



TAS / CAS
TRIBUNAL ARBITRAL DU SPORT
COURT OF ARBITRATION FOR SPORT
TRIBUNAL ARBITRAL DEL DEPORTE

CAS 2022/A/9055 Alex Aso et al. v. Ghana Football Association

ORDER

on Request for Provisional Measures

issued by the

**President of the Appeals Arbitration Division of the
Court of Arbitration for Sport**

in the arbitration between

**Messrs Alex Aso, Felix Abuska, Mohammed Zakari, Shaibu Taufiq, Fard Ibrahim,
Richard Acquah, Eric Eso, Amos Kofi Nkrumah, Stephen Owusu Banahene, Kwame
Moses, Empem Dacosta, Frank Akoto, Isaac Opoku Agyemang, Solomon Afriyie,
Mohammed Bailou, Emmanuel Owusu, Samed Mohammed, Paul Asare de Vries, Amos
Addai, Abdul Kadir Mohammed and Isah Ali, Ghana**

Represented by FIFPRO, Hoofddorp, the Netherlands

- Appellants -

and

Ghana Football Association, Ghana

Represented by Ms Naa Odofoley Nortey, Beyuo & Company, East Cantonments, Accra,
Ghana

- Respondent -

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I. THE PARTIES

1. Messrs Alex Aso, Felix Abuska, Mohammed Zakari, Shaibu Taufiq, Fard Ibrahim, Richard Acquah, Eric Eso, Amos Kofi Nkrumah, Stephen Owusu Banahene, Kwame Moses, Empem Dacosta, Frank Akoto, Isaac Opoku Agyemang, Solomon Afriyie, Mohammed Bailou, Emmanuel Owusu, Samed Mohammed, Paul Asare de Vries, Amos Addai, Abdul Kadir Mohammed and Isah Ali (the “Appellants”) are Ghanaian professional football players. They currently play for the Ghanaian clubs Inter Allies FC and Ashantigold SC.
2. The Ghana Football Association (the “Respondent”) is the national football association of Ghana, which has its seat in Accra, Ghana. It is affiliated with the Confédération Africaine de Football (the “CAF”) and the Fédération Internationale de Football Association (“FIFA”).

II. FACTUAL BACKGROUND

3. On 17 July 2021, Ashantigold SC won a Ghana Premier League match against Inter Allies FC on the score of 7-0 (the “Match”).
4. In September 2021, the Respondent informed Amos Addai, Amos Kofi Nkrumah, Empem Dacosta, Emmanuel Owusu, Eric Eso, Frank Akoto, Isaac Opoku Agyemang, Mohammed Bailou, Kwame Moses, Samed Mohammed, Solomon Afriyie and Stephen Owusu Banahene that misconduct charges were brought against them on the grounds that they “*did facilitate and participated in the playing of a fixed match or a match of convenience*”, based on Article 34(5)(a) of the GFA Premier League Regulations, which provides as follows:

“Any GFA or club official, or club, or player or participant of a match who instigates, commands, counsels, solicits, procures, or in any manner purposely aids, facilitates, encourages or promotes the playing of a fixed match or a match of convenience involving his club, or involving other clubs, the result of which may in one way or the other, affect his club, commits a grievous offence and the offender shall be referred to the Disciplinary Committee for appropriate sanctions”
5. There is no evidence that a notice of charge was issued to the other Appellants (Alex Aso, Felix Abuska, Mohammed Zakari, Shaibu Taufiq, Fard Ibrahim, Richard Acquah, Paul Asare de Vries, Abdul Kadir Mohammed and Isah Ali).
6. None of the Appellants submitted a response to the notice of charge.
7. On 16 May 2022, the GFA Disciplinary Committee (the “GFA DC”) issued its decision in the case of Inter Allies FC and its players. Felix Abuska, Mohammed Zakari, Shaibu Taufiq, Richard Acquah, Alex Aso, Abdul Kadir Mohammed and Isah Ali were suspended for 24 months; Fard Ibrahim was suspended for 36 months.

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8. On the same day, the GFA DC issued a separate decision in the case of Ashantigold SC and its players. Stephen Owusu Banahene, Empem Dacosta, Frank Akoto, Isaac Opoku Agyemang, Amos Kofi Nkrumah, Eric Esso, Kwame Moses, Solomon Afriyie were suspended for 24 months; Samed Mohammed was suspended for 30 months; and Emmanuel Owusu, Mohammed Bailou, Amos Addai and Paul Asare de Vries were suspended for 48 months.
9. On 17 May 2022, the Appellants and some other players appealed to the GFA Appeals Committee.
10. On 1 July 2022, the GFA Appeals Committee dismissed the players' appeals and "*endorse[d] all the sanctions imposed by the Disciplinary Committee on the clubs, players and officers*" (the "Appealed Decision"). The Appealed Decision was notified to the Appellants on 13 July 2022.

III. PROCEEDINGS BEFORE THE CAS AND THE PARTIES' SUBMISSIONS

11. On 25 July 2022, the Appellants filed a Statement of Appeal with Court of Arbitration for Sport (the "CAS") against the Respondents with respect to the Appealed Decision. Together with their Statement of Appeal, the Appellants filed a request for provisional measures. The Appellant submitted the following prayers for relief:

"On account of the all of the above, the Appellants respectfully request the CAS to suspend the bans imposed on them by the GFA and thus to stay the decision of the GFA Disciplinary and Appeals Committee."

12. The Appellants' main arguments may be summarised as follows:
 - With regard to irreparable harm, the Appellants that the Appealed Decision heavily affects their careers. They are unable to work for a substantial period of time, which substantially affects their livelihood as football is their primary source of income. These months of suspension can never be recovered, either from a financial or a sporting point of view, especially in view of the brevity of a football career. In addition, players can only be registered from 1 July to 22 September, so that the Appellants will miss the entire season should their suspension be lifted after 22 September 2022. Finally, the fact that they may still train is not sufficient to protect their personality rights.
 - With regard to the likelihood of success, the Appellants underline that the GFA DC decisions "*lack any substantive evidence and arguments against the individual players*", and that many of them "*are not even mentioned at all in the considerations of the decisions*". The Appealed Decision does not demonstrate that which specific player, if any, engaged in match-fixing. The Appellants suspect that they have been sanctioned merely for playing in a fixed match, which "*cannot be condoned and is incompatible with fundamental principles of law and fairness*".

- Finally, the Appellants submit that they “*have been wrongly banned from football and are as such unable to work and provide for their families*” although “*they have not even been specifically accused of active or passive match-fixing*”. The mere fact that they played in a game which was allegedly fixed does not mean that they fixed the match themselves. Absent any specification that an individual player actively engaged in match-fixing, none of the Appellants would be a concrete risk for the integrity of competitions. A possible postponement of the sanction will also not negatively affect the GFA.
13. On 27 July 2022, the CAS Court Office initiated an appeals arbitration procedure under the reference *CAS 2022/A/9055 Alex Aso et al. v. Ghana Football Association* and *inter alia* invited the Respondent to comment on the request for provisional measures.
 14. On 31 July 2022, the Respondent filed its answer to the Appellants’ request for provisional measures, requesting that said request be dismissed. The Respondent’s main arguments may be summarised as follows:
 - With regard to irreparable harm, the Respondent relies on CAS jurisprudence confirming that the loss of the possibility to participate in a sporting even does not represent, per se, irreparable damage. It is not sufficient that an athlete is prevented from competing in sports events to justify a stay. In addition, a purely financial damage cannot be considered as irreparable.
 - With regard to the likelihood of success on the merits, the Respondent submits that the GFA DC concluded that the relevant match was fixed and found the Appellants “*culpable of the count on the basis of the undenied charge contained in the charging document, which suffice as admissions, as well as direct evidence because there is a testimonial evidence on the record*” that the Appellants played the match “*with the knowledge that [it] had been fixed*”. There is “*direct and circumstantial evidence linking every single one of the Appellants to the fixing of the match*”.
 - With regard to the balance of interests, the Respondent submits that “*it has an overriding interest in enforcing its rules and regulations and in protecting and maintaining the integrity of its competitions*”, especially since the Appellants “*were counselled to play a fixed match, failed to report the same, [...] and refused to respond to the count and charge despite a reasonable opportunity to do so*”.
 15. On 2 August 2022, the CAS Court Office advised the Parties that the President of the CAS Appeals Arbitration Division, or her Deputy, (the “Deputy Division President”) would render an Order on the Appellants’ application for provisional measures in due course.

IV. CAS JURISDICTION

16. In accordance with Article 186 of the Swiss Private International Law Act (“PILA”), the CAS has power to decide upon its own jurisdiction.

17. The extent of the jurisdictional analysis at this point is to assess whether, on a *prima facie* basis, the CAS can be satisfied that it has jurisdiction to hear the application. The final decision on jurisdiction will be made by the Sole Arbitrator in his award.
18. Article R47 of the Code states that “*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*”.
19. In the absence of a specific arbitration agreement, in order for the CAS to have jurisdiction to hear an appeal or a request for provisional and conservatory measures, the statutes or regulations of the sports-related body from whose decision the appeal is being made must expressly recognise the CAS as an arbitral body of appeal.
20. The Appellants rely on Article 48 of the GFA Disciplinary Code, which provides as follows:

“*Decisions passed by the Disciplinary and Appeal Committees may be appealed against before CAS, subject to the provisions of this Code and articles 57 and 58 of the FIFA Statutes*”.
21. The Respondent has not challenged at this stage the jurisdiction of the CAS to hear the present matter.
22. In view of the above, the Deputy Division President considers that CAS has *prima facie* jurisdiction in the present proceedings, without prejudice to any final decision the Sole Arbitrator might take in this respect, once constituted.

V. ADMISSIBILITY

23. According to Article R49 of the Code, “[i]n the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, or in a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against.”
24. The Appealed Decision was notified on 13 July 2022 at the earliest. The Appellants filed their Statement of Appeal on 25 July 2022. The Statement of Appeal *prima facie* complied with all the other requirements of Article R48 of the Code.
25. Therefore, the Deputy Division President finds that, on a *prima facie* basis and without prejudice of any different decision that the Sole Arbitrator may make in this regard once constituted, the appeal is admissible.

VI. LEGAL DISCUSSION

26. Pursuant to Article 183 PILA, an international arbitral tribunal in Switzerland is empowered to order provisional or conservatory measures at the request of one party: “*Unless the parties have otherwise agreed, the arbitral tribunal may, on motion of one party, order provisional or conservatory measures.*”
27. Pursuant to Article R37(3) of the Code, the Division President is competent to consider an application for a stay prior to the file having been transferred to the Panel.
28. In accordance with Article R37 of the Code and CAS jurisprudence (*CAS 2007/A/1370-1376; CAS 2006/A/1088; CAS 2004/A/780; TAS 2004/A/708-709; CAS 2003/O/486; CAS 2002/A/378; CAS 2001/A/324*), when deciding whether an application for a stay should be ordered, the Division President should in general consider the following factors:
- a) whether the stay requested is necessary to protect the applicant from irreparable harm (“irreparable harm” test): the applicant must demonstrate that the requested stay is necessary in order to protect its position from damage or risks that would be impossible, or very difficult, to remedy or cancel at a later stage;
 - b) whether the applicant has reasonable chances to succeed on the merits (“likelihood of success” test): the applicant must demonstrate that its position is not obviously groundless and that it has reasonable chances eventually to win the case;
 - c) whether the interests of the applicant outweigh those of the opposite parties and of third parties (“balance of interests” test): the applicant must demonstrate that the harm or inconvenience it would suffer from the refusal of the requested stay would be comparatively greater than the harm or inconvenience other parties would suffer from the granting of the provisional measures.
29. The Division President notes that the three requirements for the grant of provisional measures (i.e. irreparable harm, likelihood of success on the merits of the appeal and balance of interests) are cumulative (*CAS 2007/A/1403; TAS 2007/A/1397; and CAS 2010/A/2071*).

Irreparable harm

30. In accordance with CAS jurisprudence, as a general rule, when deciding whether to grant the requested provisional measures, the Deputy Division President considers whether the measure is useful to protect the applicant from substantial damage that would be difficult to remedy at a later stage (“irreparable harm” test): “*The Appellant must demonstrate that the requested measures are necessary in order to protect his position from damage or risks that would be impossible, or very difficult, to remedy or cancel at a later stage.*” (*CAS 2007/A/1370-1376, CAS 2008/A/1630*).
31. The Deputy Division President needs to determine whether the Appellants would suffer irreparable harm should the Appealed Decision not be stayed. In this respect, the Deputy

Division President notes that the Appellants are seeking to stay a suspension of 24, 30, 36 or 48 months.

32. CAS has consistently recognised that, given the finite and brief career of most athletes, a suspension (subsequently found to be unjustified) can cause irreparable harm (see Preliminary Decisions in CAS 2008/A/1453; CAS 2014/A/3571; CAS 2016/A/4710). The Respondent relies on CAS 2021/A/7829 to submit that “*the loss of the possibility to participate in a sporting event does not represent, per se, an irreparable damage*”. The case CAS 2021/A/7829 had however nothing to do with players being suspended for two to four years for their alleged participation in match-fixing. In that case, the organisation of the preliminary qualification for the FIFA World Cup Qatar 2022 was awarded to Bahrain and the Iran federation challenged that decision.
33. It is true that inability to compete has been found to be an inevitable (and legitimate) consequence of a suspension. In the present case, however, the players are not only prevented from participating in a specific competition but in the national championship, which is the main competition of the year. In other words, should the provisional measures not be granted, the Appellants will miss a significant part of the football season. In addition, pursuant to Article 65(1) of the GFA Disciplinary Code, in cases of “*manipulation of football matches and competitions*”, the GFA “*shall request the Disciplinary Committee of FIFA to extend the sanctions they have imposed so as to have worldwide effect*”. The players will therefore not be able to play abroad either. Finally, given that the deadline for clubs to register players expires on 22 September 2022, a decision in their favour after that date would not stop the irreparable harm that they suffer given that they would not be able to register – and play – for the rest of the season. In this regard, there was no indication by the Respondent that a late registration might be possible should (some of) the players be exonerated.
34. In the light of the above, the Division President considers that the Appellants may suffer irreparable harm in case the requested provisional measure are not granted.

Likelihood of success

35. CAS jurisprudence indicates that “*the Appellant must make at least a plausible case that the facts relied upon by him and the rights which he seeks to enforce exist and that the material criteria for a cause of action are fulfilled*” (see CAS 2010/A/2113; CAS 2011/A/2615; CAS 2012/A/2943).
36. First of all, the Deputy Division President emphasises that her analysis is based on the file as it stands at the moment of the present Order and, therefore, this Order is rendered without prejudice to the final decision of the Sole Arbitrator, once constituted.
37. The Deputy Division President notes that neither the GFA DC decisions, nor the Appealed Decision specify the involvement of each individual player in the Match. While there is evidence of numerous communications between the President of Ashantigold SC and a volunteer or official of Inter Allies FC, as well as evidence of money transactions between them, there is no indication in any of the decisions rendered by the GFA that the

players were involved. The only players named in the GFA decisions are players who did not appeal and therefore are not parties to the present procedure. None of the Appellants are mentioned in any of the decisions with an indication of a concrete and specific act that would suggest – let alone demonstrate – that they were “*involved in the arrangement, preparation and/or playing of the fixed match*” within the meaning of Article 34(5)(d) of the GFA Premier League Regulations. The Deputy Division President cannot agree with the Respondent that there is “*direct and circumstantial evidence linking every single one of the Appellants to the fixing of the [M]atch*”.

38. The Deputy Division President stresses that the fact that the result of a match was manipulated, whether for betting purposes or otherwise, does not automatically mean that a certain player is to be considered, with comfortable satisfaction, involved in such match manipulation (CAS 2017/A/5338).
39. Finally, as regards the Respondent’s argument that the Appellants’ failure to deny the charges brought against them shall be considered as an admission of guilt, the Deputy Division President first notes that some of the Appellants deny having even received a notice of charge. In any case, in appeal proceedings before CAS, the facts and the law are examined de novo by the CAS in accordance with Article R57 of the Code. Accordingly, the Appellants will be authorised to submit new prayers for relief, new evidence and new legal arguments. Their silence during the first instance proceedings can therefore not be interpreted against them before the CAS.
40. In light of the arguments and evidence submitted by the Parties at this stage, the Deputy Division President is satisfied that, on a *prima facie* basis, a plausible question has been raised regarding the validity of the sanctions imposed on the Appellants.
41. In conclusion, the Division President considers that the criterion of likelihood of success is met.

Balance of interests

42. In accordance with CAS jurisprudence, as a general rule, when deciding whether to grant provisional and conservatory measures, the CAS considers whether the interests of the applicant outweigh those of the opposite party and of third parties (“balance of interests” test): “*It is then necessary to compare the disadvantages to the Appellant of immediate execution of the decision with the disadvantages for the Respondent of being deprived such execution*” (CAS 2008/A/1453; CAS 2008/A/1630; CAS 2008/A/1677).
43. The Respondent submits that “*it has an overriding interest in enforcing its rules and regulations and in protecting and maintaining the integrity of its competitions in light of the dangers posed by criminal organizations involved in match fixing*”. The Deputy Division President acknowledges that match-fixing is a serious offence and that the Respondent has a legitimate interest in protecting the image and the integrity of its competitions.

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44. However, were the Sole Arbitrator to ultimately find during the course of the full appeal that the sanctions imposed in the Appealed Decision should be upheld and accordingly that the appeal is dismissed, the Appellants could be suspended as from the date of notification of the final Award with little harm to the Respondent other than a few months' delay. On the contrary, were the requested stay denied, but the Sole Arbitrator eventually determined that the suspension must be lifted, then the Appellants could not be reintegrated given that the registration deadline expires on 22 September 2022 and they would miss the entire football season. Therefore, the Deputy Division President determines that the balance of interests test tips decisively in favour of the Appellant.

VII. CONCLUSION

45. It follows from the above that the three cumulative conditions for granting the request for provisional measures have been met. As a consequence, the Deputy Division President considers that the application for provisional measures filed by the Appellants on 25 July 2022 shall be granted.

VIII. COSTS

46. According to standard CAS practice, the cost of this part of the proceedings will be decided in the final award or in any other final disposition of this arbitration.

ORDER

The Deputy President of the Appeals Arbitration Division of the Court of Arbitration for Sport, ruling *in camera*, decides that:

1. The application for provisional measures filed by Messrs Alex Aso, Felix Abuska, Mohammed Zakari, Shaibu Taufiq, Fard Ibrahim, Richard Acquah, Eric Eso, Amos Kofi Nkrumah, Stephen Owusu Banahene, Kwame Moses, Empem Dacosta, Frank Akoto, Isaac Opoku Agyemang, Solomon Afriyie, Mohammed Bailou, Emmanuel Owusu, Samed Mohammed, Paul Asare de Vries, Amos Addai, Abdul Kadir Mohammed and Isah Ali on 25 July 2022 in the matter *CAS 2022/A/9055 Alex Aso et al. v. Ghana Football Association* is granted.
2. The decision rendered by the Ghana Football Association's Appeals Committee on 1 July 2022 is stayed.
3. The suspensions imposed on Messrs Alex Aso, Felix Abuska, Mohammed Zakari, Shaibu Taufiq, Fard Ibrahim, Richard Acquah, Eric Eso, Amos Kofi Nkrumah, Stephen Owusu Banahene, Kwame Moses, Empem Dacosta, Frank Akoto, Isaac Opoku Agyemang, Solomon Afriyie, Mohammed Bailou, Emmanuel Owusu, Samed Mohammed, Paul Asare de Vries, Amos Addai, Abdul Kadir Mohammed and Isah Ali are lifted with immediate effect.
4. The costs of the present order shall be determined in the final award or in any other final disposition of this arbitration.

Lausanne, 10 August 2022

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Elisabeth Steiner
Deputy President of the Appeals Arbitration Division