



Tribunal Arbitral du Sport
Court of Arbitration for Sport

CAS 2020/A/6812 Kalusha Bwalya v. Football Association of Zambia

ORDER

on Request for Provisional Measures

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

Sole Arbitrator: Mr André Brantjes, Attorney-at-Law, Amsterdam, the Netherlands

Ad hoc Clerk: Mr Dennis Koolaard, Attorney-at-Law, Arnhem, the Netherlands

in the arbitration between

Mr Kalusha Bwalya, Zambia

Represented by Mr Paolo Torchetti, Attorney-at-Law, Ruiz-Huerta & Crespo Abogados,
Valencia, Spain

Appellant

and

Football Association of Zambia, Lusaka, Zambia

Represented by Mr Hastings S. Pasi, Attorney-at-Law, Mando & Pasi Advocates, Kitwe,
Zambia

Respondent

* * * * *

I. THE PARTIES

1. Mr Kalusha Bwalya (the “Appellant”) is a former professional football player and football official of Zambian nationality who previously, *inter alia*, held positions as Vice-President of the Football Association of Zambia (2004-2008) and President of the Football Association of Zambia (2008-2016).
2. The Football Association of Zambia (the “Respondent” or the “FAZ”) is the national governing body of football in Zambia with its registered office in Lusaka, Zambia. The FAZ is affiliated to the *Fédération Internationale de Football Association* (“FIFA”).
3. The Appellant and the FAZ are hereinafter jointly referred to as the “Parties”.

II. FACTUAL BACKGROUND

4. On 5 February 2020, after the Appellant decided to stand for election for the FAZ presidency for the next four-year term of 2020-2024, he provided the FAZ with documents entitled “2020 FAZ Elections Candidate Nomination Form” and “2020 FAZ Elections Questionnaire for Integrity Checks”. The elections are scheduled to take place on 28 March 2020.
5. On 15 February 2020, the FAZ Electoral Committee issued its decision (the “First Instance Decision”):

“RE: YOUR NOMINATION FOR THE POSITION OF FAZ PRESIDENT”

Please refer to the above mentioned and your interest to stand as FAZ President in the forthcoming elections.

After scrutinizing your nomination form and comparing the information you provided with the selection criteria which every candidate was expected to read before filling in the nomination form, your nomination was not successful as you failed to pass the integrity check.

This is as provided for in Part 1, 3 (b) of Questionnaire for Integrity Checks.¹

You are however reminded of your right of appeal as stipulated by Article 9 of the Electoral Code. You [sic] appeal should reach the General Secretary before Tuesday 18th February 2020, who will forward it to the Chairman of the Electoral Appeals Committee immediately.” (emphasis in original)

6. On 21 February 2020, following an appeal filed by the Appellant, the FAZ Electoral Appeal Committee issued its decision (the “Appealed Decision”), the final paragraph of which provides as follows:

¹ The Appellant acknowledges that the reference to Part 1, 3 (b) of the Questionnaire in the First Instance Decision was a mistake and should read Part 1, 4 (b) of the Questionnaire.

“In toto the grounds of appeal are dismissed and the preliminary issue as to the additional grounds is sustained. The net effect is that [the Appellant] does not qualify to contest the forthcoming FAZ election on account of failure to pass the integrity check. The integrity check is a mandatory requirement both under the FAZ Constitution and the FIFA Code of Ethics.

The integrity check questionnaire provides that a candidate who “has been found guilty and/or sentenced by the FIFA Ethics Committee or any other sporting body with a sanction that would seriously put into question the discharge of the office [sic] concerned.”

[The Appellant] was sentenced by FIFA Ethics Committee and only had his sentence and fine reduced, but not overturned. The net effect is, therefore, that the whole Appeal herein fails.”

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

7. On 2 March 2020, the Appellant lodged a combined Statement of Appeal / Appeal Brief against the Appealed Decision with the Court of Arbitration for Sport (“CAS”), pursuant to Article R48 of the CAS Code of Sports-related Arbitration (edition 2019) (the “CAS Code”). In this submission, the Appellant requested that expedited proceedings be implemented and that the proceedings be referred to a sole arbitrator. Alternative to the request to expedite the proceedings, the Appellant filed an application for provisional measures. With respect to the provisional measures, the Appellants submitted the following prayers for reliefs:

“The Appellant herein respectfully requests the Panel:

1. [...]
2. *To adopt a preliminary award:*
 - a) [...]
 - b) *granting the provisional measures to suspend the elections until a final award is issued”*

8. On 4 March 2020, the Appellant supplemented his application for provisional measures with additional arguments regarding the urgency of suspending the FAZ Presidential Elections, the Appellant’s right to be heard and the alleged incorrect constitution of the FAZ Electoral Appeals Committee that issued the Appealed Decision.
9. On 4 March 2020, the CAS Court Office acknowledged receipt of the Appellant’s combined Statement of Appeal / Appeal Brief and, *inter alia*, provided the FAZ with a time limit to respond to the Appellant’s request to expedite the proceedings.
10. On 10 March 2020, the CAS Court Office informed the Parties that the FAZ did not submit its position within the prescribed deadline on the Appellant’s request and that the

proceedings would therefore not be expedited. The FAZ was granted a time limit to file its position on the Appellant's application for provisional measures. The Parties were also informed that, since the FAZ did not respond to the Appellant's request for the appointment of a sole arbitrator, it would be for the President of the CAS Appeals Arbitration Division to decide on the number of arbitrators.

11. On 16 March 2020, the Appellant supplemented his application for provisional measures with additional arguments based on evidence that he contends could not have been available to him at the time of filing the application for provisional measures.
12. On 19 March 2020, the CAS Court Office informed the Parties that the FAZ had not submitted an answer to the Appellant's application for provisional measures within the deadline granted and that the President of the CAS Appeals Arbitration Division or the Panel/Sole Arbitrator would issue an Order on Provisional Measures in due course.
13. On 23 March 2020, pursuant to Article R54 of the CAS Code, and on behalf of the Deputy President of the CAS Appeals Arbitration Division, the Parties were informed that the arbitral tribunal appointed to decide the present matter was constituted as follows:

Sole Arbitrator: Mr André Brantjes, Attorney-at-Law in Amsterdam, the Netherlands

14. On 24 March 2020, in accordance with Article R55 of the CAS Code, the FAZ filed its Answer.

IV. JURISDICTION OF THE CAS

15. Article R47 of the CAS Code determines that “[a]n appeal against the decision of a federation, association or sports-related body may be filed with the CAS insofar as the statutes or regulations of the said body so provide or as the parties have concluded a specific arbitration agreement and insofar as the Appellant has exhausted the legal remedies available to him prior to the appeal, in accordance with the statutes or regulations of the said sports-related body”.
16. The jurisdiction of CAS, which is not disputed, derives from Article 65(1) of the FAZ Statutes (2019 edition), providing that “[i]n accordance with the relevant provisions of the FIFA Statutes, any appeal against a final and binding decision passed by FIFA, CAF, or FAZ shall be heard by the Court of Arbitration for Sport (CAS) in Lausanne, Switzerland, unless another Arbitration Tribunal has jurisdiction in accordance with Article 63. CAS shall not, however, hear appeals on violations of the Laws of the Game, and suspensions of up to four matches or up to three months (with the exception of doping decisions)”.
17. Article 9(6) of the FAZ Electoral Code (2020 edition) provides that “[t]he decisions of the Electoral Appeal Committee shall be final and binding”.
18. Article 63 of the FAZ Statutes provides as follows:

- “1. Disputes in FAZ or disputes affecting Leagues, members of Leagues, Clubs, Players and Officials shall not be submitted to Ordinary Courts, unless the FIFA regulations, these Statutes or binding legal provisions specifically provide for a stipulate recourse to Ordinary Courts.*
- 2. Such disputes as specified in paragraph 1 above shall be taken to the Arbitration Tribunal recognised by FAZ or the Court of Arbitration for Sport (CAS) in Lausanne, Switzerland.*
- 3. As long as FAZ has not recognised or established any Arbitration Tribunal, the disputes specified above shall be taken to the Court of Arbitration for Sport (CAS) in Lausanne, Switzerland. Any Arbitration Tribunal recognised or established by FAZ shall be in line with the Arbitration Act of Zambia or any statutory modification thereto.*

[...]

19. Since no further internal legal remedies were at the disposal of the Appellant before the FAZ and because no other Arbitration Tribunal has been recognised by the FAZ in accordance with Article 63 of the FAZ Statutes, it follows that CAS has jurisdiction to adjudicate and decide on the present dispute. Pursuant to Article R37 of the CAS Code, the Sole Arbitrator is authorised to make an Order on Provisional or Conservatory Measures.

V. ADMISSIBILITY

20. Article R49 of the CAS Code provides that, “[i]n the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, or of a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against”.
21. Since neither the FAZ Statutes nor the FAZ Electoral Code provide for a time limit to appeal, the default time limit of 21 days shall apply.
22. Since the Appealed Decision was issued on 21 February 2020 and the combined Statement of Appeal / Appeal Brief was filed on 2 March 2020, the appeal was filed within the 21-day time limit, that is to say in a timely manner.
23. It follows that the Appellant’s appeal is admissible.

VI. SUBMISSIONS OF THE PARTIES

A. THE APPELLANT

24. The Appellant’s submissions supporting the application for provisional measures, in essence, may be summarised as follows:

Irreparable harm

- To satisfy the irreparable harm test “(t)he Appellant must demonstrate that the requested measures are necessary in order to protect his position from damage or risks that would be impossible, or very difficult, to remedy or cancel at a later stage.” (CAS 2011/A/2479, para. 4a)
- The determination of irreparable harm is a fact specific test that is analysed within the context of the circumstances of each specific case.
- Elections will be held on 28 March 2020. The Appellant has already been harmed because he was incorrectly declared ineligible to stand for election, but such harm will become irreparable if the elections will take place while the Appellant is incorrectly prohibited from running.

Likelihood of success

- *In order to demonstrate the likelihood of success “(t)he Appellant must make at least a plausible case that the facts relied upon by him and the rights which he seeks to enforce exist and that the material criteria for a cause of action are fulfilled.”* (CAS 2011/A/2479, para. 4b)
- The Appellant made plausible factual and legal arguments as to his chances of success where the FAZ Electoral Committee refused his eligibility on criteria not enumerated in the FAZ Statutes. The use of unenumerated criteria for admissibility renders the Statutes and regulations of FAZ completely unintelligible to the point that the FAZ Electoral Committee is wielding arbitrary power.
- The Appellant also refers to the legal submissions as to the merits of the appeal in arguing that the criterion of *likelihood of success* is complied with:
 - The Appellant’s right to be heard was violated in the proceedings before the FAZ Electoral Committee because the First Instance Decision was taken without affording the Appellant an opportunity to present his case. On appeal, the FAZ Electoral Appeals Committee did not address the Appellant’s concerns.
 - The FAZ Electoral Code was most recently amended to include the Annexe and Questionnaire on 1 February 2020. This was done by an extraordinary and emergency meeting called by the FAZ. It was unable to make this fundamental change to the Statutes so instead the FAZ Electoral Committee attempted to alter the Questionnaire. In doing so, the FAZ Electoral Committee acted *ultra vires* as it did not have the authority to do so.

- The FAZ Electoral Committee violated the principle of *nulla poena sine lege*, because sports bodies cannot impose sanctions without proper legal or legislative basis. This would also be against Swiss public order.
 - The FAZ, in attempting to change the Questionnaire via an Annexe to the FAZ Electoral Code, did a complete “end-around” not only with respect to its Statutes, but with the fundamental principle of the doctrine of the hierarchy of a federation’s rules or norms.
 - The FAZ did not comply with its own Statutes and thereby violated the fundamental legal principle that federations must observe their own Statutes.
 - The FAZ violated the principle of *lex specialis derogat generali*, because Article 7 of the FAZ Electoral Code indicates that fundamental eligibility criteria must be enumerated in the FAZ Statutes.
- Alternatively, the Appellant ought to be declared eligible because the FIFA Ethics case does not put into question the discharge of the presidential office.

Balance of interests

- In applying the balance of interests test “(i)t is necessary to compare the disadvantage to the Appellant of immediate execution of the decision with the disadvantages for the Respondent in being deprived of such execution.” (CAS 2011/A/2479, para. 4c)
- The FAZ has a legitimate interest in ensuring the smooth running of elections held on a timely basis and in ensuring that the persons that stand for election for executive positions retain the highest level of integrity and professionalism.
- The Appellant is not requesting that the elections be suspended indefinitely, but the Appellant is asking that a final award in this appeal be issued before the elections take place. The FAZ has nothing to lose if the provisional measures pending the final award are granted, as the elections can go ahead immediately after a final award.
- Should the provisional measures be refused, the elections held, and the CAS subsequently issues an award proclaiming that the Appellant is eligible to stand in the election, the balance of interests tips in favour of the Appellant. In this case, the Appellant’s inability to work and represent his home federation is a serious matter.
25. By letters dated 4 and 16 March 2020, the Appellant supplemented its application for provisional measures. These letters, in essence, may be summarised as follows:
- If a final award is not issued before the elections, the Appellant’s right to be heard will be violated.

- The FAZ Electoral Appeals Committee was incorrectly and illegally constituted. Mr Mando and his firm are counsel for the FAZ in this case, but Mr Mando was also the President of the FAZ Electoral Appeals Committee that issued the Appealed Decision. If this were to be allowed, the procedure would violate fundamental principles of fairness.
- The FAZ Electoral Code that is currently applicable was only ratified on 1 February 2020. This is further evidence that the FAZ has acted on a very short timeline immediately before the elections, attempting to impose eligibility criteria selectively applicable.
- The High Court of Zambia issued an injunction to suspend the elections due to procedural irregularities. This action was filed on behalf of other FAZ officials. CAS is requested to issue such order in this case as well for the purposes of consistency.

B. THE RESPONDENT

26. Although duly invited by CAS Court Office letter dated 10 March 2020, the FAZ opted not to file any submission in respect of the Appellant's application for provisional measures.

VII. LEGAL DISCUSSION

27. The Sole Arbitrator recalls the relevant criteria for successfully grounding an application for provisional measures: according to well-established CAS jurisprudence, the arbitral tribunal may grant provisional relief if i) the party seeking such relief would suffer irreparable harm if the relief were not granted, ii) that party has a likelihood of success on the merits of the appeal, and iii) the interests of the Appellant outweigh those of the other party (award of 15 September 2003, *CAS 2003/O/486, Fulham FC v. Olympic Lyonnais*; order of 25 May 2001, *CAS 2001/A/329, Gibraltar Badminton Association v. International Badminton Federation*; order of 15 March 2001, *CAS 2001/A/324, Addo and van Nistelrooij v. Union des Associations Européennes des Football (UEFA)*; order of 12 July 2007, *CAS 2007/A/1317, Fogarty & Schoppe v. BWF*; and order of 6 April 2010, *CAS 2010/A/2071 Irish Football Association v. Football Association of Ireland, Daniel Kearns and FIFA*).
28. The three prerequisites for granting provisional measures (*i.e.*, irreparable harm, likelihood of success on the merits, and balance of interests) are cumulative (order of 12 December 2007, *CAS 2007/A/1403, Real Racing Club de Santander SAD c. Club Estudiantes de la Plata*; order of 27 October 2007, *TAS 2007/A/1397, Colluto c. Association Cantonale Vaudoise de Football*; and order of 6 April 2010, *CAS 2010/A/2071 Irish Football Association v. Football Association of Ireland, Daniel Kearns and FIFA*).
29. As to the requirements for satisfying these criteria, the Sole Arbitrator relies on the helpful summary set out in the Order issued in CAS 2011/A/2479:

- “(a) *whether the measure is useful to protect the applicant from irreparable harm (“irreparable harm” test): “The Appellant must demonstrate that the requested measures are necessary in order to protect his position from damage or risks that would be impossible, or very difficult, to remedy or cancel at a later stage” (CAS 2010/A/2113 and references cited).*
- (b) *whether the action is not deprived of any chance of success on the merits (“likelihood of success” test): “The Appellant must make at least a plausible case that the facts relied upon by him and the rights which he seeks to enforce exist and that the material criteria for a cause of action are fulfilled” (CAS 2010/A/2113 and references cited).*
- (c) *whether the interests of the applicant outweigh those of the opposite party and of third parties (“balance of interest” test): “It is then necessary to compare the disadvantage to the Appellant of immediate execution of the decision with the disadvantages for the Respondent in being deprived such execution” (CAS 2010/A/2113 and references cited).” (Order in CAS 2011/A/2479, para. 4 of the abstract published on the CAS website)*
30. So as not to prejudice any possible future ruling on the merits of these arbitration proceedings, the Sole Arbitrator only refers to the information and documents that are relevant for assessing the Appellant’s application for provisional measures.
31. Since the FAZ did not provide any position as to the Appellant’s request for provisional measures, the arguments presented by the FAZ in its Answer may be taken into account in the proceedings concerning the merits of the appeal, but cannot play a role in the assessment of the Appellant’s request for provisional measures.
32. As to the criterion of *irreparable harm*, the Sole Arbitrator is prepared to accept that the Appellant satisfied this test. If the elections for FAZ President would proceed as planned on 28 March 2020 while the Appealed Decision stands, the Appellant is prevented from standing for election for the position of FAZ President. If the Appellant would subsequently succeed on the merits of the appeal, the damage inflicted on him would be impossible or very difficult to repair.
33. As to the *likelihood of success* on the merits, the Sole Arbitrator finds, on a *prima facie* basis, that the Appellant did not establish that he has at least a plausible case that the facts relied upon by him and the rights which he seeks to enforce exist and that the material criteria for a cause of action are fulfilled.
34. The key argument advanced by the Appellant is that the FAZ Electoral Committee refused his eligibility on the basis of criteria that were not set out in the FAZ Statutes, while Article 7 of the FAZ Electoral Code requires that such eligibility criteria must be enumerated in the FAZ Statutes. The Appellant maintains that sanctions imposed on him by the FIFA Ethics Committee and the FIFA Appeals Committee cannot be taken into account in assessing his eligibility.
35. Article 7 of the FAZ Electoral Code provides as follows:

- “1. *The eligibility criteria for the positions to be filled within the relevant bodies of FAZ are defined in the relevant provisions of the Statutes of FAZ.*
 2. *The Electoral Committee shall not impose any eligibility criteria that are not provided for in the Statutes of FAZ or any other formal requirements that are not provided for in this Electoral Code or in the Statutes of FAZ. The Electoral Committee shall only request the documents that help establish whether the relevant eligibility criteria have been fulfilled.*
 3. *The Electoral Committee shall publish the full list of eligibility criteria (with reference to the relevant provisions of the Statutes of FAZ), as well as the documents to be provided for each of the positions within the deadlines stipulated in the Statutes of FAZ.”*
36. Unlike the Appellant suggests, Article 7 of the FAZ Electoral Code does not indicate that the FAZ Electoral Committee shall only apply the eligibility criteria set out in the FAZ Statutes, because Article 7(2) of the FAZ Electoral Code provides that no formal requirements may be imposed that are “*not provided for in this Electoral Code or in the Statutes of FAZ*” (emphasis added by Sole Arbitrator).
37. Accordingly, an assessment of a candidate’s eligibility is not only to be based on the FAZ Statutes, but also on the formal requirements set out in the FAZ Electoral Code. This is supported by Article 26(2) of the FAZ Statutes, which determines that “*Elections of the bodies of FAZ [...] shall be conducted in accordance with the Electoral Code of FAZ*” and Article 55(1) of the FAZ Statutes providing that “*The Electoral Committee is the body in charge of organising and supervising the election process in accordance with the Electoral Code of FAZ. [...]*”.
38. According to Article 7(3) of the FAZ Electoral Code, the “*full list of eligibility criteria*” is to be published by the FAZ Electoral Committee, which implies that the eligibility criteria set out in the FAZ Statutes are not conclusive, but that the FAZ Electoral Committee is vested with the authority of establishing more bespoke eligibility criteria along the lines of the basic eligibility criteria set out in the FAZ Statutes.
39. The Appellant expressly acknowledges that “[t]he correct eligibility criteria in accordance with the FAZ Statutes and the Electoral Code is found in the 2020 FAZ Elections Qualifications for Nomination as Candidates”.
40. Article VI(d) of these “2020 FAZ Elections Qualifications for Nomination as Candidates” provides as follows:
- “The following are not eligible to stand for elections as FAZ officials.*
- [...]
- d) *Any person who has been convicted by the Courts of Law or any other footballing body.”*

41. Accordingly, since the Appellant was convicted by the FIFA Ethics Committee and the FIFA Appeals Committee, and FIFA being a “footballing body”, the Sole Arbitrator finds that the FAZ Electoral Committee and the FAZ Electoral Appeal Committee were entitled to take this element into account in their assessment of the Appellant’s eligibility.
42. Furthermore, Article 8(2) of the FAZ Electoral Code provides, *inter alia*, the following:

“[...] Candidatures received by the general secretariat shall immediately be forwarded to the secretary of the Electoral Committee as well as to the Ethics Committee for the relevant integrity checks to be carried out as per Annexe A of this Electoral Code.”
43. On this basis, the Sole Arbitrator finds, on a *prima facie* basis, that Annexe A forms part of the FAZ Electoral Code.
44. Article 4(b) of Annexe A to the FAZ Electoral Code provides as follows:

“The candidate or holder shall be deemed not to have passed the integrity check, if he:

[...]

b) has been found guilty and/or sentenced by the FIFA Ethics Committee or any other sporting body with a sanction that would seriously put into question the discharge of the office concerned.”
45. Also on this basis, the Sole Arbitrator finds that the FAZ Electoral Committee and the FAZ Electoral Appeal Committee were entitled to take into account the Appellant’s conviction by the FIFA Ethics Committee and the FIFA Appeals Committee in their assessment.
46. Turning to the conviction by the FIFA Ethics Committee and the FIFA Appeals Committee, the FIFA Ethics Committee initially found the Appellant guilty of multiple violations of the FIFA Code of Ethics (multiple violations of Article 20 – Offering and accepting gifts and other benefits, and a violation of Article 16 – Confidentiality). As a consequence, a two-year ban on taking part in any football-related activity at national and international level and a fine of CHF 100,000 were imposed on the Appellant. Following an appeal filed by the Appellant, these sanctions were subsequently reduced by the FIFA Appeals Committee to a ban of the period already served and a fine of CHF 10,000. Since the Appellant was banned since the issuance of the FIFA Ethics Committee decision on 12 April 2018 and the FIFA Appeals Committee Decision was dated 28 January 2019, the Appellant effectively served a ban of approximately nine and a half months.
47. The Sole Arbitrator finds that certain discretion is to be afforded to the FAZ Electoral Committee and the FAZ Electoral Appeal Committee in assessing whether such conviction “*would seriously put into question the discharge of the office concerned*”, as set out in Article 4(b) of Annexe A to the FAZ Electoral Code, but on a preliminary basis

the Sole Arbitrator finds that it does not appear unreasonable for these bodies to conclude that this requirement was met and declared the Appellant ineligible on this basis.

48. As to the remaining arguments put forward by the Appellant, the Sole Arbitrator finds that, on a *prima facie* basis, all are to be dismissed.
49. The Sole Arbitrator notes that the Appealed Decision comprises 23 pages and appears to address all arguments brought forward by the Appellant in some detail. The Appellant did not indicate any specific aspect that the FAZ Electoral Appeal Committee failed to address. Even if the Appellant's right to be heard was violated in the proceedings before the FAZ Electoral Committee, which does not appear to be the case, this was repaired in the proceedings before the FAZ Electoral Appeal Committee. The Sole Arbitrator is therefore not convinced that the Appellant's right to be heard was violated.
50. Insofar the Appellant refers to an amendment of the FAZ Electoral Code on 1 February 2020 and that the Annexe and the Questionnaire were illegitimately incorporated and thereby violated the doctrine of hierarchy of norms, the Sole Arbitrator finds that, first of all, the Appellant failed to prove which amendments were made on 1 February 2020. By failing to do so, the Appellant prevented the Sole Arbitrator from establishing that the amendments made are relevant for the outcome of the present Order on Request for Provisional Measures. In any event, in case the Appellant disagreed with the amendment of the FAZ Electoral Code and the Annexe and Questionnaire enclosed thereto, he should have challenged the decision underlying such amendments. The Appellant failed to establish that he did and such failure cannot be repaired by means of the present appeal proceedings concerning the Appealed Decision.
51. Insofar the Appellant maintains that the FAZ Electoral Committee violated the principle of *nulla poena sine lege* or *lex specialis derogat generali*, the Sole Arbitrator finds that these arguments must be dismissed, because no sanction was imposed on the Appellant. He was merely declared ineligible to stand for election for the position of FAZ President. In any event, as set out *supra*, the FAZ Electoral Committee appears to have had a proper legal basis to declare him ineligible to stand.
52. Finally, as to the supplementary arguments of the Appellant filed with the CAS Court Office by letter dated 16 March 2020, the Sole Arbitrator finds that these additional arguments must be dismissed, insofar as admissible.
53. Based on the submissions of the Appellant, the Sole Arbitrator has no reason to believe that the FAZ Electoral Appeals Committee was incorrectly and illegally constituted. There is no indication that Mr Mando, as chair of the FAZ Electoral Appeals Committee, lacked the required independence or impartiality at the time of issuance of the Appealed Decision. The mere fact that he and his firm were later retained as counsel for the FAZ does not make this any different.
54. Finally, the Sole Arbitrator finds that the mere fact that the High Court of Zambia apparently issued an injunction to suspend the FAZ elections set to take place on 28 March 2020 has no bearing on the Appellant's application for provisional measures. The High Court of Zambia apparently rendered its decision on the basis of an application

from FAZ officials other than the Appellant. The Sole Arbitrator is required to render his own independent decision on the Appellant's application for provisional measures and he is not satisfied that the prerequisites to do so are complied with.

55. Consequently, the Sole Arbitrator finds that the Appellant failed to satisfy the requirement of *likelihood of success* of the Appellant's appeal on the merits of the case. For the avoidance of doubt, the above assessment is only a *prima facie* assessment on the basis of the evidence available to the Sole Arbitrator at this stage of the proceedings, and should in no way be interpreted as prejudicing the outcome of these arbitration proceedings. Should the Appellant be able to provide additional evidence (insofar as admissible) or arguments, the Sole Arbitrator may well reach a different conclusion in the final arbitral award on the merits of the present arbitration.
56. Finally, as to the third criterion of *balance of interests*, the Sole Arbitrator is prepared to accept that the Appellant would be prejudiced if the elections were to take place and that it would later be decided in the merits of these appeal arbitration proceedings that the Appellant should have been declared eligible to stand for election.
57. However, suspending the elections until a final award on the merits of these present appeal arbitration proceedings is issued presumably also causes significant inconvenience for the FAZ.
58. Particularly considering the above assessment on the criterion of the *likelihood of success*, the Sole Arbitrator finds that the balancing of interests sways in favour of the FAZ to proceed with the presidential elections as planned.
59. Consequently, the Appellant's application for provisional measures is denied.

VIII. COSTS

60. According to standard CAS practice, the costs of this part of the proceedings will be settled in the final award or in any other final disposition of this arbitration.

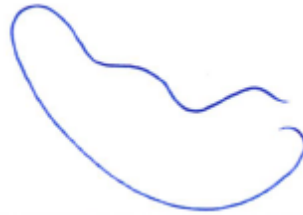
ORDER

The Court of Arbitration for Sport rules:

1. The application for provisional measures filed by Mr Kalusha Bwalya on 2 March 2020 in the matter *CAS 2020/A/6812 Kalusha Bwalya v. Football Association of Zambia* is dismissed.
2. The costs of the present order shall be determined in the final award.

Lausanne, 27 March 2020

THE COURT OF ARBITRATION FOR SPORT



André Brantjes
Sole Arbitrator



Dennis Koolaard
Ad hoc Clerk