Arbitration CAS 2020/A/7397 Young Africans Sports Club v. Bernard Morrison, award of 22 November 2021

Panel: Mr Patrick Stewart (United Kingdom), Sole Arbitrator

Football
Conclusion and validity of an employment contract
Principles governing intertemporal issues
Exception to the exhaustion of internal legal remedies
Validity of a contract under Tanzanian law

1. **Intertemporal issues are governed by the general principle *tempus regit actum* or principle of non-retroactivity, which holds that (i) any determination of what constitutes a sanctionable rule violation and what sanctions can be imposed in consequence must be determined in accordance with the law in effect at the time of the allegedly sanctionable conduct, (ii) new rules and regulations do not apply retrospectively to facts occurred before their entry into force, (iii) any procedural rule applies immediately upon its entry into force and governs any subsequent procedural act, even in proceedings related to facts occurred beforehand, and (iv) any new substantive rule in force at the time of the proceedings does not apply to conduct occurring prior to the issuance of that rule unless the principle of *lex mitior* makes it necessary.**

2. **There are generally recognized exceptions to the prerequisite that the internal legal remedies of an association must be exhausted before filing an appeal with CAS. In particular, where the result of such internal review is obvious from the very outset, no such obligation exists, since in such case the duty to exhaust legal remedies would only serve as a barrier to delay access to justice.Therefore, the condition to exhaust available legal remedies is subject to an exception when access to justice is put into question.**

3. **A contract is validly formed pursuant to Tanzania law where there is a "proposal" and an "acceptance" of that proposal. A proposal is made when one person signifies to another his willingness to do or to abstain from doing anything, with a view to obtaining the assent of that other to such act or abstinence. For that proposal to be communicated, it must come to the knowledge of the person to whom it is made. A proposal is considered to be accepted when the person to whom the proposal is made signifies his assent thereto.**

I. PARTIES

1. Young Africans Sports Club (the "Appellant" or "YASC") is a professional football club based in Tanzania. The Appellant is currently competing in the Tanzanian Premier League. It is a member of the Tanzanian Football Federation ("TFF") which in turn is affiliated to the Fédération Internationale de Football Association ("FIFA").

2. Bernard Morrison (the "Respondent" or "the Player") is a professional football player from Ghana.

II. FACTUAL BACKGROUND

A. Background Facts

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

4. The Player was living in Ghana when he was made an offer to enter into a playing contract with YASC for the second half of season 2019/20. The Player was content with the offer and travelled to Tanzania, arriving on 17 January 2020. On arrival in Tanzania, The Payer was introduced to Engineer Hersi Ally Said. In a witness statement submitted to CAS, Mr. Hersi described himself as the *"Vice Chairman of the Club's* [YASC's] *Competition and Recruitment Committee"*.

5. The Player entered into a contract with YASC (the "First Contract") under which YASC agreed to pay the Player USD 2,500 per month. The First Contract had an expiry date of 14 July 2020 and, pursuant to clause 2.3 either party had the *"equal right to enter negotiations for extending the Contract by notifying the other party of this in writing at least Three (3) months before the date of expiry …"*.

6. YASC submitted a copy of the First Contract to CAS as evidence. The First Contract was dated 15 January 2020 and the date beneath the parties' signatures on the First Contract was also 15 January 2020.

7. The Player claimed that: (a) following his arrival in Tanzania, Mr. Hersi informed him that the contract would be signed if he proved his ability in two matches; (b) he was presented with the First Contract for signature on 23 January 2020, after having played two matches; (c) he only became aware of the contract dated 15 January 2020 when it was produced by YASC in subsequent legal proceedings; and (d) YASC forged his signature on the 15 January 2020 version of the First Contract in order to ensure that he was registered with the TFF by the transfer registration deadline of 15 January 2020.

8. The Player performed well for YASC and became popular with the fans of YASC and rival clubs. On 8 March 2020, the Player scored the winning goal for YASC in a match against Simba Sports Club ("Simba"). Following this match, the Player requested that YASC grant him an extended contract on improved financial terms and the Player and Mr. Hersi had further discussions regarding the Player's request.

9. On 20 March 2020, the Player met with Mr. Hersi and Mr. Simon Patrick, YASC's Legal Director. The Player took part in a photoshoot with Mr. Patrick and Mr. Hersi in which the Player appeared to be signing a document. YASC claimed this document was a new playing contract (the "Disputed Contract"), pursuant to which YASC agreed to pay the Player USD 5,000 per month. In his witness statement submitted to CAS, the Player claimed that: (a) he had not signed any contract during the photoshoot; (b) it was staged to enable YASC to announce to its fans that the Player had extended his contract; and (c) he agreed to participate in the charade in exchange for *"endorsements and an ambassadorial job at the GSM shops which Eng. Hersi is managing"*.

10. YASC submitted a copy of the Disputed Contract to CAS as evidence. The Disputed Contract:

    a) was dated *"15th July 2020"* in typed font on the top of the first page;

    b) was dated *"15th January, 2020"* in typed font beneath each signature on the final page, although each date had been scored-out by hand and accompanied by a signature which appears to be that of Mr. Patrick;

    c) was dated *"20th day of March 2020"* beneath the signature blocks on the final page – part hand-written ("20th" and "March"), with the remainder in typed font;

    d) stated at clause 2.1 that *"The Player commence* (sic) *work on 15th July 2020"*;

    e) stated at clause 2.2 that it *"… shall expire on 14th July 2022 …"*;

    f) was witnessed by one witness only, being Mr. Patrick; and

    g) was initialled by YASC on each page and by the Player on the second page only.

11. On 23 March 2020, the Player sent a WhatsApp voice note to Mr. Hersi. In that voice note, the Player stated that:

    a) he had already decided not to extend his contract with YASC and his desire was to move to a South African club so that he could be with his family;

    b) he had received a payment of USD 10,000 from an intermediary purporting to act for Simba who were interested in signing the Player; and

    c) following reports on social media about the Disputed Contract, the intermediary was demanding answers.

12. Mr. Hersi replied on the same day, via WhatsApp as follows to the voice note: *"My brother. No worries, I will call n advise. Just relax"*.

13. On 31 March 2020, Mr. Patrick sent the Player an e-mail (with the Chairman, Vice Chairman and Secretary General of YASC on copy) containing the subject heading *"Notice of Intention to Extend the Contract"*. The e-mail stated as follows: *"In the exercise of our contractual rights under clause 2.3 of the Professional Football Contract between us, we're writing to formally notify you on our intention to extend the said contract on the terms and conditions we'll both agree …. Our recruitment team will be contacting you shortly for joint negotiations"*.

14. In April 2020, the Player claimed that he had received an offer to join Kazma Sporting Club in Kuwait for a salary of USD 10,000. Specifically, on 18 April 2020, the Player sent Mr. Hersi a written message which stated as follows: *"… There is an agent of mine who wanna* (sic) *send me over to Kuwait after the season here, I've thought about it and would like to inform you that I dont* (sic) *wish to continue my my* (sic) *stay at the club after the season, so as we spoke about paying for the next seasons, I think my decision has been made and would like to inform you and the club that, the money shouldn't be paid and no increment of salaries needs to be done. So can we please cancel the contract we had earlier on please …"*. YASC declined the Player's request. YASC disputed the veracity of the offer from Kazma Sporting Club and claimed that it was a tactic by the Player to leave YASC.

15. On 10 June 2020, the Player was interviewed by Global TV and he was asked to clarify whether or not he had extended his contract with YASC. The Player stated that he had entered into a six month contract which would come to an end in the following month.

16. On 12 June 2020, YASC submitted the Disputed Contract to the TFF. On the same day the TFF acknowledged receipt of the e-mail and confirmed that the contract had been updated on the FIFA Connect system.

17. On 24 June 2020, YASC issued a press release stating that: (a) *"in consideration of the player's personal interests"* the Player was contracted to YASC until 14 July 2022; (and b) YASC were going to deduct TZS 1,500,000 from the Player's salary for giving unauthorised media interviews. The Player claimed that the salary deduction was never actually made.

18. Also on 24 June 2020, USD 25,000 was deposited into the Player's bank account from an unknown depositor. On 29 June 2020, the Player instructed his bank to reverse the transaction. The Player subsequently learned that YASC had made the deposit. The Player claimed that this was done against his wishes, whereas YASC claimed that it was fulfilling its obligations under the Disputed Contract.

19. On 27 June 2020, the Player made a complaint to the TFF in which he stated *inter alia* that: (a) YASC was falsely claiming it had entered into a contract extension with the Player; (b) YASC had deposited USD 25,000 into his bank account without prior notice or his agreement to give the impression that it was paying him for the following season; (c) he wished to return the money to YASC but YASC was not co-operating with him to facilitate this; and (d) he was seeking the TFF's support to resolve the matter.

20. On 28 July 2020, YASC deposited USD 5,000 into the Player's bank account with the reference *"Salary for July 2020"*. The Player claimed that he should only have received USD 2,500 (being the final month's salary under the First Contract), whereas YASC claimed that it was fulfilling its obligations under the Disputed Contract (pursuant to which a monthly salary of USD 5,000 was payable). On 29 July 2020, the Player e-mailed the TFF to inform them of the purported overpayment.

21. On 11 August 2020, the Player sent an e-mail of complaint to his bank in which he claimed *inter alia* that: (a) the bank had neither reversed the USD 25,000 transaction as per instructions nor permitted him to withdraw the cash so that he could repay it to YASC (as the bank said the credited amount was a *"shadow balance"*); (c) YASC had alleged to the TFF that the Player had in fact withdrawn the cash; (d) the bank had prevented him from withdrawing other cash from his account in accordance with instructions from YASC; and (e) YASC and the bank were conspiring against him. The Player also threatened legal action against the bank.

B. Proceedings before the Legal and Players' Status Committee of the TFF

22. The Player filed a complaint with the Legal and Players' Status Committee of the TFF (the "LPS Committee") which *inter alia* claimed that he had not entered into the Disputed Contract. In support of his complaint, the Player submitted *inter alia* the following to the LPS Committee: (a) a copy of his passport and a handwritten declaration showing his specimen signature; (b) the e-mail from Mr. Patrick to the Player of 31 March 2020 headed *"Notice of Intention to Extend the Contract"*; and (c) evidence of the Player's attempts to return the USD 25,000 deposit to YASC and to report the purported salary overpayment for July 2020. The Player also highlighted to the LPS Committee alleged anomalies with respect to the dating and signing of the Disputed Contract.

23. In contesting the Player's complaint, YASC submitted *inter alia* the following to the LPS Committee: (a) the Disputed Contract; (b) photographs from the photoshoot of 20 March 2020 which purported to show the Player signing the contract; (c) a copy of a bank statement evidencing payments made by YASC into the Player's bank account in purported fulfillment of their obligations under the Disputed Contract; and (d) WhatsApp communications between the Player and Mr. Hersi which YASC claimed to be evidence of the Player acknowledging the existence of the Disputed Contract.

24. On 10 and 11 August 2020, the LPS Committee held a hearing to consider the Player's complaint and it determined the matter on 12 August 2020 (the "Appealed Decision") as follows:

    a) The Disputed Contract contained discrepancies and therefore the benefit of the doubt should be given to the Player;

    b) YASC's e-mail to Player of 31 March 2020 contradicted YASC's claims that the Disputed Contract was entered into on 20 March 2020.

c) The photographs taken at the photoshoot on 20 March 2020 did not prove that the Disputed Contract had been signed and the Player had provided an alternative explanation for these photographs (i.e. that he had posed for the pictures to please YASC's supporters at the request of Mr. Hersi).

d) The WhatsApp communications between the Player and Mr. Hersi were not evidence of the Disputed Contract as they preceded the effective date of the Disputed Contract and *" … one cannot cancel a contract that effective had not reached* (sic)*"*. Furthermore, Mr. Hersi is *"the representative of the Sponsor of the club who is not a party to the contract. Hence, a WhatsApp message between Eng. Hersi Said and player does not hold water in this argument as Eng. Hersi Said has no power in negotiation on termination of the said contract"*.

e) While YASC claimed that the money transferred by them to the Player's account was in compliance with their obligations under the Disputed Contract, the Player had contacted the TFF to question why this money had been paid. *"… the fact that the club had transferred USD 25,000 in the player account cannot be a legal conclusion that he was willing to the extension contract …. The only remedy the Committee see is for the club to refunded back their money if such transaction took place"*.

f) Accordingly, the Disputed Contract was not entered into by the Player and his employment with YASC expired at the end of the First Contract.

g) the Player should repay YASC the USD 30,000 which YASC had paid into the Player's bank account pursuant to the Disputed Contract.

25. In August 2020, following expiry of the First Contract and issuance of the Appealed Decision, the Player entered into a contract with Simba.

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

26. On 27 August 2020, pursuant to Articles R47 and R48 of the Code of Sports-related Arbitration in force at that date (being the 1 July 2020 version) (the "Code"), the Appellant filed a Statement of Appeal at the Court of Arbitration for Sport (the "CAS") challenging the Appealed Decision and requesting that the case be submitted to a sole arbitrator.

27. On 8 September 2020, pursuant to Article R51 of the Code, the Appellant filed its Appeal Brief.

28. On 17 September 2020, the CAS Court Office acknowledged receipt of the Statement of Appeal and of the Appeal Brief and invited the Respondent to submit his Answer within 20 days of receipt of the letter by courier.

29. On 17 October 2020, pursuant to Article R55 of the Code, the Respondent filed his Answer, including an objection to the jurisdiction of CAS.

30. On 21 October 2020, the CAS Court Office sent the Respondent's Answer to the Appellant and invited the Appellant to provide comments on the Respondent's objections to CAS jurisdiction within five days of receipt of the letter by courier.

31. On 30 October 2020, the Appellant provided its comments on the Respondent's objections to CAS jurisdiction and noted that elements of the Respondent's Answer were missing from the documents provided by the CAS Court Office.

32. On 2 November 2020, the CAS Court Office sent the missing elements of the Respondent's Answer to the Appellant.

33. On 4 November 2020, the Respondent (after having reviewed the missing elements of the Respondent's Answer) provided further comments on the Respondent's objections to CAS jurisdiction.

34. On 12 November 2020, the Appellant objected to the admissibility of the Respondent's further comments on the objection to CAS jurisdiction.

35. On 16 November 2020, the CAS Court Office informed the parties that the objection to CAS jurisdiction and related issues would be determined following constitution of the Panel.

36. On 21 December 2020, the CAS Court Office informed the parties that the President of the CAS Appeals Arbitration Division had decided to submit the case to a Sole Arbitrator.

37. On 21 January 2021, and in accordance with Article R54 of the Code, the parties were informed by the CAS Court Office that the Panel had been constituted as follows:

    Sole Arbitrator: Mr Patrick Stewart, Solicitor in Manchester, United Kingdom.

38. On 8 February 2021, the Sole Arbitrator requested that the parties provide further submissions with respect to the issue of CAS jurisdiction.

39. On 18 February 2021 and 19 February 2021, the Appellant and the Respondent respectively submitted further submissions with respect to the issue of CAS jurisdiction.

40. On 5 March 2021, the Sole Arbitrator requested that the parties clarify why they had referred to different versions of the TFF Constitution in their submissions on CAS jurisdiction.

41. On 9 March 2021 and 16 March 2021, the Appellant and the Respondent respectively submitted their responses to the Sole Arbitrator's request of 5 March 2021.

42. On 1 April 2021, the Sole Arbitrator requested the parties to make inquiries of the TFF with respect to the operation of their review of decisions rendered by the LPS Committee.

43. On 24 April 2021 and 28 April 2021, the Appellant and the Respondent respectively submitted responses to the Sole Arbitrator's request of 1 April 2021.

44. On 29 April 2021, the Sole Arbitrator requested the parties to make further inquiries of the TFF with respect to the operation of their review of decisions rendered by the LPS Committee.

45. On 30 April 2021, the Appellant confirmed that it had submitted the further inquiries to the TFF and also made further submissions regarding the review of decisions rendered by the LPS Committee.

46. On 6 May 2021, the Appellant provided a response from the TFF to the Sole Arbitrator's further inquiries of 29 April 2021.

47. On 12 May 2021, the Appellant made submissions with respect to the TFF's response to the Sole Arbitrator's further inquiries of 29 April 2021.

48. On 14 May 2021, the CAS Court Office invited the Respondent to comment, by 20 May 2021, on the Appellant's submissions of 24 April 2021, 30 April 2021, 6 May 2021 and 12 May 2021.

49. On 25 May 2021, the Respondent submitted its comments.

50. On 26 May 2021, the CAS Court Office: (a) advised the parties that the Sole Arbitrator, who had duly considered the entirety of the parties' submissions regarding CAS jurisdiction as well as the explanations provided by the TFF, had determined that CAS did have jurisdiction to consider the case and that the reasons for this decision would be outlined in the final arbitral award; and (b) invited the parties to indicate whether they wished for a hearing to be held.

51. None of the parties objected to the Sole Arbitrator's proposed way of proceeding.

52. On 31 May 2021, the Appellant advised that it did not require a hearing and, on 1 June 2021, the Respondent requested a hearing.

53. On 16 June 2021, the CAS Court Office informed the parties that: (a) pursuant to Article R57 of the Code, the Sole Arbitrator had decided to hold a hearing; (b) pursuant to Article R44.3 of the Code, the Sole Arbitrator had instructed the Appellant to submit a witness statement for Mr. Hersi and the Respondent himself to submit himself a witness statement; in each case by 2 July 2021; and (c) pursuant to Article R44.3 of the Code, both Mr. Hersi and the Respondent were required to appear as witnesses at the hearing.

54. On 22 June 2021, the Respondent objected to: (a) the Sole Arbitrator's instructions for Mr. Hersi to provide witness evidence; and (b) past, albeit unspecified, submissions allegedly made by the Appellant which the Respondent considered to be in breach of Article R56 of the Code.

55. On 29 June 2021, the CAS Court Office informed the parties that the Sole Arbitrator had considered the Respondent's objections and determined as follows: (a) the Sole Arbitrator was acting within the discretion offered by the Code in requiring Mr. Hersi to submit witness evidence; (b) that the factual positions submitted by both parties referred to the role played by Mr. Hersi and that his evidence was therefore highly relevant; and (c) any new argumentation or evidence introduced by either party after the submission of the Appeal Brief or the Answer (as the case may be), would be discounted in its entirety by the Sole Arbitrator when determining the case (unless the same had been expressly requested by the Sole Arbitrator pursuant to Article R44.3 of the Code).

56. On 30 June 2021 and 2 July 2021, the Appellant and the Respondent, respectively, submitted witness statements in accordance with the directions of the Sole Arbitrator of 16 June 2021.

57. On 29 July 2021, a hearing was held by videoconference as provided for in Article R44.2 of the Code. In addition to the Sole Arbitrator and Ms Carolin Fischer, Counsel to the CAS, the following persons attended the hearing:

For the Appellant:

- Mr. Simon Patrick - Counsel
- Mr Alex Mgongolwa - Counsel
- Eng. Hersi Ally Said - Witness
- CPA. Haji Mfikirwa – Finance Director
- Senzo Mbatta Mazingiza - CEO

For the Respondent:

- Mr Ndurumah Keya Mejembe - Counsel
- Mr Makubi Kunju Makubi - Counsel
- Bernard Morrison – Respondent and witness.

58. At the opening of the hearing, the parties confirmed that they had no objections to the constitution of the Arbitral Tribunal nor to the procedure adopted by the Sole Arbitrator so far. The parties were given full opportunity to submit their arguments in opening and closing statements, to examine and cross-examine each witness and to answer the questions posed by the Sole Arbitrator. Before the hearing was concluded, the parties confirmed that their right to be heard had been duly respected.

IV. SUBMISSIONS OF THE PARTIES

59. The following summary of the parties' positions is illustrative only and does not necessarily comprise each and every contention put forward by the parties. The Sole Arbitrator however, has carefully considered all the submissions made by the parties, even if no explicit reference is made in this section IV of the award.

A. Submissions of the Appellant / YASC

60. In its Appeal Brief, the Appellant filed the following prayers for relief:

> *"(a) That this Honorable Court quash and set aside the decision of the decision* (sic) *of the Legal and Players Status Committee of the Tanzania Footbal* (sic) *Federation passed on the 12th August, 2020 at Der es salaam Tanzania)*
>
> *(b) That, this Honorable Court be pleased to declare that the Respondent a lawful Player of the Appellant (sic).*
>
> *(c) That, this Honorable Court be pleased to declare that the act done by the Respondent by signing for Simba Sports Club while still having the Contract with the Appellant amounts to double registration.*
>
> *(d) That, this Honorable Court be pleased to a proper sanction (sic) against the Respondent for breaching fair play principle in football.*
>
> *(e) That, this Honorable Court be pleased to order the Respondent pay USD. 200,000 for not taking part in the Appellant's activities since April.*
>
> *(f) That, this Honorable Court be pleased to nullify all the matches that the Respondent will participate for any other club than the appellant herein in any FIFA and/or Tanzania Footbal (sic) Federation recognized competition.*
>
> *(g) Costs.*
>
> *(h) Grant any further or other relief that this Honorable Court may deem fit and fair to grant".*

61. The Appellant submitted that:

a) in the Appealed Decision, the LPS Committee had in fact acknowledged the existence of the Disputed Contract and had therefore erred in resolving the dispute in favour of the Respondent. The Appellant's submissions stated that *"The committee on its findings answered the issue affirmatively that the contract between the parties exists and it has partly been performed … the committee … made a finding that the extended contract has a lot of anomalies … since the committee answered the sole framed issue affirmatively, the committee's task was supposed to end there but not go further to discuss things which were never presented nor argued during the hearing …"* (reference pages 3 and 4 of the Appeal Brief).

b) the LPS Committee erred and contradicted itself in finding, on the one hand, that the Disputed Contract *"had discrepancies (affirmation of existence of the extended contract)"* but, on the other hand, that it was not proven that the Respondent had signed the Disputed Contract.

c) as *"… the committee made it clear that the payment of USD. 25,000 and USD 5,000 can be considered as partly performance of the extended contract, this literally means the extended contract is rightful and lawful …".*

d) the LPS Committee erred in law and fact in finding that the *"… photographs taken during the signing ceremony were merely to please club fans as opposed to what was submitted by the Appellant that the pictures prove the dates on which the event took place".*

e) the LPS Committee wrongly discounted the fact that the Respondent admitted receiving payments of USD 25,000 and USD 5,000 from the Appellant.

f) Mr Zacharia Hanspope, a Director of Simba which subsequently signed the Respondent, sat on the LPS Committee during the majority of the hearing and that this was a conflict of interest which tainted the hearing and the Appealed Decision.

g) pursuant to applicable contract law of Tanzania, the discrepancies identified by the LPS Committee with respect to the Disputed Contract were not sufficient to vitiate it and that, accordingly, the Disputed Contract remained in force and the parties were bound by it.

h) the Respondent had entered into a contract with Simba prior to the LPS Committee issuing its decision and that, accordingly, a double registration had occurred.

B. Submissions of the Respondent / the Player

62. In its Answer, the Respondent filed the following prayers for relief:

"19.1 That, this appeal be dismissed with costs.

19.2 For a declaration that the Respondent did not sign for the Appellant on 15th January 2020 as alleged by the Appellant but he signed on 23rd January 2020;

19.3 For a declaration that the Respondent played two matched for the Appellant without having a lawful executed contract;

19.4 That, the Appellant and Respondent did not enter into a contract allegedly executed on 20th March 2020;

19.5 That, the Respondent is the lawful Respondent for Simba Sports Club for which he signed for on 14th August 2020.

19.6 That the award of the Committee be revised to state the refund of US$. 27,500 instead of US$. 30,000.

19.7 That, the Appellant be ordered to pay the Respondent general damages as may be assessed by this honourable Court.

19.8 That, the Appellant be ordered to pay punitive damages as a result of its conduct towards the Respondent

19.9 Costs

19.10 Any other reliefs as this Court may deem fit to grant".

63. The Respondent submitted that he had not entered into the First Contract on 15 January 2020 as at that stage he was still in Ghana. He further contended that the First Contract was a result of fraud by the Appellant and was not a valid contract. The Respondent had made a similar submission to the LPS Committee which had decided that this was not relevant to the issues under consideration.

64. The Respondent submitted that: (a) even if the First Contract was valid (which was not admitted) then the Appellant had failed to follow the process for extending the First Contract as set out at clause 2.3 of the First Contract which states as follows: *"the player and the club have equal rights to enter negotiations for extending the contract by notifying the other party of this in writing at least three (3) months before the date of expiry of the contract in advance"*; and (b) there was no evidence of any such negotiations having taken place. The Respondent submitted that the events which took place between the parties did not constitute an offer of employment or an acceptance of that offer.

65. The Respondent further submitted that: (a) the Appellant's email to the Player of 31 March 2020 is conclusive proof that, whatever is alleged to have been signed on 20 March 2020, it was not negotiated or freely consented to; and (b) the Appellant has never denied the authenticity of that e-mail or offered an explanation for it.

66. The Respondent submitted that the Disputed Contract contained the following deficiencies which is further evidence that the Disputed Contract was not genuine:

a) The parties' signatures were witnessed by the same person, being the Appellant's Legal Director who lacked the necessary independence.

b) The Disputed Contract was missing annexes.

c) The Disputed Contract contained contradictory dates.

d) The Disputed Contract does not bear the seal or stamp of the club on any page of the document.

e) The Chairman of the Appellant, Mr. Mshindo Msolla, purportedly signed both the First Contract and the Disputed Contract yet the signatures on each document are different.

f) The Respondent's initials only appear on one page of the Disputed Contract.

g) The Respondent did not initial the hand-annotated deletion of the dates immediately beneath the parties' signatures on the final page.

67. The Respondent contested the Appellant's submission that the Appealed Decision affirmed the existence of the Disputed Contract and submitted that the Appellant was selectively quoting the Appealed Decision and taking advantage of drafting ambiguities to misrepresent the LPS Committee's position. The Respondent urged CAS to *"agree with and support the finding of the Committee that the Respondent proved not to have signed the said contract"*.

68. The Respondent also contested the Appellant's submission that the photographs produced in evidence proved that a contract was signed on 20 March 2020 and noted that: (a) the photographs show neither the content of the document purportedly being signed or the alleged signature; and (b) the only people appearing in the photographs with the Respondent were Mr. Patrick (the purported witness for both signatories) and Mr. Hersi (who was not a signatory); and (c) Mr Mshindo Msolla, who was alleged to have signed for the Appellant, does not feature in any of the photographs.

69. The Respondent also contested the Appellant's submission that the Respondent had accepted the payments of USD 25,000 and USD 5,000 in consideration of entering into the Disputed Contract and submitted that the payments were made to complete the charade. The Respondent noted that: (a) the deposits were made before 15 July 2020 (i.e. before the commencement date of the Disputed Contract) despite purporting to be connected to the Disputed Contract; (b) the deposits were made after 24 June 2020 (i.e. the date of the Appellant's press release rebutting the Respondent's claims that he had not entered into the Disputed Contract); and (c) the Respondent had sought to return the money. The Respondent submitted that he did not withdraw the said money and that the Appellant had failed to provide any proof to this effect.

70. The Respondent rejected the Appellant's claim that there had been any double registration. The Respondent submitted that: (a) the contract between the Respondent and Simba was dated 14 August 2020 – i.e. after the expiry of the First Contract; and (b) even if the Respondent and Simba had negotiated or concluded a contract prior to the Appealed Decision being issued, this did not contravene any order of the LPS Committee or prejudice the Appellant.

71. With respect to the Appellant's allegations regarding Mr Zacharia Hanspope, the Respondent submitted that: (a) this was a matter for the TFF to address, rather than the Respondent; (b) Mr Hanspope played no role in preparing the Appealed Decision; and (c) Mr Hanspope retired from the proceedings following the Appellant's allegations of conflict.

72. With respect to the Appellant's allegation that the Appellant stopped playing for the club in April 2020, the Respondent submitted that he worked for the Appellant until the end of the season and that he only missed matches because of illness or non-selection. The Respondent also noted that the Appellant had not presented any details or evidence with respect to this allegation.

V. JURISDICTION

73. Article R47 of the Code provides as follows:

"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 it prior to the appeal, in accordance with the statutes or regulations of that body".

74. The Respondent contested the jurisdiction of CAS with respect to this matter and made the following submissions in his Answer:

"(a) The rules of the Federation do not give the Appellant the right to directly appeal to CAS against the said decision of the Legal and Players' Status Committee. Under regulation 72 (15) of the Premier League Regulations, version of 2020, the decision of the Legal and Player's (sic) *Status Committee is final and not appealable. Any aggrieved party has the right to apply for review of the decision before the same committee but not otherwise.*

(b) Alternatively, assuming without admitting that, the Appellant had the right to appeal to CAS, it was obliged as a matter of procedure to exhaust the available remedy of applying for review before appealing. The Appellant has not supported his appeal with any provision of the statute or regulation of TFF which provides for an appeal to CAS if aggrieved by the decision of the Federation.

(c) The contract … which is the subject matter of the proceedings, does not provide room for an appeal or arbitration proceedings before CAS. Under Article 15.2 of the said contract, the parties commit themselves to the dispute resolution procedures as per the Tanzania Football Federation (TFF) rules/regulations. The only exception is where TFF is not competent to determine the dispute. As submitted herein the dispute was determined by the Legal and Players' Status Committee which shows that the Appellant is aware and submitted to the jurisdiction of TFF because TFF is competent to determine contractual disputes between the Appellant and its player under the TFF rules and regulations".

75. In considering the Appellant's challenge to CAS jurisdiction, the Sole Arbitrator considered whether the case met the following requirements of Article R47 of the Code:

a) Whether the statutes or regulations of the TFF provide for an appeal against the decision of the LPS Committee to be filed at CAS; and

b) Whether the Appellant had exhausted the legal remedies available to it prior to the appeal, in accordance with the statutes and regulations of the TFF.

76. With respect to the first requirement:

a) The Sole Arbitrator initially considered which version of the TFF's constitution applied to this case, as the Appellant and the Respondent had each submitted a different version, each of which had different operative provisions with respect to jurisdictional matters. The Appellant submitted a version containing a stamp of the

"Registrar of Sports Association & Clubs, National Sports Council of Tanzania" dated 29 May 2019 (the "2019 Stamped Version of the TFF Constitution"). The Respondent submitted a version containing a stamp of the "Registrar of Sports Association & Clubs, National Sports Council of Tanzania" dated 29 July 2020 (the "2020 Stamped Version of the TFF Constitution"). The Appellant explained that a constitution of a sports institution in Tanzania is not valid until it has been deposited with and approved by the Registrar of Sports Association & Clubs, National Sports Council of Tanzania and provided CAS with the relevant regulations pursuant to which this requirement is stipulated. As the Respondent did not contest this explanation, the Sole Arbitrator was satisfied to proceed on this basis. The Appealed Decision was issued on 12 August 2020 and the Statement of Appeal was filed with CAS on 27 August 2020. Therefore: (i) during the period in which the Appellant was considering whether it had a right of appeal to CAS against the Appealed Decision, the 2020 Stamped Version of the TFF Constitution was the valid version; and (b) accordingly the Sole Arbitrator referred to that version when considering jurisdiction.

b) Article 66 of the 2020 Stamped Version of the TFF Constitution provides as follows:

"1. Disputes within TFF or disputes affecting Members of TFF, members of leagues, clubs, members of clubs, players and officials may only be referred in the last instance (i.e. after exhaustion of all internal channels within TFF) to CAS in Lausanne, Switzerland, which shall settle the dispute definitively to the exclusion of any ordinary court.

2. Disputes of international dimension arising from or related to the Statutes, regulations and decisions of FIFA or CAF may only be submitted in the last instance to CAS as specified in the Statutes of FIFA and CAF".

c) Article 67 of the 2020 Stamped Version of the TFF Constitution provides as follows:

"1. TFF shall have jurisdiction on internal national disputes, i.e. disputes between parties belonging or affiliated to TFF.

2. FIFA and/or CAF shall have jurisdiction on international disputes i.e. disputes between parties belonging to different associations and/or confederations, in accordance with the relevant regulations.

3. TFF shall ensure its full compliance and that of all those subject to its jurisdiction with any final decision passed by a FIFA body, a CAF body or CAS".

d) It could be argued that this is an international dispute or a dispute with an international dimension for the purposes of the TFF Constitution as the Appellant is from Tanzania and the Respondent is from Ghana. However, the Sole Arbitrator does not find merit with this as: (i) football players, in contrast to clubs, do not belong to an association; and (ii) FIFA's role with regard to player status disputes is to ensure compliance with the FIFA Regulations on the Status and Transfer of Players ("FIFA RSTP"). Article 1 para. 2 of the FIFA RSTP states as follows: *"The transfer of players between clubs belonging to the same association is governed by specific regulations issued by the association concerned in*

accordance with article 1 paragraph 3 below, which must be approved by FIFA. Such regulations shall lay down rules for the settlement of disputes between clubs and players, in accordance with the principles stipulated in these regulations". It is therefore evident that the FIFA RSTP are not relevant to this matter and that, accordingly, FIFA does not have jurisdiction, meaning that jurisdiction sits with the TFF.

e) It is clear from Article 66(1) of the 2020 Version of the TFF Constitution that an appeal to CAS is available for *"… disputes affecting Members of TFF, members of leagues, clubs, members of clubs, players and officials"*.

f) Accordingly, the first requirement is fulfilled, i.e. the statutes/regulations of the TFF provide for appeals against decisions of the LPS Committee to be filed at CAS.

77. With respect to the second requirement, the Sole Arbitrator firstly considered which version of the rules for the Tanzania Premier League apply (as this was a point of dispute between the parties). The Sole Arbitrator considered the following:

a) The Respondent filed his claim with the LPS Committee on 27 June 2020 in accordance with the rules of the Tanzania Premier League in force as at that date (the "2018 TPL Rules"). They provided as follows: *"The Legal and Players Status Committee is the body with the authority to deal with the registration, confirmation or revocation of player registration"*.

b) The LPS Committee held a hearing on the matter on 1 July 2020 at which point the 2018 TPL Rules were still in force.

c) On 2 August 2020, new rules for the Tanzania Premier League were adopted by the TFF and came into force (the "2020 TPL Rules"). They provided as follows: *"If any dispute arises between parties to the players' contract, The Legal and Players Status Committee of the Tanzania Football Federation (TFF) is the responsible body to mediate the parties and determine and contractual dispute and its decision shall be final. The aggrieved party may apply for review if dissatisfied with the decision given. Fee for such remedy shall be one million Tanzania shillings (1,000,000/-)"*.

d) The LPS Committee issued the Appealed Decision on 12 August 2020.

e) The Appellant submitted that the 2018 TPL Rules should apply and that, accordingly, it had exhausted the other legal remedies available to it. The Respondent submitted that the 2020 TPL Rules should apply and that, accordingly, the Appellant had not exhausted all other legal remedies available to it as it had failed to exercise its right of review under the 2020 TPL Rules.

f) According to CAS jurisprudence, the retroactive application of procedural rules is permitted under Swiss law. Reference is made to CAS 2017/A/5086, CAS 2014/A/3776, and CAS 2006/A/1181 and CAS 2002/O/410.

g) The following was stated in CAS 2017/A/5086: *"The Panel notes that, according to well-established CAS jurisprudence, intertemporal issues are governed by the general principle tempus regit actum or principle of non-retroactivity, which holds that (i) any determination of what constitutes a sanctionable rule violation and what sanctions can be imposed in consequence must be determined in accordance with the law in effect at the time of the allegedly sanctionable conduct, (ii) new rules and regulations do not apply retrospectively to facts occurred before their entry into force (CAS 2008/A/1545, para. 10; CAS 2000/A/274, para. 208; CAS 2004/A/635, para. 44; CAS 2005/C/841, para. 51), (iii) any procedural rule applies immediately upon its entry into force and governs any subsequent procedural act, even in proceedings related to facts occurred beforehand, and (iv) any new substantive rule in force at the time of the proceedings does not apply to conduct occurring prior to the issuance of that rule unless the principle of lex mitior makes it necessary".*

78. As the 2020 TPL Rules introduced a right of review for the aggrieved party, which *prima facie* benefitted the Appellant, the Sole Arbitrator considered that the 2020 TPL Rules applied as at 2 August 2020 and therefore applied to the Appealed Decision (issued on 12 August 2020).

79. The 2020 TPL Rules provided the Appellant with a right of review with respect to the Appealed Decision which the Appellant had failed to utilise. At the request of the Sole Arbitrator, the TFF confirmed that: (a) the right of review remained available to the Appellant, notwithstanding the passage of time since the Appealed Decision; and (b) it was open to the LPS Committee to quash the Appealed Decision pursuant to such review.

80. As such, it appeared *prima facie* that the Appellant had not exhausted the legal remedies available to it in accordance with the 2020 TPL Rules and that, accordingly Article R47 of the Code was not satisfied (nor Article 66(1) of the 2020 Version of the TFF Constitution). However, CAS precedent establishes an exception to this rule (see CAS 2014/A/3576 and CAS 2016/A/4720). In the latter, the Panel determined that *"[…] where the result of such internal review is obvious from the very outset, no such obligation exists, since in such case the duty to exhaust legal remedies would only serve as a barrier to delay access to justice".* Accordingly, the condition to exhaust available legal remedies is subject to this exception when access to justice is put into question. Given that the right of review available to the Appellant would have resulted in the LPS Committee re-considering its own decision based on the same evidence, the Sole Arbitrator considers that the right of review as set out in the 2020 TPL Rules is illusory in nature and that the requirement to exhaust the legal remedies is not a deterrent in the present case.

81. Accordingly, the Sole Arbitrator considers that the CAS has jurisdiction to decide the present dispute.

VI. ADMISSIBILITY

82. Article R49 of the Code provides as follows:

"In the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, or in a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against. The Division President shall not initiate a procedure if the statement of appeal

is, on its face, late and shall so notify the person who filed the document. When a procedure is initiated, a party may request the Division President or the President of the Panel, if a Panel has been already constituted, to terminate it if the statement of appeal is late. The Division President or the President of the Panel renders her/his decision after considering any submission made by the other parties".

83. Article 58 (1) of the FIFA Statues provides as follows:

"Appeals against final decisions passed by FIFA's legal bodies and against decisions passed by confederations, member associations or leagues shall be lodged with CAS within 21 days of receipt of the decision in question".

84. The LPS Committee rendered the Appealed Decision on 12 August 2020. The last day of the 21-day period by which the Appellant was required to have filed the Statement of Appeal was therefore Thursday, 2 September 2020. As the Statement of Appeal was submitted on 27 August 2020, the Appellant's appeal to CAS was admissible.

85. Furthermore, the Sole Arbitrator notes that in his prayers for relief, the Respondent requested that he be awarded both general damages and punitive damages. However, this amounts to a counterclaim. In accordance with established CAS jurisprudence, counterclaims are not permitted within a CAS appeal arbitration procedure. Accordingly, this part of the Respondent's requests for relief is not admissible.

VII. APPLICABLE LAW

86. Article R58 of the Code provides as follows:

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

87. Both parties' submissions relied on and referred to the various regulations of the TFF, including the rules for the Tanzania Premier League, and subsidiarily to the law of Tanzania. Furthermore, the Appealed Decision is that of the LPS Committee of the TFF which is domiciled in Tanzania.

88. Accordingly, the Sole Arbitrator is satisfied that primarily, the various regulations of the TFF are applicable to this Appeal and that the law of Tanzania shall apply subsidiarily to fill in any gaps or lacuna when appropriate.

VIII. MERITS

89. According to Article R57 para. 1 of the Code, the Sole Arbitrator has *"full power to review the facts and the law"*. As repeatedly stated in the CAS jurisprudence, by reference to this provision

the CAS appeals arbitration procedure entails a *de novo* review of the merits of the case, and is not confined merely to deciding whether the ruling appealed was correct or not. Accordingly, it is the function of the Sole Arbitrator to make an independent determination as to merits (see CAS 2007/A/1394).

90. In light of the facts and the circumstances of the case, as well as considering the Appellant's contentions in support of its claims, the Sole Arbitrator observes that the main issues to be resolved are the following:

a) Did the Respondent execute the Disputed Contract?

b) If the Respondent did execute the Disputed Contract, did it contain discrepancies which would require it to be vitiated?

c) If the Respondent did not execute the Disputed Contract, did the parties otherwise enter into a valid contract of employment to follow on from the First Contract?

d) If there was a valid contract of employment between the Appellant and the Respondent to follow on from the First Contract, was there a double registration as a consequence of the Respondent entering into a contract of employment with Simba?

e) If there was no valid contract of employment between the Appellant and the Respondent to follow on from the First Contract, should the Respondent refund USD 30,000 or USD 27,500 to the Appellant?

f) Did the Respondent fail to fulfil his contractual duties for the Appellant from April 2020?

g) If CAS finds in favour of the Respondent, is he entitled to damages?

91. The Sole Arbitrator deems it unnecessary to resolve the following issues which were raised by the Appellant or the Respondent:

a) Whether the First Contract was valid. The Respondent submitted that this is relevant to the credibility of the Appellant. However, the Sole Arbitrator is satisfied that the evidence submitted by the parties with respect to the Disputed Contract is sufficient to make a determination on any points of contention relating to that.

b) Whether there was a conflict of interest on the part of Mr Hanspope with respect to the Appealed Decision and/or whether the LPS Committee's process in determining the Appealed Decision was tainted. As the CAS appeals arbitration procedure entails a *de novo* review of the merits of the case, this cures any alleged process failures with respect to the Appealed Decision.

92. As a preliminary matter, the Sole Arbitrator requires to determine the issues of the burden of proof and the standard of proof.

93. The concept of burden of proof has been considered in many CAS decisions and is well established CAS jurisprudence. It was set out in CAS 2007/A/1380 as follows:

"According to the general rules and principles of law, facts pleaded have to be proved by those who plead them, i.e., the proof of facts, which prevent the exercise, or extinguish, the right invoked, must be proved by those against whom the right in question is invoked. This means, in practice, that when a party invokes a specific right it is required to prove such facts as normally comprise the right invoked, while the other party is required to prove such facts as exclude, or prevent, the efficacy of the facts proved, upon which the right in question is based. […] It is well established CAS jurisprudence that any party wishing to prevail on a disputed issue must discharge its burden of proof, i.e. must give evidence of the facts on which its claim has been based. […] The two requisites included in the concept of "burden of proof" are (i) the "burden of persuasion" and (ii) the "burden of production of the proof". In order to fulfil the burden of proof, the Club must, therefore, provide the Panel with all relevant evidence that it holds, and, with reference thereto, convince the Panel that the facts it pleads are true, accurate and produce the consequence envisaged by the Club. Only when these requirements are complied with has the party fulfilled its burden and has the burden of proof been transferred to the other party" (see also CAS 2005/A/968 and CAS 2004/A/730).

94. It follows therefore that each party must fulfil its burden of proof to the required standard by providing and referring to evidence to convince the Sole Arbitrator that the facts it pleads are established.

95. As to the question of what the standard of proof is, the Sole Arbitrator observes that neither party has expressed any position in its written submissions. The Sole Arbitrator also notes that the applicable rules do not appear to contain any explicit standard and neither was any standard agreed upon between the parties. In this context, both legal authorities (see the chapter "Evidentiary Issues Before CAS" by RIGOZZI/QUINN in "International Sports Law and Jurisprudence of the CAS - 4th Conference CAS & SAV/FSA Lausanne 2012, Editions Weblaw 2014", edited by BERNASCONI M.) and relevant CAS case-law concur that the applicable standard of proof should be the comfortable satisfaction standard. The Sole Arbitrator sees no reason to apply a different standard in the present case.

A. Did the Respondent execute the Disputed Contract?

96. The burden of proof sits with the Appellant to establish that the Respondent actually executed the Disputed Contract.

97. In seeking to discharge this burden of proof, the Appellant submitted a copy of the Disputed Contract which it alleged the Respondent had signed. The Respondent denied that the signature in the Disputed Contract was his and submitted in evidence four samples of his true signature for comparison purposes. On closely comparing the samples signatures with the signature in the Disputed Contract, the Sole Arbitrator observes that the signature in the Disputed Signature does differ in minor respects from the sample signatures. The Sole Arbitrator considers that this creates doubt as to the authenticity of the signature on the Disputed Contract.

98. With respect to the photographs of the alleged signing session of 20 March 2020, which the Respondent submitted as further evidence of the Respondent having signed the Disputed Contract, the Sole Arbitrator notes the following:

a) The photographs do not show what document was purportedly being signed. Nor do they show that the Respondent actually signed the document, in the way (for example) that video evidence could have done.

b) The photographs show the Respondent purportedly signing the bottom right hand side of the front page of the document and the bottom right hand side of an inside page of the document (i.e. two separate pages). However, in the copy of the Disputed Contract submitted by the Appellant, the Respondent's purported signature or initial is visible at the bottom right hand side of one page only. This undermines the Appellant's submission that it was the Disputed Contract which was being signed by the Respondent in the photographs.

99. As further evidence of the Respondent having signed the Disputed Contract, the Appellant referred to an e-mail sent by the Respondent to Mr. Hersi on 18 April 2020 (i.e. after the date on which the Disputed Contract was allegedly signed) in which he said: *"… There is an agent of mine who wanna* (sic) *send me over to Kuwait after the season here, I've thought about it and would like to inform you that I dont* (sic) *wish to continue my my* (sic) *stay at the club after the season, so as we spoke about paying for the next seasons, I think my decision has been made and would like to inform you and the club that, the money shouldn't be paid and no increment of salaries needs to be done. So can we please cancel the contract we had earlier on please …"*. In his witness statement and when giving witness evidence during the hearing, the Respondent gave the following explanation for the content of this e-mail:

a) During discussions between the Respondent and Mr. Hersi regarding a potential contract extension, Mr. Hersi had advised the Respondent that the Appellant would start to pay an increased salary from April 2020 (i.e. before the expiry of the First Contract) if he committed to a contract extension. At the point of sending the e-mail, the Respondent had decided against extending his contract with the Appellant and was therefore informing the Appellant not to start making the increased payments.

b) When referring to *"… the contract we had earlier …"*, the Respondent was referring to the First Contract rather than the Disputed Contract as the offer from the Kuwaiti club was valid for 48 hours only and this required him to leave the Appellant immediately.

100. The Sole Arbitrator considers the content of the 18 April 2020 e-mail to be ambiguous and acknowledges that one possible interpretation is that a contract extension had been agreed. However, the Sole Arbitrator considers the Respondent's explanation as to what he meant by his choice of words to be equally plausible and, as the Sole Arbitrator found the Respondent to be a credible witness, he is willing to accept his explanation. Accordingly, the Sole Arbitrator does not consider the 18 April 2020 e-mail as persuasive evidence of the Respondent having signed the Disputed Contract.

101. In considering this issue, the Sole Arbitrator also finds the Appellant's e-mail of 31 March 2020 (with the subject heading *"Notice of Intention to Extend the Contract"*) to be particularly relevant. That e-mail stated as follows: *"In the exercise of our contractual rights under clause 2.3 of the Professional Football Contract between us, we're writing to formally notify you on our intention to extend the said contract on the terms and conditions we'll both agree …. Our recruitment team will be contacting you shortly for joint negotiations"*. This clearly contradicts the Appellant's assertion that the parties had already entered into the Disputed Contract. The Appellant has failed to satisfactorily explain why it would send such an e-mail only 16 days after the Respondent had supposedly signed the Disputed Contract.

102. For the reasons set out in paragraphs 96 to 101, the Sole Arbitrator is not satisfied that the Respondent signed the Disputed Contract.

B. If the Respondent did execute the Disputed Contract did it contain discrepancies which would require it to be vitiated?

103. Given the Sole Arbitrator's finding with respect to the first issue, there is no need to address this second issue.

C. Did the parties otherwise enter into a valid contract of employment to follow-on from the First Contract?

104. According to the evidence submitted, a contract is validly formed pursuant to Tanzania law where there is a "proposal" and an "acceptance" of that proposal.

105. Pursuant to statute:

a) a proposal is made *"when one person signifies to another his willingness to do or to abstain from doing anything, with a view to obtaining the assent of that other to such act or abstinence"*.

b) for that proposal to be communicated it must come *"to the knowledge of the person to whom it is made"*.

c) a proposal is considered to be accepted *"when the person to whom the proposal is made signifies his assent thereto …"*.

106. Even if the Disputed Contract had not been executed by the Respondent, the Sole Arbitrator considered: (a) whether the material terms contained within the Disputed Contract were communicated by the Appellant to the Respondent; and (b) the Respondent's conduct signified his assent to those material terms.

107. The burden of proof on this again sits with the Appellant. The Appellant relied on the following evidence in support of the proposition that an employment contract existed between the parties:

a) The Appellant maintained that the Respondent had been provided with a copy of the Disputed Contract and that, accordingly, its terms had been communicated to him. The Appellant relied on the photographs taken on 20 March 2020 as evidence of that. However, as already established with respect to the first issue, the photographs do not actually identify the document which the Respondent is in possession of.

b) The Appellant also made reference to the reasoning within the Appealed Decision and submitted that it constituted an affirmation by the LPS Committee *"… that the contract between the parties exists and it has partly been performed …"*. Having reviewed the Appealed Decision, the Sole Arbitrator does not agree with the Appellant's interpretation of the LPS Committee's written reasons. In any event, even if he did, the Sole Arbitrator is conducting the appeal *de novo* and is therefore not bound to the legal or factual findings of the LPS Committee.

c) The Appellant also claimed that the sign on fee of USD 25,000 for the first year and the USD 5,000 as the first Respondent's salary constituted an offer and further relied on the fact that they had paid the Respondent the sums of USD 25,000 and USD 5,000 in fulfilment of the Appellant's obligations under the new employment contract. The Sole Arbitrator is not persuaded by this. The evidence presented shows that the Respondent queried those payments with both the Appellant and the TFF and that he attempted to return them.

108. Accordingly, the Sole Arbitrator is not satisfied that the Appellant made a proposal to the Respondent regarding the terms of a new contract.

109. The Respondent provided evidence which shows that the Appellant commenced the process for the negotiation of new contract terms. Reference is made to the Appellant's e-mail to the Respondent of 31 March 2020 (*"Notice of Intention to Extend the Contract"*). However, that e-mail did not include any proposal and no evidence was submitted showing that the negotiation process progressed any further.

110. Even if the Sole Arbitrator was persuaded that the Appellant had made an offer to the Respondent capable of acceptance (which he is not based on the evidence submitted), the Respondent's conduct did not indicate an acceptance of that offer. Indeed the Respondent's conduct and actions consistently demonstrated a desire to leave the Appellant upon expiry of the First Contract. Reference is made to: (a) the Respondent's attempts to return payments to the Appellant; (b) comments made by the Respondent during a television interview on 10 June 2020; (c) the e-mail sent by the Respondent to the TFF on 27 June 2020; (d) the Respondent's e-mail to Mr. Hersi of 18 April 2020; and (e) the content of the voice message sent by the Respondent to Mr. Hersi on 23 March 2020.

111. Accordingly, the Appellant has failed to prove to the comfortable satisfaction of the Sole Arbitrator that the parties entered into a valid contract of employment to follow-on from the First Contract.

D. Was there an occurrence of double registration?

112. Having concluded that there was no further contract of employment between the Appellant and Respondent, the Sole Arbitrator considers that: (a) the Respondent was free to enter into the contract of employment with Simba; and (b) accordingly there was no double registration.

E. Should the Respondent refund USD 30,000 or USD 27,500 to the Appellant?

113. It is agreed by the parties that two separate payments of USD 25,000 and USD 5,000 were made by the Appellant into the bank account of the Respondent. In the Appealed Decision the LPS Committee ordered the Respondent to repay those amounts as they considered them to have been paid in consideration of a non-existent contract of employment.

114. The Respondent argued that USD 2,500 of the amounts relates to payments owned under the First Contract and that, accordingly, he should only be required to repay USD 27,500 of the USD 30,000. The Sole Arbitrator considers this to amount to a counterclaim. In accordance with established CAS jurisprudence, counterclaims are not permitted within an appeal arbitration procedure See, for example, CAS 2016/A/4852. Accordingly, the Sole Arbitrator denies the Respondent's request.

F. Did the Respondent fail to fulfil his contractual duties for the Appellant from April 2020?

115. The Appellant has not made any submissions or provided any evidence in support of this claim and the Respondent made no admissions with respect to the claim. Accordingly, the Sole Arbitrator finds in favour of the Respondent with respect to this claim.

G. Is the Respondent entitled to damages?

116. As already detailed above (para. 85), in his prayers for relief, the Respondent requested that he be awarded both general damages and punitive damages. However,

- this amounts to a counterclaim which is not permitted within an appeal arbitration procedure.

- in any event, the Respondent did not make any submissions with respect to the legal basis for these awards or their quantum.

117. Accordingly, the Sole Arbitrator declares that the Respondent's request for damages is inadmissible.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The Appeal filed by Young Africans Sports Club on 27 August 2020 against the decision issued on 12 August 2020 by the Legal and Players' Status Committee of the Tanzania Football Federation is dismissed.

2. The decision issued on 12 August 2020 by the Legal and Players' Status Committee of the Tanzania Football Federation is confirmed in its entirety.

3. The counterclaim filed by Bernard Morrison is not admissible.

4. (…).

5. (…).

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