**Arbitration CAS 2021/A/8433 Yeni Malatyaspor FK v. Moryke Fofana, award of 16 September 2022**

Panel: Mr Patrick Lafranchi (Switzerland), Sole Arbitrator

*Football*
*Failure of the club to pay outstanding amounts of an employment contract*
*Standing to be sued*
*"Vertical" and "horizontal" disputes*
*Financial difficulties as ground for non-payment*

1. **According to Swiss Law, the standing to be sued (*Passivlegitimation*) is not a prerequisite for proceedings according to Article 59 of the Swiss Code of Civil Procedure (CCP), but concerns the substantive law. If it is missing, the action is dismissed as unfounded. The standing to be sued is a substantive requirement of the claim, and must be examined *ex officio* by the judge at each level in the context of the application of the law.**

2. **Disputes adjudicated by FIFA bodies can be qualified as "horizontal" disputes where they involve two or more direct or indirect members of FIFA (such as clubs, players, or coaches) and do not involve FIFA's particular prerogatives or disciplinary powers and where FIFA has nothing directly at stake. In such context, and provided the relevant other conditions are met, a CAS panel will proceed to examine the appeal and adjudicate the dispute although FIFA was not summoned as respondent. Other decisions involving, for instance, the application of sporting sanctions, purely disciplinary issues, eligibility or registration matters fall within the "vertical" criteria. Disputes which hold both "vertical" and "horizontal" issues are *i.e.* a breach of contract case between a player and a club where the FIFA DRC renders a decision awarding compensation to a player and imposes sporting sanctions against a club.**

3. **It is a longstanding and well-known principle that financial difficulties to satisfy an obligation of payment do not excuse the failure to make the required payment.**

## I. PARTIES

1. Yeni Malatyaspor FK ("the Appellant", "Malatyaspor FK" or "the Club") is a professional football club based in Malatya, Turkey. It is affiliated to the Turkish Football Federation (the "TFF"), which in turn is affiliated with the Fédération Internationale de Football Association ("FIFA").

2. Moryke Fofana (hereinafter "the Respondent" or "the Player", together with the Appellant "the Parties") is an Ivorian football player.

## II. FACTUAL BACKGROUND

### A. Background Facts

3. Below is a summary of the relevant facts and allegations as established by the Sole Arbitrator on the basis of the decision rendered by the FIFA Dispute Resolution Chamber ("DRC") on 8 October 2021 ("the Appealed Decision"), the written submissions of the Parties and the evidence adduced. Additional facts may be set out, where relevant, in connection with the legal discussion that follows. While the Sole Arbitrator has considered all the facts, allegations, legal arguments and evidence submitted by the Parties in the present proceedings, he refers in his Award only to the submissions and evidence he considers necessary to explain his reasoning.

4. On 28 June 2019, the Appellant and the Respondent concluded an employment contract ("the Contract") for the period of 28 June 2019 - 31 May 2021.

5. In clause "3 – Payments and Special Provisions", the Contract stated to following with regards to the litigious Football Season 2020-2021:

> *"[…]*
>
> *For 2020-2021 Football Season: 900.000 EURO NET*
>
> *A. Aforementioned amount is to be paid to the PLAYER by the CLUB in 10 (ten) instalments on the below mentioned dates;*
>
> *Aa. 90.000 Euros (*10) start on 30. August 2020 – finish on 30 May 2021*
>
> *[…]".*

6. On 2 June 2021, Counsel for the Player sent a default notice to the Club, indicating the following: *"I hereby would like to kindly notify you to make the payment of the outstanding overdue to the Notifying Party, amounting of 310.000.00 euros net which it is corresponding to the payment of part of January's (40.000,00 euros = 90.000,00 – 50.000,00), February's (90.000 euros), March's (90.000 euros) and April's 2021 salaries. May's 2021 salary is still due to the Player (90.000,00 euros). In accordance with the article 12bis of the Regulations on Status and Transfers of Players, should you fail to pay the abovementioned amount (310.000,00 euros) within ten (10) open days following the receipt of this notification. I am instructed to initiate all legal actions and take all appropriate measures to safeguard its interest".*

### B. Proceedings before the FIFA Player's Status Committee

7. On 24 June 2021, the Player lodged a claim against the Club before the DRC, requesting the

payment of a total amount EUR 400'000 plus 5% interest *p.a.* as from the due dates. This amount is composed of EUR 40'000 for his salary of January 2021 and EUR 360.000 for his salary of February 2021 until May 2021.

8. In its reply to the claim, the Club acknowledged the existence of the contractual relationship, and provided a copy of the following documents:

| **Name:** | **Date:** | **Amount** |
|---|---|---|
| Bank Receipt (Garanti BBVA) | 13/12/2020 | EUR 90,000 |
| Bank Receipt (Garanti BBVA) *"Salary 30.11.2021"* | 26/01/2021 | EUR 90,000 |
| Bank Receipt (Garanti BBVA) *"One full and one half salary for season 2020/2021"* | 18/02/2021 | EUR 135,000 |
| Bank Receipt (Garanti BBVA) *"in return for receivable for season 2020-2021"* | 06/05/2021 | EUR 50,000 |
| Bank Receipt (Garanti BBVA) | 18/12/2020 | EUR 22,500 |
| Sekerbank receipt allegedly signed by the player with the wording *"I got the original cheque in order to offset my salary dated 30.09.2020"* | 31/03/2021 (date of the document) 19/06/2020 (date of cheque) | EUR 60,500 |
| Bank Receipt Outgoing Fund Transfer *"for his salary 30.10.2020"* | 06/01/2021 | EUR 45,000 |
| | TOTAL: | EUR 493,000 |

9. On 8 October 2021, the DRC passed the following decision ("the Appealed Decision"), which reads as follows:

*"1. The claim of the Claimant, Moryke Fofana is accepted.*

*2. The Respondent, Yeni Malatyaspor, has to pay to the Claimant, the amount of EUR 400,000 as outstanding remuneration plus interest as follows:*

- *5% interest p.a. over the amount of EUR 40,000 as from 1 February 2021 until the date of effective payment;*

- *5% interest p.a. over the amount of EUR 90,000 as from 1 March 2021 until the date of effective payment;*

- *5% interest p.a. over the amount of EUR 90,000 as from 1 April 2021 until the date of effective payment;*

- *5% interest p.a. over the amount of EUR 90,000 as from 1 May 2021 until the date of effective payment;*

- *5% interest p.a. over the amount of EUR 90,000 as from 1 June 2021 until the date of effective payment;*

3. *Full payment (including all applicable interest) shall be made to the bank account indicated in the* ***enclosed*** *Bank Account Registration Form.*

4. *A fine in the amount of USD 20,000 is imposed on the respondent (art. 12 bis of the Regulations)*

5. *Pursuant to art. 24 of the Regulations on the Status and Transfer of Players (August 2021 edition), if full payment (including all applicable interest) is not made* ***within 45 days*** *of notification of this decision, the following* ***consequences*** *shall apply:*

    1. *The Respondent shall be banned from registering any new players, either nationally or internationally, up until the due amount is paid. The maximum duration of the ban shall be of up to three entire and consecutive registration periods.*

    2. *The present matter shall be submitted, upon request, to the FIFA Disciplinary Committee in the event that full payment (including all applicable interest) is still not made by the end of the three entire and consecutive registration periods.*

6. *The consequences* ***shall only be enforced at the request of the Claimant*** *in accordance with art. 24 par. 7 and 8 and art. 25 of the Regulations on the Status and Transfer of Players.*

7. *This decision is rendered without costs".*

10. On 19 October 2021 the grounds of the Appealed Decision were communicated to the Parties.

11. The DRC held that it remained undisputed that the Parties concluded an employment contract valid as from 20 [actually 28 according to the Contract] June 2019 until 31 May 2021 with the conditions that the Club was bound to pay to the Player EUR 900'000 net for the football season 2020-2021 and that the total amount had to be paid to the Player in 10 instalments à EUR 90'000, starting on 30 August 2020 and finishing on 30 May 2021.

12. The DRC acknowledged the Appellant's position and the accompanying receipts, but also held that none of the Appellant's receipts proved that they were related to the claimed amounts from January 2021 to May 2021.

13. Consecutively and in application of the legal principle, *pacta sunt servanda*, the Respondent was awarded USD 400'000 plus 5% interest *p.a.* as total outstanding amount, as agreed in the contract between the Parties.

14. Concerning the imposed fine of USD 20'000, the FIFA DRC held that according to Article 12 bis par. 2 of the FIFA Regulations on the Status and Transfer of Players ("the RSTP"), any club found to have delayed a due payment for more than 30 days without a *prima facie* contractual basis may be sanctioned in accordance with Article 12 bis par. 4 RSTP. The DRC further highlighted that the Appellant had already been found to have delayed a due payment for more than 30 days without a *prima facie* contractual basis. The DRC also noted that a repeated offence was considered as an aggravating circumstance and would lead to a more severe penalty.

15. Furthermore, the DRC decided that, in the event that the Appellant does not pay the amounts due to the Respondent within 45 days as from the moment in which the Respondent, following the notification of the present decision, communicates the relevant bank details to the Appellant, a ban from registering any new players, either nationally or internationally, for the maximum duration of three entire and consecutive registration periods shall become effective on the Appellant in accordance with Article 24bis para. 2 and 4 of the Regulations.

16. Finally, the DRC recalled that the above-mentioned ban will be lifted immediately and prior to its complete serving upon payment of the due amounts, in accordance with Article 24bis para. 3 of the Regulations.

## III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

17. On 8 November 2021 by email and on 9 November 2021 via e-filing, the Appellant filed its Statement of Appeal against the Appealed Decision with the Court of Arbitration for Sport ("CAS"). In its Statement of Appeal, the Appellant requested that a sole arbitrator be appointed by the CAS.

18. On 15 November 2021, the Appellant filed its Appeal Brief.

19. On 17 November 2021, the CAS Court Office initiated the procedure and invited the Respondent a deadline to state its position on the appointment of a Sole Arbitrator and to submit its Answer.

20. On 21 November 2021, the Respondent sent a letter to the CAS and requested that the time-limit to file his Answer is set aside and fixed once the advance of costs had been paid by the Appellant. Furthermore, the Respondent agreed with the appointment of a sole arbitrator in this case.

21. On 23 November 2021, the CAS granted Respondent's request. Accordingly, it set aside the time-limit set on 17 November 2021 and confirmed that a new time-limit would be fixed upon the Appellant's payment of its share of the advance of costs.

22. On 29 December 2021, the CAS acknowledged receipt of the payment of the advance of costs and invited the Respondent to submit an Answer within twenty days upon receipt of its letter.

23. On 11 January 2022, the CAS Court Office informed the Parties that, pursuant to Article R54 of the Code of Sports-related Arbitration (the "CAS Code") and on behalf of the Deputy President of the CAS Appeals Arbitration Division, the Panel in the present procedure had been constituted as follows:

Sole Arbitrator: Mr Patrick Lafranchi, Lawyer in Bern, Switzerland

24. On 17 January 2022, the Respondent filed his Answer.

25. On 20 January 2022, the CAS acknowledged receipt of the Respondent's Answer and invited the Parties to inform the CAS Court Office by 27 January 2022 whether they preferred a hearing to be held or for the Sole Arbitrator to issue an award based solely on the Parties' written submissions.

26. On 25 January 2022, the Respondent requested for the Sole Arbitrator to issue an award based solely on the Parties' written submissions. The Appellant failed to state its position within the granted time limit.

27. On 17 February 2022, the CAS Court Office informed the Parties that the Sole Arbitrator will decide the case based solely on the Parties' written submission. Furthermore, in application of Articles R44.3 and R56 of the CAS Code, the Sole arbitrator ordered written submissions on the issue of the Respondent's standing to be sued with regard to the fine imposed by FIFA. None of the Parties submitted comments on the issue within the granted deadline.

28. On 14 March 2022, the CAS Court Office issued the Order of Procedure, which was returned duly signed by the Respondent on 29 March 2022 and by the Appellant on 30 March 2022.

## IV. THE POSITION OF THE PARTIES

29. The following outline of the Parties' positions is illustrative only and does not necessarily comprise every contention put forward by the Parties. The Sole Arbitrator, indeed, has carefully considered all the written 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

30. In its rather short submissions, the Appellant does not dispute that the Parties have signed an employment contract valid from 28 June 2019 until 31 May 2021. The Appellant argues that the Appealed Decision was unjustified and did not consider its economic difficulties. The Appellant further argued that there was no justified or valid reason for the imposed fine of USD 20'000, which would further not have any legal basis. Finally, the Club argued that it was not financially capable of paying the outstanding amount of the Player and that the fine in the amount of EUR 20'000 was neither proportionate nor justified.

31. In light of the above, the Appellant submitted the following requests for relief in its Appeal

Brief:

*"In Conclusion: We kindly request from CAS PANEL that as we have explained in detail above annulment of FIFA DRC decision dated on 08 October 2021 notified to the parties on 19 October 2021".*

## B. The Position of the Respondent

32. The Respondent submitted that the Appellant's request was neither justified nor founded since, in accordance with the Contract, the Appellant was obliged to pay a total amount of EUR 400'000 which corresponds to the Player's unpaid salaries and since the provided bank-details demonstrate that such payments were not made.

33. The Respondent further submitted that the Appellant had filed its appeal before CAS in bad faith, as it signed new players instead of paying the Respondent and had filed the appeal only to delay the application of the sanctions that the DRC had imposed on the Club and to realise further the transfers in the upcoming transfer window.

34. He thus requested the CAS the following:

*"1.1 To dismiss the Appellant for all of its requests;*

*1.2 To fully confirm the Decision rendered by the DRC, specifically condemn the Appellant to pay to the Respondent the overdue payables in the amount EUR 400,000 plus 5% interest p.a. from 1st February 2021 for the salaries until the date of effective payment.*

*1.3 To state that the Appellant shall be condemned to pay any and all costs of the present arbitral proceedings as well as any eventual further costs and expenses for witnesses and experts;*

*1.4 to condemn the Club to pay all attorney's fees of the Player for an amount of CHF 15,000".*

## V. JURISDICTION

35. Given that CAS has its seat in Switzerland and that when the purported arbitration agreement was executed neither the Appellant nor the Respondent had their respective seat in this country, this is an international arbitration procedure governed by Chapter 12 of the Swiss Private International Law Act ("PILA"), whose provisions are thus applicable. Article 186 (1) of the PILA states that the arbitral tribunal shall itself decide on its jurisdiction. This general principle of Kompetenz-Kompetenz is a mandatory provision of the *lex arbitri* and has been recognized by CAS for a long time (see *e.g.* CAS 2004/A/748).

36. Article R47 of the CAS Code provides as follows:

*"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 him prior to the appeal, in accordance with the statutes or regulations of that body".*

37. Article 57 (1) of the FIFA Statutes (May 2021 edition) provides as follows:

*"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".*

38. Article 24 (2) RSTP reads – in its pertinent parts – as follows:

*"Decisions reached by the DCR or the DCR judge may be appealed before the Court of Arbitration for Sport (CAS)".*

39. As the Appealed Decision is issued by the DRC, the Sole Arbitrator is satisfied that, according to Article 57 (1) of the FIFA Statutes and Article 24 (2) RSTP, CAS has jurisdiction to hear this case and decide on the matter.

40. It is further undisputed between the Parties that CAS has jurisdiction to adjudicate the matter at hand, which they confirmed by signature of the Order of Procedure.

## VI. ADMISSIBILITY

41. Article R49 of the CAS Code reads as follows:

*"In the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, or in a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against".*

42. According to Article 57 (1) of the FIFA Statutes, appeals *"shall be lodged with CAS within 21 days of notification of the decision in question".*

43. According to Article R51 of the CAS Code, the appeal brief shall be filed *"within ten days following the expiry of the time limit for the appeal".*

44. The grounds of the Appealed Decision were notified to the Parties on 19 October 2021, the Statement of Appeal was filed on 8 November 2021 and the Appeal Brief on 15 November 2021. The Sole Arbitrator thus notes that all requirements mentioned in the provision set out above are fulfilled. In particular, both the Statement of Appeal and the Appeal Brief were filed in a timely manner. The Appeal is therefore admissible.

45. Finally, the Sole Arbitrator notes that, according to case law of CAS and the Swiss Federal Tribunal, standing to be sued is a question touching on the substance, as opposed to the admissibility of a claim (CAS 2017/A/5359; CAS 2013/A/3372; SFT 128 III 50). Consequently, the question whether the Respondent has standing to be sued will be answered at a later stage of the award and does not prevent this case to be admissible.

## VII. APPLICABLE LAW

46. Article R58 of the CAS Code reads as follows:

*"The Panel shall decide the dispute according to the applicable regulations and, subsidiarily, to the rules of law chosen by the parties or, in the absence of such a choice, according to the law of the country in which the federation, association or sports-related body which has issued the challenged decision is domiciled or according to the rules of law the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision".*

47. According to Article 56 (2) of the FIFA Statutes, the provisions of the CAS Code shall apply to the proceedings. CAS shall primarily apply the various regulations of FIFA and additionally, Swiss law.

48. The Sole Arbitrator therefore rules that the present dispute is to be solved according to the corresponding FIFA regulations, in particular the RSTP (given that the Player filed its claim on 24 June 2021, in its February 2021 edition), and that Swiss law shall be applied subsidiarily.

## VIII. MERITS

### A. Introductory remarks

49. The Appellant filed an appeal against the FIFA DRC decision of 8 October 2021 and requested that said decision be annulled. The FIFA DRC ordered in the said decision: (1) that the Appellant has to pay EUR 400'000 to the Respondent, (2) that the Appellant has to pay a fine in the amount of USD 20'000 to FIFA and (3) that the Appellant will be banned from registering any new players up until the due amount is paid. However, the second sanction is subject to a request by the Respondent.

50. The present dispute raises a question regarding Respondent's *standing to be sued* in connection with the sanctions imposed by the FIFA DRC. Even though this point was not explicitly raised by the Respondent, the Sole Arbitrator will deal with this issue in application of the principle of *iura novit curia* or *iura novit arbiter* respectively. This principle must be respected by arbitral tribunals having their seat in Switzerland, including the CAS. In applying this principle, an arbitral tribunal has to determine the law applicable to the merits and apply such law so determined (CAS 2017/A/5111). According to Swiss Law, the standing to be sued (*Passivlegitimation*) is not a prerequisite for proceedings according to Article 59 of the Swiss Code of Civil Procedure (CCP), but concerns the substantive law (cf. SFT 139 III 504 consid. 1.2 p. 507; 133 III 180 consid. 3.4 p. 184). If it is missing, the action is dismissed as unfounded (SFT 138 III 737 consid. 2). As held by previous CAS panels and the Swiss Federal Tribunal, the standing to be sued is a substantive requirement of the claim, and must be examined *ex officio* by the judge at each level in the context of the application of the law (CAS 2018/A/5799; CAS 2013/A/3372; CAS 2012/A/2906; SFT 128 III 50; SFT 126 III 59).

51. In this light, the Sole Arbitrator will address the following issues in turn:

*i) The nature of the Decision of the Dispute Resolution Chamber of 8 October 2021*

*ii) The nature of the Appellant's request*

*iii) The Respondent's standing to be sued*

*iv) The Appellant's obligation to pay the fine imposed by FIFA*

*v) The Appellant's obligation to pay EUR 400.000,00 to Respondent*

## B. The nature of the Decision of the Dispute Resolution Chamber of 8 October 2021

### *1. Legal Background*

52. Disputes adjudicated by FIFA bodies can be qualified as "horizontal" disputes where they involve two or more direct or indirect members of FIFA (such as clubs, players, or coaches) and did not involve FIFA's particular prerogatives or disciplinary powers and where FIFA has nothing directly at stake. In such context, and provided the relevant other conditions are met, a CAS panel will proceed to examine the appeal and adjudicate the dispute although FIFA was not summoned as respondent. Other decisions involving, for instance, the application of sporting sanctions, purely disciplinary issues, eligibility or registration matters fall within the "vertical" criteria. Disputes which hold both "vertical" and "horizontal" issues, *i.e.* a breach of contract case between a player and a club where the FIFA DRC renders a decision awarding compensation to a player and imposes sporting sanctions against a club (on this question, HAAS U., Standing to appeal and standing to be sued, in: BERNASCONI/RIGOZZI (éditeurs), International Sport Arbitration, 6th Conference CAS & SAV/FSA, Weblaw, p. 53 at 88). The example holds a horizontal dispute between a player and a club relating to a breach of contract and to the claimed compensation and a vertical dispute between FIFA and the club relating to the sporting sanctions (see, for instance, CAS 2016/A/4838 or CAS 2017/A/5359).

53. With regards to appeals against decisions rendered by a FIFA Body: Article 57 (1) of the FIFA Statutes (February 2021 edition) contains that appeals against final decisions passed by FIFA's legal bodies shall be lodged with CAS. However, Article 57 (1) does not specify which party the appeal should be brought against, *i.e.* which party has standing to be sued. As held in CAS 2016/A/4838, and in analogy to Article 75 of the Swiss Civil Code (SCC) and Article 706 of the Swiss Code of Obligations (SCO), challenges against decisions of associations that are vertical in nature, must be directed at the association itself[1]. It follows that in an appeal against a sporting sanction imposed by a FIFA legal body, FIFA needs to be summoned, as only FIFA has standing to be sued (see, for instance, CAS 2016/A/4838, para. 117-118 with further references).

### *2. The nature of the FIFA DRC Decision of 8 October 2021*

54. In the Appealed Decision, the FIFA DRC accepted the Respondent's claim in full and ordered the Appellant to pay EUR 400'000 plus interests to the Respondent. This obligation was based on the Contract signed by the Parties on 28 June 2019. As this part of the decision solely

[1] CAS 2016/A/4838, para. 117-118 with further references.

relates to an obligation between the Club and the Player, it is of horizontal nature.

55. Additionally, the FIFA DRC imposed a fine in the amount of USD 20'000 on the Appellant. This fine was based on Article 12bis of the Regulations. As this fine is a sanction and a purely disciplinary issue by the FIFA DRC against the Appellant, this part of the decision is of vertical nature.

56. It follows that the Appealed Decision is of both horizontal and vertical nature.

### C. The nature of the Appellant's request

57. In both its Statement of Appeal and its Appeal Brief, the Appellant only lists Mr. Moryke Fofana as the Respondent. At no point did the Appellant direct its appeal at FIFA as an additional Respondent.

58. However, in both its Statement of Appeal and its Appeal Brief, the Appellant asked the Sole Arbitrator to annul the Appealed Decision.

59. It follows that the Appellant filed an appeal against both the horizontal and vertical part of the Appealed Decision.

### D. The Respondent's standing to be sued

60. As to the part of the Appealed Decision dealing with the obligations between the Club and the Player, stemming from the Contract, the Respondent has standing to be sued, as the dispute is purely horizontal. It follows that the Appellant's claim in this regard will be dealt with hereafter.

61. As to the part of the Appealed Decision imposing a sporting in the form of a disciplinary fine in the amount of USD 20'000.00, the Respondent has no standing to be sued, as the dispute is of a purely vertical nature. It follows that the Appellant's claim in this regard shall be dismissed for lack of standing to be sued and the imposed fine of USD 20'000 shall thus be confirmed.

### E. The Appellant's obligation to pay the fine imposed by FIFA

62. In light of the above (*supra* para. 60ff), the Sole Arbitrator does not need to review the Appellant's argumentation relating to the fairness and the proportionality of the imposed fine. Indeed, as the Player does not have standing to be sued on this issue, the appeal as far as it is directed against the imposed fine shall be dismissed for lack of standing to be sued and the imposed fine of USD 20'000 shall thus be confirmed.

### F. The Appellant's obligation to pay EUR 400.000 plus interests to the Respondent

63. The Parties have concluded an employment contract in the sense of Articles 319 *et seqq.* SCO.

Article 319 (1) SCO provides: *"By means of an individual employment contract, the employee undertakes to work in the service of the employer for a limited or unlimited period and the employer undertakes to pay him a salary based on the amount of time he works (time wage) or the tasks he performs (piece work)".*

64. The Parties agreed *i.a.* that the Player would play for the Club during the Football Season 2020-2021 for a minimum rate of EUR 900'000 net.

65. Consequently and in application of the principle of *pacta sunt servanda*, the Appellant is in principle obliged to pay EUR 900'000 to the Respondent. The Appellant however only partly fulfilled its contractual obligations since it paid a total amount of EUR 493'000 to the Respondent.

66. Accordingly, the DRC considered that the amount of EUR 400'000 that was claimed by the Respondent was due and ordered the Appellant to pay this amount with 5% interest per year.

67. In its Appeal Brief, the Appellant argued that in the Appealed Decision, the DRC failed to consider its economic difficulties. Furthermore, the Appellant submits that it was neither financially capable to pay the outstanding amount to the player, nor pay the imposed fine of USD 20'000.

68. At no point did the Appellant submit any explanation let alone any evidence regarding its alleged financial difficulties. In any case, even if the Appellant had proven that its financial situation was dire, it would not have excused its contractual obligations. It is a longstanding and well-known principle that financial difficulties to satisfy an obligation of payment do not excuse the failure to make the required payment (CAS 2018/A/5838, para. 95; CAS 2016/A/4402, para. 40; CAS 2006/A/1008, para. 19). Accordingly, the Appellant shall pay to the Respondent the outstanding amount of USD 400'000.

69. The Sole Arbitrator finally notes that the DRC awarded 5% interest p.a. as from the due dates and until effective payments. The Appellant did not contest the interest rate, which is further in line with the subsidiarily applicable Swiss law and shall thus also be confirmed.

## G. Conclusions

70. In light of the above, the Sole Arbitrator concludes that the appeal filed by the Appellant against the Appealed Decision must be dismissed and that the Appealed Decision shall be confirmed.

## ON THESE GROUNDS

**The Court of Arbitration for Sport rules that:**

1. The appeal filed by Yeni Malatyaspor FK on 8 November 2021 against Mr. Moryke Fofana is dismissed.

2. The decision of the FIFA Dispute Resolution Chamber of 8 October 2021 is confirmed.

3. (…).

4. (…).

5. All other or further requests or motions for relief are dismissed.