Arbitration CAS 2018/A/5982 Al Merreikh Sport Club v. Sudan Football Association (SFA), award of 20 February 2020

Panel: Mr Nicholas Stewart QC (United Kingdom), President; Mr Hendrik Willem Kesler (The Netherlands); Mrs Anna Bordiugova (Ukraine)

Football
Validity of a match complaint
CAS jurisdiction
Condition for an extension of the time limit to file the answer
Valid filing of the answer
Request for intervention
Validity of a complaint signed by an "authorized" person

1. **According to Article 66.4 of the SFA Statutes, as long as no national sports arbitration tribunal has been established, any dispute of national dimension may only be appealed to CAS in the last instance. Since no national tribunal for sport has been established, there is an appeal to CAS, unless there is some other provision of law or the statutes or regulations of the SFA which overrides or qualifies Article 66.4 so as to exclude such an appeal. In that respect, a provision of the General Rules of the SFA 2004 and Amendments 2014 does not have that effect because the General Rules are subordinate to the SFA Statutes and are not valid so far as they are inconsistent with the Statutes. Moreover, the provision should be interpreted as far as possible consistently with SFA Statutes and not as intended to reduce the rights of appeal under Article 66.4 of the SFA Statutes. In addition, Article 68.1 of the SFA Statutes provides that in accordance with the relevant provisions of the FIFA Statutes, any appeal against a final and binding decisions passed by SFA can be appealed to the CAS unless the national tribunal for sport has jurisdiction.**

2. **Under Article R32 para. 2 of the CAS Code, once it is clear that by the time the deadline for filing the answer expired, no application has been made for extension of time for the answer, there is no power under the Code for the President of the CAS panel (or anyone else) to extend the time limit.**

3. **Pursuant to Article R31.3 second sentence of the CAS Code, if any written submissions are transmitted in advance by facsimile or by electronic mail at the official CAS email address, the filing is valid upon receipt of the facsimile or of the electronic mail by the CAS Court Office provided that the written submission and its copies are also filed by courier within the first subsequent business day of the relevant time limit. Accordingly, where the submission was otherwise sent in accordance with the time limits provided for by Article R32 CAS Code (Time limits) and the proviso in Article R31.3 was satisfied, then there was a valid filing so making the CAS Court Office's**

receipt of the email the valid filing. It is clear from Article R31 that for the purposes of Article R32 anything sent must be sent to the CAS Court Office. Articles R31 and R32 of the CAS Code do not treat as critical the time taken for the relevant submission to reach CAS once it has been sent. A party who has filed the submissions in time i.e. pursuant to Articles R31 and R32 of the CAS Code has validly filed its submissions, even if the package then takes weeks to arrive or even if it never arrives but gets lost in transit. In that situation, the party will need to prove that it was sent, but the filing is validly done as soon as the package is sent on its way to CAS. There is no requirement for a party to use any form of expedited delivery or to take steps - beyond despatch within the time limit - to see that it arrives at CAS as soon as possible. For the purposes of Article R32 of the CAS Code, the crucial point is when and to where the package was sent, not when it arrived at the CAS Court Office. The fact that a confusion occurred in the address on the package containing the submissions is not a critical point. It is nevertheless essential that for the purposes of Article 31.3 of the CAS Code the identity and content of the items which have been sent by courier exactly match what has been sent by facsimile or electronic mail.

4. **By Article R41.4 of the CAS Code, a third party may only participate in the arbitration if it is bound by the arbitration agreement or if it and the other parties agree in writing. Where there is no agreement between the parties in that respect and no written submission in the third party's application regarding the question of whether it is bound by the arbitration agreement, without even deciding if the third party was so bound, a CAS panel should not exercise its discretion under Article R41.4 of the CAS Code to accept the participation of the third party considering that (i) if the appeal is otherwise successful, there is no obstacle to granting the relief requested by the appellant notwithstanding the fact that the third party has not been able to participate in the appeal but would clearly be adversely affected by that outcome, (ii) the interests of the third party are adequately protected by the participation of the respondent, of which it is a member, (iii) participation of third party would add to the costs of the arbitration for the parties and CAS, which would not be reasonable and proportionate.**

5. **According to the applicable regulations of the federation, to be valid, a match day complaint shall be signed by the president of the complaining club or by the person authorized by the club's board of directors. In that respect, a club's football manager has the necessary authority to sign a match day complaint. Indeed, every employee has the implied authority of the board to take any step in the interests of the club which is within the scope of his or her duties and responsibilities under the terms of their employment. No express authority need be given: it is implicit in the contract of employment, provided only that the contract is validly made on behalf of the club. Signing a match day complaint is within the scope of duties and responsibilities of someone given the express job title of football manager of a club, as this is a matter directly related to a match and to the football activities of the club, potentially affecting the number of points and its position in the league.**

I. PARTIES

1. Al Merreikh Sport Club (the "Appellant") is a professional football club in Khartoum, Sudan, and is a member of the Sudan Football Association.

2. The Sudan Football Association (the "SFA" or the "Respondent") is based in Khartoum and is the governing body of football in Sudan. The SFA is a member of the African Football Confederation ("CAF") and the Fédération Internationale de Football Association ("FIFA").

II. FACTUAL BACKGROUND

A. Introductory facts

3. This section contains a summary of the relevant facts based on the Parties' written submissions and evidence and oral submissions at the hearing. The Panel has considered all the arguments and evidence submitted by the Parties and refers to specific matters in this Award only as necessary to explain its decision.

4. The Panel has relied upon the submitted English translations of documents originally in Arabic. There have been no disputes between the Parties about the accuracy of translations. In this award, quoted passages from those English translations are set out exactly as in the submitted documents except where indicated by square brackets.

5. The Appellant played the 2018 (sometimes designated in the documents as 2017-18) football season in the Sudan Premier League (the "SPL"). On 3 October 2018 the Appellant played an SPL match (the "October Match") against Al Merreikh Al Fasher Sport Club ("Al Fasher"). The Appellant lost the October Match 2-1.

6. In the October Match Al Fasher fielded a player Hisham Suleiman ("Mr Suleiman" - there are spelling variations in the documents) despite that player being then under automatic suspension by the SFA and therefore ineligible to play in that match. The suspension was for having received three cautions (yellow cards) in three separate matches in the SPL during the 2018 season.

7. After the October Match but on the same day 3 October 2018, the Appellant's Football Manager Mr Aiman Hassan Adar signed and gave the official SFA match supervisor a written complaint (the "Match Day Complaint"), with a letter heading "Al Merreikh Sport Club" and the subject shown as "Re: Complaint", stating:

   "Reference is made to above mentioned subject, please find our complaint on ineligibility of the player Husham Suleiman carrying the number 3 for he has been warned with three yellow cards".

   The Football Manager's full name is actually Mr Ayman Hassan Mohamed Hassan. "Adar" is a nickname. For convenience and with no intended discourtesy he is referred to in this award as "Mr Adar".

8. The Appellant's position was and is that under the SFA's *Regulations for the 2018 Season of the Premier League Competition* (the "SPL Regulations" or the "SPLR") the effect of the player Mr Suleiman's ineligibility was that on complaint by the Appellant to the SFA, Al Fasher should forfeit the October Match by a score of 2-0. It would follow that the Appellant would gain three points for a win, which would make the Appellant the winner of the SPL for the 2018 season.

9. However, in circumstances described below, the Match Day Complaint made on 3 October 2018 has not been upheld by the SFA as a valid complaint under its rules and regulations. The Appellant's complaint was dismissed by the SFA Competition Organizing Committee (the "SFA COC") on 6 October 2018 (there are numerous immaterial discrepancies of dates in the documents) and its appeal against that decision was dismissed by a decision of the SFA Appeal Committee (the "SFA AC") on 10 October 2018 (the "Appealed Decision").

10. By this appeal the Appellant seeks to establish the validity of the Match Day Complaint, that it ought to have been upheld by the SFA and ought now to be upheld by this Panel; and that as a consequence the Appellant should be declared the winner of the SPL for the 2018 season. As matters stand, subject to the outcome of this appeal, the Appellant has finished only in second place in the SPL for the now completed 2018 season.

B. Proceedings before the Sudan Football Association

a) Sudan Premier League Regulations 2018

11. The SPL Regulations are critical to this case and for an understanding of the decisions made by the SFA COC and then by the SFA AC. Relevant provisions of the SPL Regulations are:

> *"Article (6): Organizing Matches*
>
> *6.1 Matches shall be organized in accordance with the rules and regulations issued by [FIFA] and the regulations of this competition. (…)*
>
> *Article (8) Violations and Penalties*
>
> *8.1 A suspended player may not play again unless the suspension period is served and his participation in any match is considered illegal.*
>
> *8.2 . (…)*
>
> *8.3 The club is solely responsible for the legality of the participation of any player in his team in any game and the club which involves a player whose participation has proved to be illegal in any match, when a complaint against it is submitted, the club loses the result of the match 2/zero in addition to any other penalties.*
>
> *8.4 . (…)*
>
> *8.5 In cases of warned and sent off players from the pitch, the following provisions shall apply:*
>
> *First:*
>
> *i Any player who has been warned by the yellow card in three matches … is considered automatically suspended from playing in competitive match. (…)*

vii The player to whom paragraph [i] above applies twice during the season shall be automatically suspended for a second competitive match. If paragraph [i] above was applied twice, the penalty shall be increased for an additional match automatically. In all cases were the player is suspended a fine not less than 5000 pounds (five thousand pounds) may be added.

Article (14) Complaints and Appeals

14.1 . (…)

14.2 . (…)

14.3 Any complaint, other than the incorrect registration of a player, should be sent to the General Secretary of the Association within twenty-four hours of the end of the match, excluding holidays, and fees should be paid. The complaint may also be handed over to the match commissioner.

14.4 Any participating club may submit a complaint concerning any match in the Premier League provided that the club took part in that match. The club lodging the complaint shall determine the specific facts along with the date when the violation was committed, which its complaint was based upon, within the prescribed time period.

14.5 The complaint must meet the following conditions:

A) Submitted in writing to the General Secretary of the Association within twenty-four hours from the end of the match, excluding public holidays, along with the prescribed fees.

B) The complaint shall be signed by the president of the club or the person authorized by the club's board of directors.

…".

Article 8 relates to the substance of the Appellant's complaint and Article 14 to the procedure for making the complaint.

b) The Match Day Complaint and the SFA COC and SFA AC decisions

12. Following the Match Day Complaint, on 5 October 2018 the Appellant submitted a letter (with attachment) addressed to the SFA Secretary General and signed by Mr Mohamed Gaafar Sayed Ahmed Guresh, the Appellant's Secretary General (the "5 October Letter"). The 5 October Letter was headed: *"Al-Merreikh Sport Club complaint against the participation of Merreikh Elfashir player Husham Suleiman in the match between Elfashir Merreikh and Capital Merreikh Club on Wednesday 3/10/2018 at Elfashir city"*. Omitting unnecessary detail here, the 5 October Letter stated:

"Reference is made to the above-mentioned subject and … our complaint lodged to the supervisor after the end of the match immediately, please find attached documents to prove the offence.

The player mentioned above has been warned by the following cards:

[Details of the three yellow cards followed, with attachments, but are not necessary to set out here.]

Therefore, the above mentioned player has broken the suspension by his participation with his club against the Capital Merreikh Club [the Appellant] on 3/10/2018. Kindly apply the regulation clauses of premier league competition for season 2018 section (8) paragraph (1 & 3)".

13. By a written notification dated 7 October 2018 from the SFA addressed to the Appellant's Club Secretary, the SFA informed the Appellant that on 6 October 2018 the SFA COC had decided to reject the Appellant's complaint *"in form"*. The key points in that notified decision (the "SFA COC Decision") were:

    (1) The Appellant had failed to meet the requirements of SPLR Article 14.5(B), because Mr Adar was *"not a chairman of the [Appellant] club and has no capacity to sign [the Match Day Complaint] on behalf of the club"*.

    (2) The Appellant had also failed to comply with SPLR Article 14.4, because *"the committee has come to know that, the complaint has not included [within the specified period] specific events which constitute legal offence. However, it includes (the player has been warned with three yellow cards only). The complaint has not mentioned the date of match or the club disclaimant in question or referred to the offence committed. Moreover, the complaint has not included a specific application to be considered"*.

    (3) The SFA COC had received the 5 October Letter requesting to be added to the Match Day Complaint but had rejected it because it was delivered more than 24 hours after the end of the October Match.

    (4) Based on those grounds, the SFA COC had decided *"the rejection of the complaint in form"*.

14. The Appellant submitted a notice of appeal to the SFA AC dated 6 October 2018 against the SFA COC Decision. It set out seven grounds of appeal. The Panel summarises those grounds as:

    (1) Mr Adar had the authority to sign and submit the Match Day Complaint on behalf of the Appellant, which therefore complied with SPLR Article 14.5.

    (2) The SFA COC was wrong to have found that the Appellant had failed to comply with the requirement in SPLR Article 14.4 to determine in the Match Day Complaint the specific facts and the date when the violation was committed.

    (3) This was essentially the same as ground (2).

    (4) The SFA COC was wrong to have rejected and disregarded the 5 October Letter.

    (5) The SFA COC had held a press conference after reaching its decision in which it had suppressed part of its findings. Accordingly, the Appellant requested the SFA AC to add the text of what had been said at that press conference to the record for the purposes of the appeal to SFA AC.

    (6) The SFA COC had unlawfully hidden aspects of its proceedings.

    (7) In failing to strip Al Fasher of its points for the October Match and award them instead to the Appellant, the SFA COC had not properly applied the relevant law and regulations; and the SFA AC ought to cancel the SFA COC Decision and award the October Match to the Appellant by a score of 2-0 (so that the Appellant would receive three points for winning the October Match).

    Points (5) and (6) have not been pressed by the Appellant on this appeal to CAS and need no further consideration in this Award. The grounds of appeal were summarised in the Appealed

Decision in terms which in substance were not significantly different from the Panel's summary above.

15. The Appealed Decision was notified by a letter dated 10 October 2018 from the Chairman of the SFA AC addressed to the Appellant's Secretary General. It informed the Appellant that the SFA AC had accepted the appeal in form but had rejected it in terms of merit. It stated that the appeal had been lodged within the time limits set by the SFA and the required fee had been paid, so it was accepted in form. After a summary of the grounds of appeal, the terms of the SFA AC's decision were set out (following here the precise terms of the English translation, none of which has given the Panel any difficulties of understanding):

"After we went through the reasons of appeal, [the SFA COC Decision], complaint events and sections upon which the committee depended on its decision, the committee concluded that, the competitions committee decision is correct, because the complaint has not met the requirements included in section (14)/4 of the premier league, where there are not specific events in the complaint and type of offence and its dates, neither the match nor the date or the name of club disclaimant were determined. Instead, the club mentioned that, the player was given three warnings without mentioning any events to indicate the offence and its nature. It is not understood that, there is an offence committed openly. So it is possible to have three warnings in previous matches, and then a player can be suspended and penalized or suspension is broken after the player has corrected his track, or the player may have participated in the match illegally, all these can be predicted. Therefore the club should have determined the offence, its date, and details but it did not appear in the complaint of the appellant. Regarding the complementary information submitted, we noted that, this information was submitted on 5/10/2018 according to the decision of committee, and the appeal of appellant. Section (14)/4 obliged the appellant to lodge his information within the statute of limitation which is 24 hours from the match starting. It is proved that, the reasons were produced after 48 hours, where the match was played on 3/10/2018. However, with respect to the provision of section (14)/5, we found that, the provision specified mandatory of signature of chairman or whoever authorized. But the complaint was signed by the ball manager in his this capacity. His position as a ball manger is not sufficient to sign the complaint. We did not find any provision in law or statute or written contract from Khartoum Merreikh Sport club authoring him to sign the complaint. In addition to that, he did not mention any date of official authorization or attach an authorization with the complaint as a document up to the date of compliant consideration or the appeal. Knowing that, clubs have legal entities. In this regard, Youth and Sport Law, Sudan Football Association statute and general rules have defined the club as "the corporation which incorporates in accordance with the law or statute. This legal capacity must oblige others to deal with it under official authorization. Therefore Section (14) obliged the chairman or whoever authorized to have their signature on the complaint. Because complaints may gain rights, but also may subject to punishment as specified by the same section.

2- When the appellant mentioned that, the procedures should not hide the justice, this can be considered when there is no provision. Thus, if there is a provision specified by the law there will be no room to overcome it, as no discretion should be exercised in the presence of provision and precedents should not be considered in case that, there is an obligatory provision.

3- The appeal mentioned that, the committee has not paid attention to the section 8/3 of the regulation indicating the club is responsible for ineligibility of participation of its players . . . we say, it is known that, as procedure, the complaint is considered firstly in terms of form, if it is accepted, the events will then be considered and its correctness will be investigated as well to see if there is any proof. If the offence is proved, a question will rise, who is responsible for this, then this section will be considered. As long as, the complaint was cancelled in

accordance with above mentioned obligatory section, therefore, no room to reach the abovementioned section to close the road before the competitions committee then the appeal committee for rejection in form.

4- The appeal aroused that, the punishment of the player means complaint acceptance in terms of merit, despite that, it was rejected in form. We would like to say that, although, there is no a decision to punish the player and the club in question from the competitions committee before us, however, the cancellation of complaint in form will prohibit one to discuss it partial or completely in term of merit. The rejection of the complaint in form will make it as if there is no complaint filed and the player track cannot be corrected accordingly. Therefore, the player track will be corrected unless otherwise the club submitted a request or a valid complaint.

Therefore, the committee decided the following:

1. *Acceptance of appeal in form.*
2. *Rejection of appeal in term of merit. And support the [SFA COC Decision]"* (the English translation says "appeal committee decision" but that is an obvious slip in either the original or the translation).

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

16. On 27 October 2018, the Appellant filed its statement of appeal with CAS against the Appealed Decision in accordance with Article R47 *et seq.* of the Code of Sports-related Arbitration (the "Code" or the "CAS Code"). In its statement of appeal, the Appellant nominated Mr Hendrik Willem Kesler as its chosen arbitrator in accordance with Article R48 of the Code.

17. On 5 November 2018, the CAS Court Office received from the Appellant a document (with attachments) dated 30 October 2018 which it later described (in its Appeal Brief) as a combined Statement of Appeal/Request for Relief. However, by an emailed letter to CAS dated 7 November 2018 the Appellant requested that the 30 October 2018 document should be disregarded as it had been submitted by mistake. That request was accepted and that document and its attachments have been disregarded by the Panel.

18. The Statement of Appeal asked that *"an injunction issue, enjoining the commencement of the forthcoming 2018/2019 SFA Premier League Season until a resolution of this matter"*. That was a request for provisional measures under Article R37 of the Code, requesting postponement of the start of the 2019 season until this appeal was resolved. Between 7 and 18 November 2018 the Appellant was able to clarify its request for an injunction and the Respondent submitted its comments, requesting dismissal of the application. By her reasoned written decision dated 22 November 2018 the President of the CAS Appeals Arbitration Division dismissed the application and ordered that the costs of that order should be determined in the final award or in any other final disposition of this arbitration.

19. On 11 November 2018, the Appellant filed its appeal brief (dated 9 November 2018) in accordance with Article R55 of the Code.

20. The Respondent made no nomination of an arbitrator so in accordance with Article R53 of the Code the President of the CAS Appeals Arbitration Division appointed Ms Anna Bordiugova.

21. On 11 December 2018, Al Hilal Club, Sudan, had filed an application for intervention in this appeal, with reasons, in accordance with Article R41.3 of the Code, which by Article R54 applies *mutatis mutandis* to the Appeal Arbitration Procedure. The application also made reference to Article 74 of the Swiss Code of Civil Procedure, but that applies only to court proceedings and adds nothing relevant here to the provisions of the CAS Code.

22. By letter dated 12 December 2018, the CAS Court Office invited the Parties to express their positions on Al Hilal Club's application by 19 December 2018. By letter dated 18 December 2018 the Appellant requested dismissal of the application. The Respondent expressed no view. By letter dated 21 December 2018 the Parties were informed by the CAS Court Office that the President of the Appeals Arbitration Division had decided to leave the decision on such application with the Panel, once constituted.

23. By letter dated 21 January 2019, the CAS Court Office acknowledged receipt of the payment by the Appellant of the advance of costs and invited the Respondent to file its Answer within twenty days of receipt of the CAS Court Office letter by courier. The Respondent received that letter by courier on 24 January 2019, so by Article R32 of the CAS Code the deadline for filing of the Answer was 13 February 2019.

24. In accordance with Article R54 of the Code the President of the CAS Appeals Arbitration Division appointed Mr Nicholas Stewart QC as President of the Panel. On 8 February 2019, the CAS Court Office, on behalf of the President of the CAS Appeals Arbitration Division, informed the Parties that the Panel was constituted as follows:

President:	Mr Nicholas Stewart QC, Barrister in London, Great Britain
Arbitrators:	Mr Hendrik Willem Kesler, Attorney-at-law in Enschede, The Netherlands
	Ms Anna Bordiugova, Attorney-at-law in Kyiv, Ukraine.

25. On 10 February 2019, the Respondent sent its Answer by email to the CAS Court Office.

26. On 18 February 2019, the Respondent sent a letter to the CAS Court Office, informing the latter as follows:

"Answer of the Respondent

(…)

Referring to our email and DHL letter dated 10/2/2019 concerning the above subject, we have been informed by the DHL Company on 17/2/2019 that FIFA had refused to receive the sent letter with the six copies of our answer and attached documents (…).

(…) The DHL Company has informed us that the said answer with the attached documents reached FIFA on 13/2/19.

It will be highly appreciated to explain the reasons of your refusal in accepting our DHL letter".

27. On the same date, the CAS Court Office invited the Respondent to clarify its letter of the same day, noting that it seemed to be directed to FIFA but addressed to CAS. This request remained unanswered.

28. By letter dated 20 February 2019 the Appellant objected to the admission of the Respondent's Answer on the ground that it had been submitted after the deadline set by the CAS Court Office letter dated 21 January 2019. The Appellant's letter specifically referred to Article R55 of the Code, which states:

"in the event that the Respondent fails to submit his Answer within the stated time limit, the Panel may nevertheless proceed with the arbitration and deliver an award without the benefit of a written answer or without taking into account an answer filed out of time".

29. On 21 February 2019, after successful re-routing from FIFA, the DHL package containing the Answer was received at the CAS Court Office.

30. On 1 March 2019, the CAS Court Office, on behalf of the Panel, invited the Appellant to file comments exclusively related to the admissibility of the Respondent's Answer.

31. On 7 March 2019, the Appellant filed its comments on the admissibility of the Answer, objecting thereto.

32. On 21 March 2019 the Parties were informed that the Panel had decided to dismiss Al Hilal's application for intervention and to hold a hearing in Lausanne on 9 May 2019. Al Hilal was also informed on the same date of the Panel's decision to deny its application for intervention.

33. On 26 March 2019 the Respondent informed the Panel that the suggested date would be within the holy month of Ramadan and it would face difficulties in obtaining visas. It therefore requested the hearing date to be postponed until after the end of Ramadan. Nevertheless on 27 March the Parties were called by the Panel to appear at the hearing on 9 May 2019.

34. By two letters dated 27 March 2019 the Appellant sent to the CAS Court Office a copy of a letter dated 9 October 2018 from the SFA Secretary-General to the Secretary of Al Fasher and requested the admission of that 9 October 2018 letter into evidence. The basis of that request was that the letter was supportive of the contention in paragraph 3(3) of the Appeal Brief that Mr Suleiman had been ineligible to play in the October Match.

35. By letter to the parties dated 29 March 2019 the CAS Court Office on behalf of the Panel gave various procedural directions and made requests for further documents. The Respondent was also ordered to state, within fifteen days of receipt of that letter, whether Mr Suleiman had been ineligible to play in the October Match (and it was added that in view of that order there was no need at that stage to consider admission of the 9 October 2018 letter mentioned in paragraph 34 above).

36. By emails dated 21 and 22 April 2019 and letter dated 30 April 2019, all sent to the CAS Court Office, the Respondent requested to attend the hearing by videoconference due to serious turmoil with continuous protests in Khartoum and a curfew imposed by the Sudan army,

which the Respondent said was causing it difficulty arranging travel for its representatives to Lausanne for the hearing on 9 May 2019. The President of the Panel accepted that the political upheaval in Sudan at that time was likely to have made it difficult to obtain the necessary documentation for the Respondent's representatives to travel from Khartoum to Lausanne in time for a hearing on 9 May 2019.

37. On 1 May 2019 the CAS Court Office notified the parties that the President of the Panel had decided to allow the Respondent to attend the hearing by video-conference.

38. On the same date, the CAS Court Office sent the parties the Order of Procedure ("Order"), which was returned duly signed by the Appellant only on 6 May 2019. Despite having been invited and reminded to provide the Order, the Respondent failed to do so.

39. On 2 May 2019 the Appellant had asked the Panel to cancel the hearing and decide the case on documents only. Under Articles 57 and 44.2 of the CAS Code, the Panel could have decided the case on the written materials only if it had deemed itself to be sufficiently well informed not to hold a hearing. However, that was not the Panel's view so that request was denied.

40. On 6 May 2019, the Appellant requested to attend the hearing by video-conference. Such request was refused by the President of the Panel, as (i) it was not shown that the Appellant's representatives would have any difficulty attending in person; and (ii) to have both Parties attending by videoconference was likely to make the efficient conduct of the hearing very difficult (as it undoubtedly would have done, in the light of experience of the actual hearing).

41. A hearing was held on 9 May 2019 at the CAS Court Office in Lausanne, Switzerland. The Panel was assisted by Mr Daniele Boccucci, counsel to the CAS. Mr Talat Emre Koçak attended and made oral submissions on behalf of the Appellant. The Respondent's representatives Mr Mudathir Osman Osman Kheiry and Mr Ramsoi Yahia Abdalla attended by video-conference as authorised.

42. There was an unexpected turn at the beginning of the hearing: Mr Koçak told the Panel that he was making an objection because he had learned that morning that Mr Mudathir Osman Osman Kheiry was a director of the Appellant club. Mr Mudathir Osman Osman Kheiry acknowledged that he was a director of the Appellant but assured the Panel that he would always tell the truth. That assurance was welcome, although Mr Mudathir Osman Osman Kheiry had not given and was not going to be giving evidence anyway. But it was not an answer to Mr Koçak's concerns. Mr Mudathir Osman Osman Kheiry's conflict of interest was obvious. The Panel recognised that this was an unsatisfactory position. However, there was no oral evidence from either Party and the Panel already had full written submissions from the Parties. The President invited Mr Koçak to consider where his objection might lead and whether his client's position would be prejudiced in any real way by Mr Mudathir Osman Osman Kheiry's presenting the Respondent's oral submissions. On consideration, Mr Koçak helpfully withdrew his objection so the hearing proceeded. Mr Mudathir Osman Osman Kheiry's short submissions at the hearing did not raise any matters outside the scope of the written submissions already before the Panel.

43. That was not the only unsatisfactory aspect of the Respondent's conduct of this case. While the Panel has not approached this appeal with unrealistic expectations, there were persistent failures by the Respondent to comply with requests and directions of the Panel. For example, by 6 May 2019, only three days before the hearing, the CAS Court Office was still having to write to the Respondent asking for significant information and documentation which had been requested by the Panel on 29 March 2019, as well as overdue contact details for its videoconference appearance. These matters cannot all be explained by the wider upheaval in Khartoum at that time. It is not acceptable that a national football association should act in that way. Whatever its stance on the merits of an appeal to the CAS by one of its member clubs, a national association has a clear responsibility to all its members and to the CAS to deal with a case in a more helpful and efficient manner. The Panel trusts that the Respondent will take these criticisms to heart, though it can be assured that none of this affects the Panel's decision.

44. Despite written reminders from the CAS Court Office, by the time of the hearing the Respondent had still failed to comply with the order mentioned in paragraph 35 above concerning Mr Suleiman's eligibility to play in the October Match. Accordingly, the 9 October 2019 letter mentioned in paragraph 34 above was admitted into evidence under Article R56 of the CAS Code. The exceptional circumstances justifying that late admission of evidence were the Respondent's failure to answer the Panel's question on the same point, the significance of the point and that it was a factual matter on which the Respondent and not the Appellant had the responsibility of keeping records (as it had done). It would have been unfair to the Appellant to exclude that letter from evidence.

45. The parties confirmed that they did not have any objection to the constitution of the Panel. At the end of the hearing, they confirmed that their right to be heard had been respected and that they had had ample opportunity to present their cases.

IV. SUBMISSIONS OF THE PARTIES AND REQUESTS FOR RELIEF

A. Appellant

46. The Appellant's submissions may be summarised as follows:

(1) CAS had jurisdiction over this appeal by article 66.4 of the SFA Statutes 2017:

As long as within the territory of The Republic of Sudan no Arbitration Tribunal has been installed and recognized by the General Assembly of SFA, any dispute of national dimension may only be referred in the last instance to the Court of Arbitration for Sport (CAS) in Lausanne, Switzerland.

(2) Accordingly, as no such Arbitration Tribunal had been established in Sudan, CAS had jurisdiction by Article R47 of the Code.

(3) By SPLR Article 8.5 (i) the Al Fasher player Husham Suleiman was suspended from playing in the October match, so by SPLR Article 8.1 his participation in that match was considered illegal.

(4) Accordingly, if a complaint was submitted against Al Fasher in relation to that illegal participation, by SPLR Article 8.3 Al Fasher would be deemed to have lost the match 2-0.

(5) The effect of Al Fasher being deemed to have lost the match 2-0 was that the Appellant would receive three points for having won the match. Those three points had the effect that the Appellant finished the 2018 season with most points in the SPL and was therefore the SPL Champion club for that season.

(6) There were provisions of the FIFA Disciplinary Code 2017 which ought to have been implemented by the SFA but had not been; and those provisions also applied with the same result as in (5) above.

(7) The Match Day Complaint was a valid complaint under SPLR Article 14 and in particular complied with SPLR Article 14.5 B) as Mr Adar had been a person authorised by the Appellant club's board of directors to make the complaint.

(8) The SFA Appeal Committee had not taken into account the requirements of the SPL Regulations or the mandatory provisions of the FIFA Disciplinary Code.

47. In its Statement of Appeal and its Appeal Brief, the Appellant requested the following relief (in addition to the requests for preliminary measures and for an expedited hearing, already considered above):

1) The SFA Appeal Committee decision dated 10 October should be annulled.

2) The Respondent SFA should be obliged to declare the Appellant as winners of the match against Al Fasher played on 3 October 2018 with three points and two goals.

3) The Respondent should be obliged to rectify the 2018 Sudan Premier League table and declare the Appellant as champion of Sudan Premier League for the 2018 season with 34 points.

4) The Respondent should bear the costs of this arbitration and contribute an amount to the legal costs of the Appellant under Article R64.5 of the CAS Code.

B. Respondent

48. The Respondent's submissions in opposing this appeal are summarised by the Panel as follows:

(1) The Appellant had failed to comply with Article R49 of the CAS Code (time limit for appeal) so the appeal should be dismissed on that ground.

(2) This dispute between the Appellant and the SFA was a national issue - which the Panel understands as a submission that CAS has no jurisdiction over this appeal because of Article 67.2 of the SFA Statutes, which stated:

SFA shall have jurisdiction on internal national disputes, i.e. disputes between parties belonging to SFA. FIFA shall have jurisdiction on international disputes, i.e. disputes between parties belonging to different Associations and/or Confederations.

(3) As no arbitration tribunal had been constituted as mentioned in Article 66.4 of the SFA Statutes, CAS would have jurisdiction on this appeal subject to its having to follow Sudan national laws: see next point (4).

(4) CAS has no jurisdiction on cases relating to match results, because of Article 106 E) of the General Rules of the SFA 2004 and Amendments 2014:

Decisions of the Organizing Committee regarding the matches of the first-division clubs shall be appealed to the Supreme Appeals Committee and its decision shall be final in this respect.

(5) The SFA Organizing Committee and the SFA Appeal Committee had correctly rejected the Appellant's complaint for the reason that it failed to comply with Article 14 of the SPL Regulations because:

(i) It did not include a date.

(ii) The club against which the complaint was filed was not mentioned.

(iii) The complaint did not tell what happened exactly and the match where the action happened and its date.

(iv) The 5 October Letter was submitted after the 24 hour time limit in Article 14.2 had expired.

(v) The Match Day Complaint was not signed by the President of the Appellant club or a person authorised by the board of directors and no legal authorisation had been attached to the complaint.

(6) Article 8.3 of the SPL Regulations could not be applied in favour of the Appellant where the complaint was not in a valid form.

(7) The complaint involved a national (as opposed to international) issue and the SFA general assembly had decided that the burden of proof in such cases fell on the complaining club and not on the SFA. The Appellant had failed within the specified time limit to provide any proof of the illegality of Mr Husham Suleiman's participation in the October Match. The Appellant was therefore not entitled to the award of any points for that match.

(8) The SFA Appeal Committee had correctly upheld the decision of the SFA Competition Organizing Committee.

49. The Respondent's Answer included a number of other points not mentioned above or elsewhere in this Award, e.g. references to a 2018 Ministerial Decision and to correspondence with FIFA in February and March 2018. In allowing this appeal, the Panel has considered everything submitted by the Respondent. Wherever those submissions are not specifically mentioned in this Award, that is because the Panel considers them as irrelevant or as not providing any seriously arguable reason to reject this appeal.

50. In its Answer, the Respondent makes the following requests for relief:

1. To reject the Appellant's statement of appeal due to violation of article R49 of the CAS Code 2017.

2. *To reject the Appellant's requests.*
3. *To accept the Respondent's requests especially on CAS jurisdiction.*
4. *To confirm the decision hereby appealed against.*
5. *To order the Appellant to bear all the costs incurred with the present procedure.*

V. CAS JURISDICTION

51. The Order of Procedure dated 1 May 2019 was signed on behalf of the Appellant on 6 May 2019 but has not been signed by the Respondent. It stated that the Appellant relied on Article 66 of the SFA Statutes as conferring jurisdiction on CAS but that the jurisdiction of the CAS was contested by the Respondent. However, the jurisdiction of CAS on this appeal is clear, by a combination of Article R47 of the Code and Article 66 of the SFA Statutes.

52. Article R47 of the Code states:

An appeal against the decision of a federation, association or sports-related body may be filed with the 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.

53. As noted in paragraph 48(3) above, it is expressly acknowledged by the Respondent that no National Tribunal for Sport has been established. Accordingly, there is an appeal to CAS under Article 66.4 of the SFA Statutes unless there is some other provision of law or the statutes or regulations of the SFA which overrides or qualifies Article 66.4 so as to exclude such an appeal.

54. The only provision relied upon by the Respondent as having that exclusionary effect is Article 106 E) of the General Rules of the SFA 2004 and Amendments 2014 (set out in paragraph 48(4) above). However, it is clear to the Panel that Article 106 E) does not have that effect, for the following reasons:

(1) The General Rules are subordinate to the SFA Statutes and are not valid so far as they are inconsistent with the Statutes, which by Article 33.4 of the Statutes can only be amended by a two-thirds majority of Members present and voting in General Assembly.

(2) It follows that if Article 106 E) purported to have the effect of excluding an appeal to CAS in a case such as the present appeal, it would be invalid to that extent.

(3) Moreover, quite apart from points (1) and (2), Article 106 E) should be interpreted as far as possible consistently with SFA Statutes. The Panel does not interpret Article 106 E) as intended to reduce the rights of appeal under Article 66.4 of the SFA Statutes. The whole of Article 106, including 106 E), is directed to the determination of the *actual* result of a match. It does not extend to subsequent adjustments of that result, in this case following a complaint in accordance with SPLR Articles 8 and 14, producing a *deemed* different result from the actual result on the day (imposed both as a penalty on the defaulting club and a corresponding adjustment in favour of the complainant club).

(4) In addition to points (1), (2) and (3), the Panel notes Article 68.1 of the SFA Statutes, which states (in the exact terms of the English language version in evidence):

In accordance with the relevant provisions of the FIFA Statutes, any appeal against a final and binding decisions passed by the FIFA, CAF or SFA could be appeal to the Court of Arbitration for Sport (CAS) in Lausanne, Switzerland unless the National Tribunal for Sport (NATS) has jurisdiction in accordance with art.(66).

Accordingly, the Article 106 E) designation of a decision of the Supreme Appeals Committee (which obviously means the SFA Appeal Committee) as "final" does not exclude an appeal to CAS anyway.

55. CAS therefore has jurisdiction to decide this appeal.

VI. ADMISSIBILITY

A. Appeal

56. The Respondent has submitted that the Appellant filed its statement of appeal after the 21 days' time limit specified by Article R49 of the Code. There is no basis for that submission. The statement of appeal was filed on 27 October 2018 and the Appealed Decision had been received by the Appellant on 11 October 2018 at the earliest. The relevant rules for filing the appeal have been followed in accordance with the applicable time limit. The Panel determines that this appeal is admissible.

B. Answer

57. The relevant sequence of events is:

- By a letter dated 21 January 2019 the CAS Court Office notified the Respondent that it should submit to CAS an Answer within 20 days of receipt of that letter by courier. That letter was received by the Respondent on 24 January 2019, so by Article R32 of the Code the deadline for filing the Answer was 13 February 2019.
- The Respondent's Answer was received by the CAS Court Office by email on 10 February 2019.
- The Respondent had despatched the Answer (with requisite copies) as a package (the "Package") from Sudan on 10 February 2019 by the well-known commercial courier service DHL.
- The Package was addressed (in these precise terms including layout) to:
  FIFA,
  MR DANIELE BOCCUCCI
  COUNSEL TO THE CAS FIFA
  STRASSE 20
  8044 ZURICH
  8044 ZURICH

SWITZERLAND

(*One detail relating to the third and fourth lines is that FIFA's address is FIFA-Strasse 20.*)

- FIFA declined to accept delivery of the Package on 13 February 2019.
- The Package was delivered to the CAS at its offices in Lausanne on 21 February 2019.
- No other package was sent by the Respondent.

58. The Panel notes that the Appellant's letter of objection mentioned in paragraph 28 above was sent by fax to the CAS on the day before the Package was delivered to the CAS. The letter asked the Panel to dismiss the Answer, based on *"the clear article [R55] of the Code and well established jurisprudence of the CAS"*, but did not refer to any specific jurisprudence or develop that submission.

59. The Panel decided to give the Appellant a further opportunity of making submissions, so by letter from the CAS dated 1 March 2019 the Appellant was granted seven days to file its comments exclusively on the question whether or not the Panel should rule the Answer inadmissible. The Appellant did then make written submissions, sent to the CAS on 7 March 2019.

60. Those submissions drew attention to Article R55 of the Code and also to Article R32, which states:

"R32 Time limits

The time limits fixed under this Code shall begin from the day after that on which notification by the CAS is received. Official holidays and non-working days are included in the calculation of time limits. The time limits fixed under this Code are respected if the communications by the parties are sent before midnight, time of the location of their own domicile or, if represented, of the domicile of their main legal representative, on the last day on which such time limits expire. If the last day of the time limit is an official holiday or a non-business day in the location from where the document is to be sent, the time limit shall expire at the end of the first subsequent business day.

Upon application on justified grounds and after consultation with the other party (or parties), either the President of the Panel or, if she/he has not yet been appointed, the President of the relevant Division, may extend the time limits provided in these Procedural Rules, with the exception of the time limit for the filing of the statement of appeal, if the circumstances so warrant and provided that the initial time limit has not already expired. With the exception of the time limit for the statement of appeal, any request for a first extension of time of a maximum of five days can be decided by the CAS Secretary General without consultation with the other party (-ies).

The Panel or, if it has not yet been constituted, the President of the relevant Division may, upon application on justified grounds, suspend an ongoing arbitration for a limited period of time".

61. The Appellant's first point was that the time limit for submission of the Answer expired on 13 February 2019 (which was correct, subject only to the proviso at the end of Article R33.3 of the Code), but it was delivered to the CAS on 21 February 2019; and extension of the time limit would be contrary to the clear wording of Article R32 of the Code.

62. The Panel accepts that any extension of a time limit would be contrary to Article R32. It is clear that by the time the deadline expired on 13 February 2019 no application had been made for extension of time for the Answer. In those circumstances there was no power under the Code for the President of the Panel (or anyone else) to extend the time limit.

63. However, the prior question is whether or not the Answer was actually served within the 13 February 2019 deadline, in which case no extension of time would have been needed anyway.

64. On that question, the Appellant says that *"submitting the Answer to a completely different body with a completely different address does not affect the clear wording of the Code and strict time limit rules"*. Although not explicitly stated in such terms, the Panel takes that as a submission by the Appellant that the Answer was not filed by the 13 February 2019 deadline. If the Appellant is right about that, then as there is no power to extend the deadline it follows that by Article R55:

- the Panel was able then to proceed with the arbitration and deliver an award

But

- was bound to disregard the written Answer entirely.

65. The Appellant submitted that the Respondent had acted against procedural good faith by:

- *"Artificially extending the time limits against the CAS Code by filing a request pursuant to Article R55 of the Code (advance of costs) just before its expiry"*;
- Sending the Answer just two days before the 13 February 2019 deadline to FIFA in Zurich instead of the CAS in Lausanne.

66. There is no substance in that allegation of bad faith. As to the first of those two points, the Respondent had made the relevant request under Article R55 of the Code on 3 December 2019, within the applicable time limit (and its request was granted).

67. Even if that had been the very last day of the relevant time limit, there was no possible element of bad faith by the Respondent in exercising its right to make that request when it did. The good faith exercise of that right could not undermine the validity of the Answer if it was otherwise filed in accordance with the CAS Code in February 2019.

68. As to the second point, the Panel again sees no element of bad faith in the Respondent's conduct. Its package containing the Answer was obviously wrongly addressed. Equally obviously, that was careless but not deliberate. The fact that it was despatched by courier from Sudan only three days (not two days) before the original 13 February 2019 deadline also did not involve any element of bad faith. It is inherent in a deadline that a party is entitled to go right up to the deadline.

69. The Panel is satisfied that in everything relating to the addressing, despatch and delivery of the Answer, the Respondent has acted in good faith throughout.

70. This brings the Panel to the nub of the issue: Did the mistaken addressing of the package containing the Answer mean that it was not validly filed in accordance with Articles R31 and R32 of the Code?

71. The starting point here is Article R31, which states:

R31 Notifications and Communications

All notifications and communications that CAS or the Panel intend for the parties shall be made through the CAS Court Office. The notifications and communications shall be sent to the address shown in the arbitration request or the statement of appeal, or to any other address specified at a later date.

All arbitration awards, orders, and other decisions made by CAS and the Panel shall be notified by courier and/or by facsimile and/or by electronic mail but at least in a form permitting proof of receipt.

The request for arbitration, the statement of appeal and any other written submissions, printed or saved on digital medium, must be filed by courier delivery to the CAS Court Office by the parties in as many copies as there are other parties and arbitrators, together with one additional copy for the CAS itself, failing which the CAS shall not proceed. If they are transmitted in advance by facsimile or by electronic mail at the official CAS email address (procedures@tas-cas.org), the filing is valid upon receipt of the facsimile or of the electronic mail by the CAS Court Office provided that the written submission and its copies are also filed by courier within the first subsequent business day of the relevant time limit, as mentioned above.

Filing of the above-mentioned submissions by electronic mail is permitted under the conditions set out in the CAS guidelines on electronic filing.

The exhibits attached to any written submissions may be sent to the CAS Court Office by electronic mail, provided that they are listed and that each exhibit can be clearly identified; the CAS Court Office may then forward them by the same means. Any other communications from the parties intended for the CAS Court Office or the Panel shall be sent by courier, facsimile or electronic mail to the CAS Court Office.

72. The Answer was received at the CAS Court Office by email on 10 February 2019. The effect of the second sentence of R31.3 (*"If they are transmitted …"*) was to make that a valid filing provided that the Answer and copies were also sent by courier by midnight 14 February 2019.

73. The fourth paragraph of Article R31 (*"Filing of the above-mentioned submissions by electronic mail …"*) has no application here. That refers to a system for electronic filings for use throughout the particular case. If implemented, which requires the agreement of all parties, it dispenses altogether with the need for filing of hard copies by courier. That system was never implemented in this case. The reference to guidelines on electronic filing has nothing to do with the present case.

74. This brings the Panel on to Article R32. The Package was despatched from Sudan on 10 February 2019. That was four days before the deadline under the proviso in Article R31.3, which was 14 February 2019 (the first business day after the time limit of 13 February 2019 set by the CAS letter dated 21 January 2019).

75. Accordingly, if the Package was otherwise sent in accordance with Article R32 on 10 February 2019, then there was a valid filing because the Respondent had satisfied the proviso in Article

R31.3, so making the CAS Court Office's receipt of the 10 February 2019 email the valid filing. (The essential point would be the same if that email had never been sent, because if the hard copy was sent from Khartoum in accordance with Article R31 on 10 February 2019, that would have still been a valid filing at the time of sending from Khartoum).

76. The key question is therefore: When it left Sudan by courier on 10 February 2019, was the couriered package containing the Answer "sent" for the purposes of Article R32? If it was, then the proviso in R31.3 had been satisfied and the Answer had been validly filed by the 10 February 2019 email. But if it was not, then that did not satisfy the proviso; and since no further package was sent by the Respondent by 14 February 2019 (or ever), there would have been no valid filing of the Answer.

77. Article R32 does not spell out to whom or to where a communication (in this case the Answer) should be sent in order to meet the time limit. It does not need to. It is clear from Article R31 that for the purposes of Article R32 anything sent must be sent to the CAS Court Office.

78. So was the Package "sent" for the purposes of Article R32 even though it was addressed to FIFA at its postal address in Zurich and not to the CAS Court Office at its address in Lausanne?

79. That question is to be answered by looking strictly at the position as it stood at midnight Sudan time on the last day allowed by Articles R31 and R32 – in this case 14 February 2019. Nothing that happened after that deadline could change the Answer.

80. If the Package had been completely correctly addressed to the CAS Court Office in Lausanne but had gone astray in transit and never arrived at the CAS at all, it would still have been sent within the terms of Article R32 and therefore still validly filed. Conversely, if it had been completely wrongly addressed, with nothing that indicated either the CAS or its address, but had somehow found its way to the CAS (perhaps as a result of someone opening the Package), that would not have retrospectively validated the sending as having been done in accordance with Article R32; and in that situation there would have been no valid filing.

81. It would be artificial to draw a distinction between the identification in the Package address of *"Mr Daniele Boccucci Counsel to the CAS"* as opposed to *"the CAS Court Office"*. Mr Boccucci was the CAS counsel assigned to this case and the recent correspondence with the Parties from the CAS Court Office, including the letter dated 21 January 2019, had been signed by him. Sending to Mr Boccucci was the same as sending to the CAS Court Office for the purposes of Articles R31 and R32.

82. It is obvious that the Respondent *intended* to send the Package to Mr Boccucci and therefore, in view of what was said in the previous paragraph, to the CAS Court Office. However, that is not the point and does not help the Respondent. The question is whether, viewed objectively, it actually *did* send it to him.

83. In an obvious practical sense the Package was sent to FIFA. Where the very first line of the address is "FIFA" and the only postal address given is the correct address of FIFA, it is

impossible to say it was not. However, that does not necessarily mean it was *only* sent to FIFA and cannot also be regarded as sent to Mr Boccucci.

84. Despite the mistake in addressing the Package, it was practically bound to end up being delivered to Mr Boccucci at CAS. On the unusual facts of this case, this is a crucial point in the Panel's decision that the Answer was validly filed. If by some chance it had been delivered to the CAS without going first to FIFA, it would have stayed at the CAS and been accepted by the CAS Court Office. If it went to FIFA first, as was always the most likely course, then given that FIFA and CAS are well-known to each other and are both in Switzerland (even though in different cities), the Package was practically bound to be sent on or diverted quite quickly to CAS. Alternatively, if FIFA gave no help, then it could hardly have been a problem for a company with DHL's resources and experience to work out or find out (with or without reference back to the Respondent) that the Package was supposed to go to CAS in Lausanne; and then to deliver it there.

85. The Panel attaches no weight at all to the fact that the Package was *actually* delivered to CAS. That would be the wrong approach, for the reasons given in paragraphs 80 and 81 above. The Panel's conclusions in the previous paragraph are based on a common sense view of how matters stood when the Package left Sudan on 10 February 2019, which was the crucial point in time. (The Panel has seen no evidence and has received no submission that anything relevant happened between 10 and 14 February 2019, so there is no question of a change of circumstances after 10 February before the deadline of 14 February 2019 under the proviso in Article 31.3 of the CAS Code).

86. The Panel notes that Articles R31 and R32 of the Code do not treat as critical the time taken for the relevant submission to reach CAS once it has been sent. A party who does that, and sends the package out in time, has validly filed – even if the package then takes weeks to arrive or even if it never arrives but gets lost in transit. In that situation, the party will need to prove that it was sent, but the filing is validly done as soon as the package is sent on its way to CAS. There is no requirement for a party to use any form of expedited delivery or to take steps (beyond despatch within the time limit) to see that it arrives at CAS as soon as possible.

87. In the present case, the confusion in the address on the Package was practically certain to cause some delay in arrival at the CAS Court Office, as compared with a package addressed clearly and only to the CAS Court Office at its full and correct postal address in Lausanne. However, given our observations about timing in the previous paragraph, that is not a critical point. For the purposes of Article R32 of the CAS Code, the crucial point is when and to where the Package was sent for the purposes of Article R32 of the CAS Code, not when it arrived at the CAS Court Office.

88. […][1].

[1] [NB: As this paragraph has exactly the same content as the previous one in the original award, it has been deleted for ease of reading but its number has been kept to preserve the original numbering].

89. Consistent with the principle stated in paragraph 79 above, it is nevertheless essential that the Panel is satisfied about the identity and content of the items which had been sent from Khartoum on 10 February 2019; and that for the purposes of Article R31.3 those items exactly matched what had been sent by email to the CAS Court Office earlier that day. This is not in doubt on the facts of this case: despite a short stop at the FIFA offices, the Package was eventually delivered to the CAS Court Office on 21 February 2019 without being returned to the Respondent in the meantime. The Answer and exhibits delivered to CAS plainly therefore remained in their original state and had not been amended since they were sent from Khartoum on 10 February 2019.

90. The Panel has also considered the question whether, if filing of the Answer were not valid for the reasons given above, it would nevertheless be excessive formalism to decide that it had been filed after the deadline. In particular, the Panel's attention has been drawn to the decision of the sole arbitrator in CAS 2011/A/2567, paragraphs 75 to 82. While it is not necessary for the Panel to reach a decided view on this question, it does have doubts about the sole arbitrator's reasoning in that case and is not convinced that the filing of the answer in the present appeal could have been saved from invalidity on the principle of excessive formalism.

91. The Panel's conclusion is that:

(1) The Answer was transmitted by the Respondent to the CAS Court Office by electronic mail on 10 February 2019, which was within the time limit for filing set by the CAS Court Office letter dated 21 January 2019.

(2) The written Answer and its copies were sent by the Respondent in accordance with Article R32 of the Code within the time limit specified in the proviso in Article R31.3.

92. The Answer was therefore validly filed on 10 February 2019.

VII. APPLICABLE LAW

93. Article R58 of the Code provides as follows:

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

94. The Parties have made no choice of the rules of law to be applied to this dispute. The result is that the Panel should decide this dispute according to the statutes and regulations of the SFA and, subsidiarily, the law of Sudan (where the SFA is domiciled). The Panel does not deem it appropriate to apply any other law.

VIII. AL HILAL'S REQUEST FOR INTERVENTION

95. The basis of Al Hilal Club's application was that if the Appellant succeeded on this appeal to CAS, it would replace Al Hilal as the SFA Premier League Champion club for the 2018 season; and that would have significant adverse financial consequences, as well as loss of honour and prestige, for Al Hilal. The Panel noted those points but rejected the application.

96. By Article R41.4 of the Code, a third party may only participate in the arbitration if it is bound by the arbitration agreement or if it and the other parties agree in writing. There was no agreement by either the Appellant or the Respondent to Al Hilal's participation. The question whether Al Hilal was bound by the arbitration agreement was not addressed at all in its written submissions in support of its application. However, even if it was assumed by the Panel, without deciding, that Al Hilal was so bound, the Panel nevertheless did not consider that it should exercise its discretion under Article R41.4 of the Code to accept the participation of the third party Al Hilal.

97. In summary, the Panel's reasons for dismissing Al Hilal's application were:

(1) If this appeal by the Appellant were otherwise successful, the Panel saw no obstacle to granting the relief requested by the Appellant notwithstanding that Al Hilal had not been able to participate in this appeal but would clearly be adversely affected by that outcome. On this point, the Panel relies upon and endorses the reasoning in CAS 2016/A/4642, paras 103-128, on the effect of non-joinder and non-participation of a third party potentially adversely affected by a decision of a CAS Panel.

(2) It was clear that the SFA as Respondent was participating actively in these proceedings and opposing the appeal in its entirety. In those circumstances, it was reasonable to regard the interests of Al Hilal as being adequately protected by the participation of the SFA, of which it is a member, without any need for inevitably overlapping submissions from Al Hilal.

(3) Participation of Al Hilal would add to the costs of the arbitration for the Parties and CAS, which in the light of points (1) and (2) above would not be reasonable and proportionate.

IX. MERITS

98. An essential ingredient of the Appellant's case is that the Al Fasher player Mr. Suleiman was ineligible to play in the October Match. That was the basis of the Match Day Complaint and the Appellant's claim that it should be awarded the October Match by a score of 2-0 under SPLR Article 8.3.

99. The letter dated 9 October 2018 from the SFA Secretary General to the Secretary of Al Fasher, admitted into evidence as mentioned in paragraph 44 above, expressly referred to the Appellant's complaint and reported a decision of the SFA COC to impose disciplinary

sanctions on Mr Suleiman in accordance with Article 8.5 (vii) (set out in paragraph 11 above)[2]. For the purposes of this appeal, the significance of that letter is that it shows unequivocally that the basis of the SFA COC's imposition of those sanctions was that Mr Suleiman had indeed been ineligible to play in the October Match as he had received three cautions in earlier matches but had not yet served the mandatory suspension. His participation in the October Match plainly was illegal within the meaning of SPLR Article 8.3.

100. Having dismissed the Respondent's objections to jurisdiction and admissibility, when it comes to the merits of appeal the Panel sees only one issue as raising a seriously arguable case for the Respondent in opposition to this appeal. That is the question whether for the purposes of SPLR Article 14.5 B) Mr Adar was *"a person authorized by the [Appellant] club's board of directors"* to sign the Match Day Complaint.

101. Before examining that issue, the Panel will explain why it rejects all the Respondent's other points of alleged non-compliance with Article 14 of the SPL Regulations set out in (i) to (iv) in paragraph 47(5) above. The Respondent relies particularly on Article 14.4 where it says:

The club lodging the complaint shall determine the specific facts along with the date when the violation was committed, which its complaint was based upon, within the prescribed time period.

The word "determine" does not strictly make sense there. It must be intended in the sense of "notify".

102. The Panel has considered the requirements of Article 14 of the SPL Regulations and has concluded that those points (i) to (iv) are hopelessly flimsy objections:

(i) Although nobody wrote the date on the Match Day Complaint *before* it was handed to the match commissioner, it was obvious from the naming of the ineligible player that it related to that day's match and the match commissioner signed, dated and timed his receipt on the document itself as "**03/10/2018 Sat 06:15 pm**".

(ii) and (iii) There is no substance in the objections that the complaint did not mention the club against which the Appellant was complaining or tell what happened exactly and the match where it happened and its date. Coupled with the points mentioned in subparagraph (i) above, the naming of the ineligible player, with the statement that he had carried three cautions with a yellow card, was enough to meet the requirements of Article 14.4. The purpose of SPLR Article 14.4 was only to ensure that the SFA had enough information in the written complaint to know what it was about so that it could make a ruling. The SFA had all the basic information about SPL fixtures, including dates, venues and participants. From the information given in the Match Day Complaint, it was obvious that it referred to the October Match against Al Fasher and to the ineligibility of that club's named player because of his three previous cautions.

[2] Referred to as (g) instead of vii in the English translation of that letter.

(iv) It is immaterial that the 5 October Letter was submitted after the expiry of the 24 hour time limit in Article 14.2, as long as the document handed to the match commissioner on 3 October 2018 was a valid complaint. Moreover, there is nothing in the SPL Regulations or any other regulations which prevents the submission of additional information after the 24 hour deadline. In order to deal with a complaint responsibly, wherever reasonable the SFA COC should take into account relevant information available to it when it considers the complaint, including information provided by the complainant and information available from within the SFA. In any case, even if the SFA COC disregarded the 5 October Letter altogether, the submission of that letter could not have invalidated the complaint already made within the 24 hour time limit in SPLR Article 14.3 of the SPL Regulations.

103. On the question of validity of the Match Day complaint, the key point which does require further examination is the Respondent's objection that the complaint did not comply with Article 14.5 B) of the SPL Regulations because it was not signed by the president of the Appellant club or the person authorized by the club's board of directors.

104. The complaint was clearly not signed by the president of the Appellant club. To be valid, it therefore had to be signed by *"the person authorized by the club's board of directors"*. With the small adjustment that as a matter of common sense this must mean *"a person"* as opposed to *"the person"*, this requirement must be strictly met. The Panel does not see any room here for the application of the principle of excessive formalism or any other basis for dispensing with this requirement. Unless Mr Adar was a person authorised by the club's board to sign the complaint, it was invalid and this appeal fails.

105. The evidence includes no express authority given to Mr Adar. That is not surprising. It is unlikely that the Appellant's board (or the board of any club in a similar situation) would have thought to give express *advance* authority to anyone at the club to make a complaint under Article 14 of the SPL Regulations if the situation for a complaint should arise. It is also unrealistic to suppose that if the situation arose in which the Appellant (or any club) wished to make a complaint under Article 14.4 after a match, there would be a board resolution passed before a complaint was lodged within the specified 24 hours after the match. That is not the way in which the SFA or any of its members could have expected Article 14.5 (B) of the SPL Regulations to be operated in practice.

106. Nevertheless, the Panel must reject this appeal unless comfortably satisfied that Mr Adar had the implied authority of the Appellant club's board to make the complaint on 3 October 2018.

107. The only evidence on that issue is that Mr Adar was the Football Manager of the Appellant club under a written contract of employment, which is in evidence, made between the Appellant (represented by its Secretary General) and Mr Adar under his full name Ayman Hassan Mohamed Assan. By the express terms of the contract, Mr Adar was appointed as Football Manager of the club with effect from October 2017 at a basic monthly salary of SDG 9,000 (equivalent to around CHF 200) and a total monthly salary of SDG 15,000 including accommodation and other allowances. The contract contained no details of his responsibilities

as Football Manager beyond an express obligation to "perform the position professionally and be committed to the norms, regulations, laws issued by the club".

108. Nevertheless, the Panel concludes that Mr Aiman Hassan Adar did have the necessary authority to sign the Match Day Complaint. Every employee has the implied authority of the board to take any step in the interests of the club which is within the scope of his or her duties and responsibilities under the terms of their employment. No express authority need be given: it is implicit in the contract of employment, provided only that the contract is validly made on behalf of the club. There is no suggestion here that Mr Adar's employment contract was not a valid contract.

109. The key question is therefore whether the signing of the Match Day Complaint on 3 October 2018 was within the scope of Mr Adar's duties and responsibilities as the Appellant club's Football Manager. The Panel is comfortably satisfied that it was. This was a matter directly related to a match and to the football activities of the club, potentially affecting the number of points and its position in the Premier League. It was exactly the type of responsibility which would normally be part of the functions of someone given the express job title of Football Manager.

110. A way of testing this conclusion is to ask whether it could seriously be supposed that the club Football Manager was acting *beyond* his authority by taking the practical step of signing and submitting this complaint, which was indisputably in the Appellant club's interests. The Panel considers such a view to be utterly unrealistic.

111. The Panel therefore holds that the complaint signed by Mr Aiman Hassan Adar and countersigned by the match supervisor on 3 October 2018 was a valid complaint under SPLR Article 14.

112. That conclusion does depend in the first place on the Panel's interpretation of the SPL Regulations. It also rests on a finding that Mr Aiman Hassan Adar had the necessary authority of the Board. On that question the Parties made no submissions and submitted no evidence on the law of Sudan. It is apparent from the evidence and submissions, including the terms of SPLR Article 14.4 B) itself, that the Appellant is a legal entity with a familiar structure including particularly a board of directors. The whole tenor of both Parties' submissions was that the essential question was whether as a matter of fact Mr Adar had the authority of the Appellant's board to sign the Match Day Complaint. It was not suggested by either party that the law of Sudan imposed any complication or technical qualification of that straightforward question.

113. The only remaining point to consider is the Respondent's contention, set out in paragraph 48(7) above, that the Appellant had failed within the specified time limit to provide any *proof* of the illegality of Mr Suleiman's participation in the October match, so the Appellant was therefore not entitled to the award of any points for that match.

114. The Panel entirely accepts that the Appellant's complaint could only be properly upheld if it was shown on the balance of probability that Al Fasher had used an ineligible player in the

Match. What it does not accept is that such a conclusion could only be supported by evidence submitted by the Appellant, whether within or after the 24 hour limit. The correct position is that once the complaint has been validly made, which (as indicated in paragraph 99 above) requires sufficient identification of the issue for the SFA Competition Organization Committee to know what it has to decide, it is the responsibility of the SFA to decide the matter on the basis of information already in its possession or reasonably obtainable, whether or not supplied by the complainant club. The fairly straightforward issue of whether the Al Fasher player had been ineligible to play in the October Match was something the SFA COC could readily establish from the SFA's own records or, if there were any gaps in the SFA's current records, by obtaining the relevant information from SFA member clubs and match officials. Knowing the current status of players in one of its own competitions, including ineligibility, is a basic responsibility of a football association.

115. Mr. Suleiman *was* ineligible to play in the October Match, as noted in paragraph 98 above, and that was readily ascertainable by the SFA COC and the SFA AC. On the making of a valid complaint by the Appellant, the consequence of forfeiture of the Match by a 2-0 score in favour of the Appellant followed automatically under SPLR Article 8.3. Neither the SFA COC nor the SFA AC had any discretion to make any other decision.

116. The Appellant has submitted that alternatively the appeal could succeed on the ground that the SFA had failed to implement mandatory requirements of the FIFA Disciplinary Code which, if implemented, would also have resulted in reversal of the October Match result and the award of three points to the Appellant. The Panel does see real difficulties for the Appellant in this alternative line of argument, as it does not see that non-implemented provisions of the FIFA Disciplinary Code could have had direct effect as between clubs in the SFA or between the Appellant and the SFA. But in the light of the Panel's conclusions it is unnecessary to decide that point or consider it further.

117. The SFA Appeal Committee was wrong to uphold the decision of the Competition Organizing Committee. It ought to have upheld the Appellant's complaint under SPLR Article 14 and to have awarded the Appellant three points for the match against Al Fasher played on 3 October 2018, which should have been deemed to have been won 2-0 by the Appellant.

118. The award of those three points to the Appellant changes the final positions at the top of the Sudan Premier League for the 2018 season. The Appellant club is the champion club and Al Hilal Club drops to the runner-up position. The SFA will naturally have the responsibility of ensuring that this change is fully observed and implemented in all practical ways so that the Appellant receives the full benefit of being the champion club for that season.

ON THESE GROUNDS

The Court of Arbitration for Sport orders that:

1. The appeal filed by Al Merreikh Sport Club against the decision issued by the Sudan Football Association Appeal Committee on 10 October 2018 is upheld.

2. The decision issued by the Sudan Football Association Appeal Committee on 10 October 2018 is set aside.

3. The Sudan Football Association shall declare that Al Merreikh Sport Club:

   (1) is deemed to have won its Premier League match against Al Merreikh Al Fasher Sport Club on 3 October 2018 by a score of 2-0 and is awarded three points for that win; and

   (2) is the champion club of the Sudan Premier League for the 2018 season (and the Sudan Football Association shall rectify the 2018 Sudan Premier League table to show Al Merreikh Sport Club as the champion club with 34 points).

4. (…).

5. (…).

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