



Arbitration CAS 2021/A/8134 Siphwe Baleka v. Fédération Internationale de Natation (FINA), award of 22 November 2021 (operative part of 26 July 2021)

Panel: Mr André Brantjes (The Netherlands), Sole Arbitrator

Aquatics (swimming)

Eligibility requirements for Universality Places

Rationale of Universality Places in the FINA Qualification System

Deadline for application for a Universality Place

- 1. In the FINA Qualification System for the XXXII Olympiad – Tokyo 2020, Universality Places must be considered a “pathway” and do not provide a qualification method *per se*. Universality Places only come into play once no athletes from a particular National Olympic Committee (NOC) have “achieved an OQT / “A” Time or an OST / “B” Time”, i.e. when no athlete from an NOC has qualified for the Tokyo 2020 Olympic Games on their own merit. For an athlete to be eligible to participate in the Tokyo 2020 Olympic Games based on a Universality Place, the athlete must satisfy the criteria set specifically for Universality Places in order to be awarded a Universality Place by FINA.**
- 2. A different deadline for Universality Places does not amount to any violation of the Olympic Charter and does not represent any excessive formalism or discrimination.**

I. THE PARTIES

1. Mr Siphwe Baleka (the “Appellant” or the “Athlete”) is an international-level Guinea-Bissau swimmer since 11 May 2021. Prior to that, the Athlete resided and lived in Springfield, Missouri, United States of America. The Athlete is born in 1971 and is currently 50 years old.
2. The Fédération Internationale de Natation (“FINA” or the “Respondent”) is the international federation recognized by the International Olympic Committee (“IOC”) for administering international competition in water sports.
3. The Athlete and FINA are hereinafter jointly referred to as the “Parties”.

II. FACTUAL BACKGROUND

4. Below is a summary of the main relevant facts, as established on the basis of the Parties’ written submissions and the evidence examined in the course of the present appeal arbitration proceedings. This background is made for the sole purpose of providing a synopsis of the

matter in dispute. Additional facts may be set out, where relevant, in connection with the legal discussion.

5. On 15 July 2020, FINA published on its website the Qualification System for the XXXII Olympiad – Tokyo 2020 (the “Tokyo 2020 Olympic Games”). This Qualification System provides the following with respect to “Universality Places”:

“NOCs with no athletes who have achieved an OQT / “A” Time or an OST / “B” Time may enter a maximum of one (1) man and one (1) woman, provided that those athletes participated in the 18th FINA World Championships 2019 and/or are approved by FINA to compete (“Universality Places”).

Because of the exceptional circumstances related to COVID-19 crisis, the consequent postponement of the Tokyo Olympics, and taking into account the unprecedented two-year period between the FINA World Championships Gwangju 2019 and the new date of the Games in 2021, NOC/NFs with no men or women with an “A” or “B” time standard will be allowed to enter their highest ranked men athlete or highest ranked women athlete in one individual event, based upon the FINA Points Table (2021 edition), through a performance in an approved FINA Olympic qualifying event (including the FINA World Championships Gwangju 2019).

*[...] NOCs must submit their applications for Universality Places to FINA for approval by **20th June 2021**. FINA will confirm the Universality Places to NOCs by **1st July 2021**”.*

6. On 4 June 2021, FINA sent a reminder to the Presidents and Secretary Generals of the NOCs and National Federations pertaining to the participation of swimmers through Universality Places, indicating, *inter alia*, that applications were to be sent by the enclosed reply form by 20 June 2021.
7. On 17 June 2021, the Guinea Bissau National Olympic Committee (“GB NOC”) filed an application for a Universality Place to FINA for the Athlete to take part in the Tokyo 2020 Olympic Games (the “First Application”). The GB NOC used the reply form enclosed to FINA’s letter dated 4 June 2021. This First Application indicates that the Athlete had participated in the 1st International Masters Swimming in Cairo, Egypt.
8. On 19 June 2021, FINA informed the GB NOC, copying both the Athlete as well as the *Federação de Natação da Guiné-Bissau* (the “GB NF”), that the First Application was not approved, as the Athlete did not comply with the requirements for a Universality Place, because the 1st International Masters Swimming in Cairo, Egypt, was not a FINA-approved Olympic qualifying event.
9. On 19 June 2021, the Athlete reverted back to FINA and asked which events he still could enter before the deadline of 27 June 2021. FINA did not respond to that email.
10. On 26 June 2021, the Athlete participated in the Egypt National Swimming Trial in Cairo, Egypt, which was a FINA-approved Olympic qualifying event.

11. On 27 June 2021, the GB NF (i.e. this time not the GB NOC), filed an application for a Universality place to FINA for the Athlete (the “Second Application”), indicating that the Athlete had participated in the Egypt National Swimming Trial in Cairo, Egypt, on 26 June 2021.
12. On 27 June 2021, FINA (the “Appealed Decision”) responded as follows to the GB NF’s Second Application by email:

“Dear President, Mr. Duarte Ioia,

We kindly would like to advise you that as per the qualification timeline stipulated in the Swimming Qualification System - LINK -, the application for the Universality Places closed on 20 June 2021, and only the performances of swimmers achieved by the said closing date are valid for consideration.

We remain at your disposal for any additional information you may require.

Kind regards,

Namhee CHO
FINA Sports Department”.
13. On 28 June 2021, the GB NF informed FINA it appealed its 27 June 2021 decision and sent a reminder on 30 June 2021. FINA did not respond to these reminders.
14. On 1 July 2021, the Swim Swam news organization published the news that FINA strictly applied the Qualification Rules for the Universality Places and that the Athlete was not eligible for consideration as his result at the Egypt National Swimming Trial on 26 June 2021, was achieved after the deadline of 20 June 2021.
15. On 12 July 2021, the GB NF informed FINA that its email address had been hacked, that it was aware that a correspondence had been addressed to FINA, and that it was not responsible for any operations done between 21 June and 8 July 2021.
16. On 14 July 2021, FINA requested the GB NF to confirm that all communications sent to FINA from the relevant email address between 21 June and 8 July 2021 were to be considered null and void.
17. On 16 July 2021, the GB NF confirmed that any documents sent to FINA between 21 June and 8 July 2021 via the relevant email address were to be considered null and void.
18. On 1, 3 and 4 July 2021, the GB NF requested for an appeal, clarification and information with respect to the Appealed Decision. FINA did not respond to these emails.

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

19. On 4 July 2021, the Appellant sent an email to CAS requesting an emergency appeal with respect to the Appealed Decision.
20. On 5 July 2021, the CAS Court Office acknowledged receipt of the Athlete's email dated 4 July 2021 and requested clarification as to whether the email had to be treated as a request for provisional measures in accordance with Article R37 of the Sports related Arbitration (the "Code") or a Statement of Appeal under Article R48 of the Code. In any event, the CAS Court Office drew the Appellant's attention on the formal requirements set forth by the Code and invited the Athlete to complete his submission. In addition, the Appellant was invited to pay the CAS Court Office filing fee.
21. On 6 July 2021, the Appellant filed a Statement of Appeal and opted for a Panel of three arbitrators and nominated Dr Karim Youssef, Attorney-at-Law in Cairo, Egypt, as arbitrator.
22. On 8 July 2021, the CAS Court Office, *inter alia*, informed the Appellant that his email of 4 July 2021 would be considered as a request for an expedited procedure in accordance with Article R52 of the Code.
23. On 8 July 2021, the Appellant informed the CAS Court Office that his Statement of Appeal was to be considered as his Appeal Brief.
24. On 9 July 2021, the CAS Court Office invited the Respondent to file its Answer.
25. On 11 July 2021, the Appellant filed an "Updated Appeal Brief".
26. On 12 July 2021, the Respondent informed the CAS Court Office that it would accept an expedited procedure, subject to the following conditions being met:
 - The Statement of Appeal was considered as the Appeal Brief;
 - The Answer can be filed until 20 July 2021 after having received confirmation from the CAS Court Office that the Appellant had paid the advance of costs;
 - The operative part of the CAS Award be issued on the basis of the case file without any hearing or second round of submissions;
 - The "Updated Appeal Brief" of 11 July 2021 be withdrawn.
27. In addition to the above, the Respondent indicated that it would not pay its share of the advance of costs as it considered the case was moot now that the IOC deadline to register entries for the Tokyo 2020 Olympic Games of 5 July 2021 had expired.

28. On 12 July 2021, the Appellant indicated that he would prefer the appointment of a sole arbitrator.
29. In a subsequent communication on the same date, the Appellant informed the CAS Court Office that an Award in the present matter had to be issued by no later than 28 July 2021 and requested the Respondent's decision not to qualify him "*be STAYED effective immediately*". The Appellant further indicated that the "Updated Appeal Brief" of 11 July 2021 had to be regarded as the presiding document of record and, contrarily to what he stated in his previous email, confirmed he would agree with a Panel of three arbitrators.
30. On 13 July 2021, the CAS Court Office invited the Respondent to comment the Appellant's request for a stay. The Respondent was also requested to comment on the decision of the Appellant to continue to rely on the "Updated Appeal Brief", as that seemed to form an obstacle to the conditions and terms set forth in the Respondent's letter of 12 July 2021.
31. On 14 July 2021, the Appellant informed the CAS Court Office that he was no longer represented by a lawyer. In addition, after having been provided with an estimate of the arbitration costs for a Panel of three arbitrators, the Appellant requested the appointment of a sole arbitrator.
32. On 14 July 2021, the Respondent confirmed it agreed to the appointment of a sole arbitrator and to the implementation of an expedited procedure in accordance with Article R52 of the Code and that this agreement was conditional upon the following:
 - The Answer is filed by 21 July 2021;
 - The Operative part of the CAS Award is issued on the basis of the case file without any hearing or second round of submissions.
33. On 15 July 2021, the Respondent confirmed that it did not accept the admissibility of the "Updated Appeal Brief".
34. On 16 July 2021, the Respondent submitted its reply to the request for provisional measures pursuant to Article R37 of the Code, requesting for its dismissal.
35. On 16 July 2020, the Deputy President of the CAS Appeals Arbitration Division issued the operative part of an Order on Request for a Stay, ruling, *inter alia*, that the request for a stay was denied.
36. On 20 July 2021, pursuant to Article R54 of the Code, the CAS Court Office informed the Parties on behalf of the President of the CAS Appeals Arbitration Division that the arbitral tribunal for the present matter was constituted by:

Sole Arbitrator: Mr André Brantjes, Attorney-at-Law in Amsterdam, The Netherlands.

37. On 21 July 2021, the Respondent filed its Answer pursuant to Article R55 of the Code.
38. On 26 July 2021, both Parties returned a signed copy of the Order of Procedure provided to them by the CAS Court Office on 22 July 2021. In the Order of Procedure both Parties confirmed:

“their agreement that the Sole Arbitrator may decide this matter based on the Parties’ written submissions. The Parties confirm that their right to be heard has been respected. Pursuant to Article R57 of the Code, the Sole Arbitrator considers herself to be sufficiently well informed to decide this matter without the need to hold a hearing”.

39. The Sole Arbitrator confirms that he carefully heard and took into account in his decision all of the submissions, evidence and arguments presented, even if they have not been specifically summarized or referred to in the present Award.

IV. SUBMISSIONS OF THE PARTIES

40. The submissions of the Appellant in his letter of 4 July 2021, in essence, may be summarized as follows:
- The unexperienced newly-activated GB NF made a mistake by thinking the 1st International Masters Swimming Championships in October 2019 was a FINA-approved Olympic qualifying event.
 - The Athlete was informed that the qualifying time standards had to be obtained in the period between 1 March 2019 and 27 June 2021.
 - The misinterpretation of the eligibility requirements was only discovered on 19 June 2021.
 - Because FINA had clearly stated that the qualification period ended on 27 June 2021, the Athlete entered into the Egypt Swimming National Championships on 26 June 2021, so he was in time to qualify.
 - The case of the Athlete is extraordinary because never before had an African American swimmer become a citizen of an African nation, attempting to compete in the Olympic Games starting from nothing.
 - The Appealed Decision violates the spirit of the Olympic Charter and is a kind of discrimination based on age.
 - By limiting the qualification period to 20 June 2021, the Athlete is not given the same opportunity to qualify as other swimmers.

- Since FINA’s approval was not until 1 July 2021, this suggested that the Athlete had until 27 June 2021 to qualify like all other swimmers.
 - The Respondent should have considered exceptional circumstances like the COVID-19 crisis.
41. The Appellant filed the following request for relief in his Statement of Appeal of 6 July 2021:
- “Given that the Guinea Bissau Swim Federation and Mr Bakela has met all the published requirements for the Universality Place eligibility, we request that FINA’s decision be reversed and that FINA approve the Guinea Bissau Swim Federation and the Guinea Bissau Olympic Committee’s University [sic] Place for Mr Siphiwe Baleka in order that he be allowed to compete in the 2021 Tokyo Olympics”.*
42. The submissions and requests for relief contained in the Appellant’s Appeal Brief filed on 11 July 2021 is declared inadmissible for the reasons set out below. The Sole Arbitrator therefore does not consider it appropriate to summarise the content of the Appeal Brief here.
43. The submissions of the Respondent in its Answer, in essence, may be summarized as follows:
- The Appeal Brief is inadmissible according to Article R56 of the Code. The Appellant stated in his emails of 8 and 9 July 2021 that the Statement of Appeal had to be considered as the Appeal Brief, hence he was not allowed to file new submissions and produce new evidence. The Appellant also did not demonstrate exceptional circumstances further to Article R56 of the Code.
 - The 17 June 2021 application did not meet the FINA Rules requisites, as the Athlete did not perform in a FINA-approved qualifying event as listed in Qualification System for the OG Tokyo.
 - If the Athlete would have exercised a minimum degree of care, he would have been able to determine that the 1st International Masters Swimming Championships in Cairo, Egypt, was not a FINA-approved qualifying event and that the First Application of 17 June 2021 would be rejected.
 - The Respondent strictly applied the Qualification System which specifies that only the performances of swimmers achieved on or before 20 June 2021 are valid for consideration.
 - The Qualification System was established and developed by FINA and the IOC.
 - Universality places shall be considered a “pathway” to the Tokyo 2020 Olympic Games for unqualified athletes and not as a qualification method per se. Rule 9.3.6.4.3 of the FINA By Laws provides that a National Federation/NOC with no swimmers who have achieved either the Standard Entry Time, may enter to the Olympic Games

one man and one woman, provided those swimmers participated in the preceding FINA World Championships and/or are invited by FINA to compete.

- Universality Places do not adhere to the 27 June 2021 qualification deadline, but instead to the separate deadline for the Universality pathway which applications were due on 20 June 2021.
- The official cut-off date was communicated to the NOCs and National Federations well in advance of this deadline, being notably published on FINA's official website since 15 July 2020.
- As the Second Application was filed after 20 June 2021, the application had to be dismissed.
- Furthermore, as the GB NF confirmed that any documents sent to the Respondent between 21 June and 8 July 2021 had to be considered null and void, the Second Application of 27 June 2021 did not have to be taken in consideration.
- An alleged qualification does not guarantee entry to the OG Tokyo. The right to enter belongs to the NOCs. As the Second Application of 27 June 2021 was not filed by the GB NOC, the Respondent had to dismiss the application.
- Finally, as the Appellant did not live on the territory of Guinea Bissau for at least one year prior to the OG Tokyo, FINA Rule 2.5 was not fulfilled. The Appellant was therefore in any event not eligible to represent Guinea Bissau at the Tokyo 2020 Olympic Games.

46. The Respondent submitted the following request for relief in its Answer:

- I. *To dismiss the Appeal and to confirm the Respondent's decision not to enter the Appellant through Universality places to the Tokyo Olympic Games 2020;*
- II. *To order the Appellant to bear all costs of the proceedings and to pay an amount to be determined by the Sole Arbitrator as contribution to the costs and expenses incurred by the Respondent".*

V. JURISDICTION

44. Article R47 of the Code states the following:

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

45. In the absence of a specific arbitration agreement, in order for CAS to have jurisdiction to hear an appeal, the statutes or regulations of the sports-related body from whose decision the appeal is being made must expressly recognize the CAS as an arbitral body of appeal.

46. Rule C26 of the FINA Constitution provides as follows:

“Disputes between FINA and any of its Members or members of Members, individual members of Members or between Members of FINA that are not resolved by a FINA Bureau decision may be referred for arbitration by either of the involved parties to the Court of Arbitration for Sports (CAS), Lausanne. Any decision made by the Arbitration Court shall be final and binding on the parties concerned”.

47. Rule C26 of the FINA Constitution thus provides for the possibility of referring disputes between FINA and any of its Members or members of Members, individual members of Members or between Members of FINA to the CAS.

48. The Sole Arbitrator Panel decided to retain jurisdiction on the basis of Rule C26 of the FINA Constitution.

VI. ADMISSIBILITY

49. According to Article R49 of the Code, “[I]n 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”.

50. The FINA Constitution contains no specific deadline to appeal. Thus, according to Article R49 of the Code, an appeal should be filed within 21 days of issuance of the decision challenged.

51. The Appealed Decision was issued – and notified to the Appellant – on 27 June 2021. The Appellant filed his Statement of Appeal on 6 July 2021.

52. Since the Statement of Appeal was filed within 21 days of the official notification of the Appealed Decision, and all other requirements were complied with, the Sole Arbitrator finds that the appeal is admissible.

VII. APPLICABLE LAW

53. Article R58 of the Code provides as follows:

“The Panel decides the dispute according to the applicable regulations and the rules of law chosen by the parties or, in the absence of such a choice, according to the law of the country in which the federation,

association or sports-related body which has issued the challenged decision is domiciled or according to the rules of law the application of which the Panel deems appropriate. In the latter case the Panel gives reasons for its decision”.

54. The FINA Constitution does not contain any applicable law clause.
55. The Sole Arbitrator holds that the applicable law in this case shall be the FINA rules and regulations. Additional, Swiss law may apply.

VIII. MERITS

56. This first topic that the Sole Arbitrator has to deal with is whether the “Updated Appeal Brief” is admissible, as FINA explicitly objected to the admissibility therefore, referring to Article R56 of the Code.
57. On 8 July 2021, the Appellant explicitly informed the CAS Court Office that his Statement of Appeal was to serve as his Appeal Brief.
58. Article R56 of the Code provides as follows:

“Unless the parties agree otherwise or the President of the Panel orders otherwise on the basis of exceptional circumstances, the parties shall not be authorized to supplement or amend their requests or their argument, to produce new exhibits, or to specify further evidence on which they intend to rely after the submission of the appeal brief and of the answer”.

59. As the Appellant had indicated that its Statement of Appeal was to serve as its Appeal Brief, the CAS Court Office provided the Respondent with a time limit to file its Answer. The Sole Arbitrator finds that the Appellant had thereby foregone its right to file an Appeal Brief. The Sole Arbitrator finds that the Appellant’s procedural decision could no longer be reversed after the CAS Court Office granted the Respondent a time limit to file its Answer, save for exceptional circumstances.
60. As the Appellant has not invoked any exceptional circumstances and FINA objects to the admissibility of the Appeal Brief, the Sole Arbitrator, in accordance with Article R56 of the Code, declares the “Updated Appeal Brief” inadmissible and will decide this case based on the Statement of Appeal and other admissible correspondences submitted by the Appellant.
61. Notwithstanding the above and for the reasons set forth below, the Sole Arbitrator is satisfied that, even if the “Updated Appeal Brief” were declared admissible and admitted to the file, there would be no change in the substance of the Appeal.
62. The actual merits of the present proceedings concern the eligibility requirements for Universality Places. The starting point for eligibility is the Qualification System.

63. The Qualification System was established and developed by FINA and the IOC/NOCs of National Federations.
64. According to Rule 9.3.6.4.3 of the FINA By Laws, a National Federation/NOC with no swimmers who qualified standard entry times, may enter the Olympics with one man and one woman, provided that these swimmers participated in the preceding FINA World Championships (50m) an/or are invited by FINA to compete. According to this Rule the swimmer must have participated in a FINA Olympic qualifying event.
65. The Sole Arbitrator concurs with FINA that the Universality Places thus must be considered a “pathway” and do not provide a qualification method *per se*. Universality Places only come into play once no athletes from a particular NOC have “*achieved an OQT / “A” Time or an OST / “B” Time*”, i.e. when no athlete from an NOC has qualified for the Tokyo 2020 Olympic Games on their own merit. For an athlete to be eligible to participate in the Tokyo 2020 Olympic Games based on a Universality Place, the athlete must satisfy the criteria set specifically for Universality Places in order to be awarded a Universality Place by FINA. The Sole Arbitrator finds that there is no particular reason why the eligibility requirements between both “pathways” cannot be different.
66. FINA prescribed a clear deadline of 20 June 2021 in the Qualification System for Universality Places, in deviation of the deadline of 27 June 2021 applicable to the direct qualification pathway.
67. On 17 June 2021, the GB NOC filed the First Application with respect to the Athlete with FINA. It used the standard template Universality Places. This form provides the following sentence:

“This form should be signed by both NF & NOC and returned to FINA no later than 20th June 2021”.
68. It is undisputed between the Parties that the 1st International Masters Swimming in Cairo, Egypt, referred to in the First Application was not a FINA-approved Olympic qualifying event, which was indirectly confirmed by the filing of a Second Application on 27 June 2021.
69. In consequence of this, the Sole Arbitrator has no doubt that, while the First Application was validly submitted, FINA correctly dismissed the First Application because a mandatory prerequisite for awarding a Universality Place to the Athlete was not complied with.
70. As to the Second Application, the Sole Arbitrator notes that the form used is identical to the First Application and contains exactly the same sentence referring to the deadline of 20 June 2021.
71. By using the same templates, the Sole Arbitrator finds that no other conclusion is possible, than holding that the GB NOC and the GB NF should have been aware of the deadline of 20

June 2021 to apply for Universality Places. The argument of the Athlete that he only became aware of this deadline as of 19 June 2021 is not convincing.

72. Also, the Athlete's argument that the Second Application has to be considered as an updated version of the First Application is to be dismissed, as the First Application had already been rejected by FINA on 19 June 2021. The Athlete should have participated in FINA-approved Olympic qualifying event before 20 June 2021 and the GB NOC had to file an application for Universality Places ultimately on 20 June 2021.
73. The Sole Arbitrator finds that FINA's conduct does not show any discrimination of the GB NOC, the GB NF or the Athlete, nor did the Athlete evidence that this was the reason for dismissing the applications for Universality Places. The Sole Arbitrator finds that FINA dismissed the Second Application filed on behalf of the Athlete for the valid reason that it was filed after the relevant deadline of 20 June 2021.
74. This also covers the Athlete's argument that FINA should have been more lenient. If the Athlete and the GB NF would have exercised a minimum degree of care, they would have been able to determine that the 1st International Masters Swimming Championships 2-19 in Cairo, Egypt, was not a FINA-approved qualifying event. The Sole Arbitrator thus also concurs with FINA on this point.
75. The Qualification System paragraph regarding Universality Places cannot reasonably be interpreted differently and is clear about the applicable deadline. The deadline of 27 June 2021 is not mentioned in the paragraph concerning Universality Places and therefore does not give rise to any legitimate confusion on the Athlete's side.
76. It is not clear to the Sole Arbitrator why FINA did not respond to the GB NF's requests for clarification after issuance of the Appealed Decision, but the Sole Arbitrator finds that, while it would probably have been appropriate for FINA to respond, FINA was by no means legally required to do so.
77. The Sole Arbitrator finds that FINA can also not be blamed for the fact that it strictly applies deadlines and uses different deadlines for different "pathways" and has to be considered a mechanism that is put in place by FINA within its autonomy and, moreover, was approved by the IOC.
78. The Sole Arbitrator finds that a different deadline for Universality Places does not amount to any violation of the Olympic Charter and does not represent any excessive formalism or discrimination, at least the Athlete failed to establish that this had been the case.
79. In consequence, the Sole Arbitrator finds that by the deadline of 20 June 2021 was missed and that the Appellant therefore does not meet the eligibility criteria. This is a necessary but unfortunate consequence of the Athlete's failure to properly follow the selection and nomination procedures.

80. Consequently, regrettably for the Athlete, the GB NOC and the GB NF, the Sole Arbitrator finds that the Athlete did not meet the requirements for Universality Place eligibility, as a consequence of which the Athlete's appeal is to be dismissed.
81. Notwithstanding the above conclusion, the Sole Arbitrator finds that the Second Application was in any event null and void in light of the correspondence exchanged between the GB NF and FINA between 12 and 16 July 2021. The GB NF unequivocally confirmed that any correspondence received by FINA from the GB NF between 21 June and 8 July 2021 was to be considered null and void.
82. Furthermore, the Sole Arbitrator finds that the Second Application was in any event not valid, because it was filed by the GB NF, and not by the GB NOC, while the Qualification System provides that "**NOCs** must submit their applications for Universality Places to FINA for approval" (emphasis added by Sole Arbitrator).
83. Consequently, also for these reasons, the Athlete's appeal is to be dismissed.
84. Finally, considering the above reasoning, it is not necessary for the Sole Arbitrator to address FINA's argument that the Athlete would in any event not have been eligible for a Universality Place, because he did not live in Guinee-Bissau for more than a year, which is a requirement to be awarded a Universality Place pursuant to FINA Rule 2.5.
85. All other and further motions or prayers for relief are dismissed.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by Mr Siphiwe Baleka on 4 July 2021 against the decision of the Fédération Internationale de Natation issued on 27 June 2021 is dismissed.
2. The decision of the Fédération Internationale de Natation issued on 27 June 2021 is confirmed.
- (...)
5. All other and further motions or prayers for relief are dismissed.