



Tribunal Arbitral du Sport
Court of Arbitration for Sport

CAS 2019/A/6382 Musa Hassan Bility v Confédération of African Football & Fédération Internationale de Football Association

ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

President: Mr Anthony **Lo Surdo** SC, Barrister in Sydney, Australia
Arbitrators: Mr Jose Juan **Pinto**, Attorney-at-law in Barcelona, Spain
Mr Jeffrey G. **Benz**, Attorney-at-law, USA

in the arbitration between

Musa Hassan Bility, Liberia

Represented by Mr Paolo Torchetti, Attorney-at-law, Ruiz-Herta & Crespo, Valencia, Spain

Appellant

And

Confédération of African Football, Egypt, Africa

Represented by Mr Marc Cavaliero, Kleiner & Cavaliero, Zurich, Switzerland

First Respondent

and

Fédération Internationale de Football Association, Zurich, Switzerland

Represented by Mr Miguel Liétard Fernandez-Palacios, Director of Litigation and Mr Jaime Cambreleng Contreras, Head of Litigation, FIFA, Zurich, Switzerland

Second Respondent



I. INTRODUCTION

1. Musa Hassan Bility (“Mr Bility”), the Appellant, is a football administrator who was formerly the President of the Liberian Football Association and until 24 July 2019, served on the Executive Committee of the Second Respondent.
2. The Confédération of African Football (“CAF”), the First Respondent, is an association registered in Egypt, the controlling body for African Football and a Confederation recognized by the Second Respondent.
3. Fédération Internationale de Football Association (“FIFA”), the Second Respondent, is a private association constituted under Swiss law, registered in the Commercial Register of the Canton of Zürich in accordance with art. 60 ff. of the Swiss Civil Code and is the world governing body of association football.
4. These proceedings concern a decision which Mr Bility asserts was made by the CAF on 18 July 2019 by which it appointed Ms Fatma Samoura, the Secretary-General of FIFA to the role of FIFA General Delegate to the CAF, for an initial 6 month renewable term, and which he submitted required the ratification or endorsement of the CAF Executive Committee or General Assembly, neither of which was obtained. He accordingly contended that the decision should be set aside.
5. Ms Fatma Samoura was appointed to the role of FIFA General Delegate to the CAF and that she commenced in that role on 1 August 2019.
6. CAF and FIFA disputed that the decision to appoint Ms Samoura to the role of FIFA General Delegate to the CAF was made by the CAF on 18 July 2019. They contended that a decision to so appoint Ms Samoura was unanimously passed by the CAF Executive Committee at its meeting on 19 June 2019 attended by Mr Bility. CAF and FIFA challenged the appeal both as to its merits and on the grounds that the CAS had no jurisdiction to entertain the appeal, that it was inadmissible and that Mr Bility lacked standing to pursue it.
7. Ms Samoura’s term as FIFA General Delegate to the CAF expired on 2 February 2020 and was not extended.
8. As a result, on 13 February 2020, Mr Bility withdrew the appeal with immediate effect and made written submissions in relation to costs.
9. On 19 February 2020, CAF and FIFA furnished their respective written submissions in relation to costs.
10. This award accordingly only concerns the question of costs consequent upon the termination of the appeal.
11. In doing so, it is necessary to have regard to an abbreviated procedural history of the matter.

II. SUMMARY OF THE PROCEEDINGS BEFORE THE CAS

12. The Statement of Appeal was filed on 23 July 2019.



13. By letter dated 12 August 2019, FIFA made application to intervene in the proceedings having been informed by the CAF of the existence of the proceedings on 2 August 2019.
14. On 22 August 2019, CAF indicated that it had no objection to FIFA's intervention in the proceedings.
15. On 23 August 2019, Mr Bility indicated that he had no objection to FIFA's intervention in the proceedings.
16. On 26 August 2019, the CAS Court Office notified the parties that pursuant to Article R41.4 of the Code and in light of the agreement of the parties, FIFA was to be considered as a party to the procedure.
17. The Appeal Brief was filed on 4 September 2019.
18. On 16 October 2019, the parties were advised of the formation of the Panel which is constituted as follows:

President: Mr Anthony Lo Surdo SC, Barrister in Sydney, Australia
Arbitrators: Mr Jose Juan Pinto, Attorney-at-law in Barcelona, Spain
Mr Jeffrey G. Benz, Attorney-at-law, USA
19. On 23 October 2019, CAF filed a request for the bifurcation of the procedure and for the Panel to render a preliminary decision on CAS jurisdiction and admissibility of the appeal. The CAS Court Office invited the other parties to inform it by 30 October 2019 whether they agreed to the request the bifurcation. In the meantime, CAF's time limit to file its Answer on the merits was suspended.
20. On 28 October 2019, FIFA agreed to CAF's request for bifurcation. The CAS Court Office informed the parties that FIFA's time limit to file its Answer on the merits was suspended.
21. On 20 November 2019, Mr Bility filed his submissions on the issues of bifurcation, jurisdiction and admissibility of the Appeal.
22. On 6 December 2019, the CAS Court Office notified the parties that CAF's request for the bifurcation of this procedure was rejected and that the Panel would rule on its jurisdiction and the admissibility of the appeal in the final award on the merits. CAF and FIFA were directed pursuant to Article R55 of the Code to submit their respective Answers within 14 days.
23. On 15 January 2020, CAF and FIFA filed their respective Answers.
24. On 27 January 2020, Mr Bility filed his second submissions.
25. On 7 February 2020, CAF and FIFA filed their respective second submissions.



26. On 13 February 2020, Mr Bility notified the CAS Court Office of the withdrawal of his appeal with immediate effect. That notification also contained brief submissions as to costs.
27. On 19 February 2020, CAF and FIFA furnished their respective submissions as to costs.
28. The parties' submissions in relation to costs are summarised below.

III. POSITION OF THE PARTIES IN RESPECT OF COSTS

Mr Bility's Submissions

29. Mr Bility submits that:
 - (a) the reason for the withdrawal of the appeal is that the CAF Executive Committee decided to refuse the continuation of the FIFA General Secretary's role as General Delegate of the CAF;
 - (b) he has paid the entirety of the advance of costs and requests the CAS administration to refund a portion of those costs that it considers appropriate in the circumstances;
 - (c) there have been several rounds of written submissions and the legal issues before the Panel have been complex. CAF unnecessarily complicated matters by first, filing a request for bifurcation, which was refused, and by failing to provide documents in its possession relevant to the decision the subject of the appeal;
 - (d) scheduling of the oral hearing was complicated by each of the respondents and, in particular, by FIFA not being available until the third week of March 2020;
 - (e) FIFA seeking to be joined to the proceedings also contributed to the complexity of the procedural issues; and
 - (f) having regard to the aforementioned circumstances, Mr Bility should not be ordered to pay a portion of either of the respondents' legal expenses.
30. Mr Bility does not request that either CAF or FIFA bear any part of the costs of the proceeding and nor does he request any contribution by them towards his legal fees.



CAF's Submissions

31. CAF submits that:

- (a) it has, at all times acted in accordance with the CAS procedural rules and did not intend to “complicate” the proceedings;
- (b) the application for bifurcation had been validly made with the objective of simplifying the process by obtaining an early decision on jurisdiction and/or admissibility;
- (c) in so far as the request for the production of documents is concerned, CAF acted transparently and provided all existing documents. Further, Mr Bility failed to comply with the Panel’s request to identify the documents, or classes of documents that he contended should be produced by either of the respondents which had not been produced. A response to that request would have proved helpful and necessary to support his position in relation to the Document Production Request;
- (d) it was Mr Bility’s request for the respective hearings in which he is a party to be heard “back-to-back” that caused several exchanges or correspondence to take place between the parties and the CAS Court Office; and
- (e) Mr Bility should contribute to its legal fees as “expressed in its previous submissions.” In its Answer, CAF sought a contribution from Mr Bility towards its legal fees of CHF 20,000.

FIFA's Submissions

32. FIFA submits that as Mr Bility has withdrawn his appeal and is not requesting a contribution to his legal expenses, FIFA does not seek a contribution to its legal expenses.

IV. JURISDICTION

33. Whilst each of CAF and FIFA challenged the jurisdiction of the CAS to determine the merits of the appeal, no party has contested its jurisdiction to determine the question of costs and by each making submissions on that question they have implicitly, at least, accepted that CAS has jurisdiction to consider that question.

V. DETERMINATION AS TO COSTS

34. As Mr Bility has withdrawn his appeal, the Panel has not been required to determine the merits of the appeal nor the questions of jurisdiction, admissibility and standing.

35. The only outstanding matter is that of costs.

36. Article R64.4 of the CAS Code provides that:

“At the end of the proceedings, the CAS Court Office shall determine the final amount of the cost of arbitration, which shall include:



- *the CAS Court Office fee,*
- *the administrative costs of the CAS calculated in accordance with the CAS scale,*
- *the costs and fees of the arbitrators,*
- *the fees of the ad hoc clerk, if any, calculated in accordance with the CAS fee scale,*

- *a contribution towards the expenses of the CAS, and*
- *the costs of witnesses, experts and interpreters.*

The final account of the arbitration costs may either be included in the award or communicated separately to the parties. The advance of costs already paid by the parties are not reimbursed by the CAS with the exception of the portion which exceeds the total amount of the arbitration costs.”

37. Article R64.5 of the CAS Code provides that:

“In the arbitral award, the Panel shall determine which party shall bear the arbitration costs or in which proportion the parties shall share them. As a general rule and without any specific request from the parties, the Panel has discretion to grant the prevailing party a contribution towards its legal fees and other expenses incurred in connection with the proceedings and, in particular, the costs of witnesses and interpreters. When granting such contribution, the Panel shall take into account the complexity and outcome of the proceedings, as well as the conduct and the financial resources of the parties.”

38. In view of the fact that Mr Bility withdrew his appeal and does not seek an order that either of CAF or FIFA bear any portion of the procedural costs of the proceedings, the Panel determines that the costs of the arbitration, in an amount that will be determined and served on the parties by the CAS Court Office, shall be borne in full by Mr Bility.
39. The Panel notes that FIFA claims no contribution towards its expenses from Mr Bility with the consequence that FIFA will bear its own legal fees (if any) and other expenses incurred in connection with the proceedings.
40. In so far CAF requests a contribution towards its legal fees and other expenses is concerned, as Mr Bility has withdrawn his appeal, the decision the subject of it therefore remains unchallenged. This is a situation which *de facto* corresponds to a dismissal of the appeal (CAS 2009/A/2011, para. 9) with CAF thus “prevailing” at least for the purposes of Article R64.5 of the Code.
41. The Panel acknowledges that the proceedings had a degree of complexity. However, the Panel is of the view that:
- (a) no party was more responsible than others for that complexity;
 - (b) FIFA was entitled to seek to be joined as a party and, indeed, its joinder was not opposed by either Mr Bility or CAF; and
 - (c) whilst unsuccessful, the application for bifurcation was neither inappropriate nor improper in the circumstances in which it was made.
42. Each of the parties conducted themselves in an exemplary, professional and co-operative manner throughout the procedure. There was a slight delay in the allocation of a hearing date caused, in part, by Mr Bility’s not unreasonable request to have this procedure heard in close proximity to other proceedings to which he is a party and, in part, by the unavailability of FIFA’s legal representatives for a hearing before 19 March 2020. At the time of the withdrawal of the appeal, CAF and FIFA had indicated that they would each be available for a hearing on



7 April 2020 which was just over a week after the hearing of the other procedure in which Mr Bility is a party.

43. The Panel acknowledges that at the time of the withdrawal of the appeal there was outstanding a request by Mr Bility for the production of documents. As some documents the subject of the Document Production Request had been provided by the respondents with their submissions, on 10 February 2020, the Panel requested Mr Bility to identify with precision the documents or categories of documents which he contended that CAF or FIFA or either of them had failed to produce with a view to the Panel adjudicating upon that request so that any documents could be produced ahead of the hearing. The withdrawal of the appeal rendered the Document Production Request otiose and the issue moot.
44. The Panel is not aware of any fact, matter or circumstance relevant to the financial re-sources of either of the parties which would be relevant to the exercise of its discretion in relation to costs.
45. The fact remains that the appeal was instituted by Mr Bility in circumstances where he understood that Ms Samoura's appointment as FIFA General Delegate to the CAF was for an initial but renewable term of 6 months. He must therefore have foreseen that if that term was not extended and if the appeal was not be determined prior to the expiration of that initial term, the appeal would have been rendered nugatory. Mr Bility has put the CAF to the legal expense of defending the appeal which has now been withdrawn and he must, in the determination of the Panel, make a contribution towards CAF's legal fees.
46. In all the circumstances, the Panel is of the view that CAF is entitled to a contribution towards its legal fees in the amount of CHF 3,000.



ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The withdrawal of the appeal filed by Musa Hassan Bility against the Confédération of African Football and Fédération International de Football Association is acknowledged.
2. The arbitral procedure CAS 2019/A/6382 Musa Hassan Bility v Confédération of Africa Football and Fédération International de Football Association is terminated and deleted from the CAS roll.
3. The costs of the arbitration, to be determined and served on the parties by the CAS Court Office, shall be entirely borne by Musa Hassan Bility.
4. Musa Hassan Bility is ordered to pay to Confédération of Africa Football a total amount of CHF 3,000 (three thousand Swiss francs) as a contribution towards the legal fees and other expenses incurred in connection with these arbitration proceedings.
5. Fédération International de Football Association will bear its own legal fees and other expenses incurred in connection with the proceedings
6. All other motions or prayers for relief are rejected.

Seat of arbitration: Lausanne, Switzerland

Date: 23 March 2020

THE COURT OF ARBITRATION FOR SPORT

Anthony Lo Surdo SC
President

Jose Juan Pinto
Arbitrator

Arbitrator