CAS 2020/A/7032 Ben Malango v. Tout Puissant Mazembe
CAS 2020/A/7033 Tout Puissant Mazembe v. Ben Malango, Raja Casablanca & FIFA
CAS 2020/A/7042 Raja Casablanca v. Tout Puissant Mazembe

ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

President: Mr Ulrich Haas, Professor of Law in Zurich, Switzerland and Attorney-at-Law in Hamburg, Germany

in the arbitration between

Mr Ben Malango, Congo DR

Represented by Mr Dodo Landu Domo, Secretary General of Union des Footballeurs du Congo (UFC), Kinshasa, Congo Democratic Republic and Mr Mario Flores Chemor, Attorney-at-Law, Morgan Sports Law, Lausanne, Switzerland

- Appellant in CAS 2020/A/7032 / First Respondent in CAS 2020/A/7033 -

and

Tout Puissant Mazembe (TP Mazembe), Lubumbashi, Congo Democratic Republic

Represented by Ms Sheena Belmans, Attorney-at-Law, ALTIUS Lawyers, Brussels, Belgium

- Respondent in CAS 2020/A/7032 / Appellant in CAS 2020/A/7033 / Respondent in CAS 2020/A/7042 -

and

Raja Casablanca, Morocco

Represented by Mr Breno Costa Ramos Tannuri and Mr Somaiah Mandepanda Jaya, both Attorneys-at-Law, Tannuri Ribeiro Advogados, São Paulo, Brazil

- Second Respondent in CAS 2020/A/7033 / Appellant in CAS 2020/A/7042 -

and

Fédération Internationale de Football Association (FIFA), Zurich, Switzerland

Represented by Mr Roberto Nájera Reyes, Senior Legal Counsel and Mr Pierre Llamas, Legal Intern

- Third Respondent in CAS 2020/A/7033 -

I. PARTIES

1. Ben Malango ("Mr Malango") is a professional Congolese football player born on 10 November 1993 in Kinshasa (Congo).

2. Tout Puissant Mazembe ("TP Mazembe"), is a professional Congolese football club based in Lubumbashi and affiliated to the Fédération Congolaise de Football-Association ("FECOFA").

3. Raja Casablanca ("Raja") is a football club with its registered office in Casablanca, Morocco and affiliated to the Fédération Royale Marocaine de Football ("FRMF").

4. Fédération Internationale de Football Association ("FIFA") is the world governing body of football. It exercises regulatory, supervisory and disciplinary functions over national associations, clubs, officials and players, worldwide. FIFA is an association under Articles 60 et seq. of the Swiss Civil Code ("CC") with its headquarters in Zürich, Switzerland.

5. Mr Malango, TP Mazembe, Raja and FIFA are hereinafter jointly referred to as the "Parties".

II. FACTUAL BACKGROUND

6. The present procedure concerns an employment-related dispute revolving around a decision rendered on 21 February 2020 by the FIFA Dispute Resolution Chamber ("DRC") (the "Appealed Decision").

7. Below is a summary of the main relevant facts and allegations based on the Parties' written submissions, the file and the content of the hearing that took place in Lausanne on 8 November 2023. Additional facts, allegations and evidence may be set out, where relevant, in other parts of this award. 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 its award only to the submissions and evidence he deems necessary to explain his reasoning. The English versions of original French texts in the present arbitral award are mainly based on translations submitted by the Parties, which have remained undisputed.

A. Background Facts

8. In 2014, Mr Malango and TP Mazembe concluded an employment contract (the "First Contract"). The relevant parts of the First Contract read as follows:

CONTRAT D'ENGAGEMENT

PIECE N°

Entre les soussignés

LA SOCIETE TOUT PUISSANT MAZEMBE ENGLEBERT SPRL, représentée par son Administrateur Gérant sur délégation des pouvoirs, Madame **Carine NAHAYO,** ayant son siège social à Lubumbashi, commune de Kamalondo, stade Mazembe, immatriculée sous **NRC 01219** dénommée ci-dessous **« LE CLUB »** ou **« L'EMPLOYEUR »** d'une part

Et ;

Monsieur **MALANGO NGITA Ben**, de nationalité congolaise, né le 10 novembre 1993 à Kinshasa, ayant élu domicile aux fins des présentes au siège social de la société **TOUT PUISSANT MAZEMBE ENGLEBERT SPRL** situé à Lubumbashi, commune de Kamalondo, Stade Mazembe, ci-dessous dénommé **« LE JOUEUR »** ou **« L'EMPLOYE »**, d'autre part

ARTICLE 1 : CADRE JURIDIQUE

Le présent contrat à durée déterminée, conclu entre le club et le joueur, est régi par:

- Les dispositions des règlements généraux de la Fédération Congolaise de Football Association, en particulier, les statuts du joueur et du transfert.
- La loi n 015/2002 du 16 octobre 2002 portant code du travail.
- Les règlements de la CAF et de la FIFA.

..

ARTICLE 4 : DUREE DU CONTRAT

Le présent contrat d'engagement est conclu pour une durée de sept ans renouvelable, aux conditions nouvelles à discuter en temps utile entre les parties, le cas échéant.

Les parties s'obligent de mettre en exécution la clause de libération au bout de chaque saison si les circonstances le commandent et son application doit se faire conformément aux dispositions ci-dessous définies par elles.

ARTICLE 5 : OBLIGATIONS DU CLUB EMPLOYEUR

5.1 Rémunération de l'employeur

En contrepartie des obligations du joueur définies à l'article 6, le club s'engage à octroyer une rémunération.

Au titre du présent contrat, le joueur, percevra ainsi les rémunérations suivantes;

a. un salaire net mensuel d'USD 1,000 (mille dollars américains) payable mensuellement.

b. Une prime de USD 15,000 (quinze mille dollars américains) sera remise au joueur à la signature du présent contrat.

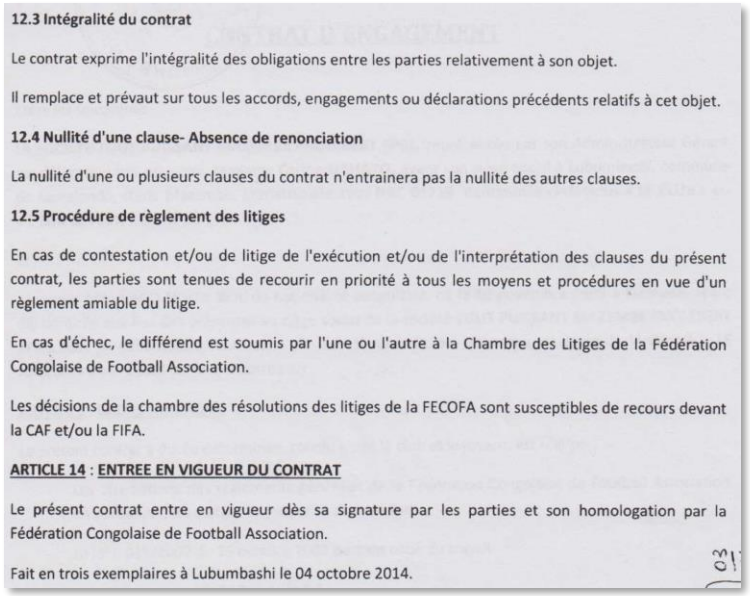
c. une prime de match dont le montant est fixé en fonction de la participation du joueur et des résultats de chacune des rencontres officielles des compétitions.

…

ARTICLE 8 : MODIFICATION DU CONTRAT

Toute modification du présent contrat, pour quelque motif que ce soit, doit donner lieu à un avenant établi dans les mêmes formes que le contrat initial.

…



12.3 Intégralité du contrat

Le contrat exprime l'intégralité des obligations entre les parties relativement à son objet.

Il remplace et prévaut sur tous les accords, engagements ou déclarations précédents relatifs à cet objet.

12.4 Nullité d'une clause- Absence de renonciation

La nullité d'une ou plusieurs clauses du contrat n'entrainera pas la nullité des autres clauses.

12.5 Procédure de règlement des litiges

En cas de contestation et/ou de litige de l'exécution et/ou de l'interprétation des clauses du présent contrat, les parties sont tenues de recourir en priorité à tous les moyens et procédures en vue d'un règlement amiable du litige.

En cas d'échec, le différend est soumis par l'une ou l'autre à la Chambre des Litiges de la Fédération Congolaise de Football Association.

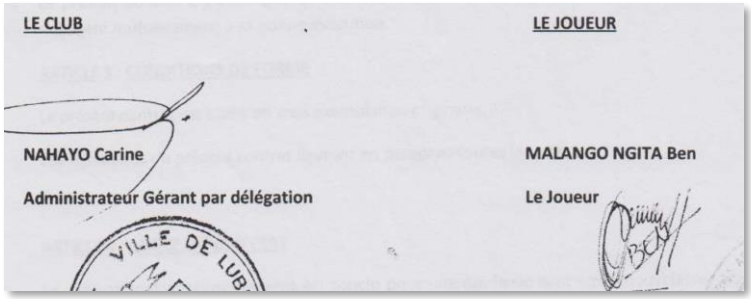
Les décisions de la chambre des résolutions des litiges de la FECOFA sont susceptibles de recours devant la CAF et/ou la FIFA.

ARTICLE 14 : ENTREE EN VIGUEUR DU CONTRAT

Le présent contrat entre en vigueur dès sa signature par les parties et son homologation par la Fédération Congolaise de Football Association.

Fait en trois exemplaires à Lubumbashi le 04 octobre 2014.

…



LE CLUB **LE JOUEUR**

NAHAYO Carine **MALANGO NGITA Ben**

Administrateur Gérant par délégation **Le Joueur**

VILLE DE LUB

9. According to TP Mazembe and Raja, the former had loaned Mr Malango from October 2015 until November 2016 to the club Cercle Sportif Don Bosco de Lubumbashi ("Don Bosco").

10. In January 2019, the South African club Orlando Pirates ("Orlando Pirates") made an offer for the transfer of Mr Malango. This offer was rejected by TP Mazembe's representative.

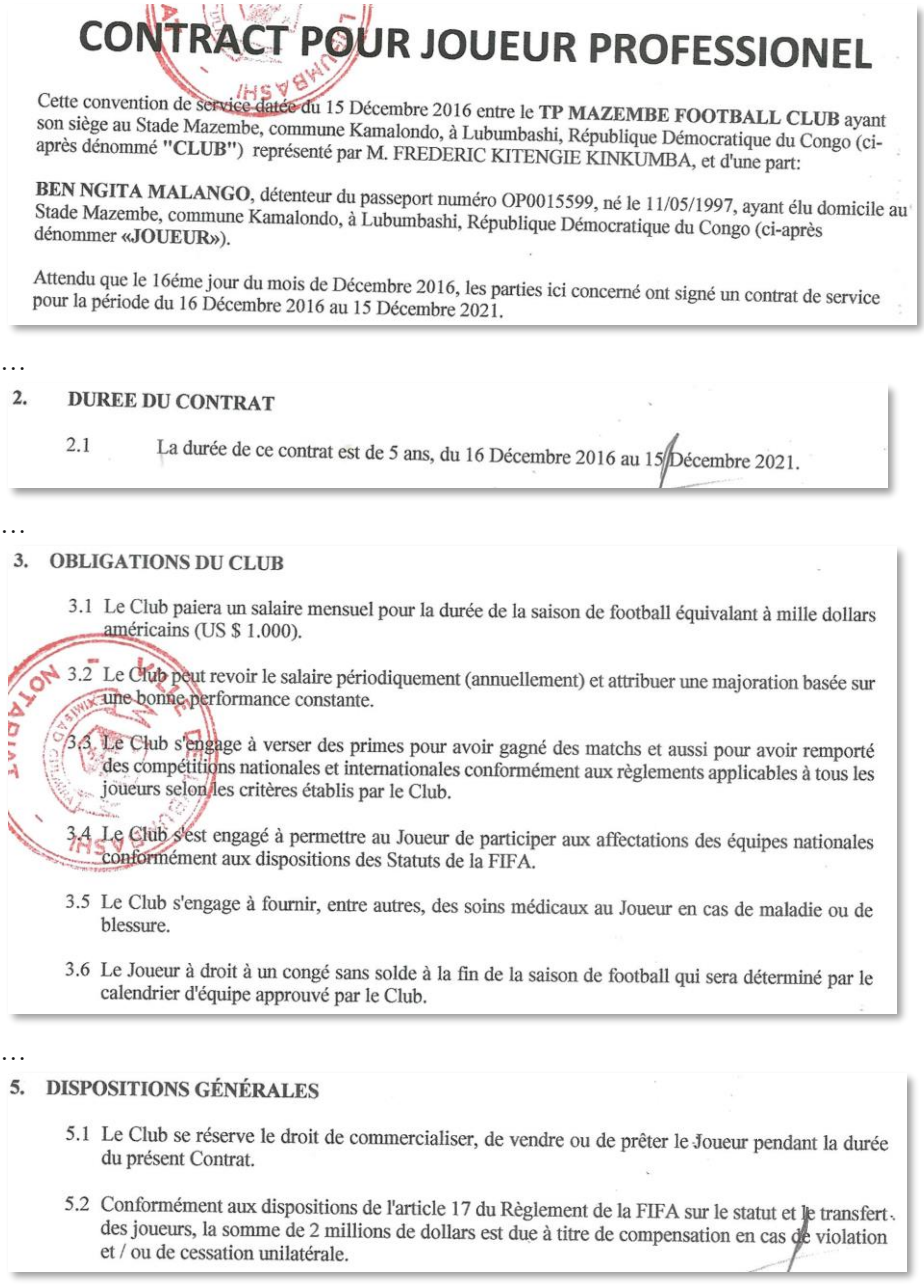
11. According to Raja and Mr Malango, the latter requested on 21 January 2019 to be provided with a copy of the First Contract as he had misplaced the copy received in 2014. In this respect, TP Mazembe denies having received the request dated 21 January 2019 allegedly sent by DHL on 24 January 2019.

12. According to Raja, FIFA and Mr Malango, the latter asked for the intervention of the Union des Footballeurs du Congo ("UFC") on 25 May 2019 – as TP Mazembe had not provided him with the requested copy notwithstanding his several requests – which subsequently requested TP Mazembe, by a letter dated 27 May 2019, for the copy of the First Contract.

13. On 7 June 2019, the UFC addressed a letter to TP Mazembe, requesting information about Mr Malango's contractual situation.

14. On 8 June 2019, Mr Kitengie, General Manager of TP Mazembe, informed the UFC that the First Contract was no longer in force and that a second contract (the "Second Contract") had been concluded on 16 December 2016 after Mr Malango had returned from the loan. Mr Malango and Raja submit, that this was the first time that Mr Malango had heard about the alleged renewal/extension of the employment relationship.

15. The disputed Second Contract provides – *inter alia* – as follows:



CONTRACT POUR JOUEUR PROFESSIONEL

Cette convention de service datée du 15 Décembre 2016 entre le **TP MAZEMBE FOOTBALL CLUB** ayant son siège au Stade Mazembe, commune Kamalondo, à Lubumbashi, République Démocratique du Congo (ci-après dénommé **"CLUB"**) représenté par M. FREDERIC KITENGIE KINKUMBA, et d'une part:

BEN NGITA MALANGO, détenteur du passeport numéro OP0015599, né le 11/05/1997, ayant élu domicile au Stade Mazembe, commune Kamalondo, à Lubumbashi, République Démocratique du Congo (ci-après dénommer «**JOUEUR**»).

Attendu que le 16éme jour du mois de Décembre 2016, les parties ici concerné ont signé un contrat de service pour la période du 16 Décembre 2016 au 15 Décembre 2021.

…

2. DUREE DU CONTRAT

2.1 La durée de ce contrat est de 5 ans, du 16 Décembre 2016 au 15 Décembre 2021.

…

3. OBLIGATIONS DU CLUB

3.1 Le Club paiera un salaire mensuel pour la durée de la saison de football équivalant à mille dollars américains (US $ 1.000).

3.2 Le Club peut revoir le salaire périodiquement (annuellement) et attribuer une majoration basée sur une bonne performance constante.

3.3 Le Club s'engage à verser des primes pour avoir gagné des matchs et aussi pour avoir remporté des compétitions nationales et internationales conformément aux règlements applicables à tous les joueurs selon les critères établis par le Club.

3.4 Le Club s'est engagé à permettre au Joueur de participer aux affectations des équipes nationales conformément aux dispositions des Statuts de la FIFA.

3.5 Le Club s'engage à fournir, entre autres, des soins médicaux au Joueur en cas de maladie ou de blessure.

3.6 Le Joueur à droit à un congé sans solde à la fin de la saison de football qui sera déterminé par le calendrier d'équipe approuvé par le Club.

…

5. DISPOSITIONS GÉNÉRALES

5.1 Le Club se réserve le droit de commercialiser, de vendre ou de prêter le Joueur pendant la durée du présent Contrat.

5.2 Conformément aux dispositions de l'article 17 du Règlement de la FIFA sur le statut et le transfert des joueurs, la somme de 2 millions de dollars est due à titre de compensation en cas de violation et / ou de cessation unilatérale.

5.3 En cas de différend entre les parties concernant le contenu du présent contrat et ses obligations, la question peut être renvoyée au Comité du statut et des transferts des joueurs de la FIFA. En cas d'appel, ce litige sera réglée conformément aux Règles du Tribunal d'Arbitrage Sportif (TAS) et la décision du TAS sera définitive et lie les parties.

…

16. On 24 June 2019, the South African club Orlando Pirates requested TP Mazembe to provide it with the third-party ownership declaration (the "TPO declaration") regarding Mr Malango.

17. On 25 June 2019, TP Mazembe informed Orlando Pirates that Mr Malango would be still under a valid contract.

18. On 28 June 2019, TP Mazembe provided Mr Malango by e-mail with a copy of the Second Contract, demanded Mr Malango's return and sent him a flight ticket.

19. On 1 July 2019, Mr Malango contested the authenticity of the Second Contract by arguing, *inter alia*, that he had never signed the Second Contract. Mr Malango furthermore informed TP Mazembe that he would not return to TP Mazembe.

20. On the same day, TP Mazembe addressed an e-mail to Mr Malango and disagreed, *inter alia*, with Mr Malango's point of view regarding the Second Contract.

21. On 17 July 2019, Orlando Pirates informed Mr Malango that it decided to end any contractual negotiation with him and informed TP Mazembe accordingly.

22. In August 2019, the club Raja displayed interest in Mr Malango. Considering the continuous disagreement as to the existence and/or the authenticity of the Second Contract, various communication had been exchanged between TP Mazembe and Raja during this time.

23. On 15 August 2019, Mr Malango and Raja entered into an employment contract ("Raja Contract"), which provides – *inter alia* – as follows:

IL A ETE CONVENU ET ARRETE CE QUI SUIT

ARTICLE 1 : CADRE JURIDIQUE DU CONTRAT

Le présent contrat à durée déterminée, conclu entre le club et le joueur, est régi par les dispositions :

- De la loi 65-99 relative au Code du travail promulguée par le dahir n°1-03-194 du 14 rejab 1424 (11septembre 2013) ;
- De la loi 30.09 relative à l'éducation physique et aux sports promulguée par le dahir n°110-150 du 13 ramadan 1431(24 aout 2010) ;
- Des Règlements de la Fédération Royale Marocaine de Football et, en particulier, du Règlement sur le Statut et le transfert des joueurs et ses annexes ;
- Des règlements de la FIFA, dont le Joueur déclare avoir préalablement pris connaissance

...

ARTICLE 3 : DUREE DU CONTRAT

Le présent contrat sera conclu entre les parties contractantes pour une durée déterminée de Trois (3) saisons sportives conformément aux dispositions de l'article 14 de la loi précitée n°30-09.

Il commence à courir à compter du 15 Août 2019 et prendra fin le 30 Juin 2022.

Dans le cas où un match officiel du championnat national auquel prend part le club a lieu après le 30 juin, le présent contrat prend fin après le déroulement de ce match.

ARTICLE 4 : REMUNERATION DU JOUEUR

En contrepartie des obligations du Joueur définies à l'article 7 ci-dessous, la rémunération du Joueur au titre des présentes se décompose en :

- Un salaire mensuel ;
- Une prime de signature ;
- Une prime d'objectif ;
- Une indemnité de logement ;
- Des primes de matchs ;
- Des billets d'avion.

Salaire mensuel

Le Joueur percevra un salaire net mensuel comme suit :

Année	Saison sportive	Salaire mensuel en chiffres	Salaire mensuel en lettres
1ère Année	2019 / 2020	Equivalent en Dirhams de 4.000 Dollars Américains	Equivalent en Dirhams de Quatre Mille Dollars Américains
2ème Année	2020 / 2021	Equivalent en Dirhams de 4.000 Dollars Américains	Equivalent en Dirhams de Quatre Mille Dollars Américains
3ème Année	2021 / 2022	Equivalent en Dirhams de 4.000 Dollars Américains	Equivalent en Dirhams de Quatre Mille Dollars Américains

Une prime d'engagement

Au titre de son engagement libre par l'Employeur, le Joueur percevra une prime nette d'engagement fixée à la contrevaleur en Dirhams de Cinquante Mille (50.000) Dollars Américains payable à la réussite du test médical.

Prime de signature

Au titre du présent contrat, le Joueur percevra une prime annuelle nette de signature comme suit :

Saison sportive	Montant en chiffre	Montant en lettres	Modalités de paiement en équivalent en Dirhams
2019 / 2020	L'équivalent en Dirhams de 148.000 Dollars Américains	L'équivalent en Dirhams de Cent Quarante Huit Mille Dollars Américains	[illegible]
2020 / 2021	L'équivalent en Dirhams de 172.000 Dollars Américains	L'équivalent en Dirhams de Cent Soixante Douze Mille Dollars Américains	[illegible]
2021 / 2022	L'équivalent en Dirhams de 172.000 Dollars Américains	L'équivalent en Dirhams de Cent Soixante Douze Mille Dollars Américains	[illegible]

Prime d'objectif

Au titre du présent contrat, le Joueur percevra une prime mensuel nette d'objectif dont le montant est déclaré comme suit :

Saison sportive	Montant en chiffre	Montant en lettres	Modalités et conditions de paiement en équivalent en Dirhams
2019 / 2020	L'équivalent en Dirhams de 54.000 Dollars Américains	L'équivalent en Dirhams de Cinquante Quatre Mille Dollars Américains	[illegible]
2020 / 2021	L'équivalent en Dirhams de 30.000 Dollars Américains	L'équivalent en Dirhams de Trente Mille Dollars Américains	[illegible]
2021 / 2022	L'équivalent en Dirhams de 30.000 Dollars Américains	L'équivalent en Dirhams de Trente Mille Dollars Américains	[illegible]

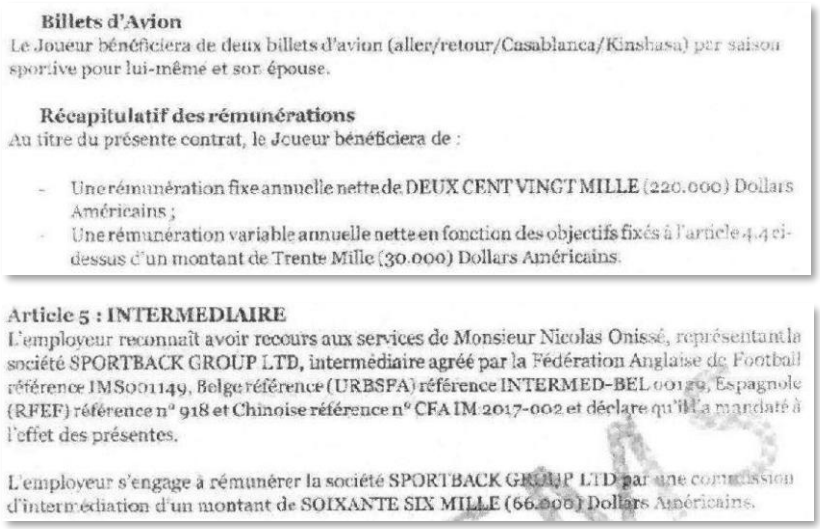
Une indemnité de logement

Le Joueur percevra une indemnité de Logement mensuelle de Sept Mille (7.000) Dirhams tout au long de son contrat.

Primes de matchs

Le Joueur percevra une prime de match dont le montant est fixé par le barème des primes établi par le club et qui est fonction de la participation du Joueur et des résultats obtenus lors de chacune des rencontres officielles des compétitions suivantes :

- Championnat du Maroc ;
- Coupe du Trône ;
- Compétitions CAF, UAFA, FIFA.



Billets d'Avion
Le Joueur bénéficiera de deux billets d'avion (aller/retour/Casablanca/Kinshasa) par saison sportive pour lui-même et son épouse.

Récapitulatif des rémunérations
Au titre du présente contrat, le Joueur bénéficiera de :

- Une rémunération fixe annuelle nette de DEUX CENT VINGT MILLE (220.000) Dollars Américains ;
- Une rémunération variable annuelle nette en fonction des objectifs fixés à l'article 4.4 ci-dessus d'un montant de Trente Mille (30.000) Dollars Américains.

Article 5 : INTERMEDIAIRE
L'employeur reconnaît avoir recours aux services de Monsieur Nicolas Onissé, représentant la société SPORTBACK GROUP LTD, intermédiaire agréé par la Fédération Anglaise de Football référence IMS001149, Belge référence (URBSFA) référence INTERMED-BEL 00129, Espagnole (RFEF) référence n° 918 et Chinoise référence n° CFA IM 2017-002 et déclare qu'il a mandaté à l'effet des présentes.

L'employeur s'engage à rémunérer la société SPORTBACK GROUP LTD par une commission d'intermédiation d'un montant de SOIXANTE SIX MILLE (66.000) Dollars Américains.

24. On 20 September 2019, the Single Judge of the Players' Status Committee ("PSC") issued a decision, granting the provisional registration of Mr Malango with Raja.

B. Proceeding before FIFA's Dispute Resolution Chamber

25. On 3 September 2019, TP Mazembe ("Claimant") lodged a claim before the DRC against Mr Malango ("First Respondent") and Raja ("Second Respondent") for compensation for a breach of contract without just cause and inducement to breach, respectively. More specifically, TP Mazembe requested that Mr Malango and Raja to be held jointly and severally liable to pay the amount of USD 5,000,000 plus 5% interest p.a. as from the date of the alleged breach and a four-month suspension for official matches for Mr Malango and a transfer ban for two registration periods for Raja.

26. On 21 February 2020, the DRC partially accepted TP Mazembe's claim. The operative part of the Appealed Decision reads as follows:

> "*1. The claim of the Claimant, Tout Puissant Mazembe, is partially accepted.*
>
> *2. The First Respondent, Mr Ben Malango, has to pay to the Claimant compensation for breach of contract in the amount of USD 296,996.50, plus 5% interest p.a. as from 3 September 2019 until the date of effective payment.*
>
> *3. The Second Respondent, Raja Casablanca, is jointly and severally liable for the payment of the aforementioned amount.*
>
> *4. Any further claim lodged by the Claimant is rejected.*
>
> *5. The Claimant is directed to inform the First Respondent and the Second Respondent, immediately and directly, preferably to the e-mail addresses as indicated on the cover letter of the present decision, of the relevant bank account to which the First Respondent and the Second Respondent must pay the amount mentioned under point 2. above.*
>
> *6. The First Respondent and the Second Respondent shall provide evidence of payment of the due amount in accordance with point 2. above to FIFA to the e-mail address psdfifa@fifa.org, duly translated, if need be, into one of the official FIFA languages (English, French, German, Spanish).*

7. In the event that the amount due in accordance with point 2. above is not paid by the First Respondent and/or the Second Respondent within 45 days as from the notification by the Claimant of the relevant bank details to the First Respondent and the Second Respondent:

7.1 The First Respondent shall be restricted from playing in official matches up until the due amount is paid and for the maximum duration of six months (cf. art. 24bis of the Regulations on the Status and Transfer of Players).

7.2 The Second Respondent shall be banned from registering any new players, either nationally or internationally, up until the due amount is paid and for the maximum duration of three entire and consecutive registration periods (cf. art. 24bis of the Regulations on the Status and Transfer of Players).

8. The restriction and ban mentioned in point 7. above will be lifted immediately and prior to complete serving, once the due amount is paid.

9. In the event that the aforementioned sum is still not paid by the end of the restriction from playing of six months of the First Respondent or the ban of three entire and consecutive registration periods of the Second Respondent, the present matter shall be submitted, upon request, to FIFA's Disciplinary Committee for consideration and a formal decision."

27. The Appealed Decision with grounds was notified to TP Mazembe, Mr Malango and Raja on 14 April 2020 and reads in its pertinent parts as follows:

"*[…]*

9. At this point, the Chamber deemed it necessary to recall the content of art. 12 par.3 of the Procedural Rules, according to which any party claiming a right on the basis of an alleged fact shall carry the respective burden of proof.

[…]

11. At this stage, the Chamber considered it appropriate to remark that, as a general rule, FIFA's deciding bodies are not competent to decide upon, nor do they have sufficient power and authority to fully investigate and address, matters of criminal law, such as the ones of alleged falsified signature or documents. Furthermore, the Chamber indicated that it is not part of its usual practice to appoint handwriting experts and that such questions of allegedly falsified documents generally must fall into the jurisdiction and expertise of the competent national criminal authority.

12. The Chamber then recalled that all documentation remitted shall be considered with free discretion and, therefore, it focused its attention on the employment contract of 16 December 2016 as well as on other documents containing the player's signature provided by the parties in the context of the present dispute. In this regard, the Chamber pointed out that the original version of the aforementioned employment contract was in fact provided by TP Mazembe, following a request of FIFA.

13. On the basis of its appreciation of the aforementioned documents, in particular, comparing the relevant signatures of the player in the various documents provided in the present case, the DRC was obliged to conclude that, at least from a layman's perspective, the signatures on such documents appear on a prima facie basis to be the same.

14. In view of all of the above, i.e., the burden of proof on the player to prove the alleged forgery of his signature, the inherent limitations of the Chamber's investigative powers, and its review of the documentation at its disposal, the Chamber concluded that it was constrained to deem the present claim of TP Mazembe to be based on a valid employment contract concluded between said club and the player on 16 December 2016 and valid until 15 December 2021.

15. *At this point, the DRC however deemed it important to point out that it is peculiar that the verification by the FA through the 'Attestation de Confirmation', confirming the validity of the contract and attesting that it had been deposited at FECOFA, was made only 3 years after the conclusion of the contract. However, considering that the club was able to provide FIFA with the original of the employment contract of 16 December 2016 and referring once again to art. 12 par. 3 of the Procedural Rules, the Chamber considered that the player did not meet the burden of proving that his signature on the original document was indeed falsified.*
16. *Consequently, on 15 August 2019, when the player concluded a new employment contract with Raja, he still had a valid contract with TP Mazembe and – as no other justification was brought up by the player other than the invalidity of the contract – he entered into more than one employment contract covering the same period.*
17. *Based on the foregoing, the Chamber established that the player breached his contract with TP Mazembe without just cause on 15 August 2019 by concluding a new employment contract with Raja on that date. Thus, as per art. 18 par. 4 of the Regulations, the provisions set forth in Chapter IV of the Regulations shall apply and the player is to be held liable to bear the financial and sporting consequences of having signed two valid employment contracts for the same period of time.*
18. *The Chamber then focused its attention on the consequences of such termination. Taking into consideration art. 17 par. 1 of the Regulations, the Chamber decided that TP Mazembe is entitled to receive from the player an amount of money as compensation for breach of contract.*
19. *Having stated the above, the Chamber turned to the calculation of the amount of compensation payable to TP Mazembe by the player. In doing so, the Chamber firstly recapitulated that, in accordance with art. 17 par. 1 of the Regulations, the amount of compensation shall be calculated, in particular and unless otherwise provided for in the contract at the basis of the dispute, with due consideration for the law of the country concerned, the specificity of sport and further objective criteria, including in particular, the remuneration and other benefits due to the player under the existing contract and/or the new contract, the time remaining on the existing contract up to a maximum of five years, and depending on whether the contractual breach falls within the protected period.*

[…]

22. *In this context, the Chamber went on to analyse the content of clause 5.2 of the contact. In particular, the Chamber noted that, even though the clause appears to be reciprocal and to apply in case of unjust premature termination by either the player or TP Mazembe, the amount therein established – USD 2,000,000 – is patently disproportionate in comparison to the amount TP Mazembe had agreed to pay the player for his monthly services, i.e. USD 1,000.*
23. *As a result, the Chamber concluded that such an exorbitant amount provided as compensation for unjust breach is excessive and is not acceptable. As a consequence, the Chamber determined that the amount of compensation payable by the Respondent to the Claimant had to be assessed in application of the other parameters set out in art. 17 par. 1 of the Regulations. The Chamber recalled that said article provides for a nonexhaustive enumeration of criteria to be taken into consideration when calculating the amount of compensation payable.*

[…]

25. *Bearing in mind the foregoing, the Chamber proceeded with the calculation of the monies payable to the player under the terms of the employment contract with TP Mazembe from its date of termination without just cause by the player,*

i.e. 15 August 2019, until its natural expiry date, i.e. 15 December 2021 and concluded that the player would have received in total USD 28,000 as salaries.

26. The Chamber stipulated that for the relevant period of time, i.e. from 15 August 2019 to 15 December 2021, the player was entitled to receive from Raja the total remuneration of USD 565,993, based on a monthly allocation of the several amounts due to him as per the new contract, amounting to USD 20,214.

27. In line with its well established jurisprudence, the Chamber concluded that the average of the residual value of the contract with TP Mazembe and the remuneration of the player with Raja between 15 August 2019 and 15 December 2021 is thus USD 296,996.50. In view of the above, the player must pay compensation to TP Mazembe in the amount of USD 296,996.50, plus 5% interest as from the date of the claim.

28. Furthermore, in accordance with the unambiguous contents of article 17 par. 2 of the Regulations, the Chamber established that the player's new club, i.e. Raja, shall be jointly and severally liable for the payment of compensation. In this respect, the Chamber recalled that according to article 17 par. 4 sent. 2 of the Regulations, it shall be presumed, unless established to the contrary, that any club signing a professional who has terminated his contract without just cause has induced that professional to commit a breach.

[…]

31. Therefore, bearing in mind the above, the Chamber decided that, in the event that the player and Raja do not pay the amount due to TP Mazembe within 45 days as from the moment in which TP Mazembe, following the notification of the present decision, communicates the relevant bank details to the player and to Raja, a) the player shall be restricted from playing in official matches up until the due amount is paid and for the maximum duration of six months and b) Raja shall be banned from registering any new players, either nationally or internationally, up until the due amount is paid and for the maximum duration of three entire and consecutive registration periods (cf. art. 24bis of the Regulations on the Status and Transfer of Players).

[…]."

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

28. On 30 April, 4 and 5 May 2020, TP Mazembe, Mr Malango and Raja filed three separate Statements of Appeal with the Court of Arbitration for Sport (the "CAS") with respect to the Appealed Decision.

A. 2020/A/7032 Ben Malango v. Tout Puissant Mazembe

29. On 4 May 2020, Mr Malango filed an Appeal (in English) against the Appealed Decision with the Court of Arbitration for Sport (the "CAS") against TP Mazembe in accordance with Article R48 of the Code of Sports-related Arbitration (the "CAS Code"). Mr Malango also requested the nomination of a sole arbitrator, preferably from the CAS football list. The proceeding was docketed as CAS 2020/A/7032 ("CAS 7032").

30. On 5 May 2020, the CAS Court Office informed FIFA about the Appeal of Mr Malango and its option of intervention pursuant to Article R41.3 of the CAS Code.

31. On the same day, the CAS Court Office informed Mr Malango and TP Mazembe that another appeal (in French) has been filed by TP Mazembe against Mr Malango, Raja and FIFA with respect to the Appealed Decision (docketed as *TAS 2020/A/7033 Tout Puissant Mazembe c. Ben Malango, Raja Casablanca & FIFA*, hereinafter "CAS 7033"). The CAS Court Office invited the Parties in accordance with Article R52 of the CAS Code to inform the CAS Court Office, by 8 May 2020, whether they agree to consolidate the procedures CAS 7032 and CAS 7033. Furthermore, the CAS Court Office invited TP Mazembe to comment on Mr Malango's proposal that CAS 7032 be submitted to a sole arbitrator, by 11 May 2020. The CAS Court Office finally informed that Mr Malango had chosen to proceed in English and that the language of the arbitration should be English unless TP Mazembe objects by 8 May 2020.

32. On 6 May 2020, TP Mazembe agreed to consolidate case CAS 7032 with case CAS 7033, objected to submit the matter to a sole arbitrator (while requesting the nomination of Mr Nicolas C. Ulmer as arbitrator) and explained that French should be the language of the procedure. The CAS Court Office informed Mr Malango accordingly on 6 May 2020.

33. On 8 May 2020, Mr Malango agreed to consolidate case CAS 7032 with case CAS 7033, maintained his request to nominate a sole arbitrator and explained that he would be willing to implement a French-English procedure, while keeping the CAS correspondence and the final arbitral award in English. Furthermore, Mr Malango requested a 14-day extension of the deadline to file his Appeal Brief in light of the COVID-19 circumstances and based on the CAS Emergency Guidelines.

34. On 11 May 2020, the CAS Court Office extended in accordance with Article R32 (2) of the CAS Code and to the CAS Emergency Guidelines of 16 March 2020 Mr Malango's time limit to file his Appeal Brief by 14 days.

35. On the same day, 11 May 2020, Raja agreed to consolidate case CAS 7032 with case CAS 7033.

36. On 15 May 2020, FIFA renounced its right to request its possible intervention in case CAS 7032. The CAS Court Office informed the Parties accordingly on the same day.

B. CAS 2020/A/7033 Tout Puissant Mazembe v. Ben Malango, Raja Casablanca & FIFA

37. On 30 April 2020, TP Mazembe filed an Appeal (in French) against the Appealed Decision with the CAS against Mr Malango, Raja and FIFA. TP Mazembe requested in its Statement of Appeal an extension of 14 days of the deadline to file its Appeal Brief, nominated Mr Nicolas Ulmer, Attorney-at-law, Geneva, Switzerland, as arbitrator and requested that the language of the arbitration be French.

38. On 4 May 2020, the CAS Court Office granted TP Mazembe a deadline until 7 May 2020 to rectify its Statement of Appeal (by providing the CAS Court Office with the complete address of Mr Malango pursuant to Article R48 of the CAS Code and the

requested number of copies of the Statement of Appeal and all other written submissions according to Article R31 of the CAS Code).

39. On 5 May 2020, the CAS Court Office informed the Parties about the Appeal of TP Mazembe (CAS 7033). Additionally, the CAS Court Office granted the requested extension by TP Mazembe of 14 days of the deadline to file its Appeal Brief in accordance with Article R32 (2) of the CAS Code and the CAS Emergency Guidelines of 16 March 2020.

40. In the same letter dated 5 May 2020, the CAS Court Office invited the Parties in accordance with Article R52 of the CAS Code to inform the CAS Court Office, by 8 May 2020, whether they agree to consolidate the procedures CAS 7032 and CAS 7033. Furthermore, the CAS Court Office invited Mr Malango, Raja and FIFA to jointly nominate an arbitrator pursuant to Article R53 of the CAS Code until 15 May 2020. Finally, the CAS Court Office informed the Parties that due to the choice of TP Mazembe and unless objection until 8 May 2020, the language of the arbitration should be French.

41. On 6 May 2020, FIFA objected to be called as a Party in CAS 7033 and requested to be excluded from the procedure. FIFA furthermore stated that if this should not be the case, FIFA would reserve its right to claim against TP Mazembe for the legal costs incurred by FIFA as a consequence of the unnecessary involvement in the case CAS 7033. Finally, FIFA objected to French being the language of the procedure and stated that English should be the language of the arbitration.

42. On the same day, considering that FIFA had deemed that it could not be considered as a Party in the procedure, the CAS Court Office invited TP Mazembe to inform the CAS Court Office whether it maintains or withdraws its Appeal with respect to FIFA.

43. On 7 May 2020, TP Mazembe explained that it maintains its Appeal regarding FIFA and reiterated that French should be the language of the arbitration. The CAS Court Office informed the Parties on the same day accordingly.

44. On 8 May 2020, Raja opposed that the procedure be conducted in French and requested English to be the language of the arbitration. Furthermore, Raja agreed to consolidate the case CAS 7033 with the case CAS 7032.

45. On 11 May 2020, FIFA agreed to consolidate the matters CAS 7033 and CAS 7032.

46. On the same day, the CAS Court Office informed the Parties that on 8 respectively 11 May 2020, Raja and FIFA agreed to consolidate the case CAS 7033 with the case CAS 7032 and that Raja had sought English to be the language of the arbitration.

C. CAS 2020/A/7042 Raja Casablanca v. Tout Puissant Mazembe

47. On 5 May 2020, Raja filed an Appeal (in English) against the Appealed Decision with the CAS against TP Mazembe, whereby Raja requested to proceed in English and that the case be submitted to a Sole Arbitrator, while suggesting Mr Manfred Peter Nan,

Attorney-at-law, Arnhem, the Netherlands. In the event the matter would be submitted to a three-member Panel, Raja nominated Mr Manfred Peter Nan as arbitrator. Furthermore, Raja requested that TP Mazembe should be requested to provide the First Contract and the original version of the Second Contract. In this respect, Raja additionally requested the suspension of the procedure during the period in which a handwriting expert would consider whether the signature of Mr Malango in the Second Contract had been fabricated or forged. The proceeding was docketed as CAS 2020/A/7042 ("CAS 7042").

48. On 7 May 2020, the CAS Court Office informed FIFA about Raja's appeal against the Appealed Decision and inquired whether FIFA wished to intervene in the proceedings pursuant to Article R41.3 of the CAS Code.

49. On the same date, the CAS Court Office informed Raja and TP Mazembe that two other Appeals had been filed (CAS 7032 and CAS 7033) with respect to the Appealed Decision and invited them, to inform the CAS Court Office, by 11 May 2020, whether they agree to consolidate the respective three procedures. Moreover, the CAS Court Office invited TP Mazembe to inform the CAS Court Office, by 12 May 2020, whether it agrees to the appointment of a Sole Arbitrator and/or to the Sole Arbitrator suggested by Raja, Mr Manfred Peter Nan. The CAS Court Office furthermore informed that the language of the arbitration should be English unless TP Mazembe objects by 11 May 2020. Finally, the CAS Court Office invited TP Mazembe to file its position in respect of the request of Raja for production of document and of the requested suspension of the procedure no later than 11 May 2020.

50. On 11 May 2020, TP Mazembe declared its consent to the consolidation of CAS 7042, CAS 7033 and CAS 7033 provided that the consolidation would not affect (i) the nomination of Mr Nicolas C. Ulmer as arbitrator and (ii) the choice of French as the language of the arbitration. TP Mazembe, accordingly, objected to proceed in English. Furthermore, TP Mazembe objected to refer the matter to a sole arbitrator and to Raja's request for production of documents and for suspension of the proceedings.

51. On the same date, the CAS Court Office informed Raja and TP Mazembe about TP Mazembe's letter dated 11 May 2020 and that accordingly, further instructions regarding the language of the arbitration and the composition of the arbitral tribunal would follow and that the President of the Appeals Arbitration Division, or her Deputy, should rule on Raja's requests for production of documents and for suspension of the proceedings.

D. The Consolidated proceedings CAS 7032, CAS 7033 and CAS 7042

52. On 12 May 2020, the CAS Court Office informed the Parties that in light of their agreement, the proceedings CAS 7032, CAS 7033 and CAS 7042 had been consolidated as of this date. Considering the dissent between the Parties regarding the language of the arbitration and the composition of the arbitral tribunal, the CAS Court Office invited them to liaise with each other and to revert to the CAS Court Office with agreements in this respect until 22 May 2020.

53. Regarding the language of the arbitration, the CAS Court Office advised the parties on the same day, that Mr Malango's, TP Mazembe's and Raja's time limits to file their Appeal Briefs were stayed pending an agreement/decision on the language of the arbitration. The CAS Court Office furthermore stated, that if the Parties fail to reach an agreement within the given deadline, the President of the Appeals Arbitration Division, or her Deputy, will decide on the language of the procedure in accordance with Article R29 of the CAS Code.

54. Concerning the composition of the arbitral tribunal, the CAS Court Office decided that the deadlines with respect to the arbitration panel set forth in its letters of 5 and 7 May 2020 should not apply anymore and informed, that in case the Parties fail to reach an agreement on the composition of the arbitral tribunal within the given deadline, the issue will be forwarded to President of the Appeals Arbitration Division, or her Deputy, in accordance with Article R50 (1) of the CAS Code.

55. On 13 May 2020, the CAS Court Office informed the Parties that the Deputy Division President was not competent to rule on Raja's request for production of documents (as this would be assessed by the Panel/sole arbitrator once constituted/appointed). Consequently, the Deputy Division President considered Raja's request as premature and denied it. Since Raja's request to suspend, the arbitral proceedings was narrowly linked to the request for production of documents, the request to suspend the arbitral proceeding was denied.

56. On 20 May 2020 (letter dated 19 May 2020), Mr Malango requested the CAS Court Office to require TP Mazembe to disclose the First Contract and the Representation Contract with the company Sport Equity (the "Representation Contract") and requested the time limit to file his Appeal Brief to be stayed pending a decision on the disclosure of the respective documents.

57. On 22 May 2020, Raja informed the CAS Court Office that Raja and Mr Malango had come to an agreement for the proceedings to be conducted in English and for the matter to be submitted to a Sole Arbitrator.

58. On 24 May 2020 (Sunday), TP Mazembe informed the CAS Court Office that no agreement between the Parties could be reached regarding the language of the arbitration and the composition of the arbitral tribunal.

59. On 25 May 2020, the CAS Court Office informed the Parties that failing an agreement of the Parties in relation to the composition of the panel, the issue will be decided by the President of the Appeals Arbitration Division, or her Deputy. As TP Mazembe and Mr Malango would agree on a bilingual procedure, the CAS Court Office furthermore invited Raja and FIFA to file their positions in this respect by 28 May 2020. With respect to Mr Malango's request of 20 May 2020 (letter dated 19 May 2020), the CAS Court Office reminded the Parties that only the arbitral tribunal is competent to rule on a request for production/disclosure of documents pursuant to Article R44.3 of the CAS Code and that, consequently, Mr Malango's request was, at this stage of the procedure, premature.

60. On 26 May 2020, the CAS Court Office informed the Parties that given (i) the uncertainty related to the payments of the advance of costs by each Respondent in the three cases (CAS 7032, CAS 7033 and CAS 7042) and that (ii) there were more Parties than arbitrators to be appointed, the Deputy President of the Appeals Arbitration Division had decided to refer these matters to a sole arbitrator. The CAS Court Office furthermore indicated that the identity of the sole arbitrator will be communicated to the Parties upon receipt of the advance of costs and the transfer of the file to the sole arbitrator pursuant to Article R54 (3) of the CAS Code *a contrario*.

61. On 28 May 2020, FIFA disagreed on a bilingual procedure and explained that English should be the language of the arbitration, while indicating that it would not oppose to the filing of documentary evidence in French without English translation, as long as all communications, written submissions, the potential hearing and the relevant award would be in English.

62. On the same date, Mr Malango agreed to a bilingual procedure provided that the CAS correspondence and the final award would be in English.

63. Still on the same date, Raja objected to a bilingual procedure and requested the President of the Appeals Arbitration Division of the CAS to issue an Order on Language for the proceedings to be conducted solely in English.

64. On 29 May 2020, the CAS Court Office informed the Parties that, as they had failed to reach an agreement on the language of the proceedings, the President of the Appeals Arbitration Division, or her Deputy, would render an Order on Language.

65. On the same date, 29 May 2020, TP Mazembe expressed its disagreement with the decision of the Deputy President of the Appeals Arbitration Division to refer the procedures to a sole arbitrator. Notwithstanding its criticism, TP Mazembe requested for a joint nomination of the sole arbitrator by the Parties.

66. The CAS Court Office forwarded the letter of TP Mazembe on the same day, 29 May 2020, to the Parties and invited Mr Malango, Raja and FIFA, to comment on TP Mazembe's request for a joint nomination of the sole arbitrator until 3 June 2020.

67. On 3 June 2020, FIFA and Mr Malango agreed with TP Mazembe's request to jointly nominate a sole arbitrator.

68. On 4 June 2020, the CAS Court Office informed the Parties by e-mail about the agreement of FIFA and Mr Malango to jointly nominate a sole arbitrator and informed that Raja had failed to provide its position in this respect within the prescribed deadline. The CAS Court Office thus invited the Parties to jointly nominate a sole arbitrator by 12 June 2020 and pointed out that in case of failure, the sole arbitrator would be nominated by the President of the Appeals Arbitration Division, or her Deputy, pursuant to Article R54 (1) of the CAS Code.

69. On the same date and enclosed to the e-mail of the CAS Court Office sent to the Parties on 4 June 2020, the Deputy President of the Appeals Arbitration Division of the CAS

rendered an Order on Language in the consolidated arbitration proceedings CAS 7032, CAS 7033 und and CAS 7042 with the following operative part:

> "*1. Pursuant to Article R29 of the Code of Sports-related Arbitration, the language of the arbitral procedures CAS 2020/A/7032 Ben Malango v. Tout Puissant Mazembe, TAS 2020/A/7033 Tout Puissant Mazembe c. Ben Malango, Raja Casablance & FIFA and CAS 2020/A/7042 Raja Casablanca v. Tout Puissant Mazembe is English.*
>
> *2. The time limit of Mr Malango, Tout Puissant Mazembe and Raja Casablance to file their respective Appeal Brief in English resumed upon notification of the present Order;*
>
> *3. Unless ordered by the Sole Arbitrator once constituted, Tout Puissant Mazembe shall not file any English translation of its Statement of Appeal.*
>
> *4. The costs of this Order shall be determined in the final award or in any final disposition of this arbitration.*"

70. On 12 June 2020, TP Mazembe informed the CAS Court Office that no agreement could be reached between the Parties regarding the nomination of a sole arbitrator.

71. On 13 June 2020, Raja requested a two-week extension of the time limit to file its Appeal Brief.

72. On 15 June 2020, the CAS Court Office granted Raja's request for an extension of the deadline of two weeks pursuant to Article R32 (2) of the CAS Code and to the CAS Emergency Guidelines of 16 March 2020. Considering that the Parties failed to reach an agreement to jointly nominate a sole arbitrator within the given deadline, the CAS Court Office furthermore informed the Parties that the issue will be decided by the President of the Appeals Arbitration Division, or her Deputy, pursuant to Article R54 (1) of the CAS Code.

73. On 15 June 2020, TP Mazembe requested a 20-day extension of the time limit to file its Appeal Brief due to a lock down situation in Congo Democratic Republic. On the same day, the CAS Court Office informed the Parties accordingly and invited Mr Malango, Raja and FIFA to comment on the request by 17 June 2020.

74. On the same date, FIFA informed the CAS Court Office that it did not oppose the 20-day extension requested by TP Mazembe to file its Appeal Brief.

75. On 16 June 2020, Mr Malango filed his Appeal Brief (with respect to CAS 7032), whereby he requested, *inter alia*, to order a handwriting expert to analyse his alleged signature on the Second Contract. Furthermore, on the same date (but in a separate letter), Mr Malango objected to the 20-day extension requested by TP Mazembe.

76. On the same date, the CAS Court Office informed the Parties that TP Mazembe's request for an extension of the deadline will be decided by the President of the Appeals Arbitration Division, or her Deputy, pursuant to Article R32 (2) of the CAS Code.

77. On 17 June 2020, Raja agreed with the 20-day extension requested by TP Mazembe to file its Appeal Brief. On the same day, Raja informed the CAS Court Office in a

separate letter referring to case CAS 7033, that it would not pay its share of the advance on costs and requested that the time limit to submit its Answer be set only after TP Mazembe had paid the advance of costs according to Article R55 of the CAS Code.

78. On 18 June 2020, the CAS Court Office informed the Parties about the two letters of Raja dated 17 June 2020 and that consequently, the CAS Finance Director would get back to TP Mazembe with respect to the payments of the advance costs in the matter CAS 7033.

79. On the same date, the CAS Court Office informed the Parties in a separate e-mail, on behalf of the Deputy President of the Appeals Arbitration Division, that TP Mazembe's request for a 20-day extension of the time limit to submit its Appeal had been granted.

80. On 23 June 2020, Raja requested the CAS to order TP Mazembe to furnish the original version of the First Contract, that the alleged Second Contract be submitted for the consideration of an independent handwriting expert/graphologist and to suspend all time-limits regarding the ongoing proceedings until the result of the handwriting expert/graphologist would be obtained.

81. On 24 June 2020, the CAS Court Office – by referring to its letter of 13 May 2020 – denied Raja's request for production of documents and suspension of the deadline to file its Appeal Brief. The CAS Court Office reminded Raja that these requests were to be assessed by the sole arbitrator, once appointed.

82. On 26 June 2020, Raja requested for an extension of nine days to submit its Appeal Brief in case CAS 7042.

83. On 29 June 2020, the CAS Court Office invited the other Parties to comment on Raja's request by 30 June 2020 at 5.00 pm (CET).

84. On the same day, TP Mazembe informed the CAS Court Office that TP Mazembe did not object to Raja's request for an extension of the deadline.

85. On 6 July 2020, Mr Malango informed the CAS Court Office that the law firm Morgan Sports Law would also represent him.

86. On the same day, Raja requested clarification with regard to the time limit to file its Appeal Brief arguing that, besides the suspension of the time limit until further notice granted on 29 June 2020, Raja had not received any further information in this respect from the CAS Court Office.

87. On 7 July 2020, the CAS Court Office extended Raja's deadline to file its Appeal Brief in light of TP Mazembe's agreement and Mr Malango's and FIFA's lack of objection.

88. On the same date, 7 July 2020, Mr Malango requested the CAS Court Office to inform TP Mazembe that Mr Malango would kindly ask TP Mazembe to reconsider its stance regarding TP Mazembe's share of costs in case CAS 7032.

89. On 8 July 2020, the CAS Court Office invited TP Mazembe, by 10 July 2020, to comment on Mr Malango's letter (dated 7 July 2020, received 8 July 2020 at the CAS Court Office) and inform the CAS Court Office whether it would agree to pay its share of the advance costs in the matter CAS 7032.

90. On 9 July 2020, TP Mazembe requested for an extension of ten days to submit its Appeal Brief and for a suspension of the deadline in the meantime.

91. The CAS Court Office, on the same day, invited Mr Malango, Raja and FIFA to comment on TP Mazembe's request.

92. On the same day, 9 July 2020, Mr Malango opposed TP Mazembe's request while Raja and FIFA expressed their consent to the requested extension. The CAS Court Office informed the Parties on the same day that the President of the Appeals Arbitration Division, or her Deputy, will rule on TP Mazembe's request for an extension of time limit.

93. On 10 July 2020, TP Mazembe informed the CAS Court Office that it would not pay its share of the advance of costs in the matter CAS 7032.

94. On 13 July 2020, the CAS Court Office noted that TP Mazembe's letter of the previous day and invited Mr Malango to substitute for TP Mazembe's share in accordance with Article R64.2 (2) of the CAS Code. The CAS Court Office furthermore informed the Parties, that the Deputy President of the Appeals Arbitration Division had decided to uphold partially TP Mazembe's request and to grant a last and final extension of five days to file its Appeal Brief.

95. On 14 July 2020, Raja requested for an additional extension of ten days to submit its Appeal Brief.

96. On 15 July 2020, the CAS Court Office invited TP Mazembe, Mr Malango and FIFA, by 16 July 2020 at 12.00 pm (CET), to comment Raja's request.

97. On the same day, TP Mazembe consented to Raja's request for extension of the deadline.

98. On 16 July 2020, the CAS Court Office confirmed that Raja's request for a ten-day extension to submit its Appeal Brief was granted, since neither Mr Malango nor FIFA had filed any objection within the prescribed deadline.

99. On 23 July 2020, TP Mazembe filed its Appeal Brief in CAS 7033.

100. On 27 July 2020, Raja filed its Appeal Brief in CAS 7042. Therein, Raja requested that TP Mazembe be ordered to provide the First Contract and the original physical version of the Second Contract and that the latter be submitted to an independent handwriting expert/graphologist pursuant to Article R44.3 of the CAS Code.

101. On 4 August 2020, the CAS Court Office acknowledged receipt of the respective Appeal Briefs and informed the Parties, that the exhibits would be considered as

successfully received by the Parties unless the CAS Court Office would hear otherwise from them. Finally, the CAS Court Office drew the Parties' attention to Article R55 of the CAS Code.

102. On the same date, FIFA requested to be allowed to submit its Answer after TP Mazembe had paid its share of the advance of costs pursuant to Article R55 (3) of the CAS Code. The CAS Court Office denied FIFA's request on the same day, explaining that the totality of the advance of costs had already been paid by Mr Malango, TP Mazembe and Raja.

103. Still on 4 August 2020, TP Mazembe informed the CAS Court Office that it had only been provided with the enclosures 10-13 of Mr Malango's Appeal Brief and that, *inter alia*, TP Mazembe reserved all its rights with regard to the admissibility of the missing enclosures.

104. After verification on the CAS e-filing platform, the CAS Court Office confirmed on 5 August 2020 that only enclosures 10-13 had been uploaded together with Mr Malango's Appeal Brief and requested Mr Malango to re-submit a complete set of his enclosures without further delay.

105. On the same day, Mr Malango informed the CAS Court Office that he had re-submitted the complete set of enclosures.

106. On 5 August 2020, TP Mazembe acknowledged via e-mail receipt of the enclosures and reiterated its reservation in relation to the admissibility of the enclosures.

107. On 10 August 2020, Mr Malango requested a 20-day extension of the time limit to file his Answer to the Appeal Brief.

108. On 11 August 2020, the CAS Court Office invited TP Mazembe, Raja and FIFA to comment on Mr Malango's request by 12 August 2020 at noon (CET).

109. On 11 August 2020, Raja agreed to the extension as requested by Mr Malango.

110. On 12 August 2020, TP Mazembe requested a 30-day extension of the deadlines to submit its Answers to the Appeal Briefs and explained, that it would not object to Mr Malango's request provided that the 30-day extension would be granted to TP Mazembe.

111. On 17 August 2020, after consulting with the Parties, the CAS Court Office confirmed that the respective Answers should be filed simultaneously by 30 September 2020.

112. On 17 September 2020, FIFA filed its Answer to the Appeal Brief (with respect to case CAS 7033).

113. On 28 September 2020, Raja requested an extension of five days to submit its Answer.

114. On 29 September 2020, the CAS Court Office invited Mr Malango, TP Mazembe and FIFA to comment on Raja's request for an extension of the time limit.

115. On the same day, TP Mazembe agreed to Raja's request, provided that a reciprocal extension of five days would be granted to TP Mazembe in the matters CAS 7032 and CAS 7042.

116. In order to limit further exchanges of correspondence on this topic, the CAS Court Office invited the Parties on the same day, 29 September 2020, to inform it, no later than 30 September 2020 at noon (CET), whether they agree that the time limit to file their Answers be extended until 5 October 2020, whereby their silence would be deemed acceptance.

117. On the same day, TP Mazembe agreed to extend the time limit to file the Answers for all Parties until 5 October 2020.

118. On 30 September 2020, the CAS Court Office – absent any objection from Mr Malango, Raja and FIFA – extended the deadline to file all Answers until 5 October 2020.

119. On 5 October 2020, TP Mazembe filed its Answer in the cases CAS 7032 and CAS 7042). Therein, TP Mazembe requested that enclosures 1-9 and 14-33 to Mr Malango's Appeal Brief be struck from the file due to their late filing and that enclosures 1-8; 11-15, 17-18; 21-23; 25-26; 29, 30 and 32 to Mr Malango's Appeal Brief and enclosures 2-9; 11-13; 16, 18 and 23; 25-27; 29; 31-33; 36-38 to Raja's Appeal Brief shall be considered as inadmissible insofar as they were not accompanied by an English translation.

120. On the same date, Raja filed its Answer to the Appeal Brief in CAS 7033.

121. On 6 October 2020 (but dated 2 October 2020), Mr Malango filed its Answer in CAS 7033. Therein, Mr Malango requested that TP Mazembe be ordered to provide the original copies of the First and the Second Contract.

122. On 6 October 2020, the CAS Court Office acknowledged receipt of TP Mazembe's, Raja's and FIFA's Answers as well as Mr Malango's Answer filed. The CAS Court Office invited the Parties to inform it by 13 October 2020, whether they prefer a hearing to be held in this matter.

123. In the same e-mail dated 6 October 2020, 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 Panel appointed to decide the matters CAS 7032, CAS 7033 and CAS 7042 had been constituted as follows:

    Sole Arbitrator: Mr Ulrich Haas, Professor, Zurich, Switzerland

124. On 7 October 2020, TP Mazembe requested that the Sole Arbitrator reject Mr Malango's Answer together with its exhibits as inadmissible due to late filing.

125. On 8 October 2020, the CAS Court Office, on behalf of the Sole Arbitrator, invited Mr Malango to comment on TP Mazembe's request by October 2020.

126. On 9 October 2020, FIFA informed the CAS Court Office that it considered a hearing not necessary.

127. On 13 October 2020, Raja and Mr Malango requested that a hearing be held in the present matters.

128. On 14 October 2020, TP Mazembe requested an extension of five days in order to comment on the need to hold a hearing. The CAS Court Office extended TP Mazembe's deadline accordingly on the same day until 23 October 2020.

129. In a separate e-mail on the same day, the CAS Court Office, on behalf of the Sole Arbitrator, advised the Parties – while granting a deadline until 19 October 2020 to comply with the following respective instructions:

> "***Mr Ben Malango*** *is invited to comment on (i) TP Mazembe's objection to the admissibility of its Appeal Brief's enclosures 1-9 and 14-33 for late filing (Answer §§16 et seq.); and (ii) TP Mazembe's objection to the admissibility of its Appeal Brief's enclosures 1-8, 11-15, 17-18, 21-23, 25-26, 29-30 and 32 because they were not submitted with English translations (Answer §§ 30 et seq.).*
>
> ***TP Mazembe*** *is requested to provide the CAS Court Office with the original hardcopies of the First and Second Contract. The Sole Arbitrator will order an expert to examine the authenticity of the signature of Mr Ben Malango under the Second Contract. The Parties will be given an opportunity to comment on the identity of the expert in due course.*
>
> ***Raja Casablance*** *is invited (i) to comment on TP Mazembe's objection to the admissibility of its Appeal Brief's enclosures 2-9, 11-13, 16, 18, 23, 25-27, 29, 31-33 and 36-38 for lack of English translations and (ii) to file witness statements of Messrs Mukandila Tshitunde, Amis Mahfoud and Rabi Lafoui*." [emphasis in original]

130. On 16 and 19 October 2020, Mr Malango and Raja, respectively, commented on TP Mazembe's objections. Raja furthermore requested an extension of five days to submit the witness statements.

131. On 19 October 2020, TP Mazembe informed the CAS Court Office that the original version of the Second Contract had been submitted to FIFA in the context of the DRC proceeding and requested the CAS Court Office to instruct FIFA administration to provide the CAS Court Office with the document. Furthermore, TP Mazembe requested an extension of the deadline to submit the original version of the First Contract until 27 October 2020.

132. On 20 October 2020, the CAS Court Office, on behalf of the Sole Arbitrator, advised the Parties as follows:

> "*i.* *The original hard copies of the First and Second Contract:*
>
> *The Sole Arbitrator understands that the original hardcopies of the Second Contract are currently in possession of the FIFA.*
>
> *FIFA is therefore kindly invited to send the aforesaid hardcopies of the Second Contract* ***by 27 October 2020****.*
>
> *Furthermore, TP Mazembe is invited to file the original hardcopies of the First Contract* ***by 27 October 2020****.*
>
> *ii.* *TP Mazembe's objection to late filings of Mr Ben Malango:*

- *Admissibility of the enclosures to the Appeal Brief (CAS 2020/A/7032): TP Mazembe's objection is granted and only the Appeal brief with enclosures 10-13 is admitted on file in CAS 2020/A/7032;*
- *Admissibility of the Answer (CAS 2020/A/7033): TP Mazembe's objection is granted. Exhibits are admitted on file, but not the Answer. Ben Malango will be able to address TP Mazembe's Appeal Brief during the hearing and rely on his exhibits.*

The grounds of the Sole Arbitrator's decision will be provided with the final arbitral award.

iii. TP Mazembe's objections to the missing translations of the exhibits of Mr Ben Malango and Raja Casablanca:

Such objection is rejected and the grounds of the Sole Arbitrator's decision will be provided with the final arbitral award.

iv. Request of Raja Casablanca to extend deadline for five (5) days to provide the required witness statement:

On behalf of the Sole Arbitrator and pursuant to Article R32 (2) of the Code, such request is granted." [emphasis in original]

133. On 23 October 2020, TP Mazembe requested that a hearing be held in the present matters.

134. On 26 October 2020, Raja submitted the witness statements of Messrs Mukandila Tshitunde, Anis Mahfoud and Rabi Lafoui.

135. On 27 October 2020, TP Mazembe informed the CAS Court Office that it was unable to retrieve a hardcopy of the First Contract and that it was only in possession of a scanned copy of said contract. The letter continues to state that

> *"… we hereby provide the CAS with two letters by Mr Patient Mukendi Kabeya – TP Mazembe's lawyer in Congo DR – addressed to the FECOFA and TP Mazembe in November 2014 … enclosing, inter alia, a copy of the First Contract. Furthermore, we attach a statement issued by Mr Patient Mukendi Kabeya with regard to the above. These elements confirm the authenticity of the First Contract."*

136. On 27 October 2020, the CAS Court Office informed the Parties that Ms Marianne Saroli, Attorney-at-law in Montreal, Canada, had been appointed as ad hoc Clerk to assist the Sole Arbitrator.

137. On 18 November 2020, the CAS Court Office provided the Parties four *curriculum vitae* and letter of recommendations of experts in handwriting and invited the Parties to raise any possible objection as to the appointment of these experts by no later than 25 November 2020.

138. On 18 November 2020, FIFA informed the CAS Court Office that it did not have any objection as to the appointment of the experts referred to in the CAS Court Office letter.

139. On 20 November 2020, also Mr Malango informed the CAS Court Office that he did not have any objections in relation to the experts.

140. On 25 November 2020, Raja and TP Mazembe informed the CAS Court Office that they did not have any objections to the appointment of one of the experts.

141. On 15 December 2020, the CAS Court Office informed the Parties that the Sole Arbitrator had decided to appoint Ms Nicole Crown-Burri of the Zurich Forensics Science Institute as an expert ("Expert"). The letter further invited Mr Malango to send 10-15 original samples of his signature (that must be contemporaneous to the year of the signing Second Contract) to the CAS Court Office that will be forwarded to the Expert by 4 January 2021. Within the same deadline, the letter invited Raja to provide contemporaneous samples of Mr Malango's signatures.

142. On 16 December 2020, Mr Malango requested an extension of the deadline in view of the "*Christmas holiday period coupled to the stringent measures linked to the pandemic of COVID-19*".

143. On 17 December 2020, the CAS Court Office acknowledged receipt of Mr Malango's letter and invited the other Parties to comment on such request. The letter advised the other Parties that their silence will be deemed acceptance.

144. On the same day, TP Mazembe informed the CAS Court Office that it did not object to an extension of Mr Malango's deadline provided that a similar extension is granted in the event that it be requested to file further written submissions.

145. On 22 December 2020, the CAS Court Office noted that TP Mazembe did not raise an objection to the extension of Mr Malango's deadline and that its request for an extension of the deadline was premature, since no new round of written submission had been ordered by the Sole Arbitrator at this juncture. The letter further advised the Parties that no objection to the extension of Mr Malango's deadline had been raised by FIFA or Raja and that, consequently, the Mr Malango's request was granted, and the deadline extended by 25 January 2021.

146. On 22 January 2021, Mr Malango provided the requested samples of his signature.

147. Raja failed to provide the requested samples to the CAS Court Office, within the granted deadline.

148. On 8 February 2021, the CAS Court Office informed the Parties as follows:

> *"Please note that the Sole Arbitrator intends to ask …* [the Expert] *… the following questions:*
>
> 1. *Whether the signature under the Contract dated 16 December 2016 (the 'Second Contract') above the name 'Ben Ngita Malango' is Mr Malango's signature?*
> 2. *Whether there is any other indication arising from the Second Contract that may cast doubt on the authenticity of the signature of Mr Malango?*
> 3. *Please express also probabilities in relation to your answers to questions (1) and (2).*
> 4. *Please make any other or further observations that you deem pertinent in the context of the above examination.*

On behalf of the Sole Arbitrator, the Parties are invited to submit any comment on the above-mentioned questions no later than 12 February 2021."

149. On 10 February 2021, Mr Malango informed the CAS Court Office that it agreed with the questions for the Expert. Furthermore, the letter noted that "*as we have never seen the document before, we would also suggest the following question … Whether the contract really is an original document, i.e. whether the player's signature is written on it directly and not e.g. copied form another document.*"

150. On 11 February 2023, TP Mazembe informed the CAS Court Office that it considered questions 2 and 3 (insofar as it relates to question 2) as well as 4 to fall outside the scope of expertise of the Expert and therefore requested that these questions shall not be forwarded to the Expert.

151. On 12 February 2021, Raja informed the CAS Court Office that it agreed with the list of questions proposed by the Sole Arbitrator. In addition, the letter stated as follows:

"… we kindly request the Sole Arbitrator to as ask … [the Expert] *to analyse the salary slips which were enclosed as exhibit 4 of the Appeal Brief submitted by Tout Puissant Mazembe … considering the fact that that Mr Ben Malango is adamant that he has not signed such payment slips. Moreover from the plain comparison with the naked eye, the inconsistencies in the signatures contained in each of the salary slips is staggering … Lasty, we request if the …* [Expert] *could compare the signatures and initials of Mr Ben Malango marked on the employment contract dated 4 October 2014 (the 'First Contract'), the employment contract dated 16 December 2016 (the 'Second Contract') signed with …* [TP Mazembe] *and the new contract dated 15 August 2019 signed with Raja … ."*

152. On 23 February 2023, the CAS Court Office advised the Parties as follows:

"… TP Mazembe's request to delete questions n. 2, 3 and 4 is denied as such questions do not fall outside the scope of analysis of the report;

Mr Malango's request to add his question is denied as it is already covered by questions formulated by the Sole Arbitrator;

Raja Casablanca's request is denied insofar as it pertains to the salary slips for the reasons that (i) it falls outside the scope of the report as only the authenticity of Mr Malango's signature on the Second Contract is at stake and (ii) only scan versions of the payment slips have been provided, and not originals;

Raja Casablanca's request to ask the expert to compare the signature of the initials of Mr Malango on the employment contract dated 4 October 2014 (with TP Mazembe), the employment contract dated 16 December 2016 (with TP Mazembe) and the new employment contract dated 15 August 2019 (with Raja …) is granted and such question will be added on the list.

Raja … is invited to file the original of the employment contract dated 15 August 2019 with the CAS Court Office within seven … days as of receipt of this letter."

153. On 2 March 2021, Raja informed the CAS Court Office that it had sent the original version of the employment contract dated 15 August 2019 via DHL to the CAS Court Office.

154. On 20 April 2021, the CAS Court Office on behalf of the Sole Arbitrator sent to the Expert a letter that reads in its pertinent parts as follows:

"In accordance with Article R44.3 of the Code of Sports-related Arbitration (the 'Code'), I inform you that you have been appointed as an expert by Mr Ulrich Haas, Professor of Law in Zurich (Switzerland), Sole Arbitrator in the above-referenced matters.

You will find enclosed, by courier, the following documents:

- *An employment contract signed on 4 October 2014 by Mr Ben Malango Ngita with TP Mazembe (the "First Contract") (Document A);*
- *An employment contract (allegedly) signed on 16 December 2016 by Mr Ben Malango Ngita with TP Mazembe (the "Second Contract" or the "Litigious Contract") (Document B);*
- *Eight (8) samples of Mr Ben Malango Ngita's signature (Document C);*
- *An employment contract signed on 15 August 2019 by Mr Ben Malango Ngita and Raja Club Athletic (the "Third Contract") (Document D). An employment contract signed on 4 October 2014 by Mr Ben Malango Ngita with TP Mazembe (the "First Contract") (Document A);*
- *An employment contract (allegedly) signed on 16 December 2016 by Mr Ben Malango Ngita with TP Mazembe (the "Second Contract" or the "Litigious Contract") (Document B);*
- *Eight (8) samples of Mr Ben Malango Ngita's signature (Document C);*
- *An employment contract signed on 15 August 2019 by Mr Ben Malango Ngita and Raja Club Athletic (the "Third Contract") (Document D).*

On behalf of the Sole Arbitrator, you are invited to answer, by way of a report, the following questions:

- *1. Whether the signature under the Contract dated 16 December 2016 (the "Second Contract") above the name 'Ben Ngita Malango' is Mr Malango's signature?*
- *2. Whether there is any other indication arising from the Second Contract that may cast doubt on the authenticity of the signature of Mr Malango?*
- *3. Please express also probabilities in relation to your answers to questions (1) and (2).*
- *4. Please compare the signatures and initials of Mr Ben Malango Ngita on the First Contract (with TP Mazembe), the Second Contract (with Tout Puissant Mazembe) and the Third Contract (with Raja Club Athletic) and make any observations related thereto.*
- *5. Please make any other or further observations that you deem pertinent in the context of the above examination."*

155. A copy of the above letter to the Expert was sent to the Parties on the same day.

156. On 30 August 2021, the CAS Court Office on behalf of the Expert invited Mr Malango to provide answers to some follow-up questions.

157. On 1 September 2021, Mr Malango provided the answers to the Expert.

158. On 8 November 2021, the Expert provided her report ("First Forensic Report"). Under the heading "Conclusions" the Expert found as follows:

"The findings provide very strong support for the proposition that the questioned signature ... on page 3 of the Contract dated 16 December 2016 ('the Second Contract') above the

name 'Ben Ngita Malango' was written by the writer of the known signatures, Mr Ben Ngita Malango, over the proposition that it was written by someone else.

The findings provide moderate support for the proposition that the initials QI1 on page 1 of the Contract dated 16 December 2016 (the 'Second Contract') were written by the writer of the known material, Mr Ben Ngita Malango, over the proposition that they were written by someone else.

The findings provide strong support for the proposition that the initials QI2 on page 2 of the Contract dated 16 December 2016 (the 'Second Contract') were written by someone other than the writer of the known signatures, over the proposition that they were written by Mr Ben Ngita Malango himself.

The findings provide very strong support for the proposition that the disputed document has been altered through substitution of page 2 of the original contract, over the proposition that it is an unaltered document …"

159. On 12 November 2021, the CAS Court Office forwarded the First Forensic Report to the Parties and invited them to file any observation they might have by 26 November 2021.

160. On 19 November 2021, TP Mazembe requested a 15-day-extension of the deadline to file its comment.

161. On the same day, the CAS Court Office acknowledged receipt of TP Mazembe's request and informed the Parties that unless any objection is raised by the other Parties by 23 November 2021, the deadline to comment on the First Forensic Report is extended for all Parties until 13 December 2021.

162. On 9 December 2021, TP Mazembe requested a further extension of the deadline of seven days.

163. On the same day, the CAS Court Office acknowledged receipt and informed the Parties that unless any objection is raised the deadline for all Parties to comment on the First Forensic Report will be extended to 20 December 2021.

164. On 19 December 2021, TP Mazembe requested a further 3-day-extension of the deadline.

165. On the same day, the CAS Court Office advised the Parties that the deadline for all Parties to comment on the First Forensic Report will be extended until 23 December 2021 unless an objection is raised by the Parties.

166. On 20 December 2021, FIFA informed the CAS Court Office that it did not have any comments on the First Forensic Report.

167. On 20 December 2021 and 22 December 2021, Mr Malango and Raja filed their respective comments on the First Forensic Report.

168. On 23 December 2021, TP Mazembe filed its observations on the First Forensic Report. Therein, TP Mazembe contested the conclusions of the report. It submits – *inter alia* – that the Second Contract was signed in three originals. One copy was for the Player, the other one for TP Mazembe (and has been analysed by the Expert) and a final copy was

deposited with a notary (the "Notary Copy"). TP Mazembe submitted that it "*requested the notary to see the original copy that he had in his possession, since its signature*." The analysis of the Notary Copy by the Expert would confirm that the Second Contract was authentic. TP Mazembe, therefore, in its letter to the CAS "*formally requests that a new expertise be carried out in relation to the …* [Notary Copy] *by* … [the Expert]".

169. On 29 December 2021, the CAS Court Office invited the other Parties to comment on TP Mazembe's letter and the request contained therein by 7 January 2022.

170. On 3 January 2022, Raja requested a 10-day-extension of the deadline to file its comments.

171. On 3 January 2022, the CAS Court Office granted Raja's request for an extension of the deadline.

172. On 17 January 2022, Raja submitted its comments. Therein, Raja objected to TP Mazembe's submission of new documents and its request to carry out a new expertise on the Notary Copy. Raja stated that TP Mazembe was provided with an adequate opportunity to submit all relevant documentation and decided not to submit the Notary Copy at an earlier stage. Furthermore, when – on 19 October 2020 – the Sole Arbitrator requested TP Mazembe to provide the original hardcopies of the Second Contract, TP Mazembe replied that it did no longer have any copy in its possession, since the only original it had, was filed with the FIFA DRC. Therefore, TP Mazembe invited the Sole Arbitrator to instruct FIFA to provide it with the original on behalf of TP Mazembe. In view of the above, TP Mazembe must be estopped from submitting a new document at this point in time. Furthermore, Raja pointed to the following inconsistencies in relation to TP Mazembe's position:

> *"For instance, when examining the exhibits to the Appeal Brief submitted by TPM (exhibit 3 of TPM's Appeal Brief), there is a copy of the Second Contract attached as an exhibit (see Exhibit – 2).*
>
> *On a closer inspection, one can determine that such exhibit submitted by TPM looks different from the copy submitted for the handwriting expert analysis as the FECOFA stamp is missing and only two and not three people affixed their initials at the bottom of the first two pages. Obviously, there is a difference in the number of signatories as well on the last page.*
>
> *Additionally, it is of prime importance to underline another curious aspect regarding the Second Contract. In its letter dated 23 December 2021, TPM states that "it must be recalled that the Contract was signed in three original copies: (i) one for the Player, (ii) one for the Club and (iii) one for the notary" (see Exhibit - 3). Actually, this is the first time TPM is mentioning that its Notary has been safeguarding an original copy of the Second Contract.*
>
> *On the contrary, TPM itself and FECOFA mentioned several times that one original copy of the contract had been "deposited" with FECOFA (see Exhibit – 4, 5 p. 6 par.17 & 6 p.9 par.24). However, TPM's letter of 23 December 2021 does not mention any original copy kept by FECOFA.*
>
> *Last but not least, TPM's original copy is allegedly the one that was submitted for analysis to the handwriting expert. A second original copy is the one that the Notary was keeping in his person according to TPM. It is also important to point out that, by a letter of 16 January 2020 (see Exhibit - 7), FIFA requested TPM to send them the original copy of the Second Contract and subsequently FIFA sent the said original hard copy they received from TPM directly to CAS (see Exhibit – 8), which was analysed by the handwriting expert. And yet,*

this copy is different from the exhibit TPM submitted to its Appeal Brief and the new original copy of the Second Contract that was allegedly in the possession of the Notary.

When comparing (i) the copy of Second Contract that TPM submitted as an exhibit to its Appeal Brief, (ii) the original copy of the Club that was analysed by the handwriting expert and (iii) the original copy TPM is now submitting through its Notary, it is obvious that all three so-called original copies are different. …

Here as in the case of CAS 2002/O/410, if TP Mazembe's request were to be accepted by the Sole Arbitrator, such conduct would 'entail a violation of general principles of law which are widely recognised, particularly the principles of fairness and of good faith. In particular, […] the principle of venire contra factum proprium. This principle provides that when the conduct of one party has led to raise legitimate expectations on the part of the second party, the first party is barred from changing its course of action to the detriment of the second party'. …

Lastly, regarding the contracts of the two other players, submitted by TPM as exhibits to its letter of 23 December 2021, those two contracts do not concern the Player and are immaterial to the present case, as such should not be admitted as evidence in light of Art. R44.1 of the CAS Code unless the Sole Arbitrator deems otherwise."

173. In an unsolicited letter to the CAS dated 18 January 2022, TP Mazembe submitted – *inter alia* – as follows:

"Indeed, Raja Casablanca asserts that the statement made in the Letter that the Contract was signed in three original copies: (i) one for the Player, (ii) one for the Club and (iii) one for the notary" would contradict a previous declaration according to which the Contract had been deposited at the FECOFA. Furthermore, Raja Casablanca argues that the copy of the Contract submitted as Exhibit to our Appeal Brief would be different from the version of the Contract that was analysed by the Expert.

These are incorrect statements intended to mislead the Sole Arbitrator.

As a matter of fact, the Contract was signed in three original copies: one for the Player, one for the notary and one for TP Mazembe. However, TP Mazembe deposited its original copy of the contract at the FECOFA (the "Original Copy"), while retaining a scanned copy of this original contract (the "Scanned Copy"). The Exhibit attached to our Appeal Brief was the Scanned Copy, whereas the copy sent to the CAS for expertise was the Original Copy. A close examination of both documents confirms that they are the same contract, the only difference being that on the Original Copy the FECOFA stamps as well as the initials and signature of the FECOFA's representative have been added after scanning."

174. On 22 March 2022, the CAS Court Office on behalf of the Sole Arbitrator informed the Parties as follows:

"I inform the Parties that the Sole Arbitrator is considering TP Mazembe's request to order a second expert report.

In this respect, I inform the Parties of the following:

- *a supplementary advance of costs of more or less CHF 4,000 will be requested;*
- *in addition, the chemical analysis of the ink will generate extra costs esteemed to CHF 3,000 - 5,000, the collection of multiple samples of ink including paper support each about 1 mm in diameter;*
- *furthermore, the chemical analysis of the ink will destroy the documents in question and permission must be given by the TP Mazembe.*

In light of the above, TP Mazembe is requested to file its comments thereto no later than 25 March 2022."

175. On 25 March 2022, TP Mazembe informed the CAS Court Office that it accepts to bear the costs for the second expertise and that it gives its permission for a technical analysis of the ink (and the resulting destruction of the contract). However, TP Mazembe observes that since the copy is with the notary, it also requires the latter's permission for the analysis. Thus, TP Mazembe requests an extension of the deadline until 29 March 2022 to obtain the notary's confirmation.

176. On the same day, the CAS Court Office grants TP Mazembe's request for an extension of the deadline.

177. On 29 March 2022, TP Mazembe forwarded to the CAS Court Office a letter from the notary granting permission to perform the analysis on the document (i.e., the Notary Copy).

178. On 10 October 2022, the CAS Court Office informed the Parties as follows:

> *"Please find below the list of questions that will be asked to the Expert during the second expertise:*
>
> 1. *Please compare Original 1 (Contract dated 16 December 2016, 'Questioned Document Q' according to the Expert Report dated 8.11.2021) with document 2 (newly submitted version of the Contract dated 16 December 2016, 'Notary Version') and make any observations related thereto. This includes - inter alia - a chemical analysis of the inks and the paper used. Are they of the same composition or not?*
> 2. *Whether the signature under the newly submitted Contract dated 16 December 2016 ('Notary Version') above the name 'Ben Ngita Malango' is Mr Malango's signature?*
> 3. *Whether there is any other indication arising from the newly submitted Contract dated 16 December 2016 ('Notary Version') that may cast doubt an the authenticity of the signature of Mr Malango?*
> 4. *Whether the findings of the Second Expert Report have any impact on the …* [First Forensic Report]*?*
> 5. *Please also express probabilities in relation to your answers to questions (1) to (4).*
> 6. *Please make any other or further observations that you deem pertinent in the context of the above examination.*
>
> *If you need to make recourse to any of the documents used in the …* [First Forensic Report] *(other than Original 1), please list them also in the new report.*
>
> *On behalf of the Sole Arbitrator, I invite the Parties to comment on the above-mentioned questions or to submit any additional question by 14 October 2022."*

179. On 17 October 2022, the CAS Court Office noted that none of the Parties had submitted any comments on the list of questions. Consequently, on 18 October 2022, the above list of questions was submitted to the Expert and the Parties were informed thereof.

180. On 5 April 2023, the Expert delivered her Second Forensic Report. In the section "Conclusion" of said report. The Expert states as follows:

> *"1. Please compare Original 1 (Contract dated 16 December 2016, 'Questioned Document Q' according to the Expert Opinion dated 08.11.2021) with Document 2 (newly submitted version of the Contract dated 16 December 2016, 'Notary Version') and make any*

observations related thereto. This includes - inter alia - a chemical analysis of the inks and the paper used. Are they of the same composition or not?

No difference of the paper properties was found between the pages of the documents and between both documents.

No difference between the inks used for the initials QI1.1, QI2.1 (questioned initials on pages 1 of both questioned documents) and the signatures QS1 and QS2 (questioned signatures on pages 3 of both documents) was found. On the other hand, the inks used for the initials QI1.2 and QI2.2 (questioned initials on page 2) could be clearly differentiated from the remaining entries, but not from each other. This means that a different writing instrument was used to produce the initials BMN on the second pages of both contracts.

2. Whether the signature under the newly submitted Contract dated 16 December 2016 ('Notary Version') above the name 'Ben Ngita Malango' is Mr Malango's signature?

The findings provide very strong support for the proposition that the questioned signature QS on page 3 of the Contract dated 16 December 2016 (the 'Notary Version') above the name 'Ben Ngita Malango' was written by the writer of the known signatures, Mr Ben Ngita Malango, over the proposition that it was written by someone else.

3. Whether there is any other indication arising from the newly submitted Contract dated 16 December 2016 (,'Notary Version') that may cast doubt in the authenticity of the signature of Mr. Malango?

See answer to question 2.

Whether the findings of the Second Expert Report have any impact on the … [First Forensic Report]?

Under consideration of the statement provided in the email from 23.12.2021 the probative value of the findings pertaining to the integrity of the document Q1 appear slightly reduced. The findings provide strong support for the proposition, that the questioned contract Q1 is an altered document (specifically, altered by substituting page 2 after the contract has been completed) over the proposition that the disputed contract in an unaltered document.

The other findings remain unchanged.

5. Please also express probabilities in relation to your answers to questions (1) to (4).

See answers to the questions 1, 2 and 4.

6. Please make any other or further observations that you deem pertinent in the context of the above examination.

The written findings by the provide writer of weak the known support for material, the Mr proposition Ben Ngita that the Malango questioned over the initials proposition QI2.1 that were the questioned initials QI2.1 were written by a different writer.

> *The findings provide weak support for the proposition that the questioned initials QI2.2 were written by someone other than Mr Ben Ngita Malango, over the proposition that he was the writer of QI2.2.*
>
> *The findings provide moderately strong support for the proposition that the questioned contract Q2 is an altered document (specifically, altered by substituting page the 2 after contract has been completed) over the proposition that the disputed contract is an unaltered document.*
>
> *The evaluation of findings is based on the submitted evidence, the propositions in the report and on the case information given by the client. Should these circumstances change, a re-evaluation of the findings may be necessary."*

181. On 6 April 2023, the CAS Court Office invited the Parties to comment on the Second Forensic Report within 20 days from receipt of the letter.

182. On 19 April 2023, TP Mazembe requested an extension of the deadline. In support of its request, TP Mazembe submitted that a new counsel within of the law firm (Ms Sheena Belmans) had taken over the case file from Mr Grégory Ernes, that the new counsel was experiencing problems contacting the client and that such input was crucial to provide comments on the Second Forensic Report. The letter continued to state that TP Mazembe

> *"wishes to file new submissions in this matter to incorporate the findings of the expert as stated in both of his reports on our written submissions and, if necessary, develop new grounds on the basis of these two expert reports. In this regard, we would appreciate that the Sole Arbitrator issues a calendar for the filing of final submissions by the parties."*

183. Following the above letter, the CAS Court Office informed the Parties on behalf of the Sole Arbitrator that

- the deadline to comment on the Second Forensic Report is extended for all Parties until 8 May 2023; and that
- the Sole Arbitrator "*does not consider the possibility to grant a new round of submissions to the parties, other than the observations on the …* [the Second Forensic Report]. *However, the Sole Arbitrator reserves his final decision in this regard*."

184. On 25 April 2023, FIFA informed the CAS Court Office that it had no observations on the Second Forensic Report.

185. On 2 May 2023, TP Mazembe informed the CAS Court Office as follows:

> *"Surprisingly, … we did not find in the arbitration file a letter informing the parties about the Sole Arbitrator's decision to conduct an expertise on the authenticity of Mr Malango's signature and on the integrity of the contract dated 16 December 2016 and about appointing Mrs Nicole Crown as expert. …*
>
> *After a careful review of the second report, we noted that the conclusions of the expert remain ambiguous as the expert's findings provide very strong support that the questioned signatures were written by Mr Malango but the expert considers however - with a moderate degree of confidence – that the contract is an altered document.*

Therefore, and as it is in TP Mazembe's interest to clarify these findings, we have contacted several experts to get their observations on the expert report. We would expect those observations to be particularly relevant for the case as it would allow TP Mazembe to appreciate:

- *the reliability of the ESDA test performed to examine the indented impressions;*
- *the expert's conclusions on the questioned initials on page 2 who tended to consider that the initials were simulated even though the amount of specimen writing are more recent (2018 and 2019) and too limited to convey the entire range of variation of the handwriting of Mr Malango;*
- *the expert's conclusions on the integrity of the contract, which are mainly based on the ESDA test, the layout of page 2 and the chemical analysis which was only performed on the inks of the questioned initials and signature and not on the inks of the initials and signature of TP Mazembe's representative.*

Despite our efforts in contacting several experts, we encountered difficulties in finding an expert willing and available to answer our questions. In addition, the timeframe required for the preparation of such observations appears to be longer than the extension initially granted. For the sake of transparency, please find attached our latest correspondence with an expert in forensic handwriting analysis stating that the timeframe is not feasible.

Given the above, we kindly ask the Sole Arbitrator to postpone the delay to submit the observations on the second expert report to 31 May 2023. This final deadline will allow TP Mazembe to prepare its defence in an appropriate manner. …"

186. On 3 May 2023, the CAS Court Office invited the other Parties to comment on TP Mazembe's letter.

187. On 4 May 2023, Mr Malango objected to TP Mazembe's request and referred to the fact that the "*methodology used to perform the* … [Second Forensic Report] *is identical to the one used for the …* [First Forensic Report], *which remained unchallenged … by … the parties. The parties were invited … to provide questions and comments with regard to the expertise requested that will be formulated* … [and] *no comment or objection was raised … in and around any matters relating to the expertise questions, methodology and/or choice of expert …*".

188. Still on 4 May 2023, Raja objected to a further extension of the deadline to submit comments to the second Forensic Report. Furthermore, the letter states that "*TP Mazembe … had sufficient amount of time to analyse and understand the expert report which was sent to the Parties on 6 April 2023* …".

189. On 8 May 2023, the CAS Court Office advised the Parties on behalf of the Sole Arbitrator as follows:

"As an initial matter and for the sake of good order, please be advised of the following:

- *On 14 October 2020, the CAS Court advised the Parties inter alia as follows: 'TP Mazembe is requested to provide the CAS Court Office with the original hardcopies of the First and Second Contract. The Sole Arbitrator will order an expert to examine the authenticity of the signature of Mr Ben Malango under the Second Contract. The Parties will be given an opportunity to comment on the identity of the expert in due course'.*
- *On 15 December 2020, the Sole Arbitrator advised the Parties about the appointment of Ms Nicole Crown-Burri …*

> *Furthermore, the Sole Arbitrator reminds Counsel of TP Mazembe that, in the letter of 20 April 2023, it is clearly stated that the Parties' intervention is limited to (i) filing observations on the …* [Second Forensic Report] *and that (ii) no further extension of the deadline will be granted absent exceptional circumstances. Furthermore, (iii) the Sole Arbitrator expressly rejected TP Mazembe's request to file further submissions other than observations on the …* [Second Forensic Report] *at this stage.*
>
> *Based on the above, the Sole Arbitrator rejects the request of TP Mazembe, inter alia for the following reasons:*
>
> - *Ms Belmans has informed the CAS on 19 April 2023 that she had taken over the case 'recently' from one of her colleagues of the same law firm. For this reason, she was already granted an extension of the deadline of 10 days by CAS letter until 8 May 2023 (more than requested).*
> - *The Parties were advised that no further extensions will be granted.*
> - *This is not the time to file new submissions. The intervention is limited on commenting the …* [Second Forensic Report]. *If counsel deems it necessary that a further round of submission is needed following the report, it shall make a reasoned request to this effect in its observation on the second expert report. The Sole Arbitrator will then decide on such request (as already advised in the CAS letter dated 20 April 2023).*
> - *The new request for an extension of the deadline until 31 May 2023 is not warranted in order to file observations on the …* [Second Forensic Report] *and the reasons provided do not constitute exceptional circumstances. The Sole Arbitrator notes - inter alia - that an ESDA test was already performed in the context of the …* [First Forensic Report] *(8 November 2021). At that point in time TP Mazembe did not deem it necessary to consult further experts on 'the reliability of the ESDA test'. Thus, it is not comprehensible why this would be necessary at this point in time."*

190. On 8 May 2023, TP Mazembe submitted its observations on the Second Forensic Report "*without being able to call his expert to assess the* ... [Second Forensic Report and, therefore] *reserves its right to challenge this decision and the future award on the basis of Article 6 ECHR.*"

191. Still on 8 May 2023, Raja and Mr Malango submitted their respective comments on the Second Forensic Report.

192. On 14 June 2023, the CAS Court Office informed the Parties that the Sole Arbitrator had decided to hold a hearing in this matter. Furthermore, the letter advised the Parties that Ms Marianne Saroli had stepped down from her position as ad hoc Clerk in the present matter.

193. After some exchange of letter, the CAS Court Office informed the Parties on 28 August 2023 that the hearing will be held in Lausanne on 8 November 2023. Furthermore, the letter invited the Parties to provide the names of all persons who will be attending the hearing on their behalf by 4 October 2023.

194. On 4 September 2023, FIFA informed the CAS Court Office of the persons attending the hearing on its behalf.

195. On 2 October 2023, Raja informed the CAS Court Office of the persons that will attend the hearing on its behalf.

196. On 5 October 2023, the CAS Court Office reminded TP Mazembe and Mr Malango to communicate the names of the persons who will be attending the hearing on their respective behalf's. Furthermore, the letter advised Raja to provide the email addresses of the witnesses that will be heard by videoconference. Finally, the letter invited the parties to state whether they wish for the Expert to be heard by videoconference or in person. In the latter case, the letter advised the Parties that this will cause further costs.

197. On 9 October 2023, Raja provided the missing email-addresses. Furthermore, Raja advised the CAS Court Office that it preferred the Expert to participate in the hearing by videoconference.

198. On 11 October 2023, Mr Malango provided the names of the persons that will be attending the hearing on his behalf. In addition, he informed the CAS Court Office that he agreed to hear the Expert by videoconference.

199. On the same day, TP Mazembe provided the names of the persons attending the hearing on its behalf. Furthermore, TB Mazembe requested that the Expert be heard at the hearing in person.

200. On 13 October 2023, the CAS Court Office informed the Parties that the Sole Arbitrator had decided to allow the Expert to give evidence by videoconference pursuant to Article R44.2(4) of the CAS Code in order to avoid supplementary costs.

201. On 16 October 2023, the CAS Court Office noted that Mr Dodo Landu Domo has been listed by Mr Malango as a witness in his letter dated 11 October 2023 even though he has acted as Mr Malango's counsel so far. The CAS Court Office, thus, invited Mr Malango to clarify Mr Dodo Landu Domo's position on or before 18 October 2023.

202. By letter to the CAS Court Office dated 18 October 2023, Mr Dodo Landu Domo clarified that he was and is acting as Mr Malango's representative (and not as a witness) and that he will attend the hearing by videoconference. Furthermore, the letter advised the CAS Court Office that the interpreter previously listed (Ms Belinda Smits) will be replaced by Mr Joachim Colaris.

203. On 31 October 2023. The CAS Court Office provided the Parties with a draft hearing schedule. Furthermore, the CAS Court Office invited the Parties to sign and return a copy of the Order of procedure ("OoP") by 6 November 2023.

204. On 1 November 2023, FIFA returned a signed copy of the OoP.

205. On 3 November 2023, the CAS Court Office provided an invitation from CISCO Webex for all participants that will attend the hearing remotely.

206. On 6 November 2023, Mr Malango returned a signed copy of the OoP and requested that he be granted 15 minutes for his opening statement instead of 10 minutes as provided for in the hearing schedule. Furthermore, the letter advised the CAS Court Office that Mr Malango will not attend the hearing via videoconference.

207. On the same day, Raja requested that the sequence of its witnesses in the hearing schedule be changed.

208. On 7 November 2023, the CAS Court Office reminded TP Mazembe and Raja to submit a signed copy of the OoP. The letter also invited Mr Malango to provide his email address to the CAS Court Office in order to be able to join the videoconference.

209. On the same day, Raja informed the CAS Court Office that its witnesses Mr Mukandila Tshitunde and Mr Anis Mahfoud will not be able to attend the hearing.

210. Still on the same day, TP Mazembe and Raja provided a copy of the signed OoP to the CAS Court Office.

211. On the same day, the CAS Court Office provided the Parties with a revised hearing schedule.

212. In the evening of 7 November 2023, informed the CAS Court Office as follows:

> *"Ahead of tomorrow's hearing, I set out below a handful of legal authorities to which we intend to refer (on behalf of Mr Malango) at tomorrow's hearing, which have not been cited previously in the parties' submissions*
>
> *We apologize for the late hour of this email, but thought it best to circulate these in advance of the hearing, so that everybody has a the opportunity to read them before and/or can readily access them during the hearing …"*

213. Still in the evening of 7 November 2023, TB Mazembe in an email to the CAS Court Office stated that

> "*Mr. Malango's procedural attitude clearly violates our client's right of defense. Said email at the eve of the hearing. The Parties have abundantly and repeatedly had the possibility to express their observations and develop their arguments. In addition, from the summary email, it is impossible to infer how and to what extent the cited case law and doctrine will be invoked during the hearing …. This is simply unacceptable … TP Mazembe therefore requests the immediate exclusion of the email and its attachments from the proceedings … Alternatively, TP Mazembe requests that the case be adjourned after tomorrow's hearing in order to allow the club to respond in writing to whichever argument Mr Malango wishes to raise during the hearing …".*

214. Still on 7 November 2023, counsel of Mr Malango objected to TP Mazembe' email and stated that in "*view of the principle iura novit curia, there can be no restriction on the party's reference to legal authorities at the hearing."*

215. Shortly before midnight of the same day, counsel for TP Mazembe reiterated its request to exclude Mr Malango's email and its attachment from the file.

216. On 8 November 2023, a hearing was held in Lausanne, Switzerland. At the outset of the hearing, all Parties confirmed that they had no objection to the constitution and composition of the Panel. Furthermore, Raja advised the Sole Arbitrator that its witness Mr. Rabii Lafoui will not give testimony at the hearing.

217. In addition to the Sole Arbitrator and Mr Fabien Cagneux, Managing Counsel at the CAS, the following persons attended the hearing:

The Expert: via videoconference

For Mr Malango:

1) Mr William Sternheimer, Legal Counsel
2) Mr Ben Cisneros, Legal Counsel
3) Mr Dodo Landu Domo, legal Counsel (via videconference)
4) Mr Ben Malango (via videoconference)
5) Mr Joachim Colaris, interpreter (via videoconference)

For TP Mazembe:

1) Ms. Sheena Belmans, Legal Counsel

For Raja:

1) Mr. Breno Costa Ramos Tannuri, Legal Counsel
2) Mr. Somaiah Mandepanda Jaya, Legal Counsel

For FIFA:

1) Mr Roberto Náhera Reyes, Senior Legal Counsel
2) Mr Pierre Llamas, Legal Intern

218. The Expert was invited by the Sole Arbitrator to tell the truth subject to the sanction of perjury under Swiss law. The Expert gave a brief overview of her findings. Subsequently, the Parties had full opportunity to pose their questions to the Expert.

219. Before the hearing was concluded, all Parties expressly stated that they had no objection to the procedure adopted by the Sole Arbitrator and that they were given full opportunity to present their cases, question the Expert, submit their arguments in closing statements and to answer the questions posed by the Sole Arbitrator. Furthermore, the Parties agreed to suspend the proceedings for two weeks for the purpose of settlement negotiations. The Parties agreed to inform the CAS Court Office at the latest on 22 November 2023 whether an amicable settlement has been reached.

220. 23 November 2023, the Parties requested that the deadline to suspend the proceedings be extended until 24 November 2023.

221. On the same day, the CAS Court Office granted the request of the Parties.

222. On 24 November 2023, the Parties requested another extension of the deadline to suspend the proceedings until 1 December 2023.

223. On 27 November 2023, the CAS Court Office informed the Parties that in view of the potential conclusion of a settlement agreement the arbitral proceedings remain suspended until 1 December 2023.

224. On 1 December 2023, the Parties requested a further extension of the deadline following which the CAS Court Office suspended the proceedings until 15 December 2023.

225. On 15 December 2023, Mr Malango informed the CAS Court Office that the Parties were unable to reach a settlement agreement following which the CAS Court Office informed the Parties that the Sole Arbitrator will issue an arbitral award in due course.

226. On 4 September 2024, the CAS Court Office asked for a further advance of costs from the Parties and advised the Sole Arbitrator to suspend all activities on the case pending the payment of the further advance on costs.

IV. POSITIONS OF THE PARTIES

227. 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 Parties' claims 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. Mr Malango

228. On 4 May 2020, in his Statement of Appeal (CAS 7032), and 16 June 2020, in his Appeal Brief (CAS 7032), Mr Malango filed the following requests for relief:

> "*a) To annul the decision of the FIFA DRC dated 21 February 2020.*
>
> *b) To pass a new decision accepting the Appellant's appeal in its entirety.*
>
> *c) To rule that the Appellant was not under a valid employment contract with the Respondent and therefore did not breach any contract.*
>
> *d) To rule that the Appellant does not have to pay the Respondent any compensation for breach of contract.*
>
> *e) In the alternative, to rule that the Appellant must pay the Respondent compensation in the maximum amount of USD 27,000.*
>
> *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.*"

229. On 5 October 2020 (but dated 2 October 2020), in his Answer to the Appeal Brief filed by TP Mazembe (in case CAS 7033), Mr Malango requested that in case his appeal in CAS 7032 should be dismissed, *to:*

> *"a) Reject the appeal of the Club.*

b) In the alternative, reduce the amount of the liquidated damage clause to a maximum amount of USD 27,000.

c) Order the Club to pay the full arbitration costs.

d) Order the Club to pay the Player an amount towards his legal costs and expenses incurred in connection with the present proceedings."

230. Mr Malango's submissions in support of his requests both in CAS 7032 and CAS 7033 can be summarised as follows:

i. The First Contract

231. With respect to the First Contract, Mr Malango submits that:

- The First Contract was originally entered into for a period of seven years (Article 4 of the First Contract). However, the maximum valid duration of an employment contract is only five years. The First Contract provided a monthly salary amounting to USD 1,000, i.e. total value of USD 60,000. The First Contract expired on 31 May 2019.
- As Mr Malango had misplaced the First Contract, he requested TP Mazembe to provide him with a copy on 21 January 2019. His request for a copy displays his *bona fide* as he was aware that clubs were interested in his services. At that time the First Contract was due to expire within the next six months.

ii. Existence and Validity of the Second Contract

232. Mr Malango has never signed the Second Contract. Thus, the copies/originals submitted in this respect are forged. This is supported by the following:

1. The initials, date of signature and signature

- A closer look at the signature reveals some discrepancies with Mr Malango's signature which require an expert analysis.
- The date of signature is not Mr Malango's handwriting, and an untrained observer can see that there is some confusing resemblance with the handwriting style used to write TP Mazembe's date of signature.

2. The post-dated certification by the FECOFA

- FECOFA only provided a copy of the Second Contract homologated by its services on 16 September 2019.
- The approval signature on the Second Contract is Mr Belgian Situatala's signature (signatory of the letter from FECOFA to FIFA dated 16 September 2019). However, Mr Situatala had only become FECOFA's deputy secretary general in charge of competitions as of April 2019.
- The confirmation of homologation provided by FECOFA and dated 9 August 2019 gives no indication as to a respective date or homologation number of said

contract. Thus, it is obvious that the homologation took place in 2019 and not in 2016. This post-dated homologation explains the silence of FECOFA regarding the several requests to produce a copy of the First and Second Contract.

- TP Mazembe did not file a copy of the homologated contract in its FIFA claim.
- It is a club's obligation to register a contract with its Football Association ("FA"). This furthermore demonstrates that the Second Contract was never provided to FECOFA by TP Mazembe until a time between 28 June 2019, i.e., the date on which TP Mazembe provided a copy for the first time, and 16 September 2019, which is two and a half years after the alleged signature of the Second Contract.

3. *The wrong birthdate on the Second Contract*

- According to the section identifying Mr Malango as a party to the Second Contract, the latter was born on 11 May 1997. However, in accordance with Mr Malango's birth certificate as well as TP Mazembe's own website, Mr Malango was born on 10 November 1993.

4. *The identity of the Club's signatory and the absence of Club's stamp*

- The Second Contract, on page 1 (parties' identification), refers to Mr Frederic Kitengie Kinkumba, Manager and Sports Director, as TP Mazembe's representative. However, the document was signed by Mr Kamwanya Ilunga, Second Vice-President. Furthermore, there is no explicit reference to a mandate or authorization or a respective annex to the Second Contract, which must have been a mandatory formality to validly and legally entitle Mr Kamwanya Ilunga to commit on behalf of TP Mazembe.
- No official TP Mazembe stamp is affixed anywhere on the Second Contract and the identity of TP Mazembe's witness consists of an unidentified signature.

5. *The incoherent and incomplete notarial certification*

- The notarial certification is dated 17 December 2016, while both parties signed on 16 December 2016. Mr Malango never appeared before any notary, neither on 16 December 2016 nor on any other date.
- Information with regard to the amount due to the notary is missing despite a clear reference in the dedicated stamp area.

6. *The absence of registration with the National Employment Office*

- According to Article 47 of the Labour Code of the Democratic Republic of Congo, applicable in accordance with Article 1.4 of the Second Contract, "*the employer is required to submit any written contract to the National Employment Office, following the terms and conditions set by Minister's order having Work and Social Foresight in its attributions. Failure by the employer to complete this formality entitles the worker to terminate the employment contract at any time, without notice and he may claim, if necessary, damages. The employment*

contract that the National Employment Office refused to approve ends automatically."

- TP Mazembe had the legal obligation to submit the Second Contract to said office. However, TP Mazembe failed to provide any evidence of such submission.

7. The Club's previous CAS case

- TP Mazembe was a party before the CAS in case CAS 2013/A/3207. The award in this matter is evidence, *inter alia*, of the collusion of TP Mazembe with FECOFA. In the mentioned case, a former employee had questioned the authenticity and existence of an employment contract.

8. The Club's lack of good faith and contradictory attitude with regard to the First Contract

- Mr Malango asked for a copy of the First Contract in good faith, as early as he was approached by another club at the very beginning of the six months period within which the contractual relationship was due to expire. This request was reiterated several times to TP Mazembe and FECOFA, which proves not only the willingness to prevent any dispute, but also the undertaking of all efforts possible on the side of Mr Malango.
- The attitude of TP Mazembe is a breach of the principle of good faith according to which it is part of an employer's obligation to provide a copy of the contract if the employee requests it.

9. The moment of first reference to the existence of the Second Contract

- The first reference to the Second Contract was made by TP Mazembe on 8 June 2019. Mr Malango and UFC immediately denied the existence of the document and repeatedly invited TP Mazembe and FECOFA to provide a copy of it to prove its existence.
- TP Mazembe provided a copy of the Second Contract only on 28 June 2019. This first "*apparition*" took place in the middle of contractual negotiations between Mr Malango and Orlando Pirates. This is a fortunate coincidence, since Mr Malango was about to sign, as a free agent, a new contract with one of the best clubs on the continent, while TP Mazembe was not in a position to obtain any transfer compensation.
- The copy of the Second Contract provided on 28 June 2019 was not homologated. The homologated version appeared only in September 2019. This corroborates that the Second Contract did not exist until late June 2019.

233. Finally, Mr Malango submits in light of Article 12 (1) and (7) of the FIFA Procedural Rules that the DRC disposes of a certain level of discretion when exercising its investigative power, but failed to request the production of the First Contract and the appointment of a handwriting expert to examine the Second Contract in the first instance procedure.

iii. Termination of the Second Contract

234. Mr Malango submits that, alternatively, in the event that the Sole Arbitrator would reach the conclusion that the Second Contract is authentic and valid, Mr Malango was entitled to terminate the Second Contract at any time without any notice nor compensation according to the labour laws of the Democratic Republic of Congo:

- FIFA did not give due consideration to the national law, although Article 1.4 of the Second Contract refers to it as being also applicable:

  " *This Contract and in accordance with the agreement of the two parties is governed by the Regulations governing the Transfer of Players, issued by the Fédération Internationale de Football (FIFA) and the 'General Sporting Regulations' of the Congolese Football Federation, and also the labour laws of the Democratic Republic of Congo.*" [free translation as submitted by Mr Malango]

- Article 47 of the Labour Code of the Democratic Republic of Congo provides as follows:

  " *The employer is required to submit any written contract to the National Employment Office, following the terms and conditions set by Minister's order having Work and Social Foresight in its attributions.*

  Failure by the employer to complete this formality entitles the worker to terminate the employment contract at any time, without notice and he may claim, if necessary, damages. The employment contract that the National Employment Office refused to approve ends automatically." [free translation as submitted by Mr Malango]

- As TP Mazembe had never submitted the Second Contract to the National Employment Office, Mr Malango was, pursuant to Article 47 of the Labour Code of the Democratic Republic of Congo, free to terminate the employment relationship, at any time and without having to pay any compensation.

- The practice of TP Mazembe in the present matter "*is the modus operandi of some clubs. Indeed, what they do is sign a first contract which they duly register with the FA. Then, they sign a second contract to extend the contract duration which they do not register yet with the FA. If the player performs well and wants to leave after the expiry of the first contract, the Club pulls out the Second Contract and will state to the player that he is not free to go. If the player underperforms, they will tell the player that there is no Second Contract and that no Second Contract has been registered with the FA. In this respect, it is also fundamental to indicate that if the club had breach or terminated the contract, and the player would have filed a claim to FECOFA also basing itself on the Second Contract, said association would refuse to accept any request in relation to the Second Contract since it would not be registered with FECOFA.*"

- Therefore, "*it would effectively mean that the Club could tie the Player to a long-term contract if it wanted to, but the Player had no such equal right.*" As stated in CAS 2014/A/3707 (paras. 121 et seq.), this behaviour is not acceptable.

- "*In essence, this is exactly what* [TP Mazembe] *did: trying to establish a long-term employment relationship when* [Mr Malango] *performed well, and a short-term relationship when* [he] *did not perform well enough in the sole discretion of* [TP Mazembe] *as it was the one who controlled the filing of the Second Contract. This is illegitimate under art. 335a of the Swiss Code of Obligations as well as in accordance with the principles of the FIFA DRC which state that unilateral options are not acceptable.*"

iv. Compensation

235. In regard to the amount of compensation, Mr Malango submits that the DRC had applied the respective criterion of Article 17 (1) FIFA Regulations on the Status and Transfer of Players (the "FIFA RSTP") wrongly insofar as the specific circumstances of the case at hand command to apply the criteria defined in Article 17 (1) FIFA RSTP so as to limit the compensation to the residual value of the Second Contract:

- Article 17 (1) FIFA RSTP reflects the intent to offer the ability to the competent deciding body to take all circumstances of each case into account and should be applied in a manner that does not favour any side of the employment relationship. In line with CAS case law, compensation for unilateral termination without cause should not be punitive or lead to enrichment.
- The calculation method of the average of both the old and the new contract as used by the FIFA DRC did not place both parties on equal footing, but rather had a punitive effect on Mr Malango and did not reflect the value that TP Mazembe was willing to place in Mr Malango.
- The contractual terms between a club and a player are the best possible indicators to assess the value placed by the former in the latter. According to 3.1 of the Second Contract, TP Mazembe "*will pay a monthly salary of one thousand dollars for the duration of the football season.*" The Second Contract does not entail any further remuneration and/or advantages than this modest salary.
- The wording of Article 5.1 of the Second Contract shows, inter alia, the unequivocal social philosophy and economic intentions of TP Mazembe:

  "The Club reserves the right to commercialise, sell or lend the Player for the duration of this Agreement." [free translation as submitted by Mr Malango]

v. Joint and Several Liability

236. Regarding the joint and several liability, Mr Malango submits that the liability should not be turned into a justification to limit a player's fundamental freedom to move and work by assuming that such high amounts would be paid by the new employer.

vi. First Forensic Report

237. With respect to the First Forensic Report, Mr Malango submits that:

- The report raises substantial doubts as to the overall authenticity of the Second Contract.
- As for the initials on page 1 of the Second Contract allegedly stemming from the Player (QI.1), the report concludes that the evidential value is limited. Thus, it follows that doubts remain as to the identity of the writer of those initials and these doubts shall not be taken lightly.
- These doubts are further enhanced when looking at the initials on the second page of the Second Contract (CI.2). Here, the report finds that there is strong support that said initials were written by someone other than the Player.
- The report clearly concludes that there are substantial doubts as to the authenticity and integrity of the Second Contract, since its page 2 has been substituted.
- It follows from all of the above that the version of the Second Contract provided by TP Mazembe fails to meet the applicable standard of proof required to rely on said document and that, therefore, the Second Contract shall be disregarded.

vii. Second Forensic Report

238. With respect to the Second Forensic Report, Mr Malango submits that:

- The Second Forensic Report confirms the substantial doubts raised in the First Forensic Report in relation to the Second Contract's integrity and authenticity.
- In the Second Forensic Report there is weaker support for the assumption that the initials on the Notary Copy stem from the Player. The Expert expressly refers to "weak support". Consequently, substantial doubts remain as to the affixing of the initials on the Second Contract by the Player.
- Irrespective of the above, it is also clear from this second report that the initials on page 2 of the Second Contract were written by someone other than the Players. In this regard the Expert speaks of "strong support".
- It is further telling that the Expert concludes – when comparing the copy provided by TP Mazembe and the Notary Copy – that the initials on the second page were written with a different writing instrument.
- Also, the Second Forensic Report concludes that there is support for the finding that the contract has been altered.

B. TP Mazembe

239. In its Appeal Brief dated 23 July 2020 (with respect to CAS 7033), TP Mazembe filed the following requests for relief:

> "*1. Declare this Appeal admissible;*
>
> *2. Set aside partially the decision of the FIFA Dispute Resolution Chamber;*
>
> *3. Order the First Respondent to pay to the Appellant compensation for breach of contract in the amount of USD 2,000,000 as per the penalty clause contained in Article 5.2 of the Contract;*
>
> *In the alternative:*
>
> *4. Reduce the penalty contained in Article 5.2 of the Contract to a reasonable amount in accordance with Article 163 para. 3 CO;*
>
> *5. Order the First Respondent to pay to the Appellant compensation for breach of contract set at this reasonable amount.*
>
> *In the further alternative:*
>
> *6. Order the First Respondent to pay to the Appellant compensation for breach of contract in the amount of USD 750,000.*
>
> *In the further alternative:*
>
> *7. Order the First Respondent to pay to the Appellant compensation for breach of contract in the amount of USD 423,090.*
>
> *And in any event:*
>
> *8. Award an interest of 5% p.a. on the amount of the compensation as from 16 August 2019 until the effective date of payment.*
>
> *9. Hold the Second Respondent jointly and severally liable to the payment of the compensation;*
>
> *10. Impose on the First Respondent a minimum restriction on playing in official matches of four-month restriction, and to the extent that the Panel finds that the circumstances of the present constitute aggravating factors, a six-month restriction;*
>
> *11. Impose on the Second Respondent a ban from registering any new players, either nationally or internationally, for two entire and consecutive registration periods*
>
> *12. Order the First, Second and Third Respondents to bear the costs of proceedings before the Court of Arbitration for Sport;*
>
> *13. Award a contribution to be established at its discretion to cover the legal fees and expenses of the Appellant."*

240. In its Answer dated 5 October 2020 related to the matters CAS 7032 and CAS 7042, TP Mazembe filed the following requests for relief:

> "*In the matter CAS 2020/A/7032 Ben Malango v. Tout Puissant Mazembe:*
>
> *1. Dismiss the Appeal of Mr Ben Malango;*
>
> *2. Order Mr Malango to bear the costs of proceedings before the Court of Arbitration for Sport;*

3. *Award a contribution to be established at its discretion to cover the legal fees and expenses incurred by the Respondent.*

In the matter CAS 2020/A/7042 Raja Casablanca v. Tout Puissant Mazembe:

1. *Dismiss the Appeal of Raja Casablanca in the case 2020/A/7042;*
2. *Order Raja Casablanca to bear the costs of proceedings before the Court of Arbitration for Sport;*
3. *Award a contribution to be established at its discretion to cover the legal fees and expenses incurred by the Respondent.*"

241. TP Mazembe's submissions – in essence – can be summarised as follows:

i. The First Contract

242. TP Mazembe submits, inter alia, the following regarding the First Contract:

- TP Mazembe and Mr Malango entered into the First Contract on 4 October 2014. The First Contract was signed for a period of seven years.
- Upon signing the First Contract, Mr Malango informed TP Mazembe that he was born on 10 November 1993, the date which was therefore mentioned in the First Contract.
- When Mr Malango and TP Mazembe realised that the initial duration of seven years could potentially constitute an issue in the light of the relevant sporting regulations, they decided – for the sake of clarity – to renew the employment contract containing the same terms as the First Contract.
- Nevertheless, prior to signing this new contract, Mr Malango informed TP Mazembe that he was in fact born on 11 May 1997 and provided TP Mazembe with passport n°OP0015599 issued on 25 February 2016, bearing such birthdate. Consequently, relying on this official document handed over by Mr Malango, TP Mazembe drew up the Second Contract referencing Mr Malango as born on 11 May 1997.

ii. Validity of the Second Contract

243. TP Mazembe submits that on 16 December 2016, Mr Malango and TP Mazembe entered into the Second Contract containing all the *essentialia negotii,* valid as from the date of signature until 15 December 2021:

- The validity of the Second Contract shall be assessed exclusively in the light of the following *essentialia negotii* :(i) the name of the parties; (ii) the date; (iii) the position of the employee; (iv) the duration; (v) the player's remuneration; (vi) the signature of the parties.
    - Neither Mr Malango nor Raja denied the presence of the elements (i) to (v).

- "*Albeit acknowledging that these elements constitute the only essentialia negotii, Raja dedicates extensive developments on the lack of registration of an employment contract with the FA.*"
- However, "[T]*he jurisprudence of FIFA and the CAS leaves little room for doubt; there is no influence on the validity of the employment contract: '*[…] *as a general rule, the homologation and/or registration of an employment contract at a federation does not constitute a condition for its validity.*"

244. TP Mazembe submits the following in respect to the alleged forgery of the Second Contract:

– Principles of burden of proof
  - The CAS Code is silent on the issue of the burden of proof if a party disputes the authenticity of a contract.
  - Pursuant to Article 178 Swiss Code of Civil Procedure ("CCP"), the party that invokes a document must prove its authenticity if the authenticity is disputed by the opposing party. Although this provision does not apply directly to the present arbitral proceedings, TP Mazembe encourages the Sole Arbitrator to be guided and inspired by this specific provision, as this has already been done by another sole arbitrator in a football case brought before the CAS (CAS 2015/A/4177, para. 66): "*[…]in order to rebut the presumption of authenticity of physical records, it does not suffice to simply dispute the authenticity of the documents; the disputing party must rather give adequate grounds for its claim.*"
  - Considering that TP Mazembe relies on an original version of the Second Contract, which shall be presumed as authentic, Mr Malango and Raja bear a higher burden of proof, requiring them to provide the Sole Arbitrator with adequate grounds supporting their joint allegations of forgery.

245. According to TP Mazembe, Mr Malango and Raja have failed to submit an "*adequate ground*" to rebut the presumption of authenticity of the Second Contract:

1. Absence of criminal complaint

– Mr Malango has never filed any criminal complaint against TP Mazembe despite the fact that forgery constitutes a serious criminal offence in any legal system.

– TB Mazembe refers to the decision CAS 2018/A/6468, in which the panel decided in para. 137, that "[…] [i]*f the Club was convinced that the signature of HRH. has been forged by the Player, it would have been expected to file a criminal complaint against the Player for such a serious offence* […].", the mere absence of criminal complaint suffices to demonstrate the groundless nature of the allegation of forgery jointly raised by Mr Malango and Raja.

2. Signature and initials of Mr Malango

- TP Mazembe has always adopted a transparent attitude towards the Second Contract:
  - TP Mazembe proposed in the pre-litigation phase to hold a meeting in Lubumbashi so that Mr Malango and Raja, as well as their experts if they wished so, could examine the Second Contract. Neither Mr Malango, nor Raja replied to this proposal. In this regard, and considering the high risk of loss of evidence, it could not reasonably be expected from TP Mazembe to forward the only original version it had to Raja or Mr Malango;
  - Before FIFA, TP Mazembe immediately submitted the original version of the Contract when requested to do so;
  - Before the CAS, in its correspondence dated 11 May 2020, TP Mazembe confirmed that if the Sole Arbitrator deemed it necessary, it would accept that an expertise be carried out;
  - Following the request of Mr Malango and Raja, TP Mazembe submitted the First Contract in the present proceedings with its Answer.
- Mr Malango explained that there would be a "*confusing resemblance with the handwriting style used to write the Club's date of signature*" but failed to mention any specific resemblance to substantiate his allegation despite bearing the burden of proof to do so. Conversely, any observer will note that the signature contained in the Second Contract is similar to Mr Malango's signature on the passport n° OP0015599 issued on 25 February 2016, on the passport n° OP0462441 issued on 25 September 2018 as well as on the Raja Contract.
- Regarding the statement of Raja, that the inclusion of the initials "BMN" in the Second Contract would confirm its forged nature since Mr Malango "[…] *has always marked his initials as 'BM' when required*", it has to be noted that the only sample that Raja produced in support of its claim is the Raja Contract, i.e., a document initialled after the dispute arose. This document can therefore not be considered as reliable evidence.
- Furthermore, in the First Contract, Mr Malango initialled the contract as "M", which demonstrates that Mr Malango constantly changes his way of initialling. These changes confirm the genuine nature of the Second Contract. Indeed, if TP Mazembe had forged the Contract, it would have copied the way of initialling of the First Contract, i.e., "M", which was the only one known to TP Mazembe; it would not have invented a new one out of thin air.
- Regarding the alleged graphic discrepancy between the initials marked on the first page and on the second page of the Second Contract, a mere analysis of the Raja Contract, the validity of which is uncontested, is sufficient to disregard this argument: A graphic discrepancy between the initials on the different pages is also found in the Raja Contract;

sometimes there is a space between the "B" and the "M", sometimes the letters are connected; sometimes the "B" is inclined, sometimes it is straight.

3. The erroneous birth date

- The erroneous birthdate has in principle no influence on the validity of the employment contract, as it does not constitute an *essentialia negotii*.
- Only Mr Malango knows his date of birth with certainty, whereas TP Mazembe could have to rely on Mr Malango's assertion as well as on the documentation provided by the latter regarding his birthdate.
- When TP Mazembe recruited Mr Malango in 2014, the latter had neither a birth certificate nor a passport. Therefore, when Mr Malango informed TP Mazembe that he was born on 10 November 1993 and thus of full age, TP Mazembe had no other choice but to believe him.
    - This explains why the First Contract bears this date and elucidates why the FECOFA and CAF mention it: this was the believed birthdate of Mr Malango at the time when he was registered for the first time with these associations. Ever since registration and up until now, such birthdate (10 November 1993) has been maintained in both registers. Furthermore, only these associations have the power to modify the information contained in their respective registers.
- Mr Malango informed TP Mazembe after the end of his loan with Don Bosco that he was born on 11 May 1997 and provided evidence of it by showing a passport (Passport OP0015599) bearing this new date. As TP Mazembe relied on Mr Malango's statement and on an official document, TP Mazembe recorded 11 May 1997 as the Player's date of birth in the Second Contract in good faith. Furthermore, an Algerian visa was granted to Mr Malango based on the passport n° OP0015599, confirmed its validity.
- The birthday issue highlights Mr Malango's nonchalance (at best) and bad faith (at worst). Mr Malango made three requests for the issuance of a passport. Each time he alleged a different birthdate:
    - Passport n° OP0015599 with 11 May 1997 as birthdate delivered on 25 February 2016;
    - Passport n° OP0462441 with 11 October 1997 as birthdate delivered on 25 September 2018;
    - Passport n° OP0506744 with birthdate 10 November 1993 delivered on 14 January 2019.
- The timing of this last request appears to be very suspicious. Indeed, the previous passport being valid until 24 September 2023, there was no objective reason to make a new passport in January 2019 other than Mr Malango preparing the ground for substantiating his future allegation of forgery.

- Even the UFC, which represents Mr Malango in the present case, does not seem to know his exact birthdate insofar as his membership form mentions 11 October 1993 as birthdate.

4. *The registration with the FECOFA and certification with the latter*

- The "Attestation de Confirmation" confirms that TP Mazembe did register the Second Contract. The "Attestation de Confirmation" is a document issued by the FECOFA following a request of TP Mazembe in 2019, which confirms that (i) a contract valid for 5 years was concluded by Mr Malango and TP Mazembe on 16 December 2016 and (ii) this contract was registered with the FECOFA.
- The fact that the stamp of the FECOFA was accompanied by the signature of Mr Situatala, who was allegedly not the Deputy Secretary General of the FECOFA at that time, is irrelevant. The only action that might be required of a club is to file a copy of the contract with the FA for registration; however, whether and when a stamp or signature is affixed to the contract by the FA is a purely internal FA matter over which the club has no control. TP Mazembe bears no responsibility for the fact that the officials from the FECOFA did not affix a signature to the Contract when it was registered.

5. *The lack of registration with the National Employment Office*

- TP Mazembe was under no obligation to register the Contract with the National Employment Office.
- An administrative formality such as a registration with a FA or a public authority has no influence on the validity of an employment contract.
- Provisions of the Labour Code of the Democratic Republic of Congo are irrelevant in order to assess the legal questions submitted to the Sole Arbitrator:
  - Mr Malango failed to submit any (admissible) evidence in support of his assertion regarding the relevant provisions of Congolese labour law, as he failed to submit the enclosure containing the referred provision together with its Appeal Brief, which results in the enclosure being inadmissible.
- However, even under Congolese Law, the alleged registration with the National Employment Office is not a condition of validity of the employment contract. Indeed, according to the referred provision, the lack of registration does not render the contract null and void, but only entitles the employee to terminate it while leaving him free to pursue the execution if he wishes. As Mr Malango did not raise this argument when he terminated the Second Contract, he renounced on its potential application.

6. *The identity of the Club's signatory and absence of the Club's stamp*

- Mr Kitengie, in his capacity as General Manager of TP Mazembe, usually signs the employment contracts as representative of the club.
- As Mr Kitengie was at that time travelling in Europe and therefore unable to sign the Contract on behalf of TP Mazembe, the first page of the Second Contract refers to Mr Kitengie as representative of TP Mazembe, while the Contract is signed by the Second Vice-President, Mr Kamwanya Ilunga.
- In order to avoid unnecessary delay in the signature, Mr Kitengie proceeded to grant a mandate to Mr Ilunga to sign on his behalf. Unfortunately, Mr Ilunga is not in a position to confirm these events as he passed away on 30 September 2019.
- The alleged absence of stamp does not demonstrate a forgery:
  - Only the signature of a person authorised to represent TP Mazembe is required as *essentialia negotii*; there is no obligation for a club to affix its stamp to the contract.
  - As a stamp is intended to legalise the signature of the person representing the club, there is no need to affix it when the contract is legalised by a notary as in the present case.

7. The incomplete notarial "certification"

- The legalisation by notary constitutes evidence of the authenticity of the Second Contract.
- As outlined by the notary himself, none of the elements submitted by Mr Malango (date of legalisation; absence of a notarial deed; absence of mention of the notary's fees) is incoherent and demonstrates a forgery.
  - There was no need to issue a notarial deed, as the notary was merely requested to legalise the signatures, but not to record the action of signing the contract. This also explains why the legalisation was carried out on the following day and not on 16 December 2016.
  - Contrary to a notarial deed, the legalisation of a document does not require the notary's seal to mention the fees.

8. The Salary

- The Second Contract was not intended to constitute a proper renewal of the contractual relationship, but only to ensure that the existing relationship was in conformity with the relevant football regulations. It would have therefore not been inconsistent if the wage remained the same and that the duration corresponded to the remaining duration of the First Contract.
- The salary was not aimed to remain the same: Article 3.2 of the Second Contract provided for the possibility to annually increase Mr Malango's

salary based on his performances, which TP Mazembe did as from January 2018 with an increase to USD 4,000.

- As Mr Malango had never played any official game for TP Mazembe before returning to TP Mazembe at the end of the year 2016, the parties decided that Mr Malango should first win his spurs before receiving a pay raise.

9. The incoherent date of the article announcing the signature of the Contract

- Mr Malango was considered as a new player of TP Mazembe in the eyes of the public when the loan with Don Bosco ended in November 2016 and he returned to TP Mazembe. TP Mazembe was at this time a club to which he was still bound for five years but for which he had never played before.
- Thus, even though the Second Contract regularising the contractual situation between Mr Malango and TP Mazembe had not been formally signed yet, the communication department of TP Mazembe decided to anticipate and announce his arrival as a new signature.
- This information had been published on TP Mazembe's website and was thus easily available, but Mr Malango had never denied it. By not doing so, Mr Malango implicitly acknowledged the existence of the 5-year contractual relationship with TP Mazembe.

10. TP Mazembe's bad faith with regard to the First Contract

- TP Mazembe rejects Mr Malango's claim that it behaved in bad faith by not providing him with a copy of the First Contract in spite of his requests, since the documents on which Mr Malango basis such claim are inadmissible.
- In the event that the Sole Arbitrator deems the documents admissible, the following must be taken into account:
  - Mr Malango lost his copy of the First Contract and TP Mazembe does not bear any responsibility for this.
  - When Mr Malango submitted his requests, the First Contract had already been replaced by the Second Contract and was thus no longer in force. TP Mazembe therefore acted in good faith, when it deemed it unnecessary to communicate a copy of the First Contract.
  - However, in its correspondence dated 11 May 2020, TP Mazembe confirmed that it would submit this contract upon request and finally decided to spontaneously produce it together with the Answer in cases CAS 7033 and CAS 7042.
  - TP Mazembe did not receive Mr Malango's requests for communication of the First Contract dated 21 January 2019 and allegedly sent by DHL on 24 January 2019. The address on the DHL envelope appears to be incomplete since neither the PO Box nor the street name is mentioned. Furthermore, Mr Malango is unable to

provide the Sole Arbitrator with the tracking record or the proof of receipt of a letter which was allegedly sent 18 months ago.

- In fact, TP Mazembe only received Mr Malango's request on 7 June 2019 through the correspondence of the UFC and replied to it on the following day, i.e., on 8 June 2019, informing the latter that the Second Contract had been signed on 16 December 2016.

11. *The moment of first reference to the existence of the Second Contract*

– It is incorrect that TP Mazembe referred to the Second Contract for the first time on 8 June 2019:

- The existence of a 5-year contractual relationship between Mr Malango and TP Mazembe was officially announced on TP Mazembe's website in 2016. This information was thus in the public domain.
- As TP Mazembe only receive Mr Malango's request on 7 June 2019 through the UDC, it is difficult to understand how TP Mazembe could have referred earlier to the Second Contract.
- Since Mr Malango received a copy of the Second Contract when he signed it, TP Mazembe did not consider it necessary, to provide him with a new copy. However, when it realised that a contractual issue may arise, TP Mazembe immediately provided a copy of the Second Contract.

12. *TP Mazembe's previous case before the CAS*

– The reference to a previous CAS case involving TP Mazembe is misplaced:

- The case CAS 2013/A/3207 has no relevance for the outcome of the present matter. In the present matter, TP Mazembe did submit to FIFA and to the CAS the original version of the Second Contract. This was not done in the previous case.
- There is a further case pending before the DRC involving TP Mazembe and a former player, Elia Meschack. The latter is a friend of Mr Malango who is represented by the same agent, Sportback Group Ltd. The facts in both cases are surprisingly similar. Elia Meschack challenges the validity and enforceability of a contract alleging that it contains an erroneous birthdate. The fact that two players, represented by the same agent, simultaneously allege the same argument in order to question the authenticity and validity of the employment contract is no coincidence. This is a fraudulent strategy organised by the agent and the players.
- Raja's track record with CAS cases is a clear indication of its usual strategy of defence. Reference is made to the award CAS 2016/A/4408 where Raja already resorted to unsupported statements of forgery as a defence towards a claim for breach of contract.

iii. Termination without just cause of the Second Contract

246. TP Mazembe submits that by entering into the Raja Contract on 15 August 2019 covering the same period and valid as from the date of signature until 30 June 2022, Mr Malango had terminated the Second Contract without just cause on 15 August 2019 within the meaning of Article 14 (1) FIFA RSTP:

1. Date of termination

- Neither Mr Malango nor Raja challenged that the Second Contract had been terminated when executing the Raja Contract.
- Considering the jurisprudence of the CAS according to which "*the signature of the new contract amounts to a termination of the contract in force at that time*" (CAS 2017/A/5395, para. 53), the Second Contract was thus terminated by Mr Malango on 15 August 2019.

2. Absence of just cause

- Mr Malango's contention that in the absence of registration of the Second Contract with the National Employment Office, he was free to terminate the employment relationship, at any time and without compensation, based on Article 47 of the Labour Code of the Democratic Republic of Congo, must be rejected for the following reasons:
  - The termination with or without just cause of an employment contract and the (financial) consequences deriving therefrom constitute questions which shall be assessed in light of the FIFA RSTP and subsidiarily Swiss law and not according to Congolese law.
  - As already stated, Mr Malango's reference to Congolese labour law is inadmissible and even if Congolese labour law was applicable, Mr Malango had renounced to the potential application of the right to terminate the contract.

iv. Compensation (based on Article 5.2 of the Second Contract)

247. The DRC wrongly calculated the compensation due to TP Mazembe:

1. The applicable provisions

- As the present dispute has to be assessed in accordance with the FIFA regulations and subsidiarily with Swiss law, the Appealed Decision was made in violation of Articles 160-163 of the Swiss Code of Obligations ("CO") and in contradiction with the relevant jurisprudence of the CAS and the Swiss Federal Tribunal ("SFT") in this respect.
  - Under Swiss Law, even if a contractual penalty is deemed "excessive", this does not invalidate the penalty clause. Instead, in case the penalty is excessive, the adjudicatory body must pursuant to Article 163 (3) CO reduce the penalty. The DRC disregarded the penalty clause altogether

and calculated the compensation based on the criteria of Article 17 (1) FIFA RSTP.

- Article 17 (1) FIFA RSTP recognizes the "primary role" of the parties' autonomy before applying Article 17 (1) FIFA RSTP. Thus, the amount of compensation has to be determined taking into account the penalty clause contained in Article 5.2 of the Second Contract.

- The penalty clause is valid:
  - Article 5.2 entails all required elements according to Swiss law: (i) the contractual parties are named, (ii) the type of penalty has been determined, (iii) the conditions triggering the obligation to pay it are set and (iv) its measure is identifiable.
  - Raja's submission that the clause "*shall be in full set aside*" since it fails to clearly identify the addressee is unfounded. The clause clearly defines the parties to which it applies, i.e., Mr Malango and TP Mazembe. Raja does not mention any legal provision or principles based on which the penalty clause must be "*set aside*" for "*lack[s] of clearness*".
  - Article 5.2 is included in the section "*Dispositions Générales*" ("*General Provisions*") of the Second Contract. It is undeniable that "*a general provision*" is a provision which is intended to apply to all parties to the contract. If the parties had intended that this penalty clause should only apply to one of them, they would have included it either in section 3 ("*Obligations of the Club*"), section 4 ("*Obligations of the Player*") or section 6 ("*Termination*").
  - The terms used also demonstrate the parties' intention that the clause be applied to all situations, i.e., any type of serious breach by either TP Mazembe or Mr Malango ("*en cas de violation et/ou cessation unilatérale*" / "*in the event of a breach and/or unilateral termination*").
  - Article 5.2 refers to Article 17 FIFA RSTP, which, at the time of signing the Contract in December 2016, made no distinction between compensation payable to players and to clubs.
- The penalty amount of USD 2,000,000 is not excessive:
  - The DRC conclude that the above amount is excessive based on Mr Malango's salary in the Second Contract. This approach is not in line with the jurisprudence of the SFT and the CAS. The latter have established several criteria that ned to be taken into account when (i) assessing whether a penalty clause is excessive and when (ii) adjusting an excessive amount.
  - A contractual penalty cannot be considered as excessive simply because it exceeds the amount that the creditor could claim as compensation for non-performance.

2. Adjusting the penalty amount

- Although Article 163 (3) CO has to be applied *ex officio*, the burden to present the relevant facts lies within the debtor.
- Article 163 (3) CO does not expressly provide the criteria to determine whether a penalty is excessive. Considering the jurisprudence of the SFT and the CAS in this respect, a penalty amount of USD 2,000,000 is not excessive in the case at hand mainly due to the following criteria.
- Mr Malango was the main striker of TP Mazembe and therefore one of the main assets of the club. Mr Malango's value as a player is reflected by the transfer offers received by TP Mazembe and its reaction to these offers. An offer of USD 750,000 received in December 2018 was rejected without even discussing it. Furthermore, Raja's President publicly acknowledged that Mr Malango was worth USD 3,000,000.
- Mr Malango's salary to which the DRC referred in order to conclude that the penalty was excessive thus appears to be biased and contrary to the proper jurisprudence of the DRC.
- When Mr Malango terminated the contract, he had already been included in the list of 30 players eligible to take part in the 2019-20 edition of the Total CAF Champions League. This list being limited to 30 players pursuant to Article V.5, 6 and 7 of the CAF Champions League Regulation, TP Mazembe was obliged to participate in the competition with 29 players instead of 30. This clearly caused a damage to TP Mazembe in comparison to all the other teams that were authorised to register 30 players.
- Furthermore, TP Mazembe was eliminated in the quarterfinals by Raja (in the CAF Champions League). Raja won 2 – 1 on the aggregate score, with Mr Malango scoring one of Raja's two goals. It is undeniable that Mr Malango's goal and the elimination resulting therefrom caused a serious damage to TP Mazembe, which it would not have suffered if Mr Malango had not terminated the Second Contract. Indeed, the prizes awarded to the participating teams by the CAF depend on the stage of the League that a team reaches (e.g., winner, runner-up, semi-finalists, quarter-finalists etc.). If TP Mazembe had not lost these quarterfinals as a result of Mr Malango's last goal, it would have had a chance to earn a minimum of USD 875,000, and even USD 1,250,000 or USD 2,500,000 should it have been a finalist or have won the ultimate game.
- The numerous public accusations of forgery by Mr Malango against TP Mazembe caused a damage to the honour and reputation of TP Mazembe. Accusing a person of a criminal offence or of an immoral conduct constitutes an infringement of its honour. "*Article 28 of the Swiss Civil Code (CC) protects any person against unlawful infringement of its personality rights, including its honour. […] Any victim of an infringement, including legal persons such as a football club, may claim moral damages in accordance with Article 49 CO*."

- Finally, "*the fact that a key player of TP Mazembe decided to terminate his contract to join one of its main rivals clearly damaged the prestige of TP Mazembe on the African football scene.*"
- Considering CAS jurisprudence regarding Article 160 (1) CO, Mr Malango committed the most severe contractual breach possible. By contrast, TP Mazembe did not commit any fault, always complying with its legal and contractual obligations.
- In assessing the seriousness of the fault committed by Mr Malango the following must be taken into account:
  - Mr Malango terminated the contract during the protected period which is a specific aggravating factor in football matters;
  - The contract between Mr Malango and TP Mazembe was a long-term contract in the football industry, i.e. a 5-year contract and it was terminated (only) after 2.5 years;
  - Mr Malango was a very important element of the squad, with more than 100 official appearances in official matches with TP Mazembe's first team;
  - Mr Malango was named in the short list of "Men's African Player of the Year" in the CAF Awards 2018;
  - Mr Malango unjustly accused TP Mazembe of forgery.
- Before the DRC, Mr Malango argued that the penalty is disproportionate in view of his salary (i.e., USD 1,000). However, even assuming that this allegation is factually correct (which is not the case) it is insufficient to establish "*the economic situation of the debtor*". Indeed, other criteria have to be taken into account, in particular the revenues from the Raja Contract. Mr Malango was entitled under the Raja Contract to USD 800,000 approximately when the contractual breach occurred.
- However, in view of the joint liability of the new club according to Article 17 (2) FIFA RSTP, the player's economic situation shall not play a decisive role when assessing the excessiveness of a penalty clause in the football world.

3. Interest

- TP Mazembe finally submits that in any event and in line with Article 339 (1) CO and Article 104 (1) CO, the Sole Arbitrator shall award a default interest of 5% per annum on the amount of compensation as from the day following the date of the breach, i.e., 16 August 2019, until the date of effective payment.

v. In the Alternative: Compensation based on Article 17 (1) FIFA RSTP

248. In case the Sole Arbitrator sets aside the penalty clause and applies Article 17 (1) FIFA RSTP, TP Mazembe submits the following:

– The DRC did not correctly apply Article 17 (1) FIFA RSTP. When determining the compensation under Article 17 (1) FIFA RSTP, lost transfer fees or lost opportunities serve as a basis for the determination of the compensation.

– Considering the offer of USD 750,000 which TP Mazembe received for the permanent transfer of Mr Malango, the compensation amounts to USD 750,000.

– Should the method of the DRC be used and only the remunerations under the First and Second Contract be taken into account, TP Mazembe states, in the alternative, that it would be entitled to receive an amount of USD 423,090 ((USD 112,000 + USD 734,180) / 2):

– The remuneration under the Second Contract amounted to USD 4,000 per month and not USD 1,000. As such, over a period of 28 months, the remaining remuneration amounted to USD 112,000.

– Regarding the Raja Contract, the guaranteed remuneration until 15 December 2021 amounts to USD 734,180, broken down as follows:

  o USD 112,000 corresponding to 28 monthly salaries;

  o MAD 196,000 (= USD 20,180) corresponding to 28 monthly accommodation allowance;

  o USD 50,000 as hiring bonus;

  o USD 148,000 as signing bonus for the season 2019-20;

  o USD 172,000 as signing bonus for the season 2020-21;

  o USD 172,000 as signing bonus for the season 2021-22;

  o USD 60,000 as Player's agent fee.

- With respect to the last agent fee, it has to be noted that – although it was paid by Raja to the agent – this remuneration was paid on behalf of Mr Malango for the services provided by the agent to Mr Malango. As this type of payment is qualified as remuneration of Mr Malango from a labour and tax perspective, it has to be taken into account in the present calculation.

- In the context of Article 17 (1) FIFA RSTP, Mr Malango and Raja proposed to take into account (only) the residual value of the Second Contract with TP Mazembe.

    o However, the precedent (CAS 2007/A/1298 & CAS 2007/A/1299 & CAS 2007/A/1300), on which Raja and Mr Malango relies has been overturned (CAS 2018/A/5607 & CAS 2018/A/5608, in CAS Bulletin 2019/2, p. 66).

    o Furthermore, "[…] *according to CAS jurisprudence* [CAS 2018/ A/5693, para. 168] *the remuneration paid by the new*

club is an objective criterion that must be considered in order to calculate the compensation based on Article 17 para. 1 RSTP."

- Moreover, Mr Malango and Raja failed to demonstrate the alleged lack of consideration of TP Mazembe towards Mr Malango:
  - The decision in CAS 2014/A/3568, para. 70 does not support Mr Malango's or Raja's position. Instead, the award confirms the legitimacy of the method of calculation used by FIFA in the present matter. In the award CAS (i) rejected the argument that the compensation should be determined exclusively based on the new contract and to (ii) calculate such compensation based on the average between the remunerations agreed under the old and the new contract (CAS 2014/A/3568, para. 72).
  - The significant pay rise in January 2018, i.e., one year after the entry into force of the Second Contract, of 400% (from USD 1,000 to USD 4,000) demonstrates TP Mazembe's high interest and consideration towards Mr Malango.
  - The terms "vendre" ("to sell") or "prêter" ("to loan") are commonly used in the football world as synonyms for permanent and temporary transfers respectively and their use do not show an alleged lack of consideration. In fact, the term "loan" is even expressly mentioned in Article 10 FIFA RSTP. The term "commercialisation" only refers to the possibility for TP Mazembe to exploit the image rights of Mr Malango, what is common practice in sport.
  - Finally, as Mr Salomon Idi Kalonda Della did not travel to Congo for political reasons between 2016 and 2019, it would have been difficult for him to put pressure on Mr Malango.
- TP Mazembe objects to Mr Malango's assertion, that FIFA discriminates players. Mr Malango submitted that FIFA would have awarded Mr Malango only USD 27,000 in case of breach by TP Mazembe, but awarded the amount of USD 296,996.50 to TP Mazembe in the present case:
  - "[A]*n attitude is discriminatory when it tends to treat two identical situations in a different way. A contrario, a difference of treatment is justified if the two persons are not in identical situations. In the respect, the CAS confirmed on several occasions [CAS 2015/A/3999 & CAS 2015/A/4000, para. 151; CAS 2016/A/4826, para. 105] that the damages suffered by players and clubs as a result of a breach of contract are different*."
  - FIFA, therefore, is entitled to apply different methods in order to calculate the damage of a player and of a club.
  - In any event, considering that Mr Malango's salary amounted to USD 4,000, and not USD 1,000, the residual value of the Second Contract

amounted to USD 108,000 and not USD 27,000. The alleged disparity appears therefore not to be as blatant as Mr Malango purports.

249. TP Mazembe finally submits that in any event and in line with Article 339 (1) CO and Article 104 (1) CO, the Sole Arbitrator shall award a default interest of 5% per annum on the amount of compensation as from 16 August 2019 until the date of effective payment.

vi. Joint liability

- In its Answer to the Appeal Briefs in cases CAS 7032 and CAS 7042, TP Mazembe objects to Raja's statement that the latter shall not be jointly liable for Mr Malango's breach of contract.
- According to Article 17 (2) FIFA RSTP, Raja is Mr Malango's new club and, therefore, must be held jointly and severally liable to the payment of the compensation.
- FIFA and CAS have consistently held that the liability under Article 17 (2) FIFA RSTP constituted a case of strict liability (liability without fault).
- Although Raja acknowledges being Mr Malango's new club, Raja however considers that it should not be held liable, because "*it did not benefit or profit from the player's breach of contract.*" In support of its position, Raja refers to the award CAS 2017/A/4977). However, this position cannot be followed:
  - The above-cited award concerned very different facts. In said decision the Panel acknowledged "*truly exceptional circumstances*".
  - The CAS panel explicitly stated, that if the new club acquires the player without paying a transfer fee, it will profit from the breach of contract. As such, its joint and several liability under Article 17 (2) FIFA RSTP would be justified. This is exactly what occurred in the present matter: Raja profited from the breach insofar as it could acquire Mr Malango without paying any compensation.

vii. Sporting Sanctions

250. Referring to Article 17 (3) FIFA RSTP, TP Mazembe submits that FIFA had erred in refusing to impose the corresponding sanctions on Mr Malango:

- The breach occurred within the protected period insofar as the Second Contract was terminated without just cause two and a half years after its entry into force whereas Mr Malango was under the age of 28 when signing the Second Contract. Therefore, FIFA should have imposed a sporting sanction on Mr Malango.
- The imposition of a sporting sanction on Mr Malango is justified due to the following circumstances:

- The accusations of forgery made by Mr Malango against TP Mazembe constitute aggravating circumstances in relation to the issue of sporting sanctions.
- After terminating his contract and forcing TP Mazembe to play the 2019-20 edition of the CAF Champions League with 29 players, Mr Malango played with Raja against TP Mazembe in said Champions League, even scoring the goal that eliminated TP Mazembe from the competition. A restriction on playing official matches specifically aims at avoiding this type of issues where a party is sanctioned twice, i.e. on and off the field.
- According to CAS 2019/A/6337, paras. 115-117, if a player "*opted to put his personal interests over his contractual commitment towards the Club*" (for instance by accepting a more lucrative employment contract) that player must be sanctioned.

- TP Mazembe has thus a legally protected interest to require that a sanction be imposed on Mr Malango.

- By quoting Article 17 (4) FIFA RSTP, TP Mazembe submits that FIFA had erred in refusing to impose the corresponding sanctions on Raja:
- Article 17 (4) FIFA RSTP entails a rebuttable presumption: the new club is subject to sanction if it does not prove that it has not induced the breach.
- Raja did not raise any argument in order to rebut this presumption during the proceedings before the DRC. Therefore, the Sole Arbitrator must impose sporting sanctions on Raja.
- FIFA's decision not to impose a sporting sanction is incomprehensible as the DRC explicitly referred to Article 17 (4) FIFA RSTP and Raja's inducement in Point II.28 of the Appealed Decision.
- Several elements confirm that Raja induced Mr Malango to breach the Second Contract:
  - Despite being provided with a copy of the Second Contract and thus being fully aware of Mr Malango's contractual obligations with TP Mazembe, Raja decided to hire Mr Malango. Indeed, the DRC had recognized that contacts between Mr Malango and Raja took place from 3 August 2019 at the latest, i.e., before the breach of the contract.
  - Raja's president explicitly acknowledged that the club had been aware of the risks it was taking but decided to go further with the execution of the Raja Contract in view of the limited nature of these risks in comparison to the value of Mr Malango.

viii. The First Forensic Report

251. TP Mazembe submits the following in relation to the First Forensic Report:

- The Report unambiguously confirms that on 16 December 2019 the Player and TP Mazembe entered into a contract.

- The discrepancies between the initials do not constitute a relevant element. It is common practice for Congolese players to deliberately omit initialling certain pages of a contract, or to use different initials in the same contract in order to reserve the possibility of contesting the contract later.
- When Mr Malango signed the Second Contract, two other players entered into employment contracts with TP Mazembe (Mr. Kiaku and Mr Mika). Both contracts have the exact same layout as the Second Contract. In all three contracts, page 2 differs in layout from the other pages. The reason for this is that all contracts are prepared by copying and pasting from other contracts.
- Having different layout within the same contract "*is rather the norm for contracts concluded in Africa*".
- If TP Mazembe had really intended to falsify the Second Contract, "*ensuring that the layout fits would have been its first preoccupation …*".
- With respect to the intended impressions referred to by the Expert, these can be easily explained by the fact that three original copies of the Second Contract were signed at the same time.
- The Expert's consideration regarding the ink is merely based on an assumption and can in no way be relevant.

ix. The Second Forensic Report

252. TP Mazembe submits the following in relation to the Second Forensic Report:

- The initials of the Player on the Second Contract are composed of three capital letters. This is not enough to exhibit distinctive features. Consequently, they cannot be used to identify the Player's handwriting.
- Furthermore, the number of specimens containing the initials is too limited for the Expert to be used for any analysis. There is just not sufficient contemporaneous suitable comparison material.
- The Expert's conclusions in relation to page 2 of the Second Contract are based on 4 elements, i.e., different inks (and thus different ball-point pens being used), a lack of indented impressions, a difference in the lay-out and on the handwritten entries (the initials). All these elements are not conclusive and, thus, have limited evidential value.
- In both reports a series of factual elements have been neglected despite the fact that they have profound impact on the conclusions:
    - The Second Contract was legalised by the notary just one day after its completion. This makes it extremely unlikely that the Player's initials were forged or altered after the execution of the Second Contract.
    - The Expert's assessment does not take into account that two witnesses attended the closing of the meeting and countersigned the Second Contract ensuring (i) the existence of the contract, (ii) the authenticity

of the Player's signature, and (iii) the Player's consent, which was given without coercion in an informed manner. The written witness statement of Mr Dony Kabongo confirms the authenticity of the Player's signature on all three versions of the Second Contract.

- The appointment of a handwriting expert must be subject to a substantiated order. The Sole Arbitrator has never justified the need for ordering the expertise. This is also contrary to CAS jurisprudence. In view of the above, the appointment of the Expert was "*not valid*" and therefore, the First and the Second Forensic Reports need "*to be set aside*".
- The onus of proof that the Second Contract was executed is not on TP Mazembe. It is Raja and the Player that must discharge the burden that the Second Contract is falsified.
- The standard of proof is that of comfortable satisfaction. Such standard varies depending on the seriousness of the allegation in question. Forgery and falsification of documents are very serious allegations. The conclusions by the Expert in the First and Second Forensic Report are not sufficient to meet the required threshold. This is all the more true, considering that a "*non-neglible degree of uncertainty remained in the expert's opinion when evaluating the findings*." TP Mazembe refers insofar to an award issued by a panel in the matter CAS 2020/A/6796, para. 101 et seq.
- The chemical analysis and optical examination by the Expert were only performed on the inks used by the Player. However, other signatories who attended the closing meeting surely signed the document with a different pen and might have given their writing instrument to the Player to sign the document. Thus, in the absence of further examinations the conclusions of the Expert cannot be followed.
- The ESDA-examination undertaken by the Expert is a technique that does not provide conclusive evidence and should be considered with great caution. As a matter of fact, the results from the ESDA examination reveal that all pages of both originals of the Second Contract were part of the signing process. Thus, the Expert drew the wrong conclusion from the ESDA-examination.
- The Expert failed to take into account the factual circumstances surrounding the execution of the Second Contract. She never enquired about the modalities of completion. Such modalities may be of importance when assessing the autenticity of the Second Contract. They may provide an explanation why some indented impressions are missing from the pages of the two versions of the Second Contract.
- The Expert has also "*missed the fact that the Contract was countersigned by two witnesses whose function was to certify (i) the existence of the Contract, (ii) the authenticity of the Player's signature, and (iii) that the Player's consent was given without coercion … and in an informed manner*".

- There is simply no motive for TP Mazembe to forge or falsify the Second Contract.
- Only the remuneration components are included in page 2 of the Second Contract. However, the date of the contract and its duration are included on page one. The First and Second Forensic Reports concluded that the initials on page one and three as well as the signature on page 3 of the Second Contract are authentic. Thus, there can be no doubt that an employment contract had been executed between TP Mazembe and the Player. The latter is also corroborated by the fact that the Player never disputed having received the monthly salaries. Such salary could not have been paid in accordance with the First Contract, since the fixed salary contained therein was lower.

C. Raja

253. In its Appeal Brief dated 27 July 2020 (related to CAS 7042), Raja filed the following requests for relief:

> " *As to the merits:*
>
> *FIRST – To accept in full the present Appeal and as such, fully set aside the Appealed Decision;*
>
> *SECOND – To issue a finding that the Player never signed the Forged Employment Contract:*
>
> *THIRD – To uphold that the Appellant and the Player are not entitled to pay any compensation whatsoever to the Respondent;*
>
> *FOURTH – To confirm that no sanctions are to be imposed on Appellant and the Player*
>
> *Alternatively, and only in the event the above is rejected:*
>
> *FIFTH – To accept in full the present Appeal and as such, partially amend the Appealed Decision;*
>
> *SIXTH – To limit the payment of any compensation to an amount corresponding the monthly salary payment of the Player between September 2019 and December 2021; and*
>
> *SEVENTH – To order that the compensation payable to TPM shall amount to USD 27,000 (twenty-seven thousand dollars).*
>
> *At any rate:*
>
> *EIGHTH – To order TPM to pay all arbitration costs and be ordered to reimburse RAJA the minimum CAS court office fee of CHF 1,000 (one thousand Swiss Francs) and any other advance of costs paid to the CAS; AND*
>
> *NINTH – To order the Club to pay to RAJA any contribution towards the legal and other costs incurred and regarding the ongoing proceedings in the amount of CHF 20,000 (twenty thousand Swiss Francs).*" [emphasis in original]

254. On 5 October 2020, in its Answer to the Appeal Brief filed by TP Mazembe (related to CAS 7033), Raja filed the following requests for relief:

> " *FIRST – To set aside in full the Appeal Brief;*
>
> *SECOND – To issue a finding that the Player never signed the Forged Employment Contract:*
>
> *THIRD – To uphold that the Second Respondent and the Player are not entitled to pay any compensation whatsoever to the Appellant;*
>
> *FOURTH – To confirm that no sanctions are to be imposed on Second Respondent and the Player*
>
> *Alternatively, and only in the event the above is rejected:*
>
> *FIFTH – To partially amend the Appealed Decision;*
>
> *SIXTH – To limit the payment of any compensation to an amount corresponding the monthly salary payment of the Player between September 2019 and December 2021; and*
>
> *SEVENTH – To order that the compensation payable to TPM shall amount to USD 27,000 (twenty-seven thousand dollars).*
>
> *At any rate:*
>
> *EIGHTH – To order TPM to pay all arbitration costs and be ordered to reimburse RAJA the minimum CAS court office fee of CHF 1,000 (one thousand Swiss Francs) and any other advance of costs paid to the CAS; AND*
>
> *NINTH – To order the Club to pay to RAJA any contribution towards the legal and other costs incurred and regarding the ongoing proceedings in the amount of CHF 20,000 (twenty thousand Swiss Francs).*" [emphasis in original]

255. Raja's submissions – in essence – can be summarised as follows:

i. The First Contract

- With respect to the First Contract, Raja, *inter alia*, submits that:
- The First Contract was valid for a five-year period. TP Mazembe had provided Mr Malango only with a copy of the Contract but never with an original counterpart.
- Mr Malango misplaced his copy of the First Contract and asked TP Mazembe several times to provide him with another copy of the First Contract (for the first time in January 2019). The refusal of TP Mazembe to do so demonstrates that TP Mazembe had exploited this situation to fabricate the Second Contract and furthermore, violates the FIFA Circular Letter N. 1171, published on 24 November 2008 by the FIFA general secretariat.

ii. Existence and Validity of the Second Contract

256. Raja denies the existence of the Second Contract, respectively its authenticity, and states that the Second Contract is forged and fabricated by TP Mazembe for the following reasons:

1. Date of Birth of Mr Malango

- The Second Contract mentions 11 May 1997 as Mr Malango's date of birth and not his correct date of birth, 10 November 1993.
- The correct date of birth is confirmed, *inter alia*, in the official birth certificate of Mr Malango, his membership form as recorded in the UFC, in records of FECOFA, in the Raja Contract, in the personal records of Mr Malango in the African Football Association ("CAF") or in the CAF membership card issued to Mr Malango.
- The profile of Mr Malango as published on the official website of TP Mazembe confirms that his year of birth is 1993.
- If TP Mazembe had, indeed, showed the Second Contract to Mr Malango, the latter would have advised TP Mazembe that the date of birth contained therein is incorrect.
- If Mr Malango was indeed born on 11 May 1997, it would be logical for him to accept this date to be recorded, as there would be no benefit for him to be four years older within a career perspective.

2. Monthly Salary

- The Second Contract stipulates the same monthly salary (USD 1,000) as the First Contract.
- Mr Malango had a fantastic season with extremely good performances during the loan period with Don Bosco. It is unreasonable that a player in the best moment of his career would accept to extend an employment contract for a period of five years with the same monthly (USD 1,000) remuneration.
- TP Mazembe never paid Mr Malango a monthly salary of USD 4,000.
- The two payslips/payment receipts submitted by TP Mazembe to demonstrate that it had raised the monthly salary to USD 4,000 as from January 2018 do not explain why Mr Malango would have accepted to extend the employment relationship without receiving any rise in salary, since the alleged rise occurred in January 2018 and therefore two years after the date of the alleged execution of the Second Contract.
- The signatures on the payslips/payment receipts do not belong to the same person. It is clear that neither one of the signatures nor the handwriting regarding the name (above the signature) belongs to Mr Malango. Furthermore, the comparison of the handwritings and signatures in the payslips/payment receipts with the signature on the Second Contract shows that they do not belong to Mr Malango.

3. Initials

- On the bottom of every page of the Second Contract, the initials of Mr Malango are marked as "BMN". Mr Malango, however, always used the initials as "BM".
- The initials "BMN" marked on the first and second page of the Second Contract are considerably different and evidently inconsistent.

4. The registration

- The registration (or "Attestation de Confirmation") of the Second Contract took place before the FECOFA three years after the alleged conclusion of the Second Contract without any reason.
- The Appealed Decision provides as follows*:* "*15. At this point, the DRC however deemed it important to point out that its peculiar that the verification by the FA through the 'Attestation de Confirmation', confirming the validity of the contract and attesting that it had been deposited at FECOFA, was made only 3 years after the conclusion of the contract.*"
- There is no sound explanation why FECOFA accepted to register the Second Contract three years after Mr Malango and TP Mazembe allegedly signed it. This is not the usual procedure. The registration of the Second Contract three years later was only possible because the members of FECOFA are also part of this disgraceful scheme to prevent players to transfer to a third club as a "free agent".

5. Photos

- The picture allegedly showing Mr Malango signing the Second Contract had been published by TP Mazembe on its website on 16 November 2016. The publication mentions 10 November 1993 as Mr Malango's date of birth. The publication was made 30 days before the alleged signing of the Second Contract.
- The photo was taken a few days after Mr Malango had returned from loan from Don Bosco. TP Mazembe wanted to show everyone that Mr Malango, one of the best players of Don Bosco in the previous season, had returned to TP Mazembe.

iii. Compensation

257. Should the Sole Arbitrator decide that the Second Contract is valid, Raja submits as follows regarding the amount of compensation:

1. Clause 5.2 is invalid

- As stated in Article 17 (1) FIFA RSTP ("*unless otherwise provided for in the contract*"), the primary role established by the FIFA legislator is the contractual autonomy of the parties.
- According to the long-standing jurisprudence of CAS, a clause qualifies as a contractual penalty under Swiss law if it (a) clear indicates the parties bound by it, (b) defines the kind of penalty, (c) specifies the conditions triggering the obligation to pay such penalty, and (d) defines the amount of the contractual penalty.
- Raja submits that "*Clause 5.2 […] does not fulfil with the aforementioned pre-requisites since it does not clearly establish the parties bound whether there is a unilateral termination without just cause.*"
- Article 5.2 of the Second Contract refers also to Article 17 FIFA RSTP. It is not clear whether according to this clause the obligation to pay USD 2,000,000 is only incumbent on Mr Malango, TP Mazembe or both contractual parties. According to Raja "[s]*uch lack of clearness in relation to the terms and conditions of liquidated damages clause is incontestably unacceptable whenever establishing whether the compensation amount eventually determined is (or not) proportional or abusive.*"

2. Article 17 (1) FIFA RSTP

- The compensation must be calculated pursuant to Article 17 (1) FIFA RSTP, whereby the following has to be taken into consideration:
  - the specific circumstances of the case;
  - The so-called objective criteria and specificity of sport;
  - The remuneration and benefits of a player in relation to the old and the new employment contract;
  - Fees and expenses paid or incurred by the old club during the term of the old employment relationship;
  - The "positive interest" principle, which in essence serves the purpose to put the injured party in the very same position as if the other party had not breached the employment contract;
  - The jurisprudence of the CAS (CAS 2014/A/3568), according to which "*Clubs cannot seek to profit from a situation whereby they attribute to a player's services a greater value than they are willing to pay the player in return for those services. The calculation of compensation must take account of the player's remuneration under the previous employment contract, for a period equating to the time remaining under the said contract, also set forth in Article 17 para. 1 RSTP.*";
  - The refusal of TP Mazembe to provide a copy of the First Contract or the original of the Second Contract.

- Therefore, and considering CAS 2014/A/3735 and Article 44 CO, the compensation shall be calculated based on the residual remuneration which Mr Malango was entitled to receive pursuant to the Second Contract. Considering that the Second Contract expired on 15 December 2021 and assuming that the Second Contract had been terminated on 15 August 2019, the compensation covers the monthly salaries between September 2016 and December 2021 which amount to USD 27,000 (USD 1,000 x 27 months).

3. On a subsidiary basis: application of Article 163 (3) CO

- In case the Sole Arbitrator does not set aside the penalty clause, he must – according to Raja – apply Article 163 (1) CO. According thereto the court may reduce penalties that it considers excessive at its discretion (Article 163 (3) CO).
- "[…] *the burden of proving the fact that lead to conclude that one is in presence of an abusive penalty clause lies with the debtor. However, this requirement is lighter concerning the real damage suffered by the creditor because usually the debtor is not aware of this damage. Thus, the creditor has to prove even succinctly his loss."*
- A penalty is excessive when it exceeds patently the amount that would seem fair and equitable. In determining whether a penalty amount is proportional, *inter alia*, the following has to be taken into account:
  - The real objective (or interest) of the parties at the time of the conclusion of the penalty clause respectively the purpose of the penalty;
  - The principle of party autonomy;
  - The principle of *pacta sunt servanda*;
  - The prohibition of abuse of right;
  - The requirement to act in good faith;
  - Articles 19 and 20 CO, which prohibit contracts which are impossible, unlawful, immoral and/or contravene public policy or personal rights;
  - The prohibition of expropriation without compensation;
  - The prohibition of discrimination and the protection of incapables;
  - Article 27 CC, which prohibits contracts, which are excessively restrictive on one party;
  - The requested penalty of USD 2,000,000 amounts to 3333.33% of the total remuneration of Mr Malango (under the First Contract: USD 60,000, calculated based on the monthly salary of USD 1,000).
- Raja thus concludes that "[i]*n any case, it is evident that USD 2,000,000 (two million dollars) due as a penalty is unreasonable and flagrantly exceeds an amount understood as admissible and within those parameters*

which to fulfil with the sense of justice and equity and as such, shall whatsoever the scenario be drastically reduced."

- The alleged breach of the Second Contract took place on 24 June 2019 and thus still within one of the registration periods of transfer and before the 2019-2020 season having started. Hence, TP Mazembe had more than enough time to hire a new professional football player to replace Mr Malango. TP Mazembe indeed hired two "*free agent players*" (Japhte Bola Kitambala and Isaac Amoah), who play the same position as Mr Malango, without spending any money on transfer fees. Therefore, the early termination of the Second Contract had not caused any financial or sportive loss of TP Mazembe.
- As TP Mazembe has not provided any clarifications (or evidence) regarding its losses, it failed to fulfil the conditions of the so-called *"creditor's interest".* The losses of TP Mazembe amount to USD 1,000 x 30 months (salaries due between June 2019-December 2021) = USD 30,000.
- Mr Malango had always doubted the authenticity of the Second Contact and had transparently communicated to TP Mazembe that he had lost his copy of the First Contract. Even though there was nothing that prevented TP Mazembe from providing him with a copy of the First or the Second Contract, TP Mazembe refused to do so.
- Mr Malango's alleged breach of the Second Contract is not severe when taking into account all the irregularities and the inconsistencies surrounding said contract. Not providing Mr Malango with the alleged Second Contract (or the First Contract) is evidence of TP Mazembe's intention not to retain the services of Mr Malango and to force him to breach the contract.
- The intention of TP Mazembe "*was never to find an amicable solution but to use of arguments and an intransigent behaviour, which drove* [Mr Malango] *to one way and one way only: terminate it unilaterally*."
- TP Mazembe was the only party, which had the alleged original version of the Second Contract. Although there was nothing that could have prevented TP Mazembe to support (or accept) the hiring of an impartial expert to consider and provide a proper report regarding the authenticity of the signatures in the Second Contract, TP Mazembe always refused to do so.
- Mr Malango had never any intention to breach the contract. He was always loyal to TP Mazembe and never caused any problem during the five years of the employment relationship.
- Before TP Mazembe breached the trust and confidence of Mr Malango by fabricating his signature under the Second Contract, Mr Malango always intended to honour his commitment towards TP Mazembe.

– Therefore, and due to the regrettable attitude and malicious behaviour of TP Mazembe, Mr Malango had no other option than to terminate the Second Contract unilaterally.

– Mr Malango is obviously less experienced than TP Mazembe. TP Mazembe was fully aware that Mr Malango was from a poor community with no prior business experience and decided to take advantage of the vulnerable position of Mr Malango. TP Mazembe is notorious for such activities, as well as for illegitimate acts including forgery, fraudulent activities, intimidation, and blackmail.

– Mr Malango had never access to any sort of legal assistance when negotiating the First and Second Contract.

– The similar case CAS 2013/A/3207, in which the CAS Panel dismissed the Appeal of TP Mazembe, shows that TP Mazembe is infamous for "*immoral activities*".

– Mr Malango was in a difficult financial situation over the last years. Considering the monthly salary of USD 1,000 and the residual value of the Second Contract, a penalty of USD 2,000,000 is excessive and should not be higher than USD 30,000.

– Considering the remuneration set out in the First and the Second Contract, it is hard to believe that Mr Malango had received more than USD 100,000 by the time of the signature of the Raja Contract.

– Mr Malango is almost 27 years old, and it is reasonable to believe that he has only a couple of years left as a top football player.

- The penalty amount of USD 2,000,000 is furthermore disproportional in view of the so-called "specificity of sport", as established in Article 17 (1) FIFA RSTP, "*which enable those applying the provision to strike a reasonable balance between the needs of contractual stability, on the one hand, and the needs of free movement of players, on the other hand.*"

- The assumption that Raja had paid USD 60,000 to the intermediary (or agent) of Mr Malango on the latter's behalf according to Article 5 of the Raja Contract is wrong. In any event such sum cannot be taken into account when calculating the compensation due to TP Mazembe.

iv. Joint and Several Liability

258. According to Raja, Article 17 (2) FIFA RSTP is not applicable in the case at hand:

- Under Swiss law, joint liability has to be based either (a) on a contract, (b) on tort, or (c) on unjust enrichment, whereby (a) and (b) are not applicable in the case at hand.

- Regarding the option (c), it is undisputed that Raja did not have any benefit resulting from the alleged breach of the Second Contract. Raja explains that "*[i]n this regard and according to the legal scholars, whether*

the players' new club can prove that it did not benefit or profit from the player's breach of contract, then it could evade the joint and several liability of Art. 17, par. 2 of the FIFA RSTP." [para. 215 of its Appeal Brief and para. 367 of its Answer]

v. Sporting Sanctions

- Raja submits that the case at hand does not warrant the imposition of sporting sanctions:
  - The well-accepted and consistent practice of the DRC, not to automatically apply the sanctions stipulated in Article 17 (3) and (4) FIFA RSTP, applies in the present matter.
  - Considering all the elements in the present dispute, *inter alia*, the regrettable behaviour of TP Mazembe, there are no factual or legal grounds for the imposition of any disciplinary sanction on Mr Malango or Raja.
- Furthermore, TP Mazembe has no legitimate interest to request the imposition of any sporting sanctions since this authority rests exclusively with the decision-making bodies of FIFA.
- Finally, the power of CAS panels to review a case *de novo* is limited regarding the imposition of disciplinary sanctions:
  - According to the so-called *"principle of association authority"* the CAS Panel shall interfere and render a new decision only when the decision-making bodies acted arbitrarily.
  - There is no legal basis for the re-consideration of the decision if the CAS panel simply disagrees with a decision.
  - The CAS panels only set aside decisions of a disciplinary nature if the sanction concerned is evidently and grossly disproportionate to the offence.

vi. The First Forensic Report

259. Raja submits that the following comments on the First Forensic Report:

- It follows from such report that the Second Contract is forged. Undoubtedly, the initials of the Player on page 2 of the Second Contract have been written by someone other than the Player.
- The Expert's findings corroborate the inconsistencies raised by Raja. The Player had misplaced the First Contract and had requested a copy from TP Mazembe, who – despite numerous reminders – did not send it. The Second Contract provided for a low remuneration (monthly salary of EUR 1,000), did not contain an increase in salary, was for allegedly five additional years and contained a wrong date of birth for the Player. In

addition, the Second Contract was only registered with the FECOFA 3 years after it was allegedly signed.

- According to CAS jurisprudence, the standard of proof when it comes to forgery is "comfortable satisfaction". This standard is met in the case at hand.

viii. The Second Forensic Report

260. Raja submits the following comments on the Second Forensic Report:

- Also the Second Forensic Report concludes that the Notary Copy was altered.
- One of the additional elements found by the Expert in the context of the Second Forensic Report is that different inks were being used on page 2 of the Second Contract for the initials of Mr Malango.
- In view of the above, neither of the various documents submitted in relation to the Second Contract have the necessary "*integrity or credibility*".

D. FIFA

261. On 17 September 2020, in its Answer (related to CAS 7033), FIFA filed the following requests for relief:

"*(a) rejecting the reliefs sought by the Appellant;*

(b) confirming the Appealed Decision;

(c) ordering the Appellant to bear the full costs of these arbitration proceedings; and

(d) ordering the Appellant to make a contribution to FIFA's legal costs."

262. FIFA's submissions – in essence – can be summarised as follows:

i. Lack of Standing to be sued in the horizontal Dispute

- FIFA submits that it lacks standing to be sued in the present horizontal dispute between TP Mazembe, Mr Malango and Raja […] *Whilst in vertical disputes, the decision of the association 'shapes, alters or terminates' the membership relation between itself and the member concerned, horizontal disputes 'originate in a legal relationship amongst individual members'."*
- "[A]*ccording to Swiss law and CAS' well-established jurisprudence, a respondent in an arbitration proceeding has standing to be sued ('legitimation passive') only if it has some stake in the dispute <u>because</u>*

<u>something is sought against it</u> and is personally obliged by the disputed right." [emphasis in original]

- Since the FIFA RSTP do not provide clarity with respect to the standing to be sued, one must resort to Swiss law, which applies subsidiarily:
  - "*[…] Article 75 SCC […] 'does not apply indiscriminately to every decision made by an association. […] A dispute between two football clubs, i.e. two association members, therefore, is not a dispute which can be appealed against under Art. 75 Swiss Civil Code. The sports association taking a decision is not doing so in a matter of its own, i.e. in a matter which concerns its relationship to one of its members, rather it is acting as a kind of first decision-making instance, as desired and accepted by the parties'.*"
  - "*The DRC offers a dispute resolution system where FIFA is not a party but a neutral entity that is called to settle a strict contractual dispute between its indirect members in a matter that does not concern FIFA's relationship to one of those indirect members. Furthermore, this neutral position is not changed by the fact that Appellant has the chance to have the case reviewed by CAS as a result of FIFA's recognition of CAS' jurisdiction in the FIFA Statutes.*"
- Except for requests 10 and 11, for which FIFA has no standing, the requests for relief of TP Mazembe are solely directed against Mr Malango and/or Raja and thus only concern the contractual relationship between a player and a club and the consequences arising from the breach thereof.
  - "*[…] as confirmed in CAS 2007/A/1287, the panel established that when merely acting as the competent deciding body of first instance in a dispute between two or more parties regarding transfer or contractual matters, FIFA cannot, in principle, be named as a respondent in the appeal procedure. Indeed, FIFA cannot be considered as the 'passive subject' of the claim brought before the CAS by way of appeal against its decision, as its rights are not concerned by the relief sought by the appellant(s).*"
  - Hence, FIFA does not have any standing to be sued in relation to the above-described requests for relief of TP Mazembe that concern the horizontal dispute between the other parties to these proceedings and which find their cause of action purely in the contractual relationship between TP Mazembe and Mr Malango.

ii. Lack of Legitimate Interest

263. FIFA furthermore submits that TP Mazembe does not have any legitimate interest to request that sanctions be imposed on Mr Malango and Raja according to Article 17 (3) and (4) FIFA RSTP:

– "*[…] in order for a party to have standing to appeal, the following requirements need to be met: (i) the party needs to be sufficiently affected by the appealed decision and should have a legitimate and direct interest in the decision being annulled, which would result in a 'practical usefulness' for said party and (ii) the interest must be present at the time the appeal is filed and the decision is rendered.*"

– It is established jurisprudence that neither a club nor a player has any legitimate interest to request the imposition of sporting sanctions on a party that has breached the relevant contract during the protected period:

  o According to CAS 2014/A/3707, para. 169, *"'[…] no rule of law, either in the FIFA Regulations or elsewhere, [allows] the club victim of the breach of contract to request that a sanction be pronounced. Indeed, the system of sanctions laid down rules that applied to the FIFA, on the one side, and to the player or to the club that hired the player, on the other side. A third party ha[s] no legally protected interest in this matter'."*

  o The CAS has *"confirmed the abovementioned principles in its recent award CAS 2018/A/6002 dated 7 July 2020 where it was stated that: '[…] the Panel states that the Appellant does not have a legitimate interest, in this case, to ask for disciplinary measures to be applied on the first three respondents. […] Independently from a possible breach or not, performed by one of the parties involved in this case, […] the Panel considers that the application of such measures directly is out of its scope of review. Thus, no disciplinary sanction is applied'."*

- Consequently, TP Mazembe would gain absolutely nothing in case Mr Malango would be banned from playing or Raja would be banned from registering players. Indeed, such a decision would clearly lack any "practical usefulness" for TP Mazembe.

iii. Article 24bis FIFA RSTP is irrelevant

264. Article 24bis FIFA RSTP does not grant it standing to be sued in this case. The DRC has no discretion whether to impose a sanction or not:

– The consequences of the failure to pay the relevant amounts in due time according to Article 24bis FIFA RSTP will automatically be part of the decision as to the substance of the dispute. The possible consequences are a mandatory and indispensable part of the decision and neither the PSC nor the DRC can refuse to include them.

– The Appealed Decision is a result of a purely contractual dispute between TP Mazembe, Mr Malango and Raja. Article 24bis FIFA RSTP does not change the nature of the dispute.

– Consequently, and as also confirmed in CAS 2019/A/6422, para. 47, "[…] *FIFA's neutral position in the DRC proceedings as the entity called to settle a dispute between two of its indirect members, is not changed by the fact that the Appellant has the right to appeal such decision to CAS in accordance with FIFA's Statutes, even if, as in the present case, the Appealed Decision contains the consequences for non-compliance as per Article 24bis RSTP*."

V. JURISDICTION

265. Article R47 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.*"

266. The FIFA RSTP currently in force provide that "[a]*ny case that has been brought to FIFA before these regulations come into force shall be assessed according to the previous regulations.*" Consequently, this case must be assessed according to the FIFA RSTP 2020. Any reference thereafter to the FIFA RSTP is, thus, a reference to the 2020 ed. that came into force in March 2020. Article 24(2) FIFA RSTP provides as follows:

> "[…] *Decisions reached by the DRC or the DRC judge may be appealed before the Court of Arbitration for Sport (CAS).*"

267. Article 58 (1) and (2) of the FIFA Statutes (2019 edition) that were in force at the time states as follows:

> "*1. Appeals against final decisions passed by FIFA's legal bodies and against decisions passed by confederations, member associations or leagues shall be lodged with CAS within 21 days of receipt of the decision in question.*
>
> *2. Recourse may only be made to CAS after all other internal channels have been exhausted*."

268. The Appealed Decision also provides as follows:

> "*According to art. 58 par. 1 of the FIFA Statutes, this decision may be appealed against before the Court of Arbitration for Sport (CAS).* […]".

269. In view of all of the above and in light of the fact that none of the Parties has disputed the jurisdiction of the CAS and all Parties have signed the OoP, it follows that CAS has jurisdiction to decide on the present dispute.

VI. ADMISSIBILITY

270. Article R49 CAS Code provides as follows:

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

271. In addition, Article 58 (1) of the FIFA Statutes refers to a time limit of 21 days to file an appeal.

272. Furthermore, the Appealed Decision provides as follows:

> "*The statement of appeal must be sent to the CAS directly within 21 days of receipt of notification of this decision […].*"

273. The Sole Arbitrator notes that the grounds of the Appealed Decision were notified to TP Mazembe, Mr Malango and Raja on 14 April 2020 and that they filed their Statements of Appeal with the CAS on 30 April, 4 and 5 May 2020, respectively. Thus, all three Statements of Appeal were filed within the deadline of 21 days. It is true that when TP Mazembe filed its appeal on 30 April 2020, the latter did not comply with the requirements in Article R48 of the CAS Code. However, on 4 May 2020, the CAS Court Office granted TP Mazembe a deadline until 7 May 2020 to rectify its Statement of Appeal. TP Mazembe complied with the directions of the CAS Court Office within the prescribed deadline. Consequently, also TP Mazembe's appeal was filed within the applicable deadlines and, thus, is admissible.

VII. OTHER PROCEDURAL ISSUES

274. Since the procedures CAS 7032, CAS 7033 and CAS 7042 were initiated after 1 January 2019, but before 1 July 2020, the applicable CAS Code is the one in force as from 1 January 2019 (Code 2019 edition). Additionally, with respect to the time between 16 March 2020 and 30 June 2020, the CAS Emergency Guidelines of 16 March 2020 are applicable.

A. Consolidation

275. The Parties agreed to consolidate the three proceedings CAS 7032, CAS 7033 and CAS 7042. Consequently, the proceedings were consolidated in accordance with Article R52 (4) of the CAS Code on 12 May 2020. Thus, the Sole Arbitrator will issue a single award covering all three proceedings.

B. Late filings of Mr Malango

276. The Sole Arbitrator notes that Mr Malango did not file the enclosures 1-9 and 14-33 to his Appeal Brief (in case CAS 7032) and his Answer (in case CAS 7033) within the time limits pursuant to Articles R32, R51 respectively R55 of the CAS Code:

- After the time limit to file Mr Malango's Appeal Brief has been extended for 14 days and subsequently suspended until the notification of the Language Order on 4 June 2020, the deadline to submit his Appeal Brief expired on 21 June 2020. While Mr Malango filed his Appeal Brief on 16 June 2020 with its enclosures 10-13, the enclosures 1-9 and 14-33 had only been uploaded on the CAS e-filing platform on 5 August 2020 at 11:00 am CET upon request of the CAS Court Office of 5 August 2020.
- The deadline to submit the Answer expired for all Parties on 5 October 2020. While the exhibits to Mr Malango's Answer had been filed via e-filing on 3 October 2020, the Answer itself had only been filed on 6 October 2020.

277. After being invited by the CAS Court Office to comment on TP Mazembe's objections to the admissibility of the enclosures 1-9 and 14-33 to his Appeal Brief and his Answer, Mr Malango requested on 16 October 2020 to reject TP Mazembe's objections arguing that:

- He believed in good faith that he had duly filed all required documents on 16 June 2020 and 3 October 2020 until he was informed by the CAS Court Office to the contrary on 5 August 2020 respectively 6 October 2020. Indeed, it would make little sense to only file some enclosures well in advance of the relevant deadline;
- The late submission of said documents is the result of an "*unfortunate human oversight*" following pure technical issues;
- His immediate reactions to the CAS Court Office's correspondence furthermore show this good faith. As this correspondence did, *inter alia*, not indicate that it was "*without prejudice to any issue as to the admissibility*", but simply invited him to file the missing documents, it was his legitimate expectation (which is a general principle of law applicable also to CAS proceedings) that there would be no issue as to their admissibility;
- The circumstances surrounding the late filings are not analogous to those in the CAS awards referred to by TP Mazembe:
  - In both cases referred to by TP Mazembe, no document at all had been filed within the applicable time limits (CAS 2010/A/2159, paras 17 et seq. and CAS 2009/A/1841, paras. 13 et seq.);
  - In the case referred to by TP Mazembe, the appellant had provided additional documents only several months after submitting the appeal brief (CAS 2018/A/5896, paras. 77 and 81);
- *In casu* the Appeal Brief together with enclosures 10-13 had been filed on 16 June 2020 and the Answer's exhibits on 3 October 2020, i.e., two days before the expiry of the time limit. "*These occurrences, combined with the immediate filing of the missing documents upon receipt of the CAS Secretariat's correspondence, suffice to demonstrate that the non-filing of the document simply constitutes an omission made in good faith and with no intention to benefit from an additional time limit*";
- TP Mazembe did not suffer any harm from this situation: its deadline to file its Answer to Mr Malango's Appeal Brief had been stayed pending the filing of the missing exhibits and Mr Malango's Answer has been filed immediately after

receiving the CAS Court Office's correspondence, while no hearing had been scheduled at this stage;

- Granting TP Mazembe's request would constitute an excess of formalism;
- Should the Sole Arbitrator qualify the Answer as inadmissible, the exhibits to the Answer filed on 3 October 2020 shall remain on file and Mr Malango shall be able to address TP Mazembe's Appeal Brief at a hearing and rely on the exhibits.

278. Pursuant to Article R32 (1) of the CAS Code, "*[t]he time limits fixed under this Code are respected if the communications by the parties are sent before midnight,* […]*, on the last day on which such time limits expire.*" Article R31 (3) of the CAS Code as amended by the CAS Emergency Guidelines of 16 March 2020 provides that "[…] *any other written submissions,* […] *must be filed by courier delivery to the CAS Court Office* […]*, failing which the CAS shall not proceed. If they are transmitted in advance by facsimile or by electronic mail* […]*, the filing is valid upon receipt of the facsimile or of the electronic mail by the CAS Court Office provided that the written submission and its copies are also filed by courier OR UPLOADED TO THE CAS E-FILING PLATFORM within the first subsequent business day of the relevant time limit* […]."

279. In accordance with Article R31 (4) of the CAS Code and Article 14 (1) of the CAS Guidelines on the e-filing of procedural documents, "[t]*he time limit to submit procedural documents on the CAS platform is respected if the uploading of the written submissions is complete on the last day in which such time limit expires, time of the processing location*.". Pursuant to Article 15 of the CAS Guidelines on the e-filing of procedural documents, "[t]*he CAS is not liable for any failure to open, download or upload a procedural document on the CAS platform within the allowed time limit.*"

280. The party filing the submission bears the burden of proof of having sent the communication within the time limit prescribed (NOTH/HAAS, in Arroyo, Arbitration in Switzerland, The Practitioner's Guide, 2nd ed. 2019, Article R32, N 7). The CAS Code does not provide any consequences in cases where appeal briefs are filed in due time via electronic means, but not the exhibits due for technical reasons. In general, the party using a certain way of communication bears the risks connected to such means of communication (NOTH/HAAS, in: Arroyo, Arbitration in Switzerland, The Practitioner's Guide, 2nd ed. 2019, Article R31, N 11).

281. According to Mr Malango, the late submissions were the "*result of unfortunate human oversights following pure technical issues*". As noted on 5 May 2020 by the CAS Court Office, Mr Malango had completed his Registration Form to access the e-filing platform. As he had opted to use the e-filing platform, he bore the risk of "*technical issues*" in this respect. It is furthermore uncontroversial, that the risk of an "*unfortunate human oversights*" lies with the party filing the submission and that "*unfortunate human oversights*" cannot excuse the non-observation of set time limits.

282. Regarding the enclosures to the Appeal Brief, the following is to be noted:

- Pursuant to Article R51 (1) of the CAS Code, the Appeal Brief must be filed "*together with all exhibits and specification of other evidence upon which it intends*

to rely" within ten days following the expiry of the time limit for the Appeal and that "[t]*he appeal shall be deemed to have been withdrawn if the Appellant fails to meet such time limit."* Article R51 of the CAS Code sets out the time limit for filing the Appeal Brief as well as its required contents, *inter alia*, its exhibits;

- The filing of exhibits is, in principle, not mandatory. Thus, their late filing does not impact on the appeal. The latter, more particularly, is not deemed to have been withdrawn in case of late filing of the exhibits. However, Article R51 (1) of the CAS Code clearly provides that any exhibits, on which an appellant intends to rely, must be filed together with the Appeal Brief. *A contrario*, an appellant cannot rely on exhibits, which have not been filed together with the appeal brief; such exhibits are thus considered inadmissible;
- Moreover, Mr Malango did not submit any exceptional circumstances within the meaning of Article R56 (1) of the CAS Code. It is worthy to note that – due to the consolidation of the cases – Mr Malango had a further chance to submit (these/other) exhibits together with his Answer (in CAS 7033), but failed to do so;
- For all the above reasons, the Sole Arbitrator granted TP Mazembe's objection on 20 October 2020 and only admitted the Appeal Brief together with enclosures 10-13 on file.

283. With respect to the admissibility of the Mr. Malango's Answer, the following has to be considered:

- Article R55 (2) of the CAS Code provides that if the Answer is not submitted "*by the stated time limit, the Panel may nevertheless proceed with the arbitration and deliver an award*";
- Furthermore, Article R56 (1) of the CAS Code provides that "[u]*nless the parties agree otherwise or the President of the Panel orders otherwise on the basis of exceptional circumstances, the parties shall not be authorized to supplement or amend their requests or their argument, to produce new exhibits, or to specify further evidence on which they intend to rely after the submission of the appeal brief and of the answer*";
- The Sole Arbitrator notes that Mr Malango did not submit any "exceptional circumstances". He merely stated that the late submission was "*the result of unfortunate human oversight following pure technical issues*", that it was his "*honest and good faith belief*" that he had duly filed all documents and the non-filing "*constitutes an omission made in good faith*". All of this, however, does not qualify as exceptional circumstances;
- Particularly, considering that "*unfortunate human oversight following pure technical issues*" had already caused the late submission of the enclosures 1-9 and 14-33 in June respectively August 2020, Mr Malango should have been aware of possible "*unfortunate human oversight*" or "*technical issues*" when filing the Answer in October 2020 and could have taken the required precautions to avoid a (second) late filing;
- In view of all of the above, the Sole Arbitrator granted TP Mazembe's objection on 20 October 2020 and only admitted the exhibits to the Answer (in case 7033) on file, since they were submitted on time (on 3 October 2020). TP Mazembe's

further request in this respect, to also deem the exhibits to Mr Malango's answer as inadmissible, was, accordingly, rejected.

284. The above, however, did not prevent Mr Malango from addressing TP Mazembe's Appeal Brief at the hearing and rely on his exhibits.

C. Absence of an English Translations of the Exhibits

285. TP Mazembe requested in its Answer (regarding CAS 7032 and CAS 7042), that enclosures 1-8; 11-15, 17-18; 21-23; 25-26; 29, 30 and 32 to Mr Malango's Appeal Brief and enclosures 2-9; 11-13; 16, 18 and 23; 25-27; 29; 31-33; 36-38 to Raja's Appeal Brief shall be considered inadmissible, because both parties failed to submit corresponding translations into English:

- TP Mazembe referred to Articles R51 (1) and R29 of the CAS Code, according to which "[…] *the non-translated document will be admitted to the file provided that* […] *(ii) the non-translation of this document does not bring the other party to a disadvantage in the proceedings, or deprives the party of its right to be heard*"*;*
- Mr Malango and Raja objected to French being the language of these proceedings and insisted on English as the language of the procedure. "[T]*he Deputy President of the Appeals Arbitration Division considered that 'the positions of Mr Ben Malango, Raja Casablanca and FIFA according to which English shall be the language of the proceedings prevail on Tout Puissant Mazembe's position to proceed in French' and thus ruled that 'English shall be the language of the present arbitral proceedings'*."*;*
- TP Mazembe submits that the "*decision to hold the proceedings in English, which is exclusively due to the joint will of …* [Mr Malango] *and Raja, causes harm to* [it]*, or at least places it to a disadvantage. Said disadvantage is two-fold: (i) several representatives of TP Mazembe involved in the present dispute and hence will have to appear before the CAS, do not speak English and (ii) TP Mazembe translated all the documents into English and thus bore significant translation costs*" in the dispute at hand;
- Mr Malango and Raja had *"decided contra factum proprium to submit untranslated documents";*
- According to TP Mazembe the above appears even more justified in relation to Raja's enclosures *"in view of its counsel's attitude, who purported not understand French at all in order to have this language dismissed, but who then relied on evidence drafted solely in French, thereby showing that he does in fact understand French."*

286. Mr Malango requested on 16 October 2020 to reject TP Mazembe's objection arguing as follows:

- The Order on Language led Mr Malango "*to genuinely believe that only the proceedings (i.e., exchange of correspondence) and the Appeal Briefs shall be filed in English, and that enclosures could be filed in French, unless a certified translation would be required by the Sole Arbitrator […]";*

- Article R29 of the CAS Code, which was quoted in the Order on Language, states that *"[…] President may order that all documents submitted in languages other than that of the proceedings be filed together with a certified translation in the language of the proceedings"* [emphasis in original];
- Mr Malango thus understands *"that had the Deputy President of the CAS Appeal Arbitration Division intended to include the filing of enclosures in the scope of the order, she would have explicitly done so. Instead, the possibility to file enclosures in French was left open and made subject to the Sole Arbitrator's decision to request certified translations if need be once constituted";*
- Such solution had also been applied to TP Mazembe regarding "*its Statement of Appeal filed in French which, according to the Order, 'shall only be translated upon request of the Sole Arbitrator'.";*
- "*TP Mazembe has not been put in any disadvantageous position due to the filing in French language of some of the Appeal Brief's enclosures since the club and its legal representatives, as well as the Sole Arbitrator, understand French language.*"

287. Raja also objected to TP Mazembe's request arguing the following:

- "[A]*ccording to Article R29 of the CAS Code, the Panel has the possibility (but is not obliged) to request the production of certified translation of all documents that are not in the language of the procedure*";
- The non-translation of the respective documents brings no disadvantage to TP Mazembe:
  - The mother tongue of the counsel of TP Mazembe is French and French is an official language of Belgium (the domicile of TP Mazembe's counsel);
  - French is one of TP Mazembe's counsel working languages: the Statement of Appeal filed by TP Mazembe was in French and the profile of the counsel of TP Mazembe on the website of his firm states that he is fluent in French;
  - Enclosure 23 and most part of the enclosures 2-9 were addressed to/by TP Mazembe and were already in TP Mazembe's possession;
  - Enclosures 11-13 and 16-18 are correspondences exchanged with TP Mazembe and its legal counsel;
  - Enclosures 31-33 and 36-38 had only been added to demonstrate the correct date of birth of Mr Malango and, therefore, can be easily understood.
- The non-admissibility of the respective enclosures would infringe Raja's right to be heard and constitutes "*excessive formalism*".

288. The Sole Arbitrator, on 20 October 2020, has dismissed TP Mazembe's objection. The letter provided that the full reasoning would be disclosed in the Award:

- A missing translation does not automatically lead to the inadmissibility of the respective document, as this would constitute an excessive formalism. In general, an additional period would be granted in such cases to produce the required translations. However, in the case at hand the missing translation did not disadvantage TP Mazembe, or violated or restricted its rights of defence and the right to be heard;

– It is undisputed that the representatives of TP Mazembe and its counsels understand French. Indeed, TP Mazembe had filed its Statement of Appeal in French and insisted, until the Order on the Language was issued, that French be the language of the procedures. TP Mazembe also never argued that it did not understand the contents of the exhibits in question. Moreover, the Sole Arbitrator notes that several of the objected enclosures are either already in TP Mazembe's possession or constitute communication with TP Mazembe itself. Therefore, the Sole Arbitrator finds it disproportionate and not in the interest of good administration of justice to strike these exhibits from the file.

D. Appointment of the Expert

289. In his Appeal Brief in the matter 7032, the Player requested the CAS "*to appoint an independent handwriting expert to examine the authenticity* … [of the Second Contract]." TP Mazembe in its Answer (in the matters 7032 and 7042) stated " […] *that if the Sole Arbitrator deemed it necessary, it would accept that an expertise to be carried out*", thus it did not oppose Mr Malango's evidentiary request.

290. On 14 October 2020, the CAS Court Office, on behalf of the Sole Arbitrator, advised the Parties that the Sole Arbitrator will solicit an expert opinion to examine the authenticity of the Second Contract. On 18 November 2020, the CAS Court Office provided the Parties with a short list of handwriting experts and invited them to comment on the names on such list. The Parties did not object to any names on the short list. On 15 December 2020, the CAS Court Office informed the Parties that the Sole Arbitrator had decided to appoint the Expert from the short list. Again, TP Mazembe did not raise any objections. Instead, TP Mazembe requested – once the First Forensic Report was issued – to conduct a second expertise by the same Expert on the Notary Copy.

291. It is only after the Expert issued her Second Forensic Report that TP Mazembe requested the Sole Arbitrator "*that the expert reports be set aside*". TP Mazembe justified such request by stating as follows:

> *"In the absence of such a decision justifying the need for such expertise, TP Mazembe believes that the decision to appoint an expert to examine the authenticity of the Player's initials and signature as well as the integrity of the Contract is not valid all the more so as TP Mazembe's explanations in its Answer Brief supported by cogent evidence therein have already undermined the Player's and Raja Club's claim of forgery and, consequently, the need for handwriting expertise."*

292. The Sole Arbitrator is of the view that the procedural order to appoint the Expert is covered by Article R57 (1) of the CAS Code that provides *inter alia* as follows:

> "*… Upon transfer of the CAS file to the Panel, the President of the Panel shall issue directions in connection with the hearing for the examination of the parties, the witnesses and the experts, as well as for the oral arguments*".

293. Furthermore, Article R57 (3) CAS refers to Article R44.3 of the CAS that provides as follows:

> "*If …* [the Panel] *deems it appropriate to supplement the presentations of the parties, the Panel may at any time order the production of additional documents or the examination of witnesses, appoint and hear experts, and proceed with any other procedural step. The Panel may order the parties to contribute to any additional costs related to the hearing of witnesses and experts*."

294. The above provisions grant ample discretion to a panel to order evidentiary measures that it finds "appropriate". Since the authenticity and integrity of the Second Contract, a central document in these proceedings, was disputed between the Parties and considering that TP Mazembe did not oppose a request to appoint a handwriting expert to begin with, did not object to the appointment of the Expert and specifically requested that the Expert be appointed one more time to conduct an analysis of the Notary Copy, the Sole Arbitrator is of the view that it was absolutely "appropriate" within the above meaning to appoint a handwriting expert in order to better assess the submissions of the Parties.

E. TP Mazembe's Request to file further Expert Evidence

295. On 23 December 2021, once the First Forensic Report had been forwarded to the Parties, TP Mazembe "*formally request*[ed] *that a new expertise be carried out in relation to the …* [Notary Copy] *by* … [the Expert]". On 22 March 2022, after granting the right to be heard to all Parties, the Sole Arbitrator accepted TP Mazembe's request and submitted to the Parties a list of question for the Expert, which the Parties approved. Once the Second Forensic Report was issued the Sole Arbitrator, on 6 April 2023, forwarded the report to the Parties and invited them to comment on it. On 19 April 2023, TP Mazembe requested an extension of the deadline to provide its comments. The Sole Arbitrator granted such extension until 8 May 2023 and advised the Parties that no further extension will be granted. Furthermore, the Sole Arbitrator informed the Parties that he did not deem a further round of submissions necessary and that the Parties at this stage were limited to commenting on the Second Forensic Report. The letter also informed the Parties that if they deemed otherwise that they file a reasoned request to that effect. On 2 May 2023, TP Mazembe requested a further extension of the deadline to comment on the report arguing that it contested the "*reliability of the ESDA test*" and wished to consult experts to this effect.

296. TP Mazembe's request ignores that the Sole Arbitrator had granted one final extension of the deadline, that according to Article R56 (1) of the CAS Code the exchange of submissions had been closed, but for "comments" on the Second Forensic Report. There was no agreement between the Parties to allow for a further round of submissions. In addition, the Sole Arbitrator finds that there are no exceptional circumstances to grant TP Mazembe's request. At the centre of TP Mazembe's request stands the criticism of the ESDA test performed by the Expert. However, such test was already applied in the First Forensic Report and TP Mazembe had no issue with the methodology applied by the Expert at that time. Such behaviour contravenes the principle of *venire factum proprium* and, therefore, cannot be upheld. The Sole Arbitrator notes that TP Mazembe in its comments filed on the Second Forensic Report "*reserve*[d] *its right to challenge*

[the decision of the Sole Arbitrator not allow a further extension of the deadline and a full further round of further submissions] *and the future award on the basis of Article 6 ECHR*." However, at the hearing TP Mazembe no longer upheld such objection and acknowledged that the procedure fully respected its right to be heard and that there were no further outstanding procedural issues.

F. Witness Statement

297. At the outset of the hearing Raja and TB Mazembe advised the Sole Arbitrator that none of its witnesses will testify at the hearing. A discussion followed between the Parties how to deal with the witness statements filed for the Raja's witnesses (Mr Mukandila Tshitunde, Mr Anis Mahfoud and Mr. Rabii Lafoui) and how to deal with the witness statements filed by TP Mazembe (Mr Frédéric Kitengie and Mr Régis Laguesse). Considering that neither the parties nor the Sole Arbitrator was able to question these witnesses, the Sole Arbitrator decided to keep the statements on file giving them the weight of documentary evidence and treating them as mere party declarations.

G. The References submitted by Mr Malango on 7 November 2023 after business hours

298. Mr Malango on the eve of the hearing submitted a list of authorities it intended to rely upon at the hearing. TP Mazembe objected to – what it described – the late filing of the legal authorities. The Sole Arbitrator dismissed TP Mazembe's request. It is customary for parties in CAS proceedings to refer at the hearing to CAS jurisprudence and to legal authorities. This is even true, if such legal authorities have not been provided together with the written submissions. Consequently, the Sole Arbitrator rejects TP Mazembe's request to strike these legal authorities from the file.

VIII. APPLICABLE LAW

299. Article R58 CAS Code provides the following:

> " *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 the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision.*"

300. Article 57 (2) of the FIFA Statutes (June 2019 edition) sets forth as follows:

> " *The provisions of the CAS Code of Sports-related Arbitration shall apply to the proceedings. CAS shall primarily apply the various regulations of FIFA and, additionally, Swiss law.*"

301. Article 1.4 of the Second Contract provides as follows:

> " *Le présent Contrat et conformément à l'accord des deux parties est régi par les Règlements régissant le Transfert de Joueurs, délivrés par la Fédération*

> *Internationale de Football (FIFA) et les 'Règlements Généraus Sportifs' de la Fédération congolaise de football, et aussi les lois du travail de la République démocratique du Congo*." [original in French]
>
> **Free translation**: This Contract and in accordance with the agreement of the two parties is governed by the Regulations governing the Transfer of Players, issued by the Fédération Internationale de Football (FIFA) and the 'General Sporting Regulations' of the Congolese Football Federation, and also the labor laws of the Democratic Republic of Congo.

302. From the above provisions, Mr Malango follows that the FIFA RSTP, Congolese law and subsidiarily – if needed – Swiss law apply to the dispute. Raja's position is less clear. In its Appeal Brief Raja submits that "*it may be concluded that the CAS should apply as applicable law in the ongoing arbitration the various regulations of FIFA, Swiss laws and the laws of DR Congo, whilst taking into account the term 'specificity of sport'.*" However, in its Answer (CAS 7033), Raja submits that "*the CAS should apply […] the various regulations of FIFA and Swiss laws […]*", without mentioning the application of "*the laws of DR Congo*". TP Mazembe submits that the merits of the dispute shall be governed (only) by the FIFA regulations, in particular the FIFA RSTP and (subsidiarily) by Swiss law. TP Mazembe objects "*to 'Congolese law' / 'laws of DR Congo', as the national law (subsidiarily) applicable to the merits of the dispute*." FIFA submits that the dispute shall be decided pursuant to the FIFA Statutes and regulations – namely the FIFA RSTP – and subsidiarily, Swiss law, should the need arise to fill a possible gap in the FIFA regulations.

303. The Sole Arbitrator is satisfied that, pursuant to Article R58 of the CAS Code, primarily the various regulations of FIFA apply to the merits of this appeal. Article R58 of the CAS Code provides for a mandatory hierarchy of the applicable legal framework. Thus, the "applicable regulations" within the meaning of Article R58 of the CAS Code always apply, irrespective of a choice of law by the Parties. Furthermore, due to the reference in Article 57 (2) of the FIFA Statutes, the Sole Arbitrator will apply Swiss law subsidiarily should the need arise to solve an interpretational issue in relation to the application of the various regulations of FIFA. However, Swiss law as invoked in Article 57 (2) of the FIFA Statutes does not prevail over a choice of law made by the parties. According to Article 1.4 of the Second Contract also the labor laws of the Democratic Republic of Congo apply (should the Second Contract be valid). The latter governs issues not addressed in the FIFA regulations, i.e. for which FIFA has not set any uniform standards of the industry.

IX. MERITS

304. The relevant questions that the Sole Arbitrator needs to answer in the present matter can be grouped into the following sets of issues:

i. Does FIFA has standing to be sued in the present matter?
ii. Is the Second Contract authentic and valid?
iii. In case the aforementioned question is answered in the affirmative, did Mr Malango terminate the Second Contract without just cause?

iv. In case the aforementioned question is answered in the affirmative, what are the consequences of the terminating without just cause in the present dispute?

A. Standing to be sued of FIFA

305. The Sole Arbitrator notes that the question of standing is a matter of substantive law. This has also been confirmed by well-established CAS jurisprudence (see CAS 2020/A/7356; CAS 2016/A/4602; CAS 2013/A/3047; CAS 2008/A/1639). Thus, the Panel will apply the FIFA regulations and – in case of a *lacuna* – Swiss law. Such finding is backed by CAS jurisprudence. In CAS 2016/A/4836 para 116, the panel rightly found as follows:

> "*As established above, …* [Article 58(1) of the] *FIFA Statutes dictates that any appeals against decisions of a body such as the FIFA PSC should be lodged with the CAS. It does not specify which party the appeal should be brought against i.e. which party has standing to be sued. This lacuna can be filled using Swiss law and in particular article 75 of the SCC.*"

306. Article 75 of the Swiss Civil Code ("SCC") foresees that an appeal against a decision of an association must be brought against the association that has issued the decision. Thus, according to this provision, only the association has standing to be sued. Article 75 CC, however, can only serve as a guidance if the dispute in question is akin to the matters dealt with in said Article. The latter deals with disputes arising from a legal relationship (membership) between a member of an association and the association itself. Consequently, Article 75 CC deals with a "vertical" dispute. However, as the panel in in CAS 2014/A/3489-3490 rightly noted, not all disputes pertaining to the life of an association are necessarily "vertical" in nature". Instead, there are also disputes that are qualified as "horizontal" in which FIFA does not assume executive, but only adjudicatory, powers without having any direct involvement. At para 119, the panel in CAS 2014/A/3489-3490 noted as follows:

> "*….if a party to an horizontal dispute adjudicated by a FIFA body – i.e., a dispute between two or more direct or indirect members of FIFA (such as clubs, players, agents or coaches) which does not involve FIFA's disciplinary powers and where FIFA has nothing directly at stake – appeals to the CAS without summoning FIFA, the appointed CAS panel may still proceed to examine the matter and adjudicate the dispute. This is so because a decision adopted by a FIFA body on a dispute between its direct or indirect members, being a decision of an association, is not an award but it has a contractual value for the members of the association. (…)*"

307. The present dispute is a horizontal dispute only concerning Mr Malango, TP Mazembe and Raja. Thus, with respect to the requests pursued by TP Mazembe no. 1 – 9 in CAS 7033, FIFA lacks standing to be sued from the outset.

308. The only requests of TP Mazembe that are directed against FIFA are the following:

> "[…]
>
> *10. Impose on the First Respondent a minimum restriction on playing in official matches of four-month restriction, and to the extent that the Panel finds that the circumstances of the present constitute aggravating factors, a six-month restriction;*

> *11. Impose on the Second Respondent a ban from registering any new players, either nationally or internationally, for two entire and consecutive registration periods*

309. This Panel refers to the constant CAS jurisprudence according to which an indirect member of FIFA has no standing to request that sporting sanctions be imposed on other indirect members, such as clubs or players. In CAS 2007/A/1359, no. 53 et seq, the panel stated as follows:

> *"53. This Panel is also called upon to decide on the Appellant's application that sporting sanctions be imposed on the Player.*
>
> *54. The Appellant considers that the DRC disregarded art. 17 para. 3 of the FIFA Regulations by not imposing a sporting sanction on the Player. The said provision states that 'sporting sanctions shall also be imposed on any player found to be in breach of contract during the Protected Period'. In this respect, the DRC Decision considered that the above mentioned provision gives the competent body the power to decide to impose a sporting sanction on a player found to be in breach of contract during the Protected Period, but not the obligation to do so. In view of the specific circumstances of the case, including the young age of the Player at the time he signed he Employment Contract and the controversy surrounding his registration from the Appellant, the DRC decided not to impose any sporting sanctions, which would have had a considerable impact on the Player and were considered to be excessive and inappropriate.*
>
> *55. It follows from a literal interpretation of the said provision that it is a duty of the competent body to impose sporting sanctions on a player who has breached his contract during the protected period: 'shall' is obviously different from 'may'; consequently, if the intention of the FIFA Regulations was to give the competent body the power to impose a sporting sanction, it would have employed the word 'may' and not 'shall'. Accordingly, based on the wording of art. 17 para. 3 of the FIFA Regulations, a sporting sanction should have been imposed.*
>
> *56. However this Panel considers that rules and regulations have to be interpreted in accordance with their real meaning. This is true also in relation with the statutes and the regulations of an association. Of course, if the wording of a provision is clear, one needs clear and strong arguments to deviate from it.*
>
> *57. During the hearing, FIFA observed that it is stable, consistent practice of FIFA and of the DRC in particular, to decide on a case by case basis whether to sanction a player or not. Even though it is fair to say that the circumstances behind the decisions filed by FIFA to demonstrate such practice differ from case to case, the Panel is satisfied that there is a well accepted and consistent practice of the DRC not to apply automatically a sanction as per art. 17 para. 3 of the FIFA Regulations. The Panel is therefore inclined to follow such an interpretation of the rationale of art. 17 para. 3 of the FIFA Regulations which may be considered contrary to the literal interpretation, but appears to be consolidated practice and represents the real meaning of the provision as it is interpreted, executed and followed within FIFA. It is indeed noteworthy that a sporting sanction, by which the Player was suspended from playing for two years, was imposed of the Player within the ambit of FFA disciplinary proceedings.*
>
> *58. This being so, the Appellant's application that a sporting sanction be imposed on the Player is dismissed."*

310. This practice has been consistently followed by the CAS (CAS 2014/A/3568, no. 96; CAS 2016/A/4826, para. 123 seq.; CAS 2013/A/3444, para. 118 et seq.) and its longstanding acceptance lends legitimacy to it. Despite having been invited to do so by the Panel at the hearing, TP Mazembe could not advance any good reasons justifying a decision to overrule these precedents.

311. In the absence of any provision to the contrary, the Sole Arbitrator is of the view that it is solely within FIFA's prerogative to decide on the imposition of sporting sanctions.

Moreover, the FIFA RSTP do not recognize the possibility for a club to bring a claim against FIFA to this effect.

312. The findings here are not contradicted by Article 24bis of the FIFA RSTP. The Sole Arbitrator concurs with the view expressed in CAS 2019/A/6422, where the panel at para. 47 stated as follows:

> […] *FIFA's neutral position in the DRC proceedings as the entity called to settle a dispute between two of its indirect members, is not changed by the fact that the Appellant has the right to appeal such decision to CAS in accordance with FIFA's Statutes, even if, as in the present case, the Appealed Decision contains the consequences for non-compliance as per Article 24bis RSTP*."

313. Consequently, the Sole Arbitrator finds that the claims filed by TP Mazembe pertaining to FIFA are without merit.

B. Is the Second Contract authentic and valid?

1. The Position of the Parties

314. Mr Malango and Raja submit that the two copies of the Second Contract provided by TP Mazembe in these proceedings are forged. According to both parties Mr Malango did not sign the Second Contract back in 2016. Both parties highlight a series of incidents that back their allegation of forgery, among others the submit as follows:

- Even though the Second Contract was allegedly signed in December 2016, the document was filed with FECOFA and only homologated in September 2019, i.e. much later. This fact was also highlighted by FIFA in the Appealed Decision, wherein it is stated "[a]*t this point, the DRC however deemed it important to point out that it is peculiar that the verification by the FA through the 'Attestation de Confirmation', confirming the validity of the contract and attesting that it had been deposited at FECOFA, was made only 3 years after the conclusion of the contract*";
- It is a club's obligation to register a contract – once executed – immediately with FECOFA. If, however, the homologation of the Second Contract only occurred in September 2019, it follows from this that there was no contract back in 2016;
- The homologation of the Second Contract in September 2019 coincides with two other important events: (i) with Mr Malango asking to be provided with a copy of the First Contract and (ii) other clubs being interested in hiring the services of Mr Malanago. In June 2019 contractual negotiations took place between Mr Malango and Orlando Pirates. TP Mazembe referred to the Second Contract for the first time on 8 June 2019 and provided a copy thereof on 28 June 2019 in order undermine these negotiations;
- The Second Contract bears the wrong date of birth of Mr Malango. The Second Contract states that Mr Malango was born on 11 May 1997. However, in accordance with Mr Malango's birth certificate as well as TP Mazembe's own website, Mr Malango was born on 10 November 1993;
- No official TP Mazembe stamp is affixed anywhere on the Second Contract and the identity of TP Mazembe's witness consists of an unidentified signature;

- There was no incentive for Mr Malango to sign a (new) contract in 2016 with the exact same remuneration as agreed upon in the First Contract.

315. TP Mazembe submits that in 2016 it executed the Second Contract with Mr Malango. The purpose was not to sign a new contract, but rather to "renew" the existing one in order to avoid legal uncertainties. The First Contract was signed for a term of seven years back in 2014. The parties to the Contract realized at a certain point that the maximum term of an employment contract was only five years. In order to ensure the original envisaged length of the contract, the parties decided in 2016 to renew the existing contract for an additional term of five years. TP Mazembe rejects the allegation that the Second Contract is forged and provides – *inter alia* – as follows:

- If Mr Malango was convinced that the document was forged, it would have filed a criminal complaint against TP Mazembe. Since he did not do so, it can be inferred that TP Mazembe did not forge the document;
- Before FIFA, TP Mazembe immediately submitted the original version of the Second Contract when requested to do so;
- The erroneous birthdate on the first page of the Second Contract has no influence on the validity of the contract, as it does not constitute an *essentialia negotii*. TP Mazembe relied on Mr Malango's assertion as well as on the documentation provided by the latter regarding his birthdate. Mr Malango informed TP Mazembe after the end of his loan with Don Bosco that he was born on 11 May 1997 and provided evidence of it by showing a passport (Passport OP0015599) bearing this date. As TP Mazembe relied on Mr Malango's statement and on an official document, TP Mazembe recorded 11 May 1997 as the Player's date of birth in the Second Contract in good faith. Furthermore, an Algerian visa was granted to Mr Malango based on the passport n° OP0015599, confirmed its validity;
- The "Attestation de Confirmation" confirms that TP Mazembe did register the Second Contract. The "Attestation de Confirmation" is a document issued by the FECOFA following a request of TP Mazembe in 2019, which confirms that (i) a contract valid for 5 years was concluded by Mr Malango and TP Mazembe on 16 December 2016 and (ii) that this contract was registered with the FECOFA;
- The alleged absence of stamp does not demonstrate a forgery. As a stamp is intended to legalise the signature of the person representing the club, there is no need to affix it when the contract is legalised by a notary as in the present case;
- The Second Contract was not intended to constitute a proper renewal of the contractual relationship, but only to ensure that the existing relationship was in conformity with the relevant football regulations. This explains why the wage remained the same and that the duration corresponded to the remaining duration of the First Contract.

2. The Burden of Proof

316. The burden of proof that the Second Contract has been executed lies with TP Mazembe. In this respect, the Sole Arbitrator is inspired by Article 8 SCC. This provision states that, unless the law provides otherwise, each party must prove the facts upon which it

is relying to invoke a right, thereby implying that the case must be decided against the party that fails to adduce that evidence.

317. The burden of proof not only allocates the risk among the parties of a given fact not being ascertained but also allocates the duty to submit the relevant facts before the court/tribunal. It is the obligation of the party that bears the burden of proof in relation to certain facts to also submit them to the court/tribunal (SFT 97 II 216, 218, consid. 1).

318. The Sole Arbitrator is inspired by Article 178 CCP. The latter article provides that "[t]*he party invoking a physical record must prove its authenticity if this is disputed by the opposing party; the opposing party must give adequate grounds for disputing authenticity*". Thus, in order for a document to have probative value it must be authentic, i.e. the contents of the document must be attributed in its entirety to the presumed author(s) (cf. CAS 2020/A/7373, para. 88).

319. Article 178 CCP deviates from the general principle described above that each party must prove the facts on which it relies. The provision presumes the authenticity of a private document as long as it is not disputed in a substantiated manner by the opposing party.

320. In order to rebut the presumption of authenticity of a document, it is not sufficient to simply object to its authenticity. Instead, the disputing party must proffer sufficient reasons to cast doubt on the authenticity of the document. A mere blanket, unsubstantiated denial is, on the contrary, not sufficient. The objections to the authenticity of the document in question must, therefore, be substantiated. Only if the opposing party succeeds in doing so, the other party carries the burden to prove the authenticity of the document in question (SFT 4A_197/201, consid. 4.2; cf. also CAS 2020/A/7373 para. 92).

321. With respect to the applicable standard to "substantiation", the Sole Arbitrator takes guidance from CAS 2020/A/3737, para. 93 et seq. Therein the sole arbitrator stated as follows:

> *"The duty of a party to sufficiently substantiate its submissions is intrinsically linked to the principle of party presentation and, thus, it is clearly a procedural issue (KuKo-ZPO/OBERHAMMER, 2nd ed. 2014, Art. 55 no 12). Consequently, Article 182 of the PILA applies with respect to the applicable law. In view of the fact that the CAS Code is silent on the perquisites necessary to qualify an objection and/or a submission as sufficiently substantiated, the Sole Arbitrator refers to the CPC. To this end, according to the jurisprudence of the Swiss Federal Tribunal ("SFT"), submissions are sufficiently substantiated, if:"*
>
> – *they are detailed enough to determine and assess the legal position claimed (SFT 4A_42/2011, 4A_68/2011, E. 8.1); and*
> – *detailed enough for the counterparty to be able to defend itself (SFT 4A_501/2014, E. 3.1).*
>
> *94. It follows from the above that in case the authenticity of the physical record is contested in a substantiated manner, the party invoking such document may adduce any evidence available to it (including witness testimony, expert evidence, etc.) to discharge its burden of proof with respect to the authenticity of the physical record submitted (CP CPC-VOUILLOZ, 2020, Art. 178 note 8)."*

3. The Findings of the Sole Arbitrator

322. The Expert in his First Forensic Report concluded that there is "*very strong support for the proposition*" that the copy of the Second Contract that had been registered with FECOFA (so-called copy Q1) is "*an altered document (specifically, altered by substituting page 2 after the contract has been completed) ....*". The Expert based its finding on

- the different layout of pages 1 and 3 on the one hand compared to the layout of page 2;
- the different inks used for Mr Malango's initials on page 1 (QI1) and the signature on page 3 on the one hand and Mr Malango's initials on page 2 (QI2);
- the contradicting indented impressions found on the various pages. Thus, e.g. page 2 was lying underneath page 1 while one of the initials was affixed on page 1, but not when the Mr Malango wrote his initials on page 1. Furthermore, indented impressions corresponding to the Mr Malango's initials on page 2 (QI2) were found on page 3 indicating that page 3 must have been positioned underneath page 2, while the initials on page 2 were written. However, impression corresponding to Mr Malango's initials on page 1 (QI1) were found neither on page 2 nor page 3;
- the differences between the initials of Mr Malango on page 1 (QI1) and on page 2 (QI2). According to the Expert there is strong support that the initials on page 2 (QI2) were written by someone other than Mr Malango.

323. The Sole Arbitrator has reviewed the First Forensic Report in light of TP Mazembe's objections. Therein, TP Mazembe submitted that the inconsistencies noted by the Expert can also be explained differently than by manipulation. In particular, TP Mazembe explained that "*it is common practice for the Congolese players to deliberately omit initialling certain pages of a contract, or to use different initials in the same contract*" and that having different layouts in the same contract "*is rather the norm for contracts concluded in Africa*". TP Mazembe continued to explain that the alleged inconsistencies related to the indented impressions are due to "*the fact that ... three original copies of the employment contracts were signed at the same time*". Finally, TP Mazembe refers to the Expert's considerations related to the different inks as a "*mere assumption*".

324. The objections raised by TP Mazembe are not such as to allay the serious concerns with respect to the integrity and authenticity of the Second Contract. The Sole Arbitrator accepts that the individual circumstances referred to by the Expert, considered in isolation, may be insufficient to cast doubt on the authenticity of the document. However, when considering the circumstances in their entirety, it is impossible not to share the Expert's assessment. Different writing instruments were used on page 2 of the contract for Mr Malango's initials. Furthermore, there is no sound explanation why there are no indented impressions of the player's initials (QI1) on the second page of the contract, whereas there are indented impressions of the player's initials (QI2) on page 3. The objection that a player would deliberately use different initials in order to be able to invoke forgery at a later stage is far-fetched. If that had been Mr Malango's

intention at the time of the signing of the contract, he would have avoided making the initials look similar at a superficial glance. The differences would then be much more obvious.

325. If one then takes into account the circumstances surrounding the Second Contract, the doubts as to the authenticity and integrity of the Second Contract are considerably strengthened. TP Mazembe's theory that the parties did not want to conclude a new contract in the present case, but merely wished to confirm an already existing agreement, is not plausible. The First Contract did not provide for a penalty / liquidated damage clause in the event of a breach of contract. Instead, the First Contract provided in Article 4 (2) that the "*parties mutually oblige themselves to execute the release clause at the end of each season, if the circumstances command them to do so and its application must be done following the provisions below, defined by them*". Furthermore, the content and layout of the Second Contract differ from the First Contract. While the First Contract comprises five pages, the Second Contract only has three pages. In addition, the Second Contract surfaced at the very time when Mr Malango was in contract negotiations with other clubs. Also, the penalty clause/liquidated damages clause relevant to the present dispute is on page 2 of the Second Contract, i.e. the page that is at the centre of the manipulation allegations.

326. It also seems implausible why a player would agree to a contract extension with a club without improving his financial conditions. This is all the more so, considering that Article 4 (1) of the First Contract provides that "[t]*his contract of employment is ... renewable, on new terms to be discussed in due course between the parties, if applicable*". Thus, the First Contract foresees, in principle, that new terms are negotiated in case of "renewal". The clause with the unchanged remuneration is to be found – again – on page 2 of the Second Contract, the very same page that is at the centre of the allegation of manipulation. Thus, the most relevant provisions for the dispute at hand (penalty clause / liquidated damage clause and the player's remuneration) are all on page 2 of the Second Contract. Finally – on a sidenote – the Sole Arbitrator recalls that TP Mazembe by letter dated 11 February 2023 to the CAS, objected to the Expert analyzing anything else but the signature of Mr Malango on page 3 of the Second Contract.

327. In summary, the Sole Arbitrator notes that the concerns regarding the authenticity and integrity of the Second Contract are significant and thus substantiated. Consequently, the burden shifts to TP Mazembe to prove that the Second Contract was validly concluded.

328. The above findings are reinforced by the Second Forensic Report. Therein, the Expert stated that "… *the findings provide moderately strong support for the proposition that the questioned contract Q2* [the Notary Copy] *is an altered document (specifically, altered by substituting page 2 after the contract has been completed) over the proposition that the disputed contract is an unaltered document*". The Expert based such finding on the "*differences in inks between the questioned entries on pages 1 and 3 compared to page 2*" and the "*lack of indented impressions matching the questioned initials QI2.1 on the second page*" which is incompatible with "*an undisrupted production process*". When comparing the findings of the First and the Second Forensic

Report, the Expert notes that the analysis of the Notary Copy "*result in a slight reduction of the overall probative strength of the conclusion pertaining to the integrity of the document*" However, the Expert maintains the view that "*the findings provide strong support for the proposition, that the questioned contract … is an altered document (specifically, altered by substituting page 2 after the contract has been completed) over the proposition that the disputed contract is an unaltered document*."

329. TP Mazembe criticizes the above findings in the Second Report for a number of reasons. It submits that "… *only the questioned initials and questioned signature were tested*" and that this "*limitation of the analyses might have distorted the expert's conclusion*". It cannot be excluded – according to TP Mazembe – that the "*Player simply grabbed another pen to sign page 2*". Furthermore, TP Mazembe submits that the ESDA analysis does not provide "*conclusive evidence*". The Expert admitted – according to TP Mazembe – that this analysis technique "*may help to identify*" a sequence of handwriting, "*but does not constitute conclusive evidence*" and that in "*this specific case, inconsistencies of the ESDA-test results … can be explained other than by the substitution of page 2*". TP Mazembe notes that "*the Contract was signed in three copies and that other players attended the same meeting to sign their contracts in several copies as well*" and that, therefore, "*it is likely that, during the signature process, other pages from other contracts served as a writing support when the Player affixed his initials and signatures on the pages of the two Contract copies submitted for expertise*". Furthermore, no weight should be attributed to the differences in lay-out of the pages, since such differences "*can also be observed in the other similar contracts drawn up by TP Mazembe and signed on the same day*." TP Mazembe refers to the Witness Statement of Mr Dony Kabongo, who attended the meeting on which the Second Contract was executed. In this Witness Statement he "*explicitly confirms the authenticity of the Player's signature on all three versions of the Contract*".

330. The evidentiary value of the Witness Statement of Mr Dony Kabongo is very limited, since he did not attend the hearing and was not available for questions and for cross-examination. Thus, there was no possibility to verify Mr Dony Kabongo's declarations. No witnesses were proffered or heard to establish the production process of the Second Contract. Insofar as TP Mazembe submits that the Notary Copy was kept by the Notary and that, therefore, it could not be altered, the Sole Arbitrator notes that the Notary Copy was only handed to the Notary one day after the alleged execution of the Contract and that the Notary was not present, when the Second Contract was signed. Thus, there was (sufficient) time to manipulate the Notary Copy in the same way as the copy that was registered with the FECOFA. The Sole Arbitrator notes that the criticism of the ESDA-examination was voiced by TP Mazembe only after the Second Forensic Report had been issued. TP Mazembe took no issue with this technique after being invited to comment on the First Forensic Report. As for the various elements on which the Expert based her conclusion in the Second Report, the Sole Arbitrator repeats that – when taking individually – they may not be sufficient to cast doubt as to the integrity and authenticity of the document. However, when taking together, and assessed in light of all the accompanying circumstance of the case, they weigh sufficiently to cast serious doubts as to the authenticity of the Second Contract. Consequently, the Sole Arbitrator finds that the presumption of authenticity is rebutted in the case at hand and that it is up

to TP Mazembe to prove the authenticity and integrity of the document in question. The Sole Arbitrator notes that TP Mazembe has failed to do so to the required standard of proof.

331. Based on the foregoing, and after taking into due consideration all the evidence produced and all arguments made, the Sole Arbitrator finds that TP Mazembe failed to prove that the document named as the Second Contract on which it based its claims has been executed by it and Mr Malango.

C. The Consequences of the Above

332. Considering that TP Mazembe has failed to prove the authenticity and integrity of the Second Contract, it cannot base its claims on said contract. The Second Contract cannot be upheld in parts (i.e. without page 2). The Sole Arbitrator notes that he can only rely on a document if it can be attributed in its entirety to the presumed author. This is obviously not the case here. In addition, the pages 1 and 3 of the Second Contract do not contain the *essentialia negotii* of an employment contract according to the FIFA RSTP.

333. Furthermore, TP Mazembe cannot base its claim on the First Contract, since according to its written submissions the latter is "totally irrelevant" for the case at hand. At the hearing, however, TP Mazembe alluded to the possibility that it could also base its claim on the First Contract. Mr Malango objected to this amendment of the matter in dispute. Consequently, the Sole Arbitrator cannot decide on such a newly introduced claim in light of Article R56 of the CAS Code. In view of all of the above, the appeal filed by TP Mazembe must be dismissed and the appeals filed by Mr Malango and Raja accepted and upheld.

334. All other and further motions or prayers for relief are dismissed.

X. COSTS

(…).

* * * * * * *

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by Tout Puissant Mazembe on 30 April 2020 against the decision of the FIFA Dispute Resolution Chamber issued on 21 February 2020 is dismissed.
2. The appeals filed by Mr Ben Malango and Raja Casablanca on 4 and 5 May 2020 respectively against the decision of the FIFA Dispute Resolution Chamber issued on 21 February 2020 are upheld.
3. The decision of the FIFA Dispute Resolution Chamber issued on 21 February 2020 is set aside.
4. (…).
5. (…).
6. All other and further motions or prayers for relief are dismissed.

Seat of arbitration: Lausanne, Switzerland
Date: 24 April 2025

THE COURT OF ARBITRATION FOR SPORT

Ulrich Haas
Sole Arbitrator