

Decision of the FIFA Disciplinary Committee

passed on 13 April 2023

DECISION BY:

Thomas HOLLERER (Austria), Member

ON THE CASE OF:

Mr. Junior Kabananga Kalonji

(Decision FDD-14389)

REGARDING:

Art. 21 of the FIFA Disciplinary Code - *Failure to respect decisions*

I. FACTS OF THE CASE

1. The following summary of the facts does not purport to include every single contention put forth by the actors at these proceedings. However, the member of the FIFA Disciplinary Committee (**the Committee**) has thoroughly considered any and all evidence and arguments submitted, even if no specific or detailed reference has been made to those arguments in the following outline of its position and in the ensuing discussion on the merits.
2. On 3 May 2022, the Court of Arbitration for Sport (**CAS**), in an ordinary arbitration procedure, rendered an Arbitral Award (**the CAS Award**) ordering Mr. Junior Kabananga Kalonji (**the Respondent**) to pay to Mr. Fabio Baglio (FB Football Management) (**the Claimant**) the following amounts:
 - (i) EUR 125,000, plus 5% interest per year as from 17 October 2019.
 - (ii) CHF 5,000 as a contribution towards the legal costs and expenses in connection with the arbitration proceedings.
 - (iii) the costs of the arbitration to be determined and served to the parties by the CAS Court Office.
3. No appeal was lodged before the Swiss Federal Tribunal against the aforementioned CAS Award.
4. On 7 February 2023, pursuant to the abovementioned CAS award, the CAS Court Office ordered the Respondent to pay the amount of CHF 22,136 as costs of arbitration to the Claimant.
5. On 14 March 2023, as the amounts due to the Claimant by the Respondent were not paid, the legal representative(s) of the Claimant requested the initiation of disciplinary proceedings against the Respondent for failure to comply with the CAS Award.
6. On 24 March 2023, the Secretariat to the FIFA Disciplinary Committee (**the Secretariat**) informed the Respondent that this would constitute a potential breach of art. 21 of the FIFA Disciplinary Code (**FDC**). In this respect, the Secretariat proposed the following sanction to the Respondent in accordance with art. 58 FDC as read in conjunction with Annexe 1 FDC:
 1. *The Respondent, the Player Junior Kabananga Kalonji, shall pay to Fabio Baglio (FB Management) (the Creditor) as follows:*
 - *EUR 125,000 plus interest of 5% per year as from 17 October 2019 until the date of effective payment;*
 - *CHF 5,000.00 as a contribution towards the legal costs and expenses in connection with the arbitration proceedings;*
 - *CHF 22,136.00 as cost of the arbitration procedure.*
 2. *The Respondent is granted a final deadline of 30 days as from the present proposal becoming final and binding in which to pay the amount due. Upon expiry of the aforementioned final deadline and in the event of persistent default or failure to comply in*

full with the Decision within the period stipulated, the present matter will, upon request of the Creditor, be resubmitted to the FIFA Disciplinary Committee so that a ban on any football-related activity may be imposed on the Respondent.

3. *The Respondent shall pay a fine to the amount of CHF 15,000.*
7. On 27 March 2023 (*i.e.* within the 5 days deadline granted by art. 58 FDC), the Respondent rejected the aforementioned proposed sanction and provided his position, requesting regular proceedings to be conducted.

II. RESPONDENT'S POSITION

8. The position submitted by the Respondent can be summarized as follows:
 - The Respondent asked for an "objective" hearing on the case.
 - He doesn't understand the reference to art. 58 FDC related to "*Forgery and falsification*".
 - The Claimant "*has already imposed sanctions on the [Respondent] for the amount of the debt and demands its repayment in civil proceedings, while the penalties were directed at the [Respondent]'s property in the form of a residential apartment*". The present matter therefore is "*a repetition or duplication of the claims of one creditor to one Debtor*", keeping in mind that the Respondent "*sent documents to appeal the decision [rendered at national level], and filing a new lawsuit regarding the invalidation of the [Claimant]'s claims, since they were based solely on assumptions*".
 - The dispute "*has not previously been considered by the legal and judicial bodies of FIFA*". "*A civil dispute was considered between a person posing as a sports agent and a professional player. At the same time, the rules of specifics of consideration of such disputes were not applied*".
 - The "*norms of the 'FIFA Regulatory Documents' were not applied, including the provisions of the regulations on working with intermediaries were not applied and were not considered*".
 - "*Taking into account all the circumstances, the [Respondent] believes that there are no grounds for applying disciplinary sanctions, since the dispute has not been finally resolved between the parties, and the [Claimant] already claims to receive real estate to repay the debt according to the CAS decision, while, as indicated above, there are prerequisites for changing such a decision*".
 - The Respondent "*believes that the jurisdiction of the FIFA Disciplinary Committee is not seen in this dispute between the parties, however, for a comprehensive and objective investigation, he kindly asks to appoint a review of all the circumstances and facts related to the filing of the [Claimant]'s application to FIFA*".
9. The Committee once again reiterated that it had considered all the facts, allegations, legal arguments and evidence provided by the Respondent, and in the present decision had only

referred to those observations and evidence for which he considered necessary to explain its reasoning.

III. CONSIDERATIONS OF THE DISCIPLINARY COMMITTEE

10. In view of the circumstances of the present matter, the Committee decided to first address the procedural aspects of the present matter, namely, its jurisdiction as well as the applicable law, before entering into the substance of the matter and assessing the possible failure of the Respondent to comply with the CAS Award as well as the potential sanctions resulting therefrom.

A. Jurisdiction of the FIFA Disciplinary Committee

11. First of all, the Committee noted that the Respondent challenged its jurisdiction, but he did not provide any reason and/or evidence in support of his statement.
12. Notwithstanding the above and for the sake of good order, the Committee found it worthwhile to emphasize that, on the basis of arts. 56 and 57 FDC, it was competent to evaluate the present case and to impose sanctions in case of corresponding violations.
13. In addition, and on the basis of art. 51 (2) of the FIFA Statutes, the Committee may pronounce the sanctions described in the Statutes and the FDC on member associations, clubs, officials, players, football agents and match agents.

B. Applicable legal framework

14. With regard to the matter at hand, the Committee pointed out that the disciplinary offense, *i.e.* the potential failure to comply with the CAS Award, was committed continuously prior to and after the entry into force of the 2023 edition of the FDC. In this respect, and keeping in mind the principles enshrined under art. 4 FDC, the Committee deemed that the merits as well as the procedural aspects of the present case should fall under the 2023 edition of the FDC.
15. Having established the above, the Committee wished to recall the content and scope of art. 21 FDC in order to duly assess the case at hand.
16. According to this provision:
 1. *Anyone who fails to pay another person (such as a player, a coach or a club) or FIFA a sum of money in full or part, even though instructed to do so by a body, a committee, a subsidiary or an instance of FIFA or a CAS decision (financial decision), or anyone who fails to comply with another final decision (non-financial decision), passed by a body, a committee, a subsidiary or an instance of FIFA, or by CAS:*

a) will be fined for failing to comply with a decision and receive any pertinent additional disciplinary measure; and, if necessary:

b) will be granted a final deadline of 30 days in which to pay the amount due or to comply with the non-financial decision;

(...)

f) in the case of natural persons, upon expiry of the aforementioned final deadline and in the event of persistent default or failure to comply in full with the decision within the period stipulated, a ban on any football-related activity for a specific period may be imposed. Other disciplinary measures may also be imposed.

17. Moreover, for the sake of good order, it is worth emphasizing that in line with art. 57.1.h) FDC, cases involving matters under art. 21 FDC may be decided by one member of the Disciplinary Committee alone, acting as a single judge, as in the present case.
18. Following the above, the Committee next proceeded to recall that pursuant to art. 21.10 FDC, it may impose disciplinary measures for non-compliance with a final CAS award rendered in the context of an ordinary CAS procedure, provided that the respective CAS procedure was initiated after 15 July 2019, as *in casu* (the Committee noting in this respect, that the CAS procedure in connection with the CAS Award had been initiated on 21 May 2020).
19. Finally, the Committee emphasized that, equal to the competence of any enforcement authority, it cannot review or modify as to the substance a previous decision, which is final and binding, and thus has become enforceable.
20. Its jurisdiction being established and the applicable law determined, the Committee subsequently turned its attention to the CAS Award.

C. Merits of the dispute

I. Analysis of the facts in light of art. 21 FDC

21. To begin with, the Committee observed that the present disciplinary proceedings referred to a potential failure by the Respondent to comply with a CAS Award dated 3 May 2022 by means of which the Respondent was ordered to pay to the Claimant as outlined above.
22. The above having been established, the Committee once again recalled that no appeal was lodged before the Swiss Federal Tribunal against the CAS Award, which therefore became final and binding.
23. In response to the Respondent's request for a "*review of all the circumstances and facts*", the Committee recalled that, as previously explained, it is not allowed to analyse the case decided by CAS as to the substance, in other words, to reassess the circumstances having led to the

- CAS Award or to check the correctness of the amounts ordered to be paid, but has as a sole task to analyse if the Respondent complied with the relevant final and binding award¹.
24. In these circumstances, the Committee observed that the Respondent argued that the FIFA regulations, including the provisions of the regulations on working with intermediaries, were not applied.
 25. Taking into account the foregoing, the Committee pointed out that the former however pertained to the substance of the CAS Award and was as such, outside the scope of competence of the FIFA Disciplinary Committee².
 26. This having been established, the Committee also noted that the Respondent contended that there are no grounds for applying disciplinary sanctions since the dispute between the parties has not been resolved in view of its appeal lodged at national level.
 27. Against such background, the Committee observed from the case file that the Respondent did not submit any documentation in support of this allegation. In fact, as explained in par. 22 *supra* and in the absence of any evidence demonstrating that the CAS Award would have been appealed (before the Swiss Federal Tribunal), the Committee had no other alternative but to conclude that the CAS Award is final and binding, as a result of which sanctions may be imposed on the Respondent on the basis of art. 21 FDC in case the amounts due in accordance with said award are not paid by the latter.
 28. Furthermore, the Committee recalled that subsequent to the opening of the disciplinary proceedings against the Respondent, the latter did not provide any proof of payment. Similarly, the Claimant did not confirm the receipt of the outstanding amounts or grant the Respondent any further time to settle his debt.
 29. Against this background, the Committee concluded that the Respondent had failed to pay to the Claimant the outstanding amounts due to it in accordance with both the CAS Award and was therefore in breach of art. 21 FDC.
 30. In view of the foregoing, the Committee concluded that the Respondent, by its conduct as described above, is considered guilty of non-compliance with a financial decision under the terms of art. 21 FDC.

II. Summary

31. In view of the foregoing, the Committee concluded that the Respondent, by its conduct as described above, violated art. 21 FDC.
32. Therefore, the Committee considered that the Respondent is to be sanctioned for the abovementioned violation.

¹ CAS 2016/A/4595; CAS 2013/A/3323.

² CAS 2018/A/5779 - par. 51

III. The determination of the sanction

33. As a preliminary remark, the Committee emphasized that the Respondent withheld the amounts unlawfully from the Claimant. Even FIFA's attempts to urge the Respondent to fulfil his financial obligations failed to induce him to pay the total amounts due.
34. With regard to the applicable sanctions, the Committee observed in the first place that the Respondent is a natural person, and as such was subject to the sanctions described under arts. 6.1 and 6.2 FDC.
35. Notwithstanding the above, the Committee recalled that art. 21 FDC foresees specific sanctions for anyone who fails to pay another person a sum of money in full or in part, even though instructed to do so by a body, a committee, a subsidiary or an instance of FIFA or a CAS decision, in so far that the latter:
 - (i) will be fined and receive any pertinent additional disciplinary measure (lit. a); and
 - (ii) will be granted a final deadline of 30 days in which to pay the amount due (lit. b);
 - (iii) (in the case of natural persons as *in casu*) upon expiry of the aforementioned final deadline and in the event of persistent default or failure to comply in full with the decision within the period stipulated, a ban on any football related activity for a specific period may be imposed (lit. f).
36. Consistently with the above, and with respect to the fine to be imposed, the Committee underlined that, in line with art. 6 (4) FDC, it shall range between CHF 100 and CHF 1,000,000.
37. In this respect, the Committee pointed out that Annexe 1 FDC provides for a list of specific disciplinary measures which may be taken into consideration in case of failure to respect financial decisions. As such, after analysing the circumstances pertaining to the present case, whilst balancing (i) the outstanding amount(s) due in light of Annexe 1 FDC and (ii) the Respondent's current salary based on the information contained in the Transfer Matching System, the Committee regarded a fine amounting to CHF 5,000 as appropriate.
38. Furthermore, and in application of art. 21.1.b) FDC, the Committee granted a final deadline of 30 days to the Claimant in order to pay the amounts due to the Respondent.
39. Finally, and consistently with art. 21.1.f) FDC, the Committee decided that upon expiry of the aforementioned final deadline, and in the event of persistent default or failure to comply in full with the CAS Award, the present matter will, upon the request of the Claimant, be resubmitted to the Disciplinary Committee to decide on the potential imposition of a ban on any football-related activity on the Respondent for a period of six (6) months, such sanction being proportionate to the offence committed while taking into account the circumstances of the case at hand.

IV. DECISION OF THE DISCIPLINARY COMMITTEE

- 1. Mr. Junior Kabananga Kalonji is found responsible for failing to comply in full with the award issued by the Court of Arbitration for Sport on 03 May 2022 (Ref. CAS 2020/O/7178).**
- 2. Mr. Junior Kabananga Kalonji is ordered to pay to Fabio Baglio (FB Football Management) as follows:**
 - **EUR 125,000 plus interest of 5% per year as from 17 October 2019 until the date of effective payment.**
 - **CHF 5,000 as a contribution towards the legal costs and expenses in connection with the arbitration proceedings.**
 - **CHF 22,136.00 as costs of the arbitration proceedings.**
- 3. Mr. Junior Kabananga Kalonji is granted a final deadline of 30 days as from notification of the present decision in which to pay the amount due. Upon expiry of the aforementioned final deadline and in the event of persistent default or failure to comply in full with the decision within the period stipulated, the present matter will, upon request of Fabio Baglio (FB Football Management), be resubmitted to the FIFA Disciplinary Committee so that a ban on any football-related activity may be imposed on Mr. Junior Kabananga Kalonji for a period of six (6) month(s).**
- 4. Mr. Junior Kabananga Kalonji is ordered to pay a fine to the amount of CHF 5,000.**
- 5. The fine is to be paid within 30 days of notification of the present decision.**

FÉDÉRATION INTERNATIONALE
DE FOOTBALL ASSOCIATION



Thomas Hollerer

Member of the FIFA Disciplinary Committee

NOTE RELATING TO THE LEGAL ACTION:

According to art. 58 (1) of the FIFA Statutes reads together with arts. 52 and 61 of the FDC, this decision may be appealed against before the Court of Arbitration for Sport (CAS). The statement of appeal must be sent to the CAS directly within 21 days of receipt of notification of this decision. Within another 10 days following the expiry of the time limit for filing the statement of appeal, the appellant shall file a brief stating the facts and legal arguments giving rise to the appeal with the CAS.

NOTE RELATING TO THE PAYMENT OF THE AMOUNT DUE:

The Respondent, Mr. Junior Kabananga Kalonji, is directed to notify the secretariat to the FIFA Disciplinary Committee of every payment made and to provide the relevant proof of payment.

The Creditor, Mr. Fabio Baglio (FB Football Management), is directed to notify the secretariat to the FIFA Disciplinary Committee of every payment received.

NOTE RELATING TO THE BAN ON ANY FOOTBALL-RELATED ACTIVITY:

The ban covers the participation, in any capacity, in a competition or activity authorised or organised by FIFA or any association, club or other member organisation of an association, or in competitions authorised or organised by any professional league or any international or national-level competition organisation or any elite or national-level sporting activity funded by a governmental agency.

The ban may be lifted upon full payment of the amount(s) due.

NOTE RELATING TO THE PAYMENT OF THE FINE:

Payment can be made either in Swiss francs (CHF) to account no. 0230-325519.70J, UBS AG, Bahnhofstrasse 45, 8098 Zurich, SWIFT: UBSWCHZH80A, IBAN: CH85 0023 0230 3255 1970 J or in US dollars (USD) to account no. 0230-325519.71U, UBS AG, Bahnhofstrasse 45, 8098 Zurich, SWIFT: UBSWCHZH80A, IBAN: CH95 0023 0230 3255 1971 U, with reference to the abovementioned case number.