



REPUBLIC OF KENYA

IN THE TRIBUNAL OF KENYA AT NAIROBI COUNTY

COURT NAME: TRIBUNALS

CASE NUMBER: SDTSC/E059/2025

CITATION: SYDNEY WAHONGO VS GOR MAHIA FOOTBALL CLUB

JUDGMENT

JUDGMENT

#### INTRODUCTION

1. This dispute arises out of an employment relationship between the Claimant, a professional footballer and the Respondent, a football club, concerning alleged salary arrears, unlawful termination and entitlement to compensation under the FIF Regulations on the Status and Transfer of Players (RSTP).
2. The Claimant seeks relief for:
  - a) Salary arrears;
  - b) Unlawful termination; and
  - c) Compensation under the FIFA Regulations on the Status and Transfer of Players (RSTP).
3. The Respondent opposes the claim and raises, inter alia, force majeure, performance-based termination, and a counterclaim.

#### 2. JURISDICTION

4. The Tribunal has jurisdiction under:
  - o Section 58 of the Sports Act, 2013;
  - o FKF Constitution; and
  - o FIFA RSTP.

#### 3. UNDISPUTED FACTS

5. The parties entered into:
  - o A contract dated 1st August 2020;
  - o A subsequent contract effective 1st August 2024 to 31st July 2026 at KES 100,000 per month.
6. The Respondent terminated the Claimant's contract on 7th February 2025.

#### 4. ISSUES

7. The issues for determination are:
  - a) Whether the Claimant is entitled to salary arrears



- b) Whether the termination of the Claimant's contract was lawful
- c) Whether the Respondent can rely on force majeure
- d) Whether the Claimant is entitled to compensation
- e) Whether the Respondent's counterclaim is merited
- f) Who bears the costs of the proceedings

## 5. APPLICABLE LAW

8. The Tribunal applies FIFA RSTP, particularly:

- a) Article 13 (contractual stability)
- b) Article 14 (just cause)
- c) Article 14bis (overdue payables)
- d) Article 15 (sporting just cause)
- e) Article 17 (compensation)

## 6. ANALYSIS

a) Salary Arrears

9. The Claimant produced a statement of account demonstrating arrears of approximately KES 1,000,000.

10. The Respondent did not rebut this evidence.

11. Under Article 14bis RSTP, overdue salaries constitute a material breach.

12. The CAS Panel in CAS 2017/A/5379 held:

"The non-payment of remuneration over a significant period of time represents a serious breach of the employer's obligations and justifies the termination of the contract with just cause."

13. Further, CAS jurisprudence consistently recognizes that remuneration is the essential obligation of the club.

14. The burden of proof lies with the Claimant on balance of probabilities, which has been discharged through documentary evidence.

Finding:

14. The Respondent was in fundamental breach due to non-payment.

b) Lawfulness of Termination

(i) Sporting Just Cause

15. The Respondent relied on Article 15 RSTP.

16. Article 15 grants a right only to players.

17. In CAS 2013/A/3091, the Panel stated:

"A club cannot invoke purely sporting reasons as valid grounds to unilaterally terminate an employment contract."

18. The Tribunal adopts this reasoning in full.

(ii) Just Cause (Article 14)

19. The Respondent has not demonstrated:

- Misconduct;
- Disciplinary action;
- Due process.

20. In CAS 2014/A/3707, the Panel emphasized:

"The concept of just cause must be interpreted restrictively and termination must be considered as a measure of last resort."

21. Similarly, in CAS 2006/A/1180, it was held:

"Only a breach or misconduct of a certain severity justifies the termination of a contract without



notice.”

22. No such severity has been established.

(iii) Prior Breach by the Club

23. The Tribunal notes that the Respondent was already in breach due to salary arrears.

24. In CAS 2008/A/1519-1520 (Matuzalém), the Panel underscored:

“The principle of contractual stability is of paramount importance in football and any unilateral breach must be sanctioned.”

25. A party in breach cannot rely on termination rights.

Finding:

26. The termination was without just cause and violated Articles 13 and 14 RSTP.

c) Force Majeure

27. The Respondent relies on COVID-19.

28. The contract was entered after the pandemic began.

29. Performance continued through partial payments.

30. CAS jurisprudence requires impossibility and unforeseeability.

31. In CAS 2010/A/2145, the Panel observed:

“Force majeure presupposes an event that is unforeseeable, unavoidable and renders performance objectively impossible.”

32. These conditions are not satisfied.

Finding:

33. The force majeure defence fails.

d) Compensation

34. Article 17 RSTP governs compensation.

35. The residual value of the contract is:

→ 18 months × KES 100,000 = KES 1,800,000

36. In CAS 2016/A/4490, the Panel held:

“The residual value of the contract is the starting point and primary reference for the calculation of compensation.”

37. In CAS 2008/A/1519-1520, the Panel further stated:

“Compensation must place the injured party in the position it would have been had the contract been properly fulfilled.”

38. No evidence of mitigation of damages has been placed before the Tribunal.

39. The Tribunal adopts the well-established principle that compensation must be positive, predictable and proportionate.

Finding:

39. The Claimant is entitled to full compensation.

e) Counterclaim

40. The Respondent’s counterclaim is unsupported by evidence.

41. FIFA DRC jurisprudence requires strict proof.

42. In CAS 2015/A/4039, the Panel held:

“A party asserting a financial claim bears the burden of proving both its existence and quantum.”

Finding:

43. The counterclaim is dismissed.



## 7. DETERMINATION

44. The Tribunal finds that:

- The Respondent breached the contract through non-payment;
- The termination was unlawful under FIFA RSTP;
- The Claimant is entitled to compensation and arrears.

## 8. ORDERS

45. The Tribunal therefore orders as follows:

- a) The Respondent shall pay salary arrears in the sum of KES 1,000,000
- b) The Respondent shall pay compensation in the sum of KES 1,800,000
- c) The total sum payable is KES 2,800,000
- d) Interest shall accrue at court rates from the date of filing until payment in full
- e) The Respondent's counterclaim is hereby dismissed;
- f) The costs of the proceedings are awarded to the Claimant

## 9. FINAL REMARKS

46. This Tribunal reiterates that contractual stability is a fundamental pillar of the global football regulatory framework and must be upheld with strict adherence to FIFA regulations.

"Contractual stability is a fundamental pillar of the football regulatory framework."

(CAS 2008/A/1519-1520)

47. Clubs must adhere strictly to:

- Payment obligations;
- Due process;
- FIFA regulatory standards.

SIGNED BY: HON. ALLAN MOLA OWINYI (DEPUTY CHAIRPERSON)



THE JUDICIARY OF KENYA.

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