

15. From July 2023 up to and including February 2024, neither the Player nor his counsel received any response from the KFA, despite the abovementioned requests.
16. The Player received a letter, claimed to be received by WhatsApp, dated 22 March 2024, through which the KFA summoned the Player to appear before the KFA Investigation Officer on 25 March 2024. The letter reads as follows:

"[...]"

*This letter serves as an official summon for you to appear before the Football Kenya Federation (KFA) Investigation Officer on **Monday, March 25, 2024**. The meeting will be held at **KFA Offices at 10am** as part of the ongoing investigation into allegations of match fixing that were communicated to you on **February 6th, 2023**.*

Your attendance is mandatory, and the purpose of this meeting is to provide you with the opportunity to address the allegations that have been made against you. The KFA takes any accusations of match fixing very seriously, as they threaten the integrity of the sport, and is committed to conducting a thorough and fair investigation into these claims.

Please be advised that failure to comply with this summon may result in further disciplinary action, as per the regulations of the KFA. It is in your best interest to attend the meeting and fully cooperate with the Investigating Officer.

[...]"

17. The Player responded to the KFA's letter, confirming his presence, with the following message:

"Dear Sir

I acknowledge receipt of this summons for a hearing in 3 days.

My lawyer, who has written to you several times, tells me that he was not informed of this hearing.

I confirm my presence, however being surprised to have never been the recipient of any document in relation to the investigation and what I am accused of.

I will therefore be available to answer your questions even if I still do not really know what I am accused of.”

18. On 25 March 2024, the Player attended the meeting with the KFA’s investigation officer.
19. On 12 April 2024, the Player’s counsel sent a letter to the KFA following up on the meeting with the KFA’s investigation officer. The letter states as follows:

“[...]

First, we must admit that KFA’s summon sent to our client via WhatsApp on 22 March 2024 for an in-person meeting with an investigating officer three days later, i.e. on 25 March 2024 came as a surprise. Said summon sent on such short notice did not allow our client to be duly accompanied and represented during said interview.

Mr. Ogutu nevertheless attended the said meeting, in a spirit of good faith and cooperation as he has always displayed since the start of the investigation. He reiterated his position that he did not engage in any match-fixing activities and was not part of any manipulation scheme whatsoever. Our client was also positively surprised to note that KFA’s investigator confirmed that the case file does not incriminate him and that the latter will inform KFA accordingly, for a decision to be taken in and around 15 April.

We do hope that such a timeline will be respected, given that our client has been provisionally suspended for an excessive lapse of time, i.e. since 6 February 2023 and the only thing he wishes for is to resume his profession.

In this perspective, we kindly invite KFA to deliver a decision as soon as possible in the interests of all parties involved and take the opportunity of this letter to also request that said decision be communicated to the undersigned as the official legal representative of Mr. Ogutu. This is more important in order to preserve and protect my client’s rights.

[...]”

20. On 26 May 2024, since the KFA did not provide any further updates nor a final decision, the Player’s counsel sent another letter to the KFA. The letter reads as follows:

“[...]

After being provisionally suspended for more than a year, my client was finally granted a hearing on 25 March 2024, albeit under questionable conditions.

I then wrote to you on 12 April to discuss the conditions of this hearing.

That said, my client was told at the hearing that he would receive a response within a fortnight.

To date, he has not been notified of any decision.

Once again, this way of operating amounts to a denial of justice.

If no decision is notified within a fortnight, I will refer the matter to CAS for denial of justice and to compensate my client for his loss.

[...]”

21. On 2 August 2024, in the absence of a reply from the KFA, the Player’s counsel sent a final letter to the KFA, including a final deadline to render a decision by 2 September 2024, stating the following:

“[...]

It is now the sixth time that we kindly urge you to render a final decision of Mr. Lennox Ogutu who has now been provisionally suspended since 6 February 2023, in complete contradiction with the limitations set out in article 51.3 of the FIFA Disciplinary Code.

Unfortunately, to date, Mr. Ogutu never had access to the case file, was not provided any update as to the state of investigation and is still waiting for a final decision to be rendered.

This absence of action and/or decision is unreasonable, and it breaches the players’ right to have access to a swift and well-functioning justice system and has prevented him from working.

In this regard, we invite you to lift the suspension of Mr. Ogutu without further delay and render a final decision by 2 September 2024.

Should KFA fail to do so, such failure will be considered a denial of justice, and we will have no choice but to start a procedure against KFA at the Court of Arbitration for Sport which would also include a claim for financial compensation to repair the harm experienced by Mr. Ogutu.

[...]”

22. The KFA did not respond to the letter of 2 August 2024.

IV. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

23. On 19 September 2024, the Appellant filed a Statement of Appeal with the Court of Arbitration for Sport (“CAS”) against the Respondent with respect to the provisional suspension imposed by the Respondent and for denial of justice, in accordance with Article R47 and R48 of the 2023 edition of the CAS Code of Sports-related Arbitration (the “CAS Code”).

24. On the same date, the Appellant filed a Request for Provisional Measures, in accordance with Article R37 of the CAS Code. In his Request for Provisional Measures, the

Appellant requested the CAS to issue an order to suspend the bans imposed on the Appellant by the Respondent and, consequently, to stay the decision of the KFA Integrity Department.

25. On 1 October 2024, in accordance with Article R51 of the CAS Code, the Appellant filed its Appeal Brief, which was acknowledged by the CAS Court Office on 2 October 2024.
26. On 8 October 2024, the CAS Court Office informed the Parties, *inter alia*, that the Respondent had not replied to the Request for Provisional Measures, and that the President of the Appeals Arbitration Division would render an Order on Provisional Measures shortly.
27. On 23 October 2024, the Respondent filed its Answer in accordance with Article R55 of the CAS Code.
28. On 24 October 2024, the CAS Court Office acknowledged receipt of the Respondent's Answer and invited the Appellant to file a reply strictly limited to the objection to CAS jurisdiction. Furthermore, the CAS Court Office invited the Parties to indicate whether they preferred a hearing to be held in this matter or for the Sole Arbitrator to render an award based solely on the Parties' written submissions. Lastly, the CAS Court Office invited the Parties to inform the CAS Court Office whether they requested a case management conference with the Sole Arbitrator in order to discuss procedural issues, the preparation of the hearing (if any), and any issues related to the taking of evidence.
29. On 29 October 2024, the Appellant filed his submissions in response to the Respondent's objection to the jurisdiction of the CAS, in accordance with Article R55 (1) of the CAS Code. In addition, the Appellant informed the CAS Court Office that he did not consider a hearing necessary and did not request a case management conference.
30. On 25 November 2024, the CAS Court Office sent the Parties the Order on Request for Provisional Measures, as rendered by the President of the Appeals Arbitration Division on the same date. The operative part of the Order on Provisional Measures provides as follows:
 - “1. *The application for provisional measures filed by Mr Lennox Ogutu on 19 September 2024 in the matter CAS 2024/A/10878 Lennox Ogutu v. Kenyan Football Association is granted.*
 2. *The decision rendered by the Head of the Integrity Department of the Kenyan Football Association's Appeals Committee on 6 February 2023 is stayed.*
 3. *The suspension imposed on Mr Lennox Ogutu is lifted with immediate effect.*
 4. *The costs of the present order shall be determined in the final award or in any other final disposition of this arbitration.*”
31. On 7 January 2025, the CAS Court Office informed the Parties that the President of the CAS Appeals Arbitration Division, pursuant to Article R54 of the CAS Code, had decided that the Panel appointed to decide the case was constituted as follows:

Sole Arbitrator: Mr Frans de Weger, Attorney-at-Law, Haarlem, the Netherlands

32. On 13 January 2025, the Sole Arbitrator noted that the Appellant did not consider a hearing to be necessary, whereas it appeared that the Respondent failed to provide its position in this regard, within the given deadline. Consequently, in the absence of a reply, the Sole Arbitrator invited the Respondent again whether it wished to request a hearing, and if so, to provide the grounds thereof. Furthermore, the Sole Arbitrator informed the Parties that, in the absence of explicit agreement with the Respondent, an expedited procedure would not be implemented.
33. On 28 January 2025, in the absence of any further reply from the Respondent as to the holding of a hearing or not, in accordance with Article R57 of the CAS Code, the Sole Arbitrator informed the Parties that he deemed himself sufficiently well-informed to decide the case based solely on the Parties' written submissions, without the need to hold a hearing. Furthermore, the Sole Arbitrator requested the Parties to return a signed copy of the Order of Procedure.
34. On 3 February 2025, the CAS Court Office acknowledged receipt of the Appellant's signed Order of Procedure on the same date.
35. On 10 February 2025, the CAS Court Office informed the Parties that the Respondent had not returned a signed copy of the Order of Procedure within the granted time-limit and, consequently, was invited to do so on or before 14 February 2025. No signed copy of the Order of Procedure was received from the Respondent by the CAS Court Office.

V. SUBMISSIONS OF THE PARTIES AND REQUESTS FOR RELIEF

36. The Sole Arbitrator confirms that he carefully considered in his decision all the submissions, evidence, and arguments presented by the Parties, even if they have not been specifically summarised or referred to in the present arbitral award.

A. The Player's Submissions

37. The Player's submissions, in essence, may be summarised as follows:

Jurisdiction and admissibility

- In accordance with Article 69 para. 1 of the Constitution of the KFA ("KFA Constitution"), disputes within the KFA or disputes involving leagues, league members, clubs, club members, players and officials shall not be submitted to ordinary courts, unless the KFA Constitution or binding legal provisions specifically provide for or stipulate recourse to ordinary courts. Such disputes shall, in accordance with Article 69 para. 3, be referred to an independent Arbitration Tribunal recognised by KFA or CAF, or to the CAS.
- In addition, Article 67 para. 2 of the KFA Constitution assigns to the Appeals Committee of the KFA ("KFA Appeals Committee") the responsibility of hearing appeals against all decisions made by all committees. In accordance with Article 67 para. 3 of the KFA Constitution, decisions of the Appeals

Committee may be appealed to the CAS, or to a national, independent Arbitration Tribunal recognized in the KFA Constitution.

- Based on the foregoing, “*any dispute and decision can be submitted to the CAS*”.
- The matter was not brought before the KFA Appeals Committee, as the KFA did not issue any disciplinary decision. As a result, the Appellant’s provisional suspension remained in effect indefinitely. Consequently, the matter was legitimately referred to the CAS.
- On 2 August 2024, the KFA was sent a final notice, setting a deadline of 2 September 2024 to issue a decision. Failure to do so by that date would result in the matter being referred directly to the CAS on the grounds of denial of justice. As the KFA did not render a decision within the given timeframe, the Player referred the matter to the CAS.
- Furthermore, the relevant date for the commencement of the deadline for appeal is 2 September 2024. The Statement of Appeal was submitted on 19 September 2024. Consequently, the Appeal Brief was submitted in a timely manner.
- As to the exhaustion of legal remedies, the Player refers to CAS jurisprudence (CAS 2017/A/5086) from which it follows that CAS’ *de novo* review does not open the door for international federations to abuse the system and intentionally omit procedural violations, such as unreasonably delaying in the issuance of a decision while “blocking” a party from appealing to CAS through its requirement of exhausting all internal channels before filing an appeal.

Denial of Justice

- ‘Access to justice’ is “*a fundamental right, protected and enshrined at international level*”. This right is recognized in Article 6 para. 1 of the European Convention on Human Rights. Under this provision, in civil proceedings, individuals are entitled to have their disputes adjudicated by a court, a principle that is universally recognised as a fundamental principle of law.
- ‘Denial of justice’ is defined in CAS jurisprudence, such as CAS 2005/A/944, CAS 2015/A/4213, CAS 2015/A/4195, CAS 2017/A/5042, CAS 2017/A/5086 and CAS 2022/A/9056, as “*the refusal of a body to rule, issue a decision or delay the issuance of a decision beyond a reasonable period of time, thus opening the possibility for an appeal against this inaction*”.
- The Club informed the Player of a provisional suspension imposed by the KFA on 6 February 2023, due to allegations of match-fixing. However, he never received the case file nor was he contacted by the KFA, despite several reminders, until March 2024, i.e. 13 months after the suspension imposed on him. The Player was summoned to an interview with a KFA integrity officer

in March 2024, during which he was informed that there was no evidence of match-fixing implicating him and that a decision would be made by mid-April 2024. Despite the Player's reminders after the interview, he remained suspended due to the KFA's failure to take further action. The timeline of this case, combined with the absence of clear communication from the KFA, is unacceptable and has caused significant prejudice to the Player.

- Based on the foregoing, the KFA's refusal to issue a decision constitutes a denial of justice and violates the Player's fundamental rights.

Breach of the Player's fundamental rights

- The Player states that the KFA, as 'governing body of football in Kenya', enjoys a normative and disciplinary power over its members, which, according to the Player, also comes with an obligation towards them, to provide for an independent and efficient disciplinary process.
- The KFA's internal justice system is to be mandatorily followed by players in disciplinary matters. For this reason, the KFA's internal justice system must be respectful of an individual's fundamental rights. Such system places a greater responsibility on the KFA, as the normative and judiciary power, to ensure that the rule of law and fundamental principles of justice are being upheld. An individual forced to give up fundamental rights, such as the right to access ordinary state courts, would expect that the disciplinary system imposed on him complies with internationally recognised fundamental rights.
- Furthermore, the applicable KFA regulations do not contain any provisions on the applicable time limits, and in particular concerning i) the maximum length of a provisional suspension, or ii) the maximum length for the deciding body to render a decision.
- Consequently, the Player finds himself in a position in which he is greatly prejudiced, has suffered irreparable damages and has not been able to provide his services since February 2023. The Player states the KFA is not only breaching its own statutes and regulations, but also the Player's fundamental rights.

Suspension

- The Player states he was wrongly banned from football and is, as such, unable to work and provide for his family, as he has been suspended by the KFA since February 2023 without having been specifically accused of match-fixing.
- He has never been involved in match-fixing, and the burden to prove otherwise lies with the KFA.
- He has not been provided with any documentation or records indicating his involvement in match-fixing. Therefore, his suspension was imposed solely pending the KFA's investigation. Furthermore, the Player states that while a provisional suspension may be justified to prevent further harm to the integrity of the KFA's competition, such suspension must be temporary, with both the

investigatory and adjudicatory processes conducted in promptly to minimize the impact on the accused individual.

- Furthermore, a 20-month suspension – with no access to the case file and no set date for a final decision – can no longer be deemed provisional. Rather, it amounts to an arbitrary sanction breaching the Player’s fundamental right to access to justice and to work. This violation largely outweighs the unsubstantiated claim that integrity of KFA’s competition is at stake.
- The Player refers to Article 51.3 of the FIFA Disciplinary Code, which stipulates that a provisional measure is limited to 90 days, which may be extended once for an additional period of 90 days. Consequently, the provisional suspension imposed on him goes far beyond the limit of 180 days.
- In light of the above, particularly the harm cause to the Player’s career and the duration of the suspension, the Player requests the CAS to annul the KFA’s decision on the Player’s suspension and to order the immediate lift of the Player’s suspension.

Financial compensation

- The KFA is responsible to repair the harm caused by the KFA. Therefore, the Player requests financial compensation.
- The actions of KFA have significantly harmed the Player by preventing him from playing football, thereby depriving him of his livelihood and career opportunities. Instead of gaining visibility to enhance his career, the Player has been subjected to negative publicity, despite no proven allegation and without due process being followed in adjudicating his case.
- The suspension has affected both the Player’s sporting and professional career, as well as his reputation. With reference to various news articles, the Player highlights that both his suspension and the allegations against him were widely covered in national media.
- Furthermore, the KFA’s provisional suspension and subsequent inaction prevented the Player from working over a period of 20 months, a duration in which the Player could have been drawing a salary. As the Player’s basic salary at the time of the provisional suspension amounted to Kshs. 45,000 (forty-five thousand Kenyan Shillings) per month, the KFA is liable to compensate the Player with the amount of Kshs. 900,000 (nine hundred thousand Kenyan Shillings), corresponding to the salary the Player would have expected to earn by the time of filing his Appeal. The Player argues the sum will be updated on the date of the decision to be taken.

38. On this basis, the Player submitted the following requests for relief in his Appeal Brief:

- “a) *To declare that the Respondent’s refusal to deal with the disciplinary case of Mr. Lennox Ogutu constitutes a denial of justice.*

- b) *To lift the suspension imposed on the Player.*
- c) *To annul the decision rendered by the Respondent.*
- d) *In the alternative, refer the matter back to KFA for a final and appealable decision to be passed in an expeditious manner.*
- e) *To rule that KFA must financially compensate Mr. Ogutu for the harm caused by the denial of justice in the amount of Ksh 900 00 (to be completed on the date of the decision) plus 5% interest.*
- f) *To condemn the Respondent to pay the entire CAS administration costs and the arbitration fees and to reimburse the Appellant of any and all expenses he incurred in connection with this procedure.*
- g) *To rule that the Respondent has to pay the Appellant a contribution towards his legal costs.”*

B. The Respondent

39. The KFA’s submissions, in essence, may be summarised as follows:

- After having received confidential information that the Player was involved in match-fixing within the Kenyan game, to safeguard the integrity of the Kenyan football, the Player was provisionally suspended. After a meeting with the Respondent’s Integrity Officer on 25 March 2024, the Respondent’s Integrity Department proceeded to record other statements from several other persons of interest in the case. The Respondent was in the process of finalising its investigation *“into the match fixing allegations when the present appeal was lodged before the Tribunal”*.
- In accordance with Article 69 para. 1 of the KFA Constitution, disputes within the KFA or disputes involving leagues, league members, clubs, club members, players and officials shall not be submitted to ordinary courts, unless the KFA Constitution or binding legal provisions specifically provide for or stipulate recourse to ordinary courts. Such disputes shall, in accordance with Article 69 para. 3, be referred to an independent Arbitration Tribunal recognised by KFA or CAF, or to the CAS.
- Additionally, the KFA refers to Article 69 para. 5 of the KFA Constitution, which stipulates that:

“If any of the parties is dissatisfied by decisions and rulings made by any of the Standing Committees and judicial committees, such a party is at liberty to lodge an appeal with the Appeals Committee whose decision shall be final unless stipulated elsewhere in this constitution.”
- Furthermore, the KFA refers to Article 70 para. 1 of the KFA Constitution, which reads as follows:

“Recourse may only be made to an Arbitration Tribunal in accordance with art. 68 once all internal channels of KFA have been exhausted.”

- Based on the foregoing, the KFA Constitution only allows for an appeal to the CAS once all the KFA’s internal dispute resolution channels have been exhausted. As the Appellant did not file an appeal with the KFA Appeals Committee, whose mandate allows it to hear appeals against all decisions determined by all committees, the Appellant has not exhausted the internal legal remedies under the KFA Constitution.
 - The KFA, with reference to Article R47 of the CAS Code, notes that the Player has not exhausted the KFA’s available internal remedies. Additionally, the Player has not demonstrated that the Appeals Committee was either unavailable, inefficient, or incapable of providing an adequate remedy, which would have justified filing the appeal before first approaching the KFA Appeals Committee.
 - Based on the foregoing, the KFA states the Tribunal lacks the jurisdiction to determine the Player’s appeal.
40. On this basis, the Respondent submitted the following requests for relief in its Answer:
- a. This Tribunal declare that it lacks jurisdiction to determine the present appeal.*
 - b. The Appellant be directed to refer their complaint back to the Appeals Committee with such other directions as this Tribunal deems fit.*
 - c. Each party be ordered to bear their own legal costs.”*

VI. APPLICABLE LAW

41. 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 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 that the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision”.

42. With reference to Article R58 of the CAS Code, and in view of the fact that this appeal derives from a disciplinary procedure initiated by the KFA, the Appellant submits that the various regulations of the KFA, in particular the KFA Constitution (which is also referred to by the Appellant as the ‘FKF Statutes’) as well as the KFA Rules and Regulations Governing Kenyan Football (“KFA Regulations”), are applicable.
43. The Sole Arbitrator observes that also the Respondent refers to the KFA Constitution as well as the KFA Regulations.
44. In this regard, Article 8 of the KFA Constitution reads as follows:

“1. The bodies and officials of FKF must observe the Statutes, regulations, directives, decisions and the Code of Ethics of FIFA, of CAS and of FKF in their activities.

2. Every person and organisation involved in the game of Association Football in FKF's territory is obliged to observe the relevant Constitution, regulations, decisions of FKF and the principles of fair play as well as the principles of loyalty, integrity and sportsmanship."

45. Additionally, Article 13 para. 1 of the KFA Regulations reads as follows:

"Matters not provided for in these Rules will be dealt with in terms of the FKF Statutes, other relevant FKF prescripts and precedents, and where the same are silent the Rules and Regulations of FIFA, as the case may be, including the FIFA Anti-Doping Regulations. In case of conflict between these regulations and the FIFA statutes, the FIFA statutes will take precedence at all times."

46. Accordingly, in application of Article R58 of the CAS Code, the Sole Arbitrator shall apply the various rules and regulations of the KFA, in particular the KFA Constitution and the KFA Regulations, as they govern the federation whose decision – or absence of a decision – has been challenged. Additionally, in matters not provided for in the KFA Constitution and KFA Regulations, the Sole Arbitrator shall apply the FIFA Statutes, edition 2024, and the FIFA Disciplinary Code, edition 2023, and additionally, if needed, Kenyan law.

VII. JURISDICTION

47. Article R47 para. 1 of the CAS Code provides the following:

"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."

48. According to Article 69 para. 1 and para. 3 of the KFA Constitution:

"1. Disputes in the Association or disputes affecting Leagues, members of Leagues, Clubs, members of Clubs Officials and other Association Officials shall not be submitted to Ordinary Courts, unless the FIFA regulations this Constitution or binding legal provisions specifically provide for or stipulate recourse to Ordinary Courts."

"3. The disputes as specified in art. 1 shall be taken to an independent Arbitration Tribunal recognised by FKF or CAF or to the Court of Arbitration for Sport (CAS) in Lausanne, Switzerland."

49. In the present case, the Respondent contests the jurisdiction of the CAS because the Appellant has not exhausted the KFA's available internal legal remedies. In this regard, the Respondent takes the position that the Appellant had to appeal before the KFA Appeals Committee. On the other hand, the Appellant argues that he was never in a position to file an appeal before the KFA Appeals Committee since the first instance body, the Disciplinary Commission of the KFA ("KFA Disciplinary Committee"), had not ruled on the case and not issued a decision. This, so argues the Appellant, constitutes a denial of justice which justifies an appeal directly to CAS.

50. Having taken note of the above positions and against the above legal framework, the Sole Arbitrator observes that most of the above arguments made by the Parties relate to the exhaustion of internal legal remedies. The Sole Arbitrator is aware that there is some debate as to whether the “exhaustion of legal remedies” is a question of jurisdiction or a question of admissibility (RIGOZZI/HASLER, in ARROYO M.(Ed.), *Arbitration in Switzerland*, Article R47 CAS Code, marg. No. 37; See also MAVROMATI/REEB, *The Code of the CAS*, R47, marg. no. 12 and 32). The Sole Arbitrator subscribes itself to the following CAS jurisprudence in this respect (see, *inter alia*, CAS 2019/A/6298):

“77. It is debated in legal doctrine whether exhausting internal legal remedies is an admissibility requirement (pro: RIGOZZI/HASLER, Article R47 CAS Code, in: Arroyo (Ed.), Arbitration in Switzerland, Vol. II, 2018, p. 1583) or a matter of jurisdiction (pro: MAVROMATI/REEB, The Code of the Court of Arbitration for Sport, 2015, p. 391). According to Rigozzi/Hasler ‘[i]t must be emphasized that although the ‘exhaustion of internal remedies rule’ constitutes a mere admissibility requirement, it is treated as a precondition for CAS jurisdiction in the context of actions to set aside CAS awards based on Art. 190(2) (b) PILS, meaning that the issue can be reviewed with unfettered powers by the Swiss Supreme Court.’ (RIGOZZI/HASLER, Article R47 CAS Code, in: Arroyo (Ed.), Arbitration in Switzerland, Vol. II, 2018, p. 1584).

78. The Panel favours considering the issue as an admissibility requirement. First, this is in line with the Parties’ written and oral submissions that considered it to be an issue of admissibility. Second, because the requirement does not serve to distinguish the Panel’s mandate from the Parties’ access to justice before state courts. By submitting to CAS jurisdiction, the Parties wanted to exclude any kind of recourse to state courts. In particular, they did not want to enable a party to file an appeal before state courts in all matters, in which a CAS panel finds that the requirements for a ‘decision’ within the meaning of Article R47 CAS Code are not fulfilled. Consequently, the issue whether or not a decision is appealable (within the meaning of Article R47 of the CAS Code) is not aimed at limiting the CAS jurisdiction vis-à-vis state courts. Instead, it is an admissibility issue, since – at the end of the day – the response to the question at stake is dictated by procedural principles such as procedural efficiency. This Panel finds itself comforted in its view by a comparison with the procedural rules regulating appeals before state courts. In such context whether or not a (preliminary) decision from a previous instance is appealable or not to a higher instance is a procedural matter of admissibility.”

51. In view of the above, the Sole Arbitrator considers the matter of the exhaustion of legal remedies to be an admissibility requirement, as the Parties have excluded any kind of recourse to state courts, by submitting to CAS jurisdiction (CAS 2019/A/6298, para 78). Furthermore, based on Article 69 para. 3 of the KFA Constitution, if the Appellant had exhausted all internal legal remedies available to it, CAS would be competent to adjudicate and decide on such appeal (CAS 2022/A/8664, para 57). Consequently, the issue whether or not a decision is appealable is not aimed at limiting the CAS jurisdiction.

52. Furthermore, the Sole Arbitrator notes that, in accordance with the case law of the Swiss Federal Court, which is applicable when determining the CAS jurisdiction, to say that there has been a denial of justice is a matter of substance and does not affect the jurisdiction of the court seized (TAS 2022/A/9056, para. 40).
53. Therefore, the Sole Arbitrator will not address the Respondent’s arguments in relation to the available internal legal remedies in the context of jurisdiction (but under the part of chapter “VIII. Admissibility”).
54. Considering the foregoing, and in application of Article R47 of the CAS Code as well as Article 69 para. 1 and para. 3 of the KFA Constitution, the CAS has jurisdiction to adjudicate and decide on the present dispute.

VIII. ADMISSIBILITY

55. As a starting point, the Sole Arbitrator refers to Article R49 of the CAS Code:

“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.”

56. The Sole Arbitrator observes that the KFA Constitution nor the KFA Regulations set out a time limit within which an appeal must be lodged before CAS, which is also not in dispute between the Parties. Therefore, in the present case, the time limit of 21 days as provided for in Article R49 of the CAS Code, in principle, applies. However, the Sole Arbitrator notes that this case concerns an appeal based on an alleged denial of justice. In such a situation, it is settled case law that the time limit of Article R49 of the CAS Code cannot apply when an appeal is brought before the CAS on the grounds that a decision has been delayed, as is the case here (see, *inter alia*, CAS 2022/A/9056, CAS 2006/A/1139). As no particular circumstances, such as a possible abuse of rights from the side of the Appellant, exist which should lead to a reversal of this established case law, the Sole Arbitrator adheres to this established case law and will thus have to decide whether a denial of justice exists in the present case.

Existence of a denial of justice

57. The Appellant argues that an unfair delay in making a decision constitutes a denial of justice and that he has been “*left in the dark*” for more than 1.5 years, with no indication of any pending decision. The Respondent has had 20 months to act, yet it failed to do so, hence committing a denial of justice. The Appellant argues that he was never in a position to file an appeal before the KFA Appeals Committee because the KFA Disciplinary committee, as the first instance body, had not issued a decision.
58. The Respondent, on the other hand, has not provided any explanation or argumentation regarding the alleged denial of justice other than that the Respondent was in the process of finalizing its investigation as to the match-fixing allegations.
59. In accordance with the CAS jurisprudence, a denial of justice occurs “*if the judicial body has failed to issue and communicate a decision following a party’s request, also*

taking into account the particular urgency existing in some cases. If there is a lacuna in the rules of the sports body regarding cases of inactivity and lack of answer to a request, a decision not to open a case or the absence of reaction in general must be considered as a decision subject to an appeal to the CAS.” (see, *inter alia*, CAS 2005/A/944; CAS 2015/A/4195; CAS 2017/A/5042; and CAS 2020/A/6921)

60. In addition, the absence of any viable opportunity to obtain a legally binding and challengeable clarification might likely have to be treated as or like a denial of justice, which would be treated like a decision subject to an appeal at CAS, to the extent that such absence is fatal to the interests of the parties (see, *inter alia*, CAS 2015/A/4213, para. 58; and MAVROMATI/REEB, *The Code of the Court of Arbitration for Sport, Commentary, Cases and Material*, Alphen aan de Rijn (NL) 2015, R47 para. 24).
61. In view of the above legal framework, the Sole Arbitrator brings in mind that, in the present case, the Club was formally notified of match-fixing allegations involving the Appellant in February 2023. It has been established that, since that time, the Appellant has followed up with the Respondent on four occasions, seeking information and updates regarding the disciplinary case against him. Ultimately, on 25 March 2024, the Appellant attended a meeting with the Respondent’s Integrity Officer. Following the meeting with the Respondent’s Integrity Officer, the Appellant made three further attempts to follow up with the Respondent, requesting a decision to be rendered. The Sole Arbitrator notes that the Respondent has never provided the Appellant with the case file or any evidence regarding the allegations against him.
62. The Sole Arbitrator further observes that the Appellant sent a final notice to the Respondent on 2 August 2024, setting a deadline of 2 September 2024 for the Respondent to issue a decision. In such letter, the Respondent was clearly warned that, if no response was received by that date, the Appellant would consider that the Respondent refused to issue a decision, thereby constituting a denial of justice.
63. It is undisputed that the Respondent has not responded to any of the reminders sent by the Appellant and/or his counsel, nor has the Respondent rendered a decision regarding the disciplinary proceedings against the Respondent, despite the Appellant’s explicit requests. What is more, there is also not a single indication that a decision will follow shortly, let alone what the status of the matter is other than that, as set out above, the Respondent “*is finalising the process*”. Consequently, it is undisputed that for the duration of almost two years, no decision has been issued. This prolonged inaction by the Respondent has resulted in an unjustified delay in issuing a decision, exceeding what can be considered a reasonable period of time.
64. As to the Respondent’s position that the Appellant first had to exhaust internal legal remedies by means of appealing before the KFA Appeals Committee first before bringing his appeal to the CAS, which is a matter of admissibility as set out above, the Sole Arbitrator finds that the Respondent cannot succeed in such claim either.
65. In this regard, the Sole Arbitrator notes that it is not in dispute between the Parties that the KFA Constitution provides for an appeal before the KFA Appeals Committee that the first decision had to be taken by the KFA Disciplinary Committee, which is the judicial body as referenced in Article 64 para. 1 of the FKF Constitution, as mentioned before. However, it is the Respondent’s position that the Appellant had to

appeal before the KFA Appeals Committee first before appealing to the CAS. On the other hand, the Appellant argues that he was never in a position to file an appeal before the KFA Appeals Committee first since the first instance body, the KFA Disciplinary Committee, had not issued a decision yet. This, so argues the Appellant, as set out, constitutes a denial of justice which justifies an appeal directly to the CAS.

66. Having in mind the above positions in relation to the exhausting of legal remedies in the context of denial of justice, the Sole Arbitrator observes that Article 70 of the KFA Constitution, also referred to by the Respondent, provides that all internal channels of the KFA must have been exhausted. In this regard, the Sole Arbitrator also refers to Article R47 para. 1 of the CAS Code which provides the following:

“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.”

67. The Sole Arbitrator notes that, in accordance with CAS jurisprudence, parties are protected under the “denial of justice” principle from the unreasonable delay in the issuance of a decision while blocking a party from appealing to the CAS through its requirement of exhausting all the internal channels before filing an appeal. In CAS 2017/A/5086, for example, the Panel held as follows (in paragraph 129 of the Award):

“The Panel also takes note of the Appellant’s argument that CAS’s de novo review opens the door for international federations to abuse the system and intentionally commit procedural violations, such as unreasonably delaying in the issuance of a decision while “blocking” a party from appealing to CAS through its requirement of exhausting all internal channels before filing an appeal. However, according to long-standing CAS jurisprudence, parties are protected from such alleged abuse under the “denial of justice” principle. According to the CAS, “[i]f a body refuses without reasons to issue a decision or delays the issuance of a decision beyond a reasonable period of time, there can be a denial of justice, opening the way for an appeal against the absence of a decision” (CAS 2015/A/4195, citing CAS 2005/A/899; see also CAS award of 15 May 1997, published in REEB M., Digest of CAS Awards 1986-1998, p. 539).”

68. The Sole Arbitrator finds that the Respondent cannot successfully held against the Appellant that the internal legal remedies were not exhausted yet. In other words, so finds the Sole Arbitrator, the Respondent is clearly blocking the Appellant from appealing to the CAS through its requirement of exhausting all internal channels before filing such appeal before the CAS. The Sole Arbitrator finds that the Appellant should be protected by the “denial of justice” principle against such stance. What is more, the Sole Arbitrator is aware that the KFA Regulations, in particular Article 10.3.4.1, provide for a 72 hours deadline to appeal the decision of the KFA Disciplinary Committee before the KFA Appeals Committee after receipt of the “written disciplinary hearing decision”. However, as the Appellant rightfully stated, such decision has not been issued after almost more than two years, let alone the unclarity as to what should be considered as a “written disciplinary hearing decision”.

69. Be that as it may, the Respondent's position as to the exhausting of legal remedies will be rejected. Therefore, as the Sole Arbitrator has already established that the delay in the present case is far from reasonable, in view of the above and in light of the specific circumstances of the case, such delay clearly leads to a denial of justice.

In conclusion

70. As to the time limit for the filing of an appeal and having in mind Article R49 of the CAS Code, and the absence of any further time limits in the KFA Constitution and the KFA Regulations for an appeal to the CAS, the Sole Arbitrator notes that the Appellant filed his Statement of Appeal on 19 September 2024. The Statement of Appeal was therefore filed within 21 days of the expiry of the formal notice period, i.e. the deadline of 2 September 2024, set out in the Appellant's final notice of 2 August 2024, thus demonstrating the diligence required in such situation, even though the time limit set out in Article R49, as mentioned before, was not applicable to the Appellant in this case (in accordance with TAS 2022/A/9056, para. 49). Additionally, the Sole Arbitrator further notes, as for matters not provided for within the KFA Regulations or the KFA Constitution, the KFA Regulations refer to the FIFA regulations, which in Article 57 of the FIFA Statutes, which will be considered by the Sole Arbitrator in the present case, as also set out before, provides that appeals shall be lodged with the CAS within 21 days of receipt of the decision in question.
71. In light of the aforementioned, the Sole Arbitrator notes that the Respondent's failure to issue and duly communicate a decision in regard to the disciplinary proceeding against the Appellant, constitutes a denial of justice. Consequently, the Appellant has the right to appeal against the absence of a decision from the Respondent with regard to the disciplinary case and the match-fixing allegations against the Respondent.
72. Consequently, and having in mind that the Statement of Appeal also satisfies the other criteria for the admissibility of the appeal, it follows that the appeal is admissible.

IX. MERITS

A. The Main Issues

73. The Sole Arbitrator finds that the main issues to be addressed are the following:
- a. Should the suspension imposed on the Appellant be lifted?
 - b. Should the Respondent's decision to provisionally suspend the Appellant be annulled?
 - c. Does the Respondent have to financially compensate the Appellant for the harm caused by the denial of justice?
74. The Sole Arbitrator will address these issues in turn below.
- a. Should the suspension imposed on the Appellant be lifted?*
75. Carefully analysing the Parties' positions, the Appellant argues that he has been suspended since February 2023 without any access to the case file nor any date in

sight for a final decision. In this regard, the Appellant notes that he seems to have been sanctioned merely pending an investigation. The Appellant states that the suspension imposed on him no longer qualifies as a provisional suspension but rather amounts to an arbitrary sanction breaching the Appellant's fundamental right to access to justice and work. The Appellant notes that the provisional suspension imposed on him goes far beyond the limit of 180 days, as stipulated in Article 51.3 of the FIFA Disciplinary Code. According to the Appellant, this violation largely outweighs the unsubstantiated claim that integrity of Respondent's competition is at stake. The Appellant acknowledges that a suspension may be imposed as a first procedural step to prevent further harm to be caused to the integrity of the Respondent's competition. However, so argues the Appellant, a suspension must be limited in time and the investigatory and adjudicatory process must be made in a swift manner in order to limit the harm caused by the suspension on the accused individual.

76. The Sole Arbitrator notes that the Respondent, on the other hand, has not provided any explanation or argumentation regarding the provisional suspension in its defence.
77. Having the above positions in mind, the Sole Arbitrator emphasizes that, in accordance with CAS jurisprudence, suspensions gradually lose their essential interim character with the passage of time (see, *inter alia*, CAS 2017/A/4987, para. 220; CAS 2017/A/4998, para. 194; and CAS 2017/A/4969, para. 213). As such, so finds the Sole Arbitrator, indefinite and indeterminable suspensions cannot be deemed as proportionate, which also stems from jurisprudence (CAS 2017/A/4987, para. 220; CAS 2017/A/4998, para. 194; as well as CAS 2017/A/4969, para. 213).
78. In fact, the Sole Arbitrator finds that the provisional suspension imposed on the Appellant, which has remained in effect for a duration of almost two years, exceeds the permissible duration of a provisional suspension. Consequently, the provisional suspension in the present case has become indefinite. In accordance with CAS jurisprudence, it was up for the Respondent to limit the provisional suspension in time and to consider whether or not it sought further suspension justified by new developments and within the framework of the FKF (CAS 2017/A/4987, para. 220; CAS 2017/A/4998, para. 194; and CAS 2017/A/4969, para. 213). The Respondent clearly failed to do this. What is more, the Respondent clearly failed to inform the Appellant about the status of the case, in particular after a meeting with the Respondent's integrity officer on 5 March 2024, despite several requests from the side of the Appellant to inform the latter about any further steps in the proceedings.
79. Additionally, the Sole Arbitrator notes that the KFA Regulations nor the KFA Constitution contain any reference to a maximum duration for a provisional suspension. In this regard, the Sole Arbitrator brings in mind, as mentioned under the "applicable law", that for matters not provided for in such regulations, the KFA Regulations make explicit reference to the FIFA regulations. More specifically, Article 51 para. 3 of the FIFA Disciplinary Code, edition 2023, stipulates as follows:

"A provisional measure may apply for up to 90 days. The duration of any such measure may be deducted from the final disciplinary sanction. The chairperson of the competent judicial body, or their nominee, may exceptionally extend the validity of a provisional measure by up to 90 days."

80. In light of the foregoing, the Sole Arbitrator finds that the Respondent did not act in line with Article 51 para. 3 of the FIFA Disciplinary Code, applicable by means of its own regulations, by failing to ensure that the provisional suspension on the Appellant was duly limited in time. In the Sole Arbitrator's view, to impose a longer suspension would be unfair, again having in mind that the Respondent has not provided the Appellant with any case file or evidence regarding the disciplinary case and the match-fixing allegations against the Appellant, let alone that the Appellant was informed by the KFA when a final decision in this matter was to be expected.
81. Therefore, in view of the above, the Sole Arbitrator deems it appropriate, fair and just to lift the provisional suspension imposed on the Appellant on 6 February 2023.
- b. Should the Respondent's decision to provisionally suspend the Appellant be annulled?***
82. The Sole Arbitrator observes that the Appellant also requests the CAS to annul the decision, as stipulated by means of his request for relief under para. 8.1(c) of his Statement of Appeal and the Appeal Brief. In this regard, the Sole Arbitrator notes however that the Appellant solely refers to "*the decision*". As the Appellant, in para. 4.40 of the Appeal Brief, specifically requests the CAS to annul the decision of suspension taken by the Respondent, the Sole Arbitrator concludes the Appellant is challenging the decision from the Respondent to provisionally suspend the Appellant.
83. The Sole Arbitrator brings in mind that the Respondent, by means of its letter of 6 February 2023, informed the Appellant that he was provisionally suspended. This communication can be considered as a decision following the definition of "decision" and the characteristic features of a "decision" as stated in established CAS precedents.
84. In this regard, it follows from such jurisprudence that the form of communication has no relevance to determine whether there exists a decision. In particular, the fact that "*the communication is made in the form of a letter does not rule out the possibility that it constitute a decision subject to appeal*" (see, *inter alia*, CAS 2020/A/6921 & 7297; CAS 2015/A/4213; CAS 2008/A/1633; and CAS 2007/A/1251). It also clearly follows from such jurisprudence that "*a decision is thus a unilateral act, sent to one or more determined recipients and is intended to produce legal effects*" (see, *inter alia*, CAS 2008/A/1633 para. 31; CAS 2004/A/748 para. 89). In this regard, "*an appealable decision of a sport association or federation is normally a communication of the association directed to a party and based on an "animus decidendi", i.e. an intention of a body of the association to decide on a matter [...]*". (see again CAS 2015/A/4213).
85. In view of this legal framework, the Sole Arbitrator finds that the letter of 6 February 2023 endorses all the required elements that fall under the definition of "decision" as stated in the above-mentioned CAS precedents. In fact, the letter is directed by the KFA to the Player in which it was decided that the Player was provisionally suspended by means of which his legal situation was affected. As it was the intention of the KFA that such communication was a decision on behalf of the KFA, i.e. that the Player was provisionally suspended, it is clear that the letter constitutes a decision subject to appeal.
86. Having decided that the letter of 6 February 2023 can be considered as a decision, the Sole Arbitrator notes that the Appellant had the possibility to appeal against the

provisional suspension imposed on him pursuant to Article 67 para. 2 of the KFA Constitution before the KFA Appeals Committee. As the Appellant failed to appeal against the letter of 6 February 2023 and this specific request for relief concerns the annulment of the decision of the KFA to provisionally suspend the Appellant, the scope of this part of the appeal is covered by *res judicata*. Put differently, the Appellant is precluded from requesting the annulment of the decision on the suspension as he did not appeal against the decision of 6 February 2023, also having in mind that the appeal of the Appellant is based on denial of justice, more specifically the absence of the final decision of the KFA Disciplinary Committee in the main proceedings on the merits. As such, in order to succeed in his claim for the annulment of the decision for the suspension, the Appellant should have appealed that decision.

87. Therefore, the Sole Arbitrator finds he is not in the position to grant the Appellant’s request for relief to annul the decision as requested. As a consequence, the Appellant’s request to annul the decision rendered by the Respondent is dismissed.

c. Does the Respondent have to financially compensate the Appellant for the harm caused by the denial of justice?

88. The Sole Arbitrator notes that the Appellant, on the one hand, claims damages for the suspension and the subsequent failure to follow due process. He argues that it is the Respondent’s responsibility to repair the harm caused to him. In this regard, the Appellant states that the damages can be easily quantified, referring to his salary at the time of the provisional suspension, amounting to Kshs. 45,000 (forty-five thousand Kenyan Shillings) per month in accordance with Article 1, in ‘PART 2’ of the Employment Agreement. Therefore, the Appellant states he would have expected to earn Kshs. 900,000 (nine hundred thousand Kenyan Shillings) by the time of filing the Appeal. The Sole Arbitrator observes that the Respondent, on the other hand, has not expressed its position regarding the Appellant’s claim for damages in its defence.

89. As a point of departure, the Sole Arbitrator notes that the scope of CAS appeal arbitration proceedings is in principle determined by the scope of the proceedings before the previous instance. However, this case concerns a claim based on denial of justice and no decision was issued, as set out above. The Sole Arbitrator finds, therefore, that it cannot be held against the Appellant that he did not file a claim for damages prior to the present CAS proceedings and that he failed to exhaust the KFA’s internal legal remedies as to his claim for damages. In this regard, the Sole Arbitrator also notes that the KFA Constitution and the KFA Regulations do not provide the Appellant with the possibility to claim compensation for any damages and that, following Article 69 of the KFA Constitution, the ordinary courts were excluded.

90. In view of the above, and following CAS jurisprudence, in cases where there are no legal remedies available for a party within the federation to decide on claims for damages, which is the matter at hand, CAS has found itself competent to decide on such claims for damages (see, *inter alia*, CAS 2014/A/3703 and CAS 2022/A/9016).

91. For example, in CAS 2022/A/9016, the CAS held as follows:

“84. However, the Panel finds that there are no legal remedies available within FIFA to decide on a claim for damages filed by Shakhtar arising out of the alleged illegitimate

issuance of the Appealed Decision by the Bureau. Accordingly, the Panel finds that it cannot be held against Shakhtar that it would somehow have failed to exhaust FIFA's internal legal remedies before turning to CAS. Indeed, the only forum competent to adjudicate and decide on any damages claim of Shakhtar against FIFA is undoubtedly CAS, as Article 57 FIFA Statutes excludes the competence of ordinary courts of justice. FIFA explicitly confirmed during the hearing that CAS would be competent to examine such claims for damages, albeit in separate ordinary arbitration proceedings.

85. *What is debated therefore is whether such claim is to be decided under the aegis of the CAS Appeals Arbitration Division, or of the CAS Ordinary Arbitration Division.*

86. *Given that the present Panel is undisputedly competent to assess the validity of the Appealed Decision, the Panel finds that it would be procedurally efficient to also adjudicate and decide on any damages claim arising directly out of the alleged illegitimate enactment of the Amended Temporary Rules. Otherwise, should the present Panel conclude that the Appealed Decision is to be set aside, Shakhtar would subsequently have to re-submit its damages claim before CAS. The panel constituted under the aegis of the Ordinary Arbitration Division would then be confronted with a final and binding decision determining that the Appealed Decision is annulled, restricting it to solely quantify the purported damages of Shakhtar. Such a process would be very inefficient, unnecessarily burdensome and time consuming for both Shakhtar as well as FIFA. Most importantly, FIFA is by no means prejudiced if this Panel addresses the substance of Shakhtar's damages claim in the context of the present appeal arbitration proceedings, or at least it has failed to establish that it would somehow be prejudiced. Indeed, it would actually be advantaged if the outcome were that no damages are recoverable in the circumstances of this case, as it would not have to incur the cost and distraction of a second arbitration. Furthermore, the term "appeal" within the meaning of Article R47 CAS Code must be construed broadly. It covers all claims that aim at establishing the illegality of a "decision of a federation, association or sports-related body". The Panel finds that also the claim of damages in the case at hand serves the same purpose. The idea that Shakhtar should have submitted the damage claim to FIFA first, amounts to excessive formalism, since FIFA in the Appealed Decision refuted to have acted in an illegal manner. Consequently, FIFA also refuted implicitly any damages arising from an alleged illegality of the Appealed Decision."*

92. Additionally, the Sole Arbitrator notes that the relevant factor in determining whether to decide on a claim for damages is the extent to which it is connected with the subject of the matter at hand. In the present case, the Sole Arbitrator finds that the claim for damages is directly linked to the denial of justice committed by the Respondent. The Sole Arbitrator notes that the CAS is the forum competent to adjudicate and decide on the Appellant's claim for damages, as Article 69 para. 3 of the KFA Constitution, as mentioned before, excludes the competence of ordinary courts (in accordance with CAS 2022/A/9016, para. 84). Consequently, the Sole Arbitrator finds that procedural efficiency requires that he does not limit himself to assessing the denial of justice as such, but that the Sole Arbitrator should also adjudicate and decide on the Appellant's claim for damages which is alleged to result directly from that denial of justice.
93. The Sole Arbitrator, however, finds that the Appellant cannot succeed in his claim for damages. First, as set out before, the Sole Arbitrator notes that the Appellant had the possibility to appeal against the provisional suspension imposed on him pursuant to Article 67 para. 2 of the KFA Constitution before the KFA Appeals Committee, which he failed to do. In order to succeed in his claim for damages, the Sole Arbitrator

finds that the Appellant should have, at the least, appealed against the decision of 6 February 2023. Second, even if the absence of an appeal against the decision of 6 February 2023 would not stand in the way for a successful claim, and having in mind that the Appellant also claims damages for the failure to follow due process, the Sole Arbitrator finds that the Appellant has also failed to provide evidence that could lead to a successful claim for damages in the present proceedings. In fact, the Appellant has not submitted any evidence of non-payment by his former club Mathare nor did he, for example, provide a letter that was sent on his behalf to Mathare that he did not agree with the non-payment of salaries once the club stopped payments. The Appellant only refers to his Employment Contract that runs from 17 July 2022 until the end of the 2022-2023 season. In this respect, the Sole Arbitrator also notes that the Employment Agreement with Mathare automatically expired at the end of the 2022/2023 sporting season. Consequently, so finds the Sole Arbitrator, the signing of any subsequent employment agreement, for which payments have also been claimed by the Appellant, was not even guaranteed, at all, let alone that there was any certainty that such subsequent agreement would offer the same salary as stipulated in the Employment Agreement with Mathare. There is no such evidence provided either.

94. Based on the foregoing and after taking into consideration all evidence produced and all arguments made by the Appellant, as addressed above, the Sole Arbitrator concludes that the Appellant cannot successfully claim damages from the KFA. Consequently, the Sole Arbitrator dismisses the Appellant's request for relief that the Respondent must financially compensate the Appellant for the alleged harm caused.

B. Conclusion

95. Based on the foregoing, the Sole Arbitrator holds that:
- a. The Respondent's failure to deal with the disciplinary case of the Appellant constitutes a denial of justice.
 - b. The provisional suspension imposed on the Player is lifted.
 - c. The Appellant's request to annul the decision rendered by the Respondent is dismissed.
 - d. The Appellant's request to rule that the Respondent must financially compensate the Appellant for the harm caused by the denial of justice in the amount of Ksh 900,000 (nine hundred thousand Kenyan Shillings) plus 5% interest is dismissed.
 - e. The Appellant's request to condemn the Respondent to pay the CAS administration costs and a contribution towards the Appellant's legal costs, are partially granted, as further stipulated in the following paragraphs.

X. COSTS

(...).

* * * * *

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The Court of Arbitration for Sport (“CAS”) has jurisdiction to decide on the appeal filed on 19 September 2024 by Mr Lennox Ogutu.
2. The appeal filed by Mr Lennox Ogutu on 19 September 2024 is admissible.
3. The appeal filed by Mr Lennox Ogutu on 19 September 2024 is partially upheld.
4. The Kenyan Football Association’s failure to deal with the disciplinary case of Mr Lennox Ogutu constitutes a denial of justice.
5. The suspension imposed on Mr Lennox Ogutu by the Kenyan Football Association is lifted.
6. (...).
7. (...).
8. All other and further motions or prayers for relief are dismissed.

Seat of arbitration: Lausanne, Switzerland

Date: 2 April 2025

THE COURT OF ARBITRATION FOR SPORT

Frans M. de Weger
Sole Arbitrator