

# Decision of the Players' Status Chamber

passed on 11 April 2023

regarding a dispute concerning the transfer of  
the player Tarvershima Chris Shimbayev

**BY:**

**KANONNIKOFF Luis (Paraguay)**

**CLAIMANT:**

**Galaxy Sports Academy, Nigeria**

Represented by John Nnona

**RESPONDENT:**

**Nanjing City FC, China PR**

## I. Facts of the case

1. On 15 March 2022, the Nigerian club Galaxy Sports Academy (hereinafter: *the Claimant*) and the Chinese club Nanjing City FC (hereinafter: *the Respondent*) concluded a transfer agreement (hereinafter: *the Contract*) regarding the player Tarvershima Chris Shimbayev (hereinafter: *the player*).

2. Art. 2 of the Contract reads as follows:

*"Subject to the conditions set out in clause 3, the total transfer compensation payable by Party A to Party B in respect of the transfer shall be the amount of USD 100,000 (One Hundred Thousand United States Dollars) include VAT, which sum shall be payable by Party A to Party B in the following three instalments:*

*a. USD 20,000 (Twenty Thousand USD) include VAT payment shall be made within 5 working days after all transfer and registration procedures are completed.*

*b. USD 40,000 (Forty Thousand USD) include VAT payment shall be made before 31 December 2022.*

*c. USD 40,000 (Forty Thousand USD) include VAT payment shall be made before 31 July 2023."*

3. Art. 4 of the Contract reads as follows:

*"If the player's performance in this season is average and does not meet the expectations of the club, the agreement will be suspended break off by 31 December 2022. The player will not continue to be work(sic) on the 2023 and the Party B will not receive the second and third payment."*

4. On 3 February 2023, the Claimant sent an email correspondence to the Respondent requesting the amount of USD 40,00 to be paid within 10 days, to no avail.

## II. Proceedings before FIFA

5. On 24 February 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

6. The Claimant states that art. 4 of the Contract shall be declared null and void. In its view, *"the Respondent cannot be allowed by the PSC to absolve itself of the obligation to pay transfer fees by hiding under a circumstance the occurrence of which depends on the Respondent's subjective view."*

7. According to the Claimant, the Respondent has failed to pay the second instalment in the amount of USD 40,000.

8. The Claimant file the following requests for relief:

*respectfully urges the PSC to award the Claimant the underlisted relief in the present dispute:*

*A. Payment of 40,000 USD (Forty Thousand United States Dollars) plus 5% interest per annum from the due dates.*

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

9. Despite being invited to file its position, the Respondent failed to reply to FIFA.

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

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

10. First of all, the Single Judge of the Players' Status Chamber (hereinafter also referred to as *Single Judge*) analysed whether he was competent to deal with the case at hand. In this respect, he took note that the present matter was presented to FIFA on 24 February 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.
11. Subsequently, the Single Judge referred to art. 2 par. 1 and art. 24 par. 2 of the Procedural Rules and observed that in accordance with art. 23 par. 2 in combination with art. 22 par. 1 lit. f) of the Regulations on the Status and Transfer of Players (October 2022), he is competent to deal with the matter at stake, which concerns a contractual dispute between clubs belonging to different associations.
12. Subsequently, the Single Judge analysed which regulations should be applicable as to the substance of the matter. In this respect, he confirmed that, in accordance with art. 26 par. 1 and 2 of the Regulations on the Status and Transfer of Players (October 2022), and considering that the present claim was lodged on 24 February 2023, the October 2022 edition of said regulations (hereinafter: *the Regulations*) is applicable to the matter at hand as to the substance.

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

13. 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.

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

14. 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 it will refer only to the facts, arguments and documentary evidence, which it considered pertinent for the assessment of the matter at hand.

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

15. The foregoing having been established, the Single Judge moved to the substance of the matter, and took note of the fact that, the Claimant deems that art. 4 of the Contract is potestative, since it gives the possibility to the Respondent to withhold the payment depending on its subjective opinion. On its side, the Respondent had failed to reply to FIFA, thus, it failed to contest the Claimant's allegations.
16. In this context, the Single Judge acknowledged that since the Respondent had failed to present any argument against the position of the Claimant, the Single Judge shall accept the uncontested argumentation as submitted by the Claimant regarding the interpretation and applicability of art. 4 of the Contract.
17. In view of the foregoing, the Respondent is held liable to pay the Claimant the outstanding amounts deriving from the Contract concluded between the parties, namely USD 40,000.
18. Lastly, taking into consideration the Claimant's request as well as the constant practice of the Football Tribunal in this regard, the Single Judge decided to award the Claimant interest on said amount at the rate of 5% p.a. as of the date it was overdue until the date of effective payment.

#### **ii. Art. 12bis**

19. In continuation, the Single Judge referred to art. 12bis par. 2 of the Regulations, which stipulates that any club found to have delayed a due payment for more than 30 days without a *prima facie* contractual basis may be sanctioned in accordance with art. 12bis par. 4 of the Regulations.
20. To this end, the Single Judge confirmed that the player put the club in default of payment of the amounts sought, which had fallen due more than 30 days before, and granted the club a 10-day deadline to cure such breach of contract.
21. Accordingly, the Single Judge confirmed that the club had delayed a due payment without a *prima facie* contractual basis. It followed that the criteria enshrined in art. 12bis of the Regulations was met in the case at hand.
22. The Single Judge further established that by virtue of art. 12bis par. 4 of the Regulations he has competence to impose sanctions on the club. On account of the above and bearing in mind that this is the first offence by the club within the last two years, the Single Judge decided to impose a warning on the club in accordance with art. 12bis par. 4 lit. a) of the Regulations.
23. The Single Judge highlighted that a repeated offence will be considered as an aggravating circumstance and lead to a more severe penalty in accordance with art. 12bis par. 6 of the Regulations.

### iii. Compliance with monetary decisions

24. Finally, taking into account the applicable Regulations, the Single Judge referred to art. 24 par. 1 and 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.
25. 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.
26. 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. 24 par. 2, 4, and 7 of the Regulations.
27. 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.
28. 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. 24 par. 8 of the Regulations.

### d. Costs

29. Finally, the Single Judge referred to art. 25 par. 1 and 2 of the Procedural Rules, according to which in disputes between clubs, costs in the maximum amount of USD 25,000 are levied. As per art. 25 par. 5 of the Procedural Rules, the Single Judge will decide the amount that each party is due to pay, in consideration of the parties' degree of success and their conduct during the procedure, as well as any advance of costs paid.
30. Taking into account that the claim of the Claimant has been fully accepted, the Single Judge concluded that the Respondent shall bear the costs of the current proceedings before FIFA. According to Annexe A of the Procedural Rules, the costs of the proceedings are to be levied on the basis of the amount in dispute. Consequently, the Single Judge concluded that the maximum amount of costs of the proceedings corresponds to USD 5,000.
31. In light of the above, the Single Judge determined the costs of the current proceedings to the amount of CHF 4,000 and concluded that said amount has to be paid by the Respondent in order to cover the costs of the present proceedings.

## IV. Decision of the Players' Status Chamber

1. The claim of the Claimant, Galaxy Sports Academy, is accepted.
2. The Respondent, Nanjing City FC, must pay to the Claimant the following amount(s):
  - **USD 40,000 as outstanding amount** plus 5% interest *p.a.* as from 1 January 2023 until the date of effective payment.
3. Any further claims of the Claimant are rejected.
4. A **warning** is imposed on the Respondent (cf. art. 12bis of the Regulations for the Status and Transfer of Players).
5. Full payment (including all applicable interest) shall be made to the bank account indicated in the **enclosed** Bank Account Registration Form.
6. Pursuant to art. 24 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.
7. The consequences **shall only be enforced at the request of the Claimant** in accordance with art. 24 par. 7 and 8 and art. 25 of the Regulations on the Status and Transfer of Players.
8. The final costs of the proceedings in the amount of USD 4,000 are to be paid by the Respondent to FIFA. FIFA will reimburse to the Claimant the advance of costs paid at the start of the present proceedings (cf. note relating to the payment of the procedural costs below).

For the Football Tribunal:



**Emilio García Silvero**  
Chief Legal & Compliance Officer

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**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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