

**CAS 2024/A/10607Al-Hilal Club v. Lamin Jarjou & Grenoble Foot 38**

**ARBITRAL AWARD**

**delivered by the**

**COURT OF ARBITRATION FOR SPORT**

**sitting in the following composition:**

President: Prof Luigi Fumagalli, Professor and Attorney-at-Law in Milan, Italy  
Arbitrator: Mr Michele A.R. Bernasconi, Attorney-at-law in Zurich, Switzerland  
Mr François Klein, Attorney-at-law in Paris, France

**in the arbitration between**

**Al-Hilal HK, Omdurman, Sudan**

Represented by Mr Pedro Macieirinha, Attorney-at-law in Vila Real, Portugal

**Appellant**

**and**

**Lamin Jarjou, Gambia**

Represented by Mr Antoine Semeria, Attorney-at-law in Paris, France

**Respondent 1**

**and**

**Grenoble Foot 38, Grenoble, France**

Represented by Mr Ladjel Guebbabi, Attorney-at-law in Grenoble, France

**Respondent 2**

## I. PARTIES

1. Al-Hilal HK (“Al-Hilal” or the “Appellant”) is a professional football club based in Omdurman, Sudan, that competed in the Sudanese Premier League until the season 2021-2022, after which the championship was cancelled. As a result, the Club currently competes in the Super D1, the top-flight tournament of football in Mauritania.
2. Mr Lamin Jarjou (the “Player” or the “First Respondent”) is a professional football player of Gambian nationality, born on 19 February 2002.
3. Grenoble Foot 38 (“GF 38” or the “Second Respondent”) is a professional football club based in Grenoble, France.
4. The First Respondent and the Second Respondent are referred together to as the “Respondents”. The Appellant and the Respondents together are referred to as the “Parties”.

## II. FACTUAL BACKGROUND

5. Below is a summary of the main relevant facts and allegations based on the Parties’ oral and written submissions as lodged with the Court of Arbitration for Sport (the “CAS”). Additional facts and allegations may be set out, where relevant, in connection with the legal discussion that follows. Although the Panel has considered all the facts, allegations, legal arguments and evidence submitted by the Parties in the present proceeding, this Award refers only to the submissions and evidence it considers necessary to explain its reasoning.
6. On 19 July 2022, Al-Hilal signed a transfer agreement (the “Transfer Agreement”) with Casamance Sporting Club, a club from Senegal (the “Casa Sports”) and the Player, under which Casa Sports permanently transferred the registration of the Player to Al-Hilal and the Player accepted the transfer.
7. The transfer fee and its payment terms were established at Article 2 of the Transfer Agreement, as follows:

*“2.1. In consideration of the permanent transfer of the Player’s registration to AL-HILAL CLUB, AL-HILAL CLUB shall pay to CASA SPORTS the total fixed consideration of EUR € 250.000,00 (Two Hundred and Fifty Thousand EUR) and 10% of a future sale (“the Transfer Compensation Fee”). For avoidance of any doubt the transfer compensation fee is in net amount, excluded of any taxes that may arise. Each party shall bear its own taxes, if any, arising under their local regulations (territory).*

*2.2. AL-HILAL CLUB shall be solely responsible for the payment of any levy/fees due to the Football Federation of Sudan or any local or regional football federation in Sudan in respect of its registration of the Player and pursuant to this Agreement.*

*2.3. Furthermore any and all solidarity contributions payments due to third former clubs shall be distributed by CASA SPORTS in accordance with the applicable FIFA RSTP; The amount due as Solidarity Contribution due to each third former club shall be calculated and paid by CASA SPORTS in surplus.”*

8. On 20 July 2022, Al-Hilal entered with Cheikh Oumar Aidara into a “*Commission Agreement*” undertaking to pay him the amount of USD 30,000 as a commission for the transfer of the Player from Casa Sports to Al-Hilal.
9. On 1 August 2022, Al-Hilal and the Player signed an employment agreement (the “*Employment Contract*”), for a period starting on the date of its signature and expiring on 31 July 2027. Schedule 1 attached to the Employment Contract established that the Player would be paid a total of USD 490,000 as follows:
  - Season 2022/2023:
    - Sign-on fee: USD 72,000 (to be paid upon the signing of the Employment Contract);
    - Monthly salary: USD 4,000 (to be paid at the end of each month from 2022 to 2023);
  - Season 2023/2024:
    - Sign-on fee: USD 32,000 (to be paid on 1 August 2023);
    - Monthly salary: USD 4,000 (to be paid at the end of each month from 2023 to 2024);
  - Season 2024/2025:
    - Sign-on fee: USD 42,000 (to be paid on 1 August 2024);
    - Monthly salary: USD 4,000 (to be paid at the end of each month from 2024 to 2025);
  - Season 2025/2026:
    - Sign-on fee: USD 52,000 (to be paid on 1 August 2025);
    - Monthly salary: USD 4,000 (to be paid at the end of each month from 2025 to 2026);
  - Season 2026/2027:
    - Sign-on fee: USD 52,000 (to be paid on 1 August 2026);
    - Monthly salary: USD 4,000 (to be paid at the end of each month from 2026 to 2027).
10. On 15 April 2023, an armed conflict broke out in Sudan, causing *inter alia*, the suspension of all sporting activities.
11. On 3 May 2023, the team of Al-Hilal, including the Player, fled to Egypt, where the pre-season training camp was initially shifted to avoid any problems caused by the political tension in Sudan. Then, the camp was later relocated from Egypt to Tunisia, where the pre-season activities were held at the end of June and early July 2023.
12. On 6 May 2023, the Player flew to Dakar, Senegal, and from there to Gambia.
13. On 20 May 2023, GF 38 transmitted to Al-Hilal an offer to acquire the Player’s services on loan (the “*Offer*”), reading as follows (in its original French text):

*“[...] Prêt du joueur pour la saison 2023/2024 avec une prise en charge intégrale du salaire du joueur par le Grenoble Foot 38, et une option d’achat d’un montant de 250 000 € (date de la levée de l’option restant à définir)*

*Les éléments ci-dessus seront conditionnés aux éléments suspensifs suivants :*

- *Accord du joueur*
- *Enregistrement de la mutation temporaire du joueur en faveur du Grenoble Foot 38 par la Ligue de Football Professionnel.*
- *Avis favorable du médecin du Grenoble Foot 38 lors du passage de la visite médicale.*

*Nous vous prions de croire, Monsieur, en l’assurance de nos salutations les meilleures.”*

14. On 21 May 2023, Mr Nicolas Onissé Berater, the agent of the Player (the “Agent”), contacted Al-Hilal with respect the Offer. By return, Al-Hilal informed the Agent that the Offer was not satisfactory and could not be accepted.
15. On 5 June 2023, the Player’s counsel addressed a letter to Al-Hilal, requesting the payment of the outstanding salaries for March, April and May 2023, amounting to USD 12,000 in total, as follows:

*“[...] Because of the geopolitical situation in Sudan, my client had to flee the country urgently in March and was evacuated via Egypt, Turkey and Senegal to his country of origin, Gambia.*

*Al-Hilal Sports Club is no longer able to provide him with work or pay his wages.*

*On this last point, it turns out that the salaries for March, April and May 2023 have not been paid. [...]*

*The purpose of this letter is specifically to give formal notice to Al-Hilal Club to pay, within 15 days of receipt of this e-mail, the salaries due to Mr Jarjou for the months of March, April and May 2023, i.e. the sum of 12,000 US Dollars.*

*In the absence of payment of this amount within the aforementioned 15-day period, I have already received a mandate from my client to terminate his employment contract for just cause, in application of articles 14 and 14 bis of the FIFA Regulations governing the Status and Transfer of Players.*

*Aware of the extremely tense situation in Sudan and the impossibility for Al-Hilal Sports Club to meet its contractual obligations, my client is obviously not opposed to seeking an amicable solution as provided for in article 10.2 of his employment contract.*

*Any amicable agreement must be reached within the same 15-day period, i.e. before 22 June 2023. [...]*”

16. On 13 June 2023, the Player authorized Ms Nyima Sanyang Jarjusey to collect on his behalf the payment of USD 12,600, which she did on 14 June 2023.
17. On 19 June 2023, Al-Hilal remitted to the Player the outstanding amounts.
18. On 26 June 2023, the Player sent an email to the Secretary General of FIFA seeking assistance with respect to the “*Situation in Sudan*”, in the following terms:

*“I am Lamin Jarjou, a Gambian footballer and former Senegalese international. I was voted Senegal’s top player in 2022, then my club Casa Sport sold me to the Sudanese club Al-Hilal,*

*where I signed a contract until 2027.*

*I am asking for your help because, in light of the civil war that started in Sudan on 15 April 2023, I cannot do my job as a professional footballer in the minimum conditions acceptable.*

*At the start of the conflict, the whole team was confined to the training centre in Omdurman and we quickly saw restrictions on water, food and communication with our families. We were left without any news and training stopped immediately. During those first 10 days of "civil war", the gunfire outside and the explosions had a strong impact on me, and I still often have nightmares.*

*On 25 April, we were evacuated in the back of pick-ups to another Sudanese town on the outskirts of Khartoum. The conditions did not improve, with the same lack of food each day and no training. All our matches were cancelled and we were shut in for a week.*

*We then set off on another bus journey to Egypt, and for several days we waited at the border with other refugees for a visa to enter Egypt.*

*I finally obtained a visa to enter Egypt on 3 May 2023.*

*I spent the night of 3 to 4 May on the border between Egypt and Sudan with hundreds of refugees. In the morning, I entered Aswan and then another long journey to Cairo began.*

*The club bought a single ticket back to Dakar via Istanbul with Turkish Airlines, and I managed to take a flight on 6 May 2023.*

*I then paid my own way to join my mother and sisters in the Gambia.*

*As the club had not paid wages for almost 3 months, I was obliged to hire a lawyer. It was only after receiving the formal notice on 5 June 2023 that the club resolved the situation last Monday, 19 June 2023.*

*Since then, I have received very little news from the club, and the situation in Sudan still has not improved. We are about to enter the third month of conflict. Now, according to the UN High Commissioner for Refugees, more than 500,000 people have fled abroad and more than 2 million have been displaced within the country.*

*The country is a bloody battlefield and more than 2000 people have already died. How can we expect to go back and resume a normal life after this? How can I continue to do my job? Even if the civil war were to end tomorrow, it would take years to rebuild the country and restore a semblance of normality. The championship has come to a halt and is unlikely to resume.*

*On 2 June 2023, my lawyer, Antoine Séméria, asked your team to allow players in Sudan to join a club of their choice on loan for one season from 1 July 2023, as was authorised for players in Ukraine at the start of the conflict there. Unfortunately, the response was that services were overloaded and that FIFA regulations in force had to be complied with.*

*If the FIFA regulations concerning Ukraine do indeed apply to Sudan, I would like to be released from my contractual obligations before 1 July and would ask you to help me with this process.*

*You will understand that my career, my life and that of my family cannot be governed by FIFA being overloaded. I am therefore writing to ask for your help in terminating my contract with Al-Hilal Omdurman. My family and I have been through very difficult times and I cannot imagine returning to Sudan in the short or medium term.*

*Madam Secretary General, you are now my last hope and I will be eternally grateful for the attention and help you give my request. I look forward to a prompt and positive response from you".*

19. On 28 June 2023, the Player arrived in Tunisia for the Club's training camp, but did not participate in any training claiming an ankle injury.
20. On 29 June 2023, the Player requested his passport from Al-Hilal and subsequently, after informing the Club of his intention to quit, left the pre-season camp.
21. On the same day, the Player sent his letter to Al-Hilal terminating the Employment Contract for just cause (the "Termination Letter") for the following reasons:

*"I am writing this letter to inform you of my wish to terminate my employment contract due to the civil war situation in Sudan and the impossibility (moral and financial) of continuing my work as a professional footballer in these conditions.*

*As a reminder, I've signed an employment contract with your Club on 1 August 2022 for a period of 5 years in return for a monthly salary of 4000 US Dollars (four thousand US dollars) plus various bonuses payable on signing and at the beginning of each sporting season.*

*In April 2023, war broke out between the country's ruling army and paramilitary forces.*

*As soon as the conflict broke out, we were confined to the training centre in Omdurman with the whole team, and we quickly experienced restrictions on water and food, as well as difficulties communicating with our families. We were left without any news and training came to a halt straight away. During those first 10 days of 'civil war', the gunfire outside and the explosions left a strong impression on me, and I still have nightmares about them today.*

*On 25 April, we were then evacuated in the back of pick-ups to another Sudanese town on the outskirts of Khartoum, but the conditions didn't improve: there was still a lack of food on a daily basis and no training.*

*Then we set off on another bus journey to Egypt, and for several days we waited at the border with other refugees for a visa to enter Egypt.*

*I finally got a visa to enter Egypt on 3 May 2023.*

*I spent the night of 3 to 4 May at the border between Egypt and Sudan with hundreds of refugees. In the morning I entered Aswan (Egypt) and then started another long journey to Cairo.*

*You paid for me to fly back to Dakar via Istanbul with Turkish Airline. I managed to take off on 6 May 2023.*

*I then paid my own way to Gambia to join my mother and sisters.*

*You stopped paying my wages from March 2023, which forced me to hire a lawyer - again at my own expense - to put you on notice to pay three months' wages (March, April and May).*

*Under threat, you paid these three months' salary on 19 June.*

*You then summoned me to a training course in Egypt, which was due to start on 20 June.*

*The course was cancelled.*

*It was relocated to Tunisia.*

*Out of respect for your club, I went to Tunisia on 28 June 2023 to inform the management (and in particular the coach) of my wish to terminate my contract.*

*Today, faced with the inextricable situation in Sudan and the impossibility for me to carry out my work under normal conditions even though I'm only 20 years old, I'm obliged to terminate my employment contract early for just cause.*

*I don't want to go through the cacuhemar of last April again. I don't want to smell death or see it. I want to work in safety for myself and for my loved ones.*

*The country is on fire and more than 2,000 people have already died. How can I imagine returning to the club and resuming a normal life after that?*

*I tried to find an amicable solution with you through my agent, but you refused a mutual agreement.*

*I therefore have no other option but to terminate my employment contract early for just cause, in application of the FIFA Regulations on the Status and Transfer of Players (applicable according to the employment contract).*

*In accordance with article 14 of the FIFA Regulations on the Status and Transfer of Players, "A contract may be terminated by either party without consequences of any kind (either payment of compensation or imposition of sporting sanctions) where there is just cause".*

*The war situation in Sudan, the trauma endured and the impossibility for me to exercise my profession under normal conditions and the delay in the payment of my wages constitute valid reasons for me to terminate our contractual relationship.*

*This decision constitutes for me a last resort (ultima ratio).*

*Just cause to lawfully terminate an employment contract exists when the fundamental terms and conditions which formed the basis of the contractual arrangement are no longer respected by one of the parties, which is the case here.*

*According to FIFA and CAS case law, the breach is considered sufficiently serious when there are objective circumstances that would render it unreasonable to expect the employment relationship between the parties to continue.*

*War is a case of force majeure that makes it impossible to maintain our contractual relationship.*

*The occurrence of force majeure implies an objective, rather than a personal impediment, beyond the control of the obliged party, that is unforeseeable, that cannot be resisted, and that renders the performance of the obligation impossible. [...]*

*I find myself in this forced situation, which fully justifies the early termination of my employment contract for just cause.*

*This early termination of my employment contract will take effect immediately after this e-mail has been sent.*

*Having said that, I would like to thank you sincerely and warmly for the trust you have placed in me by signing me with your club in August 2022. [...]*

22. On 19 July 2023, Al-Hilal filed a claim with the FIFA Football Tribunal requesting the payment by the Player of a total amount of USD 608,642.92 as compensation for breach of the Employment Contract. The Player, in his answer, filed in turn a counterclaim against Al-Hilal seeking, *inter alia*, the payment of the outstanding salary due for June 2023.
23. On 22 September 2023, the Player signed with GF 38 an employment contract (the "New Employment Contract"), valid as from 22 September 2023 until 31 May 2026, for a monthly salary of EUR 7,000.
24. On 7 March 2024, a decision (the "Appealed Decision") was rendered by the Dispute

Resolution Chamber of the FIFA Football Tribunal (the “DRC”), holding as follows:

- “1. *The claim of the Claimant / Counter-Respondent, Al-Hilal KH, is rejected.*
  2. *The counterclaim of the Respondent / Counter-Claimant, Lamin Jarjou, is partially accepted.*
  3. *The Claimant / Counter-Respondent must pay to the Respondent / Counter-Claimant the following amount(s):*
    - *USD 4,206 as outstanding remuneration plus 5% interest p.a. as from 30 June 2023 until the late of effective payment.*
  4. *Any further claims of the parties are rejected.*
  5. *Full payment (including all applicable interest) shall be made to the bank account indicated in the enclosed Bank Account Registration Form.*
  6. *Pursuant to art. 24 of the Regulations on the Status and Transfer of Players, if full payment (Including all applicable interest) is not made within 45 days of notification of this decision, the following consequences shall apply:*
    1. *The Claimant/Counter-Respondent shall be banned from registering any new players, either nationally or internationally, up until the due amount is paid. The maximum duration of the ban shall be of up to three entire and consecutive registration periods*
    2. *The present matter shall be submitted, upon request, to the FIFA Disciplinary Committee in the event that full payment (including all applicable interest) is still not made by the end of the three entire and consecutive registration periods.*
  7. *The consequences shall only be enforced at the request of the Respondent / Counter-Claimant in accordance with art. 24 par. 7 and 8 and art. 25 of the Regulations on the Status and Transfer of Players.*
  8. *This decision is rendered without costs.”*
25. On 3 May 2024, the grounds of the Appealed Decision were notified to the Parties. In the pertinent portions they read as follows:
- i. as to the “*Main legal discussion and considerations*”:
    - “60. [...] *the matter at hand concerns a claim of a club against a player for breach of contract, including a counterclaim of the player.*
    61. *In this context, the Chamber acknowledged that its task was to decide if the employment contract had been terminated with or without just cause by the player and to decide on the consequences thereof.*
    62. *The DRC duly noted that according to the club, the player terminated the contract without just cause since all outstanding amounts were remitted and the armed conflict that erupted in Sudan on 15 April 2023 does not constitute a force majeure.*
    63. *The members of the Chamber acknowledged that the player on the other hand held that he went through a difficult time while waiting to get out of the country during the armed conflict, that he suffered from a psychological trauma based on that event and that he decided that he would not risk his life again to play football for the club. In support of his position, the player argued that the armed conflict was a force majeure situation, that the club was not able to offer work as agreed in the contract*



since the football season was suspended and that it delayed payments. Further the DRC noted that the player maintained that it was an ultima ratio decision since he already pointed out the circumstances in his default notice dated 5 June 2023 and that he offered to find an amicable solution for the termination of the contract.

64. Analysing the circumstances of the matter at hand, the Chamber acknowledged that the civil war broke out in Sudan on 15 April 2023 and that also the club decided to leave the country with the players for safety reasons. The Chamber has no doubts in accepting that the situation in Sudan by April 2023 was truly precarious, and even dangerous, and that it was understandable that i) the club moved its players outside of Sudan and ii) that (foreign) players did not want to stay in Sudan. As such, the Chamber deemed that the club acted diligently in a very difficult situation, which evidently fell outside the scope of influence of the club and for which it was not to blame.
65. At the same time, the Chamber recognises that because of the armed conflict and the ensuing departure from Sudan as well as the suspension of the competition in Sudan, the circumstances under which the contract was signed on 1 August 2022 had significantly changed to the point that in casu the player could no longer be reasonably expected to honour the contract. Indeed, not only was there no domestic competition for the player to participate in anymore, but also the player all of a sudden had to live and work in a different country (Tunisia), circumstances which he could not have reasonably foreseen when signing the contract and which entailed a material change of the initially agreed conditions of the employment contract.
66. The Chamber rejects the club's line of argumentation that the player misused the armed conflict as an excuse to sign with his new club, as this not being based on any evidence and in fact highly unlikely given that 3 months elapsed between the termination of the contract with the club and the conclusion of the new contract in France. The Chamber further rejects the club's argument that the situation in Sudan had not changed much since 2022, which is also an assertion that cannot be sustained on the basis of the documentation on file. Indeed, it is undisputed that the armed conflict erupted on 15 April 2023, i.e. after the contract had been concluded. Thus, the club cannot pretend that the situation in Sudan did not substantially change in the periods before and after that date.
67. On account of the above, due to the very specific circumstances of the matter at hand, taking into account that the sporting season was suspended and since the conditions of the contract changed significantly when the club decided to travel to a different country for safety reasons, the DRC – without holding any of the parties liable for such – concluded that the parties could no longer perform the contract as initially agreed.
68. Consequently, the Chamber decided that no compensation shall be paid to either party.
69. Based on the above conclusion, the DRC decided to only grant the player his partial salary for June 2023 as well as the reimbursement of his flight costs to Gambia, as established in the contract.
70. In addition, taking into consideration the player's request as well as the constant practice of the Chamber in this regard, the latter decided to award the player interest at the rate of 5% p.a. on the outstanding amounts as from 30 June 2023 until the date of effective payment.
71. On account of the above, the members of the Chamber concluded by rejecting the claim of the club and partially accepting the counterclaim of the player”;

ii. as to the “*Compliance with monetary decisions*”:

- “72. Finally, taking into account the applicable Regulations, the Chamber referred to art. 24 par. 1 and 2 of the Regulations, which stipulate that, with its decision, the pertinent FIFA deciding body shall also rule on the consequences deriving from the failure of the concerned party to pay the relevant amounts of outstanding remuneration and/or compensation in due time.
73. In this regard, the DRC highlighted that, against clubs, the consequence of the failure to pay the relevant amounts in due time shall consist of a ban from registering any new players, either nationally or internationally, up until the due amounts are paid. The overall maximum duration of the registration ban shall be of up to three entire and consecutive registration periods.
74. Therefore, bearing in mind the above, the DRC decided that the club must pay the full amount due (including all applicable interest) to the player within 45 days of notification of the decision, failing which, at the request of the player, a ban from registering any new players, either nationally or internationally, for the maximum duration of three entire and consecutive registration periods shall become immediately effective on the Respondent in accordance with art. 24 par. 2, 4, and 7 of the Regulations.
75. The club shall make full payment (including all applicable interest) to the bank account provided by the player in the Bank Account Registration Form, which is attached to the present decision.
76. The DRC recalled that the above-mentioned ban will be lifted immediately and prior to its complete serving upon payment of the due amounts, in accordance with art. 24 par. 8 of the Regulations.”

### III. PROCEEDING BEFORE THE CAS

26. On 22 May 2024, the Club lodged with CAS a Statement of Appeal in accordance with Article R47 of the Code of Sports-related Arbitration (the “CAS Code”) to challenge the Appealed Decision. In its Statement of Appeal, the Appellant nominated Mr Michele A.R. Bernasconi, Attorney-at-law in Zurich, Switzerland, as an arbitrator.
27. On 7 June 2024, the First Respondent nominated Mr François Klein, Attorney-at-law in Paris, France, as an arbitrator.
28. On 12 June 2024, the CAS Court Office noting the nomination made by the First Respondent, invited the Second Respondent to confirm whether it agreed with it and informed the Parties that, in the absence of an objection, it would be considered that Mr Klein had been jointly appointed by the Respondents.
29. On 12 June 2024 and within the relevant time-limit, the Appellant filed its Appeal Brief with the CAS Court Office, in accordance with Article R51 of the CAS Code.
30. On 13 June 2024, the Second Respondent confirmed its agreement with the nomination of Mr Klein as an arbitrator.
31. On 18 June 2024, the CAS Court Office submitted a copy of the “*Arbitrator’s Acceptance and Statement of Independence Form*” completed by Mr Bernasconi and drew their

attention to the remark he made on that form as well as to the time-limit provided for Article R34 of the CAS Code.

32. On 26 June 2024, the CAS Court Office noted that no challenge had been filed against the nomination of Mr Bernasconi.

33. On 5 July 2024, in accordance with Article R54 of the CAS Code, and on behalf of the President of the CAS Appeals Arbitration Division, the CAS Court Office informed the Parties that the Panel appointed to decide the present matter was constituted as follows:

President: Prof Luigi Fumagalli, Professor and Attorney-at-law in Milan, Italy;

Arbitrators: Mr Michele A.R. Bernasconi, Attorney-at-law in Zurich, Switzerland; and Mr François Klein, Attorney-at-law in Paris, France.

34. On 12 July 2024 and within the relevant time-limit, the Second Respondent lodged with the CAS Court Office its Answer pursuant to Article R55 of the CAS Code.

35. On 15 July 2024 and within the relevant time-limit, also the First Respondent lodged with the CAS Court Office his Answer pursuant to Article R55 of the CAS Code.

36. On 16 July 2024, the CAS Court Office requested the Parties whether they wished a case management conference and a hearing to be held in this case. As a result, correspondence was exchanged between the Parties and the CAS Court Office in that respect.

37. On 26 July 2024, the Appellant sent a letter to the CAS Court Office as follows:

*“1 - The Appellant considers necessary for the sake of a proper decision to be issued in the present matter that a second round of submissions shall be granted to the parties, namely to the Appellant.*

*2 - In fact, the Respondents raise new facts and arguments that need to be replied by the Appellant.*

*3 - Respondent 1 highlights three points:*

- The identity of the Respondent 1;*
- The geopolitical context in Sudan;*
- The preparation of Lamine JARJOU's departure for France and Grenoble's complicity.*

*4 - Respondent 2 argues de defiance of the most elementary rules of procedure; the request for SASP Grenoble Foot 38 to be called to account; and the termination of Mr. Lamin JARJOU's employment contract for just cause.*

*5 - So, it is crucial for the Appellant to reply to such defenses with a new written submission.*

*6 - On the other hand, as to identity of the Player, the Appellant would like to provide a new evidence to demonstrate the allegations 77., 78., 79., 80. and 81. of the Appeal Brief.*

*7 - Firstly, as already shown with Exhibits 13 and 14 of the Appeal Brief, the Player has already conducted actions that aren't liable of someone that acts on good faith.*

*8 - Namely the Respondent 1 have on purpose changed his birthday year, to become “younger”, as per the previous passport, that mentions a date of birth of 19/02/2002. (Exhibit 13 of the Appeal Brief)*

*9 - And his new passport valid, establishes a date of birth of 19/02/2003, with another name and*

*nationality. (Exhibit 14 of the Appeal Brief)*

*10 - Even the place of birth was changed (Exhibits 13 and 14 of the Appeal brief).*

*11 - And this is why the Gambian Club where he played before made a case against him and Casa Sport de Zinguinchor, FSF (Exhibit 18 now attached to the file).*

*12 - Meaning the Respondent 1 can act in a unproper manner to achieve his objective.*

*In view of the aforementioned. the Appellant requests:*

- A second round of written submissions:*
- The acceptance of Exhibit 18 presented by the Appellant related to the identity of the Respondent 1[...].”*

38. On 4 August 2024, the First Respondent, in a letter sent to the CAS Court Office upon receipt of the Appellant’s communication dated 26 July 2024, wrote the following:

*“[...] I would like to inform the Court that I do not understand the appellant’s arguments concerning the nationality and age of respondent 1.*

*This grievance, developed for the first time on appeal, is not only totally misleading, but is also irrelevant to the resolution of the dispute, which concerns only the recognition of a cause of force majeure due to the outbreak of war in Sudan in April 2023.*

*My client has no difficulty in responding to the dilatory and vexatious arguments relating to his age, but awaits the court’s opinion on the need to do so.”*

39. On 9 August 2024, the CAS Court Office *inter alia* informed the Parties of the following:

*“1. Second round of written submissions*

*On behalf of the Panel, the Parties are informed that the latter, pursuant to Article R56 of the Code of Sports-related Arbitration (the “Code”), has decided to dismiss the Appellant’s request for a second round of written submissions, unless both Respondents would expressly agree with such request, by email on or before 16 August 2024.*

*2. Evidentiary measures*

*On behalf of the Panel, the Parties are informed that, pursuant to Article R56 of the Code, the Panel has decided, for the time being, to dismiss the Appellant’s request of 25 July 2024 to file new evidence, unless both Respondents would expressly agree with such request, by email on or before 16 August 2024.*

*Should the Appellant be able to prove that there are exceptional circumstances that justify a late production of evidence, the Appellant is, pursuant to Article R56 of the Code, able to file again such request.*

*Besides, pursuant to Article R44.3 of the Code (applicable by reference of Article R57), the Panel has decided to grant the Appellant’s request for production of evidence by the Respondents formulated under § 91 of its Appeal Brief. Therefore, the Respondents are invited to provide the CAS Court Office, no later than 16 August 2024, the “invitation letter used, to be granted the Schengen Visa to the Respondent 1” and the “player passport in which is stamped the visa granted to the Respondent 1”.*

*The Appellant will then have the opportunity to produce, within a week, written observations strictly limited to those documents.”*

40. On 13 August 2024, the First Respondent (i) with respect to the second round of written

submissions, indicated that “*there is no point ... as there is no need to file new evidence (there are no exceptional circumstances justifying the production of such evidence)*”, and (ii) with respect to the request for information made by the Panel, submitted (a) a copy of the Schengen visa issued by the French authorities on 19 September 2023; (b) the invitation sent by GF 38 on 31 July 2023 (and not 3 August 2023 as previously erroneously indicated) and the visa application of the same day, (c) a copy of the New Employment Contract signed on 31 July 2023, with effect from 1 August 2023; (d) a copy of the plane ticket Brussels / Lyon dated 21 September 2023. With respect to the New Employment Contract, the Player’s counsel indicated that it could not take effect on 1 August 2023, as the Player did not have a visa at the time and the formalities for the contracts’ approval had not been complied with yet, and therefore had to be signed again on 22 September 2023.

41. On 16 August 2024, the Appellant with respect to the question of the late submission of evidence, (i) cited exceptional circumstances justifying its request, being the fact that the new evidence pertained to the First Respondent’s alleged lack of good faith, including discrepancies in age, identity, and nationality, since the First Respondent previously altered his date of birth, presenting conflicting information through two different passports; (ii) pointed to inconsistencies in the statements provided by both Respondents, particularly regarding the Player’s age, nationality, and career history; (iii) noted further discrepancies regarding the Player’s previous clubs, raising questions about the accuracy of the Player’s account; and (iv) confirmed that it intended to submit a new exhibit (Exhibit 18) to establish the Player’s true age, nationality, and career history.
42. On 22 August 2024, the CAS Court Office *inter alia* informed the Parties of the following determinations concerning the pending issues:

“1. Second round of written submissions

*I take note that the First Respondent does not agree with the Appellant’s request for a second round of written submissions and that the Second Respondent did not answer within the prescribed deadline.*

*Therefore, I refer to the CAS letter of 9 August 2024 and confirm that, subject to the indications at paragraph 3 below, no further round of written submissions will take place.*

2. New documents

*I take note that the First Respondent does not agree with the Appellant’s request of 25 July 2024 to file new evidence and that the Second Respondent did not answer within the prescribed deadline. Besides, the content of the Appellant’s letter of 16 August 2024 regarding the filing of a new evidence is duly noted. The First Respondent’s letter of 13 August 2024 and the Appellant’s letter of 16 August 2024 have been duly forwarded to the Panel. The Panel considers that the circumstances put forwards by the Appellant justify the admission of its exhibit 18, which is thus accepted on file in application of Article R56 of the CAS Code.*

*I however advise you that the Panel had taken due note of the First Respondent’s letter of 4 August 2024 and that the admissibility of exhibit 18 on file is without any prejudice to its relevancy to the merits of the case.*

*Furthermore, I take note of the evidence provided by the First Respondent upon request by the Panel.*

3. New observations

*In light of the above, I refer to the CAS Court Office letter of 9 August 2024 and invite the Parties to submit their observations, if any, strictly limited to exhibit 18 filed by the Appellant and to the evidence provided by the First Respondent upon request by the Panel by email on or before 29 August 2024.”*

43. On 26 August 2024, the Second Respondent requested to be authorized to plead in French.
44. On 27 August 2024, the Appellant responded to the correspondence dated 22 August 2024, expressing concerns over inconsistencies in the evidence provided by the First Respondent. More specifically, the Appellant (i) highlighted contradictions and a lack of documentation to confirm key dates and actions, such as the dispatch of correspondence to the French Embassy in Dakar and its response; (ii) underscored a timeline that suggests a strong connection between the Respondents before the alleged invitation on 31 July 2024; (iii) mentioned further contradictions regarding the New Employment Contract. These inconsistencies suggest deliberate manipulation by the First Respondent to obscure the timeline and nature of his contract with the Second Respondent. The Appellant, therefore, requested that additional evidence be provided by the Second Respondent, including emails confirming the visa request, the Embassy’s response, and the Second Respondent’s invitation.
45. On 28 August 2024, the CAS Court Office invited the Appellant and the First Respondent to inform the CAS whether they agreed to allow the Second Respondent to plead in French.
46. On 29 August 2024, the Appellant insisted that the Second Respondent plead in English, “*since it has already been decided that the procedure will be conducted in English*”.
47. On 29 August 2024, the First Respondent submitted his “*Defense brief on exhibit 18 filed by the Appellant and his observation*” making the following considerations:
  - i. the issues regarding his age, nationality, and passport are entirely unrelated to the core matter at hand and have no bearing on the outcome of the case;
  - ii. with respect to the Exhibit 18, presented by the Appellant, which is FIFA’s response to a third-party inquiry regarding eligibility for training compensation and FIFA’s electronic player passport (“EPP”), it should be noted that: (a) he never played for Real de Banjul, a club erroneously added to his record; (b) the dates associated with his time at Elite United are incorrect; (c) Al-Hilal is not mentioned in his EPP; (d) there are two separate entries for Casa Sport, one listing him as an amateur and the other as a professional. However, his contract with Casa Sport was as a professional player from the outset, as it involved an international transfer. Due to the lack of an official contract with Elite United, the club received no compensation, and the Gambian Football Federation took responsibility for issuing and validating the transfer;
  - iii. his Gambian passport is the appropriate document with respect to the matters of age, nationality, and place of birth. Indeed (a) the Appellant used the information from his Gambian passport to obtain for him a Sudanese passport; (b) the

Senegalese passport was a mistake and was never utilized; (c) there is an error in his date of birth, and the name change to Lamine DIADHIOU is a “francization” of his original name; (d) similarly, the additional name “DEDAHYO” on the Sudanese passport is unexplained and was not requested by him; (e) concerning his place of birth, he had no control over the information provided by clubs to authorities for passport issuance and he promptly informed Casa Sport of the incorrect birthdate on his new passport; (f) a similar situation occurred with the Sudanese authorities, who added an extra name to his local passport.

48. On 2 September 2024, the CAS Court Office, noting that the Appellant had not agreed that the Second Respondent pleads in French at the hearing, informed the Parties that the Panel had decided that “*the Second Respondent [was] not authorized to plead in French [...]*”, unless his pleadings were translated by an independent and professional interpreter.
49. On 18 September 2024 and after due consultation with the Parties, the CAS Court Office confirmed that the hearing would be held by videoconference on 10 December 2024.
50. On 13 November 2024, the CAS Court Office issued an order of procedure (the “Order of Procedure”) on behalf of the President of the Panel and invited the Parties to return a signed copy of it, which the Appellant did on 13 November 2024, the First Respondent and the Second Respondent on 18 November 2024.
51. On 25 November 2024, the Appellant sent an email to the CAS Court Office as follows:
- “2.- [...] it must be emphasized that Mr. Nicolas Onissé Berater was the Agent of Mr. Lamin Jarjou and Mr. Jarjou as a party shall endeavour his best efforts, due to his privileged relationship with Mr. Nicolas Onissé Berater to attend at the hearing. [...]
- 5- The attendance of Mr. Lamin Jarjou, as a party in the hearing of the present dispute. is indispensable!
- 6- The absence of Mr. Lamin Jarjou at the hearing will only prove his bad faith in the present dispute.
- 7- The Appellant have expressly requested on his Appeal Brief the presence of Mr. Lamin Jarjou to provide his testimony at the Hearing, according to the Evidence roll provided.
- 8- To provide the testimony about the facts mentioned in points 5. to 91. of the Appeal Brief. [...]
- 11- Accordingly, the Panel shall expressly declare that wishes to hear the testimony of Mr. Lamin Jarjou, and enforce Mr. Lamin Jarjou to endeavor his best efforts to make the attendance of Mr. Nicolas Onissé Berater due to his privileged relationship.”
52. On 27 November 2024, the CAS Court Office on behalf of the Panel expressly invited the First Respondent to attend the hearing personally and to make his best efforts to obtain the participation of Mr Nicolas Onissé Berater, to be heard as a witness.
53. On 10 December 2024, the hearing was held in this case by videoconference further to Articles R44.2 and R57 of the CAS Code. The Panel was assisted by Ms Pauline Pellaux, CAS Counsel. The Panel was joined at the hearing by:

- i. for the Appellant: Mr Pedro Macieirinha and Mr Joaquim de Almeida Pizarro, counsel;
  - ii. for the First Respondent: the Player personally, assisted by Mr Antoine Semeria, counsel;
  - ii. for the Second Respondent: Mr Ladjel Guebabbi and Ms Marine Fardeau, counsel.
54. At the hearing, as a preliminary matter, the Parties confirmed that they had no objection to the appointment of the Panel. The Panel, then, heard the declarations of the witnesses. In that context:
- i. Mr Nicolas Onissé Berater confirmed to be the agent of the Player and declared that the negotiations with GF 38 started only in July 2023, after the termination of the Employment Contract and following contacts with a large number of other clubs through the “*TransferRoom*” platform. The New Employment Contract was then signed in a first text at the end of July in order to obtain a Visa to enter France, and then on 22 September 2023 in order to register it with the French football authorities;
  - ii. Mr Mohamed Ahamed Elshaikh Savas (“Mr Savas”) confirmed that he is a consultant for football matters to Al-Hilal, being a friend of its Vice-President, and that he was involved in the transfer of the Player to Al-Hilal. He added *inter alia* that (a) nobody had complained about the situation in Sudan before the conflict that broke out in April 2023, even though the political situation there was not stable and he had himself experienced turbulences and a *coup* in 2011, when also the championship was suspended for some weeks; (b) when the conflict started, Al-Hilal did everything it could to prospect its players, organizing their travel to Egypt and then to their country or to the new training camp; (c) Al-Hilal immediately paid the outstanding salary due to the Player upon receipt of the letter requesting payment; (d) the Player, after re-joining Al-Hilal in Tunisia, obtained his passport by lying, and without announcing to anybody his intention to terminate the Employment Contract; (e) after the termination, he tried to convince the Player to return to Al-Hilal, but without any threats; (f) no other foreign player raised any issue with respect to the war in Sudan;
  - iii. the Player summarized the events that occurred in Sudan, when the civil war broke, and the travel to Egypt, stating that his first concern in that period was with respect to his safety and no to contractual issues. He further declared that: (a) also other foreign players, after reaching Egypt, returned to their country of origin, and that he travelled from there to Gambia, with the financial support of Al-Hilal, because he wanted to stay with his mother, who was very much concerned about his situation; (b) that he travelled to Tunisia to tell personally to the Al-Hilal’s officers that he had decided to terminate the Employment Contract and that in such situation, in order to obtain his passport, kept by Al-Hilal, he pretended needing it only to complete a transfer of money, concealing his true intention to quit; (c) that Mr Savas tried later to convince him to return to Al-Hilal, putting pressure and offering money; (d) that, because of the events in Sudan and the problems he had, he suffers from post-traumatic stress disorder and has lost his ability to play at the



same level as before.

55. The Appellant, in the context of the deposition of the Player, declared that in a voice message, sent after fleeing Sudan and receiving the payment of the outstanding salaries, the Player confirmed that he was happy to stay in Sudan, and requested the Panel to be authorized to submit it. The Panel, after hearing the Respondents, who objected to the admissibility of this document, and a deliberation, announced its decision not to admit the filing of the new document, since there was no exceptional circumstance justifying its late filing.
56. The Parties were then put in a position to plead in support of their respective cases and, at the invitation of the Panel, to make submissions on the possible relevance of Article 337b, para.2, of the SCO in this case.
57. At the end of the hearing, the Parties confirmed having no objection regarding the conduct of the proceeding and that their right to be heard had been respected.

#### **IV. THE PARTIES' SUBMISSIONS**

58. The following summary of the Parties' positions is illustrative only and does not necessarily comprise each and every contention put forward by the Parties. The Panel, however, has carefully considered all the submissions made by the Parties, even if no explicit reference is made in what immediately follows.

##### **A. The Appellant**

59. In its Appeal Brief, the Appellant submitted its requests for relief as follows:

*"The Appellant hereby respectfully requests the Court of Arbitration for Sports to:*

- a) *Accept the present appeal.*
- b) *Set aside the Appealed Decision in full.*
- c) *To carry out an award that:*
  - a) *Acknowledges that the Appellant did not breach the Contract, and that there was not a force majeure situation;*
  - b) *Rules that the Respondent 1 breached the Contract, and then wrongfully terminated it, without just cause;*
  - c) *Condemns the Respondent 1 to pay compensation to the Appellant Club in the amount of USD 608,642.92 (six hundred and eight thousand, six hundred and forty-two US Dollars and ninety-two cents), plus 5% p.a. as interests as of 29 June 2023, until the effective date of payment; and*
  - d) *Imposes a sporting sanction on the Respondent 1 for contractual breach, in the form of a 4-month suspension from participating in official matches;*
  - e) *The Respondent 1 shall bear the costs of the procedure.*
  - f) *Condemns the Respondent 2 to jointly and severally liable to pay compensation to the Appellant Club in the amount of USD 608,642.92 (six hundred and eight thousand, six hundred and forty-two US Dollars and ninety-two cents), plus 5% p.a. as interests as of 29 June 2023, until the effective date of payment;*

- g) *Grant to the Appellant a contribution towards its legal fees and other expenses incurred in connection with the proceedings, taking in account the complexity and outcome of the proceedings, as well as the conduct and the financial resources of the parties, no less than CHF 5.000.”*

60. In essence, the Appellant requests the CAS to overturn the Appealed Decision, rejecting the Player’s claims of *force majeure* and just cause for the termination of the Employment Contract, and declare the Respondents responsible for breach of the Employment Contract, awarding financial compensation, legal costs and punitive measures in favour.
61. In its submissions, the Appellant first describes the facts it indicates to be relevant, with respect to the Player’s transfer from Casa Sports to Al-Hilal, to the conclusion of the Employment Contract and of the New Employment Contract, and to the events giving rise to the present dispute. In that regard, the Appellant underlines *inter alia* that:
- i. on 19 July 2022, the Transfer Agreement was signed, under which the Player’s registration was permanently transferred from Casa Sports to Al-Hilal. On 1 August 2022, the First Respondent signed a five-year employment agreement valid until 31 July 2027. The Player subsequently relocated to Sudan and fulfilled his professional duties without experiencing any security concerns for several months;
  - ii. because of the disorders in Sudan, the Appellant relocated its team to Egypt and then to Tunisia for safety reasons, covering all expenses. Following the rejection of the Offer and with due consideration of the time needed by GF 38 to obtain a Schengen visa for the Player, the Agent drew up a timetable for the termination of the Player’s Employment Contract. The Appellant paid the Player’s overdue salaries by mid-June. The Player joined the camp in Tunisia on 28 June 2023, but refused to train, claiming a false injury. On 29 June 2023, he fraudulently obtained his passport, left the camp without permission, and abandoned the team a few days before a crucial match, disrupting preparations despite being in a secure environment;
  - iii. on 29 June 2023, the Player unilaterally terminated the Employment Contract, citing *force majeure* due to conflicts in Sudan. However, the Sudan’s political instability predated the Player’s signing in 2022 and all other players continued to fulfil their obligations in safe conditions outside Sudan. The First Respondent can be accused of deception, including providing false information about his age and nationality. These actions, combined with the Second Respondent’s earlier Offer and the direct communication with the Agent, indicate premeditated intent. The timeline of events reveals that the Player signed the New Employment Contract with the Second Respondent on 22 September 2023, despite the French registration window closed on 1 September 2023, rendering him ineligible to play. Therefore, both Respondents acted in bad faith, orchestrating the termination and transfer for mutual benefit.
62. The Appellant, then, makes submissions as to the legal aspects of the dispute. They can be summarized as follows:
- i. as to the Player’s contractual breach:

- a. the First Respondent breached his contractual obligations by leaving the pre-season camp in Tunisia in late June 2023 and failing to participate in team activities. While the Player attributed his non-participation to an ankle injury, Al-Hilal's physical therapist Mr Mohammad Salih Yasen Alfaky found no evidence of such an injury or attempts to treat it and on 10 July 2023 made a statement as follows: *“Regarding lamen jarjo case the player absent the first training session without informing any body about his alibi, i went to check on him he told me that he feels pain in the ankle, the history of the injury didn't seems convincing to me and the physical examination didn't sign for injury, also he didn't attend to clinic to get any treatment and keeps saying he will attend the next training but he didn't”*;
  - b. the Player acted in bad faith, deceiving the staff and failing to fulfil his duties under the Employment Contract. This behaviour constitutes an abusive conduct under Article 14(2) of the FIFA's Regulations on the Status and Transfer of Players (“RSTP”), potentially aimed at forcing the Appellant to accept his departure. FIFA regulations require clubs to take disciplinary measures or request a player's return before terminating a contract for unauthorized absence. However, prolonged absence, lack of communication, and failure to provide a valid explanation can lead to a justified conclusion that the player has terminated the contract implicitly through his actions. The Player's departure and refusal to engage in his contractual duties meet these criteria, violating the obligations he willingly accepted by signing the Employment Contract;
- ii. as to the absence of just cause to terminate the Employment Contract:
- a. under Article 14(1) of the RSTP, the just cause for the early termination of a contract must be assessed based on the specific circumstances of the case. No predefined list of just causes is provided by the RSTP, but the jurisprudence has established several criteria for defining what may constitute it. In general, just cause exists when one party fails to respect the fundamental terms of the contract. A sufficiently serious breach of contractual obligations, such as a breach of trust, can justify termination. The breach must be serious enough to make it unreasonable to expect the employment relationship to continue. Termination should be a last resort, and, in some cases, the party seeking termination must first warn the other party of its unacceptable conduct. Contracts may include specific clauses outlining just causes for termination, providing greater legal security. However, if a dispute arises, the DRC will examine the specific circumstances, even if the contract lists just causes, and may rule that a behavior does not constitute just cause;
  - b. the Respondents argued that the termination was justified due to Al-Hilal's failure to meet financial obligations and the civil war in Sudan. While Sudan has experienced political instability for many years, including coups and a state of emergency, the current civil war was not an unexpected development, and the Respondents' claim does not provide a valid reason for premature contract termination. The Player initially granted the Appellant a 15-day

- period to resolve a financial issue, claiming unpaid amounts; however, the Appellant made every effort to find a solution. The Player was instructed to join the pre-season camp, which was his contractual obligation, and the Appellant ensured he received his owed money on time. The Player later authorized a third party to collect the money on his behalf, confirming that the financial issue was resolved by 19 June 2023;
- c. despite these facts, the Player continued to claim “moral impossibility” to fulfil the Employment Contract. However, his actions, including threatening the Appellant, indicated a desire to breach it from the outset. Even when the situation in Sudan worsened, the Appellant took steps to ensure the Player’s safety, relocating him at its expense;
  - d. the Player was aware of Sudan’s political situation when signing the Employment Contract and staying in the country for 8 months before citing the civil war as a *force majeure* event. However, the crisis in Sudan was not unforeseeable, and *force majeure* does not apply in cases of negligence or failure to mitigate risks. All other team members continued to train without issues, demonstrating that there was no genuine impossibility for the Player to fulfil his obligations;
- iii. the Player failed to provide the Appellant with prior notice or an opportunity to address any alleged contractual breaches before unilaterally terminating the Employment Contract. According to CAS precedents, valid immediate termination requires the aggrieved party to issue a warning, giving the other party a chance to rectify the issue within a reasonable timeframe. The Player’s failure to adhere to this procedure constitutes wrongful termination, making him liable for compensation and potential sanctions;
  - iv. as to the compensation for wrongful termination:
    - a. the Employment Contract’s wrongful termination without just cause entitles the Appellant to compensation under Article 17(1) of the RSTP, which stipulates that the party in breach must pay compensation. The calculation of the compensation is based on the residual value of the contract. As the Player terminated the Employment Contract on 29 June 2023, the compensation amount is determined by the unpaid remuneration until the end of the Employment Contract as set out in Schedule 1 to said Employment Contract and totals USD 379,733.33;
    - b. in addition to the residual value, the unamortized transfer fee Al-Hilal paid to sign the Player from Casa Sports shall also constitute the compensation. The transfer fee paid by the Appellant for the Player was USD 250,000 with an additional USD 30,000 commission paid to Mr Cheikh Oumar Aidara. The Employment Contract was for 5 years, but the Player terminated it early on 29 June 2023, after performing its duties for only 333 days. The unamortized transfer and commission fees, calculated on the basis of the residual value of the Employment Contract, amounts to USD 228,909.59. Therefore, the total

compensation due amounts to USD 608,642.92;

- c. under Article 17(2) of the RSTP, the Second Respondent is jointly and severally liable for this compensation. This provision aims to prevent unjust enrichment of the new club and ensures that the former club receives compensation for the breach of contract, even if the new club did not induce the breach. The new club's liability is automatic and does not depend on fault or involvement in the breach. The club responsible for the player's breach is determined by the first club with which the player was registered after the breach occurred.

63. In summary, the Player's termination of the Employment Contract was premeditated to secure a contract with the Second Respondent, which was signed on 22 September 2023, after the registration period had closed, preventing the Player from playing any matches. The Respondents coordinated to unjustifiably terminate the Employment Contract; as a result, they should be held liable for compensation and subjected to sporting sanctions.

## **B. The First Respondent**

64. In his Answer, the First Respondent requested the CAS to issue an award:

- "A.- Rejecting in full the appeal against the Decision issued by the Single Judge of the Dispute Resolution Chamber with reference FPSD-10972*
- B.- Accepting in full the Decision issued by the Single Judge of the Dispute Resolution Chamber with reference FPSD-10972*
- C.- The Club is ordered to pay all legal costs (30.000 Swiss Francs) and other arbitration expenses."*

65. In essence, the First Respondent requests that the Appeal be dismissed and the Appealed Decision confirmed in its entirety.

66. In support of his position the First Respondent primarily addresses the following points:

- i. with respect to his identity, the evidence confirms that he was born on 19 February 2002 and has consistently played under his Gambian passport in various leagues, including those in Senegal, Sudan and France. A clerical error in a Senegalese passport, issued when Senegal sought to recruit him, mistakenly listed his birth year as 2003, but this passport was never used in the Sudanese league. Moreover, the Appellant itself issued him a Sudanese passport, using the same birth year as his Gambian document, to register him as a local player. This evidence conclusively resolves the issue, dismissing the Appellant's claim as baseless;
- ii. with respect to the geopolitical context in Sudan, since the outbreak of civil war in Sudan on 15 April 2023, the national football championship has remained suspended, with no resumption in sight for the 2023/2024 or 2024/2025 seasons. The ongoing conflict has devastated the country, described by the United Nations as facing one of the worst humanitarian crises globally; as a result, football has become impossible in Sudan, with even the national team and the major clubs like

Al-Hilal forced into exile. Sudan attempted to restart its league with just three teams for the 2025 season. However, this effort failed when one club withdrew after the second match only, leaving just two teams and effectively no championship;

- iii. the Appellant's claim that the Player's departure was orchestrated by his Agent and the Second Respondent is entirely false. The war in Sudan and the resulting inability to fulfil the Employment Contract under its original terms forced the Player to seek opportunities in a more stable country. In search of a new team, his profile was shared with over 100 clubs. GF 38 was the first club to express interest in the Player's profile, with Montreal FC also showing interest. Initial discussions with the Appellant were quickly closed, prompting the Second Respondent to freeze any further talks. It was only after the Employment Contract's termination that negotiations with the Second Respondent resumed. The New Employment Contract was signed on 22 September 2023, three months after the termination of the Employment Contract. Regarding the Schengen visa, the Second Respondent issued the invitation on 3 August 2023, and the visa was obtained by 19 September 2023, a relatively quick process. The Player did not play for the Second Respondent's professional team but was loaned to a Kazakh Football Club.

67. Then, the First Respondent submits *inter alia* the following:

- i. as to the termination of the Employment Contract for just cause:
  - a. under the RSTP, exceptions exist to the principle of contractual stability, allowing unilateral termination under "*just cause*" (Article 14) or "*sporting just cause*" (Article 15). "*Just cause*" is not specifically defined but is assessed on a case-by-case basis, with Article 337 of the Swiss Code of Obligations ("SCO") providing a framework for immediate termination by either party due to circumstances that make continued employment unreasonable. The Panel must assess whether the reasons given by the Player in his Termination Letter were serious enough to justify the early termination of his Employment Contract. This raises the issue of whether a civil war, occurring during the season, constitutes *force majeure* and qualifies as a just cause for termination;
  - b. according to CAS case law, *force majeure* requires an objective, unforeseeable impediment, beyond the obliged party's control, which makes fulfilling contractual obligations impossible. It is narrowly interpreted and does not excuse negligence or lack of diligence (CAS 2013/A/3471; CAS 2021/A/8277). Swiss law stipulates that the legal consequences of *force majeure* depend on whether the impossibility to perform is temporary or permanent, and on the fault of the parties involved. For permanent impossibility, Article 119 of the SCO applies, releasing parties from their obligations. For temporary impossibility, options include setting time limits, seeking performance, claiming damages, or terminating the contract (Articles 107-109 SCO). The CAS has recognized civil war as *force majeure*, as seen in the Egyptian revolution case (CAS 2014/A/3463 & 3464, award of 26 August 2014). The panel in that case concluded that the war, beyond the

parties' control, prevented the club from performing its obligations, limiting liability to the pre-*force majeure* period. Similarly, Article 337 SCO permits termination of employment for just cause when continuing the relationship becomes untenable in good faith. Immediate termination is justified only under severe breaches or persistent lesser violations after warnings. These principles support the relevance of *force majeure* and just cause in the present dispute;

c. the civil war in Sudan, which began on 15 April 2023, between the Sudanese Armed Forces (SAF) and the Rapid Support Forces (RSF), is a catastrophic and unprecedented event. Concentrated in Khartoum and the Darfur region, the war fulfils the criteria of *force majeure*, as it was beyond control, unforeseeable and unavoidable through reasonable measures:

- contrary to the Appellant's claims, the war's intensity and scale could not be anticipated when the Player signed the Employment Contract;
- comparisons with prior conflicts in Sudan, such as those in 2019 and 2021, are invalid, given the vastly higher death toll, displacement and destruction caused by the current conflict;
- the war has rendered professional football in Sudan impossible, with the championship suspended since April 2023. The 2022/2023 season was not completed and the 2023/2024 season did not take place at all, an unprecedented since 1980;
- this disruption prevented the Player from performing the professional duties for which he was hired. During the period from April to July 2023, the Appellant provided no updates, instructions, or training to him, leaving him abandoned and unable to fulfil his role;
- the situation suffered by First Respondent can be described as follows [typos in the original]:

*"1. When the war broke out around the 14 or 15 April, we were in team camp in Omdurman we woke up and saw everyone was quite and started to hear gun shots and think never came across such*

*2. there was no information from the club authorities to inform us about what was happening we just get update from the news about what is happening and the gun shots never stopped*

*3. things started to get worse shortage of food and water if we eat around lunch time we sit until the next day or we kept drinking coca cola and biscuits to put something in our stomach yet still no information from the authorities few of us were in the camp our other teammates went home to stay with there families the Sudanese player only few of them stayed with us which includes the team captain*

*4. our family are worried everyone back home started to contact and see our safety couldnt sleep just thinking everyday how to leave sudan and move to a safe place*

*Before traveling to dongola i texted savas the one responsible to negotiate with the the foreigners who signed for the club he said to me lamin calm things wil change this is ok soon it will pass i told him you are in Germany and*

*asking us to calm everyday we hearing gun shots and we recieved to information from the club you wait i myself to make inquiries*

*When we arrived dongola the situation was calm there not like in Omdurman amd khartoum but yet still we find it hard to eat amd we hardly communicate to our families because there come a time no internet so we find it hard to talk to our families and my mum was very worried she went days without eating she said because she doesn't hear from me nor any update from my the team She then started to contact some of our team officials about my situation*

*5. We spent some days in Dongola then we had visa to move to egypt We started another journey by bus to the border between egypt and sudan in may*

*We spend 2 days in the bother we find it very hard to cross along side other refugees whom are also fleeing the country*

*Alhamdullah after few hours we enter aswan Egypt then in the evening the team paid for us to move to the capital by train*

*When we arrived in the capital the next day they bought me a ticket visa turkey to senegal and i paid my own ticket to gambia where my family is and they said they will refund which they never did*

*And they promise us when we reach egypt they will pay us our salary and my bonus we won for the arab cup which they didn't*

*Since i arrived in gambia my family were glad to see me but the trauma was still in my mind sometimes I sleep at night an my mind goes to the gun shots i heard in sudan it was difficult for me in the early days in gambia [...]"*

- the impact of this situation on the physical and mental health of the First Respondent is supported by the report signed on 16 August 2023 by Professor Lamin Sidibeh, a clinical psychologist (the “Sidibeh Report”), who stated *inter alia* the following:

*“[...] During the first assessment of Mr Lamin Jarjou in May, I observed that he had a very good mental functioning, and there was no pre-existing mental health problem. Nevertheless, it was quite evident that he was traumatized by the war experience in Sudan, and the long time it took under the gunshots with confinement before his evacuation. compounded by the poor living conditions and consequent fear for his life. The Client manifested trauma related symptoms, including depression symptoms, sleep disturbance, intrusive memories, physical symptoms, such as fatigue, and weight loss. He suffered from negative emotions such as irritations, frustration, and anger. In the month of May to June 2023. The Gambian media focused on the Client, and this was very frustrating and embarrassing to him due to his popularity in football. These frustrations were buttressed by the manner in which he was abandoned and treated by the Al-Hilal club for no fault of his. The emotional conditions had developed into a post-traumatic stress disorder (PTSD), mainly as a result of the life threatening experience in Sudan. [...]"*

- d. on the validity and merits of the termination of the Employment Contract for just cause:

- in case of serious employer’s breaches or exceptional circumstances, such as the war in Sudan, the employee is not required to seek the employer’s agreement for termination. The First Respondent demonstrated transparency and loyalty by notifying the Appellant of



the untenable situation in Sudan: firstly, he issued a formal notice on 5 June 2023, citing unpaid wages for 3 consecutive months and highlighting the impact of the war; he also travelled to Tunisia during a team training camp to personally inform his teammates, staff, and management of his intention to terminate the Employment Contract due to the conflict. The Appellant's claim that a prior formal notice was necessary is unfounded, as the 5 June 2023 notice fulfilled the procedural requirements under Articles 12 and 14-bis of the RSTP. Additionally, in cases of just cause an employment contract can be terminated immediately, as it was the case here;

- even before the war in Sudan began, the Appellant failed to pay the Player's March 2023 salary and despite several promises no payments were made. The Player, abandoned by the Appellant, had to personally fund parts of his travel back home and received no updates from the Appellant for 3 months. After multiple unanswered reminders, he sought legal advice and sent a formal notice on 5 June 2023, demanding payment of his wages for March, April, and May within 15 days and proposing an amicable contract termination due to the war and the Appellant's inability to fulfil its obligations. While the overdue wages were eventually paid, the Appellant ignored the termination proposal and failed to provide clarity on his employment situation. Faced with the war's escalation and the impossibility of pursuing his career in Sudan, the Player terminated the Employment Contract for just cause. Before doing so, he informed FIFA on 26 June 2023 and travelled to Tunisia to personally notify his decision to the Appellant's management. Three other players, similarly affected, also terminated their contracts prematurely, including one case officially ruled by FIFA as justified due to non-payment of wages. The Appellant made offers to other players, including proposing transfers to clubs in Tanzania, Rwanda or Mauritania, but these options were unviable for the Player, who did not sign with the Appellant to relocate to such leagues. Since 14 April 2023, the Appellant has only played 10 matches, all in the CAF Champions League, and the Sudanese league has not resumed. Given the war's intensity and risks, it was unreasonable to expect the Player to remain in Sudan;

- ii. on the Appellant's claims for damages and on the Player's request of confirmation of the Appealed Decision:
  - a. the Appellant's claim for compensation of USD 608,642.92 is not only unjustified, but also disproportionate, failing to account for the extraordinary circumstances and the Appellant's breaches of its obligations. In fact:
    - the amount claimed is almost double the total value of the Employment Contract at the time of termination, which was USD 370,000. Considering that the Player only played for 8 months before the league's suspension due to the war, this demand is unwarranted and appears speculative;

- even before the war, Al-Hilal failed to pay the Player’s salaries for 3 months and neglected to provide basic support, including covering his repatriation expenses. Furthermore, after the conflict began, the Appellant abandoned communication with the Player for months, leaving him to fend for himself during a traumatic period;
  - the Player’s experiences during the war were harrowing, including dangerous evacuations and extended periods without basic necessities. This led to significant psychological trauma, later diagnosed as PTSD, as indicated in the Sidibeh Report, which rendered him unable to continue his duties with the Appellant. This trauma also disrupted his professional career, as evidenced by his struggles to reintegrate into the sport;
  - since the war’s outbreak in April 2023, the Sudanese league has been suspended, with only 10 matches played. The Player’s opportunities to fulfil his role were virtually inexistent, undermining the Appellant’s claim that he failed to meet contractual obligations;
  - the Appellant replaced the First Respondent with a similar player immediately and has sought financial restitution, including a USD 30,000 commission refund, further highlighting an attempt to unfairly benefit at the Player’s expense;
  - the Appellant’s demand for sporting sanctions is legally baseless, as FIFA regulations protect players who terminate contracts for just cause, with provisions which clearly applies here given the exceptional circumstances;
- b. the Appealed Decision is to be confirmed insofar as it ordered the Appellant to:
- “- *grant the player his partial salary for June 2023;*
  - *grant the reimbursement of his flight costs to Gambia, as established in the contract;*
  - *award the player interest at the rate of 5% p.a. on the outstanding amounts as from 30 June 2023 until the date of effective payment;*
  - *pay 10,000 Swiss francs in representation costs”.*

### **C. The Second Respondent**

68. In its Answer the Second Respondent submitted the following prayers for relief, requesting CAS to:

*“JUDGE that at the time of his recruitment by SASP GRENOBLE FOOT 38 on 23.09.2023, Mr. Lamin JARJOU was free of any contractual commitment,*

*CONSEQUENTLY,*

*ORDER AND JUDGE that the AL-HILAL club’s claims against SASP GRENOBLE FOOT 38 are inadmissible,*

*ORDER AND JUDGE that SASP GRENOBLE FOOT 38 be dismissed from the case,*

*TO DISMISS all the claims of the AL-HILAL club against SASP GRENOBLE FOOT 38;*

*IN ANY EVENT*

*NOTING that a civil war of rare violence broke out in Sudan and particularly in Omdurman on April 15, 2023 in the middle of the sporting season, resulting in the cancellation of the entire championship for the 2022/2023 season,*

*RECOGNIZE Mr. JARJOU's state of idleness and abandonment following the outbreak of war in Sudan on April 15, 2023.*

*RECOGNIZE that Mr. Lamin JARJOU's psychological state is not compatible with the resumption of his activity as a professional soccer player with Al-Hilal Omdurman Club.*

*RECOGNIZE that the Sudanese Championship could not be completed for the 2022/2023 season*

*FIND that the Sudanese Championship could not be resumed for the 2023/2024 season (as the championship normally starts in October)*

*DIRECT AND JUDGE that the outbreak of civil war in Sudan and particularly in Omdurman during the season constitutes force majeure*

*ORDER AND JUDGE that the termination of Mr. Lamin JARJOU's employment contract was for just cause in accordance with article 14 of the FIFA Regulations governing the Status and Transfer of Players;*

*ORDER AND JUDGE that Mr. Lamin JARJOU has been free to join the Club of his choice since June 29, 2023, the date of termination of his contract for just cause.*

*CONSEQUENTLY*

*TO DISMISS all the claims of the AL-HILAL club against SASP GRENOBLE FOOT 38;*

*JUDGE that the player's counterclaims are admissible and well-founded*

*ORDER the AL-HILAL club to pay SASP GRENOBLE FOOT 38 compensation of 30,000 Swiss francs for the costs of the proceedings and to pay all costs and expenses of the proceedings."*

69. In essence, the Second Respondent requests that the appeal filed by the Appellant be dismissed: the termination of the Employment Contract with the Appellant was justified due to the *force majeure* caused by the civil war in Sudan and the exceptional circumstances surrounding the case, including the suspension of the Sudanese championship; based on the above, the Second Respondent maintains that the Player was free of any contractual obligations when he joined GF 38 on 23 September 2023.
70. In support of its requests, the Second Respondent submits *inter alia* the following:
- i. the DRC correctly affirmed that the armed conflict in Sudan constituted a substantial, unforeseeable, and insurmountable change in the conditions of the Player's employment. This situation made it unreasonable to expect the Player to honour the Employment Contract. The Appellant failed to prove otherwise or demonstrate any abuse of the conflict by the Player to breach the Employment Contract:
    - a. the civil war erupted on 15 April 2023, after the Employment Contract was signed, drastically altering the Player's living and working conditions. The Player fled Sudan for Tunisia due to safety concerns, and the national

- championship was suspended, effectively nullifying the primary purpose of the contract;
- b. additionally, there was no causal link between the Player's termination of his contract and his eventual signing with the Second Respondent, as three months elapsed between these events;
- ii. the Appellant failed to substantiate its claim that the Second Respondent be found jointly liable with the Player for compensation. Consequently, the Appellant's claim lacks merit and must be dismissed:
    - a. the termination of the Employment Contract was deemed lawful. Therefore, Article 17(2) of the RSTP does not apply in this case;
    - b. the timeline of events confirms that the Player terminated the Employment Contract on 29 June 2023, citing just cause due to the civil war in Sudan, without any prior involvement of the Second Respondent. The Player approached the Second Respondent as a free player on 20 July 2023 and his recruitment was finalized on 22 September 2023, after confirming his contractual freedom;
    - c. a formal complaint was never raised, or a compensation claim made, against the Second Respondent prior to the current proceedings;
    - d. no evidence exists of misconduct by the Second Respondent in the recruitment process or any fault attributable to it regarding the Player's decision to terminate the Employment Contract under extraordinary circumstances;
    - e. moreover, the Player's psychological trauma from fleeing Sudan and the ongoing war further justify his actions, which were unrelated to the Second Respondent.

## V. JURISDICTION OF THE CAS

71. Article R47 of the CAS Code provides as follows:

*“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.*

*An appeal may be filed with CAS against an award rendered by CAS acting as a first instance tribunal if such appeal has been expressly provided by the rules of the federation or sports-body concerned.”*

72. Pursuant to Article 56(1) of the FIFA Statutes (2021 Edition, in force as of 21 May 2021, when the Appealed Decision was issued and the Appellant's appeal was filed with CAS), FIFA recognises the jurisdiction of the CAS to *“resolve disputes between FIFA, member associations, confederations, leagues, clubs, players, officials, intermediaries and licensed match agents”*.
73. Further, pursuant to Article 57(2) of the FIFA Statutes, *“recourse may only be made to*

*CAS after all other internal channels have been exhausted*". The Appealed Decision was issued by the FIFA DRC, and it is not disputed that all internal channels within FIFA have been exhausted.

74. Finally, the jurisdiction of CAS is not disputed by the Parties and was confirmed by them all when signing the Order of Procedure. It follows that the CAS has jurisdiction to hear to appeal filed by the Appellant against the Appealed Decision.

## **VI. ADMISSIBILITY**

75. The Statement of Appeal has been filed on 22 May 2023 against a decision notified on 3 May 2023. It was therefore filed within the 21-day time-limit provided for Article R49 of the CAS Code and Article 57(1) of the FIFA Statutes. It further also complied with the requirements of Articles R48 and R64(1) of the CAS Code, including the payment of the CAS Court Office fee.

76. It follows that the appeal is admissible.

## **VII. APPLICABLE LAW**

77. Pursuant to Article R58 of the CAS Code, in an appeal arbitration procedure before the CAS:

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

78. Pursuant to Article 56(2) of the FIFA Statutes:

*"[t]he 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."*

79. In the course of the arbitration, the Parties made several references to Swiss law and discussed the consequences for the case at stake of several provisions set by the SCO. At the hearing, the Parties confirmed their respective positions that Swiss law applies to the merits of the dispute and gave no indication as to the applicability of any other law. As a result, the Panel finds that the various regulations of FIFA, and chiefly the RSTP, are primarily applicable. Swiss law applies subsidiarily.

## **VIII. PRELIMINARY ISSUES**

80. As mentioned above (§ 55), the Appellant sought at the hearing the authorization to file, or in any case to reproduce live, a voice message sent by the Player to Mr Savas. In the absence of an agreement of the Respondents to such production, the Panel considered the requested filing not to be admissible pursuant to Article R56 of the CAS Code.

81. As it is well-known, that provision, which marks a distinctive feature of CAS appeal arbitration proceedings, prohibits *inter alia* the submission of new evidence after the filing of the appeal brief and the answer, in this way ensuring the rapidity of the procedure and at the same time guaranteeing *due process*, i.e. the right to be heard, insofar as it avoids the “surprise effect” of a late introduction of evidence and gives all parties the possibility to be aware ahead of the hearing of the evidence before the Panel. However, exceptions are contemplated, in order to allow some flexibility in the application of the rule: new evidence can be adduced if the other party agrees or, in the absence of an agreement, if the President of the Panel so allows based on “exceptional circumstances”.
82. In the present case, the Panel considered at the hearing, and confirms in the present Award, that no “exceptional circumstances” have been established by the Appellant to justify the late introduction of the voice message as new evidence. The Panel in fact notes that such voice message has been available to Mr Savas, an Appellant’s advisor apparently very close to the Vice-President of Al-Hilal and very much involved in the management of the contractual relations with the Player, since it was sent (on an unidentified date after the Player’s receipt of the outstanding salary), but had not been filed before the DRC and before CAS together with the written submissions. At the hearing, when requested by the Panel to specify the “exceptional circumstances” invoked to deviate from the basic principle established by Article R56 of the CAS Code, the Appellant’s counsel only referred to the fact that he discovered the voice message just the day before the hearing. The Panel finds this justification to be insufficient, since no explanation was offered to explain why the message was “discovered” only on the day before the hearing. In addition, the Panel notes that no explanation was offered at all to indicate why no notice to the Panel and the Respondents had been given to inform them of the “discovery” as soon as it took place.
83. As a result, the Panel finds no reason to depart from the rule established at Article R56 of the CAS Code and confirms that the new evidence offered at the hearing by the Appellant could not be admitted.

## **IX. MERITS**

84. The dispute heard in this arbitration concerns the termination of the Employment Contract by the Player, as declared on 29 June 2023. The Player and the DRC considered such termination to be justified; the Appellant denies the existence of a just cause for termination and considers it to be wrongful, exposing the Respondents to financial and disciplinary consequences.
85. As a result, the Panel notes that at the heart of the dispute is the question whether there was a just cause for a unilateral premature termination of the Employment Contract. The Player submits in essence that the civil war that broke out in Sudan in April 2023, and the consequences it produced, fully justified his termination. The Appellant denies the point, on the basis of several reasons.
86. In light of the foregoing, the Panel remarks that no financial reasons have been invoked as a cause for the termination of the Employment Contract. More specifically, the Panel

notes that, when the Termination Letter was sent, Al-Hilal had fully complied with its payment obligations. Indeed, when the Player raised the issue in the letter of 5 June 2023, he was promptly paid by Al-Hilal. In the same way, the Panel underlines that no other violations of the Employment Contract by Al-Hilal have been invoked by the Player.

87. In summary, and in other words, the issue before this Panel is whether the civil war (and not a contractual violation) that broke out in Sudan in April 2023, and the consequences it produced, constituted a “just cause” for termination under the applicable rules.

88. The concept of “just cause” is mentioned by Article 14(1) of the RSTP, according to which:

*“A contract may be terminated by either party without consequences of any kind (either payment of compensation or imposition of sporting sanctions) where there is just cause.”*

89. FIFA explained in the Commentary of the RSTP (2023 Edition) that (emphasis added):

*“Whether a party has a just cause to prematurely terminate a binding contract must be assessed for each individual case and in consideration of all the specific circumstances.*

*The Regulations do not provide a definition, nor a defined list of what would generally be considered a just cause. It is impossible to capture all potential conduct that might be considered just cause for the premature and unilateral termination of a contract. However, over the years, jurisprudence has established several criteria that define, in abstract terms, which combinations of circumstances should be considered just causes.*

*A contract may only be terminated prior to the expiry of the agreed term where there is a valid reason to do so. In several awards, CAS has drawn a parallel between the concept of “just cause” as defined in article 14, Regulations and the concept of “good cause” in article 337 paragraph 2 of the Swiss Code of Obligations (SCO). Good cause (and thus just cause) to lawfully terminate an employment contract exists when the fundamental terms and conditions which formed the basis of the contractual arrangement are no longer respected by one of the parties. [...]*

*CAS has returned to the topic of what is to be considered just cause on several recent occasions. In an award rendered in October 2021 [CAS 2020/A/7253], CAS once again noted that it had to refer to the principles of Swiss law and CAS jurisprudence to define “just cause” as the Regulations do not provide any definition of this term. According to that award, just cause exists when the relevant breach by the other party (or **other impeding circumstances**) is of such nature, or has reached such a level of seriousness, that the essential conditions under which the contract was entered into are no longer present and the injured party cannot in good faith be expected to continue the employment relationship, to be established on a **case-by-case basis**.”*

90. In other words, two points have to be noted:

- i. the violation of a contract by one party is the main, but not the exclusive, situation in which a just cause for termination may arise, since “*other impeding circumstances*” can be considered to justify the termination, if they are of such nature that the essential conditions under which the employment contract was entered into are no longer present and the affected party cannot in good faith be expected to continue the employment relationship; and
- ii. the evaluation of the existence of a just cause must be made on a “*case-by-case basis*”.

91. In light of the foregoing, it is not necessary to verify whether Al-Hilal complied with its contractual financial and other obligations and did what it could, when the civil war in Sudan exploded in April 2023 and the players had to be evacuated, after a period of confinement in the training centre, to Egypt and a training camp was organized abroad. The efforts made by Al-Hilal in the circumstances of the case have also been recognized by the DRC in the Appealed Decision, where it confirmed that “*the club acted diligently in a very difficult situation, which evidently fell outside the scope of influence of the club and for which it was not to blame*”. In fact, as said, a just cause for a party to terminate a contract can exist irrespective of a violation of that contract by the other party. Therefore, the compliance by Al-Hilal with its financial and other obligations under the Employment Contract does not exclude that a just cause may have arisen for the Player to terminate it.
92. In the same way, it is not necessary to verify whether all conditions are met for a finding of existence of a *force majeure* situation in the case of the Player, since a “just cause” may exist beyond the strict limits of the occurrence of a *force majeure* situation.
93. The applicable FIFA rules and regulations are indeed silent on the concept of *force majeure*, however widely and internationally accepted.
94. The legal concept of *force majeure* is in fact recognized and applicable under Swiss law, even though no statutory definition of *force majeure* is offered. According to the Swiss Federal Tribunal, there is *force majeure* in the presence of an unforeseeable and extraordinary event which is not related to the business of the company, but interferes from an external source with inevitable force (BGE 102 Ib 257; see also WERRO F., in *Commentaire Romand*, 2<sup>nd</sup> ed., ad Art. 41 CO No 46).
95. The concept of *force majeure* is also known in CAS jurisprudence. In CAS 2015/A/3909 the panel held that “*force majeure takes place in the presence of extraordinary and unforeseeable events that occur beyond the sphere of activity of the person concerned and that impose themselves on him/her in an irresistible manner*”. According to other panels, “*force majeure implies an objective (rather than a personal) impediment, beyond the control of the ‘obliged party’, that is unforeseeable, that cannot be resisted and that renders the performance of the obligation impossible*” (CAS 2021/A/8277, para 87 with further references to CAS 2018/A/5537; CAS 2017/A/5496; CAS 2013/A/3471, para. 49; CAS 2006/A/1110; CAS 2002/A/388). In addition, according to a consistent approach taken by CAS case law, the conditions for the occurrence of *force majeure* should be interpreted strictly and narrowly, since they may introduce an exception to the binding force of an obligation (CAS 2021/A/8277, para 89 with further references; CAS 2021/A/8156, para 113 with further references to CAS 2018/A/5537; CAS 2017/A/5496; CAS 2013/A/3471, para. 50; CAS 2006/A/1110; CAS 2002/A/388).
96. In this case, it might be doubted that the civil war (an event undoubtedly beyond the sphere of control of the parties to the Employment Contract and that imposed itself on them in an irresistible manner) made the performance by the parties absolutely and finally impossible. In the end, Al-Hilal relocated abroad and resumed its sporting activities.
97. However, the supervening event (the civil war) was of a magnitude not comparable to other disorders (even armed conflicts) that had occurred in the past (as proved by the



efforts made to escape from Sudan as soon as feasible) and was unexpected (as shown by the fact that the ordinary football activities had been planned and organized until the events occurred) to Al-Hilal itself. Therefore, the Appellant cannot “blame” the Player for having joined it in full knowledge of the risks of being in Sudan: not even Al-Hilal expected the outbreak of the civil war (in the magnitude it did).

98. Such event radically changed the conditions on the basis of which the Employment Contract had been concluded by Al-Hilal and the Player. The Employment Contract was in fact stipulated for the Player to play in a Sudanese championship, organized under the rules of the Sudan Football Association. However, the championship in Sudan was interrupted and could not be resumed; Al-Hilal had to relocate abroad and eventually participate in a foreign championship. In other words, because of the civil war and the consequences it had produced, Al-Hilal was no longer in a condition to perform under the Employment Contract. The Player was therefore entitled to terminate it, since the essential conditions under which it had been entered into were no longer present and the Player could not in good faith be expected to continue the employment relationship.
99. The fact then that the Player terminated the Employment Contract only around two months after leaving Sudan and (presumably) after acquiring the concrete expectation of signing a new employment contract does not change the conclusion with respect to the fact that the basis of his employment with Al-Hilal had already fundamentally changed. It is therefore unnecessary to verify (as requested by the Appellant: § 44 above) the circumstances in which the Player applied for a “Schengen visa” after the occurrence of the event which radically changed the conditions on the basis of which the Employment Contract had been concluded. In the same way, all aspects relating to the nationality, name, date of birth and passports of the Player, or to the alleged mendacity of his declarations when he obtained the return of his passport after re-joining Al-Hilal in Tunisia, are irrelevant. Finally, the Panel notes that no evidence has been adduced in this arbitration, and according to the rules governing it, to prove that, in the period between the outbreak of the civil war and the termination of the Employment Contract, the Player had positively accepted to continue his employment with Al-Hilal even in the new circumstances. Indeed, the operations of Al-Hilal resumed in June 2023 and in the letter of 5 June 2023 the Player referred to the extremely tense situation in Sudan and to the Al-Hilal impossibility to meet its contractual obligations as a reason to come to a termination of the Employment Contract by mutual agreement.
100. As a result, the Panel concurs with the observations of the DRC that the Player was entitled to terminate the Employment Contract with just cause, with no consequences for him.
101. At the same time, the Panel notes that no specific criticism (beyond the denial of owing anything to the Player) has been advanced against the decision of the DRC to order *inter alia* the payment of the June 2023 salary. Beyond that, and in any case, the Panel finds that such payment was due: it is true that the Player in the month of June 2023 rendered no service to Al-Hilal, but in that period the Club was also late in paying the salaries due for the preceding months, and the Player joined Al-Hilal as soon as the payment was received.

102. In summary, the Appealed Decision must be entirely confirmed and the Appeal dismissed.
103. The above conclusion makes unnecessary to consider any of the additional prayers for relief and requests made by the Parties. Accordingly, all the other motions or prayers for relief are dismissed.

**X. COSTS**

(...).

## **ON THESE GROUNDS**

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

1. The appeal filed on 7 January 2022 by Al-Hilal HK against the decision rendered by the FIFA Dispute Resolution Chamber on 7 March 2024 is dismissed.
2. The decision rendered by the Dispute Resolution Chamber of the FIFA Football Tribunal on 7 March 2024 is confirmed.
3. (...).
4. (...).
5. All the other motions or prayers for relief are dismissed.

Seat of arbitration: Lausanne, Switzerland

Date: 10 April 2024

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

Luigi Fumagalli  
President of the Panel

Michele A.R. Bernasconi  
Arbitrator

François Klein  
Arbitrator