

Decision
of the
FIFA Disciplinary Committee

Mr. LIM Kia Tong [SIN], Acting Chairman
Mr. ALMISEHAL Yasser [KSA], Member
Mr. BERGSSON Gudni [ISL], Member

At the home of FIFA

On 29 January 2020,

to discuss the case of:

OMUKOTO Festo, Kenya

(Decision 191671)

regarding:

Unlawfully influencing match results

I. inferred from the file

A) FACTS

1. The present section provides a summary of the relevant facts of the case, based on the investigation report carried out by the FIFA Integrity department and describes the proceedings held before the FIFA Disciplinary Committee. Its sole purpose is to provide a synopsis of the case at hand. Additional details may be specified, where relevant, in connection with the legal discussion.
2. Mr. Festo Omukoto (hereinafter, Mr. Omukoto or the Player) is a Kenyan player who, at the time when the facts analyzed hereby occurred, was playing for the club Kakamega Homeboyz FC (hereinafter, Kakamega) in the Kenya Premier League.
3. On 2 January 2019, Kakamega played a match against Sony Sugar (hereinafter also referred to as Match A) within the scope of the Kenya Premier League championship. Kakamega lost two (2) goals to (1). Furthermore, on 19 January 2019, Kakamega played against Mathare United (hereinafter also referred to as Match 2) and lost three (3) goals to (2).
4. On 29 January 2019, Mr Bernard Shitiabi, the Chief Executive Officer of Kakamega, called Mr. Omukoto, as well as four other players of the team, and handed them over a written confession in which all five players would admit their participation in an alleged conspiracy to fix the result of matches A and B. Mr. Omukoto apposed his fingerprint in the mentioned written confession as, apparently, a sign of agreement with its content. All the written confessions were provided to the FIFA Integrity department on 28 March 2019.
5. On 27 August 2019, after having received the consent of both the Football Kenya Federation and the "Confederation Africaine de Football", the FIFA Integrity department interviewed Mr. Omukoto and recorded his statements.
6. During the above-mentioned interview¹, Mr. Omukoto confirmed that he played 90 minutes in both matches A and B. Furthermore, he confessed that a player of Kakamega, Mr. George Mandela, approached him after a training session and offered to give him KSH 100,000 if Kakamega lost Match A by four (4) goals to one (1). According to the Player, Mr. George Mandela gave him KSH 50,000 in cash before Match A was played. Regarding Match B, Mr. Omukoto admitted that Mr. George

¹The FIFA Disciplinary Committee has thoroughly considered in its discussion and deliberations all the statements and confessions made by the Player during the interview before the FIFA Integrity officer, even if no express reference has been made.

Mandela approached him again and, this time, offered to give him KSH 300,000 if Kakamega lost four (4) goals to (1). Mr. Omukoto affirmed that he was alone when Mr. George Mandela offered him the deals and that he did not tell anyone about the said deals.

7. On November 2019, the FIFA Integrity Department provided the secretariat of the FIFA Disciplinary Committee (hereinafter: *the Secretariat*) with the already mentioned investigation report, as well as those related to three other players of Kakamega. According to the investigation reports, all players had been allegedly involved in a match manipulation scheme.

B) PROCEEDINGS BEFORE THE FIFA DISCIPLINARY COMMITTEE

8. On 19 December 2019, disciplinary proceedings were opened against Mr Omukoto, for a possible violation of art. 69 of the FIFA Disciplinary Code 2017 edition (FDC 2017) and/or art. 18 of the FIFA Disciplinary Code 2019 edition (FDC 2019). Mr Omukoto was provided with a copy of the report from the FIFA Integrity Department together with its annexes, and was informed that the case was going to be submitted to the FIFA Disciplinary Committee on 28 January 2020. In this sense, Mr. Omukoto was invited to submit his position by 17 January 2020 at the latest.
9. Following this communication, on 14 January 2020, Mr. Omukoto was informed of the composition of the panel for the meeting of the Disciplinary Committee that would finally take place on 29 January 2020.
10. After having opened disciplinary proceedings, no correspondence from Mr. Omukoto has been received.
11. On 29 January 2020, the FIFA Disciplinary Committee held a meeting at the Home of FIFA.

II. and considered

1. PROCEDURAL ASPECTS

A) Jurisdiction of the Disciplinary Committee

1. First and foremost, the FIFA Disciplinary Committee (hereinafter, *the Committee*) considers it appropriate to point out that one of the objectives of FIFA is, according to art. 2 lit. g) of the FIFA Statutes, to promote integrity, ethics and fair play with a view to preventing all methods or practices, such as corruption, doping or match manipulation, which might jeopardize the integrity of matches, competitions, players, officials and member associations or give rise to abuse of association football.

2. Pursuant to art. 14 par. 2 of the Regulations Governing the Application of the Statutes, FIFA shall take action, especially but not exclusively, against irregular betting activities, doping and racism. This kind of behavior is prohibited and will be subject to sanctions.
3. In this context, FIFA has adopted a zero-tolerance approach to match manipulation and is committed to protecting the integrity of football by all means necessary (in particular, see FIFA circular no. 1422).
4. Moreover, in line with art. 53 par. 2 of the FIFA Statutes, the Committee may pronounce the sanctions described in the Statutes and the FIFA Disciplinary Code on member associations, clubs, officials, players, intermediaries and licensed match agents.
5. Furthermore, art. 27 para. 6 of the FDC 2019 stipulates that the FIFA judicial bodies (i.e. the Committee) reserve the right to investigate, prosecute and sanction serious infringements that fall under the jurisdiction of, amongst others, confederations and/or associations if the latter fail to prosecute the mentioned infringements within three months from the infringement becoming known to the Committee.
6. In this respect, having the alleged facts taken place on January 2019 and having the competent authorities (i.e. the Football Kenya Federation and the "Confédération Africaine de Football (CAF)") requested and authorized the FIFA judicial bodies to investigate and prosecute the alleged irregular activities conducted by, amongst others, Mr. Omukoto, the Committee concludes that, in line with the already mentioned art. 27 para. 6 of the FDC 2019, it is competent to deal with the present matter.
7. For the ease of completeness, the Committee deems necessary to remark that, in any event, its competence has not been contested by Mr. Omukoto.

B) Applicable law

8. Once having confirmed the competence of the Committee to assess the present case, the latter moves on to determine which edition of the FIFA Disciplinary Code is applicable.
9. First of all, the Committee points out that, according to the FDC 2019 (i.e. The edition of the FDC currently in force) and in particular, to art. 4 par. 1 & 2, the FDC 2019 applies to all disciplinary offences committed following the date on which it comes into force as well as all disciplinary offences committed prior to this date, subject to any milder sanction that would apply under previous rules.

10. In this sense, the Committee observes that, in the present case, the alleged infringements were committed on January 2019, this is, while the FDC 2017 was still in force.
11. Following the above, and in line with art. 4 par. 2 of the FDC 2019, the Committee moves on to analyze the nature of the disciplinary offence charged against Mr. Omukoto as well as the potential sanctions contemplated for this type of violations in both the FDC 2017 and FDC 2019.
12. As to the nature of the disciplinary offence, the Committee notes that disciplinary proceedings were opened against Mr. Omukoto for allegedly conducting activities aimed at manipulating the result of two matches. This offence and the potential sanctions that it entails are covered by art. 69 of the FDC 2017, which foresees a match suspension or a ban on taking part in any football-related activity as well as a fine of at least CHF 15,000, and by art. 18 FDC 2019, which provides for a minimum five-year ban on taking part in any football-related activity as well as a fine of at least CHF 100,000.
13. After having examined both provisions, the Committee concludes that the FDC 2017 establishes milder sanctions than the FDC 2019 for match manipulation and therefore, rules that the merits of the present case fall under the FDC 2017.
14. Notwithstanding the above, the Committee holds that the procedural aspects of the present matter should be governed by the FDC 2019.

2. MERITS

15. In order to rule on this case, the Committee considers that it shall address the issue of the applicable standard of proof, before examining whether the evidence at its disposal demonstrates an infringement of art. 69 of the FDC 2017 by Mr. Omukoto and deciding on the sanction to be imposed, if any.

A) The applicable standard of proof

16. The Committee refers to art. 35 par. 3 of the FDC 2019, according to which “the standard of proof to be applied in FIFA disciplinary proceedings is the comfortable satisfaction of the competent judicial body”.
17. In this sense, and according to established case law of the Court of Arbitration for Sport (CAS), the test of comfortable satisfaction must take into account the circumstances of the case, which include the paramount importance of fighting corruption of any kind in sport and considering the nature and restricted powers of the investigation authorities of the governing bodies of sport compared to national formal interrogation authorities².

² CAS 2018/0/5712

18. To this respect, the Committee will consider any admissible reliable evidence such as, amongst others, admissions by the person prosecuted, any “credible testimony” by third parties or any reliable documentary evidence and expert reports.
19. In the present case, the Committee will consider and rely, namely, on the confession made by Mr. Omukoto as well as that of the other three players from Kakamega, which were all recorded and made in front of a FIFA Integrity Officer.
20. Finally, the Committee wishes to underline that the burden of proof, as stipulated in art. 36 par. 1 of the FDC 2019, rests on the Committee itself.

B) The evaluation of the evidence

21. As already stated, the Committee acknowledges that the evidence it relies on to assess whether Mr. Omukoto has breached art. 69 of the FDC 2017 are the written confessions of Mr. Omukoto himself, as well as those of the other three players of Kakamega, and the audio recordings and written transcripts of the interviews carried out by the FIFA integrity officer.
22. To this respect, the Committee observes that besides having apposed his fingerprint in the written confession, which in the Committee opinion is already a sign of approval, Mr. Omukoto confirmed the veracity of the content of the said document during the interview with the FIFA integrity officer.
23. As to the interview, the Committee is comfortably satisfied that Mr. Omukoto, who identifies himself at the beginning, made his statements voluntary and freely.
24. In addition, the Committee considers it necessary to remark that at no point, besides having been given the chance to present his position, did Mr. Omukoto contest the veracity of the above-mentioned evidence.
25. Once having established the above, the Committee moves on to assess whether the evidence at its disposal demonstrates that Mr. Omukoto violated art 69 par. 1 of the FDC 2017.
26. According to art. 69 par. 1 of the FDC 2017, “Anyone who conspires to influence the result in a manner contrary to sporting ethics shall be sanctioned [...]”.
27. Following the wording of the mentioned article, the Committee understands that in order to conclude whether Mr. Omukoto violated the relevant provision, it has to verify if the latter “conspired” to manipulate the result of a match in a manner contrary to sporting ethics.
28. To this respect, the Committee observes that, although the definition of “conspiracy” is not included in the FIFA regulations, the CAS has already shredded some light as to its meaning. In this sense, conspiracy is to be understood as “all intentional actions, secretly planned, aimed at manipulating the result of a match,

be it in combination with, or to the advantage, of others, or by the person who conspires acting alone, or to his individual benefit [...]” (CAS 2017/A/5173 Joseph Odartei Lamptey v. FIFA).

29. Following the definition given by the CAS, the Committee moves on to analyze, on the basis of Mr. Omukoto’s statement, his behavior during the days prior to matches A & B, as well as his performance during the said matches and examine whether this conduct is to be considered as a conspiracy to manipulate the result of the mentioned matches.
30. In this sense, the Committee observes that Mr. Omukoto stated that before Match A and after a training session, George Mandela approached him and offered him money if Kakamega lost match A by four (4) goals to one (1) in exchange of a sum of money (i.e. KSH 100,000) that would be given to him after the said match. The Committee also remarks that Mr. Omukoto stressed that he was alone when George Mandela approached him and that he did not know if the latter had also approached and made similar offers to other players of the team and that he had never talked about the situation with anybody.
31. Furthermore, the Committee underlines that Mr. Omukoto confessed that George Mandela also approached him and offered KSH 300,000 if Kakamega lost Match B by four (4) goals to one (1). The Committee acknowledges that the final score for Match A and Match B was not the result apparently sought by George Mandela and that therefore, as Mr. Omukoto claimed, the former did not pay the Player the amounts promised. However, and as already pointed out in paragraph I/6. the Committee observes that Mr. Omukoto, even if he claimed that he did not accept the deal proposed by George Mandela, admits having received from George Mandela the amount of KSH 50,000 in cash before Match A took place.
32. Regarding the sporting performance of Mr. Omukoto in Matches A and B, the Committee observes that the latter claimed he played those matches as he always does and that he performed well, despite having been asked by Mr. George Mandela to carry out certain type of actions during the relevant matches, such as to commit a penalty or to tackle the opponents, which Mr. Omukoto refused to do.
33. In addition, the Committee also takes into consideration for its analysis, the written confessions and interviews conducted by the FIFA Integrity Officer to Mr. Omukoto’s three teammates, against who disciplinary proceedings were also opened for a potential breach of art. 69 of the FDC.
34. The Committee finds it relevant for the present analysis the fact that the cases of Mr. Omukoto and his three teammates, have been analyzed and decided on the same date, as they were highly connected to each other. In this sense, the Committee noted that they all confessed they had been approached by Mr. George Mandela, who had offered them a certain amount of money if Kakamega lost matches A & B by four (4) goals to (1). In addition, the Committee also realized that two out of the

three above-mentioned players also received money from Mr. George Mandela before Match A took place.

35. Once having established the above, the Committee, abided by the definition given by CAS regarding the term “conspiracy”, believes that Mr. Omukoto’s behavior was (i) intentional, since he was offered and freely accepted money from Mr. George Mandela; (ii) secretly planned, since only the instigator (i.e. Mr. George Mandela) and Mr. Omukoto himself knew about the deal offered and the payment made; (iii) aimed at manipulating the result of a match, since Mr. George Mandela’s desire was clearly for Kakamega to lose the concerned matches and (iv) to his individual benefit, since he was promised and even obtained an economic gain.
36. Furthermore, and in the opinion of the Committee, the fact that four different players confessed that the same person (i.e. Mr. George Mandela) offered them money to fix the result of the same two matches, and that none of the four players were aware that the others had been also approached, clearly manifests the existence of a conspiracy to manipulate the result of matches A and B.
37. In light of the above, and bearing in mind the conclusions draw by the Committee, the latter is comfortably satisfied that Mr. Omukoto conspired to manipulate the result of the relevant matches, and that he is therefore, in breach of art. 69 par. 1 of the FDC.

C) Sanctions

38. After having established and confirmed that Mr. Omukoto violated art. 69 par. 1 of the FDC 2017, the Committee moves on to decide on the sanction to be imposed.
39. First of all, the Committee recalls the content of art. 69 par. 1 of the FDC 2017, according to which *“anyone who conspires to influence the result of a match in a manner contrary to sporting ethics shall be sanctioned with a match suspension or a ban on taking part in any-football related activity as well as a fine of at least CHF 15,000. In serious cases, a lifetime ban on taking part in any football-related activity shall be imposed”*.
40. The Committee emphasizes that unlawfully influencing match results causes immense damage to football’s integrity and jeopardizes its credibility and reputation. In this context, FIFA has adopted a zero-tolerance approach to match manipulation and it is committed to protecting the integrity of football.
41. In this sense, the Committee ascertains that Mr. Omukoto conspired with Mr. George Mandela in order to manipulate the matches played by their team, Kakamega Homeboyz, against Sony Sugar and Mathare United.
42. The Committee believes that Mr. Omukoto’s conduct cannot be tolerated as it attacks and breaches the essential values of sport, such as fair play, sportsmanship

or respect to teammates and opponents. As such, this behavior must be sanctioned accordingly.

43. As a consequence, the Committee, after having thoroughly analyzed the case and based on the provision of article 69 par. 1 of the FDC 2017 with regard to the sanctions to be imposed for match-fixing activities, considers that, in line with art. 22 and the already mentioned art. 69 of the FDC 2017, a ban from taking part in any football-related activity for a period of four (4) years is the appropriate sanction to be imposed against Mr. Omukoto.

III. has therefore decided

1. The FIFA Disciplinary Committee found the player OMUKOTO Festo responsible for the infringement of the relevant provision of the FIFA Disciplinary Code (2017 ed.) related to unlawfully influencing match results (Art.69.par.1).
2. The player OMUKOTO Festo is hereby banned from taking part in any football-related activity at national and international level for four (4) years as from notification of the present decision.

FÉDÉRATION INTERNATIONALE
DE FOOTBALL ASSOCIATION



LIM Kia Tong
Acting Chairman of the Disciplinary Committee

Note relating to the legal action:

This decision can be contested before the FIFA Appeal Committee (art. 57 of the FDC 2019). Any party intending to appeal must announce its intention to do so, in writing, within three (3) days of notification of the grounds of the decision. The reasons for the appeal must then be provided, in writing, within a further time limit of five (5) days, starting upon expiry of the first time limit of three (3) days (art. 56 par. 4 of the FDC, 2019 edition). The appeal fee of CHF 1,000 shall be transferred on the date of the expiry of the time limit of five days for submitting the reasons for appeal at the latest (art. 56 par. 6 of the FDC, 2019 edition).

Payment of the appeal fee can be made either in Swiss francs (CHF) to account no. 0230-325519.70J, UBS AG, Bahnhofstrasse 45, 8098 Zurich, SWIFT: UBSWCHZH80A, IBAN: CH85 0023 0230 3255 1970 J or in US dollars (USD) to account no. 0230-325519.71U, UBS AG, Bahnhofstrasse 45, 8098 Zurich, SWIFT: UBSWCHZH80A, IBAN: CH95 0023 0230 3255 1971 U, with reference to the case number above mentioned.