



TAS / CAS

TRIBUNAL ARBITRAL DU SPORT
COURT OF ARBITRATION FOR SPORT
TRIBUNAL ARBITRAL DEL DEPORTE

CAS 2022/A/9010 Tema Youth Football Club v. Ghana Football Association

ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition

President: Prof Dr Pascal Pichonnaz, Professor of Law, Fribourg, Switzerland
Arbitrators: Ms Joanne Setright, Attorney-at-Law, Sydney, New South Wales, Australia
Mr Hendrik Willem Kesler, Attorney-at-Law, Enschede, The Netherlands
Ad hoc Clerk: Mr Dennis Koolaard, Attorney-at-Law, Amsterdam, The Netherlands

in the arbitration between

Tema Youth Football Club, Tema, Ghana

Represented by Mr Okataktie Kwaku Osafobuabeng and Mr Appiahene Osei Akoto, Attorneys-at-Law, Tema, Ghana

- Appellant -

and

Ghana Football Association, Accra, Ghana

Represented by Ms Naa Odofey Nortey and Mr Prosper Harrison Addo, Attorneys-at-Law, Accra, Ghana

- Respondent -

* * * * *

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I. PARTIES

1. Tema Youth Football Club (the “Appellant” or “Tema Youth FC”) is a football club with its registered seat in Tema, Ghana. Tema Youth FC is registered with the Ghana Football Association (the “GFA”).
2. The GFA (the “Respondent”) has its registered seat in Accra, Ghana. The GFA is the national association governing football in Ghana and is affiliated with the *Fédération Internationale de Football Association* (“FIFA”).
3. Tema Youth FC and the GFA are hereinafter jointly referred to as the “Parties”.

II. INTRODUCTION

4. This proceeding revolves around a transfer agreement (the “Transfer Agreement”) concluded between Tema Youth FC and Young Red Bull FC, another football club from Ghana, concerning the registration of the football player Mr Joseph Paintsil (the “Player”) for Tema Youth FC. It is disputed between the Parties as to whether the Player was properly transferred from Young Bull FC to Tema Youth FC. According to the Transfer Agreement, no transfer fee was payable, but Young Red Bull FC was entitled to 30% of any potential future transfer fee received by Tema Youth FC for the Player.
5. The Player was eventually transferred by Tema Youth FC to KRC Genk, a Belgian football club, for a transfer fee of EUR 3,000,000, on the basis of which Young Red Bull FC lodged a claim against Tema Youth FC before the Players’ Status Committee of the GFA (the “GFA PSC”) for the amount of EUR 778,807, alleging that Tema Youth FC had already paid EUR 122,000 from the total amount due of EUR 900,000.
6. The GFA PSC upheld Young Red Bull FC’s claim (the “First Instance Decision”). Following an appeal lodged by Tema Youth FC against the First Instance Decision, the GFA Appeals Committee issued a decision (the “Appealed Decision”), awarding EUR 688,000 to Young Red Bull FC, EUR 150,000 to the GFA and 150,000 to the Ghana League Clubs Association (“GHALCA”).
7. Tema Youth FC is challenging the Appealed Decision before the Court of Arbitration for Sport (“CAS”), *inter alia*, arguing that the Player was never registered with Young Red Bull FC. The GFA seeks a confirmation of the Appealed Decision.

III. FACTUAL BACKGROUND

8. Below is a summary of the main relevant facts, as established on the basis of the written submissions of the Parties and 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.

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A. Background Facts

9. Until 2012, the Player was registered with Fadama Ajax FC, a Ghanaian football club.
10. On 15 March 2012, the Player was transferred from Fadama Ajax FC to “*RedBull Soccer Academy West Africa Limited*” (“Red Bull Soccer Academy”), another Ghanaian football club.
11. It is not in dispute that at some point in time Red Bull Soccer Academy ceased participating in official competitions with its representative teams. It is however in dispute when this happened. It is also in dispute with which club the Player was subsequently registered. Whereas Tema Youth FC maintains that, based on the applicable rules of the GFA, the Player was automatically registered with Fadama Ajax FC again and that the Player in any event was not and could not have been registered with Young Red Bull FC, the GFA maintains that the Player was registered with Young Red Bull FC, but that this was immaterial for the outcome of the proceedings as Young Red Bull FC was in any event bound by the Transfer Agreement. The Player may at some point also have been registered with Young Red Bull (Football) Babies, another Ghanaian football club.
12. On 27 January 2015, Tema Youth FC and Young Red Bull FC concluded an agreement entitled “*Release of the Player Joseph Paintsil*” (the Transfer Agreement), providing, *inter alia*, as follows:
 - “1. *Should Tema Youth F/C secure a local or foreign contract for the player, (Joseph Paintsil) Tema Youth Football Club shall be entitled to seventy percent (70%) and the remaining thirty percent (30%) shall go to Young Red Bull F/C.*”
13. In the season 2017/18, the Player was loaned by Tema Youth FC to the Hungarian football club Ferencvaros.
14. On 1 July 2018, Tema Youth FC transferred the Player to KRC Genk, a Belgian football club, for a transfer fee of EUR 3,000,000.

B. Proceedings before the GFA Players’ Status Committee

15. On 23 March 2022, Young Red Bull FC filed a claim against Tema Youth FC before the GFA PSC, claiming to be entitled to an amount of EUR 778,807 based on the Transfer Agreement, i.e. 30% of the transfer fee received by Tema Youth FC from KRC Genk, less EUR 122,000 allegedly already paid.
16. On 23 March 2022, the GFA PSC rendered the First Instance Decision, with the following operative part:

“[Tema Youth FC] shall therefore pay the outstanding balance of Seven Hundred and Seventy-Eight Thousand, Eight Hundred and Seven Euros (€778,807.00) to

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[Young Red Bull FC] *within one month after the latter has furnished the former with bank details of his choice.*”

C. Proceedings before the GFA Appeals Committee

17. On 15 April 2022, Tema Youth FC filed an appeal against the First Instance Decision with the GFA Appeals Committee.

18. On 11 June 2022, the GFA Appeals Committee rendered the Appealed Decision, with the following operative part:

“We hereby direct [Tema Youth FC] to pay [Young Red Bull FC] the €688,000.00 within fourteen (14) days from the receipt of our decision from the [GFA]. [Tema Youth FC] is further directed to pay the One Hundred and Fifty Thousand Euros (€150,000.00) due to the [GFA] and the One Hundred and Fifty Thousand Euros (€150,000.00) due GHALCA within the same fourteen days indicated earlier.”

19. The grounds of the Appealed Decision provide, *inter alia*, as follows:

- *“The documentary evidence made available to the PSC and this Committee shows clearly that [Tema Youth FC] registered [the Player] on the basis of the [Transfer Agreement]. This is the contract that allowed [Tema Youth FC] to acquire the economic benefits of the Player. We are of the view that [Tema Youth FC] is bound by the terms of the [Transfer Agreement] and is therefore under an obligation to pay 30% of the transfer fee to [Young Red Bull FC].*
- *Our position is that if any other Club is of the view that [Young Red Bull FC] dishonestly acquired its player before transferring him to [Tema Youth FC], the said Club is at liberty to take steps to vindicate its rights, provided it will not be caught by the limitation provisions in the Statutes and Regulations of the [GFA]. We are however not concerned with any such speculative matter in considering the instant appeal. [...]*
- *Our decision is that [Young Red Bull FC] is entitled to 30% of the transfer fee received from KRC Genk of Belgium. The Committee arrived at its decision that [Young Red Bull FC] is entitled to the 30% by relying solely on the undisputed fact that [Tema Youth FC] acquired the economic rights relating to the [Player] from [Young Red Bull FC] on the basis of the [Transfer Agreement]. [...]*
- *We note from the appeal record that [Tema Youth FC] does not dispute paying monies totalling Six Hundred and Ninety Thousand, Eight Hundred Ghana Cedis (GH¢690,800.00), the equivalent of One Hundred and Twenty-Two Thousand Euros (€122,000.00) to Henry Acquah who is the CEO of [Young Red Bull FC]. [Tema Youth FC’s] case is that these payments were for other services provided to it by Henry Acquah and not part payment of 30% of the transfer fee received from KRC Genk for the transfer of [the Player]. Our review of the appeal record does not reveal any documentary evidence to support of the assertion by [Tema Youth FC] that its Chief Executive Officer paid these monies to Henry Acquah on the basis of scouting services provided to [Tema Youth FC] by Henry Acquah. [...]*

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- *We note from the [First Instance Decision] of the PSC that it did not take into account the five percent (5%) due the [GFA] and the five percent (5%) due [GHALCA] in calculating the outstanding sum payable to [Young Red Bull FC] by [Tema Youth FC]. This sum has to be deducted from the Three Million Euros before the balance is shared on the basis of the 70% and 30% agreed in the [Transfer Agreement] between the two clubs. Ten percent (10%) of Three Million is Three Hundred Thousand. [Tema Youth FC] shall therefore pay One Hundred and Fifty Thousand Euros to the [GFA] and One Hundred and Fifty Thousand Euros to GHALCA [...]. [Tema Youth FC] shall further pay 30% out of the sum of Two Million, Seven Hundred Thousand Euros (€2,700,000.00) to [Young Red Bull FC] less the €122,000.00 already paid to [Young Red Bull FC]. By our calculations, the 30% is Eight Hundred and Ten Thousand Euros (€810,000.00). [Young Red Bull FC] has already received €122,000.00 from [Tema Youth FC] and therefore the balance payable to [Young Red Bull FC] is Six Hundred and Eighty-Eight Thousand Euros (€688,000.00).*
- *Both the Premier League and League One Regulations of the [GFA] provide in their sections 32 that 10% of all transfer fees in respect of external transfers shall be paid into a Football Development Fund as follows;*
 - I. *Five (5%) percent shall be paid to the GFA, and*
 - II. *Five (5%) shall be paid to the Ghana League Clubs Association provided the Player is not a juvenile player.”*

IV. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

20. On 1 July 2022, Tema Youth FC filed a Statement of Appeal dated 30 June 2022 with the CAS Court Office in accordance with Articles R47 and R48 of the 2021 edition of the CAS Code of Sports-related Arbitration (the “CAS Code”), challenging the Appealed Decision. In this submission, Tema Youth FC named the GFA as the sole respondent, it requested that the proceedings be expedited, and it applied for a stay of execution of the Appealed Decision in accordance with Article R37 CAS Code as well as requested an expedited proceeding further to Article R52 CAS Code.
21. On 7 July 2022, Tema Youth FC nominated Ms Joanne Setright, Attorney-at-Law in Sydney, New South Wales, Australia, as arbitrator. Furthermore, following an inquiry from the CAS Court Office, Tema Youth FC indicated that, despite the title “Appeal Brief” its submission filed on 1 July 2022 had to be designated as its Statement of Appeal.
22. On 18 July 2022, the GFA nominated Mr Hendrik Willem Kesler, Attorney-at-Law in Enschede, the Netherlands, as arbitrator.
23. On the same date, 18 July 2022, the CAS Court Office informed the Parties that Tema Youth FC should have filed its Appeal Brief by 11 July 2022, but that it had received no communication from Tema Youth FC in this regard.

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24. Still on the same date, 18 July 2022, Tema Youth FC informed the CAS Court Office that it had filed its Appeal Brief via the CAS E-filing Platform on 10 July 2022 and therefore within the deadline granted.
25. On 19 July 2022, the CAS Court Office acknowledged that Tema Youth FC had uploaded a document to the CAS E-filing Platform to the category “Appeal Brief”, but that such document was titled “Statement of Appeal”, that it was understood from Tema Youth FC’s letter dated 7 July 2022 that its Statement of Appeal was not designated to serve as its Appeal Brief, but that it was now understood that the Statement of Appeal was designated to serve as the Tema Youth FC’s Appeal Brief, further to Article R51 CAS Code. Furthermore, in the absence of the GFA’s agreement and further to Article R52 CAS Code, it was confirmed that the proceeding would not be expedited.
26. On 20 July 2022, the GFA filed its response to Tema Youth FC’s application for a stay of execution of the Appealed Decision, requesting that it be dismissed.
27. On 21 July 2022, the CAS Court Office transmitted a disclosure made by Mr Kesler to the Parties further to Article R33 CAS Code, which neither of the Parties subsequently challenged further to Article R34 CAS Code.
28. On 26 July 2022, the CAS Court Office provided the Parties with a reasoned “Order on Request for Stay”, rendered by the Deputy President of the CAS Appeals Arbitration Division on the same date. The operative part of the Order on the Request for Stay provides as follows:
 - “1. *The request for a stay filed by Tema Youth Football Club on 1 July 2022 in the matter CAS 2022/A/9010 Tema Youth Football Club v. Ghana Football Association is dismissed.*
 2. *The costs of this Order shall be determined in the final award or in any other final disposition of this arbitration.*”
29. On the same date, 26 July 2022, the GFA filed its Answer in accordance with Article R55 CAS Code. In its Answer, the GFA, *inter alia*, objected to the testimony of any witnesses called by Tema Youth FC for whom no witness statements had been filed. The GFA also objected to certain exhibits filed by Tema Youth FC arguing that, based on Article R57 CAS Code, such evidence was available to Tema Youth FC or could have reasonably been discovered before the First Instance Decision was rendered.
30. On 3 August 2022, the GFA reiterated its objection to the testimony of any witnesses called by Tema Youth FC for whom no witness statements had been filed and, following an inquiry in this respect by the CAS Court Office, indicated that its preference was for CAS to issue an award based on the written submissions of the Parties.
31. On 18 August 2022, Tema Youth FC requested for a hearing to be held.
32. On 19 August 2022, the CAS Court Office informed the Parties that pursuant to Article R54 CAS Code, and on behalf of the Deputy President of the CAS Appeals Arbitration Division, the Panel appointed to decide the present case was constituted as follows:

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President: Prof Dr Pascal Pichonnaz, Professor of Law, Fribourg, Switzerland;
Arbitrators: Ms Joanne Setright, Attorney-at-Law, Sydney, New South Wales, Australia;
and
Mr Hendrik Willem Kesler, Attorney-at-Law, Enschede, The Netherlands.

33. On 15 September 2022, the CAS Court Office informed the Parties on behalf of the Panel as follows:

“Respondent’s Objection to Evidence – paragraph 7.3 of the Answer

The Parties are informed that the Panel, having considered the Parties’ respective positions in this regard, has decided to dismiss the Respondent’s objection to the Appellant’s following exhibits: Exhibits A-5, A-6, A-7, A-8, A-9, A-10, A-11, and A-12. The reasons for this decision will be provided in the final Award.

Respondent’s Objection to Witnesses put forward by Appellant – paragraphs 7.1 & 7.2 of the Answer

The Parties are also informed that the Panel, having considered the Parties’ respective positions in this regard, has decided to dismiss the Respondent’s objection to the Appellant’s witnesses. The reasons for this decision will be provided in the final Award.

The Appellant’s Witnesses

*Furthermore, on behalf of the Panel and further to Article R44.3 [CAS Code], the Appellant is ordered to submit by **6 October 2022** witness statements for the following persons listed at paras. 7.1 et seq. of the Appellant’s Appeal Brief:*

*Mr Wilfred Osei
Mr Musah Yakubu Zinah
Ms Hamed Abdul-Wahab
Mr Francis Adu
Mr James Dzandzi”*

34. On 6 October 2022, Tema Youth FC provided the CAS Court Office with witness statements for Mr Osei, Mr Yakubu Zinah and Mr Dzandi.
35. On 7 October 2022, the CAS Court Office acknowledged receipt of the three witness statements submitted by Tema Youth FC, noting that no witness statements were filed for Ms Abdul-Wahab and Mr Adu, and that it was therefore understood that Tema Youth FC no longer relied on these witnesses.
36. On 12 October 2022, the CAS Court Office informed the Parties that the Panel had decided to hold a hearing by video-conference further to Articles R44.2 and R57 CAS Code, and invited the GFA to file a reply to the witness statements submitted by Tema Youth FC.

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37. On 20 October 2022, the GFA provided the CAS Court Office with witness statements of Mr Henry Acquah and Mr Francis Adu, together with accompanying exhibits.
38. On 26 October 2022, pursuant to Article R44.3 CAS Code, Tema Youth FC filed a document production request with the CAS Court Office for the following 5 categories of documents in the form of a so-called “Redfern Schedule”:
 - “1. *Electronic Report from the FIFA Connect System on Categorization and Statuses of Young Redbull FC and Young [sic]*
 2. *Electronic Report on the first registration date of Young Red Bull FC players in the FIFA Connect*
 3. *The Electronic Report of the International Transfer Certificate of [the Player] when the player was transferred to Hungary*
 4. *Electronic version of the player passport of [the Player] as issued by GFA in 2018.*
 5. *Electronic Report on the transactional trail in the Transfer Matching System of GFA on [the Player] transfer to KRC Genk of Belgium.”*
39. On 27 October 2022, Tema Youth FC provided the CAS Court Office with an additional witness statement of Mr Osei, together with accompanying exhibits.
40. On 28 October 2022, the GFA objected to Tema Youth FC’s document production request, maintaining, *inter alia*, that the documents sought to be produced were irrelevant for the outcome of the proceedings.
41. On 1 November 2022, Tema Youth FC filed an unsolicited response to the GFA’s letter dated 28 October 2022.
42. On 3 November 2022, following an invitation from the CAS Court Office to respond to Tema Youth FC’s letter dated 1 November 2022, the GFA filed additional comments with respect to Tema Youth FC’s document production request.
43. On 30 November 2022, the CAS Court Office informed the Parties that the Panel had decided to grant document production request No. 1 for the period 2015-2022 and document production requests Nos. 2-5 in full, indicating that the reasons for the Panel’s decisions would be provided in the final Award.
44. Also on 30 November 2022, the GFA produced a number of documents allegedly responsive to Tema Youth FC’s document production request together with certain explanatory comments.
45. On 30 December 2022, following an invitation from the CAS Court Office to respond to the documents produced by the GFA, Tema Youth FC filed a written submission in which it not only addressed the documentation produced by the GFA, but also commented on the substance of the dispute. Tema Youth FC, *inter alia*, maintained that its document production request

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had not been fully satisfied by the GFA, in particular that no electronic documents had been produced.

46. On 13 January 2023, following an invitation from the CAS Court Office to respond to Tema Youth FC's letter dated 28 December 2022 (but received by the CAS Court Office on 30 December 2022), the GFA, *inter alia*, indicated that it had produced all documents listed in Tema Youth FC's "Redfern Schedule" and that it was "*happy to have a CAS expert fly in at the Appellants expense to verify the authenticity from the system*". The GFA also requested that Tema Youth FC's contentions in its letter dated 30 December 2022 insofar as they relate to the payment of 10% of the transfer fee "*be struck out as they do not relate to the discovery requests and can only be classified as a veiled attempt to make additional submissions after the close of the window for substantive submissions in this case*".
47. On 19 January 2023, the CAS Court Office informed the Parties that Mr Dennis Koolgaard, Attorney-at-Law in Amsterdam, The Netherlands, had been appointed as *Ad hoc* Clerk, further to Article R54 CAS Code.
48. On 24 January 2023, the CAS Court Office informed the Parties as follows:

"Document Production

[...]

First, the Panel has taken note of the production of a number of documents following the Order by the Tribunal of 30 November 2022. The Panel would like to have a clear statement by the Appellant about which of the produced documents it wants to have integrated into the file. The Panel assumes, for the time being, that it might be all of them, but any clarification about this will be welcome.

The Panel has also considered the Parties' respective positions and in light of the circumstances of this case (including the fact that the hearing is scheduled to be held on 1 February 2023), and further to Article R44.3 [CAS Code], the Parties are informed of the following:

- *The Appellant's request for the Respondent to produce an electronic version of the Player's player passport is **dismissed** because the Panel understands that the Respondent no longer has access to the Player's player passport. However, the Appellant is permitted to contact FIFA in order to try and obtain a copy of the Player's player passport and to provide the CAS Court Office of FIFA's response and any documents produced, by **27 January 2023**; and*
- *As to the Appellant's contention in the final paragraph of the penultimate page of its letter dated 28 December 2022, the Panel understands that this request relates to category II of the Redfern Schedule. In this respect, the Respondent indicated in the Redfern Schedule that "[a]ttached is the registration report for Young Red Bull Babies". The Panel was however not able to find such report in the documents produced by the Respondent. Accordingly, the Respondent is requested to resubmit such report and/or to provide other documentation corresponding to category II of the Appellant's document*

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*production request by **27 January 2023**. The Respondent should identify clearly that these documents are linked to category II.*

- *The Appellant's request for the Respondent to produce electronic versions of the reports referred to in the final paragraph of the Appellant's letter dated 28 December 2022 is **dismissed** as the Appellant failed to demonstrate the added value of electronic versions over paper versions.*

*The Appellant should indicate by **27 January 2023** whether it intends to have any new documents produced further to the above integrated into the file.”*

49. On 26 January 2023, the GFA returned a duly signed copy of the Order of Procedure provided to the Parties by the CAS Court Office on 24 January 2023.
50. On 27 January 2023, the GFA filed a copy of the registration report for Young Red Bull Babies with the CAS Court Office.
51. On 30 January 2023, the CAS Court Office informed the Parties that it had not received any communication from Tema Youth FC concerning the CAS Court Office's 24 January 2023 letter and that the deadline to do so had lapsed.
52. On 31 January 2023, Tema Youth FC provided the CAS Court Office with additional comments concerning its document production requests.
53. On 1 February 2023, a hearing was held by video conference. At the outset of the hearing, both Parties confirmed that they had no objection to the constitution and composition of the Panel.
54. In addition to the members of the Panel, Mr Dennis Koolaard, the *Ad hoc* Clerk, and Ms Kendra Magraw, CAS Counsel, the following persons attended the hearing:
 - a) For Tema Youth FC:
 - 1) Mr Okataktie Kwaku Osafobuabeng, Counsel;
 - 2) Mr Appiahene Osei Akoto, Junior Counsel.
 - b) For the GFA:
 - 1) Ms Naa Odofey Nortey, Counsel;
 - 2) Mr Prosper Harrison Addo, Counsel;
 - 3) Mr Henry Asante-Twum, Interpreter.
55. The following persons were heard, in order of appearance:
 - 1) Mr Wilfred Kwaku Osei, President / Chairman of Tema Youth FC, witness called by Tema Youth FC;
 - 2) Mr James Dzandza, Director of United Through Sports Academy, witness called by Tema Youth FC;

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- 3) Mr Musah Yakubu Zinah, Secretary of Fadama Ajax FC, witness called by Tema Youth FC;
- 4) Mr Henry Acquah, President and Sole Shareholder of Young Red Bull Football Babies and Young Red Bull FC, witness called by the GFA;
- 5) Mr Francis Adu Essah, Systems Administrator of the GFA, witness called by the GFA.

56. All witnesses were invited by the Panel to tell the truth subject to the sanction of perjury under Swiss law. Both Parties and the Panel had full opportunity to examine and cross-examine the witnesses.
57. The Parties were given full opportunity to present their cases, submit their arguments and answer the questions posed by the Panel.
58. Before the hearing was concluded, both Parties expressly stated that they had no objection to the composition of the Panel and to how the procedure was directed by the Panel and that their right to be heard had been respected.
59. On 7 February 2023, Tema Youth FC returned a duly signed copy of the Order of Procedure provided to the Parties by the CAS Court Office on 24 January 2023.
60. On 25 August 2023, Tema Youth FC filed a “Petition on Demotion” to the CAS Court Office, concerning its relegation by the GFA.
61. On 31 August 2023, the GFA provided its response to the Appellant’s “Petition on Demotion”.
62. On 22 September 2023, after consulting with the other members of the Panel, the President of the Panel issued an Order on Provisional Measures, which rejected the Appellant’s Petition on Demotion.

V. SUBMISSIONS OF THE PARTIES AND REQUESTS FOR RELIEF

63. The following summary of the Parties’ positions is illustrative only and does not necessarily comprise each and every contention put forward by the Parties. The Panel, however, has carefully considered all the submissions made by the Parties, even if no explicit reference is made in what immediately follows.

A. The Appellant

64. Tema Youth FC’s submissions, in essence, may be summarised as follows:
 - This appeal relates to the Appealed Decision that emanated from the First Instance Decision on the petition of Young Red Bull FC requesting payment of an outstanding amount of EUR 778,807 from Tema Youth FC for the transfer of the Player. This was a fictitious claim as the Player’s player passport did not include Young Red Bull FC as, by the time that the purported Transfer Agreement between Tema Youth FC and Young Red Bull FC was executed, Young Red Bull FC was not in existence. The GFA

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Appeals Committee also strangely took a decision to additionally declare payment of another 10% to the GFA when this matter was not before the GFA Appeals Committee.

De Novo Review

- The Panel may issue a new decision to replace the decision challenged, or annul and remit it back to the previous instance. CAS has the power to deal with the case *de novo*. However, the Panel has discretion to exclude evidence presented by the Parties if it was available to them or could reasonably have been discovered by them before the Appealed Decision was rendered. A *de novo* review of the facts and laws applicable to the issues raised by this appeal is in order.
- The GFA PSC fictitiously and fraudulently generated another player passport tailor-made to specifically deal with this matter when a previous player passport had been generated for FIFA when the Player was transferred on loan to Ferencvaros and KRC Genk.

Procedural Issues

- There were procedural flaws in the Appealed Decision. Tema Youth FC appealed the First Instance Decision with respect to Young Red Bull FC's claim for EUR 778,806. No case was brought against Tema Youth FC by the GFA or GHALCA with regard to the non-payment of 10% owed to the GFA and GHALCA.
- Tema Youth FC has not been heard with respect to this payment to the GFA and GHALCA by the GFA Appeals Committee and it would be against the rules of natural justice for the GFA Appeals Committee to "smuggle" this decision into a request from Young Red Bull FC.
- It is the fervent prayer of Tema Youth FC for CAS to remit the case back to the GFA for Tema Youth FC to submit its arguments on the matter "*by reconstituting a fair-minded panel for further deliberations to put finality to the purported debt owed to the GFA and GHALCA by [Tema Youth FC] when the facts prove something to the contrary*".

The Competence of the GFA PSC and the GFA Appeals Committee

- The GFA PSC failed to establish a marked distinction between Mr Acquah and Young Red Bull FC, and the two were used interchangeably as the "*Plaintiff*" in this instant case. Because Young Red Bull FC was not in existence at the time of filing the claim, it had no capacity to bring such action before the GFA PSC.
- It is also fundamentally flawed in common law jurisdictions for any judicial body to assume that a purported payment made by "Wilfred @ Finance", a company owned by Mr Wilfred Kwaku Osei, to Mr Acquah, constituted payments made by Tema Youth FC to Young Red Bull FC. The bank statements of Mr Acquah should have been rejected by the GFA PSC. Also, no agreement has been provided to the effect that "Wilfred @ Finance" had been instructed to make payments on behalf of Tema Youth FC. Mr Acquah had been employed as a development coach with Tema Youth FC and

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it is disingenuous on his part to use such disbursements as purported debt being settled to Young Red Bull FC through his private account.

- The GFA PSC should have declined jurisdiction on two counts. In the first place, Young Red Bull FC was not registered as a football club playing under Cape Coast Metropolitan Juvenile League and for that matter lacked the capacity to sign a contractual agreement with Tema Youth FC. In the second place, Article 32(5) of the GFA General Regulations states that the GFA PSC shall not address any dispute if more than two years have elapsed from the event giving rise to the dispute. The Player was transferred in 2018 and no claim has been made in writing to the secretariat of Tema Youth FC or the GFA Secretariat until 2022. Two years have elapsed and the payments made to Mr Acquah's bank account do not amount to payments made to Young Red Bull FC.

The Substance of the Case

- The Transfer Agreement was signed by Tema Youth FC under false pretences, as Young Red Bull FC had positioned itself as the owner of the Player, when in fact Young Red Bull FC was non-existent. Tema Youth FC was deceived and coerced into signing such fraudulent and forged Transfer Agreement. Defrauding under false pretences constitutes a second-degree felony in Ghana under the Criminal Offences Act 1960.
- While Young Red Bull FC failed to establish how it acquired ownership of the Player, the GFA Appeals Committee ascribed economic rights to Young Red Bull FC, which is preposterous.
- The Player was a player of Fadama Ajax FC when Tema Youth FC registered the Player in 2015. Pursuant to Article 32(4) of the GFA General Regulations, "*Juvenile players do not float until after three (3) seasons after graduating from their juvenile clubs*". Accordingly, Young Red Bull FC should have negotiated with Fadama Ajax FC before the Player could have been released to it.
- The purported registration of the Player should have been certified and authenticated by the "*regional chairman of Greater Accra*" since it involved movement across districts. There is no such validation as the original registration card with provision of registration details of the Player at under 12 with Fadama Ajax FC was abandoned for the fake registration card which suggests that the Player was a first-time registrant at the juvenile level, which is not the case.
- Following the agreement signed on 15 March 2012, Red Bull Soccer Academy owned both the economic and sporting rights of the Player, but Red Bull Soccer Academy went defunct in 2013. Red Bull Soccer Academy failed to register the Player for their division one league, rendering the Fadama Ajax FC the only team to have held the registration of the Player as a juvenile. The GFA failed to demonstrate how Young Red Bull FC acquired the economic rights of the Player.
- In the transfer of the Player, the player passport that was used did not include Young Red Bull FC. No club is entitled to payments when it is not included in the player

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passport at the moment of the transfer. Any differing player passport generated subsequently is fraudulent and the IT officer who is complicit must be sanctioned for fraudulent conduct.

- The singular act of the GFA Appeals Committee to confer economic rights on Young Red Bull FC is tantamount to “third party ownership” that is sanctionable on the basis of Article 17(b) of the GFA General Regulations. Tema Youth FC relied on Young Red Bull FC under the assumption that it was operating a legitimate football business that conferred sporting rights on it, but if it turns out that the latter was non-existent and forged all related documents, it is Young Red Bull FC that must be punished and not Tema Youth FC.
- The Player remained as a juvenile player with Fadama Ajax FC. Red Bull Soccer Academy is a Division One Zone 3 club. According to Article 4 of the Rules and Regulations of the National Juvenile Committee, once a player is registered for a senior club, he is no longer qualified to play at the juvenile level. The Player could therefore not register for Young Red Bull FC anymore.
- The registration date of 22 November 2013 on the forged registration card of the Player by Young Red Bull FC can be challenged on two counts. The registration date of 2013 was impossible as Young Red Bull FC was non-existent in November 2013. Furthermore, players of juvenile clubs in the Cape district were registered only once a season in August and as such the registration date of November 2013 was forged.
- On 10 September 2018, Fadama Ajax FC issued a disclaimer to the purported registration of the Player by Young Red Bull FC, which the latter was unable to contravene. The GFA PSC and the GFA Appeals Committee ascribed certain rights to Young Red Bull FC even though it was non-existent at the time. Related compensation has been paid by Tema Youth FC to Fadama Ajax FC.
- Fadama Ajax FC and Tema Youth FC submitted certified documents to authenticate the respective years of training and development of the Player to enable the GFA IT Department to process the Player’s player passport. Conspicuously missing was Young Red Bull FC, which could not submit any certified documents to authenticate the ownership or registration of the Player.
- The fake player passport produced by the IT Department of the GFA arbitrarily allocated years of registration to Young Red Bull FC.
- The GFA PSC and the GFA Appeals Committee also failed to meticulously execute their functions when key witnesses involved in the development of the Player were not invited to serve as witness or appear personally to give attestations.

65. On this basis, Tema Youth FC submits the following requests for relief:

- “1.1 *An order to set aside and annul the Decision of the Appeals Committee of June 11 2022 purported to ascribe economic rights to Young Red Bull FC that would directly affect clubs that legitimately trained and developed the player, Joseph Paintsil.*

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- 1.2 *A declaration that the Decision of the Appeals Committee of June 11 2022 purportedly made on payment of 10 percent to Ghana Football Association must be remitted to a duly constituted unbiased panel for the Appellant to be heard on the matter before a decision can be pronounced.*
- 1.3 *That pursuant to R44.4 of the CAS Sports-related Arbitration (the Code) Code, the CAS order an expedited hearing in this matter on de novo basis in respect of which appropriate directions may be issued.*
- 1.4 *The Respondent shall bear the costs of this arbitral proceeding and contribute an amount of the legal costs of the Appellant according to Article R64.5 of the Code of Sports-related Arbitration.*
- 1.5 *In accordance with R37 of the Code of Appellant also applies for a stay of execution be issued by CAS, to set aside the order of Appeals Committee for the sum of ... [sic] be paid to GFA and Young Red Bull FC respectively, until the final determination of award decision by CAS.”*

B. The Respondent

66. The GFA’s submissions, in essence, may be summarised as follows:

- In the proceedings before the GFA PSC, Young Red Bull FC tendered documentary evidence of a series of periodic payments made to Mr Acquah, a “*Bailee*” of Young Red Bull FC, by Mr Wilfred Osei Kweku, Executive Board Member of Tema Youth FC, through Wilfred @ Finance, a company owned by Mr Osei Kweku, totalling EUR 122,000.
- Tema Youth FC alleges without corroboration and documentary proof that the partial payments were for scouting services of Mr Acquah.

The GFA’s Answer to the Issues Raised by Tema Youth FC

- As to Tema Youth FC’s argument that Young Red Bull FC did not have the registration rights of the Player when the Transfer Agreement was entered into, these arguments and allegations can only be classified as an attempt to contradict the contents of the Transfer Agreement by way of an attack on the consideration upon which the Transfer Agreement is based.
- The GFA Appeals Committee relied on Sections 18(1) and (3), 24 and 25 of the Evidence Act, which provide, *inter alia*, that a presumption is that, unless otherwise provided by law, the facts in a written document are conclusively presumed as true.
- In the instant appeal, there is no dispute regarding the authenticity of the Transfer Agreement, there is no dispute that the condition precedent therein was satisfied, and there is no dispute that Tema Youth FC breached the Transfer Agreement by failing to remit to Young Red Bull FC the total amount due to it.

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- As to Tema Youth FC's argument that if the partial payments of the outstanding amount were not proven, as determined by the GFA PSC and the GFA Appeals Committee, Young Red Bull FC adduced enough documentary evidence from which they drew reasonable inferences that by a more probable than not standard, payments were made on behalf of Tema Youth FC in satisfaction of its obligations pursuant to the Transfer Agreement. Tema Youth FC provided insufficient evidence to rebut such evidence.
- Finally, with regard to the allegation of Tema Youth FC that the GFA Appeals Committee lacked the *locus* to instruct it to pay the sum of EUR 150,000 to the GFA and GHALCA each, is without legal basis because it is predicated by the wilful and convenient misapprehension of the text and spirit of Article 32(5)(c)(i) and (ii) of the GFA Division One League Regulations, which provides in pertinent part that 10% of all training and transfer fees in respect of external transfers, shall be paid into the Football Development Fund as follows: 5% shall be paid to the GFA and 5% shall be paid to GHALCA.

67. On this basis, the GFA submits the following requests for relief:

“The Respondent respectfully submits that on the basis of the foregoing instant appeal is without legal merit; and can only be reasonably classified as forum shopping by the Appellant on the basis of the same facts that have been thoroughly and adequately dealt with by the GFA PSC and Appeals Committee in light of the applicable laws, in the hopes that a different set of laws will be applied in the hope of a different outcome; and should therefore be dismissed.”

VI. JURISDICTION

68. Article R47(1) CAS Code provides as follows:

“An appeal against the decision of a federation, association or sports-related body may be filed with CAS if the statutes or regulations of the said body so provide or if the parties have concluded a specific arbitration agreement and if the Appellant has exhausted the legal remedies available to it prior to the appeal, in accordance with the statutes or regulations of that body.”

69. Clause 2 of the Transfer Agreement provides as follows:

“Any misunderstanding or dispute arising out of this contract agreement shall be amicable settled in the line with FIFA rules and practices. The dispute shall be referred to [GFA] and FIFA whose decision in the matter shall be final and binding on all parties.”

70. Article 61 GFA Statutes provides as follows:

- “1. Disputes in GFA or disputes affecting Members of GFA, Leagues, members of Leagues, Clubs, members of Clubs, Players and Officials shall not be submitted to Ordinary Courts, unless the FIFA regulations, these Statutes or

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binding legal provisions specifically provide for or stipulate recourse to Ordinary Courts.

2. *Such disputes as specified in paragraph 1 should be taken before the Court of Arbitration for Sport (CAS) in Lausanne, Switzerland.”*

71. Furthermore, Article 62 GFA Statutes provides as follows:

“1. Recourse may only be made to an Arbitral Tribunal once all internal channels of GFA have been exhausted.

2. GFA shall have jurisdiction on internal national disputes, i.e. disputes between parties belonging to GFA. FIFA shall have jurisdiction on international disputes, i.e. disputes between parties belonging to different Associations and/or Confederations.”

72. While Clause 2 of the Transfer Agreement between Young Red Bull FC and Tema Youth FC seems to provide for a dual forum, i.e. the GFA and FIFA, potentially providing for two levels of jurisdiction, the Panel finds that it is not required to interpret such dispute resolution clause, because Tema Youth FC explicitly relies on Articles 61(1) and (2) GFA Statutes as conferring jurisdiction on CAS, which remained uncontested by the GFA.

73. The Panel finds that the present dispute clearly affects the interests of Tema Youth FC in the sense of Article 61 GFA Statutes. In the absence of any binding legal provisions providing for recourse to ordinary courts, it follows that CAS is competent.

74. The jurisdiction of CAS was also not disputed by the Parties and is explicitly confirmed by signing the Order of Procedure.

75. It follows that CAS has jurisdiction to adjudicate and decide on the present dispute.

VII. ADMISSIBILITY

76. Article R49 CAS 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 in a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against.”

77. As maintained by Tema Youth FC, the GFA Statutes do not proscribe a time limit within which to file an appeal with CAS. This has remained uncontested by the GFA. Consequently, the default 21-day time limit to appeal set forth in Article R49 CAS Code is applicable.

78. The Appealed Decision was communicated to Tema Youth FC on 11 June 2022. Tema Youth FC filed its Statement of Appeal (dated 30 June 2022) with CAS on 1 July 2022, i.e.

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within the time limit of 21 days. Also Tema Youth FC's Appeal Brief was timely filed and no objections were raised in this respect by the GFA.

79. The dispute in the matter at hand was originally a domestic dispute "*between parties belonging to GFA*" in the sense of Article 62(2) GFA Statutes, as a consequence of which the judicial instances of the GFA (the GFA PSC and the GFA Appeals Committee) were competent to decide. The Appealed Decision is a decision of last resort within the internal channels of the GFA.
80. As such, Tema Youth FC exhausted all internal legal channels of the GFA available to it before filing an appeal with CAS in the sense of Article 62(1) GFA Statutes, which also remained uncontested by the GFA. According to legal doctrine, the exhaustion of internal legal remedies is an admissibility requirement (RIGOZZI/HASSLER, Article R47 CAS Code, in: ARROYO, Arbitration in Switzerland, The Practitioner's Guide, Vol. II, para. 37).
81. The appeal furthermore complied with all other requirements of Article R48 CAS Code, including the payment of the CAS Court Office fee.
82. It follows that the appeal is, in principle, admissible. However, the Panel considers it questionable whether it can assess the substance of Tema Youth's appeal insofar as it concerns the parts of the Appealed Decision addressing interests of Young Red Bull FC and GHALCA, as such entities are not parties in the present arbitration.

i. Can the Panel uphold Tema Youth FC's appeal insofar as it concerns the interests of Young Red Bull FC?

83. The GFA initially did not raise any concerns related to the admissibility of Tema Youth FC's appeal in its Answer, but the issue was discussed during the hearing and the Panel finds that this is in any event an issue that is to be assessed *ex officio*. During the hearing, the GFA, *inter alia*, indicated that it could not understand why in a contractual matter between two football clubs, Tema Youth FC chose to leave out the entity that could be directly affected by the outcome of the proceedings, but that GFA chose to respond to the appeal nonetheless because it was interested in receiving the percentage of the transfer fee paid for the Player that it is entitled to under Article 32(5)(c) of the GFA Division One League Regulations.

a. Procedural background

84. The First Instance Decision was triggered by a claim from Young Red Bull FC, whereby it requested payment of an outstanding amount of EUR 778,807 from Tema Youth FC. The First Instance Decision upheld such claim, directing Tema Youth FC to pay the amount of EUR 778,807 to Young Red Bull FC.
85. Following an appeal filed by Tema Youth FC, the GFA Appeals Committee largely confirmed the First Instance Decision, directing Tema Youth FC to pay EUR 688,000 to Young Red Bull FC, but also that Tema Youth FC was required to pay EUR 150,000 to the GFA and EUR 150,000 to GHALCA. The GFA Appeals Committee explained the different outcome as follows:

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“We note from the [First Instance Decision] of the PSC that it did not take into account the five percent (5%) due the [GFA] and the five percent (5%) due [GHALCA] in calculating the outstanding sum payable to [Young Red Bull FC] by [Tema Youth FC]. This sum has to be deducted from the Three Million Euros before the balance is shared on the basis of the 70% and 30% agreed in the [Transfer Agreement] between the two clubs. Ten percent (10%) of Three Million is Three Hundred Thousand. [Tema Youth FC] shall therefore pay One Hundred and Fifty Thousand Euros to the [GFA] and One Hundred and Fifty Thousand Euros to GHALCA [...]. [Tema Youth FC] shall further pay 30% out of the sum of Two Million, Seven Hundred Thousand Euros (€2,700,000.00) to [Young Red Bull FC] less the €122,000.00 already paid to [Young Red Bull FC]. By our calculations, the 30% is Eight Hundred and Ten Thousand Euros (€810,000.00). [Young Red Bull FC] has already received €122,000.00 from [Tema Youth FC] and therefore the balance payable to [Young Red Bull FC] is Six Hundred and Eighty-Eight Thousand Euros (€688,000.00).”

86. At the outset, the Panel considers it relevant to indicate that it finds it odd and legally questionable whether the GFA Appeals Committee, acting as a dispute resolution body in a horizontal dispute between Young Red Bull FC and Tema Youth FC, could *ex officio* direct Tema Youth FC to pay certain amounts to the GFA and GHALCA, while such entities do not appear to have been parties to the proceedings before the GFA PSC or the GFA Appeals Committee, let alone to have claimed any amounts from Tema Youth FC.

b. Tema Youth FC’s different types of prayers for relief

87. Be this as it may, in its Appeal Brief, Tema Youth FC filed different types of prayers for relief; some of purely procedure nature, some dealing with rights of the GFA and/or GHALCA, and some dealing with rights of Young Red Bull FC – these are recalled below:

- “1.1 An order to set aside and annul the Decision of the Appeals Committee of June 11 2022 purported to ascribe economic rights to Young Red Bull FC that would directly affect clubs that legitimately trained and developed the player, Joseph Paintsil.*
- 1.2 A declaration that the Decision of the Appeals Committee of June 11 2022 purportedly made on payment of 10 percent to Ghana Football Association must be remitted to a duly constituted unbiased panel for the Appellant to be heard on the matter before a decision can be pronounced.*
- 1.3 That pursuant to R44.4 of the CAS Sports-related Arbitration (the Code) Code, the CAS order an expedited hearing in this matter on de novo basis in respect of which appropriate directions may be issued.*
- 1.4 The Respondent shall bear the costs of this arbitral proceeding and contribute an amount of the legal costs of the Appellant according to Article R64.5 of the Code of Sports-related Arbitration.*
- 1.5 In accordance with R37 of the Code of Appellant also applies for a stay of execution be issued by CAS, to set aside the order of Appeals Committee for the sum of ... [sic] be paid to GFA and Young Red Bull FC respectively, until the final determination of award decision by CAS.”*

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88. The Panel finds that prayers for relief 1.3 and 1.5 are merely of procedural nature, that prayers for relief 1.2 and 1.4 concern the rights of the GFA as the Respondent in the present arbitration, and that prayer for relief 1.1 exclusively concerns the rights of Young Red Bull FC.

c. The prayers for relief directed against Young Red Bull FC

89. As to prayer for relief 1.1, the Appealed Decision directed Tema Youth FC to pay an amount of EUR 688,000 to Young Red Bull FC. Should Tema Youth FC's request for relief 1.1. be upheld, Young Red Bull FC would lose its entitlement to EUR 688,000, which is obviously prejudicial to it. This notwithstanding, Tema Youth FC did not designate Young Red Bull FC as a respondent in the present proceedings before CAS.

90. The Panel finds that prayer for relief 1.1 is problematic in that whether or not any economic rights are ascribed to Young Red Bull FC in the present appeal arbitration proceeding is in principle of no concern to the GFA, which is the only Respondent in the proceedings. The GFA PSC and the GFA Appeals Committee acted merely as dispute resolution bodies in a horizontal dispute between two of its member clubs.

91. Because Young Red Bull FC was not designated as a respondent in these proceedings, Young Red Bull FC is not in a position to defend itself against the allegations of Tema Youth FC and/or to file evidence in response.

92. The Panel finds that the legal situation of Young Red Bull FC in the present arbitration is similar to the one of a football team that might be affected by a decision on whether a team has enough points to remain in a league or be relegated to a lower division (affected third parties). In such situation, it is consistent CAS jurisprudence that such third party shall be designated as a respondent to the proceedings – *standing to be sued* – to ensure that it has also party rights (PELLAUX/REEB, *La désignation de la partie défenderesse devant le Tribunal Arbitral du Sport (TAS)*, Bulletin TAS, 2021/2 p. 31 *et seq.*, and the cases mentioned, in particular CAS 2019/A/6351 FEGUIFOOT, Aboubacar Conté & Ahmed Tidiane Keita c. CAF, para. 70). If the affected third-party is not designated as a respondent or does not have the opportunity to defend its rights, the prayers for relief affecting such party should be rejected (PELLAUX/REEB, *La désignation de la partie défenderesse devant le Tribunal Arbitral du Sport (TAS)*, Bulletin TAS, 2021/2, p. 34).

93. The Panel finds that this is not fundamentally different in the matter at hand. As third-party to these proceedings, Young Red Bull FC was not integrated by Tema Youth FC in the procedure, either as a respondent designated by Tema Youth FC, or at least potentially following a request for joinder filed by the GFA pursuant to Article R41.2 CAS Code, or through an intervention pursuant to Article R41.3 CAS Code.

94. In the absence thereof, the Panel finds that prayer for relief 1.1 filed by Tema Youth FC against Young Red Bull FC cannot be granted, as upholding such relief would prejudice Young Red Bull FC, without the latter having been granted the opportunity to defend itself against Tema Youth FC's appeal, which would amount to a violation of its right to be heard.

95. It is true that Mr Henry Acquah, sole shareholder of Young Red Bull FC and Young Red Bull Babies, was heard as a witness and provided a witness statement upon the request of the GFA.

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However, the Panel finds that this does not cure Tema Youth FC's failure to designate Young Red Bull FC as a respondent in the present proceedings. Accordingly, unlike Tema Youth FC's argument in this respect, Mr Henry Acquah is not the full embodiment of Tema Youth FC. Whereas, the former is a natural person, the latter is a legal entity. While Mr Henry Acquah provided evidence as a witness, Young Red Bull FC did not provide any evidence as a legal entity.

96. For completeness, the Panel finds that the GFA was not wrongly designated as a Respondent, because the GFA indeed has an interest at stake in the proceedings since it was awarded an amount of EUR 150,000 by means of the Appealed Decision. However, in addition to the GFA, Tema Youth FC should also have designated Young Red Bull FC as a respondent.
97. One could engage in an academic discussion as to whether the prayers for relief of Tema Youth FC are to be declared inadmissible rather than being rejected insofar as they concern the interests of Young Red Bull FC. Rejecting an appeal in principle has *res judicata* effect, whereas declaring an appeal inadmissible does not have such effect. This discussion however appears immaterial for the outcome of the dispute between Tema Youth FC and Young Red Bull FC. Since Tema Youth FC's time limit to challenge the Appealed Decision has lapsed, it appears precluded from filing a new appeal before CAS in which it could designate Young Red Bull FC as respondent, with the consequence that the Appealed Decision acquires *res judicata* effect insofar as the amount of EUR 688,000 to be paid by Tema Youth FC to Young Red Bull FC is concerned.
98. Although the Panel considers it inefficient and unnecessary to engage into a full-fledged academic discussion, the Panel finds that the better arguments speak in favour of declaring Tema Youth FC's appeal inadmissible insofar as its prayers for relief concern the interests of Young Red Bull FC, rather than rejecting such prayers for relief. This is particularly so because rejecting the appeal would entail a confirmation of the Appealed Decision, which the Panel considers inappropriate in a situation where Young Red Bull FC was not a party to the proceedings and the Panel is not required to assess the substance of the dispute. Indeed, the present arbitral award is unable of acquiring a *res judicata* effect in the legal relationship between Tema Youth FC and Young Red Bull FC as the latter is not a party to the present proceedings. Rather, in the legal relationship between Tema Youth FC and Young Red Bull FC it is the part of the Appealed Decision whereby Tema Youth FC was directed to pay Young Red Bull FC an amount of EUR 688,000 that acquires a *res judicata* effect, in the absence of an appeal having been filed against it by Tema Youth FC whereby Young Red Bull FC was designated as respondent.
99. Consequently, the Panel finds that the appeal of Tema Youth FC, insofar as it concerns the interests of Young Red Bull FC, is inadmissible.
100. The Panel want to make clear that the Appealed Decision amended the First Instance Decision. This amendment was relevant for the dispute between Tema Youth FC and Young Red Bull FC, because – correct or not – due to the amount awarded to the GFA and GHALCA, the 30% due to Young Red Bull FC was calculated on the basis of a lower amount (i.e. EUR 2,700,000 instead of EUR 3,000,000) as in the First Instance Decision. The Panel finds that Young Red Bull FC did not appeal this latter point, as a consequence of which there is no reason for revisiting it at this stage.

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ii. Can the Panel uphold Tema Youth FC's appeal insofar as it concerns the interests of GHALCA?

101. The Panel notes that a similar problem as with Young Red Bull FC arises also with respect to GHALCA.

102. Although it appears from Tema Youth FC's prayers for relief that the GFA was awarded an amount equalling 10% of the EUR 3,000,000 transfer fee received by Tema Youth FC, this is incorrect. Rather, the operative part of the Appealed Decision provides as follows:

"We hereby direct [Tema Youth FC] to pay [Young Red Bull FC] the €688,000.00 within fourteen (14) days from the receipt of our decision from the [GFA]. [Tema Youth FC] is further directed to pay the One Hundred and Fifty Thousand Euros (€150,000.00) due to the [GFA] and the One Hundred and Fifty Thousand Euros (€150,000.00) due GHALCA within the same fourteen days indicated earlier."

103. Accordingly, the GFA was not awarded 10% of the relevant transfer fee, but only 5%. The other 5% was awarded to GHALCA.

104. This part of the Appealed Decision is in line with Article 32(5)(c) of the GFA Division One League Regulations, which provides the following in its pertinent part:

"[T]en (10%) percent of all training and transfer fees in respect of external transfers, shall be paid into the Football Developmental Fund as follows (i) five (5) percent shall be paid to the GFA, and (ii) five (5) percent shall be paid to the Ghana League Clubs Association (GHALCA). Where the player involved is a Juvenile, GHALCA's 5 percent share shall be paid to the National Juvenile Committee".

105. However, just like Young Red Bull FC, GHALCA has not been designated as a respondent by Tema Youth FC in the present appeal proceedings, while Tema Youth FC's request to modify the Appealed Decision has a potential impact on GHALCA's position. Young Red Bull FC requests that the matter concerning the awarded amount of EUR 150,000 to the GFA be remitted back to the previous instance. This would be prejudicial for GHALCA, as its entitlement to an amount of EUR 150,000 could be in jeopardy if such prayer for relief would be upheld.

106. Given that it was awarded an amount of EUR 150,000, GHALCA clearly has an interest in the outcome of the present proceedings, but it is not put in a position to defend itself against the allegation of Tema Youth FC.

107. Consequently, the Panel finds that the appeal of Tema Youth FC, insofar as it concerns the interests of GHALCA, is inadmissible.

VIII. APPLICABLE LAW

108. Article R58 CAS Code provides as follows:

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“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.”

109. Tema Youth FC submits that the law applicable to the substance of the dispute consists of the 2013 GFA Statutes, the 2013 GFA General Regulations, the 2013 GFA Regulations to the Status and Transfer of Players and the 2013 Rules and Regulations of National Juvenile Committee, as these rules and regulations were applicable to the registration and agreements pertaining to the Player. Throughout its submissions, Tema Youth FC also relies on the Ghanaian Criminal Offences Act.
110. The GFA maintains that, in accordance with Article 5 of the GFA Disciplinary Code, Ghanaian law applies to the substantive issues as well as to evidentiary issues. Specifically, the GFA refers to the Ghanaian Evidence Decree 1975.
111. The Panel finds that the present proceedings are primarily governed by the various rules and regulations of the GFA and, additionally, on the basis of Ghanaian law.

IX. PRELIMINARY ISSUES

A. The GFA’s Objection to the Admissibility of Documentary Evidence Relied upon by Tema Youth FC

112. On 15 September 2022, the CAS Court Office informed the Parties, *inter alia*, as follows:

“Respondent’s Objection to Evidence – paragraph 7.3 of the Answer

The Parties are informed that the Panel, having considered the Parties’ respective positions in this regard, has decided to dismiss the Respondent’s objection to the Appellant’s following exhibits: Exhibits A-5, A-6, A-7, A-8, A-9, A-10, A-11, and A-12. The reasons for this decision will be provided in the final Award.”

113. As to the reasons for this preliminary decision, the Panel determines as follows.
114. In objecting to the documentary evidence relied upon by Tema Youth FC in its Appeal Brief, the GFA relies on Article R57 para. 3 CAS Code, which provides as follows:

“The Panel has discretion to exclude evidence presented by the parties if it was available to them or could reasonably have been discovered by them before the challenged decision was rendered. Articles R44.2 and R44.3 shall also apply.”

115. Indeed, the GFA maintains that Tema Youth FC presented evidence in its Appeal Brief that it could reasonably have discovered before and should therefore be declared inadmissible.

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116. The Panel acknowledges its discretion in potentially excluding evidence on the basis of Article R57 para. 3 CAS Code. However, the Panel observes that the practice of CAS with respect to the application of Article R57 para. 3 CAS Code is restrictive:

“It is clear from the language of this rule that while a CAS Panel may exclude such evidence, it is not bound to do so. Indeed the practice of the CAS with respect to the application of this rule is restrictive. In other words, exclusion of evidence should be the exception rather than the rule, and should generally be applied in “exceptional circumstances of abusive or inappropriate conduct by the parties submitting new evidence” (MAVROMATI/REEB, The Code of the Court of Arbitration for Sport, Commentary, Cases and Materials, Alphen aan den Rijn 2015, p. 521-522).

The Sole Arbitrator does not find the presence of circumstances justifying the exclusion of new evidence, and finds that to the extent that the Respondent was granted the opportunity to address such evidence, which it was, such an approach is in keeping with the CAS’s de novo power of review under R57 of the Code, and with the parties’ right to be heard.” (CAS 2016/A/4859, para. 64 of the abstract published on the CAS website)

117. The Panel agrees with such analysis and finds that the documentary evidence submitted by Tema Youth FC was in line with its reasoning throughout the proceedings in various instances. The Panel found that the additional evidence merely served to further corroborate Tema Youth FC’s arguments that were dismissed by the GFA PSC and the GFA Appeals Committee, and that there were no reasons to believe that Tema Youth FC intentionally held back such evidence from the GFA PSC and/or the GFA Appeals Committee for illegitimate purposes. The Panel considered it important to examine all the evidence the Parties wished to rely on in accordance with its *de novo* competence. The Panel’s decision obviously did not entail that the documentary evidence relied upon by Tema Youth FC was decisive or relevant, it simply meant that the Panel did not exclude such evidence from the case file.
118. In any event, despite the Panel’s decision, at the end of the hearing the GFA expressly stated that it had no objection to the procedure adopted by the Panel and that their right to be heard had been respected.

B. The GFA’s Objection to the Testimony of Witnesses Called by Tema Youth FC

119. On 15 September 2022, the CAS Court Office informed the Parties, *inter alia*, as follows:

“Respondent’s Objection to Witnesses put forward by Appellant – paragraphs 7.1 & 7.2 of the Answer

The Parties are also informed that the Panel, having considered the Parties’ respective positions in this regard, has decided to dismiss the Respondent’s objection to the Appellant’s witnesses. The reasons for this decision will be provided in the final Award.”

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120. As to the reasons for this preliminary decision, the Panel determines as follows.

121. Article R51 para. 2 CAS Code provides as follows:

“In its written submissions, the Appellant shall specify the name(s) of any witnesses, including a brief summary of their expected testimony, and the name(s) of any experts, stating their area of expertise, it intends to call and state any other evidentiary measure which it requests. The witness statements, if any, shall be filed together with the appeal brief, unless the President of the Panel decides otherwise.”

122. The Panel noted that Tema Youth FC indicated the witnesses it wished to hear in its Appeal Brief, summarising the subject of their testimony and that “[t]he witnesses will provide written witness statement [sic] at a date specified by the Panel prior to the hearing”.

123. The Panel found that Tema Youth FC thereby formally complied with the requirements of Article R51 para. 2 CAS Code. This notwithstanding, considering Tema Youth’s proposal to provide witness statements and to accommodate the GFA in preparing for the cross-examination of such witnesses, the Panel decided to dismiss the GFA’s objection to the testimony of the witnesses called by Tema Youth FC, but to order Tema Youth to provide witness statements.

124. Since Tema Youth eventually only filed witness statements for three out of the five witnesses called, only these three witnesses were allowed to testify. The two witnesses for whom no witness statements were filed were not heard.

125. In any event, despite the Panel’s decision, at the end of the hearing the GFA expressly stated that it had no objection to the procedure adopted by the Panel and that their right to be heard had been respected.

C. The GFA’s Document Production Requests

126. On 30 November 2022, the CAS Court Office informed the Parties that the Panel had decided to grant document production request No. 1 for the period 2015-2022 and document production requests Nos. 2-5 in full, indicating that the reasons for the Panel’s decisions would be provided in the final Award.

127. As to the reasons for this preliminary decision, the Panel determines as follows.

128. Article R44.3 para. 1 CAS Code provides as follows:

“A party may request the Panel to order the other party to produce documents in its custody or under its control. The party seeking such production shall demonstrate that such documents are likely to exist and to be relevant.”

129. The Panel considered that Tema Youth FC had complied with the prerequisites set by Article R44.3 para. 1 CAS Code, i.e. it demonstrated that the documents sought were likely to exist, that they were likely in the custody of the GFA and that they were likely to be relevant. The GFA’s contestations in this respect were considered insufficiently convincing.

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130. The Panel notes that, upon receipt of the documents produced by the GFA following the Panel's decision, Tema Youth FC did not raise any objection that was not addressed by the Panel. The Panel therefore assumed that Tema Youth FC's document production requests were duly satisfied.

131. In any event, at the end of the hearing, the GFA expressly stated that it had no objection to the procedure adopted by the Panel and that their right to be heard had been respected.

D. The admissibility of Tema Youth FC's substantive comments in its letter dated 30 December 2022

132. On 13 January 2023, the GFA requested that Tema Youth FC's contentions in its letter dated 28 December 2022 insofar as they relate to the payment of 10% of the transfer fee "*be struck out as they do not relate to the discovery requests and can only be classified as a veiled attempt to make additional submissions after the close of the window for substantive submissions in this case*".

133. The Panel notes that, by CAS Court Office letter dated 15 December 2022, the CAS Court Office acknowledged receipt of emails and attachments from the GFA, inviting Tema Youth FC to comment.

134. The Panel finds that the documents produced by the GFA on 15 December 2022 included information concerning the Player's registration with various clubs in Ghana before and after the Player's loan with Ferencvaros. One of the Tema Youth FC's arguments in its letter dated 28 December 2022 was that the Player was not registered with the GFA between his registrations for Ferencvaros and KRC Genk. The Panel finds that such arguments fall within the scope of the CAS Court Office's invitation to comment dated 15 December 2022 and are therefore admissible.

135. However, the Panel finds that Tema Youth FC's argument regarding the alleged incompatibility of Article 32(5)(c) of the GFA Division One League Regulations with Article 9 of the FIFA Regulations on the Status and Transfer of Players (the "FIFA RSTP") was raised for the first time in Tema Youth FC's letter dated 28 December 2022 and is not related to the GFA's emails or attachments filed on 15 December 2022. The Panel therefore considers that such reasoning of Tema Youth FC is inadmissible.

X. MERITS

A. The Substantive Issues

136. Having declared the appeal of Tema Youth FC inadmissible insofar as it concerns the amounts awarded to Young Red Bull FC and GHALCA in the Appealed Decision, the only requests for relief that remain to be resolved by the Panel are the ones that concern the GFA, in particular Tema Youth FC's claim that the question concerning the amount awarded to the GFA in the Appealed Decision is to be "*remitted to a duly constituted unbiased panel*".

i. Issuing a decision itself or referring the case back to the previous instance?

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137. As indicated *supra* para. 104, the Panel assumes that the GFA Appeals Committee, as a dispute resolution body deciding in a horizontal dispute between Young Red Bull FC and Tema Youth FC, *ex officio* directed Tema Youth FC to pay certain amounts to the GFA and GHALCA pursuant to Article 32(5)(c) of the GFA Division One League Regulations. The Panel finds it, nevertheless, odd and questionable that while such entities do not appear to have been parties to the proceedings before the GFA PSC or the GFA Appeals Committee, let alone to have claimed any amounts from Tema Youth FC, they were granted such amounts. The Panel comes back on this below (para. 141).

138. Article R57 CAS Code provides, *inter alia*, as follows:

“[The Panel] *may issue a new decision which replaces the decision challenged or annul the decision and refer the case back to the previous instance. [...]*”

139. The Panel is therefore afforded discretion in either deciding issues brought before it itself, or refer the matter back to the previous instance, i.e. the GFA Appeals Committee.

140. The Panel finds that referring the matter back to the GFA Appeals Committee is not efficient. The Panel finds that Tema Youth FC also did not establish its interest in referring the matter to any other body or panel or the competence of any other body or panel. Furthermore, the Panel finds that it qualifies as a “*duly constituted unbiased panel*” itself. Neither Tema Youth FC nor the GFA are prejudiced by such procedure, as both Parties are granted all due process rights in the present arbitration, as they have indeed confirmed at the end of the hearing.

141. Although the part of the Appealed Decision whereby it was directed to pay EUR 150,000 to the GFA may have taken Tema Youth FC by surprise, arguably violating its right to be heard, the Panel finds that any such violation of its right to be heard is cured by means of the present appeal arbitration proceedings. Indeed, it is longstanding CAS jurisprudence that procedural defects that may have occurred before previous instances are cured by CAS’ *de novo* competence, as a consequence of which potential procedural defects that occurred before the previous instance fade to the periphery:

“[T]he virtue of an appeal system which allows for a full rehearing before an appellate body is that issues of the fairness or otherwise of the hearing before the tribunal of first instance fade to the periphery ... The Panel therefore finds it unnecessary to consider the charge made by the Appellants as to FINA’s violation of due process.” (CAS 1998/A/208, paras. 5.3 et seq.)

142. Consequently, the Panel exercises the discretion afforded to it under Article R57 CAS Code and will decide this issue itself.

ii. Is the GFA entitled to any percentage of the transfer fee received for the Player by Tema Youth FC?

143. In the Appealed Decision, the GFA Appeals Committee directed Tema Youth FC to pay an amount of EUR 150,000 to the GFA, which equals 5% of the EUR 3,000,000 transfer fee received by Tema Youth FC for the transfer of the Player to KRC Genk.

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144. The Panel recalls Article 32(5)(c) of the GFA Division One League Regulations, which provides the following in its pertinent part:

“[T]en (10%) percent of all training and transfer fees in respect of external transfers, shall be paid into the Football Developmental Fund as follows (i) five (5) percent shall be paid to the GFA, and (ii) five (5) percent shall be paid to the Ghana League Clubs Association (GHALCA). Where the player involved is a Juvenile, GHALCA’s 5 percent share shall be paid to the National Juvenile Committee”.

145. It is not in dispute that the Player was transferred from Tema Youth FC to KRC Genk in exchange for a transfer fee of EUR 3,000,000.
146. Tema Youth FC’s argument that the Player was transferred outside the jurisdiction of the GFA is dismissed. Although the Player was loaned by Tema Youth FC to Ferencvaros before being transferred to KRC Genk, the argument that the Player was not registered with the GFA after his registration with Ferencvaros is unconvincing. Indeed, although the Player’s registration may *de facto* have transferred from Ferencvaros to KRC Genk directly, legally, the Player was registered with Tema Youth FC again before being transferred to KRC Genk.
147. The Panel finds that this is confirmed by a letter dated 13 July 2018 issued by FIFA to the GFA, whereby FIFA authorised the Player’s transfer to KRC Genk on an exceptional basis:

“[A]fter having thoroughly studied your correspondence as well as, in particular, the information provided within the Transfer Matching System (TMS), we have observed that your association was not able to request the relevant International Transfer Certificate (ITC) for the [Player], from the Hungarian Football Federation (MLSZ) in the TMS at the latest on the last day of the relevant registration period fixed by your association, i.e. 1 July 2018. In particular, we understand that your association therefore requests a special exemption from the current ‘validation exemption’ in the TMS in order to first register the player for your affiliated club, Tema Youth FC, and the release him to allow his subsequent registration at the Union Royale Belge des Sociétés de Football-Association (BEL) for its affiliated club, KRC Genk.

In this context, please be informed that, as a general rule, a request for the special exemption from such a ‘validation exemption’ in the TMS could only possibly be granted on the condition that, following the return from loan, the player concerned would be immediately transferred to a club affiliated to an association with an open registration period.

In this respect, we understand from your correspondence and the information contained in the TMS that the loan of the [Player] from your affiliated club, Tema Youth FC, to the Hungarian club, Ferencvarosi TC, apparently came to an end on 30 June 2018. Subsequently, your affiliated club, Tema Youth FC, entered and confirmed the relevant transfer instruction (TMS 200427 – instruction type: Return from Loan) for the return of the player from the relevant loan in the TMS on 9 July 2018, i.e. outside of the relevant registration period fixed by your association. In addition, we duly noted that on 28 June 2018, i.e. within the

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relevant registration period fixed by the BEL, the Belgian club, KRC Genk, entered and confirmed a transfer instruction (TMS 199483 – instruction type: Engage against payment) in order to register the player. On that same day, the Belgian club equally uploaded all the mandatory documents related to the subsequent transfer of the player, in particular, the relevant transfer agreement and the player’s employment contract.

In view of all the above, and in consideration of the fact that the Belgian club, KRC Genk, entered and confirmed its relevant transfer instruction in the TMS on 28 June 2018, i.e. within the relevant registration period fixed by the BEL, we would like to inform you that we are able to grant your request for the special exemption from the ‘validation exemption’ in the TMS.

In this respect, we need to stress that the authorisation is granted on an exceptional basis only, in view of the particular and specific circumstances of the matter at stake. Equally, please take note that the present assessment is without prejudice to the appreciation of identical or similar matters in future.”

148. The file also contains an International Transfer Certificate (“ITC”) issued by the Hungarian Football Association in favour of the GFA concerning the Player, referring to a de-registration date of 15 July 2018 and an ITC delivery date of 18 July 2018.
149. The applicability and validity of Article 32(5)(c) of the GFA Division One League Regulations is not contested by Tema Youth FC.
150. The Panel finds that the content of the provision is clear, requiring Tema Youth FC to pay 5% of the EUR 3,000,000 transfer fee received to the GFA, equalling an amount of EUR 150,000.
151. Against this background, the Panel finds that although it would have been more appropriate for the GFA to file an independent legal claim against Tema Youth FC to obtain such sum, the legal basis of the claim is sound as it is rooted in the GFA regulations.
152. Consequently, the Panel finds that Tema Youth FC’s appeal, insofar it is directed against the amount of EUR 150,000 awarded to the GFA in the Appealed Decision, is dismissed.

B. Conclusion

153. Based on the foregoing, the Panel holds that:
 - i) The appeal of Tema Youth FC against the Appealed Decision, insofar as it concerns the interests of Young Red Bull FC, is inadmissible.
 - ii) The appeal of Tema Youth FC against the Appealed Decision, insofar as it concerns the interests of GHALCA, is inadmissible.
 - iii) Tema Youth FC’s appeal, insofar it is directed against the amount of EUR 150,000 awarded to the GFA by means of the Appealed Decision, is dismissed.
154. All other and further motions or prayers for relief are dismissed.

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XI. COSTS

(...).

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ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed on 1 July 2022 by Tema Youth Football Club against the decision issued on 11 June 2022 by the Appeals Committee of the Ghana Football Association, insofar as it concerns the interests of Young Red Bull FC and the Ghana League Clubs Association, is inadmissible.
2. The appeal filed on 1 July 2022 by Tema Youth Football Club against the decision issued on 11 June 2022 by the Appeals Committee of the Ghana Football Association, insofar as it concerns the interests of the Ghana Football Association, is dismissed.
3. The decision issued on 11 June 2022 by the Appeals Committee of the Ghana Football Association, insofar as it concerns the interests of the Ghana Football Association, including the payment obligation concerning the amount of EUR 150,000 (one hundred fifty thousand Euros) to be paid to the Ghana Football Association, is confirmed.
4. (...).
5. (...).
6. All other and further motions or prayers for relief are dismissed.

Seat of arbitration: Lausanne, Switzerland
Date: 22 September 2023

THE COURT OF ARBITRATION FOR SPORT

Pascal Pichonnaz
President of the Panel

Joanne Setright
Arbitrator

Hendrik Willem Kesler
Arbitrator

Dennis Koolaard
Ad hoc Clerk