



Arbitration CAS 2015/A/4328 Tema Youth Football Club v. Ghana Football Association (GFA), award of 13 July 2016

Panel: Mr Mark Hovell (United Kingdom), President; Mr Marco Balmelli (Switzerland); Mr Bernhard Welten (Switzerland)

Football

Request by a club of disciplinary sanctions for fielding ineligible players

Role of “whistle blowers”

Review by appeal committee of its initial decision

1. **The role of a “whistle blower” is to bring matters to an authority’s attention that the authority might not be aware of, so that the authority can look into those matters and potentially sanction a wrong doer. Whilst there should be some basis or foundation to allegations made by a whistle blower, once that basic hurdle is overcome, then it is for the authority to take over and to investigate properly; and it is then for it (or its judicial body) to consider guilt or innocence and, if the former, any sanction. The authority cannot sit back and expect the whistle blower to do all the work for it.**
2. **Upon request to review its initial decision, an appeal committee of an association should appoint different members than those that had heard the initial case to conduct the requested review. Furthermore, in its review the appeal committee should take into account any new evidence available since the initial decision, including evidence available that – strictly speaking – has not been produced by the party bearing the burden of proof.**

I. PARTIES

1. Tema Youth Football Club (“Tema” or the “Appellant”) is a football club with its registered office in Greater Accra, Ghana. It is currently competing in the Polytank Division One League Zone 3B and is a member of the Ghana Football Association.
2. Ghana Football Association (the “GFA” or the “Respondent”) is the governing body of football in Ghana and has its registered office in Accra, Ghana. It is affiliated to the Fédération Internationale de Football Association (“FIFA”).

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. Although the Panel has considered all the facts, allegations, legal arguments and evidence submitted by the Parties in the present proceedings, it refers in this Award only to the submissions and evidence it considers necessary to explain its reasoning.
4. On 30 October 2013, D. signed an employment contract with Amidaus Professional Football Club ("Amidaus") for a period of 3 years, terminating on 30 August 2016. D. has a date of birth of 11 January 1994 and a licence number of [...] and was registered with Amidaus with these details.
5. At the end of the 2013/14 First Capital Plus Premier League season, Amidaus was relegated to the GN Bank Division One League.
6. On 15 October 2014, D. was transferred from Amidaus to Dreams Football Club ("Dreams") and registered with Dreams.
7. On 25 July 2015, Tema and Dreams played each other in a match in the GN Bank Division One League, taking place at Kweiman Park in Accra, Ghana ("the Match"). During the Match, Dreams fielded two players named C. and J. (the "Players"). Tema lost the Match 2-0.
8. At the end of the 2014/2015 season, Dreams finished in first place with a total of 56 points and were therefore promoted to the Premier League. Tema finished the season in second place with a total of 49 points and remained in Division One.

Proceedings before the GFA Disciplinary Committee

9. On 4 August 2015, Tema filed a protest with the Disciplinary Committee of the Ghana Football Association (the "GFA DC") against Dreams alleging that Dreams fielded two ineligible players during the Match. Tema contended that Dreams had committed fraud by registering the player D. as C. and O. as J., forging their names and dates of birth. Tema requested the following relief:
 1. *To declare Dreams FC as losers of the 24th Week fixture as per article 34(1)(e).*
 2. *Three points and three goals should be awarded to Tema Youth FC as per 34(2) of the General Regulations.*
 3. *Application of sanction under article 34(5)(a)".*
10. On 6 August 2015, Tema wrote to the GFA General Secretary requesting that records relating to the two players concerned within their protest (i.e. D./C. and O./J.) are made available to the GFA DC.

11. Dreams did not file a Statement of Defence within the required timeframe, i.e. within 3 days of receiving a copy of the protest.
12. On 17 August 2015, the GFA DC rendered a decision (the “GFA DC Decision”), dismissing Tema’s protest as follows:
 - “1. *That having failed to establish that the two players were unqualified players when they played in the Match Day 24 GN Bank Division One League (Zone 3) game between Dreams FC and Tema Youth FC, the protest of Tema Youth FC is hereby dismissed in accordance with Article 37(16) of the GFA General Regulations.*
 2. *That for bringing a frivolous Protest before the Disciplinary Committee, Tema Youth FC is hereby fined One Thousand Ghana Cedis (GHc 1,000) in accordance with Article 37(16) of the General Regulations which shall be paid to the GFA within fourteen (14) days upon receipt of this Ruling, failing which Tema Youth FC shall automatically forfeit all subsequent matches after the said deadline by the Division One League Board or the GFA in accordance with Articles 39(8)(b), 39(8)(d) and 39(8)(f) of the First Amendment to the GFA General Regulations.*
 3. *That should any party be dissatisfied with or aggrieved by this Decision, the party has within three (3) days of being notified of this Ruling to appeal to the Appeals Committee of the Ghana Football Association (See Article 37(11) of the General Regulations of the GFA)”.*
13. On 20 August 2015, Tema filed an appeal against the GDA DC Decision before the Appeals Committee of the GFA (the “GFA AC”).
14. On 11 September 2015, the GFA AC set aside the fine imposed on Tema but upheld the remainder of the GFA DC Decision (the “First GFA AC Decision”).
15. On 14 September 2015, the First GFA AC Decision was communicated to Tema.
16. On 17 September 2015, Tema filed for a review with the GFA AC and requested that the GFA AC review the First GFA AC Decision.
17. On 5 November 2015, the GFA AC rendered the following decision (“the Appealed Decision”):
 - “1. *This is an application for review of the Appeals Committee’s (AC’s) decision dated 11th September, 2015 which upheld the Disciplinary Committee’s (DC’s) decision concerning the eligibility of two players of the respondents who featured in the GN Bank Division One league match day 24 game played between the parties herein at Kweiman park.*
 2. *The applicants’ case was that the respondents were involved in fraudulent deals or acts in the process of registration of those players thereby making the players unqualified to play in that match.*
 3. *The DC found that there was no evidence adduced by the applicants in support of their allegation of fraud and consequently dismissed the protest, which decision was upheld by the AC. It is against this decision that the instant application for review has been initiated.*

4. *We deem it appropriate to state the legal position regarding the review jurisdiction of the AC. In the decision of the AC in the case of Tano Bofoakwa FC versus B.A. United FC dated 2nd May, 2014, the AC expressed itself as follows;*

...
 5. *In the instant case, it has not been demonstrated before us by the applicants that there had been some fundamental or basic error which the AC inadvertently committed in the cause of delivering its earlier decision and that error had occasioned a miscarriage of justice. Neither have the applicants shown that they have discovered any new and important matter or evidence which, after the exercise of due diligence could not be obtained or discovered by them.*
 6. *In fact, upon careful examination of the record before us, we have no difficulty in concluding that the instant application constitutes nothing but a further appeal by which the applicants have canvassed previous arguments which were considered by the AC in delivering its earlier decision. We find the conditions precedent for a successful invocation of the review jurisdiction non-existent in this case.*
 7. *In the result, we shall decline the invitation by the applicants to review our earlier decision. Accordingly, the application fails and same is hereby dismissed.*
 8. *No costs is awarded [sic]*".

18. On 11 November 2015, the Appealed Decision was communicated to Tema.

Parallel proceedings before the GFA DC

19. On 28 September 2015, the GFA Prosecutor sent C. and Dreams a charge sheet which stated as follows:

“Statement of Offence

[C.] is hereby charged for breaching Articles 26(3)(b) of the GFA General Regulations in the 2013-14 football season.

Particulars of the Offence

That you, [C.], in the 2013-14 football season registered for two clubs one [sic] in two different division under different names ([E. and C.] respectively) and different date of birth of births [sic] contrary to GFA Regulations”.

20. In or around October 2015, C. submitted his written statement of defence pleading guilty to the charges and waived his right to a personal hearing.

21. On 13 October 2015, the GFA DC rendered a decision as follows:

- “1. *That the Disciplinary Committee having satisfied itself that the evidence adduced before it supports the charge, hereby imposes a ban 6 matches on [C./D.] for the forgery of his documents (i.e. for changing it illegally or wrongly).*

2. *That the Disciplinary Committee having satisfied itself that the evidence adduced before it supports the charge, hereby imposes a ban of one (1) football season on [C./D.] for double registration in the 2013 season.*
3. *That the bans stated in Decisions 1 and 2 above shall run concurrently with the effect being that the player will serve a ban of one (1) football season starting immediately.*
4. *That after having served the ban, [D./C.] must use available legal steps to correct his identification.*
5. *That should any party be dissatisfied with or aggrieved by this Decision, the party has within three (3) days of being notified of this Ruling to appeal to the Appeals Committee (See Article 37(11) of the General Regulations of the GFA)”.*

Parallel proceedings before the GFA Players’ Status Committee

22. In or around October 2015, Amidaus filed a claim in front of the Players’ Status Committee of the GFA (the “GFA PSC”) against Dreams regarding the transfer and registration of D. as C.
23. On 5 November 2015, the GFA PSC ruled as follows (the “GFA PSC Decision”):
 - *The registration of [C.] by Botwey Youth F.C is declared null and void.*
 - *The GFA Ethics Committee should investigate the registration of the player and that all those found culpable in the fictitious registration of [C.] by Botwey Youth F.C should be dealt with”.*
24. The reasoning for the GFA PSC Decision was as follows:
 - *There was enough evidence that the player [D.] is the same as [C.].*
 - *That the player indeed registered and played for Amidaus Professionals during the 2013/14 season and that his details were falsified to enable him register for a third Division Club by name Botwey Youth F.C.*
 - *The Committee was not satisfied that Botwey Youth had the right to release the Player [C.] to Dreams F.C.*
 - *The Committee was satisfied that the release agreement dated 15th October, 2014 between Amidaus Professionals and Dreams F.C as regards the player [D.] is binding.*
 - *That the purported registration of [C.] by Botwey Youth F.C was improper and fictitious”.*

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

25. On 30 November 2015, pursuant to Articles R47 and R51 of the Code of Sports-related Arbitration (the “CAS Code”), Tema filed a Statement of Appeal/Appeal Brief against the Appealed Decision at the Court of Arbitration for Sport (“the CAS”). The Appeal Brief was directed only against the GFA and contained the following requests for relief:
 - *(1) The Decision subject to Appeal (including the decision of September 14, 2015 of the same Appeals Committee) shall be annulled.*

- (2) *The Respondent shall be obliged to declare Tema Youth FC as winners of the match day 24 played at Kweiman with 3 (three) points and 3 (three goals) and a further deduction of 6 (six) points from the accumulated build-up of Dreams FC as stated under article 34 of the General Regulations of the Respondent.*
- (3) *That Dreams FC be demoted to a lower division for fraudulent and fictitious registration of [D.] and [O.] with the intention of concealing the true ages of the players and in the case of the former, to conceal 25% interest stakes Amidans Professionals have in the player [D.] for which the two clubs duly signed a binding Release Agreement to that effect in accordance with FIFA Regulations on Status and Transfer of player Annex 3 Article 9.4.*
- (4) *In accordance with request No. 2 the Respondent shall be obligated to correct the 2014-2015 Division One League Table and Tema Youth Club be declared as eventual champions with 52 points and thus promoted to play in the First Capital Plus Premier League for the 2015-2016-league season.*
- (5) *The Respondent shall be obligated to rectify the records of [D. (C.)] and [O. (J.)] with Dreams FC to reflect their initial records in the Transfer Matching System (TMS) and not the fictitious and improper records uploaded by Dreams FC.*
- (6) *The Respondent shall bear the costs of this arbitral proceeding and contribute an amount of the legal costs of the Appellant according to Article R64.5 of the Code of Sports-related Arbitration”.*

26. In accordance with Article R37 of the CAS Code, Tema also requested the following provisional measures:

- “(1) The execution of the Decision (and consequentially also of the decision of the Respondent of November 11 2015) shall be suspended until CAS has rendered its final decision in the Appeal Proceeding.*
- (2) Until final decision of the CAS, the Respondent shall postpone the start of the 2015-2016 Ghana Premier League and the Ghana Division One League”.*

27. On 1 December 2015, the CAS Court Office wrote to Tema acknowledging receipt of the Statement of Appeal/Appeal Brief and advised Tema that in order to be able to initiate an arbitration procedure, Tema were required to complete their Appeal by 4 December 2015 by providing the CAS Court office with the nomination of an arbitrator, unless the appointment of a sole arbitrator was requested.

28. On 4 December 2015, Tema wrote to the CAS Court Office nominating Dr. Marco Balmelli, Attorney-at-Law, Basel, Switzerland as an arbitrator.

29. On 8 December 2015 Tema filed a ‘supplemental brief’ which was aimed at amending the Statement of Appeal filed on 30 November 2015, and sought to join Dreams and FIFA as Respondents as well as the GFA. This ‘supplemental brief’ contained the following requests for relief:

- “(1) The Decision subject to Appeal (including the decision of September 14, 2015 of the same Appeals Committee) shall be annulled.*

- (2) *That pursuant to R44.4 of the CAS Code, the CAS order an expedited hearing in this matter in respect of which appropriate directions may be issued.*
- (3) *That an injunction issue, enjoining [t]he commencement of the 2015/16 until a resolution of this matter.*
- (4) *That an order issue, ordering the GFA and FIFA be joined as necessary and interested party Respondents.*
- (5) *The Respondent shall be obliged to declare Tema Youth FC as winners of the match day 24 played at Kweiman with 3 (three) points and 3 (three goals) and a further deduction of 6 (six) points from the accumulated build-up of Dreams FC as stated under article 34 of the General Regulations of the Respondent.*
- (6) *That Dreams FC be demoted to a lower division for fraudulent and fictitious registration of [D.] and [O.] with the intention of concealing the true ages of the players and in the case of the former, to conceal 25% interest stakes Amidaus Professionals FC have in the player [D.] for which the two clubs duly signed a binding Release Agreement to that effect in accordance with FIFA Regulations on Status and Transfer of player Annex 3 Article 9.4.*
- (7) *In accordance with request No. 2 the Respondent shall be obligated to correct the 2014-2015 Division One League Table and Tema Youth Club be declared as eventual champions with 52 points and thus promoted to play in the First Capital Plus Premier League for the 2015-2016-league season.*
- (8) *The GFA shall be obligated to rectify the records of [D.] [(C.)] and [O.] [(J.)] with Dreams FC to reflect their initial records in the Transfer Matching System (TMS) and not the fictitious and improper records uploaded by Dreams FC.*
- (9) *The Dreams FC shall bear the costs of this arbitral proceeding and contribute an amount of the legal costs of the Appellant according to Article R64.5 of the Code of Sports-related Arbitration”.*

30. In accordance with Article R37 of the CAS Code, Tema also requested in its ‘supplemental brief’ the following provisional measures:

- “(1) The execution of the Decision (and consequentially also of the decision of the [GFA] of November 11, 2015) shall be suspended and the 2015/16 Ghana Premier shall be enjoined from commencing until CAS has rendered its final decision in this matter”.*

31. On 11 December 2015, the CAS Court Office wrote to the Parties acknowledging that the Statement of Appeal/Appeal Brief was completed on 9 December 2015, however advised Tema that the ‘supplemental brief’ was filed out of time as the time limit to designate a Respondent was the same time limit to file a Statement of Appeal. Accordingly, when Tema filed their ‘supplemental brief’, the time limit to designate Dreams as a Respondent had already elapsed in accordance with Articles R48 and R49 of the CAS Code. Therefore, Dreams would not be considered as a Respondent in this matter. Tema’s request to include FIFA as an ‘interested party defendant’ was also rejected as not only were FIFA not listed as a Respondent in the Statement of Appeal filed on 30 November 2015, but the concept of an ‘interested party defendant’ did not exist under the CAS Code. Finally, the GFA was invited to file its position regarding Tema’s request for provisional measures by 16 December 2015.

32. On 16 December 2015, the GFA provided its response objecting to Tema's request for provisional measures. The GFA submitted that Tema failed to credibly show that there was a realistic and imminent threat of, or actual, injury causing irreparable harm unless provisional measures were granted and therefore requested the CAS to dismiss the request.
33. On 18 December 2015, the President of the CAS Appeals Arbitration Division rendered an award on preliminary measures, ruling that:
 - “1. *The request for a stay filed by Tema Youth FC on 30 November 2015, in the matter CAS 2015/A/4328 Tema Youth Football Club vs Ghana Football Association is rejected.*
 2. *The costs deriving from the present order will be determined in the final award or in any other final disposition of this arbitration”.*
34. On 21 December 2015, in accordance with Article R53 of the CAS Code, the GFA wrote to the CAS Court Office nominating Mr Bernhard Welten, Attorney-at-Law, Bern, Switzerland as an arbitrator.
35. On 31 December 2015, in accordance with Article R55 of the CAS Code, the GFA filed its Answer and requested the following relief:

“To sum, it is our strongest contention and prayer to that in the light of our arguments and supporting regulations the GFA urge CAS to dismiss the appeal for lack of merit and/or lack of jurisdiction”.
36. On 4 January 2016, the CAS Court Office wrote to the Parties inviting them to inform the CAS Court Office whether they preferred a hearing to be held in this matter or whether they wished for the Panel to issue an award based solely on the Parties' written submissions.
37. On 5 January 2016, following receipt of the GFA's Answer, Tema filed a further written submission regarding CAS jurisdiction arguing, in summary, that the CAS did have jurisdiction to hear this dispute.
38. On 8 January 2016, the CAS Court office acknowledged Tema's submissions regarding CAS jurisdiction and advised the Parties that it was for the Panel, once constituted, to decide on CAS jurisdiction and that the Parties were not authorised to provide any further submissions unless the Parties mutually agreed to it, or were requested to do so by the Panel.
39. On 11 January 2016, the GFA wrote to the CAS Court Office stating that they would prefer the Panel to issue an award based solely on the Parties' written submissions. On the same day, Tema wrote to the CAS Court Office stating that it wished for a hearing to be held in this matter, however it wished to be heard at this hearing via telephone.
40. On 1 February 2016, Tema wrote to the CAS Court Office with a 'request for an order to produce documentary evidence', requesting the Panel to order the GFA to produce evidence of, *inter alia*, biographical data evidence of the players involved in this dispute and copies of match reports.

41. On 3 February 2016, pursuant to Article R54 of the CAS Code and on behalf of the President of the CAS Appeals Arbitration Division, the CAS Court Office informed the Parties that the Panel appointed to this case was constituted as follows:
 - President: Mr Mark A. Hovell, Solicitor in Manchester, United Kingdom.
 - Arbitrators: Dr Marco Balmelli, Attorney-at-Law in Basel, Switzerland.
Mr Bernhard Welten, Attorney-at-Law in Bern, Switzerland.
42. On 12 February 2016, given the disagreement between the Parties regarding the need for a hearing, the CAS Court Office wrote to the Parties on behalf of the Panel requesting the Parties to file a second round of written submissions by 19 February 2016, limited to the following issues:
 - “ Provide a PDF copy of the GFA regulations and statutes.
 - Guide the panel how one club can complain to the GFA about another fielding an ineligible player, in accordance with the GFA regulations and statutes.
 - How the GFA then disciplines that club and the position of the complainant in those proceedings.
 - How either club can appeal?
 - Whether either club can seek a review of any appealed decision.
 - What the conditions for such a review are”.
43. On 13 February 2016, Tema submitted its second round of written submissions.
44. On 15 February 2016, the GFA wrote to the CAS Court Office requesting that a hearing is now held in this matter instead of its earlier preference that the Panel render an award based solely on the Parties’ written submissions.
45. On 23 February 2016, the CAS Court Office wrote to the Parties granting an ultimate deadline of 29 February 2016 for the GFA to file its second round of written submissions.
46. On 29 February 2016, the GFA submitted its second round of written submissions.
47. On 17 March 2016, the CAS Court office informed the Parties that the Panel had decided to hold a hearing in this matter and requested the Parties to confirm their availability.
48. On 23 March 2016, Tema wrote to the CAS Court Office reiterating their request to be heard via telephone at the hearing.
49. On 7 April 2016, Tema filed a signed Order of Procedure with the CAS Court Office.
50. On 14 April 2016, the GFA filed a signed Order of Procedure with the CAS Court Office and requested to be heard at the hearing via Skype.

IV. THE HEARING

51. On 31 March 2016, the CAS Court Office wrote to the Parties confirming that a hearing would take place on 28 April 2016.
52. A hearing was held on 28 April 2016 at the CAS premises in Lausanne, Switzerland. The Parties did not raise any objection as to the composition of the Panel. The Panel were all present and was assisted by Mr Antonio de Quesada, CAS Counsel. The following persons attended the hearing:
- i. Tema: Mr E. Selasi Adika, external counsel; Mr Wilfred Kweku Osei, President and Owner; Mr Francis Adu Essah and Mr Ahmed Gambo, witnesses.
 - ii. The GFA: Mr Kweku Eyiah, Legal Counsel and Mr Isaac Addo, Acting General Secretary.
53. All the Party representatives, counsels and the witnesses participated in the hearing via Skype. The Party representatives and the witnesses were invited by the President of the Panel to tell the truth subject to the sanctions of perjury. The Parties and the Panel had the opportunity to examine and cross-examine the Party representatives and the witnesses. The Parties then were given the opportunity to present their cases, to make their submissions and arguments and to answer questions posed by the Panel. The hearing was then closed and the Panel reserved its detailed decision to this written Award.
54. Upon closing the hearing, the Parties expressly stated that they had no objections in relation to their respective rights to be heard and that they had been treated equally in these arbitration proceedings. The Panel has carefully taken into account in its subsequent deliberation all the evidence and the arguments presented by the Parties, both in their written submissions and at the hearing, even if they have not been summarised in the present Award.

V. SUBMISSIONS OF THE PARTIES

55. 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 Panel however, has carefully considered all the submissions made by the Parties, even if no explicit reference is made in what immediately follows.

A. Tema's Submissions

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

56. Tema submitted that both the GFA DC and the GFA AC had erred by allowing the outcome of the Match to stand. There were clear precedents such as *BA United FC v. Aduana Stars FC*, *BA United FC v. Berlin BC*, *BA United FC v. Bechem United FC* and *King Solomon FC v. Soccer Learners*

FC that demonstrated that the GFA sanctioned some of its clubs that played matches with ineligible or unqualified players by deducting points from those clubs.

57. Articles 26 and 29 of the GFA's Regulations state as follows:

“Article 26: Registration – General Guidelines

1.
 - (a) *The National Secretariat shall keep registers and data bases in which the names and birth dates and other particulars of all players for each club shall be recorded.*
 - (b) *A player must be registered with a club as either a Professional or an Amateur in accordance with the provision of Article 2 of the FIFA Regulations on the Status and Transfer of Players. Only registered players are eligible to participate in organised football. By the act of registering, a player agrees to abide by the Statutes and Regulations of FIFA, CAF and the GFA.*
 - (c) *All clubs shall ensure that their total number of registered players does not exceed a number to be determined by the GFA in consultation with the clubs from time to time.*
 - (d) *Each Regional Association shall determine the number of players to be registered by the clubs for its competitions.*
 - (e) *In registering players, full names (Surnames and Other names) shall be given. Incomplete or nicknames shall not be accepted. After registration the association shall be notified of any changes, and in any event, not later than fourteen (14) days from the date of the change.*
2.
 - (a) *Each club shall be given a software by the IT Department of the GFA to generate electronic registration form for each player for the Premier, Division One, Division Two League Clubs, Women League Clubs and Juvenile League Clubs. The form shall bear the signatures of the player, club official, the Medical Officer who examined the player, and shall be affirmed with passport size photograph of the player (not more than six month old).*
 - (b) *Clubs registering players shall pay processing fees as determined by the GFA.*
 - (c) *The application for registration of a Professional must be submitted together with a copy of the player's contract. It shall be at the discretion of the relevant decision-making body to take account of any contractual amendments or additional agreements that have not been duly submitted to it.*
3.
 - (a) *If a player who has not been registered with the Association appears for a club in any official match, that player will be considered as having played illegitimately. Without prejudice to any measure required to rectify the sporting consequences of such an appearance, sanctions may also be imposed on the player and / or the club. The right to impose such sanctions lies in principle with the Association or the organizer of the competition concerned.*
 - (b) *A player shall only be registered for one club at a time.*
 - (c) *The Ghana Football Association is obliged to provide the club for which the player is registered with a player passport containing the relevant details of the player. The player passport shall indicate the club (s) for which the player has been registered since the season of his 12th birthday. If a birthday falls between seasons, the player shall be listed in the player passport for the club for which he was registered in the season following his birthday.*

(d) Players may be registered with a maximum of three (3) clubs during one season. During this period, the player is only eligible to play official matches for two clubs. As an exception to this rule, a player moving between two clubs belonging to associations with overlapping seasons (i.e. Start of the season in summer/ autumn as opposed to winter/ spring) may be eligible to play in official matches for a third club during the relevant season, provided he has fully complied with his contractual obligations towards his previous clubs. Equally, the provisions relating to the registration periods (Article 6 of the FIFA Regulations on the Status and Transfer of Players) as well as to the minimum length of a contract (Article 18, paragraph 2, of the FIFA Regulations on the Status and Transfer of Players) must be respected.

(e) A club shall be deemed to be the bona fide holder of the registration of a player only upon receipt of his registration card duly issued by the Ghana Football Association.

(f) Players may only be registered subject to the exception provided for in Article 6 paragraph 1 of the FIFA Regulations on the Status and Transfer of Players (Article 28 (1) of the GFA General Regulations) if an application from the club is validly submitted during a registration period.

(g) The provision concerning Registration Periods do not apply to competitions in which only Amateurs participate. For such competition (s), the GFA shall specify the periods when players may be registered, provided that due consideration is given to the sporting integrity of the relevant competition.

4. *Under all circumstances due consideration must be given to the sporting integrity of the competition. In particular a player may not play official matches for more than two clubs competing in the same national championship or cup during the same season, subject to stricter individual competition regulations of member associations.*

Article 29: Unqualified Player

1. *An unqualified player is:*

(a) Any player not registered at an association who appears for a club in any official match. Without prejudice to any measure required to rectify the sporting consequences of such an appearance, sanctions may also be imposed on the player and/ or the Club. The right to impose such sanctions lies in principle with the association or the organizer of the competition concerned.

(b) A player suspended by the GFA from participating in football competitions indefinitely or for a specific period.

(c) A player banned from participating in competitions organised by WAFU, CAF and FIFA.

(d) A player who has registered for more than one club or with any club registered with another National Association.

(e) A player who has received a caution in three separate official matches of the FA (i.e. the League and the FA Cup Competitions).

(f) A player who has received a direct red card in a match.

(g) A player who has received two cautions in the same match.

2. *(a) An unqualified player shall not take part in any competition organised by the Association.*

- (b) For the avoidance of doubt, a player shall not be deemed to have been fielded in a match unless he actually played in the match.*
- (c) Without prejudice to the generality of the foregoing provision of this Article, the Association shall in all cases locate and punish the guilty party/parties. In the event of the player being the sole guilty party, the results of the match which he played shall stand.*
- (d) A player guilty of double or multiple registrations shall be suspended from participating in matches and competitions organised by the GFA for a period of one (1) year”.*

58. In the matter at hand, Dreams fielded two (2) unqualified players in the Match. The first was D. He had been signed from Amidaus on 15 October 2014, yet some 3 months later, he was registered in the name of C., with a date of birth exactly 2 years younger, as if he had come from a third division club.
59. The second player was O., who was registered as J.
60. At the hearing, in response to the questions from the Panel, Tema explained that some players in Ghana were registered as different people with younger ages. This was done mainly to help the player develop. The hope is for players to be transferred abroad, but foreign clubs prefer younger, established players, rather than old ones. Additionally, changing a player's identity can help clubs avoid paying training compensation and/or solidarity contributions to former clubs. If there are sell on clauses (as with D.) then it may help avoid these too if a player is transferred under a different name.
61. Tema alleged that only clubs can register players, so Dreams must have registered D. as C., with his younger age and also O. as J. Further, Dreams decided to field these two players in the Match and should be disciplined for its actions.
62. The owner of Tema (Mr Osei) gave evidence at the hearing that from his position with the National U17 set up and from having seen the Players play against Tema in the past (indeed D. had scored against Tema), he was able to identify D. as C. and O. as J. during the Match. Tema believed that he would get his opportunity to deliver this evidence at least to the GFA AC, when he was invited to attend its hearing. However, he was “*invited and then gagged*” as he was not allowed to speak at that hearing.
63. Tema also submitted that whilst there was a burden of proof upon it, it completed the standard petition for the GFA and then wrote to it on 6 August 2015 asking it to conduct its own search of its own records, so as to establish what Tema was alleging, i.e. that these Players had been registered with different names and ages and as such those registrations should be treated as null and void and Dreams should be disciplined for fielding those Players in the Match.
64. The details it provided were sufficient for the GFA to now extract the evidence from its own systems. It had satisfied any burden of proof. However, both the GFA DC and the GFA AC disagreed and determined to take no action against Dreams, rather starting an action against D./C. which ultimately resulted in him being banned for a year, when he could not personally change his registration details. This could only be done by his club, by Dreams.

65. Tema could not access the GFA's systems to extract the necessary proof, hence why it wrote to the GFA to ask it to carry out this task.
66. In summary, the GFA's stance has resulted in a miscarriage of justice against the Players and Tema.

B. The GFA's Submissions

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

67. The GFA submitted that it merely followed its regulations. It received the protest or petition from Tema, but according to Article 34 of the GFA Regulations, the burden of proof was upon Tema to show that the Players were unqualified.
68. Further, the GFA, having heard Mr Osei at the hearing queried why he had not provided the evidence he possessed, i.e. that he knew the players C. as D. and J. as O. from having worked with them as U17 players and/or having seen them at other clubs playing against Tema. The standard petition form asked for all evidence to be provided. Mr Osei should have provided it, and not doing so was a mistake, but a mistake of his own making.
69. The GFA submitted that the process Tema had to follow was clearly set out in the GFA Regulations and that the precedents Tema had referred to all pre-dated these Regulations, so were not on "*all fours*" with the matter at hand.
70. Tema could have produced the evidence of Mr Osei before the GFA AC too, but didn't. When it applied for a review, no new evidence was adduced either, as such the GFA AC were correct in refusing any review.
71. Finally, the GFA noted that D./C. was ultimately banned, but submitted that at the time of the Match, he was registered and therefore a "qualified player".

VI. JURISDICTION OF THE CAS

72. 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".

73. Article 45.1 of the Statutes of the GFA provides that:

"45.1 In accordance with Articles 62 and 63 [now 66 and 67] of the FIFA Statutes, any appeal against a binding decision of an organ of FIFA shall be dealt with by CAS which shall be recognized by the GFA and its members as an independent judicial authority whose decision they will respect. The CAS shall however, not have jurisdiction on any disputes relating to:

45.1.1 *The violation of the Laws of the Game*

45.1.2 *Suspension of up to 4 matches or 3 months*

45.1.3 *Decisions passed by an independent and duly constituted Arbitration Committee of the GFA*

...

45.2 *The GFA shall ensure that itself and its members, match and players' agents will fully comply with the final and binding decisions by FIFA or by CAS".*

74. Further, Article 91 of the GFA Disciplinary Code states:

"Any party aggrieved by a decision of the Appeals Committee of the GFA may appeal to the Court of Arbitration for Sports in Lausanne, Switzerland as the final arbiter in all sports-related litigation".

75. The jurisdiction of CAS was initially disputed by the GFA, as they argued that the 'correct' appeal by Tema against Dreams was rejected by the CAS and the case of 'Tema v the GFA' was a fresh case (i.e. not subject to a first instance dispute) for which the CAS did not have jurisdiction. However, the Panel rejects the GFA's arguments and rules that it does have jurisdiction to hear this dispute as the Appealed Decision is appealable to the CAS, pursuant to Article 68 of the GFA Statutes and Article 91 of the GFA Disciplinary Code.

76. The jurisdiction of the CAS was further confirmed by the Order of Procedure duly signed by all Parties. It follows that the CAS has jurisdiction to hear this dispute.

VII. ADMISSIBILITY

77. The Statement of Appeal/Appeal Brief, which was filed on 30 November 2015, and completed on 9 December 2015, complied with the requirements of Articles R48 and R64.1 of the CAS Code, including the payment of the CAS Court Office fee.

78. It follows that the Appeal is admissible.

VIII. APPLICABLE LAW

79. 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".

80. Accordingly, the Panel rules that the various regulations of the GFA, such as the GFA General Regulations, GFA Statutes and the GFA Disciplinary Code would apply.

IX. LEGAL DISCUSSION

A. Merits

81. This is not a typical club v. club dispute. Those are normally based on contract law and may be dealt with within an arbitration forum established by a football association or federation. In those types of disputes, the Panel would fully expect either party that was attempting to rely upon a fact or support a submission with evidence to carry the burden of proof.
82. The Panel notes that at the centre of this dispute is a disciplinary issue – did Dreams field ineligible players or not. Of course Tema could potentially benefit if Dreams were found guilty of a breach of the GFA’s Regulations that govern such offences; but equally, Tema would argue that it has already suffered, because if those Players had not been fielded by Dreams, it might have won the Match it lost, so, as such is simply looking for natural justice.
83. In the Panel’s eyes, Tema is a “whistle blower”. It has come forward and made allegations to the GFA and it has written to the GFA telling it to look at its own systems to verify these allegations. However, the GFA did not appear to investigate, rather it sent the matter to the GFA DC, which heard the matter at first instance, without any defence from Dreams (as it chose not to participate at this stage) and determined not to take any action against Dreams, on the basis that Tema had not discharged its burden of proof.
84. Tema appealed the GFA DC Decision to the GFA AC, who interviewed Mr Essah, the IT Manager at the GFA, who is responsible for player registrations. A hearing was convened, but Tema were not invited to speak at the hearing. Ultimately, the appeal is rejected, again, on the grounds that Tema did not satisfy its burden of proof.
85. The Panel notes that the GFA AC also determined to set the wheels in motion for the GFA’s Prosecutor to look into the position of the Players to check to see if their registrations were altered in some way.
86. The Panel then notes that Tema sought a review of the First GFA AC Decision. Tema felt it had to ask for this review within 3 days of that decision (and indeed Article 37 of the GFA Regulations appears to confirm that). Tema was aware that the GFA Prosecutor was looking at the position of the Players and D./C. was ultimately banned on 13 October 2015 for one (1) season following a decision of the GFA DC. This may then have provided the “new evidence” required for Tema to have based a request for a review on, but Tema had already made that request at that stage.
87. The GFA AC, upon reviewing its own decision (i.e. the First GFA AC Decision), determined there was no grounds for a review, as no new evidence had been produced by Tema. This decision, the Appealed Decision, was then appealed to the CAS.

a) *Burden of Proof upon Tema*

88. The Panel can see that pursuant to Article 34 of the GFA Regulations, the burden of proof is on Tema. The Panel notes the position of Tema, that such burden should be “relaxed” when the evidence required was already in the hands of the GFA. It cited *Tarkwa United FC v. Samartex FC* as jurisprudence to support this position.
89. The Panel also notes that Mr Osei gave evidence at the hearing concerning his first-hand knowledge that the Players were playing under different identities in the Match. The GFA pointed out that Tema could/should have included his testimony as evidence before the GFA DC when filing its initial petition. In response, Tema stated that it thought he would get a chance to speak before the GFA DC, or certainly at the GFA AC once Mr Osei had been invited to the hearing.
90. The Panel also notes the letter of 6 August 2015 that Tema sent to the GFA, referred to at para. 10 above. It became apparent during the hearing that a club could not access registration information regarding players at other clubs on the 2014/15 season’s systems (although it is now possible using the FIFA Connect system). As such, Tema had asked the GFA to access its own registration systems to make the checks. The extent to which this was or was not done is unclear to the Panel. The GFA AC examined Mr Essah, but it ultimately agreed with the GFA DC that the case should be dismissed, due to Tema not providing sufficient evidence.
91. This course of reasoning puzzles the Panel. What is the role of a “whistle blower”? To be able to bring matters to the authority’s attention that it might not be aware of, so it can look into those matters and potentially sanction a wrong doer? Whilst there should be some basis or foundation to allegations made by a whistle blower, once that basic hurdle is overcome, then it is surely for the authority to take over and to investigate properly and then for it (or its judicial body) to consider guilt or innocence and, if the former, any sanction. It cannot sit back and expect the whistle blower to do all the work for it.

b) *The GFA AC Review*

92. The Panel notes that the GFA AC seemed satisfied that there was something amiss with the registrations of the Players. It directed the GFA Prosecutor to look at the position of the Players. Why didn’t it do the same with the position of Dreams? It was common ground between both the Parties and Mr Essah that the Players could not access the systems to change their identities, only clubs could access the GFA registration systems.
93. The GFA AC was asked on 17 September 2015 to review its own decision. Rather than appoint members of the GFA AC that had not already heard the matter, the same people (with two more) conducted the review on 5 November 2015.
94. The Panel notes that on 28 September 2015, the GFA Prosecutor charged D./C. and on 13 October 2015, the GFA DC sanctioned him by banning him for a year. That decision concluded:

- “1. That the Disciplinary Committee having satisfied itself that the evidence adduced before it supports the charge, hereby imposes a ban 6 matches on [C./D.] for the forgery of his documents (i.e. for changing it illegally or wrongly).
 2. That the Disciplinary Committee having satisfied itself that the evidence adduced before it supports the charge, hereby imposes a ban of one (1) football season on [C./D.] for double registration in the 2013 season.
 3. That the bans stated in Decisions 1 and 2 above shall run concurrently with the effect being that the player will serve a ban of one (1) football season starting immediately.
 4. That after having served the ban, [D./C.] must use available legal steps to correct his identification.
 5. That should any party be dissatisfied with or aggrieved by this Decision, the party has within three (3) days of being notified of this Ruling to appeal to the Appeals Committee (See Article 37(11) of the General Regulations of the GFA)”.
95. The Panel notes that the GFA General Secretary did not appear before it at the hearing, nor did the GFA offer up any witnesses or representatives. The Panel wondered if the GFA AC were aware of this finding, this new evidence, at the time it rendered the Appealed Decision. Much as the GFA were at pains to say how it remained independent of its judicial bodies, it is clear from looking at the Appealed Decision, that the General Secretary was present and should have made the GFA AC aware of this new evidence. Instead, it merely confirmed the First GFA AC Decision, that Tema had not produced enough evidence.
96. To conclude, what was known by the GFA regarding D./C. should have been considered when reviewing the First GFA AC Decision and treated as new evidence.
- c) *De novo* powers**
97. The Panel notes the extensive prayers for relief from Tema. Much as Article R57 of the CAS Code provides the Panel with great flexibility and the possibility to hear the case on a *de novo* basis, the Panel felt unable to fully exercise such powers without Dreams being present to be heard too.
98. However, the Panel notes that Tema’s primary prayer is to annul the Appealed Decision. The Panel have determined to do just that, but pursuant to Article R57 of the CAS Code, in this instance have determined to send the matter back to the GFA AC to conduct a proper review of the First GFA AC Decision (dated 11 September 2015).
99. The Panel also makes the following suggestions:
- a) Different members of the GFA AC than those that heard the First GFA AC Decision should conduct the review;
 - b) The GFA AC should take note of the new evidence that should have been made available to it, namely the decision of the GFA DC relating to D./C. of 13 October 2015. Additionally the complaint made by Amidaus against Dreams;

- c) Ultimately (although it will be a decision for the GFA AC) it may feel it is appropriate to appoint the GFA Prosecutor to look at the transfers and registrations, then ask the GFA AC to rehear the matter, hearing both Dreams and Tema (especially Mr Osei) and the Players too, all to consider whether any sanction against Dreams is warranted.

B. Conclusion

100. Based on the foregoing, and after taking into due consideration all the evidence produced and all submissions made, the Panel partially allows the Appeal of Tema, annulling the Appealed Decision and sending the matter back to the GFA AC for review in accordance with the GFA Regulations.
101. All other prayers for relief are dismissed.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed on 30 November 2015 by Tema Youth Football Club against the decision rendered by the Appeals Committee of the Ghana Football Association on 5 November 2015 is partially upheld.
2. The decision rendered by the Appeals Committee of the Ghana Football Association on 5 November 2015 is annulled and the matter is to be returned to the Appeals Committee of the Ghana Football Association for review.
- (...)
5. All other motions or prayers for relief are dismissed.