

Disciplinary Committee

FIFA[®]

Date: 27 July 2021

Sent to:
Zoo FC
c/o Mr. Felix Majani
felix@majanisports.com; lazyogo@gmail.com

C.C.:
Football Kenya Federation

Notification of the grounds of the Decision Ref FDD-6516

Dear Sirs,

Please find attached the decision passed in the aforementioned case by the FIFA Disciplinary Committee on 23 April 2021.

We would appreciate your taking due note of this decision and ensuring its implementation.

Yours faithfully,

FIFA



Carlos Schneider
Head of the FIFA Disciplinary Department

Fédération Internationale de Football Association

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Decision of the FIFA Disciplinary Committee

passed on 23 April 2021

DECISION BY:

Mr. Alejandro Piera, Paraguay (Deputy Chairman)

Mr. Kia Tong Lim, Singapore (Member)

Mr. Thomas Hollerer, Austria (Member)

ON THE CASE OF:

Zoo FC, Kenya

(Decision FDD-6516)

REGARDING:

Article 18 of the FIFA Disciplinary Code [2019 ed] – Manipulation of football matches and competitions

I. FACTS OF THE CASE

1. The following summary of the facts does not purport to include every single contention put forth by the actors at these proceedings. However, the FIFA Disciplinary Committee has thoroughly considered in its discussion and deliberations any and all evidence and arguments submitted, even if no specific or detailed reference has been made to those arguments in the following outline of its position and in the ensuing discussion on the merits.
2. On 24 April 2019, the General Secretary of the Football Kenya Federation (hereinafter the “FKF”) sent a letter to FIFA Integrity stating that the FKF had given a mandate to FIFA to open formal investigations into the allegations of match manipulation affecting Kenyan football.
3. Furthermore, on 20 May 2019, the Chief Compliance Officer of the Confédération Africaine de Football (CAF) addressed an email to FIFA Integrity stating CAF’s consent to FIFA opening formal investigations into the allegations of match manipulation in Kenyan football. These mandates were re-confirmed by FKF on 2 November 2020 and by CAF on 8 November 2020, respectively.
4. On 21 December 2020, FIFA Integrity transferred an Investigative Report (hereinafter “FIR”) to the FIFA Disciplinary Committee, which contained the following case summary:
 - *The present investigation centred itself on possible violations of FIFA regulations by the Kenyan club Zoo FC in connection with two matches played in the Kenyan Premier League:*
 - *Sofapaka FC vs Zoo FC played on 27 January 2019 (3:2) in Nairobi, Kenya (hereinafter “Match 1”);*
 - *Wazito vs Zoo FC played on 1 March 2020 (4:1) in Nairobi, Kenya (hereinafter “Match 2”).*
 - *FIFA Integrity has received reports of three (3) different companies specialised in sports integrity services including the monitoring of sports betting worldwide, which deem Match 1 and Match 2 as suspicious and possibly manipulated due to suspicious movements on the betting markets. The betting evidence seems to indicate that the bettors held prior knowledge of Zoo FC losing the matches.*
 - *FIFA Integrity has also received reports from the same companies in which they have identified a high number of defensive errors and alleged incidents of underperformance by players of Zoo FC during Match 1 and Match 2.*
 - *Moreover, FIFA Integrity has received reports from two (2) different companies specialised in sports integrity in regards to a total number of six (6) additional matches played by Zoo FC in the Kenyan Premier League from 2018-2019, which have also been deemed suspicious and possibly manipulated due to suspicious betting movements. This fact further raises the concern that match manipulation might be deeply embedded within Zoo FC and that this club has been involved in match manipulation schemes and dishonest practices.*
 - *Furthermore, FIFA has obtained an affidavit from the current coach of Zoo FC, Mr Herman ISWEKHA (hereinafter “Mr Iswekha”), describing the alleged involvement of various players of Zoo FC in match manipulation over the course of the 2018/19 and 2019/20 Kenyan Premier*

League seasons. These allegations were also widely reported in various media outlets. Additionally, some direct links between Zoo FC players and the well-known match-fixers Mr Wilson Raj Perumal and Mr Sankaran Chann were identified.

- *All these factors summed together raise serious concerns in regards to the integrity of the club Zoo FC and its possible involvement in the manipulation of Match 1 and Match 2. This investigation limited itself to the possible conduct of individuals registered with Zoo FC in relation to violations of regulations related to the manipulation of football matches and competitions and is limited to the establishment of facts and corroborating evidence relating to the manipulation of Match 1 and 2.*
5. In particular, the report contained an analysis and assessment of the facts gathered during the investigation, including expert reports, intelligence and witness statements regarding the two suspicious matches. Having in mind that the FIR was particularly extensive, the following is intended to illustrate the main elements and information contained in such report and is without prejudice to other sections of the FIR that may be relevant to the present case.

1. Betting reports

a. Fraud Detection System (FDS) reports

- *The basis of the alleged violation of art. 18 of the FDC are the two FDS reports received from Sportradar that conclude the following:*
 - *Match 1: “There is clear and overwhelming betting evidence that the course or result of this match was unduly influenced with a view to gaining corrupt betting profits. The betting evidence ultimately indicates that bettors held prior knowledge Zoo Kericho losing in a match containing at least five goals in total.” (...) “Suspicious live betting for Zoo Kericho to lose the match and lose by at least three goals, indicating that an attempt was made to unduly influence the course or result of this match with a view to gaining corrupt betting profits.”*
 - *Match 2: “There is clear and overwhelming betting evidence that the course or result of this match was unlawfully influenced or manipulated. The betting evidence ultimately indicates that bettors held prior knowledge of Zoo FC losing by at least two goals in a match containing at least three goals in total.” (...) The betting patterns and current supporting evidence provide indications that Zoo FC were potentially complicit in the manipulation of this fixture.”*
- *The role of FDS is to highlight irregular betting movements, in the core betting markets by monitoring Major European and Asian bookmakers. If a match displays irregular betting patterns, the match is “escalated” and a report is generated (FDS report). CAS has confirmed that the escalation process together with the circumstances in which a FDS report is generated inspires the trust in the FDS, also considering the fact that “the decision for a match to be reported as a positive case of match manipulation is not taken by a single person, but by a group of people, who generally seek to reach a consensus as to the decision to be taken”.*
- *In this context, CAS has determined that the FDS report is the basis for the conclusion that a match has been fixed, which means that the analytical and mathematical information*

contained therein needs to be supported by other elements, which point in the same direction. CAS describes this requirement as follows: “a differentiation must be made between the so-called quantitative information and a qualitative analysis of the quantitative information¹”. In this sense, CAS explicitly acknowledged that the analytical information derived from the FDS is valuable evidence that “particularly if corroborated by further evidence, can be used in order to conclude that a club was directly or indirectly involved in match-fixing²”.

- In the underlying case, Sportradar provided FIFA with FDS reports analysing the suspicious odds detected during Match 1 and Match 2 on the Live Asian Handicap Market and the Live Totals market. In these reports, it was explicitly mentioned that the betting patterns detected were in contrast to logical expectations, and there was no legitimate and justifiable explanation for them. The final conclusions drawn in the FDS report are not only based on analytical data and on the absence of any normal explanation, but indeed take into account the following external factors corroborating the theory that the abnormal betting behaviour was likely to be explained by match-fixing:

Match 1:

- Suspicious betting at a period of the match where match action could not be fairly assessed and could not have legitimately influenced bettors’ opinions to such an extent;
- Increase of suspicious betting in spite of diminishing time remaining; and
- Previous escalated match of Zoo FC that witnessed similar suspicious live betting.

Match 2:

- Suspicious actions by the players;
 - Line-up change due to five players being sacked due to match-fixing allegations; and
 - Previous escalated match of Zoo FC that witnessed similar suspicious live betting.
- Consequently, FIFA Integrity is convinced that the analytical information outlined in the two FDS reports was sufficiently supported by external elements, in order to meet the criteria determined by CAS for those reports to be considered as a basis for building up in the direction that Match 1 and Match 2 have been manipulated.

b. Other reports supporting the conclusion of the FDS reports

- According to CAS, other reports that reach similar conclusions as the FDS report can also be evidence of the reliability of the FDS³.
- In the underlying investigation, FIFA Integrity also received reports from Genius Sports and Perform, which analysed the betting patterns during Match 1 and Match 2. These reports came to the following conclusions in regards to the two matches:

¹ CAS 2016/A/4650 ; CAS 2018/A/5734.

² CAS 2016/A/4650.

³ CAS 2018/A/5734.

Match 1:

- *Genius Sports: “Upon a deep analysis of the betting patterns, the context surrounding each club, as well as team news and match action (‘Performance Analysis’), the betting appears to suggest that the match was likely manipulated for exactly five goals to be scored in the game, with Sofapaka winning 3-2 or, ideally, 4-1. A final score of 4-1 would likely have presented slightly greater profits, but the 3-2 scoreline was still very much profitable to bettors – particularly on the Totals market.” (...) “It is clear that an extreme set of sporting factors would be needed to justify this betting. There was no evidence of any such sporting factors in this case. Therefore, we have graded this report Red.”*
- *Perform: “There are clear grounds for concern as to the integrity of this match through analysis of in-play betting markets. These concerns are in Match Odds and Asian Handicap markets during the early stages of the match, and even more so in the Total Goals markets during the final quarter of the match. (...) The extent of the shortening of Sofapaka’s price appears irregular when compared to both team’s respective prices in previous matches played that season.” (...) Overall, given the multiple market concerns, Sofapaka v Zoo Kericho has been allocated a ‘4’ (strong suspicion) on SPI’s Integrity Grading Index, and further investigations are strongly recommended.”*

Match 2

- *Genius Sports: “Upon a deep analysis of the betting patterns, the context surrounding each club, as well as team news and match action (‘Performance Analysis’), we have concerns over the integrity of the match. Specifically, bettors appear to have held prior knowledge that Wazito would win by at least two goals, and for at least four goals to be scored in the game.” (...) “It is clear that no sporting factors could be identified to justify the betting described in this report. In this case, the sporting factors do not appear to have any relationship to the betting. Therefore, we have graded this report Red.”*
- *Perform: “A drop in the Match Odds price of Wazito from around 1.70 down to 1.25 is almost the level of movement expected in reaction to a goal being scored, and indicates excessive market confidence that Wazito would go on to win the match. Although Wazito were on top during the early stages of the match, their dominance was not to a degree that would justify such strong support. (...) Taking these factors into account and following analysis of betting markets, Wazito v Zoo Kericho has been allocated a ‘3’ (medium suspicion) on SPI’s Integrity Grading Index, with further investigations recommended.”*
- *Genius Sports and Perform have conducted an independent analysis of the betting data of Match 1 and Match 2 and reached similar conclusions as the FDS reports with regard to the behaviour of Zoo FC.*
- *In conclusion, FIFA Integrity considers the FDS as a reliable mechanism to assist in the detection of fixed matches and comfortably relies on the conclusions of the two provided FDS reports on Match 1 and Match 2 as well as on the additional reports supporting their*

conclusion, which considers that these two matches have been manipulated for betting purposes.

2. Removal of betting markets

- In recent decisions, CAS acknowledged the importance of the fact that a bookmaker removes a certain live market before the end of a football match when considering if a match has been manipulated⁴. In regards to Match 1 and 2 the following was detected by Genius Sports and Perform:

Match 1:

- Genius Sports and Perform have noted that a prominent Asian bookmaker, namely Singbet, has suspended all its markets after the 22nd minute until the remainder of the match.
- Genius Sports also detected that Bet365, a British Online Gambling Company based in the United Kingdom, suspended all its markets during the opening 10 minutes and again as of the 82nd minute.

Match 2:

- Genius Sports detected that Singbet, a major Asian operator, closed the Match Result market prematurely in the 9th minute until the remainder of the match.
 - Genius Sports also noted that SBObet, an online bookmaker that has operations in Asia licensed by the Philippines and operations in Europe licensed by the Isle of Man, also closed the Match Result market prematurely in the 16th minute until the remainder of the match.
- The fact that Genius Sports and Perform highlighted that various bookmakers removed all their markets or some of their markets during Match 1 and Match 2 is striking and, although it does not suffice per se to determine the manipulation of a match, when appreciated in conjunction with the remaining elements of the report it adds to the conclusion that these matches have been manipulated.

3. History of suspicious matches

- In a landmark case, CAS stated the fact that the further evidence having been brought forward in regards to additional suspicious matches of the same club comforted the panel in its determination that the match analysed had been manipulated and left them “with the opinion that this was not an isolated incident⁵”.
- In the underlying case, FIFA Integrity listed six (6) additional matches that were deemed to have been manipulated over the period 2018-2019 and relies on the FDS reports in each of these matches. In all these matches it was concluded, as for Match 1 and Match 2, that the bettors held prior knowledge of Zoo FC losing the match. Moreover, the conclusions of the FDS reports were supported by six reports of Genius Sports on the six additional matches that were identified.

⁴ CAS 2016/A/4650 ; CAS 2018/A/5734.

⁵ CAS 2017/A/5173.

- *The fact that Zoo FC was implicated in these additional suspicious matches leads to the conclusion that the manipulation of Match 1 and Match 2 were not isolated events and it appears that the club has been involved in match-fixing over a period of three years.*

4. Suspicious behaviour of players of Zoo FC

- *While suspicious behaviour or errors detected on the field of play cannot, per se, be conclusive evidence of match-fixing, it can be seen as corroborating evidence while deciding whether a match has been manipulated or not⁶. According to CAS, it is of particular relevance that there exists a link between the suspicious betting patterns and the suspicious performance, for example when the timing of the errors coincides with the exceptional betting patterns⁷.*
- *Players, apart from referees, are the key individuals who can directly influence the result or course of a match. Especially, as most of the fixing entails conceding a certain number of goals or a certain team losing the match, a well-known modus operandi of match-fixers is to corrupt goalkeepers and defenders to ensure the desired result.*
- *In a first step, it has to be analysed what kind of evidence was brought forward in connection with Match 1 and Match 2 in relation to the performance of individuals on the field of play. In a second step, it needs to be established if there is a correlation between the suspicious behaviour and the betting patterns in said matches.*

Match 1

- *The three sports consultancies Sportradar, Genius Sports and Perform have provided FIFA Integrity with performance analysis reports in regards to Match 1. The following two players were all mentioned by the three companies due to their high amount of mistakes during the match and their specific performance in the lead-up to the three goals conceded by Zoo FC. For the purpose of reaching a comprehensive overview, the mistakes that were identified by at least two out of the three expert companies are displayed in the table below.*

Mr Ligare (defender, no. 16)

Minutes of the match	Sportradar	Genius Sports	Perform
21.44-21.54 ⁵²⁰ (Goal 1)	X	X	
23.30-23.39 ⁵²²	X	X	X
24.33-24.44 ⁵²⁴ (Goal 2)	X	X	X
37.59-38.11 ⁵²⁶	X	X	

Mr Sabiri (defender, no. 13)

Minutes of the match	Sportradar	Genius Sports	Perform
01.29-01.37 ⁵²¹	X	X	
13.48-13.57 ⁵²³	X	X	
21.25-21.31 ⁵²⁵		X	X
30.29-30.40 ⁵²⁷	X	X	X
32.18-32.34 ⁵²⁸ (Goal 3)	X	X	X
37.59-38.11 ⁵²⁹	X	X	
44.35-44.48 ⁵³⁰		X	X
44.35-44.48 ⁵³¹		X	X

- *Sportradar also highlighted Mr Elungat (goalkeeper, no. 19) and Genius Sports Mr Ouma (defender, no. 39) for some suspicious errors during the match. (...).*
- *It is striking and suspicious to see that the players of Zoo FC that were identified for their errors during Match 1 were all either defenders or the goalkeeper.*

⁶ CAS 2009/A/1920.

⁷ CAS 2017/A/5173 ; CAS 2016/A/4650.

- (...)
- *Considering that most of the suspicious betting took place in the first 20 minutes of the match prior to the first goal that was conceded by Zoo FC, it has to be considered that the match action that was highlighted by the three companies during this period of time, namely the mistake of Mr Ligare in connection with the first goal as well as some other mistakes of Zoo FC players, coincide with the timing of the suspicious betting detected.*
- *Genius Sports concluded in this regards the following: “It could be suggested that certain individuals from Zoo Kericho were possibly playing below their full capabilities which would, therefore, influence the outcome of the match. (...) we are concerned that certain players from Zoo Kericho may have been playing in a manner which assisted the success of this betting, and below their maximum levels, at specific times during the game.” There were no relevant errors identified for the match officials or the opposing team Sofapaka FC.*
- *Perform made the following conclusion: “SPI’s performance analysis has identified elements in the performances of several members of the Kericho team that corroborate concerns over the integrity of the match. Throughout the match only one suspicious event IPR was raised through the action of a Sofapaka player and, overall, our analysis has identified no concerns of deliberate under-performance relating to Sofapaka players. (...) In the period of the match which followed the substantial betting for Sofapaka, between twenty minutes play and half-time, Kericho defended their goal in a manner which was repeatedly and arguably to a much lower standard than expected for a team at their level, and that contrasted with their performance at other stages of the match.” There were no relevant errors of the match officials identified by Perform.*

Match 2

- *The three sports consultancies Sportradar, Genius Sports and Perform have provided FIFA Integrity with performance analysis reports in regards to Match 2. The following three players were mentioned by the three companies due to their high amount of mistakes during the match and their specific performance in the lead-up to the three goals conceded by Zoo FC. For the purpose of reaching a comprehensive overview, the mistakes that were identified by at least two out of the three expert reports are displayed in the table below.*

Mr Ambulwa (defender, no. 24)			Mr Misikhu (goalkeeper, no. 9)			Mr Murabwa (defender, no 17)		
	Genius Sports	Perform	Sport-radar	Genius Sports	Perform	Sport radar	Genius Sports	
45:50-45:60 ¹⁴³ (Goal 3)	X	X						
32:05-32:17 ¹⁴⁴ (Goal 2)			X	X	X			
41:55-42:00 ¹⁴⁵				X	X			
74:40-74:45 ¹⁴⁷ (Goal 4)			X	X	X			
						45:50-45:60 ¹⁴⁵ (Goal 3)	X	X

- *Considering that most of the suspicious betting took place in the first 20 minutes of the match prior to the first goal that was conceded by Zoo FC, it has to be considered that the match action that was highlighted by the three companies during this period of time, namely the mistake of Mr Ambulwa in connection with the first goal as well as some other mistakes of Zoo FC players, coincide with the timing of the suspicious betting detected.*
- *It has to be noted that the three groups that analysed the performance of the teams specifically highlighted errors in connection with the four goals conceded by Zoo FC, which*

therefore shows the direct link between the action of these players and the suspicious betting.

- *Genius Sports concluded in this regards the following: “we are concerned that certain players from Zoo Kericho were possibly playing in a manner which assisted the success of this betting, and below their maximum levels, at specific times during the game. In the context of the betting described in this report, the betting appears to suggest that certain individuals held prior knowledge of the outcome of the match. The behaviour of the Zoo Kericho players only strengthens this belief.” Moreover, Genius Sports did not identify any relevant mistakes of Wazito players or the match officials in their report.*
- *Perform made the following conclusion: “In conclusion, SPI’s performance analysis has identified actions on the pitch from Kericho players which work to the detriment of their own team, and instead work towards outcomes supported in the betting markets. Suspicions over moves in the betting markets are increased since there appears to be no justification for them in events on the pitch.” Moreover, Perform did not identify any relevant mistakes of Wazito players or the match officials in their report*
- *In view of the above, FIFA Integrity is convinced that there was a clear correlation between the action and mistakes of various Zoo FC players during Match 1 & 2 and the suspicious betting detected in the betting markets. Furthermore, it can be excluded that any individuals not pertaining to Zoo FC, such as referees, have been complicit in the manipulation.*

5. Open source information

- *According to CAS, the information contained in media outlets, or general open source pointing to the direction that match-fixing has taken place, can be seen as corroborating evidence that could support the conclusion that an individual or a club have been directly or indirectly involved in match-fixing activities⁸.*
- *As outlined in section VI. of this investigative report, it was reported in various media outlets that according to the head coach of Zoo FC, Mr Iswekha, various Zoo FC players allegedly have been involved in match manipulation during their time at the club and have therefore been sacked.*
- *Even though the reported information in the media does not prove in itself that Zoo FC has been directly or indirectly involved in match-fixing activities, the public perception supports the further evidence provided and also points to the confirmation of the involvement of the club.*

6. Intelligence

- *Intelligence that points to the direction that match-fixing has taken place can be seen as corroborating evidence that could support the conclusion that a certain match has been manipulated or that an individual or a club have been directly or indirectly involved in match-fixing activities.*

⁸ CAS 2016/A/4650.

- *FIFA Integrity has received an affidavit from the Zoo FC head coach, Mr Iswekha, describing situations of alleged match-fixing at the Club and stating that former players of Zoo FC, namely Mr Elungat, Mr Sabiri, Mr Ligare, Mr Ouma, Mr Kiptoo and Mr Oduor, allegedly have been fixing matches of Zoo FC in the 2018/19 and 2019/20 seasons of the Kenyan Premier League. After confronting the players with the suspicions, they have gradually been sacked by the club, with the last player having to leave the club in the end of 2019.*
- *Even though Mr Iswekha has not provided any direct evidence for the allegations made in the affidavit against the players, his statements have to be taken into account when establishing if the club Zoo FC has been involved in match-fixing activities. Especially, the fact that the mentioned players were present at the club at the time of Match 1 as well as during the time of some additional suspicious matches presented in section V. of this report, further strengthens the concerns in regards to the club having been involved in match-fixing activities.*
- *These concerns are even further strengthened by the fact that some social media connections between Zoo FC players and well-known match-fixers were identified and some players appear to follow social media pages offering “fixed” matches, as outlined in section VII. B of this investigative report.*
- *Last but not least, it is concerning to observe that even after the last release in the end of 2019 of players under suspicion for match-fixing, it appears that the manipulation of matches continued at the club, as Match 2 was played in March 2020. This could be an indication of a deep routed match-fixing that is not only connected to a few individuals within the club.*

7. Witness statements

- *Witness statements are another valuable element of proof when aiming to establish match manipulation that may per se, in the case of an explicit confession by an individual, determine his culpability, although it is a fact that explicit confessions are rare to obtain due to the concealed nature of the conducts aimed at manipulating matches.*
- *Nevertheless, the lack of a specific confession does not rule out that weight and reliability are given to other statements made by the relevant witnesses, which has ultimately been supported by CAS when considering that the simple denial is insufficient to rebut other evidence when the implicated individuals have not offered an alternative version that could explain the match-fixing conducts that are investigated⁹.*
- *In this context, and as it has been previously explained in this report, some of the statements made by the witnesses that were interviewed unequivocally point out in the direction that match-fixing has taken place at Zoo FC during the period of the matches under scrutiny.*
- *In this regard, the owner of the club, Mr Ken Ochieng, the current Head Coach Mr Herman Iswekha who was the coach of the team in Match 2, as well as Mr Sammy Okoth and Mr Nick Yakhama, former Head Coach and Technical Director of Zoo FC and who were carrying out their functions in Match 1, all admitted having suspicions of match-fixing over some of*

⁹ CAS 2018/A/5734.

the team's players and confirmed that the mistakes committed by their players in Match 1 and Match 2 were abnormal. Moreover, upon being informed in the interviews with FIFA Integrity of the suspicious betting patterns in those matches, they all acknowledged that, although not having conclusive evidence of it, both matches were likely to have been manipulated.

- *Furthermore, Mr Ochieng and Mr Iswekha explicitly confirmed that the reason for sacking five of the team's players was the suspicions of match-fixing they had over them, although given that the club had no conclusive evidence of match-fixing against them, the official reason given to the players for terminating their contract without being subject to legal consequences was their poor performance.*
- *On another note, the aforementioned individuals, as well as one of the Club's former players, Mr Ambulwa, also confirmed that some of the suspected players had a considerable change in their lifestyle while at Zoo FC by opening different businesses, which added to the suspicions over them, considering that at that time the Club was not paying the players' salaries.*
- *Finally, upon viewing the mistakes committed in Match 2 and being informed by FIFA Integrity of the suspicious betting patterns over those matches, Mr Ochieng, Mr Iswekha and Mr Ambulwa confirmed their suspicions and acknowledged that the match may have been manipulated.*
- *In sum, despite the witness statements in this investigative report lacking the value of an explicit confession, the fact that officials and players of the Club have identified suspicious mistakes by some players of Zoo FC and also have acknowledged the possibility that Match 1 and Match 2 have been manipulated can be seen as corroborating evidence further strengthening the concerns in regards to these two matches.*

8. Number of matches under scrutiny and evidence bundle

- *In a landmark case, CAS stated that it was particularly relevant that the evidence submitted was not related to only one but to more matches and therewith a crescendo of evidence was provided¹⁰. In the case of this CAS decision the following evidence was provided in order to prove that match manipulation occurred: FDS reports, supporting expert reports, suspicious behaviour of players in the field of game, suspension of betting markets by a betting operator, media news.*
- *In this investigative report against Zoo FC, the focus was put on two matches that are deemed to have been manipulated, and a similar crescendo of evidence as in the above-referenced CAS decision has been presented. In particular, also in the present case FDS reports, additional expert reports supporting the conclusion of the FDS reports, suspicious behaviour of players in the field of game, suspension of betting markets by some betting operators and information reported in the media were adduced. In addition, evidence such as information on other six additional suspicious matches played by Zoo FC, intelligence (namely the affidavit of Mr Iswekha), consistent witness statements and suspicious social media connections, were also brought forward. Consequently, this bundle of evidence*

¹⁰ CAS 2018/A/5734.

contains additional means of proof compared to the referenced CAS proceedings and, even more, the cumulative effect of the adduced evidence points to the conclusion that match manipulation occurred in the case at stake.

9. Conclusion

- In view of the above and taking into consideration the assessment of all the factual elements presented, FIFA Integrity concludes that the betting movements in connection with Match 1 and Match 2 were suspicious and such circumstance cannot be explained otherwise than the fact of these matches have been manipulated by individuals pertaining to the club Zoo FC.*
 - It also has to be noted that, even though it has been established that individuals pertaining to the club Zoo FC played a fundamental role in the manipulation of Match 1 and Match 2, namely the goalkeeper and other defenders, FIFA Integrity believes that there is not enough evidence to conclusively identify a single specific individual to be held as the sole responsible of the manipulation of the matches under scrutiny, based on the available evidence (mainly the performance analysis and intelligence information). However, in view of all the pieces of evidence herewith submitted, this fact does not preclude the conclusion that Match 1 and Match 2 indeed have been manipulated.*
 - Such approach was also recently adopted by CAS whereby, despite confirming that the mere identification of mistakes of a goalkeeper during a match that was manipulated was not sufficient to prove that said goalkeeper was actually involved in the manipulation of the match, the Panel was comfortably satisfied that the evidence provided (namely a BFDS report and the analysis of the performance of the goalkeeper and other defenders of the team) proved that the match at stake had been manipulated¹¹.*
6. Accordingly, FIFA Integrity recommended that, based on the aforementioned report, proceedings be opened against Zoo FC by the Disciplinary Committee in accordance with art. 52 FDC.
7. On 25 February 2021, disciplinary proceedings were opened against Zoo FC (hereinafter also referred as to “*the Club*” or “*the Respondent*”) for the potential breach of art. 18 of the FIFA Disciplinary Code (FDC).

II. ZOO FC’S POSITION

8. On 18 March 2021, Zoo FC provided its position which can be summarised as follows:

1. Brief History of the Respondent

- Zoo Football Club was established in the year 2009 by its Chairman and owner Ken Ochieng’ whom finances the team from his law practice in the Kericho town that it is based. Mr. Ochieng’ started the team to give back to the community by offering talented youth with an opportunity to showcase their football talents. The Club is widely known as

¹¹ CAS 2018/A/6075.

a nursery for talent and has also had a reputation of rehabilitating some talented but contumacious and/or drug and alcohol abusing youth.

- Having explained that the Club concluded several partnerships that helped its players to graduate with High School Certificates/College diplomas or to have part-time jobs, the Respondent recalled that it helped many Kericho youth to have a source of livelihood that they would otherwise not have. The Club has granted them a new lease of life that no other team would and is desirous of continuing to do so.
- However, running such a huge team with such enormous objective has had huge financial drain on its owner. It inevitably has had to adopt the semi-professional model to be able to keep afloat and the training sessions are hence inevitably held in the evening after work or school.

2. Brief Statement of facts

- In late 2018 and or early 2019, there were numerous reports in the Kenyan media of incidences of match-fixing in the Kenyan football scene. It is during this period that Mr. Ochieng' became suspicious that some of the club's players might have been throwing away the team's away matches or were purposely underperforming.
- Consequently, Mr. Ochieng' took action and in three phases terminated or did not renew the contracts of the aforesaid players.
- Moreover, Mr Ochieng' reported his concerns to the Football Kenya Federation. However, given that neither Mr. Ochieng', the Club nor the FKF had ample legislative tools and resources to detect and fight match-fixing, Mr. Ochieng' sought the help of one of Kenya's leading media outlets, *Daily Nation Newspaper*, to publicise the matter in the hope that the Kenyan police or any criminal investigative agencies would take it up.
- After extensive investigations carried out by the *Daily Nation Newspaper's* top journalist, no evidence directly or indirectly linking Zoo FC or any other club to match-fixing could be found. To the contrary, it appeared that Kenyan clubs were victims of the vice.
- In the context of its investigation, FIFA Integrity interrogated several officials of the club, namely Mr Ken Ochieng' (Chairman), Mr Herman Iswekha (Head coach), Mr Nick Yakhma (Former technical director) and Mr Sammy Okoth (Former head coach).
- Mr. Okoth and Mr. Yakhama vehemently refuted allegations of match-fixing reported by Mr. Ochieng' and Mr. Iswekha when they had been interrogated by FIFA Integrity.
- In addition, some players of the club were equally interrogated by FIFA Integrity, namely Mr Sammy Sindani (Former defender), Mr Martin Elunga't (Former goalkeeper), Mr Eugene Ambulwa (Former defender) and Mr Vincent Misikhu (Current goalkeeper). In this respect, the three last players refuted the allegation of match-fixing and denied having ever witnessed or suspected incidence of match manipulation in the team.
- To the contrary, the poor performance of the team was ascribed to the numerous financial problems that the Club was facing, and which hindered the overall team's performance.
- Finally, although Sportradar Intelligence and Investigation Services Report mentioned several players as persons of interest, seven current and former players mentioned

therein were curiously not interrogated despite their availability. However, these players were cooperative and provided affidavits during the present proceedings and are willing to assist.

3. Legal Arguments

a. Zoo FC did not breach art. 18 of the FDC

- To be guilty of infringing art. 18 FDC, one must be directly or indirectly involved in match manipulation. In this context, if anyone was directly or indirectly involved in match manipulation, then it was the club's goalkeeper and other defenders, but not the officials of the Respondent.
- However, neither the goalkeeper nor the defenders can be said to have breached art. 18 FDC to the comfortable satisfaction of the FIFA Disciplinary Committee. In this respect, FIFA Integrity held that it *"believes that there is not enough evidence to conclusively identify a single specific individual to be held as the sole responsible of the manipulation of the matches under scrutiny, based on the available evidence (namely the performance analysis and intelligence information."*
- In this regard, the seriousness of allegations of match-fixing against the goalkeeper and the other defenders required strong cogent evidence. In this sense, the burden of proof rests on FIFA, but the FIR does not offer more than mere suspicion. Not even the Club's officials, Mr. Ochieng and Mr. Iswekha, were able to back their suspicions by establishing that any of the players was engaged in that prohibited conduct. In fact, the FIR suggested that further investigation had to be undertaken, implying that the present disciplinary proceedings were initiated on incomplete investigations.
- In continuation, the video footages of Matches 1 and 2 could offer a certain degree of wrongdoing but cannot be conclusive evidence. In this context, CAS already ruled that *"not every instance of bad or underperformance of a player necessarily means that a match was fixed (...)"*¹².
- In view of the gravity of the charges, FIFA Integrity should have at least summoned a football expert (either a coach, a referee or a fellow professional footballer) to suggest that players' performance was the result of malicious intention, or that their *mens rea* had been compromised beyond reasonable doubt. However, it appears that the players and coaches of the Club considered these mistakes as not so unusual.
- In the same line, the Referees Report of Match 1 corroborates the improbability that the goalkeeper and other defenders manipulated the matches.
- As regards to the FDS betting reports and the betting monitoring system, the Respondent recalled that according to CAS, such betting reports have *"certain limitations and unless supported by other evidence, they are not sufficient proof that a match has been manipulated"*¹³.

¹² CAS 2013/A/3256.

¹³ CAS 2016/A/4650.

- In other words, FIFA Integrity misdirected itself upon the facts by failing to properly evaluate them and appraise the evidence before it. In particular, the Respondent made the following remarks and comments on certain elements mentioned in the FIR:
 - i) *History of the Respondent's suspicious matches and the suspicious behavior of its player.*
 - Despite the fact that there is no authoritative definition as to what would qualify a match or a behaviour or a betting pattern as “suspicious”, suspicion, however strong, does not amount to evidence.
 - As regards the team's overall performances, football is a team sport whose results are influenced by many factors. It is therefore imperative that all sporting and non-sporting factors surrounding a match are taken into account before any conclusion on possibility of match manipulation is drawn.
 - For instance, as regards Match 2, the Respondent missed the services of their experienced defenders due to injury. Moreover, Mr. Iswekha stated during his interrogation with FIFA Integrity that the youngsters fielded simply made schoolboy errors.
 - In continuation, the Club was facing financial problems at the time when the investigated matches took place. The players would nevertheless play for the badge and achieved good results.
 - In light of the above, it is therefore incorrect and inaccurate to ignore the above elements to conclude that Matches 1 & 2 were manipulated, or that there was general match manipulation merely because the Respondent posted some poor performances along the way. No interviews were conducted with the coaches and players who participated in the suspicious matches.
 - Notwithstanding this, and in rebuttal of the allegations of match-fixing, the aforementioned individuals attested to their honest belief that:
 - The staff and/or its officials and/or the club have never been involved in match-fixing nor witnessed any incidences of match-fixing at club.
 - They have always played all the matches according to their capabilities.
 - ii) *Mr. Iswekha's affidavit purportedly stating that former players were involved in match-fixing*
 - The interpretation of Mr. Iswekha's affidavit is incorrect and misleading as the latter never stated that any of the Club's players fixed matches but merely suspected that some of his players could have been involved in match-fixing.
 - In this context, FIFA Integrity itself admitted that “*Mr Iswekha has not provided any direct evidence for the allegations made in the affidavit against the players [...].*”
 - iii) *Social media connections between Zoo FC players and well-known match fixers*
 - The mere fact that a player likes or follows the social media accounts of a match-fixer does not make that player a match-fixer.

- This point of view is corroborated by the FIR where it was reported that *"the links of Zoo FC with the Perumal syndicate as well as with match-fixing website [...] do not constitute a proof of a match manipulation in themselves, they raise integrity concerns"*.
- iv) *Mr. Ochieng', Mr. Iswekha, Mr. Yakhama, Mr. Okoth and Mr. Ambulwa's witness statements*
 - All the witnesses merely suspected some players to be involved in match manipulation but did not have any evidence to that effect.
 - To the contrary, the rest of the persons of interest vehemently denied having ever witnessed or suspected any match-fixing in the team. This is also acknowledged in the FIR as follows: *"[...] the witness statements in this investigative report lack the value of an explicit confession..."*.
- v) *The number of matches under scrutiny and evidence bundle*
 - Overall, FIFA Integrity looked at the FDS reports, the witness statements, the players' suspicious behavior and their social media connections to conclude that they cumulatively point towards match manipulation.
 - However, these conclusions are based on suspicions that have not been corroborated with evidence that equate the seriousness of the accusations levelled against the players.
 - In other words, it is quality and not quantity which determines the adequacy of evidence.

b. Was the club directly or indirectly involved in match manipulation?

- For the purposes of art. 18 FDC, a distinction between the club (its officials), and the players must be established to be in line with CAS practice, as the latter did this distinction in other matters before concluding that the club was strictly liable for the conduct of its players.
- In cases where FIFA has been able to identify and find cogent evidence of match-fixing by a player, only the said player was sanctioned, to the exclusion of his club.
- Most importantly, CAS stated that *"[w]ith respect to UEFA's allegation that Fenerbahçe as an entity violated article 5 of the UEFA DR, the Panel finds that this is not the case. A legal entity can only be held liable for match-fixing through actions of persons representing or acting on behalf of the legal entity, i.e. its officials."*
- In light of the foregoing, the FIFA Disciplinary Committee cannot establish that the Respondent's officials have breached art. 18 FDC for the following reasons:
 - The president of the Club terminated the contracts of players he suspected to be involved in match-fixing and reported his suspicions to FKF and actively reached out to the Kenyan media;
 - The Respondent fully cooperated and continues to cooperate with the FIFA.

- Concluding that the reporter (i.e. the Club) were in breach of art. 18 FDC would be a grave misapplication of the law in view of the manifest absence of direct or indirect evidence linking the Respondent's officials to match-fixing practices.

c. No strict liability – exception to art. 8 (1) of the FDC.

- Art. 8 (1) FDC is not absolute. On the contrary, it needs to be qualified or addressed on a case-by-case basis given the presence of the term "*may be responsible*". This discretionary power granted to the Disciplinary Committee should be applied judiciously when it comes to attributing responsibility to clubs for certain actions of their players, or even exonerating them, depending on the circumstances.
- Moreover, for any sanctions to be imposed on the Respondent through art. 8 (1) FDC, it must be confirmed first that its officials and players performed an "*action or omission*" that "*directly or indirectly*" influenced or manipulated Matches 1 and 2. From the foregoing, there is no evidence in the FIR that could prove that the Respondent's officials or players directly or indirectly influenced or manipulated the said matches.
- Furthermore, art. 8 (1) FDC was not designed to impose a systematic sanction on a club for the acts or omissions of its players, but rather to educate and encourage clubs to take an active role in the fight against match-fixing, which the Club clearly did since it terminated the contracts of the suspected players, reported its concerns to FKF, alerted the Kenyan media and cooperated with FIFA.
- It would somehow be counterproductive and contrary to the spirit of that rule if a club that did all within its powers to help curb a serious vice in football were to pay a hefty price merely because the actual perpetrators have not been identified.
- Finally, art. 51 of the Swiss Code of Obligations provides that an employer is exempt from the doctrine of strict liability if it can establish that it took all due care to avoid a damage of this type or that the damage would have occurred even if all due care had been taken.
- In this respect, the Respondent did not attempt to cover up the potential misconduct but reported its suspicions to FKF and the media. In addition, it terminated or did not extend the contracts of the players suspected to be involved in match-fixing.
- Consequently, the Respondent cannot be held liable for the act of the goalkeeper and the other defenders.

4. Conclusion

- In light of the foregoing, the Respondent requested to clear and release it from all the charges.
- However, should the Disciplinary Committee consider the Respondent liable under arts. 18 (2) and 8 (1) FDC, the disciplinary measure to be imposed should be scaled down, or even entirely dispensed, and the Disciplinary Committee should bear in mind the following mitigating circumstances:
 - The Respondent fully cooperated and continues to cooperate with FIFA;
 - It reported the matter to FIFA through the Kenyan FA and the media.

5. The FIFA Disciplinary Committee (hereinafter also referred to as “*the Committee*”) once again reiterated that it had considered all the facts, allegations, legal arguments and evidence provided by Zoo FC, and in the present decision had only referred to those observations and evidence for which it considered necessary to explain its reasoning.

III. CONSIDERATIONS OF THE DISCIPLINARY COMMITTEE

1. In view of the circumstances of the present matter, the Committee decided to first address the procedural aspects, namely, its jurisdiction and the applicable law, before entering into the substance of the matter.

A. Jurisdiction of the FIFA Disciplinary Committee

2. First of all, the Committee noted that at no point during the present proceedings did the Respondent challenge its jurisdiction or the applicability of the FIFA Disciplinary Code (FDC).
3. Notwithstanding the above and for the sake of good order, the Committee found it worthwhile to emphasise that, in view of arts. 18 (4) and 53 of FDC edition 2019 – edition applicable to the present matter as outlined below – it was competent to evaluate the present case and to impose sanctions in case of corresponding violations.

B. Applicable law

4. In order to duly assess the present matter, the Committee deemed that it had to determine which edition of the Disciplinary Code applied to the substance of the case.
5. In these circumstances, the Committee noted that FIFA Integrity investigated two matches which took place on 27 January 2019 (Match 1) and 1 March 2020 (Match 2) respectively. Bearing in mind that the current and applicable 2019 edition of the Disciplinary Code entered into force on 15 July 2019, it appears that Match 2 would fall under the 2019 ed. of the FDC, whilst Match 1 should be analysed under the previous edition of the Code, namely the 2017 edition.
6. Notwithstanding the above, the Committee decided that the code applicable to the present matter, including Match 1, should be the 2019 edition in light of art. 4 (2) of the FDC, which states that “[*the 2019 ed.*] also applies to all disciplinary offences committee prior to the date on which it comes into force, subject to any milder sanction that would apply under previous rules”. Effectively, this provision allows for a retroactive application of the current code to the extent that the sanctions under the new code are more favourable to the accused than those under the previous edition.
7. In this regard, the Committee noticed that art. 18 (2) of the 2019 ed. and art. 69 (2) of the 2017 ed. referred both to “*Manipulation of football matches and competitions*” and to “*Unlawfully influencing match results*” respectively and empowered FIFA Judicial Bodies to sanction a club or an association to which the player or official belongs in case the latter engaged in any form of

match manipulation. As to the sanctions to be imposed, art. 69 (2) of the 2017 ed. foresaw a fine and, in case of a serious offence, expulsion from a competition, relegation to a lower division, a point deduction and the return of awards. The 2019 ed., on the other hand, provided as specific sanctions the forfeiture of the match in question or the ban on participating in another competition, while additional disciplinary measures could be imposed, notably those listed in art. 6 of the 2019 ed.

8. In light of the above observations, one can hardly regard the potential sanctions to be imposed under the 2019 ed. in cases of match manipulation as less favourable to the accused than the possible sanctions the latter could face pursuant to the application of the 2017 ed. In addition, the Committee wished to emphasise that both provisions are intended to punish anyone who engages in match-fixing, and that the slightly different wording of the two provisions does not affect their identical purpose or interpretation.
9. Finally, the Committee observed that the Respondent did not dispute the fact that the FIR referred to the 2019 ed. of the FDC only and likewise did not claim that another version of the FDC should apply.
10. The above having been clarified, the Committee decided to begin by recalling the content and the scope of the relevant provisions of the 2019 ed. FDC applicable to the present case, the aforementioned being without prejudice to other rules that may also be at stake:

Article 8 (1) of the FDC – Responsibility

“Unless otherwise specified in this Code, infringements are punishable regardless of whether they have been committed deliberately or negligently. In particular, associations and clubs may be responsible for the behaviour of their members, players, officials or supporters or any other person carrying out a function on their behalf even if the association or club concerned can prove the absence of any fault or negligence.”

11. This article stipulates that clubs or associations can be held liable for the behaviour of their members, players, officials or any other person carrying out a function on their behalf, this being the case even if the club/association in question can establish that it was not in fault or that it had not been negligent.

Article 18 (1) and (2) of the FDC – Manipulation of football matches and competitions

Par. 1 *“Anyone who directly or indirectly, by an act or an omission, unlawfully influences or manipulates the course, result or any other aspect of a match and/or competition or conspires or attempts to do so by any means shall be sanctioned with a minimum five-year ban on taking part in any football-related activity as well as a fine of at least CHF 100,000. In serious cases, a longer ban period, including a potential lifetime ban on taking part in any football-related activity, shall be imposed.*

Par. 2 *“If a player or official engages in behaviour described in paragraph 1, the club or association to which the player or official belongs may be sanctioned with the forfeiting of the match*

in question or may be declared ineligible to participate in a different competition, provided the integrity of the competition is protected. Additional disciplinary measures may be imposed.

12. These provisions aim to achieve one of FIFA's statutory objectives, namely the promotion of integrity, ethics and fair play with a view to preventing all methods or practices, such as corruption, doping or match manipulation, which might jeopardize the integrity of matches, competitions, players, officials and member associations or give rise to abuse of association football¹⁴.
13. In continuation, it is worth mentioning that for several years FIFA has taken a zero-tolerance approach with respect to match manipulation and is committed to protecting the integrity of football by all possible means.
14. Finally, the Committee pointed out that the second paragraph of art. 18 FDC is similar to art. 8 (1), in that associations or clubs may be sanctioned should their players or officials be found to be engaged in match-fixing.

C. Standard of proof

15. Firstly, the Committee recalled that the burden of proof lies with FIFA, which is required to prove the infringement under art. 36 (1) FDC.
16. Secondly, the Committee pointed out that, according to art. 35 (3) FDC, the standard of "comfortable satisfaction" is applicable in disciplinary proceedings. According to this standard of proof, the onus is on the sanctioning authority to establish the disciplinary violation to the comfortable satisfaction of the judging body, taking into account the seriousness of the allegation.
17. In particular, CAS, which also applies this standard in disciplinary proceedings, defined this standard of proof as higher than the civil standard of "*balance of probability*" but lower than the criminal standard of "*proof beyond a reasonable doubt*"¹⁵.
18. In addition, the Committee noted that the CAS jurisprudence clearly establishes that the standard of proof in match-fixing cases is "comfortable satisfaction"¹⁶.
19. The Committee subsequently turned its attention to the merits of the case.

¹⁴ Cf. art. 2 lit. g) of the FIFA Statutes.

¹⁵ See amongst other CAS 2009/A/1920; CAS 2010/a2172; CAS 2013/A/3323; CAS 2017/A/5006.

¹⁶ CAS 2009/A/1920; CAS 2013/A/3062; 2013/A/3256; CAS 2013/A/3258; CAS 2018/A/5920.

D. Merits of the dispute

I. Issues to be considered

20. Having established the above, the Committee then proceeded to examine the evidence at its disposal, namely the Investigative Report provided by FIFA Integrity along with the different enclosures as well as the position of the Respondent, in order to determine whether Zoo FC can be held liable for the misconduct of its own players, as suggested in the FIR.
21. In this respect, FIFA Integrity, through its Investigative Report, is considered to have comprehensively analysed Matches 1 and 2 and concluded that both Matches had been fixed in regards not only to their outcome but also to the number of goals scored to obtain betting profits.
22. To reach that conclusion, the following elements have been incorporated to the proceedings:
- **Betting reports:** FDS reports which analysed the suspicious odds detected during Match 1 and Match 2 on the Live Asian Handicap Market and the Live Totals market. In these reports, it was explicitly mentioned that the betting patterns detected contrasted with logical expectations, and there was no legitimate and justifiable explanation for them. Moreover, Sportradar drew this conclusion not only on analytical data and on the absence of any normal explanation, but also took into account external factors that corroborated the theory that the abnormal betting behaviour was likely to be explained by match-fixing. Moreover, additional reports from Genius Sports and Perform, which also analysed the betting patterns during Matches 1 and 2, reached similar conclusions.
 - **Removal of betting market:** Some bookmakers removed all their markets or some of their markets during Matches 1 and 2.
 - **History of suspicious matches:** Sportradar provided six reports regarding additional matches that were deemed to have been manipulated over the period 2018-2019. These conclusions were supported by six reports of Genius Sport on those six additional matches.
 - **Suspicious behaviour of players of Zoo FC:** Sportradar, Genius Sports and Perform identified mistakes of Zoo FC players in Matches 1 and 2, whilst simultaneously, no relevant concerns regarding the performance of the players of the opposing teams were highlighted. Moreover, it was established that the actions of those players were deemed to be linked to the suspicious betting.
 - **Suspicious connection on social media:** Some Zoo FC players followed social media pages offering information on fixed matches and had connections with convicted match-fixers.
 - **Open-source information and affidavit from Zoo FC head coach:** Various media outlets reported that according to the head coach of Zoo FC, various players were allegedly involved in match manipulation during their time at the Club and had been sacked for that reason. Similar allegations were provided by the head coach to FIFA in an affidavit.
 - **Witness statements:** Some officials and players of the Club have identified suspicious mistakes by some players of Zoo FC and acknowledged the possibility that Matches 1 and 2 have been manipulated. In addition, they confirmed that the lifestyle of some of the

suspected players had changed considerably since they were at the Club, with the opening of different businesses, thus raising suspicions about them given that at that time the Club was not paying the salaries of the players due to financial problems.

23. Based on these elements, it was determined in the FIR that players, related to Zoo FC only, were involved in match-fixing and more specifically in the manipulation of Matches 1 and 2. Therefore, as per arts. 8 (1) and 18 (2) FDC, the Respondent should be held liable for the behaviour of its players.
24. Upon the opening of the present disciplinary proceedings, the Respondent contested the allegations of match-fixing and considered that FIFA had misdirected itself upon the facts by failing to properly evaluate and appraise the facts and evidence before it. In particular, the Respondent argued that several elements had not been taken into account, such as the fact that during Match 2 the Club's best defenders were absent and were replaced by youngsters who made schoolboy mistakes, or the fact that the Club was facing financial problems which therefore hindered the general performance of the team.
25. In the view of the Respondent, it was therefore wrong to conclude that Matches 1 and 2 had been manipulated on the basis that some players underperformed. Furthermore, the Respondent submitted several affidavits from players and a former coach attesting that nobody from the Club had been involved in match manipulation and that they always competed to the top of their capabilities.
26. With regard to the liability of clubs for the behaviour of their players and officials, the Respondent pointed out that art. 8 (1) FDC does not provide for automatic strict liability but that the Disciplinary Committee has a discretionary power when assigning responsibility to clubs for certain actions of their players, and that this power had to be applied judiciously as clubs could also be exonerated from any liability depending on the circumstances.
27. In sum, the Respondent argued that the FIR has failed to demonstrate that Zoo FC players were involved in match-fixing since the conclusions contained therein were merely based on suspicions that were not corroborated by evidence, with the result that the Respondent itself could never be held liable for unproven misconduct by its players. In any event, the Respondent did its utmost to report its suspicions to FKF and the media, terminated the contracts of the players it suspected of being involved in match-fixing and cooperated with FIFA. Therefore, sanctioning the Club that reported its concerns would be contrary to the spirit and purpose of art. 18 FDC.
28. In view of the above, the Committee considered that, before proceeding to analyse a possible violation of art. 18 FDC by Zoo FC's players, it first had to determine whether the Club could be held liable for the behaviour of its own players. Consequently, the Committee decided to focus first on the question of the liability of clubs for conduct committed by individuals under their umbrella before analysing whether art. 18 FDC had been infringed in the case at hand.

II. The responsibility of clubs over actions committed by individuals under their umbrella

29. As established above, the first issue to be analysed concerned the liability of clubs for the conduct of individuals under their umbrella. In other words, can Zoo FC be held liable for the alleged misconduct of its own players, as reported in the FIR?
30. As a starting point, the Committee noted that the Disciplinary Code contained various provisions establishing that clubs or national associations can be held responsible for the conduct of other individuals. In particular, the Committee remarked that arts. 8 (1) and 18 (2) FDC set out a strict liability rule, according to which the club or association is responsible for the misconduct of its players and officials, even if the club or association concerned is not at fault.
31. In the light of these elements, the Committee considered that the wording of the above-mentioned provisions left no doubt that players and officials could incur the responsibility of the association or club to which they belong through their actions and behaviour.
32. Turning to the case at hand, the Committee understood that in the event that Zoo FC's players were involved in match manipulation in a manner contrary to art. 18 (1) FDC, the Club would be held liable for this conduct as per arts. 8 (1) and 18 (2) FDC. In this sense, the Committee considered it particularly important to look into a CAS award involving the club KS Skënderbeu and UEFA, in which the club was held responsible, and sanctioned, for the behaviour of individuals belonging to the club for being involved in match-fixing¹⁷.
33. Among the relevant elements of this award was the fact that CAS decided that the strict liability of a club can be established without the need to identify a specific perpetrator, as long as the offence was committed by an individual under the umbrella of the club in question. In other words, CAS held that it was sufficient that individuals belonging to the club, such as its members, official supporters or players, were involved in match-fixing activities in order for the club to incur liability¹⁸.
34. This approach was confirmed by the Swiss Federal Tribunal (SFT), which stated that it was not necessary to identify a specific person in order for art. 8 of the UEFA Disciplinary Regulations to apply, but that it was sufficient to establish that any of the club's members, officials, supporters or players had committed the wrongdoing, as long as no third parties to the club, such as referees, were involved in the offence in question¹⁹. Furthermore, SFT stressed that such an interpretation was compatible with the text of the provision and was justified by the fact that match-fixing and corruption were essentially concealed and that, as sports bodies had limited coercive powers, they did not have the same means of investigation as state authorities to shed light on such acts.
35. For the sake of clarity, the Committee made it clear that it was fully aware that the above-mentioned case did not concern FIFA and that the provisions of the UEFA Disciplinary Regulations (UEFA Regulations), namely arts. 8 and 12, were at stake. Nevertheless, the Committee noted that

¹⁷ CAS 2018/A/5734

¹⁸ Ibid.

¹⁹ SFT 4A_462/2019.

art. 8 of the UEFA Regulations provided for a strict liability rule, identical to art. 8 (1) FDC, and that art. 18 (1) FDC was drafted very similarly to art. 12 of the UEFA Regulations and had the common objective of sanctioning match-fixing related behaviour.

36. As a result, the Committee decided that there was no reason to deviate from the approach taken in the *SK Skënderbeu case*, although the abovementioned provisions originate from different regulations, namely those of UEFA and FIFA. This means that in the event that the Respondent's players would be involved in match manipulation, without any third-party involvement (e.g. a referee), Zoo FC would be held responsible for this infringement perpetrated by its own players.

III. Was art. 18 (1) of the FIFA Disciplinary Code infringed?

37. Having stated the above, the Committee moved to analyse whether Zoo FC's players had infringed art. 18 (1) FDC.
38. In this regard, the Committee started to recall that art. 18 (1) FDC sanctions the conduct of match manipulation as the conduct of *"anyone who directly or indirectly, by an act or an omission, unlawfully influences or manipulates the course, result or any other aspect of a match and/or competition or conspires to do so by any means"*.
39. In continuation, the Committee pointed out that for art. 18 (1) FDC to be infringed, it is necessary that *"anyone"*, directly or indirectly, manipulates or unlawfully influences the course, result or any other aspect of a match or conspires by any means. In particular, and in line with the *KS Skënderbeu* award, the Committee understood that, according to the wording of art. 18 (1) FDC (*"anyone"*), it is not necessary for a specific individual to be identified, but that no other group alien to the club under scrutiny is responsible for the offence to engage the liability of the club under art. 18 (2) FDC.
40. In this context, the Committee considered that if it could be established to its comfortable satisfaction that Zoo FC's players had unlawfully influenced the course or the result of Matches 1 and 2, then art. 18 (1) FDC would be breached by persons belonging to the Respondent, thus engaging its responsibility for the acts of its own players.
41. Against this background, the Committee started by pointing out that the only subjects who could effectively manipulate matches are the individuals performing on the field of play. These individuals are the only who could have a decisive impact in the development of the match and unduly influence both the result and the smooth running of the latter. Being true that other individuals may conspire to fix matches, and deserve by that a similar punishment, the ones bringing to play the plot are those performing during the match.
42. Bearing the above in mind and having examined the evidence and information in the case file, the Committee had no doubt that several players of Zoo FC, by their actions, illegally influenced the course and outcome of Matches 1 and 2, and thus engaged in conduct contrary to art. 18 (1) FDC. In reaching this conclusion, the Committee relied primarily on the betting reports provided by Sportradar, Genius sport and Perform and the fact that these companies were able to identify

errors made by Zoo FC's players in the matches examined which were directly linked to suspect betting patterns.

43. Before examining the content of these betting reports, the Committee wished to point out that, as the Swiss Federal Tribunal has rightly recognised, Sports Federations do not have the same means of investigation as the State authorities to bring to light match-fixing practices, which are by nature hidden. Thus, one of the main tools that Sports Federations can rely on to detect such practices is the betting reports generated by companies that are, among other things, specialised in monitoring the betting market to detect suspicious betting patterns before and during a match. Furthermore, CAS has explicitly recognised that analytical information derived from these fraud detection system reports (FDS), such as those of Sportradar, is valuable evidence which, *"particularly if corroborated by further evidence, can be used in order to conclude that a club was directly or indirectly involved in match-fixing"*²⁰.
44. The above being clarified, the Committee focused on the content of the betting reports provided by Sportradar, Genius sport and Perform, which all pointed towards the same direction, namely that Matches 1 and 2 had been manipulated. In particular, the Committee considered that it could not be ignored that those reports explicitly mentioned that the betting patterns detected were in contrast to logical expectations, and that there was no legitimate and justifiable explanation for them, except the fact that the bettors knew the outcome of the matches in advances. Moreover, the fact that betting websites removed all their markets or some of their markets during Matches 1 and 2 was another important element that pointed to match-fixing.
45. In this regard, the Committee noted that the Respondent did not offer any convincing alternative explanation for the betting movements that formed the basis of the match-fixing allegations.
46. During the investigation, the same companies were able to identify mistakes of Zoo FC's players in Matches 1 and 2, while no relevant concerns regarding the performance of players of the opposing teams or the match officials were highlighted. Moreover, it was established that the actions of those players were deemed to be linked to the suspicious betting. In particular, the Committee deemed that the arguments of the Respondent that the team was missing its best defenders during Match 2 does not stand, bearing in mind that obvious mistakes of the goalkeeper Mr Misikhu connected to goals 2 and 4 had been identified by the aforementioned companies.
47. Already at this stage and on reading the betting reports, the Committee was comfortably satisfied that Matches 1 and 2 had been manipulated by players of the Respondent. Moreover, additional evidence gathered during the investigation fully supported this conclusion.
48. For example, newspaper articles reported that according to the head coach of the Club, various players were involved in match-fixing during their time at the club and have been sacked accordingly. Moreover, some officials and players of the Club, including the president of the Club, acknowledged the possibility that Matches 1 and 2 had been manipulated. This last element was

²⁰ CAS 2018/A/5734.

not an explicit confession *per se* as the players interrogated by FIFA Integrity denied these allegations.

49. Nevertheless, the Committee emphasised that the lack of a specific confession does not rule out that weight and reliability are given to other statements made by the relevant witnesses. In this regard, it is worth recalling that CAS has considered that a simple denial was insufficient to rebut other evidence when the implicated individuals had not offered an alternative version that could explain the match-fixing conduct being investigated²¹. Therefore, the fact that the contracts of some players of the Club were either terminated or not extended due to match-fixing suspicions from the side of the Club's president cannot be ignored by the Committee.
50. The Committee further took into account the additional betting reports provided by Sportradar, which identified that six matches over the period 2018-2019 might have been manipulated. Such conclusions were also confirmed by corroborating reports from Genius Sport.
51. Finally, the Committee was extremely concerned that two (former) goalkeepers of the Club appeared to have links with Mr Perumal and his associate Mr Chann, two convicted match-fixers. In particular, the FIR reported that:
- *"Martin Elungat has previously been connected with two online profiles that are almost certainly attributed to Sankaran Chann, namely those of: i) Tony Phillip, who liked a profile picture uploaded on Facebook by Mr Elungat in April 2019, and ii) David Escobar, whose profile picture on Facebook was liked by Mr Elungat, who was the only individual to have liked the photo."*
 - *"Vincent Misikhu follows an Instagram account that is almost certainly attributed to Mr Perumal, and is one of just 66 Instagram users that are following this Perumal account, showing at the very least his awareness of match-fixing."*
52. In the same vein, the Committee found it inconceivable and inadmissible that at least four players were following social media pages offering information about match-fixing, such as Instagram profiles entitled *"Oliviawin9"*, *"legitfixedmatches01"*, *"reliablefixedmatch"*, *"Winningbetsfixedmatches"*, *"betpawakenya"*, *"ehibetoo1"*, *"hilpcorrectscorefixedmatch"* or *"fixedbet123"* and one Facebook profile *"BETS"*²². When confronted with this element, the Respondent merely stated that *"the mere fact that a player likes or follows the social media accounts of a match-fixer does not make that player a match-fixer"*, without however offering any explanation as to why players "were following" such profiles.
53. All in all, the Committee found that it was apparent that FC Zoo's players were involved in match-fixing, as not only did the players underperform, but their poor performances were associated with suspicious bets and these suspicious bets were directly linked to illogical and unjustifiable betting patterns for Matches 1 and 2, except that the bettors had advance knowledge of the scoring in those matches.

²¹ CAS 2018/A/5734.

²² Martin Elungat, Danson Chetambe, Micheal Madoya, and Stanslas Akiya.

54. In addition, the Committee felt strengthened in its conclusion by the following evidence:

- Six other Zoo FC matches were likely to have been manipulated in accordance with betting reports;
- Witness statements (coach and president) acknowledging that some players may have manipulated matches;
- Newspaper articles reporting on potential match-fixing cases involving Zoo FC's players;
- Two of the club's (former) goalkeepers were likely to have been involved with convicted match-fixers and four players followed social media profiles with particularly suspicious names providing information on match-fixing.

55. Finally, the Committee pointed out that the evidence gathered demonstrated that no third party to the Club was involved in the manipulation of Matches 1 and 2. Consequently, the Committee deemed that players belonging to Zoo FC illegally influenced the course and outcome of these two matches, thus violating art. 18 (1) FDC.

56. Therefore, based on art. 8 (1) read in conjunction with art. 18 (2) FDC, the Committee concluded that Zoo FC should be held responsible for the behaviour of its players and should be sanctioned accordingly.

IV. Determination of the sanction

57. The violations of the FDC by Zoo FC having been established, the Committee subsequently considered the sanction(s) to be imposed.

58. The Committee observed in the first place that the Respondent was a legal person, and as such could be subject to the sanctions described under art. 6 par. 1 and 3 of the FDC.

59. For the sake of good order, the Committee underlined that it was responsible to determine the type and extent of the disciplinary measures to be imposed in accordance with the objective and subjective elements of the offence, taking into account both aggravating and mitigating circumstances (art. 24 par. 1 of the FDC).

60. As established above, Zoo FC was held responsible for the behaviour of its players who engaged in match manipulation in violation of art. 18 (1) FDC. In this regard, the Committee observed that arts. 8 (1) and 18 (2) FDC contain a strict liability rule, according to which the club or association is responsible for the misconduct of its players and officials. Nevertheless, these provisions give the Disciplinary Committee some discretion, as the provisions do not provide that in all cases of misconduct by its players or officials, the association or club must be sanctioned. This discretionary power is reflected by the terms "*may be responsible for the behaviour of their members (...)*" in art. 8 (1) FDC and "*the club or association to which the player or official belongs may be sanctioned*" / "*Additional disciplinary measures may be imposed*" in art. 18 (2) FDC.

61. In view of the above, the Committee devoted particular attention to CAS jurisprudence, in particular CAS 2014/A/3578, which dealt with the strict liability of the host association regarding the behaviour of spectators. In said award, CAS pointed out that *“the FDC draftsman left space granting the FIFA DC with discretion not to sanction an association (in the particular case KNVB) or to impose sanctions at its own discretion depending on the particular facts and elements of each case, such as how serious the violation was, the way the association handled the incident, and whether the overall circumstances of the incident should justify the sanctioning of the association in question.”*
62. By virtue of that award, it became apparent to the Committee that it had to decide whether Zoo FC's sanction could be justified or whether there were appropriate circumstances that could reduce or even eliminate any sanction to be imposed on the Respondent.
63. In this regard, the Committee found that there were no circumstances that could exonerate the Respondent to be sanctioned. On the contrary, in the course of the present disciplinary proceedings, it was established that Matches 1 and 2 were manipulated, while six other matches were most likely manipulated. The manipulation/unlawful influence of matches is one of the most serious offences that can be committed as it goes to the heart of football, which explains why FIFA has adopted a zero-tolerance policy towards this practice.
64. Furthermore, the Committee noticed that between Match 1 and Match 2, more than a year had passed. In addition, if one looks at the other six matches suspected of having been manipulated, it was clear to the Committee that match manipulation was likely to be deeply rooted within Zoo FC and that the Club had been involved in match manipulation schemes and malpractice over a long period of time.
65. Having determined that the Club should be sanctioned, the Committee subsequently turned its attention to art. 18 (2) FDC which provides for specific sanctions such as the loss of the match in question or a ban from participating in another competition, while additional disciplinary measures could be imposed. In this respect, the Committee found it useful to recall the sanctions foreseen in the 2017 edition of the FDC, namely a fine and, in the event of a serious offence, expulsion from a competition, relegation to a lower division, deduction of points and the return of awards.
66. As such and based on these observations, the Committee considered that a fine would be an insufficient sanction in view of the long period of time over which Zoo FC's matches had been manipulated and the seriousness of the offence. Taking into account the specific sanctions provided for in the FDC ed. 2017 and the need to preserve the integrity of the competition, the Committee considered that an expulsion from the competition in which the match manipulation scheme took place was necessary to ensure the integrity of that competition. Indeed, without an immediate expulsion of the Club from the *Kenyan Super League* for one year, namely for the 2020/2021 season, that league and its championship would be put at risk and every match result would be questioned.

67. In addition, the Committee decided that the Club should be relegated to the next division, namely the *Division One*. While the expulsion from the *Kenyan Super League* is a measure to safeguard the integrity of that championship, the relegation of the Club should be regarded as a disciplinary measure sanctioning the Respondent for having been involved, through its players, in match-fixing schemes and malpractice over a long period of time.
68. The Committee accepted that these measures were severe but considered them necessary to protect the integrity of the 2020/2021 *Kenyan Super League* season and proportionate to the seriousness of the offences committed.
69. Finally, since it appeared that match manipulation was deeply rooted in Kenyan football, the Committee decided to order the Football Kenya Federation to contact FIFA and to implement a prevention plan as an educational directive designed to prevent and combat the manipulation of football matches and competitions.

IV. DECISION OF THE DISCIPLINARY COMMITTEE

- 1. The FIFA Disciplinary Committee finds the club Zoo FC responsible for activities related to manipulation of football matches and competitions.**
- 2. The club Zoo FC is hereby expelled from the Kenyan Premier League Season 2020/2021 as of the date of notification of the present decision.**
- 3. The FIFA Disciplinary Committee hereby orders the relegation of the first team of the club Zoo FC to the FKF Division One for the next season.**
- 4. The FIFA Disciplinary Committee orders the Football Kenya Federation to contact FIFA and implement a prevention plan as an educational directive designed to prevent and combat the manipulation of football matches and competitions.**

FÉDÉRATION INTERNATIONALE
DE FOOTBALL ASSOCIATION



Alejandro Piera

Deputy Chairman of the FIFA Disciplinary Committee

NOTE RELATING TO THE LEGAL ACTION:

This decision can be contested before the FIFA Appeal Committee (art. 57 of the FDC, 2019 edition). Any party intending to appeal must announce its intention to do so in writing within three (3) days of notification of the grounds of the decision. Reasons for the appeal must then be given in writing within a further time limit of five (5) days, commencing upon expiry of the first-time limit of three (3) days (art. 56 par. 4 of the FDC, 2019 edition). The appeal fee of CHF 1,000 shall be transferred to the aforementioned bank account on the date of the expiry of the time limit of five days for submitting the reasons for appeal at the latest (art. 56 par. 6 of the FDC, 2019 edition).