Arbitration CAS 2005/A/889 Mathare United FC v. Al-Arabi SC, award of 12 April 2006

Panel: Prof. Massimo Coccia (Italy), President; Mr Dirk-Reiner Martens (Germany); Mr José Juan Pintó (Spain)

Football
Training compensation
Method for calculating the training compensation
Period of training
Hierarchy of FIFA rules
Burden of proving the "clear disproportion" of the training compensation

1. **For transfers outside the EU/EEA area, FIFA rules clearly state that one must look at the category of the training club and at the costs of the club which has hired the footballer. In particular, Circular 769 provides that *"whenever training compensation is due it shall be based on the costs of the country of the* new *club, […] while taking the category of the club which has effectively trained the player"*.**

2. **A club may obtain compensation only for the period during which it actually trained the player, without taking into account the previous training periods. Indeed, Circular 769 specifies that "*only years of effective training may be taken into account*", making also reference to "*full years of proper and proven training*".**

3. **The FIFA Circulars are administrative measures which are – as sources of law within the FIFA legal system – hierarchically subordinate to the FIFA Regulations. Accordingly, although FIFA Circulars usefully and legitimately serve the purposes of implementing, detailing and interpreting the FIFA Regulations, they may not amend them. As a result, if a provision contained in a FIFA Circular is incompatible with a provision contained in FIFA Regulations, the former should yield to the latter (*lex superior derogat inferiori*). In addition, if different FIFA Circulars contain incompatible provisions, the later in time must prevail (*lex posterior derogat priori*).**

4. **Pursuant to Circular 826, the amount of the training compensation calculated on the basis of the indicative amounts can be adjusted if the result *"is clearly disproportionate to the case under review"*. The burden of proving the "clear disproportion" falls on the party objecting to the training compensation resulting from the indicative amounts and asserting that such compensation should be "adjusted". The objecting party bears the burden of adducing enough evidence to substantiate its assertion that the amount calculated in accordance with the table of Circular 826 is not only *disproportionate* but also *clearly* so. This means that any party challenging before the CAS the compensation calculated through the indicative amounts has the burden of submitting clear and convincing evidence, to the comfortable satisfaction of the panel, that the case under**

review involves truly particular circumstances and that the calculated compensation must be adjusted.

The Appellant Mathare United Football Club (hereinafter "Mathare United" or the "Appellant") is a football club with headquarters in Nairobi, Kenya, affiliated to the Kenya Football Association (hereinafter the "Kenyan Federation" or "KFA"), which in turn is affiliated to FIFA.

The Respondent Al-Arabi Sports Club (hereinafter "Al-Arabi" or the "Respondent") is a football club with headquarters in Doha, Qatar, affiliated to the Qatar Football Association (hereinafter the "Qatar Federation" or "QFA"), which in turn is affiliated to FIFA.

The present dispute arises from a transfer of the Kenyan football player D., born in 1985 (according to his Kenyan passport), from the Appellant to the Respondent.

On 10 January 2002, the Player signed a first professional football contract with Mathare United, effective from 1 January 2002 until 31 January 2003.

On 17 December 2002, the Player and the Appellant replaced the said contract with a new contract which was to be effective from 1 January 2002 until 31 January 2006. The Player's parents did not express their consent to the signature of the contract, as they did not provide Mathare United with the signed "Parent Consent" form.

On 12 February 2003, Mathare United wrote to the Kenyan Federation stating as follows:

"RE: D.

D. joined the Mathare Youth Sports Association (MYSA) seven years ago and played on the MYSA U12 youth teams in the 1996 and 1997 Norway Cups.

He joined Mathare United in January 2002 and has played 34 of our 58 Premier League, Cup and CAF matches and scored 17 of our 89 goals.

His contract expired on January 31, 2003 and he decided not to renew it.

I confirm that D. and our club have no further legal or financial obligations to each other.

On behalf of our club,

Jack Oguda

Team Manager".

On 13 March 2003, Mathare United wrote to the Kenyan Federation explaining that its previous letter was sent on the assumption that the Player was a minor, and stating as follows:

"[We] have carried out our own investigations and determined that D. is now at least 19 years old. On December 17, 2002, D. signed a new contract with our club up to January 31, 2006. […] At that time D. claimed he was only 17 years old and a minor. He therefore took a 'Parent Consent' for signature to validate the contract.

> *However, he never returned that form. His already existing contract expired on January 31, 2003. However, the new evidence confirms that D. was not a minor when he signed his new contract last December. Consequently, that contract is therefore legally valid and binding. Consequently D. is still a player with a valid contract with our club […]. Under the FIFA rules, D. cannot go for trials or be transferred to another club or be issued with an ITC by the KFF without the prior knowledge and agreement of our club"* (underlined in the original).

The evidence on which the Appellant relied to argue that the Player was 19 years old was a letter sent on 12 March 2003 by the Player's primary school in Nairobi stating that, according to its records, D.'s date of birth was 1983.

On 29 April 2003, the Kenyan Federation wrote to FIFA stating as follows:

> *"RE: Kenyan Player D. The Kenya Football Federation hereby wishes to inform you that the above named Kenyan Player is not attached to any club in the country as per the records available at the Federation and is therefore free to join a club of his choice.*
>
> *Should you require further information regarding the player, please do not hesitate to contact the undersigned for clarification.*
>
> *Yours in Sports,*
>
> *Allan Chenane*
>
> *Ag Secretary General".*

On 26 May 2003, the Player signed a professional football contract with Al-Arabi.

Before and after 26 May 2003, Mathare United wrote many times to the Kenyan Federation and to FIFA, always claiming that the Player had already come of age and that, accordingly, the contract signed on 17 December 2002 with Mathare United was valid and binding.

On 20 August 2004, FIFA informed the concerned parties that the question regarding the existence of a valid employment contract between Mathare United and the Player was an issue that could not be examined by FIFA, as it was an internal matter to be decided by the Kenyan Federation. FIFA also remarked that, in any event, Mathare United was entitled to the payment of training compensation given that the transfer had taken place before the Player had reached the age of 23.

On 2 September 2004, Mathare Youth Sports Association (hereinafter also "MYSA") and Mathare United jointly submitted to FIFA a claim against Al-Arabi. MYSA and Mathare United claimed the payment of a transfer fee or, on a subsidiary basis, the payment of training and solidarity compensation.

On 10 September 2004, the Player sent a letter to FIFA, declaring inter alia that he was born in 1985 in Nairobi, that from 1996 to 2000 he played for a club called Sakayonsa Football Club (hereinafter "Sakayonsa FC"), that in that period he *"never joined Mathare nor MYSA"*, that in 2000 he had joined Kakamega High School, that in 2001 he had played for Kakamega FC, that in 2002 he had signed a one-year contract with Mathare United, and that he had never renewed that contract.

On 29 November 2004, 11 March 2005 and 29 March 2005, FIFA asked the Kenyan Federation,

Mathare United and MYSA to provide any available records on the registration of D. since he was 12 years old. The Kenyan Federation never provided any records, while Mathare United and MYSA stated that there were no records because there was no requirement for individual players to be registered with the Kenyan Federation.

In particular, FIFA received from the Appellant's counsel a letter dated 26 January 2005 putting forward the following comments on behalf of MYSA and Mathare United:

> *"i. The MYSA started in 1987 and has developed into the largest self-help youth sports and community service organisation in Africa. Mathare is one of Africa's largest and poorest slums. The Mathare United professional team was established in 1994 to generate revenue to pay the players and to help cover some and eventually all of MYSA's operating costs. Every player on Mathare United is from MYSA and does 60 hours of community service every month in MYSA.*
>
> *ii. MYSA consists of 16 zones with teams playing in over 90 leagues. The player, D., has played representative football for MYSA teams to include a period during which he played professionally with Mathare United.*
>
> *iii. Between 1995 and 2000 D. was registered as a player with MYSA team, Sakayonsa (confirmed by D. in his letter to FIFA dated 10 September 2004). During that same period, D. played 17 international youth matches on MYSA teams in the FIFA recognised Norway Cup in Oslo. Sakayonsa is an MYSA team playing in the MYSA Pumwani Zone. Mr Zuben Abdallah, the MYSA Zonal Chairman there from 1996 to 2004, will confirm that D. played during the period 1995 to 2000 for Sakayonsa. In addition, MYSA can provide documentary evidence in the form of match reports and team sheets.*
>
> *iv. We have already provided FIFA with copies of the professional contracts signed by D. dated 10 January 2002 and 17 December 2002 which confirm the period during which D. was registered as a professional player with Mathare United".*

On 12 April 2005, the FIFA Dispute Resolution Chamber of the Players' Status Committee (hereinafter the "DRC") issued a decision (hereinafter the "DRC Decision" or the "Appealed Decision") which considered the issue of the existence or not of a valid and binding contract between the Player and Mathare United to be an internal matter to be judged by the Kenyan Federation. Therefore, the DRC limited its ruling only to the calculation of the training compensation fee in accordance with art. 42 para. 1 (b) (iv) of the 2001 FIFA Regulations for the Status and Transfer of Players (hereinafter the "Transfer Regulations").

The DRC was of the opinion that the training period to be taken into consideration was from 1995 until May 2003. This opinion was based on the following grounds: the Kenyan Federation did not provide the Chamber with any document or information regarding the period in which the Player had been registered with Mathare United; the Appellant's assertion that no individual registration was required by the Kenyan Federation had not been contested; the Player had not provided any evidence supporting his declaration that he had spent only one year at Mathare United.

The DRC based its calculation of the training compensation on art. 7 of the 2001 FIFA Regulations governing the Application of the Regulations for the Status and Transfer of Players (hereinafter the "Application Regulations") and on the parameters provided by the FIFA Circular no. 826 of 31 October 2002 (hereinafter "Circular no. 826"). The DRC remarked that, in cases of a transfer of a

player between countries which are outside the EU/EEA, the relevant training compensation must be based on the costs of the country in which the new club is located, while taking into account the category of the club which has effectively trained the player.

Accordingly, the DRC held that: (a) Mathare United, in accordance with the Annex to Circular no. 826, belonged to category 4; (b) the Player was transferred to a club of the Asian region; (c) under Circular no. 826, the indicative amount of category 4 for Qatar (Asia) is USD 2,000 per year of training; (d) the said indicative amount had to be multiplied by the seven and a half years of training.

In conclusion, the DRC decided that:

- Al-Arabi had to pay to the Appellant the amount of USD 15,000 as training compensation within 30 days from the notification of the decision;
- if the due amount was not paid within the stated deadline, an interest rate of 5% p.a. would have applied and the matter would have been submitted to the FIFA's Disciplinary Committee for the adoption of a sanction.

The DRC Decision was notified to the parties on 13 May 2005.

In order to implement the DRC Decision, on 22 June 2005 Al-Arabi paid USD 15,750 to Mathare United.

Mathare United appealed the DRC Decision before the CAS, filing its statement of appeal on 23 May 2005 and its appeal brief on 3 June 2005, with supporting exhibits.

LAW

Jurisdiction and Scope of Review

1. The jurisdiction of the CAS, which is not disputed, derives from articles 59-61 of the FIFA Statutes and art. R47 of the Code of Sports-related Arbitration (the "Code"). It is confirmed by the order of procedure which was signed by both parties.

2. It follows that the CAS has jurisdiction to decide the present dispute.

3. Then, according to Article R58 of the Code, the "*Panel shall have full power to review the facts and the law. It may issue a new decision which replaces the decision challenged […]*". It follows that the Panel has full scope of review and may adjudicate this dispute *de novo*, without being limited to confirming or annulling the findings and ruling of the DRC.

Applicable Law

4. Article R58 of the Code reads as follows:

"The Panel shall decide the dispute according to the applicable regulations and 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 application of which the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision".

5. Then, Article 59.2 of the FIFA Statutes provides as follows:

"The CAS Code of Sports-Related Arbitration governs the arbitration proceedings. With regard to substance, CAS applies the various regulations of FIFA […] and, additionally, Swiss law".

6. The Panel holds that the *"applicable regulations"* are all FIFA rules material to the dispute at stake, as well as the various Circulars implementing those regulations. Then, in accordance with the Code and the FIFA Statutes, any aspect of the present dispute which is not covered by the FIFA regulations must be subsidiarily governed by Swiss law.

7. With regard to the FIFA regulations, the Panel notes that on 18 December 2004 FIFA issued a new set of regulations for the status and transfer of players, which came into force on 1 July 2005. However, Article 26 (Transitional Measures) of such 2005 Regulations, as amended by the FIFA Executive Committee on 10 September 2005, provides that "any case that has been brought to FIFA before these Regulations come into force shall be assessed according to the previous regulations". As the case at stake has been brought to FIFA before 1 July 2005, reference should be made only to the FIFA regulations adopted on 5 July 2001, i.e. the already mentioned Transfer Regulations and Application Regulations. In addition, the Panel notes that the FIFA Circulars no. 769 of 24 August 2001 ("Circular 769"), no. 799 of 19 March 2002 ("Circular 799") and no. 826 of 31 October 2002 ("Circular 826") are also of some relevance.

8. With regard to the application of FIFA rules, the Panel wishes preliminarily to point out that it concurs with the following opinion expressed by the CAS in the case 2003/O/506:

"the FIFA Circulars are administrative measures which are – as sources of law within the FIFA legal system – hierarchically subordinate to the FIFA Regulations. Accordingly, although FIFA Circulars usefully and legitimately serve the purposes of implementing, detailing and interpreting the FIFA Regulations, they may not amend them. As a result, if a provision contained in a FIFA Circular is incompatible with a provision contained in FIFA Regulations, the former should yield to the latter (lex superior derogat inferiori). In addition, if different FIFA Circulars contain incompatible provisions, the later in time must prevail (lex posterior derogat priori)".

Merits

A. Findings of the Panel concerning the Player's age and career

9. As preliminary issues of fact, to be determined in view of the possible assessment of a compensation in favour of the Appellant, the Panel must find out the exact age of the Player and the details of his football career during his training years in Kenya.

10. As to the Player's age, the Appellant argued before FIFA that the Player was born in 1983 and not in 1985, with the consequence that on 17 December 2002 the Player would not have been a minor requiring his parents' written consent to validly sign a contract. However, the only supporting evidence submitted by the Appellant is a letter from the Player's primary school in Nairobi stating that D.'s was born in 1983 *"according to the [school's] Admission book"*. In contrast, the Respondent provided the Panel with a copy of the Player's passport, where it is clearly reported that his date of birth is 1985. The Panel deems the passport, issued by the Republic of Kenya, to be compelling evidence of the Player's age and, accordingly, finds that the Player was born in 1985.

11. As to the Player's career, the Player testified that he played with Mathare United only in 2002, while in 2001 he played with Kakamega FC and until 2000 he played with Sakayonsa FC. Both the Appellant's briefs and Mr Bob Munro's witness statement confirm the Player's declaration, specifying however – and giving evidence thereof – that Sakayonsa FC is a club affiliated with MYSA.

12. The Appellant claims that MYSA and Mathare United are basically a single organization managed jointly and with finances which are interrelated. However, the Appellant did not provide any evidence whatsoever of a formal link between the two entities. Actually, the Panel notes that Mr Munro, who is at the same time Chairman of the Board of Trustees of MYSA and Chairman of Mathare United, declares in his witness statement that *"MYSA is registered under the Kenyan Societies Act"* whereas Mathare United *"is a Limited Company, wholly owned by XXCEL Africa Ltd"*. Mr Munro also testifies that MYSA and Mathare United *"cooperate in helping the impoverished youth in the Mathare slums and the Mathare professional team voluntarily fields only players who have been developed through the MYSA system"*.

13. The Panel is indeed impressed with the praiseworthy social and community work done by MYSA and by Mathare United. However, Mr Munro's evidence (see the previous paragraph) clearly indicates that, from a formal point of view, MYSA and Mathare United are two distinct entities – MYSA a not-for-profit organization and Mathare United a limited company – which in fact "cooperate" but are not legally integrated. In particular, it appears to the Panel that, while Mathare United is a football club, MYSA is not a club but rather an association aggregating youth football clubs and organizing competitions and activities for them. The fact itself that the claim before the FIFA bodies was brought by both entities further proves that they are legally separate entities.

14. Therefore, on the basis of the evidence on file, the Panel finds that Mathare United is a professional football club legally distinct from and formally unrelated to the amateur organization named MYSA. The Panel finds also that: (i) the Player played until 2000 for Sakayonsa FC, within MYSA, (ii) he played for the amateur club Kakamega FC in 2001, and finally (iii) he played for Mathare United from 1 January 2002 until 31 January 2003. After that date, the Player was a free agent and had the right to sign a professional contract with any club of his choice, as clearly attested by Mathare United on 12 February 2003 and by the Kenyan Federation on 29 April 2003.

B. Standing of the Appellant

15. In the proceeding before the DRC, the claim for compensation against Al-Arabi was brought on behalf of both Mathare United and MYSA jointly. However, the DRC Decision was appealed to the CAS only by Mathare United and not by the distinct entity MYSA. Therefore, with regard to MYSA and its claims, the Panel is of the opinion that the DRC Decision must be considered as res judicata, and the CAS may adjudicate only on claims pertaining to Mathare United and not on claims pertaining to MYSA.

16. However, the Appellant claims compensation both for the period in which the Player played for Mathare United and for the years in which the Player played as an amateur within MYSA. Yet, the Appellant has not provided any evidence of a legal proxy given by Sakayonsa FC and/or MYSA to Mathare United in order to represent their claims before the CAS. Indeed, the Panel sees no evidence nor legal guarantee that any compensation eventually granted to Mathare United in reference to the Sakayonsa FC and MYSA training years would actually be received by Sakayonsa FC or by MYSA.

17. Accordingly, the Panel is of the opinion that the Appellant is not entitled to properly bring a claim for compensation against the Respondent in reference to the Player's training periods with Sakayonsa FC and MYSA. The Panel thus holds that the Appellant has standing to claim compensation only in reference to the Player's training period with Mathare United.

C. Assessment of the training compensation due to the Appellant

a) Method for calculating the training compensation fee

18. It is common ground between the parties that the Respondent is entitled to receive from the Appellant some pecuniary compensation for having trained the Player. Both parties also concur that the training compensation must be calculated on the basis of the "indicative amounts" set forth in Circular 826. However, the parties have different views on the interpretation of the FIFA rules and, thus, on the amount of training compensation to be paid.

19. In particular, the Appellant contends that the training compensation is to be determined by taking into account the category to which the new club (Al-Arabi) belongs, while the

Respondent contends that reference should be made to the category of the club which trained the Player (Mathare United).

20. The Panel notes that, for transfers outside the EU/EEA area, FIFA rules clearly state that one must look at the category of the training club and at the costs of the club which has hired the footballer (see Articles 7.1 and 7.3 of the Application Regulations, Section 2.b of Circular 769, and Section ii of Circular 826). In particular, Circular 769 provides that *"whenever training compensation is due it shall be based on the costs of the country of the new club, […] while taking the category of the club which has effectively trained the player"*. Accordingly, the Panel does not accept the interpretation offered by the Appellant on this issue.

21. In accordance with the applicable FIFA rules, the Panel observes that the training compensation in the present case must be calculated as follows. The Panel must first ascertain the number of years during which the Player was trained by the Appellant between the ages of 12 and 21, i.e. between 1997 and 2006. Then, as Qatar belongs to the Asian Confederation, the training compensation fee shall be obtained by multiplying the indicative amount set for Asia and corresponding to the category of Mathare United by the number of years of training.

b) Period of training

22. The Panel has already held that the Appellant may obtain compensation only for the period during which it actually trained the Player, without taking into account the previous training periods with Sakayonsa FC and MYSA. Indeed, Circular 769 specifies that *"only years of effective training may be taken into account"*, making also reference to *"full years of proper and proven training"*. This principle has been confirmed by the CAS jurisprudence (CAS 2004/A/594) It is undisputed that, before being hired by Al-Arabi, Mathare United trained the Player only from January 2002 to January 2003, that is the period for which the Player signed a contract with Mathare United on 10 January 2002.

23. Accordingly, the Panel finds that 2002 is the only full year of proper and proven training which can be credited to the Appellant. As a consequence, the Panel holds that only one year of training shall be taken into account for calculating the training compensation due to Mathare United.

c) Categorisation of Mathare United and calculation of the compensation on the basis of the indicative amounts

24. As said, compensation must be calculated by taking into account both the indicative amount specified in Circular 826 for Asia and the category of Mathare United. In this respect, the Appellant has objected to the category 4 attributed by the DRC, arguing that it should be classified in category 2, or at least 3.

25. According to the table that the FIFA Secretariat attached to Circular 826, Kenyan clubs could only be classified in category 4. However, the Panel notes that this classification does not comply

with the clubs' categorisation set out by art. 6 of the Application Regulations and then reiterated by Circulars 769 and 799. Indeed, according to art. 6 of the Application Regulations, all first-division clubs of countries with professional football which are not in category 1 shall be in category 2. Category 4 is reserved only to *"all fourth- and lower division clubs of the national associations in category 1"*, *"all third- and lower division clubs in all other countries with professional football"* and *"all clubs in countries with only amateur football"*.

26. As Kenya is a country with professional football and the Appellant is a first-division club in such country, a classification in category 4 would be in clear breach of the Application Regulations. The Panel is unable to find any provision of the FIFA regulations which could entitle the FIFA Secretariat to draft a table departing from the established mandatory categorization. Even Circular 826 itself, to which the table issued by the FIFA Secretariat was attached, requires *"following the guidelines contained in art. 6 of the Application Regulations"*.

27. Therefore, the Panel is of the opinion that, in order to comply with art. 6 of the Application Regulations and with the ensuing Circulars (and in line with the Panel's view on the hierarchy of FIFA rules as stated above), the Appellant, as a professional first-division club, could only be classified either in category 1 or in category 2. As Circular 826 provides no indicative amounts for category 1 in Africa or Asia, this implies that no African or Asian club can be equated to the top level clubs of the top football countries. Therefore, the Panel finds that the Respondent must be classified in category 2.

28. The Panel takes comfort from the fact that its opinion on this issue is wholly consistent with the opinion expressed in CAS 2003/O/506 on the same issue. In that case the Panel held that, in case of conflict, the Application Regulations must prevail over the table attached to Circular 826 and, thus, it classified a professional club in category 2 rather than 3.

29. Accordingly, the Panel finds that the calculation of the training compensation fee for the only relevant year of training (2002) must be made on the basis of the indicative amount of category 2 for Asia. As a result, on the basis of the indicative amount set forth by Circular 826, the training compensation due to the Respondent is USD 40,000.

d) Adjustment for "clear disproportion"

30. Pursuant to Circular 826, the Panel has the power to adjust the amount calculated on the basis of the indicative amounts if the result is *"is clearly disproportionate to the case under review"*.

31. The burden of proving the "clear disproportion" falls on the party objecting to the training compensation resulting from the indicative amounts and asserting that such compensation should be "adjusted". In the Panel's view, the objecting party bears the burden of adducing enough evidence to substantiate its assertion that the amount calculated in accordance with the table of Circular 826 is not only disproportionate but also clearly so. This means that any party challenging before the CAS the compensation calculated through the indicative amounts has the burden of submitting clear and convincing evidence, to the comfortable satisfaction of the

Panel, that the case under review involves truly particular circumstances and that the calculated compensation must be adjusted.

32. The Appellant submits that D. is a highly sought after international footballer, whose recent market value may range from USD 3.7 million to USD 4.5 million. However, the Appellant acknowledges that this is "press speculation" and, as supporting evidence, it refers the Panel to some press extracts.

33. The Panel remarks that the sports press is always full of rumours concerning the football players' market, but quite often those rumours are merely unfounded speculation. Accordingly, the Panel finds that the Appellant has provided no clear and convincing evidence that the amount of USD 40,000 is "clearly disproportionate" as compensation for a single year of training. As a result, the Panel holds that the Appellant has not satisfied its burden of proof that the compensation calculated on the basis of the indicative amounts must be adjusted so as to reflect some particular circumstances of the case under review.

34. Accordingly, the Panel holds that the Respondent owes to the Appellant the total amount of USD 40,000 as training compensation fee related to the Player. However, the Respondent already paid USD 15,750 to the Appellant after the DRC Decision. Therefore, the Respondent shall pay USD 24,250 to the Appellant as final settlement of the training fee, in addition to interest calculated as set forth herein below.

D. Interest

35. As set out above, the Respondent must pay an amount of USD 40,000 to the Appellant. The Panel notes that the Appellant claimed interest on the amount due as training compensation at a rate of 5% per annum as from 24 June 2003 or, in the alternative, as from 14 March 2004.

36. According to art. 9 of the Application Regulations, *"the new club shall pay the training club the amount due as compensation for training and education pursuant to the above provisions at the latest within 30 days of the signature of the first contract under the terms of Art. 4 of the FIFA Regulations […]"*. Therefore, as this provision sets the deadline for the payment on the 30th day after the signature of the contract, art. 102 para. 2 of the Swiss Code of Obligations applies and the debtor is on notice to pay an amount even in the absence of the creditor's specific warning (see CAS 2003/O/469, CAS 2003/O/500 and CAS 2003/O/506).

37. Absent any provision on interest in the FIFA rules and absent any evidence of a specific agreement between the parties, and pursuant to the CAS jurisprudence (CAS 2003/O/486, CAS 2003/O/506, CAS 2004/A/696), the Panel decides to award interest at an annual rate of 5%, in accordance with art. 104 para. 1 of the Swiss Code of Obligations, which provides as follows:

"1 Le débiteur qui est en demeure pour le paiement d'une somme d'argent doit l'intérêt moratoire à 5 pour cent l'an, même si un taux inférieur avait été fixé pour l'intérêt conventionnel".

[Translation (by the Swiss-American Chamber of Commerce): *"1 If an obligor is in default as to the payment of a financial debt, he shall pay penalty interest at five percent per annum, even if the contract provides for a lower rate"*].

38. In the present case, the Player's contract with the Respondent was signed on 26 May 2003. Therefore, the Panel holds as follows:

- On the amount of USD 24,250, interest of 5% p.a. shall run as from 25 June 2003 until the day of effective payment.
- On the amount of USD 15,750, the Appellant must pay interest of 5% p.a. for two years (from 25 June 2003 until 22 June 2005), i.e. an amount of USD 1,575.

39. In sum, the Respondent must pay to the Appellant the total amount of USD 25,825 (24,250 plus 1,575), in addition to 5% p.a. from 25 June 2003 until the day of effective payment on the amount of USD 24,250.

The Court of Arbitration for Sport rules that:

1. The appeal submitted by Mathare United F.C. is partially upheld.

2. The appealed decision issued on 12 April 2005 by the FIFA Dispute Resolution Chamber is set aside.

3. Al-Arabi S.C. is ordered to pay to Mathare United F.C. the amount of USD 25,825 (twenty-five thousand eight hundred twenty-five US Dollars), as settlement of the training compensation fee for the player D.

4. Al-Arabi S.C. is ordered to pay to Mathare United F.C. interest of 5% per annum, calculated on the amount of USD 24,250 (twenty-four thousand two hundred fifty US Dollars) as from 25 June 2003 until the day of effective payment.

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

(…).