CAS 2023/A/9517 Eurafrica FC v. Sunyani The Wisers FC & Ghana Football Association

ARBITRAL AWARD

issued by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

Sole Arbitrator: Prof. Stefano Bastianon, Professor of Law and Attorney-at-Law, Busto Arsizio, Italy

in the arbitration between

Eurafrica Football Club, Accra, Ghana

Represented by Mr Dennis Adjei Dwomoh, LawPlus, Accra, Ghana

Appellant

and

Sunyani The Wisers FC, Sunyani, Ghana

Represented by Mr McKeown Amenano-Bese, Franklyn & Partners, Accra, Ghana

First Respondent

and

Ghana Football Association, Accra, Ghana

Represented by Ms Naa Odofeley Nortey, Beyuo & Company, Accra, Ghana

Second Respondent

I. PARTIES

1. Eurafrica Football Club (the "Appellant" or "EAFC") is a football club with its registered seat in Accra, Ghana. Its mission consists of discovering and nurturing football talents in Ghana for the wider international football market. It is a member of the Ghana Football Association (the "GFA") which in turn is a member of the *Fédération Internationale de Football Association* (the "FIFA").

2. Sunyani The Wisers FC (the "First Respondent" or "Sunyani FC") is a football club competing in the Division two competitions organized by the Brong Ahafo Regional Football Association. It is also a member of the GFA.

3. The GFA (or the "Second Respondent") is the governing body of football in Ghana. It is a member of FIFA.

4. The EAFC, the Sunyani FC and the GFA are jointly referred to as the "Parties".

II. FACTUAL BACKGROUND

5. The elements set out below are a summary of the main relevant facts as established by the Sole Arbitrator based on the Parties' submissions and documents on file. While the Sole Arbitrator has considered all the facts, allegations, legal arguments and evidence submitted by the Parties in the present proceedings, this Award refers only to the submissions and evidence he considers necessary to explain his reasoning.

A. Background facts

6. By letter dated 14 April 2019, The Wisers FC informed the GFA that the player Mr Felix Afena Ohene Gyan (the "Player") was released to EAFC and that, accordingly, the licence to register the Player was granted.

7. On 10 July 2019, Eurafrica Calcio Academy ("EACA") offered to The Wisers FC the sum of GH¢ 6,000 (six thousand cedis) plus 10% of onward transfer fee for the permanent transfer of the Player.

8. On 14 July 2019, Mr Kwaku Danso, Chiarman of The Wisers FC, accepted EACA's offer for the permanent release of the Player.

B. Proceedings before the GFA Players' Status Committee ("GFA PSC") and the GFA Appeals Committee ("GFA AC")

9. On 30 September 2022, the First Respondent filed a complaint with the GFA PSC against EACA concerning the refusal of EACA to pay the agreed 10% onward transfer fee on the transfer of the Player from EACA to the Italian club AS Roma.

10. On 4 November 2022, the First Respondent filed a second complaint with the GFA PSC against EACA and the Appellant concerning the refusal of EACA and/or the Appellant to pay the agreed 10% onward transfer fee on the transfer of the Player from EACA to AS Roma.

11. On 18 November 2022, the GFA PSC issued its decision and ruled as follows:

"*EurAfrica Football Club (EAFC) or Mr Oliver Arthur or both, shall therefore pay the Ghana Football Association, 80,000EUROS (EIGHTY THOUSAND EUROS* [sic] *being 10% Statutory payment on the transfer sum of Felix Afena Gyan to AS ROMA, and also pay 72,000Euros (SEVENTY-TWO THOUSAND EUROS) to Sunyani The Wisers. However, the Committee took note that Mr Oliver Arthur had earlier paid 10,000 Euros to Mr Kwaku Danso. This should be deducted from the 72,000Euros, leaving a balance of 62,000Euros to be paid to Sunyani the Wisers. These monies shall be paid within two weeks upon notification or publication of this decision, whichever comes first. Beneficiaries shall therefore furnish EurAfrica FC with their bank coordinates, or any bank of their choice for the payments to be made.*

Failure to adhere to this decision, EurAfrica FOOTBALL CLUB and Mr Oliver Arthur shall both be referred to the Disciplinary Committee for further action in accordance with Article 15 of the GFA Disciplinary Code (2019)".

12. On the same date, the Appellant filed an appeal with GFA AC against the GFA PSC's decision.

13. On 6 February 2023, the GFA AC issued its decision and dismissed the appeal filed by the Appellant (the "Appealed Decision"). In particular, the GFA AC ruled as follows:

"*We hereby dismiss the appeal in respect of the order to of the Players' Status Committee to pay Ten Per cent (10%) of the onward transfer fee received by the Appellant from AS Roma to the Respondent. We direct that the said sum, being Sixty-two Thousand Euros (€ 62,000.00), i.e., Seventy-two Thousand Euros (€ 72,000.00), less the sum of Ten Thousand Euros (€ 10,000.00) advanced to the Chairman of the Respondent club by Mr. Oliver Arthur, be paid the Respondent (THe Wisers FC) by the Appellant (Eurafrica FC).*

We hereby dismiss the appeal relating to the order to pay the Ghana Football Association 10% of the transfer fee paid to the Appellant, Eurafrica Football Club by AS Roma, being Eighty Thousand Euros (€ 80,000.00). We direct the Appellant to pay the said money within seven (7) days of receipt of our decision.

We however, set aside the orders of the PSC directed at the individual, Oliver Arthur who acted in his capacity as Director of Eurafrica Calcio Academy, on behalf of that entity which is not a member of the GFA".

14. In support of its decision, the GFA AC relied on the following main arguments:

(a) while admitting that EACA is a separate legal entity from EAFC, "*we are of the view that there was only one transaction involving the release or transfer of the player Felix Ohene Afena Gyan from the Respondent. We further state that in the said transaction, we find the Appellant herein acting in concert with Eurafrica CALCIO Academy as parties of the one part while the Respondent was the other party*";

(b) "[f]*rom the proceedings of the PSC, we note that there is an admission of the payment of the sum of Six Thousand Ghana cedis (GHS 6,000) described as 'compensation' by the Appellant to the Respondent, upon the release of the player, by no mean a person than the Chief Executive Officer of the Appellant, Kathleen Arthur. This amount, like the disputed 10% of the onward transfer fee, is not contained in the release letter dated July 14, 2019, authored by the Respondent. Yet, it had surprisingly been settled by the very same entity (Eurafrica FC) that claims that it had not entered into an agreement for the payment of ten per cent of the onward transfer fee for the player to the Respondent*";

(c) "[i]*t is noteworthy that the first mention of this agreed 'compensation' of GHS 6,000 to be paid for the release of the player is contained in the letter dated July 10, 2019 earlier referred to, which is an offer letter for the same player who had three months earlier been released by the Respondent to the Appellant, this time, from Eurafrica Calcio Academy. The said letter also, contained the agreement to pay 10% of the onward transfer fee to the Respondent*";

(d) "[c]*uriously, though the said letter dated July 10, 2019, was from Eurafrica Calcio Academy, the Appellant by some stroke clairvoyance, knew three months earlier what amount would be offered for the release of the same player by Eurafrica Calcio Academy and actually, paid the exact same amount. Yet, the same Appellant claims to be totally oblivious of any other financial obligation towards The Wisers FC, to wit, 10% per cent of the onward transfer fee because it had no such written agreement with the Respondent*";

(e) "*in the absence of any documentary evidence from the Appellant as the basis for the payment of the sum of GHS 6,000 to the Respondent, we find the claim of the Respondent that there was an agreement between the parties herein for the payment of 10% of the onward transfer fee to the Respondent a more probable (Balance of Probabilities - Evidence Decree) version of the facts of the transaction between the parties*";

(f) the obligation to pay the statutory payment of 10% of all transfer frees relating to external transfers as per Article 32(5) of the Regional Football Association of the GFA "*is not dependent on a claim against the club involved by the Ghana Football Association. The PSC in determining issues relating to the payment of transfer fees has the power to suo motu order the payment of the 10% to the GFA and GHALCA without any petition before the PSC for the payment of same*".

15. On 28 February 2023, the Appealed Decision with grounds was notified to the Appellant.

C. Proceedings before the Court of Arbitration for Sport

16. On 20 March 2023, in accordance with Articles R47 and R48 of the CAS Code of Sports-related Arbitration, 2023 edition (the "CAS Code"), the Appellant filed its Statement of Appeal with the CAS against the First Respondent and the Second Respondent with respect to the Appealed Decision. In its Statement of Appeal, the

Appellant requested that the present case be submitted to a sole arbitrator and applied for a stay of the execution of the Appealed Decision.

17. On 24 March 2023, the CAS Court Office invited the Respondents to comment on the Appellant's request for a stay within ten days.

18. On 31 March 2023, the Appellant filed its Appeal Brief in accordance with Article R51 of the CAS Code.

19. On 3 April 2023, the First Respondent and the Second Respondent informed the CAS Court Office that they did not oppose to the appointment of a sole arbitrator. Moreover, the First Respondent informed the CAS Court Office that it is "*prepared to stay execution of the judgment of the Appeal Committee of the Ghana Football Association until the final determination of the Appeal by CAS*". By contrast, the Second Respondent did not submit any comment on the Appellant's request for a stay within the given time limit.

20. On 5 April 2023, the Appellant informed the CAS Court Office that it maintained its application for a stay of the execution of the Appealed Decision.

21. On 18 April 2023, the Second Respondent filed its Answer in accordance with Article R55 of the CAS Code.

22. On 19 April 2023, the CAS Court Office informed the Parties that, given the fact that the Appellant specified its request for a stay in its letter dated 5 April 2023, the Respondents were granted a deadline of ten days to comment on the Appellant's letter of 5 April 2023.

23. On 27 April 2023, the First Respondent filed its Answer in accordance with Article R55 of the CAS Code.

24. On 28 April 2023, the CAS Court Office invited the First Respondent to provide proof of filing its Answer in a timely manner by 3 May 2023.

25. On 9 May 2023, the CAS Court Office informed the Parties that, pursuant to Article R54 of the CAS Code and on behalf of the President of the CAS Appeals Arbitration Division, the Panel appointed to decide the case is constituted as follows:

Sole Arbitrator: Prof. Stefano Bastianon, Professor of Law and Attorney-at-Law in Busto Arsizio, Italy.

26. In the same letter, the CAS Court Office informed the Parties that the Respondents did not comment on the Appellant's request for a stay and provisional measures within the given time limit and that the Sole Arbitrator would render a decision in accordance with Article R37 of the CAS Code.

27. On 12 May 2023, the Appellant requested the Sole Arbitrator to declare the First Respondent's Answer inadmissible for being filed late.

28. On 15 May 2023, the CAS Court Office invited the First Respondent to comment on the Appellant's position within three days.

29. On 17 May 2023, the First Respondent argued that (a) the CAS "*has jurisdiction to entertain the 1st Respondent Statement of Defense filed prior to submitting the process to the Sole Arbitrator*"; (b) "*the 1st Respondent filed through email to the committee within its time based on when it received the orders of the Committee*"; (c) "*Natural Justice requires that written statements from parties have to examined by the Committee to come to a fair conclusion of the matter*".

30. On 25 May 2023, the CAS Court Office informed the Parties that the Sole Arbitrator decided that the First Respondent's Answer is inadmissible and that the grounds of his ruling would be exposed in the final Award.

31. In the same letter, the CAS Court Office invited the Parties to inform the CAS Court Office, within three days, whether they prefer a hearing to be held. In addition, the CAS Court Office invited the Parties to provide it with the following information:

   "*a) The Appellant is invited to specify in whose favour the payment of GHS 6,000 was made and provide the relevant evidence;*

   b) the First Respondent is invited to specify who has been the recipient of the payment of GHS 6,000 and provide the relevant evidence;

   c) the Second Respondent is invited to provide the CAS Court Office with the Player's passport and to state whether both The Wisers FC and Sunyani The Wisers FC are members of GFA and provide the relevant evidence".

32. Still on 25 May 2023, the Second Respondent informed the CAS Court Office that it did not consider a hearing necessary and, in response to the CAS Court Office's letter dated 25 May 2023, clarified that The Wisers FC and Sunyani The Wisers FC "*are affiliated with the Brong Ahafo Regional Football Association and by extension the Ghana Football Association. (...) We can therefore confirm that they are members of the Ghana Football Association*".

33. On 26 May 2023, in response to the CAS Court Office's letter dated 25 May 2023, the First Respondent provided the CAS Court Office with a document called "*Agreement on the transfer of Felix Ohene Afena Gyan to AS Roma*".

34. On the same date, the First Respondent, in a further response to the CAS Court Office's letter dated 25 May 2023, clarified that:

   (a) "*the 1st Respondent does not intend to request for a hearing on the matter*";

   (b) "*a cash payment of Six Thousand Ghana Cedis (GHS 6,000.00) was received from Oliver Arthur (Agent of the Player) on behalf of the Appellant for the purchase of the player by Mr. Kwaku Danso, the Chairman of the First Respondent at the time of payment. Attached is the receipt issued upon the payment*";

(c) "[p]*ursuant to the receipt of GHS 6,000.00 the First Respondent received an amount of GH ¢60,000.00 representing Ten Thousand Euros (Euros 10,000.00) as part payment of the onward transfer payment from the Appellant. Attached is Bank Statement evidencing payment from the Appellant*";

(d) "[u]*pon the institution of the matter at the Committee of the 2nd Respondent, Oliver Arthur as an agent of the Player and representative of the Appellant approached the 1st Respondent and requested for a settlement out of the Committee but same was rejected by the 1st Respondent. Copy of proposed terms of settlement*";

35. On 27 May 2023, in response to the CAS Court Office's letter dated 25 May 2023, the Appellant informed the CAS Court Office that:

"*a. (...) the Appellant has not paid any GH¢6,000 to the 1st Respondent for the release of the amateur player or any entity (...);*

b. The Appellant did not testify or contend that it had made any payment of GH¢6,000 to 'The Wisers FC' for the release of the amateur player during hearing at the Player Status Committee or Appeals Committee (...);

c. The Appellant did not testify or contend that it had made any payment of GH¢6,000 to the 1st Respondent ie 'Sunyani The Wisers FC' for the release of the amateur player during the hearing at the Player Status Committee or Appeals Committee".

36. Moreover, the Appellant informed the CAS Court Office that it intended to rely on its written submission and that, therefore, a hearing would not be necessary.

37. On 30 May 2023, the CAS Court Office invited the Third Respondent to provide the case file of the proceedings before the GFA PSC and AC.

38. On 1 June 2023, the CAS Court Office notified the Parties with the Order on Request for a Stay rejecting the Appellant's request.

39. On 6 June 2023, the CAS Court Office invited the Third Respondent to provide the records of the hearings held on 20 and 27 October 2022 and 3 November 2022 as part of the case file of the proceedings before the GFA PSC and AC.

40. On 9 June 2023, the Second Respondent provided the CAS Court Office with the proceedings before the GFA PSC dated 20 October 2022, 27 October 2022, 3 November 2022 and 9 November 2022.

41. On the same date, the Appellant requested the Sole Arbitrator to declare the First Respondent's exhibits attached to its letter of 26 May 2023 inadmissible pursuant to Article R57 of the CAS Code.

42. On 12 June 2023, the CAS Court Office invited the Respondents to comment on the admissibility of two exhibits submitted by the First Respondent on 26 May 2023 by 14 June 2023. Neither the First Respondent nor the Second Respondent provided the CAS Court Office with any comment within the granted deadline.

43. On the same date, the CAS Court Office informed the Parties that, pursuant to Article R57.2 of the CAS Code, the Sole Arbitrator deemed himself sufficiently well-informed to decide this case based solely on the Parties' written submissions, without the need to hold a hearing, unless one of the Parties would request a hearing by 14 June 2023.

44. No Party requested a hearing within the given deadline.

45. On 26 June 2023, the First Respondent and Second Respondent signed the Order of Procedure.

46. On 29 June 2023, the Appellant signed the Order of Procedure.

III. SUBMISSIONS OF THE PARTIES

A. The Appellant

47. In its Statement of Appeal, the Appellant requested the following reliefs:

"*a. A declaration that the 1st Respondent lacks the capacity to institute the Complaint.*

b. A declaration that the decision of the Appeals committee is a nullity for breaching the rules of Natural Justice.

c. A declaration that the decision of the Appeals committee is a nullity for imposing a contractual obligation on the Appellant when the Appellant has no contractual obligation nor agreement with the 1st Respondent.

d. A declaration that the decision of the Appeals committee is nullity by it being in excess of the jurisdiction of the Appeals Committee to impose a joint liability on the Appellant and another entity the Appellant had no relationship with.

e. A declaration that the decision of the Appeals Committee dated the 27th day of February 2023 cannot be supported having regard to the evidence on record.

f. Establish that the order for the Appellant to pay an amount of Sixty-Two Thousand Euros (€ 62,000.00) is without just cause and it is unlawful.

g. Establish that the order requesting the Appellant to pay a further Eighty Thousand Euros (€ 80,000.00) to the 2nd Respondent being 10% transfer fee is unlawful and without just cause in law.

h. Establish that there is no obligation on the Appellant to pay an onward transfer fee of 10% whether to the 1st Respondent or the 2nd Respondent.

i. Establish Appellant has no outstanding financial obligation(s) to the 1st or 2nd Respondent.

j. To charge all costs of the present proceedings on the Respondents and to make the Respondents pay additional cost of legal fees of the Appellant of CHF 10,000.00".

48. The Appellant's arguments may be summarized as follows:

(a) the First Respondent (*i.e.,* Sunyani FC) is a totally different legal entity from The Wisers FC. In particular, the Appellant argues that:

(i) a search conducted with the Office of Registrar of Companies in Ghana has shown that the First Respondent is an entity radically different from The Wisers FC in terms of name, post office address, object of business, directors, banks and symbol;

(ii) all the transaction disputed in the present case took place in 2019, whereas the First Respondent was incorporated with the Registrar of Companies in September 2022 only;

(b) the First Respondent never entered into an agreement with the Appellant or EACA for the transfer of the Player;

(c) based on the documents attached to the complaint filed by the First Respondent with the GFA PSC, the alleged agreement for the payment of the 10% onward transfer fee was entered into by The Wisers FC and EACA;

(d) the First Respondent is incorporated as a football academy, not as a football club; accordingly, it is not a member of the GFA and, therefore, it is not entitled to file a complaint before the GFA PSC and AC;

(e) the Appellant and EACA are two different legal entities and they have no relationship. Accordingly, "*the Appellant cannot be made to inherit the liabilities of another entity it has no contractual nor legal relationship with*";

(f) neither the First Respondent nor The Wisers FC are entitled to be paid any training compensation and/or solidarity compensation from the Appellant because "*the Wisers FC itself, from whom the Appellant obtained Felix Ohene Afena-Gyan wrote a letter unequivocally, irrevocably and unconditionally waiving any claim or potential claim it has or may have in any training compensation and/solidarity contribution*";

(g) the Appellant is not liable to make any payment under Article 32(5) of the GFA Regional Football Association Regulations ("GFA RFAR"), given that:

(i) the decision of the GFA PSC ordering the Appellant to pay the Second Respondent the sum of € 80,000 (eighty thousand euros) is null "*because the said relief was not part of the claim of the 1st Respondent and the 2nd Respondent never gave the Appellant the opportunity to a hearing on whether the Appellant is liable to pay the said amount of money or not*". Accordingly, the said decision "*is in full breach of the rules of natural justice and is a wrongful decision*";

(ii) Article 32(5) of the GFA RFAR applies only in case of "external transfers", whereas in the present case the Player was not transferred externally to AS Roma, but was loaned to AS Roma;

(iii) when the Player was transferred to AS Roma "*the 2nd Respondent was fully aware of the fact of the loan status and as such it charged the Appellant $500 to issue an international transfer certificate on his behalf as its 10% share of the International Transfer*";

(iv) in the International Transfer Certificate, "*the 2nd Respondent affirmed that the Player had duly fulfilled all obligations towards the former club and the 2nd Respondent and as such he is free to pursue all sporting activities and to register with another association affiliated to FIFA*";

(h) there is no evidence supporting the finding of the Appealed Decision that the Appellant, represented by Ms Kathleen Arthur, "*made a payment of GHS 6,000 in line with the promise of Eurafrica Calcio Academy Limited to the 1st Respondent about three months after the player had already been released to the Appellant*".

B. The First Respondent

49. The First Respondent's Answer was declared inadmissible by the Sole Arbitrator (see above para. 29) and excluded from the case file. The arguments raised by the First Respondent will therefore not be addressed in this Award.

C. The Second Respondent

50. The Second Respondent requested the following reliefs:

"*(…) the Appellant's claim is without legal merit and ought to be dismissed*".

51. The Second Respondent's arguments may be summarized as follows:

(a) the Second Respondent did not err when it joined the Appellant to the suit, given that, under Ghanaian law, "*the misjoinder of a party in legal proceedings should not be permitted to defeat the substance of a suit and thus, a trier of fact cloaked with jurisdiction to hear the suit, can amend it* Suo motu";

(b) the Second Respondent did not err when it found that the Appellant breached the contract it entered into with the First Respondent, given that:

(i) in the present case, the argument that the First Respondent was a party to a contract with the Appellant is supported by the following documents:

- a document authored by the Appellant concerning an offer from EACA relating to an unambiguous subject matter, that is the Player;

- the Player's passport confirming that the Player was obtained from the First Respondent by the Appellant;

(ii) moreover, the evidence on file shows that the Appellant sold the Player to AS Roma, "*by way of the invoice sent by the Appellant to the third club purportedly to collect other entitlements due to the 1st Respondent; but this time on a letterhead bearing the name of the Appellant and the same address as the letterhead upon which the offer of the player was made to the First Respondent*";

(c) in the present case, *"an absurdity will result if the words contained in the letterhead containing the offer to contract are construed literally to mean that the Appellant is not a party to the contract because of an error, that now appears to have been intentionally made by the Appellant, which now seeks to take advantage of*". By contrast, "*it is self-evident on the basis of the totality of the evidence on the record that the Appellant objectively and subjectively [is] the party who offered to contract with the 1st Respondent, through the Appellant's own admission*;

(d) the Second Respondent did not breach the rules of natural justice when it, *suo motu*, ordered the Appellant to remit the monetary equivalent of 10% of the transfer fee for the Player to the Second Respondent, given that such payment is provided by Article 32(5) of the GFA RFAR. In particular, the Second Respondent argues that:

(i) Article 32(5)(c)(i) and (ii) of the GFA RFAR provides, in its pertinent parts, that "*ten (10) percent of all training and transfer fees in respect of external transfers, shall be paid into the Football Development Fund as follows (i) five (5) percent shall be paid to the GFA, and (ii) five (5) percent shall be paid to the Ghana League Clubs Association (GHLCA)*";

(ii) Article 15(1)(b) of the GFA Disciplinary Code provides that "*anyone who fails to pay another person (such as a player, a coach or a club) or GFA a sum of money in full or in part, even though instructed to do so by a body, a committee or an instance of GFA will be granted a final deadline of 14 days in which to pay the amount due*";

(iii) "[t]*he obligation to pay ten percent to the 2nd Respondent is statutory and is not dependent on a claim made by a party in proceedings. So long as there is an external transfer of a player from Ghana to another country Article 32(5)(c)(1) of the GFA RFA regulations kicks in, and the GFA PSC can on its own motion order the payment to the 2nd Respondent and GHALCA without any petition from any party*".

IV. JURISDICTION OF THE CAS

52. In accordance with Article 186 of the Swiss Private International Law Act ("PILA"), the CAS has the power to decide upon its own jurisdiction.

53. Article R47 para. 1 of the CAS Code states that "[a]*n 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*".

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

55. In the case at hand, the Appellant relies on Article 58(5) of the GFA Statutes, which provides as follows:

"*Decisions pronounced by the Appeals Committee may only be appealed to the Court of Arbitration for Sport in Lausanne, Switzerland, or to a national, independent Arbitration Tribunal in accordance with the provisions in these Statutes*".

56. The First Respondent accepts that CAS has jurisdiction to rule on the present matter, while the Second Respondent has not challenged the jurisdiction of the CAS. The jurisdiction of the CAS is further confirmed by the Order of Procedure duly signed by all Parties.

57. In view of the above, the Sole Arbitrator considers that the CAS has jurisdiction to decide on the present dispute.

V. ADMISSIBILITY OF THE APPEAL

58. Article R49 of the CAS Code provides as follows:

"*In the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, or in a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against. The Division President shall not initiate a procedure if the statement of appeal is, on its face, late and shall so notify the person who filed the document. When a procedure is initiated, a party may request the Division President or the President of the Panel, if a Panel has been already constituted, to terminate it if the statement of appeal is late. The Division President or the President of the Panel renders her/his decision after considering any submission made by the other parties*".

59. The Sole Arbitrator notes that the GFA Statutes does not provide for a specific time limit to file the Statement of Appeal against decisions issued by the Appeals Committee of the GFA. Therefore, the time limit of 21 days set forth in Article R49 of the CAS Code applies to the matter at hand.

60. The Appealed Decision was issued on 27 February 2023 and communicated to the Appellant on 28 February 2023. The Appellant filed its Statement of Appeal on 20 March 2023 and therefore within the 21-day time limit. The Statement of Appeal complied with all the other requirements of Article R48 of the CAS Code.

61. In the absence of any objection to the admissibility of the appeal, the Sole Arbitrator finds that the appeal is admissible.

VI. APPLICABLE LAW

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

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

63. In the present case, the "*applicable regulations*" for the purposes of Article R58 of the CAS Code are those of GFA RFAR because the appeal is directed against a decision issued by GFA AC in application thereof, as well as the GFA Statutes and, subsidiarily, Ghanaian law.

VII. PRELIMINARY MATTERS

(a) The admissibility of the First Respondent's Answer

64. The Appellant has challenged the admissibility of the First Respondent's Answer arguing that it has been filed late.

65. By contrast, the First Respondent claims that it filed its Answer by mail within the time limit.

66. The Sole Arbitrator notes that by letter of the CAS Court Office date 3 April 2023, the First Respondent was granted a deadline of 20 days from receipt of the Appeal Brief to file its Answer. Such deadline expired on 24 April 2023.

67. The First Respondent filed its Answer by mail on 27 April 2023 and by courier on 28 April 2023.

68. On 28 April 2023, the CAS Court Office invited the First Respondent to provide the CAS Court Office with a proof of sending its Answer in a timely manner by 3 May 2023.

69. The First Respondent did not provide the CAS Court Office with the requested proof.

70. Article R31 para. 3 of the CAS Code provides as follows:

"*The request for arbitration, the statement of appeal and any other written submissions, printed or saved on digital medium, must be filed by courier delivery to the CAS Court Office by the parties in as many copies as there are other parties and arbitrators, together with one additional copy for the CAS itself, failing which the CAS shall not proceed. If they are transmitted in advance by facsimile or by electronic mail at the official CAS email address (procedures@tas-cas.org), the filing is valid upon receipt of the facsimile or of the electronic mail by the CAS Court Office provided that the written submission and its copies are also filed by courier or uploaded to the CAS e-filing*

platform within the first subsequent business day of the relevant time limit, as mentioned above".

71. In the case at hand, the First Respondent's deadline to file its Answer expired on 24 April 2023 (*i.e.,* 20 days from date of receipt of the CAS Court Office letter of 3 April 2023).

72. The First Respondent filed its Answer by mail on 27 April 2023 and by courier on 28 April 2023, *i.e.,* when the deadline was already expired.

73. In light of the above, the Sole Arbitrator concludes that the First Respondent's Answer is not admitted to the file and, accordingly, shall not be taken into account.

(b) The admissibility of the two exhibits submitted by the First Respondent on 26 May 2023.

74. The Appellant argues that the two exhibits submitted by the First Respondent on 26 May 2023 are inadmissible pursuant to Article R57 of the CAS Code given that:

"*the two exhibits were not part of the original record and same was never produced as part of their case whether at the Players Status Committee or at the Appeals Committee Stage*";

"*those two attachments purport to be payments exchanged between the 1st Respondent and persons who are not parties to this suit and same cannot be admitted as part of the record since it lacks relevance*";

"*the letterhead on which the document was issued is remarkable different from the letterhead of 'THE WISERS FC' as evidenced by the numerous exhibits forming part of the record of appeal*";

"*these two documents cannot be admitted as evidence of payment between the Appellant and the 1st Respondent*".

75. The Sole Arbitrator observes that Article R57 of the CAS Code provides as follows:

"*The panel has full power to review the facts and the law. (…)*

(…)

The panel has discretion to exclude evidence presented by the Parties if it was available to them or could reasonably have been discovered by them before the challenged decision was rendered. (…).".

76. Pursuant to CAS 2014/A/3486 (paras. 51 – 53), *"[a] Panel's power to review an appeal on a de novo basis is well established in a long line of CAS jurisprudence. Indeed, this basis of review is, in essence, the foundation of the CAS appeals system and the standard of review should not be undermined by an overly restrictive interpretation of Article R57.3 of the Code. The Panel's inherent discretion to exclude certain evidence under this provision of the Code is just that, i.e. a discretionary power to exclude (or*

admit) certain evidence based on the Panel's own assessment of the case at hand. Thus, the Panel is free to accept or reject any such evidence and doing such should not disrupt the fundamental principle of de novo review. The Panel is of the opinion that Article R57.3 of the Code should be construed in accordance with the fundamental principle of the de novo power of review. As such, the Panel also considers that the discretion to exclude evidence should be exercised with caution, for example, in situations where a party may have engaged in abusive procedural behavior, or in any other circumstances where the Panel might, in its discretion, consider it either unfair or inappropriate to admit new evidence".

77. Similarly, legal scholars have underlined that Article R57 para. 3 of the CAS Code "*should be used with restraint in order to preserve the fundamental de novo character of the review by the CAS*" and that "*the rationale of Article R57 paragraph 3 is to avoid evidence submitted in an abusive way and/or retained by the parties in bad faith in order to bring it for the first time before the CAS*" (MAVORMATI/REEB, *The Code of the Court of Arbitration for Sport*, 2015, pp. 520-521).

78. In light of the above, the Sole Arbitrator finds that the First Respondent did not engage in any abusive or otherwise unacceptable procedural conduct and does not consider either unfair or inappropriate to admit the new evidence presented by First Respondent for the first time in the proceedings before the CAS.

79. This conclusion is also supported by the fact that the two exhibits were submitted by the First Respondent upon a request from the Sole Arbitrator in accordance with Articles R57 para. 3 and R44.3 of the CAS Code.

80. Accordingly, the Sole Arbitrator concludes that the Appellant's request for exclusion of the First Respondent's exhibits is rejected.

VIII. MERITS

81. The dispute at issue pivots around the following main questions:

    (a) Is the First Respondent entitled to file a complaint before the GFA PSC?

    (b) From whom and to whom was the Player transferred?

    (c) Is there an agreement between the Appellant and the First Respondent concerning the transfer of the Player?

    (d) Is obligation under Article 32(5) of the GFA RFSR enforceable *ex officio*?

(a) Is the First Respondent entitled to file a complaint before the GFA PSC?

82. The Appellant claims that the First Respondent (i) is not a football club as it is registered as a football academy; (ii) accordingly, it is not a member of GFA and cannot file a complaint before the GFA PSC.

83. By contrast, the First Respondent argues that it has been registered with the GFA since 2014 and it has participated in all Division 2 competitions organized by the Brong Ahafo Regional Football Association.

84. The Sole Arbitrator notes that, in its additional information provided on 25 May 2023, the Second Respondent confirmed that the First Respondent is affiliated with the Brong Ahafo Regional Football Association and by extension to GFA and that it is, thus, a member of the GFA.

85. Article 51(3) of GFA Statutes provides as follows:

"*Players status disputes involving GFA, its Members, Players, Officials, intermediaries and licensed match agents shall be settled in accordance with these Statutes and subject to any applicable national law*".

86. According to the definitions attached to the GFA Statutes, a member is defined as "*a legal person that has been admitted into membership of GFA by the Congress*".

87. Accordingly, since (i) the First Respondent is a member of the GFA and (ii) disputes involving the members of GFA shall be settled in accordance with the GFA Statutes, the Sole Arbitrator concludes that the First Respondent was entitled to file a complaint before the GFA PSC.

(b) From whom and to whom was the Player transferred?

88. The Appellant argues that the Player was transferred from The Wisers FC to the Appellant.

89. The Sole Arbitrator notes that the Player's passport provided by the Second Respondent clearly shows that the Player was transferred from Sunyani The Wisers FC (*i.e.,* the First Respondent) to the Appellant.

90. The Sole Arbitrator also notes that the Player's passport is the official document attesting the Player's career history. In fact, it is to be noted that, according to the FIFA Commentary on the RSTP, "*[t]he player passport – which should not be confused with a travel document – is meant to assist associations and clubs in tracing the sporting history of the player, as it lists all clubs for which the player was registered as from the season in which he turned 12. This information is crucial when calculating training compensation and the solidarity contribution payable to those clubs that have invested in training this player*" (see comment no. 1, para 1 under Article 7).

91. CAS jurisprudence confirms the evidentiary relevance of a player's passport in the above sense: "*The fundamental role in establishing the entitlement of the clubs to training compensation that is played by the player's passport naturally assumes, as a general rule, that the information contained in the player's passports is correct and adequate to ensure that the difference stakeholders from the football community are able to rely in good faith on such information*" (cf. CAS 2015/A/4214).

92. As a consequence, any club wishing to register a new player has the responsibility to exercise the required diligence and possibly refrain from completing the transfer process in the case where the records showing a player's history are not accurate or complete or when any doubt arises in relation to a player's career history.

93. Therefore, the Sole Arbitrator finds that since it was the club that was interested in registering the Player, the Appellant was the party who should rightfully bear the risk that the information on the basis of which the transfer process was completed was not accurate and adequate.

94. In light of the above, the Sole Arbitrator concludes that in the present case the Player was transferred from the First Respondent to the Appellant.

(c) Is there an agreement between the Appellant and the First Respondent concerning the transfer of the Player?

95. The Appellant argues that it has not entered into any agreement with the First Respondent for the payment of a 10% onward transfer fee concerning the Player. In particular, the Appellants argues that:

(a) the Players was transferred from The Wisers FC (which is a legal entity different from the First Respondent) to the Appellant;

(b) the release letter dated 14 April 2019 exchanged between the Wisers FC and the Appellant contains no obligation to pay either the sum of GH¢ 6,0000 (six thousand cedis) nor the 10% onward transfer fee;

(c) the two letters dated 10 July 2019 and 14 July 2019 providing for the payment of the sum of GH¢ 6,000 (six thousand cedis) and the 10% onward transfer fee were exchanged between The Wisers FC and EACA (which is a legal entity different from the Appellant).

96. Based on the evidence on file, the Sole Arbitrator notes the following:

(a) the Player's passport clearly shows that the Player was transferred from the First Respondent to the Appellant;

(b) the transfer of the Player from the First Respondent to the Appellant is the result of a negotiation managed by Mr Oliver Arthur;

(c) Mr Oliver Arthur is a Players' agent, EACA's Director and Ms Kathleen Arthur's (the Appellant's Chief Executive Officer) brother;

(d) on 20 October 2022, in the proceedings before the Ghana PSC, Ms Kathleen Arthur admitted that the Player was transferred from the First Respondent to the Appellant and that the Appellant paid the sum of GH¢ 6,000 (six thousand cedis) to the First Respondent;

(e) the letter exchanged on 14 April 2019 between The Wisers FC and the Appellant and the letter exchanged on 10 July 2019 between The Wisers FC and EACA show that both the Appellant and EACA were located at the same address, i.e., No. 38 First Phase, Transacco valley Estates, Accra, Ghana.

97. In light of the above, the Appellant cannot claim (a) that it never negotiated with the First Respondent for the transfer of the Player, (b) that the Player was transferred from The Wisers FC to the Appellant, and (c) that it did not testify before the Ghana PSC that it had made a payment of GH¢ 6,000 (six thousand cedis) to the First Respondent for the release of the Player.

98. By contrast, based on the evidence on file, it is the Sole Arbitrator's opinion that the transfer of the Player was the result of only one negotiation between the Appellant and the First Respondent managed by Mr Oliver Arthur. Pursuant to such negotiation, the release of the Player was subject to the payment of the sum of GH¢ 6,000 (six thousand cedis) and the 10% onward transfer fee.

99. This conclusion is also supported by the exhibit provided by the First Respondent showing a bank transfer of GH¢ 60,000 (sixty thousand cedis), around € 10,000 (ten thousand euros) from the Appellant to Mr Kwako Danso, EACA's chairman.

100. In particular, the First Respondent argued that the payment of GH¢ 60,000 (sixty thousand cedis) represents a "*part payment of the onward transfer payment from the Appellant*". By contrast, the Appellant claimed that the exhibit submitted by the First Respondent shows a "*payment exchanged between the 1st Respondent and persons who are nor parties to this suit and same cannot be admitted as part of the record since it lacks relevance*", and that it "*cannot be admitted as evidence of payment between the Appellant and the 1st Respondent*".

101. Against this, however, the Sole Arbitrator notes that:

(a) Mr Kwako Danso is the person who signed the two letters dated 14 July 2019 and 19 July 2019 exchanged between The Wisers FC and EACA;

(b) these two letters are the only documents providing for the obligation to pay the sum of GH¢ 6,000 (six thousand cedis) and the 10% onward transfer fee for the transfer of the Player;

(c) the evidence on file shows that (i) the Player was transferred from the First Respondent to the Appellant; (ii) the Appellant has paid the sum of GH¢ 6,000 (six thousand cedis) to the First Respondent for the transfer of the Player;

(d) the Appellant never alleged, let alone proved, that the payment of GH¢ 60,000 (sixty thousand cedis) was not related to the transfer of the Player.

102. In light of the above, the Sole Arbitrator concludes that the Appellant is legally bound to pay the 10% onward transfer fee to the First Respondent.

103. With respect to the Appellant's argument that the First Respondent has waived any claim for training compensation and/or solidarity contribution as per exhibit 24 submitted by the Appellant, the Sole Arbitrator notes that:

(a) exhibit 24 is a letter written on The Wisers FC letterhead, but curiously signed by the Chairman of the Sunyani FC;

(b) exhibit 24 contradicts the Appellant's defense in the case at hand, given that the Appellant has always argued that (i) The Wisers FC and the First Respondent are two different legal entities and (ii) the Appellant has never negotiated with the First Respondent for the transfer of the Player;

(c) in any case, exhibit 24 refers to "*funds for training compensation and/or solidarity contribution* ***from A.S. Roma***" (emphasis added), not to the 10% onward transfer fee from the Appellant.

104. In light of the above, the Sole Arbitrator concludes that the Appellant's exhibit 24 as such does not invalidate the conclusion reached at para.105 of this Award.

(d) Is obligation under Article 32(5) of the GFA RFAR enforceable ex officio?

105. The Appellant argues that the decision of the GFA PSC ordering the Appellant to pay the sum of € 80,0000 (eighty thousand euros) to the GFA is null because (i) the First Respondent never requested such a relief and therefore the GFA PSC could not issue such an order *ex officio*; (ii) the Second Respondent did not give the Appellant the opportunity to be heard on this specific issue; and (iii) Article 32(5) of the GFA RFAR refers only to external transfers, whereas the Player was loaned to AS Roma.

106. The Second Respondent claims that it did not breach the rules of natural justice when ordered *ex officio* the Appellant to remit the monetary equivalent of 10% of the transfer fee for the Player to the First Respondent, given that such payment is provided by Article 32(5) of the GFA RFAR, and it is not dependent on a party's claim.

107. As regards the alleged breach of the Appellant's right to be heard, the Sole Arbitrator notes that Article R57 para. 1 of the CAS Code grants him full power to review this matter on a *de novo* basis and this has been confirmed by numerous CAS precedents (cf. CAS 2014/A/3467, CAS 2011/A/2500 & 2591, CAS 2008/A/1700 & 1710).

108. This full power of review means that procedural flaws, if any, in a first instance decision can often be cured by a CAS proceeding (cf. CAS 2001/A/345).

109. In CAS 2008/A/1574, the Panel dealt with the meaning of a CAS Panel's *de novo* powers and ruled that a *de novo* hearing is "*a completely fresh hearing of the dispute between the parties, any allegation of denial of natural justice or any defect or procedural error even in violation of the principle of due process which may have occurred at first instance whether within the sporting body or by the Ordinary Division CAS panel, will be cured by the arbitration proceedings before the appeal panel and the appeal panel is therefore not required to consider any such allegations*".

110. Amongst the procedural violations in a first instance decision that can be cured by a *de novo* CAS proceeding is the right to be heard, and this has been consistently established in CAS jurisprudence (CAS 2012/A/2913, CAS 2012/A/2754, CAS 2011/A/2357 and TAS 2004/A/549).

111. The Swiss Federal Tribunal ("SFT") has also confirmed the legality of the curing effect of the CAS *de novo* review. Accordingly, infringements on the parties' right to be heard can generally be cured when the procedurally flawed decision is followed by a new decision, rendered by an appeal body which had the same power to review the facts and the law as the tribunal in the first instance and in front of which the right to be heard had been properly exercised.

112. That said, the Sole Arbitrator also notes that the Appellant has always argued that a hearing in the present procedure before the CAS was not necessary.

113. In summary, the Parties were provided with the opportunity to submit any evidence and arguments they wished to in relation to any of the issues involved in this dispute, including the alleged breach of the Appellant's right to be heard before the GFA AC. As such, the Parties' right to be heard in this CAS proceeding has been fully respected and was further confirmed by the Order of Procedure duly signed by the Appellant.

114. As regard the power of the GFA AC to order *ex officio* the Appellant to pay the sum of € 80,000 (eighty thousand Euros) to the Second Respondent pursuant to Article 32(5) of the GFA RFAR, the Sole Arbitrator notes that the said provision provides that "*Ten (10) percent of all transfer fees in respect of external transfers, shall be paid into a Football Development Fund as follows:*

(i) five (5) percent shall be paid to GFA;

(ii) five (5) percent shall be paid to the Ghana League Clubs Association (GHALCA)

(...)".

115. Based on the wording of Article 32(5) of the GFA RFAR, the obligation to pay ten percent to the GFA is statutory and is not dependent on a party's request. So long as there is an external transfer of a player from Ghana to another country Article 32(5)(c)(1) of the GFA RFAR regulations applies, and the GFA PSC can, on its own motion, order the payment to the GFA and GHALCA even in the absence of a party's request.

116. Lastly, as regard the Appellant's argument that Article 32(5) of the GFA RFAR applies only to external transfers and not also to loans, the Sole Arbitrator notes that, according to Article 26(2)(a) of the GFA RFAR "*under the provisions of these Regulations, the loan of a player by one club to another constitute a transfer*".

117. In light of the above, the Sole Arbitrator concludes that the GFA AC was fully entitled to order *ex officio* the Appellant to pay the sum of € 80.000 (eighty thousand euros) to the GFA pursuant to Article 32(5) of the GFA RFAR.

IX. COSTS

(…).

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ON THESE GROUNDS

The Court of Arbitration for Sport rules:

1. The appeal filed by Eurafrica Football Club on 20 March 2023 against the decision rendered on 27 February 2023 by the Ghana Football Association Appeals Committee is dismissed.

2. The decision issued on 27 February 2023 by the Ghana Football Association Appeals Committee is confirmed.

3. (…).

4. (…).

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

Seat of arbitration: Lausanne, Switzerland

Date: 6 September 2023

THE COURT OF ARBITRATION FOR SPORT

Prof. Stefano Bastianon
Sole Arbitrator