



## IN THE DISCIPLINARY COMMITTEE GHANA FOOTBALL ASSOCIATION

Protest Case: No. A104- 2017

### **CORAM**

1. Prosper Harrison Addo, Esq.	-	Chairman
2. Eva Okyere, Esq.	-	Vice Chairperson
3. Osei Kwadwo Addo, Esq.	-	Member
4. W.O.1 J. W. Amoo	-	Member
5. Alex Kotey	-	Member
William Bossman	-	Secretary

### **IN ATTENDANCE**

H.E. Amarkai Amarteifio, Esq.	-	Accra Great Olympics FC
Kwame Takyi, Esq.	-	Accra Great Olympics FC
Fadi Fattal	-	Accra Great Olympics FC
Fred Pappoe	-	Accra Great Olympics FC
Nafisa Fattal	-	Accra Great Olympics FC
Oloboi Commodore	-	Accra Great Olympics FC
Emmanuel Avenorgbo	-	Accra Hearts of Oak SC
Hackman K. Aidoo	-	Accra Hearts of Oak SC
Nii Saban Quaye	-	Accra Hearts of Oak SC
Isaac Mensah	-	Accra Hearts of Oak SC
Frank Nelson	-	Accra Hearts of Oak SC
Thomas Kwesi Esso	-	Accra Hearts of Oak SC
Alhaji Akambi Brimah	-	Accra Hearts of Oak SC
Kwaku Sakyi Quarshie	-	Accra Hearts of Oak SC

## **ACCRA GREAT OLYMPICS FC vrs ACCRA HEARTS OF OAK SC** **PROTEST IN RESPECT OF THEIR MATCHDAY 25** **GHANA PREMIER LEAGUE MATCH**

### **PROCEEDINGS**

In accordance with Article 41(5) of the GFA Statutes of the Ghana Football Association (GFA) and Articles 37(10)(a) to 37(10)(d) of the GFA General Regulations, the Disciplinary Committee (hereinafter referred to as "the Committee") considered the depositions from Accra Great Olympics Football Club (hereinafter referred to as "the Petitioner") and Accra Hearts of Oak Sporting Club (hereinafter referred to as "the Respondent") together with all the supporting attachments, witness statements, oral evidence and the reports of the match officials.

## **SUMMARY OF FACTS**

### **CASE OF ACCRA GREAT OLYMPICS FC**

Accra Great Olympics FC (the Petitioner) lodged a protest against Accra Hearts of Oak SC (the Respondent) for failing to pay a fine within the stipulated time before playing in their Matchday 25 Ghana Premier League match played at the Accra Sports Stadium in contravention of Articles 39(8)(b) and 39(8)(d) of the General Regulations of the GFA.

According to the Petitioner, on June 13, 2017, the Disciplinary Committee of the GFA imposed a fine of Ten Thousand Ghana Cedis (GHc10,000.00) on Accra Hearts of Oak SC with half of the fine being suspended. The Petitioner continued that Accra Hearts of Oak SC being dissatisfied appealed against the decision. The Petitioner further stated that the Respondent also filed a Stay of Execution on June 16, 2017 which was dismissed on June 19, 2017.

Accra Great Olympics FC narrated further that the Appeal was dismissed by the Appeals Committee of the GFA on July 25, 2017 and the Respondent was ordered to pay the full Ten Thousand Ghana Cedis (GHc10,000.00) fine instead.

It is the case of the Petitioner that at the time of playing the Match day 25 fixture, Accra Hearts of Oak SC had refused, failed or neglected to fully pay the entire fine imposed even though, the statutory stipulated time had elapsed.

The Petitioner subsequently, prayed that Accra Hearts of Oak SC should suffer the punishment of forfeiture under Articles 39(8)(b) and 39(8)(d) of the GFA General Regulations (as amended).

### **DEFENCE OF ACCRA HEARTS OF OAK SC**

The Respondent in its Statement of Defence to the protest, urged the Committee to dismiss the protest.

The Respondent stated the assertion of Accra Great Olympics FC is not true and that when the Disciplinary Committee decision was communicated to the club the club made payment of the Five Thousand Ghana Cedis (GHc5,000.00) fine on July 7, 2017 (GFA Receipt No. 029773 attached).

According to Accra Hearts of Oak SC, on August 17, 2017, the club was served with the Appeals Committee decision and the club paid the additional (the previously suspended) fine on August 25, 2017 (GFA Receipt 030262) before playing the August 27, 2017 fixture.

The Respondent consequently, urged the Disciplinary Committee to dismiss the protest and award cost against the Petitioner.

### **REPLY TO DEFENCE BY ACCRA GREAT OLYMPICS FC**

In the Reply to the Statement of Defence, the Petitioner indicted that the club had seen the two receipts.

On the receipt for the payment made on July 7, 2017, the Petitioner claimed that the payment by Accra Hearts of Oak SC was in violation of Article 39(8)(e) of the GFA

General Regulations which obligates clubs to make payments by either Cash or Banker's Draft.

Then, on the receipt for the payment dated August 25, 2017, the Petitioner stated that the club believes that the receipt was not issued on August 25, 2017 as appears on the receipt.

Accra Great Olympics FC stated that the club shall lead evidence to show that the receipt cannot be relied upon as proof of payment of the amount stated thereon and that same should be rejected.

The Petitioner stated that the club would show that no cash was paid on the said day and that at the time of the match between the two clubs the fine of Ten Thousand Ghana Cedis (GHc10,000.00) was not fully paid by Accra Hearts of Oak SC.

The Petitioner requested a full trial to enable it to produce witnesses to prove that the Respondent did not pay the full fine before honouring the match in question.

### **Procedure Adopted**

In accordance with Article 37(10)(b) of the GFA General Regulations, the Disciplinary Committee is not obliged to conduct a trial unless, the Committee deems it fit to do so to ensure a fair adjudication of the matter before the Committee.

Article 37(10)(b) of the GFA General Regulations

***“The decision of the Disciplinary Committee shall be based on the statement and/or evidence filed by the parties. However, if in the opinion of the Disciplinary Committee further evidence is required to assist in the determination of the case, the Disciplinary Committee may take such evidence before delivery of its decision. In such cases, the Disciplinary Committee will be required to deliver its judgement within five (5) days after taking any such further evidence”.***

At the first meeting of the Disciplinary Committee on this matter, the Committee took a serious view of the allegation of fraud made by the Petitioner against the Respondent in relation to the Receipt dated August 25, 2017.

The Committee after considering all process of the matter decided to afford the Petitioner the opportunity to present witnesses to prove the allegations and for the Respondents to offer any defence against the allegations.

### **Verdict**

After taking evidence from the following witnesses of Accra Great Olympics FC and considering all the facts, evidence and the regulations in relation to the protest, the Disciplinary Committee agreed on three issues for adjudication:

Fred Pappoe	-	Witness for Accra Great Olympics FC
Oloboi Commodore	-	Witness for Accra Great Olympics FC

Kofi Manu - Witness for Accra Great Olympics FC  
Alex Asante - Witness for the Committee  
Kwame Opare - Witness for the Committee

The full panel of the Disciplinary Committee unanimously dismissed two of the three issues (issued stated in majority and minority decisions).

On the third issue on the effect of the payment made by Accra Hearts of Oak SC by cheque in relation to Article 39(8)(e) of the GFA General Regulations (the requirement for either Cash or Bank Draft), the Disciplinary Committee reached a 3-2 verdict in favour of the Petitioner, Accra Great Olympics FC.

Prosper Harrison Addo, Esq., W.O. 1 J. W. Amoo and Alex Kotey decided in favour with Eva Okyere, Esq. and Osei Kwadwo Addo, Esq. dissenting. The Disciplinary Committee agreed that Prosper Harrison Addo, Esq. (Chairman) will read the majority decision while Eva Okyere, Esq. (Vice Chairperson) will read the dissent opinion.

Below are the two opinions.

## **MAJORITY DECISION**

### **FINDINGS AND GROUNDS OF THE DECISION**

It is the case of Accra Great Olympics FC that Accra Hearts of Oak SC refused, failed or neglected to pay a fine of Ten Thousand Ghana Cedis (GHc10,000.00) imposed on the club by the GFA Disciplinary Committee and the Appeals Committee in violation of Articles 39(8)(d) and 39(8)(d) of the General Regulations.

To arrive at a decision on this matter the following three issues are worth answering:

- 1. Whether or not the payment by Accra Hearts of Oak SC on July 7, 2017 (the first GHc5,000) with the cheque is invalid and in violation of Article 39(8)(e) of the GFA General Regulations.*
- 2. Whether or not the evidence provided by Accra Great Olympics FC through the witnesses was enough to prove the allegation of the fraud that the payment for the receipted dated August 25, 2017 was not made on the said date thereby invalidating the receipt.*
- 3. Whether or not time should start reckoning for the 2<sup>nd</sup> payment of Five Thousand Ghana Cedis (GHc5,000) from the date of the Disciplinary Committee decision and not from the date of the decision of the Appeals Committee which overturn the suspended part of the fine.*

This entire membership of the Committee was in agreement on the third issue that time started reckoning from the date the decision of the Appeals Committee was **communicated** to Accra Hearts of Oak SC.

It is the position of this Committee that until the said date the Respondent, Accra Hearts of Oak SC will not be in a position to know that there was a further fine imposed on the club.

It is very clear that the requirement of payment within 14 days upon the communication of the decision to Accra Hearts of Oak SC thereafter, is not in doubt. It is clear to this Committee therefore that time started reckoning from August 17, 2017 when the Decision was emailed to the Respondent and was also published on the GFA website.

The Committee was unanimous on this issue and holds that the protest fails on this issue. On the second issue, whether or not the evidence provided by Accra Great Olympics FC through the witnesses was enough to prove the allegation of the fraud that the payment for the receipted dated August 25, 2017 was not made on the said date thereby invalidating the receipt, the Committee was again unanimous.

It is the position of the Committee that the burden of proof in an allegation of fraud must be beyond the usual requirement of balance of probabilities in protest cases.

The Committee was in agreement that the proof required for fraud was beyond reasonable doubt. Accra Great Olympics FC was therefore required to show beyond all reasonable doubt that the receipt issued on the August 25, 2017 as actually issued on a different date to fraudulently beat the system.

Upon the evaluation of all the evidence on this issue, the Committee holds that Accra Great Olympics FC have not provided the Committee enough evidence to prove that the official receipt of the GFA have been tempered with as the sequence of serial numbers in the receipt book was all intact. It is the position of this Committee that the protest fails on this issue 2 too.

On the first issue, the Committee was split on the application of Article 39(8)(e) of the GFA General Regulations. It is the case of the Petitioner that Accra Hearts of Oak SC had not paid the first fine of Five Thousand Ghana Cedis imposed on the club by the GFA Disciplinary Committee on June 13, 2017 and was in violation of Articles 39(8)(b) and 39(8)(d) of the General Regulations.

Article 39(8)(d) of the General Regulations of the GFA also states as follows:

***“A Club that fails to pay its fines, costs and debts on or before the stipulated due date shall automatically forfeit its subsequent matches until such time the fines and/or costs are fully paid”.***

It must be noted however that the regulation is used together with Article 39(8)(b) of the General Regulations. This regulation requires that the fines are communicated to the party to trigger the reckoning of the 14 days deadline.

Article 39(8)(b) of the General Regulations of the GFA (as amended) states:

***“Without prejudice to any provision in these Regulations to the contrary, a club shall pay all fines, costs, debts imposed on it by the GFA or the Judiciary bodies of the GFA not later than 14 days excluding Saturdays, Sundays and Public holidays after such fines or costs HAVE BEEN COMMUNICATED to it in writing by the Association on the GFA website, the GFA notice board, GFA newspaper, GFA newsletter, National Newspaper and/or through the GFA email to the official emails of the Club”.***

Thus, for a protest to succeed under these provisions, (supra) a club must prove:

- i. *that a fine has been imposed on the defaulting club*
- ii. *that the fine was communicated to the defaulting club using one of the modes of communication prescribed,*
- iii. *that the 14 days deadline after the communicated had passed,*
- iv. *that the defaulting club had not paid the fine, and*
- v. *that the match in question was played at the time the fine remained unpaid.*

Accra Hearts of Oak SC had a simple answer to point (iv) above, which is that the club had paid the amount by a cheque numbered 644879 and was issued with GFA Receipt number 029773.

It is this payment made by cheque that Accra Great Olympics FC says was invalid and therefore, cannot be taken as payment since it was not made in conformity with Article 39(8)(e) of the GFA General Regulations.

Article 39(8)(e) of the GFA General Regulations states as follows:

***“Mode of payment of costs, fines and other debts orders from statutory bodies of the GFA SHALL be BY CASH OR BY BANKERS DRAFT. Accordingly, Clubs shall not be allowed to tie such payment to sponsors funds or any other source”***(emphasis mine)

It is very clear and unambiguous that the requirement to pay by either cash or bankers draft was a mandatory one. The Committee notes the use of the word “shall” in the regulation. The regulation is unambiguous and need no interpretation.

The two options opened to clubs are only Cash payment or payment by Banker’s draft.

It is the position of this Committee that the regulation supra states only two modes of payment - Cash and Banker’s Draft. It is very clear that banker’s draft is as good as cash in hand because it is issued by the bank and is paid on demand without failure.

Thus, clubs must be mindful that for the modes of Cash and Banker’s Draft, **payment is recognized immediately upon receipt by the GFA Account Department** and the effective date and time of payment for all intents and purposes is the exact time of receipt.

**The point must be made very clearly that the usage of any other payment mode is at the club’s peril. This is the risk clubs take by using payment by cheque rather than the stated mode of payment.**

A lot can go wrong with payment by cheques, such as wrong signature.

This finds supports in the difference between banker’s draft and a cheque. For a banker’s draft is prepaid and issued by the bank whilst a cheque, on the other hand, is not prepaid is dependent on funds being actually available in the issuer’s account at the bank meaning, a cheque can be dishonoured or fail to clear.

Consequently, for our purposes, for the period that the cheque remains unpaid or unredeemed in the banking system, the fines remained unpaid.

**It is therefore the position of the Disciplinary Committee that receipts should not be issued by the GFA for payment made with cheque. With the mode of cheque, one is never sure when payment is actually effected and/or whether the cheque would clear at the time of issuing a receipt.**

This Committee will side with the strict enforcement of the regulations as passed by the GFA Congress.

Thus, if the members of the GFA think the GFA should accept cheque payments considering the history of the GFA with dishonoured and/or false cheques, it is for the Congress of the GFA to amend the regulations.

This Disciplinary Committee shall not endorse the wrong practice of using any other mode of payment than the modes approved by the GFA Congress.

Thus, the purported payment of the first fine by cheque Accra Hearts of Oak SC by cheque was not in accordance with the GFA regulations and therefore, invalid.

Therefore at the time the Respondent played the match against Accra Great Olympics FC, the club had not paid the first half of the fine, being GHc5,000 in accordance with the GFA regulations. On this issue, the evidence is very clear to this Committee that Accra Hearts of Oak SC has breached Articles 39(8)(b) and 39(8)(d) of the General Regulations.

Article 39(8)(b) of the General Regulations of the GFA (as amended) states:

***“Without prejudice to any provision in these Regulations to the contrary, a club shall pay all fines, costs, debts imposed on it by the GFA or the Judiciary bodies of the GFA not later than 14 days excluding Saturdays, Sundays and Public holidays after such fines or costs have been communicated to it in writing by the Association on the GFA website, the GFA notice board, GFA newspaper, GFA newsletter, National Newspaper and/or through the GFA email to the official emails of the Club”.***

Article 39(8)(d) of the General Regulations of the GFA also states as follows:

***“A Club that fails to pay its fines, costs and debts on or before the stipulated due date shall automatically forfeit its subsequent matches until such time the fines and/or costs are fully paid”.***

It is therefore, our view that the Protest of Accra Great Olympics FC against Accra Hearts of Oak SC shall succeed on this issue in accordance with Article 39(8)(d) of the GFA General Regulations.

In this respect, this process being different from the forfeiture process under Article 34(1) of the General Regulations, we shall have recourse to Articles 31(1) and 31(2) of the GFA Disciplinary Code which are reproduced as follows:

***31(1) “A team shall be sanctioned with forfeiture and as such deemed to have lost the match 3-0”.***

***31(2) “if the goal difference at the end of the match is greater than three (sic - in favour of the benefiting club), the result on the pitch is upheld”***

## **DECISIONS**

***The Committee therefore, makes the following decisions:***

- 1. That for failing to fully pay the fine imposed by the Ghana Football Association within the stipulated time to do so, Accra Hearts of Oak SC acted in violation of Article 39(8)(b) and 39(8)(d) of the General Regulations (as amended on December 30, 2014 by the GFA Congress) and shall forfeit the Matchday 25 match.***
- 2. That consequently, the match result shall not stand.***
- 3. That having been found to have forfeited the match, Accra Hearts of Oak SC shall be deemed to have lost the match by three (3) goals to nil (0) to Accra Great Olympics FC, in accordance with Articles 31(1) and 31(2) of the GFA Disciplinary Code.***
- 4. That should any party be dissatisfied with or aggrieved by this Decision, the party has within three (3) days of being notified of this Ruling to appeal to the Appeals Committee of the Ghana Football Association (See Article 37(11) of the General Regulations of the GFA).***



**Prosper Harrison Addo, Esq.  
Chairman, Disciplinary Committee (A)  
Friday, November 10, 2017**

# **MINORITY DECISION**

## **(DISSENTING VIEW)**

### **FINDINGS AND GROUNDS OF THE DECISION**

The following are the three issues that can be distilled from the facts of the instant Protest and the evidence led, in my considered opinion:

4. Whether or not the Respondent paid the suspended amount of Five Thousand Ghana Cedis (GH¢5,000.00) as ordered by the Appeals Committee before the Matchday 25 fixture against the Petitioner.
5. Whether the Respondent paid the initial amount of Five Thousand Ghana Cedis (GH¢5,000.00) being part of the fine of GH¢ 10,000.00 as ordered by the Disciplinary Committee within fourteen days as stipulated by the GFA General Regulations.
6. Whether the payment of Five Thousand Ghana Cedis by the Respondent on July 7, 2017 is invalid same having been made with a cheque.

### **ISSUE 1 - Whether or not the Respondent paid the suspended amount of Five Thousand Ghana Cedis (GHS 5,000.00) as ordered by the Appeals Committee before the match day 25 fixture against the Petitioner.**

The gravamen of this issue is that the Petitioner sought to impugn the receipt issued by the Accounts department of the GFA by insisting that the date stated on it could not be accurate as the Respondent could not possibly have made the said payment of GH¢ 5,000 cedis on the date.

To establish its claim, the Petitioner called four witnesses namely, Mr. Fred Pappoe, a board member of the Petitioner, Mr. Oloboi Commodore, the General Manager of Petitioner, Mr. Kofi Manu and Mr. Alex Asante, the Acting General Secretary of the GFA.

Mr. Pappoe in his evidence intimated that he had sought via phone call on Friday, 25<sup>th</sup> August, 2017 to know from the Ag. General Secretary, Mr. Alex Asante if the Respondent had paid the fine because he had received information that the payment had not been made by that time.

Mr. Pappoe said that Mr. Asante told him on Sunday 27<sup>th</sup> August, 2017 that his checks with the accounts department revealed that an attempt was made by the Respondent to make payment by cheque but the process could not be concluded due to the absence of one signature.

Mr. Pappoe said he also made the same enquiry from the Ag. General Secretary, Mr. Isaac Addo who was on leave at the time and was told by Mr. Addo that as at Monday 28<sup>th</sup> August, 2017, no such payment had been made by the Respondent.

This story was corroborated by Mr. Alex Asante who testified that he had received a call from Mr. Pappoe who claimed that he had information that the Respondent were attempting to make payment in respect of the imposed on it by the Committee over the weekend. The witness testified further that his checks at the GFA Accounts Office revealed that the Respondent had tried to make the payment on the Friday before the match in question, but could not complete the process.

Mr. Manu further gave evidence to the effect that he had met the Administrative Manager of the Respondent, Hackman Aidoo on the day of the match in question inside the Stadium before the match kicked off and the latter looked jittery. He stated that upon enquiring from him why he was jittery, Mr. Aidoo told him that he had received a text message from Oloboi Commodore threatening the Respondent with a Protest should the Respondent win the match in question. Mr. Manu further testified that he told Mr. Aidoo that the only problem the Respondent had was that it had not paid the fine imposed on it by the Committee.

According to Mr. Manu, he had been told by an Accounts officer at the GFA a day after the match in question that the Respondent had presented a cheque for the payment of the outstanding amount on the fine but the cheque had been refused as it was not properly endorsed.

When asked under cross-examination whether he was aware that the Respondent had returned on Friday, July 7, 2017 to make the payment of GH¢ 5,000, he answered in the negative.

The thrust of Mr. Oloboi Commodore's evidence is that on the day of the match, the Administrative Manager of the Respondent, Mr. Hackman Aidoo approached him and said he had been alerted of an impending protest. Mr. Commodore said that he confirmed that indeed, should the Petitioner lose the match, it would file a protest against the Respondent. He said during the match, he was informed by Mr. Aidoo that a cheque was paid to the GFA on Friday 25<sup>th</sup> August, 2017.

Mr. Commodore further testified that a day after the said match, he was sitting at the GFA car park with Mr. Kofi Manu and upon seeing Mr. Kwame Opare, an Accounts Officer of the GFA, Mr. Manu enquired from him if the Respondent had paid the fine and when. He said the Accounts Officer told them that the Respondent brought a cheque on Friday, August 25, 2017, but it was returned to the Petitioner because one signature was missing on the face of it.

According to him, the Accounts Officer told Mr. Kofi Manu in his presence that he did not know whether Hearts of Oak came back to pay cash.

The Committee invited Mr. Kwame Opare, an Accounts Officer at the Accounts Office of the GFA who was on record as having received the payment of five thousand Ghana cedis made by the Respondent in satisfaction of the outstanding part of the fine on 25<sup>th</sup> August, 2017.

In my opinion, Mr. Opare is a material witness to these proceedings and his testimony brought the much needed illumination to the issues for determination.

It was Mr. Opare's testimony that on Friday the 25<sup>th</sup> of August, 2017, a representative of the Respondent presented a cheque for five thousand Ghana Cedis to settle the outstanding part of the fine imposed on the Respondent by the Committee.

Mr. Opare stated that he had received the said cheque and actually issued a receipt to the Respondent's representative when he subsequently, realized that though there were two signatures at the bottom of the cheque, only one of the signatories had endorsed the upper part of the cheque. He thus, ran down the stairwells after the Respondent's representative and returned the cheque to him to go and rectify the anomaly and then, cancelled the receipt he had issued in respect of that transaction.

He further testified that about an hour later, the Respondent's representative returned with cash to make the payment of the outstanding fine. The payment was made and the receipt which is an exhibit before the Committee was issued.

Indeed, Mr. Opare brought his receipt book to the sitting and showed the Committee the cancelled receipt.

Under cross-examination by the Petitioner, Mr. Opare maintained that the Respondent had made the payment with cash and the receipt was evidence of same. He denied suggestions by the Petitioner that the receipt could not have been issued on Friday and vehemently denied ever speaking to Mr. Asante on Sunday, 27<sup>th</sup> August, 2017 after the match in question.

Mr. Opare maintained that that he had been approached by the Administrative Manager of the Respondent on Sunday when he came to the GFA to get supplies for a team in preparation for a match, but he had told the Respondent's officer bluntly that he was not working and could thus, not deal with him on any official matter. He intimated that he actually called Mr. Asante, as his immediate supervisor, and reported the incident to him and was advised by Mr. Asante to be careful.

It is my considered opinion that in seeking to impugn the official receipt of the GFA coming from proper custody, i.e. the Accounts Office of the GFA, the Petitioner imputed forgery or falsification to the Respondent, both of which criminal offences require a higher standard of proof than the balance of probability.

Section 13(1) of the Evidence Act, 1975 (NRCO 323) states:

### **13. Proof of crime**

***(1) In any civil or criminal action, the burden of persuasion as to the commission by a party of a crime which is in issue requires proof beyond a reasonable doubt.***

The aggregation of the foregoing evidence in my view, lends little or no assistance to the Committee in its quest to establish whether the Respondent had not made any payment in respect of the outstanding part of the fine as ordered by the Appeals Committee within the stipulated period before honouring its match against the Petitioner. At best, the evidence amount to hearsay evidence and fails woefully to help the Petitioner to discharge the burden of proof it bears.

Hearsay evidence is defined in Section 116 (c) of the Evidence Act as; ***“evidence of a statement other than a statement made by a witness while testifying in the action at the trial, offered to prove the truth of the matter stated.”***

Section 117 of the Evidence Act states that; ***“Hearsay evidence is not admissible except as otherwise provided by this Act or any other enactment or by the agreement of the parties.”***

From the above, it is my considered opinion that the validity of the official receipt issued by the Accounts Officer of the Accounts Office of the GFA remains uncontroverted and attests to the fact that the Respondent had paid the sum of GH¢ 5,000 on Friday, 25<sup>th</sup> August, 2017 in settlement of the outstanding part of the fine imposed on it by the Committee.

Moreover, it is my opinion that the Petitioner failed to controvert the evidence of the Accounts Officer who is a material witness in these proceedings as it neither succeeded at projecting the witness as an incredible witness nor discrediting his evidence.

This Committee cannot rely on mere conjecture, suppositions and hearsay evidence to affix culpability on the Respondent for an offence as serious as forgery which requires proof beyond reasonable doubt to establish.

I submit that this leg of the Protest must fail.

**ISSUE 2 - Whether the payment of the amount of Five Thousand Ghana Cedis (GH¢5,000.00) made by the Respondent on 7<sup>th</sup> July, 2017 was made within the stipulated period.**

This issue is raised by the Petitioner with the intent of reaping the benefits embedded in Article 39 (8)(d) upon a violation of Article 39 (8)(d) of the GFA's General Regulations. The said provisions are reproduced as follows:

***(b) Without prejudice to any provision in these Regulations to the contrary, a club shall pay all fines, costs, debts imposed on it by the GFA or the Judiciary bodies of the GFA not later than 14 days excluding Saturdays, Sundays and Public holidays after such fines or costs have been communicated to it in writing by the Association on the GFA website, the GFA notice board, GFA newspaper, GFA newsletter, National Newspaper and/or through the GFA email to the official emails of the Club.***

***(d) A Club that fails to pay its fines, costs and debts on or before the stipulated due date shall automatically forfeit its subsequent matches until such time the fines and/or costs are fully paid.***

From the facts of the instant case, the Respondent filed a Motion for Stay of Execution on 16<sup>th</sup> June, 2017 following the decision of the Committee delivered on 13<sup>th</sup> June, 2017 which imposed a fine of GH¢ 10,000 on it.

It is trite learning that time does not run during the pendency of an application for Stay of Execution. This means that the effect of the decision could only kick in after the determination of the application for Stay of Execution.

The wisdom underpinning this position which is endorsed by our Courts, is that if time does not cease to run pending the determination of a Motion for Stay of Execution, the outcome of the application may amount to naught and any harm that the application sought to avert would have occurred by the time it is finally determined.

Once the Respondent decided to appeal the decision of the Committee, the prudent thing was to stay execution of the said decision until the final determination of the appeal, as it is trite law that an appeal does not act as a stay of execution.

To assert that the 14-day period given to the Respondent to settle the fine imposed on it by this Committee ought to be reckoned from the date of the decision rather than the date of the dismissal of the Motion for Stay of Execution, would be most erroneous and absurd.

Clearly, the Respondent could only have paid the fine as ordered by the Committee upon the determination of its application for stay of execution. I therefore, find puzzling the submission by the Petitioner that the Respondent paid the first half of the fine out of time.

Per the GFA General Regulations, where a party fails to pay a fine imposed on it by the Committee within the stipulated 14-day period, reminders are to be served on the party by the GFA. Where the party still fails to comply with the order of the Committee, then that party suffers forfeiture of any points that the party may win after the default.

From the provisions, the effect of non-compliance with the Rules in this instance is only triggered where the defaulting party honours a match organized by the GFA while still in default.

On the basis of the above, I am of the considered opinion that at the time the Respondent honoured the match day 25 fixture on 27<sup>th</sup> August, 2017, it was not in default of the order to pay the fine of GHS 5,000 and the payment made on 7<sup>th</sup> July, 2017, cannot be held to have been made out of time.

This Committee therefore, ought to reject the arguments canvassed by the Petitioner.

**ISSUE 3 - Whether the payment of Five Thousand Ghana Cedis (GH¢5,000.00) made by the Respondent on July 7, 2017 is invalid same having been made with a cheque.**

Germane to this issue are the interpretation of Article 39(8)(e) and the legal effect of same. The said Article 39(8)(e) states;

**(e) Mode of payment of costs, fines and orders from statutory bodies of the GFA shall be by cash or Banker's Draft. Accordingly, clubs shall not be allowed to tie such payments to sponsors' funds or any other source.**

It is a cardinal rule of interpretation that any construction which does not give effect to the purpose or intent of the legislation or words construed and would lead to absurdity or practical difficulties ought to be avoided.

As tempting as a strict application of the initial part of this provision, i.e. **“Mode of payment of costs, fines and orders from statutory bodies of the GFA shall be by cash or Banker's Draft”** may be, one only needs to read the provision as a whole to realize that resorting to the ordinary meaning of this provision would be tantamount to adopting a purely mechanical and literal approach to interpretation which will lead to an absurdity as it will not give effect to the purpose of the legislation.

**VALIDITY OR INVALIDITY OF THE PAYMENT**

In determining whether the payment made by the Respondent on 7<sup>th</sup> July, 2017 is invalid or void or ought to be declared invalid or void, I find the decision of the Supreme Court in **Ahenfie Cloth Sellers Association v. Mensah & Others [2010] SCGLR 680** most instructive.

In the said case, the Court was invited to determine whether a money lending transaction between the parties was illegal or not as the Ahenfie Cloth Sellers Association had no valid money lender's license as required under the revised Money Lenders Act, 1941 (Cap 176). The Court in determining the issue gave an erudite exposition on the legality or illegality of a contract or agreement which is against the provisions of a statute. The Court in a unanimous decision rendered by Brobbey JSC, held that such a contract is not necessarily illegal, especially where the legislation does not stipulate so. At page 704, the learned jurist said;

***“A contract or agreement which is against the provisions of a statute is not necessarily illegal. In Olatiboye v Captan [1968] GLR 146 where the argument was canvassed that a transaction was illegal because it violated the provisions of the Diamond Mining Industry Protection Ordinance, Cap 152 (1951 Rev.), s 3(1) in that the plaintiff had no license as required by that statute, Amissah JA drew the distinction between the two types of contracts as follows: “(1) it is not every infringement of a statutory provision that makes a contract illegal and therefore unenforceable. Where the act contemplated by the contract was prohibited by statute but was subject to a penalty which was merely for the benefit of the revenue, the contract could be enforced. Where the provisions of a statute indicated the intention of the legislature to prohibit the contract itself, then even though the penalty imposed for a breach incidentally benefitted the revenue, the contract would nevertheless be illegal and unenforceable.” Lending money is a social phenomenon. No legislature can legislate to prohibit it. If it does, it will be an exercise in futility because people cannot be stopped from borrowing money and lending it when needs arise.”***

The Court further stated at page 705 that; ***“Where a contract is in violation of a statute, that statute invariably sets out the exact status of such a contract. If the statute prohibits or proscribes the contract in its formation, performance or enforcement, it so provides in no uncertain terms.”***

In the above cited case, the Court after setting out the provisions under sections 2 and 3 of the revised Money Lenders Act on the offence of breaching the mandatory requirement of possession of a valid moneylender’s licence and the attendant penalties respectively, posited thus at page 707:

***“Nowhere in section 5 of the old Cap 176 or the revised section 3 of the revised Cap 176 are the words “illegal,” “void,” or “unenforceable” used to describe any money lending transaction which is carried out without the lender being in possession of a valid moneylender’s licence.”***

From the foregoing, it is amply evident that the purpose of Article 39(8)(e) of the General Regulations of the GFA is not to oust the use of cheques as a mode of payment of fines such as the one in question. As a result, nowhere in the said provision or in the entire legislation is it stated that payment of a fine by cheque or any other mode other than that which is prescribed in that provision is or shall be invalid, void or unenforceable.

I am of the firm conviction that when read as a whole, the purpose of Article 39(8)(e) can be gleaned from the second part which reads; ***“Accordingly, clubs shall not be allowed to tie such payments to sponsors’ funds or any other source.”*** It is to ensure that clubs do not use the unavailability of donor funds or other sources of funding as an excuse to settle their fines, costs or simply comply with such orders by statutory bodies of the GFA.

It is important that due cognizance is given to context in interpreting and giving effect to the law, as the law does not operate in a vacuum. In a country where a cheque is a recognized mode of payment for commercial transactions and also, in an era where the nation is gravitating towards modern international trends of paperless transactions, it is confounding that the GFA would continue to denounce the use of cheques as a mode of payment for any transaction at all, inclusive of fines. Little wonder then, that the GFA itself has failed to practice what it preaches.

If which is denied, the decision to decline payment of fines by cheques stems from a fear that the cheque may be dishonoured subsequent to the FA issuing a receipt evidencing payment, the Criminal and other Offences Act, 1960 (Act 29) offers a deterrent solution to that problem. Section 313A (1) of Act 29 states as follows:

**313A. Issue of false cheque**

*(1) A person who -*

*(a) without reasonable excuse, the proof of which lies on that person, issues a cheque drawn on a bank with which that person does not have an account, or*

*(b) issues a cheque in respect of an account with a bank when that person does not have a reasonable ground, the proof of which lies on that person, to believe that there are funds or adequate funds in the account to pay the amount specified on the cheque within the normal course of banking business, or*

*(c) with intent to defraud stops or countermands a cheque previously issued by that person, commits a criminal offence and is liable to a fine not exceeding two hundred and fifty penalty units or to a term of imprisonment; not exceeding twelve months or to both the fine and the imprisonment, and in the case of a subsequent criminal offence to a fine not exceeding one thousand penalty units or to a term of imprisonment not exceeding five years.*

From the above, it is submitted that the fear of criminal sanction should be deterrent enough for a club not to intentionally issue a cheque which will be dishonored.

More importantly, it is my considered view that in the instant case, there is no basis for this fear as the cheque in question was received as far back as July and has to date, not been dishonored.

In his testimony before the Committee, Mr. Kwame Opare who is in my considered view, the only material witness in this matter stated unequivocally, under cross-examination that by practice, the GFA receives payments by cheques. He testified that the payment by the Respondent on the 7<sup>th</sup> of July, 2017, was a regular and acceptable practice which was not peculiar to the Respondent alone.

It is provided in Section 26 of the Evidence Act, 1975 (NRCD 323) that;

**26. Estoppel by own statement or conduct**

*Except as otherwise provided by law, including a rule of equity, when a party has, by that party's own statement, act or omission, intentionally and deliberately caused or permitted another person to believe a thing to be true and to act upon that belief, the truth of the thing shall be conclusively presumed against that party or the successors in interest of that party in any proceedings between*

*(a) that party or the successors in interest of that party, and*

*(b) the relying person or successors in interest of that person.*

From the facts of this case, Accra Hearts of Oak made the payment in contention, being the first part of the fine on the 7<sup>th</sup> of July, 2017. The said payment was received by the GFA without any inhibition; the amount has hit the account of the GFA and the GFA has had no cause to raise any concerns over the money received.

Some three months or more down the line, this Committee is being invited to declare this payment invalid because it was not made in accordance with the mode prescribed in Article 39(8)(e) above.

On the strength of Section 26 of NRCD 323 (*supra*), the GFA and its members are estopped from now questioning the payment of the fine by cheque as done by the Respondent on the 7<sup>th</sup> of July, 2017 and declaring same invalid.

Indeed, one has to wonder what mischief, injury or damage has been occasioned by the payment by cheque made by the Respondent on the 7<sup>th</sup> of July, 2017, to warrant the invalidation of same. None, in my considered opinion.

It is therefore, submitted that this ill-fated attempt by the Petitioner to benefit from an omission on the part of the GFA which the Petitioner itself may possibly have taken advantage of in the past should not be countenanced by the Committee.

### **DECISION**

In conclusion, it is my considered opinion that this Committee ought to decline the invitation by the Petitioner to descend into the arena of absurdity and in the interest of justice, dismiss the instant Protest in its entirety.

**EVA OKYERE, ESQ.**  
**Vice-Chairperson**  
**Disciplinary Committee**  
**Thursday, November 9, 2017**

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