CAS 2025/A/11328 Ellen Chiwenga v. South African Football Association (SAFA)

ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

Sole Arbitrator: Ms Maite Nadal Charco, Attorney-at-Law, Madrid, Spain.

in the arbitration between

Ms Ellen Chiwenga, United Kingdom

Represented by Mr Panagiotis Kyriakou, Attorney-at-Law, Geneva, Switzerland

Appellant

South African Football Association (SAFA), South Africa

Represented by Mr Msawenkosi Arthur Dhlamini, Attorney-at-Law, Johannesburg, South Africa

Respondent

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I. PARTIES

1. Ms Ellen Chiwenga (the "Appellant") is a licensed FIFA Match and Football Agent residing in London.

2. The South African Football Association ("Respondent" or "SAFA") is the governing body for football in South Africa.

II. FACTUAL BACKGROUND

A. Background Facts

3. A summary of the most relevant facts and the background giving rise to the present dispute will be established based on the Parties' written submissions and the evidence filed within these submissions. Additional facts may be set out, where relevant, in connection with the legal discussion which follows. The Sole Arbitrator refers in her Award only to the submissions and evidence she considers necessary to explain her reasoning. The Sole Arbitrator, however, has considered all the factual allegations, legal arguments and evidence submitted by the Parties in the present proceedings.

4. The Appellant is a licensed FIFA Match and Football Agent. She is the founder of EC Football Agents.

5. On 15 February 2024, the Appellant sent the following email to the Respondent's General Secretary, Mrs Lydia Monyepao:

> *"[D]ear General Secretary,*
> *I hope all is well*
> *The English FA just came back to me asking if South Africa Women's national team would be available to play a friendly match in the UK against England Women's national team later this year on either Tuesday October 29 or Tuesday December 3,2024?*
> *This is under the scenario that England don't have to the play the play-offs for the qualification to the Women's Euros 2025.*
> *I look forward to hearing from you soon*
> *Many thanks*
> *Very best wishes*
> *Ellen"*

6. On 22 April 2024, the Appellant sent an email to the Respondent attaching a match contract "prepared by the English FA for the proposed fixture between England and South Africa on 29 October 2024." In the same email, the Appellant stated that she was exploring a second game for the South Africa Women's national team.

7. On 26 May 2024, the Appellant sent to the English FA a match contract signed by the Respondent; and on 13 June 2024, she sent to the Respondent the same match contract counter-signed by the English FA.

8. On 1 July 2024, the Appellant sent the following email to the Respondent's General Secretary, Mrs Lydia Monyepao, a pdf document ("Mandate SAFA Ellen, 1 July 2024") was attached thereto:

> *"[H]I Lydia*
> *I hope all is well and that you had a very nice weekend.*
> *Please find attached below a draft Mandate Agreement so I can work on future games and sponsorship/partnership agreements for SAFA and its National Teams. Let me know what you think. I did not mention any fee maybe we can discuss this once the game against England is 100% confirmed later this month.*
> *Also, the English FA told to me that one person using the email address terrencesportsnetwork@gmail.com has been sending direct messages to England's Senior General Manager about a friendly game between South Africa and England. I told the FA that these messages have nothing to do with SAFA and advised them to block this person.*
> *So we should be careful as it seems some people have knowledge of this match and trying to take advantage behind our back.*
> *Many Thanks, have a lovely week!*
> *Very best wishes*
> *Ellen"*

9. The Appellant did not receive an explicit reply to this email, nor any comments on the attached document.

10. On 5 August 2024, Mr Eroll Madlala, the Respondent's "Commercial and Marketing Manager", sent an email to the Appellant with a Word document attached called "SAFA Commercial Agency Mandate – EC Football." In this email, Mr Madlala made the following statement, among other things:

> *"[...] As far as match agents and agencies, we do not have a standard mandate that commissions agencies to find opponents as our statutes require our international committee to make contact with a FIFA member whom South Africa wants to play. We therefore need to clarify the Denmark and Argentina Matches as soon as possible so that we remove the risk of a match not occurring because a non-compliance"*

11. In the "SAFA Commercial Agency Mandate - EC Football" (defined by Mr Madlala in his email as an 'standard commercial agency mandate'), attached to the email specifically in clause six ("Appointment"), the purpose of the contract was stated in the following terms:

> *"[S]AFA appoints ECFA, who accepts such appointment, on a non-exclusive basis limited to the clients agreed by the parties, to:*
>
> *6.1.1. procure written proposals with sponsors that are willing and able to conclude sponsorship agreement(s), for the Senior Men and Women National teams, with SAFA outside of the African continent territory*

> *6.1.2. procure sponsorship agreement(s) with sponsors that are willing and able to conclude sponsorship agreement(s), for the Senior Men and Women National team, with SAFA outside of the African continent territory".*

12. On 5 August 2024, the Appellant responded to Mr Madlala's email by attaching Articles 15 to 17 of the FIFA Match Agents Regulations (MAR) and stating the following:

> *"Hi Errol […] Thank you very much for sharing your standard commercial mandate […] I understand that you have to follow your statutes, but we have to find a solution regarding these games […] You may also want to look at the possibility to review your statutes and not get restricted any longer by your 'international committee' to find interesting opportunities to play international friendly games […] It is part of my duty as FIFA Match Agent to help FAs & clubs find new opportunities through years of close collaboration and relationships with them. It is also part of my duty to get a mandate to secure games and to get compensated for my work, as everyone […] It is legislated by FIFA and part of the FIFA Match Agent Regulations, as expressed by the articles below […] Let's get this mandate on paper. Then Denmark in the calendar. Two excellent games against teams of the top 15".*

13. On 6 August 2024, the Appellant, along with her partner at EC Football Agents, Mr Yves Couturier ("Mr Couturier"), held a call with Mr Madlala to discuss the reason why the Respondent had sent a commercial agreement while not accepting the Appellant's agency mandate letter.

14. On 12 August 2024, the Appellant sent an invitation letter from the Danish Football Association (DFA) to the Respondent for a game on 25 October. The Respondent confirmed receipt of the invitation on 13 August 2024 and indicated that it must be sent to the National Executive Committee (NEC) for approval.

15. On 15 August 2024, the Respondent sent to the Appellant a signed acceptance letter approved by NEC.

16. On 26 August 2024, the Appellant asked Mr Madlala via WhatsApp when the mandate was going to be sent. The following day, Mr Madlala replied that, as they had discussed in their call two weeks earlier, there would be no such mandate due to SAFA regulations, and that the purpose of that call had been to discuss the Appellant's fees and how to pay them. The Appellant answered that she would send invoices for the two games. Mr Madlala made no comment on this matter.

17. On 30 August 2024, Mr Couturier sent the "match contract" for the match against Denmark to the Respondent via email. In the same email, he also confirmed the date, venue and time of the match (Friday 25 October at Aalborg Stadium, kick-off time 6 pm or 7 pm (TBC local time), as well as some logistical details about the trip to Denmark (recommended airport, name of the hotel, day of arrival and specific meal requirements).

18. On 10 September 2024, the Respondent returned the signed "match contract" for the Denmark match to the Appellant

19. On 11 September 2024, the Appellant sent by email to the Respondent the FIFA Tier 1 Forms formalizing the two Matches, in which she was identified as the agent responsible for promoting and staging both fixtures.

20. On 18 October 2024, the Appellant sent by email two invoices of GBP 9,578 and GBP 9,363 to the Respondent for the organisation of the two Matches, both of which were payable "upon receipt". The Respondent did not react to these invoices or reply to the email.

21. On 4 November 2024, following the matches against England and Denmark, the Appellant sent a reminder to the Respondent regarding the invoices, while reiterating the alternative payment solution of organising a friendly match between the South African and Argentine men's football teams in November 2025.

22. On 14 November 2024, the Appellant sent a message to Ms Natascia Tschiclas (Respondent's vice-president), who told her that she would ask the CEO about this matter and that she would receive payment soon. She also indicated that the Respondent "had some issues that had nothing to do with payments."

23. The Appellant never received payment for the invoices sent to the Respondent.

B. Proceedings before FIFA Football Tribunal

24. On 9 December 2024, the Appellant filed a claim against the Respondent before the FIFA Football Tribunal.

25. Before the FIFA PSC, the Appellant stated that "that she does not hold any resentment towards SAFA and anyone at SAFA. She only wishes to collaborate on further opportunities and be paid for her work."

26. On 17 December 2024, FIFA notified the claim to the Respondent.

27. The Respondent did not submit any response to the claim.

28. After analysing the arguments of the Appellant, the FIFA PSC issued its decision Ref. Nr. FPSD-48042 in the above dispute (the "Appealed Decision") on 29 January 2025, the grounds of which were notified to the Appellant on 18 March 2025.

The main arguments set out in the Appealed Decision are as follows:

> "32. [*F*]*irst, the FIFA administration noted that there is a contract between the Member Associations for the friendly matches, but there is no contract or agreement signed by the parties of this procedure. Actually, the Match contracts between the Member Associations do not mention any intervention or execution by a match agent.*

> *33. It is evident that the Claimant worked hard for the two arranged matches. Nevertheless, there is no evidence that the Respondent had undertaken the obligation to pay a service fee to the Claimant as a match agent. Therefore, the FIFA administration noted that there is no Contract validly executed between the parties.*
>
> *34. Regarding the invoices sent by the Claimant to the Respondent, there is not a document signed by the parties establishing the amount of the any service fee.*
>
> *35. Since there was no Respondent's position, the Single Judge has no alternative but solve the present case based on what is in the case file."*

29. The operative part of the Appealed Decision provides as follows:

> *1. The Football Tribunal has jurisdiction to hear the claim of the claimant, Ellen Chiwenga.*
>
> *2. The claim of the Claimant, Ellen Chiwenga, is rejected.*
>
> *3. This decision is rendered without costs.*

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

30. On 7 April 2025, the Appellant filed a Statement of Appeal with the Court of Arbitration for Sport (hereinafter referred to as the "CAS") against the Respondent, pursuant to the Code of Sports-related Arbitration (hereinafter referred to as the "Code"), challenging the Appealed Decision. In her Statement of Appeal, the Appellant proposed that a sole arbitrator be appointed to hear the appeal.

31. The Respondent remained silent on the issue of the number of arbitrators. Consequently, in accordance with Article R50 of the Code, the number of arbitrators was to be decided by the President of the CAS Appeals Arbitration Division or her Deputy, taking into account the circumstances of the case.

32. On 26 September 2025, in accordance with Article R51 of the Code, the Appellant filed her Appeal Brief, together with supporting documents.

33. On 3 October 2025, the CAS Court Office communicated to the parties that the President of the CAS Appeals Arbitration Division had decided to submit the case to a sole arbitrator. The appointment of the Sole Arbitrator would proceed pursuant to Article R54 of the Code.

34. On 24 October 2025, pursuant to Article R54 CAS Code, the CAS Court Office, on behalf of the President of the CAS Appeals Arbitration Division, informed the parties that the arbitral tribunal appointed to decide the present matter was constituted as follows:

- Ms. Maite Nadal Charco, Attorney-at-Law in Madrid, Spain as Sole Arbitrator.

35. On 15 November 2025, in accordance with Article R55 of the Code, the Respondent filed its Answer.

36. On 17 November 2025, the Parties were invited to inform the CAS Court Office whether they preferred a hearing to be held in this matter or for the Sole Arbitrator to issue an award based solely on the Parties' written submissions.

37. On 21 November 2025, the Appellant communicated that she considered that a hearing was necessary and requested that such hearing be held by videoconference.

38. The Respondent did not comment on the need to hold a hearing or on how it should take place.

39. On 2 December 2025, the CAS Court Office informed the parties that the Sole Arbitrator had decided to hold a hearing in the present matter, which will be held by videoconference (via CISCO Webex).

40. On 7 January 2026, on behalf of the Sole Arbitrator, the CAS Court Office issued an Order of Procedure, which was duly signed by the Appellant on 12 January 2026 and by the Respondent on 14 January 2026.

41. On 4 February 2026, the hearing in this case was held by videoconference.

42. The following persons attended the hearing: for the Appellant: Mr. Panagiotis Kyriakou, counsel and Ms. Ellen Chiwenga (who was questioned by the parties); for the Respondent, Mr Msawenkosi Arthur Dhlamini, counsel and Ms Lydia Monyepao, chief executive of the Respondent.

43. The following were questioned as witnesses: Mr. Yves Couturier (called by the Appellant) and Mr. Errol Madlala (called by the Respondent). Each witness was invited by the sole arbitrator to tell the truth subject to the sanctions of perjury. Each party and the Sole Arbitrator had the opportunity to examine and cross-examine the witnesses, with the clarifications made below in the case of Mr Madlala.

44. With regard to Mr Madlala's questioning, the Sole Arbitrator wishes to draw attention to a number of incidents that took place and which should be noted.

45. Firstly, the witness was in the same room as Ms Monyepao, so he was instructed to leave that room and find a new location to continue his questioning.

46. With the witness in the new location, the Respondent's counsel conducted his examination, but just as the Appellant's counsel was about to cross-examine Mr. Madlala, certain technical problems arose that made this impossible. Despite attempts to rectify this, the connection continued to be unreliable, resulting in two interruptions to the hearing.

47. When the hearing resumed, the witness was asked by the Appellant's counsel whether he had had any contact with the Respondent's counsel during the interruptions, which Mr Madlala denied.

48. It should be noted that the camera belonging to the counsel for the Respondent switched off on several occasions, requiring the sole arbitrator to ask him to switch it back on.

49. Following the last of the interruptions, Mr Madlala was able to answer some questions, but the sole arbitrator decided to end the questioning due to the noise in the room where he was located (which led to ask him if he was alone) and the recurring disconnections of Mr Madlala's camera, as she considered that his testimony could have been compromised.

50. With regard to Mrs Natascia Tschiclas, the Respondent had proposed her as a witness, and the Appellant also requested that she be questioned. The Respondent confirmed her intention to attend the hearing. However, Mrs Tschiclas was not present, and no explanation was provided for her absence, a fact that will be duly assessed by the Sole Arbitrator.

51. At the conclusion of the hearing, the Parties explicitly agreed that their right to be heard and to be treated equally in these arbitration proceedings had been fully observed. The Parties were also satisfied that due process had been fully observed.

IV. SUBMISSIONS OF THE PARTIES

52. The following summary of the Parties' positions is illustrative only and does not necessarily comprise each and every contention put forward by the Parties. The Sole Arbitrator, however, has carefully considered, for the purposes of the legal analysis which follows, all the submissions made by the Parties, even if there is no specific reference to those submissions in the summary.

A. Appellant's position

53. The Appellant's submissions, in essence, may be summarized as follows:

54. The Appellant is a licensed FIFA match agent and had the right to procure matches for the Respondent under articles 13 and 15 of the FIFA Match Agents Regulation (FIFA MAR).

55. The Respondent accepted the matches arranged by the Appellant, thereby assuming the payment obligations set out in Article 19 of the MAR.

56. The above-mentioned Article 19 of the FIFA MAR entitles match agents to receive, in exchange for procuring a match for a given club or association, (i) the "commission" contractually agreed upon by the parties (capped at 25% of the match fee paid to the club or association they represent), or (ii) "compensation" of 10% of the match fee, if the parties have made no contractual arrangements on an amount.

57. In the present case, it is clear that both matches (against England and Denmark) were arranged and organized by the Appellant, which means that she is entitled to receive remuneration for her work. This is evidenced by:

a) The “hard” work carried out by the appellant to organize both matches, reflected in the numerous exchanges of communications and documents between the parties.

b) The Appellant’s name is indicated in the FIFA Tier 1 Forms, which were signed by the Respondent, as the agent responsible for procuring both matches

c) The fact that the Respondent never contested its obligation to pay the Appellant for the work she had performed, nor that she had performed such work in the first place; it only requested time or alternative payment arrangements.

58. In light of the above, having procured the matches, and having discharged her duties successfully and with the requisite diligence, the Appellant should have been paid in accordance with the terms of Article 19 of the MAR.

59. The Respondent is in breach of this provision so long as it refuses to make the relevant payments.

60. The Appealed Decision errs in rejecting the claim submitted by the Appellant, indicating that there was *“[n]o Contract validly executed between the parties”* or no *“[e]vidence that the Respondent had undertaken the obligation to pay a service fee”*, that nothing was *“[s]igned by the parties of this procedure”*, and there was no “document” establishing the amount of the fee.

61. FIFA MAR foresee two types of written arrangements in relation to match agency relationships: in Article 16, they foresee a “mandate”, whereas in Article 17 they foresee a “contract” proper, which records the parties’ concrete “commitments”.

a) the “mandate” (Article 16) is commonly referred to as a “mandate letter”, and is issued by the federation at the early stage of negotiations as proof of the agent’s authority to negotiate on its behalf with other federations; and

b) the “contract”, (Article 17) is referred to as a “mandate contract” and is concluded between the agent and the federation once negotiations based on the “mandate letter” have taken place. This provision states: “[a]ny commitments undertaken by and for a match agent shall be drawn up in duplicate in writing in the form of a contract signed by all the parties concerned”

62. It is precisely the absence of this document (“the contract”) or of any of the requirements that it must contain (Article 18.2 of the FIFA MAR) that has led the PSC to erroneously dismiss the claim filed by the Appellant, despite the work carried out by the latter.

63. In the present case written communications exist authorizing the Appellant to procure the Matches and recognizing her services thus a “mandate contract” in the sense of Article 17 of the FIFA MAR must be deemed to exist, whereby the Appellant was hired to procure the Matches.

64. It is therefore evident for the Appellant that a contract exists between the parties.

65. If the “mandate contract” has not taken the form of “duplicate” documents containing signatures by both Parties and setting out the remuneration (Article 17 and 18.1.b of the FIFA

MAR), this is solely due to the Respondent's attitude. These formal conditions should therefore be deemed fulfilled according to Article 156 of the CO: *"[a] condition is deemed fulfilled where one of the parties has prevented its fulfilment by acting in bad faith"*.

66. The Appellant repeatedly requested a "mandate letter" (Article 16 of the FIFA MAR, but the Respondent never provided one," [d]evising a multitude of conflicting excuses and vaguely referring to various internal bodies and statutes, which allegedly did not allow it to work with agents" ; Finally, trusting in the good faith of the Respondent, the Appellant ceased to request the "mandate letter" and never requested the "mandate contract" (Article 17 of the FIFA MAR), because it understood that it would be a futile request given the Respondent's refusal to issue any written commitment.

67. The Respondent's attitude against the Appellant, negating a "mandate letter" or a document embodying a "mandate contract" while using her work and providing failed assurances of payment, does not deserve legal protection; a "mandate contract" compliant with the formal requirements of Articles 16 and 17 of the MAR must be deemed to exist.

68. The Appellant sent two invoices, recording clear amounts (GBP 9,578 and GBP 9,363) and requiring payment upon receipt in subsequent discussions with the Respondent, no opposition whatsoever was recorded with respect to these amounts

69. To the contrary, the Respondent confirmed its willingness to pay and engaged in discussions about the possible means of payment. These included the possibility of hosting a friendly men's match between South Africa and Argentina.

70. These amounts due to the Appellant are broken down as follows:

a) "*Organisation of Tier 1 Women's friendly match between ENGLAND and SOUTH AFRICA in Coventry, United Kingdom* [GBP] *7,800.00*" (agency fees for the England game).
b) "*Expenses England (flights, transfers, lodging & board, 26-30 October 2024)* [GBP] *1,563.00*" (other expenses incurred for the England game).
c) "*Organisation of Tier 1 Women's friendly match between DENMARK and SOUTH AFRICA in Aalborg, Denmark* [GBP] *7,800.00*" (agency fees for the Denmark game).
d) "*Expenses Denmark (flights, transfers, lodging & board, 21-26 October 2024)* [GBP] *1,778.00*" (other expenses incurred for the Denmark game).

71. The interest provided for in Article 104(1) of the CO (5% per annum) shall accrue from 20 October 2024, i.e. the day following receipt, at which point the Respondent should have made the corresponding payments.

72. Alternatively, and in the unlikely event that CAS dismisses the payment of the invoices, the Appellant would still be owed "10% of the amount [she] has negotiated for the club or national association", pursuant to Article 19.2 of the FIFA MAR. This would entail the payment of DKK 23,218 and GBP 3,685, plus interest of 5% per annum to be calculated from the day immediately following the matches, i.e., October 26 in the case of the match against England and October 30 in the case of the match against Denmark.

73. The Appellant made the following requests for relief:

a) Hold an online hearing on this matter.

b) Uphold the present appeal.

c) Set aside the Appealed Decision.

d) Order the Respondent to pay:

i) GBP 18,941 with simple annual interest at 5% from 20 October 2024, or alternatively

ii) DKK 23,218 with simple annual interest at 5% from 30 October 2024, and GBP 3,685 with simple annual interest at 5% from 26 October 2024.

e) Allocate all costs in connection with this arbitration, if any are incurred or ordered in the course of the proceedings, against the Respondent.

B. Respondent's position

74. The Respondent's position and arguments can be summarized as follows:

75. The Respondent believes that the Appeal should be dismissed for two main reasons:

a) There is no contract between the parties, as there was no meeting of the minds. Article 1. Par 1 of the Swiss Code of Obligations ("CO")

b) Even if a contract had been concluded by the parties, same does not comply with the necessary regulatory requirements and is, therefore, null, void, and unenforceable.

76. Besides, the Appellant's failure to cite FIFA as a respondent must result in the appeal being dismissed.

77. Mr Madlala rejected the contract submitted by the Appellant outright for contravening the SAFA Statutes, specifically by affecting the exclusive competence of the International Affairs Committee, as set out in Article 46.

> *"46. The International Affairs Committee shall consist of a chairperson, a deputy chairperson and no more than 10 (ten) Members and shall be responsible for the following:*
>
> *46.1 recommending the approval of international competitions by the SAFA NEC of SAFA.*
>
> *46.2 organising international competitions subject to the approval of the SAFA NEC.*
>
> *46.3 overseeing South African Football clubs and/or teams representing South Africa and participating in international competitions;*
>
> *46.4 ensuring that such competitions do not conflict with other national competitions of SAFA.*
>
> *46.5 assisting the SAFA NEC in the authorisation of matches between*

> *representative national teams and representative club teams of another federation and ensuring that such matches do not assume the status of a competition or championship without special permission from the SAFA NEC and/or FIFA;*
>
> *46.6 submitting regular reports to the SAFA NEC."*

78. Mr Madlala then submitted a 'counteroffer' in the form of a 'commercial agreement', which the Appellant rejected without offering an alternative text or requesting any modifications.

79. In the face of a counteroffer, therefore, there can be no meeting of the minds in accordance with Art. 1 and Art. 10 CO, since "the Appellant's initial offer was "extinguished by the Respondent's counteroffer".

80. Mr. Madlala made it clear to the Appellant that there was an issue with how the Appellant could even be paid, in light of there being no mandate or signed commercial agreement.

81. Even if it could be demonstrated that a contract had been concluded, it would not be valid or binding because it did not comply with the form prescribed by law (Arts. 11 and 12 of the CO).

82. The applicable regulation is the FIFA Match Agent Regulations ("FIFA MAR"). Specifically, Articles 16, 17, and 18, such that if an agreement/mandate between a match agent and a federation does not meet the following requirements:

    a) Be in writing.

    b) Be signed by both parties.

    c) Contain certain provisions.

    Such a contract between the federation and the match agent shall be deemed null and void.

83. Regarding FIFA's absence from the proceedings, the respondent believes that this will inevitably result in the appeal being dismissed since the present case is a vertical dispute that requires FIFA to be called to the proceedings.

84. The Respondent made the following requests for relief:

    (i) reject the Appeal of the Appellant in its entirety.

    (ii) upholds the Appealed Decision; and

    (iii) awards the Respondent a contribution towards its legal costs.

V. JURISDICTION

85. 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.

86. In connection with the above-mentioned Article R47 of the Code, the jurisdiction of the CAS, which has not been disputed by the Parties, arises out of Articles 49 and 50 of the FIFA Statutes (2024 ed.) which in the pertinent part reads as follows:

> *"49: 1. FIFA recognizes the independent Court of Arbitration for Sport (CAS) with headquarters in Lausanne (Switzerland) to resolve disputes between FIFA, member associations, confederations, leagues, clubs, players, officials, football agents and match agents".*
>
> *"50: 1. Appeals against final decisions passed by FIFA's legal bodies and against decisions passed by confederations, member associations or leagues shall be lodged with CAS within 21 days of receipt of the decision in question*
> *2. Recourse may only be made to CAS after all other internal channels have been exhausted.".*

87. The Sole Arbitrator notes that the Appealed Decision has been issued by a FIFA legal body, that the FIFA Statutes provide for the recourse to the CAS and that all the prior legal remedies available to the Appellant have been exhausted, so the general conditions for the CAS to have jurisdiction in accordance with Article R47 of the Code are met.

88. In addition, all the Parties accepted that the CAS has jurisdiction to resolve this dispute and, moreover, confirmed it by signing the Order of Procedure.

89. Therefore, the Sole Arbitrator holds that CAS has jurisdiction to resolve this dispute.

VI. ADMISSIBILITY

90. 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.*

91. Article 50.1 of the FIFA Statutes states that appeals shall be lodged with CAS within 21 days of receipt of the challenged decision.

92. The Sole Arbitrator notes that the admissibility of the Appeal is not contested by the Respondent. The grounds of the Appealed Decision were notified to the Parties on 18 March 2025. The Appellant's Statement of Appeal was filed on 7 April 2025, *i.e.*, within the 21-day deadline established by Article 50.1 of the FIFA Statutes and Article R49 of the Code. Therefore, the appeal is admissible.

VII. APPLICABLE LAW

93. Article R58 of the 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".*

94. In addition, Article 49, para. 2 of the FIFA Statutes establishes the following:

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

95. In accordance with these provisions, the Sole Arbitrator considers that the present dispute shall be resolved on the basis of the applicable FIFA Regulations and subsidiarily, by Swiss law, if necessary.

96. It is clear from the written submissions that both Parties agree with the above.

VIII. MERITS

97. The present proceedings arise out of the Appealed Decision issued on 29 January 2025, which dismissed Ms. Chiwenga's Claim.

98. The Sole Arbitrator, in view of the Appealed Decision and the Parties' submissions and requests, before entering into the consideration of the merits of the present case, deems it appropriate to identify and define the main issues that shall be analysed and resolved in the present case:

    i) Should the fact that FIFA was not called to the proceedings be considered an error that would lead to the dismissal of the appeal *in limine litis*?

    With regard to the merits of the case, if the answer to the first question is negative,

    ii) Was there a contractual agreement in place between the parties?

    iii) If so, was that contract valid and enforceable?

    iv) And finally, Are the amounts claimed by the appellant due?

99. For the sake of good order, it is therefore necessary to analyse first whether the fact that the appeal was not brought against FIFA should lead to the inevitable dismissal of the appeal on the grounds that it is a "vertical" matter.

i) Should the fact that FIFA was not called to the proceedings be considered an error that would lead to the dismissal of the appeal in limine litis?

100. In the opinion of this Sole Arbitrator, the response must be negative.

101. The distinction between so-called 'vertical' and 'horizontal' disputes, and their impact on FIFA intervention in the proceedings, can be found in *CAS 2015/A/3896 Elias Mendes Trindade v. Club Atlético de Madrid, award of 10 December 2015* (par 89 *et seq.):*

> *With regard to the allegation that FIFA should have been summoned by the Appellant as a necessary party in the present proceedings (...), the Panel agrees with CAS consistent jurisprudence according to which in cases where FIFA merely acts as the legal body rendering the lower-instance decision, i.e. in cases which do not involve FIFA's disciplinary powers (so-called "horizontal disputes"), as in the present case, FIFA has the opportunity to participate in the CAS proceedings but is not a necessary party, nor the Appellant has the burden to summon FIFA as a respondent (see CAS 2008/A/1705; CAS 2008/A/1708; CAS 2010/A/2289).*
>
> *In this respect, the Panel notes that neither the FIFA Statutes nor any other FIFA Regulations contain any specific rule defining the standing to be sued.*
>
> *In these circumstances, CAS panels have consistently addressed the issue whether FIFA has standing to be sued in a certain CAS proceedings by referring to the meaning given to the term "standing to be sued" by Swiss law, affirming that an individual or an entity has standing to be sued "if it is personally obliged by the "disputed rights" at stake" (see CAS 2006/A/1206). In other words, a party has standing to be sued and may thus be summoned before the CAS only if it has some stake in the dispute because something is sought against it (see CAS 2014/A/3690; CAS 2008/A/1517; CAS 2006/A/1189; CAS 2006/A/1192).*
>
> *Within this framework, CAS jurisprudence is unanimous in stating that in cases* where FIFA imposes disciplinary sanctions (for example on a player or a club) or *in all other cases where the matter concerns a membership related decision, FIFA would have capacity to be sued, according to art. 75 of the Swiss Civil Code, as the association which passed the opposed decision1.*
>
> *On the contrary, according to the well-established CAS jurisprudence, FIFA has no standing to be sued where it is only involved in the dispute between two parties (such as a player and a club as in the present case) merely as the adjudicating body having issued the appealed decision and the parties cannot bring an actual claim against FIFA. In this respect, it has been pointed out that criticism directly brought against FIFA with regard to the decisions rendered by FIFA dispute resolution bodies are not sufficient for that purpose (see CAS 2005/A/835 & CAS 2005/A/942). Conversely, the circumstance that FIFA may have a general, abstract interest that its members behave in accordance with the applicable FIFA rules (which may, in theory, justify FIFA's intervention in a CAS*

proceedings according to art. R41.4 of the CAS Code), does not suffice to constitute any "interest at stake" for the purpose of conferring FIFA the capacity to be sued (see CAS 2014/A/3690).

102. Since the present case deals with a contractual dispute between a Match Agent and a National Association, and does not involve any disciplinary power of FIFA, nor any issue concerning FIFA's relationship with one of its member, the Sole Arbitrator believes that it does not fall within the framework of art. 75 of the Swiss Civil Code, nor that the Appellant has any actual claim to bring against FIFA, nor that FIFA has any interest at stake in the present dispute in the sense specified above.

103. Despite the above, it should be noted that FIFA was expressly offered the possibility to intervene in the present arbitration proceedings and freely declined it.

104. Having resolved this preliminary issue, it is appropriate to proceed to addressing the questions indicated above regarding the merits of the case.

ii) Was there a contractual agreement in place between the parties?

105. In order to respond to the aforementioned question, it is essential to begin with the provisions of Article 1 of the Swiss CO:

"Art. 1
1. *Le contrat est parfait lorsque les parties ont, réciproquement et d'une manière concordante, manifesté leur volonté.*
2. *Cette manifestation peut être expresse ou tacite."*

"Art. 1
1. *The contract is concluded when the parties have, reciprocally and in a concordant manner, expressed their will*
2. *This expression may be express or tacit.".* (Unofficial translation by the Sole Arbitrator)

106. It is an undisputed fact that there is no written contract that accurately reflects the obligations assumed by the parties.

107. On 1 July 2024, the Appellant sent by email a 'mandate agreement' with the following text:
"[W]e hereby duly authorise and mandate Ms ELLEN CHIWENGA to conduct all negotiations and to take all steps she may deem necessary or appropriate in that regard. The objectives of this mandate include:
- *The organisation of international friendly football games for South Africa Senior A Men's and Women's national teams against good opposition teams belonging to Football Confederations outside CAF;*
- *The organisation of international friendly football games for South Africa Youth Men's and Women's national teams.*
- *The participation of South Africa Youth Men's and Women's national teams in international tournaments.*
- *The negotiation of new sponsorship and partnership agreements (training kit,*

official sponsors, official partners, kit supplier, etc) for South Africa Senior and Youth Men's and Women's national teams.

- *The organisation of training camps and friendly games for South Africa Senior Men's and Women's national teams for the preparation of major continental and international tournaments (AFCON, FIFA World Cup).*

This mandate shall last from the date hereof for an initial period of three years until 1July 2027. It is renewed annually by tacit agreement thereafter, unless otherwise expressly stated by the Parties".

108. More than a month later, on 8 August 2024, Mr Madlala, on behalf of the Respondent, sent a document that he defined as a 'standard commercial agency mandate'. This mandate authorised the Appellant's company as follows:

> *" 6.1. SAFA appoints ECFA, who accepts such appointment, on a non-exclusive basis limited to the clients agreed by the parties, to:*
> *6.1.1. procure written proposals with sponsors that are willing and able to conclude sponsorship agreement(s), for the Senior Men and Women National teams, with SAFA outside of the African continent territory*
> *6.1.2. procure sponsorship agreement(s) with sponsors that are willing and able to conclude sponsorship agreement(s), for the Senior Men and Women National team, with SAFA outside of the African continent territory"*

109. According to the Respondent, Mr Madlala's remittance of such document constitutes a "counteroffer" and this indicates that there was no mutual accord as required by Article 1 of the Swiss CO transcribed above.

110. The sole arbitrator does not concur with this assertion.

111. Firstly, because the "standard commercial agency mandate" sent by Mr. Madlala, does not reflect, - or more specifically does not reflect in essence- , the work undertaken by the Match Agent and set out in the FIFA MAR, such that this Sole Arbitrator does not consider that it can be understood as a sufficient 'counter-offer' to prove the absence of that concordant expression of will.

112. As stated in Article 1.2 of the Swiss CO, such expression of will does not require a specific form as a condition for the validity of the legal act: *"A declaration of intent may therefore be oral or written, or made using electronic means of communication, for example by fax, post or text message. It may also be expressed or conveyed through conclusive actions:*
a) An expression of will is express (ausdrückliche Willenserklärung) if it results from behaviour that is usually or conventionally understood to convey a specific message to others, such as an expressis verbis statement ('I accept your offer') or a nod of the head.
b) An expression of intent is made by conclusive acts (konkludente Willenserklärung) when it does not directly express a certain will but nevertheless allows the recipient to infer the existence of that will. Such a manifestation of will most often results from active behaviour".
(Commentarie Romand, Thévenoz.Werro, Editerurs, pag.10, unofficial translation by the Sole Arbitrator).

113. The sole arbitrator finds that there are multiple conclusive acts carried out by the parties which clearly indicate a mutual agreement between them, in the sense that the Appellant would be responsible for negotiating and managing the two football matches in question for the respondent as per the terms outlined in Article 13 of the FIFA MAR:

a) The Appellant mediated the signature process of the match contracts for both Matches in constant communication with the Respondent.

b) Numerous communications between the Parties exist concretely showing the Appellant's organization of the two matches and the consent of the Respondent for the Appellant to carry out such actions.

c) The name of the Appellant is indicated in the FIFA Tier 1 Forms, which were signed by the Respondent, as the agent responsible for procuring both fixtures.

d) Both Matches successfully took place without the Respondent ever expressing any reservations about the quality or fulfilment of the work carried out by the Appellant.

e) Although this point will be referred to subsequently, the Respondent consented to the cost of the services rendered and did not voice any objections when the invoices for those services were dispatched to him by the Appellant.

114. In summary, the Sole Arbitrator is of the opinion that there was an agreement of wills in accordance with the provisions of Article 1 of the Swiss CO.

115. Therefore, it was mutually agreed upon by the Parties that the Appellant would assume the obligation to organise two friendly matches between the SAFA women's team and the national teams of England and Denmark, with the consent and authorisation of the Respondent.

iii) Was the agreement valid and enforceable?

116. As previously mentioned, the Appellant sent the Respondent a mandate in accordance with the provisions of the FIFA MAR. The Respondent then sent back the "standard commercial agency mandate" through Mr Madlala, on the basis that the Respondent's Statutes (specifically art. 46.1) did not permit the signature of the mandate sent by the Appellant.

117. This sole arbitrator understands that the Respondent's interpretation of Article 46 of SAFA statutes is not correct.

118. Article 46 of the SAFA Statutes reads as follows:

"46. [T]he International Affairs Committee shall consist of a chairperson, a deputy chairperson and no more than 10 (ten) Members and shall be responsible for the following:
46.1 recommending the approval of international competitions by the SAFA

NEC of SAFA.
46.2 organising international competitions subject to the approval of the SAFA NEC.
46.3 overseeing South African Football clubs and/or teams representing South Africa and participating in international competitions.
46.4 ensuring that such competitions do not conflict with other national competitions of SAFA.
46.5 assisting the SAFA NEC in the authorisation of matches between representative national teams and representative club teams of another federation and ensuring that such matches do not assume the status of a competition or championship without special permission from the SAFA NEC and/or FIFA.
46.6 submitting regular reports to the SAFA NEC."

119. This article indicates the competence of the International Affairs Committee in the organisation of international competitions when this organisation is carried out directly by the National Association. The foregoing does not in any way imply that a Match Agent cannot carry out such organisation; moreover, he/she shall be the only one competent to do so when it is not carried out by the National Association (Article 13 *"[t]he FIFA licence to arrange matches confers upon the holder the exclusive right to arrange friendly matches or tournaments between national teams or clubs from different confederations"*. in relation to Article 15 of the FIFA MAR (*"[i]f no arrangements have been made directly between clubs and/or national associations, the latter shall, in principle, only authorise matches organised by authorised agents")*.

120. Therefore, the Respondent's refusal to sign the mandate sent by the Appellant has no legal basis.

121. As already indicated, the 'standard commercial agency mandate' was not suitable for the intended purpose of organising matches against national teams. It was only valid for signing commercial agreements with sponsors, with the agent receiving a percentage of the value of the contracts they secured.

122. The appellant repeatedly requested that the mandate be signed, but the respondent refused outright on the grounds that it allegedly contravened the statutes. However, as mentioned above, this was not the case.

123. The Sole Arbitrator understands that the Respondent cannot now take advantage of the lack of a written contract that complies with the requirements set forth in the FIFA MAR when it has systematically refused to sign the mandate provided by the Appellant.

124. This arbitrator considers the citation **CAS 2019/A/6131 Archad Burahee v. Equatorial Guinea Football Federation, award of 14 August 2019,** to be very appropriate, as it accurately reflects the case at hand. Thus, in par. 112, it states:

"(...) The Federation's argument that any agreement concluded with the Agent is to be declared null and void because the requirements of Article 18 FIFA Match Agent

Regulations are not complied with is to be dismissed, because the Agent acted in good faith by repeatedly insisting on the confirmation from the Federation on the terms and conditions discussed, which approval was ultimately given although not in the form desired by the Agent. The Sole Arbitrator finds that, although Article 18 FIFA Match Agent Regulations has indeed not been fully complied with, the lax attitude and the failure of the Federation to conclude a specific contract with the Agent for the organisation of the match against Andorra cannot be protected in the circumstances at stake. The Sole Arbitrator finds that it is the Federation itself that is to be blamed for the fact that no proper contract was concluded with the Agent for the organisation of the match against Andorra and the Federation cannot in good faith invoke such failure to escape from its payment obligations towards the Agent. Indeed, this is in accordance with the Latin maxim commodum ex injuria sua nemo habere debet, which means that a wrongdoer should not be enabled by law to take any advantage from his actions".

125. In the present case:

- The Appellant acted in good faith, repeatedly requesting that the letter of mandate be signed, and emphasising that the document sent by Mr Madlala was not fit for purpose.
- The Respondent refused to sign the letter of mandate or put the existing contractual relationship between the parties into writing even though the work carried out by the Appellant was already well advanced.
- Having repeatedly refused to formalise the relationship between the parties in writing, the Respondent claims that, even if a contract existed, it would be null and void precisely because of this lack of written confirmation and failure to comply with the requirements of Article 18 of the FIFA MAR. As previously stated, this cannot be enabled by law.

126. Therefore, and in view of the above, the contractual relationship between the parties is valid and enforceable

iv) Are the amounts claimed by the appellant due?

127. The sole arbitrator notes that the appellant sent to SAFA (Mr Madlala) an email on 18 October 2024, with the following message:

"[H]i Errol,

I hope all is well!

Please find attached below the invoices for the two Matches in Denmark and England.

I would be very grateful if you could settle them quickly.

Many Thanks

Very Best Wishes, Ellen"

128. Two invoices, both dated 16 October 2024, were attached to the aforementioned email:

a) Invoice 125025 "RE: DENMARK V. SOUTH AFRICA- INTERNATIONAL FRIENDLY MATCH, 25 OCTOBER 2024; for an amount due of £ 9,578.00.

b) Invoice 125026 "RE: ENGLAND V. SOUTH AFRICA- INTERNATIONAL FRIENDLY MATCH, 29 OCTOBER 2024; for an amount due of £ 9,363.00.

129. It was therefore evident that, as of 16 October 2024, the Respondent had full knowledge of the fees requested by the Appellant for the work involved in organising each of the matches, as well as the expenses incurred in connection with such organisation.

130. The Respondent:

a) Never responded to the above-mentioned email, nor to the one sent a few weeks later (4 November 2024) in which the Appellant requested that payment of the aforementioned invoices be expedited, even offering alternative methods of payment.
b) Never contested the fact that the Appellant had performed her work.
c) Never questioned the amount of the invoices sent, either in relation to the fees or the expenses incurred.
d) Never contested its obligation to pay the Appellant; it only requested time or alternative payment arrangements

131. Furthermore, the arbitrator wishes to note that, on 14 November 2024, in a WhatsApp message, the Vice-President of the Respondent, Ms Natacha Tschiclas tells the Appellant, *"[I] am sure that you will get paid soon. I will also ask the CEO about it"*.

132. In her witness statement, Ms Tschiclas asserted:

"2.1. [I] deny having accepted liability or assumed payment obligations on behalf of the Respondent, nor could I do so in terms of the Respondent's Statute.
2.2 Accepting such liability on the terms as alleged by the Appellant would be in violation of Art. 46 of the Respondent's Statute. To my knowledge, the Appellant was advised thereof"

133. The sole arbitrator acknowledges the inconsistencies between the content of the WhatsApp message and the witness statement. However, Ms Tschiclas was not present at the hearing, despite having announced her intention to attend. Consequently, she was not available to be questioned on this matter.

134. This fact must be assessed by the sole arbitrator in the sense of giving value to the message sent on 14 November 2024. In this message, Ms Tschiclas indicated to the Appellant that she was sure that she would be paid soon and that she was even going to speak to the CEO of SAFA in this regard.

135. In summary and taking everything outlined at this point into consideration, the arbitrator understands the following:

i) there was an agreement between the parties for the Appellant to assume the duties of a FIFA Match Agent in the organisation of the two friendly matches.

ii) this agreement was not put in writing for reasons attributable to the Respondent, despite the Appellant's attempts.

iii) both Matches organised by the appellant occurred without any expressed disagreement from the Respondent.

iv) neither the validity nor the amount of the fees owed to the Appellant were ever disputed or objected to by the Respondent; and therefore, the Respondent is obliged to pay GBP 18,941 to the Appellant.

136. With regard to the interest accruing on the amounts due, the Sole Arbitrator first notes that the existence of default must be assessed pursuant to Article 102 of the Swiss Code of Obligations ("CO"), which provides as follows in a free translation into English:

> *"[W]here an obligation is due, the debtor is in default as a result of a reminder from the creditor."*

137. As a consequence of such default, the obligation to pay default interest arises by operation of law. In this respect, Article 104(1) CO provides that in a free translation into English:

> "*[A] debtor in default on payment of a pecuniary debt must pay default interest of 5% per annum even where a lower rate of interest was stipulated by contract*".

138. As no agreement establishing a different rate of interest has been proven in the present case, the Sole Arbitrator holds that the statutory interest rate of 5% per annum applies. Accordingly, interest at a rate of 5% per annum shall accrue on the outstanding amounts as from the date of default until the date of effective payment.

139. Thus, the arbitrator finds that Ms. Chiwenga is entitled to receive from the South African Football Association the sum of GBP 18,941 plus 5% interest p.a. as of 20 October 2024, until the date of effective payment., without examining the alternative claim set out in the appeal brief.

140. In view of all the above, the Sole Arbitrator decides to uphold the Appeal in its entirety and to annul the Appealed Decision.

IX. COSTS

(…)

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by Ellen Chiwenga against the decision Ref. Nr. FPSD-48042 issued on 29 January 2025 by the FIFA Players Status Chamber is upheld.
2. The decision Ref. Nr. FPSD-48042 issued on 29 January 2025 by the FIFA Players Status Chamber is annulled.
3. The South African Football Association is ordered to pay to Ms. Ellen Chiwenga, the sum of GBP 18,941 plus 5% interest p.a. as of 20 October 2024, until the date of effective payment.
4. (…).
5. (…).
6. All other motions or prayers for relief are dismissed.

Seat of arbitration: Lausanne, Switzerland

Date: 15 June 2026

THE COURT OF ARBITRATION FOR SPORT

Maite Nadal
Sole Arbitrator