



FIDE ETHICS COMMISSION

The Ethics Commission (hereafter called the ETH), sitting in the following composition -

Chairman: Mr Francois Strydom
 Members: Mr Rajesh Hari Joshi
 Mr Ravindra Dongre
 Ms Yolander Persaud

during the meeting held in Lausanne on 23rd - 24th of November 2019, made the following-

DECISION

Case n. 2/2019: “Alleged unlawful disciplinary action taken by the NCF against Mr. Bomo Kigigha”.

1. The ETH **confirms** that a quorum is established by the presence and participation of all four (4) of its voting members.
2. The ETH **notes** the complaint of **Mr. Bomo Kigigha**, a Nigerian Olympiad chess player, against the **Nigerian Chess Federation** (“NCF”) and its President, **Mr. Olalekan Adeyemi** in his personal capacity, submitted on 4 July 2019 and supplemented on 13 August 2019 (“the complaint”). The Complainant also filed a replying statement on 26 September 2019. The complaint arose from the five-year ban imposed upon the Complainant by the NCF on 22 June 2019 pursuant an incident at the 2018 Chess Olympiad in Batumi, Georgia where a number of memento chess sets and clocks went missing.

3. The ETH **notes** the complaint against the NCF (the First Respondent) is for taking disciplinary action and imposing bans on the Complainant in violation of the fundamental principles of fairness and justice.
4. The ETH **notes** the complaint against the Second Respondent, the President of the NCF, for a possible violation of Art. 2.2.2, 2.2.3 or 2.2.10 of the FIDE Code of Ethics by the alleged abuse of his office in instigating and being party to the taking of unlawful disciplinary action against the Complainant.
5. The ETH **notes** that on 19 August 2019 the ETH Chair wrote to the Respondents and requested that a date for an appeal hearing in the case of Mr. Kigigha be fixed within 7 calendar days and that the appeal hearing must take place within one month. The letter also stated that if the NCF Statutes do not provide for an appeal, the ETH be advised accordingly. In the Second Respondent's answer, he states that he was out of the country attending various chess events, when the ETH letter of 19 August 2019 arrived. He only returned home on 12 September 2019 and could attend to the ETH correspondence on 16 September 2019.
6. The ETH **notes** the contents of the defensive statement of the Respondents received on 16 September 2019 by the ETH, as well as the Respondents' replying statement on 8 November 2019.
7. The ETH **notes** subject-matter of the complaint and the defences raised:
 - 7.1 During October 2018, the 43rd World Chess Olympiad took place in Batumi, Georgia ("the Batumi Olympiad"). The Complainant was a member of the Nigerian Open team at the Batumi Olympiad;
 - 7.2 On 15 October 2018 the Secretary General of the NCF wrote to the Complainant, alleging that that the Complainant had dishonestly received 14 chess boards and 14 chess clocks from the organisers of the Batumi Olympiad, ostensibly on behalf of the NCF, whereas the NCF had already received its allocation of souvenir packs to the knowledge of the Complainant. The immediate return of the chess

equipment was demanded. On 19 October 2019 the NCF sent a reminder to the Complainant, but the chess equipment was not returned;

- 7.3 Subsequently, the Complainant was invited by a “Letter of Invitation” from the NCF Secretary General dated 10 December 2018 to attend a disciplinary meeting of the NCF on 14 December 2018 in the following terms:

“I am directed to invite you for a Meeting with the disciplinary Committee of NCF immediately after the first round on Friday, 14 December 2018 at the 19th National Sports Festival chess Tournament venue.”

- 7.4 On 14 December 2018, the Complainant appeared in front of the NCF disciplinary committee on accusations that he had dishonestly received 14 chess boards and 14 chess clocks from the organisers of the Batumi Olympiad. The Complainant explained to the members of the disciplinary committee that he received 12 souvenir gift sets from the campaign office of one of the presidential candidates and each one of his teammates kept one set for themselves;
- 7.5 The disciplinary committee comprised of Mr. Mohammed Bawa (chairman), Dr. Raymond Ogunade, Mr. Adu Oladapo, Ms. Rachael Edward-Dappa and Ms. Olabisi Aziz as members. However, when the committee deliberated on the Complainant’s case, Mr. Bawa and Ms. Aziz were absent. Ms. Aziz, the Secretary General, was replaced by the Assistant Secretary General, Ms. Atinuke Adesina. According to the Complainant, Mr. Obinna Ogbonnanya was also present;
- 7.6 About 6 months later, the Complainant received a Letter of Ban from the NCF, dated 26 June 2019, advising him that the recommendations of the disciplinary committee were approved by the NCF Board on 22 June 2019. The decision of the NCF Board was to ban the Complainant for a period of 5 years on charges of gross misconduct,

insubordination and bringing the name of Nigerian chess into disrepute at the Batumi Olympiad.

- 7.7 The Complainant avers that he was banned without a fair hearing based upon false allegations against him. He claims that no evidence or proof of him misappropriating the chess equipment was presented at the hearing. As a result of the ban, he lost his position as the chess coach for the Bayelsa State Government and Sports Council and all of his sponsors, so his means of livelihood has been put in jeopardy;
- 7.8 The Complainant further avers that on 28 June 2019 he filed an appeal to the NCF Appeal Committee against the NCF decision against him (and posted the letter of appeal on his Facebook page), but nothing transpired in consequence thereof. He complains of the fact that the sanction against him is enforced without his appeal being heard;
- 7.9 In substantiation of his allegations that due process has not taken place in his disciplinary proceedings, the Complainant relies *inter alia* on the fact that the disciplinary committee comprised of the same NCF Board members who took the decision on his ban;
- 7.10 The Respondents, in their answering statements, point out that the Complainant admitted collecting the souvenir packs but gave at various times conflicting explanations as to what had happened to the packs;
- 7.11 The Respondents aver that the Complainant was given plenty opportunities to return the souvenirs and that he received a fair hearing at the disciplinary committee meeting of 14 December 2018. The NCF denies having received a letter of appeal from the Complainant;
- 7.12 The Second Respondent avers that he, as NCF President, was not involved at any stage in the Complainant's disciplinary proceedings. He states that the Board of the NCF approved unanimously the recommendation of the disciplinary committee. He further claims that

the NCF President is not permitted to cast votes at Board meetings unless there is a tie;

- 7.13 The Respondents rely for their authority and powers on the National Sports Federations Code of Governance (“Code of Governance”) issued by the Nigerian Federal Ministry of Youth and Sports Development. The Respondents were unable otherwise to refer the ETH to any disciplinary code or other document within the governance of the NCF, which prescribes the conduct that will be regarded as a breach of ethical principles and the sanction(s) that the offender may face.
8. The ETH **confirms** that FIDE member federations have principal authority in respect of the governance of chess activities in their own countries. The ETH shall exercise jurisdiction over the conduct of officials of national federations only in exceptional circumstances, namely in instances where the case has international implications and is not judged at national level, or instances where the national federation fails to prosecute disciplinary cases in compliance with fundamental justice (FIDE Statutes, Chapter 8, Ethics Commission - Objectives and Competencies).
9. The ETH **notes** that the principles of fundamental justice demand that the relevant procedures as prescribed by the organisation's statutes and disciplinary code be respected. Fundamental justice further includes (albeit not necessarily as their equivalent) the concepts of “natural justice”, the "duty to act fairly", “procedural fairness” and "procedural due process". The principles of natural justice ensure a fair decision is reached by an objective decision-maker. Natural justice is based on two fundamental rules, *nemo iudex in causa sua* (no person may judge their own case) and *audi alterem partem* (hear the other side). A person is barred from deciding any case in which he may be, or may fairly be suspected to be, biased. Bias may be actual, imputed or apparent.

10. The ETH **notes** that the right to a fair hearing requires that individuals are not penalised by decision affecting their rights unless they have been given prior notice of the case against them, a fair opportunity to answer it, and the opportunity to present their own case. The requirement of a fair hearing affords a person the right to adequate notification of the date, time and place of hearing as well as detailed notification of the case to be met. This information allows the person adequate time to effectively prepare his own case and to answer the case against him.

11. The ETH **notes** the principle of legality also finds application in the present case, namely that offences and sanctions must be clearly and previously defined, the sanctions must be predictable and that existing rules cannot be adjusted to situations or behaviour that the legislating body did not clearly intend to penalise. In *George Yerolimpos' case* (CAS 2014/A/3516) the Panel stated in its decision that it is axiomatic that before a person can be found guilty of a disciplinary offence, the relevant disciplinary code must proscribe the misconduct with which he is charged - *nulla poena sine lege* (no punishment without law). It is not merely sufficient to identify a duty, it is also necessary to stipulate that breach of such duty will attract disciplinary sanctions. In other words, offences and sanctions must be provided by clear rules enacted beforehand.

12. The ETH **confirms** that, according to Chapter 8 of the FIDE Statutes, in cases where the ETH finds that the national federation has failed to prosecute disciplinary cases in compliance with fundamental justice, the ETH shall be entitled to assume jurisdiction itself over the national case and conduct an enquiry *de novo* in regard to the alleged violation(s). The ETH **refers** to ETH case no. 4/2015 as a precedent.

13. Upon due consideration of the documents submitted and arguments advanced by the parties, the ETH **finds** that the disciplinary action taken against and ban imposed on the Complainant by the NCF were done in

violation of fundamental principles of fairness and justice in light of, *inter alia*, the following:

- 13.1 The inadequate Letter of Invitation issued to the Complainant to attend the meeting of the disciplinary committee which failed to state the nature of the investigation to be undertaken and the charges faced by the Complainant, as well as the possible sanctions if he were to be found guilty. Even accepting that the letter was sufficient to ensure the Complainant's presence at the meeting of the disciplinary committee on 14 December 2018, it nevertheless amounted to ambush tactics by the NCF which potentially prejudiced the Complainant in his defence;
- 13.2 The Complainant was sanctioned in violation of the principle of legality - no code of conduct existed which defined the offences and permissible sanctions beforehand. The sanction of a 5 year ban accordingly suffers from arbitrariness and may even be potentially disproportionate.
- 13.3 It has not been shown that the replacement of two of the regular disciplinary committee members at the Complainant's hearing was duly authorised by a resolution of the NCF Board which means that the legitimacy of the composition of the disciplinary committee on the relevant day is in serious doubt. There is no proof that standing members of the disciplinary committee can delegate their responsibilities to outsiders;
- 13.4 The participation in the NCF Board decision by individuals who were members of the disciplinary committee and who made the recommendation of disciplinary action against the Complainant to the NCF Board had an appearance of bias. These members (Dr. Raymond Ogunade, Mr. Adu Oladapo and Ms. Rachael Edward-Dappa) neglected to recuse themselves in the final decision-making process and defeated the whole purpose of the sub-committee making a recommendation for separate reflection and consideration by the Board;

- 13.5 The failure by the NCF to afford the Complainant an appeal pursuant to his notice of appeal dated 28 June 2019 and the ETH letter of 19 August 2019.
14. Upon due consideration of the evidence, the ETH **finds** further that there is no proof that the Second Respondent partook in the formal disciplinary steps taken against the Complainant or that he acted in any way in a manner inconsistent with the duties of his office or the *bona fide* advancement of the interests of the NCF, even if he was wrong in his belief that the NCF was entitled to institute disciplinary proceedings against the Complainant in the manner it did. In coming to this conclusion, the ETH **accepts** that it is competent to exercise jurisdiction over the Second Respondent on the basis that he is an official of a national federation, the case has international implications (to the extent that it concerns an incident which occurred at the Batumi Olympiad) and was not judged at the national level.
15. Upon due consideration of the arguments advanced by the parties, the ETH by unanimity **decides** that:
- 15.1 the jurisdiction of the ETH in the present matter and admissibility of the complaints against the First Respondent (NCF) and the Second Respondent (Mr. Olelekan Adeyemi) are confirmed;
- 15.2 the sanction imposed by the NCF on Mr. Bomo Kigigha on 22 June 2019 is hereby nullified with immediate effect. This means, pending the disciplinary proceedings before the ETH referred to hereunder, the Complainant is free to exercise all his competitive, judicial, organising, club and coaching rights within the NCF with effect from the date of publishing of this written decision.
- 15.3 in the circumstances the ETH is entitled and does assume jurisdiction over the NCF's complaint against Mr. Bomo Kigigha and will conduct an enquiry de novo in regard to possible violations of the FIDE Code

of Ethics in accordance with the procedural directives to be given by the ETH chairman to the parties;

15.4 the ETH does not express itself on the merits of the disciplinary complaint brought by the NCF against the Complainant as this would form the subject-matter of the *de novo* enquiry to be conducted by the ETH;

15.5 The Second Respondent (Mr. Olelekan Adeyemi) is found **not guilty** of the alleged violation of art. 2.2.2, 2.2.3 or 2.2.10 of the FIDE Code of Ethics and the case against him is dismissed.

16. The ETH **requests** the FIDE Secretariat to communicate forthwith the decision to the Mr. Bomo Kigigha, Mr. Olelekan Adeyemi, the Nigerian Chess Federation, as well as the African Chess Confederation, and to publish in due course the decision on the FIDE website.

DATED ON THIS THE 23rd DAY OF DECEMBER 2019.

F P Strydom

CHAIRMAN
FIDE ETHICS COMMISSION