



Arbitration CAS 2017/A/5163 Hamad Kalkaba Malboum v. Association of National Olympic Committees of Africa (ANOCA), award of 25 May 2018

Panel: Prof. Luigi Fumagalli (Italy), President; Prof. Ulrich Haas (Germany); Mr Romano Subiotto QC (United Kingdom)

Multiple sport

*Alleged violation of the Code of conduct applicable to the election of the President of regional association of NOCs
Authority of an arbitral tribunal to issue an award embodying the parties' settlement*

Under Swiss law an arbitral tribunal sitting in Switzerland has authority to issue an award embodying the terms of the parties' settlement, if the contesting parties agree to a termination of the dispute in this manner. The panel's ratification of the parties' settlement and its incorporation into an award serves the purposes of vesting the parties' agreement with a *res iudicata* effect and of enabling the enforcement of their agreement. In such context, it is the task of the panel to verify the *bona fide* nature of the parties' agreement (a) to ensure that the will of the parties has not been manipulated by them to commit fraud and (b) to confirm that the terms of such agreement are not contrary to public policy principles or mandatory rules of the law applicable to the dispute.

I. THE PARTIES

1. Mr Hamad Kalkaba Malboum ("Mr Malboum" or the "Appellant") is a Cameroonian former Senior Officer of the Cameroon army born on 11 November 1950. He has been *inter alia*, the President of the Confederation of African Athletes and Vice President of the International Association of Athletics Federation ("IAAF"). In 2017, he ran for the election for President of the Association of National Olympic Committees of Africa against the incumbent President, General Lassana Palenfo ("Mr Palenfo")¹.
2. The Association of National Olympic Committees of Africa ("ANOCA" or the "Respondent") is a continental non-profit non-governmental organisation (NGO) with legal status, constituted as a regional association of 54 National Olympic Committees ("NOCs") in Africa, which is recognised by the International Olympic Committee ("IOC"). Its seat is in Abuja, Nigeria. The current President of ANOCA is Mr Palenfo.
3. Mr Malboum and ANOCA are referred to as the "Parties".

¹ [*Editor's note*: in the original award, this paragraph is without numbering].

II. BACKGROUND FACTS

4. Below is a summary of the main relevant facts and allegations based on the Parties' written submissions, pleadings and evidence adduced during these proceedings. Additional facts and allegations may be set out, where relevant, in connection with the legal discussion that follows. Although the Panel has considered all the facts, allegations, legal arguments and evidence submitted by the Parties in the present proceedings, it refers in this award only to the submissions and evidence it considers necessary to explain its reasoning.
5. On 13 January 2017, ANOCA informed its members that a General Assembly would take place on 9 to 11 May 2017, at which members would be invited to vote on candidatures for various positions within ANOCA, including the position as President.
6. On 5 May 2017, the Executive Committee of ANOCA (the "ExCo") convened at its 51st Session to examine the issues to be considered at the 17th Ordinary Session of the General Assembly of ANOCA, which would take place in Djibouti from 9 to 11 May 2017. During this Session, the ExCo approved the final list of the candidatures for the elections submitted by various African National Olympic Committees. The final list recorded two applications for the position of President: one from Mr Malboum and the other from Mr Palenfo, the incumbent President.
7. On 6 May 2017, an extraordinary session of the ExCo was convened by Mr Palenfo to look into "*an important question of ethics which was brought to the attention of the ANOCA President in relation with one of the nominations for the upcoming elections*". During this extraordinary session, the charge was advanced against Mr Malboum of having accepted various sums of money from the government of Cameroon for the purpose of campaigning for election to the position of President of ANOCA. The charge was based on copies of two documents:
 - i. a document dated 8 February 2017 from the Secretary General of the Prime Minister of the Republic of Cameroon to the Minister of Finance of Cameroon asking for a transfer of money in favour of Mr Malboum to support the campaign of Mr Palenfo for the Presidency of ANOCA (the "Financial Document"); and
 - ii. a nine-page report ("*Compte Rendu*") dated 27 March 2017 prepared by Mr Malboum for the Government of Cameroon on the progress of his campaign for his election as President of ANOCA, describing his contacts, interviews and meetings with various officials of the Olympic and African Sports Movement (the "March Report").
8. On 6 May 2017, therefore, the ExCo issued a decision addressed to Mr Malboum (the "Decision") as follows:
 - a. *You are being referred to the IOC Ethics Commission which is being requested to examine and make a determination on what the Executive Committee has found to be unethical behaviour related to the questionable financial activities of your campaign. You are also being referred to the IOC Ethics Commission for violating the autonomy of sport by inviting and directly involving government interference in your campaign for the presidency of an Olympic organisation.*
 - b. *The Executive Committee has decided to expunge your candidature for the position of President of*

ANOCA and has removed your name from the list.

- c. *The Executive Committee has decided to suspend you forthwith from all activities and positions related to the Olympic Movement in Africa pending the outcome of the investigation by the Ethics Commission. You are therefore informed that you will not be allowed to represent the NOSC in the 17th Ordinary Session of the General Assembly which will be held in Djibouti from 9-11 May 2017. However, the NOSC may be represented by any other delegates.*

Finally, should the Ethics Commission find in your favour it would be your right to seek recourse through another election for the position of President by way of an extra-ordinary General Assembly which can be convened as provided for in the Statutes”.

9. In support of its Decision, the ExCo stated the following:

“On this day the Executive Committee of the Association of National Olympic Committee met in your presence to hear various allegations against you that arose from communication between you and the national authorities in Cameroon.

The Executive Committee understood the communication to mean that you had been advanced various sums of money by your government for the purpose of campaigning for election to the position of President of ANOCA. It was also the understanding of the Executive Committee that the funding was meant to “motivate” various senior sports leaders.

You also sought additional funding from your government to continue with the “motivation” of the 54 member NOCs and that notwithstanding you already had been to missions in most parts of Africa to meet with members of the Olympic Family in the continent for that purpose.

It was also noted that your government authorities had been in direct communication with ministries of foreign affairs, and through them, ministries of sport in African countries, requesting them to influence their National Olympic Committees to vote for you.

The Executive Committee came to conclusions that the contents of the communication contravened rules which forbid that illegal distribution and funding campaigns for positions in the Olympic Movement and that the autonomy of sport should be guarded.

You were given the opportunity to explain yourself. You did acknowledge the authenticity of the documents. You however disputed the interpretation that the funding was illegal campaign. You also argued that you did not see anything wrong in the support of your government and that its direct involvement in your campaign did not constitute a violation of one of the tenets of Olympism, the autonomy of sport and the Olympic Movement in general. ...

It is therefore with regret that the following decisions have been made in relation to what the Executive Committee agreed unanimously that you had committed infractions which violate the spirit and the letter of the IOC and ANOCA codes of conduct to which ANOCA fully subscribe”.

10. On 7 May 2017, Mr Malboum in a letter to the President of ANOCA, Mr Palenfo, challenged the Decision and requested that a decision on the matter be made by the General Assembly, as *“the body holding the highest power in our organization”.*
11. On 7 May 2017, Mr Berraf answered, on behalf of the ANOCA Juridical Commission, Mr Malboum’s letter dated 7 May 2017, denying his request to refer the matter to the General

Assembly, since the ExCo remained the “sole custodian of prerogatives for safeguarding ethics within the African Olympic Movement” and was therefore entitled to adopt “an interim or provisional measure to prevent continuing damage to the reputation of ANOCA by expunging your candidacy in the ANOCA elections”, and the “ANOCA constitution does not have any provisions to submit a provisional measure taken by the Executive Committee to be examined by the General Assembly”.

12. On 7 May 2017, on behalf of the ExCo, Mr Thomas Ganda Sithole, at that time ANOCA Secretary General, referred the case of Mr Malboum to the Ethics Commission of the International Olympic Committee (the “IOC Ethics Commission”), as per the Decision.
13. On 7 May 2017, Mr Malboum sent a letter to the Presidents and Secretary Generals of the African NOCs to refute the allegations of wrongdoing brought against him, and claim his innocence.
14. On 7 May 2017, Mr Berraf also sent a letter to the Presidents and Secretary Generals of the NOCs of Africa informing them of the Decision to disqualify Mr Malboum from the ANOCA elections and annexing the documents, the March Report and the Financial Document, which had “raised serious concerns about the morality” of Mr Malboum, and on which the charge and the disqualification were based.
15. On 8 May 2017, “an oral communication by the IOC Chief Ethics and Compliance Officer” to the then Secretary General of ANOCA was made (and later confirmed in writing in an email dated 3 August 2017 from the IOC Chief Ethics and Compliance Officer, Ms Zappelli, to Ms Kendrah Potts). In this communication the IOC stated that “the IOC Ethics Commission’s jurisdiction is limited to the IOC Code of Ethics’ scope of application. For all the associations recognised by the IOC, the IOC Code of Ethics applies only to the relations between these organisations and the IOC. Therefore, the referral being exclusively an internal matter, the Ethics Commission has no jurisdiction to intervene”. There is no reference that this decision was, at the time, communicated to Mr Malboum or to the General Assembly.
16. On 9 May and 10 May 2017, the General Assembly of ANOCA was held in Djibouti, during which Mr Palenfo as sole candidate was reconfirmed in his position as President of ANOCA. No issue relating to Mr Malboum was raised.

III. THE PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

17. On 25 May 2017, , pursuant to Article R47 of the Code of Sports-related Arbitration (the “Code”), Mr Malboum filed with the Court of Arbitration for Sport (“CAS”) a statement of appeal against the Decision. The statement of appeal, drafted in French, indicated the Respondent as follows:

“Monsieur Lansana Palenfo

Président de l’Association des Comités Nationaux Olympiques d’Afrique

51 Iya Abubakar Crescent Japi P.M.B. 645 Abuja – Nigeria

lypalenfo@gmail.com - info@africaolympic.org”.

18. On such basis, the CAS Court Office registered the arbitration proceedings as “*CAS 2017/A/5163 Hamad Kalkaba Malboum v. Lansana Palenfo*”.
19. On 26 May 2017, Mishcon de Reya LLP, writing with respect to the case “*Hamad Kalkaba Malboum v. Association of National Olympic Committees of Africa*”, informed the CAS Court Office that they had been instructed to act in the appeal filed against the Decision. They therefore requested to be granted an extension of the deadline to provide the outstanding information for the statement of appeal required by Article R48 of the Code, as well as of the deadline to file the appeal brief.
20. On 29 May 2017, the CAS Court Office informed Mishcon de Reya LLP that, in absence of any power of attorney, the request dated 26 May 2017 could not be dealt with.
21. On the same 29 May 2017, the CAS Court Office, writing in French, informed the Appellant that his statement of appeal had been found to be incomplete as the appointment of an arbitrator was missing, and set a deadline of three days to complete it.
22. On 30 May 2017, Mishcon de Reya LLP provided the CAS Court Office with the power of attorney signed by Mr Malboum, appointing Ms Kendrah Potts and Mr Tom Murray as his attorneys.
23. On 30 May 2017, the CAS Court Office requested the Appellant and his attorneys to clarify their position as to the language of the procedure, since the statement of appeal had been filed in French and an appeals procedure would be initiated in the language of the statement of appeal.
24. On 1 June 2017, the Appellant’s attorneys notified the CAS Court Office of the appointment of Professor Ulrich Haas as arbitrator for the proceedings. Additionally, the Appellant’s attorneys requested that the proceedings be conducted in English, and therefore to be permitted to withdraw the appeal in French and to file a new or supplemental appeal in English. Finally, as the Appellant was not able to obtain a copy of ANOCA’s statutes, principles and/or regulations, they requested an extension of the deadline to file the appeal brief.
25. On 2 June 2017, the CAS Court Office transmitted to Mr Palenfo the statement of appeal filed by Mr Malboum, as well as copy of the correspondence exchanged with the Appellant’s attorneys. In that respect, the CAS Court Office clarified that Mr Malboum’s request to modify the statement of appeal had been dismissed as that possibility was not contemplated by the Code. Furthermore, the CAS Court Office invited Mr Palenfo to state whether he consented to the requested deadline extension, and whether he agreed on the choice of English as the language for the proceedings.
26. On 2 June 2017, the CAS Court Office informed ANOCA of Mr Malboum’s appeal against Mr Palenfo with respect to the Decision. The CAS Court Office informed ANOCA of its possibility to participate in the proceedings, even though the appeal was not directed at it.

27. On 3 and 5 June 2017, Mr Palenfo informed the CAS Court Office that he did not agree with the Appellant's request to proceed in English and that he wished that the arbitration be conducted in French.
28. On 6 June 2017, the CAS Court Office requested the Appellant to state whether he maintained English as the language of the arbitration or would agree to Mr Palenfo's request to proceed in French.
29. On 7 June 2017, Mr Palenfo informed the CAS Court Office of his opposition to the Appellant's request for an extension of the deadline to file the appeal brief.
30. On 8 June 2017, the Appellant's attorneys informed the CAS Court Office that they had noted that the CAS Court Office in its correspondence had not correctly identified the proper respondent, as the Respondent in the arbitration was not Mr Palenfo, but ANOCA, since the Decision had been rendered by ANOCA and the reference to Mr Palenfo in the statement of appeal (formed by Mr Malboum without legal advice) was "*merely to provide an individual at ANOCA to whom the appeal should be directed*". At the same time, the Appellant's attorneys maintained their request that the proceedings be conducted in English and that the deadline to file the appeal brief be extended. Additionally, the Appellant's attorneys filed an application for disclosure by ANOCA of the French and English versions of the "*rules, regulations (including the ANOCA Code of Ethics and any regulations regarding campaigning), the Statutes and the Constitution of ANOCA (the Documents), which may be relevant to the charges against*" Mr Malboum, that had not been provided notwithstanding his various requests.
31. On 9 June 2017, Mr Palenfo informed the CAS Court Office of the appointment of Ms Sophia Kerbaa as his attorney.
32. On 9 June 2017, the CAS Court Office informed the Appellant that the issue of the identity of the Respondent would be dealt with by the Panel, once constituted. Furthermore, regarding the language of the proceedings, the CAS Court Office informed that an Order of Language would be rendered by the President of the CAS Appeals Arbitration Division. Lastly, the CAS Court Office reminded the Appellant that the deadline to file his appeal brief was suspended until a decision was taken by the Panel on the Appellant's request for disclosure.
33. On 12 June 2017, Mr Palenfo, in a letter to the CAS Court Office, requested an extension of five days to appoint an arbitrator.
34. On 13 June 2017, the CAS Court Office granted Mr Palenfo the extension requested in his letter dated 12 June 2017.
35. On 15 June 2017, the President of the CAS Appeals Arbitration Division rendered an Order on Language under which English was set to be the language of the arbitration.
36. On 19 June 2017, Dr François Carrard informed the CAS Court Office on behalf of Mr Palenfo of the appointment as his attorney. Additionally, he notified Mr Palenfo's appointment of Mr Romano Subiotto, QC as an arbitrator.

37. On 21 June 2017, Mr Carrard provided the CAS Court Office with the power of attorney signed by Mr Palenfo in his favour.
38. On 24 July 2017, pursuant to Article R54 of the Code, the CAS Court Office, on behalf of the President of the Appeals Arbitration Division, informed Mr Malboum and Mr Palenfo that the Panel appointed for this arbitration was constituted as follows: Professor Luigi Fumagalli, President; Mr Romano Subiotto, QC and Professor Ulrich Haas, Arbitrators.
39. On 28 July 2017, the CAS Court Office informed Mr Malboum and Mr Palenfo, on behalf of the Panel, that Mr Palenfo was granted a deadline until 18 August 2017 to file a submission limited to the issue of the identification of the Respondent.
40. On 7 August 2017, in a letter to the CAS Court Office the Appellant requested, *inter alia*, to be allowed to make submissions on the matter of the proper respondent.
41. On 15 August 2017, the CAS Court Office, writing on behalf of the Panel, informed Mr Palenfo that his comments on the issue of the proper respondent were to be filed after the receipt of the Appellant's payment of the second share of the advance on costs. At the same time, the CAS Court Office informed the Appellant that, following the receipt of the Respondent's comments on the issue of the proper respondent, he would be granted a deadline to file his reply thereto.
42. On 6 September 2017, Mr Palenfo filed with the CAS Court Office a submission on the identification of the respondent. In such submission, Mr Palenfo indicated that he was not the respondent to be named in this procedure and requested that the appeal be declared inadmissible.
43. On 18 September 2017, the Appellant lodged with the CAS Court Office an answer on the matter of the identification of the respondent, insisting that the appeal was brought against ANOCA, as the Decision was rendered by it, the statement of appeal named Mr Palenfo only as a reference in his capacity as President of ANOCA, and was addressed to the ANOCA offices. Thus, the Appellant argued that the proper respondent was clearly identified to be ANOCA.
44. On 22 September 2017, the CAS Court Office informed Mr Malboum and Mr Palenfo that the Panel had decided to hold ANOCA, as represented by Mr Palenfo, to be the Respondent named by the Appellant in the statement of appeal, and that the reasons for such decision would be stated in the final award. As a result, the CAS Court Office modified the registered arbitration proceedings as "*CAS 2017/A/5163 Hamad Kalkaba Malboum v. ANOCA*". Additionally, the CAS Court Office invited the Respondent to file the documents requested by the Appellant in his statement of appeal, or to state the reason of any refusal.
45. On 27 September 2017, Mr Palenfo, writing as President of ANOCA, in a letter to the CAS Court Office expressed ANOCA's surprise for the decision taken by the Panel to hold ANOCA as respondent and requested clarification regarding the rights of ANOCA with respect to the previous decisions taken by CAS. Furthermore, he requested clarification about which

documents were requested exactly by the Appellant.

46. On 29 September 2017, the CAS Court Office transmitted to ANOCA, on behalf of the Panel, a copy of the complete case file, granted it a deadline to state its position on the appointment of the arbitrator made by Mr Palenfo personally, the language of the proceedings and any issues it wished to raise at that stage of the proceedings.
47. On 2 October 2017, Mr Palenfo's attorney, in a letter to the CAS Court Office, requested clarification regarding Mr Palenfo's personal status relating to the procedure.
48. On 3 October 2017, the CAS Court Office informed Mr Malboum and ANOCA that Mr Palenfo was no longer a party to the proceedings.
49. On 5 October 2017, Dr François Carrard informed the CAS Court Office of his appointment as counsel for ANOCA, and provided the relevant power of attorney.
50. On 6 October 2017, the Appellant, in a letter to the CAS Court Office, insisted in his request for the disclosure of the documents deemed to be necessary to prepare the appeal brief.
51. On 17 October 2017, the CAS Court Office informed the Parties that, since the Respondent had failed to lodge any comment on the appointment of the arbitrator made by Mr Palenfo and on the language of the arbitration, the choice of English as the language of the proceedings and the appointment of Mr Subiotto were confirmed. Additionally, the CAS Court Office invited the Respondent to file the documents requested by the Appellant, or to state the reasons of its opposition.
52. On 23 October 2017, ANOCA filed the English and French versions of the ANOCA Statutes, as requested by the Appellant.
53. On 24 October 2017, the Appellant, in a letter to the CAS Court Office, requested an extension of the deadline until the 13 November 2017 to file his appeal brief.
54. On 27 October 2017, the CAS Court Office informed the Parties that, in the absence of any objection from the Respondent, the Appellant's request for an extension until 13 November 2017 was granted.
55. On 13 November 2017, the Appellant filed his appeal brief and evidence in support, including witness statements of Mr Malboum, Mr Gideon Napoleon Sam, Mr David Ojong and Lord Sebastian Coe.
56. On 15 November 2017, the CAS Court Office confirmed the receipt of the appeal and informed the Respondent of the deadline to file its answer to the appeal.
57. On 4 December 2017, the Respondent requested an extension of the time limit to file its answer to the appeal.
58. On 6 December 2017, the Appellant, in a letter to the CAS Court Office, consented to the

Respondent's request.

59. On 7 December 2017, the CAS Court Office confirmed that the deadline for the Respondent to file its answer was extended to 21 December 2017.
60. On 20 December 2017, the Respondent requested an additional extension of the deadline to file its answer, due to the Respondent's attorney necessity to recover from an encountered illness.
61. On 21 December 2017, the CAS Court Office invited the Appellant to state his position on the Respondent's request.
62. On 22 December 2017, the Appellant, in view of ANOCA's counsel's position, accepted the request for an extension. However, he requested that a hearing be held in February 2018.
63. On 22 December 2017, the CAS Court Office informed the Parties that the Respondent's request for an extension until 12 January 2018 had been granted.
64. On 27 December 2017, the CAS Court Office informed the Parties of the Panel's decision to hold a hearing in Lausanne, Switzerland, and of the Panel's availability for a hearing on 1 or 7 February 2018.
65. On 27 December 2017, the Respondent informed the CAS Court Office of his unavailability for a hearing on either 1 or 7 February 2017, as the Respondent's attorney would be attending meetings in South Korea during the Olympic Games.
66. On 12 January 2018, the Respondent filed its answer to the appeal pursuant to Article R55 of the Code. Together with such answer, the Respondent requested the Panel to hear as witnesses Dr Mehrez Boussayene, Mr Joao Manuel Da Costa Afonso Alegre, Mr Philippe Brown, and Mr Robert Zombodze Magagula.
67. On 16 January 2018, the CAS Court Office confirmed the receipt of the Respondent's answer. Furthermore, it gave notice to the Parties that, unless agreed otherwise, the Parties should refrain from supplementing or amending their requests or their arguments, producing new exhibits or specifying further evidence.
68. On 17 January 2017, the Appellant noted that the Respondent's answer referred to points of Nigerian law. As set out in *"the Appeal Brief ... , there was no exchange of legal arguments prior to the decision of ANOCA that is being challenged. As a result, the points of Nigerian law have never previously been raised by the Respondent and the Appellant has not had an opportunity to respond to them"*. Therefore, the Appellant suggested liaising with the Respondent's legal counsel to seek to identify the scope of the points of Nigerian law that the Respondent contended to be relevant to the appeal and reserved the right to seek permission from the Panel to respond to such points.
69. On 22 January 2018, the CAS Court Office informed the Parties of the Panel's availability for a hearing on 12 March 2018.

70. On 23 January 2018, the Appellant requested whether it was possible to accommodate a hearing before 2 March 2018.
71. On 30 January 2018, the Appellant requested that the hearing be scheduled to take place between 12 and 18 April 2018, as his counsel was no longer available in March 2018.
72. On 1 February 2018, the CAS Court Office informed the Parties that the hearing would be held in Lausanne on 13 April 2018.
73. On 2 February 2018, the CAS Court Office issued on behalf of the President of the Panel an order of procedure (the “Order of Procedure”), confirming *inter alia* the CAS jurisdiction to hear the appeal brought by Mr Malboum. The Order of Procedure was signed on behalf of the Appellant on 5 February 2018.
74. On 9 February 2018, the Respondent submitted copy of a decision issued by the Court of Appeal of Nigeria on 18 February 2002.
75. On 20 February 2018, the CAS Court Office received a letter, dated 19 February 2018, signed by the Secretary General of ANOCA, Eng. Ahmed Abou Elgasim Hashim, that reads as follows:

“The Association in search for true justice has been informed of a list of Witnesses submitted in respect of the case 2017/A/5163 Hamad Kalkaba Malboum Vs ANOCA.

ANOCA does hereby inform that the said submitted list has not been decided upon nor approved by the competent body to appear as Respondent Witnesses in the ANOCA hearing.

Based on the above we kindly request a withdrawal of the submitted list while reserving our rights to submit an approved list of Witnesses.

ANOCA would like to further draw your kind attention to the fact that the submitted record of Minutes of the ANOCA 17th General Assembly held in Djibouti on the 9th and 10th May 2017 authenticated under the name of an unauthorized former officer of the Association, Mr. Philemon Sakouma in his then capacity as Director of Administration and Finance under Probation” has not been accepted by the former Secretary General of ANOCA, Mr. Thomas Sithole, as representing the records of the General Assembly Meeting and hence cannot be considered as being the correct Minutes of the Meeting as per Clause 31.2 of the ANOCA Statutes nor have been submitted for approval by the General Assembly as per Clause 19 of ANOCA Statutes”.
76. On 28 February 2018,
 - i. the Appellant’s attorneys sent a letter to the Respondent’s attorney noting the withdrawal of the list of witnesses, as per the Respondent’s letter dated 19 February 2018, and seeking confirmation of the identity of the Respondent’s witnesses and an indication of the summary of their expected depositions;
 - ii. the Respondent’s attorney answered the letter of the Appellant’s attorneys, referring them to the list of witnesses attached to the answer to the appeal, and to the indication therein contained of the facts on which they would be heard;
 - iii. the Respondent’s attorney, in a letter to the CAS Court Office transmitted the

correspondence exchanged on the same day and underlined, *inter alia*, that according to Article 29.3 of the ANOCA Statutes its President is in charge of legal proceedings. He therefore confirmed that he had never received any instruction to withdraw or modify the list of witnesses filed with the answer to the appeal.

77. On 1 March 2018, the Respondent's attorney forwarded to the CAS Court Office a letter of even date sent to the Appellant's attorneys, confirming that the signatory of the letter dated 19 February 2018 had no authority to interfere with the procedure, and that the list of witnesses was not withdrawn.
78. On 2 March 2018, the Appellant lodged with the CAS Court Office a "Reply Brief" intended to respond to the "new points", including issues of Nigerian law, raised by the Respondent in the answer. Attached to such reply brief, the Appellant lodged with CAS, *inter alia*,
- i. a letter dated 26 August 2017, sent by Ms Aicha Garad Ali, President of the National Olympic Committee of Djibouti, to Eng. Ahmed Abu Elgasim Hashim, Secretary General of ANOCA, requesting that an Extraordinary General Assembly of ANOCA be convened to consider the following points: "*Consideration of the events of May 2017 in Djibouti. Presidency of ANOCA and setting up of the ANOCA Ethics Commission*". Purpose of such request, according to Mr Aicha Garad Ali, was to "*allow the General Assembly ... to exercise its statutory powers, given that it was not allowed the opportunity to do so in Djibouti, not having been informed of the oral communication of the IOC Ethics Commission on 8 May 2017*";
 - ii. a letter dated 2 September 2017, sent by Mr Palenfo to all African NOCs following Ms Aicha Garad Ali's request, expressing *inter alia* his availability to convene an informal meeting alongside the general assembly of the Association of National Olympic Committees to be held in Prague in November 2017. Such letter, in the relevant parts, so reads:

"To ensure transparency, information circulation and equity towards the NOCs of Africa and guarantee full access to the relevant information, in order to enable each of you to have a full picture of the situation and assess the issue according to your consciences and sense of responsibility so as to adopt the most appropriate position, I have thought in my capacity as President of the body which gathers us, that it is my duty to bring to your attention the following information to lift any ambiguity on the events of the General Assembly of Djibouti:

 - *The decision which was taken to disqualify the candidature of M. Hamad Malboum Kalkaba to the Presidency of ANOCA and to suspend his participation to the works of the General Assembly, was actually a decision taken by the Executive Committee which met, as it usually does, before the works of the General Assembly.*
 - *This decision was not contested during the General Assembly, and the issue was not even raised by any member NOC.*
 - *Besides, the works of the General Assembly proceeded in a peaceful atmosphere in perfect compliance with the rules in force.*
 - *The statement of the IOC Ethics Commission underscoring that they have no jurisdiction to deal with the case since it considered the matter as an internal issue reinforces the decision-making responsibility of our body, fully embraced by the Executive Committee.*

- *In accordance to the Recommendations of the General Assembly of Djibouti, the Executive Committee held its first meeting after the General Assembly, set up its own Ethics Commission that would, henceforth, meet and decide such kinds of issues.*
- *Meanwhile, M. Kalkaba has not missed the opportunity to use his right to recourse to CAS which is presently conducting appropriate investigations on the case before delivering its verdict.*

To summarize the situation, considering the case pending before CAS and the Ethics Commission of ANOCA which has put this issue as a priority on its agenda for its future actions, the request of an Extraordinary General Assembly for a limited period of time of less than two months, although legitimate, might be premature, and is most likely not to reach a fair solution in either ways, as long as the CAS did not come up with a verdict and our new Ethics Commission has not decided the case.

It is worth recalling that the decision of the Executive Committee concerning the case of Kalkaba has clearly stated the possibility to convene new elections in case M. Kakaba is cleared of any charges.

As a matter of fact, it should be agreed, to leave the competent bodies, the CAS and the Ethics Commission in our case, to proceed with their investigations free from any pressure, before coming up, collectively, with the next steps to be decided ...

However, I will not miss the opportunity to contact the members of the Executive Committee to convene an informal general assembly alongside the General Assembly of ANOC in Prague to address the issue and decide what further action may be necessary to be taken”;

- iii. a further letter of Ms Aicha Garad Ali dated 3 September 2017, insisting that an “extraordinary”, not an “informal” General Assembly of ANOCA be convened, and underlining the following:

“... the points raised in the correspondence referred to above do not in any way lift any ambiguity, but rather introduce more confusion, and, in fact, should bring the NOCs and we the officials to think even deeper ...

- *The decision to disqualify and suspend Mr Hamad Kalkaba Malboum from the race for the presidency of ANOCA and from attending the meeting of the GA was arbitrary, as no investigation was carried out concerning this matter and the opportunity was not given to the General Assembly to deliberate on the matter. Such a decision should not have been taken by people who themselves were candidates or were inclined to supporting a particular candidate. This point is only mentioned in passing here as it DOES NOT CONSTITUTE THE MAIN SUBJECT OF OUR REQUEST*
- *The letter states also that this decision was not challenged by the General Assembly. This is because the General was INFORMED on 10 May 2017 that the case had been referred by the ANOCA Executive Committee to the IOC Ethics Commission AND NOT TO CAS. Delegates at the General Assembly were also not given the floor to speak. The General Assembly NEVER received the information regarding the oral communication of the IOC ethics commission of the 08 May 2018, and as such was deprived of the right to speak on this matter.*
- *The meeting of the GA only took place in a peaceful atmosphere thanks to mediations without which the situation would have been chaotic. Allow me to inform you that the President of the IOC was on the verge of canceling his coming due to the potentially not conducive meeting environment.*

- *The declaration of non-Jurisdiction by the IOC had been communicated to ANOCA on 08 May, TWO DAYS BEFORE the elections of 10 May. This information WAS NOT communicated to the General Assembly and would have allowed the Assembly to discuss and take a decision, being the supreme and Sovereign Organ of ANOCA; such a decision does not fall under the responsibility of the Executive Committee.*
- *According to the recommendations of the GA in Djibouti, an ANOCA ethics commission was to be set up. For this purpose, permit me to take our mother institution as an example; the setting up of such an important commission in my humble opinion cannot be the prerogative of the EXECUTIVE COMMITTEE but of the GENERAL ASSEMBLY. This Commission should be independent, its functions clearly defined and approved by the General Assembly, composed of persons with a track record of integrity and whose character as it relates to ethics should not be put to question. In the light of the information contained in the letter received, it is important that more detailed explanation should be provided to the National Olympic Committees who have the right to know when this commission was put in place, who defined its powers and who appointed its members. Without doubt this Commission which should be put in place by the General Assembly, will henceforth be able to sit and decide amongst other things on all issues that threaten to stigmatize the dignity of our Association.*
- *As far as what I am aware of, it was Mr. Kalkaba Malboum who made a case to CAS AND NOT ANOCA, this was a personal decision which does not in any way interfere as far as it concerns our request for the truth and transparency with regards to the events in Djibouti.*
- *Asking the African National Olympic Committees to await the decision regarding a case on which we have almost no information and which was a personal decision, will in no way provide answers to urgent questions of concern to us all – LACK OF TRANSPARENCY IN THE MANAGEMENT OF EVENTS IN DJIBOUTI*
- *Let me therefore; submit to you once again the points below from my previous communication in order to once again address any ambiguity in the interpretation of the request for the holding of an EXTRAORDINARY GENERAL ASSEMBLY and NOT an INFORMAL GENERAL ASSEMBLY in Prague in order not to mix up things. We insist that we deserve explanations regarding the fact that:*
 - * *A COMMUNICATION BY THE IOC ETHICS COMMISSION WAS MADE ON 08 MAY AND CONCEALED FROM THE GENERAL ASSEMBLY*
 - * *VIDEO CAMERA FOOTAGES DID NOT SHOW THAT ANY DOCUMENT WAS SLIPPED INTO THE HOTEL ROOM IN QUESTION*
 - * *THE GENERAL ASSEMBLY WAS DEPRIVED OF ITS RIGHTS OF DECISION CONCERNING THOSE EVENTS*
 - * *WE WERE ALL MISINFORMED AND WE HAVE THE RIGHT TO DEMAND ANSWER”;*

- iv. a letter dated 7 September 2017 of the President of the National Olympic Committee of South Sudan to the Secretary General of ANOCA, supporting the request of an extraordinary meeting of the General Assembly of ANOCA in order to answer the following questions:

- “ *Why this important information was communicated orally, and not documented in writing which would had cost only one line that “THIS IS EXCLUSIVELY AN INTERNATAL [sic!] MATTER OF ANOCA” and send by internet mail.*
- *And if so, why ANOCA did not declared it to the house before election, because it could either had been transferred to ANOCA Legal and Ethic Commission or discussed immediately or deferred the election till the issue resolves thoroughly”;*
- v. a notice sent by the Secretary General of ANOCA calling an Extraordinary General Assembly of ANOCA for 3 November 2017.
79. On 8 March 2018, the Respondent’s attorney (Dr Carrard) informed the CAS Court Office that he had just received a letter sent on 7 March 2018 by Mr Mustapha Berraf, 1st Vice President of ANOCA, to the members of the ExCo, informing them of the appointment of Mr Eric Vazey as attorney to represent ANOCA in these proceedings. The Respondent’s attorney disputed the authority of Mr Berraf and of the members of the ExCo to interfere in the proceedings, since ANOCA, according to its Statutes, was represented in the arbitration by Mr Palenfo in his capacity as President.
80. On 12 March 2018:
- i. Dr Carrard returned to the CAS Court Office a copy of the Order of Procedure signed on behalf of the Respondent, indicated that the hearing would be attended by Mr Palenfo and by Mr Mahamed Azzoug, his assistant, and confirmed the list of witnesses submitted on 12 January 2018;
 - ii. Mr Berraf informed the CAS Court Office that Mr Vazey, attorney-at-law in Geneva, had been appointed by the ExCo to represent ANOCA in this arbitration procedure, transmitting copy of the relevant “*procuration*” and indicating that the powers of Mr Palenfo had been suspended pending the resolution of the appeal filed by Mr Malboum;
 - iii. the Appellant’s attorneys indicated the persons attending the hearing on behalf of the Appellant.
81. On 13 March 2018, the CAS Court Office requested from Mr Berraf copy of the ExCo decision mentioned in his letter of 12 March 2018.
82. On 13 March 2018, the CAS Court Office also invited the Respondent to clarify the situation within ANOCA.
83. On 14 March 2018, the Secretary General of ANOCA, Eng. Ahmed Abou Elgasim Hashim, lodged with the CAS Court Office “*a record of the consultations undertaken within the framework of the appointment of a new Counsel to represent ANOCA*” in the CAS arbitration.
84. On 19 March 2018, Dr Carrard informed the CAS Court Office of the termination of his mandate to represent ANOCA in this arbitration and forwarding in that regard a “*self-explanatory*” letter signed by Mr Palenfo. Such letter, in its English translation, reads as follows:

- “1. *Clause 29 of the ANOCA Statutes provides that the President of ANOCA may institute legal proceedings (the French version of the Statutes, which prevails, reads “ester en justice”). As soon as Mr. Kalkaba Malboum submitted an appeal against the decision of May 6th, 2017, of the Executive Committee of ANOCA – decision signed by Mr. Mustapha Berraf, I have provided for ANOCA’s representation in this matter in accordance with the Statutes of ANOCA and according to what I consider to be the letter’s legitimate interest. To that effect, I have instructed Me François Carrard, attorney in Lausanne. I hereby recall for all purposes that the prayer submitted by Mr. Kalkaba Malbourn (cf. Appeal Brief of November 17th, 2017 and Order of Procedure) aim exclusively at the decision of May 6th, 2017, of ANOCA’s Executive Committee and not those decisions taken by the General Assembly of ANOCA in Djibouti on May 9th, 10th, and 11th, 2017, in particular my election to the presidency of ANOCA. I also hereby recall for all purposes that I am the President in exercise of ANOCA, office which has been confirmed to me on November 3rd, 2017 in Prague, the question of the scope of my powers being reserved.*
2. *Recently, the Secretary general of ANOCA (cf. his letters of 19th February and 14th March 2018 to yourself), as well as Mr. Mustapha Berraf, acting on behalf of ANOCA’s Executive committee, have intervened in the procedure by taking various initiatives in the name of ANOCA, whilst challenging my powers. As I am anxious not to hamper the smooth functioning of arbitral justice and to avoid the projection, in front of CAS, of a dispute which is not submitted to it, acting furthermore in a spirit of democratic calming, I have taken the following decisions:*
- 1) *Whilst personally reserving all my rights consecutive to the abovementioned interventions by the Secretary general and the Executive Committee of ANOCA, in this procedure, I renounce, effective immediately, to represent ANOCA in the said above-mentioned procedure. I have instructed Mr. François Carrard to terminate his mandate, which he has accepted. I thank him for his professionalism.*
 - 2) *I leave to Mr. Berraf and his colleagues the responsibility of representing ANOCA for the continuation of the above-mentioned procedure.*
 - 3) *I confirm for all purposes that I hereby reserve all my rights, both in my personal capacity as in my position of President of ANOCA, including the right to avail myself of this letter in all circumstance.*
 - 4) *In the name of ANOCA, I hereby ask you to accept and convey to the CAS my apologies for the complications which may have been caused by the intervention, without my knowledge, of the Secretary general and of members of the Executive committee of ANOCA in this procedure”.*
85. On 28 March 2018, Mr Vazey confirmed to the CAS Court Office his appointment to represent ANOCA in the pending arbitration and requested to be provided with a full copy of the case file.
86. On 28 March 2018, the CAS Court Office transmitted by courier to Mr Vazey a copy of the entire file.
87. On 30 March 2018, the Respondent’s (new) attorney indicated that the following witnesses would testify at the hearing of 13 April 2018: Mr Tomas Amos Ganda Sithole, Mrs Matlohang Moiloa-Ramoqopo and Mr Ahmed Abou Elgasim Hashim.

88. On 6 April 2018, the Respondent's (new) attorney requested the Panel to postpone the hearing "for a minimum of one month", in light of the recent appointment and receipt of the entire file and in order to properly defend his client's interests.
89. On 9 April 2018, the Appellant objected to the Respondent's request for postponement.
90. On 9 April 2018, the Respondent replied to the Appellant's letter of the same date and insisted in its request that the hearing be postponed.
91. On 9 April 2018, the CAS Court Office advised the Parties that the Panel had decided to maintain the hearing. At the same time, the Respondent was invited to submit summaries of the expected testimonies of its witnesses by the next day.
92. On 10 April 2018, the Respondent indicated the names of the witnesses to be heard at the hearing: Mr Tomas Amos Ganda Sithole, Mr Joao Manuel Da Costa Afonso Alegre and Mr Ahmed Abou Elgasim Hashim, called to testify on specific facts described in the Respondent's answer of 12 January 2018.
93. On 11 April 2018, the Appellant's attorneys informed the CAS Court Office that the Respondent's counsel had indicated that he did not have any question for Lord Sebastian Coe.
94. On 11 April 2018, the Respondent's counsel confirmed that he did not have any question also for Mr Sam.
95. On 11 April 2018, the Respondent's counsel, in another email to the CAS Court Office, indicated that Mr Sithole, previously indicated as a witness, could not appear at the hearing. He therefore submitted an "Affidavit" signed by Mr Sithole.
96. On 13 April 2018, a hearing was held in Lausanne, at the CAS offices. The Panel was assisted at the hearing by Mr José Luis Andrade, CAS counsel. The following persons attended the hearing:
 - i. for the Appellant: Mr Malboum in person, assisted by Ms Potts, counsel, and Mr Murray, legal representative;
 - ii. for the Respondent: Mr Vazey, counsel.
97. At the opening of the hearing, the Respondent's counsel confirmed that he did not have any question for Mr David Ojong, a witness called by the Appellant. Mr Ojong was therefore allowed to attend the hearing. Then, after introductory statements by counsel, the Panel heard declarations from Mr Malboum, Mr Da Costa Afonso Alegre and Mr Elgasim Hashim. All the witnesses confirmed the facts on which they were respectively called to testify.
98. The declarations heard by Panel can be summarized as follows²:

² The summary which follows is intended to give an indication of only a few key points touched at the hearing. The Panel emphasises that it considered the entirety of the declarations made at the hearing.

- i. Mr Malboum described the events of the night of 5 May 2017, when he was first confronted with the charge of having violated ethical rules, as well as the extraordinary session of the ExCo of 6 May 2017. In that respect, Mr Malboum declared that the minutes of such session of the ExCo are not correct, as they mention declarations he never made. In any case, Mr Malboum denied having paid anybody to “buy” votes and having requested support from the Government of Cameroon;
 - ii. Mr Da Costa Afonso Alegre confirmed that the Decision was taken within 24 hours of discovering the documents on which it was based, but underlined the peculiarities and urgency of the situation, the fact that Mr Malboum had admitted the authenticity of those documents, and the clear wording of the March Document, which mentioned the “motivation” of voters. Mr Da Costa, then, declared that, at the time the Decision was taken, and the General Assembly was held in May 2017, he had no knowledge of the answer of the IOC Ethics Commission, of which he was informed only in late October 2017;
 - iii. Mr Elgasim Hashim referred to the communication he had received from the former Secretary General of ANOCA, indicating that the minutes of the extraordinary session of the ExCo of 6 May 2017, as well as the minutes of the General Assembly in Djibouti were not correct and had not been properly approved.
99. The parties, next, were invited to make submissions by their counsel in support of their respective cases. In that context:
- i. the Respondent’s counsel declared that ANOCA admitted that no evidence existed to support the conclusion that Mr Malboum had paid bribes to “buy” votes for the election as President of ANOCA, and that the Decision was affected by procedural defects, since the organ competent to issue the Decision was – according to the ANOCA Statutes – the General Assembly;
 - ii. the Appellant’s counsel, while acknowledging the Respondent’s position, requested that an award be rendered by the Panel confirming that Mr Malboum had committed no ethical violation, and imposing on the Respondent the costs of the arbitration and a contribution to the Appellant’s expenses;
 - iii. the Parties, invited by the Panel, agreed on the following joint request for relief:
“Relief sought:
 - a. *a declaration that ANOCA’s Decision of 6 May 2017 is annulled and that all sanctions against Mr Malboum are expunged;*
 - b. *a declaration that given that Mr Malboum has not committed any wrongdoing, ANOCA shall comply with the Resolution passed at the Extraordinary General Assembly on 3 November 2017 that a new election for president (open to all candidates) shall take place in accordance with ANOCA Statutes; and*
 - c. *the costs of the arbitration process and the Appellant’s legal fees be paid by the Respondent”.*
100. At the conclusion of the hearing, finally, the Parties expressly stated that their right to be heard

and to be treated equally in the CAS arbitration proceedings had been fully respected.

IV. THE POSITION OF THE PARTIES

101. The following outline of the Parties' positions is illustrative only and does not necessarily comprise every submission advanced by the Parties. The Panel confirms, however, that it has carefully considered all the submissions made by the Parties, whether or not there is specific reference to them in the following summary.

A. The Position of the Appellant

102. In his appeal brief, Mr Malboum requested the following relief:

- a. a declaration that ANOCA's Decision of 6 May 2017 is annulled;*
- b. a declaration that ANOCA should comply with its statement that a new election for president would take place if Mr Malboum were found not to have committed any wrongdoing;*
- c. a declaration that any and all sanctions against Mr Malboum are lifted;*
- d. a declaration that ANOCA acted in bad faith and in breach of contract; and*
- e. the costs of the arbitration process and the costs of his legal fees in bringing this appeal be paid by the Respondent".*

103. As mentioned above, however, at the hearing the Appellant modified his request for relief, by seeking, jointly with the Respondent, from the Panel:

- a. a declaration that ANOCA's Decision of 6 May 2017 is annulled and that all sanctions against Mr Malboum are expunged;*
- b. a declaration that given that Mr Malboum has not committed any wrongdoing, ANOCA shall comply with the Resolution passed at the Extraordinary General Assembly on 3 November 2017 that a new election for president (open to all candidates) shall take place in accordance with ANOCA Statutes; and*
- c. the costs of the arbitration process and the Appellant's legal fees be paid by the Respondent".*

104. Notwithstanding the modification, the essence of the Appellant's position consists in a challenge to the Decision, because it *"is unsound as a matter of substantive law and completely disregards fundamental principles of law as well as ANOCA's own statutes"*. In the Appellant's opinion, *"this is, in essence, a political dispute, which has involved an abuse of power by the incumbent President and Executive Committee for the purpose of excluding the only other candidate standing in the election for president"*.

105. The reasons advanced in support of Mr Malboum's contentions and requests can be summarised in four main points:

- i. the principle of autonomy of sport does not prohibit government support for a candidate for the presidential elections *per se*;
- ii. there is no evidence establishing the allegations of bribery;

- iii. the ExCo did not have authority to adopt the Decision and/or to impose the sanctions;
 - iv. the Decision is affected by procedural defects.
106. Preliminary to his explanations in support of such grounds for the challenge of the Decision, the Appellant mentioned the factual background of his relations with the Government of Cameroon and underlined that, since he had formerly been a Senior Officer in the Cameroon army, he was obliged to seek the Cameroon Government's approval to be able to stand for ANOCA president. Then, due to the significant cost of campaigning for a prestigious position such as president of ANOCA, particularly the costs of travelling to campaign for support, Mr Malboum was granted financial assistance from the Cameroon Government. Mr Malboum provided a detailed report to the Cameroon Government dated 27 March 2017 to account for the financial support by explaining what steps had been taken as part of the campaign. In April 2017, the Cameroon Government provided CFA 186,285,700 (approximately USD 300,000) towards the costs of his campaign. However, Mr Malboum denied that this was in breach of any rules. Further, Mr Malboum strongly denied having paid any money to "buy" votes.
107. The points in support of the appeal were explained as follows:
- i. there is no rule clearly setting out a prohibition for candidates running for President of ANOCA from receiving governmental support for their campaign, whether financial or logistical. Therefore, ANOCA had to invoke only a "*purported breach of the broad principle of autonomy of sport*". However, Mr Malboum argued that this approach cannot be justified for a number of reasons:
 - the principle of autonomy of sport does not prohibit all forms of governmental support within the Olympic Movement: "*in fact, government cooperation and support is welcomed in many aspects*". For instance, Article 27.5 of the Olympic Charter provides that NOCs may cooperate with governmental bodies to fulfil their mission; in addition, "*bids to host the Games are always supported by governments and involve significant governmental support, financially, logistically and politically*". Moreover, the ANOCA President, Mr Palenfo, is an example of governmental support himself: being a Minister of State in the Ivory Coast, and consequently having a role in the Ivorian Government, he has the inevitable Ivorian Government's support. Nevertheless, the purpose of the principle of autonomy is to prevent undue political influence. However, no such suggestion or evidence is present in the case;
 - relying on the principle of autonomy in this case would infringe the fundamental principle that rules must be clear, precise and capable of being predicted at the time of the relevant conduct. However, numerous high profile officials in entities recognised by the IOC received government support for their campaigns and were not sanctioned. Therefore, Mr Malboum could and would not have been able to know that government support for a campaign supposedly infringed any rules;
 - the *contra proferentem* principle implies that any ambiguity or uncertainty in a rule must be interpreted against the legislator, in this case ANOCA;
 - various CAS rulings support the conclusion that the ANOCA approach is contrary to general principles of law, which the CAS is required to uphold;

- by finding that Mr Malboum had infringed the ANOCA Statutes and/or the IOC Code of Ethics as a result of receiving government support, ANOCA failed to comply with its obligation to apply its rules honestly, openly and in good faith and not capriciously or arbitrarily, given that Mr Palenfo also benefited from the support of his government;
- ii. the ExCo failed to provide any evidence that demonstrated any alleged bribe in exchange for votes. The evidence ANOCA solely relied upon are some cherry-picked paragraphs of the March Report, that Mr Malboum himself prepared in an official document for the Government of Cameroon, and the Financial Document. However, neither of the documents provide evidence of bribery. The Report illustrates Mr Malboum's engagement in "*usual campaign activities, i.e. visiting relevant people to lobby for support*". Additionally, the Appellant notes that there are no details regarding "*for example, who was supposed to have been bribed, what money was paid or when any such bribe took place*". A charge of bribing in exchange for votes is a serious charge. In order to prove the charge, cogent evidence is required. However, no evidence to support a charge of bribery can be substantiated, and therefore the charge cannot be proven to any standard of proof. And in this case, in the absence of a prescribed standard of proof, it is submitted that the standard of proof should be the "comfortable satisfaction of the panel". The standard is therefore higher than the balance of probabilities but lower than the criminal standard of proof. Further, the more serious the allegation, the greater the degree of evidence required to achieve "comfortable satisfaction." In this case, the allegation that Mr Malboum paid for votes is a very serious allegation: a finding that he engaged in such conduct involves a finding of dishonesty and corruption;
- iii. in accordance with the ANOCA Statutes, the ExCo did not have the authority to make the Decision or to impose the sanctions. The Statutes do not set out any sanctions that may be imposed on individuals and, under Articles 43.1 and 51 of the Statutes, the Decision should have been submitted for ratification at the next General Assembly, *viz.* at the General Assembly of 9-11 May 2017 held in Djibouti. Instead, the ExCo "*deliberately misled Mr Malboum and ANOCA members*" by failing to update them in regards of the IOC Ethics Commission's decision to decline jurisdiction over the case before the ANOCA General Assembly took place and this specific conduct seemed to have been taken in order to prevent the Appellant from standing in the election;
- iv. the Decision is undermined by serious procedural flaws:
 - the "*hearing*" before the ExCo was affected by bias and was neither independent nor fair. The "*hearing*" was primarily chaired by Mr Palenfo, the only candidate running against Mr Malboum for the election as President, which demonstrates a conflict of interest. Additionally, the members of the ExCo were appointed by Mr Palenfo. Thus, the ExCo cannot be considered to be a neutral adjudicator;
 - in the morning of 6 May 2017, the Appellant was informed only on short notice of the extraordinary session of the ExCo, was not provided with details of the case against him and was given no time to obtain legal advice or to prepare his defence;
 - when asked about the source of receipt of the March Report and the Financial Document, two confidential documents addressed to the Government of

Cameroon, the ExCo refused to provide an adequate response, leaving Mr Malboun to speculate that the documents were received in breach of confidentiality. In any case, the explanation contained in the minutes of the extraordinary session of the ExCo of 6 May 2017, given by Mr Boussayene that he found those documents “*pushed under the door*” of his hotel room “*some minutes after 09:00PM*”, is “*not true*”, because, as indicated by Ms Garad in her letter of 3 September 2017 (§ 78(iii) above), “*the video camera footages did not show that any document was slipped into the hotel room in question*”;

- ANOCA failed to specify clearly on what basis Mr Malboun was alleged to have infringed the rules and failed to provide a detailed reasoned Decision;
- ANOCA failed to comply with a number of provisions of the IOC Code of Ethics and Governance principles, including failing to adopt a code of ethics, establish an ethics commission or publish its rules and regulations;
- the “*disciplinary procedure breached ANOCA’s own Statutes as the Executive Committee did not have the authority to make the Decision and impose the Sanction without referring the case to the General Assembly*”.

108. Mr Malboun received no further news from ANOCA regarding the status of his case before the IOC Ethics Commission. In fact, it has subsequently been discovered that the IOC Ethics Commission informed ANOCA on 8 May 2017 that it did not have jurisdiction over the matter and would not investigate it. Despite this information being received in time for Mr Malboun to present his case to the General Assembly for it to determine his case, the IOC Ethics Commission’s position was not communicated to Mr Malboun or the General Assembly by the ExCo. Mr Malboun only became aware that the IOC Ethics Commission had declined jurisdiction when his counsel contacted the IOC Ethics Commission, which provided a copy of the communication sent to ANOCA: ANOCA’s deliberate actions misled the General Assembly and Mr Malboun by failing to communicate the IOC Ethics Commission’s decision. Therefore, the Respondent’s contention that no objection was raised at the General Assembly in Djibouti by fully informed ANOCA members (and thus that the Decision was ratified by the General Assembly) is plainly wrong, because vital information was not given to the ANOCA members. It could not be accepted, therefore, even as a matter of Nigerian law, that the General Assembly would have reached the same conclusion as the ExCo.
109. As a result of the unlawful conduct of ANOCA, the Appellant suffered loss and damages not only on a financial level, but also to his reputation. “*Where disciplinary decisions are taken by an independent panels, there is no contractual relationship between the accused and the panel. Consequently, the accused cannot seek damages even if the decision is manifestly unfair. However, in this case, ANOCA failed to put in place an independent ethics commission and proceeded to conduct the Hearing and make the Decision itself. In doing so, it left itself open to a claim for damages*”. Mr Malboun would therefore be entitled to damages as a result of ANOCA’s breaches of conduct to compensate the loss and damages he has suffered. However, Mr Malboun, as he is “*strongly committed to improving sport in Africa, which includes seeking increased funding for sport*”, does not wish to ask this CAS Panel to award damages.
110. In summary, Mr Malboun argued that in light of the ExCo misconduct in following the procedures, the lack of evidence for the “*extremely serious charge, involving allegations of corruption and*

dishonesty”, the unfounded charge of infringement of rules as result of the received government support, and the non-compliance with the necessity of predictability of rules, the relief sought should be granted.

B. The Position of the Respondent

111. In its answer, ANOCA requested the CAS to render:

- I. *A declaration that Mr. Kalkaba Malboum’s Appeal is entirely dismissed.*
- II. *A declaration that Mr. Kalkaba Malboum is suspended from all activities within ANOCA and the African Olympic Movement for a period of four years beginning on May 6th, 2017.*
- III. *The costs of the arbitration process and the costs of the Respondent’s legal fees to be paid by the Appellant”.*

112. As mentioned above, however, also the Respondent’s position was modified at the hearing. In essence, the Respondent recognized that the Appellant’s appeal should be granted, and therefore sought, jointly with the Appellant, from the Panel:

- a. *a declaration that ANOCA’s Decision of 6 May 2017 is annulled and that all sanctions against Mr Malboum are expunged;*
- b. *a declaration that given that Mr Malboum has not committed any wrongdoing, ANOCA shall comply with the Resolution passed at the Extraordinary General Assembly on 3 November 2017 that a new election for president (open to all candidates) shall take place in accordance with ANOCA Statutes; and*
- c. *the costs of the arbitration process and the Appellant’s legal fees be paid by the Respondent”.*

113. At the hearing, in fact, ANOCA admitted that no evidence existed to support the conclusion that Mr Malboum had paid bribes to “buy” votes for the election as President of ANOCA, and that the Decision was affected by procedural defects, as it should have submitted to the General Assembly for ratification.

114. Prior to such modification, the Respondent’s position was exactly the opposite: in essence it wanted the appeal to be dismissed and the Decision confirmed.

115. In support of its initial request, the Respondent contended that “*the central question*” in this arbitration could “*be expressed in simple terms: taking into account all facts and circumstances known prior to the presidential election of May 10th, 2017 in Djibouti, was ANOCA entitled to exclude the Appellant from the election and have him suspended, and if so on which legal basis?*”. In the Respondent’s initial opinion “*the answers to such questions*” were “*affirmative*”.

116. As to the factual background, the Respondent underlined *inter alia* that:

- i. *“a totally unexpected event occurred during the late evening of Friday, May 5th, 2017 at the Hotel Djibouti Palace Kempinski. Mr. Boussayene, President of the National Olympic Committee of Tunisia and Chairman of the Juridical Commission of ANOCA, declared that whilst returning to his hotel room on the evening of May 5th, 2017, he found behind his room’s door two documents dated February 3rd and March 27th, 2017. ... As soon as Mr. Boussayene was aware of the content of both documents, he*

immediately informed ANOCA's second Vice-President, Mr. João Costa Alegre Afonso and invited Mr. Malboum to join them in Mr. Boussayene's room in order to discuss an important matter. ... Mr. Malboum acknowledged the authenticity of both documents but insisted on the fact that there were internal correspondences between him and his Government and that he had not yet undertaken any act of motivation of any electors, adding that he was ready to assume his responsibility and ready to face sanctions, declaring himself willing to definitely leave the Olympic and Sport Scene if necessary. ... Mr. Malboum also alleged that the other candidate, Mr. Palenfo, would also have been supported by his own Government. ... Facing the strange and incomprehensible attitude of Mr. Malboum and in view of a most serious situation, Mr. Boussayene and Mr. Alegre Afonso went to inform the President of ANOCA who was accommodated in the same hotel. The latter decided then to convene an Extraordinary Session of the ANOCA Executive Committee on May 6th, 2017 at 11:00 am";

- ii. *"at the time these unexpected events happened, there was no Ethics Commission within ANOCA. The reason for this situation is both simple and logic: the establishment of an Ethics Commission for ANOCA was instituted for the first time in the 2016 version of ANOCA Statutes. Inasmuch as the ANOCA President is responsible for appointing the members of the said commission, President Palenfo wanted to ensure that a newly appointed Ethics Commission should be appointed by the President elected in May 2017. It would be up to the President elected at such opportunity to appoint an Ethics Commission. On the other hand, there was no urgent ethical matter to be considered between the 2016 and 2017 General Assemblies".*

117. With regard to the merits of the dispute, the Respondent underlined the following:

- i. the Appellant was not independent from his Head of State: *"the fact that a retired public servant has to seek permission ... in order to run for an office within an international non-governmental sports organisation ... denotes a total lack of autonomy and independence";*
- ii. Mr Malboum's candidature was flawed in the first place. A letter from the Government of Republic of Cameroon to the Government of Republic of Tunisia announced Mr Malboum's candidature and explicitly asked to support it. Consequently, the announcement of Mr Malboum's candidature was done through the Cameroonian Government and not through the National Olympic Committee of Cameroon. *"Mr. Boussayene asked for clarification ... Mr. Malboum ... never responded, in spite of the seriousness of the concerns expressed"*. Hence, the candidature was not presented in compliance with Article 25 of the ANOCA Statutes and demonstrates the control by the Government of Cameroon;
- iii. the ExCo's resolution to submit the case of the Appellant to the IOC Ethics Commission instead of the ANOCA Ethics Commission was justified, as the latter at the time of the events had not been established yet. Furthermore, the absence of an ANOCA Ethics Commission did not constitute any violation of the ANOCA Statutes. Therefore, the referral to the IOC Ethics Commission was *"logical and appropriate at the time and in view of the circumstances"*. Additionally, as a consequence of the IOC Ethics Commission's response rendered on 8 May 2017, the Decision of the ExCo against Mr Malboum remained in force at the opening of the General Assembly;
- iv. no member of ANOCA raised any kind of question or issue relating Mr Malboum's situation during the General Assembly. Nor was any objection raised during or before

- the voting procedure, even though everyone present at the General Assembly should have been informed. Mr Berraf sent a detailed account in writing to all Presidents and Secretary Generals of all National Olympic Committees in Africa regarding the disqualification of Mr Malboum. Additionally, the Appellant himself sent a letter to the same, informing them that he deemed his application to be valid and that he was still to be considered as a candidate for the presidency of ANOCA;
- v. the “*alleged lack of ratification by the General Assembly is misleading and an abusive argument*”, as all acts of communication prior to the General Assembly provided ample and sufficient information to enable any member to raise any question or submit any intervention prior or at the General Assembly. No formal item concerning a ratification of the Decision was inserted in the Agenda; however, “*it is obvious that during all that period and with all information received, every ANOCA member, without exception, ... knew that Mr Malboum had been excluded or suspended. Any member ... had ample time to raise the matter*”. Therefore, the General Assembly “*validated the Executive Committee decisions and cured any hypothetical flaw*”, and “*it would be abusive or excessive formalism to challenge ... validity*”;
- vi. the case of Mr Malboum showed that he had voluntarily accepted to submit to intolerable pressures from his Head of State and Government. This was proven by:
- Mr Malboum’s obligation to seek permission from the Head of State even though he was retired from public service, hence demonstrating a lack of independence that would “*be in itself sufficient to justify his exclusion and suspension*”;
 - the Government of Cameroon’s deliberate interference in an ANOCA election process by informing foreign governments of its decision to present Mr Malboum’s candidature;
 - Mr Malboum’s request for total funding of his campaign and his reporting back to his government, both of which are further indications of his dependence;
 - the language used in the March Report “*referring to the necessity of the “motivation” of sport personalities*”, which represents an ambiguity;
- vii. “*in short, the red line has been crossed several time by both the Government of Cameroon and Mr. Malboum. ... ANOCA had all good reasons to take the decisions of exclusion from the candidature and suspension of Mr. Malboum. Any other decision would have constituted an acceptance of an intolerable interference and breach of the principle of autonomy*”.
118. The Respondent’s initial position was based on principles set by sporting regulations as well as on Nigerian law:
- i. as to the first aspect, the Respondent contended that all NOCs, including those represented within ANOCA, have a strong obligation to fully comply with the Olympic Charter and enforce it as much as they can; and in that regards, the Respondent referred to:
- Article 6.1 of ANOCA Statutes, which provides that ANOCA has the mission to “*Contribute to developing, fostering and defending the Olympic Movement and its autonomy in Africa, in pursuance of the Olympic Charter*”;

- Fundamental Principle 5 of Olympism, as defined in the Olympic Charter, which provides that *“Recognizing that sport occurs within the framework of society, sports organizations within the Olympic Movement shall have the rights and obligations of autonomy, which include freely establishing and controlling the rules of sport, determining the structure and governance of their organizations, enjoying the right of elections free from any outside influence and the responsibility for ensuring that principles of good governance be applied”*;
- Rule 27.6 of the Olympic Charter, which provides that *“the NOCs must preserve their autonomy and resist all pressures of any kind, including but not limited to political, legal, religious or economic pressures which may prevent them from complying with the Olympic Charter”*;

ii. with respect to Nigerian law, the Respondent submitted the following:

“It is trite law that where in supervening events, a delay may cause an irreparable damage to a person, property or organization, a decision taken to avert same in utmost good faith would be considered binding as was the case in the absence of an Ethic Commission.

Based on Article 51 of the ANOCA statutes, the Executive Committee of the ANOCA has the mandate to, amongst others, sanction the offences listed in Article 42 of the Statutes of the ANOCA in the absence of an Ethics Commission. This statutory obligation is to be carried out either by warning/reprimand or suspension/expulsion of a member. Haven given the power ‘de jure’ to act in the capacity of a disciplinary committee on matters that boarder on the violation of the Constitution and Code of Ethics of ANOCA as well as the Olympic Charter, every decision taken by it is binding on the person against whom the decision is taken.

The Executive Committee sat de jure (as of right by virtue of article 51 of the Statutes) and decided de facto to disqualify Mr. Malboum’s candidature and, due to the urgency of the situation seen that the elective general assembly was imminent informed all the members of ANOCA which make up the General Assembly of the said decision by mail. The decision of the Executive Committee, which had been well known by all ANOCA members prior to the General Assembly, was neither opposed before or during such General Assembly. This means that the decision of the General Assembly would not have been any different, thus inferring an informal ratification. In the locus classicus of Cyril O. Osakue v. Federal College of Education (Tech) Asaba & 2 Ors, (2002) 7NWLR (pt 765) pg 222 (to be supplied as requested), where it was held that where the decision of a higher body is likely to be the same as that of the committee because of the clear facts and obvious outcome of the case, that decision will be held valid.

... due to the gravity of the offence and being that Mr. Malboum was accused of breaching one of the cardinal rules of ACNOA also strongly reflected in the IOC Charter, and the degree of urgency, considering that an elective general assembly was imminent, any delay would have been putting the personal interest of a single member above the general interest and reputation of the association and of the Olympic Movement in Africa.

Further, Mr. Malboum ... states that the presidents of all African NOCs, which constitute the General Assembly were informed by his letter and official communication from ACNOA of the situation and decision of the Executive Committee. These would amount to a request for them to step in in his favour. Nobody followed him. Does the fact that they did not bring his case during the Elective General Assembly which ran for two days not imply their agreement with same? Qui tacet consentire videtur.

We hereby submit that the decision of the Executive Committee was not in any way tantamount to an infringement under Nigerian law considering the facts above”.

119. In summary, the Respondent, taking into account all facts and circumstances known prior to the Presidential election of 10 May 2017 in Djibouti, considered it had jurisdiction to exclude the Appellant from the election and to suspend him.
120. Finally, Mr Palenfo's position as President of ANOCA was unanimously confirmed at the ANOCA General Assembly held on 3 November 2017 in Prague, whilst he was released from a number of executive tasks. In the Respondent's opinion, the fact that in Prague all members of ANOCA confirmed Mr Palenfo as President was "*quite significant*", as no ANOCA member challenged the Prague decisions which reconfirmed and validated Mr Palenfo's election.
121. Based on all circumstances of the case, the Respondent submitted that the only reasonable outcome of this dispute is a confirmation of the decisions taken in May 2017 in Djibouti and in November 2017 in Prague.

V. JURISDICTION

122. The jurisdiction of CAS is not disputed by the Parties and has been confirmed by the signature of the Order of Procedure.
123. 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 him prior to the appeal, in accordance with the statutes or regulations of that body".
124. For the purposes of Article R47 of the Code, Article 50 of the ANOCA Statutes provides the following:
"ANOCA recognizes the Court of Arbitration for Sport (CAS) as the body to which sports-related disputed relating to ANOCA may be referred".
125. Article 43.2 of the ANOCA Statutes also provides that:
"The disciplinary decisions can be appealed at the Court of Arbitration for Sport "CAS" in Lausanne, in accordance with the Sport Arbitration Code whose verdict shall be considered final".
126. The Panel, consequently, has jurisdiction to decide on the appeal filed by Mr Malboum against the Decision.

VI. ADMISSIBILITY

127. The statement of appeal filed by Mr Malboum complied with the requirements of Article R48 of the Code. The admissibility of the appeal is not challenged.

128. The appeal is therefore admissible.

VII. SCOPE OF THE PANEL'S REVIEW

129. According to Article R57, first paragraph of the Code,

“The Panel has full power to review the facts and the law. It may issue a new decision which replaces the decision challenged or annul the decision and refer the case back to the previous instance. ...”.

VIII. APPLICABLE LAW

130. The law applicable in the present arbitration is identified by the Panel in accordance with Article R58 of the Code.

131. Article R58 of the Code provides the following:

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

132. In the present case the “*applicable regulations*” for the purposes of Article R58 of the Code are, indisputably, those contained in the ANOCA Statutes.

133. As a result, ANOCA regulations shall apply primarily. Nigerian law, being the law of the country in which ANOCA is domiciled, applies subsidiarily.

IX. OTHER PROCEDURAL ISSUES

134. The present arbitration was started by Mr Malboum in order to have the Decision set aside. By such Decision, in fact, the ExCo excluded on 6 May 2017 Mr Malboum from the election to the position of ANOCA President, scheduled to take place on 9/10 May 2017: reasons for the measures adopted by the ExCo were alleged violations of the IOC and ANOCA codes of conduct, committed by Mr Malboum during his campaign to become the President of ANOCA.

135. In support of his challenge to the Decision, Mr Malboum submitted that no such violations had been committed: he had not bribed anybody to “buy” the votes to be elected; and the funding and support he received from his government were perfectly legal or, in any case, could not be the basis for the Decision. The Decision, in turn, was adopted, in Mr Malboum’s opinion, by a body that had no authority to pass it, and was affected by several other procedural flaws.

136. The appeal brought by Mr Malboum was originally resisted by ANOCA, that, in its written submissions before this Panel, requested the confirmation of the measures adopted by the ExCo: the support received by Mr Malboum contravened the rules and principles guaranteeing the autonomy of sport; the accusation of “paying for votes” was based on the ambiguous

wording of the March Document; and the Decision was (somehow) ratified by the General Assembly of ANOCA in Djibouti (May 2017) and Prague (November 2017).

137. As a result of the Parties' submissions, several issues had to be dealt with by this Panel, including a preliminary question. As mentioned, in fact, the way in which the statement of appeal was drafted (§§ 17-18 above) led the CAS Court Office to register the case as an appeal brought by Mr Malboum against Mr Palenfo. As a result, an issue arose as to the identification of the entity that had been named as a respondent by Mr Malboum. In that regard, after an exchange of written submissions by the Parties, the Panel decided, on 22 September 2017 (§ 44 above) to hold ANOCA, as represented by Mr Palenfo, to be the Respondent named by the Appellant in his statement of appeal and that the reasons for such decision would be stated in the final award.
138. In addition to addressing such issue, and giving reasons for the decision so adopted, the Panel was requested to verify whether:
 - i. Mr Palenfo had committed the violations for which he was found responsible; and
 - ii. the Decision was otherwise affected by any procedural defects leading to its setting aside.
139. At the hearing (§ 99 above), however, the Respondent's position changed dramatically. ANOCA no longer requested that the Decision be set aside, but invited the Panel to grant the relief sought by the Appellant, and therefore to annul the Decision. The Respondent, in that regard, admitted that Mr Malboum had committed no ethical violations and that the Decision was affected by procedural flaws.
140. The "U-Turn" in the Respondent's position led the Parties to submit a joint request for relief, both relating to the merits of the dispute and the awarding of the costs of this arbitration. The Panel was therefore requested to declare in an award that:
 - i. the Decision adopted by the ExCo on 6 May 2017 is annulled and that all sanctions against the Appellant are expunged;
 - ii. given that the Appellant has committed no wrongdoing, ANOCA shall comply with the resolution passed at the Extraordinary General Assembly on 3 November 2017 that a new election for President (open to all candidates) shall take place in accordance with the ANOCA Statutes;
 - iii. the costs of this arbitration and the Appellant's legal fees be paid by the Respondent.
141. In essence, therefore, the Parties are requesting this Panel to adopt a sort of "consent award" incorporating the terms of this joint request for relief.

X. MERITS

142. The Panel notes that under Swiss law an arbitral tribunal sitting in Switzerland has authority to issue an award embodying the terms of the parties' settlement, if the contesting parties agree to a termination of the dispute in this manner. The Panel's ratification of their settlement and its incorporation into an award serves the purposes of vesting the parties' agreement with a *res*

indicata effect and of enabling the enforcement of their agreement. In such context, it is the task of the Panel to verify the *bona fide* nature of the parties' agreement (a) to ensure that the will of the parties has not been manipulated by them to commit fraud and (b) to confirm that the terms of such agreement are not contrary to public policy principles or mandatory rules of the law applicable to the dispute.

143. As a result of the foregoing, the Panel does not have to specifically deal in this award with the questions that had to be answered (§§ 137-138 above): such questions are only relevant for the exercise of the control reserved to the tribunal incorporating the parties' agreement in an award, and within the limits of such control.
144. In that regard, after reviewing the terms of the Parties' joint request for relief, their respective pleadings and the evidence submitted by them, the Panel finds no grounds to object to the terms of the Parties' agreement and is satisfied that the Parties' joint request for relief constitutes a *bona fide* settlement of the dispute brought to its attention.
145. In fact, the Panel notes, beyond the Respondent's admissions at the hearing, that:
 - i. as to the issue of the identification of the respondent named by Mr Malboum in his statement of appeal, that ANOCA also in its written submissions never objected to its participation in this arbitration, and that the Panel's decision (to hold ANOCA to be the original Respondent) was based on a careful interpretation of the statement of appeal, drafted by Mr Malboum personally, to challenge a decision of ANOCA and mentioning Mr Palenfo only as representative of ANOCA;
 - ii. the evidence submitted by the Respondent did not allow it to establish a case of bribery against Mr Malboum. Besides the ambiguous wording of the March Document (for which Mr Malboum offered a credible explanation), no indications whatsoever were given as to how, when, to whom, and where the alleged bribes were paid (or at least offered);
 - iii. the Respondent did not establish any convincing and sufficiently clear legal basis for the finding of any infringement based on the support received by Mr Malboum and given by his government;
 - iv. the authority of the ExCo to issue the Decision is doubtful, as the Decision should, at least, have been submitted to the General Assembly for ratification, pursuant to Article 51 of the ANOCA Statutes, together with the information that the IOC Ethics Committee had decided not to take the case of Mr Malboum.
146. In other words, the relief requested jointly by the Parties corresponds to the Panel's findings based on the examination of the evidence on file and the Parties' written submissions. As a result, the relief requested should be granted.
147. In conclusion, the Panel holds that the Decision is to be set aside. Therefore, the sanction adopted by the ExCo against Mr Malboum is to be annulled, and a new General Assembly has to be called for the election of the new President of ANOCA, according to the terms already decided by ANOCA in its Session held in Prague on 3 November 2017.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by Mr Hamad Kalkaba Malbourn against the decision adopted by the Executive Committee of ANOCA on 6 May 2017 is granted.
2. The decision adopted by the Executive Committee of ANOCA on 6 May 2017 is annulled and that all sanctions against Mr Malbourn are expunged.
3. Given that Mr Malbourn has not committed any wrongdoing, ANOCA shall comply with the resolution passed at its Extraordinary General Assembly on 3 November 2017 that a new election for president (open to all candidates) shall take place in accordance with ANOCA Statutes.
4. (...).
5. (...).