

DISCIPLINARY COMMITTEE

OF THE GHANA FOOTBALL ASSOCIATION

IN RESPECT OF CHARGES AGAINST TECHIMAN CITY FC, OKYEMAN PLANNERS FC, BEREKUM ARSENALS FC AND NEW EDUBIASE FC FOR THE CLUBS' FAILURE TO HONOUR THE MTN FA CUP PRELIMINARY ROUND MATCHES

PANEL

- | | |
|------------------------|-------------|
| 1. Carla Olympio, Esq. | - Chairman |
| 2. Shaibu Ali | - Member |
| 3. David Okyere | - Member |
| 4. Justice Yeboah | - Member |
| 5. Nurudeen Alhassan | - Member |
| William Bossman | - Secretary |

1.0 PROCEEDINGS.

In accordance with Article 56 of the GFA Statutes, Article 11 of the FA Cup Regulations of the GFA, the Disciplinary Committee (hereinafter referred to as "the Committee") considered the consolidated depositions from Techiman City FC, Okyeman Planners FC, Berekum Arsenal FC and New Edubiase FC (hereinafter referred to as "the Respondents") and the reports of the match officials.

2.0 CHARGES

2.1 TECHIMAN CITY FC

Techiman City FC was charged on two counts of misconduct for failing to honour a fixture contrary to Regulation 11 (b) of the FA Cup Regulations, Approved by Congress on December 30, 2014 and as Amended on November 9, 2015. The Club allegedly failed to turn up to play the MTN FA Cup (the "Tournament") Preliminary Round match against DC United FC on January 28, 2020 without permission from the GFA and without proper withdrawal notification to the GFA.

Secondly, the Club was charged for failing to give satisfactory reason for withdrawing from the FA Cup competition contrary to Regulation 7 (d) of the FA Cup Regulations. According to the charge sheet, the Club withdrew from the FA Cup competition and failed to turn up to play the MTN FA Cup Preliminary Round match against DC United without giving any satisfactory reasons whatsoever.

2.2 OKYEMAN PLANNERS

Okyeman Planners FC was charged on two counts of misconduct for failing to honour a fixture contrary to Regulation 11 (b) of the FA Cup Regulations, Approved by Congress on December 30, 2014 and as Amended on November 9, 2015. The Club allegedly failed to turn up to play the MTN FA Cup Preliminary Round match against Prampram Uncle T United on January 25, 2020 without permission from the GFA and without proper withdrawal notification to the GFA.

Secondly, the Club was charged for failing to give satisfactory reason for withdrawing from the FA Cup competition contrary to Regulation 7 (d) of the FA Cup Regulations. According to the charge sheet, the Club withdrew from the FA Cup competition and failed to turn up to play the MTN FA Cup Preliminary Round match against DC United without giving any satisfactory reasons whatsoever.

2.3 BEREKUM ARSENALS FC

Berekum Arsenal FC was charged on two counts of misconduct for failing to honour a fixture contrary to Regulation 11 (b) of the FA Cup Regulations, Approved by Congress on December 30, 2014 and as Amended on November 9, 2015. The Club allegedly failed to turn up to play the MTN FA Cup Preliminary Round match against Unity FC on January 25, 2020 without permission from the GFA and without proper withdrawal notification to the GFA.

Secondly, the Club was charged for failing to give satisfactory reason for withdrawing from the FA Cup competition contrary to Regulation 7 (d) of the FA Cup Regulations. According to the charge sheet, the Club withdrew from the FA Cup competition and failed to turn up to play the MTN FA Cup Preliminary Round match against DC United without giving any satisfactory reasons whatsoever.

2.4 NEW EDUBIASE FC

New Edubiase FC was charged on two counts of misconduct for failing to honour a fixture contrary to Regulation 11 (b) of the FA Cup Regulations, Approved by Congress on December 30, 2014 and as Amended on November 9, 2015. The Club allegedly failed to turn up to play the MTN FA Cup Preliminary Round match against Unistar Academy on January 25, 2020 without permission from the GFA and without proper withdrawal notification to the GFA.

Secondly, the Club was charged for failing to give satisfactory reason for withdrawing from the FA Cup competition contrary to Regulation 7 (d) of the FA Cup Regulations. According to the charge sheet, the Club withdrew from the FA Cup competition and failed to turn up to play the MTN FA Cup Preliminary Round match against DC United without giving any satisfactory reasons whatsoever.

3.0 RESPONSES TO CHARGES

In separate replies to the charges, all four Clubs pleaded Not Guilty and requested for personal hearings. All four Clubs also asked for the Committee to adjourn its sitting scheduled for February 7, 2020 and cited their intention to engage lawyers as the reason for the request for adjournment.

The Committee however declined the request from the four Clubs for an adjournment of the February 7, 2020 sitting and called on the Clubs to appear before it at 5:00pm on that day, per their decisions to opt for a personal hearing.

4.0 HEARING

The four Clubs Techiman City FC, Okyeman Planners, Berekum Arsenal & New Edubiase FC pleaded not guilty on both counts of offences and requested for a personal hearing.

The Committee duly sat as scheduled on February 7, 2020 and the Clubs presented themselves before it. As the Clubs have all been charged with the same offences and shared legal representation, their lawyers prayed for the cases to be consolidated, with a joint hearing and joint statement of defence to be presented. The Committee granted the request.

At the hearing, the Prosecutor presented his case and the Clubs, as represented by their team of lawyers, maintained their plea and made a case for their defence. The Disciplinary Committee then asked that the Clubs prepare a written submission to be presented at the latest by close of business on Thursday February 7th, 2020. The statement was duly received by the Committee, and we summarize the main points of their defence below:

WRITTEN SUBMISSION/DEFENCE CASE OF THE CLUBS:

In a nutshell, the position of the Clubs is threefold:

1. That they were not required to and could not be properly considered to be participating in the Tournament, because
2. The GFA had not properly applied the relevant rules and regulations, and therefore
3. They cannot be said to have withdrawn from or have abandoned a match they were not obliged to play in in the first place.

They base these arguments on the following:

That the Clubs have been charged with breaching Article 11(b) of the FA Cup Regulations, which states:

“Any Club failing to fulfill a fixture shall be declared losers of the match and be punished by the Disciplinary Committee”.

The Clubs' position is that this Regulation cannot apply to them because they neither postponed nor abandoned the relevant matches. Secondly, they say they did not apply to participate in the FA Cup so they cannot be said to have failed to fulfill a fixture. They argue that Regulations 4, 5, 6, 13 and 14 of the Regulations provide for a system of application and entry to the Tournament which they did not participate in, and that therefore they cannot be penalized for not participating in any of the matches, as they were never covered by the relevant rules of play.

In the opinion of the Clubs, from their reading of the Regulations cited, no Club can participate in the FA Cup as of right or may assume to have been admitted to participate in the FA cup competition.

The Clubs further presented that they did not apply to participate in the said Tournament as required by Article 6 of the Regulations, that they were not given application forms by the FA to complete, and that they did not, as part of any application process, submit their colours to the FA Cup Committee - all pre-requisites they claim, to participate in the competition. The statement adds: *"The Clubs only inquired how much was in store for them as participants of a sponsored product. The answer was not forthcoming from the FA. The Clubs would only have made an informed decision based on its financial capabilities and how feasible it would have been to either participate or decline to participate but the answers never came from the FA. In the light of the FA's failure to be forthright with the Clubs"* (on this matter of financials) therefore, they argue that *"the FA cannot use the same rules both as a shield when it suits them and a sword when it goes against them"*.

They submit that the GFA did not follow due process in setting out such an application process, and therefore that they cannot be penalized for not participating, or for not assigning reasons for not participating.

5.0 COMMITTEES FINDINGS AND GROUNDS FOR DECISION

The Committee has met with the Clubs and their legal team, read their written submission and looked at the recommendations of the Prosecutor. The Prosecutor set out the Charges as stated at section 2.0 above, and provided for the following resulting penalties:

1. Respondents should be declared losers of their respective matches,
2. Respondents should not allowed to enter the FA Cup in the following two (2) seasons, and
3. Respondents to pay a fine of five thousand cedis (GHC5000) or as the Disciplinary Committee may prescribe pursuant to Regulation 7 (a) (b), 7 (d), and 11 (b) of the FA Cup Regulations.

For ease of reference, we set out the relevant regulations and articles below:

Article 7 (a) of the FA Cup Regulations states that:

"Any Club intending to withdraw from the FA Cup must notify its intention to do so to the FA Cup Committee and the opposing Club, not less than seven (7) days before the date fixed for playing the match."

Article 7 (b) of the FA Cup Regulations states as follows:

"A Club failing to comply with Article 7(a) above shall be compelled by the GFA to pay the expenses incurred and to suffer any considers appropriate."

Article 7 (d) of the FA Cup Regulations states as follows:

*"A Club failing to give satisfactory reasons for withdrawing from the FA Cup **shall** in addition to any other action considered appropriate not be allowed to enter the FA Cup in the following two (2) seasons and shall be liable to such fine as the Disciplinary Committee considers appropriate."*

Article 11 (b) of the FA Cup Regulations states as follows:

"Any Club failing to fulfill a fixture shall be declared losers of the match and be punished with by the Disciplinary Committee."

Article 16 (c) of the GFA Statutes 2019 states that members are obliged to:

"to take part in competitions (if applicable) and other sporting activities organised by GFA;"

The Committee responds to each of the points made in the statement of the Clubs as follows:

ANALYSIS:

1. The Committee as a preliminary matter turned its attention to the question of whether the Respondents showed up for their 2019/20 MTN FA Cup Preliminary Round matches. It is clear from the match reports put before it, that they did not.
2. Secondly, the Committee investigates the submissions before it. We take note of the Clubs' argument that they cannot be considered participants in the Tournament who can be penalised for not playing matches because the appropriate application procedure was not followed. The Clubs cited Regulations 4, 5, 6, 13 and 14 of the FA Cup Regulations in support of this. They made the argument that these regulations buttress their position that eligibility for and therefore obligation to participate in the FA Cup can only be triggered by filling out an application form and submitting it to the FA, as well as submitting the team colours ("strip") they will be wearing. They cite in particular Reg 6 (a) of the FA Cup Regs which states: "A Club wishing to participate in the FA Cup must complete the Application Form **(if any)** and payment process **(if any)** on or before the date directed by the FA Cup Committee. A Club who fails to pay the GFA's Membership subscriptions **(if required)** shall be subject to removal from the FA Cup." (Emphasis ours). It is clear to the Committee from a reading of this Regulation however that the application form requirement will only kick in if the GFA has provided for one, and that the words "if any" and "if required" leave the provision or otherwise of such application processes to the discretion of the GFA.

From an investigation of recent history it becomes further obvious that Clubs who have participated in the FA Cup Competition over the years including the Respondents are well aware that there is **no** Application Form, Payment process or Members

Subscription in relation to participation in the competition. In the case of the 2019/20 MTN FA Cup season, Clubs have not been informed or notified of these requirements **because there are none**. This Committee therefore finds that the claim by the Respondents and their reference to Article 6 of the FA Cup Regulations cannot hold.

3. The Committee, in coming to a decision on the facts and arguments on this matter, took into account the following further rules and regulations of the GFA:
 - a. Article 16 (c) of the GFA Statutes states that members are obliged to take part in competitions (if applicable) and other sporting activities organised by GFA.
 - b. Regulation 8 of the Division One League regulations states: "All Division One League clubs shall compete in the FA Cup Competition without fail"
 - c. Regulation 11 of the Division One League regulations gives the GFA an absolute power to prepare fixtures for the Division One league.
 - d. Regulation 12 (1) of the Division One League regulations states that "Postponement of a match only to be granted due to force majeure or "some other sufficient cause"
 - e. Reg 13 Division One League provides regulations on abandonment of matches. It includes provisions such as Reg 13 (1): "A club shall be liable for misconduct if it withdraws from a competition after the competition has started without just cause" and Reg 13 (2): "Any club intending to withdraw from any competition must give notice of its intention to do so to the GFA not later than fourteen (14) days before the commencement of the competition. Should a club fail to comply with this Regulation the Association shall have the power to compel such offending club to refund any expenses incurred and take such further action as it may deem fit."

It is the opinion of the Committee that taking all of the above rules and regulations of the GFA into account, we must conclude that it is expressly essential to the smooth running of leagues that, barring any extremely serious occurrences of Force Majeure, all Clubs must participate in tournaments. Further, in accordance with the above rules and regulations and for the sake of organisers and all other participating Clubs, if for any reason a Club finds that it cannot attend a match it is obliged to notify the GFA in advance, and in accordance with the laid down procedures.

Again, pursuant to Article 7 of the FA Cup Regulations (which Clubs are required to familiarize themselves with), all Clubs are aware of the requirements for withdrawal from the Competition. The Respondents ought to have known the procedure and informed the GFA of their intention not to participate in the competition. They knew or must have known the consequences of their refusal or failure to honour their preliminary round matches, yet they went ahead and willfully breached the Regulations.

Further, and for the reasons stated above, the Committee rejects the assertion of the Respondents that they had not applied to participate in the Tournament and therefore were not obligated to participate. On the contrary, as members of the Division One League who had

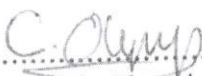
been informed in advance that these matches were being held - just as all other members had, they were obliged to field teams to play. Failing that, they were required to provide in advance an adequate explanation of why they would not play. They did neither and instead chose not to show up for the matches, causing great inconvenience to other teams that did show up, and showing disrespect to the fans and to the organisers.

It is the opinion of the Committee that if the Clubs had legitimate grievances they could have followed other more professional ways of bringing them to the attention of the GFA. Instead, they chose this route. The Committee therefore upholds the charges against the four Respondents and the punishments spelt out in Article 7 (d) and Article 11 (b) of the FA Cup Regulations and recommended by the Prosecutor.

6.0 DECISION

The Committee therefore makes the following decisions:

1. Techiman City FC, Okyeman Planners FC, Berekum Arsenal FC and Okyeman Planners FC have been declared losers of their respective matches
2. Techiman City, Okyeman Planners, Berekum Arsenal and New Eduabiase are not allowed to enter the FA Cup in the following two seasons (2020/21 and 2021/22 seasons)
3. Techiman City FC, Okyeman Planners FC, Berekum Arsenal FC and New Edubiase FC are hereby ordered to pay the fine of Five Thousand Ghana Cedis (GH¢5,000.00) each payable to the GFA within fourteen (14) days upon receipt of this Ruling,
4. That should any party be dissatisfied with or aggrieved by this Decision, the party has within two (2) days of being notified of this Ruling to appeal to the Appeals Committee of the Ghana Football Association (see Article 31(b) of the FA Cup Regulations of the GFA).


.....
Carla Olympio, Esq.
Vice Chairperson, Disciplinary Committee
Monday, February 17, 2020