

Decision of the Dispute Resolution Chamber

passed on 18 October 2023

regarding an employment-related dispute concerning
the player Dennis Wanyoike

COMPOSITION:

Frans de Weger (Netherlands) , Chairperson
Peter Lukasek (Slovakia), member
Khalid Awad Al-Thebity (Saudi Arabia), member

CLAIMANT:

Dennis Wanyoike, Kenya

Represented by Kenya Footballers Welfare Association (KEFWA)

RESPONDENT:

Fountain Gate FC, Tanzania

I. Facts of the case

1. On 6 July 2022, the Kenyan player, Dennis Wanyoike (hereinafter: *Claimant* or *player*) and the Tanzanian club, Fountain Gate FC (hereinafter: *club* or *Respondent*) concluded an employment contract (hereinafter: *contract*) valid for a period of two years as from the 2022/2023 season until the 2023/2024 season.
2. According to the information in TMS, the season dates are recorded as follows:

*"2022/2023 - 01.07.2022 - 31.05.2023
2023/2024 -- 15.06.2023 - 31.05.2024"*
3. According to clause 4.2 of the contract, the club undertook to pay the player a net annual compensation of Tanzanian Shillings (TZS) 5,520,000 which corresponds to a net monthly wage of TZS 460,000.
4. Additionally, the player was entitled to a sign-on fee of TZS 460,000 as per clause 4.3 of the contract, which will be paid when the *"arrives at the camp"*.
5. On 10 September 2022, after the player's arrival in Tanzania, he was requested by the club *"along with other Kenyan teammates to go back to his home country to obtain some paperwork while his work permit was allegedly arranged by the Club, without providing any further explanation or instructions to the Player."*
6. On 16 October 2022, the player travelled back to Tanzania to be available for training, *"despite the Club failing to provide him with the work permit nor giving him further indications."*
7. On 28 November 2022, the club sent the player a release agreement.
8. On 22 December 2022, the club sent an internal memo to the player, where the player amongst others was requested to train with a development team.
9. On 25 December 2022, the player sent the club a letter, in terms of which he made it clear *"that he was hired for the first team, yet he had been requested to attend to a separate training. Despite this the Player showed willingness to be present. Additionally, the Player highlighted that he was owed several monthly payments, as well as the sign on fee, he had not been reimbursed for the expenses he incurred in to arrive to camp and had not received his passport back nor had been issued the corresponding work permit from the Club."*
10. On 14 February 2023, the player put the club in default requesting payment of his outstanding salaries corresponding to September 2022 until January 2023 in the total amount of TZS 2.300,000, plus TZS 460,000 as sign-on fee, granting it a deadline of 15 days.

11. On 6 March 2023, the player terminated the employment contract invoking just cause for outstanding salaries and abusive behaviour from the club.
12. The player is playing as an amateur at the Kenyan club, Terror Squad FC.

II. Proceedings before FIFA

13. On 20 July 2023, the Claimant filed the claim at hand before FIFA. A brief summary of the position of the parties is detailed in continuation.

a. Position of the Claimant

14. According to the Claimant, the club failed to comply with its contractual obligations.
15. The player further argued that the main reason *“he was forced to terminate were due the several outstanding salaries which was outstanding, accordingly he could not sustain himself, nor attend to trainings given that he had no money and the club refused to provide him with the adequate transportation promised despite his repeated requests to the club”*.
16. The requests for relief of the Claimant, were the following:
 - *TZS 3.220,000 + TZS 130,000 as outstanding salaries + 5% interest as of the relevant due dates until the date of effective payment.*
 - *TZS 7,360,000 as the amount due as compensation for breach of contract + 5% interest as of 6 March 2023 until the date of effective payment.*
 - *In addition, the Player is requesting the FIFA DRC to impose sporting sanctions on the Club for breach of contract, for the latter’s breach of contract within the protected period.*

b. Position of the Respondent

17. Notwithstanding being invited to do so, the Respondent failed to reply to the claim.

III. Considerations of the Dispute Resolution Chamber

a. Competence and applicable legal framework

18. First of all, the Dispute Resolution Chamber (hereinafter also referred to as *Chamber* or *DRC*) analysed whether it was competent to deal with the case at hand. In this respect, it took note that the present matter was presented to FIFA on 20 July 2023 and submitted for decision on 18 October 2023. Taking into account the wording of art. 34 of the March 2023 edition of the Procedural Rules Governing the Football Tribunal (hereinafter: *the Procedural Rules*), the aforementioned edition of the Procedural Rules is applicable to the matter at hand.
19. Subsequently, the members of the Chamber referred to art. 2 par. 1 of the Procedural Rules and observed that in accordance with art. 23 par. 1 in combination with art. 22 lit. b) of the Regulations on the Status and Transfer of Players May 2023 edition), the Dispute Resolution Chamber is competent to deal with the matter at stake, which concerns an employment-related dispute with an international dimension between a Kenyan player and a Tanzanian club.
20. Subsequently, the Chamber analysed which regulations should be applicable as to the substance of the matter. In this respect, it confirmed that, in accordance with art. 26 par. 1 and 2 of the Regulations on the Status and Transfer of Players (May 2023 edition), and considering that the present claim was lodged on 20 July 2023, the May 2023 edition of said regulations (hereinafter: *the Regulations*) is applicable to the matter at hand as to the substance.

b. Burden of proof

21. The Chamber recalled the basic principle of burden of proof, as stipulated in art. 13 par. 5 of the Procedural Rules, according to which a party claiming a right on the basis of an alleged fact shall carry the respective burden of proof. Likewise, the Chamber stressed the wording of art. 13 par. 4 of the Procedural Rules, pursuant to which it may consider evidence not filed by the parties, including without limitation the evidence generated by or within the Transfer Matching System (TMS).

c. Merits of the dispute

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

i. Main legal discussion and considerations

23. The foregoing having been established, the Chamber moved to the substance of the matter, and took note of the fact that the Claimant claims that he terminated the contract with just cause, based on the alleged non-payment of certain financial obligations by the Respondent as per the contract, in accordance with art. 14bis of the Regulations.
24. In this context, the Chamber acknowledged that their task was to determine, based on the evidence presented by the parties, whether the claimed amounts had in fact remained unpaid by the Respondent and, if so, whether the formal pre-requisites of art. 14bis of the Regulations had in fact been fulfilled.
25. The Chamber noted that – after having been provided with the claim of the Claimant – the Respondent failed to present its response. By not presenting its position to the claim, the Chamber was of the opinion that the Respondent renounced its right of defence and, thus, accepted the allegations of the Claimant.
26. Furthermore, as a consequence of the aforementioned consideration, the Chamber expressed that it shall take a decision upon the basis of the documentation already on file; in other words, upon the statements and documents presented by the Claimant.
27. The Chamber then referred to the wording of art. 14bis par. 1 of the Regulations, in accordance with which, if a club unlawfully fails to pay a player at least two monthly salaries on their due dates, the player will be deemed to have a just cause to terminate his contract, provided that he has put the debtor club in default in writing and has granted a deadline of at least 15 days for the debtor club to fully comply with its financial obligation(s).
28. The Chamber noted that the Claimant claims not having received his remuneration corresponding to September 2022 until January 2023. Furthermore, the Chamber noted that the Claimant has provided written evidence of having put the Respondent in default on 14 February 2023, i.e. at least 15 days before unilaterally terminating the contract on 6 March 2023.
29. The Chamber also noted that in the case at hand the Respondent bore the burden of proving that it indeed complied with the financial terms of the contract concluded between the parties, however it failed to do so.
30. Additionally, the Chamber took note of the Claimant's argument that that the club failed to provide him with a valid work permit.
31. In this context, the Chamber referred to the jurisprudence of the Football Tribunal, which as a general rule indicates, that it is the club's duty and responsibility to obtain, if necessary, a work permit or a visa for its players prior to the signing of an employment contract or

during its period of validity, in order for players to be able to legally enter a particular country and be in a position to render their services to the club.

32. Thus, the Chamber concluded that the Claimant had a just cause to unilaterally terminate the contract, based on art. 14bis of the Regulations.

ii. Consequences

33. 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.
34. The Chamber observed that the outstanding remuneration at the time of termination, coupled with the specific requests for relief of the player, are equivalent to TZS 3,220,000.
35. 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 amounts which were outstanding under the contract at the moment of the termination, i.e. TZS 3,220,000, corresponding to the following:
- TZS 460,000 as sign on fee
 - TZS 460,000 as salary due for September 2022
 - TZS 460,000 as salary due for October 2022
 - TZS 460,000 as salary due for November 2022
 - TZS 460,000 as salary due for December 2022
 - TZS 460,000 as salary due for January 2023
 - TZS 460,000 as salary due for February 2023
36. 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 respective due dates until the date of effective payment.
37. The Chamber further remarked that player failed to provide evidence i.e., proof of payment/invoice relating to travel expenses, therefore it decided to reject this part of the player's claim.
38. 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.

39. In application of the relevant provision, the Chamber held that it first of all had to clarify as to whether the pertinent employment contract contained a provision by means of which the parties had beforehand agreed upon an amount of compensation payable by the contractual parties in the event of breach of contract. 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.
40. As a consequence, the members of the Chamber determined that the amount of compensation payable by the club to the player 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.
41. 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 from the date of its unilateral termination until its end date. Consequently, the Chamber concluded that the amount of TZS 6,900,000 (i.e. TZS 460,000 X 15 months - March 2023 until May 2024) serves as the basis for the determination of the amount of compensation for breach of contract.
42. In continuation, the Chamber verified as to 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 DRC 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.
43. In this respect, the Chamber noted that the player for the club, Terror Squad FC as an amateur since the unilateral termination of the contract.
44. 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.
45. In this respect, the Chamber decided to award the player compensation for breach of contract in the amount of TZS 6,900,000, i.e. TZS 460,000 X 15 months, as the residual value of the contract.

46. 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 6 March 2023 until the date of effective payment.

iii. Sporting Sanctions

47. The Chamber noted that the Respondent had simultaneously been held liable by the Football Tribunal for the early termination of the employment contracts without just cause, namely in the following cases:

- a. Case ref. FPSD-10993
- b. Case ref. FPSD-10994
- c. Case ref. FPSD-10995
- d. Case ref. FPSD-10996

48. Under article 17 par. 4 of the Regulations, in addition to the obligation to pay compensation, sporting sanctions shall be imposed on any club found to be in breach of contract or found to be inducing a breach of contract during the protected period.

49. As to the protected period, this is defined in the Regulations as *"a period of three entire seasons or three years, whichever comes first, following the entry into force of a contract, where such contract is concluded prior to the 28th birthday of the professional, or two entire seasons or two years, whichever comes first, following the entry into force of a contract, where such contract is concluded after the 28th birthday of the professional"*.

50. In the present case, the player was 23 years old when he signed the employment agreement, which took place on 6 July 2022. As such, the Chamber confirmed that since the termination of the employment agreement occurred on 6 March 2023, it took place within the protected period.

51. At the same time, the DRC recalled that the player terminated the contract with just cause, as the club was found to be in breach of the employment contract. As such, and by virtue of art. 17 par. 4 of the Regulations, the Chamber decided that the Respondent shall be banned from registering any new players, either nationally or internationally, for the two next entire and consecutive registration periods following the notification of the present decision.

52. For the sake of completeness, the Chamber recalled that in accordance with article 24 par. 3 lit. a) of the Regulations, the consequences for failure to pay relevant amounts in due time may be excluded where the Football Tribunal has imposed a sporting sanction on the basis of article 17 in the same case. Consequently, the Chamber confirmed that the consequences for failure to pay relevant amounts in due time envisaged by art. 24 of the Regulations were excluded in the present matter, and that should the Respondent fail to timely comply with this decision, it would be for the FIFA Disciplinary Committee to adopt the necessary measures in accordance with the FIFA Disciplinary Code.

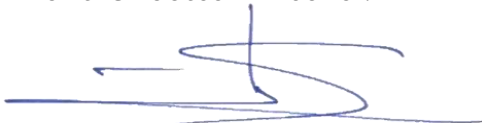
d. Costs

53. The Chamber referred to art. 25 par. 1 of the Procedural Rules, according to which *“Procedures are free of charge where at least one of the parties is a player, coach, football agent, or match agent”*. Accordingly, the Chamber decided that no procedural costs were to be imposed on the parties.
54. Likewise, and for the sake of completeness, the Chamber recalled the contents of art. 25 par. 8 of the Procedural Rules, and decided that no procedural compensation shall be awarded in these proceedings.
55. Lastly, the DRC concluded its deliberations by rejecting any other requests for relief made by any of the parties.

IV. Decision of the Dispute Resolution Chamber

1. The claim of the Claimant, Dennis Wanyoike, is partially accepted.
2. The Respondent, Fountain Gate FC, must pay to the Claimant the following amount(s):
 - TZS 3,220,000 **as outstanding remuneration** plus 5% interest *p.a.* as from the respective due dates as follows:
 - On the amount of TZS 460,000 as from 1 September 2022
 - On the amount of TZS 460,000 as from 1 October 2022
 - On the amount of TZS 460,000 as from 1 November 2022
 - On the amount of TZS 460,000 as from 1 December 2022
 - On the amount of TZS 460,000 as from 1 January 2023
 - On the amount of TZS 460,000 as from 1 February 2023
 - On the amount of TZS 460,000 as from 1 March 2023
 - TZS 6,900,000 **as compensation for breach of contract without just cause** plus 5% interest *p.a.* as from 6 March 2023 until the date of effective payment.
3. Any further claims of the Claimant are rejected.
4. Full payment (including all applicable interest) shall be made to the bank account indicated in the **enclosed** Bank Account Registration Form.
5. The Respondent shall be banned from registering any new players, either nationally or internationally, for the next two entire and consecutive registration periods following the notification of the present decision.
6. If full payment (including all applicable interest) is not made within 30 days of notification of this decision, the present matter shall be submitted, upon request of the Claimant, to the FIFA Disciplinary Committee.
7. This decision is rendered without costs.

For the Football Tribunal:



Emilio García Silvero

Chief Legal & Compliance Officer

NOTE RELATED TO THE APPEAL PROCEDURE:

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

NOTE RELATED TO THE PUBLICATION:

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

CONTACT INFORMATION

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