

# Decision of the Players' Status Chamber

passed on 11 April 2023

regarding an employment-related dispute concerning  
the coach Ahmed El Faramawy Yousef Mostafa Soliman

**BY:**

**Luis Kanonnikoff (Paraguay)**

**CLAIMANT:**

**Ahmed El Faramawy Yousef Mostafa Soliman, Egypt**

Represented by Islam Hisham & Partners Law Firm / Mr Shimaa El-Daly

**RESPONDENT:**

**Fountain Gate FC, Tanzania**

## I. Facts of the case

1. On 25 May 2022, the Egyptian coach Ahmed El Faramawy Yousef Mostafa Soliman (hereafter *the Claimant* or *the coach*) and the Tanzanian club Fountain Gate FC (hereafter *the Respondent* or *the club*) concluded an employment agreement (hereafter *the Employment Agreement*) valid as of 1 July 2022 until 31 June 2023.
2. In Clause 4 of the Employment Agreement, the Claimant and the Respondent (hereafter jointly referred to as *the parties*) agreed upon, *inter alia*, the following financial terms:
  - An annual compensation of USD 14,400, distributed in 12 monthly salaries of USD 1,200.
3. In clause 4.5 of the Employment Agreement, the parties, *inter alia*, agreed upon the following: *"The party seeking to terminate the contract shall compensate the other a cumulative sum amounting to a six months net pay."*
4. On 8 December 2022, the Respondent terminated the Employment Agreement with the Claimant. In the respective termination notice, the Respondent asserted that the Claimant does not have the appropriate licence in line with the new regulations of the competition and that the final dues of the Claimant are the following:
  - *"Salary to the date of exit;*
  - *Any unpaid salary to date;*
  - *Payment of 1 months0 salary in lieu of the notice;*
  - *Annual leave accrued to the month of your exit;"*
5. On 19 December 2022, the Claimant acknowledged the receipt of the termination letter and replied as follows:

*"I am requesting for my severance payments, which are 4 month salary of working. In accordance to the contract you have to pay me 6 months salary as the penalty agreed in the contract between us and the requirement for my passport and all movement rights within Tanzania until you pay me.*

*Please finish all of my belongings that are with you. within a maximum period of 14 days from the date I got the termination letter."*
6. On 21 December 2021, the Claimant sent a further letter to the Respondent regarding a potential settlement agreement. In this respect, the Claimant held that the Respondent shall pay him *"4 month working days and in accordance to the contract you have to pay me 6 month salary as the penalty agreed in the contract between us, meaning the total amount should be 12.000.00/= us dollar that is the hole amount of ten month salary."*

7. On 28 December 2022, the Respondent sent a "Payment Agreement" to the Claimant, trying to settle the dispute as follows:
  - *"Salary to the date of exit;*
  - *Any unpaid salary to date;*
  - *Payment of 1 months0 salary in lieu of the notice;*
  - *Annual leave accrued to the month of your exit;"*
8. On 8 January 2023, the Claimant sent a letter to the Respondent as a *"final warning notice to settle all matters regarding the Coach amicably within 10 days"*. In this respect, the Claimant requested the amount of USD 4,800 as outstanding salaries and USD 7,200 as compensation.
9. On 7 December 2022, the Claimant signed a new employment agreement with the Tanzanian club Kitayosa FC, valid *"for six months"* until 30 June 2023.
10. Based on Clause 4 of the new employment agreement, the Claimant was entitled to USD 1,200 as a monthly salary. The value of the new employment agreement amounted to USD 7,200 (six times USD 1,200).

## II. Proceedings before FIFA

11. On 26 January 2023, the Claimant filed the claim at hand before FIFA. A brief summary of the position of the parties is detailed in continuation.

### a. Position of the Claimant

12. The requests for relief of the Claimant were the following:
  - 1) *To accept this claim against the Respondent.*
  - 2) *To consider the Respondent liable for the breach without just cause of the Employment Contract.*
  - 3) *To condemn the Respondent to pay the Claimant an amount of **USD 4,800-/ as the outstanding salaries** according to article 7 of FIFA-RSTP divided as follows:*
    - a) *Salary's September 2022: an amount of USD 1,200-/ "one thousand and two hundred dollars" plus 5% interest should be calculated as from 01 September 2022.*
    - b) *Salary's October 2022: an amount of USD 1,200-/ "one thousand and two hundred dollars" plus 5% interest should be calculated as from 01 October 2022.*
    - c) *Salary's November 2022: an amount of USD 1,200-/ "one thousand and two hundred dollars" plus 5% interest should be calculated as from 01 November 2022.*
    - d) *Salary's December 2022: an amount of USD 1,200-/ "one thousand and two hundred dollars" plus 5% interest should be calculated as from 01 December 2022.*  - 4) *To condemn the Respondent to pay the Claimant **agreed compensation under article 4.5 of the Employment Contact "penalty clause" for the early termination, in***

**amount of USD 7,200-** / “seven thousand and two hundred dollars” plus 5% interest to be calculated as from 08 December 2022

5) To condemn the Respondent to pay the claimant an **additional of compensation under the concept of specificity of sport** according to article 6 para 2 b, in an amount of USD 7,200- / “seven thousand and two hundred dollars” plus 5% interest to be calculated as from 08 December 2022

6) To condemn the Respondent to pay interests at a rate of five percent (5%) per annum over entire amounts requested from the due date of each payment until the date of the effective payment.

7) To ban the Respondent from registering any new players, either nationally or internationally, for two registration periods according to FIFA RSTP; AND

8) To impose the Respondent whatever sanctions this honorable Chamber deems fit in accordance with 7 Annexe 2 of the FIFA RSTP.

9) To fix a sum of **USD (5,000- /)** “five thousand dollars”, to be paid by the Respondent to the Claimant, to help the payment of its **legal fees and costs**.

10) As a consequence of the above, to condemn the Respondent to pay all expenses and costs of the present proceedings, if any.”

13. The Claimant argued that the termination on 8 December 2022 occurred without just cause as the validity of the contract cannot be subject to holding a specific licence.
14. What is more, the Claimant alleged that the Respondent did not comply with its financial obligations and, at the date of termination, several salaries (September – December 2022) remained outstanding and shall be paid by the club along with compensation foreseen in Clause 4.5 of the Employment Agreement.
15. The Claimant was of the opinion that the respective Clause 4.5 is “*valid, as it contained all the necessary elements required under Swiss law.*”
16. Finally, the Claimant was of the opinion that due to aggravating circumstances, he shall be granted an additional compensation of USD 7,600.

#### **b. Position of the Respondent**

17. In its reply, the Respondent confirmed the existence of the employment relationship, yet argued that new regulations came into force and that the Claimant did no longer have an appropriate license.
18. Since the Respondent would have been allegedly penalised for employing the Claimant in the original position, a different alternative had been offered, however, to no avail.
19. The Respondent asserted that the parties agreed to mutually terminate the contract, with payments to “start in January”, yet due to the current financial situation the Respondent asserted to pay the amounts “starting this March 2023”.

### **c. Comments of the Claimant**

20. The Claimant was requested to provide final comments regarding the alleged amicable settlement between the parties.
21. In this respect, the Claimant asserted:

*“Regarding the Respondent’s allegation in related to the alleged mutual termination, this allegation is groundless. The Respondent did not provide any evidence proving that both parties have agreed to terminate the contract mutually nor even provide the Chamber with anything proving that it paid any amount to the Claimant on basis of this termination.”*

## **III. Considerations of the Players’ Status Chamber**

### **a. Competence and applicable legal framework**

22. First of all, the Single Judge of the Players’ Status Chamber (hereinafter also referred to as *the Single Judge*) analysed whether he was competent to deal with the case at hand. In this respect, it took note that the present matter was presented to FIFA on 26 January 2023 and submitted for decision on 11 April 2023. Taking into account the wording of art. 34 of the October 2022 edition of the Procedural Rules Governing the Football Tribunal (hereinafter: *the Procedural Rules*), the aforementioned edition of the Procedural Rules is applicable to the matter at hand.
23. Subsequently, the Single Judge referred to art. 2 par. 1 of the Procedural Rules and observed that in accordance with art. 23 par. 2 in combination with art. 22 lit. c) of the Regulations on the Status and Transfer of Players (March 2023 edition), he is competent to deal with the matter at stake, which concerns an employment-related dispute with an international dimension between an Egyptian coach and a Tanzanian club.
24. Subsequently, the Single Judge analysed which regulations should be applicable as to the substance of the matter. In this respect, it confirmed that, in accordance with art. 26 par. 1 and 2 of the Regulations on the Status and Transfer of Players (March 2023 edition), and considering that the present claim was lodged on 26 January 2023, the October 2022 of said regulations (hereinafter: *the Regulations*) is applicable to the matter at hand as to the substance.

### **b. Burden of proof**

25. The Single Judge recalled the basic principle of burden of proof, as stipulated in art. 13 par. 5 of the Procedural Rules, according to which a party claiming a right on the basis of an alleged fact shall carry the respective burden of proof. Likewise, the Single Judge

stressed the wording of art. 13 par. 4 of the Procedural Rules, pursuant to which he may consider evidence not filed by the parties, including without limitation the evidence generated by or within the Transfer Matching System (TMS).

### **c. Merits of the dispute**

26. His competence and the applicable regulations having been established, the Single Judge entered into the merits of the dispute. In this respect, the Single Judge started by acknowledging all the above-mentioned facts as well as the arguments and the documentation on file. However, the Single Judge emphasised that in the following considerations he will refer only to the facts, arguments and documentary evidence, which he considered pertinent for the assessment of the matter at hand.

#### **i. Main legal discussion and considerations**

27. The foregoing having been established, the Single Judge acknowledged that this is claim of a coach concerning a termination of the contract by the club taking place on 8 December 2022.

28. In this respect, the Single Judge recalled the arguments of the coach that the club did not have just cause to terminate the contract. On the other hand, the Single Judge took note of the arguments of the club, asserting that the coach was not in possession of the appropriate licence and believed the parties agreed to settle amicably.

29. In this context, the Single Judge first decided to address the existence of an amicable settlement as alleged by the Respondent. In this respect, the Single Judge noted that, based on the evidence on file, no amicable settlement was reached between the parties regarding the termination nor the financial consequences arising therefrom.

30. The Single Judge continued with his analysis regarding the “inappropriate” licence in line with the new regulations of the competition. In this respect, the Single Judge pointed out to art. 2 par. 4 of Annexe 2 of the Regulations, which stipulates that a holding a specific licence does not influence the validity of the contract and, consequently, the Single Judge concluded that the termination by the club occurred without just cause.

#### **ii. Consequences**

31. Having stated the above, the members of the Single Judge turned his attention to the question of the consequences of such unjustified breach of contract committed by the Respondent.

32. The Single Judge observed that the outstanding remuneration at the time of termination, coupled with the specific requests for relief of the player, are equivalent to salaries under the contract between September and 6 December 2022, amounting to USD 3,832.25.
33. As a consequence, and in accordance with the general legal principle of *pacta sunt servanda*, the Single Judge decided that the Respondent is liable to pay to the Claimant the amounts which were outstanding under the contract at the moment of the termination, i.e. USD 3,832.25 (i.e. USD 1,200 times three plus *pro rata* 6 days of December).
34. In addition, taking into consideration the Claimant's request as well as the constant practice of the Single Judge in this regard, the latter decided to award the Claimant interest as follows:
  - USD 1,200 plus 5% interest p.a. as from 1 October 2022 until the date of the effective payment;
  - USD 1,200 plus 5% interest p.a. as from 1 November 2022 until the date of the effective payment;
  - USD 1,200 plus 5% interest p.a. as from 1 December 2022 until the date of the effective payment;
  - USD 232.25 plus 5% interest p.a. as from 6 December 2022 until the date of the effective payment.
35. Having stated the above, the Single Judge turned to the calculation of the amount of compensation payable by the club to the coach in the case at stake. In doing so, the Single Judge firstly recapitulated that, in accordance with art. 6 par. 2 of Annexe 2 of the Regulations, the amount of compensation shall be calculated, in particular and unless otherwise provided for in the contract at the basis of the dispute, with due consideration for the remuneration and other benefits due to the coach under the existing contract and/or the new contract and the time remaining on the existing contract.
36. In application of the relevant provision, the Single Judge 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.
37. In this regard, the Single Judge took note of the wording of clause 4.5 of the contract, which established that *"The party seeking to terminate the contract shall compensate the other a cumulative sum amounting to a six months net pay."*
38. After analysing the content of the aforementioned clause, the Single Judge concluded that it fulfilled the criteria of reciprocity and proportionality, in line with the Single Judge's longstanding jurisprudence, and therefore was to be applied in the case at hand to determine the amount of compensation payable by the Respondent to the Claimant.

39. Consequently, the Single Judge decided that the amount of USD 7,200 (i.e. USD 1,200 times six), as per the compensation clause agreed between the parties in the contract, is due to the coach by the club.
40. Lastly, taking into consideration the Claimant's request as well as the constant practice of the Single Judge in this regard, the latter decided to award the Claimant interest on said compensation at the rate of 5% p.a. as of 6 December 2023 until the date of effective payment.

### iii. Compliance with monetary decisions

41. Finally, taking into account the applicable Regulations, the Single Judge referred to art. 8 par. 1 and 2 of Annexe 2 of the Regulations, which stipulate that, with its decision, the pertinent FIFA deciding body shall also rule on the consequences deriving from the failure of the concerned party to pay the relevant amounts of outstanding remuneration and/or compensation in due time.
42. In this regard, the Single Judge highlighted that, against clubs, the consequence of the failure to pay the relevant amounts in due time shall consist of a ban from registering any new players, either nationally or internationally, up until the due amounts are paid. The overall maximum duration of the registration ban shall be of up to three entire and consecutive registration periods.
43. Therefore, bearing in mind the above, the Single Judge decided that the Respondent must pay the full amount due (including all applicable interest) to the Claimant within 45 days of notification of the decision, failing which, at the request of the Claimant, a ban from registering any new players, either nationally or internationally, for the maximum duration of three entire and consecutive registration periods shall become immediately effective on the Respondent in accordance with art. 8 par. 2, 4, and 7 of Annexe 2 of the Regulations.
44. The Respondent shall make full payment (including all applicable interest) to the bank account provided by the Claimant in the Bank Account Registration Form, which is attached to the present decision.
45. The Single Judge recalled that the above-mentioned ban will be lifted immediately and prior to its complete serving upon payment of the due amounts, in accordance with art. 8 par. 8 of Annexe 2 of the Regulations.

### d. Costs

46. The Single Judge referred to art. 25 par. 1 of the Procedural Rules, according to which *"Procedures are free of charge where at least one of the parties is a player, coach, football agent,*



*or match agent*". Accordingly, he decided that no procedural costs were to be imposed on the parties.

47. Likewise, and for the sake of completeness, the Single Judge recalled the contents of art. 25 par. 8 of the Procedural Rules and decided that no procedural compensation shall be awarded in these proceedings.
48. Lastly, the Single Judge concluded his deliberations by rejecting any other requests for relief made by any of the parties.

## IV. Decision of the Players' Status Chamber

1. The claim of the Claimant, Ahmed El Faramawy Yousef Mostafa Soliman, is partially accepted.
2. The Respondent, Fountain Gate FC, must pay to the Claimant the following amount(s):
  - **USD 1,200 as outstanding remuneration** plus 5% interest p.a. as from 1 October 2022 until the date of the effective payment;
  - **USD 1,200 as outstanding remuneration** plus 5% interest p.a. as from 1 November 2022 until the date of the effective payment;
  - **USD 1,200 as outstanding remuneration** plus 5% interest p.a. as from 1 December 2022 until the date of the effective payment;
  - **USD 232.25 as outstanding remuneration** plus 5% interest p.a. as from 6 December 2022 until the date of the effective payment.
  - **USD 7,200 as compensation for breach of contract without just cause** plus 5% interest *p.a.* as from 6 December 2022 until the date of effective payment.
3. Any further claims of the Claimant are rejected.
4. Full payment (including all applicable interest) shall be made to the bank account indicated in the **enclosed** Bank Account Registration Form.
5. Pursuant to art. 8 of Annexe 2 of the Regulations on the Status and Transfer of Players, if full payment (including all applicable interest) is not made **within 45 days** of notification of this decision, the following **consequences** shall apply:
  1. The Respondent shall be banned from registering any new players, either nationally or internationally, up until the due amount is paid. The maximum duration of the ban shall be of up to three entire and consecutive registration periods.
  2. The present matter shall be submitted, upon request, to the FIFA Disciplinary Committee in the event that full payment (including all applicable interest) is still not made by the end of the three entire and consecutive registration periods.
6. The consequences **shall only be enforced at the request of the Claimant** in accordance with art. 8 par. 7 and 8 of Annexe 2 and art. 25 of the Regulations on the Status and Transfer of Players.
7. This decision is rendered without costs.

For the Football Tribunal:



**Emilio García Silvero**

Chief Legal & Compliance Officer

**NOTE RELATED TO THE APPEAL PROCEDURE:**

According to article 57 par. 1 of the FIFA Statutes, this decision may be appealed against before the Court of Arbitration for Sport (CAS) within 21 days of receipt of the notification of this decision.

**NOTE RELATED TO THE PUBLICATION:**

FIFA may publish this decision. For reasons of confidentiality, FIFA may decide, at the request of a party within five days of the notification of the motivated decision, to publish an anonymised or a redacted version (cf. article 17 of the Procedural Rules Governing the Football Tribunal).

**CONTACT INFORMATION**

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