



**Arbitration CAS 2018/A/5595 Phar Rangers FC v. Ghana Football Association (GFA), award of 5 August 2019**

Panel: Mr Pat Barriscale (Ireland), President; Mr Jacopo Tognon (Italy); Mr Bernhard Welten (Switzerland)

*Football*

*Relegation of a club to a lower division*

*CAS jurisdiction*

*Reinstatement of a club due to the breach of its own regulations by the federation*

1. **Article 43.1 of the GFA Statutes states that in accordance with Articles 59 and 60 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. Article 91 of the GFA Disciplinary Code further states that any party aggrieved by a decision of the Appeal Committee (AC) of the GFA may appeal to the CAS as the final arbiter in all sports-related litigation. According to CAS jurisprudence, unless there is any new evidence to be presented by way of internal review by the AC, there is no grounds for review of the AC decision. Furthermore, the obligation to exhaust internal legal remedies applies only to ordinary – and not to extraordinary or incomplete legal remedies.**
2. **By failing to declare “*ex officio*” a club that failed to pay the fines imposed on it as loser in all the games subsequent to the stipulated due date as provided by article 39(8)(d) GFA General Regulations, the federation is in breach of its own regulations.**

**I. PARTIES**

1. Phar Rangers Football Club (the “Club” or the “Appellant”) is a football club with its registered office in Accra, Ghana. The Club was playing in the Zone 3 Division 1 League, the second highest league in Ghana until its relegation to the Regional League in February 2018. The Club is affiliated to 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 offices in Accra, Ghana. It is affiliated with the Fédération Internationale de Football Association (“FIFA”) and to the Confédération Africaine de Football (“CAF”). In June 2018, the Ghana government ordered the dissolution of the GFA and based on this decision, FIFA decided on 27 August 2018 to appoint a normalisation committee for the GFA. This committee will exist until 31 March 2019 at the latest.

## II. FACTUAL BACKGROUND

### A. Background Facts

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 16 July 2017, the Club played a Division 1 League game against Okwahu United which it lost 1:0.
5. On 3 September 2017, at the conclusion of Zone 3 Division 1 League, the Appellant finished in twelfth position in the table being one position above the relegation zone. It would, therefore, remain for the following season in Zone 3 of Division 1 League. It completed 30 match days at that point as there were sixteen teams in total in Zone 3 Division 1. Among the four teams to be relegated at that stage were Okyeman Planners FC ("Planners") as well as Okwahu United.
6. On 18 October 2017, the GFA Disciplinary Committee ("DC") accepted a protest lodged by the Planners in respect of their match day 29 match against Okwawu United FC. The protest was accepted by the DC as at the date of that match Okwawu had not paid a number of fines imposed against their players and this was in breach of Articles 39(8)(b) and (d) of the GFA General Regulations. Accordingly, the Planners were declared the winner of this game by 3:0 in accordance with Articles 31(1) and (2) of the GFA Disciplinary Code. The result of this decision moved the Planners to fourth in the Zone 3 Division 1 League and the Appellant to thirteenth place and, consequently, into the relegation zone.

### B. Proceedings before the GFA Disciplinary Committee

7. On 24 November 2017, the Appellant sent a letter to the GFA once it became aware of the DC decision of 18 October 2017 involving the Planners and Okwawu United. The Appellant requested the GFA to declare all matches played against Okwawu United after 12 March 2017 and 18 May 2017 to be forfeited "*ex officio*" based on Articles 39(8)(b) and (d) of the GFA General Regulations.
8. On 27 November 2017, the Appellant filed a formal protest against the GFA before the DC, as the GFA refused to declare the game of 16 July 2017 as forfeited in favour of the Appellant.
9. On 20 December 2017 and 2 January 2018, the Appellant sent letters to the GFA asking about the status of the complaints filed.
10. On 11 January 2018, the DC decided that the protest filed by the Appellant was dismissed for want of jurisdiction.

11. On 16 January 2018, the Club filed an appeal to the Appeals Committee of the GFA (“AC”).
12. On 15 and 21 February 2018, the Appellant sent letters to the AC asking for the status of the proceedings and drawing the attention to the possible denial of justice and, as a consequence, the possibility to appeal to the Court of Arbitration for Sport (“CAS”).
13. On 23 February 2018, the AC dismissed the appeal (“Appealed Decision”). Such decision was sent to the Club with letter dated 26 February 2018.

### **III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT**

14. On 1 March 2018, the Appellant filed its Statement of Appeal pursuant to Articles R47 et seq. of the Code of Sport related Arbitration (“CAS Code”) together with a request for provisional measures in accordance with Article R37 of the CAS Code. Within its Statement of Appeal, the Appellant requested that this procedure be referred to a Sole Arbitrator, failing which they nominated Mr. Jacopo Tognon, attorney-at-law in Padova in Italy, as arbitrator.
15. On 13 March 2018, the Respondent confirmed its preference that a three-member Panel be appointed instead of a Sole Arbitrator.
16. On 14 March 2018, the President of the CAS Appeals Arbitration Division issued her decision rejecting the Appellant’s request for provisional measures.
17. On 20 March 2018, the Appellant filed its Appeal Brief pursuant to Article R51 of the CAS Code.
18. On 5 April 2018, the CAS Court Office informed the parties that the President of the CAS Appeals Arbitration Division decided to submit the present procedure to a three-member Panel.
19. On 11 April 2018, the Respondent filed its Answer pursuant to Article R55 of the CAS Code.
20. On 4 May 2018, the Respondent nominated Mr. Bernhard Welten, attorney-at-law in Bern, Switzerland, as arbitrator in these proceedings.
21. On 11 June 2018, the Appellant requested that this procedure be suspended following the issuance of a press release by the Ministry of Information in the Republic of Ghana that the Government was taking steps to dissolve the GFA.
22. On 12 June 2018, the CAS Court Office acknowledge receipt of the Appellant’s request and invited the Respondent to comment accordingly.
23. On 19 June 2018, the CAS Court Office informed the parties that the GFA remained silent so far and it granted an extended deadline until 25 June 2018 to receive the Respondent’s Answer,

stating that the Respondent's silence will be considered as acceptance to the Appellant's request to suspend the proceedings.

24. On 5 July 2018, the CAS Court Office, having heard no objection from the Respondent concerning the Appellant's request to suspend the procedure, suspended this procedure until further notice from the CAS Court Office.
25. On 5 December 2018, the Appellant informed the CAS Court Office that FIFA formulated a normalisation committee within the GFA and as a result, the Appellant requested the lifting of the suspension in this procedure.
26. On 6 December 2018, the CAS Court Office lifted the suspension and the proceedings resumed.
27. On 20 December 2018, the CAS Court Office, on behalf of the President of the Appeals Arbitration Division, informed the parties that the Panel appointed to this case was constituted as follows:  
President: Mr. H Pat Barriscale, Barrister in Limerick, Ireland  
Arbitrators: Mr. Jacopo Tognon, Attorney-at-Law in Padova, Italy  
Mr. Bernhard Welten, Attorney-at-Law in Bern, Switzerland.
28. On 28 January 2019, the Appellant signed the Order of Procedure. The Respondent did not sign the Order of Procedure or otherwise object to its contents.
29. On 29 January 2019 – one day before the scheduled hearing - the GFA sent a letter to the Appellant (but addressed to the CAS) requesting an adjournment of the hearing based on the extraordinary situation the GFA was in and since the normalisation committee had not yet come up with the restructuring process. Such letter was not sent to the CAS Court Office but instead only received by the Appellant.
30. On 30 January 2019, a hearing was held at the CAS Court Office in Lausanne, Switzerland. At the outset of the hearing, the Appellant did not raise any objection to the composition of the Panel. The Panel members were all present and were assisted by Mr. Brent J. Nowicki, CAS Counsel. The following persons attended the hearing:  
Phar Rangers FC: Mr Yaw Amponsah (Club President) and Mr Nilo Effori (Club's Legal Representative)  
Ghana Football Association: no appearance.
31. During the Appellant's initial remarks at the outset of the hearing, the Appellant furnished the Panel with a copy of the Respondent's letter dated 29 January 2019, which as noted above, was never sent to the CAS Court Office. In consideration of the timing of the Respondent's request,

noting that such request was not properly sent to the CAS Court Office, the Panel proceeded with the hearing.

32. The Appellant being present was given the opportunity to present its case, to make its submissions and arguments and to answer the questions posed by the Panel.
33. Upon closing the hearing, the Appellant expressly stated that it had no objections in relation to its right to be heard and to be 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.
34. On 30 January 2019, the CAS Court Office formally informed the Parties that the letter filed by the GFA on 29 January 2019 was only presented to the Panel at the hearing and that the Panel rejected the requested adjournment.

#### **IV. SUBMISSIONS OF THE PARTIES**

35. 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. The Club's Submissions**

36. The Club submitted that the objective of this appeal was to get the GFA to respect its own regulations. It submitted that both the DC and the AC had erred by allowing the outcome of the match to stand without applying consequences which "automatically" followed pursuant to the regulations. Such an automatic follow up did not require any provocation by any party.
37. The Club submitted that when the DC came to its decision on the 18 October 2017 in the case brought by Planners against Okwawu United, that there were consequences not only for that specific match but also for all the matches Okwawu United had played since 12 March 2017. This derived from Article 39(8)(d) of the GFA General Regulations where the words "*shall automatically forfeit*" is stated in relation to the subsequent matches until the fines and/or costs are fully paid.
38. The Club suggested that when Planners brought the case against Okwawu United it was acting as a type of "*whistle blower*". The DC made its decision and should have only served as a reminder to the GFA to take up its responsibility towards all affected member clubs. The GFA could not reward simply one-member club without applying the "automatic" consequences which flowed from the same pursuant to Article 39(8)(d) of the GFA General Regulations. If the GFA Regulations had been appropriately applied, then the Club would have remained safe in Zone 3 Division 1 League and finished in 11<sup>th</sup> position. It would have allowed them to continue in Zone 3 Division 1 League for the following season.

39. The Club made use of the only type of procedure at its disposal to reach out to the GFA and the DC. By lodging the protest as they did, this was the only method available to them to bring the matter appropriately before the DC which had jurisdiction to deal with it. This jurisdiction is stated in the GFA Disciplinary Code and the Club has relied particularly on the following Articles in relation to the same:

*“Article 2 – Scope of Application: Substantive Law*

*This code applies to every match and competition organized or sanctioned by the GFA. Beyond this scope, it also applies if a match official is harmed and more generally, if the statutory objectives of FIFA and the GFA are breached, especially with regard to forgery, corruption and doping. It also applies to any breach of FIFA and GFA Regulations that do not fall under the jurisdiction of any other body.*

Under Article 1 – Object

*This code describes infringement of the rules in GFA Regulations, determines the sanctions incurred, regulates the organisation and functions of the bodies responsible for taking decisions and the procedures to be followed before these bodies. For the avoidance of doubt, the bodies are:-*

*The Disciplinary Committee;*

*The Ethics Committee;*

*The Appeals Committee”.*

40. Furthermore, under the GFA Statutes and particularly Article 41.3.3, the DC has the power “to deal with offences involving infringements of the laws of the game, the regulations of all international bodies to which the GFA is affiliated and the statutes and regulations of the GFA”.
41. In summary, the GFA, by failing to appropriately apply its own regulations, had caused significant loss to the Appellant, causing it to play in the regional league as opposed to Zone 3 of the Division 1 League. As a result, the Club had lost all its key players who clearly did not want to play in regional league. Additionally, the financial consequences for the Club were also significant.
42. In its prayers for relief, the Club requests as follows:
- “(a) The appeal filed against the Decision of the GFA Appeal Committee is admissible;*
  - (b) The Decision of the GFA Appeal Committee is annulled and set aside.*
  - (c) to decide that the non-application of Article 39(8)(d) of the GFA General Regulations by the GFA itself is in breach of such Regulations;*
  - (d) to confirm that the application of the Article 39(8)(d) of the GFA General Regulations should have been made automatically by the Respondent, without any provocation,*
  - (e) The Respondent, in accordance with letter “d” above, to declare the Appellant as winner of the match day 21 on 16 July 2017 and concede 3 (three) points and 3 (three) goals and a further deduction of 3 (three) points from Okwawu United FC, in accordance with Article 34 of the GFA General Regulations;*

- (f) *Due to the letter “d” and “e” above, the Respondent to correct the 2017 Zone 3 Division One table and declare the Appellant as participant on this League for the 2018 season;*
- (g) *The GFA, in case this appeal is upheld, to restart the Zone 3 Division one League 2017/2018 with the Appellant included.*
- (h) *an order for the Respondent to bear the entire costs of the Appellant’s legal costs and expenses with the present arbitration proceedings”.*

43. At the hearing, the Panel raised the issue of the information being readily available to the Appellant regarding the non-payment of fines and that they too could have brought a protest against Okwawu United after their matches. The President gave evidence that the register was inaccurate, record keeping was not good at all and it was either wrong or irregular. The information was not readily available to all Clubs and further, that certain individuals were keeping information which was not in the register for their own personal use and gain at subsequent dates.

## **B. Respondent’s Submissions**

44. The non-payment of fines is not confidential. The GFA has a registry in an accounts office where such information is readily available. All the Club needed to do was conduct a search at the registry to obtain such information.

45. The appeal filed by the Club is frivolous and unmeritorious and the GFA suggested that the decision of the AC was correct and that the AC could not assume original jurisdiction of the matter as it did not have the power under the GFA Statutes and the general regulations and, therefore, it could not assume powers it simply did not have.

46. The GFA further pretended that the CAS does not have the appropriate jurisdiction to deal with this appeal

47. In its prayers for relief, the Respondent requests as follows:

*“We respectfully submit that the Appeal is unmeritorious, that procedurally it is flawed and substantially has no basis.*

*We therefore urge the tribunal to dismiss the Appeal on the preliminary point of lack of jurisdiction. And also for lack of merits”.*

## **V. JURISDICTION**

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

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

49. Article 43.1 of the GFA Statutes states that in accordance with Articles 59 and 60 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. Further, Article 91 of the GFA Disciplinary Code states that any party aggrieved by a decision of the AC may appeal to the CAS as the final arbiter in all sports-related litigation.
50. The Respondent in its Answer stated that the Appellant did not exhaust all the legal remedies available to it prior to appealing to the CAS. The Respondent referred to Article 37 of the GFA Regulations and specifically to Article 37.13(a) which states: *“The decision of the Appeals Committee in any matter shall be final provided that the Appeals Committee shall have power to review its own decision either suo moto or on application by an aggrieved club, official or player”*. The Respondent is of the opinion that the Appellant failed to seek a review of the Appealed Decision and, therefore, it failed to exhaust all the internal remedies at its disposal before coming to CAS. As a consequence, the CAS has no jurisdiction to hear the matter in those circumstances. The Respondent referred to *CAS 2014/A/3576*.
51. In response to this suggestion, the Appellant sought to rely on the CAS case *2015/A/4328*, which states that, unless there was any new evidence to be presented by way of internal review by the AC, there were no grounds for review of the AC decision.
52. The Panel agrees with the Appellant and rejects the arguments put forward by the GFA as there is no new evidence giving reasons for such a review of the Appealed Decision. Neither the GFA nor the Appellant did assert in their submissions that any new evidence exists, thus giving reasons for such a review. The review is an extraordinary remedy. MAVROMATI/REEB, The Code of the Court of Arbitration for Sport, R47 N 33 state: *“The wording of Article R47 of the Code has been interpreted as encompassing ordinary remedies only and not extraordinary remedies. The SFT has confirmed the view that the obligation to exhaust internal legal remedies applies only to ordinary – and not to extraordinary or incomplete legal remedies”*. The Panel is, therefore, of the opinion that the CAS has jurisdiction based on Article 43.1 of the GFA Statutes and Article 91 of the GFA Disciplinary Code.

## VI. ADMISSIBILITY

53. Article R49 of the Code provides as follows:
- “In the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, or in a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against”*.
54. The Statement of Appeal was filed on 28 February 2018 and, therefore, within the 21-day deadline after having received the Appealed Decision on 26 February 2018. The Appellant complied with the requirements of Articles R48 and R64.1 of the CAS Code.

55. It follows that the appeal is admissible.

## VII. APPLICABLE LAW

56. Article R58 of the Code provides as follows:

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

57. This case involves a dispute between the GFA and the Club being a member of the GFA. Therefore, this is an “internal” dispute of the GFA and it is undisputed by the Parties that mainly the various regulations of the GFA, such as the GFA General Regulations, GFA Statutes and the GFA Disciplinary Code would apply. The Panel does not assert differently.

## VIII. MERITS

58. Before going into the merits, the Panel would like to point out that on the day of the hearing, it received a letter from GFA dated 29 January 2019 requesting an adjournment of the hearing for several reasons mainly being in the responsibility of the GFA itself. This seemed to be the reason why the GFA did not participate in the hearing, not even requesting to participate by video or telephone. The Panel could not see any justifiable reasons why the hearing should have been adjourned when it would have been possible for the GFA to at least participate remotely. Therefore, at the beginning of the hearing the Panel decided to reject the GFA’s request for an adjournment of the hearing.

59. Upon questioning from the Panel, the Club explained that there had been no official competition in Ghana football since June 2018 and that only very recently a transitional schedule had been published for matches over the following three months commencing in February 2019. This schedule was to ensure that some football took place before the new season which was due to commence in August 2019. At this stage, the Appellant sought to amend their prayers for relief to include reinstatement for the 2019/2020 and not 2018/2019 season.

60. In the Panel’s view, this case is not only caused by the Appealed Decision, but also by the DC deciding the protest filed by the Planners against Okwawu United on 18 October 2017. The important Articles to be applied in this case are:

- Article 39(8)(b) GFA General Regulations:

*“Without prejudice to any provision in these Regulations to the contrary, a club, shall pay all fines, costs, debts imposed on it by the GFA or the Judiciary bodies of the GFA not later than 14 days excluding Saturdays, Sundays and Public holidays after such fines or costs have been communicated to it in writing by the Association of the GFA website, the GFA notice board, GFA newspaper, GFA newsletter, National Newspaper and/ or through the GFA email to the official emails of the Club”.*

- Article 39(8)(d) GFA General Regulations:

*“A Club that fails to pay its fines, costs and debts on or before the stipulated due date shall automatically forfeit its subsequent matches until such time the fines and/ or the costs are fully paid”.*

61. Article 39(8)(d) of the GFA General Regulations clearly states that Okwawu United should have lost all its games since 12 March 2017; this date was confirmed in the DC decision of 18 October 2017. It is the GFA’s duty to apply Article 39(8)(d) of the GFA General Regulations “*ex officio*” as the wording in this Article clearly states “*automatically forfeit*”. In other words, beside the forfeit victory granted to the Planners in the DC decision of 18 October 2017, the GFA should have declared all games played by Okwawu United after 12 March 2017 to be forfeited. By failing to declare Okwawu United as loser in all these games, including the match against the Appellant, the GFA was in breach of its own Regulations.

Once the Appellant became aware of the decision of 18 October 2017, the Panel is satisfied to see that it took the only and appropriate action available, based on the applicable GFA Regulations: to lodge a protest before the DC. On 27 November 2017, such protest was filed by the Appellant just after having enquired about the “*ex officio*” application of Article 39(8)(d) of the GFA General Regulations against Okwawu United.

62. Based on the applicable GFA Regulations, specifically Article 39(8) (d) of the GFA General Regulations, the Panel is of the opinion that the Appellant has to be declared the forfeit winner of the game against Okwawu United of 16 July 2017 by 3:0 and receive 3 points. Therefore, it would no longer be on a relegation place by the end of the 2017/18 season.

63. The GFA did not object to the Club’s allegations that when applying automatically Article 39(8)(d) of the GFA General Regulations, the Club would have remained in the Division 1 League. Thus, the Panel is of the opinion that the Club can continue to play in the Division 1 League. Accordingly, the Appeal is accepted.

64. Because of this, the Appellant applied before CAS for provisional measures to postpone the start of the Division 1 Zone 3 League until a decision is rendered in the Appeal proceeding. These provisional measures were refused by Order of CAS dated the 14th of March 2018. Thereafter, the appeal progressed in the normal way and the consequences for the Appellant was that they were relegated to the regional leagues which are a much lower standing than the Division 1 League. The Panel believes that the GFA owed a duty to all of the Clubs involved in the League and not just to Planners who brought the application. Furthermore, the Panel is satisfied that the GFA DC did not require any provocation or application by any other club to apply all of the consequences which followed pursuant to the GFA Regulations and particularly pursuant to Article 39(8)(d). By failing to apply these consequences, there was a potential lack of *bona fides* on the part of the GFA and a breach of equal treatment of all other clubs involved. It also appears to the Panel that there were irregularities within the administration of the GFA at the time and this was subsequently borne out by the suspension/dissolution of the GFA on the 7 June 2018 and the appointment of a Normalisation Committee by FIFA and the Ghanaian Government on the 27 August 2018. The Appellant should not be prejudiced by the Respondent’s shortcomings.

## ON THESE GROUNDS

### **The Court of Arbitration for Sport rules that:**

1. The appeal filed by Phar Rangers FC against the decision of the Appeals Committee of the Ghana Football Association of 23 February 2018 is upheld.
2. The decision of the Appeals Committee of the Ghana Football Association of 23 February 2018 is set aside and replaced by this award.
3. In the game between Phar Rangers FC and Okwawu United of 16 July 2017, Phar Rangers FC is declared the forfeit winner by 3:0. Phar Rangers FC, therefore, remained in the GFA Division 1 League Zone 3 at the end of season 2017/2018 and shall start playing in the same GFA Division 1 League in the next football season.
4. (...).
5. (...).
6. All other motions or prayers for relief are dismissed.