



GENS UNA SUMUS

FÉDÉRATION INTERNATIONALE DES ÉCHECS

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FIDE ETHICS & DISCIPLINARY COMMISSION

The First Instance Chamber of the Ethics & Disciplinary Commission (hereafter called “the EDC Chamber”), sitting in the following composition -

Chairperson: Mr Johan Sigeman

Members: Mr David Hater
Mr Khaled Arfa

during an exchange of correspondence and online meetings during the period 28 May – 21 June 2020, made the following decision -

DECISION

Case no. 2/2020: “Alleged match-fixing during Kenyan National Women Chess Championship, 2019”

1. The EDC Chamber **notes** its establishment by the EDC Chairman on 8 May 2020.
2. The EDC Chamber **notes** the report of the Investigation Chamber (IC) of the FIDE Fair Play Commission (“FPL”) received by the EDC on 5 May 2020, representing a complaint of the alleged violation of the FIDE Code of Ethics (“the Code of Ethics”) by Ms. Easter Awinja (FIDE ID: 10807055) and Ms. Julie Mutisya (FIDE ID: 10814922) (“the Respondents”), more specifically an alleged attempt at match fixing.
3. The EDC Chamber **notes** that the Respondents did not respond to the EDC Chamber’s inquiries or use the opportunity given to submit a defensive statement in the proceedings before the EDC Chamber. Accordingly, the facts supplied in the FPL report stand uncontroverted.

4. In addition to the FPL IC Report, the EDC Chamber **notes** the contents of the following reports, documents and e-mails received as part of the case file: statement by Ms. Cheryl Ngima (FIDE ID:10808973) to FPL , the Chief Arbiter Mr. James Mwangi's (FIDE ID: 10806245) report and statement to FPL, the Respondent Ms. Julie Mutisya's response to FPL, the Respondent Ms. Easter Awinja's response to the FPL, two statements by Mr. Benard Wanjala, President of the Kenyan Chess Federation to FPL and arbiter at the event Mr. Moses Maina's statement to FPL.
5. The EDC Chamber **notes** the subject-matter of the complaint and defence(s):
 - 5.1 The Respondents (Ms Easter Awinja born in 1993 and Ms Julie Mutisya born in 1999) were both participants in the Kenyan Women Chess Championship 2019 ("KWCC"), which took place in Nairobi, Kenya from 11-15 December, 2019.
 - 5.2 In the 9th round of the tournament, the Respondents were playing each other. During the round, the Respondents were observed by the section arbiter when talking to each other. The arbiter made the players aware of the fact that they were not allowed to communicate during play, unless one of the players were proposing a draw. Later, still during the game, the Respondents were seen writing on the back of one of the score-sheets. The text read "*Draw or I win?*" The score-sheet also contained calculations of the tournament standing and the distribution of prize-money.
 - 5.3 When the Chief Arbiter was informed of the above, he decided to forfeit both players. Subsequently, the Appeals Committee declared both Respondents non-eligible for prize money in the tournament. In addition to this, both Respondents were either (i) disqualified by the Appeals Committee for the second stage of the Kenyan Olympiad selection tournament or (ii) were subject to a recommendation by said Appeals Committee to this effect, directed to the Disciplinary Commission.
 - 5.4 The matter was thereafter considered by the Chess Kenya Executive Committee, which decided that the previous sanctions imposed by the Appeals Committee (forfeit and non-eligibility for prize money in the tournament) were sufficient and no additional sanctions, such as disqualification for the second stage of the selection tournament, were motivated. The matter was not referred to the KCF Disciplinary Commission. In a statement from Mr. Benard Wanjala, it appears that the Executive Committee's priority was to select the best team for the upcoming Olympiad.
 - 5.5 By reference to the FIDE Ratings database, the EDC Chamber has established that both Respondents participated in FIDE rated events since the KWCC. Ms. Easter Awinga has played two games in the Kenya Premier Chess League 2019 and six games in the 2nd Phase Olympiad Qualifier 2020. Ms. Julie Mutisya has played ten games in the Kenya Premier Chess League 2019, five games in the 2nd Phase Olympiad Qualifier 2020 and ten games in the Final Phase of the Olympiad Qualifier 2020.

6. The EDC Chamber **notes** the investigation results and recommendations of the FPL:
 - 6.1 On 6 February 2020 FPL received a statement from Ms. Cheryl Ngima regarding the alleged match-fixing incident in the KWCC wherein Ms. Ngima reported alleged mishandling of the disciplinary case at the national level.
 - 6.2 Both Respondents submitted a brief response to the FPL.
 - 6.3 The FPL points out that the Respondents both confirmed that they had attempted to fix the result in their game.
 - 6.4 The FPL submits that an appropriate sanction for the Respondents would be a world-wide ban from participation in all FIDE-rated and FIDE-authorized chess competitions for a period of three years with a suspended term of one year to be imposed on both Respondents. The ban must obligatory include at least the World Chess Olympiad.
7. The EDC Chamber **notes** that the Laws of Chess includes the following rules which have relevance to this matter: 8.1.4 (The scoresheet shall be used only for recording the moves, the times of the clocks, offers of a draw, matters relating to a claim and other relevant data), 11.1 (The players shall take no action that will bring the game of chess into disrepute), 11.7 (Persistent refusal by a player to comply with the Laws of Chess shall be penalised by loss of the game. The arbiter shall decide the score of the opponent), 11.8 (If both players are found guilty according to Article 11.7, the game shall be declared lost by both players) and 12.9 (Options available to the arbiter concerning penalties).
8. The EDC Chamber **notes** that the FIDE Anti-Cheating Regulations (Batumi, 2018) mentions match fixing as an example of “cheating” under said Regulations.
9. Upon due consideration, the EDC Chamber, by unanimity of its members, **finds** regarding the admissibility of the complaint that:
 - 9.1 The KWCC was a national event. The EDC has previously decided that the fact that a national tournament was FIDE rated may not on its own be sufficient to constitute jurisdiction for the EDC.
 - 9.2 The KWCC was however the first phase in the qualification for the Kenyan Olympiad women’s team, a fact that puts it in the realm of “international implications” as meant in the first leg of art. 26.9 of the FIDE Charter.
 - 9.3 In addition to the aforementioned, the Kenyan Chess Federation has failed to prosecute the Respondents for the alleged violation of the Code of Ethics in a proper disciplinary process. Considering the second leg of art. 26.9 of the Charter, and having regard for interpretational purposes to the corresponding article in the former FIDE Statutes (Chapter 8), this provision also founds jurisdiction for the EDC.
 - 9.4 The EDC Chamber accordingly finds that it therefore has jurisdiction to investigate a violation of the Code of Ethics, which occurred at the KWCC event, independently from the national federation’s jurisdiction to take disciplinary steps against their own players for such a violation. The EDC Chamber refers to the decision in case no 6/2019 (Dias Matos), para 6.1-6.5.

10. Upon due consideration, the EDC Chamber, by unanimity of its members, **finds** regarding the issue of the Respondents' guilt as follows:
- 10.1 In the present case, the Respondents have admitted that they were attempting to agree on the outcome of their ongoing game in line with what has been described in the statement of the Chief Arbiter.
 - 10.2 There is no generally acknowledged definition of match fixing. The Council of Europe Convention on the Manipulation of Sports Competitions (the Macolin Convention), contains a definition of “Manipulation of sports competitions”: *“...an intentional arrangement, act or omission aimed at an improper alteration of the result or the course of a sports competition in order to remove all or part of the unpredictable nature of the aforementioned sports competition with a view to obtaining an undue advantage for oneself or for others”*. The Olympic Movement Code on the Prevention of the Manipulation of Competitions has a definition of “Manipulation of sports competitions” being more or less identical to the Macolin Convention.
 - 10.3 The concept of match fixing in chess may be described as an arrangement between the parties with the aim of agreeing the outcome of the game in violation of the accepted principles of sportsmanship and fair competition, often involving deliberate underperforming by one of the parties.
 - 10.4 When contemplating the concept of match fixing, the EDC Chamber notes that arranged draws are widely known to occur in both national and international events. The reasons for an arranged draw may vary. For example, both of the players may want to save energy for later games, or may be satisfied with their tournament standing and are therefore averse to taking risks. There is an argument for regarding arranged draws as contrary to the concept of sportsmanship and fair competition as it takes away the competitive aspect already before the start of the game. The EDC Chamber does not however find arranged draws as unacceptable match fixing *per se*, primarily due to the fact that chess players are allowed under the Rules of Chess (art 9.1.2.1) to propose and agree to a draw, admittedly only during the course of the game, and none of the parties thereby agree to lose the game.
 - 10.5 There are situations where arranged draws may be in violation of the concept of sportsmanship and fair competition to such an extent that it would qualify as match fixing. One example is where one of the players is offered some kind of remuneration to agree to a draw.
 - 10.6 Match fixing and attempts at match fixing is a serious violation of the concept of fair play. Even if the KWCC was not a high category event, it was the national chess championship of Kenya and also the first stage of the qualification for the Kenyan Olympiad team.
 - 10.7 Match fixing is a concept that is in direct contradiction to the concept of fair play and it is important that violations are properly sanctioned.
 - 10.8 The Code of Ethics includes more than one article that may be of relevance in case of match fixing. Art. 2.1 (offers, or attempts to offer or accepts any consideration or bribe with a view of influencing the result of a game of chess),

- art. 2.2.5 (cheating or attempts at cheating during games and tournaments) as well as art. 2.2.10 (occurrences which cause the game of chess to appear in an unjustifiable unfavourable light and in this way damage its reputation) are all designed to address breaches of the concept of fair play and the Code of Ethics, involving improper attempts to influence the outcome of a game of chess.
- 10.9 Art. 2.1 is directly aimed at attempts to influence the result of a game of chess, such as in the case at hand, using bribes or other consideration. The word “consideration” denotes a wider concept than a bribe; it has the meaning of something of value given or promised by one party in exchange for the act or promise of the other. It refers to a *quid pro quo* relationship. The EDC Chamber refers to its previous decision in case no 5/2014 (Kasparov & Leong).
- 10.10 Even if it is not established that a specific remuneration was offered or accepted, the EDC Chamber is comfortably satisfied that the Respondents did attempt to fix the result in their game to the mutual benefit of them both. The EDC Chamber has *inter alia* considered the statement of the Arbitrator Moses Maina to the FPL IC wherein he describes the conversation in writing between the Respondents showing how they planned to share the cash prize. This would qualify as the offering and acceptance of “consideration” for purposes of Art. 2.1.
- 10.11 The EDC Chamber accepts that the Respondents were caught prior to them completing the game and returning a fixed result and are therefore guilty of an attempt at match-fixing, rather than actual match-fixing. Such an attempt is however sufficient for a violation of both Art. 2.1 and Art. 2.2.5 of the Code.
- 10.12 The EDC Chamber finds that the requirements for Art. 2.1 are satisfied in the present case in order to conclude that there had been a violation of this article by both Respondents.
- 10.13 Art. 2.2.5 is aimed at cheating or attempts at cheating during games of chess. The concept of “cheating” is defined in a broad sense by the FIDE Charter which mentions that the Anti-Cheating Regulations are aimed to prevent and fight the manipulation of chess competitions. As noted above, match fixing is regarded as “cheating” in the FIDE Anti-Cheating Regulations.
- 10.14 The Respondent’s actions with the purpose of influencing the result of their game to their mutual benefit is therefore a breach also of Art. 2.2.5.
- 10.15 Art. 2.2.10 is a more general rule, primarily aimed at targeting acts or omissions by players or office holders that is not covered by any of the more specified articles in the Code of Ethics.
- 10.16 As the EDC Chamber has found that the Respondents have breached both Art. 2.1 and Art. 2.2.5, there is no reason to invoke Art. 2.2.10.
11. Upon due consideration, the EDC Chamber, by unanimity of its members, **finds** regarding the matter of an appropriate sanction that:
- 11.1 In determining the sanction, the EDC Chamber must take into consideration all relevant aspects of the case.

- 11.2 In the present case, both Respondents had already prior to their mutual game in the last round of the KWCC qualified for the 2nd phase of the qualification for the Olympiad team.
 - 11.3 The EDC Chamber notes that an admission of guilt is usually a mitigating factor in the determination of an appropriate sanction, but in the present case there seems to be an absence of remorse on the part of the Respondents.
 - 11.4 The Respondents are taken as first offenders.
 - 11.5 The Respondents were both subject to national disciplinary actions by being forfeited in their game and also with respect to the prize money. This is in itself a sanction with immediate and burdensome consequences for the Respondents.
 - 11.6 The Respondents have been found guilty of an attempt at match-fixing rather than the completed offence. However, had they not been caught, they would probably have completed the match-fixing.
 - 11.7 The offense must nevertheless be deemed to be of a serious nature as match fixing is perilous for all sports, chess included. The offence was committed at a FIDE-rated event by Respondents. The KWCC was the first step in the qualification for the Kenyan Women Olympiad team.
 - 11.8 Given the fact that the Respondents continued their participation in competitive chess since the KWCC, there exists no basis to back-date the commencement of the EDC sanction.
 - 11.9 However, the fact that the Kenyan Chess Federation failed to sanction the Respondents by imposing a ban from playing, which, according to the EDC Chamber, would have been well-motivated, has most likely led the Respondents to continue to participate in competitive chess after the KWCC in good faith. Taken together with all aspects of the case such as the assumption that both Respondents are first offenders motivates a suspension period of six months (in accordance with Art. 3.3 of the Code of Ethics).
12. Accordingly, taking into account all of the above, the EDC Chamber **unanimously decides** as follows:
 - 12.1 Ms. Easter Awinja is **found guilty** of a violation of Art. 2.1 and 2.2.5 of the Code of Ethics;
 - 12.2 Ms. Julie Mutisya is **found guilty** of a violation of Art. 2.1 and 2.2.5 of the Code of Ethics;
 - 12.3 Ms. Easter Awinja is **sanctioned** to a worldwide ban of 24 months (whereof the last six months is suspended and will serve as a probationary period) from participating as a player in any FIDE rated chess competition, taking effect from the date of this decision, 21 June 2020.
 - 12.4 Ms. Julie Mutisya is **sanctioned** to a worldwide ban of 24 months (whereof the last six months is suspended and will serve as a probationary period) from participating as a player in any FIDE rated chess competition, taking effect from the date of this decision, 21 June 2020.

13. The Respondents are **advised** that this decision may be appealed to the Appeal Chamber of the EDC by giving written notice of such appeal to the FIDE Secretariat within 21 days from the date upon which this decision is received by the Respondent. The notice of appeal must clearly state all the grounds for the appeal. Failing the due exercise of this right of appeal, the EDC Chamber's decision will become final.
14. The EDC Chamber **requests** the FIDE Secretariat to communicate forthwith the decision to the FPL, the Respondents, the Kenyan Chess Federation, and to publish in due course the decision on the FIDE website.

DATED ON THIS 21st DAY OF JUNE, 2020.

Johan Sigeman

CHAMBER CHAIRMAN
FIDE ETHICS & DISCIPLINARY COMMISSION