



**Arbitration CAS 2019/A/6517 Wilfred Kwaku Osei v. Ghana Football Association (GFA), award of 1 September 2020**

Panel: Mr Michele Bernasconi (Switzerland), President; Mr John Adam Didulica (Australia); Mr Hendrik Willem Kesler (The Netherlands)

*Football*

*Governance – application to run for the presidency of a football association declared unsuccessful*

*CAS jurisdiction*

*Past sanction imposed by an ethics body as valid reason for ineligibility to run for the presidency*

1. When linked to a decision, the terms **“final and binding”** can only be interpreted as excluding any internal legal remedy if the statutes and the regulations of the national federation concerned leave open the possibility to bring a dispute before CAS.
2. A person desiring to represent a national association as president should be of irreproachable behaviour and be in possession of a high spectrum of norms and values including full integrity. The undisputed existence of a final decision by an ethics body of the national association, which reprimanded said person for inappropriate public remarks during a radio broadcast, establish a lack of the requisite integrity for the presidency that the national association’s elections committee can properly and reasonably rely upon to determine the non-eligibility of the person.

**A. FORM AND PROCEDURE**

**I. PARTIES**

1. Mr. Wilfred Kwaku Osei (the “Appellant”) is a Ghanaian citizen and the executive chairman of Tema Youth Football Club, a member of the Ghana Football Association.
2. The Ghana Football Association (the “GFA” or the “Respondent”) is the governing body of football in Ghana, itself affiliated to the Fédération Internationale de Football Association (the “FIFA”) since 1958. GFA has its registered offices in Accra, Ghana.

## II. FACTUAL BACKGROUND

### II.1. Introduction

3. Below is a summary of the relevant facts and allegations based on the Parties' written submissions and the evidence produced. Additional facts and allegations may be set out, where relevant, in connection with the legal discussion that follows. While the Panel has considered all the facts, allegations, legal arguments and evidence submitted by the Parties in the present proceedings, it refers in its Award only to the submissions and evidence it considers necessary to explain its reasoning.

### II.2. The Appointment of the Normalisation Committee

4. Prior to 13 December 2017, the Appellant was investigated by the GFA Ethics Committee as a consequence of public comments relating to the use of "unclassified payments" by GFA, which are outlined in more detail at para. 48 herein. As a consequence of the investigation, the GFA Ethics Committee in a determination dated 13 December 2017 found the public comments to be *"very inappropriate and should not be repeated"* and the Appellant should *"write a letter of apology to the GFA Executive Committee, the GFA and the Minister of Sport"*.
5. On 26 August 2018, due to internal difficulties within the GFA, and in particular following massive public critics of corruption within the GFA, FIFA decided to appoint a normalisation committee (sometimes also referred to as "Vetting Committee") for the GFA (the "Normalisation Committee" or the "NC").
6. On 14 September 2018, FIFA notified the GFA of the joint mission by FIFA and the Confédération Africaine de Football (the "CAF") which had taken place from 12 to 13 September 2018 in Accra, Ghana. During this mission the following four out of five (the fifth person was still under consultation) persons were identified as members of the Normalisation Committee assuming their functions with immediate effect:
- Dr. Kofi Amoah (President)
  - Ms. Lucy Quist (Vice-President)
  - Mr. Kofi Dua Adonteng (Member)
  - Ms. Naa Odofoloey Nortey (Member)
7. To the knowledge of the Panel, based on the information made available by the Parties, the composition of the Normalisation Committee has never been questioned nor disputed by any member of the GFA.
8. The objectives of the Normalisation Committee were as follows:
- To run the day to day affairs of GFA;
  - To review the statutes of GFA, in order to ensure compliance with the requirements of FIFA and CAF; and

- To organize and conduct proper elections of a new Executive Committee of GFA.
9. On 5 September 2019, the NC convened an Extraordinary Congress of the GFA during which new Statutes of the GFA were presented, discussed and finally adopted.

### II.3. The Election Process for the Presidency of the GFA

10. On 16 September 2019, the NC opened the application for the election of a new President of the GFA, the executive council and other vacant positions within the GFA.
11. On 20 September 2019, the Appellant filed his application for the position of President of the GFA. Further, the Appellant completed the integrity check questionnaire, which confirmed his understanding that he would be “*subject to the provisions of the Disciplinary and Ethics Code of GFA and to the provisions of the Statutes and other regulations of GFA that may address integrity issues*” and to be willing to “*fully comply with such provisions*” (cf. Questionnaire for Integrity Checks, signed on 19 September 2019, Part 3, under 4.).

### II.4. The Proceedings before the NC acting as the GFA Elections Committee

12. At the beginning of October 2019, the Appellant was interviewed by the NC, acting as the GFA Elections Committee in accordance with Art. 81 of the GFA Statutes, in relation to his candidacy for the Presidency of the GFA. The Appellant did not raise any objections against the composition of the Normalisation Committee.
13. On 4 October 2019, the NC, acting as the GFA Elections Committee, notified the Appellant of his unsuccessful application for the position of the President of the GFA. The decision stated the following:

*“The Ghana Football Association Normalisation Committee acting as the Elections Committee regrets to inform you that your application to contest for the position of the President of the GFA was unsuccessful.*

*This was as a result of the adverse findings against you namely:*

- *Breach of Article 33 (5) (c) of the GFA General Regulations.*
- *Decision of the Ethics Committee dated the 13th December 2017.*

*Should you wish to appeal this decision, kindly submit to the Elections Committee in writing, supported by any documents you wish to bring to our attention, **on or before Tuesday, the 8th of October, 2019 at 4:00 pm**”.*

14. On 7 October 2019, at 15:40 hrs, the Appellant filed a Notice of Appeal before the NC acting as the GFA Elections Committee in which he sought the reversal of the decision of the GFA Elections Committee of 4 October 2019. In his Notice of Appeal the Appellant did not question the power nor the jurisdiction of the NC to decide on his Appeal.
15. As a result, on 8 October 2019, the NC, acting as the GFA Elections Committee, rendered the following decision (the “Appealed Decision”) on the appeal filed by the Appellant:

*“Dear Sir*

*RE: APPEAL AGAINST THE DECISION OF THE GFA ELECTIONS COMMITTEE  
DATED THE 4<sup>TH</sup> OF OCTOBER, 2019*

*At the close of the date and time limited for appeals, i.e. Tuesday the 8<sup>th</sup> October, 2019 at 4:00 pm., we received the following documents from you by way of an appeal;*

- i) Notice of Appeal, (received on Monday the 7<sup>th</sup> of October, 2019 at 3:40 pm.).*
- ii) Notice of application for an interim injunction on the decision of the GFA Elections Committee pending appeal (received on Monday the 7<sup>th</sup> of October, 2019 at 5:05 pm).*
- iii) The statement in support of the application for an injunction pending appeal (received on Monday the 7<sup>th</sup> of October, 2019 at 5:05 pm).*

*We regret to inform you that based on the above listed documents received, before the deadline, your appeal was unsuccessful”.*

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

16. On 11 October 2019 by email and on 14 October 2019 by courier, pursuant to Article R48 of the CAS Code of Sports-related Arbitration (the “CAS Code”), the Appellant filed before the CAS a Statement of Appeal against the Appealed Decision, requesting that: the procedure is conducted in an expedited manner; that the President of the CAS Appeals Arbitration Division decides on the number of arbitrators and appoints them herself; and that FIFA shall join the present proceedings.
17. On 16 October 2019, the Appellant filed a request for provisional measures to refrain the GFA from conducting the elections scheduled for 25 October 2019.
18. On 20 October 2019, the Respondent filed its position regarding the Appellant’s application for provisional measures including an objection to the jurisdiction of CAS.
19. On 21 October 2019, FIFA informed the CAS Court Office that it renounced to intervene in the present proceedings.
20. On 22 October 2019, the Appellant filed a reply to the arguments submitted by the Respondent in response to the Appellant’s request for provisional measures.
21. On 23 October 2019, pursuant to Article R51 of the CAS Code, the Appellant filed his Appeal Brief with the following requests for relief:
  - i. A declaration that Respondent’s Elections Committee’s decision contained in its letter dated the 4<sup>th</sup> day of October is null void and of no effect.*
  - ii. A declaration that upon a true and proper construction of the eligibility criteria set forth in Respondent’s Statutes, 2019, the reasons stated in Respondent’s letter of 4<sup>th</sup> October 2019 for*

*disqualifying Appellant from contesting the presidency of Respondent's Executive Council are not justifiable.*

- iii. An order nullifying any election conducted by Respondent pending the final determination of the instant proceedings.*
  - iv. An order directed at Respondent to conduct fresh elections giving each candidate a fair chance of contesting same based on Respondent's rules".*
22. On 25 October 2019, the CAS Court Office provided the Parties with the Operative Part of the Order on the Request for Provisional Measures, pursuant to which the Appellant's request was dismissed.
  23. On 28 October 2019, the CAS Court Office notified the Parties that in the absence of the Respondent's consent no expedited procedure was to be implemented.
  24. On 7 November 2019, the Respondent filed its Answer to the Appeal Brief, in accordance with Article R55 of the CAS Code, submitting that:
    - CAS has no jurisdiction to hear this case and therefore, the Appeal is inadmissible; and
    - the Appeal is without merit and must therefore be dismissed.
  25. On 13 November 2019, the Respondent informed the CAS Court Office of its agreement that the President of the CAS Arbitration Division should decide on the number of arbitrators and to appoint them herself.
  26. On 18 November 2019, the Appellant filed his submission with regard to the jurisdiction of CAS and requested that the present case shall be decided based only on the written submissions of the Parties, without holding a hearing.
  27. On 22 November 2019, the Respondent submitted to the CAS Court Office its agreement that the CAS issues an award based only on the written submissions of the Parties, without holding a hearing. In this letter, the Respondent did not maintain its objection to the jurisdiction of CAS.
  28. On 17 January 2020, the CAS informed the Parties that the President of the CAS Appeals Arbitration Division decided to submit the present proceedings to a Panel of three arbitrators and invited the Parties to nominate their respective arbitrator.
  29. On 20 January 2020, the Appellant nominated Mr. John Adam Didulica, Lawyer in Melbourne, Australia, as arbitrator.
  30. The same day, the Respondent nominated Mr. Hendrik Willem Kesler, Attorney-at-law in Enschede, The Netherlands, as arbitrator. Also in this letter the Respondent did not maintain its objection against the jurisdiction of CAS.

31. On 16 March 2020, the CAS Court Office notified the Parties that the Panel appointed to decide the present case had been constituted as follows:
- Mr. Michele A.R. Bernasconi, Attorney-at-law in Zurich (Switzerland), as President of the Panel;
  - Mr. John Adam Didulica, Lawyer in Melbourne (Australia), as the arbitrator appointed by the Appellant; and
  - Mr. Hendrik Willem Kesler Attorney-at-law in Enschede (The Netherlands), as the arbitrator appointed by the Respondent.
32. On 22 June 2020, the CAS Court Office submitted to the Parties an Order of Procedure and informed the Parties that the Panel had decided (i) to confirm jurisdiction of CAS to issue a decision on this case and (ii) to proceed in issuing an Award on the basis of the written submissions filed by the Parties, without calling any hearing.
33. A signed version of the Order of Procedure was submitted by the Appellant and his representative on 22 and 23 June 2020, respectively, and by the Respondent on 23 June 2020. No party added any remarks in the Order of Procedure.

#### **IV. SUBMISSION OF THE PARTIES**

##### **IV.1. The Appellant**

34. Mr. Wilfred Kwaku Osei's submissions, in essence, may be summarized as follows:
35. As a preliminary issue, the Appellant considers that according to Art. 81 GFA Statutes and Art. 24 GFA Election Regulations, the decision of the GFA Elections Committee shall be final and binding. Therefore, the same body cannot be competent to hear an appeal against a decision of its own.
36. Secondly, the Appellant submits that the decision of the GFA Elections Committee is in violation of Artt. 2(1) and 3(b) of the GFA Election Regulations as it is based on pre-conceptions by some members of the GFA Elections Committee against the Appellant, particularly:
- Mr. Frank Davies and Mr. Emmanuel Darkwah, both members of the GFA Elections Committee, work in the law firm Davies & Davies, which was instructed by the NC to represent the GFA in a dispute against the Appellant's football team, Tema Youth Football Club, concerning a 10% participation fee (amounting to EUR 300'000.-), of the transfer of the player Joseph Paintsil.
  - Furthermore, Mr. Davies is also a very close friend of the NC president, Dr. Kofi Amoah, who appointed Mr. Davies' law firm in the transfer fee dispute as mentioned here above.

- Moreover, Dr. Kofi Amoah publicly declared that he will, in his capacity as president of the NC, ensure that the Appellant will not contest the elections.
  - Therefore, it is undeniable that due to the involvement of some members of the NC and the GFA Elections Committee in the dispute between the Appellant's club and the GFA, the GFA did not guarantee the Appellant a fair electoral process.
37. Thirdly, the Appellant argues that due to their involvement in the dispute between his club and the GFA, certain members of the Elections Committee were biased and had a direct interest when taking their decision to disqualify the Appellant from his candidacy as President of the GFA.
38. Fourthly, the grounds of the decision to disqualify the Appellant from his candidacy are not supported by the relevant laws and regulations:
- Art. 7(1) GFA Election Regulations stipulates the following eligibility criteria for persons who intend to be nominated to the position of the GFA President:
    - “1. Must be a Ghanaian.*
    - 2. Must be of sound mind and has not been detained as a person of mental disorder under any enactment.*
    - 3. Has not been convicted of an offence involving fraud, dishonesty or moral turpitude.*
    - 4. Helpful to have a working knowledge of the GFA, CAF and FIFA rules and regulations.*
    - 5. Has practical experience in Management, Administration, Finance or Corporate Governance.*
    - 6. Must be a person high moral integrity”.*
  - Furthermore, Art. 7 (2) GFA Election Regulations states:
    - “The Elections Committee shall not impose any eligibility criteria that are not provided for in the Statutes of GFA or impose any other formal requirements that are not provided for in these Regulations and Elections or in the Statutes of GFA. The Elections Committee shall only request the documents that help establish whether the relevant eligibility criteria have been fulfilled”.*
39. As a result of the above, the Appellant argues that the Appealed Decision was rendered in violation of Artt. 7(1) and (2) of the GFA Election Regulations since the GFA Elections Committee imposed eligibility criteria that are not foreseen in the applicable regulations.
40. Furthermore, the Appellant sustains that the reasons set out in the Appealed Decision of 4 October 2019 cannot be justified in law or evidence and therefore, the decision is against the weight of the evidence since (i) the Appellant was not in breach of Art. 33 (5) GFA General Regulations and (ii) the reliance on the GFA Ethics Committee decision of 13 December 2017 is without legal basis:
- The entity that was subject to disciplinary proceedings and therefore in violation of Art. 33 (5) GFA General Regulations, i.e. the 10 % percent trading & transfer fee rule, was Tema

Youth Football Club, which is a limited liability company registered under the laws of Ghana.

- The Appellant is an official of Tema Youth Football Club. However, the Appellant was never charged personally or requested to pay the demanded percentage of the transfer fee and also not subject to disciplinary sanctions by the Respondent according to Art. 63 GFA Disciplinary Regulations in connection with the dispute between the Appellant's club, Tema Youth Football Club, and the GFA.
  - The GFA Ethics Committee decision of 13 December 2017 did not charge and/or convict the Appellant for any offence committed under Part II, Section 5 or any other provision of the FIFA Code of Ethics and therefore, cannot be taken as ground for his disqualification as candidate for the presidency of GFA.
41. Finally, the Appellant argues that based on Artt. 16, 61, 62, 63 and 81 GFA Statutes, CAS has jurisdiction to rule on the present case. The Appellant has exhausted all GFA internal channels in accordance with Art. 62 GFA Statutes. Furthermore, even if the decisions of the NC are, according to Art. 81 (2) GFA Statutes, final and binding, they do not bar the right to appeal before CAS in accordance with Art. 61 GFA Statutes.

#### **IV.2. The Respondent**

42. The GFA's submissions, in essence, may be summarized as follows:
43. At the start of the proceedings, the GFA considered that CAS has no jurisdiction to hear this case for the following reasons:
- In accordance with Art. 81 (2) GFA Statutes a decision of the NC is final and binding and, unlike as in cases of decisions issued by the GFA Appeals Committee in accordance with Art. 58 (5) GFA Statutes, cannot be appealed.
  - Normalisation Committees appointed by FIFA are in general empowered to issue final and binding decisions.
  - The intention of the GFA Congress when adopting the new statutes and the transitional provisions in Article 81, was to hold timely elections without being set back by any formal appeals against decisions of the NC. This would only have a detrimental effect on the GFA as a body, would destabilize the electoral process and calendar as well as the league 2019/2020.
  - Invitations to rely on, mere acknowledgments, references to, reproaches to comply with decisions of CAS or a mere recognition of the CAS as a desirable venue for the resolution of disputes do not qualify as basis for the CAS to have jurisdiction to hear this case.
44. These objections were not maintained in the later course of the proceedings as detailed below.

45. Secondly, in the course of the application process for the presidency of GFA and the personal interviews, the Appellant was granted the possibility to object to the composition of the GFA Elections Committee. However, the Appellant did not make any objections, nor did he raise any issue of a conflict of interest, bias or the likelihood of bias against any of the members of the Elections Committee. Therefore, the Appellant accepted the composition and waived his right to challenge the composition of the GFA Elections Committee.
46. Thirdly, the Appellant was in violation of Art. 33 (5) GFA General Regulations. In his capacity of chief executive officer, a director and controller of Tema Youth Sporting Club Limited, he received, failed and refused to turn over the custody of funds received in trust on behalf of the GFA, representing 10% of the transfer fee of the player Joseph Paintsil.
47. The Appellant touts himself as the founder, owner, bankroller and executive board chairman of Tema Youth Football Club. Nevertheless, he refused to abide by the rules and regulations of the organization he wants to head. For this reason, the GFA Elections Committee came to the correct conclusion that the Appellant failed to have the high moral integrity expected from a person who intends to hold the position of President of the GFA.
48. Fourthly, the Appellant when holding the position of member of the GFA Executive Committee has been sanctioned for an Ethics Rule violation for the following public statement made during a radio broadcast with Citi FM in Ghana:

*“If we had spent around \$300,000.00 on referees, and stood to benefit about \$8,000,000.00 by appearing at the World Cup, I see nothing wrong with it...”*

49. Fifthly, the integrity check on the Appellant was unsuccessful because the Appellant failed to fully and voluntarily self-disclose the following requested material information in the eligibility check questionnaire:
- The Appellant failed to declare that he has been subject to disciplinary or similar sanction imposed by the GFA Ethics Committee in the past.
  - The Appellant failed to correctly declare that he was not in full compliance with the GFA Disciplinary Code and the GFA Code of Ethics by not mentioning in question number 4 of the integrity check questionnaire that:
    - he was previously sanctioned for conducts that violate Art. 2 GFA Code of Ethics and Artt. 3 (3) and (4) FIFA Code of Ethics, and
    - he was in breach of Art. 33 (5) (C) GFA General Regulations, Art. 2 GFA Statutes and Art. 13 (1) and 28 (2) FIFA Code of Ethics because he refused to return funds to the GFA.
  - By not mentioning in question number 6 of the integrity check questionnaire the GFA’s ongoing efforts to recover funds from his club Tema Youth Football Club, the Appellant

failed to correctly declare that there are circumstances that give rise to potential conflicts of interest.

50. Finally, the Respondent submits that decisions regarding an integrity check shall only be overturned by a CAS Panel in cases when the decision seems to be unreasonable.

## V. CAS JURISDICTION

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

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

52. To argue in favour of the jurisdiction of CAS, the Appellant relies first on the fact that both the Appellant and the Respondent “are engaged and relate to one another in the context of the sport of football” (Request for Arbitration, p. 23). The Appellant however seems to admit that the jurisdiction is conditional to an agreement to arbitrate by the Respondent: “This submission, it is conceded, is subject to the agreement of the Parties. It is however, argued that being related to one another in a sporting way, both Parties, must in good faith submit to the jurisdiction of the Court” (Request for Arbitration, p. 23).
53. Further, the Appellant relies on Art. 61 *et seq.* of the Statutes of GFA according to which any dispute relating to the Respondent and its members shall be decided by CAS, once all internal channels have been exhausted (Request for Arbitration, p. 24 *et seq.*).
54. The Respondent objects to the jurisdiction of CAS. The Respondent argues that the Appealed Decision is not appealable at all, because according to the GFA Statutes, the Appealed Decision is said to be “final and binding” (Answer to Appeal Brief, para. 67 *et seq.*). The Respondent did not make substantial comments on the provisions of its Statutes to which the Appellant referred to, i.e. Art. 61 *et seq.*
55. The Panel notes that Art. 61 *et seq.* of the Statutes of GFA read as follows:

*“Art. 61 – Arbitration*

*(1) Disputes in GFA or disputes affecting Members of GFA, Leagues, members of Leagues, Clubs, members of Clubs, Players and Officials shall not be submitted to Ordinary Courts, unless the FIFA regulations, these Statutes or binding legal provisions specifically provide for or stipulate recourse to Ordinary Courts.*

*(2) Such disputes as specified in paragraph 1 shall be taken before the Court of Arbitration for Sport (CAS) in Lausanne, Switzerland.*

*Art. 62 – Jurisdiction*

*(1) Recourse may only be made to an Arbitration Tribunal once all internal channels of GFA have been exhausted.*

*(2) GFA shall have jurisdiction on internal national disputes, i.e. disputes between parties belonging to GFA. FIFA shall have jurisdiction on international disputes, i.e. disputes between parties belonging to different Associations and/or Confederations”.*

56. Based on the information submitted by the Parties, the Panel is satisfied that there were no further internal legal remedies available to the Appellant for objecting against the Appealed Decision. As to the meaning of the terms “*final and binding*” when linked to a decision, the Panel comes to the conclusion that the Statutes and the Regulations of GFA can only be interpreted as excluding any internal legal remedy. Art. 61(1) of the Statutes of GFA leaves open the possibility to bring a dispute before CAS, unless the Statutes or mandatory rules would foresee the jurisdiction of state courts. In fact, not even the Respondent has argued that Art. 61(1) has to be understood as leaving the possibility of a third kind of matters that shall not be subject to any legal review. Further, Art. 63(1) of the Statutes of GFA states that CAS shall not “*hear appeals on violations of the Laws of the Game, and suspensions of up to four matches or up to three months (with the exception of doping decisions)*”. In other words, final decisions of a GFA Elections Committee are not listed among those for which CAS shall not have jurisdiction.
57. The Panel therefore comes to the conclusion that CAS has jurisdiction to hear this dispute. The Panel is comforted in its view by the fact that the Respondent itself, in its letter dated 22 November 2019, has asked CAS to issue a decision, without maintaining any objection against the jurisdiction of CAS and without arguing any limitation of scope of such a decision.
58. Finally, in addition to the above, the Panel acknowledges that the Order of Procedure, in which it was specifically detailed that the Respondent had first objected to the Jurisdiction of CAS but had later on asked CAS to issue a decision, without maintaining any objection against the jurisdiction of CAS, has been signed without reservations by both the Appellant and the Respondent.

**VI. ADMISSIBILITY**

59. The appeal was filed three days after receipt by the Appellant of the Appealed Decision. Besides the issue of jurisdiction, the Respondent did not raise any issue concerning the (formal) admissibility of the appeal. Taking this into consideration and further in view of the fact that the Appeal complied with all other requirements of Article R48 of the CAS Code, including the payment of the CAS Court Office fee, the Panel is satisfied that the Appeal is admissible.

**VII. APPLICABLE LAW**

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

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

61. The GFA Statutes are silent as to which law shall apply on any dispute submitted to CAS. Further, the Parties have not agreed on the application of any specific national law. In their respective submissions, the Parties refer exclusively to GFA and FIFA’s Regulations. Taking all of this into due consideration, the Panel is satisfied that the present dispute shall be decided primarily according to the applicable rules and regulations of the GFA. Whether any rule or regulation of FIFA is relevant for the present dispute is a matter that can be left open, in view of the legal considerations below. The Laws of Ghana shall apply complementarily.

## **B. MERITS**

### **I. THE ISSUES**

62. The main issues to be resolved by the Panel in deciding this dispute are the following:
- (i) Are the “structural” arguments raised by the Appellant against the Appealed Decision justified? *I.e.:*
    - a. Illicit composition of the GFA Elections Committee;
    - b. Lack of neutrality (“preconceptions”);
    - c. Conflicts of interest.
  - (ii) Are the substantial arguments raised by the Appellant against the Appealed Decision justified? *I.e.:*
    - a. No valid grounds to declare the Appellant ineligible;
    - b. No evidence to support the Appealed Decision.

### **II. THE “STRUCTURAL” ARGUMENTS RAISED BY THE APPELLANT**

63. As indicated above, the Appellant argues that the GFA Elections Committee was composed in an illicit manner, with members that were not neutral towards the Appellant and that were conflicted in acting as members of the GFA Elections Committee.
64. First, the Panel notes that the Appellant had the opportunity to bring his objections well before the GFA Elections Committee took any decision, but he did not do so. It was only when the Appellant filed his appeal on 7 October 2019 that the Appellant claimed that the members of the GFA Elections Committee had “*pre-existing preconceptions against the Appellant*” and a general position of bias against the Appellant.
65. After duly considering all the evidence produced, the Panel is satisfied that when the Appellant submitted his candidature and filed the respective Nomination Form, dated 19 September

2019 with the relevant annexes, the Appellant seemed comfortable in undergoing an integrity check in accordance with the GFA Statutes as well as, among others, the “Questionnaire for Integrity Checks” that was signed and filed by the Appellant as Annex B to his Nomination Form.

66. The Panel concedes that it is impossible to state that there were no potential risks of bias by any member of the GFA Elections Committee. However, based on the evidence produced, the Panel is satisfied that no such bias existed. The Panel is in particular satisfied that the Appellant has been treated in a fair manner, notwithstanding the allegations advanced by the Appellant which include, for example, the existence of a relationship or friendship between a member of the GFA Elections Committee and other candidates or that a law firm of which a member of the GFA Elections Committee is part represented a counterparty to the Club of which the Appellant is President.
67. The Appellant has raised no arguments against the composition of the GFA Elections Committee and its members which convince the Panel that due to the structure and the composition of the Committee, the Appellant has been treated in an unfair manner and, by consequence, that the Appealed Decision shall be set aside. Also, there are no valid legal arguments advanced to question the validity of the Appealed Decision, simply based on the fact that according to the applicable rules the Appealed Decision has been taken by the same body that had taken the original decision. Accordingly, the Panel comes to a preliminary conclusion that the alleged lack of neutrality or the presence of conflicts of interest have not been established by the Appellant to the satisfaction of the Panel. The Panel therefore rejects the “structural” arguments advanced by the Appellant against the GFA Elections Committee and its members.

### **III. THE SUBSTANTIAL ARGUMENTS RAISED BY THE APPELLANT AGAINST THE APPEALED DECISION**

#### **III.1. No valid grounds to declare the Appellant ineligible**

68. The Appellant argues that the Appealed Decision should be set aside because there were no valid grounds to declare the Appellant ineligible.
69. The Panel notes that the Appealed Decision is rather short. There are basically two grounds that have been debated with the Appellant during the Integrity Check procedure and on which the Appealed Decisions is based.
70. The first ground relies on the fact that the Appellant had signed on behalf of his club an acknowledgement of debt and promise of payment in favour of GFA and thereafter refused to honour such declaration.
71. The Panel considers this first argument advanced to confirm the Appellant’s ineligibility not to be very strong. An owner and president to a club may have legitimate reasons to refuse to honour a debt, notwithstanding a valid and binding obligation to do so. Similarly, the Panel

acknowledges that not honouring a debt of a club towards the national federation may be in conflict with the aspiration to become president of the same federation. Further, the behaviour of the Appellant and of his club does raise some legitimate doubts, particularly given that the Appellant has not submitted any convincing evidence to prove the legitimacy of the club's refusal to make the payment and his own capacity and efforts to positively influence the club's compliance. However, the Panel would not be satisfied that, solely based on this ground, the GFA Elections Committee could declare the Appellant non-eligible.

72. The second ground on which the Appealed Decision is based is the behaviour of the Appellant in violation of the applicable Ethics Rules of the Respondent. In particular the argument raised by the Appellant in the public that representatives of the Respondent and of the Sports bodies of the Ghanaian Government should have made "*unclassified payments*" to match officials and that a failure to do so accounted for Ghana's inability to qualify for the 2018 World Cup.
73. On the basis of the evidence submitted, and in particular the undisputed existence of a final decision of the Ethics bodies of the Respondent, which reprimanded the Appellant for his public remarks, the Panel is satisfied that the GFA Elections Committee had grounds to determine the non-eligibility of the Appellant. The Panel is of the opinion that a person desiring to represent the GFA as President should be of irreproachable behaviour and be in possession of a high spectrum of norms and values including full integrity. The words quoted on Citi FM, which are not in dispute, establish a lack of the requisite integrity for the presidency that the GFA Elections Committee properly and reasonably relied upon.
74. The defences raised by the Appellant do not convince the Panel that such a determination is illicit. In particular, the fact that the Appellant has not been sanctioned by an Ethics body of FIFA does not mean that his behaviour was not questionable.

### **III.2. Conclusion**

75. The Panel therefore comes to the conclusion that the Appealed Decision relies on valid grounds, in particular when considering the violations of the Ethics Code committed by the Appellant. Accordingly, the decisions rendered on 4 October 2019, respectively 8 October 2019 by the GFA Elections Committee shall be confirmed and the appeal filed by the Appellant shall be dismissed.
76. The Panel finally notes the Respondent's objective of regulating and proceeding to the elections of the GFA in a proper and transparent manner. It is true that the GFA Elections Committee has adopted a high stance when judging the eligibility of the Appellant. The Panel trusts that such high standard was applied to all candidates and, relevantly, no material has been produced in these arbitral proceedings to retain the opposite. The Panel also trusts that in the future, the Respondent will continue to apply a high standard of integrity for candidates to the GFA Presidency and the GFA bodies. Any different behaviour would be unfair.

**IV. OTHER PRAYERS FOR RELIEF**

77. The above conclusion, finally, makes it unnecessary for the Panel to consider the other requests submitted by the Parties to the Panel. Accordingly, all other prayers for relief, requests and claims are rejected.

**ON THESE GROUNDS**

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

1. The appeal filed on 14 October 2019 by Mr. Wilfred Kwaku Osei against the Ghana Football Association (GFA) with respect to the decisions rendered on 4 October 2019, respectively 8 October 2019 by the Elections Committee of the Respondent is dismissed.
2. The decisions rendered on 4 October 2019, respectively 8 October 2019 by the GFA Elections Committee of the Respondent are confirmed.
3. (...).
4. (...).
5. All other or further claims are dismissed.