



Arbitration CAS 2004/A/676 Ismailia Sporting Club v. Confédération Africaine de Football (CAF), award of 15 December 2004

Panel: Mr Ercus Stewart (Ireland), President; Mr Jean-Pierre Morand (Switzerland); Mr Dirk-Reiner Martens (Germany)

Football

*Eligibility of a player to play in the final of the 2003 African Champions League
CAS jurisdiction*

- 1. The provision for arbitration set out in the CAF 2002-2004 Statutes cannot be interpreted to grant jurisdiction to the CAS. During the period that these Statutes were written, neither CAF nor FIFA recognized any jurisdiction of the CAS to arbitrate football disputes. It is only with the implementation by the individual confederations of the new FIFA Statutes into their individual Statutes, that the CAS can be held to have jurisdiction.**
- 2. The FIFA rules that came into force on 1 January 2004 do not constitute per se a basis for arbitration. Instead, they constitute an instruction to introduce a regulation providing for CAS arbitration which was not implemented before the coming into force of the new CAF regulations on 1 September 2004.**

On 12 December 2003, during the second leg of the final of the 2003 African Champions League (the “Final”), between Ismailia SC of Egypt (the “Appellant”) and Enyimba of Nigeria (“Enyimba”), Enyimba fielded the player Ahmed Garba Yaro Yaro (the “Player”).

The Appellant subsequently filed a protest with the Organizing Committee for African Club Competitions (the “Organizing Committee”), in relation to the eligibility of the Player to participate in the Final.

On 7 June 2004, the Organizing Committee rejected the Appellant’s protest on its merits, and confirmed Enyimba as the winner of the 2003 African Champions League.

On 9 June 2004, the Appellant filed an appeal against the decision of the Organizing Committee with the Confédération Africaine de Football (CAF) Appeal Committee. The Appellant also filed a statement of appeal and subsequently an appeal brief with the Court of Arbitration for Sport (CAS) on 9 June 2004 and 15 July 2004 respectively.

On 8 July 2004, the Decision of the CAF Appeal Committee (the “Decision”) was to reject the Appellant’s appeal and ratify the decision of the Organizing Committee. This Decision was communicated to the Egyptian Football Federation on 10 July 2004.

On 19 August 2004 the Appellant requested that the CAS accept the statement of appeal and appeal brief that had previously been lodged against the decision of the Organizing Committee, as now being lodged against the Decision of the CAF Appeal Committee.

On 6 September 2004, the Respondent filed its statement of defence, whereby it raised, as a preliminary issue, a defence of lack of jurisdiction. The Respondent maintained that the 2002-2004 Edition of the CAF Statutes are the applicable Statutes in the present case, as the Decision was taken on 10 July 2004 and the new Statutes did not enter into force until 1 September 2004. The Respondent contended that the 2002-2004 Statutes did not provide for an appeal to the Court of Arbitration for Sport, and that therefore the CAS did not have any jurisdiction over this matter.

On 28 October 2004, CAS invited the parties to submit final submissions on the specific issue of CAS jurisdiction.

On 12 November 2004, the Appellant submitted that article 30 of the 2002-2004 Statutes provided for an Arbitration Tribunal to be appointed “by common consent”. It further stated that as FIFA has accepted the CAS jurisdiction, and as the CAS is the only recognized International Sporting Tribunal, then CAS must have jurisdiction in this case. It further claimed that if the CAS has no jurisdiction, then Ismailia SC would have no other body of appeal as the “common consent” would never be reached. The Appellant also noted that Article 61 of the new FIFA Statutes, which came into force on 1 January 2004, states:

“The Confederations, Members and Leagues shall agree to recognise CAS as an independent judicial authority and to ensure that their members, affiliated Players and Officials comply with the decisions passed by CAS”.

The Appellant contended that the FIFA rules imposed an obligation on CAF to submit itself to the jurisdiction of the CAS. As CAF had not yet amended its Statutes, Ismailia SC should not suffer because of what it considered to be a late adaptation of CAF regulations to the FIFA requirements.

On 16 November 2004, the Respondent submitted that any arbitration tribunal provided for under the 2002-2004 Statutes, would have to be appointed on an ad hoc basis. The Appellant also stated that as FIFA had not recognised the jurisdiction of CAS until last year, the 2002-2004 Statutes could not be interpreted to grant any jurisdiction for appeal to the CAS, and that therefore the CAS did not have any jurisdiction over this matter.

LAW

1. Under article R47 paragraph 1 of the Code of Sports-related arbitration (the “Code”):

An appeal against the decision of a federation, association or sports-related body may be filed with the CAS insofar as the statutes or regulations of the said body so provide or as the parties have concluded a specific arbitration agreement and insofar as the Appellant has exhausted the legal remedies available to him prior to the appeal, in accordance with the statutes or regulations of the said sports-related body.

An appeal may be filed with the CAS against an award rendered by the CAS acting as a first instance tribunal if such appeal has been expressly provided by the rules applicable to the procedure of first instance.
2. Article 30.1 of the CAF Statutes 2002-2004 states: *“National Associations, clubs or members of clubs shall not be permitted to bring before a Court of Justice disputes with the Confederation or other Associations, clubs or members of clubs, and they must agree to submit any such disputes to an Arbitration Tribunal appointed by common consent”*.
3. Article 49 of the current CAF Statutes (in force since 1 September 2004) states:
“CAF shall allow appeals to the Court of Arbitration for Sport, an independent arbitration tribunal based in Lausanne (Switzerland), to resolve any disputes between CAF, national associations, members, leagues, clubs, players, officials, match agents and licensed players’ agents”.
4. The decision that is the subject of this appeal was taken on 8 July 2004 and was communicated to the Egyptian Football Federation on 10 July 2004. The appeal of this decision was filed on 19 August 2004. Therefore, the new CAF Statutes that expressly allow for an appeal to the CAS do not apply to this case, as they came into force on 1 September 2004.
5. The provision for arbitration set out in the 2002-2004 Statutes cannot be interpreted to grant jurisdiction to the Court of Arbitration for Sport. During the period that these Statutes were written, neither CAF nor FIFA recognized any jurisdiction of the CAS to arbitrate football disputes. It is only with the implementation by the individual confederations of the new FIFA Statutes into their individual Statutes, that the CAS can be held to have jurisdiction.
6. The FIFA rules that came into force on 1 January 2004 do not constitute per se a basis for arbitration. Instead, they constitute an instruction to introduce a regulation providing for CAS arbitration. This was implemented by the coming into force of the new CAF regulations on 1 September 2004.
7. It follows that the Court of Arbitration for Sport has no jurisdiction with regard to the decision of the CAF Appeal Committee and that therefore, it cannot proceed with the present arbitration.

The Court of Arbitration for Sport rules:

1. The Court of Arbitration for Sport has no jurisdiction to decide upon the appeal filed on 19 August 2004 by Ismailia Sporting Club, aimed at Confédération Africaine de Football and related to the decision issued on 10 July 2004 by the CAF Appeal Committee.

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