



# GHANA FOOTBALL ASSOCIATION

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[F087]

## DECISION OF THE PLAYERS' STATUS COMMITTEE ON THE PETITION OF MEDEAMA SC AGAINST COACH SAMUEL BOADU

### FACTS OF THE CASE

1. On the 6<sup>th</sup> of April, 2021, MEDEAMA SC (Club/Petitioner), wrote to the Players Status Committee (PSC/Committee), complaining of a unilateral termination of contract by their coach, Mr Samuel Boadu (Respondent/Coach).
2. Petitioner said, by a new/revised contract signed by the two parties, the Coach's salary was reviewed upward from GH¢ 3,000 (Three Thousand Ghana Cedis) to GH¢10,000 (Ten Thousand Ghana Cedis), with the contract due to end December 2022. However, on the 24<sup>th</sup> of February, the coach resigned from his job citing personal reasons in his letter. According to the petitioner, they later heard the coach was with Accra Hearts of Oak FC and several attempts to get the coach to see the consequences of his action yielded no results.
3. The petitioner therefore wants a declaration of entitlement to GHC212,500 (Two Hundred and twelve thousand, five hundred Ghana Cedis), being residual value of monthly salary; general damages entitlement of GHC100,000 (One hundred thousand Ghana Cedis) for breach of contract, and any sporting sanctions associated with the coach's contract and cost. The petitioner attached copies of a first and second contracts they signed with the coach, as well as the resignation letter.

### COACH'S RESPONSE

On the 5<sup>th</sup> of May 2022, Mr. Zakaria Tanko, Representative of the coach put in a written response.

1. He indicated that the club behaved in a way such as to demotivate the coach and generally created a sense of insecurity for the job of the coach. This was done by

*Zakaria Tanko*

- appointing a Technical Director for the club without the knowledge of the coach.
2. According to the coach, the petitioner is not entitled to the compensation being sought because clause 7 of the contract clearly stipulates the compensation to be paid by parties in the event of termination without notice. The coach went further to indicate that it is only when the contractual terms fails or does not provide any compensation mechanism that FIFA Regulation (6) and (2) may be contemplated or considered.
  3. In his view, petitioner can at best be entitled to one month or three months salary, according to clause 7 of their contract.
  4. The coach further rejects the claim for general damages because petitioner has not supported its claim of financial loss with demonstrable evidence.
  5. The coach enumerated a catalogue of events that led to the sense of insecurity, among which were:
    - a) A Technical Director was appointed without communicating to him.
    - b) On the 13<sup>th</sup> of April, Technical Director came to interfere with training session without prior notification.
    - c) In a Management meeting, petitioner varied the terms of the coach's contract by confirming the laying off of his two assistants to enable the club to meet the salary demands of the newly appointed Technical Director, by name Mr. Seth Ablade.
    - d) Technical Director was unfriendly and will not open up on technical issues.
    - e) Club's refusal to pay 5% net transfer fees on player transfer as agreed, even though the club had successfully transferred Kalibo Toussaint Dade to ASFA Yennenga in January 2021.
    - f) The club, contrary to contractual agreement, owes the coach several winning bonuses, with all attempts to secure same, frustratingly ignored.
    - g) The fundamental test in all these, according to the coach is that, petitioner breached its contractual obligations, and the breach was significant enough to establish just cause.

### COUNTER CLAIM

1. The coach wants a declaration he is entitled to:
  - a) GHC10,000(Ten thousand Ghana Cedis) salary, three winning bonuses GHC2,800(Two thousand eight hundred Ghana Cedis and GHC5,000(Five thousand Ghana Cedis) half salary for December 2020 as well as 5% player transfer fee.

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- b) A declaration that coach is entitled to general damages and compensation for the creation of employment insecurity while in the employment of petitioner
- c) Any significant sanctions against petitioner for introducing job insecurity into coach's employment.

## **INVESTIGATIONS AND OBSERVATIONS**

The Committee decided to delve into the relevant portions of the existing contract in relation to the claims by both parties

### ***1. CLAUSE 1 Employment of Head Coach***

The club shall employ the Head coach and the Head coach shall from the date of this agreement serve the club as football Head coach of the club for a period of two (2) years starting from the 3<sup>rd</sup> day of December 2020

### ***2. CLAUSE 2 OBLIGATIONS OF THE HEAD COACH***

During the period of employment, the Head coach shall:

2.2 At all times promptly obey and carry out the orders and instructions of the club, the coach or any officer of the club who may be placed in authority over him and submit to and observe the rules and regulations of the club in force for the time being

### ***3. CLAUSE 3 OBLIGATIONS OF THE CLUB***

In consideration of the services to be rendered by the coach the club shall:

3.3 There will be no Enticement and Re-location package after it has been fully exhausted in the first employment contract

3.8 The Head coach is entitled to twice the winning bonus received by the players

3.15.4 The Coach shall be entitled to 5% of net player transfer fees effective 1<sup>st</sup> December, 2020

### ***4. CLAUSE 4 AUTHORITY***

4.1 The Head coach shall report directly to management

4.2 The management//board shall monitor the day-to-day operations of the Head Coach on behalf of the club. Any order(s), instruction(s) of the board shall be issued by the management

### ***5. CLAUSE 7. TERMINATION***

This agreement may be terminated by either party on thirty days written notice to the other or in lieu of the notice pay a one month salary. If the Head coach so terminates the agreement in accordance with the provisions of this agreement, the Head coach shall have the right to terminate this agreement upon giving three (3) months' notice in writing to the club or in lieu pay three (3) months of his salary, refund the entire

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enticement fees and re-location package paid to him and a compensation equal to three times the enticement fee paid to him. That shall not be the exclusive remedy of the club.

It is obvious from the presentations that, the contract did not run its full term as the coach put in a resignation letter.

In order to determine whether there was just cause for resignation or termination, the Committee examined the reasons and conditions advanced by the coach.

1. The Committee notes that the signing on of a Technical Director as well as attempts by management to dispense with the services of the two Assistant coaches, is not enough to create a sense of employment insecurity. The position of a Technical Director is an entirely different designation from that of a Head coach. This should therefore not be viewed as a threat. There was the need for patience until a categorical statement from management, demoting the Head coach to an assistant coach and altering job description and salary. That will have been the point of a violation of the coach's employment agreement.

Having said that, the committee however feels that, in the interest of harmony and transparency, the Head coach deserved to be in the picture of the intended employment of the Technical Director, as well as the termination of the appointment of his two deputies, since these all come under one department. Obviously, Clause 2.2 and 4,1 of the contract were now going to be varied with the employment of the Technical Director because, the Head coach was no longer going to report directly and take instructions from management, but from the Technical Director. This is why the committee is of the view that, the issue should have been addressed or handled in a more decent manner to avert speculation and mistrust.

2. The above situation notwithstanding, the Committee strongly believes that, the gravity or magnitude of this administrative lapse of judgement, was not enough to warrant the abrupt termination or resignation.
3. Additionally, the coach needed to officially put in, written Demand notices for unpaid winning bonuses as well as the 5% net transfer fee of players. The coach could also have registered his displeasure and stated his grievances to management to remedy whatever situation. These were not done and can therefore not be used as causes for termination.
4. The Committee is therefore convinced that, this contract was terminated without just cause. However, while petitioner is seeking the full implementation of FIFA Article 17 that deals with the consequences of terminating a contract without just cause; the coach draws attention to the fact that, even if there was a breach of the contract, there exists a penalty clause in the contract to rely on as evidenced in Clause 7 of the contract,
5. Before determining whether there is a compensation or penalty clause in the contract and ascertaining its suitability for application in this particular case, the

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committee wish to state that, penalty or compensation clauses in contracts are permissible and respected if inserted in contracts.

In Arbitration CAS 2015/A/3946 ZAO FC LOCOMOTIV V LEONID STANISLAVOVICH KUCHUK & Football Union of Russia (FUR), award of 28 January 2016, the panel indicated:

“According to well-established CAS jurisprudence, an explicit agreement of the parties to a contract on a certain sum to be paid in case breach of contract does not need to be reduced by any of the amounts that the party entitled to receive such compensation has earned after the termination of an employment contract. Specifically, in case an employment contract contains a typical clause for liquidated damages – i.e. clearly stating how the compensation shall be calculated- the amount stated in the respective clause has to be paid as liquidated damages in the sense that no reduction will be made even if the party entitled to the damages had started a new employment on a date prior to the end of its original employment contract.”

In another decision by the FIFA Dispute Resolution Chamber (DRC) passed in Zurich, Switzerland, on 21 May 2015, the panel noted:

(23) “At this point, the Chamber was eager to highlight that compensation clauses may be freely entered into by the contractual parties and may be considered acceptable, in the event that the pertinent written clause meets certain criteria such as proportionality, reasonableness and reciprocity. In this respect, the Chamber highlighted that in order to determine as to whether a compensation clause is to be considered acceptable, the specific circumstances of the relevant case brought before it shall also be taken into consideration.”


(25). “On account of all the above, the Chamber decided that the said compensation clause is valid and applicable in the present matter. Therefore, the Chamber emphasised that any compensation due to the player should be calculated solely on the basis of the relevant clause”

6. Indeed, incidentally, the Petitioner in this substantive case, makes reference to CAS/2014/A/3707, Emirates Football Company v Hassan TIR, Raja club. The panel held that:

“Parties to an employment contract must stipulate the amount of compensation to pay in the event of a breach of contract. Where such a clause exists, it’s wording should leave no room for interpretation and must clearly reflect the intention of the parties.”

It is significant to mention that, even though petitioner made reference to the above, they indicated that, the contract under review had no such provision.

7. The committee therefore had to examine the contract to ascertain whether there was a compensation clause as alleged by the Coach; or none, as indicated by the petitioner



8. The Coach had earlier drawn attention to clause 7 of the contract as representing the compensation or penalty clause.

It states:

*“This agreement may be terminated by either party on thirty days written notice to the other or in lieu of the notice pay a one-month salary. If the Head Coach so terminates the agreement in accordance with the provisions of this agreement, the Head Coach shall have the right to terminate this agreement upon giving 3 months’ notice in writing to the club or in lieu, pay 3 months of his salary, refund the entire Enticement fees and re-location package paid to him and a compensation equal to three times the enticement fees paid him. That shall not be the exclusive remedy of the club”*

9. With reference to the above, the Committee is satisfied that, clause 7 of the contract, qualifies and satisfies its insertion as a compensation or penalty clause considering its proportionality with regard to the contractual benefits that will have accrued to the coach had the contract continued.

### **DECISION**

It is the decision of the Committee that, all relevant and applicable conditions captured in clause 7 of the contract shall apply.

1. The coach, Mr. Samuel Boadu, shall pay to the petitioner, MEDEAMA SC :

- a) Three months salary in lieu of notice of termination of the contract  
GH¢10,000 x 3 =GH¢30,000
- b) Clause 7 provides for the payment, or rather, a refund three times the entire Enticement fee and re-location package by the coach to the club. However, the Committee observed that, in the new contract signed by the parties on the 3<sup>rd</sup> December 2020, clause 3.3 says:

*“There will be no Enticement and re-location package after it has been fully exhausted in the first employment contract.”*

There shall therefore be a zero payment or refund here since nothing was given to the coach under the new contract signed by both parties.


- c) Clause 7 lastly indicates the above “shall not be the exclusive remedy of the club”. MEDEAMA SC however failed to indicate in their petition, what additional remedy they require. The Committee is therefore unable to offer any, aside what clause 7 captures.
2. The coach, Mr. Samuel Boadu, shall therefore pay a total amount of GH¢30,000 (Thirty Thousand Ghana Cedis) to MEDEAMA SC as compensation fee within 14(fourteen) days upon the notification of this decision.

*For Hand*

3. Upon notification of this decision, the Petitioner, MEDEAMA SC must inform the Respondent, Coach Samuel Boadu immediately and directly of the account details to which the aforementioned amount are to be made.
4. In the event that the above-mentioned sums are not paid within the aforementioned deadline, the present matter shall be submitted to the GFA's Disciplinary Committee for consideration and a formal decision per Article 15 of the GFA Disciplinary Code.

  
**ALEX ASANTE**  
**[DEPUTY GENERAL SECRETARY]**

**SIGNED:**

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

**IN ATTENDANCE**

<b>Is-Hak Al-Hassan</b>	-	<b>Chairman</b>
<b>Cornelis R. Otoo</b>	-	<b>Vice Chairman</b>
<b>Sylvester Mensah</b>	-	<b>Member</b>
<b>Vivian Aggor</b>	-	<b>Member</b>
<b>Kwame Ayew</b>	-	<b>Member</b>
<b>Hannah O. Amakye</b>	-	<b>Secretary</b>

**DISTRIBUTION**

1. MEDEAMA SC	-	PETITIONER
2. COACH SAMUEL BOADU	-	RESPONDENT