CAS 2020/A/6796 Andriamirado Aro Hasina Andrianamimanana & Kaizer Chiefs FC v. Fosa Juniors FC & FIFA

ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

in the arbitration between

1/ Andriamirado Aro Hasina Andrianamimanana, Madagascar

2/ Kaizer Chiefs FC, South Africa

Both represented by Mr M. T. De Bruin, Attorney-at-Law, Johannesburg, South Africa

-Appellants-

and

1/Fosa Juniors FC, Madagascar
Represented by Mr Patrice Van Oostaijen, Attorney-at-Law, Amsterdam, The Netherlands

-First Respondent-

2/Fédération Internationale de Football Association (FIFA), Zürich, Switzerland
Represented by Mr Saverio Paolo Spera, Senior Legal Counsel, and Mr Alexander Jacobs, Legal Counsel, FIFA Litigation Department.

-Second Respondent-

I. THE PARTIES

1. Mr Andriamirado Aro Hasina Andrianamimanana (the "Player" or the "First Appellant") is a professional football player of Malagasy nationality. The Player is currently registered with the South African club Black Leopards FC. The Player's nickname is "Dax".

2. Kaizer Chiefs FC ("Kaizer Chiefs" or the "Second Appellant") is a professional South African football club affiliated with the South African Football Association (the "SAFA"), which, in turn, is affiliated with the Fédération Internationale de Football Association.

3. Fosa Juniors FC ("Fosa Juniors" or the "First Respondent") is a Malagasy football club affiliated with the Malagasy Football Association (the "MFA"), which, in turn, is affiliated with the Fédération Internationale de Football Association.

4. The Fédération Internationale de Football Association ("FIFA" or the "Second Respondent") is the world governing body of football, whose headquarters are located in Zurich, Switzerland.

II. FACTUAL BACKGROUND

A. BACKGROUND FACTS

5. The elements set out below are a summary of the main relevant facts as established by the Panel on the basis of the decision rendered by the FIFA Dispute Resolution Chamber on 5 December 2019 (the "Appealed Decision"), the written submissions of the Parties and the evidence filed. Additional facts may be set out, where relevant, in the legal considerations of the present Award.

6. According to Fosa Juniors, on 1 November 2016, the Player and Fosa Juniors signed an employment contract entitled "*Contrat de Footballeur Professionel*" (the "Employment Contract"), valid as from the date of signature until 31 October 2020.

7. Under the Employment Contract, the Player was entitled to receive the following remuneration:

   - A monthly gross salary of Malagasy Ariary ("MGA") 1,500,000, payable at the end of each month;
   - Accommodation, transportation, restoration and sports equipment provided by Fosa Juniors.

8. On 7 June 2018, the Player and Kaizer Chiefs signed a document entitled Contract Proposal (the "Proposal"), under which the Player should join the said club for a two-year period starting from 1 July 2018 with one-year option.

9. With regard to the remuneration of the Player, the Proposal stated as follows ("R" being South African Rand ("ZAR")):

"*Salary (Gross)*
R 60,000-00 from 1 July 2018 to 30 June 2019
R 65,000-00 from 1 July 2019 to 30 June 2020
R 70,000-00 from 1 July 2020 to 30 June 2021 – Option
Image & Autograph Rights:
The club shall pay for the services of the player an amount of R 960,000-00 for the duration of the contract as follows:
R 280,000-oo on or before 31 July 2018
R 320,000-00 on or before 31 July 2019
R 360,000-00 on or before 31 July 2020 – Option
Bonuses
As per the club's bonus structures."

10. By email of 15 June 2018, Fosa Juniors wrote, *inter alia*, as follows to Kaizer Chiefs:

"*[...] During the COSAFA Castle Cup, we heard information that Kaizer Chiefs scouted one of our players [the Player]. [...]*

We would like you to know the [Fosa Juniors] stays open for serious offers. To avoid any troubles in this case, we suggest you, if you are interested by the player, to contact us by phone call or by mail. [...] [e-mail and phone number inserted]"

11. On 29 June 2018, and without any reply from Kaizer Chiefs, Fosa Juniors wrote, *inter alia*, as follows to Kaizer Chiefs:

"*Since our first email remains unanswered we allow ourselves to write you again, in particular viewing you have posted on your website that DAX signed up for your club and viewing there is the usual buzz around Dax's transfer.*

We would like to state that DAX is under contract with Fosa till end 2019 and received a salary as fulltime football player, i.e. has no other job. He is a professional football player under FIFA rules. The [MFA] will confirm his status.

We understand that the reps of Kaizer Chiefs have approached Dax during the Cosafa Cup and a written offer has been made to Dax, a copy of which is in our possession.

We confirm that we are open to discuss a transfer from our club to Kaizer Chiefs provided that we can reach an agreement and all rules and regulations in respect of transfers will be respected."

12. In its reply of the same day, Kaizer Chiefs replied, *inter alia*, as follows:

"*[the Player] Dax was approached by Kaizer Chiefs regarding his availabilities for the upcoming 2018/2019 season.*

Dax met with representatives from Kaizer Chiefs where he was accompanied by two members of the [MFA's] travelling party for the Cosafa tournament.

Dax along with the representatives offered the information that he was an amateur player, playing in an amateur league for an amateur club [Fosa Juniors].

He also said that he was free of any professional contract and was free to join a club of his choice, on receipt of a professional contract offer.

After discussions, he was later in the day presented with an offer from Kaizer Chiefs and agreed to this offer, duly signing a legally binding document, outlining in detail, the terms and conditions of this pre-contract agreement starting of July 1st 2018.

[...]

Our stance is very clear and is set out as follows:

1. *Dax has signed a pre-contract with Kaizer Chiefs that comes into effect on July 1st 2018. Kaizer Chiefs will be processing the TMS and applying for ITC.*
2. *We expect your corporation relating to the ITC or if you feel you have a dispute, we ask you to submit evidence via the TMS platform to substantiate your claims made in the media that Dax duly has a professional contract until 2020 with your football club.*
3. *Should it be found that this is true and FIFA and [MFA] agree that Dax has a legally binding professional contract with Fosa Juniors, then Kaizer Chiefs will be left with no choice, other than to report the matter to FIFA and the MFA, requesting as per FIFA law, that the player is duly banned from signing two contracts with two football clubs. The FIFA rules are very clear on players who sign dual (two) playing contracts.*
4. *If Fosa Juniors do not provide this evidence to support the claim, then we request that the ITC is granted and the player is released with immediately effect.*
5. *If the player is not released and does not travel to South Africa, then we will apply to FIFA and the MFA, to have the player suspended from all football activities in Madagascar, due to the fact that as from July 1st 2018 he is duly contracted to Kaizer Chiefs.*

Of course, we don't want this situation to become a media frency (sic!) *and we are always open to reasonable discussions, including any compensation request in order for good relationship to be established.*

[...]"

13. On 4 July 2018, Kaizer Chiefs informed Fosa Juniors that "*after consulting with our Board of Directors and Football Manager the compensation offered to Fosa Juniors is USD 25,000. Trusting you will accept our offer for which we wish to thank you in advance.*" (the "Offer").

14. This Offer was rejected by Fosa Juniors on 5 July 2018 with the words "*Thank you for coming back to us but your offer is far below the expectations of our Boards of Directors.*"

15. On 7 August 2018, the Player and Kaizer Chiefs signed an employment contract (the "New Contract"), valid as from 1 July 2018 until 30 June 2021, under which the Player was entitled to receive remuneration in accordance with the Proposal.

16. According to the information available in the TMS, on 14 August 2018, SAFA requested the ITC from the MFA, which was rejected by the MFA since "*there has been no mutual agreement regarding the early termination of the employment contract between the former club and the professional player.*"

17. Still according to the information available in the TMS, on 12 September 2018, the Single Judge of the Players Status Committee passed a decision authorising the provisional registration of the Player with Kaizer Chiefs.

B. Proceedings before FIFA Dispute Resolution Chamber (the "FIFA DRC")

18. On 11 December 2018, Fosa Juniors lodged a claim with FIFA against the Player and Kaizer Chiefs for breach of contract, claiming payment of the total amount of EUR 150,000 plus 5% interest "*as from the abovementioned amount is due*", corresponding to:

- EUR 61,000 as the average of the remuneration due until the expiry of the [Employment Contract], which Fosa Juniors calculated as follows:
    - MGA 82,000,000, equivalent to EUR 21,000, as the residual value of the [Employment Contract] between 1 July 2018 and 31 October 2020;
    - EUR 100,000, equivalent to ZAR 1,578,300, as "*the remuneration under the New Contract*";
    - Compensation due to the specificity of sport;
    - Sporting sanctions to be imposed on the Player and Kaizer Chiefs;
    - Legal fees reimbursement.

Fosa Juniors further requested the imposition of sporting sanctions on Kaizer Chiefs.

19. In support of its claim, Fosa Juniors submitted, *inter alia*, that

- The Player had been registered with Fosa Juniors as a professional from April 2016;
- The Player was under a professional contract with the club and, by leaving it and signing another contract with another club, the Player therefore breached the Employment Contract;
- Fosa Juniors did in fact receive an offer of USD 25,000 from Kaizer Chiefs for the transfer of the Player, which proves that Kaizer Chiefs recognised the status of the Player as a professional.

20. In his reply to the claim, the Player submitted, *inter alia*, that

- He had never signed a professional contract with Fosa Juniors and that his alleged signature on the Employment Contract had been forged;
- Fosa Juniors had never paid any of his expenses besides his salary, and he had never been paid more than the expenses he incurred for playing football.

21. In its reply to the claim, Kaizer Chiefs submitted, *inter alia*, that:

- The New Contract was the Player's first professional contract;
- If the Player and Kaizer Chiefs were found liable, the compensation should be limited to EUR 32,546.18, which is calculated as being the average earnings between the Employment Contract and the New Contract.

22. The FIFA DRC concluded, after having confirmed its competence and after having conducted a thorough analysis of all the evidence submitted by the Parties, that the Player and Fosa Juniors entered into the Employment Contract.

23. With regard to whether or not the Player was to be considered a professional, the FIFA DRC referred to article 2 paragraph 2 of the Regulations of the Status and Transfer of Players (the "FIFA RSTP"), which stipulates that "*A professional is a player who has a written contract with a club and is paid more for his football activity than the expenses he effectively incurs. All other players are considered to be amateurs.*"

24. Based on the information and documents in its possession, the FIFA DRC then concluded that the Player received a salary as per the criteria set out in the above-mentioned provision, even more as the Player did not provide any evidence to prove the contrary.

25. Furthermore, the FIFA DRC recalled that Kaizer Chiefs offered the amount of USD 25,000 as transfer compensation to Fosa Juniors in order to register the Player as a professional.

26. Given these circumstances, and as it is undisputed that the Player and Kaizer Chefs entered into the New Contract when the Player was still under contract with Fosa Juniors, the FIFA DRC was left with no other option but to conclude that the Player terminated the Employment Contract without just cause.

27. On 5 December 2019, the FIFA DRC rendered the Appealed Decision and decided, *in particular*, that:

"*1. The claim of [Fosa Juniors] is partially accepted.*

2. [the Player] is ordered to pay to [Fosa Juniors], within 30 days as from the date of notification of this decision, compensation for breach of contract in the amount of MGA 157,572,000 plus 5% interest p.a. as from 11 December 2018 until the date of effective payment.

3. [Kaizer Chiefs] is jointly and severally liable for the payment of the aforementioned compensation.

4. In the event that the aforementioned amount plus interest is not paid within the stated time limit, the present matter shall be submitted, upon request, to the FIFA Disciplinary Committee for consideration and a formal decision.

5. Any further claim lodged by [Fosa Juniors] is rejected.

6. [Fosa Junior] is directed to inform [the Player] and [Kaizer Chiefs] immediately and directly of the account number to which the remittance it to be made and to notify the Dispute Resolution Chamber of every payment received.

7. A restriction of four months on his eligibility to play in official matches is imposed on [the Player]. This sanction applies with immediate effect as of the date of notification of the present decision. The sporting sanction shall remain suspended in the period between the last official match of the season and the first official match of the next season, in both cases including national cups and international champions for clubs.

8. [Kaizer Chiefs] shall be banned from registering any new players, either nationally or internationally, for two next entire and consecutive registration periods following the notification of the present decision."

III. SUMMARY OF THE ARBITRAL PROCEEDINGS BEFORE THE CAS

28. On 24 February 2020, the Appellants filed their joint Statement of Appeal in accordance with Articles R47 and R48 of the CAS Code of Sports-related Arbitration (the "CAS Code") against the Appealed Decision.

29. On the same date, the Appellants filed their joint Request for Provisional Measures within the meaning of R37 of the CAS Code, requesting that the payment of compensation or any other amount in respect of the Appealed Decision and the implementation of sporting sanctions against the Appellants in compliance with the said decision be suspended until the finalisation of the CAS proceedings in *CAS 2020/A/6796 Andriamirado Aro Hasina Andrianamimanana & Kaizer Chiefs FC v. Fosa Juniors FC & FIFA*.

30. On 11 March 2020, the Second Respondent filed its Answer to the Request for Provisional Measures, requesting the CAS to reject the Appellants' request for provisional measures.

31. The First Respondent did not file an Answer to the Request for Provisional Measures within the prescribed deadline, but on 30 March 2020, the First Respondent filed its Answer to the Appellants' joint Appeal Brief, which was forwarded to the Appellants on 5 May 2020 together with the Answer of the Second Respondent. When filing its answer, the First Respondent also forwarded a letter, which was also forwarded to the Appellants, stating as follows:

"*(...) Pursuant to article R55 of the Code for Sports-related Arbitration (the "Code"), 1st Respondent hereby submits his Answer in the abovementioned appeals arbitration proceeding against A.A.H. Andrianamimanana & Kaiser Chiefs FC ("Appellants"). The Answer has been sent by email and courier.*

Furthermore, I kindly request your attention for the following:
The Appellants claim that the involved employment contract is forged and that the signature of the players is not his signature. In order to support its position, it was the intention of 1st Respondent to submit a written statement from its director, who was

present at the moment of contract signing, to further explain in detail about that occasion. Although 1st Respondent is of the opinion that the burden of proof for this lies on the Appellants, she wishes to tell the Panel accurately about the factual circumstances at the signing of the contract, including the placing of the signature. However, due to the extraordinary situation we are currently facing with the Covid-19-pandemic, 1st Respondent was not able to provide me with the written statement in time. Therefore, we respectfully ask the Panel permission to provide the Panel with this statement as soon as possible, ultimately within three weeks as from today. We thank you in advance."

32. The Appellants did not react to the content of this letter.

33. By letter of 1 April 2020, and following the Appellants' payment of their share of the advance of costs, the Second Respondent was granted a 20-day deadline to file its Answer to the Appellants' joint Appeal Brief. Later on, and with reference to the CAS Emergency Guidelines, this deadline was extended by two weeks.

34. On 15 April 2020, and in accordance with Article R54 of the CAS Code, the Parties were informed by the CAS Court Office that the Panel had been constituted as follows: Mr Lars Hilliger, Attorney-at-Law in Copenhagen, Denmark (President of the Panel), Advocate Corné Goosen, Advocate of the High Court of South Africa, and Mr Rui Botica Santos, Attorney-at-Law in Lisbon, Portugal.

35. On 5 May 2020, the Second Respondent filed its Answer.

36. By letter of 12 May 2020, the First Appellant submitted a written statement from Mr Arno P. Steenkist, President of the First Respondent, in which connection the other Parties were invited to comment on the admissibility of the said statement.

37. The Second Respondent noted that the document in question could be considered as a party statement and that the First Respondent already mentioned its intention to attach this statement as an exhibit to the Answer of 30 March 2020 and requested the Panel's permission to provide it at a later stage due to external contingencies.

38. The Appellants, on the other hand, objected to the admissibility of the statement, submitting, *inter alia*, that no exceptional circumstances were to be found in relation to the late submission.

39. By letter of 13 May 2020, the Parties were informed that the Panel had decided to hold a hearing in this case.

40. On 26 May 2020, the Order of Procedure was forwarded to the Parties, who signed and returned it.

41. On 16 June 2020, the Panel issued its Order on Request for Provisional Measures, dismissing the Appellant's request, since, in essence, the Panel already found that in the present matter, the requirement of irreparable harm is not met, neither with regard to the First Appellant nor with regard to the Second Appellant.

42. By letter of 6 July 2020, the Appellants requested that the *alleged original professional contract* be forwarded to the SAFA in order for the Appellant to inspect it before the hearing.

43. This document was eventually forwarded to the SAFA, where, on 18 August 2020 it was inspected, *inter alia*, by Ms Lourika Buckley and representatives of the Second Appellant.

44. By letter of 10 July 2020 from the CAS Court Office, the Parties were informed, *inter alia*, that:

"*[...] Finally, referring to the Statement of Mr Arno P. Steenkist filed in 12 May 2020 and to the Appellants' and Second Respondent's respective letters of 8 and 9 June 2020, the Panel notes (i) that the First Respondent advised already on 30 March 2020 that, due to the current exceptional circumstances, it would file this written statement after the submission of its Answer; (ii) that the Appellant could have opposed to this request at that moment but rather chose to wait until the filing of such document to raise an objection; and (iii) that the Appellant failed to comment on the substance and the content of such Statement.*

Besides, the Panel finds that the document submitted on 12 May 2020 is rather a declaration signed by the President of the First Respondent which, on a procedural point of view, shall not be considered as a witness statement.

In light of the above and based on the circumstances, the written statement of Mr Arno P. Steenkist filed on 12 May 2020 is admitted to the file. The decision to admit such document is made by the President of the Panel in terms of the powers conferred on him in Article R56 of the Code.

The Panel has noted that the Appellants failed to comment on the content and substance of such Statement, however, the Appellant will be given the possibility to do at the hearing. [...]"

45. On 27 August 2020, the Appellants submitted an "Addendum to examination of signature report dated 30 July 2019" from the expert witness, Ms Lourika Buckley, (the "Supplementary Report"), requesting it to be included in the file, in which connection the Respondents were invited to comment on the admissibility of said report.

46. By letters of 2 September and 4 September 2020, respectively, both Respondents objected to the admissibility of the Supplementary Report.

47. By letter of 8 September 2020, the Parties were informed as follows:

"*The Panel has considered the Respondent's comments on the admissibility of the Addendum to examination of signature report dated 30 July 2019 (the "Report") and the majority of the Panel has noted that the original employment contract at the core of the dispute was available during the proceedings before FIFA and could already have been inspected at that moment.*

Furthermore, the majority of the Panel considers that the Appellants had also the possibility to request the production of the original of the employment contract at an earlier stage of these arbitral proceedings in order to produce the Report with their Appeal Brief.

Considering the above, the majority of the Panel finds that the Report shall be considered as a new evidence pursuant to Article R56 of the Code and that there are no exceptional circumstances to allow the filing of such document.

In light of the above, the majority of the Panel rules that the "Addendum to examination of signature report dated 30 July 2019" shall not be admitted to the file."

48. On 9 September 2020, a hearing was held partly in person in Lausanne, partly virtually via Webex.

49. In addition to Mr Lars Hilliger, Mr Rui Botica Santos (in Lausanne) and Advocate Corné Goosen (via Webex), Mr Fabien Cagneux, Counsel to the CAS (in Lausanne), and the following persons attended the hearing:

For the Appellants:

- Mr Johannes Petrus Blignaut – Counsel (via Webex)
- Ms Tahlita van Wyk – Counsel (via Webex)

- Ms Lourika Buckley – Expert witness (via Webex)
- Mr Abdulla Ismail Mayet, Witness (via Webex)
- Mr Paul Mitchel, Witness (via Webex)

For the First Respondent:

- Mr Patrice Van Oostaijen – Counsel (via Webex)
- Mr Arno Steenkist – President (via Webex)

For the Second Respondent:

- Saverio Paolo Spera – Senior Legal Counsel
- Alexander Jacobs – Senor Legal Counsel

50. Contrary to the information previously provided to the CAS Court Office, the First Appellant did not attend the hearing after all, neither in person, nor via Webex, as the Appellants' counsel announced that his attendance had not been permitted by his current club due to national play-offs.

51. In view of these circumstances, neither of the Parties requested that the hearing be postponed or that they be given the opportunity to hear the Player's testimony at a later stage, and the Panel therefore decided to conduct the hearing, not least since the Player was still represented by his counsel.

52. At the outset of the hearing, the Parties confirmed that they had no objections to the constitution of the Panel.

53. The Parties and their witnesses were afforded ample opportunity to present their case, submit their arguments and answer the questions posed by the Panel. After the Panel's final submissions, the Panel closed the hearing and reserved its final award. The Panel took into account in its subsequent deliberations all the evidence and arguments presented by the Parties although they may not have been expressly summarised in the present Award.

54. At the end of the hearing, the Parties expressly confirmed that they had no objection to the procedure adopted by the Panel and that their right to be heard and to be treated equally had been duly respected.

IV. SUBMISSIONS OF THE PARTIES

THE APPELLANTS

55. In their Appeal Brief dated 4 March 2020, the Appellants requested the following relief:

1. *[...] that the first and the second appellant is entitled to have the appealed FIFA DRC decision to be dismissed and/or reviewed and set aside.*
2. *As a result and with reference to Article R57 of the CAS Code, we do submit that CAS does have the power to issue a new decision which replaces the decision challenged:*
3. *Furthermore, [...] there is no need for CAS to refer the matter back to the FIFA DRC.*
4. *[...], the first and second appellant seeks CAS to issue a new decision establishing that the FIFA DRC erred in its conclusions.*
5. *The first and second appellant in the appeal seeks that CAS supplement/issue a new decision and/or setting aside the [Appealed Decision].*
6. *The first appellant appeals the whole decision and request that the [Appealed Decision] is being set aside and request CAS the following specific relief:*
   6.1 Make a finding that there existed no contract between the first appellant and the first respondent, when the first appellant concluded a contract with the second appellant;
   6.2 To set aside the segments of the [Appealed Decision] to pay compensation for alleged breach of contract;
   6.3 To set aside the segments of the [Appealed Decision] regarding the four months restriction on his eligibility to play on official matches – sporting sanctions;
   6.4 Legal Costs;
   6.5 Refund the advanced cost paid by the Appellants [CHF 1,000 together with any advanced costs as determined by CAS which had to be paid).
   6.6 Costs of the arbitration proceedings to be paid by the respondents;
   6.7 Travel costs [inclusive of travel costs, accommodation and all travel related expenses in respect of attending to the CAS arbitration);
   6.8 Moral damages/costs for sport specificity;
   6.9 Further and alternative relief

6.9.1 In the event CAS rules that a professional contract existed between the first respondent and the first appellant at the time when the first appellant and the second appellant concluded a contract [which is denied by the appellants], considering the circumstances under which the contract between the first appellant and the second appellant was concluded, the first respondent hereby request that CAS review and set aside the sections of the [Appealed Decision] dealing with the sporting sanctions imposed on the first appellant.

7. *The second appellant appeals the whole decision and request that the [Appealed Decision] is being set aside and request CAS the following specific relief:*
7.1 Making a finding that there existed no contract between the first appellant and the first respondent, when the first appellant concluded a contract with the second appellant;
7.2 To set aside the segments of the [Appealed Decision] to pay compensation for alleged breach of contract;
7.3 To set aside the segments of the Appealed Decision] regarding the ban from registering any new player, either nationally or internationally. For the two next entire and consecutive registration periods following the notification of the present decision – sporting sanction.
7.4 Legal costs;
7.5 Refund the advanced cost paid by the Appellants [CHF 1,000 together with any advanced costs as determined by CAS which had to be paid).
7.6 Costs of the arbitration proceedings to be paid by the respondents;
7.7 Travel costs [inclusive of travel costs, accommodation and all travel related expenses in respect of attending to the CAS arbitration.);
7.8 Moral damages/costs for sport specificity;
7.9 Further and alternative relief
7.9.1 In the event that CAS rules that a professional contract existed between the first respondent and the first appellant at the time when the first appellant and the second appellant concluded a contract [which is denied by the appellants], considering the circumstances under which the contract between the first appellant and the second appellant was concluded, the second appellant hereby request that CAS review and set aside the sections of the appealed Decision] dealing with sporting sanctions imposed on the second appellant.

56. The Appellants' position may be briefly summarised as follows:

- When Kaizer Chiefs signed a professional contract with the Player, the Player was not under any professional contract with any other club.

- The professional contract signed with Kaizer Chiefs was the Player's first professional contract with any club.

- The Player never signed the Employment Contract with the First Respondent and his alleged signature on the said contract is not signed by him.

- The fact that the Employment Contract was not signed by the Player was proven in the submitted report from an independent handwriting expert.

- The First Respondent failed to file any evidence to rebut the independent handwriting expert's report.

- The First Respondent never proved that the signature on the Employment Contract was indeed the genuine signature of the Player.

- Before signing the professional contract with Kaizer Chiefs, the Player was playing as an amateur with the First Respondent receiving a gross amount of MGA 1,500,000 per month, which equals about MGA 1,200,000 net per month.

- This total monthly cost of the Player was in the order of MGA 1,6000,000, which amount clearly exceeds the amount paid by the First Respondent.

- The Player disputes that the First Respondent paid for his accommodation, transportation, restoration and sports equipment and further submits that the First Respondent never paid any bonuses to the Player.

- The First Respondent never produced evidence to prove that the amount paid to the Player exceeded the total monthly costs of the Player.

- Thus, the Player was not paid more for his football activities than the expenses he effectively incurred when playing with the First Respondent.

- The Malagasy league is an amateur league, the First Respondent is an amateur club, and the Player was regarded as an amateur player when playing with the First Respondent.

- The Player also regarded himself as an amateur player at that time.

- The Player was only registered with the First Respondent until 14 March 2018 and was not registered again until the provisional registration with the Kaizer Chiefs in September 2018.

- Based on that and on a balance of probabilities, it is clear that there was no professional contract between the Player and the First Respondent when Kaizer Chiefs and the Player signed the New Contract.

- Before signing the New Contract, the Player informed Kaizer Chiefs, *inter alia*, that he was playing as an amateur and that he had never signed any professional contract with any club.

- This information was also confirmed by officials from the MFA.

- Kaizer Chiefs never induced the Player to terminate the alleged Employment Contract without just cause.

- There is no evidence to support the allegation that Kaizer Chiefs induced the Player to commit a breach of the alleged Employment Contract.

- Kaizer Chiefs was always transparent in its dealing with the First Respondent.

- The First Respondent never forwarded the alleged Employment Contract to Kaizer Chiefs before the signing of the New Contract, even when requested to do so by Kaizer Chiefs.

- Furthermore, the Player was open with the First Respondent regarding the offer received from Kaizer Chiefs.

- The First Respondent never uploaded any valid evidence of the alleged professional contract with the Player.

- Had the First Respondent duly uploaded any such valid evidence of a professional contract with the Player, Kaizer Chiefs would not have signed the New Contract with the Player without the consent of the First Respondent.

- In any case, the First Respondent had no interest in the Player and never requested him to return to the club.

- The applicable standard of proof in this case should be "*on a balance of probabilities*".

- In this matter, the Appellants claim that the Second Respondent should have applied the principle of "balance of probabilities", and not the principle of "comfortable satisfaction".

- Furthermore, and without any reasons, the Second Respondent disregarded the most important evidence submitted by the Appellants before the FIFA DRC, namely the independent handwriting expert's report.

- The burden of proof that the Employment Contract was not signed by the Player lies with the Player, who submitted this allegation.

- This burden of proof was discharged by the submission of the expert's report.

- The expert's report must be dealt with as uncontested, and FIFA is not allowed to act as a layman when assessing the signature of the Employment Contract.

- Sporting sanctions are not mandatory according to article 17 (3) and (4) of the FIFA RSTP, and each situation must be analysed on a case-by-case basis.

- The Second Respondent violated certain general legal principles, such as the principle of being bound by previous standard practices.

- The Appellants should in any case not be sanctioned in this case, since both Appellants were of the impression that the Player had no professional contract with the First Respondent, combined with the fact that the Appellants are not repeat offenders.

- Rules of presumptions as the one in article 17 (4) of the FIFA RSTP are invalid in some jurisdictions.

- The sanctions imposed on the Appellants are in any case disproportionate.

- The Appealed Decision, *inter alia*, deprives the Player from his right to work for four months, thus abusing the human right to work, and the sanction imposed on the Player also causes him loss of market value and makes him unable to receive any bonuses from Kaizer Chiefs.

THE FIRST RESPONDENT

57. In its Answer of 30 March 2020, the First Respondent requested the CAS:

- "*To Reject the appeal and requests for relief of the Appellants in its entirety.*

- *To decide that the (motivated) decision of the FIFA Dispute Resolution Chamber dated 6 February 2020 will be confirmed by the CAS in its entirety.*

- *To award Respondent I with a contribution to its legal fees of EUR 20,000,-.*

- *To order Appellants to pay the CAS administration costs and arbitrator's fee.*"

58. The First Respondent's submission, in essence, may be summarised as follows:

- On 1 November 2016, Fosa Juniors and the Player signed the Employment Contract valid until 31 October 2020.

- In accordance with the provisions of the Employment Contract, the Player received as a professional football player remuneration in the gross amount of MGA 1,500,000 per month.

- In addition to this remuneration, the Player also benefited from variable bonuses to be paid by the Fosa Juniors, and the First Respondent was responsible for the payment for, *inter alia*, the Player's accommodation, transportation, restoration and sports equipment.

- During his stay with Fosa Juniors, the Player was an official member of the national team of Madagascar.

- Despite the information provided by Fosa Juniors to Kaizer Chiefs regarding the professional status of the Player with Fosa Juniors, the Player and Kaizer Chiefs decided to sign the New Contract.

- Due to the existence of the professional Employment Contract, the FMF rejected the ITC request of the SAFA through the TMS, since there had been no mutual agreement regarding an early termination of the Employment Contract. A copy of the Employment Contract was uploaded in TMS to clarify this position.

- In accordance with the FIFA RSTP, the Player is to be considered as a professional a) if he has concluded a written contract with Fosa Juniors and b) if he was paid more for his football activities than the expenses he effectively incurred.

- Those two criteria need to be cumulatively met, which they are in this case.

- First of all, there can be no misunderstanding that the Player signed the Employment Contract and that the signature on the contract is the Players' own signature.

- This is supported by the statement by Fosa Juniors's president, who was present at the signing.

- Furthermore, the signature on the Employment Contract contains a certain similarity with the Player's signature on other uncontested documents.

- The burden of proof for such alleged forgery lies with the Appellants.

- The Appellants never discharged the burden of proof to show that the Employment Contract was not signed by the Player, even if his signature is found on the original document.

- The expert report submitted by the Appellants does not prove that the Player did not sign the Employment Contract.

- Furthermore, the Panel is not bound by such a report.

- With regard to the Player's remuneration, the Player never denied having received his remuneration in the gross amount of MGA 1,500,000 per month.

- With regard to the alleged costs of the Player, first of all it must be stressed that only football-related expenses are to be taken into account when assessing the status of the Player.

- The alleged, but by Fosa Juniors disputed, costs of MGA 1,600,000 per month, as submitted by the Appellants, are not proven by the Appellants.

- Furthermore, the amount is unrealistic since the minimum monthly net income in Madagascar amounts to MGA 168,019 per month, which means that the remuneration of the Player substantially exceeded this minimum amount.

- Furthermore, the bonuses and different expenses paid by Fosa Juniors must also be taken into consideration.

- Moreover, it must be stressed that even a poor remuneration may suffice in order to qualify a player as a professional, and it is also irrelevant whether the remuneration is much higher or just a little higher than the costs incurred by a player in connection with his football activities.

- The First Appellant never discharged the burden of proving that the remuneration received from Fosa Juniors was not sufficient to cover his life expenses, even less proving that it was not sufficient to cover his expenses incurred from playing football.

- In addition to the amount of remuneration, many other factors in the Employment Contract also indicate the professional status of the Player, including the heading which says "*Professional Football Player Contract*".

- In addition, the FMF confirmed that the Player had to be considered as a professional.

- Fosa Juniors had at all times a genuinely and truly interest in maintaining the services of the Player during the term of the Employment Contract, even if Fosa Juniors informed Kaizer Chiefs that it was open to discuss a transfer of the Player between the two clubs.

- It is undisputed that the Player still played matches for Fosa Juniors on 1 July 2018, which was the start date of the New Contract.

- The Player left Fosa Juniors without authorisation, which the Player never disputed was the case.

- Furthermore, it must be stressed that Kaizer Chiefs only forwarded the Offer to Fosa Juniors for the transfer of the Player because the Player was under a professional contract with Fosa Juniors.

- It was in any case the obligation of Kaizer Chiefs to conduct its own investigation concerning the status of the Player, and not only to rely on any alleged idea the Player might have had.

- Moreover, Fosa Juniors did in fact inform Kaizer Chiefs of the status of the Player before the New Contract was signed.

- Thus, as the Player was under a professional contract with Fosa Juniors when the Appellant signed the New Contract, the Player terminated the Employment Contract without just cause.

- Based on the fact that the Player signed the New Contract with Kaizer Chiefs, thus breaching the Employment Contract, Fosa Juniors is entitled to be compensated as the injured party pursuant to the FIFA RSTP.

- Furthermore, and also pursuant to the FIFA RSTP, the player and Kaizer Chiefs, as his new club, are jointly and severally liable for the payment of such compensation to Fosa Juniors.

- The amount of compensation awarded to Fosa Juniors in the Appealed Decision is too low, but due to the costs of a counter appeal before the CAS, no such counter

appeal was filed, which is why the amount of compensation has not been disputed in these proceedings.

- In addition, and since the breach was committed within the protected period, the Player and Kaizer Chiefs should be sanctioned in accordance with the FIFA RSTP, and the Appealed Decision should be confirmed in this regard.

- The mere fact that Kaizer Chiefs forwarded an offer to the Player before informing Fosa Juniors in writing of its intentions makes it clear that there can be no doubt that Kaizer Chiefs did in fact induce the Player to sign the New Contract, thus breaching the Employment Contract.

THE SECOND RESPONDENT

59. In its Answer of 5 May 2020, the Second Respondent requested the CAS issue an award on the merits:

- "*(a) rejecting the reliefs sought by the Appellants;*

- *(b) confirming the Appealed Decision;*

- *(c) order the Appellants to bear the full costs of these arbitration proceedings.*"

60. The Second Respondent's position may be briefly summarised as follows:

- First of all, it must be stressed that the burden of proof lies with any party claiming a right on the basis of an alleged fact.

- CAS jurisprudence has repeatedly upheld the validity of a framework whereby Swiss private associations choose to impose their own concept of the applicable standard of proof and the rules of evidence to be applied in the proceedings.

- Based on that, the CAS has consistently confirmed that the applicable standard of proof in the context of contractual disputes is that of "*comfortable satisfaction*" rather than "*on a balance of probabilities.*"

- In line with such jurisprudence, and the fact that sports governing bodies have limited investigative means compared to criminal courts, otherwise competent to deal with claims of forgery, the Panel must decide on the basis of its comfortable satisfaction.

- With regard to the Employment Contract, the FIFA DRC had at its disposal the original version of the said contract and also assessed the expert's report submitted by the Appellants.

- However, in the expert's report drafted by an *ex parte* expert, the author had highlighted the difficulties in which she had to operate to provide her professional opinion.

- Without suggesting any *mala fide* in the rendered opinion, the FIFA DRC had to take into consideration the author's preliminary disclaimers and the fact that she was in fact an *ex parte* expert commissioned by a party with an interest in the outcome of the case.

- Based on that, the FIFA DC correctly decided not to blindly rely solely on this report but rather weight it together with other concurring and, in this case, more relevant circumstances. However, the report was never disregarded as submitted by the Appellants.

- In any case, and as confirmed by the CAS, the Panel is in no way restricted to an expert's report as the sole basis for its decision.

- Based on that, the FIFA DRC was right in concluding that the Player and Fosa Juniors had already a valid contract in place when the Player joined Kaizer Chiefs.

- With regard to the submission of the Appellant that the Player was an amateur player with Fosa Juniors, initially it must be stressed that it is in no way relevant if the Player considered himself as an amateur.

- The definition of a professional player is clear in the FIFA RSTP and does not leave room for creative interpretations.

- Thus, having concluded that a valid contract was signed between the Player and Fosa Juniors, the remaining point to be assessed is whether the Player could be qualified as a professional in relation to the salaries received.

- In this respect, it must be kept in mind that the title under which a player is registered with the federation is irrelevant, and it is not even a condition of the validity of a professional contract that it is duly registered with the federation in question.

- The only relevant criterion is whether the Player is paid more under the Employment Contract, even if only a little more, than his expenses.

- In this case, it is up to the Appellants to demonstrate that the Player was not a professional when he signed the New Contract if they want to avoid the consequences enshrined in article 17 of the FIFA RSTP.

- It is not disputed that the Player received a gross salary of MGA 1,500,000 per month under the Employment Contract.

- However, the Appellants failed to produce any evidence that the Player incurred monthly expenses in an amount exceeding his salary.

- Furthermore, the Player was entitled to receive additional bonuses and expenses under the Employment Contract.

- It is also undisputed that the minimum wage in Madagascar does not exceed MGA 168,019, which makes the total earnings of the Player from Fosa Juniors abundantly above the minimum wage and even higher than the median salary in Madagascar.

- Based on all circumstances, the FIFA DRC was right in concluding that the Player was a professional under contract with Fosa Juniors and, in this capacity, not free to sign with Kaizer Chiefs while still bound to Fosa Juniors without consequences of any kind.

- Since the Player was legally bound by the Employment Contract, the Player ceased to fulfil his contractual obligations to Fosa Juniors when he decided to join Kaizer Chiefs, and by signing the New Contract with Kaizer Chiefs, the Player unduly terminated the one he had with Fosa Juniors without just cause.

- Apart from the disputed submission regarding the alleged forgery of the Player's signature on the Employment Contract, the Appellants have not provided any relevant explanation as to why the Player should not be deemed to have terminated the Employment Contract without just cause.

- In line with CAS jurisprudence, there is no doubt that when a player walks away from a club to which he is still contractually bound for the purpose of joining another club with which he signed an overlapping employment contract, it is a *de facto* termination of the first contract by that player.

- Moreover, the Appellants never indicated any just cause supporting the Player's action and termination of the Employment Contract.

- As such, the FIFA DRC was correct in deciding that the Player terminated the Employment Contract without just cause.

- In accordance with article 17 (1) of the FIFA RSTP, in all cases of premature contractual termination, the party in breach is required to pay compensation.

- In the absence of a specific amount agreed between the Player and Fosa Juniors in the Employment Contract in the event of breach, the compensation must be set out in accordance with article 17 (1) of the FIFA RSTP.

- After taking into consideration the circumstances of the case, the FIFA DRC determined that the only objective criterion at its disposal in order to calculate the relevant compensation was the average of the value of the Employment Contract and the new Contract for the same period of time.

- The amount of compensation is not questioned or disputed by the Appellants and, therefore, must be confirmed by the Panel.

- It is undisputed that Kaizer Chiefs is the Player's new club under article 17 (2) of the FIFA RSTP, which means that they are jointly and severally liable for the payment of the compensation to Fosa Juniors.

- The fact that such automatic joint and several liability serves legitimate purposes is confirmed by CAS jurisprudence.

- The joint and several liability of the new club does not require inducement from the said club, and the CAS has repeatedly clarified that whether the new club is at fault is immaterial to the question of joint and several liability according to article 17 (2) of the FIFA RSTP.

- Furthermore, the CAS has confirmed that joint and several liability may be based either (a) on a contract, (b) on tort, (c) on unjust enrichment, (d) on ensuring contractual stability in combination with unjust enrichment and (e) avoiding evidentiary difficulties in establishing joint liability.

- Furthermore, bearing in mind the purpose of this provision and that joint and several liability may be based on unjust enrichment (combined or not with ensuring contractual stability), the Swiss Federal Tribunal (the "SFT") has concluded that the said provision establishes passive joint and several liability between the author of the contractual violation and the one who profited from such violation.

- As it is undisputed that Kaizer Chiefs profited from the Player's breach of the Employment Contract, Kaizer Chiefs was correctly ordered to pay the compensation to Fosa Juniors jointly and severally.

- Article 17 (3) and (4) of the FIFA RSTP establish the disciplinary consequences of an unlawful breach of the contract committed during the protected period, which was the case in this matter.

- Based on that, the FIFA DRC correctly imposed sporting sanctions on both Appellants.

- With regard to the Player, the Appellants submit that the four-month restriction imposed on the Player's eligibility to play matches should be a violation of his right to work, but this is not the case as confirmed by the CAS.

- With regard to Kaizer Chiefs, it follows from article 17 (4) of the FIFA RSTP that any club found to have induced a breach of contract during the protected period must be banned from registering any new players, either nationally or internationally, for two entire and consecutive registration periods.

- Furthermore, it follows from this provision that it must be presumed, unless established to the contrary, that any club signing a professional who has terminated his contract without just cause has induced that professional to commit a breach.

- Kaizer Chiefs never discharged the burden of proof to establish that no inducement was made, rather on the contrary, and the FIFA DRC rightfully applied the relevant provisions of the FIFA RSTP on this occasion.

- The fact that the Appellants are not repeat offenders is not decisive since the imposition of sporting sanctions are made on a case-by-case basis, considering the circumstances of each matter brought before the FIFA DRC.

V. CAS JURISDICTION

61. In accordance with article 186 (1) of the Swiss Private International Law ("PILA"), the CAS has power to decide upon its own jurisdiction.

62. Article R47 of the CAS Code states, *inter alia*, as follows: "*An appeal against the decision of a federation, association or sports-related body may be filed with the 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.*"

63. In the absence of a specific arbitration agreement, in order for the CAS to have jurisdiction to hear an appeal or a request for provisional and conservatory measures, the statutes or regulations of the sports-related body from whose decision(s) the appeal is made must expressly recognise the CAS as an arbitral body of appeal.

64. With respect to the Appealed Decision, the Appellants submits that the jurisdiction of the CAS derives from article 58 (1) of the FIFA Statutes, which reads as follows:

"*Appeals against final decisions passed by FIFA's legal bodies and against decisions passed by confederations, member associations or leagues shall be lodged with CAS within 21 days of receipt of the decision in question.*"

65. The Respondents have not disputed the jurisdiction of the CAS, which was also confirmed when signing the Order of Procedure

66. It follows that the CAS had jurisdiction to hear the appeal of the Appealed Decision.

VI. ADMISSIBILITY OF THE APPEAL

67. Article R49 of the CAS Code provides as follows:

"*In the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, or of a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against. After having consulted the parties, the Division President may refuse to entertain an appeal if it is manifestly late.*"

68. It follows from article 58 (1) of the FIFA Statutes that "*appeals against final decisions passed by FIFA's legal bodies and against decisions passed by confederations, members or leagues shall be lodged with CAS within 21 days of receipt of the decision in question*".

69. The Decision was notified to the Appellants on 6 February 2020, and the Appellants' joint Statement of Appeal was lodged on 24 February 2020, i.e. within the statutory time limit of 21 days set forth in Article 58 (1) of the FIFA Statutes, which is not disputed. Furthermore, the Statement of Appeal and the Appeal Brief complied with all the requirements of Articles R48 and R51 of the CAS Code.

70. It follows that the Appeal is admissible.

VII. APPLICABLE LAW

71. Article R58 of the CAS Code provides as follows:

"*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 that the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision.*"

72. The Panel notes that the Parties agree on the application of the FIFA regulations, which implies, according to Article 57(2) of the FIFA Statutes, that "*CAS shall primarily apply the various regulations of FIFA and, additionally, Swiss law.*"

73. Based on the above, and with reference to the submissions filed, the Panel is satisfied to accept the application of the various rules and regulations of FIFA and, subsidiarily, Swiss law.

74. The Panel finally agrees with the FIFA DRC that in particular the June 2018 edition of the Regulations on the Status and Transfer of Players is applicable to this matter.

VIII. MERITS

75. Initially, the Panel notes that it is undisputed that the Player played for the team of Fosa Juniors from 2016 until July 2018.

76. During 2018, the Player indisputably received a monthly gross salary of MGA 1,5000,000 from Fosa Juniors and, according to Fosa Juniors, received several bonuses together with accommodation, transportation, restoration and sports equipment provided by the club.

77. The obligation to pay this monthly gross salary of MGA 1,500,000 and additional bonuses and to provide the above-mentioned benefits to the Player is included in the

Employment Contract valid until 31 October 2020, which, according to Fosa Juniors, was signed by both parties in November 2016, while the Player denies ever having signed the Employment Contract.

78. While Fosa Juniors has presented the alleged original Employment Contract signed by both the Player and Fosa Juniors, the Player maintains that he never signed the Employment Contract and that his alleged signature must consequently be a forgery.

79. During his stay with Fosa Juniors, the Player was also an important player on the national team of Madagascar, which participated in a tournament in South Africa in June 2018, in which connection the Player was scouted by Kaizer Chiefs.

80. It is undisputed that Kaizer Chiefs, during this tournament, presented the Player with the Proposal, under which the Player would join the said club for a two-year period starting from July 2018 and with a one-year option.

81. The Player and Kaizer Chiefs both signed the Proposal on 7 June 2018, which, with regard to the remuneration of the Player, stated as follows ("R" being South African Rand):

> "*Salary (Gross)*
> *R 60,000-00 from 1 July 2018 to 30 June 2019*
> *R 65,000-00 from 1 July 2019 to 30 June 2020*
> *R 70,000-00 from 1 July 2020 to 30 June 2021 – Option*
> *Image & Autograph Rights:*
> *The club shall pay for the services of the player an amount of R 960,000-00 for the duration of the contract as follows:*
> *R 280,000-oo on or before 31 July 2018*
> *R 320,000-00 on or before 31 July 2019*
> *R 360,000-00 on or before 31 July 2020 – Option*
> *Bonuses*
> *As per the club's bonus structures.*"

82. By email of 15 June 2018, Fosa Juniors wrote, *inter alia*, as follows to Kaizer Chiefs:

> "*[...] During the COSAFA Castle Cup, we heard information that Kaizer Chiefs scouted one of our players [the Player]. [...]*
> *We would like you to know the [Fosa Juniors] stays open for serious offers. To avoid any troubles in this case, we suggest you, if you are interested by the player, to contact us by phone call or by mail. [...] [e-mail and phone number inserted]*"

83. On 29 June 2018, and without any reply from Kaizer Chiefs, Fosa Juniors wrote, *inter alia*, as follows to Kaizer Chiefs:

> "*Since our first email remains unanswered we allow ourselves to write you again, in particular viewing you have posted on your website that DAX signed up for your club and viewing there is the usual buzz around Dax's transfer.*
> *We would like to state that DAX is under contract with Fosa till end 2019 and received a salary as fulltime football player, i.e. has no other job. He is a professional football player under FIFA rules. The [MFA] will confirm his status.*

We understand that the reps of Kaizer Chiefs have approached Dax during the Cosafa Cup and a written offer has been made to Dax, a copy of which is in our possession. We confirm that we are open to discuss a transfer from our club to Kaizer Chiefs provided that we can reach an agreement and all rules and regulations in respect of transfers will be respected."

84. In its reply of the same day, Kaizer Chiefs replied, *inter alia*, as follows:

"*[the Player] Dax was approached by Kaizer Chiefs regarding his availabilities for the upcoming 2018/2019 season.*

Dax met with representatives from Kaizer Chiefs where he was accompanied by two members of the [MFA's] travelling party for the Cosafa tournament.

Dax along with the representatives offered the information that he was an amateur player, playing in an amateur league for an amateur club [Fosa Juniors].

He also said that he was free of any professional contract and was free to join a club of his choice, on receipt of a professional contract offer.

After discussions, he was later in the day presented with an offer from Kaizer Chiefs and agreed to this offer, duly signing a legally binding document, outlining in detail, the terms and conditions of this pre-contract agreement starting of July 1st 2018.
[...]
Our stance is very clear and is set out as follows:

6. *Dax has signed a pre-contract with Kaizer Chiefs that comes into effect on July 1st 2018. Kaizer Chiefs will be processing the TMS and applying for ITC.*
7. *We expect your corporation relating to the ITC or if you feel you have a dispute, we ask you to submit evidence via the TMS platform to substantiate your claims made in the media that Dax duly has a professional contract until 2020 with your football club.*
8. *Should it be found that this is true and FIFA and [MFA] agree that Dax has a legally binding professional contract with Fosa Juniors, then Kaizer Chiefs will be left with no choice, other than to report the matter to FIFA and the MFA, requesting as per FIFA law, that the player is duly banned from signing two contracts with two football clubs. The FIFA rules are very clear on players who sign dual (two) playing contracts.*
9. *If Fosa Juniors do not provide this evidence to support the claim, then we request that the ITC is granted and the player is released with immediately effect.*
10. *If the player is not released and does not travel to South Africa, then we will apply to FIFA and the MFA, to have the player suspended from all football activities in Madagascar, due to the fact that as from July 1st 2018 he is duly contracted to Kaizer Chiefs.*

Of course, we don't want this situation to become a media frency (sic!) *and we are always open to reasonable discussions, including any compensation request in order for good relationship to be established.*
[...]"

85. On 4 July 2018, Kaizer Chiefs informed Fosa Juniors that "*after consulting with our Board of Directors and Football Manager the compensation offered to Fosa Juniors is USD 25,000. Trusting you will accept our offer for which we wish to thank you in advance.*"

86. This Offer was rejected by Fosa Juniors on 5 July 2018 with the words "*Thank you for coming back to us but your offer is far below the expectations of our Boards of Directors*".

87. Finally, on 7 August 2018, the Player and Kaizer Chiefs signed the New Contract valid as from 1 July 2018 until 30 June 2021, under which the Player was entitled to receive remuneration in accordance with the Proposal.

88. While the Appellants submit that the Player was not bound by any contractual obligations to Fosa Juniors as a professional football player when he signed the New Contract with Kaizer Chiefs, Fosa Juniors maintains that the Player was under a professional contract with it at that time and, accordingly, that the Player breached his contractual obligations and prematurely terminated the Employment Contract without just cause when signing the New Contract and leaving Fosa Juniors to go to Kaizer Chiefs.

89. In any case, and even if it is decided that the Player was in fact under a professional contract with Fosa Juniors in the summer of 2018, the Appellants submit that Kaizer Chiefs never induced the Player to breach his contract with Fosa Juniors and, therefore, should not have been sanctioned as was decided by the FIFA DRC in the Appealed Decision.

Thus, the main issues to be resolved by the Panel are:

A) Was the Player a professional player with a written contract with Fosa Juniors when he entered into the New Contract with Kaizer Chiefs?
B) If A) is answered in the affirmative, did the Player terminate the Employment Contract with or without just cause?
C) Depending on the answer to B), what are the financial consequences for the Appellants, if any, of the termination of the Employment Contract?

D) Depending on the answer to B), are any disciplinary sanctions to be imposed on the Player and/or Kaizer Chiefs as a result of the termination of the Employment Contract?

90. Before turning to the analysis of the merits of the case, it shall be clarified at this point that the below decisions have been passed by the majority of the Panel. Consequently, references to decisions of the Panel shall be read to mean decisions by the majority of the Panel.

A) Was the Player a professional player with a written contract with Fosa Juniors when he entered into the New Contract with Kaizer Chiefs?

91. The Panel initially notes that it follows from article 2 of the FIFA RSTP that:

"*1. Players participating in organised football are either amateurs or professionals.*

2. A professional is a player who has a written contract with a club and is paid more for his footballing activity than the expenses he effectively incurs. All other players are considered to be amateurs."

92. The Panel further notes that it is undisputed that the conditions in paragraph 2: a) *who has a written contract with a club*, and b) is *paid more for his footballing activities than the expenses he effectively incurs*, are cumulative and must both be fulfilled in order for the Player to be considered as a professional,

Did the Player have a written contract with Fosa Juniors?

93. During the proceedings before the FIFA DRC, Fosa Juniors presented the alleged original Employment Contract bearing signatures apparently from both the Player and Fosa Juniors.

94. Upon the examination of a copy of the Employment Contract, the Panel finds no grounds for concluding that the alleged signature of the Player – *prima facie* – looks substantially different from other signatures submitted by the Appellants during these proceedings. This opinion was not contradicted by the handwriting expert during her testimony.

95. Furthermore, it is undisputed that the Player received payments of his remuneration in accordance with the provisions of the Employment Contract during his stay with Fosa Juniors.

96. The Panel further note that it is undisputed that the Player, at least until 14 March 2018, was duly registered as a player of Fosa Juniors with the FMF, which circumstances indicate to the Panel that the Player was in a contractual relationship with Fosa Juniors during his stay with the said club.

97. Based on that and the Parties' submissions, the Panel finds that it is up to the Appellants to discharge the burden of proof to establish that the alleged signature of the Player on the Employment Contract is a forgery and, accordingly, that the Player never signed the Employment Contract himself.

98. In doing so, the Panel adheres to the principle of *actori incumbit probatio*, which has been consistently observed in CAS jurisprudence and according to which "*in CAS arbitration, any party wishing to prevail on a disputed issue must discharge its burden of proof, i.e. it must meet the onus to substantiate its allegations and to affirmatively prove the facts on which it relies with respect to that issue, In other words, the party which asserts facts to support its rights has the burden of establishing them (..) The Code sets forth an adversarial system of arbitral justice, rather than an inquisitorial one. Hence, if a party wishes to establish some fact and persuade the deciding body, it must actively substantiate its allegations with convincing evidence*" (e.g. CAS 2003/A/506, para. 54; CAS 2009/A/1810&1811, para. 46 and CAS 2009/A/1975, para. 71ff).

99. Furthermore, during the proceedings, the Appellants confirmed that the burden of proof in fact rested on them.

100. However, the Panel finds that the Appellants have not adequately discharged the burden of proof to establish to the comfortable satisfaction of the Panel, and not even on a balance of probabilities, that the Player's signature on the Employment Contract is a forgery and that the Player never signed the contract.

101. To reach this decision, the Panel has conducted an in-depth analysis of the facts of the case and the information and evidence gathered during the proceedings, including the testimony of the witnesses, in particular the testimony of the handwriting expert and the detailed testimony of the president of Fosa Juniors.

102. Furthermore, the Panel also finds it prudent to note that the Player failed to attend the hearing and present his testimony regarding, *inter alia*, his stay and contractual relationship with Fosa Juniors, and the Panel further notes that apparently no forgery proceedings were ever initiated by the Player.

103. With regard to the testimony of the handwriting expert and the submitted expert's report drafted by the same, the Panel also notes that the handwriting expert must be considered as an *ex parte* witness, and the Panel already therefore rejects the submission of the Appellants that an expert's report has to be dealt with uncontested.

104. Moreover, the Panel, also taking into consideration the disclaimers submitted by the handwriting expert in the report, does not find that the conclusion of the said report, which suggested that there was "*a strong probability*" that the signature on the Employment Contract was not produced by the same writer that executed the comparable signatures, is decisive for the case at hand.

105. In addition, the Panel does not find that the expert report together with other evidence submitted by the Appellants outweighs the evidence submitted by Fosa Juniors.

106. Based on that, the Appellants's submission regarding the Player not having signed the Employment Contract is dismissed.

107. For the sake of clarity, the Panel notes that the submission of the Appellants that the FIFA DRC failed to take into due consideration the expert's report filed by the Appellant is of no significant importance since the Panel, with reference to Article R57 of the CAS Code, has considered the case *de novo*, which means that this and any other alleged procedural flaws have in any case been cured.

Was the Player paid more by Fosa Juniors than the expenses he effectively incurred?

108. Based on the above, the Panel then has to consider whether the Player was in fact paid more by Fosa Juniors than the expenses he effectively incurred.

109. The Panel initially notes that it is undisputed that the Player, during his stay with Fosa Juniors, received a gross monthly salary of MGA 1,500,000, which amount, according to the undisputed information provided by the Respondents during the proceedings, substantially exceeds both the minimum and the median wage in Madagascar.

110. Furthermore, but disputed by the Appellants, Fosa Juniors submits that the Player received a substantial amount of money as bonuses and that the club covered the expenses of the Player with regard to, *inter alia*, accommodation, transportation and sports equipment.

111. With reference to the above-mentioned principle regarding the burden of proof and based on the undisputed fact that the Player received at least a gross monthly salary of MGA 1,500,000 from the club, the Panel finds that the burden of proof to establish the Player's expenses in the same period exceeded this remuneration must be discharged by the Appellants in order to convince the Panel to its comfortable satisfaction that the Player is not to be considered as a professional.

112. In this regard, the Panel notes that, in this specific situation where the payment of a gross monthly payment of MGA 1,500,000 from Fosa Juniors to the Player is undisputed, also from a practical point of view, it would not make sense if it was up to Fosa Juniors to discharge the burden of proving that the remuneration exceeded the Player's expenses, already for the mere reason that Fosa Juniors has no access to such alleged information.

113. However, the Panel finds that the Appellants have not adequately discharged the burden of proof to establish to the comfortable satisfaction of the Panel, and not even on a balance of probabilities, that the Player's expenses exceeded his remuneration received from Fosa Juniors.

114. Even if the alleged additional payments of bonuses and the alleged expenses covered by Fosa Juniors might not have been adequately proven by Fosa Juniors, the Panel finds that the Appellants, and specifically the Player due to his unexpected absence from the hearing, failed to discharge the burden of proof to show that the Player's expenses in fact run into MGA 1,600,000 as submitted by the Appellants, not least when this was disputed by Fosa Juniors.

115. As such, and since the Player had a written contract with Fosa Juniors, the Panel agrees with the FIFA DRC that the Player was a professional still under contract with Fosa Juniors at the time when he entered into the New Contract with Kaizer Chiefs. Whether the Malagasy league is an amateur league or not, or whether the Player was in fact registered correctly with Fosa Juniors at the MFA is found to be of no decisive relevance to this decision.

B) Did the Player terminate the Employment Contract with or without just cause?

116. Having concluded that the Player was a professional under contract with Fosa Juniors, the Panel has to consider, whether the Player then terminated the Employment Contract with or without just cause when signing the New Contract with Kaizer Chiefs and joining this club as his new club.

117. The Panel initially notes that it is not disputed by the Appellants that – in case the Panel found that the Player did in fact enter into the Employment Contract and thereby became a professional – the Player was still bound by the Employment Contract at the time of his signing the New Contract and joining Kaizer Chiefs.

118. The Panel further notes that it agrees with the Respondents that it is evident that when a player walks away from a club to which he is still bound to join another club for an overlapping period of time, this constitutes a *de facto* termination of the first contract by the player.

119. Moreover, the Panel notes that the Appellants never indicated any just cause for the Player to terminate the Employment Contract by signing the New Contract.

120. Based on that, the Panel finds that the Player terminated the Employment Contract without just cause.

121. As a matter of form, the Panel appreciates that the Appellants also submitted during the hearing that they agreed that – in case the Employment Contract was to be considered as a valid professional contract –, the Player had indisputably terminated the Employment Contract without just cause.

C) What are the financial consequences for the Appellants, if any, of the termination of the Employment Contract?

122. The Panel initially notes that it follows from article 17 (1) of the FIFA RSTP that:

"*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.*"

123. Furthermore, it follows, *inter alia*, from article 17 (2) of the FIFA RSTP that:

"*[...] If a professional is required to pay compensation, the professional and his new club shall be jointly and severally liable for its payment. The amount may be stipulated in the contract or agreed between the parties.*"

124. In the Appealed Decision and with the application of these provisions, the FIFA DRC decided, *inter alia*, that the Player "*[...] is ordered to pay to [Fosa Juniors], within 30 days as from the date of notification of this decision, compensation for breach of contract in the amount of MGA 157,572,000 plus 5% interest p.a. as from 11 December 2018 until the date of effective payment.*"

125. Furthermore, and with reference to article 17 (2) of the FIFA RSTP, it was decided that "*[Kaizer Chiefs] is jointly and severally liable for the payment of the aforementioned compensation.*"

126. The Panel initially notes that the Appellants, in their request for relief, request that the segments of the Appealed Decision regarding their obligation to pay compensation for breach of contract be set aside.

127. However, the Appellants submitted during the hearing that they did not dispute their possible obligation to pay compensation to Fosa Juniors as set out in the Appealed Decision in case the Panel should decide that the Player was bound as a professional by the Employment Contract.

128. Furthermore, the Appellants did not submit any argument as to why the decision of the FIFA DRC regarding the Appellants obligation to pay compensation in the set amount should be set aside, even less why the amount of compensation payable should be reduced.

129. Based on that, and since the Panel also finds no other reasons for not confirming the Appealed Decision with regard to the Appellants' obligation to pay compensation for breach of contract, the Panel confirms this part of the Appealed Decision.

D) Are any disciplinary sanctions to be imposed on the Player and/or Kaizer Chiefs as a result of the termination of the Employment Contract?

130. The Panel initially notes that it follows from article 17 (3) of the FIFA RSTP that:

"*In addition to the obligation to pay compensation, sporting sanctions shall also be imposed on any player found to be in breach of contract during the protected period. This sanction shall be a four-month restriction on playing in official matches. In the case of aggravating circumstances, the restriction shall last six months. These sporting sanctions shall take effect immediately once the player has been notified of the relevant decision. The sporting sanctions shall remain suspended in the period between the last official match of the season and the first official match of the next season, in both cases including national cups and international championships for clubs. (...)*"

131. Furthermore, it follows, *inter alia*, from article 17 (4) of the FIFA RSTP that:

"*In addition to the obligation to pay compensation, sporting sanctions shall be imposed on any club found to be in breach of contract or found to be inducing a breach of contract during the protected period. It shall be presumed, unless established to the contrary, that any club signing a professional who has terminated his contract without just cause has induced that professional to commit a breach. The club shall be banned from registering any new players, either nationally or internationally, for two entire and consecutive registration periods. The club shall be able to register new players, either nationally or internationally, only as of the next registration period following the complete serving of the relevant sporting sanction. In particular, it may not make use of the exception and the provisional measures stipulated in article 6 paragraph 1of these regulations in order to register players at an earlier stage.*"

132. Initially, and with reference to Definition #7 of the FIFA RSTP, the Panel notes that it is undisputed that the Player signed the New Contract within the Protected Period of the Employment Contract.

The sanction imposed on the Player pursuant to article 17 (3) of the FIFA RSTP.

133. With regard to the sanction imposed on the Player in the Appealed Decision, i.e. the restriction of four months on his eligibility to play in official matches, the Appellants submitted in their written submissions that such a sanction abuses the Player's human rights since it deprives him from his right to work, and it was further submitted that the imposed sanction causes him loss of market value and makes him unable to receive any bonuses from his current club.

134. For the sake of clarity, the Panel notes that a player who, during such a restriction period, is able to train with the team, does not suffer irreparable harm and is not having his human rights violated. The Appellants did not demonstrate otherwise.

135. Furthermore, the Panel finds no other grounds for dismissing the sanction imposed on the Player.

136. The Panel further notes that the legal basis for the sanction imposed on the Player is very clear and that the sanction imposed on the Player is the minimum sanction under the said provision, which is why the Panel, in any case, has no discretion to reduce the sanction.

137. Based on that, the Panel is satisfied to confirm the sanction imposed on the Player in the Appealed Decision.

138. Finally, and as a matter of form, the Panel appreciates that the Appellants also submitted during the hearing that they agreed that – in case the Player was considered to have breached the Employment Contract without just cause – the sanction has been imposed on the Player in accordance with the legal framework of article 17 (3) of the FIFA RSTP and, accordingly, will no longer be disputed.

The sanction imposed on the Clubr pursuant to article 17 (4) of the FIFA RSTP

139. The Panel initially notes that, pursuant to Article 17 (4) of the FIFA RSTP in addition to the obligation to pay compensation, sporting sanctions must be imposed on any club, *inter alia*, found to have induced a breach of contract during the protected period.

140. Furthermore, it follows from the said provision that it must be presumed, unless established to the contrary, that any club signing a professional who has terminated his contract without just cause has induced that professional to commit a breach.

141. Since it is undisputed that Kaizer Chiefs is the club that signed the Player upon his termination of the Employment Contract, it follows that Kaizer Chiefs is presumed to have induced the Player to commit the breach unless the Appellants are able to prove the contrary.

142. Kaizer Chiefs submits that it never induced the Player to breach the Employment Contract with Fosa Juniors and that there is no evidence to support such allegations.

143. Kaizer Chiefs was at all times transparent with Fosa Juniors and was at all times acting in good faith on the information provided by, *inter alia*, the Player that he was an amateur playing for an amateur club in an amateur league.

144. Furthermore, Fosa Juniors failed to forward the Employment Contract to Kaizer Chiefs, even when requested to do so, and Fosa Juniors failed to have the Employment Contract uploaded as required. In addition, Fosa Juniors had no interest in the Player.

145. If Fosa Juniors had acted with due diligence, Kaizer Chiefs would never had signed the Employment Contract, and Kaizer Chiefs should therefore not suffer from the negligence of Fosa Juniors.

146. Based on that, Kaizer Chiefs thus submits that the Panel, on a balance of probabilities, should find that the club discharged its burden of proof to establish that it never induced the Player to breach the Employment Contract.

147. Initially, the Panel notes that the presumption of the new club's inducement of the breach of contract is validly established in the FIFA RSTP on the basis of the freedom of Swiss associations to establish their own rules and regulations, as long as they are not in conflict with the public order.

148. However, the Panel finds that Kaizer Chiefs failed to discharge its burden of proof to rebut the presumption to the comfortable satisfaction of the Panel, and even on a balance of probabilities, that it did not induce the Player to breach the Employment Contract.

149. On the contrary, the Panel finds that, based on the evidence submitted during these proceeding, it feels comfortable to conclude that the Player would not, at least at this point, have breached the Employment Contract if Kaizer Chief had not actively presented him with the Offer, which indisputably offered the Player a better salary than the salary he was paid at that time by Fosa Juniors.

150. The Panel does not find any grounds for disputing the Appellants' submission that the Player might have introduced himself to Kaizer Chiefs as an amateur player.

151. However, the Panel finds that Kaizer Chiefs in any case failed to act with due diligence when, allegedly, relying more or less only on this incorrect information received from the Player.

152. Moreover, the Panel finds that Kaizer Chiefs, at least after receiving the two emails from Fosa Juniors in June 2018, knew or ought to have known that the information received by the Player regarding his status as an amateur might be incorrect.

153. In addition, the Panel notes that Mr Paul Mitchel, who apparently was in contact with Fosa Juniors before the signing of the New Contract, testified that he did in fact inform Kaizer Chiefs that Fosa Juniors expected to receive a compensation in case the latter should accept to release the Player for him to join Kaizer Chiefs. Or, in order words, that Fosa Juniors considered the Player to be a professional under contract.

154. Nevertheless, and even after its offer for the payment of compensation of USD 25,000 to Fosa Juniors had been rejected by the said club, Kaizer Chiefs chose to sign the New Contract with the Player and to include him in its team as a professional.

155. The Panel finds that Kaizer Chiefs is the most obvious party to bear the consequences of having chosen to run this risk, as the Panel adheres to the view that – considering the

known and not insignificant risk that the Player was contractually bound to Fosa Juniors – there was nothing to prevent the club from choosing not to sign the New Contract.

156. The Panel does not find that the fact that Fosa Juniors did not forward a copy of the Employment Contract to Kaizer Chiefs plays a significant role since Fosa Juniors can in no manner be considered obligated to do so, especially since it had already on several occasions informed Kaizer Chiefs of the existence of such a contract and of the fact that the Player was legally bound to the club as a professional under the same contract.

157. As such, the Panel feels confident in its opinion that the Player would not have left Fosa Juniors at this point and in this manner, thus breaching the Employment Contract, if Kaizer Chiefs had not presented him with the Offer and subsequently signed the New Contract, and as such facilitated the Player's wish to join Kaizer Chiefs, even if still legally bound to Fosa Juniors under the Employment Contract.

158. Based on that, the Panel finds that the FIFA DRC was correct in deciding that Kizer Chiefs in fact can be presumed to have induced the Player to breach the Employment Contract and that Kaizer Chiefs did not even come close to establishing the contrary.

159. The Panel notes that the Appellants submit that sanctions are not mandatory pursuant to article 17 (4) of the FIFA RSTP and that every case must be analysed on a case-by-case basis.

160. The Panel does not dispute that each case must be analysed on a case-by-case basis. However, and without going into whether or not sanctioning is mandatory pursuant to the said article, the Panel finds no reason to dismiss the sanction imposed on Kaizer Chiefs. Not even if Kaizer Chiefs was never sanctioned by the legal bodies of FIFA before.

161. Is this connection, the Panel notes that the sanction imposed on Kaizer Chiefs is the minimum sanction pursuant to the said provision.

162. Furthermore, the Panel notes that, in accordance with overwhelming CAS jurisprudence, sanctions imposed by, e.g., FIFA can only be reviewed by the CAS if these are evidently and grossly disproportionate to the offence.

163. The Panel does not find this to be the case.

164. Given these circumstances, the Panel is satisfied to confirm the sanction imposed on Kaizer Chiefs in the Appealed Decision.

IX. COSTS

165. Article R64.4 of the CAS Code provides as follows:

"*At the end of the proceedings, the CAS Court Office shall determine the final amount of the costs of arbitration, which shall include the CAS Court Office fee, the administrative costs of the CAS calculated in accordance with the CAS scale, the costs and fees of the arbitrators, the fees of the ad hoc clerk, if any, calculated in accordance*

with the CAS fee scale, a contribution towards the expenses of the CAS, and the costs of witnesses, experts and interpreters.

The final account of the arbitration costs may either be included in the award or communicated separately to the parties. The advance of costs already paid by the parties are not reimbursed by the CAS with the exception of the portion which exceeds the total amount of the arbitration costs."

166. Article R64.5 of the CAS Code provides as follows:

"*In the arbitral award, the Panel shall determine which party shall bear the arbitration costs or in which proportion the parties shall share them. As a general rule and without any specific request from the parties, the Panel has discretion to grant the prevailing party a contribution towards its legal fees and other expenses incurred in connection with the proceedings and, in particular, the costs of witnesses and interpreters. When granting such contribution, the Panel shall take into account the complexity and outcome of the proceedings, as well as the conduct and the financial resources of the parties.*"

167. As a general rule, the award must grant the prevailing party a contribution towards its legal fees and other expenses incurred in connection with the proceedings. In the present case, in consideration of the outcome of the proceedings, the Panel rules that the costs of arbitration, as calculated by the CAS Court Office, must be borne 50% by Andriamirado Aro Hasina Andrianamimanana and 50% by Kaizer Chiefs FC.

168. Furthermore, the Panel rules that the Appellants, jointly and severally, must pay a contribution towards the First Respondent's legal fees and expenses in the amount of CHF 6,000 (six thousand Swiss Francs), while FIFA shall bear its own legal fees and expenses.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The joint appeal filed by Andriamirado Aro Hasina Andrianamimanana and Kaizer Chiefs FC on 24 February 2020 against the decision rendered by the FIFA Dispute Resolution Chamber on 5 December 2019 is dismissed.

2. The decision rendered by the FIFA Dispute Resolution Chamber on 5 December 2019 is confirmed.

3. The costs of the arbitration, to be determined and served to the Parties by the CAS Court Office, shall be borne 50% by Andriamirado Aro Hasina Andrianamimanana and 50% by Kaizer Chiefs FC.

4. Andriamirado Aro Hasina Andrianamimanana and Kaizer Chiefs FC are jointly and severally ordered to pay to Fosa Juniors FC a total amount of CHF 6,000 (six thousand Swiss francs) as a contribution towards the expenses incurred in connection with these arbitration proceedings.

5. FIFA shall bear its own costs and expenses incurred in connection with these arbitration proceedings.

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

Seat of arbitration: Lausanne, Switzerland
Date: 27 October 2020

THE COURT OF ARBITRATION FOR SPORT

Lars Hilliger
President of the Panel

Corné Goosen
Arbitrator

Rui Botica Santos
Arbitrator