CAS 2025/A/11485 El Masry SC v. Eze Emeka Christian

ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

Sole Arbitrator: Dr Marco Balmelli, Attorney-at-Law in Basel, Switzerland

in the arbitration between

El Masry Sporting Club, Port Said, Egypt
represented by Mr Ehab Elsaie, General Manager to the Club, Port Said, Egypt

- Appellant -

and

Mr Eze Emeka Christian, Enugu State, Nigeria
represented by Mr Hamza Abdelwahab, Attorney-at-Law in Faisal- Giza, Egypt

- Respondent -

I. PARTIES

1. El Masry Sporting Club (the "Appellant" or "Club") is a professional football club with its registered seat in Port Said, Egypt. It is affiliated to the Egyptian Football Association (the "EFA"), which, in turn, is affiliated to the Fédération Internationale de Football Association (the "FIFA").

2. Mr Eze Emeka Christian (the "Respondent" or "Player"), is a professional Nigerian football player, born on 22 December 1992.

II. FACTUAL BACKGROUND

A. Facts of the case

3. Below is a summary of the main facts established on the basis of the decision FPSD-18676 rendered by the FIFA Dispute Resolution Chamber (the "FIFA DRC") on 25 April 2025 (the "Appealed Decision"), the submissions of the Parties and the evidence examined in the course of the proceedings. This background is set out for the sole purpose of providing a synopsis of the matter in dispute. Additional facts may be referred to, where relevant, in connection with the later legal discussion. While the Sole Arbitrator has considered all the facts, allegations, legal arguments and evidence available in the present proceedings, only the submissions and evidence necessary to explain the reasoning of the award will be referred to in the following paragraphs.

4. On 30 January 2020, the Appellant and the Player concluded an employment agreement, valid as from the date of signature until the end of the 2023/2024 season (the "Employment Agreement").

5. The Employment Agreement contained *inter alia* the following provision (the "Contractual Clause"):

   "*sixth: (additional provision)*

   It has been agreed between the club on the player on:

   […]

   3. the player doesn't deserve the value of 25% the [sic] *last share of each season without participation of 75% or more of total matches of the season".*

6. Further, regarding the renumeration of the Player for the 2023/2024 season, it was agreed in the Employment Contract that a total amount of USD 333,334 will be paid, divided as follows:

   - one instalment, payable on 15 August 2023, amounting to USD 120,430

- eight instalments, payable on every 15th of the subsequent months, amounting to USD 17,742

- one last instalment, payable on 30 May 2024, amounting to 70,968.

7. At the end of the 2023/2024 season, the employment relation between the Parties ended.

8. On 14 October 2024, a release form in which the Player allegedly declared having received the last financial dues in the amount of USD 6,875 from the Appellant, and thus, all financial obligations between the Parties were settled, was – again allegedly – signed by the Player (the "Release Form").

9. On 9 February 2025, the Player sent a default notice to the Appellant requesting the payment of the last instalment of USD 70,968 (the "Outstanding Amount") within 15 days.

10. On 26 February 2025, after the Appellant did not pay the Outstanding Amount, the Respondent sent a second and final default notice with an additional deadline of seven days.

11. At an unclear date, the Appellant replied and informed the Respondent that he was not entitled to receive the Outstanding Amount as the condition precedent in the Contractual Clause – the Player to have played in at least 75% of the total matches in the season – was not met.

B. Proceedings before the FIFA Dispute Resolution Chamber

12. On 19 March 2025, the Respondent lodged a claim before the FIFA DRC, requesting payment of the Outstanding Amount.

13. On 25 April 2025, the FIFA DRC passed the Appealed Decision, which reads, in its operative part, as follows:

> *"1. The claim of the Claimant, Eze Emeka Christian, is accepted.*
>
> *2. The Respondent, Almasry FC, must pay to the Claimant **USD 70,968 as outstanding remuneration** plus 5% interest p.a. as from 1 June 2024 until the date of effective payment.*
>
> *3. A **warning** is imposed on the Respondent.*
>
> *4. Full payment (including all applicable interest) shall be made to the bank account indicated in the **enclosed** Bank Account Registration Form.*
>
> *5. Pursuant to art. 24 of the Regulations on the Status and Transfer of Players, if full payment (including all applicable interest) is not made **within 45 days** of notification of this decision, the following **consequences** shall apply:*

1. *The Respondent shall be banned from registering any new players, either nationally or internationally, up until the due amount is paid. The maximum duration of the ban shall be of up to three entire and consecutive registration periods.*

2. *The present matter shall be submitted, upon request, to the FIFA Disciplinary Committee in the event that full payment (including all applicable interest) is still not made by the end of the three entire and consecutive registration periods.*

6. *The consequences **shall only be enforced at the request of the Claimant** in accordance with art. 24 par. 7 and 8 and art. 25 of the Regulations on the Status and Transfer of Players.*

7. *This decision is rendered without costs".*

14. On 14 May 2025, the FIFA DRC notified the grounds of the Appealed Decision to the Appellant and the Respondent.

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

15. On 3 June 2025, the Appellant filed a Statement of Appeal with the Court of Arbitration for Sport (the "CAS") pursuant to Article R48 of the Code of Sports-related Arbitration (the "CAS Code") against the Respondent regarding the Appealed Decision.

16. On 5 June 2025, the CAS Court notified the Appellant, that according to Article R48 para. 1 of the CAS Code the Statement of Appeal shall contain "the Appellant's request for relief" and set a time-limit of three (3) days to complete the Statement of Appeal.

17. On 7 June 2025, and within the relevant time-limit, the Appellant submitted his requests for relief to complete its Statement of Appeal.

18. On 12 June 2025, the CAS Court Office initiated the present proceedings and notified the Parties of the Statement of Appeal.

19. On 12 June 2025, and within the relevant time-limit, the Appellant filed its Appeal Brief in accordance with Article R51 of the CAS Code.

20. On 20 June 2025, FIFA informed the CAS that it renounces its right to request the intervention in the present arbitration proceedings.

21. On 3 July 2025, the CAS Court Office informed the Parties that the initial time-limit for the Respondent to file his Answer was set aside and that a new time-limit would be fixed upon the Appellant's payment of its share of the advance of costs.

22. On 9 July 2025, the CAS Court Office informed the Parties that the Appellant paid the advance of costs in the present matter.

23. On 29 July 2025, and within the relevant deadline, the Respondent filed his Answer in accordance with Article R55 of the CAS Code.

24. On 5 August the CAS Court Office informed the Parties that the Arbitral Tribunal appointed to hear the present matter was constituted as follows:

    Sole Arbitrator: Dr Marco Balmelli, Attorney-at-Law in Basel, Switzerland

25. On 24 September 2025 and after having been duly consulted, the Parties were informed that a hearing will be held by video-conference (via Cisco Webex) on Monday, 13 October 2025 at 09:30 CEST (Swiss time).

26. On 6 October 2025, the CAS Court Office sent the Parties the Order of Procedure.

27. On 8 October 2025, and within the relevant time-line, the Appellant provided the duly signed Order of Procedure.

28. On 9 October 2025, the CAS Court Office reminded the Respondent, that the deadline to submit the signed Order of Procedure expired on the same day.

29. On 13 October 2025, and after the CAS Court Office reminded the Respondent again, he provided the duly signed Order of Procedure.

30. On the same day, the hearing was held. The Sole Arbitrator was assisted by Ms Amelia Moore, Counsel of the CAS. The following persons attended the hearing:

    For the Appellant:

    - Mr Soliman Elbihiry, Administrative Manager of the Club
    - Mr Walid Salah, Legal Counsel of the Club
    - Mr Saied Moustafa, Interpreter

    For the Respondent:

    - Mr Eze Emeka Christian, Respondent/Player
    - Mr Ignacio Triguero, Legal Representative
    - Ms Natalia Randa, Legal Representative
    - Mr Hamza Abdelwahab, Legal Representative

Witnesses called by the Appellant:

- Mr Mahmoud Gaber, Team Manager
- Mr Abderrahim Deghmoun, Player

31. At the end of the hearing all Parties confirmed that their right to be heard had been respected.

32. On 29 October 2025, the CAS Court Office informed the Parties that the evidentiary proceedings were closed.

IV. SUBMISSIONS OF THE PARTIES

33. The following outline of the Parties' positions is illustrative only and does not necessarily comprise each and every contention put forward by the Parties. The Sole Arbitrator has, however, carefully considered all the submissions made by the Parties, even if no explicit reference has been made in what immediately follows. The Parties' written submissions and the content of the Appealed Decision were all taken into consideration.

A. Appellant

34. The Appellant filed the following requests for relief:

"In completion to our statement of appeal sent to your esteemed court, you are kindly requested to withdraw and cancel the decision issued by the DCR on 14 May 2025 Ref. FPSD – 18676, as the club did fulfil all its obligations towards the player as per the contract and as per the release and clearing letter signed by the player (attached 1)".

35. The Club relies on the following arguments:

- The Player is not entitled to the Outstanding Amount as the Contractual Clause conditions the payment of the last 25% of the Player's renumeration for a season to his participation in at least 75% of the total matches in the respective season, and such condition was not met for the 2023/2024 season.

- The Player never objected the Contractual Clause and neither was it refused by the EFA. In addition, clauses like the Contractual Clause are implemented also in other player contracts. Therefore, the Contractual Clause must be respected.

- The Contractual Clause is not potestative, as it is based on the Player's performance.

- Furthermore, the Appellant alleges that the Player signed the Release Form and, therefore, forfeited his claim to the Outstanding Amount.

- Finally, the Appellant argues that the Player's claim to the Outstanding Amount is time-barred as per Article 23 al. 3 of the FIFA Regulations on the Status and Transfer

of Players (the "RSTP"), as the Employment Agreement was concluded on 30 January 2020.

B. Respondent

36. The Respondent filed the following requests for relief:

"7.1. Dismiss the appeal in its entirety;

7.2. Confirm the FIFA decision in case FPSD-18676;

7.3. Order the Appellant to pay the amount of USD 70,968 plus 5% annual interest from 01 June 2024;

7.4. Order the Club to pay all the costs of the arbitration and to award the Respondent a contribution for his legal fees".

37. His argumentation presents as follows:

- A clause like the Contractual Clause is – according to the relevant jurisprudence – potestative as it leaves full discretion to the Club regarding the Player's participation. Regarding the base salary, such clause must be deemed excessive and unbalanced and therefore void.

- Further, the Player claims to never have signed the Release Form. The signature on the Release Form differs from other genuine signatures of the Player, i.e. on the release form relating to the 2021/2022 season, the Employment Agreement and his Nigerian passport.

- The claim to the Outstanding Amount is not time-barred under the provision of Article 23 al. 3 RSTP, as not the date on which the Employment Contract was signed is relevant for the beginning of the two-year period, but the breach of contract, i.e. the untimely payment of the Outstanding Amount.

- The sanctions imposed on the Appellant by the FIFA DRC are lawful according to Article 12bis al. 4 RSTP, as it did not comply with its financial obligations.

- Finally, the Respondent contends that the Appeal must, in any event, be dismissed concerning the sanctions due to the omission of FIFA as a respondent in the proceedings as only FIFA would have legal standing to be sued in matters relating to disciplinary measures, and therefore no ruling on this issue should be made.

V. JURISDICTION, ADMISSIBILITY, APPLICABLE LAW

A. Jurisdiction

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

> "*An appeal against the decision of a federation, association or sports-related body may be filed with CAS if the statutes or regulations of the said body so provide or if the parties have concluded a specific arbitration agreement and if the Appellant has exhausted the legal remedies available to it prior to the appeal, in accordance with the statutes or regulations of that body".*

39. The jurisdiction of CAS, which is not disputed, derives from Article 50 para. 1 of the FIFA Statutes as it determines that "[a]*ppeals 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*".

40. The Parties further confirmed the jurisdiction of CAS by signing the Order of Procedure.

41. It follows that CAS has jurisdiction to decide on the present dispute.

B. Admissibility

42. 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 of a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against*".

43. In addition, Article 50 para. 1 of the FIFA Statutes states:

> "*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*".

44. The grounds of the Appealed Decision were notified to the Parties on 14 May 2025 and the Statement of Appeal was filed on 3 June 2025, i.e. within the twenty-one days set by Article 50 para. 1 of the FIFA Statutes. The appeal complied with all other requirements of Article R48 of the CAS Code, including the payment of the CAS Court Office fee.

45. It follows that the Appeal is admissible.

C. Applicable Law

46. Pursuant to Article R58 of the CAS Code:

> "*[t]he Panel shall decide the dispute according to the applicable regulations and, subsidiarily, to the rules of law chosen by the parties or, in the absence of such a choice,*

according to the law of the country in which the federation, association or sports-related body which has issued the challenged decision is domiciled or according to the rules of law the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision".

47. Article 49 para. 2 of the FIFA Statutes stipulates 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".*

48. The Sole Arbitrator will decide the present dispute primarily in accordance with the FIFA Regulations and, subsidiarily, in accordance with Swiss law in case of any lacuna in the FIFA Regulations.

VI. MERITS

A. Overview and scope of the Appeal

49. According to Article R57 para 1 of the CAS Code, the Sole Arbitrator has "*full power to review the facts and the law*". As provided for in the CAS jurisprudence, the CAS appeals arbitration procedure thus entails a *de novo* review of the merits of the case as it is not confined to merely ruling whether the appealed decision is to be upheld or not (e.g. CAS 2007/A/1394 p. 6; CAS 2022/A/9219, para. 74; CAS 2022/A/8882, para. 132). It is the role of the Sole Arbitrator to establish the merits of the case independently.

50. Regarding the CAS' *de novo* power, such may also heal any procedural defects that may or may not occurred before the previous deciding body (with further references CAS 2019/A/6409, para. 123 et seq.).

51. The questions of the case at hand are whether:

i. the Contractual Clause is valid; and, if not

ii. whether the Release Form was signed by the Player and if this constitutes a full and final settlement declaration between the Parties;

iii. whether the Player's claim to the Outstanding Amount is time-barred; and

iv. in case the Appellant was found to have not fulfilled all financial obligations towards the Player, whether the sporting sanction, i.e. the warning, was rightfully imposed on them.

B. The validity of the Contractual Clause

52. The first question to be examined by the Sole Arbitrator is whether the Contractual Clause, which was implemented by handwriting under "*sixth:(additional provision)*" and reads as follows:

> *"It has been agreed between the club on the player on:*
>
> […]
>
> *3. the player doesn't deserve the value of 25% the [sic] last share of each season without participation of 75% or more of total matches of the season*".
>
> is valid and binding to the Parties.

a. The nature of the remuneration under the Employment Agreement

53. Prior to addressing the relevant legal framework and the possible potestative character of the Contractual Clause, the Sole Arbitrator deems it necessary to first rule on the nature of the renumeration under the Employment Contract.

54. The Sole Arbitrator notes that the clause "*Second: value of contract*" is the only clause referring to the Player's renumeration. The clause stipulates a total contractual value of USD 1,462,125 which must be paid in instalments of different amounts for a respective season. The highest instalment, being the last one for the season 2023/2024, amounting to USD 333,334.

55. It is therefore to be concluded that the only remuneration of the Player is owed for the duration of the Employment Agreement and is divided by seasons and is not performance-related. The contractually agreed renumeration is therefore a time wage. By including the Contractual Clause, however, the Parties established a condition precedent to the payment of 25% of "*the last share of each season"*.

b. The principle of contractual freedom and unbalanced contractual provisions

56. Secondly, the Sole Arbitrator deems it necessary to first delineate the pertinent legal framework governing the principle of contractual freedom.

57. Initially, the Sole Arbitrator notes that the Contractual Clause has been included in the Employment Contract which was signed by the Parties and that such finding was not contested. Therefore, and under the principle of *pacta sunt servanda*, which is the underlying principle of Article 13 RSTP, the Contractual Clause must generally be respected, as it was agreed upon. Such finding is also in line with the Swiss Code of Obligations (the "SCO"), which in Article 19 al. 1 establishes the principle of contractual freedom.

58. However, the principle of contractual freedom is – under Swiss law – limited by Article 20 al. 1 SCO, which reads as follows:

"*A contract is void if its terms are impossible, unlawful or immoral"*.

59. Further, Article 27 al. 2 of the Swiss Civil Code (the "SCC") establishes that "[n]*o person may surrender his or her freedom or restrict the use of it to a degree which violates the law or public morals*". Therefore, the principle of contractual freedom may be restricted.

60. Additionally, the Sole Arbitrator also notes that according to CAS jurisprudence, contractual provisions must not be entirely balanced, but a certain disparity may be admissible. In CAS 2021/A/7931 para. 119 et seq., the following was established:

"*The Sole Arbitrator also finds relevant to note what CAS jurisprudence has established regarding unilateral contractual clauses:*

"*The limit of contractual freedom in this respect is formed by the prohibition of excessive self-commitment, as laid down in Swiss law, for example, at Art. 27(2) of the Swiss Civil Code", adding in a footnote that "[n]o person can alienate his personal liberty nor impose any restrictions on his own enjoyment thereof which are contrary to law and morality." (PORTMANN, Unilateral option clauses in Footballer's contracts of employment: An assessment from the perspective of International Sports Arbitration, ISLR 2007, p. 6-16)" (CAS 2015/A/4042).*

The Sole Arbitrator notes that following the well-known CAS jurisprudence in this regard, a certain level of disparity on the contractual rights of the Parties has to be accepted as such; the question really is how big this disparity may be. If the relevant provisions constitute a deviation form [sic] *the general principles enshrined in the applicable regulations, such deviations may in principle not be potestative as established in CAS 2017/A/5056*".

c. Is the Contractual Clause potestative?

61. After establishing the nature of the renumeration and outlining the relevant legal framework, the Sole Arbitrator turns to the main dispute at hand, i.e. if the Contractual Clause is potestative, meaning "*a condition whose fulfillment was completely within the power of the obligated party"* (Merriam-Webster online dictionary, as cited in CAS 2021/A/8471 para. 126).

62. The CAS as well as the FIFA DRC ruled on the potestative nature of clauses, which – as it is the case at hand – contains a condition relating to the amount of matches played by a player.

63. For instance, in CAS 2015/A/4042 para. 68, the Sole Arbitrator held that "[s]*uch deviation may in principle not be potestative, i.e. the conditions for termination may not be unilaterally influenced by the party wishing to terminate the contract* ***(an example of a potestative clause would be the situation where a contract provides that it can be***

unilaterally terminated by the club if the player does not play in a certain percentage of matches*, for the decision to field the player may be influenced by the club)*". [emphasis added].

64. Further, in CAS 2020/A/7582 6 7583 para. 181, the Panel – relying on the above cited case – found that "[s]*uch a potestative condition, the fulfilment of which being solely dependent on Al Sadd's will (i.e. it could decide not to field the Player anymore and thereby unilaterally create the circumstances to execute this clause) is generally considered void in the jurisprudence of CAS:* […]".

65. The FIFA DRC, in its decision Nr. 20-01064 dated 10 December 2020, established the following (para. 61 et seq.):

"*In this respect, the Chamber wished to point out that the decision on the lining-up of a player in a match is normally left fully to the discretion of clubs. As such, players had no influence on the question of whether or not he would be fielded in a specific number of matches in the relevant season.*

In this context, the members of the Chamber highlighted that, in general, potestative clauses, i.e. clauses that contain obligations which fulfilment are conditional upon an event that one party entirely controls, can in general not be applied, since they limit the rights of the other contractual party in an excessive manner and lead to an unjustified disadvantage of the latter towards the other.

Along those lines, the majority of the members of the Chamber agreed that clause 1.2 cannot be taken into consideration due to its potestative nature. Indeed, as previously mentioned, the club totally controlled the fielding of the player and therefore, only the club was in a position to decide whether or not to extend or terminate the contract. The majority of the members of the Chamber referred to the jurisprudence of the DRC in this respect, which has been consistent to rule that clauses such as the one at stake, which leaves a player at the mercy of a club, cannot be upheld".

66. Regarding clauses relating to the amount of matches played by a player and the effect of such on his base salary, the FIFA DRC in the decision Nr. FPSD-8674 dated 30 March 2023 ruled what follows (para. 40 et eq.):

"*Lastly, the Chamber addressed the argument of the club in respect of the variable remuneration of the player. In doing so, the Chamber deemed that it was necessary to first analyse whether said reduction of the player's salary made by the club was indeed lawful. In this context, the Chamber highlighted that, in general, potestative clauses – i.e. clauses dependent on an event which can only be triggered by one of the contractual parties and upon the latter's wish – cannot be applied, as they limit the rights of the contractual counterparty in an excessive manner and lead to an unjustified disadvantage of the latter.*

The Chamber understands that clause in question inserted in the contract is clearly potestative as it unilaterally provides all the power to the club to decide upon a

considerable reduction of the player's salary, since it is the club, at its sole discretion, who decides if the player is fielded or not. In spite of the fact that the aforementioned clause is included in a valid employment contract voluntarily signed by both parties, the Chamber acknowledges the usual imbalance in the bargaining power of the employer and of the employee and therefore decided that such clause has a clearly abusive nature and shall not have any legal effect in the relevant employment relationship.

On account of the aforementioned considerations, the Chamber decided that the club's argumentation as to the reduction of the salaries could not subsist, and that the Respondent been in breach of its obligations for a significant period of time".

67. Such interpretation has also been supported in recent CAS jurisprudence (CAS 2024/A/10331 para. 85):

"*Second: The FIFA DRC considered that the "Participation Rate" provision set out at Clause 1(C) of the Club's financial regulations could not be applied. Such clause indicated that 25% of the value of the Player's contract was to be set aside and paid after the end of the season, in case of participation in 80% of the matches. Such clause has been defined by the Parties as containing a variable part of the Player's salary, contingent on his actual participation in matches played by the Club. The Panel could see no specific reasoning by the FIFA DRC in its decision on this issue, however the Panel agrees with the FIFA DRC that this deduction cannot be made. The Panel concludes that such clause is potestative in nature as it gives the Club the unilateral power to decide upon a considerable reduction of the Player's salary, since the Club, at its sole discretion, could decide on the participation or not of the Player. On this basis, it has an abusive nature and does not have any legal effect in the relevant employment relationship. As a result, the Appealed Decision correctly determined this point".*

68. In the case at hand, it is obvious that the power to field the Player laid with the Club and therefore, after having said all of the above, the Sole Arbitrator concludes that the Contractual Clause is potestative. As such, it must be considered null and void and the remaining 25% of the remuneration owed to the Player under the Employment Contract are not under the condition that he played in 75% of the Club's matches in the respective season.

C. The (alleged) signing of the Release Form

69. After having established the invalidity of the Contractual Clause, the Sole Arbitrator turns to the question whether the Player has signed the Release Form and thereby forfeited his claim to the Outstanding Amount.

70. The Appellant submitted the Release Form as Exhibit Nr. 4 and argues that the Player signed it and therefore acknowledges that no amount other than the USD 6,875 mentioned in the Release Form are owed to him.

71. However, the Respondent, in his Answer, denied having signed the Release Form. He puts forward that the signature on the Release Form is substantially different than the

signature on other documents, including the Employment Contract and his Nigerian passport. Referring to the Player's argument, during the hearing, Mr Soliman Elbihiry, called as a witness by the Appellant and being their administrative manager, claimed that the Player has two different signatures.

72. According to the longstanding CAS jurisprudence, the burden of proof lies with the party claiming the disputed fact:

"*According to the general rules and principles of law, facts pleaded have to be proven by those who plead them, i.e. the proof of facts, which prevent the exercise, or extinguish, the right invoked, must be proven by those against whom the right in question is invoked. This means, in practice, that when a party invokes a specific right it is required to prove such facts as normally comprise the right invoked, while the other party is required to prove such facts as exclude, or prevent, the efficacy of the facts proved, upon which the right in question is based. This principle is also stated in the Swiss Civil Code. In accordance with Article 8 of the Swiss Civil Code: Unless the law provides otherwise, the burden of proving the existence of an alleged fact shall rest on the person who derives rights from that fact. It is well established CAS jurisprudence that any party wishing to prevail on a disputed issue must discharge its burden of proof, i.e. must give evidence of the facts on which its claim has been based. The two requisites include the concept of 'burden of proof' are (i) the 'burden of persuasion' and (ii) the 'burden of production of the proof'. In order to fulfil its burden of proof, a party must, therefore, provide the Panel with all relevant evidence that it holds, and, with reference thereto, convince the Panel that the facts it pleads are true, accurate and produce the consequences envisaged by the party. Only when these requirements are complied with has the party fulfilled its burden and has the burden of proof been transferred to the other party"* (CAS 2023/A/9444, para. 53 with further references to CAS 2016/A/4580; CAS 2015/A/309; CAS 2007/A/1380, CAS 2005/A/968 and CAS 2004/A/730).

73. It is therefore for the Appellant to prove that the Player signed the Release Form, which – logically – includes the proof that the signature on the Release Form is the genuine signature of the Player.

74. To begin with, a visual comparison between the signature on the Release Form and those on all other available evidence reveals a clear difference in stylistic characteristics.

75. The Sole Arbitrator notes that the only claim submitted regarding the authenticity of the disputed signature is the aforementioned oral argument of Mr Elbihiry, stating that the Player uses two different signatures. Such claim is not supported by any further evidence. The evidence submitted that contains the Player's signature, i.e. the Employment Contract and a release form for the 2021/2022 season, contain visually the same signatures of the Player. The same applies to the Player's Nigerian passport, a copy of which was submitted by the Respondent. What is more, the Player's Nigerian passport was issued on 23 August 2024, i.e. only three weeks before the Release Form was allegedly signed.

76. While it may be possible for an individual to have more than one signature and/or to change the style of the signature, the evidence brought before the Sole Arbitrator does not imply such finding, but rather that the signature on the Release Form is not the Player's.

77. The Sole Arbitrator therefore concludes that the Appellant failed to prove the authenticity of the signature on the Release Form and by that also the potential waiver to the Outstanding Amount. With respect to the principle of procedural economy, the Sole Arbitrator abstains from examining, whether the Release Form would suffice as a waiver to the Outstanding Amount, if it were duly signed by the Respondent.

D. The claim to the Outstanding Amount is not time-barred

78. Finally, the Sole Arbitrator will examine whether the claim to the Outstanding Amount is time barred according to Article 23 al. 3 RSTP as argued by the Appellant in its Appeal Brief.

79. Such claim, however, cannot be heard. The Appellant's argumentation results from the assumption that the date on which the Employment Agreement was signed is relevant to determine if the Player lodged its claim within the two-year period. Such interpretation is flawed. In the Commentary on the RSTP, 2023 ed. (the "Commentary"), it is clearly - and by relying on the relevant jurisprudence - established, that "[t]*he two-year deadline is applied to individual payments, rather than to the contractual relationship. This means that if a player claims several outstanding monthly salary payments, the claim for each payment will be analysed individually (i.e. the date on which the payment was contractually due) to see whether it is time-barred or not. The same applies to any payment due in instalments; the due date of each individual instalment will be considered separately to establish whether it falls within the statute of limitations. This approach is applied consistently and without exception in the jurisprudence*" (p. 478).

80. The Sole Arbitrator notes that the Player lodged his claim before the FIFA DRC regarding the last instalment for the 2023/2024 season – amounting to USD 70,968 and being payable on 30 May 2024 – on 19 March 2025.

81. Therefore, the Player's claim to the Outstanding Amount is not time-barred, as the two-year period stipulated in Article 23 al. 3 RSTP would not end before 30 May 2026.

E. The sporting sanctions imposed on the Appellant

82. In the Appealed Decision, a warning according to Article 12bis al. 4 lit. a RSTP, was imposed on the Appellant.

83. In CAS 2012/A/3032 para. 43, the Sole Arbitrator concluded – referring to established jurisprudence of the CAS – what follows:

"*As a consequence, in an appeal against a decision of FIFA, by means of which disciplinary sanctions have been imposed on a party, only FIFA has standing to be sued, but not the (previously) opposing party in, e.g., a financial dispute before the competent*

FIFA bodies (cf. CAS 2008/A/1620, para. 4.7.; CAS 2007/A/1367, para. 43 et seq.). In other words, only FIFA can be the correct Respondent having standing to be sued".

84. The Appellant did not summon FIFA as a Respondent in the case at hand. Further, FIFA, by submission dated 20 June 2025, renounced its right to request its possible intervention in the procedure.

85. This said, as the Appellant failed to summon the right respondent, i.e. FIFA, for the appeal against the imposed warning, such sporting sanction cannot be lifted.

F. Conclusion

86. Following from the above, the Sole Arbitrator herby concludes that:

i. the Contractual Clause is potestative and therefore null and void;

ii. the Appellant failed to demonstrate for the Release Form to have been duly signed by the Player;

iii. the Player's claim to the Outstanding Amount is not time-barred; and, finally

iv. the Appellant failed to summon FIFA as a respondent leaving the Sole Arbitrator no possibility to rule on the imposed sporting sanction and therefore such remains in force.

VII. COSTS

(…)

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The Appeal filed by El Masry SC on 3 June 2025 against the decision rendered on 25 April 2025 by the FIFA Dispute Resolution Chamber is dismissed.

2. The decision rendered by the FIFA Dispute Resolution Chamber on 25 April 2025 is confirmed.

3. (…).

4. (…).

Seat of arbitration: Lausanne, Switzerland
Date: 23 January 2026

THE COURT OF ARBITRATION FOR SPORT

Dr Marco Balmelli, Attorney-at-Law
Sole Arbitrator