



Arbitration CAS 2022/A/8758 Saifeldin Malik Bakhit Maki v. Al Merreikh Sudanese SC, Pharco SC, Sudanese Football Association (SFA) & Egyptian Football Association (EFA) & CAS 2022/A/8759 Pharco SC v. Al Merreikh Sudanese SC, Saifeldin Malik Bakhit Maki, SFA & EFA, award of 29 August 2022

Panel: Prof. Ulrich Haas (Germany), Sole Arbitrator

Football

Termination of the employment contract without just cause by the player

Standing to be sued

Effects of signing a contract allegedly null and void

1. **The issue of standing to be sued is a question of the merits and, thus, is governed by Article R58 of the CAS Code. It is a question that warrants a uniform interpretation, since it is inextricably linked to the contents of the FIFA rules and regulations. According to Swiss law in case of vertical disputes the standing to be sued rests solely with the association that has issued the decision in question. Vertical disputes are characterized by the fact that the association issuing the decision thereby shapes, alters, or terminates the membership relation between itself and the member concerned. Vertical disputes typically arise in disciplinary, eligibility or registration contexts. In all these cases the proper party to defend the decision on appeal and, thus, having standing to be sued is the association that has issued the decision.**
2. **A player who signs a contract waives the possibility to avail himself of the alleged nullity of the contract. It does indeed not make sense for the player to sign a contract that is null and void other than express his will that the agreement shall be binding despite the alleged grounds of nullity.**

I. PARTIES

1. Mr Saifeldin Malik Bakhit Maki (the “Player”) is a professional football player of Sudanese nationality.
2. Al-Merreikh Sudanese Sport Club (the or “Al Merreikh”) is a professional football club with its registered seat in Omdurman, Republic of the Sudan. The Al Merreikh is registered with the Sudanese Football Federation, which in turn is affiliated with the FIFA.
3. Pharco Sport Club (the “New Club” or “Pharco”) is a professional football club with registered office in Cairo, Egypt. Pharco is registered with the Egyptian Football Federation, which in turn is affiliated with the *Fédération Internationale de Football Association* (“FIFA”).

4. The Sudanese Football Association (“SFA” or “Third Respondent”) is the national governing body of the sport of football in Sudan with its registered headquarters in Khartoum.
5. The Egyptian Football Federation (“EFA” or “Fourth Respondent”) is the national governing body of the sport of football in Egypt with its registered headquarters in Cairo.
6. The Appellants and the Respondents are jointly referred to as the “Parties”.

II. FACTUAL BACKGROUND

7. Below is a summary of the main relevant facts, as established on the basis of the written submissions of the Parties, the evidence examined in the course of the proceedings and at the hearing. This background information is given 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.

A. Background Facts

8. In June 2018, the Player and Al Merreikh entered an employment contract valid until 10 June 2021.
9. On 11 April 2021, the Player and Al Merreikh signed a further contract valid from June 2021 until June 2024 (the “Contract”). The relevant parts of the Contract read as follows:

“Article 1 Employment Basis

This Contract legally governs the employment relationship between the Parties. This Contract is made on the Sudan Football Association employment contract issues to the SFA members from time to time. The Parties acknowledge and agree that as per SFA regulations it is mandatory to use this Contract. ...

...

Article 9 Contract Commencement and Termination

- (1) This Contract begins on 01/06/2021 and terminates on 01/06/2024.*
- (2) The validity of this Contract is subject to the specific approval of the Sudan Football Association and the confirmation that the Player is eligible to play (ratification of the Contract).*

Article 10 Termination by the Club or the Player

- (1) SFA regulations governing the termination of the contract and, where applicable, FIFA*

regulations in force from time to time apply.

(2) ...

(3) ...

(4) *If the Club terminates this Contract without having just cause, the Club shall pay to the Player compensation equal to the total amount of: 50,000 USD ...*

(5) *If the Player terminates the Contract without having just cause, the Player shall pay to the Club compensation equal to the total amount of 500,000 USD ...*

(6) *The Parties expressly agree that the compensation amounts stipulated ... under this Article ... are fair and respect the principles of parity and reciprocity of the Parties in light of the overall circumstances related to the Contract's conclusion and execution. ...*

Schedule 1

1. The Contract has a total value of USD 250,000 ...

2. Concerning the season .../ ... the Player shall receive from the Club the total as follows:

a. Signing-on fee: 250,000 USD ... To be paid upon signing this contract.

b. Monthly salary: The sum of: 100,00 SDG ... to be paid at the end of each month for the period from until ...”.

10. Furthermore, in April 2021, the Al Merreikh was banned from registering any new professional players because of a decision of the SFA Disciplinary Committee.

11. In June 2021, the Player was injured in a match of the Sudan national team and underwent treatment in Egypt. He returned to Al Merreikh on 27 August 2021.

12. On 1 September 2021, Pharco and the Player entered into an employment contract (“New Contract”). The relevant parts of the New Contract read as follows:

“Second: The two parties agreed on value of the contract gross amount of USD 1,150,000 to be distributed as follows:

First season value 20201/2022 an amount of USD 350,000 ...

Second season value 2022/2023 an amount of USD 400,000 ...

Third season value 2023/2024 an amount of USD 400,000. ...”.

13. On 2 September 2021, Pharco – through the EFA – requested the issuance of the International Transfer Certificate (“ITC”) for the Player via the Transfer Matching System (“TMS”).
14. On the same day, Al Merreikh informed the SFA that the Player had signed the Contract with it.
15. The SFA replied to Al Merreikh’s letter of 2 September 2021 on the same day as follows:

“We would like to inform you that footballers’ contracts approval are not carried out on period other than registration duration. such process shall be initiated after registration duration commencement and system open”.

16. On 7 September 2021, the SFA sent the ITC to the EFA.
17. Following the issuance of the ITC, Pharco registered the Player with the EFA.
18. On 23 September 2021, a criminal complaint was filed against the Player with the Attorney General of Khartoum Prosecution (“The Criminal Complaint”). The Criminal Complaint reads as follows:

“I, the Complainant Attorney hereby certify that this defendant received sum of 350 Thousand Dollars from my principal - against registration to play for the signatory's club for 7 years. He received the sum of money and did not sign for the signatory, but, he signed to play in a team outside Sudan.

- *He received the money in Khartoum*
- *I have witnesses on this incident”.*

19. On 20 October 2021, Al Merreikh sent a letter to Pharco advising the latter as follows:

“The board of directors of AL Merriekh Sporting Club sent you a warm greetings. We would like to inform you that we, in elected Al-Merreikh Club headed by Mr. ADAM ABDALLAH ADAM, haven’t authorize or delegate any group to speak on behalf of Al-Merreikh Club regarding Footballer SEIF ELDEIN MALEK. In addition, we inform you that the group which is leaded by HAZEM MOSTAFA IBRAHIM is illegal and shall not deem an body for solving the current problem. This letter is notifying not to deal with illegal body. We remind you that this email which is used to send you the message is club official mail. We filed a claim to FIFA and any discussion shall be with legal administration not group which is seeking to meet you”.

B. The Proceedings before FIFA

20. On 28 September 2021, the Al Merreikh filed a claim before the FIFA Dispute Resolution Chamber (“DRC”) against the Player and Pharco SC. Therein, Al Merreikh requested the DRC to determine as follows:

“a. The Player shall pay to the Claimant [Al Merreikh]¹ compensation equal to total amount of USD 1,500,000

b. sporting sanctions shall be imposed on the player

As the Pharco found to be induced the Player to breach his contract with the Claimant during the protected period and in accordance to art. 17.2-17.4 R.STP.

we request that:

a. Sporting sanctions shall be imposed on Pharco.

b. The second respondent and the first respondent [Al Merreikh] shall be jointly and severally liable for the compensation payment”.

21. On 16 February 2022, the DRC issued its decision (the “Appealed Decision”). The operative part of the Appealed Decision reads as follows:

“1. The claim of the Claimant, Al Merrikh Sport Club, is partially accepted.

2. The First Respondent, Saifeldin Malik Bakhit Maki, has to pay to the Claimant, within 30 days as from the date of notification of this decision, USD 500,000 as compensation for breach of contract without just cause plus 5% interest p.a. as from 28 September 2021 until the date of effective payment.

3. The Second Respondent, Pharco SC, is jointly and severally liable for the payment of the compensation mentioned under point 2 above.

4. Any further claims of the Claimant are rejected.

5. Full payment (including all applicable interest) shall be made to the bank account indicated in the enclosed Bank Account Registration Form.

6. The First Respondent and the Second Respondent shall provide evidence of payment of the due amount in accordance with this decision to psdfifa@fifa.org, duly translated, if applicable, into one of the official FIFA languages (English, French, German, Spanish).

7. If the aforementioned sum plus interest is not paid within the above-mentioned time limit, the present matter shall be submitted, upon request by the Claimant, to the FIFA Disciplinary Committee for its consideration and a formal decision.

8. A restriction of four months on his eligibility to play in official matches is imposed on the First Respondent. This sanction applies with immediate effect as of the date of notification of the present decision. The sporting sanctions shall remain suspended in the period between the last official match of the season and the first official match of the next season, in both cases including national cups and international

¹ Inserted for better understanding.

championships for clubs.

9. The Second Respondent shall be banned from registering any new players, either nationally or internationally, for the two next entire and consecutive registration periods following the notification of the present decision.

10. This decision is rendered without costs”.

22. The pertinent parts of the grounds of the Appealed Decision state the following:

“52. In this regard, the Chamber observed that based on the evidence on file, it appears to be undisputed that the Player and Merriekh signed the Contract and that the allegations of the Player and Pharco are aimed against the validity of the said agreement. ...

54. The Respondents adduce that the Contract shall be deemed null and void due to "not following the terms, conditions and controls stipulated in Article No. 42 of the Regulations on the Status and Transfers of Players in the Sudanese Federation ...

56. The Chamber then recalled its longstanding jurisprudence, according to which the validity of an employment contract cannot be made subject to administrative formalities, such as, in casu, the registration of the Player. As such, the Chamber was firm to set aside the argumentation of the Respondents.

57. Furthermore, the Chamber observed the conduct of the parties based on the evidence available and noted that Merriekh had provided proof that it paid the costs of the Player's flights to Egypt for his rehabilitation, while the Respondents challenged this argument. At the same time, the Player had not complained against the alleged lack of registration (or any other motive or breach) that Merriekh could have committed. ...

60. Hence, the DRC was not convinced by the arguments submitted by the Respondents and thus it confirmed the Respondents had not met the standard of proof required to demonstrate the invalidity of the Contract. ...

62. Taking into account all the foregoing, the members of the DRC confirmed that, based on the previous determinations, it was clear that the Player had signed two employment contracts with two different clubs for the same or overlapping period of time, which is considered to be a breach of art. 18 par. 5 of the Regulations. ...

66. In application of the relevant provision, the Chamber held that it first of all had to clarify as to whether the pertinent employment contract contained a provision by means of which the parties had beforehand agreed upon an amount of compensation payable by the contractual parties in the event of breach of contract. In this regard, the Chamber established that Clause 10 of the Contract appeared to contain a compensation clause ...

67. As per the terms of the aforementioned clause, the Chamber acknowledged that the parties had agreed different compensations depending on who was the party in breach. On the one hand, Merriekh would

receive no less than USD 500,000 if the player were to terminate the Contract without just cause. On the other hand, the Player's maximum compensation in the event of breach of contract without just cause by Merriekh is set out at USD 50,000. Therefore, the clause appeared not to comply with the pre-requisite of reciprocity. ...

69. As a consequence, the Chamber determined that the amount of compensation payable in the case at stake had to be assessed in application of the other parameters set out in art. 17 par. 1 of the Regulations. The Chamber recalled that said provision provides for a nonexhaustive enumeration of criteria to be taken into consideration when calculating the amount of compensation payable. ...

76. Notwithstanding the above, the Chamber underlined that as per art. 10 of the Contract, the Claimant and the First Respondent had already anticipated the maximum amount that a serious breach of contract by the Player, as the one at hand, would entail. Hence, on the basis of the particular constellation of the case at hand together with the principle of the specificity of sport, the Chamber decided that the aforementioned amount should be reduced to USD 500,000, which shall be considered an amount fair and reasonable considering all the circumstances of the case”.

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

23. On 13 March 2022, the Player filed a Statement of Appeal against the Appealed Decision with the CAS against Al Merreikh, Pharco, SFA and EFA. The procedure was docketed under the reference number CAS 2022/A/8758. The Statement of Appeal also contained a request to stay the execution of the Appealed Decision according to Article R37 of the Code.
24. On the same day, also Pharco filed a Statement of Appeal against the Appealed Decision with the CAS against Al Merreikh, the Player, SFA and EFA. The procedure was docketed under the reference number CAS 2022/A/8759. The Statement of Appeal also contained a request to stay the execution of the Appealed Decision pursuant to Article R37 of the Code.
25. On 15 March 2022, the CAS Court Office – in two separate letters – advised the Player and Pharco that according to Article R48 of the Code of Sports-related Arbitration (the “Code”) the Statement of Appeal must contain the nomination of the arbitrator chosen by the Appellant, unless the Appellant requests the appointment of a sole arbitrator and a copy of payment of the CAS Court Office fee. The CAS Court Office invited the Appellant to complete the appeal within three days from receipt of the present letter.
26. On 29 March 2022, the CAS Court Office advised FIFA that two appeals had been filed against the Appealed Decision. The letters further inquired whether FIFA intended to participate as a party in these proceedings pursuant to Article R41.3 of the Code. Furthermore, the letters requested FIFA to provide an unmarked copy of the Appealed Decision.
27. On 29 March 2022, the CAS Court Office acknowledged receipt of the Player’s Appeal Brief in the matter CAS 2022/A/8758 and of Pharco’s Appeal Brief in the matter CAS 2022/A/8759.

The letters advised the respective Parties of the parallel proceedings against the Appealed Decision referenced as CAS 2022/A/8758 and CAS 2022/A/8759. Furthermore, the Parties were invited in accordance with Article R52 of the Code to inform the CAS Court Office whether they agree to consolidate both proceedings.

28. On 8 April 2022, FIFA informed the CAS Court Office that it renounces to its right to request its possible intervention in the proceedings CAS 2022/A/8758 and CAS 2022/A/8759. Furthermore, the letter advised as follows:

“Notwithstanding the above, we would like to underline that the Appellant has not designated FIFA as a respondent to the present procedure, whereas the Appealed Decision includes the imposition of sporting sanctions on the Appellant and the Second Respondent.

As confirmed by CAS regularly, when considering 'vertical disputes' (such as those concerning decisions on lifting a transfer ban), the Appellant 'has standing to bring a challenge against the Appealed Decision against the CAS, however, that should be directed at the association itself, i.e. FIFA'. More in particular, only if FIFA is summoned as respondent, then all the parties may have the opportunity to ask the Panel or Sole Arbitrator to adjudicate on the 'vertical' dispute. In the case at stake, however, this remains moot since FIFA was not summoned. In this respect, we wish to highlight that FIFA is not automatically a party to any CAS procedure and cannot be forced to be a party if not called by the Appellant.

In the present proceedings, FIFA is the only entity with a disputed right at stake and with a legitimate interest in relation to its prerogative to establish whether the consequences contained in a decision of its deciding body may be lifted, yet it has not been called as a party by the Appellant. Consequently, in light of all the foregoing, the appeal shall be rejected, as the CAS cannot review the disciplinary consequences of the Appealed Decision in FIFA's absence.⁴ In other words, the disciplinary sanctions imposed in the Appealed Decision are not subject to review by the Panel or Sole Arbitrator, as confirmed by the constant jurisprudence of CAS. ...”.

29. On 8 April 2022, the CAS Court Office forwarded FIFA’s letter to the Parties.
30. On 14 April 2022, the CAS Court Office noted that none of the Parties had filed his/its position on the issue of the consolidation of the proceedings and that, therefore, the matter has been submitted to the Deputy Division President, who has decided to consolidate both cases. Furthermore, the letter invited the Respondents in the matter 8759 to comment on Pharco’s request to stay the execution of the Appealed Decision by no later than 22 April 2022.
31. On 14 April 2022, the Player sent a letter to the CAS Court Office requesting that “you to do the needful legally to intervene FIFA and consider it a party in the appeal no. CAS 2022/A/8758 in order to hear the decision against it and the respondents in the requests listed at the end of the appeal of the appellant”.
32. On 15 April 2015, Pharco sent an identical letter to the CAS Court Office requesting that “you to do the needful legally to intervene FIFA and consider it a party in the appeal no. CAS 2022/A/8759 in order to hear the decision against it and the respondents in the requests listed at the end of the appeal of the

appellant”.

33. On 19 April 2022, the CAS Court Office acknowledged receipt of the Player’s and Pharco’s letter and advised them that *“CAS has no power to include FIFA as a new respondent to these proceedings ... and that it is for an appellant to identify and name all the respondents against whom it intends to direct its appeal”.*
34. On 22 April 2022, Al Merreikh answered to the CAS Court Office’ letter of 14 April 2022 as follows:
 - “1. The Appealed Decision is rendered by FIFA.*
 - 2. the appellant is failed to include FIFA as respondent in his statement of appealed filed before CAS.*
 - 3. FIFA renounced to its right to intervene in this proceedings.*

As the appellant’s failure to direct its appeals against FIFA, therefore we request to dismiss this appeal as it is directed to wrong parties”.
35. On 22 April 2022, the CAS Court Office acknowledged receipt of Al Merreikh’s letter and advised it that the question of standing to be sued *“is related to the merits and shall therefore be addressed by the Respondents in their Answer”.*
36. On 25 April 2022, the CAS Court Office acknowledged receipt of an undated letter allegedly from Al Merreikh advising the CAS Court Office that it granted Mr Hizem Amir power of attorney to represent it in the proceedings CAS 2022/A/8758 and 8759. The CAS Court Office invited Al Merreikh to clarify whether Mr Hizem Amir represents the First Respondent alongside Dr. Mudhathir Osman or *in lieu of*.
37. On 26 April 2022, Al Merreikh clarified that Mr Hizem Amir had no valid power of attorney to act for Al Merreikh. The letter indicated that the legitimate president of Al Merreikh was Mr Adam Abdullah and that the latter had not signed any power of attorney in favour of Mr Amir. The letter continues to that *“to protect Al Merrikh from harm ... we kindly request to reject the representation of Mr Amir in the cases mentioned, as Al Merrikh Club will be represented only by Dr. Mudathir Osman”.*
38. On 26 April 2022, the CAS Court office acknowledged receipt of the above letter and declared that *“in light of the foregoing, all future correspondence between the Parties and the CAS will exclusively be sent to Dr Mudathir Osman on behalf of Al-Merrikh”.*
39. On 16 April 2022, the CAS Court Office informed the Parties that the Respondents had failed to comment on the Player’s and Pharco’s requests for provisional measures and that an order on provisional measures will be issued in due course.
40. On 8 May 2022, Al Merreikh – through its counsel Dr. Mudathir Osman – submitted its

Answer.

41. On 17 May 2022, the CAS Court Office forwarded to the Parties a copy of the Order on Request for a Stay issued by the Deputy President of the CAS Appeals Arbitration Division. Therein, the Player's and Pharco's requests for a stay of the execution of the Appealed Decision were dismissed.
42. On 29 May 2022, Pharco sent a letter to the CAS Court Office requesting – inter alia – *“your Excellency to quicken all needed legal procedures in order to constitute arbitration tribunal in preparation for disposing the appeal prior to the end of the current sports season, planned to end 31 August 2022, in accordance with the provisions of Court of Arbitration for Sport generally and article no. (R/40/2) and what follows in the same law”*.
43. On 30 May 2022, the CAS Court Office acknowledged receipt of Pharco's letter and stated as follows:

“I understand from the ... letter that Pharco FC requests to submit this matter to an expedited procedure pursuant to Article R52/4) of the Code. I invite the other Parties to state their position thereto no later than 1 June 2022.

Finally, I note the except for Al Merreikh SC, none of the Parties filed a position with respect to the suggestion of the CAS Court Office to submit this matter to a Sole Arbitrator ... In light of the foregoing, please note that the issue ... shall be decided by the Division President or her Deputy, pursuant to Article R50(1) of the Code”.
44. On 1 June 2022, the Player agreed with the suggestion to submit both cases to a sole arbitrator.
45. On 2 June 2022, the CAS Court Office acknowledged receipt of the Player's letter and noted that none of the Parties had commented on Pharco's request for an expedited procedure and that – absent a unanimous agreement – no expedited procedure will be implemented.
46. On 6 June 2022, Pharco informed the CAS Court Office that the *“Egyptian League competition, season of 2021/2022 will end on 30th of August 2022 ... and to make sure that the appeal shall be disposed prior to Summer Transfer Window of season 2021/2022 planned to be determined in September 2022. ... In view of the above, we call on your Excellency again to quicken all needed legal procedures in order to constitute arbitration tribunal in preparation for disposing the appeal prior to the end of the current sports season planned to end on 30 August 2022 ...”*.
47. On 7 June 2022, Pharco again sent a letter to the CAS Court Office requesting to speed up the formation of the Panel.
48. On 8 June 2022, the CAS Court Office acknowledged receipt of Pharco's letter and reminded the Parties that

“in order to ‘speed up’ the formation of the Arbitral Award, the advance on costs must be paid by the Parties (or by the Appellants alone, in substitution of the Respondents). Upon receipt of the payment of the advance on costs in both ... [proceedings], the file will be transferred to the Panel/ Sole Arbitrator”.

49. On 21 June 2022, Pharco informed the CAS Court Office that it had paid the advance of costs in both proceedings and requested once more to *“take all the required legal procedure regarding forming the arbitration tribunal in preparation for the settling the appeal before the end of the current season ...”*.
50. On 21 July 2022, the CAS Court office acknowledged receipt of the Player and Pharco’s payments of the total of the advance of costs for both proceedings. Furthermore, the letter advised the Parties that the Panel appointed to decide the case is constituted as follows:

Sole Arbitrator: Prof Dr. Ulrich Haas, Professor in Zurich, Switzerland
51. On 25 July 2022, Pharco sent a letter to the CAS Court Office advising that *“FIFA shall recognize and comply with any decisions issued from CAS according to the stipulated regulations in FIFA Statutes”*.
52. With letter dated the same day, the CAS Court Office acknowledged receipt of the above letter and noted that *“no specific request for the Sole Arbitrator or the CAS is included therein [and that] ... accordingly, it is understood that no action is required from the Sole Arbitrator or the CAS”*.
53. On the same day, Pharco sent another letter to the CAS Court Office requesting to *“set a hearing for the parties as soon as possible to clarify all the facts of the case ...”* and to *“quicken all needed legal procedures in order to disposing the appeal prior to the end of the current sports season ...”*.
54. On 26 July 2022, the CAS Court Office acknowledged the receipt of Pharco’s letter
55. On 31 July 2022, the Player informed the CAS Court Office that it “joined” Pharco’s request dated 26 July 2022 to set a hearing date as quickly as possible.
56. On 1 August 2022, Pharco again requested that a hearing date be set as quickly as possible to clarify all facts of the case.
57. On 2 August 2022, the CAS Court Office invited FIFA to provide the CAS with the complete case file related to the appeal pursuant to Article 57(1) of the Code.
58. On the same day, the CAS acknowledged receipt of the various letter sent by Pharco and the Player. Furthermore, the CAS Court Office informed the Parties that the Sole Arbitrator would be available to hold a hearing via videoconference on 23, 24 and 25 August 2022 and invited the Parties to inform the CAS Court Office of any impossibility to attend the hearing on the aforesaid dates. The CAS Court Office also advised the Parties that it was their responsibility for the witnesses to attend and be available at the hearing. Also, it invited Pharco to submit witness statements for the witnesses called by it to appear at the hearing. Finally, the CAS Court Office invited Al Merreikh, the Sudanese Football federation and the Egyptian Football Federation to inform it, if the witnesses indicated in the Player’s and Pharco’s letters that are

under its control are going to be made available at the hearing and in the affirmative to provide witness statements for these persons.

59. On 8 August 2022, FIFA provided the full case file.
60. On the same day, the CAS Court Office acknowledged receipt of FIFA's complete case file, forwarded the link to the Parties and the Sole Arbitrator, and informed the Parties that – in view of their silence to the CAS Court Office letter dated 2 August 2022 – the hearing by videoconference will be held on 23 August 2022. Furthermore, the CAS Court office invited the Parties to provide the names of all persons who will be attending the hearing on their behalf by 15 August 2022.
61. On 10 August 2022, the CAS Court Office reminded the Parties of its letter dated 2 August 2022 and noted that they had failed to respond to its letter. Considering the foregoing, it set a last deadline until 12 August 2022 to comply with its instructions failing which the procedural requests of the Parties will be denied. Furthermore, the letter enclosed Order of Procedures (“OoPs”) and invited the Parties to return a signed copy thereof by 17 August 2022.
62. On the same day, Al Merreikh returned signed copies of the OoPs and informed the CAS Court Office that *“Mr Anas Nasereldin (in charge of players’ affairs) would be available to attend the hearing and file his statement according to appellants’ request”*.
63. Still on the same day, the CAS Court Office acknowledged receipt of Al Merreikh's letter and reminded the latter that the witness statement for Mr Anas Nasereldin must be filed no later than 12 August 2022 at 12:00 noon CET. Furthermore, the letter informed Al Merreikh that it is the Parties' responsibility to bring their own interpreter at the hearing.
64. On 11 August 2022, Pharco provided the list of persons that will be attending the hearing on its behalf. Furthermore, it filed a witness statement for Mr Amr Bergas, its executive director and the person in charge of the TMS system with Pharco. In addition, it listed Mr Samid Gadid, Mr Haitham Mohamednour and Mr Walid El Attar as further witnesses without providing a witness statement.
65. On 12 August 2022, the Player returned signed copies of the OoPs to the CAS Court Office.
66. On the same day, the Al Merreikh advised the CAS Court Office who will be attending the hearing on its behalf. Furthermore, Al Merreikh filed a witness statement for Mr Anas Nasereldin.
67. Still on 12 August 2022, the Player informed the CAS Court Office who will be attending the hearing on his behalf. Furthermore, the Player referred to the witnesses called by Pharco and, in addition, attached a further statement by the Player entitled “FACTS”.
68. Further on the same day, the CAS Court Office advised the Parties as follows:

“Considering that Pharco ... intends to call Mr Gamid, Mr Mohamednour and Mr El Attar as witnesses, Pharco ... is requested, no later than 16 August 2022 at 12:00 noon CET to submit witness statements for these persons. Please note that no extension of time will be granted by the Sole Arbitrator.

In case of failure to timely filing of the witness statements, Mr Gamid, Mr Mohamednour and Mr El Attar will not be heard during the hearing.

Besides the Sole Arbitrator noted that ... [the Player] submitted a document named ‘FACTS’ which shall not be considered as a witness statement, but rather as new submissions which are not allowed under Article R56 of the Code. Consequently, the aforementioned documents ... is excluded from the file”.

69. Finally, on 12 August 2022, the Al Merreikh informed the CAS Court Office in *“the correspondence of the appellants ... we noted that they identified the name of Mr Haitham Mohamed Nour as a witness and as the employee responsible for the players’ affairs at Al-Merriekh Club ... we like to inform you that this person mentioned does not occupy this position in the club or any other position related to the club ... The aforementioned does not have the capacity to appear and speak on behalf the club”*.
70. On 15 August 2022, Pharco returned the signed copies of the OoPs.
71. On 16 August 2022, Pharco and the Player produced two witness statements allegedly on behalf of Mr Sami Gadid (in charge of the TMS with the SFA) and Mr Walid El Attar (Executive Director of the EFA). The CAS Court Office noted that both witness statements were not signed and that *“such witness statements have been forwarded by Mr Saifeldin Malik Bakhit Maki and Pharco FC, and not by the SFA and EFA themselves”*.
72. On 16 August 2022, the EFA sent an email to the CAS Court office to which a witness statement was attached signed by Mr Walid El Attar.
73. On 17 August 2022, Mr Sami Gadid sent an email to the CAS Court Office to which an unsigned witness statement was attached.
74. On 18 August 2022, the CAS Court Office informed the Parties about the details of the hearing to be held by CISCO Webex on 23 August 2022.
75. On 22 August 2022, the CAS Court Office informed the Parties of the indicative hearing schedule in relation to the hearing fixed on 23 August 2022.
76. On 23 August 2022, a hearing was held by videoconference. The following persons – besides Mr Fabien Cagneux (Managing Counsel) and the Sole Arbitrator – attended the hearing:

For the Player:

- Mr Kamal Ibrahim (counsel)
- Mr Yaheia Farag (translator)

For Pharco:

- Prof. Juan de Dios Crespo Pérez (Counsel)
- Mr Nehad Hagag (counsel)
- Mr Sami Gadid (witness: employee in charge of the TMS system in the SFA)
- Mr Walid El Attar (witness: employee in charge of the TMS system with EFA)
- Mr Amr Bergas (witness: executive director with Pharco and person in charge of the TMS system)

For Al Merreikh:

- Dr. Mudathir Osman (counsel)
- Mr Anas Nasereldin (witness: football director with Al Merreikh)

Nobody appeared for the Third and Fourth Respondent

77. At the beginning of the hearing the Parties expressly stated that they had no objections regarding the Sole Arbitrator. At the closing all Parties confirmed that their respective rights to be heard and to be treated equally had been respected in the present proceedings.

IV. PARTIES' POSITIONS AND RESPECTIVE PRAYERS OF RELIEF

78. This section of the award does not contain an exhaustive list of the Parties' contentions, its aim being to provide a summary of the substance of the Parties' main arguments. In considering and deciding upon the Parties' claims in this award, the Sole Arbitrator has accounted for and carefully considered all the submissions made and evidence adduced by the Parties, including allegations and arguments not mentioned in this section of the award or in the discussion of the claims below.

A. The Position of the Player

79. In his Statement of Appeal, the Player sought the following relief:

"Accepting the appeal as a form to report it on time. ...

Urgently suspend the implementation of the contested resolution until the decision on the appeal filed by the Player ...

The contested resolution shall be cancelled with all its contents and with the legal consequences thereof.

Al-Merriekh club ... has been obligated to pay all the fees and expenses".

80. The submissions of the Player, as contained in its written submissions, may be summarized, in essence, as follows:
- The Appealed Decision “*contradicts the truth reality and the documents submitted*” and is not supported by the laws and regulations in force. The SFA sent the ITC upon the EFA’s request with no restrictions. There was simply “*no legal impediment preventing sending the card*”.
 - The Player does not deny signing the Contract. However, the Player is of the view that the Contract is null and void, since
 - o The Contract provides that its terms must comply with the regulations of the SFA.
 - o Clause 9(2) of the Contract provides that the “*validity of this contract is subject to the consent of the Sudanese Football Association, and assuring that the player is qualified to play ...*”.
 - o The SFA must approve all contracts concluded between the clubs and players. Furthermore, the SFA must register all players that participate in football matches organized by the SFA.
 - o The Contract was not approved or authenticated by the SFA. Furthermore, Al Merreikh did not register the Player during the registration period specified by the SFA.
 - o While Al Merreikh followed all necessary procedures when it first entered an employment relationship with the Player in 2018, it failed to do so in relation to the Contract. The Player finds it astonishing that it took Al Merreikh five months to provide the SFA with the Contract (once the request for an ITC had been filed).
 - The Player contests receiving an amount of USD 250,000 as a down-payment when signing the Contract.
 - o It is neither reasonable nor common practice that a player is paid the entire value of the contract for three years at the outset of the contract.
 - o The Player also submits that “*the club did not provide a proof of payment by the club to the provider of the contract from the club's treasury or even from the bank accounts; and the club also did not provide a proof of payment of the agreed monthly salary with the player from the date of signing the contract, and until the date of sending his complaint, subject of appeal, which is about three months' salary*”.
 - o Furthermore, the Player submits that the receipt allegedly signed by the Player

is inconsistent with the amount referred to in the Criminal Complaint. More specifically, the Player submits as follows:

“... El-Merrikh SC decided ... that amount (that he has no relation with El-Merrikh SC, and whoever implements these procedures has no official status within El-Merrikh Club, but according to our information, he is a fan of the club and a fan of football and he did so on his own at his personal expense to encourage the player. Such action was done after the player signed his contract with El-Merrikh Club on 04.11.2021 and he received the agreed amount in the club’s contract, which means that the amount that the player received from the club according to the club’s regulations is 250,000 US dollars as you have proved, while there is a different amount related to this case, which is an amount of 350,000 US dollars paid by Mr. Hesham Taj Elsair (the club fan). So, the player received the amount of 600.000 US dollars- the amount officially received + the amount received from the club fan.

Here we find that the response of El-Merrikh Club contradicts to its documents and it desires to manipulate and change the truth, show the opposite to reality and the documents submitted. It is evident from the document that a person who is not following the club paid \$250,000 to the player. The club stated that he is a fan of the club and the player as stated in his response, but not 350,000 dollars, as the club stated in its response, in an attempt to contradict the truth”.

- It follows from the complaint that the Player did not sign with Al Merreikh.
- The Player also refers to the letter of SFA of 2 September 2021. According to the Player it follows from such letter that *“Al-Merrikh SC club shall not be able to approve the aforementioned contract, and therefore it shall has no results towards Pharco FC, the player, Sudan Football Association; and no rights shall be entitled to Al-Merrikh SC”.*
- The above is further backed by Article 10 of the regulations of the player’s status and transfer regulations of the SFA (“SFA RSTP”). The relevant provision of said article provide as follows:

“(1) Players may only be registered during one of the two annual registration periods specified by the Association, i.e., the first and the second registration periods. ...

(6) Taking into account the provision of Clause No.: (2) of this Article, player may not be registered with a particular club unless an official request shall be submitted to the Sudan Football Association during the registration period”.

- According to the Player the invalidity of the Contract also follows from Article 42 of the SFA RSTP. The provision reads in its pertinent parts as follows:

“(1) The contract between the cub and the professional player is concluded according to the contract form prepared by the Player’s Status Committee of the Sudanese Football Association.

(2) In the event that the club and the player desire to sign another separate or additional contract, the approval of the Players' Status Committee on this contract must be obtained before signing it, otherwise it will be considered void. ...

(4) All professional player contracts must be approved and documented by the committee.

(5) In accordance with the concluded contract, the club shall keep a record of all the player's financial dues in the club's ledger”.

B. The Position of Pharco

81. In its Statement of Appeal Pharco sought the following relief:

“Accepting the appeal as a form to report it on time. ...

Urgently ceasing the enforcement of the contested decision until the permanent expulsion of the appeal from Pharco FC, with all legal consequences ...

Cancelling the contested decision with all its components, with all legal consequences”.

82. In support of its appeal filed, Pharco submits in essence the exact same arguments as the Player. For efficiency reasons the Sole Arbitrator does not repeat the arguments here, since they largely correspond verbatim to the submissions of the Player.

C. The Position of Al Merreikh

83. Al Merreikh on 8 May 2022 submitted as follows:

“... in accordance with article R55 of the CAS Code, kindly please find our answer below:

1. The Appealed Decision against is rendered by FIFA.

2. The appellants failed to include FIFA as respondent in his statement of appealed filed before CAS pursuant to art. R48 of the CAS Code.

3. FIFA renounced to its right to intervene in this proceedings.

4. The Respondents named by the Appellants have no standing to be sued.

5. Under Swiss law, lack of standing to be sued is generally considered a reason to reject an appeal on the merits (Swiss Federal Tribunal ATF 126 III 59, para. 1 a. p. 63).

6. Therefore we request to dismiss this appeals”.

V. JURISDICTION

84. 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 insofar as the statutes or regulations of the said body so provide or as the parties have concluded a specific arbitration agreement and insofar as the Appellant has exhausted the legal remedies available to him prior to the appeal, in accordance with the statutes or regulations of the said sports-related body”.

85. Article 58(1) of the FIFA Statutes that provides as follows:

“Appeals against final decisions passed by FIFA’s legal bodies and against decisions passed by Confederations, Members or Leagues shall be lodged with CAS within 21 days of notification of the decision in question”

86. In view of the above, the Sole Arbitrator finds that he is competent to decide the dispute at hand. Furthermore, the CAS jurisdiction is confirmed by the OoPs duly signed by the Player, Pharco and Al Merreikh.

VI. ADMISSIBILITY

87. Article R49 of the Code provides as follows:

“In the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, or of a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against. After having consulted the parties, the Division President may refuse to entertain an appeal if it is manifestly late”.

88. Pharco submits that the Appealed Decision with grounds was notified on 24 February 2022. On 13 March 2022, both the Player and Pharco lodged their Statement of Appeal with the CAS. Consequently, the deadline for appeal of 21 days (referred to in Article 58(1) of the FIFA Statutes) was observed. It follows from the above that both appeals are admissible.

VII. APPLICABLE LAW

89. Article R58 of the Code provides as follows:

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

90. The Sole Arbitrator notes that Article 57(2) of the FIFA Statutes states the following:

“The provisions of the CAS Code of Sports related Arbitration shall apply to the proceedings. CAS shall apply the various regulations of FIFA and additionally Swiss law”.

91. The Sole Arbitrators, therefore, applies the relevant FIFA rules and regulations (in particular the Regulations on the Status and Transfer of Players – “RSTP”), as in force at the relevant time of the dispute. Furthermore, the Sole Arbitrator will apply Swiss law as an interpretative tool should the need arise to interpret FIFA’s rules and regulations. Should the need arise to fill gaps in the various regulations of FIFA, the Sole Arbitrator will address the issue of the subsidiarily applicable law separately.

VIII. OTHER PROCEDURAL ISSUES

A. Failure of SFA and EFA to Appear

92. The SFA and the EFA did not participate in these proceedings, i.e., they did not respond to any of the CAS Court Office letters, did not make any written submissions and did not appear at the hearing. The Sole Arbitrator notes that Article R57(4) of the Code reads as follows:

“If any of the parties, or any of its witnesses, having been duly summoned, fails to appear, the Panel may nevertheless proceed with the hearing and render an award”.

93. Since SFA and EFA were duly notified of all relevant correspondence the Sole Arbitrator proceeded with the hearing and with delivering of the award.

B. The Statement filed by the Player on 12 August 2022

94. On 12 August 2022, the Player filed a statement entitled as “FACTS”. With letter dated 12 August 2022, such statement was stricken from the file, because it was submitted after the exchange of submissions had been closed according to Article R56 of the Code and because the Player did not avail himself of any exceptional circumstances to justify the late filing of the document.

C. The Witness Mr Mohamednour

95. On 12 August 2022, the CAS Court Office advised Pharco that in case it intended to call Mr Mohamednour as a witness, it is requested by no later than 16 August 2022 at 12:00 noon CET to submit a witness statement for this person failing which such person will not be heard as a witness at the hearing. The Sole Arbitrator notes that no such witness statement has been filed. Furthermore, the Sole Arbitrator is aware of Al Merreikh’s letter informing the CAS Court Office that no such person is employed with it. Consequently, the Sole Arbitrator did not hear Mr Mohamednour.

D. The Witness Mr Anas Nasereldin

96. The witness Mr Nasereldin has been called to appear by Al Merreikh. The latter also provided a witness statement. Unfortunately, Mr Nasereldin was not available for questioning and cross-examination at the hearing. No grounds were provided for the non-appearance of the witness. In view of the above, the Sole Arbitrator decided to strike the witness statement from the file.

E. The FIFA File

97. Article R57(1) of the Code provides – *inter alia* – as follows:

“The President of the Panel may request communication of the file of the federation, association or sports-related body, whose decision is the subject of the appeal”.

98. On 2 August 2022, the Sole Arbitrator invited FIFA to produce the case file. On 8 August 2022, FIFA produced the case file. The contents of the FIFA file is, thus, part of the file before the Sole Arbitrator.

IX. MERITS

99. The main questions before the Sole Arbitrator in these proceedings are
- Whether the Respondents have standing to be sued?
 - Whether the Player was under a valid contract with Al Merreikh at the time he signed with Pharco? and
 - In case the previous question is answered in the affirmative, what are the consequences of the above?

A. Do the Respondents have Standing to be Sued?

a. Failing to direct the Appeals against FIFA

100. Al Merreikh in its Answer submitted that the Player and/or Pharco “*failed to include FIFA as respondent in ... [their] statement of appealed filed before the CAS*” and that therefore the appeals need to be dismissed.
101. The Sole Arbitrator notes that the operative part of the Appealed decision does not only deal with the legal relationship between the Player, Pharco and Al Merreikh (horizontal dispute), but also contains a disciplinary measure imposed on the Player and Pharco by FIFA (vertical dispute). The disciplinary measures read as follows:

“8. A restriction of four months on his eligibility to play in official matches is imposed on the First Respondent. This sanction applies with immediate effect as of the date of notification of the present decision. The sporting sanctions shall remain suspended in the period between the last official match of the season and the first official match of the next season, in both cases including national cups and international championships for clubs.

9. The Second Respondent shall be banned from registering any new players, either nationally or internationally, for the two next entire and consecutive registration periods following the notification of the present decision”.

102. The issue of standing to be sued is a question of the merits and, thus, is governed by Article R58 of the Code. Since the applicable FIFA regulations are silent who the proper respondent is (in case of an appeal against a decision of the DRC), the Sole Arbitrator falls back on Swiss law according to Article 57(2) of the FIFA Statutes. The purpose of this provision is to provide a common tool of interpretation of the FIFA rules and regulations in order to ensure a uniform application of the rules. The Sole Arbitrator finds that the question of standing to be sued is a question that warrants a uniform interpretation, since it is inextricably linked to the contents of the FIFA rules and regulations.
103. According to Swiss law in case of vertical disputes the standing to be sued rests solely with the association that has issued the decision in question (BK-RIEMER, 1990, Art. 75 no. 60; RIEMER H. M., Vereins- und Stiftungsrecht, 2012, Art. 75 no. 11; BERNASCONI/HUBER, Die Anfechtung von Vereinsbeschlüssen: Zur Frage der Gültigkeit statutarischer Fristbestimmungen, SpuRt 2004, p. 268, 269; NETZLE S., Wer ist meine Gegenpartei?, SchiedsVZ 2009, p. 93, 97). Vertical disputes are characterized by the fact that the association issuing the decision thereby shapes, alters, or terminates the membership relation between itself and the member concerned (CAS 2013/A/3140, no. 8.12). Vertical disputes typically arise in disciplinary, eligibility or registration contexts. In all these cases the proper party to defend the decision on appeal and, thus, having standing to be sued is the association that has issued the decision.
104. It follows from the above that the Respondents (in both proceedings) have no standing to defend the Appealed Decision insofar as no. 8 and 9 of the operative part of the Appealed Decision are concerned. Consequently, the appeals by the Player and Pharco as far as they are directed against no. 8 and 9 of the operative part of the Appealed Decision must be dismissed from the outset.

b. Directing the Appeals against EFA and SFA

105. Pharco and the Player have directed their appeals also against EFA and SFA. The question arises whether they have standing to be sued with respect to the Appealed Decision. The Sole Arbitrator notes that both member federations have not issued the Appealed Decision. Furthermore, the Player and Pharco do not seek any relief with respect to EFA and SFA. Thus, they are not the proper parties to defend the Appealed Decision. Therefore, the Sole Arbitrator

dismisses the Player's and Pharco's claim against SFA and EFA for lack of standing to be sued.

c. *Directing the Appeal in CAS 2022/A/8758 against Pharco*

106. The Player directed his appeal against the Appealed Decision – *inter alia* – also against Pharco. The latter, however, has also appealed the Appealed Decision and pursues the identical requests as the Player. At the hearing the Player withdrew his appeal against Pharco. Al Merreikh did not object to the withdrawal of the appeal. Consequently, the Sole Arbitrator does no longer need to decide the issue. On a purely subsidiary basis the Sole Arbitrator notes that the Player did not seek any relief against Pharco and, therefore, the appeal would – in any event – have to be dismissed for lack of standing to be sued insofar as it is directed against Pharco.

d. *Directing the Appeal in CAS 2022/A/8759 against the Player*

107. Pharco directed its appeal against the Appealed Decision – *inter alia* – also against the Player. The latter, however, has also appealed the Appealed Decision and pursues the identical requests as Pharco. At the hearing Pharco withdrew its appeal against the Player. Al Merreikh did not object to the withdrawal of the appeal. Consequently, the Sole Arbitrator does no longer need to decide the issue. On a purely subsidiary basis the Sole Arbitrator notes that Pharco did not seek any relief against the Player and, therefore, the appeal would – in any event – have to be dismissed for lack of standing to be sued insofar as it is directed against the Player.

B. Was the Player under Contract with the Al Merreikh when he signed with Pharco?

108. The Player at the hearing confirmed that he signed the Contract with Al Merreikh. Thus, the execution of the Contract is not in dispute between the Parties. Furthermore, the Parties confirmed at the hearing that the circumstances surrounding the Criminal Complaint have nothing to do with the outcome of this case and that, therefore, the Sole Arbitrator may disregard the Criminal Complaint when deciding the present dispute. What is disputed between the Parties, however, is whether the Contract is valid or not.

a. *The Position of the Parties*

109. The Player and Pharco refer – *inter alia* – to Article 9(2) of the Contract. The latter states as follows:

“Article 9 Contract Commencement and Termination ...

(2) The validity of this Contract is subject to the specific approval of the Sudan Football Association and the confirmation that the Player is eligible to play (ratification of the Contract)”.

110. According to Pharco and the Player, the Contract contains a condition precedent. According thereto, the Contract becomes valid only upon “*specific approval of the SFA*” and the “*confirmation*

that the Player is eligible to play". Pharco and the Player submit that these conditions are not fulfilled in the case at hand. More particularly, they state that the Al Merreikh could not register the Player because it was under a ban to register new players. Pharco and the Player also submit that the above conditions – that were freely negotiated between the parties to the Contract – are not in conflict with Article 18(4) of the RSTP. The latter provision reads as follows:

"The validity of a contract may not be made subject to a successful medical examination and/or the grant of a work permit".

111. The requirements contained in Article 9(2) of the Contract neither relate to a medical examination nor to a work permit within the meaning of Article 18(4) RSTP. Consequently – according to Pharco and the Player – the DRC erred when setting aside the contractual agreement based on Article 18(4) RSTP.

112. Al Merreikh on the contrary states that the Contract was approved by the SFA. Such approval – according to it – is inherent, in case a contract is entered into on the template provided by the SFA for employment contracts. This follows from Article 42(1) SFA RSTP, which states as follows:

"1) The contract between the club and the professional player is concluded according to the contract form prepared by the Player's Status Committee of the Sudanese Football Association".

113. Only in case the parties to the contract wish to deviate from the template a "specific approval" is needed. This follows from Article 42(2) SFA RSTP which reads as follows:

"In the event that the club and the player desire to sign another separate or additional contract, the approval of the Players' Status Committee on this contract must be obtained before signing it, otherwise it will be considered void. ..."

114. Furthermore, Al Merreikh stated at the hearing that the registration of the Player with the SFA was possible and not precluded by the ban imposed on it, since the Player was not a "new player", but a player that has been under contract at the time the Contract was executed. The modalities of registration with the SFA are – according to Al Merreikh – such, that registration must be done via TMS and that such procedure is only possible during specific time windows. Al Merreikh also submits that once the time window opened it registered the Player via TMS with the SFA.

b. The Findings of the Sole Arbitrator

115. The Sole Arbitrator finds that the better arguments speak in favour of the Contract being valid. The Contract was signed on the template of the SFA. Article 42(2) SFA RSTP only provides for a specific approval of the SFA (prior to the signing of the contract) in case the agreement deviates from the template. This, however, has not been submitted by the Parties. In addition,

the Sole Arbitrator notes that there is a stamp of the SFA on the Contract.

116. In addition, the Sole Arbitrator finds that the Player is not a “new player” covered by the scope of the registration ban imposed by the SFA on Al Merreikh. The view held here is backed when looking at the SFA’s letter addressed to Al Merreikh dated 2 September 2021. The letter does not state that the Contract is invalid or that the Player cannot be registered due to a registration ban, but simply states that *“the process ... [of registering a contract] shall be initiated after registration duration commencement and system open”*, i.e. once the TMS is accessible during the relevant time window.
117. Even if the conditions in Article 9(2) of the Contract were not fulfilled, the Contract would not be null and void. The Player stated at the hearing that when he signed the Contract “everybody knew” that the Contract was invalid, because there were sporting sanctions against Al Merreikh. One wonders why then the Player signed the Contract. If this statement was true, then the Player waived the possibility to avail himself of the alleged nullity of the Contract. It does not make sense for the Player to sign a contract that is null and void other than express his will that the agreement shall be binding despite the alleged grounds of nullity.
118. It is true that later on in the hearing, the Player’s counsel modified the Player’s position by stating that the latter only realized that the Contract was null and void after contacting the SFA. This, contradicts the express statements of the Player. Furthermore, the Sole Arbitrator notes that the Player was with Al Merreikh already for some time. Consequently, he must have known that Al Merreikh was under a ban to register “new players”. It is difficult to accept that the Player would have renewed his contract with Al Merreikh in case he was to be qualified a “new player”, fall under the ban and not be able to play. The Sole Arbitrator notes, in addition, that there is further evidence to assume that the parties in any event wished to be bound by the Contract. It remained – e.g. – uncontested that Al Merreikh paid for the medical treatment of the Player in Egypt (after the expiry of the first contract). Furthermore, it remained equally uncontested that the Player returned to play and train with Al Merreikh on 27 August 2021. All of this would make little sense in case the Contract was perceived to be null and void by the Parties. Finally, the Sole Arbitrator notes that the Contract provides for a fee of USD 250,000 *“to be paid upon signing the contract”* (cf. Schedule 1). The FIFA file contains a receipt with the Player’s signature according to which the latter has received the respective amount. The date of the receipt is identical to the date on which the Contract was signed by the Player (11 April 2021). All of this is a strong indication that the monies were paid and that – in the eyes of the parties – the Contract was binding on them. The Arbitrator is aware that the Player contested the fact that he received the signing fee and submitted at the hearing – for the first time – that the receipt was a forgery. However, the Sole Arbitrator is not persuaded by this. It is simply not realistic to assume that the Player signs the Contract that specifically provides for a signing fee of USD 250,000, i.e. for the payment of such amount on the date of signature without obtaining the monies. To conclude, therefore, the Sole Arbitrator finds that the Contract is either valid to begin with or was confirmed through the behaviour of the Parties. The Sole Arbitrator, therefore, can leave the question open whether or not the conditions provided for in Article 9(2) of the Contract violate Article 18(4) of the RSTP. Consequently, the Player breached Article

18(5) of the RSTP, according to which a player cannot enter into more than one contract covering the same period.

C. What are the Consequences of the Above?

119. With respect to the consequences of the above, one needs to distinguish between the consequences for the Player and the consequences for Pharco.

a. *The Consequences for the Player*

120. In view of the breach committed by the Player, Al Merreikh is entitled to damages according to Article 17(1) of the RSTP. The Sole Arbitrator notes that the Player has not brought forward any criticism in relation to the calculation of the damages contained in the Appealed Decision. Furthermore, the Sole Arbitrator finds that the calculation of the damages by the DRC appears transparent and convincing. The Sole Arbitrator, therefore, sees no reason to interfere with the Appealed Decision on the quantum of the damages to be paid by the Player.

b. *The Consequences for Pharco*

121. Article 17(2) of the RSTP provides – *inter alia* – as follows:

“... If a professional is required to pay compensation, the professional and his new club shall be jointly and severally liable for its payment. The amount may be stipulated in the contract or agreed between the parties”.

122. According to the above, the club that has contracted the player (who is in breach of the previous contract) is, in principle, jointly and severally liable for the amount awarded to the previous club. The FIFA Commentary (p. 171) states insofar as follows:

“Article 17 paragraph 2 is aimed at avoiding any debate or evidentiary difficulties regarding any potential involvement of the new club in the breach of contract. It makes clear that the new club will be held liable, together with the player, to pay the compensation due to the player’s former club, regardless of whether the club provided any inducement to the player to breach their contract, and without considering its good or bad faith. Equally, this provision gives the player’s former club that was damaged because of the breach of contract, a stronger additional guarantee that the compensation the player is required to pay will in fact be paid. It also contributes to contractual stability and assists the player’s former club in repairing the damage it has suffered”.

123. The Sole Arbitrator is aware that there may be exceptions to the above rule. CAS panels have allowed for such exception in “truly exceptional circumstances” (cf. FIFA Commentary, p. 173 *et seq*). Pharco – at the hearing – claimed that there are exceptional circumstances in the case at hand. More particularly, Pharco states that it had asked the Player whether he was under an existing contract when signing him, had introduced a provision in the New Contract according

to which the Player would be liable in case he was under an existing contract and furthermore, was in good faith when it received an unconditional ITC from the SFA. The Sole Arbitrator notes that the above arguments have some merit. However, it is also worthy to note that Pharco expressed interest to contract the Player in July/August 2021. Thus, it made contact with the Player – according to the latter’s statements at the hearing – at a time when the Player was in Egypt for medical treatment to recover from an injury. Pharco – at this stage – could have made some inquiries, e.g. contact Al Merreikh in order to know whether the latter was still under contract. Pharco, however, did not do so. Consequently, the Sole Arbitrator finds that the high threshold of exceptional circumstances is not met in the case at hand and upholds the finding in the Appealed Decision according to which Pharco is severally and jointly liable for the damages caused to Al Merreikh.

D. Conclusion

124. To conclude, the Sole Arbitrator finds that all of the requests filed by the Player and by Pharco must be dismissed.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by Mr Saifeldin Malik Bakhit Maki on 13 March 2022 against the decision of the FIFA Dispute Resolution Chamber passed on 16 February 2022 is dismissed.
2. The appeal filed by Pharco Sport Club on 13 March 2022 against the decision of the FIFA Dispute Resolution Chamber passed on 16 February 2022 is dismissed.
3. The decision of the FIFA Dispute Resolution Chamber passed on 16 February 2022 is confirmed.
4. (...).
5. (...).
6. (...).
7. All other motions or prayers for relief are dismissed.