



KENYAN PREMIER LEAGUE

For the good of our sport and nation

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INDEPENDENT DISCIPLINARY AND COMPLAINTS COMMITTEE

COMPLAINT BY THE KENYAN PREMIER LEAGUE AGAINST GOR MAHIA FC CONCERNING MATCH NUMBER 65

Case No. IDCC/2016/03

Hearing dates: 28th April 2016 and 12th May 2016

Present:

Chairman: Prof. Migai Akech
Members: Ms. Peninah Wahome
Dr. Elijah Gitonga
Ms. Njeri Onyango
Mr. William Odeny

In attendance:

- 1) Mr. Jack Oguda, KPL, representing KPL
- 2) Ms. Amimo Akong'a, representing KPL
- 3) Mr. GMT Ottieno, KPL Head of Technical Services, Safety & Security
- 4) Mr. Ronald Ngala, representing Gor Mahia FC
- 5) Mr. Antony Wasunna, representing Gor Mahia FC
- 6) Ms. Diana Yonah, representing Tusker FC
- 7) Mr. David Muhongo, Match Official
- 8) Mr. Zakariah Ashira, Match Official
- 9) Mr. Austin Ochieng, Match Official
- 10) Mr. Edward Lumbugu, Match Official

RULING

IDCC JURISDICTION

1. The Independent Disciplinary and Complaints Committee (IDCC) is the Tribunal for solving disputes in the game of football managed under the auspices of the Kenya Premier League Limited (KPL)
2. IDCC is guided by Article 1.1 of the Rules of Kenyan football rules, which states: "The Kenya Football Federation (now called Football Kenya Federation) consists of Branches and Clubs approved by the executive committee. All branches and clubs must apply and adhere to the Laws of the Game and rules approved by the KFF and International Football Authorities such as CECAFA, CAF and FIFA. [Reference to KFF should read to mean FKF until such a time as FKF comes up with new rules]"
3. Consequently, the rules of Law applied in deliberations by IDCC consist of the Laws of the Game as approved by the Federation Internationale de Football (FIFA), the rules of Kenyan football, the policy decisions made by the Kenyan Premier League Limited (KPL), the FIFA Disciplinary Code (FDC), other FIFA rules and regulations, the decisions of FIFA Judiciary bodies, the decisions of the Court for Arbitration in Sports (CAS) , Case Law from IDCC and

other jurisdictions, the Laws of Kenya, the rules of natural justice and other documentations in so far as such documentations adds relevant value to the particular circumstances of a given case.

4. Where there is a discrepancy or conflict in any of the above, FIFA Disciplinary Code, other FIFA rules and regulations and decisions of the CAS to have precedence.

FACTS

5. On the 25th April 2016, the KPL charged Gor Mahia FC with the offence of failing to control its fans and supporters on the 16th April 2016 during a league match, thereby causing disruptions of the match and the assault of one of the match officials, contrary to Rule 3.4(a) of the Rules of Kenyan Football. It also charged Mr. Boniface Oluoch, the goalkeeper of Gor Mahia FC, with the offence of assaulting one of the match officials, contrary to Rule 6.1 of the Rules of Kenyan Football.
6. The IDCC held two meetings on this matter, on the 28th April 2016 and the 12th May 2016.
7. At the first meeting, Mr. Jack Oguda, the CEO of KPL, sought to rely on the match reports, and urged the IDCC to send a strong message to clubs that the League would no longer tolerate hooliganism, and that the clubs needed to take the matter of security during matches seriously. He noted that Gor Mahia FC has repeatedly been found guilty of failing to control its fans and supporters, and it was therefore necessary to deal with the latest incidence of hooliganism firmly.
8. In response, Mr. Ronald Ngala for Gor Mahia FC stated that Gor Mahia FC was the away team for the match in question, and was therefore not responsible for the welfare, safety and security of all officials and visiting clubs. In his view, this responsibility fell to Tusker FC, which was the home club, and which assumed this responsibility by virtue of Rule 3.5(b) of the Rules of Kenyan Football.
9. According to Mr. Ngala, Gor Mahia FC did not expect spectators to enter the field of play, but once this happened, it made efforts to restore order so that the match could resume. Nevertheless, Mr. Ngala sought to lay blame on the match officials for the disruptions of the match. As he saw it, one of the assistant referees had failed to give a clear signal for the disputed penalty that led to the disruptions.
10. At this point, the IDCC felt that it did not have sufficient facts to enable it to make a fair and complete determination in the matter, the other concerned parties having not been summoned to participate in the hearing. It therefore ordered the KPL to summon these parties. It continued with the hearing on the 12th May 2016, these parties having been duly summoned.
11. At this second meeting, Ms. Amimo Akong'a for the KPL submitted that the match officials stopped the match in question in the 70th minute for about ten minutes, after the fans of Gor Mahia FC threw objects at the match officials, following the award of a penalty against Gor Mahia FC. She noted that the Match Commissioner's report confirmed these facts. She averred that Gor Mahia FC had a responsibility to control its fans. In her view, imposing fines on offending clubs was no longer a sufficient deterrent measure and urged the IDCC to deduct points from Gor Mahia FC's league tally, so as to send a strong message that the League would no longer condone hooliganism.
12. She also submitted that Mr. Boniface Oluoch, Gor Mahia FC's goalkeeper, had pushed one of the match officials, contrary to Rule 6.1 of the Rules of Kenyan Football, and urged the IDCC to suspend him from participating in KPL tournaments for a period of four matches.
13. In his presentation, Mr. GMT Ottieno, the KPL Head of Technical Services, Safety & Security, informed the IDCC that the parties concerned (the two participating clubs, the stadium

management and the police) had held a pre-event meeting, as is customary, and agreed on the security arrangements for the match in question. These parties, he further informed the IDCC, also held a pre-match meeting on the day of the match, again as the custom dictates.

14. Mr. Ottieno informed the IDCC that the match went on well until the 70th minute, when Gor Mahia fans threw objects onto the field of play, being aggrieved with the referee's decision to award a penalty against Gor Mahia FC. He told the Committee that the match resumed after some ten minutes, and was completed.
15. Further, Mr. Ottieno informed the IDCC that in situations where crowd trouble is likely to arise, he would normally enter the inner perimeter of the stadium, alert the police to secure safe passage for the match officials, and then lead the match officials from the field to the dressing room. On the material day, he testified that following the final whistle, the assistant referees went to join the center referee in the middle of the field. At this point, he informed the IDCC, an intruder, who had managed to evade the police, entered the field of play, using one of the two gates of the inner perimeter wall. While the home team uses the first gate to enter and leave the field of play, the away team similarly uses the second gate. He indicated that these two gates are not locked, but merely latched, meaning that an unauthorized person can enter the perimeter if not restrained. Mr. Ottieno informed the IDCC that by the rules of the game, these gates are not locked so as to facilitate easy access, although they should always be manned strictly. Having entered the perimeter, this intruder, whom he identified as a Mr. Joseph Odhiambo alis Blacky, then assaulted one of the assistant referees.
16. Mr. Ottieno informed the IDCC that the responsibility of manning the said gates has been assigned to Gor Mahia FC, and that they were, at all time, manned by stewards of Gor Mahia FC. He testified that a steward of Gor Mahia FC, wearing bib number 145, and whom the reserve referee identified, allowed the intruder to access one of the two gates.
17. The Match Commissioner corroborated this testimony. He testified that it had been agreed at the pre-match meeting that stewards of Gor Mahia FC would man the two gates, and that they did. In his view, this explained why the intruder was able to enter the field of play, and also leave without hindrance. He further testified that the police did not want to arrest the intruder for fear of aggravating the fans, thereby worsening the situation.
18. The reserve referee testified that it was Gor Mahia FC's steward wearing bib number 145 who opened one of the gates for the intruder. He further testified that upon asking this steward why he had opened the gate for the intruder, the steward replied that the match officials needed to be punished for making a wrong decision. He also testified that when the police sought to arrest the intruder, the Gor Mahia FC steward wearing bib number 145 now aided his escape, by opening the second adjacent for him.
19. The 1st assistant referee testified that a number of Gor Mahia FC stewards, whom he was standing next to, assisted the intruder to enter the field and escape, not just the one wearing bib number 145. He stated that he heard these stewards say that they would assist the intruder to escape because the police were coming for him.
20. The 2nd assistant referee, whom the intruder assaulted, testified that after the final whistle, he had run towards the center of the field for safety. Further, he testified that the intruder then came running towards him, chased him, caught up, and begun strangling him, as the stewards watched. He also testified that after he had signaled for a penalty against Gor Mahia FC, this team's goalkeeper, wearing jersey number 23, pushed him twice.
21. When asked to respond to the complaint against him, Mr. Boniface Oluoch admitted that he had indeed pushed the 2nd assistant referee and sought forgiveness, stating that he had been upset with the decision to award a penalty against his team. He asked for the IDCC's leniency, stating that he had never before pushed a referee, and had a good disciplinary record.

22. The IDCC also reviewed the match video, and was able to get a fair sense of what transpired during the match in question.

Analysis

23. The IDCC is satisfied that the charge against Gor Mahia FC has been proved. Gor Mahia FC failed to control its members and supporters, contrary to Rule 3.4(a) of the Rules of Kenyan Football.
24. The IDCC is also satisfied that the charge against Mr. Boniface Oluoch has been proved. In any case, Mr. Oluoch admitted that he assaulted the 2nd assistant referee.
25. As the IDCC has observed in previous determinations, all clubs participating in tournaments organized by the KPL must understand that the KPL does not condone any acts of hooliganism. In this respect, all clubs must observe the KPL's Zero Tolerance Policy on Abandoned Matches and Assaults, which states that "A Club is responsible for the conduct of its officials, players and fans and will be held responsible for any assault on any person immediately before, during or after a match."
26. This policy of zero tolerance is reiterated in Rule 3.4 (a) of the Rules of Kenyan Football, which places responsibility on clubs where the members or supporters of a club are found to have behaved in an unfair manner or engaged in violent or other unsporting conduct. As the IDCC has noted on numerous occasions, Rule 3.4.(a) of the rules of the Kenyan Football places responsibility on clubs where their members or supporters are found to have behaved in an unfair manner or engaged in violent or other unsporting conduct, irrespective of whether or not the club is responsible for security for the match.
27. In our view, the intention of the drafters of this rule was to ensure that clubs contribute to security during matches by regulating the conduct of their members and supporters. And we have emphasized in our previous decisions that clubs need to appreciate that the country's policing resources are limited and have to be allocated to many competing needs. By making sure that their members and supporters behave during matches, the clubs would thereby assist the police in allocating their limited resources fairly and responsibly. Again, this rule enables clubs and the KPL to share responsibility for the provision of security. Clubs must therefore fulfill their responsibility of ensuring that their members and supporters behave in a fair manner and refrain from violent and unsporting conduct at matches. In our view, this duty entails restraining fans, and identifying and punishing troublemakers. This duty also means that where a club fails to discharge it, it will be held liable for any damage caused by its members and supporters.
28. The IDCC holds the stewards of Gor Mahia FC responsible for the assault of the 2nd assistant referee, following the conclusion of the match. The Committee finds that the said stewards, particularly the steward wearing bib number 145, allowed an intruder to get into the field of play, and subsequently escape, having assaulted the 2nd assistant referee. The IDCC found the testimonies of the match officials and Mr. GMT Ottieno persuasive in this respect. Consequently, and pursuant to rule 3.4(a) of the Rules of Kenyan Football, the IDCC holds Gor Mahia FC responsible for the assault of the said match official.
29. Clubs and their fans or supporters must respect the rules governing football. Rule 7.3 of the Rules of Kenyan Football states that "The decisions made by the referee or assistant referee on the Laws of the Game during a match are final." Further, Law 5 of the Laws of the Game states, among other things, that "The decisions of the referee regarding facts connected with play, including whether or not a goal is scored and the result of the match, are final." It follows that the fact that the fans or supporters of Gor Mahia FC did not agree with the referee's decision to award a penalty to Tusker FC does not justify the disruptions or the assault of any match official. The only justifiable course of action for aggrieved clubs and players would be to submit a protest, following the conclusion of the match.

30. The Committee is concerned that the misconduct of the fans and supporters of Gor Mahia FC, which has led to the stoppage and abandonment of KPL matches and formed the subject of numerous IDCC hearings and determinations, is undermining the reputation and growth of the KPL. We are not satisfied that Gor Mahia FC is treating the matter of managing its fans and supporters with the urgency and seriousness that it deserves. Deterrent measures are therefore required.
31. In this respect, Rule 7.3(c) of the Rules of Kenyan Football provides as follows:
“After confirming the reported misconduct of a member the committee has the power to make one or more of the following decisions: (i) to suspend the member permanently or for a stated period from all or specified activities organized or authorized by the KFF; (ii) to fine the member; (iii) to order the member to pay compensation to another member; (iv) to censure the member; (v) to close the playing filed of the member for a stated period; (vi) to order the member to pay all expenses related to the case; and (vii) to require the member to meet any other conditions set by the committee.”
32. We are satisfied that Rule 7.3(c)(vii) gives this Committee the power to deduct points from those a club has already attained in a current championship, or may attain in a future championship. This interpretation is buttressed by Rule 30 of the FIFA Disciplinary Code, which states that “A club may have points deducted from those already attained in the current or a future championship.”

Decision

33. The IDCC hereby holds that:
- (a) Gor Mahia FC failed to control its fans and supporters on the 16th April 2016 during a league match, thereby causing disruptions of KPL Match Number 65 and the assault of the 2nd assistant referee following the conclusion of the said match, contrary to Rule 3.4(a) of the Rules of Kenyan Football.
 - (b) Mr. Boniface Oluoch assaulted the 2nd assistant referee, contrary to Rule 6.1 of the Rules of Kenyan Football.
34. Consequently, the IDCC hereby orders that:
- (a) The KPL shall, with immediate effect, deduct three points from Gor Mahia FC’s tally of points, which Gor Mahia FC has attained in the KPL League Tournament of 2016.
 - (b) Mr. Boniface Oluoch is hereby banned from playing for Gor Mahia FC for one match, namely the next match organized by the KPL involving Gor Mahia FC with effect from the date of this decision, and from attending that match in the area immediately surrounding the field of play.
 - (c) Gor Mahia FC shall meet the costs of the IDCC sitting and any witness expenses of the 12th May 2016, exclusive of any legal fees, which shall be paid within 14 days of the date hereof, and in default be deducted from Gor Mahia FC’s KPL grant.

DATED at Nairobi this 26th day of May 2016

Prof Migai Akech
Chairman



Dr. Elijah Gitonga
Member



Ms. Peninah Wahome
Member



Ms. Njeri Onyango
Member



Mr. William Odeny
Member

