



**Arbitration CAS 2006/A/1171 Tuti Sport Club v. Sudan Football Association (SFA), award of 4 April 2007**

Panel: Mr Mark Hovell (United Kingdom), President; Mr Hans Nater (Switzerland); Mr Efraim Barak (Israel)

*Football*

*“Decision” of a national federation to appeal to an ordinary court*

*Notion of decision*

**The “decision” by the national federation to appeal to an ordinary court for a stay of execution is not, in itself, a decision in the context that a “decision” would have been envisaged by Art. R47 of the Code and/or Art. 60 para. 1 of the FIFA Statutes. It is merely a procedural step undertaken by a party. Accordingly, there is no decision upon which the CAS can make a ruling, under the provisions of the Code.**

Tuti Sport Club (“the Appellant”) was a division one football club in the League of Khartoum and registered with the Khartoum Local Football Association (“the KLFA”) an affiliate of the Sudan Football Association.

The Sudan Football Association (“the Respondent”) is the football association of the Republic of Sudan affiliated to FIFA and to the Confédération Africaine de Football.

In 2003, the Appellant was among the clubs of the first division in the local league of Khartoum. On 17 August 2003, the Appellant took part in an official match against Abasia Club (“AC”) and won the match. AC contended that the Appellant had illegally fielded a player, A., at that league match because the player, in their view, had not completed the appropriate suspension period, in accordance with the requirements of the Respondent’s internal transfer regulations.

The Committee Organizing the Competition of KLFA (the “Committee”) held that the Appellant was in violation of the regulations governing the eligibility of players participating in league matches and decided that the match was lost by forfeit and the Appellant lost the three points they had originally won in the match. This forfeit contributed to the Appellant’s relegation to the second division for the following season.

In accordance with the Statutes of the Respondent, the Appellant appealed to the Executive Committee of the KLFA against the Committee’s decision. The Executive Committee confirmed the Committee’s decision on appeal.

The Appellant filed an appeal against that decision before the Appeal Committee of the Respondent

(“the SFAAC”). On 19 September 2003, the SFAAC upheld and confirmed the decision of the Committee. This appeal predated any provisions in the SFA statutes that provide for a right of final appeal to the Court of Arbitration for Sport (“the CAS”).

The Respondent has stated that, on 9 November 2003 and 12 December 2003, the Appellant attempted to appeal the decision of the SFAAC to the Respondent’s Board of Directors. The Board of Directors decided that they had no authority to review the decisions of the SFAAC in circumstances such as these arising from technical matters of dispute.

On 24 December 2003, the Appellant brought the matter to the Federal Commission for the Registration of Youth and Sports Associations (“the Federal Commission”) which is a governmental body appointed by the Federal Minister of Youth Sports. The Federal Commission requested further information from the Respondent. The Respondent refused to cooperate and did not attend any hearings on the grounds that it disputed the jurisdiction of the Federal Commission to intervene in technical matters.

On 16 March 2004 the Federal Commission accepted the Appellant’s appeal. The Respondent did not accept that the Federal Commission had the authority to make such a decision and considered any such decision as non-binding. The Respondent did not at this stage lodge an appeal.

The Appellant, disputing its place in the second division, refused to play in league matches. The Respondent subsequently relegated the Appellant to the third division on account of its non-appearances in the second division matches. Matters remained disputed and unresolved, culminating in the suspension of the Appellant’s registration by the KLFA on 12 December 2004.

On 23 July 2006, the Federal Commission decided that the Respondent’s Executive Committee should be dissolved on the grounds of non-compliance with its decision of the 16 March 2004.

The Sudanese Minister of Justice intervened and blocked the decision to dissolve the Respondent’s Executive Committee whilst advising the Respondent to appeal to the Federal Youth and Sports Arbitration Committee (“the Federal Arbitration Committee”). An appeal was subsequently filed by the Respondent to the Federal Arbitration Committee on 23 July against the Federal Commission’s decision of 23 July 2006.

The appeal was rejected on 21 September 2006, and on 1 October 2006 the Respondent took its appeal to the Administrative Court of Appeal of the Khartoum Province (“the Administrative Court of Appeal”). On 2 October the Administrative Court of Appeal decided to stay the execution of the decision of the Federal Commission and Federal Arbitration Committee respectively.

On 19 October 2006 the Appellant lodged an appeal with the CAS asking that it compel the Respondent to withdraw its appeal from the Administrative Court of Appeal, and accept the authority of the Federal Commission’s decision of 23 July 2006 to dissolve its Executive Committee. The Appellant also asked that the CAS sanction the Respondent for taking recourse to an ordinary court and reinstate the Appellant in the first division of the League of Khartoum by adding the three points deduction in 2003, to rectify its former position. The Appellant’s appeal to the CAS also included a

claim for damages and compensation.

On 5 November 2006 the Appellant filed its appeal brief, some of which were written in Arabic, without any translation into English. On 6 November 2006 the Appellant filed another appeal brief replacing that of 5 November 2006, together with an additional document.

## LAW

### Competence of the CAS to rule on its own jurisdiction

1. In accordance with Swiss Private International Law, the CAS has the power decide upon its own jurisdiction.
2. Article 186 of the Swiss Private International Law Act states:
  1. The arbitral tribunal shall rule on its own jurisdiction.
  2. The objection of lack of jurisdiction must be raised prior to any defence on the merits.
  3. In general, the arbitral tribunal shall rule on its jurisdiction by means of an interlocutory decision.
3. According to the Award on Jurisdiction rendered by the CAS in the *Cole case* para. 6.3, the principle that the tribunal shall rule on its own jurisdiction “*is the embodiment of the widely recognized principle in international arbitration of ‘Kompetenz-Kompetenz’*”. On this basis the CAS went on to decide the preliminary issue of jurisdiction before it would consider addressing the substantive issues in question.

### Competence of the CAS to rule on substantive issues on Appeal

4. Art. R47 of the Code states that,

*“An appeal against the decision of a Federation, Association or sports-related body may be filed with 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”.*
5. Likewise Art. 61 para. 1 of the FIFA Statutes states that:

*“Appeals against final decisions passed by FIFA’s legal bodies and against decisions passed by Confederation, Members or Leagues shall be lodged with the CAS within 21 days notification of the decision in question”.*
6. In order for the CAS to have jurisdiction to hear an appeal, there must be a “decision” of the

Association. In this matter, whilst there does appear to have been a decision made by the Respondent in 2003, which did not have the ability to be appealed to the CAS, the Appellant has confirmed that it is appealing against a “decision” made by the Respondent on 1 October 2006 to lodge an appeal to the Administrative Court of Appeal.

7. The Respondent contends that this is not a decision within the context of that required by Art. R47 of the Code or Art. 61 para. 1 of the FIFA Statutes and as such CAS has no jurisdiction to rule on the substantive issues of appeal.

## Conclusion

8. The Panel concurs with the Respondent, in that the “decision” by the Respondent to appeal to the Administrative Court of Appeal for a stay of execution is not, in itself, a decision in the context that a “decision” would have been envisaged by Art. R47 of the Code and/or Art. 60 para. 1 of the FIFA Statutes. It is merely a procedural step undertaken by a party. Accordingly, there is no decision upon which the CAS can make a ruling, under the provisions of the Code.
9. There is no specific agreement between the parties to allow the CAS to rule on the merits of this particular dispute. Neither is there any rule in the Respondent's Regulations, which would be binding on both parties, providing for such a remedy to CAS. Furthermore, the Panel adopts the ruling in the Cole case:

*“Articles 59-61 of the FIFA Statutes, the FIFA Circular 827 and the FIFA press releases of 12 December 2002 and 19 October 2003, cannot be interpreted as providing for such a mandatory right of appeal from FAPL decisions. Moreover, the CAS jurisprudence suggests that if the FIFA Statutes did compel the Respondent to provide for a right of appeal from its decisions, no right of appeal to the CAS would exist until the Respondent had made provision for this right in its statutes or regulations.*

*[...] the possible adoption of an arbitration clause that confers jurisdiction on the CAS, by a National Federation or a League, is not solely dependent upon the will of such a body, as it is also subject to the law of the country where the National Federation or League in question has its seat”.*

10. It follows that, absent any rule in the Respondent's regulations, providing for an appeal to the CAS, the latter has no jurisdiction to hear such an appeal, irrespective of whether FIFA sets forth that such decision issued by its members are subject to an appeal to the CAS.
11. Besides, the Respondent has declined any potential offer to have the matter arbitrated voluntarily by the CAS.
12. Therefore, the CAS does not have jurisdiction to rule on the appeal filed by the Appellant in the present arbitral proceedings.

**The Court of Arbitration for Sport rules that:**

1. The Court of Arbitration for Sport has no jurisdiction to decide the present dispute between Tuti Sport Club and Sudan Football Association.
2. The appeal and amended appeals filed by Tuti Sport Club on 19 October 2006, 5 and 6 November 2006 are inadmissible.
3. The arbitration procedure CAS 2006/A/1171 Tuti Sport Club v. Sudan Football Association shall be terminated and removed from the CAS roll.

(...).