



**TAS / CAS**

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

**CAS 2022/A/8669 Anita Adonga *et al.* v. Football Kenya Federation (FKF), Confederation of African Football (CAF) & Federation of Uganda Football Associations (FUFA)**

## **ARBITRAL AWARD**

delivered by the

**COURT OF ARBITRATION FOR SPORT**

sitting in the following composition

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

in the arbitration between

**Mss Anita Adongo, Marcy Airo, Samantha Akinyi, Lucy Akoth, Sheril Angachi, Mercyline Anyango, Lavender Atieno, Janet Moraa Bundi, Vivian Corazone, Tereza Engesha, Nuru Hadima, Wincate Kaari, Martha Karani, Pauline Kathuruh, Enez Mango, Vivian Nasaka, Lorna Nyarinda, Phoebe Owiti, Nelly Sawe, Marjolen Nekesa Wafula, Elizabeth Wambui and Violet Wanyoni, (“Ms Anita Adongo *et al.*”), Republic of Kenya**

Represented by Mr Tom Seamer, Mr William Sternheimer and Mr Ben Cisneros, Morgan Sports Law, Lausanne, Switzerland

**Appellants**

and

**Football Kenya Federation, Republic of Kenya**

Represented by Mr Charles Njenga, Attorney-at-Law, MKN & Company, Nairobi, Republic of Kenya

**First Respondent**

**&**

**Confederation of African Football, Arab Republic of Egypt**

Represented by Mr Nadim Magdy and Mr Felix Majani, Counsels, Arab Republic of Egypt

**Second Respondent**

**&**

**Federation of Uganda Football Associations, Republic of Uganda**

Represented by Mr Moses Magogo Hassim, President, and Mr Suubi Watson Edgar Nigel,  
General Secretary, Kampala, Republic of Uganda

**Third Respondent**

\* \* \* \* \*

## **I. PARTIES**

1. Mss Anita Adongo, Marcy Airo, Samantha Akinyi, Lucy Akoth, Sheril Angachi, Mercyline Anyango, Lavender Atieno, Janet Moraa Bundi, Vivian Corazone, Tereza Engesha, Nuru Hadima, Wincate Kaari, Martha Karani, Pauline Kathuruh, Enez Mango, Vivian Nasaka, Lorna Nyarinda, Phoebe Owiti, Nelly Sawe, Marjolen Nekesa Wafula, Elizabeth Wambui and Violet Wanyoni (“Anita Adongo *et al.*” or the “Appellants”) are all football players of Kenyan nationality who are part of the Kenya Women’s National Football Team (the “KWNFT”), which is operated by the Football Kenya Federation.
2. The Football Kenya Federation (the “FKF” or “First Respondent”) is the national governing body of football in Kenya. The FKF is affiliated to the Confédération Africaine de Football.
3. Confédération Africaine de Football (the “CAF” or “Second Respondent”) is the governing body of football in Africa, which is in turn affiliated to the Fédération Internationale de Football Association (“FIFA”).
4. The Federation of Uganda Football Associations (the “FUFA” or “Third Respondent”) is the national governing body of football in Uganda. The FUFA is affiliated to the CAF, which is in turn affiliated to FIFA.
5. The Appellants and the Respondents are jointly referred to as the “Parties”.

## **II. FACTUAL BACKGROUND**

6. Below is a summary of the main relevant facts, as established by the Sole Arbitrator on the basis of the written submissions of the Parties, the virtual-hearing and the evidence examined in the course of the proceedings. This background information is given for the sole purpose of providing a synopsis of the matter in dispute. Additional facts may be set out, where relevant, in the legal considerations of the present Award.
7. Prior to the events giving rise to the present proceedings, the KWNFT was participating in the qualifying rounds of the Women’s Africa Cup of Nations 2022 (the “WAFCON 2022”).
8. The KWNFT was scheduled to play against the Uganda Women’s National Football Team (the “UWNFT”) in the second qualifying round of WAFCON 2022 on 14 and 23 February 2022 (the “Matches”). The winner of the Matches (on aggregate) would qualify for the group stage of the WAFCON 2022, which are held in Morocco between 2 and 23 July 2022.
9. On 11 November 2021, a statement was published by Amb. Dr. Amina Mohamed, the Cabinet Secretary of the Kenyan Ministry of Sports, Culture and Heritage on the preliminary findings of the FKF Inspection Report (the “Statement”). In the Statement it was indicated that after an inspection by the Registrar of Sports pursuant to Section 52 (1) of the Kenyan Sports Act (2013) following an extended deterioration

of the state of football management in Kenya, the Ministry of Sports Culture and Heritage had ordered, *inter alia*, to remove the current officials of the FKF from office and to appoint a Caretaker Committee for a period of six months (the “Ministerial Order”).

10. The Statement provided, *inter alia*, the following about the Ministerial Order:

**“PRESS STATEMENT BY AMB. (DR.) AMINA MOHAMED, EGH, CAV, CABINET SECRETARY, MINISTRY OF SPORTS, CULTURE AND HERITAGE ON THE PRELIMINARY FINDINGS OF THE FOOTBALL KENYA FEDERATION INSPECTION REPORT**

*On 14th October 2021, I directed the Registrar of Sports to undertake an inspection of the Football Kenya Federation pursuant to Section 52 (1) of the Sports Act (2013) following an extended deterioration of the state of football management in Kenya.*

*The Sports Act allows the Ministry to intervene in the management of sports organizations where a sports organization fails to adhere to proper corporate governance processes that include financial management.*

*Over the past few years, the Football Kenya Federation has faced several governance issues that have been of great concern to the Ministry. First, the Football Kenya Federation has failed to account for all the monies allocated to it by the Government. All beneficiaries of the Fund are as a matter of course trained on how to apply, utilize and account for the funds. The beneficiaries are also aware that they are required to fully disclose any financial assistance received from other sponsors. Football Kenya Federation has fallen short of this requirement.*

*After sixteen days of hard work, the Committee appointed by the Registrar delivered a report to the Registrar. The Registrar has forwarded the report to my office with the following recommendations:*

1. *DCI, NIS and EACC carry out further investigation to establish the extent to which the misappropriation of funds in FKF may have occurred with a view of prosecuting those who may be found culpable.*

*The current officials of FKF are removed from office to pave way for further investigations pending conclusion.*

2. *A Caretaker Committee is appointed to manage the affairs of FKF for a period not exceeding 6 months. This has been successful in other jurisdictions in recent years, the likes of Cameroon, Egypt, Ghana and Chad amongst others.*

*A special audit of the books of accounts of FKF be carried out and subsequent frequent future audits.*

3. *The government of Kenya should invoke Article 17 and 58 of the FIFA Code of Ethics (2020 edition) by informing FIFA Secretariat*
4. *Investigation Chamber on the outcome of the Inspection.*

5. *No bank account should be opened by FKF henceforth unless authorized by the Principal Secretary within the six-month period the caretaker committee will be in place.*
6. *The Ministry of Sports culture and Heritage and the Sports, Arts and Social Development Fund not to release any funds to FKF unless and until the previous funds are fully accounted for.*
7. *The Government to continue its public sensitization program through the Registrar’s office to enable members of the public, sports organizations, professional sports bodies, persons and officials to be well versed with Sports Act and all the other relevant laws.*

*Following these recommendations and in order to preserve the sport of Football, I have decided to appoint a Football Kenya Federation Caretaker Committee comprising of the following for a period of six-months.*

[...].”

11. With regard to the mandate of the appointed Caretaker Committee, the Statement provided the following:

*“The mandate of the Caretaker Committee shall comprise of the following:*

1. *Conduct all the affairs of Football Kenya Federation in accordance with its constitution. Ensure that Football Federation of Kenya is in compliance with the Sports Act (2013)*
2. *Coordinate and ensure smooth running of FKF’s operations including team preparations of all local and international sporting events*
3. *Coordinate elections of FKF in accordance to the Sports Act (2013) and the Sports Registrar’s regulations*
4. *Hand over Football Kenya Federation to the newly elected officials after a successful election*

*The Ministry of Sports Culture and Heritage shall facilitate the operations of the Caretaker Committee.”*

### **III. DECISION OF THE FKF TO WITHDRAW THE KWNFT FROM THE QUALIFYING ROUNDS OF WAFCON 2022**

#### **A. Letter of the FKF dated 20 January 2022 to withdraw the KWNFT from WAFCON 2022**

12. By a letter dated 20 January 2022, the FKF – represented by the General Secretary Mr Barry Otieno (“Mr Otieno”) – informed the CAF about the withdrawal from the KWNFT from the Matches and thus from WAFCON 2022 (the “Appealed Decision”). In the Appealed Decision the following, *inter alia*, was stated:

**“VERON MOSENGO-OMBA**

***THE GENERAL SECRETARY,***

***CONFEDERATION OF AFRICAN FOOTBALL,***

***CAIRO, EGYPT.***

**RE: KENYA VS UGANDA 2022 AWCON QUALIFIER MATCHES**

*Dear General Secretary,*

*Reference is made to the press statement released by the Cabinet Secretary for Sports, Amb. Amina Mohammed, on November 11, 2021, disbanding FKF and installing an FKF Caretaker committee and a secretariat to oversee all football activities in the country.*

*Further, the Cabinet Secretary also ordered for the immediate lock down of the FKF premises, denying all FKF staff access to the office. A situation that has completely incapacitated the federation’s operations.*

*In view of the above and taking into consideration the existing government directive, taking over all footballing activities, the federation is unable to independently plan and successfully execute any international matches, which includes the upcoming Kenya vs Uganda AWCON 2022 qualifier matches, scheduled to take place within the February 14, 2022 to February 23, 2022 FIFA window.*

*However, the federation will keep CAF informed, should the aforementioned situation change and the FKF Secretariat regains access to the FKF premises and is able to fully control footballing activities in the country.*

*We thank you for taking note and for your good understanding.*

*Yours Faithfully,*

***Barry Otieno***

**General Secretary/ CEO**

***CC: CAF Competitions.”***

**B. Events following the Appealed Decision**

13. Following the Appealed Decision, the CAF – by email of 24 January 2022 – enquired from the FKF regarding its intention to withdraw the KWNFT from the qualifying rounds of WAFCON 2022. In the email the following was stated:

*“Dear Sir*

*Hope my email finds you well.*

*We acknowledge receipt of the attached correspondence.*

*Kindly confirm that accordingly Kenya is officially withdrawing from the WAFCON in order to enable us to inform all concerned parties.*

*On the other hand, kindly note that FIFA is not concerned or responsible of WAFCON or any African qualifiers , it is CAF that is managing their own competitions and qualifiers , so you don't have to copy FIFA .*

*Awaiting your feedback concerning the confirmation of the withdrawal of KFF.*

*Best regards*

*Heba S Abdalla*

*Senior Manager Women & Futsal | Competitions*

*Confédération Africaine de Football.”*

14. On 26 January 2022, the FKF, through Mr Otieno, confirmed by email to the CAF its intention to withdraw the KWNFT from WAFCON 2022. In the email the following was stated:

*“Dear Heba,*

*As mentioned in our earlier correspondence the federation will not be able to independently plan and execute the upcoming WAFCON qualifiers against Uganda due to the reasons expounded in our letter dated January 20,2021.*

*For the last two months the FKF Secretariat has been locked out of office by the Kenyan Minister of Sports, making it impossible to undertake any form of footballing activities, including the assembling of national teams to take part in international assignments.*

*In light of the aforementioned, the federation wishes to reiterate it will not be assembling a team to play against Uganda in the upcoming WAFCON qualifiers nor make any arrangements towards honoring [SIC.] the match.*

*We thank you for taking note and for your good understanding.*

*Best Regards,*

*Barry Otieno*

*General Secretary/CEO.”*

15. On 27 January 2022, the CAF again requested per email clarity regarding the withdrawal of the KWNFT from WAFCON 2022. In the email the following was stated:

*“Dear Mr. Barry,*

*Hope my email finds you well.*

*I am kindly reconfirming that as per your previous communication and below email that **Kenya Senior national team is withdrawing from the matches of the second round of WAFCON 2022** before applying the withdrawal on CMS and informing all concerned parties.*

***Kindly reconfirm the situation.***

*Awaiting your feedback.*

*Best regards*

*Heba S Abdalla*

*Senior Manager Women & Futsal / Competitions.”*

16. On 28 January 2022, the FKF confirmed by email that it officially withdrew the KWNFT from the qualifying rounds of WAFCON 2022. In the email the following was stated:

*“Dear Heba,*

*We trust you are well.*

*Further to your email and our previous communications, we wish to confirm that FKF will not be assembling a team to play against Uganda in the upcoming WAFCON qualifiers nor make any arrangements towards honoring [SIC] the match.*

*Therefore, we wish to confirm that the federation officially withdraws its Senior national team from the matches of the second round of WAFCON 2022.*

*Best Regards,*

*Barry Otieno*

*General Secretary/CEO.”*

17. On the same date, the CAF gave effect to the Appealed Decision, confirming the withdrawal of the KWNFT from WAFCON 2022. Subsequently, the CAF cancelled the Matches and declared that as a result Uganda automatically qualified for the next round of WAFCON 2022 (the “CAF Decision”). In the CAF Decision the following, *inter alia*, was concluded:

***“Withdrawal [SIC] Kenya- Wafcon MOROCCO 2022 / Retrait Kenya-CAN Féminine MAROC 2022***

*[...]*

***TO ALL CONCERNED PARTIES***

***MATCHES 45 & 46 UGANDA vs KENYA***



*WOMEN AFCON- MOROCCO 2022*

*Dear Sir, Madam*

*We regret to inform you that we have just received from Kenya FA a correspondence informing us of their withdrawal from Women AFCON-MOROCCO 2022*

*Consequently, matches 45 & 46 are cancelled as well as the missions of all designated officials.*

*On the other hand, kindly note that Uganda is automatically qualified of the next round of the competition.*

*Kind regards*

*Heba S Abdalla*

*Senior Manager Women & Futsal | Competitions.”*

18. On the same date, the FUFA published a statement in which the KWNFT's withdrawal of WAFCON 2022 was announced. The statement reads as follows:

***“Crested Cranes To Play At 2022 Total Women's Africa Cup Of Nations***

*Uganda Senior Women's National Football Team, the Crested Cranes will play at this year's Total Women's Africa Cup of Nations following the withdrawal of Kenya.*

*The Crested Cranes who entered camp this week were supposed to face Kenya in the last qualifying stage next month.*

*It should be noted that Crested Cranes were slated to face off with Harambe Starlets next month with the first leg scheduled for 17th February and the return leg coming on 23rd February.*

*However, communication from CAF addressed to FUFA confirmed the withdrawal of Kenya from the Qualifiers.*

*“We regret to inform you that we have just received Kenya FA's correspondence informing us of their withdrawal from Women AFCON- Morocco 2022,” reads the statement.*

*“Consequently, matches 45 and 46 are cancelled as well as the missions of all designated officials.” The statement further reads.*

*The development therefore means Uganda qualifies to the 2022 edition that will be held in August in Morocco.*

*“Uganda is automatically qualified to the next round of the competition.” the CAF Communication further reads.*

*This will be the second appearance for Crested Cranes at Africa Women Cup of Nations with the first coming in 2000.*

*Uganda eliminated Ethiopia at the first round of the 2022 Total Women's Africa Cup of Nations Qualifiers."*

19. On 16 February 2022, Mr Justice (Rtd) Aaron Ringera, the President of the FKF Caretaker Committee, addressed the Appealed Decision and its consequences. In this speech he stated, *inter alia*, the following:
- The letter dated 20 January 2022 which was sent by Mr Otieno on behalf of the FKF, was sent without the authority of the FKF Caretaker Committee.
  - Mr Otieno's assertions that the KWNFT was unable to play the Matches were untrue and that "*all efforts have been put in place to enable the girls to train effectively, including getting a new coach and a technical team for the [KWNFT]*".
  - On 30 January 2022, the FKF Caretaker Committee wrote to the CAF indicating the FKF's readiness to host the Matches and requested that the KWNFT's withdrawal be rescinded.
20. On 24 February 2022, FIFA sent the CAF its Circular no. 1784, in which it notified to the CAF the suspension of the FKF and in which it was stated that the FKF was no longer entitled to take part in international competitions until the suspension was lifted. The Circular no. 1784 stated the following:

***"TO THE MEMBER ASSOCIATIONS OF FIFA***

*Circular no. 1784*

*Zurich, 24 February 2022*

*SG/kje/rta/ssa*

***Suspension of the Football Kenya Federation as of 24 February 2022 and until further notice***

*Dear Sir or Madam,*

*We inform you that, based on the decision taken by the FIFA Council on 24 February 2022, the Football Kenya Federation (FKF) has been suspended in accordance with article 16 of the FIFA Statutes until further notice.*

*Consequently, as of 24 February 2022, the FKF loses all its membership rights, as defined in article 13 of the FIFA Statutes, with immediate effect and until further notice. FKF representative and club teams are therefore no longer entitled to take part in international competitions until the suspension is lifted. This also means that neither the FKF nor any of its members or officials may benefit from any development programmes, courses or training from FIFA and/or CAF. Moreover, we remind you and your affiliates not to enter into any sporting contact with the FKF and/or its teams while the FKF is suspended.*

*Finally, the Bureau of the FIFA Council or the FIFA Council may lift this suspension at any time before the next FIFA Congress takes place and we will inform you accordingly.*

*Thank you for taking note of the above.*

*Yours faithfully,*

*FIFA*

*Fatma Samoura*

*Secretary General*

*CC: FIFA Council*

*Confederations.”*

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

21. On 18 February 2022, the Appellants filed their Statement of Appeal with the Court of Arbitration for Sport (“CAS”) against the Appealed Decision, in accordance with Articles R47 and R48 of the 2021 edition of the Code of Sports-related Arbitration (the “CAS Code”). In this submission, the Appellants named the FKF as the First Respondent, the CAF as the Second Respondent and the FUFA as the Third Respondent. The Appellants further requested, in accordance with Article R50 of the CAS Code, that the proceedings be submitted to a Sole Arbitrator.
22. On 23 February 2022, the CAS Court Office initiated the present arbitral procedure and *inter alia* invited the Respondents to inform the CAS Court Office, within 5 days, whether they agreed to the appointment of a Sole Arbitrator.
23. On 24 February 2022, the Appellants requested for the extension of the deadline to file their Appeal Brief by 10 days, which was granted by the CAS Court Office on the following day.
24. On 1 March 2022, the CAS Court Office noted that the Second Respondent requested that the dispute be submitted to a three-member Panel and invited the Second Respondent to inform the CAS Court Office, by 8 March 2022, whether it intended to pay its share of the advance of costs.
25. On 3 March 2022, the Appellants filed their Appeal Brief in accordance with Article R51 CAS Code.
26. On 7 March 2022, the CAS Court Office invited the respective Respondents, in accordance with Article R55 CAS Code, to submit their respective Answers within 20 days.

27. On the same date, the Second Respondent confirmed by email to the CAS Court Office that it did not intend to pay its share of the advance of costs. In addition, the Second Respondent stressed that its email should not be considered as an acceptance by the Second Respondent of the jurisdiction of CAS, of the standing to sue or to be sued or of the legal standing of any of the involved Parties.
28. On 8 March 2022, Mr Otieno filed an Answer for the FKF in accordance with Article R55 CAS Code. In this submission, Mr Otieno disputed the jurisdiction of CAS.
29. On the same date, the CAS Court Office noted that the FKF disputed that the CAS had jurisdiction to rule on the appeal. In accordance with Article R55(5) CAS Code, the CAS Court Office invited the Appellants to comment on the FKF's objection to the jurisdiction of CAS by 15 March 2022.
30. By letter dated 9 March 2022, the Appellants denied the jurisdictional objection raised by the FKF. Furthermore, the Appellants noted that it was not clear to them that the Answer filed on 8 March 2022 was in fact filed on behalf of the FKF. According to the Appellants, it appeared that the Answer had been filed on behalf of Mr Otieno in his personal capacity as a result of which the Answer should be deemed inadmissible, given that the FKF, and not Mr Otieno, was the First Respondent in the proceedings.
31. On the same date, the CAS Court Office noted that the issue of the representation of the FKF and the admissibility of its Answer would be submitted to the Panel, once constituted.
32. On 10 March 2022, the CAS Court Office, referring to its letter dated 23 February 2022, noted that the First and Third Respondent did not provide their positions in respect of the appointment of a Sole Arbitrator. In accordance with Article R50 CAS Code, the CAS Court Office noted that it is for the President of the CAS Appeals Arbitration Division, or her Deputy, to decide the issue, taking into account the circumstances of the case.
33. On 14 March 2022, the CAS Court Office informed the Parties that, in accordance with Article R50 CAS Code, the Deputy President of the CAS Appeals Arbitration Division had decided to submit the present case to a Sole Arbitrator, whose appointment would proceed in accordance with Article R54 CAS Code.
34. On 17 March 2022, the Second Respondent requested the time limit to file its Answer to be suspended until the advance of costs would be paid by the Appellants.
35. On the same date, the CAS Court Office set aside the time limit for the Second Respondent to file its Answer as set out in the CAS Court Office's letter dated 7 March 2022 and confirmed that a new time limit would be fixed upon the Appellants' payment of their share of the advance of costs.

36. By letter dated 18 March 2022, the Appellants enclosed the proof of payment of the Appellants' share of the advance of costs and requested the CAS Court Office to immediately fix a new 20-day time limit for the Second Respondent to file its Answer.
37. On 23 March 2022, the Appellants sent a reminder of their letter dated 18 March 2022 to the CAS Court Office.
38. On the same date, the CAS Court Office noted that it did not yet receive confirmation that the advance of costs paid by the Appellants had been credited to the CAS bank account and that therefore a new deadline to file the Answer had not yet been granted to the Second Respondent.
39. On 24 March 2022, the CAS Court Office acknowledged receipt of the Appellants' payment of their share of the advance of costs for this procedure and invited the Second Respondent, in accordance with Article R55 CAS Code, to submit its Answer within 20 days.
40. On 29 March 2022, the CAS Court Office, on behalf of the Deputy President of the CAS Appeals Arbitration Division, informed the Parties that pursuant to Article 54 CAS Code, Mr Frans de Weger, Attorney-at-Law in Haarlem, the Netherlands, had been appointed as Sole Arbitrator to resolve the dispute at hand.
41. On 24 April 2022, the Second Respondent filed its Answer in accordance with Article R55 of the CAS Code.
42. On 25 April 2022, the CAS Court Office informed the Parties that the First and Third Respondents did not file an Answer within the prescribed time limit. Further to this, per that same letter, the Parties were informed that unless the Parties agree or the Sole Arbitrator orders otherwise on the basis of the exceptional circumstances, Article R56 of the CAS Code provides that the Parties shall not be authorised to supplement or amend their requests or their argument, nor to produce new exhibits, nor to specify further evidence on which they intend to rely, after the submission of the Appeal Brief and of the Answer.
43. On 3 May 2022, the CAS Court Office informed the Parties that the Sole Arbitrator, had decided to hold a hearing and informed the Parties that he would be available on 25 May 2022.
44. After having consulted the Parties, on 18 May 2022, the CAS Court Office informed the Parties that the hearing would take place on 25 May 2022.
45. On 24 May 2022, the Appellants, the FKF and the Second Respondent returned duly signed copies of the Order of Procedure to the CAS Court Office.
46. On 25 May 2022, a hearing was held by video-conference.
47. In addition to the Sole Arbitrator and Ms Andrea Sherpa-Zimmermann, Counsel to the CAS, the following persons attended the hearing:

- a) For the Appellants:
  - 1) Mr Tom Seamer, Counsel
  - 2) Mr William Sternheimer, Counsel
  - 3) Mr Ben Cisneros, Trainee Solicitor
- b) For the FKF:
  - 1) Mr Charles Njenga, Counsel
- c) For the Second Respondent:
  - 1) Mr Nadim Magdy, Director Legal Affairs and Compliance CAF
  - 2) Mr Felix Majani, Counsel

No representative of the Third Respondent attended the hearing.

- 48. At the outset of the hearing, the Parties confirmed that they had no objection as to the constitution of the Panel.
- 49. The Parties were given full opportunity to present their cases, submit their arguments and answer the questions posed by the Sole Arbitrator.
- 50. Before the hearing was concluded, the Parties expressly stated that they had no objection to the procedure adopted by the Sole Arbitrator and that their right to be heard had been respected.
- 51. The Sole Arbitrator confirms that it carefully heard and took into account in its decision all of the submissions, evidence and arguments presented by the Parties, even if they have not been specifically summarised or referred to in the present arbitral Award.
- 52. On 10 June 2022, the Sole Arbitrator issued the operative part of the present Award in an expedited manner as requested by the Appellants.

## **V. SUBMISSIONS OF THE PARTIES AND REQUESTS FOR RELIEF**

### **A. The Appellants**

- 53. The Appellants' submissions, in essence, may be summarised as follows:

#### **Standing to appeal**

- As a preliminary matter, the Appellants submit that they have standing to bring this appeal. Primarily, because they fall within the scope of Article 69 of the FKF Constitution as the Appealed Decision created a dispute within the

association between its executive bodies and the Appellants or, at the very least, created a dispute affecting players.

- Further, the Appellants submit that they have standing to appeal as third parties directly affected by the Appealed Decision with reference to, *inter alia*, CAS 2018/A/5746. The Appellants have a sporting interest in participating in the WAFCON 2022 which is worthy of protection and that has been sufficiently and directly affected by the Appealed Decision, such that they have standing to sue. It is a direct effect of the Appealed Decision that the Appellants are prevented from participating in the WAFCON 2022. Besides, the Appellants are the primary victims of the Appealed Decision. Furthermore, the Appellants' sporting interest in playing in the Matches, having qualified to do so on sporting merit, is obvious and they stand to gain significantly by doing so.
- Were the Sole Arbitrator to consider that more than a sporting interest is necessary, the Appellants submit that their (i) legal interests under the doctrine of legitimate expectation, (ii) personality rights, and/or (iii) rights to equal treatment have been directly affected such that they have standing to bring this appeal, in any event.

### *Ultra vires*

- The Ministerial Order removed the FKF's National Executive Committee from office and appointed a Caretaker Committee, empowered to “[c]onduct all the affairs of [the FKF] in accordance with its constitution”. Since the Ministerial Order is a governmental order made pursuant to an Act of Parliament with which the FKF is required by national law to comply and over which the CAS is not competent to adjudicate, the Ministerial Order must be presumed to be lawful and binding upon the FKF. As such, the Caretaker Committee appointed pursuant to the Ministerial Order must be presumed to have been validly appointed, such that it is the only body competent to take decisions on behalf of the FKF. Given that the Appealed Decision was not taken by the Caretaker Committee, the Appealed Decision must be considered as *ultra vires* and thus unlawful. Therefore, it must be set aside.
- Were the Sole Arbitrator to hold that Mr Otieno retained the role and powers of General Secretary of the FKF notwithstanding the Ministerial Order, the Appealed Decision was nevertheless made *ultra vires*. It does not follow from Article 63 of the FKF Constitution that the General Secretary has the power to *take* decisions on behalf of the FKF. Pursuant to Articles 24 and 39 of the FKF Constitution only the National Executive Committee and/or General Assembly are empowered to do so. There has been no suggestion that one of these bodies took the Appealed Decision. Instead, it appears, *inter alia* from the letter dated 20 January 2022 that the Appealed Decision was made by Mr Otieno himself. Therefore, the Appealed Decision was made *ultra vires* and must be set aside. The Caretaker Committee was the only body of the FKF that was competent to make decisions.

### **Irrationality and arbitrariness**

- The Appellants submit that the Appealed Decision is irrational and arbitrary. Contrary to Mr Otieno's statements about the FKF being unable to independently plan and successfully execute any international matches, the Caretaker Committee had all the necessary powers to ensure the participation of FKF teams in international matches as granted to it by the Ministerial Order. This also clearly shows from the fact that, *inter alia*, the Kenya Men's National Football Team (the "KMNFT") played a qualifying match for the FIFA World Cup 2022 against Rwanda on 15 November (i.e. four days after the Ministerial Order and lockdown of the FKF's premises) and that the FKF continued to operate its local competitions on a large scale. The Appealed Decision is thus irrational, arbitrary and unlawful and must therefore be set aside.

### **Violation of legitimate expectations**

- The Appellants submit that the Appealed Decision has violated their legitimate expectations that they would have an opportunity to play in the Matches, causing severe and irreparable prejudice to the Appellants, and must therefore be set aside. The FKF, by its conduct in (i) allowing the KMNFT to participate in their World Cup Qualifier, (ii) continuing to operate its local club competitions, and (iii) calling the Appellants into a training camp to prepare for the Matches, created a legitimate expectation on the part of the Appellants that they would have the opportunity to play in the Matches.

### **Unlawful infringement of personality rights**

- With reference to Article 28 of the Swiss Civil Code and jurisprudence of both the Swiss Federal Tribunal and CAS (TAS 2012/A/2720) regarding personality rights, the Appellants submit that the Appealed Decision unlawfully infringes their personality rights, such that it must be set aside. In particular, the Appealed Decision infringes their rights to honour – in the sense of representing one's country in international sport – and/or to participate in competitions with athletes of the same level as them. Clearly, the Appellants did not consent to the Appealed Decision and there is no overriding private or public interest capable of justifying such infringements of their personality rights.

### **Unequal treatment**

- With reference to Article 4.2 of the FKF Constitution and, *inter alia*, CAS 2008/O/1455 regarding the principle of equal treatment, the Appellants submit that the Appealed Decision violates their right to equal treatment and must therefore be set aside. The Appealed Decision violates this right, given that a) the KMNFT was not withdrawn from their qualifying match for the FIFA World Cup 2022; and b) the FKF local competitions have continued, such that the Appellants have been treated less favourably than the players of



the KMNFT and the players of the FKF competitions. There is no clear justification for such different treatment.

### **Positions of CAF and FUFA**

- To ensure that the unlawful effects of the Appealed Decision are undone, the Appellants submit that the Sole Arbitrator must not only set aside the Appealed Decision but must also order the CAF to reinstate the KWNFT to WAFCON 2022 and to rearrange the Matches, as this is the only way to avoid the Appellants suffering irreparable harm.
- The Appellants acknowledge that FUFA and the UWNFT have an interest in the outcome of the appeal, having been granted qualification to the group stage of the WAFCON 2022 after the CAF Decision. It is clearly in the interests of both justice and sport that the Matches be rearranged and that qualification for the WAFCON 2022 be determined on the football pitch, rather than in the board room. The Appellants thus request CAS to restore the *status quo ante*. To the extent that FUFA and/or the UWNFT may now have any expectations of participating in the group stage of the WAFCON 2022, it is respectfully submitted that such expectations are far more short-lived than those of the Appellants.

54. On this basis, the Appellants submit the following prayers for relief in their Appeal Brief:

- “(a) *set aside the Decision;*
- (b) *order CAF to reinstate the KWNFT to AWCON and to rearrange the Matches before the start of AWCON finals group stage on 2 July 2022, as soon as the suspension of the FKF has been lifted;*
- (c) *order the FKF to take all necessary steps to ensure the participation of the KWNFT in the rearranged Matches; and*
- (d) *order the FKF to: (i) reimburse the Appellants’ legal costs and expenses related to this appeal, and (ii) bear any and all costs pertaining to the arbitration.”*

### **B. Mr Otieno on behalf of the FKF**

55. On 8 March 2021, Mr Otieno filed an Answer, as set out above.

56. However, the Sole Arbitrator has decided not to admit this Answer to the file of the present proceedings.

57. The grounds for the decision are further set out below (under “Preliminary Issues”).

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

58. The CAF’s submissions, in essence, may be summarised as follows:

- The Appellants cause confusion over the fact that in this case there are two distinct decisions. The first decision concerns the Appealed Decision, which is a decision of the FKF, and in which it was decided to withdraw the KWNFT from the qualifying rounds of WAFCON 2022. The second decision concerns the CAF Decision to grant a walkover to the UWNFT to the WAFCON 2022.

### **Lack of CAS jurisdiction**

- CAS does not have jurisdiction over the request for relief number (b) of the Appellants.
- CAF's email dated 28 January 2022, announcing to the concerned parties the withdrawal of the KWNFT from WAFCON 2022 and the qualification of the UWNFT to the final tournament of WAFCON 2022 is in itself a decision, as it satisfies the criteria constantly set out by CAS jurisprudence. Accordingly, the CAF Decision was appealable as set out in the Women Africa Cup of Nations Regulations (the "WAFCON Regulations").
- Pursuant to Article 42 WAFCON Regulations an appeal can be addressed to the Appeals Committee against the decisions taken by, *inter alia*, the Organising Committee, but not against those stipulated as final. Furthermore, the appeal must reach CAF Secretariat by fax or email within the three days following the dispatch by fax or email of the decision. Accordingly, the Appellants ought to have appealed the CAF Decision to the Appeals Committee at CAF, within three days from the date of the Appealed Decision (i.e. 28 January 2022). As stipulated in Article 47 CAS Code, for an appeal to a decision of a federation to be admissible at CAS, the Appellants should have exhausted the prior internal legal remedies stipulated in the statutes or regulations of the said federation. Since the Appellants never appealed the CAF Decision to the Appeals Committee and therefore failed to exhaust the internal legal remedies of CAF as stated in Article 42 WAFCON Regulations, the request for relief number (b) of the Appellants shall not be admissible.
- Furthermore, Article 48.3 of the CAF Statutes provides for a time limit of 10 days to appeal the decisions issued by a last instance of the CAF. In case the Sole Arbitrator qualified the CAF Decision as a final decision issued by a last instance of CAF, the Appellants should have brought their appeal to CAS maximum 10 days after the 28 January 2022, which means by 7 February 2022, the latest. The Appellants failed to bring their appeal to CAS within the stipulated 10 days period from the date of the CAF Decision, and accordingly, this appeal shall not be admissible in accordance with CAF Statutes.
- What is more, the arbitration agreement between the Appellants and the FKF, as stipulated in Article 69 of the FKF Constitution, is not extended to the CAF. CAF is not addressed by this provision nor is it applicable or bound by it.
- Further to the above, Article 67.2 of the FKF Constitution provides for an appeal mechanism of the decisions of the FKF. By failing to file an appeal before the

Appeals Committee of the FKF and deciding to bring the appeal directly to CAS without exhausting the internal legal remedies stipulated in the FKF Constitution, the Appellants violate Article R47 CAS Code as mentioned above.

- Up until the date of the suspension of the FKF by FIFA and thus at the time of issuing the Appeal Decision, Mr Otieno remained the General Secretary of the FKF. This is also demonstrated by virtue of the letter dated 24 February 2022, sent by the General Secretary of FIFA to Mr Otieno and the FKF. What is more, the Caretaker Committee that was appointed by the Ministry of Sports, Culture and Heritage by virtue of the Ministerial order was never recognized by FIFA within the meaning of Article 19 of the FIFA Statutes, and consequently by CAF. Accordingly, the Caretaker Committee shall be completely disregarded and as a result all actions and correspondence shall not be taken into consideration.
- Finally, the suspension from international football of the FKF by FIFA as of 24 February 2022 prevents the KWNFT from participating in CAF competitions during the period of the suspension and until it is lifted and accordingly prevents it from playing the qualifying rounds of WAFCON 2022. Notwithstanding the foregoing, the scheduled agenda for the matches of the qualifying rounds of WAFCON 2022 has already passed and the matches cannot be rescheduled.

59. On this basis, the Second Respondent submits the following prayers for relief in its Answer:

*“Prayer 1: To declare that CAS lacks jurisdiction to review the Appeal.*

*Prayer 2: To declare that the Appeal is inadmissible.*

*Prayer 2[SIC]: To the extent it is admissible, the Appeal shall be dismissed and the decision of the FKF shall be confirmed in its entirety.*

*Prayer 3[SIC]: Anita Adongo et al to be ordered to bear the costs of the arbitration and it shall be ordered to contribute to the legal fees incurred by the Respondent at an amount of CHF 10,000.”*

## **VI. JURISDICTION**

60. Article R47 of the Code provides as follows:

*“An appeal against the decision of a federation, association or sports-related body may be filed with 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.”*

61. The Sole Arbitrator notes that the CAF objects to the competence of the CAS. Not only does the Second Respondent argue that the CAS did not have jurisdiction as to the Appealed Decision, but it also took the position that the CAS lacks jurisdiction as to the CAF Decision. The Sole Arbitrator will therefore have to decide whether it has jurisdiction as to both decisions.
62. Before addressing this jurisdictional issue, the Sole Arbitrator notes that the requests for relief submitted by the Appellants in their Statement of Appeal and the Appeal Brief are not identical. In the Statement of Appeal, the following requests are formulated:
- “(a) *set aside the Decision;*
  - (b) *order CAF to reinstate the KWNFT to AWCON and to rearrange the Matches before the start of AWCON finals group stage on 2 July 2022;*
  - (d) *order the FKF to: (i) reimburse the Appellants’ legal costs and expenses related to this appeal, and (ii) bear any and all costs pertaining to the arbitration.”*
63. However, the Appellants submit the following prayers for relief in their Appeal Brief:
- “(a) *set aside the Decision;*
  - (b) *order CAF to reinstate the KWNFT to AWCON and to rearrange the Matches before the start of AWCON finals group stage on 2 July 2022, as soon as the suspension of the FKF has been lifted;*
  - (c) *order the FKF to take all necessary steps to ensure the participation of the KWNFT in the rearranged Matches; and*
  - (d) *order the FKF to: (i) reimburse the Appellants’ legal costs and expenses related to this appeal, and (ii) bear any and all costs pertaining to the arbitration.”*
64. In fact, it is clear to the Sole Arbitrator that the scope of the requests submitted in the Appeal Brief goes beyond the scope of the requests for relief as formulated in the Statement of Appeal. However, the Sole Arbitrator does not deem this to be an issue, as it follows from Article R56 of the CAS Code that such provision authorises new submissions until the filing of the Appeal Brief. Further to this, Article R51 of the CAS Code does not prohibit an amendment of the requests for relief (see, *inter alia*, CAS 2007/A/1396 & 1402 and TAS 2009/A/A/1881. See also MAVROMATI/REEB, The Code of the Court of Arbitration for Sport, 2015, p. 297).
65. As such, the Sole Arbitrator will review the jurisdiction of the CAS over the Appealed Decision and the CAF Decision taking into account the broader requests for relief as formulated in the Appeal Brief.
66. In this regard, the Sole Arbitrator notes that the Appellants not only request the CAS to order the FKF to take all necessary steps to ensure the participation of the KWNFT in the rearranged Matches, but also request the CAS to order the CAF to reinstate the

KWNFT to AWCON and to rearrange the Matches before the start of the AWCON finals group stage on 2 July 2022 as soon as the suspension has been lifted.

**A. Jurisdiction over the Appealed Decision**

67. Before determining whether he is competent with respect to the Appealed Decision, the Sole Arbitrator wishes to recall that the Appealed Decision entails that the FKF, represented by Mr Otieno informed the CAF about the withdrawal from the KWNFT from the Matches and thus from WAFCON 2022.
68. With respect to the Appealed Decision, the Sole Arbitrator notes that the CAF objects to the jurisdiction of the CAS. In this regard, it is the CAF's position that CAS does not have jurisdiction as the internal resolution remedies within the FKF have not been exhausted prior to filing this appeal.
69. The Sole Arbitrator does, however, not agree. As to the Appealed Decision, it is clear to the Sole Arbitrator that he has jurisdiction.
70. As stipulated by the Second Respondent in its Answer, and as reiterated by the Second Respondent during the hearing, in order to support its position that the Appellants had not exhausted the internal legal remedies at FKF, the Second Respondent referred to Article 67 par. 2 of the FKF Constitution. It is the Second Respondent's position that, based on this provision, the Appellants first had to address the Appeals Committee of the FKF before lodging an appeal in front of CAS against the Appealed Decision.
71. Article 67 par. 2 of the FKF Constitution provides as follows:
- “The Appeals Committee is responsible for hearing appeals against all decisions determined by all committees.”*
72. The Sole Arbitrator notes that the Appeals Committee is only competent insofar it concerns an appeal against a decision by a “committee”. In this regard, he notes that, in accordance with the FKF Constitution, the FKF, *inter alia*, consists of a general assembly, a national executive committee, a president, an emergency committee, standing committees, a general secretariat and judicial bodies (an ethics committee, disciplinary committee and appeals committee).
73. Whereas it follows from Article 67 par. 2 of the FKF Constitution that the Appeals Committee is competent in case of a decision by a “committee”, the Sole Arbitrator deems the president, while being a body of the FKF, is not a committee of the FKF in the sense of this provision. Therefore, the Sole Arbitrator does not concur with the Second Respondent, as the appealed decision at stake is not a decision from an FKF committee. In fact, it concerns a decision allegedly taken by the President of the FKF itself and not of any of the committees as referred to in the FKF Constitution.
74. Article 69 paragraph 3 of the FKF Constitution is clear in that the disputes as referred to in paragraph 1 can be appealed before the CAS. Following a combination of paragraphs 1 and 3 of Article 69 of the FKF Constitution, the Appellants have standing to bring this case to the CAS.

75. Further to this, it was also raised during the hearing that the reference under Article 56 par. 4 of the FKF Constitution “*to any applicable national law*” establishes that that Sports Disputes Tribunal was competent. Also this argument cannot stand, so finds the Sole Arbitrator, if only not in view of the jurisdiction scope of Article 58 FKF Constitution.
76. The Sole Arbitrator find that the appeal against the Appealed Decision in present proceeding concerns a dispute under Article 69 par. 1 affecting the Appellants, which decision is appealable under Article 69 par. 3 FKF Constitution.
77. In view of the above, the Sole Arbitrator concludes that the CAS has jurisdiction over the Appealed Decision and that the Appellants have exhausted their legal remedies. The FKF, having issued the decision, was validly summoned in these proceedings. Therefore, insofar they are focused on the FKF, the requests for relief under the Appeal Brief a, c and d, as set out above, can be considered.
78. Furthermore, the Sole Arbitrator agrees with the CAF that the jurisdiction of the CAS to rule on the Appeal against the FKF Decision in accordance with the FKF Constitution does not extend to or apply on the CAF. As rightfully held, the CAF is not a party to the FKF Constitution and is not bound by the FKF Constitution. As such, the fact that the CAS is competent to deal with the Appealed Decision, by itself, does automatically trigger that the CAS is also competent to impose any measures on the CAF.

## **B. Jurisdiction as to the CAF Decision**

79. As to the CAF Decision and, more specifically, the request under b, as set out above, the Sole Arbitrator notes that this is a different issue. In this regard, the Second Respondent submitted that the CAF Decision is a separate decision which should have been appealed by the Appellants, and that not all prerequisites for the jurisdiction of the CAS have been met in this case.
80. The Sole Arbitrator notes that it is not in dispute between the Parties that only an appeal was filed by the Appellants against the Appealed Decision, as set out above, and not specifically against the CAF Decision. In this regard, in reply to the Second Respondent’s position as to the lack of jurisdiction of the CAS as to the CAF Decision, the Appellants argue that, as both decisions are strongly interrelated, according the so-called “house of cards theory”, the CAF decision would automatically be null and void should the Appealed Decision be annulled. In this regard, the Appellants refer to CAS 2007/A/1392 and CAS 2012/A/2758 to support their view.
81. The Sole Arbitrator does, however, not agree with the Appellants. The CAF Decision is a separate decision which should have been appealed in accordance with the prerequisites stipulated in the CAF Statutes and Regulations.
82. During the hearing, the Appellants argued that the jurisdiction of the CAF follows from the fact that if the Sole Arbitrator were to establish that the Appealed Decision must be set aside, there was no legal basis for the CAF to issue its decision. In fact, as argued by

the Second Respondent, this so-called “house of cards-theory” should lead to the fact that both decisions are interrelated insofar as that the CAF cannot issue a decision should the decision of the FKF be annulled. However, the Sole Arbitrator does not find that it follows from these decisions that following any such so-called “house of cards theory” would lead to the fact that the CAF decision would automatically be null and void should the Appealed Decision be annulled.

83. In fact, the Appellants explicitly ask the CAS to order the CAF to reinstate the KWNFT to the WAFCON. This request does not relate to the FKF, but only relates to the CAF and the CAF Decision. To create CAS jurisdiction, the Appellants should have also appealed the CAF Decision in accordance with the prerequisites in this regard set out in the WAFCON Regulations. However, the Appellants never appealed this (second) decision before CAS apart from the fact that such decision should have been appealed before the CAF Appeals Committee first following Article 42 of the WAFCON Regulations, which also did not happen.
84. As such, the Sole Arbitrator finds that he does not have jurisdiction to grant the request for relief as formulated in the prayer for relief under b. as it does not fall within the scope of these proceedings. Put differently, the CAS cannot grant this request as the CAF was not a party to the Appealed Decision.
85. So, in the Sole Arbitrator’s view, the CAS does not have jurisdiction to set aside the CAF Decision. Therefore, the Sole Arbitrator is not in a position to order the CAF to reinstate the KWNFT to the WAFCON. As such, he finds that the request under b., which exclusively concerns the CAF, cannot be considered in these proceedings.
86. Consequently, the Appellants also requested under c. that the FKF be ordered to take all necessary steps to ensure the participation of the KWNFT in the rearranged matches. In theory, the Sole Arbitrator could impose such obligation on the FKF. However, this specific request presupposes that the CAF is ordered to rearrange the matches as requested under b. by the Appellants. As he is not in a position to order the CAF to organize and rearrange the matches, this request is moot. In addition, and for the sake of completeness, the Sole Arbitrator also wants to underline that he is not convinced that the obligation to be imposed on the FKF deriving from the request as formulated by the Appellant is sufficiently specific and enforceable.

## VII. ADMISSIBILITY

87. Article R49 of the Code provides as follows:

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

88. The Statement of Appeal was filed on 18 February 2022 and, therefore, within the 21-day deadline after having received the Appealed Decision on 28 January 2022, which is not disputed.
89. Furthermore, the appeal complied with all other requirements of Article R48 of the CAS Code, including the payment of the CAS Court Office fee.
90. It follows that the appeal is admissible.

#### **VIII. APPLICABLE LAW**

91. Article R58 CAS Code provides as follows:

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

92. With reference to Article 2 paragraph h) and m) and Article 8 paragraph 1 of the FKF Constitution, the Appellants submitted that the Sole Arbitrator should “*primarily apply the FKF Constitution and the FIFA Regulations and, additionally, Swiss Law*”. Furthermore, the Appellants submitted that the appeal is also subject to the *lex sportiva*.
93. With reference to Article 48 paragraph 2 of the CAF Statutes, the Second Respondent submitted that the Sole Arbitrator should apply the CAF and FIFA Regulations and subsidiarily Swiss law.
94. Based on the above, and with reference to the Parties’ submissions, the Sole Arbitrator determined to primarily apply the various regulations of the FKF and FIFA, and Swiss law on a subsidiarily basis.

#### **IX. PRELIMINARY ISSUE – ADMISSIBILITY OF THE ANSWER FILED ON 8 MARCH 2022 BY MR OTIENO**

95. Whilst noting that the FKF did not submit an Answer to the Appeal Brief, which was also confirmed by the CAS Court Office by its letter of 25 April 2022, the Sole Arbitrator notes that the FKF did submit an Answer to the Statement of Appeal on 8 March 2022. The Appellants, however, by their letter of 9 March 2022, took the position that the Answer should be declared inadmissible as it had been filed by Mr Otieno in his personal capacity, whilst the FKF is the First Respondent here.
96. Against this background, the Sole Arbitrator will first address this issue before entering into the merits.



97. Carefully looking at the power of attorney attached to the Answer that was submitted on 8 March 2022, from which the representation powers should follow, the Sole Arbitrator notes that it was Mr Otieno himself that appointed legal counsel Mr Charles Njenga, who acted on behalf of Mr Otieno. There is no mention in the power of attorney, at all, of the FKF and Mr Otieno's position as legal representative of the FKF. What is more, also looking at the Answer itself, it follows that Mr Otieno is named as the First Respondent. In fact, it clearly follows that "*Barry Otieno ... being the 1<sup>st</sup> Respondent named in the Statement of Appeal has appointed CHARLES NJENGA, LEGAL COUNSEL, to appear and act for him in these proceedings*".
98. Therefore, indeed, as is argued by the Appellants, it also appears to the Sole Arbitrator that Mr Otieno filed the Answer in his personal capacity. However, this issue and its consequences can be further left unspoken as the Answer should not be admitted to the file for a different reason. As a matter of fact, Mr Otieno acted *ultra vires* and was not entitled to act on behalf of the FKF anymore, as was also argued by the Appellants, and which lack of acting powers will be further discussed under the merits.

## **X. MERITS**

99. Having dispensed with the above preliminary issue of the (in)admissibility of Mr Otieno's Answer, the Sole Arbitrator can now turn to the main issues to be resolved. In this regard, and at the core of this dispute, the Sole Arbitrator notes that the Appellants hold that the Appealed Decision should be set aside on based multiple separate grounds. In particular, the Appellant argue that the Appealed decision i) is taken *ultra vires*; ii) is irrational and arbitrary; iii) infringes upon personality rights; and iv) violates the principle of equal treatment.
100. Therefore, the main issue to be resolved by the Sole Arbitrator is whether the Appealed Decision should be set aside. In this regard, so the Sole Arbitrator notes, in case an annulment is granted based on one of the grounds submitted by the Appellants, the other grounds brought forward by the Appellants in their submissions automatically become irrelevant.

### **A. Decision *ultra vires***

101. The Sole Arbitrator finds the Appellants can successfully claim that the Appealed Decision issued by Mr Otieno was made *ultra vires*.
102. As from 11 November 2021, by means of a Ministerial Order and communicated via the Statement of the Ministry of Sports, Culture and Heritage, a Caretaker Committee was appointed by the Kenyan Ministry (for misappropriation of public funds by the FKF which also led to the President and the General Secretary being arrested). In this regard, the Sole Arbitrator wishes to recall that the mandate of the Caretaker Committee, *inter alia*, was to "*Conduct all the affairs of Football Kenya Federation in accordance with its constitution*", and to "[e]nsure that Football Federation of Kenya is in compliance with the Sports Act (2013)".

103. Based on the above, the Sole Arbitrator is convinced that as from 11 November 2021, the Caretaker Committee was mandated to conduct all the affairs of the FKF, and that the FKF was ordered to act in compliance and in accordance with the Sports Act (2013).

104. As the Ministerial Order was thus based on the Sports Act (2013), as was also referred to in the official press release of the Kenyan Ministry (see Annex RA1 attached to the Appeal Brief), and as the FKF was explicitly ordered to act in accordance with the Sports Act (2013), the Sole Arbitrator subsequently looked into the content and procedure of appointing a caretaker committee in accordance with the Sports Act (2013). In this regard Article 54 of the Sports Act provides as follows:

*“54. Intervention by Cabinet Secretary in management*

*(1) Where a sports organisation fails to comply with the recommendations of an inspection, the Cabinet Secretary may-*

*(a) appoint any person or committee to assume the management, control and conduct of the affairs of a sports organisation, to exercise the powers and functions of the sports organization to the exclusion of its officials, including the use of its corporate seal, where the sports organisation concerned has been unable to conduct its affairs in a proper manner;”*

105. Indeed, the Sole Arbitrator deems the appointment of the Caretaker Committee by means of the Ministerial order to be an execution of the procedure set forth by Article 54(1)a of the Sports Act. As such, he deems, in accordance with the aforementioned provision, the Caretaker Committee was mandated to exercise its powers and functions to the exclusion of the officials of the FKF. In other words, as from the moment the Caretaker Committee was appointed, which took place on 11 November 2021, Mr Otieno, being an official of the FKF, was no longer entitled to act on behalf of the FKF in accordance with the Sports Act.

106. The Appealed Decision was issued on 20 January 2022 by Mr Otieno. As Mr Otieno was not entitled to act on behalf of the FKF after the Caretaker Committee was appointed, as set out above, his decision was made *ultra vires*.

107. In view of the above, therefore, the Sole Arbitrator finds that the Appealed Decision must be set aside by the CAS, as it was not validly taken by the FKF.

**B. Conclusion**

108. Based on the foregoing and after taking into consideration all evidence produced and all arguments made, the Sole Arbitrator finds that the Appealed Decision is set aside.

**XI. COSTS**

(...).

\* \* \* \* \*

## ON THESE GROUNDS

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

1. The Court of Arbitration for Sport has jurisdiction to rule on the appeal filed on 18 February 2022 by Ms Anita Adongo *et al.* against the decision rendered on 20 January 2022 by the Football Kenya Federation.
2. The Court of Arbitration for Sport does not have jurisdiction to rule on the request by Ms Anita Adongo *et al.* to order the Confederation of African Football to reinstate the Kenya Women's National Football Team to the 2022 Africa Women Cup of Nations (AWCON) and to rearrange the matches against Uganda in the second AWCON qualifying round before the start of the AWCON finals group stage on 2 July 2022.
3. The appeal filed on 18 February 2022 by Ms Anita Adongo *et al.* against the decision rendered on 20 January 2022 by the Football Kenya Federation is partially upheld.
4. The decision rendered on 20 January 2022 by the Football Kenya Federation is set aside.
5. (...).
6. (...).
7. (...).
8. All other and further motions or prayers for relief are dismissed.

Seat of arbitration: Lausanne, Switzerland

Date: 17 April 2023

(Operative part of the award notified on 10 June 2022)

**THE COURT OF ARBITRATION FOR SPORT**

Frans de Weger  
Sole Arbitrator