Arbitration CAS 2015/A/4122 Al Shaab FC v. Aymard Guirie, award of 26 August 2016

Panel: Mr Bernhard Welten (Switzerland), Sole Arbitrator

Football
Termination of the employment contract
De-registration of a player as breach of contract
Poor performance of the player
Compensation for damages and principle of the "positive interest"
Nullity of a waiver of right to the payment of compensation
Limitation to the CAS' scope of review

1. **De-registration of a player in the TMS system is a factual termination of the employment contract. According to Article 5 para. 1 of the 2010 Regulations on the Status and Transfer of Players (RSTP 2010), a player must be registered at an association to play for a club. Only registered players are eligible to participate in organized football. Article 11 RSTP 2010 states that any player not registered with an association who appears for a club in any official match shall be considered to have played illegitimately. Therefore, a club de-registering a player bars the latter's access to any official match with its team and it is, therefore violating the player's fundamental right as its employed football player to compete at the highest level possible. The de-registering of the player is therefore a breach of contract.**

2. **Inadequate sporting performance cannot constitute a legitimate reason to terminate an employment contract.**

3. **Article 17 para. 1 RSTP 2010 closely follows Article 337c of the Swiss Code of Obligations (CO), which grants as compensation to the party not being in breach of the contract an amount corresponding to all claims arising out of the employment relationship, reduced by everything which he saved as a consequence of the termination of the employment relationship and which he earned or intentionally failed to earn through other work. In principal, the injured party should be restored in the position in which it would have been if the employment contract had been fulfilled.**

4. **Article 341 CO states that an employee cannot waive any right to the payment of amounts due by law or collective bargaining agreements during an employment and within 30 days thereafter. The legal consequence of a renouncement contradicting Article 341 para. 1 CO, *i.e.* if made during the period of the employment relationship and within one month thereafter, is that such renouncement is deemed null and void.**

5. **The full power of review of the CAS cannot be construed as being wider than that of the appellate body. Therefore, CAS jurisdiction is limited to the issues arising from the appealed decision.**

I. THE PARTIES

1. Al Shaab FC (the "Club" or the "Appellant") is a football club with its registered office in Sarjah, United Arab Emirates. It is affiliated to the United Arab Emirates Football Association (the "UAE FA"), which in turn is a member of the Fédération Internationale de Football Association (the "FIFA").

2. Mr. Aymard Guirie (the "Player" or the "Respondent") is a citizen of the Ivory Coast and a professional football player, born on 5 January 1988.

II. FACTUAL BACKGROUND

A. Facts

3. The elements set out below are a summary of the main relevant facts, as established by the Sole Arbitrator on the basis of the submissions of the Parties, the exhibits produced and the expert opinion. Additional facts and allegations found in the Parties' written submissions, pleadings and evidence may be set out, where relevant, in connection with the legal discussion that follows. While the Sole Arbitrator has considered carefully all the facts, allegations, legal arguments and evidence submitted by the Parties in the present proceedings, he refers in his Award only to the submissions and evidence he considers necessary to explain his reasoning.

4. On 5 October 2011, the Player and the Club signed an employment agreement (the "Employment Contract") valid as from 4 October 2011 until 30 June 2012 with a total amount of USD 200,000 for the sporting season 2011/2012. The Player was, in accordance with the Employment Contract, entitled to receive the following payments:

   - Contract signing fee in the amount of USD 60,000;
   - 4 monthly payments of USD 10,000 each as from 30 October 2011 until 31 January 2012;
   - 5 monthly payments of USD 20,000 each, as from 28 February 2012 until 30 June 2012.

5. On 14 January 2011 (recte 2012), the Appellant sent a letter to the Player referring to the previous correspondence of 5 October 2011, the date of the signing of the Employment Contract, in which the Player was informed that he will receive information by the Appellant before 15 January 2012 about a possible termination of the Employment Contract. Due to an alleged change in the match schedule of the Appellant's first team, the Appellant asked the Player for approval that it communicates its decision about the possible termination of the Employment Contract by 17 January 2012.

6. On 30 January 2012, following the Appellant's request, the Player was de-registered by the UAE FA, whereas an International Transfer Certificate was issued by the UAE FA in favour of the Libyan Football Association on 27 August 2013 only.

7. On 12 and 25 September 2012, the Player put the Appellant in default of payment of the amount

of USD 100,000 regarding five (5) monthly payments of USD 20,000 each for the months of February to June 2012. Based on Article 3 of the Employment Contract, the Appellant should have paid the monthly amounts within 10 days.

B. Proceedings before FIFA's Dispute Resolution Chamber

8. On 1 October 2012, the Player filed a claim against the Appellant with FIFA's Dispute Resolution Chamber (the "DRC"), asking that the Appellant be ordered to pay the amount of USD 100,000, representing five (5) instalments of USD 20,000 each, which fell due as from February until June 2012, plus 5% interest *p.a.* as from the date of the first default notice, *i.e.* 12 September 2012.

9. The Appellant failed to reply to the Player's claim within the deadline set by FIFA and prior to the closure of the investigation. Four months after the closure of the investigation, on 22 May 2013, the Appellant asked to be provided with a copy of the claim submitted by the Player. Thereafter, the Appellant rejected the Player's claim and asserted that the Player had signed a written declaration, dated 30 January 2012, stating that he had received all his financial dues and that he clears the Club from any financial obligations in accordance with the Employment Contract.

10. On 22 May 2013, the Appellant further requested the DRC to order the Player to pay USD 10,000 to the Appellant for the expenses it incurred in connection with his false allegations and that the Player should be held liable for any procedural costs. The Player, for his part, denied having signed the document presented by the Appellant and highlighted that the document does, *inter alia*, not bear any letterhead of the Appellant. He further pointed out that said document cannot be considered a mutual agreement to terminate the Employment Contract and he emphasised that he would never have agreed to terminate his contract on 30 January 2012, *i.e.* at the end of the registration period, without alternative employment and without any financial benefit.

11. On 12 September 2013, FIFA asked the Appellant to send the original of the declaration of 30 January 2012; however, the Appellant has failed to do so.

12. On 10 October 2013, FIFA informed the Parties that the file was handed over to the DRC for a decision.

13. On 6 November 2014, the DRC decided (the "Decision"), *inter alia*, the following:

> *"1. The claim of the Claimant, Aymard Guirie, is accepted.*
>
> *2. The Respondent, Al Shaab Football Club, has to pay to the Claimant the amount of USD 100,000 within 30 days as from the date of notification of this decision, plus interest at the rate of 5% p.a. as from 12 September 2012 until the date of the effective payment.*
>
> *…".*

14. On 9 June 2015, based on the Appellant's request of 1 December 2014, the DRC sent the

grounds of the Decision to the Parties. The reasoning of the Decision can be briefly summarized as follows:

- The DRC considered itself competent to deal with the matter at hand as it is an employment-related dispute with an international dimension between an Ivory Coast player and an UAE club. It further stated that the 2010 edition of FIFA's Regulations on the Status and Transfer of Players (the "RSTP 2010") is applicable as to the substance.
- The Player and the Club had concluded an employment contract valid as from 4 October 2011 until 30 June 2012. In accordance with the Employment Contract the Club undertook to pay, *inter alia*, an amount of USD 100,000 to the Player in five equal instalments of USD 20,000 each as from February 2012 until June 2012.
- The Club filed its reply to the Player's claim, along with documents, only four months after the closure of the investigation into the present matter. Therefore, the Club's response could not be taken into consideration and the decision was based on the allegations and documentation presented by the Player in his statement of claim, according to Article 9 para. 3 of the Rules governing the procedures of the Players' Status Committee and the Dispute Resolution Chamber, edition 2008.
- The Player had duly substantiated his claim by presenting the relevant Employment Contract, signed by the Player and the Club. The Club, for his part, had failed to provide any justification for the non-payment of the claimed amount of USD 100,000. Therefore, the Club is liable to pay the amount of USD 100,000 to the Player, including interest at the rate of 5% *p.a.* on the amount of USD 100,000 as of 12 September 2012 until the date of effective payment.
- Finally, the DRC took note that in accordance with an instruction of 26 August 2013 in the Transfer Matching System (TMS), the Player was de-registered by the UAE FA on 30 January 2012 and then registered with a Libyan club in August 2013. Consequently, the DRC considered that the Employment Contract had been prematurely terminated with the de-registration, whereby there was no indication on file that the Employment Contract was terminated by mutual agreement between the Parties.

III. PROCEEDINGS BEFORE THE CAS

15. On 27 June 2015, the Appellant filed its Statement of Appeal against the Respondent regarding the Decision, pursuant to Articles R47 and R48 of the Code of Sports-related Arbitration (the "Code").

16. On 1 July 2015, the Appellant nominated Mr. José J. Pintó, attorney-at-law in Barcelona, Spain as arbitrator.

17. On 3 July 2015, the Respondent nominated Mr. Olivier Carrard, attorney-at-law in Geneva, Switzerland as arbitrator.

18. On 6 July 2015 (wrongly stated as 04/06/2015), the Appellant filed its Appeal Brief with the

CAS, as per Article R51 of the Code.

19. On 8 July 2015, the CAS Court Office acknowledged receipt of the Appeal Brief and set the Player a deadline of 20 days to file his Answer pursuant to Article R55 of the Code.

20. On 13 July 2015, following the Parties' agreement, the CAS Court Office extended the deadline for filing the Answer until 17 August 2015.

21. On 14 July 2015, the CAS Court Office informed the Parties about Mr. Carrard's disclosure and the possibility to challenge an Arbitrator in accordance with Article R34 of the Code.

22. On 22 July 2015, the CAS Court Office noted that no challenge had been filed against the nomination of Mr. Olivier Carrard as Arbitrator.

23. On 22 July 2015 as well, FIFA informed the CAS Court Office that it renounced its right to request its possible intervention in the present arbitration proceedings.

24. On 10 August 2015, the Appellant requested that a sole arbitrator be finally appointed to decide the present matter and informed that it wishes that Mr. José J. Pintó being appointed in said quality. On 10 August 2015, the Respondent agreed to the appointment of a sole arbitrator but rejected the Appellant's proposal; he requested that the Sole Arbitrator be appointed in accordance to Article R54 of the Code.

25. On 13 August On 11 August 2015, the Respondent filed his Answer pursuant to Article R55 of the Code. Together with his Answer, the Respondent requested that an independent expert be appointed by the Sole Arbitrator to assess the authenticity of his signature on the 30 January 2012 document.

26. 2015, the Appellant agreed that the Sole Arbitrator be appointed by the President of the CAS Appeals Arbitration Division in accordance with Article R54 of the Code. On the same date, the Respondent stated that he prefers a decision to be issued based on the written submissions.

27. On 20 August 2015, Mr. Bernhard Welten, attorney-at-law in Bern, Switzerland was appointed as Sole Arbitrator to decide upon the matter at stake.

28. On 20 August 2015 as well, the Appellant stated its preference for a decision based on the written submissions, provided that it be allowed to a further round of submissions. On the same date, the Respondent objected to the Appellant's request for a second round of submissions.

29. On 22 September 2015, the CAS Court Office informed the Parties that the Sole Arbitrator, pursuant to Article R56 of the Code, had decided to invite the Parties to file a second round of submissions. The Appellant was granted a deadline of 15 days to file its additional statement; the Respondent was granted a deadline of 15 days from the receipt of the Appellant's reply to file his rejoinder.

30. On 28 September 2015, following the Sole Arbitrator's request, FIFA filed its complete case file related to the present matter.

31. On 7 October 2015, the Appellant filed its additional statement.

32. On 18 October 2015, the Respondent filed his additional statement.

33. On 2 November 2015, the Sole Arbitrator proposed to appoint Mr. Christian Jaccard from Lausanne, Switzerland to conduct an expertise on the authenticity of the Respondent's signature on the document dated 30 January 2012.

34. On 6 November 2015, the CAS Court Office noted that the Parties had not objected to the appointment of Mr. Jaccard as independent expert. In view of this, the Sole Arbitrator appointed Mr. Jaccard with letter of 6 November 2015 as independent expert and instructed him to verify the authenticity of the Respondent's signature on a document dated 30 January 2012.

35. On 17 March 2016, the Expert submitted his Expert Opinion to the CAS concluding that, with a certain certainty, the signature on the declaration of 30 January 2012 is authentic. However, the Expert raised some concerns about the conditions and the way such document had been elaborated.

36. On 22 March 2016, the CAS Court Office granted the Respondent a deadline of seven (7) days to file his comments to the Expert Opinion.

37. On 31 March 2016, the Respondent submitted his comments to Mr. Jaccard's Expert Opinion and requested to further examine the declaration dated 30 January 2012 with a Scanning Electron Microscope (SEM) to verify if the Respondent's signature was put on the paper before the printed text (signing a blank paper).

38. On 7 April 2016, the Appellant filed its comments to the Respondent's submission of 31 March 2016 to the Expert Opinion.

39. On 28 April 2016, the Appellant stated that it does not object to the additional *"examen au microscope électronique à balayage"* adding however that it will not bear any of this additional costs.

40. On 29 April 2016, the CAS Court Office informed the Parties that only in case the Respondent expressly agreed to bear all the costs of the *"examen au microscope électronique à balayage (MEB)"* in advance, his request can be granted. The Appellant was however informed that the Sole Arbitrator, at the end of the proceedings, could impose such costs on it. The CAS Court Office therefore sought the Parties' attention in this respect.

41. On 10 May 2016, the Respondent confirmed his agreement to pay the costs for the "MEB" in advance and that such costs could be reattributed at the end of the proceedings. Furthermore, he finally requested that a hearing be held and informed that due to his financial position he would not be able to attend in person.

42. On 11 May 2016, the CAS Court Office informed the Parties that in the absence of an express agreement from the Appellant regarding the costs of the "MEB", the Sole Arbitrator denied the Respondent's request.

43. On 17 May 2016, the Appellant informed that it did not request any hearing to be held.

44. On 8 June 2016, the CAS Court Office informed the Parties that the Sole Arbitrator had decided to hold a hearing by telephone conference on 14 June 2016.

45. On 9 and 10 June 2016, the Parties signed the Order of Procedure.

46. On 14 June 2016, the Sole Arbitrator held the hearing by telephone conference. Present in the call were, for the Appellant, Mr. Waheed Arafat, Executive Director, Mr. Ahmed Abdel Wahab, Official Accounts, Mr. Mohammed Salem Batwaih, Club Licensing Officer and a translator; Mr. Aymard Guirie, assisted by his attorney Laurent Denis, for the Respondent; as well as the Sole Arbitrator and Mr. William Sternheimer, CAS Deputy Secretary General.

47. On 14 June 2016, after the hearing, the CAS Court Office granted the Appellant a deadline of five (5) days to file a post-hearing brief, limited to what had been discussed at the hearing. The Respondent was granted a similar deadline from the receipt of the Appellant's post-hearing brief to file his own post-hearing brief.

48. On 19 and 21 June 2016, the Parties filed their respective post-hearing briefs.

IV. SUBMISSIONS OF THE PARTIES

A. Appellant's Submissions and Requests for Relief

49. The Appellant's submissions, in essence, may be summarized as follows:

- The Appellant claims that the Decision has ignored the substantial grounds related to the dispute, which had been presented and proven by the Appellant. The Decision was therefore erroneous.
- The Appellant pretends that the DRC has ignored the absence of the legal capacity of the previous legal entity, Al Shaab Sport & Culture Club and the transfer of all rights and obligation to the legal general successor, Al Shaab Football Club Company L.L.C. to which all the rights and obligations have been transferred under the official licences. For these reasons, the Appellant's answer was delayed in the proceedings before the DRC. Nevertheless the DRC should have considered the Appellant's reasoning and proofs anyway.
- The Appellant alleges that it has officially informed the Respondent about its desire to terminate the Employment Contract and the Respondent has thereafter signed the acceptance of this resolution without any objection on 30 January 2012. This declaration shows that the Appellant is released from all its rights and obligations towards the Respondent.

50. In its prayers for relief, the Appellant requests as follows:

"1. Accepting the Appeal in form.

2. Accept the appeal in substance, with annulment of the appealed decision.

3. Accepting the counter-claim against the player Aymard Guirie.

4. The clearance of AL SHAAB FOOTBALL CLUB CO.L.L.C of any right or claim against the Appellee.

5. Obligating the Appellee to pay all fees, expenses and the attorney costs.

6. Obligating the Appellee to pay an indemnity amount against the material and incorporeal damages it caused to the appellant, which we estimate at 50,000 us dollars".

B. Respondent's Submissions and Requests for Relief

51. The Respondent's submissions, in essence, may be summarized as follows:

- All claims brought forward by the Appellant concerning the violation of the Appellant's procedural rights during the proceedings before the DRC are only related to FIFA; consequently, the appeal should have been lodged against FIFA, instead of against the Respondent. Notwithstanding the absence of an appeal lodged against FIFA as respondent before the CAS, all claims of the Appellant concerning the DRC proceedings are, according to the Respondent, erroneous and in contrariety with the exchange of the correspondences between the Parties and the DRC.
- The Respondent does not speak English. It is therefore strange that the declaration dated 30 January 2012 should have been issued by him. The declaration was not written by the hand of the Respondent and was not issued on official paper of the Appellant.
- The declaration of 30 January 2012 benefits only to the Appellant, without reciprocal and sufficient concession, because the Respondent was found immediately without employment, without the possibility to play professional football before 1 July 2012 (the theoretical dates of the expiry of the contract), without income and he lost the benefit of a remuneration (salary) in the amount of USD 100,000. Consequently, the Respondent never agreed to cancel by mutual agreement the Employment Contract under these conditions. Therefore, the Respondent assumes that it was the Appellant who terminated the Employment Contract unilaterally without just cause, having de-registered the Respondent with the UAE FA on 30 January 2012.
- Based on Article 341 of the Swiss Code of Obligations and the pertinent jurisprudence of the Swiss Federal Tribunal, the employee may, for the period of the employment relationship and for one month after its end, not legally binding waive any claims arising from mandatory provisions of law or the mandatory provisions of a collective employment contract.

- The Appellant shall be held liable to pay compensation to the Respondent for unilateral breach of contract in the amount of USD 100,000, taking into account the residual value of the Employment Contract and the absence of any deductions under the terms of the principle of damage mitigating and the specificity of sport.

52. In his prayers for relief, the Respondent requests as follows:

"(…)

- *TO DECLARE the appeal brought by AL-SHAAB FC against Mr. A. GUIRIE, admissible but not founded.*
- *TO CONFIRM THE FIFA DRC DECISION PRONOUNCED ON 6 NOVEMBER 2014 AS FOLLOWING:*
- *TO DECLARE the unilateral termination of the contract of employment by AL-SHAAB FC without just cause (on 30 January 2012).*
- *TO CONDEMN AL-SHAAB FC to pay an amount of $ 100,000 Net (plus interest of 5% per annum from 12 September 2012 until the effective date payment) to Mr. A. GUIRIE.*
- *TO REJECT any counterclaim of any nature by AL-SHAAB FC against Mr. A. GUIRIE.*
- *TO CONDEMN AL-SHAAB FC to pay all arbitration costs.*
- *TO CONDEMN AL-SHAAB FC to pay defence costs and other miscellaneous costs incurred by Mr. A. GUIRIE, these costs being estimated ex aequo et bono to the amount of CHF 10,000.00".*

C. Expert Opinion and the Parties Submissions in this Respect

a) Expert Opinion of 17 March 2016

53. The Expert states in his opinion that the signature on the declaration dated 30 January 2012 is undoubtedly a genuine signature affixed by the Player; it is completely consistent with the specimen signatures made available to him for verifications. However, comparing with the documents provided and involving the Appellant, the specific quality of the paper used for the declaration is different in quality and density and it is only written in English and not Arabian and English. Further the position of the text is unusual, particularly with regard to the layout normally used on other documents involving the Appellant. He therefore questions the conditions and the manner in which the declaration was produced, particularly with regard to the chronology of the contested signature and the printed text contained in the document. He therefore offers a further examination with a scanning electron microscope (SEM) to possibly ascertain if the signature was affixed before the printed text or not.

b) Respondent's Statement

54. The Respondent's submissions to the Expert Opinion, in essence, may be summarized as follows:

- On 31 March 2016, the Respondent stated that he would like to proceed with an examination with a scanning electron microscope (SEM) to verify if his signature was affixed before the printed text. The document itself is on ordinary white paper and only in English; no letterhead of the Appellant is printed on the document and therefore the document is rather strange.

- The declaration does by no means constitute a proof of the Respondent's will to early terminate the Employment Contract by mutual agreement. The Respondent's signature can therefore at maximum mean "for reception".

- On 30 January 2012, the Appellant de-registered the Respondent as a player of the Appellant; only in August 2013 he was then registered with his new Libyan club. The Declaration was not introduced into FIFA TMS system and no explanation was given for the de-registration.

- The Respondent being under the impression that his employment continues, left the UAE only on 2 May 2012. This would not make sense in case he was of the opinion having terminated the Employment Contract by mutual agreement on 30 January 2012.

c) Appellant's Statement

55. The Appellant's submissions to the Expert Opinion, in essence, may be summarized as follows:

- The Expert Opinion confirms the validity of the Appellant's defence as it is the Respondent's signature on the declaration. The quality, type or sources of the paper used for the declaration cannot have any influence on the legal validity of said document.

- The Respondent made false allegations that he never signed the declaration; the allegation that he did sign on a blank paper at a date prior to the actual date of the declaration is also false.

- According to the applicable regulations, the Parties are allowed to mutually terminate an Employment Contract early. The Respondent confirmed with his signature that he received all dues agreed upon from the Appellant.

- On 14 January 2012 (wrongly dated 14/01/2011), the Respondent confirmed with his signature that he received the Appellant's request to terminate the Employment Contract. The Respondent showed extremely low skills on the pitch.

- The Respondent agreed on the early termination and did not file any objection thereafter. This confirms that the early termination of the contract was made mutually. The Appellant de-registered the Respondent following the signature of the declaration. The Appellant cannot answer the question why the Respondent remained in the UAE for a couple of months more; they were not bound by any contract anymore.

- The Respondent did not prove that the registration period to change the club expired on 30 January 2012 in all major federations. With better technical levels or a wish to play, the

Respondent could have found another team in January/February 2012.

D. The Parties' Post-Hearing Briefs

a) Appellant's Submissions

56. The Appellant's submissions in the post-hearing brief of 19 June 2016, in essence, may be summarized as follows:

- The questions raised by the Expert Opinion do not have any influence on the legally binding signature of the Respondent on the declaration. The Expert clearly confirmed, beyond any reasonable doubt, that the signature is from the Player.

- The Player made wrong allegations that he did not sign the declaration. Therefore, the Appellant is not liable for any financial claims filed by the Player.

b) Respondent's Submissions

57. The Respondent's submissions in the post-hearing brief of 21 June 2016, in essence, may be summarized as follows:

- It has been attested that the Respondent does not speak English and therefore it was impossible for him to write the declaration.

- The Appellant explicitly confirmed its will to early terminate the Employment Contract with the Respondent, based of his bad sporting performances which cannot be considered as a just cause for termination.

- The Appellant recognized without reservations for the first time that the Respondent continued to train with the Appellant, after having signed the declaration dated 30 January 2012. The Appellant stated that the Respondent was "only" authorized to train, even after the alleged mutual termination of the Employment Contract. This is certainly not common for a professional football player. Furthermore, the Respondent stated having benefitted of the housing even after 30 January 2012, until he left the country in May 2012. Such housing was foreseen in the Employment Contract. Finally, the Respondent confirmed having played one official match with the Appellant during February 2012.

- The Appellant contradicted itself in stating not having any knowledge of the Respondent's activity after the signing of the declaration and on the other hand recognizing that the Respondent trained with its team between February and May 2012. During this period, the Respondent was not informed by the Appellant's staff about the alleged termination of the Employment Contract. The Appellant did also not inform the Respondent about the de-registration in the FIFA TMS.

- The Appellant could not answer any question regarding a compensation being paid based on the declaration signed by the Respondent. Therefore, this declaration is only in the

Appellant's favour.

- The Respondent has not written nor signed the declaration and he therefore had no knowledge about the early termination of the Employment Contract.

V. JURISDICTION

58. Article R47 of the Code provides as follows:

"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 him prior to the appeal, in accordance with the statutes or regulations of that body".

59. Article 67 FIFA Statutes states that the CAS has jurisdiction to decide on appeals against final decisions passed by FIFA's legal bodies like the DRC. Furthermore, Article 24 para. 2 FIFA Regulations on the Status and Transfer of Players (the "RSTP 2010") states that the decisions reached by the DRC may be appealed before the CAS.

60. Based on the foregoing, the Sole Arbitrator confirms that the CAS has jurisdiction to hear this appeal. The Parties have further confirmed this jurisdiction by signing the Order of Procedure.

VI. ADMISSIBILITY

61. The Decision was notified to the Appellant on 9 June 2015. The Statement of Appeal was filed on 27 June 2015. Therefore, the Appeal was filed within the 21-day deadline set by Article 67 para. 1 FIFA Statutes (2015 edition). The Appeal complied with all other requirements of Article R48 of the Code, including the payment of the CAS Court Office Fee.

62. Therefore, it follows that the Appeal is admissible.

VII. APPLICABLE LAW

63. Article R58 of the Code provides the following:

"The Panel shall decide the dispute according to the applicable regulations and, subsidiarily, to the rules of law chosen by the parties or, in the absence of such a choice, according to the law of the country in which the federation, association or sports-related body which has issued the challenged decision is domiciled or according to the rules of law the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision".

64. In the Employment Contract, the Parties agreed in Article 12 that both *"parties must abide by the rules, regulations and circulars issued by the Association, FIFA, and the Continental Union and the*

Association of Professional League". The Parties did not agree on any further law to be applicable. The Appellant remained silent in its written statements regarding the applicable law and the Respondent stated in his submissions that the case shall be decided according to the RSTP 2010 as priority and Swiss law shall apply subsidiarily. In other words, the Parties did not agree on a subsidiarily applicable law.

65. A contract between a club from the UAE and a player from Ivory Coast is certainly an international relationship and therefore the FIFA rules are applicable. As the Decision was issued by FIFA, it is obvious that the FIFA rules and regulations shall be applied (see also CAS 2006/A/1180, para. 9). Looking at Article R58 of the Code, the Sole Arbitrator is of the opinion that the FIFA regulations are applicable and subsidiarily Swiss law shall be applied.

66. In order to specify which of the FIFA regulations are applicable to this case, the Sole Arbitrator notes that the Respondent's claim was submitted to the DRC on 1 October 2012, thus before 1 December 2012, which is the date when the revised 2012 FIFA Regulations for Status and Transfer of Players (the "RSTP 2012") came into force. Pursuant to Article 26 para. 1 RSTP 2012, *"any case that has been brought to FIFA before these regulations come into force shall be assessed according to the previous regulations"*. Accordingly, the 2010 edition of the RSTP, as already established by the DRC in the Decision, shall be applicable.

VIII. MERITS

67. The present dispute concerns in essence employment matters regarding the termination of the Employment Contract and its consequences, such as compensation. On this dispute the following rules of the RSTP 2010 are applicable:

"Article 13: Respect of contract

A contract between a professional and a club may only be terminated upon expiry of the term of the contract or by mutual agreement.

Article 14: Terminating a contract with just cause

A contract may be terminated by either party without consequences of any kind (either payment of compensation or imposition of sporting sanctions) where there is just cause.

[…]

Article 16: Restriction on terminating a contract during the season

A contract cannot be unilaterally terminated during the course of a season.

Article 17: Consequences of terminating a contract without just cause

The following provisions apply if a contract is terminated without just cause:

1. In all cases, the party in breach shall pay compensation. Subject to the provisions of article 20 and Annexe 4 in relation to training compensation, and unless otherwise provided for in the contract, compensation for the breach

shall be calculated with due consideration for the law of the country concerned, the specificity of sport, and any other objective criteria. These criteria shall include, 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, the fees and expenses paid or incurred by the former club (amortised over the term of the contract) and whether the contractual breach falls within a protected period.

[…]".

A. Termination of the Employment Contract

68. The Sole Arbitrator notes that it is not contested by the Parties that the Player and the Appellant entered into the Employment Contract, valid as from 4 October 2011 until 30 June 2012. The Player was registered with the UAE FA respectively for the Appellant on 4 October 2011, de-registered with the UAE FA in the TMS system on 30 January 2012 and only on 27 August 2013 registered with the Libyan Football Association.

69. The Appellant alleged that the Parties terminated the Employment Contract by mutual agreement (the declaration), meanwhile the Player asserted that the Appellant had unilaterally terminated the Employment Contract by withdrawing his registration with the UAE FA on 30 January 2012, without the Respondent being aware.

70. These facts show and both Parties agree that the Employment Contract between the Parties was terminated on 30 January 2012. In looking at the Employment Contract, it is obvious that such termination was not made with the expiry of the term of the contract. Therefore, this termination was made or by mutual agreement or as early termination with or without cause (see Article 13 RSTP 2010).

71. Mr. Christian Jaccard stated in his Expert Opinion of 17 March 2016 that the signature on the declaration of 30 January 2012 is the signature of the Respondent. At the same time he has some doubts as the declaration does not bear any logo of the Appellant and was drafted only in English and not in English and Arabian. Furthermore, the quality of the paper used did not correspond to other documents drafted by the Appellant. He therefore has doubts if the Respondent's signature was not applied on a blank document and the text of the declaration added thereafter.

72. The Parties' views diverge from each other regarding these doubts. The Appellant did not agree to pay any costs for a further expertise to verify if the Respondent's signature was given on a blank document and the text only added thereafter. It is therefore up to the Sole Arbitrator to decide on this question.

73. In looking at the Parties' allegations, the Sole Arbitrator notes that after 30 January 2012, the Respondent - with the Appellant's consent - continued to train with the Appellant's team, stayed in the house provided by the Appellant and even played one official game for the Appellant in February 2012. The Sole Arbitrator is of the opinion that these facts raise doubts about the Respondent knowing that his Employment Contract was early terminated on 30 January 2012.

74. In the Sole Arbitrator's view, it is clear that the Respondent was aware that the Appellant would inform him about a possible termination of the contract until 17 January 2012, based on the letter dated 14 January 2011 (recte: 2012). The Parties did, however, not file any document showing the Appellant's decision regarding this eventual termination of the Employment Contract. All which was filed is the declaration of 30 January 2012. The Sole Arbitrator is of the opinion that signing the declaration of 30 January 2012, and therefore doing so after the decision was eventually announced by the Appellant regarding a possible termination of the Employment Contract, does not make any sense for the Respondent. All this shows that the Appellant's interest to file any proofs regarding the termination of the Employment Contract by mutual agreement and the signing of the declaration of 30 January 2012 by the Respondent after the text was written on the document, should be obvious. However, no such proofs were filed.

75. The Sole Arbitrator points out that both Parties had knowledge of the Expert Opinion and therefore also regarding the Expert's doubts as to the order in which the written text and the Respondent's signature were put on the paper of the declaration. The Appellant alleged that the Respondent's signature was put on the document after the text of the declaration. It denied its willingness to financially contribute to a further examination as proposed by the Expert and requested by the Respondent to show in which order the text and signature were put on the paper of the declaration. The Sole Arbitrator points out to Article 8 Swiss Civil Code, based on which the burden of proof lies on the Appellant to show – as pretended by the Appellant – that the Respondent's signature was given after the full text of the declaration was already on the paper. The Appellant did, however, only make allegations and did not bring any proof to show this. The Appellant even denied the Expert's proposal for an additional expertise which could bring such proof. Therefore, based on the principle of burden of proof, the Appellant has to bear the consequences for not having proven that the Respondent's signature was applied as it alleged, after the full text of the declaration was written. This consequence is that the declaration of 30 January 2012 is to be considered null and void.

76. The Employment Contract was therefore not terminated by mutual agreement, but unilaterally by the Appellant. From the facts stated before, the Sole Arbitrator knows that such unilateral termination was done by the Appellant in de-registering the Respondent on 30 January 2012 in the TMS system. This de-registration of the Respondent in the TMS system is a factual termination of the Employment Contract. According to Article 5 para. 1 RSTP 2010, a player must be registered at an association to play for a club. Only registered players are eligible to participate in organized football. Article 11 RSTP 2010 states that any player not registered with an association who appears for a club in any official match shall be considered to have played illegitimately (see hereto ZIMMERMANN M., Vertragsstabilität im internationalen Fussball, Zürich 2015, p. 71). Therefore, the Appellant has barred the Respondent's access to any official match with its team and it is, therefore violating the Respondent's fundamental right as its employed football player to compete on the highest level possible. The de-registering of the Respondent is therefore, according to CAS jurisprudence, a breach of contract (CAS 2013/A/3091, 3092 & 3093, para. 228) and a factual termination of the Employment Contract. The Appellant clearly showed that it did not rely on the Respondent's services anymore when announcing in the document of 14 January 2012 to take a decision about the eventual termination of the Employment Contract in the next few days. This was confirmed by the

Appellant declaring that the Respondent's performance and skill were very low.

77. The Sole Arbitrator has to check if the unilateral termination of the Employment Contract by the Appellant was eventually done with or without just cause. The RSTP 2010 as well as any other FIFA regulations do not provide the definition of "just cause". The Sole Arbitrator, however, takes note that the Appellant did not even allege or indicate any justifiable grounds for the early termination of the Employment Contract; it only alleged that it agreed with the Respondent to mutually terminate the contract on 30 January 2012.

78. The Sole Arbitrator concludes that, therefore, no sufficient grounds were indicated by the Appellant to justify the early termination of the Employment Contract. Apparently, the only reason was that the Appellant was not satisfied with the Player's performance; the Appellant even stated in its written submissions that the Respondent was playing at a very low technical level. However, according to CAS jurisprudence, inadequate sporting performance cannot constitute a legitimate reason to terminate the Employment Contract (CAS 2010/A/2049, para. 12; see also ZIMMERMANN M., Vertragsstabilität im internationalen Fussball, Zürich 2015, p. 237). The Sole Arbitrator, therefore, concludes that the Employment Contract was terminated by the Appellant without just cause.

B. Consequences of the Termination

79. To determine the consequences of the breach of contract by the Appellant, the Sole Arbitrator refers to Article 17 para. 1 RSTP 2010, which states that *"the party in breach shall pay compensation"*. Therefore, the Respondent is entitled to receive an amount of compensation for breach of contract in addition to any outstanding payments on the basis of the Employment Contract. The DRC granted the Player the amount of USD 100,000 as compensation for breach of contract.

80. Article 17 para. 1 RSTP 2010 states that the compensation for the breach shall be calculated with due consideration for the law of the country concerned, the specificity of sport, and any other objective criteria. These criteria shall include, 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 (5) years, the fees and expenses paid or incurred by the former club (amortised over the term of the contract) and whether the contractual breach falls within a protected period.

81. According to the CAS jurisprudence (see CAS 2008/A/1447, para. 30; CAS 2008/A/1518, para. 71), Article 17 para. 1 RSTP 2010 closely follows Article 337c CO, which grants as compensation to the party not being in breach of the contract an amount corresponding to all claims arising out of the employment relationship, reduced by everything *"which he saved as a consequence of the termination of the employment relationship and which he earned or intentionally failed to earn through other work"* (see CAS 2006/A/1180, para. 41). The Sole Arbitrator has therefore to compare two financial situations in order to determine the compensation: the Respondent's hypothetical financial situation without the Appellant's breach of contract and the financial situation as it is following the breach of contract by the Appellant.

82. The Sole Arbitrator agrees that, in principal, the injured party, in the case at hand the Respondent, should be restored in the position in which he would have been if the Employment Contract had been fulfilled by the Appellant. Therefore, the Respondent shall be entitled to claim payment of the entire amounts foreseen in the Employment Contract, eventually reduced by any payment the Respondent received from a third party in accordance with a new employment contract (see CAS 2005/A/866, para. 58).

83. At the time of the early termination of the Employment Contract on 30 January 2012, the Appellant did not owe the Respondent any outstanding salaries. At least, the Respondent did not ask for any open salaries, except the payments for the period February to June 2012.

84. As the Respondent only found a new club to play for in August 2013 and he most probably did not know about the early termination of the Employment Contract with the Appellant until he left the country in May 2012, it was impossible for the Respondent to find a new club for the period February until June 2012.

85. Therefore, the Sole Arbitrator grants the compensation to the Respondent equal to the remaining value of the Employment Contract for the time period of February 2012 until June 2012. This amount, based on the Employment Contract, corresponds to USD 100,000, as the DRC correctly stated.

86. As the declaration of 30 January 2012 was declared null and void by the Sole Arbitrator, such document has no influence on the calculation or eventual reduction of the compensation to be granted to the Respondent. Further, the Appellant did not bring any proof to show what exact amounts - if any - it paid to the Respondent. Therefore, the Sole Arbitrator is of the opinion that no amount of the contractually agreed USD 100,000 for the time period between February and June 2012 has been paid to the Respondent.

87. Even if the declaration of 30 January 2012 would not be null and void, the Sole Arbitrator points out to Article 341 CO which states that an employee, e.g. the Respondent, cannot waive any right to the payment of amounts due by law or collective bargaining agreements during an employment and within 30 days thereafter. In the case at hand, the Appellant pretends that the Respondent waived his right to the payment of a compensation based on Article 17 para. 1 RSTP 2010, respectively Article 337c CO. The Sole Arbitrator holds that based on Swiss literature (STREIFF/VON KAENEL/RUDOLPH, Arbeitsvertrag, Praxiskommentar zu Art. 319-362 OR, 7. edition, Zürich 2012, p. 1286; STAEHLIN A., Zürcher Kommentar Obligationenrecht, Zürich 1996, p. 789), such "amounts due by law" refers to mandatory provisions which are, in particular, the absolutely mandatory provisions listed in Article 361 CO and the relatively mandatory provisions listed in Article 362 CO. The provision of Article 337c para. 1 CO regarding the employee's claims for financial compensation in case of unilateral termination of an employment agreement without just cause by the employer is such a mandatory provision, as per Article 362 CO. The legal consequence of a renouncement contradicting Article 341 para. 1 CO, *i.e.* if made during the period of the employment relationship and within one month thereafter, is that such renouncement is deemed null and void (STREIFF/VON KAENEL/RUDOLPH, *opt. cit.*, p. 1288). Therefore, even in case the declaration would have been considered signed in the correct order (after the text was on the

document) and in full understanding of the wording by the Respondent, such waiver of payments due to the Respondent is null and void based on Article 341 CO, as the waiver was signed the same day of the termination of the Employment Contract, on 30 January 2012. There are no convincing arguments or legal reasons on the Appellant's side that the compensation of USD 100,000 shall not be due to the Respondent.

88. Article 339 para. 1 CO states that with the termination of the employment contract all claims out of this employment relationship become due. Therefore, the compensation of USD 100,000 became automatically due with the early termination of the Employment Contract on 30 January 2012. The DRC granted on the amount of USD 100,000 interests at the rate of 5% p.a. as of 12 September 2012, the date when the Respondent filed his request to the Appellant. Article 102 para. 1 CO states that a claim becomes overdue once the creditor has reminded the debtor to pay and with this put the debtor in delay of payment. This certainly happened by the Respondent with his request of 12 September 2012. Based on Article 104 CO, the debtor in delay of a payment has to pay in addition to the amount due interests of 5% p.a. The Sole Arbitrator, therefore, confirms this interest of 5% p.a. on the amount of USD 100,000 becoming due starting on 12 September 2012.

89. Summing up, the Sole Arbitrator concludes that the Decision is confirmed and the Appellant has to pay to the Respondent the amount of USD 100,000 as compensation, plus interest at the rate of 5% *p.a.* as from 12 September 2012 until the effective payment. All other motions or prayers for relief are dismissed, in particular the Appellant's claim that the Respondent shall be obliged to pay an indemnity amount of USD 50,000 to the Appellant for "material and incorporeal" damages. This because the Appellant did not file its request before the DRC and therefore, according to CAS jurisprudence (CAS 2013/A/3314, para. 31; CAS 2012/A/2874, para. 81), the Sole Arbitrator's jurisdiction is limited to the issues arising from the appealed decision. MAVROMATI/REEB, the Code of the Court of Arbitration for Sport, R57 para. 54 states that the full power of review cannot be construed as being wider than that of the appellate body. Beside this limit, the Appellant's claim for damages has no merits as the Sole Arbitrator decided that it was the Appellant himself terminating the Employment Contract without just cause.

ON THESE GROUNDS

The Court of Arbitration for Sports rules that:

1. The appeal filed by Al Shaab Football Club L.L.C against the decision rendered on 6 November 2014 by the Dispute Resolution Chamber of FIFA is dismissed.

2. The decision rendered on 6 November 2014 by the Dispute Resolution Chamber of FIFA is confirmed.

(…)

5. All other motions or prayers for relief are dismissed.