Arbitration CAS 2016/A/4604 Ängelholms FF v. Kwara Football Academy, award of 12 January 2017

Panel: Mr Mark Hovell (United Kingdom), Sole Arbitrator

Football
Training compensation
Discretion of a CAS panel to exclude new evidence under article R57(3) CAS Code
Determination of the first professional contract of a player for the purpose of the training compensation
Assessment of the amount of training compensation

1. **CAS panels, pursuant to Article R57 of the CAS Code have the power to hear disputes *de novo* or anew. That said, since the 2013 edition of the CAS Code, the newly inserted third paragraph now gives CAS panels the possibility or discretion to refuse 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. Abusive procedural behaviour from the party presenting such evidence has been recognized as an important criteria by CAS panels to exercise their discretion to exclude it. On the contrary, a panel may decide not to exercise its discretion to exclude such evidence where there is no bad faith from the party presenting the evidence, the evidence presented is central to the dispute and its exclusion could result in an incorrect decision.**

2. **Based on the player's passport, the uncontested evidence submitted by the player and the nature of "Sports Training Contracts" that are educationally focused, aimed at young amateur players and provide for a monthly payment labelled as "subsidy" exclusively used for the players educational and living expenses, those contracts should be considered as amateur contracts whereas, a contract subsequently entered into between the player and another club duly registered as a professional contract shall be considered the first professional contract of the player for the purpose of the training compensation.**

3. **Under Article 5.2 of Annexe 4 of the FIFA Regulations on the Status and Transfer of Players, training compensation is calculated based on the training costs of the new club multiplied by the number of years training with the former club. However, under Article 5.3, to ensure that training compensation for very young players is not set at unreasonably high levels, the training costs for players for the seasons between their 12th and 15th birthdays shall be based on the training and education costs of category 4 clubs.**

I. PARTIES

1. Ängelholms FF ("Angelholms" or the "Appellant") is a football club based in Ängelholm, Sweden. The club is affiliated to Svenska Fotbollförbundet (the "SFF").

2. Kwara Football Academy ("Kwara" or the "Respondent") is a youth football academy for footballers, based in Ilorin, Kwara State, Nigeria.

II. FACTUAL BACKGROUND

3. Below is a summary of the main relevant facts and allegations based on the parties' written submissions, pleadings and evidence adduced during these proceedings. Additional facts and allegations may be set out, where relevant, in connection with the legal discussion that follows. Where the Sole Arbitrator has considered all the facts, allegations, legal arguments and evidence submitted by the parties in the present proceedings, he refers in his Award only to the submissions and evidence he considers necessary to explain his reasoning.

4. From 1 January 2008 to 28 August 2012, A. (the "Player") was registered with the Respondent as an amateur player according to the player passport (the "Player Passport") issued by the Nigeria Football Federation (the "NFF") on 10 October 2014. The Player's date of birth is 12 November 1993, therefore, he was aged 14 when he registered with the Respondent and 18 years old when he left. The Player Passport contained no records for the 2005/06 and 2007/08 seasons.

5. On 16 September 2009 (two months before the Player's 16th birthday), the Player signed a sports training contract with SL Benfica for the period 30 September 2009 until 30 June 2012 (the "First Benfica Contract"). The Player was to be paid a subsidy of EUR 300 per month in the first year.

6. On 18 January 2010, the Player was granted a Portuguese visa for four months.

7. On 24 January 2010, the Player left Nigeria for Portugal to start with SL Benfica.

8. On 27 April 2010, the Player left SL Benfica and returned to Nigeria. The Player's time at SL Benfica was not recorded on his Player Passport.

9. Between May 2010 and June 2011, on his return to Nigeria, the Player stated that he played for the Nigerian Premier League Club 'Bukola Babes' (now called 'Abubakar Bukola Saraki Football Club'), and was paid 20,000 Naira (roughly EUR 60 at the exchange rate applicable on the date of this award) per month (the "Bukola Contract"); then he completed this period and played for Kwara United, and was paid 30,000 Naira (roughly EUR 90) per month (the "KU Contract"). These were not recorded on his Player Passport.

10. On 29 April 2011, the Player entered into another contract with SL Benfica for the period 1 July 2011 to 30 June 2012 (the "Second Benfica Contract"). The Player was 17 years old when

the contract was signed. The Appellant alleges that the Player was to be paid a subsidy of EUR 500 per month.

11. In December 2011, the Player was informed that SL Benfica did not intend to offer him a new contract and with their permission, he began to search for a new club.

12. On 14 May 2012, SL Benfica and the Player terminated the Benfica Contract with retroactive effect from 29 February 2012. Clause 2 of the settlement agreement with SL Benfica (the "Termination Agreement") stated that SL Benfica was to pay the Player compensation in the sum of EUR 1,500, which corresponded to the Player's subsidy for December 2011, and January and February 2012. Clause 3 stated that the settlement did not affect the rights of SL Benfica to training compensation.

13. Following this, the Player returned to Nigeria.

14. In June 2012, the Player returned to Europe and had trials with the Swedish club, Mjällby FF.

15. On 28 August 2012, the Player signed an employment contract with the Appellant for a season, paying him EUR 30,000 (the "Contract"). He was registered as a professional with the SFF and the details of this registration were uploaded onto the FIFA Transfer Matching System (the "FIFA TMS"). The Player was 18 years old when the Contract was signed.

Proceedings before the FIFA Dispute Resolution Chamber

16. On 24 July 2014, the Respondent lodged a claim before the FIFA Dispute Resolution Chamber (the "FIFA DRC") against the Appellant claiming the payment of training compensation in the sum of EUR 117,424, plus 5% interest p.a. This claim included an older version of the Player's passport from the NFF (dated 1 June 2014), which stated that the Player had been registered with the Respondent since 1 December 2005 until 30 June 2012.

17. On 25 June 2015, the Respondent again contacted the FIFA DRC. Despite now filing the Player Passport, that detailed the Player's registration with it between 1 January 2008 until 30 June 2012, the Respondent maintained its claim for training compensation in the sum of EUR 117,424, plus 5% interest p.a.

18. On 26 November 2015, the FIFA DRC rendered a decision (the "Appealed Decision") as follows:

> *"1. The claim of the Claimant is partially accepted.*
>
> *2. The Respondent has to pay to the Claimant,* ***within 30 days*** *as from the date of notification of this decision, the amount of EUR 110,000 plus 5% interest p.a. as of 25 June 2015 until the date of effective payment.*
>
> *3. In the event that the aforementioned sum plus interest is not paid within the stated time limit, the present matter shall be submitted, upon request, to FIFA's Disciplinary Committee for consideration and a formal decision.*

4. Any further claim lodged by the Claimant is rejected.

5. The final costs of the proceedings in the amount of CHF 8,000 are to be paid by the Respondent ***within 30 days*** *as from the date of the notification of the present decision, to FIFA to the following bank account with reference to case nr. 15-01021/ssa:*

6. The Claimant is directed to inform the Respondent immediately and directly of the account number to which the remittance under point 2. above is to be made and to notify the Dispute Resolution Chamber of every payment received".

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

19. On 10 May 2016, pursuant to Article R48 of the Code of Sports-related Arbitration (the "CAS Code"), the Appellant filed a Statement of Appeal against the Appealed Decision at the Court of Arbitration for Sport (the "CAS"). The Statement of Appeal contained the following requests for relief:

*"1.1 The Appellant requests the Court of Arbitration for Sport (the "**CAS**") to alter the decision passed by the FIFA Dispute Resolution Chamber on 26 November 2015 (the "**Decision**") and reject the Respondent's claim for training compensation.*

1.2 Alternatively, the Appellant requests the CAS to alter the Decision and decide that the Respondent only shall be entitled to receive training compensation for the period under which the player A. was effectively trained by the Respondent.

1.3 The Appellant also requests the CAS to order the Respondent to bear the costs of the arbitration.

1.4 The Appellant finally requests the CAS to grant the Appellant a contribution towards its legal fees and other costs incurred in connection with this arbitration in an amount to be determined at the discretion of the Panel".

20. In its Statement of Appeal, the Appellant requested that the matter be heard by a sole arbitrator.

21. On 18 May 2016, the Appellant wrote to the CAS Court Office requesting an extension of time to submit its Appeal Brief until 25 May 2016.

22. On 19 May 2016, the CAS Court Office responded granting the requested extension.

23. On 25 May 2016, pursuant to Article R51 of the CAS Code, the Appellant filed its Appeal Brief with the CAS Court Office.

24. On 1 June 2016, the CAS Court Office wrote to the Parties informing them that a sole arbitrator would be appointed in this case.

25. On 16 June 2016 the Respondent wrote to the CAS Court Office requesting that the time limit for the Respondent's Answer be fixed once the Appellant had paid its share of advance of costs. This was agreed by the CAS Court Office by its letter of the same date.

26. On 5 July 2016, the Appellant subsequently paid the advance of costs and the CAS Court Office then wrote to the parties on informing them that the Respondent's Answer should be filed within 20 days of receipt of its letter by courier.

27. On 5 July 2016, the CAS Court Office wrote to the parties informing them that Mr Mark A. Hovell, Solicitor, Manchester, United Kingdom had been appointed as a Sole Arbitrator in this matter.

28. On 21 July 2016, pursuant to Article R55 of the CAS Code, the Respondent filed its Answer with the following requests for relief:

> *"1. To exclude evidence that was not submitted in the course of consideration of the case at DRC.*
>
> *2. To uphold DRC decision.*
>
> *3. To reimburse the Respondent for the expenses borne in connection with this appeal process at the Appellant's expense.*
>
> *4. To recover arbitration costs connected with these appeal proceedings solely from the Appellant".*

29. On 28 July 2016, the Respondent wrote to the CAS Court Office stating that it did not believe that a hearing was needed in this dispute.

30. On 29 July 2016, the Appellant responded stating that it preferred for the Sole Arbitrator to issue an award based on the Parties' written submissions.

31. On 5 August 2016, the Sole Arbitrator deemed himself sufficiently well-informed to decide this case based solely on the Parties' written submissions.

32. On 1 September 2016, the Sole Arbitrator, pursuant to Article R57 of the CAS Code, invited FIFA to provide the CAS Court Office with a copy of the FIFA DRC's complete case file.

33. On 1 September 2016, in view of the Respondent's request for an exclusion of some of the Appellant's evidence, the CAS Court Office on behalf of the Sole Arbitrator invited the Appellant to submit any observations strictly limited to this request within one week.

34. On 2 September 2016, the Appellant requested an extension of five days in light of the point above, which in accordance with Article R32 of the CAS Code was granted by the CAS Court Office.

35. On 13 September 2016, the Appellant submitted its observations on the Respondent's request for the exclusion of some of its evidence.

36. On 22 September 2016, FIFA produced a copy of its entire FIFA DRC case file to the CAS Court Office. A copy of the same was sent to the Sole Arbitrator on 28 September 2016 and to the Parties on 6 October 2016.

37. On 26 September 2016, the Respondent asked the Sole Arbitrator to dismiss the Appellant's comments on matters not related to the evidence. The Respondent argued the Appellant in its reply went beyond the scope of inquiry set by the CAS Court Office.

38. On 6 October 2016, the CAS Court Office on behalf of the Sole Arbitrator informed the Parties of the following:

"The Respondent's challenge to the Appellant's letter of the 13 September 2016 is denied. The Sole Arbitrator indeed considers that this letter only contains submissions in relation to Article R57.3 of the CAS Code, which are hence accepted in the CAS file.

The Respondent's challenge to parts of the evidence contained within the Appeal Brief is denied. The reasons of this procedural decision will be given in the final award".

39. On 6 October 2016, the CAS Court Office on behalf of the Sole Arbitrator informed the Parties that as there was no request for a hearing the Parties were granted the opportunity pursuant to Article R44.3(2) of the CAS Code to submit final observations strictly limited to the FIFA file, within 14 days.

40. On 10, respectively 11 October 2016, the Parties signed the Order of Procedure.

41. On 13 October 2016, the Respondent submitted their observations on the FIFA file stating that it considered the decision rendered by the FIFA DRC as impartial and fair, that the Appellant acted in bad faith and had been evading their responsibility to pay training compensation for a long time and had delayed the proceedings before the FIFA DRC.

42. On 21 October 2016, the Appellant submitted its observations on the FIFA file stating that there was an additional version of the Player's passport dated 1 June 2014 in the FIFA file that had not been presented to the Appellant under the proceedings before the FIFA DRC.

IV. SUBMISSIONS OF THE PARTIES

43. 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 all the submissions made by the Parties, even if no explicit reference is made in what immediately follows.

A. The Appellant's Submissions

In summary, the Appellant submitted the following in support of its Appeal:

44. The Appellant did not dispute that the Player started his football career at the Respondent, but disputed that he stayed with the Respondent up until August 2012 and that he signed his first contract as a professional with the Appellant.

45. The Player already held a professional status at the time before he was registered with the Appellant. Hence, only the Player's former club was entitled to training compensation due as a result of the Player's subsequent transfer to the Appellant.

a) Admissibility of Witness Statement from the Player

46. The Appellant stated the time the Player spent in Bukola Babes and Kwara United during the season 2010/2011 as well as the written contracts with the respective clubs were unknown to it at the time of the FIFA DRC proceedings.

47. Furthermore, the various Player passports from the NFF did not provide for any information about these clubs. The information could not reasonably have been discovered by the Appellant prior to its appeal of the Appealed Decision.

48. The Appellant stated that it was only when it once again started to ask questions about the Player's whereabouts that it received the information from the Player. However, such information could not come as a surprise for the Respondent.

b) The Written contract and the remuneration are the only relevant criteria to establish professional status

49. The Appellant noted that under Article 2.2 of the FIFA Regulations on the Status and Transfers of Players (edition 2010) (the "RSTP") a professional is a player who has *"a written contract with a club and is paid more for his footballing activity than the expenses he effectively incurs"* and that all other players are considered to be amateurs.

50. The Appellant argued that the only relevant criteria for establishing whether a player is a professional or an amateur are the written contract and the remuneration, and that the wording of Art 2.2 of the RSTP does not engage for any other considerations than whether or not the remuneration provided to the player exceeds the expenses effectively incurred by the football activity.

51. The Appellant stated according to FIFA and CAS jurisprudence (such as *CAS 2006/A/1177)*, a weekly financial compensation of GBP 80 or GBP 115 is enough to meet the remuneration requirement in Article 2.2 of the RSTP.

ba) Period at Bukola Babes and Kwara United

52. The Appellant argued that the remuneration the Player received from Bukola Babes and Kwara United were relatively small, but based on the economical standard in Nigeria were sufficient for an acceptable living standard. In light of this, the Appellant argued that the Player signed his first and second contracts as a professional already during the season of 2010/2011.

bb) The Second Benfica Contract

53. The Appellant stated that when the Player signed the Second Benfica Contract, which entitled the Player to a monthly remuneration of EUR 500, the Player signed his third contract as a professional.

54. The Appellant recognised that the Player's copy of the Second Contract was unfortunately incomplete, which was also pointed out by the FIFA DRC. The Appellant cited the Termination Agreement and stated that, while it was not an employment contract between the Player and SL Benfica, the Termination Agreement clearly stipulated that the Player and SL Benfica accepted to rescind by mutual agreement the Second Benfica Contract and it gave details of the remuneration payable under that contract. Clause 1.1 of the Termination Agreement stated:

"By the present agreement BENFICA SAD and the TRAINEE agreed and accepted to rescind by mutual agreement the sporting training contract with effects from 1 July 2011 until 30 June 2012".

55. The Appellant argued this clearly proved the existent of the Second Contract, and that the recurring references in the Termination Contract that quotes specific clauses in the Second Benfica Contract proved that the Second Contract was a written contract between the Player and SL Benfica. Clause 2.1 gave details of the EUR 500 monthly payments too.

56. The Appellant noted this constituted the Player's third professional playing contract and the Player held a professional status when he signed the employment contract with the Appellant coming to the conclusion that the Player had been a professional since the 2010/2011 season.

57. The Appellant stated the Respondent is not the Player's former club in the strict sense of Annexe 4 Article 3.1 of the RSTP and is therefore not entitled to any training compensation due to the Player's registration with the Appellant.

c) Accuracy/Validity of Player Passport

58. The Appellant stated that the additional Player passport dated 1 June 2014 strengthened the Appellant's conclusion that the Player passports issued by the NFF cannot be deemed as reliable proof for the Player's career history. The Appellant stated, the NFF have issued three different Player passports and although the NFF have stated that the Player Passport dated 10 October 2014 is the *"most correct and accurate"* document, it is obvious to the Appellant that the NFF does not have sufficient information to be able to issue a credible and correct Player passport and the Player passports issued by the NFF should be disregarded by the Sole Arbitrator.

59. The Appellant stated that the first Player passport issued by the NFF on 28 August 2012 sets forth that the Player was registered as an amateur with the Respondent from 30 June 2010 until and included 1 April 2012, a period for which the Player in fact trained and played with the clubs Bukola Babes, Kwara United and SL Benfica.

60. The Appellant submitted the second Player Passport issued by the NFF on 10 October 2014 amended the dates for the Player's registration with the Respondent. The NFF increased the

period of time for the Player's registration with the Respondent. The Appellant questioned why it suddenly included 1 January 2008 until and included 28 August 2012, coming to the conclusion that instead of only containing wrongful information for the period 30 June 2010 until and included 1 April 2012, the player passport also included the first period under which the Player trained and played with SL Benfica in 2010.

61. The Appellant stated the Player Passport was amended due to the FIFA DRC's request for a clarification, but without any further explanation from the NFF. The Appellant submitted that the First Contract, the Player's Witness Statement, the Second Contract and the Termination Agreement all provided for the obvious conclusion that the player passports issued by the NFF cannot be deemed as reliable proof for the Player's career history and should be disregarded by the Sole Arbitrator.

62. The Appellant indicated that it was uncertain as to if there were any particular reasons that the periods for which the Player trained and played with Bukola Babes and Kwara United were not noted in the player passport, or if it was only as a result of insufficient routines at the NFF.

63. The Appellant further noted however, that the fact the Player was never registered at the Portuguese Football Federation ("PFF") for his time spent at SL Benfica, was most likely explained by the prohibition against international transfer of players under the age of 18, citing Article 19 of the RSTP.

64. The Appellant highlighted that in the Appealed Decision, the FIFA DRC referred to the player passport issued by the SFF as clear evidence of the fact that the Player only had been registered as an amateur until his registration with the Appellant.

65. The Appellant, in light of the above, stated that, when the SFF drafted the Player passport, they did not have any other information to rely on other than the information provided by the NFF.

66. The Appellant further submitted that due to the inconsistency in the information received from the NFF, the SFF did not feel comfortable by certifying any other part of the Player's career history, other than the dates for the Player's registration as a professional with the Appellant. The Appellant established the Player passport issued by the SFF, shall therefore only serve as evidence for the date when the Player was registered as a professional with the Appellant.

d) Registration of Player is not a determent criteria to prove player was never a Professional

67. The Appellant accepted a player has to be registered at an association in accordance with Article 2.2 of the RSTP to be eligible to play for a club, and that the registration of players by the national associations shall comply with the distinction between amateurs and professionals provided for in Article 2.2 of the RSTP.

68. The Appellant however, argued that the registration of the Player serves only as a presumption for whether the Player is an amateur or a professional, but is not determent for the classification.

69. The Appellant submitted the only relevant criteria for establishing whether a player is a professional or an amateur is the written contract and the remuneration, pursuant to Article 2.2 of the RSTP. The Appellant stated that if there was evidence, in contradiction with the registration of the Player as an amateur, that demonstrated that the Player had in fact had a written contract and had been paid more for his football activity than the expenses he effectively incurred, then the Player should be regarded as a professional. The Appellant cited CAS jurisprudence *(CAS 2009/A/1810&1811)* to confirm this.

70. The Appellant stated regardless of the player passports provided by the NFF and the SFF in this matter, the Player became a professional in accordance with Article 2.2 of the RSTP long before he signed the employment contract with the Appellant.

71. The Appellant argued that the Appealed Decision passed by the FIFA DRC highlighted that the ITC received by the SFF was from the NFF and not from the PFF and that the history of the ITC does not prove that the Player never trained and played as a professional with SL Benfica. The Appellant stated it was only a consequence of the fact that SL Benfica and the PFF never registered the Player, and cannot be used as evidence for determining the Player's status as an amateur or a professional.

e) Alternative request

72. The Appellant submitted that should the Sole Arbitrator determine that it had a liability to the Respondent to pay training compensation in relation to the Player, then it should be calculated as follows:

Training period

Start	End	Age	Compensation (EUR)	Exact dates
01-07-2007	30-06-2008	Season of 14th birthday	4,973	(01-01-2008)
01-07-2008	30-06-2009	Season of 15th birthday	10,000	
01-07-2009	30-06-2010	Season of 16th birthday	17,014	(23-01-2010)
Total training compensation			**31 986**	

B. The Respondent's Submissions

In summary, the Respondent submitted the following in support of its defence:

a) Admissibility of Witness Statement from the Player

73. The Respondent with regard to the Player's witness statement asked the Panel acting within Article R57 par.3 of the CAS Code to exclude it, any other documents provided by the Player

to support information mentioned in the witness statement and any other evidence presented by the Appellant which was not submitted to FIFA in the course of consideration of the case; as it all could reasonably have been discovered by the Appellant prior to FIFA rendering the Appealed Decision.

74. The Respondent noted that Article 1 of Annex 4 of the RSTP states:

"Training compensation shall be payable, as a general rule, up to the age of 23 for training incurred up to the age of 21, unless it is evident that a player has already terminated his training period before the age of 21".

75. In view of the above, the Respondent stated with certainty that the Appellant acted unconscientiously and the fact that the evidence submitted to the CAS could have been discovered before the Appealed Decision was rendered by the FIFA DRC, was the continuation of the Appellant's line of conduct to delay the payment of training compensation. In the Respondent's opinion, total reconsideration of the Appealed Decision with account of new evidence in these circumstances will lead to an unfavourable precedent which would allow potential appellants to withhold a part of evidence or refrain from submitting it with the purpose of the longest possible consideration of the case.

76. At the time when a professional contract was concluded with by the Appellant with the Player in August 2012, the Appellant could not have been unaware that the Player was under 23 years old. If the Appellant had acted in accordance with the RSTP from the very beginning, they would have tried to establish the Player's career history within 30 days following the Player's registration with themselves.

77. The Respondent argued if the Appellant had had any doubts they would have received a statement from the Player regarding his career back at that time. Since the Appellant did not obtain the Player's statement and did not distribute the amounts of training compensation, the Respondent argued the Appellant tried to avoid the responsibility to distribute training compensation.

78. The Respondent stated that the witness statement constituted a printed text, was not hand-written and so that it is unlikely that it was the Player himself who typed the text.

79. The Respondent stated the Player may have not fully understood what exactly he was signing. The Respondent noted an example is the statement that from 1 July 2011 to 29 February 2012 the Player was registered in *"SL Benfica as professional"*. The Respondent posed the question, what can make a person who signed a "sports training contract" consider themselves a professional? The Respondent came to the conclusion that in all likelihood, the Player was misled either when signing the contract or when signing the witness statement which someone else drew up and printed on his behalf.

b) The written contract and the remuneration only relevant criteria to establish professional status

80. The Respondent agreed that the relative criteria to establish a player as a professional are the written contract and remunerations.

81. The Respondent stated therefore, the form of a contract is one of the decisive criteria and despite the fact that legislation of some countries accepts conclusion of an employment contract in a form other than written, according to the well-established FIFA jurisprudence it is the written contract that is one of the essential factors allowing to regard the player as a professional.

82. The Respondent stated that CAS holds the same opinion and cited *CAS 2009/A/1895* and *CAS 2013/A/3207* which mention that the expression "written contract" should be interpreted strictly as this affects conformity of legal relations to the principle of contractual stability which is one of the fundamental principles of the RSTP.

83. The Respondent however argued that the Player's obligation to be involved in sports activity should be provided for in the written contract. The Respondent mentioned that pursuant to Article 2(2) of the RSTP, stipulates that the player claiming the status of a professional should be *"paid for his footballing activity ..."*.

84. The Respondent stated it was clearly obvious that the player can be paid for his footballing activity only when the obligation to be involved in such activity is provided for by the contract. The Respondent stated, often one of the criteria for FIFA to determine whether the player was a professional was the number of official matches where the player made appearances for the club which allegedly registered him as a professional and cited here a decision issued by the FIFA DRC on 27 February 2014.

ba) Period at Bukola Babes and Kwara United

85. The Respondent argued that there was no information provided in the case materials that proves a written contract was concluded between the player and FC Bukola Babes or FC Kwara United which is a mandatory requirement to establish a professional status.

86. The Respondent stated there was no contract at their disposal that was concluded between the player and FC Bukola Babes or FC Kwara United, so the Respondent could not judge whether the contract stipulated the payments in the Player's favour for footballing activity and the information about alleged payments made within this period was contained in the witness statement which the Respondent raised doubts about its credibility.

87. The Respondent submitted it was not clear from the Player's witness statement whether the Player received money for his footballing activity, whether he received money from the club and there are no documents provided indicating that the payments were indeed made.

88. The Respondent stated in view of the fact that there is no evidence of the Player having a written contract, the Respondent cannot regard the Player as a professional during this period

and submitted that the Player being an amateur, could participate in trial matches at clubs other than Kwara Football Academy, but held that the Player was not registered at any of them.

bb) Second Benfica Contract

89. The Respondent submitted that many pages of the Second Benfica Contract were missing.

90. The Respondent stated this contract did not stipulate the Player's responsibility to conduct footballing activity and submitted, according to the contract, the Player had to keep himself physically fit while waiting for the conclusion of the first professional contract. The Respondent noted there were no responsibilities to participate in matches mentioned concluding, that this was not a contract for sports activity.

91. The Respondent submitted the part of the contract provided by the Appellant does not mention any amounts of money paid to the Player by SL Benfica.

92. The Respondent noted in the Termination Agreement the parties refer to Clause 7 of the Second Benfica Contract as a ground for payments. The Respondent stated they do not have the text of Clause 7 at their disposal and consequently cannot determine if these alleged payments were made in connection with the Player's footballing activity.

93. The Respondent argued that from the part of contract presented in the case files, the parties intended to enter into relations typical for a student and an academy and that SL Benfica clearly understood that it would be impossible to use the Player's services for participation in competitions, either in the status of a professional, or as an amateur, as they did not request an ITC from the NFF and therefore could not register the Player.

94. The Respondent stated in light of the above, the Player did not and could not participate in official matches. The Respondent stated it was unclear from the photos provided by the Appellant, as to when they were taken and they do not prove the Player's participation in official matches.

95. Therefore, the Respondent stated during this period the Player was registered in Nigeria with it as an amateur. It is confirmed through the Player Passport and that the Appellant did not submit any documents issued by the official football governing bodies which would disprove information contained in the Player Passport or would indicate an official registration with any other club.

c) Accuracy/Validity of the Player Passport

96. The Respondent noted the provisions of Article 3(1)Annex 4 of RSTP which states:

"on registering as a professional for the first time, the club with which the player is registered is responsible for paying training compensation within 30 days of registration to every club with which the player has previously been registered (in accordance with the players' career history as provided in the player passport) and that has contributed to his training starting from the season of his 12th birthday".

97. The Respondent submitted that FIFA stipulates that any player's career history is established on the basis of information contained in his player passport and in the case at hand, in accordance with the Player Passport issued by the NFF on 10 October 2014, the Player had been registered with the Respondent from 1 January 2008 to 28 August 2012.

98. The Respondent stated that analysis of reasons why the NFF indicated these dates goes outside the framework of these proceedings but nevertheless, the Respondent stated they were confident that the Player Passport was evidence of no lesser significance than the statement of the Player who could be honestly mistaken about having written contracts.

99. The Respondent stated the only reason why the NFF did not enter information about the Player's transfer to S.L. Benfica in the Player Passport was that, until August 2012, the NFF had not received any requests for an ITC from foreign associations. The Respondent submitted the PFF confirmed the same fact regarding its country, by notifying that the Player was never registered in Portugal with any club either as an amateur, or as a professional.

100. The Respondent stated that information in the Player Passport provided by the NFF appeared as absolutely well founded.

d) Registration of Player is not a determent criteria to prove player was never a Professional

101. The Respondent submitted that the registration process is strictly governed by current FIFA regulations and that the Appellant's opinion that FC Bukola Babes and FC Kwara United somehow managed to sign a professional contract with the Player without notifying the NFF would not be possible indicating the Player was not of professional status.

102. The Respondent submitted the only reason why the NFF did not enter information about FC Bukola Babes and FC Kwara United in the Player Passport was because the clubs did not submit applications for registration to the NFF and the only reason why it did not enter information about the Player's transfer to SL Benfica in the Player Passport was that, until August 2012, the NFF had not received any requests for an ITC from foreign associations.

103. The Respondent concluded a non-registered player could not participate in competitions, coming to the conclusion that the alleged contracts between the Player and the said clubs, could not have been executed as employment contracts, meaning the Player was of amateur status during that time.

V. JURISDICTION OF THE CAS

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

"An appeal against a 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 him prior to the appeal, in accordance with the Statutes or regulations of that body".

105. Moreover, the Appellant relied on Article 67(1) of the FIFA Statutes (2015 edition) as it determines that:

"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 notification of the decision in question".

106. The jurisdiction of CAS was not disputed by any of the parties.

107. It follows that the CAS had jurisdiction to decide on the present dispute. The jurisdiction of the CAS was also confirmed by the Order of Procedure duly signed by the Parties.

VI. ADMISSIBILITY

108. The Statement of Appeal, which was filed on 10 May 2016, complied with the requirements of Articles R48 and R64.1 of the CAS Code, including the payment of the CAS Court Office fee.

109. It follows that the Appeal is admissible.

VII. APPLICABLE LAW

110. Article R58 of the CAS Code provides the following:

"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 the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision".

111. Accordingly the Sole Arbitrator rules that FIFA Regulations (primarily the RSTP) would apply, with Swiss law applying to fill in any gaps or *lacuna*, when appropriate.

VIII. LEGAL DISCUSSION

A. Merits

112. The Sole Arbitrator observes that the main issues to be resolved are:

- Whether to allow the new evidence advanced by the Appellant before the CAS that was not before the FIFA DRC?
- Which was the Player's first professional contract?
- Is the Respondent entitled to training compensation?
- If so, how much should the Appellant pay?

a) The New Evidence

113. The Sole Arbitrator notes that in the Appealed Decision, the FIFA DRC were not convinced that the papers before it that purported to be the Second Benfica Contract were sufficient to be treated as a professional contract between the Player and SL Benfica. The FIFA DRC concluded that *"…in the absence of any conclusive evidence from* [Angelholms] *to support its allegations, the Chamber concluded that the player had always been registered as an amateur…".*

114. It is not uncommon for a party to be unsuccessful at first instance, before FIFA, having failed to meet its burden of proof. It is also not uncommon for such a party to then appeal the decision to the CAS and to look to rectify any shortcomings before FIFA, by attempting to advance new or additional evidence to the CAS.

115. CAS panels, pursuant to Article R57 of the CAS Code have the power to hear disputes *de novo* or anew. That said, since the 2013 edition of the CAS Code, the newly inserted third paragraph now gives CAS panels the possibility or discretion to refuse certain evidence:

"…if it was available to them or could have reasonably have been discovered by them before the challenged decision was rendered".

116. In the case at hand, the Appellant has produced: a witness statement from the Player, in which he states he was under contract with Bukola Babes and Kwara United (and produced some photos showing that he was at these clubs); and an identification card for him that purports to show he was under contract with Kwara United. The Appellant stated that it was not possible to have produced these earlier.

117. The Respondent objected to this new evidence and has requested that the Sole Arbitrator disregards it.

118. A further point is the general state of confusion created by the lack of accurate records showing the Player's club history. The NFF have produced 3 different Player passports and the SFF a further one. It seems that the Player's early career cannot be accounted for at all; he was then registered with the Respondent; but went out on trial to Portugal a couple of times; played on trial for a couple of other teams in Nigeria; before trying again to find a club in Sweden. He may have signed 4 contracts during this time, in addition to anything he signed with the Parties. None of this appears in his Player Passport.

119. The Sole Arbitrator concludes that the Appellant could have procured such a witness statement from the Player as part of the FIFA DRC proceedings. It only had to ask the Player for the details of his playing career, which is set out now in that statement. Much as the Respondent has complained that it is typed out, rather than hand written (so the Player did not produce it or understand it), the Sole Arbitrator is prepared to accept it as a genuine statement from the Player, who was further exempted from appearing at a hearing by the parties. There is no evidence of a forgery or even a claim that it wasn't signed by the Player himself. The Sole Arbitrator accepts the statement as genuine, but also as one that he could exclude under Article R57(3) of the CAS Code. The same is true for the identification card and the photographs.

120. The issue is whether the Sole Arbitrator should exclude this evidence or not. Article R57(3) of the CAS Code provides him with a discretion.

121. In the case at hand, the Appellant is not looking to widen the prayers for relief than those before the FIFA DRC. In a nutshell, the Appellant is claiming that it was not the first club to sign the Player as a professional, so it is only responsible for any training compensation that may be due to his immediately previous club, which it claims wasn't the Respondent.

122. The Appellant isn't looking to introduce evidence late, where, pursuant to Article R56 of the CAS Code, there must be "exceptional circumstances". The Sole Arbitrator has a pure discretion to exercise.

123. The Sole Arbitrator notes the limited jurisprudence available on such discretion to date. In *CAS 2013/A/3286-3294*[1] that sole arbitrator additionally referred to Article 317 of the Swiss Code of Obligations, which considered the ability to adduce a document if it did not exist or was not in the appellant's possession at the time of the first instance hearing. This does not seem to assist in the case at hand. However, the *CAS 2013/A/3286-3294* decision is of relevance, as, in that case, the sole arbitrator determined to refuse the new evidence, largely as he inferred bad faith on the part of the appellant. There seemed to be an attempt by the appellant to draw out the legal procedures to the detriment of the respondent that was claiming money from the appellant. Abusive procedural behaviour was further recognized as an important criteria by other CAS panels (see for instance *CAS 2015/A/3923*).

124. In the case at hand, the Sole Arbitrator finds no such bad faith on the part of the Appellant. Whilst a consequence of any appeal is the potential added delay for the Respondent to receive any training compensation awarded in the Appealed Decision, (1) an award for interest was made by the FIFA DRC; and (2) the FIFA DRC based its decision on the lack of evidence from the Appellant. It would seem to defeat one of the general benefits and a purpose of a *de novo* procedure if a party could not look to address any crucial short comings identified at first instance.

125. Ultimately, the Sole Arbitrator wants to be put in a position where he is able to issue a complete decision. It is crucial that both parties are afforded a fair trial and their respective rights to be heard are satisfied. The additional evidence, whilst it could (and perhaps should) have been produced to the FIFA DRC, is important, as it enables the Sole Arbitrator to fully consider the Player's movements over the years in question and to determine whether the Appellant should pay training compensation to the Respondent. Basically, the evidence is central to the dispute at hand. To exclude it could result in an incorrect decision, as such, the Sole Arbitrator wants to be fully informed and determines not to exercise his discretion under Article R57(3) of the CAS Code to exclude the evidence of the Appellant.

[1] This award was appealed before the Swiss Federal Tribunal, which in its judgement of 15 July 2015 (reference: 4A_246/2014) confirmed the sole arbitrator's decision based on Article R57(3) of the CAS Code (cf. para. 6.4.3.2).

b) Which was the Player's first professional contract?

126. The Sole Arbitrator notes that the Player appears to have signed potentially up to 6 contracts with various clubs before he reached the age of 23, although he was only registered with 2 clubs over that period – the Parties to the matter in hand. It is useful to run through these contracts and to assess if any were professional contracts. However, before doing so, the Sole Arbitrator notes that the Player Passport demonstrates that the Player was an amateur while at the Respondent and a professional once he signed for the Appellant. It is the Appellant that bears the burden of proof to establish otherwise.

127. The Respondent has accepted that the Player Passport (the version dated 10 October 2014) is accurate. It accepts that there are no records for the Player's early career for the seasons 2005/06 to 2007/08. As such, it cannot claim (and was not awarded by the FIFA DRC) training compensation for those seasons. However, the Player Passport confirms that the Player was first registered with the Respondent on 1 January 2008, during the 2008/09 season.

128. It appears to be common ground that the Player left Nigeria on 24 January 2010 to join SL Benfica and he signed the First Benfica Contract. This is relevant in 2 regards, firstly, it is at this stage that the Player says in his witness statement (a statement that has not been denied by the Respondent) that this was the last day he was effectively trained by the Respondent. Secondly, the Sole Arbitrator needs to assess if this contract was a professional contract or not.

129. The First Benfica Contract was a "Sports Training Contract". Throughout the contract reference is made to its primary purpose being for the education of the Player. Whilst the Sole Arbitrator notes that the Player received a monthly payment of EUR 300, this payment was labelled a "subsidy" and was expressly to be used for *"the purchase of books, diverse school supplies, clothing and other expenses related to his age and condition, which the "graduating student" shall use in a prudent and adequate way towards the evolution of his training process"*.

130. While the First Benfica Contract was in writing, the Sole Arbitrator was not satisfied that the second limb of the test in Article 2.2 of the RSTP was met. The monthly payments appeared to be exclusively for his expenses. In this regard, the Sole Arbitrator felt the terms of this contract were closer to those that were the subject of *CAS 2014/A/3659 & 3661* than of *CAS 2006/A/1177* and determines that the First Benfica Contract was an amateur contract. The Sole Arbitrator notes that the Appellant does not dispute that this was an amateur contract either.

131. Again, it appears uncontested that on 27 April 2010, the Player returned to Nigeria. The Player's statement is that he then spent the next 15 months with 2 clubs, Bukola Babes and Kwara United. The Respondent objected to the admissibility of this evidence, but did not seek to challenge it by providing the CAS with alternative statements or evidence. The Player stated that he entered into written contracts with these clubs and that he was paid under them too.

132. The Sole Arbitrator notes that the Appellant was not able to produce a copy of either the Bukola Contract or the KU Contract. The Appellant did produce a copy of the Player's identification

card with Kwara United. The Player confirmed he was with both clubs and that he was paid by both.

133. It is difficult to know how far a monthly payment of EUR 60 or 90 would go in Nigeria. No evidence was produced in this regard. Additionally, there was no evidence that these payments were actually made. No bank statements, wage slips, statements from the 2 clubs, etc to support what the Player said in his written statement. Ultimately, the Sole Arbitrator was convinced by the Player's own statement that he was with those clubs during that time, but had insufficient evidence before him to be convinced that either or both of the Bukola Contract or the KU Contract were in writing or that they provided for payments that were in excess of the Player's expenses incurred during that period. It would have helped if the Appellant would have shown what expenses the Player incurred in Nigeria, for example. The Sole Arbitrator concludes that the Appellant has not discharged its burden of proof to establish that either contract was a professional contract.

134. Again, it appears uncontested that the Player returned to SL Benfica in July 2011 after his time with Kwara United. He signed the Second Benfica Contract, albeit, only an incomplete copy of the document was produced to the FIFA DRC and to the CAS. The Sole Arbitrator takes a different position from the FIFA DRC and does not dismiss that document out of hand.

135. It can be difficult for a club in one country to procure copies of agreements (that have not been registered through the TMS system, for example) entered into between a player and a club in another country. In the case at hand, the Appellant has procured a number of pages from the Second Benfica Contract, together with the Termination Agreement that mutually ended that contract. The form of the Second Benfica Contract is identical to the First Benfica Contract. It is a "Sports Training Contract". Apart from the date, the revised share capital details of SL Benfica, the term and the amount of the penalty clause for breach, the first 3 pages are identical, practically word for word. The Sole Arbitrator notes that the 4th page would contain the amount of the "subsidy" that SL Benfica would pay to the Player. In the First Benfica Contract, if that had run to the 2011/12 season, then the subsidy would have increased to EUR 500 pcm. The Second Benfica Contract was for that season and the Termination Agreement indicated that the subsidy was EUR 500 pcm. It seems logical for the Sole Arbitrator to conclude that the Player did have a written agreement with SL Benfica (the Second Benfica Contract) which paid him EUR 500 pcm.

136. As such, the issue for the Sole Arbitrator is whether this was a sum in excess of the expenses of the Player or a sum to meet such expenses. On balance, the Sole Arbitrator concludes that if he is prepared to accept that the missing page 4 of the Second Benfica Contract would be exactly the same as page 4 of the First Benfica Contract, with the amount of the subsidy increased to EUR 500 pcm, then he must also take note of the expressly stated purpose for the payment, as set out at paragraph 129 above. These "Sports Training Contracts" appear to be educationally focused and for young amateur players, paying sums that are exclusively for their educational and living expenses. Again, the Sole Arbitrator concludes that this contract was an amateur contract.

137. Finally, the Player signed with the Appellant. It is uncontested that this contract was a professional contract and was duly registered. This was his first professional contract.

c) Is the Respondent entitled to training compensation?

138. The Sole Arbitrator notes the wording of Article 20 of the RSTP:

"Training compensation shall be paid to a player's training club(s): (a) when a player signs his first contract as a professional…".

139. Having concluded that the Player's first professional contract was with the Appellant, the Sole Arbitrator notes that it has the obligation to pay training compensation to the Player's training clubs. In the case at hand, the Respondent has made its claim as a training club and is entitled to compensation for the period it effectively trained the Player.

d) How much should the Appellant pay?

140. As can be seen above, the Player took quite a journey to end up with the Appellant. However, the Respondent appears to accept that the journey began at its academy on 1 January 2008, based upon the Player Passport.

141. It also appears uncontested that the Player left the Respondent on 24 January 2010 to first join SL Benfica. Despite the Player Passport stating that he remained registered with the Respondent until August 2012, it is now clear that he was trained with a number of other clubs from 24 January 2010 and there is no evidence that he ever returned to the Respondent. As such, the Sole Arbitrator concludes that the Respondent is entitled to training compensation for the period between 1 January 2008 until 23 January 2010.

142. This period covers the seasons 2007/08, 2008/09 and 2009/10 in Nigeria. Under Article 5.2 of Annexe 4 of the RSTP, training compensation is calculated based on the training costs of the new club multiplied by the number of years training with the former club.

143. However, under Article 5.3, to ensure that training compensation for very young players is not set at unreasonably high levels, the training costs for players for the seasons between their 12th and 15th birthdays shall be based on the training and education costs of category 4 clubs.

144. The Player's 14th birthday was during the 2007/08 season and the Player's 15th birthday was during the 2008/09 season. As a result, training compensation is calculated based on the category 4 amount of the new club's confederation. In this case, the Appellant's confederation is UEFA and the UEFA category 4 amount in each of the relevant seasons is EUR 10,000. With respect to 2007/08, the pro-rated amount of EUR 4,972.68 is based on the 182 day training period, from 1 January 2008 through 30 June 2008.

145. For the 2009/10 season, training compensation is calculated based on the training costs of the Appellant, which are set at EUR 30,000 as the Appellant was a category 3 club. The pro-rated

amount of EUR 4,972.68 is based on the 207 day training period, from 1 July 2009 through 23 January 2010.

146. The total training compensation that the Respondent is entitled to, therefore, is EUR 31,986.38.

Season	Appellant category	Player's age	Effective training periods	Training compensation amount
2007/08	3	Season of 14th birthday	From 01/01/2008	EUR 4,972.68
2008/09	3	Season of 15th birthday		EUR 10,000.00
2009/10	3	Season of 16th birthday	Until 23/01/2010	EUR 17,013.70
Total training compensation			**EUR 31,986.38**	

147. The Sole Arbitrator notes that the FIFA DRC awarded interest at the rate of 5% interest p.a. as of 25 June 2015 until the date of effective payment. The Sole Arbitrator notes that neither party has objected to this award and confirms it in this decision.

B. Conclusion

148. Based on the foregoing, and after taking into due consideration all the evidence produced and all submissions made, the Sole Arbitrator finds that the Appellant's Appeal should be partially upheld and that the Appealed Decision be amended so that the Appellant shall pay the Respondent training compensation in the sum of EUR 31,986 together with 5% interest p.a. as of 25 June 2015 until the date of effective payment.

149. All further claims or requests for relief are dismissed.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The Appeal filed by Ängelhoms FF on 10 May 2016 is partially allowed.

2. The Decision of the FIFA Dispute Resolution Chamber of 26 November 2015 is amended so that Ängelhoms FF shall pay Kwara Football Academy the sum of EUR 31,986 together with 5% interest p.a. as of 25 June 2015 until the date of effective payment.

(…)

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