



GHANA FOOTBALL ASSOCIATION

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[F034]

DECISION OF THE PLAYERS' STATUS COMMITTEE ON THE PETITION OF MAXWELL KONADU AGAINST ASANTE KOTOKO ON BREACH OF CONTRACT

FACTS OF THE CASE

Petitioner's/Player's Case

The Petitioner set out his case in his petition dated 4th March 2021 as follows:

1. On the 4th of March 2021, Maxwell Konadu (Coach)/ Petitioner), and a coach by profession, petitioned the Ghana Football Association (GFA), Players Status Committee (PSC) alleging a unilateral breach of his contract without just cause by his club, Asante Kotoko Sporting Club(Respondent / Club / Kotoko).
2. He stated that he signed a two year contract with the Club, beginning 9th December 2019 and expected to end 8th December, 2021.
3. The said contract contained provisions on obligations, benefits, rights and duties of the respective contracting parties.
4. Article 11 of the contract lists detailed circumstances under which the contract may be terminated by either party.
5. He further indicated that the Ghana Premier League (GPL / the League), of which the Club is a member, commenced in or about November 2020. While engaged as Coach of the Respondent, the Club played four (4) matches in the GPL and one (1) match in the CAF Champions League against FC Nouadhibou club of Mauritania.
6. He listed the results of the above five(5) matches as follows:
 - 15/11/2021, Kotoko vrs Eleven Wonders(1-1);
 - 22/11/2020, Chelsea vrs Kotoko (1-1);
 - 11/12/2020, Kotoko vrs Legon Cities (1-0);
 - 27/11/2020, Nouadhibou vrs Kotoko (1-1);
 - 07/12/2020, Kotoko vrs Nouadhibo(—); and

- 17/12/2020, Olympics vrs Kotoko (1-0)
7. He indicated that, on the 17th of December, 2020, he received a letter from the Chief Executive Officer (CEO) of Kotoko terminating the contract between the two parties, with the reason being: “inability to exhibit a high level of performance which will prepare the team to the height it deserves to be.” This, the Petitioner, considered a unilateral breach of their contract without just cause.
 8. The Respondent said that on the 9th of February 2021, he wrote to Kotoko pointing out what he perceived as the illegality of their action.
 9. On the 24th of February 2021, in a letter dated 15th February 2021, Kotoko responded justifying their action and offered the Petitioner 3 months’ salary in lieu of notice. The Club also offered to pay the balance of the Coach’s signing on fee as well as and two matches winning bonuses. Total amount offered came up to GHS80, 500. Although the letter claimed to have a cheque enclosed, the Petitioner claims the letter came without the said enclosed cheque.
 10. On the 3rd of March, 2021, the Petitioner wrote back to Kotoko pointing out the absence of the Cheque and questioning why he was being paid only part of his claim. He indicated his decision to seek redress at the Players’ Status Committee. This letter was delivered to Kotoko on the 3rd of March, 2021.
 11. On March 23, 2021, the Petitioner submitted to the Committee an addendum to his original petition giving further information and explaining why his set targets captured in clause 6 of the Contract cannot be considered failures.
 12. The coach seeks the following reliefs from the PSC:
 - a. Entitlement to the sum of \$36,000 or it’s equivalent in Ghana Cedis being salaries due from January to December 2021.
 - b. A declaration of entitlement to a qualification bonus earned from their match against Nouadhibou of Mauritania in the CAF Champions League
 - c. Entitlement to GHS30,000 being balance of signing on fee
 - d. Payment of GHS2000 being payment for winning bonuses for two Ghana Premier League matches
 - e. General damages or compensation of \$60,000 for unilateral breach of contract
 - f. Costs
 13. Among the attachments presented by the Petitioner were;
 - Club’s termination letter which indicated termination “with immediate effect” for “inability to exhibit a high level of performance” dated December 17, 2020;
 - Petitioner’s demand for lawful entitlement and compensation dated 9th February 2021;

- Club's response to entitlement and compensation saying their decision was in line with the labour laws of Ghana and also in accordance of the employment contract dated 15th February 2021;
- Petitioner's rejection of the club's offer of GHS 80,500;and
- The employment contract between the parties.

14. On March 23, 2021, the Petitioner submitted to the Committee an addendum to his original petition giving further information and explaining why his set targets captured in clause 6 of the Contract cannot be considered failures.

RESPONDENT REACTION:

15. On the 16 March, 2021, the Respondent, wrote to the PSC, explaining that their Representative was out of the jurisdiction, so in order not to delay this case any further, they had decided to put in a written response to the petition within which they stated:

- a. That both parties were at liberty to sever the relationship by the terms of the contract "for cause and without cause". They relied on Clause 11.2 which says, "if the Club terminates this Agreement for any reason other than those stated in 11.4 and 11.5....the Club shall pay three months' gross salaries to the Head Coach in lieu of notice."
- b. The Respondent went further to rely on Clause 11.4 and 11.5 as being the reason the Head Coach was offered three months' salaries in lieu.
- c. In another breath, the Respondent claimed that "The appointment of the Complainant was terminated in accordance with Clauses 11.1 and 11.2"
- d. Respondent also relied on a DRC Decision 0315778 where "penalty clauses are freely entered into by the parties and may be considered acceptable, in the event that the pertinent written clause meets certain criteria...."
- e. The Respondent quoted CAS/2016/A/4826 and Article 17(1) of the FIFA RSTP and still relied on Clauses 11.1, 11.2 and 11.3 of the Contract as being fair and representing the "parties freedom of contract"
- f. Respondent finally stated that, the Petitioner breached Clause 11.5.5 of the Contract.

"On the expiry or termination of this Agreement for any cause whatsoever, the Head Coach shall return all properties belonging to the Club which he holds on behalf of the Club, to the Club in good condition, and the Club shall immediately pay all outstanding monies that the Head Coach is entitled to under this Agreement."

16. The Respondent demanded fifty-five thousand, three hundred Ghana Cedis (GHS55, 300) for hiring a vehicle for the use of the Administration Manager, because the Petitioner did not turn in the official vehicle when the contract was terminated by the Respondent.

17. The Respondent had no issue with the payment of GHS30,000 to the Petitioner, being balance of signing on fee as in Clause 4.1.1 of Contract.
18. According to the Respondent, there was no provision for the payment of winning bonuses in the contract, and that, Clause 4.1.4 only allowed the Club "the discretion" to determine the winning bonuses payable to the Head Coach in respect of other national and International matches. The Club however did note that GHS 1,000 had previously been used as a winning bonus.
19. Finally, Respondent disagreed with the General Damages of Sixty Thousand U.S Dollars (\$60,000) being claimed by the Petitioner.

The Committee's Observations

20. Both parties agree there was a signed contract between them with duration, terms, obligations and benefits.
21. Of significance and relevance in the contract to this case are: Clauses 6(Performance targets); Clause 10(Breach); Clause 11(Termination) and the Club's reasons for termination.
22. The relevant clauses have been set out below for ease of reference.

CLAUSE 6

6.1 The head coach shall achieve the following performance targets

6.1.1 League Targets

- a) The head coach undertakes to ensure that the club finishes as one of the top three (3) teams in the 2019-2020 and 2020-2021 Premier League seasons.
- b) The Head Coach further undertakes to ensure that the club wins at least one Premier league cup within the 2019-2020 and 2020-2021 Premier league seasons.

6.1.2 FA Cup Competition Targets

- a) The Head Coach undertakes to ensure that the club reaches at least the semi-final stage of the 2019-2020 and the 2020-2021 tournaments; and
- b) The Head Coach undertakes to ensure that the club wins at least one of the FA Cup competitions within the 2019-2020 and 2020-2021 League season.

6.1.3 CAF Champions league Competition Targets

- a) The Head Coach undertakes to ensure that the club reaches at least the group stage in the 2020-2021 tournament.

6.1.4 Confederations' Cup Competition Targets

a) The Head Coach undertakes that the club qualifies to play in the 2020-2021 competition and shall reach at least the semifinals of the competition.

6.2. The Parties agree that the Targets set in clauses 6 herein are fundamental and material to this Agreement.

CLAUSE 10 BREACH

10.1 Notwithstanding any other provisions of this Agreement, and without prejudice to any other rights which the Parties may have, either of the Parties hereto shall have the right to terminate this Agreement should the other Party be in breach of any of the provisions of this Agreement and fail, within one (1) month of the receipt of written notice calling upon it to remedy such breach, to comply therewith.

CLAUSE 11. TERMINATION

11.1 Subject to Clauses 11.2 and 11.3 hereunder, either party to this Agreement may terminate this Agreement by giving not less than three (3) months written notice to the other party.

11.2. If the club terminates this Agreement for any reason, other than those stated in 11.4 and 11.5 below and before the expiry of the term hereby granted or any extension thereof, the Club shall pay three (3) months gross salaries to the Head Coach in lieu of notice.

11.3 If the Head Coach terminates this Agreement before the expiry of the term hereby granted or any extension thereof, he shall pay to the Club three months gross salaries in lieu of notice

11.4 The Club may terminate the Head Coach's appointment without any compensation and without prior notice where the Head Coach is:

11.4.1 unable to meet any of the Targets stated in clause 6 herein;

11.4.2 found liable by a competent national or international authority or organization in respect of any offense involving possession, use or application of illegal or prohibited drugs or substance; and

11.4.3 found by any national or international football body to have behaved in such a manner that the continuous employment of the Head Coach is likely to bring the Club into public ridicule, dishonour or contempt.

11.5 This Agreement shall in any event be terminated in any of the following circumstances

- 11.5.1 On the date stipulated for expiry subject to the right of renewal;
- 11.5.2 if, in the opinion of the Club, the Head Coach is for no reason incapable of carrying out his duties for a period exceeding one (1) month;
- 11.5.3 if, in the opinion of the Club, the Head Coach is incapable of producing winning results in three consecutive matches;
- 11.5.4 if there is a fundamental breach of this Agreement occasioned by:
- 11.5.4.1 Refusal of the Head Coach to act in accordance with his obligations under this Agreement as directed by the Club;
 - 11.5.4.2 refusal by the club to pay the remuneration, allowances, bonuses and other benefits due the Head Coach on the date on which it is due;
 - 11.5.4.3 breach of the Parties obligation as to confidentiality as stipulated in this Agreement.
 - 11.5.4.4 any act that would render the Head Coach and the Club liable to termination under their Labour Act, 2003 (Act 651) provided that where there is a fundamental breach by any of the parties of any term of this Agreement the injured parties shall serve written notice of such breach on the party in default requiring him to remedy the breach within thirty (30) days and if the defaulting party fail so to do, the injured party may then elect to terminate the Agreement.

CLAUSE 12: DISPUTE RESOLUTION

12.1 The Parties shall endeavour in all cases to settle any disputes and misunderstanding which may arise in connection with this Agreement amicably.

12.2 Where amicable settlement of any dispute arising from this Agreement cannot be reached, the parties shall refer the matter to the following bodies in the following order for determination;

12.2.1 the Ghana Football Association (GFA)

12.2.2 Federation Internationale de Football Association (FIFA); and

12.2.3 Court of Arbitration of Sports (CAS) in Lausanne Switzerland.

The PSC now tackles the Contract termination, justification and decisions thereof:

To begin with, the Committee took note of Item 15 of the contract between the two parties which states:

Clause 15 GOVERNING LAW

“This Agreement shall be governed by the laws of the Republic of Ghana, the Football Association Rules and Regulations and the Federation Internationale de Association (FIFA)”

The Committee further took into consideration Clause 12.2 of the contract:

12.2 Where amicable settlement of any dispute arising from this Agreement cannot be reached, the parties shall refer the matter to the following bodies in the following order for determination:

12.2.1 the Ghana Football Association (GFA)

12.2, 2 Federation Internationale de Football Association (FIFA), and

12.2.3 Court of Arbitration for Sports (CAS) in Lausanne Switzerland

23. The Committee wishes to point out that, much as national law is important, in most football cases, as in this particular case, GFA and FIFA Regulations prevail over national law.
24. In Decision of the Dispute Resolution Chamber passed in Zurich, Switzerland, on 23 March 2017 on the dispute between

Player A, Country B.....as Claimant

And the Club,

Club C, Country D.....as Respondent

Regarding an employment-related dispute arisen between the parties the following instructive statement was given:

20.”.....the Chamber wished to point out, as a principle, that when deciding a dispute before the DRC, **FIFA’S regulations prevail over any national law** chosen by the parties. In this regard, the Chamber emphasized that the main objective of the FIFA regulations is to create a standard set of rules to which all the actors within the football community are subject and can rely on...”

Having established this, the PSC therefore derives its jurisdiction from the GFA Regulations

Art.28 JURISDICTION OF THE GFA which states:

“Without prejudice of the right of any player or club to seek redress before a civil court for employment-related disputes, the GFA is competent to hear:

28.3 employment related disputes between a club or the GFA itself and a coach unless it is before an independent arbitration such as the Dispute Resolution Committee that guarantees fair proceedings”

25. The Committee shall therefore examine this case before it, using GFA Regulations as in Articles 12, 13, 16(1, 3, 4, 5) that deal with contracts, respect for contracts, termination and consequences where there is no just cause.
26. The Committee’s next task was to analyse the reason(s) given by the Club for the termination of the contract and if it was in line with the terms of the contract between the two Parties. The Committee was also to examine if the termination met the “just cause” clause in football.
27. Kotoko’s termination letter to the Coach dated December 17, 2020 indicated that the termination was “with immediate effect”. The letter went on to say:

“The decision has been arrived at due to your inability to exhibit a high level of performance which would propel the team to the height it deserves to be. Subject to clause 11(2) of your employment contract, you shall accordingly be given all your entitlements.”
28. Clause 11(2) of the contract states:

“If the club terminates this Agreement for any reason other than those stated in 11.4 and 11.5 below and before the expiry of the term hereby granted or any extension thereof, the Club shall pay three months’ gross salaries to the Head Coach in lieu of notice”
29. In the understanding of the Committee, the above payment of three months’ gross salaries in lieu of notice is for any other reason other than Clause 11.4 and 11.5. In other words, it is at variance with the reason for the termination.
30. The reason given by the Club for termination, to all intents and purposes, fall under Clause 11.4.1 where the payment of three months’ gross salaries does not apply. Clause 11.4.1 captures the Performance Targets required of the Head Coach.
31. It is clause 11.4 that deals with the reason given by the Club for the termination. It states:

“The Club may terminate the Head Coach’s employment without any compensation and without prior notice where the Head Coach is:”. ...

This is followed by Clause 11.4.1 where Clause 6, dealing with set targets, is a part of conditions
32. The above clause presupposes that there must be just cause for the termination beyond reasonable doubts. It is only in such a situation that termination without

prior notice and no payment of compensation as a consequence can be considered.

33. The Committee next analysed if there was **just cause for the termination**. Just cause in the context of this Contract that warranted a termination without prior notice and without payment of compensation lie in breaches of Clauses:
- 11.4.1
 - 11.4.2
 - 11.4.3
 - 11.5.1
 - 11.5.2
 - 11.5.3
 - 11.5.4.1
 - 11.5.4.3
34. Upon examination, none of the above clauses was in breach by the Head Coach. It is only Clause 11.4.1 which is related to set targets in Clause 6, that needed to be further considered. The Committee therefore set out to examine the achievements of the Head Coach as related to the Targets set for him in **clause 6** of his contract

6.1.1 League Targets

a) "The Head Coach undertakes to ensure that the club finishes as one of the top three(3) teams in the 2019-2020 and 2020-2021 Premier league seasons;"

- The Head Coach indicated that in the 2019-2020 season, the Club was in the 4th position when the Ghana Premier League was truncated. That league did not travel far when it was truncated. With regard to this, the Committee feels it cannot be said that the Head Coach did not achieve his target.
- In the 2020-2021 Premier League the Head Coach indicated that the club had played only four (4) matches when his contract was terminated. Below are the results of the matches played before termination:

Kotoko vrs Eleven Wonders	1-1. (15/11/2029)
Chelsea vrs Kotoko	1-1. (22/11/2020)
Kotoko vrs Legon Cities	1-0. (11/12/2020)
Nouadhibou vrs Kotoko	1-1. (27/11/2020) Away game
Kotoko vrs Nouadhibou	COVID issues with Nouadhibou (Kotoko qualified)
Olympus vrs Kotoko	1-0 (17/12/2020)

- With regard to the above, and the League being in such a nascent stage, it is almost impossible to draw a determination that the Petitioner would not achieved the set target if he was allowed to run the full course of the League.

6.1.2 FA CUP Targets

a) The Head Coach undertakes to ensure that the club reaches at least the semi final stage of the 2019-2020 and 2020-2021 tournaments;

- 2019-2020 The Head Coach indicated that the Club was eliminated before the semi final stage. He however indicated that the Club continued to work with him in training and subsequent matches without a problem. The Committee is of the view that, the Club therefore did not consider this blip a sufficient enough reason to invoke the termination clause. Working relations therefore continued normally.
- 2020-2021: The tournament did not begin before the termination even though the Premier league was on-going.
- The Committee cannot deem these as failures.

6.1.3 CAF Champions' League Competition Targets

- a) The Head Coach undertakes to ensure that the club reaches at least the group stage in the 2020-2021 tournament.

Here, the Head Coach indicated that the Club drew 1-1 away with Nouadhibou of Mauritania and qualified to the next stage by default, as Nouadhibou could not honor the return leg due to COVID-19 reasons. His appointment was surprisingly terminated after this. In the above case, the Committee feels the team was on track and it was unnecessary terminating the Head Coach's contract at this stage.

6.1.4 Confederations' Cup Competition Targets

- a) The Head Coach undertakes to ensure that the club qualifies to play in the 2020-2021 competition and shall reach at least the semifinals of the competition.

This tournament is a follow-up of qualifiers of the CAF Champions league competition and since Kotoko did not allow him to continue in the CAF Champions League competition after eliminating Nouadhibou of Mauritania, he could not have participated, and did not participate in the Confederations' Cup Competition.

- In the above scenario also, the Committee cannot fault the Head Coach for not achieving a target he was not given the chance to participate in.

After all these, the Committee further examined Clause 11.5.3 of the Contract. It states that this Agreement "shall in any event be terminated in any of the following circumstances ":

11.5.3

"If, I the opinion of the Club, the Head Coach is incapable of producing winning results in three consecutive matches"

35. In the considered opinion of the Committee, the use of “opinion” in the above clause, remains only an opinion to the club. This makes it rather subjective and exposes the other party to the mercy of an opinion. This notwithstanding, after examining the results achieved by the Head Coach, nothing showed that he was “incapable of producing winning results in three consecutive matches if he was allowed to do his job“.
36. The Committee therefore, after analysing the set targets of the Head Coach’s contract, felt that the Coach’s termination was rather hasty, premature, based on the club’s “opinion” (subjective), and lacks just cause.
37. We refer to the;
Decision of the Single Judge of the Players’ Status Committee passed in Zurich, Switzerland, on 26 February 2020 on the claim presented by:

The Coach, Arnau Navarro Cabre, Spain.....as Claimant

Against

Qingdao Huanghai Football club, China PR...as Respondent

Regarding an employment and performance related dispute between the Parties:

12. On 29 July 2019, the club unilaterally terminated the contract- in writing- on the basis of the “poor team performance “. In this context, the club held that during “the last five rounds of the league [the team] only acquired six points”...

13. In this respect, the Single Judge referred to his well-established jurisprudence and emphasized that, as a general rule, only a breach or misconduct which is of a certain severity justifies the termination of a contract without notice. In other words, only when there are objective criteria which do not reasonably permit to expect a continuation of the employment relationship between the parties, a contract may be terminated prematurely....”

14. As such, the Single Judge also recalled that, still in accordance to its longstanding jurisprudence, sporting teams results/sporting teams performance cannot be retained as a valid reason to justify an early termination of an employment contract.

17. In view of the aforementioned, the Single Judge was of the firm opinion that the Club did not have just cause to prematurely terminate the employment contract of the Coach.

23. In this sense, the Single judge underlined the absence of any compensation clause included in the contract. Consequently, the Single Judge held that no compensation clause being applicable to the case at hand, the compensation can be assessed on the basis of the residual value

of the contract in line with the jurisprudence of the Players' Status Committee.

38. It is worthy of note to point out that in Kotoko's written response to the petition dated 16th March, 2021 and received by the PSC, they argued that by the terms of their contract, both parties "were at liberty to sever the relationship for cause and without cause"
39. We wish to point out that in both the GFA and FIFA Regulations, there are three (3) approved ways of terminating a contract without consequences:
1. On the expiration of the contract and if there is no further extension.
 2. Termination by mutual consent
 3. Termination with just cause
40. The fourth type of termination is unilateral termination, which is frowned upon, unless it can be justified as captured by ARTICLE 14 of the GFA Regulations:
- ARTICLE 14** The principle that contracts may be terminated by either party without consequences **where just cause can be established for doing so.**
41. Assuming, without admitting that, the contract between Kotoko and the Head Coach allowed either party to walk out of the contract as and when they pleased (Unilateral termination), it presupposes that, Kotoko was not obligated to assign any reason for the termination. They could have explicitly stated it in the termination letter. Insofar as Kotoko assigned reasons for the termination - reasons which are traceable to clauses in the contract -, such reasons have to be subjected to the "just cause" clause in the GFA Regulations. This is what has been done in this case.

DECISION:

42. In the opinion of the GFA PSC, whether there is just cause, must be established on a case-to-case basis. All breaches of the contractual obligations do not give the counterparts just cause for termination. Even if the football club or the football coach fails to fulfill contractual obligations, it might not give the other party the right to terminate the contract. The commentary edition of FIFA's transfer regulations seen in connection with extensive jurisprudence from FIFA decision-making bodies and CAS show that a contractual breach either must be material, persist for a long time or is cumulated with other violations over a certain period of time to justify termination with just cause.
43. As already stated, in the case before the GFA PSC, the committee finds the Coach's termination hasty, premature and without just cause. Therefore it does not fall within the employment contract clause 11.4 which indicates termination of the Coach's contract without "any compensation and without prior notice...", accordingly, the Head Coach is hereby granted partial reliefs:

1. The Head Coach is entitled to the payment of Thirty-six thousand U.S Dollars (\$36,000) or it's equivalent in Ghana Cedis this being salaries due him January to December 2021. This represents the residual part of his salaries due to the unjust termination.
2. Payment of GHS30,000 being the balance of the signing on fee
3. Payment of GHS2 000 being winning bonuses for two matches.
4. General damages/ compensation of \$60,000 is declined.
5. Costs not indicated, but declined notwithstanding
6. The Committee also declines the demand of the Respondent for the payment of GHS 55,300 to them by the Petitioner. The Respondent relied on clause 11.5.5 of the contract. However, this clause is an instruction enjoining both parties to act simultaneously in the event of a termination. Since it was the Respondent that terminated the contract, they could have worked out and added what was due the Petitioner to the termination letter, and taken back what belonged to them.. The said clause in the contract is simply a "give and take" approach adopted.

The amounts indicated shall be paid to the Head Coach within 30 days from the date that he furnishes the Club with his bank details.

Note: If the Ghs80, 000 has been made good to the Head Coach before this Decision, that amount shall be deducted from the sum due and balance paid to the Head Coach, otherwise, the above judgment shall be paid in full.

In the event that the aforementioned sums are not paid by the Respondent within the stated time limit, the present matter shall be referred to the GFA Disciplinary Committee for consideration and a formal decision


ALEX ASANTE
[DEPUTY GENERAL SECRETARY]

SIGNED:



.....
IS-HAK AL-HASSAN
CHAIRMAN [PSC]

IN ATTENDANCE

Is-Hak Al-Hassan	-	Chairman
Cornelis R. Otoo	-	Vice Chairman
Sylvester Mensah	-	Member
Vivian Aggor	-	Member
Kwame Ayew	-	Member
Caroline Anyanful	-	Acting Secretary

DISTRIBUTION

1. MAXWELL KONADU	-	PETITIONER
2. ASANTE KOTOKO SC	-	RESPONDENT