

TAS / CAS

TRIBUNAL ARBITRAL DU SPORT
COURT OF ARBITRATION FOR SPORT
TRIBUNAL ARBITRAL DEL DEPORTE

**CAS 2021/A/8403 Royal AM Football Club v. South African Football Association,
the National Soccer League, Sekhkhune United FC, Polokwane City FC, Richards
Bay United and Chippa United FC**

ARBITRAL AWARD ON JURISDICTION

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

President: Prof. Luigi Fumagalli, Professor and Attorney-at-Law in Milan, Italy
Arbitrators: Mr David Phillips QC, Barrister, London, United Kingdom
Judge Rauf Soulio, Judge in Adelaide, Australia

between

Royal AM Football Club, Durban, South Africa

Represented by Botha Massyn & Thobejane Associated Attorneys in Kempton Park,
South Africa

Appellant

and

South African Football Association, Johannesburg, South Africa

First Respondent

and

National Soccer League, Johannesburg, South Africa

Represented by Webber Wentzel, Johannesburg, South Africa

Second Respondent

and

Sekhukhune United FC, Kempton Park, South Africa
Represented by Tshabuse Attorneys, Johannesburg, South Africa

Third Respondent

and

Polokwane City FC, Polokwane, South Africa

Fourth Respondent

and

Richards Bay United, Richards Bay, South Africa

Fifth Respondent

and

Chippa United, North End Port Elizabeth, South Africa

Sixth Respondent

I. BACKGROUND

1. Royal AM Football Club ("Royal" or the "Appellant") is a football club based in Durban, South Africa. Royal is affiliated to the South African Football Association and to the National Soccer League. In the 2020/2021 season, Royal competed in the South African National First Division (known also as the *GladAfrica Championship*: the "Championship"), the second tier of professional football in South Africa.
2. The South African Football Association ("SAFA" or the "First Respondent") is the national football federation in the Republic of South Africa, and is a member of the Fédération Internationale de Football Association ("FIFA"), the world governing body of football.
3. The National Soccer League ("NSL" or the "Second Respondent"), currently known as the Premier Soccer League, following an agreement with the National Professional Soccer League, is a sports association responsible for administering the two professional football divisions in South Africa, and is a special member of SAFA.
4. Sekhukhune United FC ("Sekhukhune" or the "Third Respondent"), Polokwane City FC ("Polokwane" or the "Fourth Respondent"), Richards Bay United ("Richards Bay" or the "Fifth Respondent") and Chippa United ("Chippa" or the "Sixth Respondent") are football clubs affiliated to SAFA and to the NSL, which in the 2020/2021 season competed in the Championship.
5. The First Respondent, the Second Respondent, the Third Respondent, the Fourth Respondent, the Fifth Respondent and the Sixth Respondent are collectively the "Respondents". The Appellant and the Respondents are the "Parties".

II. FACTUAL SUMMARY

6. Below is a summary of the main relevant facts, as submitted by the Parties in their written pleadings and/or adduced at the hearing. Additional facts may be set out, where relevant, in connection with the legal discussion that follows. Although the Panel has considered all the facts, allegations, legal arguments and evidence submitted by the Parties in the present proceedings, it refers in this Award only to the submissions and evidence it considers necessary to explain its reasoning.
7. On 2 January 2021, a match of the Championship was played in the city of Polokwane between Polokwane and Sekhukhune (the "Match"). The Match was won on the pitch by Polokwane by 1:0.
8. On 4 January 2021, Sekhukhune lodged a protest against the Match result under Article 51 of the NSL Handbook, noting that Polokwane had contravened Article

35.2 thereof ("*Clubs participating in the National First Division must include in the team sheet for every match a minimum of 5 (five) players who are both under 23 and eligible to represent South Africa. A minimum of 2 (two) under 23 players must be on the field of play at all times during a match*"), because it had failed to include in the team sheet a minimum of 5 players under 23 eligible to represent South Africa.

9. On 7 May 2021, the NSL Disciplinary Committee (the "DC") issued a ruling (the "DC Ruling") upholding the protest and sanctioning Polokwane with a deduction of 3 points and a suspended fine.
10. Sekhukhune filed an appeal against the DC Ruling. The decision on such appeal was referred to arbitration pursuant to Article 64.1 of the NSL Handbook.
11. On 19 May 2021, Adv Hilton Epstein SC issued an award (the "Epstein Award"), setting aside the DC Ruling and declaring that Polokwane had forfeited the Match to Sekhukhune "*with a score line of 3-0*" and confirming the suspended fine.
12. On 21 May 2021, the NSL issued an "*Urgent Note*" with respect to the Epstein Award (the "21 May Note"). The NSL, disputing the findings of Epstein Award, indicated in the 21 May Note that it was seeking legal advice and was considering its options in respect of the Epstein Award. As a result, at that stage, the Epstein Award was not implemented, and Sekhukhune was not granted the 3 points based on the result of the Match declared by the Epstein Award.
13. On 23 May 2021, the final matches of the Championship were played. As a consequence of their results, Royal ranked first (with 51 points), with Sekhukhune ranking second (with 50 points). The club ranking first was entitled to the automatic promotion to the NSL Premiership (the top league in the South African football) for the 2021/2022 season.
14. On 23 May 2021, the NSL issued a press statement indicating that it had been threatened and served with court proceedings, and that the Championship trophy handover would be postponed.
15. Litigation started before the courts of South Africa. Such litigation involved a number of court proceedings. Notably, in that context, on 12 June 2021, the High Court of South Africa, Gauteng Division, in Johannesburg (the "High Court") issued an order, dismissing, *inter alia*, an application brought by Polokwane to set aside the Epstein Award (the "HC Order"). Leave to pursue an appeal against such HC Order, which was requested by Royal was denied on 17 June 2021.
16. On 12 June 2021, as a result of the HC Order, the NSL implemented the Epstein Award: Sekhukhune was crowned as the winner of the Championship with 53 points, earning the automatic promotion to the NSL Premiership; Royal was admitted to the play-offs, which offered the opportunity of a promotion to the NSL

Premiership. Eventually, however, Royal decided not to play any of the play-off matches.

17. On 30 July 2021, Royal lodged with the Court of Arbitration for Sport ("CAS") an appeal against the Epstein Award.
18. On 4 August 2021, the CAS Court Office, writing on behalf of the President of the CAS Appeals Arbitration Division, reminded Royal of the time-limits to file an appeal at CAS and informed it that *"even if CAS would have jurisdiction (the present letter being without any prejudice on this issue), the appeal filed by email on 30 July 2021 would be manifestly late. ... Therefore, the CAS shall not initiate an arbitral procedure in this matter"*.
19. On 10 August 2021, Royall requested SAFA, pursuant to Article 71.4 of the SAFA Statutes and to Article 143 of the SAFA Disciplinary Code, to refer to arbitration the *"disputes it has with the NSL"* and seek *"a review of the administrative decision taken by the NSL on the 12th June 2021"*, as well as of the Epstein Award.
20. On 19 August 2021, SAFA sent to Royal, with copy to Sekhukhune, Polokwane, Richards Bay United and Chippa, a letter (the "19 August Letter") denying the referral to arbitration as follows:

"I refer to your letter of 10 August 2021 to which is attached Royal AM FC's referral of the dispute to arbitration in terms of Article 71.4 of the SAFA Statutes and Article 143 of the SAFA Disciplinary Code. Proof of payment of the lodgement of fees is also attached.

I have considered your statement of claim in the dispute on behalf of Royal AM, and I hereby decline to refer the said dispute to arbitration in terms of Article 71.4 of the SAFA Statutes and the review sought in terms of Article 143 of the SAFA Disciplinary Code.

Without going into any further detail, it is manifestly the case that the conduct Royal AM FC complains of, namely the alleged administrative decision taken by the NSL on 12 June 2021, and the review sought of the award delivered by Hilton Epstein SC on 21 May 2021, arose out of the matter between Sekhukhune United FC and Polokwane City FC to which Royal AM was not a party.

In any event, the arbitration award delivered by Epstein SC is final and binding in terms of both the NSL Handbook and the SAFA Statutes, and to date has not been set aside in a court of law. In fact, the validity of the award has been upheld in court notwithstanding challenges to the award by Royal AM FC, and leave to appeal against it, has been refused. Royal AM FC has sought to apply for leave to appeal from the Supreme Court of Appeal, and has also referred the matter to the Constitutional Court. Both latter applications, are pending.

In the circumstances, the referral of the Royal AM FC dispute to arbitration in terms of Article 71.4, the review sought of the alleged administrative decision taken



TAS / CAS

TRIBUNAL ARBITRAL DU SPORT

COURT OF ARBITRATION FOR SPORT

TRIBUNAL ARBITRAL DEL DEPORTE

CAS 2021/A/8403 Royal AM Football Club v. South African Football Association ("SAFA"), the National Soccer League, Sekhkhune United FC, Polokwane City FC, Richards Bay United and Chippa United FC - Page 6

by the NSL on 12 June 2021, and the review sought in terms of Article 143 of the SAFA Disciplinary Code, is refused."

21. On 21 August 2021, the SAFA Disciplinary Committee found Royal guilty of misconduct for failing to play the play-off matches and sanctioned it. Such decision was not challenged and therefore became final.

III. PROCEDURE BEFORE THE COURT OF ARBITRATION FOR SPORT

22. On 7 September 2021, Royal transmitted by email to the CAS a statement of appeal pursuant to the Code of Sports-related Arbitration (the "Code") to challenge the 19 August Letter.
23. On 9 September 2021, Royal informed the CAS Court Office that the statement of appeal had to be considered as its appeal brief pursuant to Article R51 of the Code.
24. On 22 September 2021, the CAS Court Office informed the Appellant that the hard copies of the statement of appeal had not reached CAS yet, and drew the Appellant's attention to the requirements of Article R48 of the Code, including the need to specify the name and full address of the Respondents and the nomination of an arbitrator.
25. On 23 September 2021, the Appellant provided the full addresses of the Respondents.
26. On 24 September 2021, the CAS Court Office acknowledged receipt of the provided addresses and reminded the Appellant that it was still invited to nominate an arbitrator.
27. On 24 September 2021, the Appellant appointed Mr David Phillips QC as an arbitrator.
28. On 20 October 2021, the CAS Court Office confirmed receipt on 15 October 2021 of the hard copies of the statement of appeal sent on 9 September 2021, addressed some issues regarding the exhibits produced by the Appellant (neither listed nor numerated), forwarded to the Respondents copy of the Appellant's submissions and of the correspondence exchanged, and invited them to jointly nominate an arbitrator.
29. On 25 October 2021, the Appellant submitted a list, and a copy, of the produced exhibits.
30. On 4 November 2021, Richards Bay informed the CAS Court Office that it would not participate in the CAS arbitration proceedings.

31. On 4 November 2021, the NSL informed the CAS Court Office that the First Respondent, the Second Respondent and the Third Respondent had decided to appoint Judge Rauf Soulio as an arbitrator in this matter, and that no response had been received from the remaining Respondents in relation to such appointment.
32. On 5 November 2021, the CAS Court Office in a letter to the Parties noted *inter alia* the appointment of Judge Rauf Soulio as an arbitrator, and informed the Parties that, in the absence of observations from the remaining Respondents, the CAS Court Office would consider Judge Rauf Soulio as jointly appointed by all Respondents.
33. On 30 November 2021, the CAS Court Office, noting that the Appellant had paid its share of the advance of costs in the present matter, informed the First, Second and Third Respondents that the time-limits for the filing of their answers, which were previously suspended further to their requests, were resumed, and therefore invited them to submit their answers. At the same, the CAS Court Office informed the Parties, on behalf of the President of the CAS Appeals Arbitration Division, that the Panel had been constituted as follows: Prof. Luigi Fumagalli, President; Mr David Phillips QC and Judge Rauf Soulio, Arbitrators.
34. On 6 December 2021, the CAS Court Office, writing on behalf of the Panel, noted the following with respect to the "*CAS file*":

"In spite of the list of its exhibits submitted by the Appellant on 25 October 2021, the file is still not easily readable. The Panel has indeed noted the following:

- *Doc. 5 of the Appellant's list of 25 October 2021 (a "PLS media statement" dated 21 August 2021) cannot be found in the various exhibits submitted by the Appellant as RAD, AR, RAI, EPI etc.;*
- *Some of the documents numbered in the Appellant's list of 25 October 2021 appear filed in more than one copy as part of the groups of documents referred to as RAD, AR, RAI, EPI etc., and are mixed with others;*
- *It is not possible to link the documents numbered in the Appellant's list of 25 October 2021 to those referred to as RAD, AR, RAI, EPI etc. in the body of the written submission.*

In light of the above, and in application of Article R44.3 (applicable by reference of Article R57 of the CAS Code) of the CAS Code, the Appellant is invited to resubmit all the documents already filed, numbering them in sequence starting from 1, together with their list and the indication of the paragraphs of the appeal at which they were referred to."

35. On 6 December 2021, the Appellant provided some clarifications regarding the documents filed.

36. On 14 December 2021, the CAS Court Office, while confirming receipt of the Appellant's exhibits, indicated that problems still existed in their respect, invited the Appellant to proceed accordingly and suspended the time-limit for the filing of the First, Second and Third Respondents' answers.
37. On 15 December 2021, the CAS Court Office acknowledged receipt of some missing documents and invited the First, Second and Third Respondents to submit their answers.
38. On 13 January 2022, the CAS Court Office confirmed receipt of the answers filed by the Second Respondent and by the Third Respondent within the relevant time-limits, and noted that the remaining Respondents had failed to submit their answers.
39. On 18 January 2022, the CAS Court Office notified to the Parties the answers filed by the Second Respondent and by the Third Respondent. At the same time, the Parties were advised that the Panel had taken due note of the numerous objections of inadmissibility, lack of jurisdiction and *res iudicata* raised by the Second Respondent and/or Third Respondent, as well as of the Second Respondent's comment relating to its scope of review. Therefore, in application of Articles R55 and R56 of the Code, the Appellant was invited to lodge an additional written submission strictly limited to these preliminary issues. Finally, the Parties were informed that, upon receipt of these observations, the Panel would consult the Parties on the appropriateness of the holding of a hearing and of the issuance of a preliminary decision dedicated to these issues.
40. On 27 January 2022, the Appellant filed its "*Short Submission on Admissibility, Jurisdiction, Res Judicata and Scope of Review*".
41. On 28 January 2022, the CAS Court Office invited the Parties to state their positions on (i) the issuance of a preliminary decision (or final decision depending on its outcome) dedicated to the preliminary issues, and (ii) the holding of a hearing for the discussion of the same issues.
42. On 1 February 2022, the Appellant expressed its opinion that the matter be heard on all aspects, and that a final decision on the preliminary issues be made in the final award on merits.
43. On 4 February 2022, the Second Respondent indicated to be in favour of the issuance of an award on the preliminary issues and of the holding of a hearing for their discussion.
44. On 11 February 2022, the Parties were advised by the CAS Court Office that the Panel had decided to hold a hearing on the preliminary issues and to decide after this hearing whether to render an award on the preliminary issues or to join their discussion with the merits.

45. On 18 February 2022, the CAS Court Office informed the Parties that the hearing would be held by video-link on 3 March 2022.
46. On 2 March 2022, the Second Respondent submitted a document containing a timeline of the main events to which it would refer at the hearing.
47. On the same day, the Third Respondent submitted a CAS award (CAS 2013/A/3276) upon which it intended to rely on at the hearing.
48. A hearing was held on 3 March 2022 by video link. The Panel was assisted by Ms Carolin Fischer, Counsel to the CAS. The Panel was joined at the hearing:
 - i. for the Appellant: by Mr Leruma Thobejane, Attorney;
 - ii. for the Second Respondent: by Adv Franck Snyckers SC, Adv Tidimalo Ngakane, Counsel, Mr Dario Milo, Attorney, Ms Lavanya Pillay, Attorney, Mr Divashen Naidoo, Attorney, Mr Hoosein Mayet, Candidate Attorney, Mr Michael Murphy, PSL representative, Ms Dolores Madlala, PSL representative, Mr Nande Becker, PSL representative, and Mr Daniel Sive, Pupil Advocate;
 - iii. for the Third Respondent: Adv Norman Arendse SC, Adv David Borgström SC, Ms Karabo Tshabuse, Attorney, Mr Simon Malatji, President, Mr Jonas Malatji, CEO, Mr Luxolo Matikinca, Manager;
 - iv. for the remaining Respondents: nobody.
49. The hearing was also attended by Adv. Tebogo Matlanthe, CEO of SAFA, as an observer invited by the Third Respondent.
50. At the hearing, preliminarily, the Parties confirmed that they had no objection as to the appointment of the Panel and the holding of the hearing by video connection. The Parties, then, made submissions in support of their respective cases.
51. At the conclusion of the hearing the Parties confirmed that they had no objections in respect of their right to be heard and to be treated equally in the arbitration proceedings.
52. Further to the hearing of 3 March 2022 and in response to a question from the Panel regarding the state of the current season, the Second Respondent submitted some information on the number of matches played or to be played.

53. On 4 March 2022, the Appellant submitted the written version of the submissions it presented at the hearing. Referring to the submissions made by the Second and Third Respondents after the closure of the exchange of written submissions, the Appellant deemed that they were filed in violation of Article R56 of the Code and that, should they nonetheless be admitted, fairness would require that the written submissions of its oral pleadings be also admitted in the CAS file.
54. On the same day and on behalf of the Panel, the Parties were invited to refrain from submitting unsolicited documents and were informed that any unsolicited documents or submissions lodged after the hearing would not be considered by the Panel.
55. The Panel notes here that the documents submitted by the Second and Third Respondents on 2 March 2022 are admitted in the file insofar as they are a publicly available CAS award (which is not a new exhibit under Article R56 of the Code, parties being free to refer at the hearing to publicly available decisions drafted in the language of the procedure in support of their argumentation) and a time-line established on the basis of the produced written submissions. The Panel also notes that insofar as the Appellant's written submissions of 4 March 2022 is the written version of its pleading it is materially admitted in the file, the Parties' oral submissions being obviously taken into account.
56. On 5 April 2022, the Parties were informed of the Panel's decision to issue a separate award on the preliminary issues.

IV THE POSITION OF THE PARTIES

57. The following outline describes only the Parties' positions with respect to the CAS jurisdiction and the admissibility of the appeal, and is illustrative only. As a result, it does not necessarily comprise every contention put forward by the Parties. The Panel, indeed, has carefully considered all the submissions made by the Parties, even if there is no specific reference to those submissions in the following summary.

A. The Position of the Appellant

58. In its combined statement of appeal and appeal brief, the Appellant requested the following relief:

"67.1. The decision taken by SAFA on the 19th August 2021, be declared incompetent, reviewed and set aside.

67.2. Declaring the decision by the NSL to refuse to implement the Epstein arbitration award on the 21st May 2021, was unlawful and was in violation of the NSL handbook, SAFA Disciplinary Code and the FIFA statutes.

67.3. Reviewing and setting aside the Epstein award in so far as advocate Epstein SC for the first time at arbitration introduced a new issue of the alleged fielding of an ineligible player by Polokwane City FC in order to attract and

impose a sanction under article 22 of the FIFA Disciplinary Code as being grossly irrational, grossly irregular, not supported by the facts for the protest or the evidence.

67.4. *An order confirming the ruling as the sanction imposed by the NSL disciplinary committee.*

67.5. *An order confirming that the NSL Handbook is not silent on the sanction in respect of violation of rule 3.5.2 and any other violation of the NSL Handbook as provided for in terms of rule 51.4 of the NSL Handbook.*

67.6. *An order reviewing and setting aside the Epstein award in its entirety."*

59. According to the Appellant, CAS has jurisdiction to hear the appeal it filed. In more detail, jurisdiction is based, for the purposes of Article R47 of the Code, on Articles 56 and 57 of the FIFA Statutes, read in conjunction with Articles 127(2) and 129 of the SAFA Disciplinary Code.
60. In that respect, the Appellant indicates that SAFA adopted the provisions of the FIFA Statutes and the FIFA disciplinary code in its statutes and disciplinary code. The Second Respondent is a member league of SAFA and is bound by the SAFA Statutes; all the remaining Respondents are also bound by the SAFA Statutes as member clubs of the Second Respondent. As a result, all the Respondents are bound by the SAFA provisions, and by the rules of FIFA as incorporated in the SAFA regulations.
61. Under Articles 127 of the SAFA Disciplinary Code, the right was reserved for an appeal to be made to the "*as set out*" in Article 129, which in turn refers to the CAS.
62. The principle that SAFA and its members submitted to the jurisdiction of CAS is further reinforced by the SAFA Statutes at their Article 73, under which SAFA agreed and bound itself to enforce compliance with CAS decisions, and at Article 11.2.4, requiring the SAFA members to recognize "*the judicial bodies of SAFA and the Court of Arbitration for Sport (CAS) in Lausanne, as specified in these Statutes*".
63. According to the Appellant, then, its appeal is admissible, as it was filed within the time limit set by Article R49 of the Code and Article 57 of the FIFA Statutes: in fact, the appeal proceedings against the 15 August Letter were instituted on 6 September 2021, in full respect of the indicated deadline.
64. The Appellant submits finally that the requirements of *res judicata* have not been met in the present case: therefore, these proceedings are not affected by it. Indeed, the Appellant underlines that the existence of *res judicata* is subject to the "*triple identity test*" used in all jurisdictions: the parties must be the same, the claim must be the same, the claim must have been decided on merits and finalized. Such test is not satisfied with respect to both grounds on which the exception of *res judicata* as raised by the Second and Third Respondents is premised:

- i. with respect to the withdrawal of the first CAS appeal, it is to be noted that a termination order is not final and cannot produce a *res judicata* effect, if the appeal is withdrawn before the constitution of the panel and the filing of the appeal brief;
- ii. with respect to the HC Order, a civil court judgement could not have a *res judicata* effect since, in accordance with its rules which prohibit the recourse to ordinary courts, SAFA stance is that courts have no jurisdiction to determine the correctness of the SAFA, NSL and FIFA regulations. In any event, it must be noted that the parties to the proceedings in which it was rendered are not the same as the parties in the current arbitration, the HC Order did not deal with the merits of the Epstein Award, but only with the power of the arbitrator who rendered it. In addition, the HC Order did not help create certainty as to the application of the relevant rules, on which only CAS can be the arbitral tribunal to decide.

B. The Position of the Respondents

B.1 The Position of the Second Respondent

65. In its Answer, the Second Respondent sought:

"an order dismissing Royal AM's appeal with costs."

66. In support of its request, the Second Respondent denies the jurisdiction of CAS to determine the appeal, disputes the admissibility of the appeal in respect of the non-compliance with the applicable deadline and the defect in the "appeal paper" precluding the entertainment of the appeal, and invokes *res judicata* as a preclusion to the Appellant's claims.

67. According to the Second Respondent, the Appellant has failed to make out a case to show that CAS has jurisdiction to hear this case. In fact:

- i. as recognized by the CAS jurisprudence, the provisions of the Statutes of FIFA invoked by the Appellant do not offer a sufficient basis for the CAS jurisdiction. Article 57 of the FIFA Statutes in any case was incorrectly stated by the Appellant;
- ii. the SAFA Statutes do not provide for CAS jurisdiction. The provisions referred to by the Appellant imply at most a recognition of CAS, but do not confer jurisdiction to hear appeals beyond the narrow limits in which such jurisdiction is granted. Actually, as made clear by the examination of a CAS precedent involving SAFA (the award in CAS 2013/A/3276, *Thanda Zulu FC (Pty) v/ South African Football Association & al.*: the "Thanda Zulu Award"), the SAFA Statutes were amended in 2017, and the provisions previously conferring jurisdiction to CAS (Articles 70.6 and 72 of the version previously in force) were deleted and replaced by new rules,

- making no reference to CAS (Article 71.6 of the text currently in force), or limiting the mention to CAS to the obligation of SAFA to ensure compliance with final decisions of FIFA and CAS;
- ii. equally the SAFA Disciplinary Code does not provide CAS with jurisdiction, because its Article 127(2) applies only to decisions taken by the Appeal Committee, and the 19 August Letter is not a decision of the Appeal committee, and Article 129 is of no assistance to the Appellant.
68. In summary, there is no provision in the NSL Handbook, SAFA Statutes or SAFA Disciplinary Code, which provides for a right for an appeal and/or review to CAS following an unsuccessful review report and/or review in terms of Article 143 of the SAFA Disciplinary Code. Accordingly, CAS does not have jurisdiction to hear an appeal against the Epstein Award and/or SAFA's decision declining the Appellant's request for review.
69. The admissibility of the appeal is disputed by the Second Respondent under several points of view. The Second Respondent, in fact, contends that:
- i. the Appellant has no standing to appeal, because it did not establish a legally protected interest at the moment the appeal was launched;
- ii. the Appellant's statement of appeal failed to comply with Article R51 of the Code, because it failed to include any list of witnesses or witness statements or a brief summary of their expected deposition;
- iii. the Appellant has not challenged the disciplinary proceedings for failing to participate in the play-off matches;
- iv. the current CAS proceedings were not instituted or authorized by the Appellant, in light of the sale of its football activities, and its decision, communicated to the NSL on 7 September 2021, not to continue these proceedings and not to appoint attorneys. Any subsequent ratification is ineffective and late;
- v. the relief sought by the Appellant against the 21 May Note are "*out of time*".
70. In the Second Respondent's opinion, then, any review sought by the Appellant of the Epstein Award is inadmissible, as it is covered by *res judicata*. The relief sought before CAS, in fact, is the same as the operative part of the HC Order, which is final and binding on the merits of the Appellant's challenge to the Epstein Award.

B.2 The Position of the Third Respondent

71. In its Answer, the Third Respondent requested that:

"The matter ... be dismissed in its entirety." and that *"Royal AM and its successor, [...], should be held liable for the costs of the appeal incurred by Sekhkhune FC"*

72. According to the Third Respondent, the appeal of the Appellant is inadmissible, and should be rejected, for a number of reasons:
- i. CAS has no jurisdiction to hear an appeal against final and binding orders and judgments of the High Court. The validity of the Epstein Award was finally determined in the HC Order, and cannot be disputed before CAS;
 - ii. Royal has no standing to raise an appeal before CAS against the Epstein Award, because it played no role in the proceedings that led thereto;
 - iii. the appeal was filed by the Appellant when the deadline of 21 days after decision challenged had expired;
 - iv. no basis is provided to challenge the 19 August Letter, also in light of the fact that the Appellant had no standing to request a review before SAFA of the Epstein Award.

B.2 The Position of the other Respondents

73. The First Respondent, the Fourth Respondent, the Fifth Respondent and the Sixth Respondent took no position in the course of this arbitration.

V. JURISDICTION

74. The jurisdiction of the CAS invoked by the Appellant is disputed. On one hand, the Appellant alleges that the SAFA and the FIFA regulations offer a sufficient basis for this Panel to have jurisdiction to hear the appeal it brought; on the other hand, the Second Respondent and the Third Respondent (the "Answering Respondents") maintain that this Panel does not have jurisdiction to hear the claims brought by the Appellant. The First Respondent, the Fourth Respondent, the Fifth Respondent and the Sixth Respondent (the "Other Respondents") did not enter any defence in this arbitration.
75. It is therefore for the Panel to determine whether CAS jurisdiction can be found to with respect to all Respondents. In fact, even though the Other Respondents submitted no answer to the appeal, the CAS jurisdiction also in their respect has to be verified by the Panel, bearing in mind that no independent request for relief was submitted by the Appellant as against them (or any of them individually).
76. The Panel preliminarily notes that it is undisputed that these arbitration proceedings have their seat in Lausanne, Switzerland (Article R28 of the Code), and involve non-Swiss (South-African) entities. In the present case, therefore, the provisions of Chapter 12 of the Swiss Private International Law Act (hereinafter referred to as the "PILA") apply, pursuant to its Article 176 para. 1, as "*the seat of the arbitral tribunal is in Switzerland and if at least one of the parties at the time the arbitration agreement was concluded was neither domiciled nor habitually resident in Switzerland*".

77. In accordance with Article 186 of the PILA, this Panel has the power to decide upon its own jurisdiction according to the rules that define it.
78. Article R27, first paragraph of the Code provides as follows:
- "These Procedural Rules apply whenever the parties have agreed to refer a sports-related dispute to CAS. Such reference may arise out of an arbitration clause contained in a contract or regulations or by reason of a later arbitration agreement (ordinary arbitration proceedings) or may involve an appeal against a decision rendered by a federation, association or sports-related body where the statutes or regulations of such bodies or a specific agreement provide for an appeal to CAS (appeal arbitration proceedings)".*
79. Under Article R47, first paragraph of the Code, then:
- "An appeal against the decision of a federation, association or sports-related body may be filed with CAS if the statutes or regulations of the said body so provide or if the parties have concluded a specific arbitration agreement and if the Appellant has exhausted the legal remedies available to it prior to the appeal, in accordance with the statutes or regulations of that body".*
80. As made clear by a consistent jurisprudence of CAS (*inter alia* CAS 2008/A/1513; CAS 2009/A/1919; CAS 2011/A/2436; CAS 2014/A/3775), based on the wording of Articles R27 and R47 of the Code, in appeal arbitration proceedings three conditions are necessary for the jurisdiction to exist: (i) the parties must have agreed to the jurisdiction of CAS, (ii) there must be a decision of a federation, association or another sports-related body, and (iii) the internal remedies available to the appellant must have been exhausted prior to an appeal to the CAS.
81. The first point, indeed, is crucial: Articles R27 and R47 of the Code refer in fact to a basic aspect of arbitration: there can be no arbitration without consent, expressed in an arbitration agreement. As a result, in order to start an arbitration at CAS, under the CAS rules, an arbitration agreement must provide for the CAS jurisdiction. Then, with specific reference to disputes regarding decisions rendered by a sports-related body, Article R47 of the Code provides that there is consent to arbitrate if the parties have concluded a specific arbitration agreement or if the statutes or regulations of that body contemplate a right of appeal to CAS (see also CAS 2008/A/1602; CAS 2009/1910; and CAS 2013/A/3199).
82. In this case, it is undisputed that no specific arbitration agreement has been concluded between the Parties, granting the CAS the jurisdiction to settle the dispute submitted by the Appellant for decision of this Panel. In fact, the Appellant's submissions, developed in order to find a jurisdictional basis for this CAS Panel to hear the appeal it filed, are founded on provisions set in the regulations of SAFA and FIFA.

83. More specifically, with respect to the issue of CAS jurisdiction, the following provisions have been discussed:

- i. within the FIFA regulations, Articles 56 to 58 of the FIFA Statutes (in the text in force as of May 2021), which read as follows:

Article 56 [*"Court of Arbitration for Sport (CAS)"*]:

- "1. *FIFA recognises the independent Court of Arbitration for Sport (CAS) with headquarters in Lausanne (Switzerland) to resolve disputes between FIFA, Members, Confederations, Leagues, clubs, Players, Officials and licensed match agents and players' agents.*
2. *The provisions of the CAS Code of Sports-Related Arbitration shall apply to the proceedings. CAS shall primarily apply the various regulations of FIFA and, additionally, Swiss law*".

Article 57 [*"Jurisdiction of CAS"*]:

- "1. *Appeals against final decisions passed by FIFA's legal bodies and against decisions passed by confederations, member associations or leagues shall be lodged with CAS within 21 days of receipt of the decision in question.*
2. *Recourse may only be made to CAS after all other internal channels have been exhausted.*
3. *CAS, however, does not deal with appeals arising from:*
 - (a) *violations of the Laws of the Game;*
 - (b) *suspensions of up to four matches or up to three months (with the exception of doping decisions);*
 - (c) *decisions against which an appeal to an independent and duly constituted arbitration tribunal recognised under the rules of an association or confederation may be made.*
4. *The appeal shall not have a suspensive effect. The appropriate FIFA body or, alternatively, CAS may order the appeal to have a suspensive effect.*
5. *FIFA is entitled to appeal to CAS against any internally final and binding doping-related decision passed in particular by the confederations, member associations or leagues in accordance with the provisions set out in the FIFA Anti-Doping Regulations.*
6. *The World Anti-Doping Agency (WADA) is entitled to appeal to CAS against any internally final and binding doping-related decision passed in particular by FIFA, the confederations, member associations or leagues in accordance with the provisions set out in the FIFA Anti-Doping Regulations*".

Article 58 [*"Obligations relating to dispute resolution"*]:

- "1. The confederations, member associations and leagues shall agree to recognise CAS as an independent judicial authority and to ensure that their members, affiliated players and officials comply with the decisions passed by CAS. The same obligation shall apply to football agents and match agents that are licensed by FIFA.*
- 2. Recourse to ordinary courts of law is prohibited unless specifically provided for in the FIFA regulations. Recourse to ordinary courts of law for all types of provisional measures is also prohibited.*
- 3. The associations shall insert a clause in their statutes or regulations, stipulating that it is prohibited to take disputes in the association or disputes affecting leagues, members of leagues, clubs, members of clubs, players, officials and other association officials to ordinary courts of law, unless the FIFA regulations or binding legal provisions specifically provide for or stipulate recourse to ordinary courts of law. Instead of recourse to ordinary courts of law, provision shall be made for arbitration. Such disputes shall be taken to an independent and duly constituted arbitration tribunal recognised under the rules of the association or confederation or to CAS.*

The associations shall also ensure that this stipulation is implemented in the association, if necessary by imposing a binding obligation on its members. The associations shall impose sanctions on any party that fails to respect this obligation and ensure that any appeal against such sanctions shall likewise be strictly submitted to arbitration, and not to ordinary courts of law".

- ii. within the SAFA regulations, rules from the SAFA Statutes and the SAFA Disciplinary Code, which read as follows:

Article 11 of the SAFA Statutes [*"Request and Procedure for Admission of Members or Associate Members"*]

"11.2 The application must be in writing and accompanied by the following mandatory items:

11.2.4 a declaration that it recognizes the judicial bodies of SAFA and the Court of Arbitration for Sport (CAS) in Lausanne, as specified in these Statutes".

Article 73 of the SAFA Statutes [*"Court of Arbitration for Sport (CAS)"*]

"SAFA shall ensure its full compliance and that of its Members, Players, Officials and match agents with any final decision passed by a FIFA body or CAS".

Article 74 of the SAFA Disciplinary Code [*"Court of Arbitration for Sport (CAS)"*]⁽¹⁾

¹ The Panel understands the mention of Article 70 of the SAFA Statutes contained in this provision to refer to Article 71 of the SAFA Statutes currently in force. Current Article 71 (former Article 70)

"Certain decisions passed by the Arbitration Tribunal may be appealed against before the Court of Arbitration for Sport (cf. art. 70 of the SAFA Statutes and art. 129 of this code)".

Article 127 of the SAFA Disciplinary Code [*"Continuation of proceedings"*]

- 1. The Appeal Committee rules, in principle, as a body in the last instance.*
- 2. The right is reserved for an appeal to be made to the Court of Arbitration for Sport (CAS) as set out in art. 129".*

Article 129 of the SAFA Disciplinary Code

"The FIFA Statutes stipulate which decisions passed by the judicial bodies of FIFA may be taken before the Court of Arbitration for Sport".

84. The Appellant's submission that CAS has jurisdiction is based on a combined effect of the SAFA and FIFA rules: the rules of SAFA impose on its members the obligation to recognize CAS; the rules of FIFA provide for appeals to CAS against decisions passed by its member associations (and SAFA is one of them); *ergo* the rules of SAFA provide for appeals to CAS against its own decisions.
85. The Panel notes that a well settled CAS jurisprudence held that the FIFA Statutes do not contain any mandatory provision that obliges a national federation or a league to allow a right of appeal from its decisions: the pertinent articles of the FIFA Statutes cannot be interpreted as providing for such a mandatory right of appeal. In CAS 2005/A/952, the Panel remarked that if the FIFA Statutes did compel the national federation or the league to provide for a right of appeal from its decisions, no right of appeal to the CAS would exist until the national federation or the league had made provision for this right in its statutes or regulations. In this respect, indeed, another CAS Panel (in CAS 2004/A/676) held that the FIFA rules do not constitute *per se* a basis for arbitration: instead, they constitute an instruction to introduce a regulation providing for CAS arbitration. In the same way, in CAS 2009/A/1910 the Panel underlined that, *"in accordance with consistent CAS jurisprudence on this issue, in the Panel's view Article 63 [now Article 57] para. 1 of the current FIFA Statutes does not by itself grant jurisdiction to CAS with respect to decisions passed by confederations, members or leagues (see e.g., CAS 2008/A/1656, CAS 2005/A/952, CAS 2004/A/676, CAS 2002/O/422). Indeed, the mere provision that FIFA 'recognises' the CAS is not sufficient in itself for a CAS panel to claim jurisdiction over decisions issued by organizations other than FIFA (such as, in particular, national federations)"* (see also CAS 2010/A/2170 & 2171; CAS 2011/A/2483).
86. As a result, in a case such as the present one, a right of appeal to the CAS exists only if the national federation makes provisions for this right in its statutes or regulations: the rules set by the FIFA Statutes are not, by themselves, sufficient to ground the CAS jurisdiction to hear appeals brought against decisions passed by

national federations. The focus of the analysis, therefore, is on the domestic, not on the international, rules. In other words, an appeal to CAS against the 19 August Letter is possible only to the extent it is allowed by the SAFA rules.

87. In that respect, the Panel notes that the SAFA rules allow only to a very limited extent an appeal to CAS with regard to decisions issued by its bodies. In fact, an appeal to CAS is provided only for the challenge of decisions rendered by the SAFA Appeal Committee (Article 127 of the SAFA Disciplinary Code) or of "*certain decisions*" passed by a SAFA arbitral tribunal constituted pursuant to Article 71 of the SAFA Statutes (Article 74 of the SAFA Disciplinary Code).
88. No provision, on the other hand, is established providing for CAS jurisdiction to hear appeals against decisions rendered pursuant to Article 143 of the SAFA Disciplinary Code, *i.e.* rulings denying a request for review of legally binding decisions.
89. The Appellant, in order to find a jurisdictional basis for the CAS to hear its appeal, beyond the limits set by Articles 74 and 127 of the SAFA Disciplinary Code, invoked Articles 11.2.4 and 73 of the SAFA Statutes and Article 129 of the SAFA Disciplinary Code. The Panel, however, finds those provisions to be of no assistance to the Appellant. In fact:
 - i. under Articles 11.2.4 and 73 of the SAFA Statutes, SAFA and its members recognized *inter alia* CAS and the authority of its decisions, but did not confer jurisdiction to CAS;
 - ii. Article 129 of the SAFA Disciplinary Code concerns decisions issued by FIFA and not by SAFA.
90. In general terms, the Panel notes an evolution of the SAFA system towards a restriction of the cases in which CAS jurisdiction could be found. The point is indeed evidenced by a comparison between the current and the former version of the SAFA Statutes. Such Statutes, in fact, were amended in 2017, and the provisions previously conferring jurisdiction to CAS (Articles 70.6 and 72 of the version previously in force) were deleted and replaced by new rules, making no reference to CAS (Article 71.6 of the text currently in force), or limiting the mention to CAS to the obligation of SAFA to ensure compliance with final decisions of FIFA and CAS.
91. In light of the foregoing, the Panel comes to the conclusion that it has no jurisdiction to hear an appeal against the 19 August Letter, which denied, in the framework of Article 143 of the SAFA Disciplinary Code, a request for review of the Epstein Award. Such letter does not constitute a decision of the SAFA Appeal Committee and is not in itself an award, against which an appeal to CAS could be formed.
92. From such conclusion it follows that CAS has no jurisdiction to hear all requests for relief advanced by the Appellant. As indicated by the Appellant at the hearing,

those requests are premised on the setting aside of the 19 August Letter – an issue on which the CAS has no jurisdiction. In any case, an appeal to CAS against them, even if individually considered, would not be open for the Appellant: no CAS jurisdiction (for the reasons already stated) would be given to hear an appeal against them, or in any case, an appeal would be manifestly late.

93. In summary, the CAS has no jurisdiction to decide the present dispute between the Parties. As a result, all other issues raised by the Parties are moot.

X. COSTS

94. Article R64.4 Code provides the following:

"At the end of the proceedings, the CAS Court Office shall determine the final amount of the cost of arbitration, which shall include:

- the CAS Court Office fee,*
- the administrative costs of the CAS calculated in accordance with the CAS scale,*
- the costs and fees of the arbitrators,*
- the fees of the ad hoc clerk, if any, calculated in accordance with the CAS fee scale,*
- a contribution towards the expenses of the CAS, and*
- the costs of witnesses, experts and interpreters.*

The final account of the arbitration costs may either be included in the award or communicated separately to the parties. The advance of costs already paid by the parties are not reimbursed by the CAS with the exception of the portion which exceeds the total amount of the arbitration costs."

95. Article R64.5 Code provides as follows:

"In the arbitral award, the Panel shall determine which party shall bear the arbitration costs or in which proportion the parties shall share them. As a general rule and without any specific request from the parties, the Panel has discretion to grant the prevailing party a contribution towards its legal fees and other expenses incurred in connection with the proceedings and, in particular, the costs of witnesses and interpreters. When granting such contribution, the Panel shall take into account the complexity and outcome of the proceedings, as well as the conduct and the financial resources of the parties."

96. Having taken into account the outcome of the arbitration, the Panel finds it reasonable and fair that the costs of the arbitration shall be borne by the Appellant.
97. Furthermore, pursuant to Article R64.5 Code in consideration of the outcome of the present case, the conduct and the financial resources of the Parties, the Panel rules

that that the Appellant shall pay to the National Soccer League and Sekhkhune United FC, the Answering Respondents, CHF 4,000 each as a contribution towards legal fees and other expenses incurred. The Other Respondents shall bear their own legal fees and other expenses, if any, incurred in connection with the present arbitration procedure.

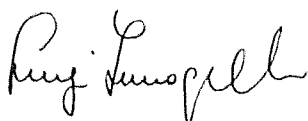
ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

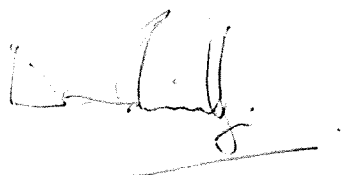
1. CAS has no jurisdiction to hear the appeal filed by Royal AM Football Club on 7 September 2021.
2. The costs of the arbitration, to be determined and served to the parties by the CAS Court Office, shall be borne by Royal AM Football Club.
3. Royal AM Football Club shall pay to the National Soccer League and Sekhkhune United FC a contribution of CHF 4,000 (four thousand Swiss Francs) each towards the legal fees and other expenses incurred in connection with the present arbitration procedure. All other Parties shall bear their own expenses.

Seat of the Arbitration: Lausanne, Switzerland
Date: 20 April 2022

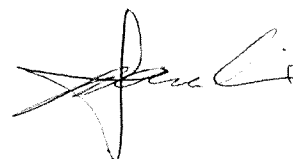
THE COURT OF ARBITRATION FOR SPORT



Luigi Fumagalli
President of the Panel



David Phillips QC
Arbitrator



Rauf Soulio
Arbitrator