CAS 2022/A/9080 Maccabi Petah Tikva FC v. Mujangi Bia

ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

Sole Arbitrator: Prof. Luigi Fumagalli, Professor and Attorney-at-Law, Milano, Italy

between

Maccabi Petah Tikva FC, Petah Tikva, Israel
Represented by Mr Joseph Gayer and Mr Omri Applebaum, Attorneys-at-Law, Tel Aviv, Israel

- Appellant -

and

Mr Mujangi Bia, Belgium
Represented by Mr Lucien W. Valloni, Attorney-at-Law, Zurich, Switzerland

- Respondent -

* * * * *

I. PARTIES

1. Maccabi Petah Tikva FC ("Maccabi", the "Club" or the "Appellant") is a football club with registered office in Petah Tikva, Israel. Maccabi is a member of the Israel Football Association (the "IFA"), which in turn is affiliated to the Fédération Internationale de Football Association ("FIFA"), the world governing body of football, headquartered in Zurich, Switzerland. In the 2019/2020 season, the Club competed and won the Liga Leumit, which is the second-tier football division in Israel. As a result, it was promoted to compete in the 2020/2021 Israeli Premier League.

2. Mr Mujangi Bia (the "Player" or the "Respondent") is a professional football player of Belgian nationality born on 12 August 1989.

II. FACTUAL BACKGROUND

3. Below is a summary of the main relevant facts and allegations based on the Parties' oral and written submissions[1] as lodged with the Court of Arbitration for Sport (the "CAS"). Additional facts and allegations may be set out, where relevant, in connection with the legal discussion that follows. Although the Sole Arbitrator has considered all the facts, allegations, legal arguments and evidence submitted by the Parties in the present proceeding, this Award refers only to the submissions and evidence considered necessary to explain its reasoning.

A. The Employment Contract

4. On 16 May 2019, the Player and the Club concluded an employment agreement (the "Employment Contract") for the 2019/2020 season, from 1 June 2019 until 31 May 2020 (Article 5), providing, *inter alia*, that:

   i. the Player was entitled to the following remuneration and benefits (Article 6(a)):
      - ten "*monthly wage payments*" of NIS 50,000 each, for a total therefore of NIS 500,000;
      - NIS 80,000 as "*premium payments*" corresponding to "*winning games 30 x 2666*";
      - NIS 50,000 as "*Cup bonus*";

   ii. the *"time for payment*" of the monthly salary was "*up to (including) 9th of following month*" (Article 6(f));

   iii. pursuant to Article 7:

      "*a. The parties hereby agree that differences of opinion between the Club and player or between the Player and the Club, in everything*

[1] Several of the documents submitted by the Parties and referred to in this Award contain various misspellings: for sake of efficiency, they are not all identified with a "[sic]".

relating to the provisions of this Agreement, shall be decided by an arbitrator, who will be appointed by virtue of the power of the Association's Arbitration Institute Codex.

b. The arbitration will be held in accordance with the directives of the Association's Arbitration Institute Codex";

iv. a handwritten "*Supplementary Provision*" (Article 9) read as follows:

"*Fourter to the understanding dated 12/4/19 the player declairs that he is a free player. The ITC must arrive until 15/7/19. The club will provide the player: A car; An apartment and Flight Tickets. If the Club will play at 2020/21 season on the premier liege, the player will play with the Club. The sallary will be 103,333 NIS gros for 10 months. The Flight tickets is for him and his family. If the club will play at 2020/21in the premier leage – the player will get 50,000 NIS Gross*."

5. On 28 October 2019, Mr Jardet Matari, the Player's agent (the "Agent"), sent a letter to the Club as follows:

"*we have been told by the player that the clubs' president, Avi Luzon himself said to the player that he wanted to "break the contract".*

Before making any comment regarding this may you confirm this information and notify us the position of the club regarding the player."

6. Also on the same 28 October 2019, the Club answered as follows:

"*we are interested to end the alliance with mutual consent and have an amount of compensation, in order to let the player … the option to play in any group in the world, when the transfer window will be open in January 2020, without any charge.*"

7. On 29 October 2019, the Agent denied any interest in "*this option*" and confirmed that the Player was "*fully focused and motivated on giving his best*" for the Club.

8. On 30 October 2019, the Club informed the Agent that the coach was "*very disappointed*" with the Player's performance and that he would not be part of the playing squad. At the same time, the Club confirmed to the Agent that it would respect the Employment Contract, but asked him again to consider its termination by mutual agreement.

9. In March 2020, *WhatsApp* messages were exchanged between the Player and Mr Ami Fahn, team manager of the Club. In such messages, the Player expressed his desire to "*fly home*" for the period of suspension of all football activities due to the COVID-19 pandemic. The Club expressed its permission "*to go back home while there is this corona issue. And come back as soon as it is fixed*" (message of Mr Fahn to the Player of 19 March 2020, at 12:29). In the same exchange, the Player confirmed that he would "*keep performing the program given to us by the physical coach*" and asked Mr Fahn "*to inform me about the situation as soon as the clubs [sic] gets information in order to give me enough time to arrange my flight back to the club*" (message of the Player to Mr Fahn of 19 March 2020, at 14:44). The

Club's answer was "*Ok*" (at 14:57 of the same day).

10. Between 6 and 8 May 2020, a new exchange of *WhatsApp* messages between the Player and the Club (Mr Fahn) took place as follows:

    i. from the Player to Mr Fahn on 6 May 2020 at 20:38:

    "*Hi ami I hope you are well and healthy. I heard that the team has to be at the club tomorrow at 4:30. Why did you inform the rest of the team and not me?*";

    ii. from Mr Fahn to the Player on 8 May 2020 at 08:52:

    "*Good morning.*

    1) Our lawyer told to your lawyer that your contract is over.

    2) Your apartment lease ended all your equipment packed, sent us your address in Belgium to send you the equipment"

    iii. the Player to Mr Fahn on 8 May 2020 at 10:03:

    "*My contract is not over. My contract ends in June 2021. What are you talking about?!*"

    iv. from Mr Fahn to the Player on 8 May 2020 at 10:06 and then at 10:13:

    "*I'm not the lawyer*"

    "*I suggest that the two lawyers talk to each other*"

    v. the Player to Mr Fahn on 8 May 2020 at 15:44:

    "*Please don't touch my stuff. Thanks to respect this*"

11. On 11 May 2020, the Player contacted the Consular Offices of the Embassy of Israel in Belgium seeking assistance with respect to the formalities to enter Israel in that period. On 13 May 2020, the Consular Offices confirmed to the Player that an authorization was needed to enter Israel and that in order to obtain it also the "*approval from the institution when training begins*" was to be submitted.

12. Between 14 and 16 May 2020, *WhatsApp* messages were exchanged between the Player and the Club (Mr Fahn) with respect to the Player's request for the Club's approval to his return to Israel. Mr Fahn insisted that the Player's situation was being handled by the lawyers.

13. On 17 and 31 May 2020, the Agent sent emails to the Club requesting a formal letter signed by the Club, necessary for the Player's return to Israel. In June 2020, the Agent sent another letter requesting, *inter alia*, the payment of the outstanding salaries, from February 2020 to May 2020.

14. On 11 and 14 June 2020, the Club's lawyer, in messages to the Agent, offered a payment to the Player of EUR 20,000 as a final settlement of all pending disputes.

15. On 24 July 2020, the Agent sent an email to the Club requesting it "*to make the necessary*" for the Player to be able to return to Israel for the preseason 2020/2021.

16. On 30 September 2020, the Player's lawyer sent a letter to the Club as follows:

"*We have taken note of the fact that the agreed monthly salary of NIS 50'000 has not been paid for February 2020, March 2020, April 2020, Mai 2020. Outstanding is also NIS 50'000 as bonus for going up into the first league. Hence, NIS 250'000 gross for the last season.*

Due to the fact that the team went to the first league, the employment contract was automatically renewed with a monthly salary of NIS 105'333 gross. In respect of the new season 2020/2021 the salary for August 2020 of NIS 105'333 is outstanding.

Furthermore, the player was never allowed to train with the team, despite his several requests of work offers he has made to the club.

The club did never send any authorization to the player in order to allow him to enter Israel again to fulfil his employment contract despite his various requests.

We kindly ask you to immediately make the respective payments of NIS 355'333 gross to the account of the player and to allow him to train with the first team.

In case the player does not receive the due salary within the next 15 days he reserves herewith his right to terminate the employment contract with immediate effect."

17. In a letter to the Club of 12 January 2021, the Player's lawyer confirmed the Player's requests in the following terms:

"We have taken note of the fact that the agreed monthly salary of NIS 50'000 has not been paid for February 2020, March 2020, April 2020, Mai 2020. Outstanding is also NIS 50'000 as bonus for going up into the first league. Hence, NIS 250'000 gross for the last season.

Since that the team went to the first league, the employment contract was automatically renewed with a monthly salary of NIS 105'333 gross. In respect of the new season 2020/2021 the salary for August 2020 of NIS 105'333, for September 2020 of NIS 105'333, for October 2020 of NIS 105'333, for November 2020 of NIS 105'333, for December 2020 of NIS 105'333 is outstanding. Hence, NIS 526'665 gross for this season.

Furthermore, the player was never allowed to train with the team, despite his several requests of work offers he has made to the club. Also, for the new season he offered his work force and is herewith still doing it but was never allowed to train or invited in the training of the first team.

Furthermore, the club did never send any authorization to the player in order to allow him to enter Israel again to fulfil his employment contract despite his various requests.

We kindly ask you to immediately make the respective payments of total NIS 776'665 gross to the account of the player and to allow him to train with the first team.

Please take not of the fact that the employment contract is still in full force and the player is still willing to fulfil this contract, but he also requests that the club does fulfil its contractual obligations.

In case the player does not receive the due salary including bonus within the next

15 days he reserves herewith his right to terminate the employment contract with immediate effect."

18. On 18 January 2021, the Club's lawyer replied as follows:

"*2. With all due respect, the content of your letter includes recycled arguments which have been already raised by the Player numerous times since last year, and have all been rejected by the Club, in the Club's many response letters and emails, sent to you and to the Player's agent.*

3. We remind you that the dispute between the Club and Mr. Mujangy is pending before an arbitrator of the Arbitration Institute of the Israeli Football Association. Mr. Mujangy still has the right to raise all his claims and demands before the arbitrator.

4. Without derogating from the above, we shall again draw your attention to the fact that Mr. Mujangy left Israel in March 2020, ending the contractual relationship between him and the Club.

5. Mr. Mujangy knows for almost one year now, that he is not part of the Club and that he is free to sign an employment agreement with another Club without any limitations. Therefore, Mr. Mujangy's approaches during the following year, were not sincere, and were made only for legal purposes.

6. It is unconceivable and quite shocking that a year has passed, and Mr. Mujangy has still done absolutely nothing in order to mitigate his alleged damages by finding another football club to employ him.

7. It is obvious Mr. Mujangy has fallen under the (false) notion that he is entitled to avoid from taking any necessary actions in order to find another club to employ him, and that Maccabi Petah Tikva will be deemed responsible to pay him salaries for a year and a half while he does not work for his living.

8. The Club hereby rejects all the claims raised in your last letter and repeat its suggestion that Mr. Mujangy will focus on joining another Club that will employ him.

9. As indicated above, the Player's claims could have been raised within the proceedings taken before the Arbitration Institute of the Israeli Football Association and which are still pending. Accordingly, it seems that there is no practical point in the endless correspondence sent on behalf of the Player."

B. The Proceedings before the Arbitration Institute of the Israeli Football Association

19. On 15 December 2019, the Club lodged a claim against the Player before the Arbitration Institute of the Israeli Football Association (the "IFAAI"), seeking the following relief:

"*… the Honorable Arbitrator is requested to [...] issue a declaratory order ordering the termination of the Agreement between the parties while awarding the amount of the damages the player is entitled to receive from the Team. […]*"

20. On 15 December 2019, the Director of the IFA Legal Department informed the Club and the Player of the possibility to have their dispute submitted to mediation and, in the absence of an agreement to submit the dispute to mediation, of their possibility to agree on the identity of the arbitrator. At the same time, the Parties were advised that, failing an agreement on the name of the arbitrator, the arbitrator would be appointed by the President of the IFA Supreme Tribunal. Finally, the Player was granted a deadline for the submission of his statement of defence. The IFA's letter included a list of arbitrators.

21. On 23 December 2019, the Player requested the suspension of the IFAAI proceedings, submitting that the IFAAI was not competent to deal with cases of an international dimension.

22. On 29 December 2019, Mr Hanoch Keinan informed the Parties of his appointment as sole arbitrator (the "IFAAI Arbitrator") and invited them to a preliminary hearing to be held on 14 January 2020.

23. On 6 January 2020, the Player sent a letter to the IFAAI Arbitrator indicating the following:

"*We refer to the letter of December 15, 2019 (received by the player on 18 December 2019) in which the Defendant (Bia Mujangy) was informed about the above mentioned proceedings.*

Please take not of the fact that we do not accept this arbitration. We are of the opinion that this arbitral tribunal is not FIFA compliant and does not meet the criteria of FIFA Circular 1010. Hence, we consider that this arbitral tribunal as not competent to deal with a case of an international Dimension. […]

As long as the issue of competence is not decided finally, we request that any deadline set to the Defendant to respond to the merits of this case is suspended or prolonged […]."

24. On 12 January 2021, following a letter from FIFA of 9 October 2020 (see ¶ 50 below[2]), the Player, via the Swiss Association of Football Players ("SAFP"), sent a letter to the IFAAI Arbitrator, indicating that the Player wanted to continue with the case, but that he was still of the view that the IFAAI arbitration did not meet the requirements set by FIFA Circular Letter No 1010 of 20 December 2005 ("Circular No 1010), whilst outlining that FIFA was not willing to decide the dispute as long as the arbitration in Israel was still pending.

25. On 26 August 2021, the Player, via the SAFP, sent another letter to the IFAAI Arbitrator indicating the following:

"*We take note of the fact that there is no intention of this arbitration panel to continue the case.*

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[2] See ¶¶ 48 and 49 for an indication of the event leading to, and the context of, the FIFA letter of 9 October 2020.

We herewith lodge a formal protest and do consider this as not acceptable and not a fair conduct of the arbitration proceedings.

In case we do not hear form you by the end of August 2021, we consider that this case is not going to be decided in the arbitration proceedings and that we are free to lodge a case with the FIFA DRC."

26. On 24 May 2022, the IFAAI Arbitrator issued an order setting a "preliminary hearing" to be held on 30 June 2022 and granting the Player a deadline for the submission of his statement of defence. Of such order, the Player was informed in a letter sent by the Club's counsel on 25 May 2022 upon the IFAAI Arbitrator's instructions.

27. On 31 May 2022, the SAFP, writing for the Player, informed the IFAAI Arbitrator and the Club that, "*after so long that the case was not taken care of*", it was the Player's firm position that he was "*not bound any longer to any kind of arbitration agreement and arbitration proceedings in Israel and that any competence to decide the case has expired*". At the same time, the Player reiterated his position that the IFAAI arbitration was not "*FIFA compliant*" and therefore not competent to deal with a case of international dimension, and invited the Club to "*take note of the fact that the FIFA Football Tribunal will deal with this case and that they have opened a new case*".

28. On 31 May 2022, the IFA sent a letter to FIFA upon request of the Club to inform FIFA that an arbitration procedure was pending before the IFAAI between the Club and the Player, and that the IFAAI Arbitrator was awaiting the filing by the Player of his statement of defence.

29. On 7 June 2022, the Club informed the Player that the IFAAI Arbitrator had decided to set a deadline for the Club to respond to the Player's letter of 31 May 2022.

30. On 9 June 2022, the Club replied to the Player's letter of 31 May 2022, insisting that the IFAAI had the authority to hear the claim submitted and that the arbitration proceedings should not be delayed. In support of its position, the Club referred to the fact that "*the agreement between the parties stipulates an arbitration clause*", "*the arbitration proceeding in question meets the criteria required by FIFA*", "*the existing arbitration clause in the FIFA by-laws (Article 22(b)) constitutes a parallel jurisdictional clause and does not negate the authority of local tribunals*", "*a lawsuit filed by the Player before FIFA has been dismissed due to the pending proceeding before the Arbitrator and is expected to be dismissed again on the same grounds*", "*the Player acknowledges the Arbitrator's authority to hear and decide the dispute between the parties and only claims that the authority has expired*", and "*most of the connections and common sense require that the arbitration be conducted in Israel*".

31. On 12 June 2022, the IFAAI Arbitrator rendered a decision "*to continue with the hearing*". As a result, a hearing was set to take place on 16 August 2022. Such decision, in the relevant portions, reads as follows:

"*10. First of all, the Parties' explicit agreement was expressed in the agreement made between them yet on May 16, 2019, and in accordance with this agreement it was determined that any dispute which may rise between them will be decided before the Arbitration Institute of the Israeli Football Association.*

11. Incidentally, it is further superfluous to note that the Arbitration Institute has conducted hundreds of files for years and continues to conduct such, while preeminent attorneys in Israel serve therein and its administration is overseen by the president of the Supreme Court of the Football Association, an esteemed jurist, who in the past served as vice president of the District Court in Tel Aviv.

12. The legislative authority in Israel, too, has expressed the excellence of the judicial institutes of the Football Association (and, unarguably, the Arbitration Institute is part of the said judicial institutes) in its legislation of the Sports Law, 5748-1988, in which exclusive authority was determined for the abovementioned institutes to hear and decide any matter related to sports activity within the framework of the Association. The Defendant's matter in the file before me is not an exception to this.

13. I will further address herein below the subject related to FIFA, insofar as matters are intertwined with the decision herein. However, prior to this I have viewed it necessary to note that even if I were required to exercise discretion on this subject with regard to the possibility of whether the hearing would be canceled or would be held before me, I would not decide otherwise.

14. In other words, while exercising my discretion, I took into account the fundamental questions, such as in which country is the evidence to be found that is required in this case to prove the facts in dispute between the Parties and, in addition, or in which place will it be easiest to obtain the evidence required, as aforesaid, and whether/or where will it be more convenient and easier to conduct the judicial hearing, as well as how will the location of the hearing affect the costs that will be ordered at the end of the day.

15. Each of the abovementioned reasons, separately, is fitting in and of itself, yet how much more so when joined together. These reasons have tipped the scales with regard to the exercise of my discretion herein on this matter.

16. As for the issue entwined with regard to the FIFA institutions, it is well known and thus matters were also expressed in the Football Association's Regulations that the Association has a close connection with the codified rules of the games of the International Football Association, as well as with the file of interpretations of FIFA's Judicial Committees, and it may be said that that which has been written here will not harm as such any institution of the FIFA Institutions, as to be described herein below.

17. Accordingly, the arbitration proceeding before me does not stand in contradiction to the FIFA Regulations. The opposite is actually true. The agreement between the Parties included an arbitration stipulation before the Arbitration Institute, which by its nature and in view of its Regulations, relates to the independent and separate status for managing a fitting procedure vis-à-vis the teams, the companies, the players and coaches, not to

mention that it allows each Party to be represented by an attorney on his behalf.

18. Furthermore, FIFA has never negated the authorities of the Arbitration Institute. On the contrary, it recognizes the authorities of this Institute, as well as of the other judicial institutes of the Football Association. In the same way, FIFA also has the jurisdiction to hear the matter subject of this case. Accordingly, it may be that two arbitration institutes, that of FIFA and that of the Israeli Football Association, have parallel jurisdiction, which will not negate the authorities of either of the abovementioned institutes."

32. On 20 June 2022, the Club filed with the IFAAI Arbitrator an updated statement of claim, which was transmitted to the Player on 22 June 2022. In such updated statement of claim, the Club requested:

"*the Honorable Arbitrator […] to issue a declaratory order directing that the Agreement between the parties was discharged in the month of the filing of the lawsuit (December 2019) while ruling on the amount of compensation to which the player is entitled to receive from the Club and while the Club will argue that in the circumstances of the case, the Player is not entitled to any compensation.*"

33. On 7 July 2022, the Player informed the IFAAI Arbitrator that:

"*We do still maintain all our protests raised and we do still not accept this arbitration and the communication from you sent through the lawyer of the club to be translated by the lawyer of the counterpart. Furthermore, we are also surprised to see that the letter is not in English.*

We have received the communication of the lawyer of the counterpart on 22 June 2022. We do protest against such way of serving a decision.

You have set a deadline of 15 days to comment on the application of the counterpart. However, due to holiday of the undersigned we are not able to provide any comment and we need an extension to file such comments.

Furthermore, please take note of the fact that we do not accept this arbitration and please also take note of the fact that FIFA Football Tribunal will decide on this case on 21 July 2022. Given this, we request that you suspend the proceedings up to a decision of FIFA is served to the parties or at least that you grant us an extension until 20 days after we have received the FIFA Football Tribunal decision to file our comments. This request is done only to safeguard all rights of our client without any acceptance of the arbitration as such."

34. On 10 July 2022, the Club answered to Player's letter of 7 July 2022, requesting the IFAAI Arbitrator to reject the Player's requests.

35. On 17 July 2022, the IFAAI Arbitrator decided to extend the deadline for the Player to submit his answer, but confirmed the hearing scheduled for 16 August 2022.

36. On 3 August 2022, the Player, in a letter to the IFAAI Arbitrator, while maintaining "*all […] requests and protests filed up today and […] the fact that we do still not accept this arbitration*", informed him that "*we have received the Decision of the*

Football Tribunal of FIFA, dated 21 July 2022 that accepted its competence to decide the case, especially also because the arbitration system of the Israel Football Association does not meet the FIFA requirements and of course not Article 6 of the Convention of Human Rights in the light of the Ali Riza decision of the Court of Human Rights", and therefore requested him "*to immediately set aside all deadlines running on our side and […] to render a decision to stop the arbitration because FIFA has decided to be competent. In the alternative […] to immediately suspend this arbitration and to cancel any planed hearing up to a final and binding FIFA decision.*"

37. On 3 August 2022, the Club replied to the Player's letter of the same date, underlining, *inter alia*, that:

"*The Arbitrator is not subject to FIFA institutions and the FIFA institutions are not instances that can determine that the Israeli arbitrator lacks competence over this dispute, therefore the Arbitrator must continue his work and issue an arbitral award as he deems appropriate.*"

38. On 4 August 2022, the IFAAI Arbitrator decided not to "*change any prior decision*" relating to the continuation of the proceeding before him.

39. On 5 August 2022, the Player, in a letter to the IFAAI Arbitrator, insisted in the request that he should:

"*issue an appealable decision on jurisdiction only. Under the current circumstances it is no acceptable for us to defend ourselves also in this proceeding*".

40. On 7 August 2022, the Club transmitted to the Player a decision adopted by the IFAAI Arbitrator on 6 August 2022, confirming the hearing of 16 August 2022.

41. On 12 August 2022, the Player sent another letter to the IFAAI Arbitrator, as follows:

"*We […] do not accept this arbitration and we do not accept jurisdiction. We cannot comment on the merits since you do not rule on jurisdiction first. In any fair arbitration proceeding a party has the right to get a interim decision on jurisdiction before he must comment on the merits. That is the reason we cannot comment and are not forced to comment on the merits.*"

42. On 14 August 2022, the Club insisted that the proceedings before the IFAAI Arbitrator be continued.

43. On 15 August 2022, the IFAAI Arbitrator confirmed the hearing as scheduled.

44. On 16 August 2022, a hearing before the IFAAI Arbitrator took place. Nobody appeared for the Player. An English version of the transcript of the hearing was transmitted to the Player's counsel on 18 August 2022.

45. On 9 September 2022, the IFAAI Arbitrator issued an award (the "IFAAI Award"), referring to the Club as the "Plaintiff" and to the Player as the "Defendant", and

ruling as follows:

"a. *The Plaintiff shall pay the Defendant a gross amount of NIS 100,000, with the addition of interest and linkage differentials in accordance with the law, from January 1, 2021 until the date of actual payment.*

b. The Defendant shall bear the Plaintiff's costs in this arbitration, as well as the fee of its attorney in the amount of NIS 10,000 plus VAT in accordance with the law.

c. The Defendant shall bear the Arbitrator's fee in this arbitration."

46. In support of such conclusion, the IFAAI Arbitrator, in addition to confirming his decision of 12 June 2022 with respect to his jurisdiction to hear the Club's claim (¶ 31 above), found the following:

"*64. I accept the Plaintiff's account that it believed that annulling the agreement with the Defendant would benefit both parties, based on the thought that the Defendant would find another team he could joint already in January 2020.*

65. I likewise accept as proven fact that the Defendant received his salary and full fights, up to the time of his departure from Israel in January 2020, and that he returned to Israel for a short time, around the time of the outbreak of the COVID-19 pandemic, and that then, following the suspension of the division games, he left Israel permanently without ever coming back.

66. Over time, until he joined another team, the defendant player did nothing to reduce his damages.

67. I do not accept the Plaintiff's contention that the Defendant's conduct was infused with bad faith, but I do accept the argument regarding the absence of any action on his part to reduce his damages.

68. As emerges from the employment agreement between the parties and based on the evidence before me, the Defendant's employment agreement was signed for a period of ten months – for the 2019/2020 playing season. The agreement set the Defendant's gross monthly salary at NIS 50,000, in addition to which it was specified that the Plaintiff would provide the Defendant with living arrangements and a car.

69. As described above, at the end of five months the Defendant was asked to find another team, and as described to me, he received his salary up to the end of those five months.

70. The balance of the payment for the entire playing season, including living arrangements and a car, was not paid to the Defendant in view of all the events that transpired, on which I have elaborated in this decision and which I will not repeat.

71. In conclusion: I find that the termination of the contract between the Plaintiff and the Defendant was due to a lack of choice, on the part of the Defendant as well.

72. Although the Defendant refrained from doing anything to reduce his damages, I hereby decide, with reference to the Plaintiff's decision to terminate his activity, that the Defendant is entitled to compensation from the

Plaintiff in a gross amount of NIS 100,000, reflecting a part of the payment that would have become due to the Defendant had he continued providing services to the Plaintiff.

73. In this regard, I further note in this section, which was specially added after I finished writing the award, that subsequent to the writing of this award, the Plaintiff petitioned to add a document based on which it asserted the absence of any obligation to pay the Defendant, for reasons presented by it in that document. Since this does not concern a new document that was discovered by the Plaintiff just now, and since had it acted with proper diligence it could have presented that document to me in good time, but it did not do so – I decided to reject the Plaintiff's petition and I did not accept the requested document.

74. As to the matter of living arrangements and a car, as mentioned in the agreement that was concluded between the parties – considering the Defendant's conduct, no compensation is due to him with respect to living arrangements and a car, which were provided to him while he was actually present in Israel, in accordance with said agreement."

47. On 3 October 2022, the Club's lawyer sent to the Player's lawyer an English translation of the IFAAI Award.

C. The Proceedings before the FIFA Dispute Resolution Chamber

48. On 15 May 2020, the Player filed a claim before the FIFA Dispute Resolution Chamber (the "DRC") seeking an order against the Club for the payment of the salaries of February 2020, March 2020 and April 2020 for a total amount of NIS 120,000, as well of NIS 4,500 corresponding to the total amount allegedly deducted without justification from prior salaries. As a result, the FIFA DRC opened proceedings under the reference No. 20-00738.

49. On 8 July 2020, the Club filed its answer to the Player's claim, requesting the FIFA DRC not to exercise its jurisdiction due to *lis pendens*, and in any case dismiss the requests of the Player.

50. On 9 October 2020, FIFA sent a letter to the Parties, signed by the "*Head of Players' Status*", indicating, *inter alia*, the following:

"*After a first thorough analysis of the documentation in our possession, we understand that the club, Maccabi Petah Tikva FC has lodged a claim on 15 December 2019 regarding the matter at stake before the Israel Football Association Arbitration Tribunal. Furthermore, it appears that said claim is still pending before said deciding body.*

Bearing in mind the above, please note that in accordance with the general principle of lis pendens, a deciding body is not in a position to deal with a dispute which has already been brought before and is still pending at another deciding body.

Consequently, we have to inform you that FIFA is not in a position to continue with the investigation of a dispute which is already pending before another deciding body."

51. On 28 September 2021, FIFA requested, in relation to case No. 20-00738, the Club's counsel to provide information regarding the proceedings before the IFAAI Arbitrator.

52. On 3 May 2022, the Player sent a letter to the FIFA DRC, reading, in its French original, as follows:

"*1. Dans cette affaire il en va d'analyser le fond de la plainte déposer par Maccabi Petah Tikva auprès de l'arbitrage de la fédération israélienne de football. Dans sa plainte le club demande l'autorisation de mettre un terme au contrat qui le lie au joueur sans indemnités et si indemnités il y a d'en définir le montant. Cette demande va complètement à l'encontre du principe de base fondamental qui est le respect des contrats. Cette plainte est irrecevable.*

2. L'arbitre n'a pas donné suite à ce dossier depuis plus de deux ans sachant qu'il devait donner une décision à savoir s'il est compétent ou non pour une affaire de dimension internationale. Je soutient qu'il n'est pas compétent pour cette affaire et que la FIFA doit reprendre le dossier dès le départ.

3. Lis pendent, après deux ans sans décision quant à la compétence, sans nouvelle de l'arbitre, cette plainte doit être classée sans suite. Lis pendent n'est pas éternel.

4. Circular 1010, au vu de ce qui précède et du déroulement du dossier, l'arbitrage ne garantit pas un procès équitable."

Translation by the Sole Arbitrator:

"*1. In this case, the merits of the complaint filed by Maccabi Petah Tikva with the arbitration of the Israeli Football Association falls to be analysed. In its complaint the club requests the authorization to terminate the contract that binds it to the player without compensation and if there is compensation to define its amount. This request goes completely against the fundamental basic principle of the respect for contracts. This complaint is inadmissible.*

2. The arbitrator has not acted on this case for more than two years knowing that he had to render a decision as to whether or not he has jurisdiction over a case of international dimension. I submit that it does not have jurisdiction over this matter and that FIFA must take over the case from the outset.

3. After two years without a decision on jurisdiction, without news from the arbitrator, the complaint shall be dismissed. Lis pendens is not forever.

4. Circular 1010, in light of the foregoing and the course of the case, arbitration does not guarantee a fair trial."

53. On 9 May 2022, the FIFA DRC informed the Parties that "*the proceedings under […] number 20-00738 have been resumed and they will be continued under the*

reference number FPSD-5945". As a result, the Club was invited to submit its position by a set deadline.

54. On 31 May 2022, the Club submitted its position, insisting that the proceeding should not be resumed, and should remain closed or at least suspended.

55. On 2 June 2022, FIFA requested the Player to provide his comments on the Club's position.

56. On 10 June 2022, the Player filed a submission with amended prayers for relief, as follows:

"*1. Club Maccabi Petah Tikva, FC is to be obliged to pay the player the salary in the amount of NIS 250'000 gross, plus interest for late payment in the amount of 5% since 1 June 2020 for the season 2019-2020.*

2. Club Maccabi Petah Tikva, FC is to be obliged to pay the player a bonus in the amount of NIS 55'986 gross, plus interest for late payment in the amount of 5% since 1 June 2020 for the season 2019-2020.

3. Club Maccabi Petah Tikva, FC is to be obliged to pay the player the salary/compensation in the amount of NIS 1'033'330 gross, plus interest for late payment in the amount of 5% since 1 June 2021 for the season 2020-2021.

4. Club Maccabi Petah Tikva, FC is to be obliged to pay the player a bonus in the amount of NIS 29'326 gross, plus interest for late payment in the amount of 5% since 1 June 2021 for the season 2020-2021.

5. Club Maccabi Petah Tikva, FC is to be obliged to pay the player a compensation based on article 17 (1) (ii) of 6 monthly salaries in the total amount of NIS 619'980 net, plus interest in the amount of 5% since 1 June 2021."

57. On 13 June 2022, the Club was invited by FIFA to provide its final comments on the matter before the FIFA DRC.

58. On 16 June 2022, the Club, in a submission to FIFA, objected to the Player's response of 10 June 2022, on the basis that it contained an entirely new claim.

59. On 21 July 2022, the FIFA DRC issued a decision on the Player's claim (the "Appealed Decision"), finding as follows:

"*1. The claim of the Claimant, Mujangi Bia, is admissible.*

2. The claim of the Claimant is partially accepted.

3. The Respondent, Maccabi Petah Tikva FC, has to pay to the Claimant, the following amounts:

NIS 55,986 as outstanding bonus, plus 5% interest p.a. as from 1 June 2020 until the date of effective payment.

NIS 1,233,330 as compensation for breach of contract without just cause plus 5% interest p.a. as from 15 May 2020 until the date of effective payment.

4. Any further claims of the Claimant are rejected.

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

6. Pursuant to art. 24 bis 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. This decision is rendered without costs."

60. On 29 July 2022, the Appealed Decision was notified to the Parties.

61. In the Appealed Decision, the FIFA DRC (which also refers to itself as the "Chamber") considered the dispute as follows:

i. with respect to the "*admissibility*" of the claim:

"*5. The Chamber noted that, on 15 December 2019, the club lodged a claim against the player before the Arbitration Institute of the Israeli Football Association (IFAA) in relation to its contractual relationship with the player. On the other hand, the Chamber also noted that, on 15 May 2020 and given that the player did not recognise the IFAA as being compliant with FIFA Circular No. 1010, said player lodged a claim before FIFA against the club, by means of which he requested the payment of outstanding remuneration.*

6. On this note, the Chamber also observed that, on 9 October 2020, the FIFA Administration decided to suspend the proceedings initiated in relation to the claim lodged by the player, given that, in principle, the matter was already pending before the IFAA.

7. However, the Chamber noted that, subsequently, on 3 May 2022, the player insisted in the continuation of the proceedings before FIFA, as he argued that no decision was rendered yet by the IFAA.

8. In relation to the matter of lis pendens, the Chamber considered it to be pertinent to underline that, in principle, the existence of lis pendens depends on, inter alia, that the actions must have the same subject matter and be between the same parties. Further to this, legal doctrine

shows that serious reasons can exist and might justify a stay of proceedings if the proceedings before the national decision-making body had already reached an advanced stage. Put differently, it is relevant whether the other decision-making body will render a decision within a reasonable period of time.

9. *Within this context, the Chamber took note of the fact that, upon information provided by Maccabi Petah Tikva FC, on 12 June 2022, Mr Hanoch Keinan, Arbitrator at the IFAA, rendered its "Decision in Arbitration File 80-19/20" by means of which, inter alia, determined that a "preliminary hearing" would be held on 16 August 2022. Given the aforementioned chronology of the proceedings before the IFAA, the Chamber first noted the significant time elapsed between the claim lodged by the club (i.e. 15 December 2019) and the establishment of a date for a "preliminary hearing" (i.e. 16 August 2022).*

10. *In the opinion of the Chamber, the significant time elapsed between both procedural stages serves as an indicator that the IFAA would be unable to render a decision within a reasonable period of time. In other words, the Chamber observed that the proceedings before the IFAA had not already reached an advanced stage. To the contrary, the Chamber was provided with information that would lead to conclude that the proceedings before the IFAA were still at a preliminary stage, even though the claim of the club was lodged more than two and a half years. The DRC is not convinced that the IFAA proceedings will be concluded soon as a first hearing has only been scheduled for August 2022.The Chamber further considered that, from the evidence on file, there is no proof that the player and the club were duly heard before the IFAA, whereas both parties already presented their respective position in writing before FIFA. Because of this, the Chamber understood that it is better equipped to render a decision than the IFAA.*

11. *In view of the above, the Chamber therefore considered that the Club failed to prove to FIFA at the relevant moment in time that the IFAA was expected to render a decision within a reasonable time.*

12. *Equally important, and with reference to art. 22 par. 1 lit. b) of the FIFA RSTP, the Chamber wished to underline that the Respondent had not provided any evidence that the IFAA was an independent arbitration tribunal that had been established at national level within the framework of the association and/or a collective bargaining agreement and which guaranteed fair proceedings and respected the principle of equal representation between players and clubs. Indeed, the Chamber deemed this of the utmost importance since a decision-making body of a member association of FIFA can only be competent when it complies with the aforementioned principles and the jurisdiction of said decision-making body is explicitly mentioned in the employment contract and/or a collective bargaining agreement. Whereas the contract contains a clear jurisdiction clause, the Respondent has not proven to the Chamber that the IFAA complied with*

the requirements of guaranteeing fair proceedings and respecting the principle of equal representation between players and clubs. As such, the FIFA DRC deemed that it was per se competent to adjudicate on the dispute between the player and the club, irrespective of any procedure pending at domestic level. In this regard, the Chamber also found it of importance that the player from the very start of the domestic proceedings objected to the competence of the IFAA and thus never accepted its jurisdiction.

13. Consequently, the Chamber unanimously agreed that the present proceedings are not to be stayed due to litispendence, and confirmed that the claim of the player is admissible";

ii. as to the "*main legal discussion and considerations*":

"*17. […] the Chamber considered that, before examining any other issue, it shall determine the exact period of validity of the contract.*

18. In relation to said issue, the Chamber observed that, indeed, the parties mutually agreed upon adding a handwritten clause to the contract, by means of which they convened to add an extension clause to the contract for one additional season in exchange of a remuneration in favour of the player in the amount of NIS 103,333 per month. In this respect, the Chamber carefully analysed the documentation gathered during the investigation and observed that the conditions for the extension of the contract appear to have been fulfilled. As a result, the Chamber established that the contract was valid for one additional season, i.e. until 31 May 2021, and that the player would be entitled to 10 instalments of NIS 100,333 each during the period of said extension.

19. The foregoing been established, the Chamber went on to analyse the main events leading to the dispute between the parties.

20. In particular, the Chamber observed that, after having signed an employment contract on 5 June 2019, the club lodged a claim against the player on 15 December 2019 before the IFAA by means of which it expressed its desire to no longer "continue its relationship with the player" since the player "fails to meet the professional standards expected from a player", while it asked a "a declaratory order ordering the termination of the Agreement between the parties while awarding the amount of the damages the player is entitled to receive from the Team".

21. From the contents of said requests, the Chamber first wished to underline that, on the basis of art 14 of the Regulations, either party to an employment contract between a professional player and a club may terminate the contract if they deem to have a just cause for such a termination. In principle, said termination is usually notified to the counterparty in writing, but does not require any declaratory statement or notice from an official decision-making body.

22. At the same time, the Chamber also underlined that, in case of a dispute, it would be up to the competent decision-making body to establish

whether a contractual breach occurred, with or without just cause, who is to be deemed responsible and what the consequences of such a breach would be (cf. art. 17 of the Regulations).

23. As a result, the Chamber understood that the claim lodged by the club on 15 December 2019 unequivocally confirms its decision of the Respondent to terminate the contract with the player.

24. Simultaneously, and referring to the request of the club before the IFAA, the Chamber also noted that the club requested before said body to award "the amount of the damages the player is entitled to receive from the Team". In other words, by acknowledging that it shall pay compensation to the player, the club de facto acknowledged that it was terminating the contract without just cause. For the sake of completeness, the Chamber also referred to its longstanding jurisprudence in accordance with which a player cannot be dismissed for alleged poor performance. Thus, the alleged poor or unsatisfactory performance cannot be considered as a just cause to terminate a contract.

25. Consequently, the Chamber established that the club terminated the contract without just cause on 15 December 2019 and, as a result, the player is entitled to compensation";

iii. as to the "*consequences*" of such finding:

"*26. Having stated the above, the members of the Chamber turned their attention to the question of the consequences of such unjustified breach of contract committed by the Respondent.*

27. Before entering the determination of the payable compensation, the Chamber first remarked that the player is entitled to his outstanding remuneration.

*28. The Chamber observed the claim of the player, and noted that he requested the payment of NIS 55,986 as bonus for winning 21 games during the season 2019/2020 (i.e. NIS 2,666*21), in accordance with art. 6 of the contract. The Chamber observed that the player supported his request with sufficient evidence.*

29. On the other hand, the Chamber observed that the club did not contest that it did not pay said amount.

30. As a consequence, and in accordance with the general legal principle of pacta sunt servanda, the Chamber decided that the Respondent is liable to pay to the Claimant the outstanding bonus in the amount of NIS 55,986.

31. In addition, taking into consideration the Claimant's request as well as the constant practice of the Chamber in this regard, the latter decided to award the Claimant interest at the rate of 5% p.a. on the outstanding amounts as from the due date (i.e. the end of the season 2019/2020) until the date of effective payment.

32. Having stated the above, the Chamber turned to the calculation of the

amount of compensation payable to the player by the club in the case at stake. In doing so, the Chamber firstly recapitulated that, in accordance with art. 17 par. 1 of the Regulations, the amount of compensation shall be calculated, in particular and unless otherwise provided for in the contract at the basis of the dispute, with due consideration for the law of the country concerned, the specificity of sport and further objective criteria, including in particular, the remuneration and other benefits due to the player under the existing contract and/or the new contract, the time remaining on the existing contract up to a maximum of five years, and depending on whether the contractual breach falls within the protected period.

33. *In application of the relevant provision, the Chamber held that it first of all had to clarify whether the pertinent employment contract contained a provision by means of which the parties had beforehand agreed upon an amount of compensation payable by the contractual parties in the event of breach of contract.*

34. *In this regard, the Chamber established that no such compensation clause was included in the employment contract at the basis of the matter at stake.*

35. *As a consequence, the Chamber determined that the amount of compensation payable by the Respondent to the Claimant had to be assessed in application of the other parameters set out in art. 17 par. 1 of the Regulations. The Chamber recalled that said provision provides for a non-exhaustive enumeration of criteria to be taken into consideration when calculating the amount of compensation payable.*

36. *Bearing in mind the foregoing as well as the claim of the player, the Chamber proceeded with the calculation of the monies payable to the player under the terms of the contract until its term. In particular, the Chamber observed that the player would still receive from the club the amounts of NIS 200,000 for the rest of the season 2020, from February 2020 until 31 May 2020 (4* NIS 50,000), and for that for the season 2020-2021, he would be entitled to "103,333 NIS gross for 10 months", i.e. NIS 1,033,330.*

37. *Thus, the Chamber established that the residual value of the contract is NIS 1,233,330 (i.e. NIS 200,000 + NIS 1,033,330), which serves as the basis for the determination of the amount of compensation for breach of contract.*

38. *In continuation, the Chamber verified whether the player had signed an employment contract with another club during the relevant period of time, by means of which he would have been enabled to reduce his loss of income. According to the constant practice of the Chamber as well as art. 17 par. 1 lit. ii) of the Regulations, such remuneration under a new employment contract shall be taken into account in the calculation of the amount of compensation for breach of contract in connection with the player's general obligation to mitigate his damages.*

39. *In this respect, the Chamber noted that the player remained*

unemployed since the unilateral termination of the contract and only signed a contract on 28 January 2022, i.e. after the original date of expiration of his contract with Maccabi Petah Tikva FC (cf. point 16 above). The Chamber therefore established that the player did not mitigate his damages during the applicable period.

40. The Chamber referred to art. 17 par. 1 lit. ii) of the Regulations, according to which, in case the player did not sign any new contract following the termination of his previous contract, as a general rule, the compensation shall be equal to the residual value of the contract that was prematurely terminated.

41. In this respect, the Chamber decided to award the player compensation for breach of contract in the amount of NIS 1,233,330, as the residual value of the contract.

42. Lastly, taking into consideration the player's request as well as the constant practice of the Chamber in this regard, the latter decided to award the player interest on said compensation at the rate of 5% p.a. as of the date of the claim until the date of effective payment";

iv. as to the "*compliance with monetary decisions*":

"*43. Finally, taking into account the applicable Regulations, the Chamber referred to art. 24bis 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.*

44. In this regard, the Chamber 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.

45. Therefore, bearing in mind the above, the Chamber decided that the club must pay the full amount due (including all applicable interest) to the player within 45 days of notification of the decision, failing which, at the request of the creditor, 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 club in accordance with art. 24bis par. 2, 4, and 7 of the Regulations.

46. The club shall make full payment (including all applicable interest) to the bank account provided by the player in the Bank Account Registration Form.

47. The Chamber 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. 24bis par. 8 of the Regulations."

III. PROCEEDING BEFORE THE COURT OF ARBITRATION FOR SPORT

62. On 4 August 2022, the Club submitted by email a Statement of Appeal to the CAS in accordance with Article R47 of the Code of Sports-related Arbitration (2021 edition) (the "CAS Code") against the Respondent, to challenge the Appealed Decision. The Statement of Appeal was uploaded to the CAS E-filing Platform on 5 August 2022. In its Statement of Appeal, the Appellant requested that the matter be submitted to a Sole Arbitrator.

63. On 8 August 2022, the CAS Court Office forwarded the Statement of Appeal to the Respondent and informed FIFA that an appeal had been lodged against the Appealed Decision, but that the appeal was not directed against FIFA. As a result, the CAS Court Office informed FIFA that, in the event it intended to participate in the proceeding, it had to file an application to that effect.

64. On 15 August 2022, the Respondent informed the CAS Court Office that he did not agree that the matter be submitted to a Sole Arbitrator. As a result, the CAS Court Office, in a letter to the Parties of the same date, informed them that it would be for the President of the CAS Appeals Arbitration Division, or her Deputy, to decide on the number of arbitrators in light of the circumstances of the case, further to Article R50 of the CAS Code.

65. On 18 August 2022, FIFA informed the CAS that it renounced its right to request its intervention in this arbitration further to Article R41.3 of the CAS Code.

66. On 24 August 2022, the Respondent clarified that he was willing to pay his share of the advance of costs subject to the granting of his request that the case be submitted to a panel of three arbitrators, and that he would not agree to make that payment "*if there will be only one arbitrator*".

67. On 18 September 2022, after having been granted extensions, the Appellant filed its Appeal Brief with the CAS Court Office, in accordance with Article R51 of the CAS Code.

68. On 20 October 2022, after having been granted extensions, the Player filed his Answer with the CAS Court Office, in accordance with Article R55 of the CAS Code.

69. On 20 October 2022, the CAS Court Office informed the Parties that Prof. Luigi Fumagalli, Milan, Italy, had been appointed as the Sole Arbitrator by the President of the CAS Appeals Division, pursuant to Article R54 of the CAS Code.

70. On 23 October 2022, the Appellant sought the Sole Arbitrator's authorization to submit copy of the IFAAI Award as a new exhibit.

71. On 9 November 2022, the CAS Court Office informed the Parties that the Sole Arbitrator, also in light of the absence of an objection by the Respondent, had decided to allow the production of the IFAAI Award. As a result, the Respondent

was granted a deadline to comment on such new document.

72. On 15 November 2022, the Appellant requested that a second round of written submissions be allowed by the Sole Arbitrator. The Respondent expressed his opposition to that request in a letter of 18 November 2022.

73. On 22 November 2022, the CAS Court Office informed the Parties that the Sole Arbitrator had decided not to grant the Parties the opportunity of a second round of written submissions, for reasons to be specified in the final award. At the same time, the Parties were informed that, having considered the Parties' positions in this regard, the Sole Arbitrator had decided to hold a hearing by video-conference in this case further to Articles R44.2 and R57 of the CAS Code.

74. On 1 December 2022, the Respondent submitted his comments on the IFAAI Award.

75. On 6 December 2002, after consulting the Parties, the CAS Court Office informed the Parties that a hearing would be held on 6 February 2023 by videoconference.

76. On 26 January 2023, the CAS Court Office communicated to the Parties the Order of Procedure issued on behalf of the Sole Arbitrator.

77. On 1 February 2023 and 2 February 2023, the Appellant and the Respondent respectively submitted to the CAS Court Office a signed copy of the Order of Procedure.

78. On 6 February 2023, a hearing was held in the present matter by videoconference. In addition to the Sole Arbitrator and Ms Kendra Magraw, CAS Counsel, the following persons virtually attended the hearing:

For the Appellant:	Mr Joseph Gayer, Mr Omri Applebaum and Mr Marc Cavaliero, Counsel, and Mr Tomer Raif, witness;
For the Respondent:	the Respondent himself, assisted by Mr Lucien W. Valloni, Counsel.

79. At the outset of the hearing, the Parties declared that they had no objections as to the appointment of the Sole Arbitrator. The Respondent, however, confirmed his objection to the submission of the case to a Sole Arbitrator, contrary to his request that a Panel of three arbitrators be appointed.

80. At the hearing, the Sole Arbitrator heard evidence from Mr Tomer Raif, a witness named by the Appellant, as well as declaration made by the Player himself. Before taking the evidence from Mr Raif, the Sole Arbitrator informed the witness of his duty to tell the truth, subject to sanctions of perjury under Swiss law. Then, the Parties and the Sole Arbitrator had the opportunity to examine and cross-examine him.

81. The content of the witness' testimony and of the Player's declarations can be

summarised as follows:

i. Mr Tomer Raif introduced himself as an expert on Israeli arbitration law and answered questions regarding the Arbitration Act of Israel, confirming *inter alia* the possibility to request the competent District Court to remove an arbitrator pursuant to, and in the circumstances described by, Article 11 of the Arbitration Act. Mr Raif declared that when an issue regarding arbitral jurisdiction arises, a party can seize a court to obtain a decision on the matter. Mr Raif at the same time stated that he was not familiar with the IFAAI arbitration system;

ii. the Player explained the origin of his relations with the Club and of the dispute with its President, the only one who, for financial reasons, wanted to get rid of him. The Player also confirmed that in December 2019 he received the request for arbitration before the IFAAI, but that then he continued to train with the Club until March 2020, when he was authorized to return to Belgium at the time of the pandemic outbreak. While in Israel, he was never informed that the Employment Contract was terminated: he was only told that he would not play. Finally, the Player underlined that in light of the unclear relation with the Club in the summer 2020 it was very difficult for him to find an alternative employment with other clubs, which would not take the risk of potential legal liabilities by signing a contract with him.

82. The Parties, then, submitted by counsel their pleadings, insisting for the granting of the relief respectively sought.

83. At the end of the hearing, the Parties confirmed that they were satisfied with the procedure throughout the hearing, and confirmed that their right to be heard had been fully respected. Again, the Respondent confirmed his objection to the appointment of a Sole Arbitrator instead of a Panel of three arbitrators.

IV. THE PARTIES' SUBMISSIONS

84. 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 Sole Arbitrator, 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

85. In its Statement of Appeal, the Appellant requested the CAS:

"*As primary requests:*

a. To annul and set aside the Decision passed on 21 July 2022 by the DRC, and;

b. To declare that under the circumstances, the Player's claim had to be closed or at least stayed due to lis pendens and until the IFAA arbitrator shall issue his award, and;

c. To re-apply FIFA's decision of 9 October 2020.

Alternatively:

a. *To declare that the Appellant had a just cause to terminate the employment agreement between the parties, under the circumstances and merits of the matter; and*

b. *To declare that under the circumstances of the matter, the Player received all the remuneration he was entitled to for the time he was at the Club, and that the Appellant bears no outstanding payments towards the Player, and:*

c. *To declare that the even if the Club did not have just cause to terminate the Agreement, the compensation to the Player should be significantly reduced and no more than 10,000 EUR due to the merits of the matter and since the Player did not meet is obligation to mitigate his damages, and:*

d. *To declare that the amounts awarded to the Player (if any), are gross amounts as provided in the employment agreement.*

Alternatively to the alternative:

a. *To annul and set aside the Decision passed on 21 July 2022 by the DRC, and;*

b. *To declare that the Appellant, did not receive its right to be heard and file its position against the Player's new claim, and;*

c. *To re-open the case before FIFA, allowing the Club to file its position to the Player's new claim before forwarding the case to the DRC for a formal decision, and:*

d. *To decide that is such case, the DRC members who issued the Appealed Decision will not be appointed to re-decide in the case after the Club files its position to the Player's new claim.*

In any case:

To order the Player to pay the Appellant a contribution towards its legal and other costs, in an amount to be determined at the discretion of the Panel or of the Sole Arbitrator."

86. In its Appeal Brief, the Appellant requested the CAS:

"*As primary requests:*

a. *To annul and set aside the Decision passed on 21 July 2022 by the DRC, and;*

b. *To declare that under the circumstances, the Player's claim had to be closed or at least stayed due to lis pendens and until the IFAA arbitrator shall issue his award, and;*

c. *To re-apply FIFA's decision of 9 October 2020.*

Alternatively:

a. *To declare that the Player's amended claim filed on 190 June 2022, is time-barred and therefore dismissed;*

b. *To declare that the initial claim filed on 15 may 2020 is the only claim before FIFA and CAS;*

c. *To declare that under the circumstances of the matter, the Player received all the remuneration he was entitled to for the time he was at the Club, and that the Appellant bears no outstanding payments towards the Player, and:*

d. To declare that the even if the Club did not have just cause to terminate the Agreement, the compensation to the Player should be significantly reduced and no more than 10,000 EUR due to the merits of the matter and since the Player did not meet is obligation to mitigate his damages, and:

e. To declare that the amounts awarded to the Player (if any), are gross amounts as provided in the employment agreement;

f. To refrain from adding any interests to any amounts of compensation the Club shall have to pay (if any).

Alternatively to the alternative:

a. To annul and set aside the Decision passed on 21 July 2022 by the DRC, and;

b. To declare that the Appellant, did not receive its right to be heard and file its position against the Player's new claim, and;

c. To re-open the case before FIFA, allowing the Club to file its position to the Player's new claim before forwarding the case to the DRC for a formal decision, and:

d. To decide that is such case, the DRC members who issued the Appealed Decision will not be appointed to re-decide in the case after the Club files its position to the Player's new claim.

In any case:

To order the Player to pay the Appellant a contribution towards its legal and other costs, in an amount to be determined at the discretion of the Panel or of the Sole Arbitrator."

87. The Appellant summarized its argument in support of its requests as follows:

"- *the Arbitration Institute of the Israeli Football Association (hereinafter: "the IFAA") had and still has the sole jurisdiction over the Parties' contractual dispute as it was chosen by the parties in an arbitration clause in their agreement.*

- *The Appellant has filed a claim against the Respondent following the arbitration clause on 15 December 2019 and such claim was still pending before an IFAA arbitrator when the Respondent's claim(s) were filed.*

- *FIFA has previously acknowledged the IFAA's jurisdiction over the parties' dispute and closed the Respondent's claim in its decision from 9 October 2020. The Respondent did not appeal such decision and it became final and binding and FIFA cannot annul its own decision.*

- *The Respondent acknowledged the IFAA's jurisdiction over the parties' dispute. Only at later stage, he argued that such jurisdiction expired due to the length of the Proceedings. However, the Player cannot rely on the period of time the IFAA Arbitration has taken when his refusal to file a statement of defense was the reason that caused the Arbitration not to proceed.*

- *FIFA cannot cancel the appointment of an IFAA arbitrator nor is it authorized to replace him.*

- *The IFAA meets the criteria of article 22 of the FIFA Regulations on the Status and Transfer of Players as an independent tribunal established at*

national level, guarantee's fair proceedings and respects the principle of equal representation of players and clubs.

- *The Respondent's initial claim from May 2020 was not admissible and filed against the Rules Governing the Football Tribunal.*
- *The Respondent's new claim from 10 June 2022 was not admissible and filed without FIFA's permission.*
- *FIFA Football Tribunal has deprived the Appellant from its elementary and basic right to be heard. It did not allow the Appellant to respond to the Respondent's' request to re-open his initial claim and it ordered the Appellant to provide its position to an entirely new claim filed by the Respondent (in which he requested amounts 15 times higher) within only 4 days.*
- *The Respondent's new claim was filed over two and a half years after the event giving rise to the dispute (the termination of the agreement by the Appellant) and was therefore time-barred and inadmissible*."

88. In more details, the Appellant's submission concerning "*matters of jurisdiction*" and "*admissibility*" are the following:

i. as to "*the Jurisdiction of the IFAA – The Arbitration Clause and the IFA Regulations*": the IFAAI Arbitrator was and still is fully competent and has jurisdiction over the Parties' contractual dispute. In the Employment Contract, in fact, the Parties agreed that an arbitrator appointed by the IFAAI would decide any dispute arising between the Parties regarding the Employment Contract. As a result, since the Appellant filed a claim with respect to an agreement that contains a clause binding the Parties to arbitrate their dispute before the IFAAI, the IFAAI arbitrator had the sole jurisdiction to entertain said dispute and adjudicate on all the Parties' claims, also in light of the principles of *lis pendens* and *res judicata*. In addition, the Player was subject to the regulations of the IFA, including the rules of the IFAAI, and more exactly to the "*Constitution of the Institute of Arbitration and Mediation"* (the "IFAAI Constitution"), which apply to all clubs and players registered with the IFA (Article 1(d)), and provide for the mandatory and exclusive jurisdiction of the IFAAI (Article 3), consistently with the Sports Law of Israel (Act No 5748-1988);

ii. as to "*the Jurisdiction of the IFAA – Meeting the Criteria of Article 22 of the FIFA RSTP*": the IFAAI arbitration meets all criteria set by Article 22 parargaph 1 (b) of the FIFA Regulations on the Status and Transfer of Players (the "RSTP"). In fact:

- the Employment Contract included a mandatory arbitration clause, stating that any disputes relating thereto would be decided by an arbitrator nominated by the IFAAI;
- the IFAAI is an independent tribunal established at the national level (under the Israeli Sports Law and IFA's regulations);
- the IFAAI guarantees fair proceedings and respects the principle of equal representation of players and clubs, since each party can be

represented by an attorney of law; the arbitrators are nominated by an Appointments Committee, which is independent of the IFA and the IFA does not intervene in its appointments. The Committee includes two retired district court judges and a distinguished law professor from Tel Aviv University, as well as a players' representative. Any dispute that is brought before IFAAI is heard by a single arbitrator, chosen by the parties from a list of arbitrators who have been appointed by the Appointments Committee. In case the parties do not agree on the identity of the arbitrator (as it happened in the present case), the Presidency of the High Tribunal of IFA appoints an arbitrator from the list of arbitrators nominated by the Appointments Committee;

- regarding the statement in the Appealed Decision, the fact that the Club did not prove that the IFAAI complies with the requirements of Article 22 paragraph 1 (b) of the FIFA RSTP does not mean that the IFAAI does not guarantee fair proceedings and equal representation to the parties who litigate their disputes before it. Actually, the issue of the IFAAI meeting those requirements was not in question at all in the proceedings before the FIFA DRC, since FIFA had already acknowledged the jurisdiction and competence of the IFAAI Arbitrator to hear the dispute, when it decided on 9 October 2020 to suspend the proceeding started by the Player, because the matter was already pending before the IFAAI. Therefore, the Club had no burden to prove, in the four days granted to comment the Player's submissions of 10 June 2022, that the IFAAI meets the criteria of Article 22 of the FIFA RSTP;
- the IFAAI Arbitrator had the power to issue an award against the Player based solely on the statement of claim, since the Player failed to submit his statement of defence, even though the IFAAI Arbitrator had given him every opportunity to respond and defend himself against the claim in a pertinent and fair manner, granting no less than six extensions of the time limit for such purposes;

iii. FIFA acknowledged the IFAA's jurisdiction over the Parties' dispute in its decision of 9 October 2020 and "*cannot annul its own decision*";

iv. "*the Player too also acknowledged the IFAA's jurisdiction over the Parties*", because he did not file an appeal or contest FIFA's decision of 9 October 2020. This means the decision became final and binding. In addition, in a letter of 31 May 2022, the Player admitted the jurisdiction of the IFAAI, when he only (but wrongly) claimed that it had expired;

v. the entire fault for the fact that the IFAAI Arbitrator did not issue his award within a short time laid solely on the Player, who refused to file his defense and filed six identical motions regarding jurisdiction, abusing the IFAAI Arbitrator's intention not to decide on the dispute without having the Player's position on the merits of the matter. In other words, the Player is the one who denied the IFAAI arbitration to quickly proceed;

vi. "*FIFA Has No Jurisdiction – FIFA Is Not Authorized To Replace The IFAA Arbitrator*": the FIFA DRC is not an appeal court authorized to annul *de facto*

the decisions of the IFAAI Arbitrator. There are other judicial bodies, competent under Israeli law, having such authority. These bodies are also competent to issue decisions concerning the jurisdiction of an Israeli arbitrator or of an Israeli arbitration institute, if a party to such proceedings denies their jurisdiction. FIFA is not one of those bodies. In the same way, FIFA is not authorized to appoint a new arbitrator or a new panel, in the event an award is not (or cannot be) timely rendered. In such cases, a party to an IFAAI arbitration can request that the arbitrator is replaced by another arbitrator, and FIFA cannot disregard the procedures set in a different forum;

vii. "*FIFA at most has parallel jurisdiction over the dispute but it does negate the IFAAI's jurisdiction*";

viii. "*the Player's claim* [of 15 May 2020] *and new claim* [of 10 June 2022] *were not admissible*", and therefore should have been both dismissed "*out of hand*":

- the claim of 15 May 2020 is just a one-page letter (in French), which did not contain any facts, written arguments and requests for relief or other elements required by the procedural rules applicable before the FIFA DRC;
- FIFA never invited the Club to file its response to, or position on, the Player's request to re-open the proceeding that had been (rightfully) closed;
- on 10 June 2022, the Player, ignoring FIFA's clear instructions that permitted him just to comment on the Club's arguments, filed an unsolicited 64-page document, which was definitely not a response to the Club's correspondence, but an entirely new claim in the total amount of NIS 1,938,622, *i.e.* 15 times more than his request in his original claim. As a result, the Player's new amended claim was inadmissible, since it was filed without permission and against FIFA's clear procedural decisions and instructions;

ix. in two separate occasions, FIFA deprived the Club of its elementary and basic right to be heard. The first time was on 9 May 2022, when FIFA decided to re-open the initial claim, closed on 9 October 2020, on the basis solely of the Player's request of 3 May 2022, never presented to the Club, without allowing it to respond. The second time was when FIFA did not allow the Club to sufficiently defend itself against an entirely new claim filed by the Player in his "*replica*" of 10 June 2022. The amended claim was an entirely new one and the Club was ordered to respond to it within two working days;

x. the Player's amended claim was time barred at the time it was filed, pursuant to Article 25 paragraph 5 of the FIFA RSTP. In fact, on 29 October 2019, the Club informed the Agent of the termination of the Employment Contract. On 15 December 2019, then, the Club filed its claim with the IFAAI, requesting the IFAAI Arbitrator to decide on the consequences of such termination. As from March 2020, the Club no longer paid the Player his salary. As a result, in the Appealed Decision it was decided that the Employment Contract was

terminated on 15 December 2019. Therefore, it cannot be disputed that the event giving rise to the dispute, which is the termination of the Employment Contract, occurred on 15 December 2019. The Player filed his amended claim on 10 June 2022, more than two and a half years after the event giving rise to the dispute. Therefore, the Player's (amended) new claim was clearly time barred on the day it was submitted.

89. As to the "*merits of the contractual dispute*", the Appellant submits that:

i. the Club terminated the Employment Contract (without just cause) and the Employment Contract ended effectively upon the notice of termination. The Club does not dispute that the Employment Contract was terminated shortly after its term commenced and without just cause. On 29 October 2019, in fact, the Club informed the Agent that the Player was requested to seek employment at another club. This notice was given a few months before the winter 2020 transfer window, allowing the Player plenty of time and opportunity to start seeking alternative employment at another club. The Club kept paying his salary, and the Club also clarified to the Player that if the amounts earned at his new club were less than the amounts earned at the Club, the Club would be willing to consider a compensation. The Club agrees that the termination of the Employment Contract due to poor performances is a termination without just cause, which has its consequences. However, the term of the Employment Contract was for only one season (the 2019/2020 season) and the consequences of the termination concern solely that season. In fact, when the Employment Contract was terminated by the Club, the condition set by its Article 9 was not fulfilled. It was fulfilled only in late summer 2020, when the Club began playing its games in the premier league during the 2020/2021 season. Moreover, in order for the Employment Contract to be extended to the 2020/2021 season, the Parties needed to sign such agreement on a "*Player Agreement Form for the Season of 2020/21*", as they did in 2019/2020. Therefore, the Player was not entitled to any compensation for the 2020/2021 season. The same goes for bonuses or "*premium payments*". The Player's right to bonuses for winning games is obviously subject to participation in the Club's games. Bonuses are given to a player for being an active part of the team, involved in the achievement which entitle to the bonus. The Player only participated in five games of the Club for the 2019/2020 season and did not contribute at all to the Club's promotion to the premier league. Therefore, the Player is not entitled to any bonuses;

ii. the outburst of the COVID-19 pandemic in Israel and its effects on the Club and its players must be taken into account. In fact, on 25 May 2020, when the football activities were about to resume, a collective bargaining agreement was signed between the Club and the Israel Football Player Organization. As a result of the collective bargaining agreement, the Player would be entitled at most to compensation in the amount of one monthly salary (gross) and an additional salary with a 30% gross offset. In fact, it is not disputed that the Club paid the Player his full salary for the 2019/2020 season up to and

including February 2020; it is also not disputed that between 13 March 2020 and 10 May 2020 there were no training and games, and the Club's players were in unpaid leave of absence: therefore, the Player would not be entitled to salary for this period; his salary during the COVID-19 period and until the end of the season would have been paid for 13 days in March 2020 as well as for 20 days in May 2020, and then one salary offset by 30% gross, for a total amount of NIS 90,000 gross (NIS 55,000 for 13 days in March 2020 and 20 days in May 2020 plus NIS 35,000 offset salary in June 2020, after which the extended playing season ended). The collective bargaining agreement was applicable to all players of the Club, in line with FIFA's Guidelines for COVID-19;

iii. if the Player is entitled to any compensation, the amounts are gross and not net;

iv. the Club is liable to pay interest on the compensation for outstanding salaries for the 2019/2020 season, in which the Player was employed at the Club. Interest should apply from the end of the 2019/2020 season (July 2020) until the date of effective payment. However, the Club does not agree that it is liable to pay any interests on the compensation for the 2020/2021 season, even if such compensation is awarded to the Player;

v. the Player had an obligation to reduce and mitigate his damages, and to seek and try to find employment at another club. However, the Player failed to comply with it. In fact, the Player did not make any effort to find another team that would employ him. The sole reason for that was the Player's decision not to mitigate his damages, while waiting and expecting to receive all the amount under a contract which had been terminated two years earlier. The fact that in 2022 the Player suddenly joined a club proves that he could have done the same two years earlier, but just decided not to. Once the Player's representative addressed the Club in late January 2022 and asked for a letter confirming that the Player did not have a valid employment agreement with the Club (in order to present it to other football clubs interested in his services), the Club complied with it immediately. Obviously, the Club would have had no problem issuing a similar letter at any time since November 2019. Therefore, the Club believes that no compensation should be awarded to the Player under the circumstances.

B. The Respondent

90. In his Answer, the Respondent requested the CAS:

"*1) to dismiss, in full, the appeal filed by the Appellant;*

2) to affirm the appealed FIFA Decision of the Football Tribunal passed on 21 July 2022, in full;

3) order the Appellant to pay all costs incurred in relation to the appeal; and

4) order the Appellant to pay all legal expenses of the Respondent in relation to the appeal."

91. According to the Respondent, the appeal must be dismissed *in limine* because the Appellant did not direct it also against FIFA. In any case, according to the Respondent, the appeal must be dismissed also for many other reasons: FIFA was competent to decide the case; there is no issue in relation to the invoked *lis pendens* principle, because the claim filed with the IFAAI by the Appellant and the claim filed by the Respondent with FIFA are different; the IFAAI proceedings were not acceptable for the Player; the IFAAI proceedings are not in compliance with Article 6 para. 1 of the European Convention on Human Rights (the "ECHR") and are not in compliance with FIFA Circular No 1010; the IFAAI Award is not enforceable; the claim of the Player lodged with FIFA was not time barred; the Club did not fulfil its contractual obligations and there was no just cause not to pay the Respondent's salary; the Respondent did not terminate the Employment Contract, and his position has always been that there was a contract in force between the Parties.

92. At the same time, the Player confirmed that he is not seeking before CAS the payment of an amount higher that the one awarded by the FIFA DRC, even though he would be entitled to it. In that regard, the Player referred to the prayers for relief submitted to the FIFA DRC on 10 June 2002 (see ¶ 56 above) and indicated that the Sole Arbitrator would be "*free to use the amounts due under these old prayers for relief to come to the same amount awarded to the player*". These "*old prayers*" include, in addition to those (at least partially) granted by the FIFA DRC (salary and bonus for the season 2019/2020 and compensation for lost salaries in the season 202/2021), also the request for the payment of the bonuses referred to the season 2020/2021 (equal to NIS 29,326) and of an additional compensation pursuant to Article 17, paragraph 1 (ii) of the FIFA RSTP (in the amount of NIS 619,980).

93. The Appellant's submissions are answered by the Respondent as follows:

    i. "*Argument of Jurisdiction / Missing direction of Appeal against FIFA as Respondent*". The Appellant submits that the FIFA DRC had no jurisdiction and was not competent to deal with the case. However, the Appellant did not direct its appeal against FIFA. This is a mistake that cannot be cured, and the appeal must be dismissed because of this procedural issue alone. The Respondent is aware of the jurisprudence of CAS that in certain cases allows appeals also if FIFA is not mentioned as a respondent, especially in cases where the dispute has a horizontal nature only. However, in the present case, the appeal touches upon important procedural principles, namely the jurisdiction of FIFA and the right to be heard before the FIFA DRC. Therefore, FIFA, i.e. the Swiss law association that took the Appealed Decision, had to be the party responding to the appeal;

    ii. "*Argument of lis pendens*". The *lis pendens* principle does not apply because the claims before the two different instances were different. Whereas the Appellant requested the IFAAI Arbitrator to cancel the Employment Contract, the Respondent requested a decision concerning the salaries to be paid by Appellant. These are two separate distinct claims. Hence, no *lis pendens* can be invoked;

iii. "*Jurisdiction and competence of FIFA*". The Club's contention that the FIFA DRC was not competent to adjudicate on the dispute between the Player and the Club is clearly incorrect, and based on a misunderstanding of Article 22 para 1 (b) of the FIFA RSTP. The IFAAI, as the National Dispute Resolution Chamber ("NDRC") in Israel, has never been recognised by FIFA and this fact alone should be sufficient to conclude that the FIFA DRC was competent. Furthermore, Article 22 of the FIFA RSTP requires that the parties explicitly opt in writing for the NDRC to be competent. *In casu*, such explicit choice was not made. Indeed, Article 7 of the Employment Contract was not explicitly agreed upon between the Player and the Club in the sense of Article 22 (b) of the FIFA RSTP. The contract signed is in fact the standard players' contract as mandatorily imposed by the IFA, the content of which cannot be amended by the Parties. Therefore, the Player did not explicitly opt in writing for the jurisdiction of the NDRC to adjudicate on possible disputes with the Club: an "option" implies in fact a free choice. Furthermore, it must be underlined that Article 7 of the Employment Contract does not explicitly refer to the "*Institute of Arbitration and Mediation*" and also the supposed "*Codex*" and/or "*Directives*" therein mentioned were not provided by the Club to the Player when the Employment Contract was signed. What is more, it is also clear that the NDRC in Israel does not comply with the requirements of FIFA to be recognised as an NDRC, since it does not guarantee fair proceedings and its composition does not respect the principle of equal representation between players and clubs, as the influence of the clubs on the process and appointments is far greater and more significant than the influence of the players. Equally, it needs to be pointed out that it remains unclear how the Chairman of the IFAAI is being appointed. In addition, it is to be noted that disputes are being decided by a sole arbitrator: if one aligns this fact to the manner in which arbitrators are nominated, *i.e*. by a committee which does not comply with the principle of equal representation, it is clear that one cannot guarantee fair and independent procedures. Furthermore, it needs to be outlined that the proceedings in front of the IFAAI are not free of charge, which is incompatible with the National Dispute Resolution Chamber Standard Regulations adopted by FIFA (the "NDRC Standard Regulations"). This means that every player who has not been paid his salaries would even be required to pay a fee to have his claim heard. In light of the compulsory arbitration, this limits the players' access to justice in an unacceptable manner;

iv. "*Argument that FIFA Circular 1010 is met by the IFAA proceedings*". This is denied, for the reasons already explained. In addition, it should be mentioned that, after a long period of time during which nothing happened in the IFAAI proceeding, the Player was no longer bound, if he ever was, to an arbitration not freely agreed, established under the control of IFA, disrespecting the principle of equal representation and not guaranteeing a fair procedure;

v. "*Violation of Article 6 of the* [European] *Convention of Human Rights / Correct application of Article 3 of the FIFA Statutes*". The players do not have an equal influence on the composition of the arbitration panel, the rules

and the entire arbitration structure, managed and controlled by the IFA. Hence, there is a clear imbalance that cannot be accepted. Furthermore, a "forced arbitration" situation occurs in this case, since the Player had no choice but to accept it. As a result, given the latest jurisprudence of the European Court of Human Rights (the "ECtHR") in the *Ali Riza* case (judgment of 28 January 2020, *Ali Riza and others v. Turkey*, application No 30226/10), Article 6 of the ECHR is applicable and requests that an impartial arbitration system is in place. This is not the case here. Therefore, the IFAAI arbitration system is in violation of Article 6 of the ECHR and the Player is not bound to it. This is even more true considering that FIFA in Article 3 of its Statutes referred to human rights principles and undertook the obligation to respect Article 6 of the ECHR also as its own rule;

vi. "*No fair proceedings before IFAAI*". The proceedings before the IFAAI were not acceptable also because of other circumstances. The proceedings were held in the Hebrew language, a language the Player does not understand. Even though the Player did not accept this way of proceeding, the IFAAI Arbitrator continued to issue orders in Hebrew, asking the Club to translate them into English for the Player. This is a behaviour that is not acceptable and is not in line with Article 6 of the ECHR. Furthermore, it is not true that the Player accepted the jurisdiction of the IFAAI. The request of the Player of 12 January 2021 to continue the IFAAI arbitration was only to get a decision on jurisdiction, and not an acceptance thereof. Finally, the IFAAI Arbitrator did not communicate directly with the Player, but through the counsel of the Club. This is not a way to conduct an arbitration and certainly not a fair procedure;

vii. "*IFAA Decision not enforceable outside of Israel*". Since the IFAAI proceedings violate Article 6 of the ECHR, and the IFAAI Award could never be enforced in a country other than Israel, because of the violation of the public policy principles it entails;

viii. "*Claim brought before FIFA is not time barred*" pursuant to Article 25 paragraph 5 of the FIFA RSTP. The Player did not file any new claim: due to the time that had elapsed between the claim filed on 15 May 2020 and 10 June 2022, new salaries had become due and they were requested by the Player in its application of 10 June 2022. FIFA, therefore, decided to resume and continue the very same case. In fact, FIFA had not closed the case before the FIFA DRC. This fact that FIFA was monitoring the pending case is shown by the communication of 28 September 2021 (see ¶ 51 above), in which it requested information about the IFAAI proceedings. Hence, there is no time bar issue at all;

ix. "*Mitigation of damages*". The Club did not terminate the Employment Contract: it just stopped complying with it. Hence, the Player was still bound thereby and was not able to sign a new employment agreement with another club. As a result, the Player was not in a position to mitigate the damages, because of the existing agreement, and cannot be blamed for this and for the fact that the Club never terminated the Employment Contract in writing;

x. "*Right to be heard*". The argument is ill founded and must be dismissed, because FIFA did grant the Appellant the right to comment on the application of the Player of 10 June 2022. Hence, the right to be heard was respected and the Appellant stated its case concerning the jurisdictional issues and *lis pendens* in its submission of 17 June 2022;

xi. "*Further comments*":

- FIFA did not issue a final and binding decision when it stopped the investigation of the matter due to *lis pendens* on 9 October 2020. FIFA took only an *interim* decision to factually suspend further investigation because another case was pending in another jurisdiction. It is clear that the FIFA DRC was free to come back on this *interim* communication at any time without violating any procedural principle, in the same way as any other judge would have the right to resume a case factually suspended;
- after the FIFA communication of 9 October 2020, the IFAAI Arbitrator remained inactive and only when FIFA resumed the case did he wake up and started to move again. An application for the replacement of the IFAAI Arbitrator, that was not acting at all, would not have changed anything, since the arbitrator is appointed in disregard of equal treatment principles;
- the communication of 29 October 2019 was not a termination of the Employment Contract, but only an offer to mutually terminate it;
- FIFA correctly decided that the compensation for the Player has to include salaries due for the season 2020/2021: the Player could not perform in that season only because of the Club, while he always offered his services;
- if the collective bargaining agreement is valid for the Respondent, which is contested, the reduction for June 2020 would be 15% only, because the Club was promoted to the Premier League in the season 2019/2020;
- the Club deprived the Player without just cause from being able to play for the team. Therefore, the bonus is due;
- the calculation of the compensation based on Article17 paragraph 1 of the FIFA RSTP is correct. The compensation for breach of contract in the amount of NIS 1,233,330, as the residual value of the Employment Contract, is to be confirmed, including interest of 5% p.a. as of the date of the claim until the date of effective payment. Also the calculation for the payment of NIS 55,986 as bonus for winning 21 games during the season 2019/2020 (i.e., NIS 2,666 x 21) is correctly calculated in accordance with Article 6 of the Employment Contract, as well as interest at a rate of 5% p.a.

V. JURISDICTION OF THE CAS

94. Article R47 of the 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.*
>
> *An appeal may be filed with CAS against an award rendered by CAS acting as a first instance tribunal if such appeal has been expressly provided by the rules of the federation or sports-body concerned.*"

95. Pursuant to Article 56(1) of the FIFA Statutes (2021 Edition, in force as of 21 May 2021, when the Appealed Decision was issued and the appeal was filed with CAS), FIFA recognises the jurisdiction of the CAS to "*resolve disputes between FIFA, member associations, confederations, leagues, clubs, players, officials, intermediaries and licensed match agents*".

96. Further pursuant to Article 57(2) of the FIFA Statutes, "*recourse may only be made to CAS after all other internal channels have been exhausted*". The Appealed Decision was issued by the FIFA DRC, and it is not disputed that all internal channels within FIFA have been exhausted.

97. CAS jurisdiction is not disputed by the Parties. It follows that the CAS has jurisdiction to hear the appeal filed by the Club against the Appealed Decision.

VI. ADMISSIBILITY

A. The Appellant's claims

98. The Statement of Appeal complied with the requirements of Articles R47, R48 and R64.1 of the CAS Code, including the payment of the CAS Court Office fee.

99. It follows that the appeal is admissible as to its form.

100. The admissibility of the appeal is however challenged by the Respondent for reasons other than its form. The Respondent in fact submits that the appeal is not admissible because the Appellant failed to name FIFA as a respondent. According to the Respondent, the issues raised by the Appellant in its challenge to the Appealed Decision include one (i.e. the competence of the FIFA DRC to hear the claim brought by the Player) directly touching the position of FIFA and its relations with affiliated entities. As a result, the Respondent had no standing to answer alone the appeal, which should be declared inadmissible.

101. The Sole Arbitrator does not agree with the Respondent's submission, and recalls the well-established CAS jurisprudence (see for instance CAS 2020/A/7144, ¶¶ 88-99) underlining that it is not necessary, for the purposes of Article 75 of the Swiss

Civil Code, to name FIFA as a respondent when the dispute heard by a FIFA body (such as the FIFA DRC) is "horizontal" in nature, i.e. when FIFA acts as a third-party adjudicator to solve disputes involving the rights and the interests of the litigants. Only when the exercise of a "disciplinary" power of FIFA is involved the dispute become "vertical", and FIFA must be called to participate in the CAS proceedings discussing it.

102. In the case at stake, the dispute between the Player and the Club heard by the FIFA DRC has undoubtedly a "horizontal" nature, as it related to a claim for compensation for breach of contract. In the opinion of the Sole Arbitrator, such nature did not change, to become "vertical", only because one of the issues considered by the FIFA DRC concerned its competence and because that issue involved a determination with regard to the role of the IFAAI as a "*National Dispute Resolution Chamber*" for the purposes of Article 22, paragraph 1 (b) of the FIFA RSTP. The FIFA DRC's power to decide the claim was in fact exercised in the interest of the litigants and was not serving directly a FIFA right that it wished to enforce against them. The fact that the correct application of FIFA rules is at stake before CAS does not alter this conclusion, since this situation occurs in all disputes, including those having a purely "horizontal" nature, and therefore would lead to the conclusion that all appeals to CAS directed against decisions rendered by FIFA require, pursuant to Article 75 of the Swiss Civil Code, the participation of FIFA as a respondent.

103. The Sole Arbitrator therefore concludes that the appeal brought by the Club against the Player is admissible.

B. The Respondent's claims

104. The Sole Arbitrator notes that the Respondent, in his Answer to the appeal filed by the Appellant, referred to his prayers for relief submitted before the FIFA DRC and indicated that the CAS would be free to "*use*" the amounts thereby claimed to reach the same amount granted by the FIFA DRC.

105. Those prayers include some requests that were not granted by the FIFA DRC. In fact, the FIFA DRC partially upheld the claim for payment of outstanding bonuses, and ordered the Appellant to pay compensation for the damages caused to the Respondent, calculated on the basis of the salaries payable to the Respondent until the end of the employment relationship (remaining part of the 2019/2020 season and the entire 2020/2021 season). As indicated at point 4 of the operative part of the Appealed Decision (see ¶ 59 above), "*any further claims of the Claimant* [the current Respondent] *are rejected*".

106. In light of the foregoing, the Sole Arbitrator finds that the examination of any claim not granted by the FIFA DRC would imply a review of the Appealed Decision in order to modify its findings. Such analysis would have been possible only in the framework of an appeal brought by the Respondent against the Appealed Decision. In the absence of any such appeal, the mentioned such analysis and determination

is clearly not admissible in the present procedure.

VII. APPLICABLE LAW

107. Pursuant to Article R58 of the CAS Code, in an appeal arbitration procedure before the CAS:

> "*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.*"

108. Pursuant to Article 56(2) of the FIFA Statutes:

> "*[t]he provisions of the CAS Code of Sports-related Arbitration shall apply to the proceedings. CAS shall primarily apply the various regulations of FIFA and additionally, Swiss law.*"

109. As a result, the Sole Arbitrator finds that the various regulations of FIFA, and chiefly the FIFA RSTP, are primarily applicable. Swiss law applies subsidiarily, should the need arise to fill a possible gap in the various regulations of FIFA.

VIII. MERITS OF THE APPEAL

110. The object of the present arbitration is the Appealed Decision, which, in its merits, (i) found that the Appellant was responsible for a breach of the Employment Contract and (ii) ordered the Appellant to pay to the Respondent (a) an amount due under it, plus interest, as well as (b) compensation for breach of contract, plus interest.

111. The Appellant disputes the findings in the Appealed Decision and asks the Sole Arbitrator to set it aside. In support of its requests, the Appellant invokes a large number of reasons: the Appellant criticizes the way in which the FIFA proceedings were conducted, submits that the FIFA DRC should have declined to exercise its jurisdiction in favour of the IFAAI Arbitrator, before whom the matter was already pending, and holds that the Player's petition had to be denied in its merits. In general terms, according to the Appellant, the case of the Player was wrongly decided by the FIFA DRC. The Respondent, on its side, requests the Sole Arbitrator to dismiss the appeal and to confirm the Appealed Decision.

112. As a result of the Appellant's submissions, several issues have to be examined by the Sole Arbitrator. Before their analysis is conducted, however, the Sole Arbitrator needs to specify the reasons (reserved for the final award) for his decision to deny a second round of written submissions, as requested by the Appellant (see ¶ 73 above). The Sole Arbitrator, indeed, considered that no "*exceptional*

circumstances" under Article R56 of the CAS Code existed (or had been proved to exist) in order to deviate from the principle that the parties are not authorized to supplement their requests or their argument after the submission of the appeal brief and of the answer. In particular, the Sole Arbitrator considered that the right to be heard of the Appellant (as well as of the Respondent) was guaranteed by the holding of a hearing, where the Appellant's case could be (and actually was) fully stated, also with respect to the IFAAI Award. On the other hand, the Sole Arbitrator confirms that the production of the IFAAI Award (as Exhibit 45 for the Appellant) was authorized (see ¶ 71 above) in the absence of objections by the Respondent and on the basis of "*exceptional circumstances*" pursuant to Article R56 of the CAS Code, which include the timing of its notification to the Parties and of its translation, completed after the Appeal Brief had been filed, and its obvious importance to this case.

113. The issues raised by the Appellant are examined below, in a sequence corresponding to the aspects of the Appealed Decision which are challenged in this arbitration.

i. Did the FIFA DRC violate the Appellant's right to be heard?

114. The Appellant submits that its basic rights had been violated in the FIFA DRC proceeding, because (i) such proceeding, already closed by decision of 9 October 2020, was reopened upon the Respondent's request without hearing the Appellant, and (ii) the Appellant was not granted sufficient time to answer the Respondent's new claim submitted to the FIFA DRC on 10 June 2022.

115. In this respect, the Sole Arbitrator notes that, according to Article R57 of the CAS Code, he has full power to review the facts and the law. The Sole Arbitrator consequently hears the case *de novo*. This implies that, even if a violation of the principle of due process occurred in prior proceedings, it may be cured by a full appeal to the CAS (CAS 94/129; CAS 98/211; CAS 2000/A/274; CAS 2000/A/281; CAS 2000/A/317; CAS 2002/A/378). In fact, the virtue of an appeal system which allows for a full rehearing before an appellate body is that issues relating to the fairness of the hearing before the tribunal of first instance "*fade to the periphery*" (CAS 98/211).

116. The Appellant has had (and used) the opportunity to bring the case before CAS, where all of the Appellant's fundamental rights have been duly respected. At the end of the hearing, the Appellant's counsel expressly confirmed that the Appellant had no objections in respect of its right to be heard and to be treated equally in the arbitration proceeding. Accordingly, even if any of the Appellant's rights had been infringed upon by the FIFA DRC – but without conceding that they had actually been infringed – the *de novo* proceedings before CAS would be deemed to have cured any such infringements.

117. As a result, the Sole Arbitrator finds it unnecessary to deal with the alleged violations by the FIFA DRC of the Appellant's right to be heard, since any conclusion in that respect would not imply the setting aside of the Appealed

Decision and the dismissal of the Respondent's claim it granted.

ii. Was the claim of the Player before the FIFA DRC admissible?

118. The Appellant challenges the Appealed Decision where it found that the Respondent's claim was admissible. According to the Appellant and contrary to the FIFA DRC's conclusions, the Respondent's claim had to be denied already for lack of admissibility.

119. The main reason advanced by the Appellant is linked to the "competence" of the FIFA DRC. According to the Appellant, in essence, the FIFA DRC was not competent to hear the Respondent's contractual claim, because any dispute concerning the Employment Contract had to be (and actually had been) submitted to arbitration in Israel, before the IFAAI. In that respect, the Appellant refers to Article 7 of the Employment Contract, to Article 22, paragraph 1 (b) of the FIFA RSTP, to the behaviour of FIFA and of the Respondent, to Israeli law, to the limits to the power of FIFA to interfere with the IFAAI arbitration, and to the principle of *lis pendens*.

120. The Sole Arbitrator notes indeed that, according to Article 7 of the Employment Contract, disputes ("*differences of opinion*") between the Parties had to be resolved by an arbitrator appointed pursuant to the "*Association's Arbitration Institute Codex*". The Sole Arbitrator holds that it is undisputed that such "*Institute*" is the IFAAI. In fact, the Respondent criticizes the reference to the "*Codex*" and the circumstance that this document was not provided when the Employment Contract was signed, but does not challenge the identification of such "*Institute*".

121. The question is then whether the IFAAI arbitration complies with the criteria set by Article 22 of the FIFA RSTP in order to substitute for the competence of the FIFA DRC to hear an employment-related disputes between a club and a player of an international dimension.

122. Article 22 of the FIFA RSTP so provides:

> "*Without prejudice to the right of any player or club to seek redress before a civil court for employment-related disputes, FIFA is competent to hear: […]*
>
> *b) employment-related disputes between a club and a player of an international dimension; the aforementioned parties may, however, explicitly opt in writing for such disputes to be decided by an independent arbitration tribunal that has been established at national level within the framework of the association and/or a collective bargaining agreement. Any such arbitration clause must be included either directly in the contract or in a collective bargaining agreement applicable on the parties. The independent national arbitration tribunal must guarantee fair proceedings and respect the principle of equal representation of players and clubs […].*"

123. On the basis of this provision, it is apparent that limits on FIFA jurisdiction may exist, even where there is an international dimension to the dispute. However, the

general rule is that FIFA is competent to hear employment-related disputes between clubs and players with an international dimension: cases heard by a national body (NDRC) are the exception to that rule. In other words, those disputes fall within the competence of the FIFA DRC, unless the conditions mentioned by Article 22, paragraph 1 (b) of the FIFA RSTP are satisfied. Those conditions are that:

i. a written, explicit, and exclusive arbitration clause nominating the NDRC to deal with any potential dispute between the club and the player has been stipulated. The written choice of forum should be directly included in the contract signed between the professional player and the club, or in a collective bargaining agreement applicable to the parties. In the latter case, the player's individual employment contract will generally have to refer explicitly to the collective bargaining agreement concerned, and to declare that agreement to be an integral part of the contractual relationship between the parties;

ii. the NDRC nominated to hear the dispute must satisfy the following criteria. It must:

   a. respect the principle of equal representation of players and clubs; and

   b. must guarantee fair proceedings.

124. The FIFA DRC came to the conclusion, in the Appealed Decision, that no evidence had been offered by the Appellant to prove that the IFAAI arbitration mentioned in the Employment Contract satisfied the requirements set by Article 22, paragraph 1 (b) of the FIFA RSTP. The Appellant submits in this CAS arbitration that such criteria are indeed met and therefore that the FIFA DRC had to decline its competence in favour of the IFAAI arbitration. The Respondent, on the other side, denies the point, and adds also that the arbitration clause contained in the Employment Contract was not sufficiently precise in order to satisfy the condition sent by Article 22, paragraph 1 (b) of the FIFA RSTP.

125. As a result, the question before this Sole Arbitrator is whether the conditions required by Article 22, paragraph 1 (b) of the FIFA RSTP were satisfied and therefore whether the Appealed Decision came to the wrong conclusion in its analysis.

126. In that regard, the Sole Arbitrator underlines that the options before him are not merely binary, *i.e*. that a conclusion can only be reached that the IFAAI system complies or does not comply with by Article 22, paragraph 1 (b) of the FIFA RSTP. The Sole Arbitrator has in fact also the option of holding that the meeting of those conditions has not been proved.

127. As indicated, a NRDC must respect the principle of equal representation of players and clubs; and must guarantee fair proceedings. In order to guide national federations to create national bodies complying with those principles, FIFA adopted the NDRC Standard Regulations and issued FIFA Circular No 1010, which the Sole Arbitrator finds to provide useful guidance for the evaluation of an existing system with respect to the satisfaction of the criteria set by Article 22, paragraph 1 (b) of the FIFA RSTP. In addition, the Sole Arbitrator notes that the matter has already

been considered in a number of CAS awards (CAS 2014/A/3483; CAS 2014/3582; CAS 2020/A/7144).

128. As to the principle of equal representation of players and clubs, the Sole Arbitrator remarks that it requires that the NRDC must consist of equal numbers of club and player representatives, as well as an independent chairperson. The chairperson and deputy chairperson should be chosen by agreement between the player and club representatives in the body concerned. As a result, when arbitrators are to be selected from a predetermined list, every interest group that is represented must be able to exercise equal influence over the compilation of the arbitrators' list. In more details, the NDRC Standard Regulations provide that the player representatives should be elected or appointed either following a proposal by a player association affiliated to FIFPro (the international association of professional football players), or, if there is no such association in the country concerned, based on a selection process agreed by FIFA and FIFPro. The club representatives, for their part, should be elected or appointed following a proposal from the clubs or leagues. As a result, and for instance, in CAS 2012/A/2970, the panel found that the principle of equal representation of players and clubs had not been respected because the members of the NDRC had been elected by the board of the member association, and the membership of that association was made up exclusively of its affiliated clubs. In CAS 2016/A/4846, it was then held that a situation where the players' representatives have less influence on the appointment of the chairperson that the clubs' representatives in not in line with the FIFA requirements.

129. The question is therefore whether the IFAAI arbitration complies with such requirement. In that regard, the Sole Arbitrator underlines that (as noted in CAS 2012/A/2983) the matter is to be examined in abstract terms and purely on the basis of the FIFA regulations. In other words, whether the system at stake (in the present case, the IFAAI arbitration) complies with local law (in this case, the laws of Israel) and is suitable to lead to the issuance of a valid and enforceable decision according thereto is not dispositive of the matter. In the same way, any issue as to the qualifications, impartiality and independence of any of the IFAAI arbitrators, which cannot be doubted, is not relevant to the question of the satisfaction by the IFAAI system of the requirement set by the FIFA RSTP that it respects the principle of equal representation of players and clubs.

130. In the analysis as to the satisfaction of this requirement, the Sole Arbitrator notes as relevant the following provisions within the "*Constitution of the Institute of Arbitration and Mediation*" (the "IFAAI Constitution"):

Article 1 (a) ["*Definition*"]:

"*The Institute of Arbitration and Mediation […] is one of the judicial organs of the Israel Football Association […]*"

Article 1 (b) ["*Members of the Institute of Arbitration and Mediation*"]

"*The arbitrators and mediators will be appointed by an appointments committee comprised of the president of the Supreme Tribunal, a member of the presidium of the Supreme Tribunal, a representative of the players' union, the general manager*

of the Association, a representative of the League Administration and the chairman of the Institute of Arbitration and Mediation (hereinafter: "the Appointments Committee"), as defined in the statutes of the Football Association […].

The chairman of the Institute of Arbitration and Mediation […] will also be appointed by the Appointments Committee but will not take part in this election. […]

In addition to the Chairman of the Institute, the number of arbitrators and mediators who will be appointed by the Appointments Committee and will actually serve in that capacity shall not exceed 10 arbitrators and mediators. The Appointments Committee may at any time appoint arbitrators to whatever extent may be required for purposes of completing the full number of arbitrators as specified above"

Article 1 (c) ["*Chairman of the Institute of Arbitration and Mediation*"]

"*1. Shall serve as a regular arbitrator and shall be appointed to adjudicate on matters in the scope of the Institute of Arbitration and Mediation; […]*

3. Shall serve as an advisory entity to the president of the Supreme Tribunal with regard to the appointment and distribution of cases between the arbitrators and the mediators, with this being in accordance with their professional competence and expertise […]"

Article 5 (a) ["*Composition*"]

"*Any dispute brought for decision of the Institute of Arbitration and Mediation shall be adjudicated before a single arbitrator. The identity of the arbitrator shall be determined by agreement of all the parties to the arbitration from the List of Arbitrators […]. If all the parties to the arbitration have failed to deliver written notice to the Secretariat of their consent in regard to the identity of the arbitrator as aforesaid, the president of the Supreme Tribunal shall appoint an arbitrator from the List of Arbitrators who shall adjudicate on the Arbitration File […]*"

131. The Sole Arbitrator understands, on the basis of the Appellant's written submissions, that the "*Supreme Tribunal*" mentioned at Articles 1(b) and 5(a) above is the "*Supreme Tribunal*" of the IFA, and observes, with reference to the arbitration proceedings organized according to the IFAAI Constitution, that:

i. the dispute is submitted as a rule to a sole arbitrator, chosen within a list of eligible arbitrators;

ii. in the absence of an agreement of all parties as to the identity of the sole arbitrator, this sole arbitrator is designated by the President of the Supreme Tribunal of the IFA, upon advice of the IFAAI chairperson;

iii. the arbitrators included in the list are designated by an appointment committee. The appointment committee also designates the IFAAI chairperson;

iv. the appointment committee is composed of the President of the IFA Supreme Tribunal, a member of the presidium of the IFA Supreme Tribunal, a representative of the players' union, the general manager of the IFA, a

representative of the league administration and the IFAAI chairman (who however does not participate in the designation of the arbitrators to be included in the list).

132. At the same time, the Sole Arbitrator remarks that no indication has been given as to the way the IFA Supreme Tribunal, its President and the members of its presidium are elected, and as to any role given to the players in their election.

133. As a result, failing a different indication, the Sole Arbitrator notes that within the appointment committee of the IFAAI, only one member is a representative of the players, while the others are all representatives either of IFA (being members of the IFA Supreme Tribunal or the IFA general manager) or of the league, and that the designation within the list of arbitrators of the individual sole arbitrator hearing a dispute remains with a member of an IFA body.

134. In light of the foregoing, the Sole Arbitrator concludes that the Appellant has not proven that the IFAAI respects the principle of equal representation of players and clubs.

135. For the sake of clarity, the Sole Arbitrator underlines that such conclusion does not detract from the personal qualifications of all members of the appointment committee, of the President of the IFA Supreme Tribunal, of the members of the presidium of the IFA Supreme Tribunal, or of any of the arbitrators appointed to the list of eligible arbitrators. In the same way, any point of Israeli law is irrelevant, including with respect to the issues (challenge to the jurisdiction of the IFA Supreme Tribunal, removal of an arbitrator, setting aside proceedings) explained at the hearing by an expert on Israel arbitration law, who however admitted not being familiar with the IFAAI arbitration.

136. In light of the conclusion, it is not necessary to examine whether fair proceedings were guaranteed before the IFAAI Arbitrator. In the same way, it is not necessary to deal with the Respondent's objections regarding the satisfaction by the arbitration clause contained in the Employment Contract of the formal requirement set by Article 22, paragraph 1 (b) of the FIFA RSTP. The finding that it has not been proven that the IFAAI respects the principle of equal representation of players and clubs is sufficient to conclude that the competence of the FIFA DRC was not prevented by the arbitration clause set by Article 7 of the Employment Contract.

137. The Appellant, however, submits that the competence of IFAAI Arbitrator had been recognized by the Player and by FIFA, that FIFA could not interfere with the IFAAI arbitration and that the existence of a *lis pendens* should have prevented the FIFA DRC from rendering the Appealed Decision.

138. The Sole Arbitrator does not agree with the Appellant's contentions, and finds that:

i. the competence of IFAAI Arbitrator was constantly denied by the Player. In a letter of 6 January 2020 to the IFAAI Arbitrator, in fact, the Player submitted that the IFAAI arbitration did not satisfy the FIFA requirements (¶

23 above); in letters of 12 January 2021 (¶ 24 above) and 31 May 2022 (¶ 27 above) the Player expressed the same position; and when the Player insisted for a decision to be rendered by the IFAAI Arbitrator, it was only to obtain a dismissal of the Club's claims for lack of competence (e.g., ¶¶ 36, 39, 41 above);

ii. the competence of the IFAAI Arbitrator was not recognized by FIFA. In its letter of 9 October 2020 (¶ 50 above), in fact, the FIFA administration simply referred to the claim submitted to the IFAAI by the Club, and limited itself to inform the parties that the FIFA "*investigation*" would not continue due *to lis pendens*. No indication was given as to the satisfaction by the arbitration clause contained in the Employment Contract of the requirements set by Article 22, paragraph 1 (b) of the FIFA RSTP. In addition, even assuming (without conceding) that such letter implied a recognition of the competence of the IFAAI Arbitrator, the Sole Arbitrator has not been directed to any provision preventing the FIFA DRC from revaluating the matter. In fact, the letter of the FIFA administration is limited to a remark regarding *lis pendens*, which, because of its very object, is open to a review, for instance with respect to the continuing existence and relevance of a pending parallel procedure. As such, in the opinion of the Sole Arbitrator, it did not contain a final decision on the Player's claim, and did not prevent the continuation of the "*investigation*" upon a new evaluation of the conditions for its conduct. In that respect, in fact, on 28 September 2021 (¶ 51 above), FIFA requested some information about the IFAAI arbitration: that request would be inexplicable, if the FIFA proceedings had been finally closed;

iii. the fact that FIFA could not interfere with the IFAAI arbitration under the Israel arbitration law is irrelevant, as already remarked (¶ 135 above). The Appealed Decision in fact is limited to the relevance of the IFAAI arbitration for the purposes of the exercise of the FIFA jurisdiction, and did not intend in any way to interfere with the conduct of the proceeding before the IFAAI Arbitrator;

iv. the exercise by the FIFA DRC of its competence under Article 22, paragraph 1 (b) of the FIFA RSTP was not prevented by a *lis pendens*. Indeed, it appears to the Sole Arbitrator that for a parallel procedure to be considered relevant as an obstacle to the exercise of the FIFA jurisdiction, it is necessary that also the decision to which the parallel procedure leads (or might lead) is eligible to substitute for a FIFA decision on the dispute between the same parties. In other words, litigation pending before a NDRC, which does not satisfy the conditions set by Article 22, paragraph 1 (b) of the FIFA RSTP, cannot be invoked as a basis for a *lis pendens* objection, and does not prevent FIFA from exercising its competence, because the decision rendered under the aegis of that NDRC would not be recognized by FIFA.

139. Finally, the Appellant submits an additional reason in support of its contention that the Respondent's claim had to be dismissed by the FIFA DRC without further examination for lack of admissibility. In fact, the Appellant contends that the Respondent's claim of 15 May 2020, which started the FIFA DRC proceedings, did

not comply with the formal requirements set by the procedural rules applicable before the FIFA DRC, and that on 10 June 2022 the Respondent submitted an inadmissible and unauthorized new claim.

140. The Sole Arbitrator does not agree also with this contention. With respect to the Respondent's claim of 15 May 2020, it appears to the Sole Arbitrator that no provision applicable before the FIFA DRC was violated, leading to the inadmissibility of the claim. The same can be said of the Respondent's submission of 10 June 2022. In any case, if a violation of the Club's right to be heard was committed, this was cured by the appeal to CAS, as already noted (¶¶ 114-117 above).

141. In light of the foregoing, the Sole Arbitrator comes to the conclusion that the FIFA DRC correctly considered the Respondent's claim to be admissible.

iii. Was the claim of the Player time-barred?

142. The Appellant, however, submits that the Respondent's claim could not be granted because it was time-barred pursuant to Article 25 paragraph 5 of the FIFA RSTP. According to the Appellant, when, on 10 June 2022, the Respondent submitted its amended claim to the FIFA DRC, more than two years from the termination of the Employment Contract had elapsed.

143. Article 25 paragraph 5 of the FIFA RSTP in fact reads as follows:

"*The Players' Status Committee, the Dispute Resolution Chamber, the single judge or the DRC judge (as the case may be) shall not hear any case subject to these regulations if more than two years have elapsed since the event giving rise to the dispute. Application of this time limit shall be examined ex officio in each individual case.*"

144. The Sole Arbitrator finds that the Respondent's petition of 15 May 2020 was filed within the applicable time-limit, and that therefore the claim thereby brought was not time-barred. As a result of that petition, a procedure was opened before the FIFA DRC. FIFA, then, on 9 October 2020, informed the Parties that the "*investigation*" of the dispute would not continue, and, on 28 September 2021, requested some information about the IFAAI arbitration. In that context, as made clear in the FIFA letter of 9 May 2022 (¶ 53 above), the procedure before the FIFA DRC was simply "*resumed*", even though under a different case number. In other words, the same procedure originally started in 2020 was continued, following a request submitted by the Player on 3 May 2022 (¶ 52 above).

145. In light of the foregoing, it is not possible to consider the claim specified on 10 June 2022 to be time-barred. In fact, it was presented in the context of a procedure timely started and referred to the breach of the Employment Contract mentioned in the petition of 15 May 2020, adding requests for payments of amounts that, according to the Respondent, had in the meantime accrued. In other words, "*the event giving rise to the dispute*" remained the same and only new financial consequences were

submitted. The Sole Arbitrator notes in addition that in the period between 9 October 2020 and 9 May 2022, FIFA did not "*continue with the investigation*" of the dispute: therefore, such requests were submitted as soon as the procedure was resumed.

146. In summary, the Sole Arbitrator finds that the claims of the Player were not time-barred when they were submitted to FIFA, because less than two years since "*the event giving rise to the dispute*" had elapsed.

iv. Did the Appellant breach the Employment Contract?

147. The FIFA DRC found in the Appealed Decision that the Appellant terminated the Employment Contract without just cause on 19 December 2019. Such finding is not disputed by the Appellant in this arbitration. It is therefore final.

v. What are the consequences of such finding?

148. In light of the foregoing, the Sole Arbitrator has to examine the consequences of the termination of the Employment Contract by the Club without just cause.

149. The matter actually was largely examined by the FIFA DRC and is only marginally disputed by the Parties to this arbitration. In fact, (i) the finding that the Player is entitled to the payment of the outstanding remuneration, and (ii) the identification of the criteria for the determination of the compensation to be paid to the Player under the FIFA RSTP are not disputed by the Parties. The dispute, in fact, concerns only the application of some of the factors involved in the calculation of the compensation, as considered by the FIFA DRC and/or that the Appellant wants to rectify.

150. Indeed, the criteria established by Article 17 of the FIFA RSTP are clear, when it comes to the determination of the compensation due to a player, in circumstances corresponding to the present ones. In fact, in addition to any outstanding remuneration, in case the player does not sign any new contract following the termination of his previous contract, as a general rule, the compensation shall be equal to the residual value of the contract that was prematurely terminated. Such provision was applied by the FIFA DRC in the Appealed Decision.

151. The Appellant however submits that the Respondent was not entitled to any bonus payment, because he did not contribute to the Club's promotion to the premier league at the end of the 2019/2020 season, and that for the determination of any compensation due to the Player, the FIFA DRC wrongly took into consideration the salary that would have accrued for the season 2020/2021, since the Employment Contract was only for the season 2019/2020 and when it was terminated, the condition set by its Article 9 had not been satisfied yet.

152. With respect to the bonus payment, the Sole Arbitrator remarks that the Appealed Decision granted the Respondent's request that NIS 55,986 be paid as outstanding bonus, calculated on the basis of NIS 2,666 per match won, multiplied by the 21

matches won by the Appellant in the season 2019/2020. Such payment was ordered on the basis of Article 6 of the Employment Contract.

153. The Sole Arbitrator finds that the Employment Contract, prepared by the Appellant, did not subject the payment of bonuses to an actual participation (in the starting "eleven" or as a substitute) of the Player in the playing team of the Appellant. As a result, the Sole Arbitrator finds that the Appealed Decision correctly concluded that a bonus of NIS 55,986 had to be paid to the Respondent.

154. In the same way, the Sole Arbitrator finds that the FIFA DRC correctly took into account the salary that would have accrued for the season 2020/2021. The handwritten "*supplementary provision*" inserted at Article 9 of the Employment Contract provided in fact that the term of the employment, originally for one year (hence the title of the Employment Contract), would be automatically extended for an additional year, if a specific condition (promotion to the premier league) was satisfied. Article 9 did not subject the extension of the Employment Contract to the exercise of an option or to additional conditions (such as a minimum number of matches played by the Respondent in the 2019/2021 season) and was binding on both Parties. The condition was satisfied. As a result, but for the termination without just cause by the Appellant, the Employment Contract would have been extended, and the Appellant cannot derive a benefit from its breach of contract. The salaries for the season 2020/2021 (NIS 1,033,330) were therefore correctly taken into account for the determination of the residual value of the Employment Contract.

155. In a second perspective, the Appellant contends that the salary to which the Player was entitled for the season 2019/2020 had to be reduced pursuant to a collective agreement negotiated with the Israeli players' union to mitigate the impact of the disruptions caused by the COVID-19 pandemic.

156. The Sole Arbitrator notes that actually an agreement between the Club and the Israeli Football Players Association was entered into on 25 May 2020. Under that agreement, it was provided that the "*unpaid leave*" of the Club's players ended on 10 May 2020, that the Club had to pay the May 2020 salary only for the remaining portion of the month and that some reductions applied to the players' salaries of June 2020 (in a measure depending on their import).

157. At the same time, however, the Sole Arbitrator remarks that:

    i. the agreement was entered into by the Israeli Football Players Association on behalf of a number of players mentioned in an appendix thereto, which does not include the Respondent;

    ii. during the "*unpaid leave*" period, the players, as indicated in the Appellant's Appeal Brief, were covered by the "*National Insurance Institute*", and no evidence has been given that the Respondent was covered (or was entitled to be covered) by the "*National Insurance Institute*". Actually, in the appendix to the agreement between the Club and the Israeli Football Players Association, the only player indicated not to be eligible for "*unpaid leave*" is a foreign (Portuguese) player;

iii. under the agreement between the Club and the Israeli Football Players Association, the players who had not received "*unemployment benefits from the National Insurance of Israel*" had to present "*the relevant documentation to evaluate their status*" (point 4);

iv. the fact that the Player was not covered by the agreement between the Club and the Israeli Football Players Association is the result of the termination without just cause of the Employment Contract by the Appellant, which therefore should not derive any benefit from its wrongful action.

158. As a result of the foregoing, the Sole Arbitrator finds that the salary to which the Player would have been entitled until the end of the Employment Contract, relevant to the calculation of the compensation to be paid by the Appellant for its termination without just cause, should not be reduced pursuant to the agreement between the Club and the Israeli Football Players Association entered into on 25 May 2020, or for any other COVID-19 related reason.

159. In light of the foregoing, the FIFA DRC correctly determined the residual value of the Employment Contract in NIS 1,233,330, on the basis of the remaining salaries payable to the Respondent for the 2019/2020 season (NIS 200,000) plus the salaries for the season 2020/2021 (NIS 1,033,330).

160. In a third perspective, the Appellant submits that the compensation to be paid to the Player should be reduced, because the Respondent, omitting to search for a new club, failed to mitigate the consequences he was suffering from due to the termination of the Employment Contract.

161. The Sole Arbitrator does not agree with the Appellant and finds that the failure of the Respondent to mitigate the damages he sustained was justified. In fact, as convincingly submitted by the Respondent in this arbitration, the actual termination of the Employment Contract by the Club was not clearly declared to the Player, who sought and obtained an otherwise unnecessary permission to leave Israel for the pandemic period, and then disputed, when the Player sought to return to Israel. In this situation, when conflicting petitions had been filed with the IFAAI and FIFA, the unclear contractual position of the Player justified any difficulty to find an alternative employment before the expiry of the Employment Contract (end of the 2020/2021 season), as this would have implied, *inter alia*, a responsibility of any new club to pay damages to the Appellant, in the event the Respondent was found responsible of a breach of contract without just cause.

162. As a result, no reduction to the compensation to be awarded to the Player should be applied.

163. In a fourth perspective, the Appellant requested the Sole Arbitrator to specify that the amount due to the Respondent are "*gross*".

164. The Sole Arbitrator agrees with the Appellant that all amounts due under the Employment Contract (as bonuses or salaries) were indicated in "*gross*" amounts (Article 6 (e) and (f) of the Employment Contract). The point does not appear to

be disputed by the Respondent.

165. In the absence of any indication in the operative part of the Appealed Decision, even though the matter might seem uncontroversial, the Sole Arbitrator finds it useful to clarify that the amounts due to the Respondent are "*gross*", in the meaning of Article 6 of the Employment Contract.

166. Finally, the Appellant disputes the portion of the Appealed Decision whereby it was ordered to pay interest on the compensation awarded to the Player. The finding that interest applies on any outstanding salary (and bonus) in unchallenged.

167. The Appealed Decision, in fact, applied interest at 5% *p.a*. as from 15 May 2020 until the date of final payment on the compensation (of NIS 1,233,330) to be paid by the Appellant to the Respondent. The Sole Arbitrator notes that, as indicated in the Appealed Decision (at ¶ 42 of the considerations), the FIFA DRC found that interest accrued from the date of the claim.

168. The Sole Arbitrator notes however that the payment of compensation for damages was specified on 10 June 2022 in the context of the procedure, referring to the breach of the Employment Contract, started of 15 May 2020, when the Respondent added requests for payments of amounts that had in the meantime accrued.

169. In light of the foregoing, the Panel finds it proper to assume the date of 10 June 2022 as the date of the claim, for the limited purposes of the calculation of interest (and without prejudice to the foregoing indications with respect to, *inter alia*, the limitation period: ¶ 145 above).

vi. Conclusion

170. As a result, the appeal lodged against the Appealed Decision has to be granted only to a very limited extent, to specify that the amounts due to the Respondent are "*gross*" and that interest on the amount of NIS 1,233,330 is to be calculated at 5% *p.a*. as from 10 June 2022 until the date of effective payment.

171. Any further claims or requests for relief are to be dismissed.

IX. COSTS

(…).

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed on 4 August 2022 by Maccabi Petah Tikva FC against the decision rendered by the FIFA Dispute Resolution Chamber on 21 July 2022 is partially upheld.

2. Point 3 of the decision rendered by the FIFA Dispute Resolution Chamber on 21 July 2022 is modified as follows:

   Maccabi Petah Tikva FC has to pay to Mr Mujangi Bia, the following amounts:

   - *NIS 55,986 gross as outstanding bonus, plus 5% interest p.a. as from 1 June 2020 until the date of effective payment.*
   - *NIS 1,233,330 gross as compensation for breach of contract without just cause plus 5% interest p.a. as from 10 June 2022 until the date of effective payment.*

3. The decision rendered by the FIFA Dispute Resolution Chamber on 21 July 2022 is confirmed in all other points.

4. (…).

5. (…).

6. All the other motions or prayers for relief are dismissed.

Seat of arbitration: Lausanne, Switzerland
Date: 28 November 2023

THE COURT OF ARBITRATION FOR SPORT

Luigi Fumagalli
Sole Arbitrator