

DECISION 2023/01

OF THE

BADMINTON WORLD FEDERATION

INDEPENDENT HEARING PANEL

QUESTION 1

CLAIMANT: Badminton World Federation

FIRST RESPONDENT: Badminton Confederation Africa

SECOND RESPONDENT: Mr. Donald Mabo

QUESTION 2

COMPLAINANT: Badminton Confederation Africa

DEFENDANT: Mr. Donald Mabo

PANEL: Mr. James Kitching (Chair)

Mr. Enric Ripoll Gonzalez

Ms. Yuri Yagi

DATE: 7 July 2023 (Question 1)

7 December 2023 (Question 2)

Regarding a matter referred by the Badminton World Federation Council on 18 April 2023 and submitted to the Independent Hearing Panel on 12 May 2023.

A. PRELIMINARY MATTERS

Introduction

1. On 16 June 2023, Mr. James Kitching, the Chair of the Badminton World Federation (“**BWF**”) Independent Hearing Panel (“**IHP**”), appointed the following members to a hearing panel in accordance with Article 18 of the BWF Judicial Procedures (30 May 2023) (“**Procedures**”):
 - 1.1. Mr. James Kitching as Chair (“**Chair**”); and
 - 1.2. Mr. Enric Ripoll Gonzalez and Ms. Yuri Yagi as Members (“**Members**”), collectively, the “**Panel**”.
2. The Panel was formed to determine two questions referred by the BWF Council on 18 April 2023, which were submitted to the IHP on 12 May 2023.

Parties

3. The parties to this matter are:

Question 1

- 3.1. Badminton World Federation (“**BWF**”), the world governing body for the sport of badminton;
- 3.2. Badminton Confederation Africa (“**BCA**”), the continental governing body for the sport of badminton in Africa recognised by the BWF; and
- 3.3. Mr. Donald Mabo (“**Mabo**”), a badminton athlete from Zambia who was also the chairperson of the BCA Athlete Commission at the relevant time;

Question 2

- 3.4. BCA (also “**Complainant**”); and
 - 3.5. Mabo (also “**Defendant**”),
- collectively known as the “**Parties**”.

B. DECISION ON QUESTION 1

Procedural and Factual Chronology

4. This section outlines the key communications, factual circumstances, and procedural rulings which occurred with respect to Question 1 only. Not all items on the case file are recorded for reasons of relevance.
5. On 25 March 2022, the Badminton Association of Zambia (“**BAZ**”) filed a complaint (“**Complaint**”) to the BCA against Mabo, following which the BCA created an “*Internal Preliminary Investigation Committee*” (“**IPIC**”) to investigate the Complaint.
 - 5.1. The IPIC ultimately recommended that the Complaint be referred to the BCA Judicial Panel (“**BCAJP**”) for decision.
6. On 29 September 2022, a hearing was held before the BCAJP.
7. On 10 February 2023, the BCAJP rendered the operative part of its decision (“**Decision**”).
8. On or around 2 March 2023, the BCAJP issued the reasoned Decision.
 - 8.1. Mabo was sanctioned for breaches of Articles 4.1, 4.2, and 4.10 of the BWF Code of Conduct for Elected Officials (“**Code of Conduct**”) and the principles set out in Articles 3 and 4 of the BCA Constitution.
 - 8.2. Mabo was reprimanded and suspended from badminton activities for twelve months as from 10 February 2023.
9. On 23 March 2023, Mabo appealed the Decision to the IHP (“**Appeal**”).
 - 9.1. The BWF and BCA subsequently exchanged correspondence regarding the competence of the BCAJP to render the Decision.
 - 9.2. The BWF contended that the BCAJP was not competent to render the Decision; only the IHP was competent. The BCA contended that BCAJP was competent.
 - 9.3. It was ultimately agreed by the Parties to request the BWF Council to refer the matter to the IHP in the form described below.
10. On 18 April 2023, the BWF Council resolved to refer the matter to the IHP in accordance with Article 7.5.5 of the November 2020 edition of the Procedures (which is now Article 7.5.6 of the May 2023 edition of the Procedures) in the following form (“**Referral**”):

Pursuant to the BWF Constitution and to the Guidelines for Council & Executive Board Procedures, the undersigned, being the President of the BWF and the Chair of the Council, hereby confirms:

THAT it was decided on 18 April 2023 by the BWF Council, to approve the direct referral by BWF of the BCA v Mabo case to the Independent Hearing Panel, in accordance with article 7.5.5 of the BWF Judicial Procedures, with two questions:

Question 1

Was the BCA Judicial Panel competent to render a decision in the case of Mr Mabo?

Question 2 – depending on the outcome of Question 1:

If the BCA Judicial Panel was competent, the IHP shall review the merits as if it were an appeal of the decision of the BCA-JP.

If the BCA Judicial Panel was not competent, the IHP shall hear the merits of the case as if it was a first instance procedure.

11. On 12 May 2023, the BWF submitted its position on Question 1. In summary, the BWF relevantly contended that:
 - 11.1. prior to the Decision, there was ambiguity as to which regulation(s) Mabo was alleged to have breached. The charging document does not specify nor identify any regulation(s);
 - 11.2. the Decision identifies that the BCAJP sanctioned Mabo for violating Articles 4.1, 4.2, and 4.10 of the Code of Conduct and Articles 3 and 4 of the BCA Constitution;
 - 11.3. the IHP is the only body within the regulatory framework of global badminton that has jurisdiction to adjudicate on violations of the Code of Conduct. This is clear from Article 5 of the Code of Conduct, Article 25 of the BCA Constitution, and Article 7.5 of the Procedures; and
 - 11.4. the BCA is the competent “*Investigating Body*” to investigate potential violations of the Code of Conduct for the purposes of the Procedures. At the conclusion of the IPIC investigation, the BCA should have referred the matter to the IHP for a first-instance decision.
12. The BWF requested the IHP find that:
 - 12.1. the referral from the BWF Council was admissible;
 - 12.2. the BCAJP was not competent to render the Decision;
 - 12.3. the IHP is competent to hear and decide on the matter; and
 - 12.4. the matter shall proceed in accordance with the BWF Council decision. The BCA shall take the position as Claimant, and Mabo as Defendant.
13. The BWF submission enclosed six exhibits:
 - 13.1. the Complaint dated 25 February 2022;

- 13.2. the charging document dated 5 May 2022;
 - 13.3. the operative Decision dated 10 February 2023;
 - 13.4. the reasoned Decision (undated but notified on or around 2 March 2023);
 - 13.5. the Appeal (enclosing sixteen exhibits) dated 23 March 2023; and
 - 13.6. the Referral dated 18 April 2023.
14. On 29 May 2023, the Legal Secretary to the IHP notified the Parties of the BWF submission. She requested that:
- 14.1. the Parties provide their position by 8 June 2023 on whether Question 1 should be determined by a single member panel or three-member panel;
 - 14.2. the Parties provide their position by 8 June 2023 on whether Question 1 should be determined on the basis of an oral hearing or written submissions; and
 - 14.3. BCA and Mabo provide their written position on Question 1 by 8 June 2023.
15. On 30 May 2023, the BWF submitted that Question 1 be determined by a single member panel and decided based on written submissions.
16. On 1 June 2023, Mabo submitted:
- 16.1. that Question 1 be determined by a single member panel and decided based on written submissions; and
 - 16.2. with respect to the substantive issue:

“I agree with the BWF position that is attached that the BCA Judicial Panel lacked jurisdiction to decide my case. I also agree that the BCA Judicial Panel did not have the authority to make that determination”.
17. On 2 June 2023, the Legal Secretary to the IHP provided the exhibits to the BWF submission to the Parties and extended the deadline for response to 12 June 2023.
18. On 12 June 2023, the BCA submitted:
- 18.1. that Question 1 be determined by a three-member panel and decided based on written submissions; and
 - 18.2. with respect to the substantive issue (set out in full):

It is correct that the decision to refer the case to the BCA Judicial Panel was made following the investigation conducted by the Preliminary Investigation Committee (PIC) and subsequent submission to the BCA Council. As outlined in our constitution clause

23.1.2, the BCA Council possesses judicial powers and is responsible for making decisions and imposing penalties in accordance with the BCA statutes.

In our capacity as an endorsee of the BWF Code of Conduct for Elected Officials, the BCA Council acted within its area of duties to ensure the observance of the BCA Statutes, which include the adoption of the BWF Code of Conduct for Elected Officials as part of our own statutes. Consequently, the Council referred the case to the BCA Judicial Panel to uphold the integrity of our organization and ensure adherence to the established rules and principles.

Furthermore, the PIC, with jurisdiction as outlined in clause 10.2.3.2-part b of the BWF Judicial Procedures, conducted an investigation into Mr. Mabo's alleged breaches of the BCA Statutes, particularly Sections 3 (Purposes and Objectives), Section 4 (Principles), and the BWF Code of Conduct for Elected Officials. Based on the findings of the PIC, it was recommended that the matter be forwarded to the BCA Judicial Panel.

We acknowledge that the BAZ v Donald Mabo case involved multiple charges against Mr. Mabo, but it is important to note that there was no specific charge referencing a violation of the code of ethics for elected officials which is under the jurisdiction of the BWF Independent Hearing Panel. The applicable law for the decision of the BCA Judicial Panel, as indicated in part 5 of the decision, was Article 25 of the Badminton Confederation Africa's constitution, which recognizes the Judicial Panel as a judicial body. The Judicial Panel, as described in Clause 5.12, has the authority to adjudicate cases involving covered persons, as defined in clause 5.7 of the BCA Constitution. The panel, in its decision, relied on section 4 of the code of conduct for elected officials in its entirety to support its findings. We further aver the Preliminary objection on the Jurisdiction of the panel should have been raised before the start of the proceedings by Mr. Donald not after the decision was rendered to which he pleaded guilty.

In conclusion, we firmly believe that the BCA Judicial Panel acted within its jurisdiction as a recognized judicial body, and its decision was made in accordance with the relevant provisions of the BCA Statutes and the BWF Code of Conduct for Elected Officials. We also wish to aver that the question whether the BCA has the jurisdiction to hear the case should have raised before the case started. We hope this response clarifies any concerns regarding the jurisdiction of the BCA Judicial Panel in handling the Donald Mabo case.

19. On 14 June 2023, the Legal Secretary to the IHP notified the Parties that the Chair had decided to appoint a three-member panel.
20. On 7 July 2023, the Chair exceptionally communicated directly with the Parties, notifying them:
 - 20.1. that the Legal Secretary to the IHP had tragically lost her life in a motor accident the previous week;
 - 20.2. of the composition of the Panel;
 - 20.3. of the operative interim decision of the Panel on Question 1; and
 - 20.4. of initial procedural matters for Question 2.

21. On 11 July 2023 and 15 July 2023, the BCA requested the full written reasons for the interim decision.
22. On 18 July 2023, a new Legal Secretary to the IHP was appointed.

Jurisdiction and Admissibility

23. Article 31 of the BWF Constitution recognises the IHP as a judicial body of the BWF.
24. In accordance with Article 7.5.6 of the Procedures, the IHP has jurisdiction to hear and decide cases, *inter alia*, as decided by the BWF Council.
25. Given the agreement of the Parties to the referral of this matter by the BWF Council in the form of two questions, the Panel determined that it had jurisdiction to hear this matter, and that the manner of the referral by the BWF Council was admissible.

Relevant regulations

26. The following articles of the Code of Conduct are relevant:

2. **Definitions**

- Elected Official means any person who holds a position on a BWF or Continental Confederation body further to an election conducted in accordance with their Statutes.*

3. **Applicability**

- This Code is applicable to all Elected Officials. Elected Officials shall also be bound by the BWF Judicial Procedures and the Badminton Code of Ethics as “Officials”.*

5. **Judicial Procedures**

- Potential breaches of this Code of Conduct shall be investigated and adjudicated in accordance with the principles and procedures set out in the BWF Judicial Procedures.*

27. The following articles of the BCA Constitution are relevant:

5. **Definitions**

- 5.7. *Covered Persons: means Officials, Players, and Related Persons and also:*

- o Includes Members of the BCA, as well as any natural person or organisation that has accepted BCA’s jurisdiction.*
 - o Any person who ceases to be a Covered Person for any reason shall for all purposes under these rules be deemed to be and to remain a Covered Person in respect of any investigation or allegation into conduct while that person was a Covered Person, and:*
 - o Any person who became a Covered Person shall be deemed to be and to remain a Covered Person for a continuous period of 12 months after the date, on each occasion, upon which that person became a Covered Person.*

Any person who is not otherwise a Covered Person but who engages in conduct which would amount to conduct which is a breach of the Statutes shall be deemed for the purposes of these Procedures as a Covered Person but shall be liable only to the Sanction(s) of a Suspension and/or a Venue Exclusion Order.

5.14. *Official means any person (whether paid or unpaid) who is an employee, office holder (including a nominated candidate) or representative of the BCA or who officiates, is a technical official or who is part of the workforce in any Tournament.*

5.17. *Statutes – means the BCA constitution and the full body of regulations of the BWF or the BCA, accordingly, in force at any relevant time, and as published.*

22. Application of BWF Statutes

In addition to the BCA Statutes, Covered Persons are bound by:

22.1. *The BWF Judicial Procedures;*

22.2. *The Badminton Code of Ethics; and*

22.3. *The BWF Codes of Conduct (BWF Statutes, Section 2.2), except where the BCA has opted out.*

22.3.1. *If BCA wishes to opt out of the BWF Codes of Conduct, the BCA General Meeting shall be the competent body for the following:*

(a) Section 2.2.1 – Candidates for Election Code of Conduct

(b) Section 2.2.2 – Elected Officials Code of Conduct.

22.3.2. *The BCA Council shall be the competent body to opt out all other BWF Codes of Conduct.*

23. Judicial Authority

...

23.3. *Potential breaches of the BWF and the BCA Statutes shall be processed in accordance with the BWF Judicial Procedures.*

25. Judicial Panel

25.1. *The Judicial Panel shall have general jurisdiction on any dispute that is not governed by the BWF Judicial Procedures. In particular, it shall be responsible for hearing and deciding on potential breaches of the BCA Statutes related to governance matters.*

28. The following article of the Procedures are relevant:

1. Definitions

1.4 *Covered Person means Officials, Players, or Related Persons and also includes BWF Affiliates as organisations, as well as any natural person or organisation that has accepted BWF's jurisdiction.*

Any person who ceases to be a Covered Person for any reason shall for all purposes under these Procedures and under the Statutes be deemed to be and to remain a Covered Person in respect of any investigation or allegation into conduct whilst that person was a Covered Person, and

Any person who became a Covered Person shall be deemed to be and to remain a Covered Person for a continuous period of 12 months after the date, on each occasion, upon which that person became a Covered Person.

Any person who is not otherwise a Covered Person but who engages in conduct which would amount to conduct which is a breach of the Statutes shall be deemed for the purposes of these Procedures as a Covered Person but shall be liable only to the Sanction(s) of a Suspension and/or a Venue Exclusion Order.

1.6 Official means any person (whether paid or unpaid) who is an employee, office holder (including a nominated candidate) or representative of the BWF or a BWF Affiliate, or who officiates or is a technical official or who is part of the workforce in any Tournament.

7.5 Jurisdiction

The IHP shall hear and decide cases arising from:

7.5.1 Integrity and Ethics cases:

Breaches of the following regulations:

...

7.5.1.2 Codes of Conduct for:

- o Candidates for Elections (BWF Statutes, Section 2.2.1); and*
- o Elected Officials (BWF Statutes, Section 2.2.2).*

10. Power to Investigate

10.1 General Power

The BWF and the Continental Confederations shall have the power to initiate and/or to pursue investigations into the potential or alleged breaches of the Statutes and/or regulations subject to their jurisdiction as set out in the following articles and when doing so shall be the 'Investigating Party'.

An Investigating Party shall have the power to instruct a third party to assist or to carry out any part of its investigations and may instruct and be represented by lawyers in those investigations and any matter arising therefrom.

10.2 Jurisdiction to Investigate

Subject to articles 10.2.4, 10.2.5 and 10.2.6.1, jurisdiction to investigate cases of potential or alleged breaches of the Statutes shall lie:

...

10.2.3 Jurisdiction to investigate cases of potential or alleged breaches of the Statutes not included in article 10.2.1 or 10.2.2 shall be assigned as follows:

- 10.2.3.1. *The BWF shall have exclusive jurisdiction to investigate cases:*
- a) *Involving Players who are in the top 100 of the BWF World Ranking in any discipline at the time of the alleged or potential breach, and their Related Persons; and*
 - b) *Involving BWF Officials, who are not also Continental Confederation Officials.*
- 10.2.3.2. *The Continental Confederations shall have jurisdiction to investigate cases:*
- a) *Involving Players other than those mentioned in article 10.2.3.1 a), and their Related Persons; and*
 - b) *Involving Officials from their respective organisations, who are not also BWF Officials.*

Decision on Question 1

29. While the Panel has carefully considered all the facts, evidence, allegations, and arguments submitted, the Panel refers in these findings on Question 1 only to the submissions and evidence it considers necessary to explain its reasoning.
30. In short, the question before the Panel is whether the IHP or the BCAJP is the competent body to adjudicate the Complaint in the first instance.
31. It is not the role of the Panel to adjudicate on the merits of the Complaint (i.e. as a first-instance body), or to assess the manner in which the BCAJP adjudicated the Complaint (i.e. as an appeal body). That function shall be exercised when answering Question 2 of the Referral at a later stage.
32. The Panel unanimously finds that the BCAJP was not competent to render the Decision.
33. Article 2 of the Code of Conduct defines an “*Elected Official*” as
- “any person who holds a position on a BWF or Continental Confederation body further to an election conducted in accordance with their Statutes”.*
34. Article 3 of the Code of Conduct states:
- “This Code is applicable to all Elected Officials. Elected Officials shall also be bound by the BWF Judicial Procedures and the Badminton Code of Ethics as “Officials”.*
35. Similarly, Article 22 of the BCA Constitution states that “*Covered Persons*” are bound by, *inter alia*, the BCA Statutes (which are generally defined as the BCA Constitution and other BCA rules), the Procedures, and Code of Conduct.
36. The Panel noted that Article 22.3 of the BCA Constitution provided the BCA with the ability to ‘opt out’ of the Code of Conduct and create its own regulatory documents

imposing behavioural obligations on “Covered Persons”. Article 22 of the BCA Constitution is cited in full:

22. *In addition to the BCA Statutes, Covered Persons are bound by:*

22.1. *The BWF Judicial Procedures;*

22.2. *The Badminton Code of Ethics; and*

22.3. *The BWF Codes of Conduct (BWF Statutes, Section 2.2), except where the BCA has opted out.*

22.3.1. *If BCA wishes to opt out of the BWF Codes of Conduct, the BCA General Meeting shall be the competent body for the following:*

(a) Section 2.2.1 – Candidates for Election Code of Conduct

(b) Section 2.2.2 – Elected Officials Code of Conduct.

22.3.2. *The BCA Council shall be the competent body to opt out all other BWF Codes of Conduct.*

37. In this respect, the Panel found:

37.1. It is not disputed by the Parties that the BCA is a “Continental Confederation” within the global badminton regulatory framework.

37.2. It is not disputed by the Parties that Mabo, having been elected as Chair of the BCA Athlete Commission, is an “Elected Official” for the purposes of the Code of Conduct, and both a “Covered Person” and “Official” for the purposes of the BCA Constitution.

37.3. There was no evidence that the BCA General Meeting, as required by Article 22.3.1 of the BCA Constitution, had decided to ‘opt out’ of the Code of Conduct. This was not contended by any of the Parties.

37.4. Mabo is therefore subject to, and bound by, the Code of Conduct, the BCA Constitution, and the Procedures.

38. Mabo was sanctioned by the BCAJP for violating the Code of Conduct (forming part of the “BWF Statutes”) and the BCA Constitution (forming part of the “BCA Statutes”).

39. Article 5 of the Code of Conduct states:

“Potential breaches of this Code of Conduct shall be investigated and adjudicated in accordance with the principles and procedures set out in the BWF Judicial Procedures.”

40. With respect to the first element (investigation) cited in Article 5 of the Code of Conduct, the Panel referred to Article 10 of the Procedures and held that the BCA was the competent body to investigate any violation of the Code of Conduct, noting that:

- 40.1. Article 10.1 of the Procedures provides “*Continental Confederations*” with the power to initiate and pursue investigations as an “*Investigating Party*” in certain limited circumstances.
 - 40.2. Article 10.2.3.2 of the Procedures provides jurisdiction to the BCA to investigate potential or alleged breaches of the Code of Conduct involving BCA “*Officials*” that were not also BWF “*Officials*”, subject to that jurisdiction not being already granted elsewhere by the Procedures.
 - 40.3. There was no evidence to suggest that the jurisdiction to investigate Mabo for alleged violations of the Code of Conduct was granted elsewhere by the Procedures. Furthermore, BWF had expressly agreed that BCA had the competence to investigate the matter pursuant to Article 10 of the Procedures.
41. With respect to the second element (adjudication) cited in Article 5 of the Code of Conduct, the Panel referred to both the Procedures and the BCA Constitution and held that the IHP was the competent body to adjudicate, noting that:
- 41.1. Article 7.5.1.2 of the Procedures provides the IHP with exclusive jurisdiction to hear and decide cases arising from the Code of Conduct.
 - 41.2. Article 23.3 of the BCA Constitution states: “*Potential breaches of the BWF and BCA Statutes shall be processed in accordance with the BWF Judicial Procedures*”.
 - 41.3. Furthermore, Article 25.1 of the BCA Constitution provides that the BCAJP “*shall have general jurisdiction on any dispute that is not governed by the BWF Judicial Procedures*”.
 - 41.4. Given that the Procedures clearly provide exclusive jurisdiction to the IHP to hear and decide cases arising from the Code of Conduct, and the BCA Constitution requires that the Procedures be applied to potential violations of the Code of Conduct (which form part of both the “*BWF Statutes*” and “*BCA Statutes*”), this was not a matter which was “*not governed by the BWF Judicial Procedures*” for the purposes of Article 25.1 of the BCA Constitution.
42. As such, the Panel held that as the matter involved potential violations of the Code of Conduct (as cited in the Decision), the IHP is the only body competent to hear and decide the case. The BCAJP was not competent to hear and decide the case.

Orders on Question 1

43. The Panel made the following orders with respect to Question 1:
- 43.1. the referral by the BWF Council is admissible;
 - 43.2. the BCAJP was not competent to render the Decision;
 - 43.3. the IHP is competent to hear and decide on the matter; and

- 43.4. the matter shall proceed in accordance with the BWF Council decision.
44. As a result, the Panel made the following procedural orders:
- 44.1. the procedure shall continue on the basis that BCA is the Complainant and that Mabo is the Defendant;
- 44.2. the BWF shall no longer be a party to the procedure for the purposes of Question 2; and
- 44.3. the BCA is invited as “*Investigating Party*” to submit its complaint to the IHP within fourteen days of notification of this interim decision.
45. The Panel noted the following:
- 45.1. although the Panel had not expressly been requested to set aside the Decision, the operation of this interim decision has the same effect: the Decision is deemed null and void, and Mabo is no longer subject to a suspension;
- 45.2. although the BCA has been invited to submit its complaint within fourteen days of notification, that time limit is to provide for the efficient conclusion of this matter. The BCA may choose to not submit a complaint, or it may choose to submit its complaint at a later date, subject to the operation of the statute of limitations within the Procedures and/or Code of Conduct; and
- 45.3. the requirement in Article 15.4 of the Procedures to submit a complaint as “*Investigating Party*” to the BWF Referral Officer is not applicable; the referral of the BWF Council clearly required the IHP to hear the matter as a first-instance body if it decided on Question 1 in the manner that has occurred.

Notification

46. On 7 July 2023, the terms of the (interim) decision on Question 1 and the orders of the Panel were notified to the Parties.
47. On 20 July 2023, following a request by the BCA, the grounds of the (interim) decision on Question 1 and the orders of the Panel (all of which form paragraphs [3] to [45] above) were notified to the Parties.

C. DECISION ON QUESTION 2: CHRONOLOGY

48. Unless expressly set out otherwise below, any rulings of fact or law with respect to Question 1 should be taken to have been adopted in the determination of Question 2.

Procedural and Factual Chronology

49. This section outlines the key communications, factual circumstances, and procedural rulings which occurred with respect to Question 2 only. Not all items on the case file are recorded for reasons of relevance.
50. On 3 August 2023, the BCA submitted its complaint against Mabo in accordance with the direction of the Panel dated 7 July 2023 (“**IHP Complaint**”).
51. On 7 August 2023, the Legal Secretary to the IHP requested that the BCA provide within fourteen (14) days:
- 51.1. any evidence to support the IHP Complaint; and
 - 51.2. its position on whether Question 2 should be determined on the basis of an oral hearing or written submissions.
52. On 7 August 2023, the Legal Secretary to the IHP provided a copy of the IHP Complaint to Mabo.
53. On 21 August 2023, the BCA provided a written submission and twelve (12) annexures to support the IHP Complaint (“**Supporting Evidence**”). It also submitted that Question 2 be determined on the basis of the written submissions.
54. On 28 August 2023, the Legal Secretary to the IHP provided Mabo with the IHP Complaint and Supporting Evidence and requested that he provide within twenty-eight (28) days:
- 54.1. his response to the IHP Complaint; and
 - 54.2. his position on whether Question 2 should be determined on the basis of an oral hearing or written submissions.
55. On 24 September 2023, Mabo provided his written response (“**IHP Response**”) and submitted that Question 2 be determined on the basis of the written submissions.
56. On 5 October 2023, the Legal Secretary to the IHP requested that the BCA provide within seven (7) days its position on the jurisdiction of the Panel to determine Question 2, which had been challenged in the IHP Response.
57. On 11 October 2023, the BCA provided its position on the jurisdiction of the Panel to determine Question 2.

58. On 11 October 2023, the BWF provided its (unsolicited) position on the jurisdiction of the Panel to determine Question 2.
59. On 20 October 2023, the Legal Secretary to the IHP notified the Parties that the submission phase of the procedure had now closed and that the Panel had decided to determine the matter based on the written submissions.
60. No further submissions or communications were received from the Parties.

Complaint

61. The IHP Complaint alleges four (4) violations of the Code of Conduct. The IHP Complaint is set out below in full:

I am writing this formal legal complaint on behalf of the Badminton Confederation Africa (BCA), as per the instructions provided by the recent ruling of the Badminton World Federation Independent Judicial Panel (IHP). The Panel determined that the Badminton Confederation Africa Judicial Panel did not have Jurisdiction to hear the initial complaint brought forward by the Badminton Association of Zimbabwe (BAZ) against Mr. Donald Mabo ("Mr. DM"). The case is now being referred to your esteemed panel to be heard as if for the first time.

I. Background

On September 29, 2022, the Judicial Panel of the Badminton Confederation Africa heard a case involving several charges against Mr. Donald Mabo, the Chairperson of the Athletes Commission of the Badminton Confederation Africa. The charges and the decisions of the Panel were as follows:

Charge 1: Dismissed - The Panel did not find Mr. DM guilty of making false and unfounded claims, as the charge was not adequately expatiated during the proceedings, and Mrs. Chipo Zumburani was not a party to the alleged meeting.

Charge 2: Guilty - Mr. DM was found guilty of stating that BCA had paid money to BAZ for championships, and the funds were allegedly pocketed without giving dues to the players.

Charge 3: Dismissed - The Panel accepted Mr. DM's explanation that the charge was assumptive and had no basis.

Charge 4: Dismissed - The Panel found that BAZ failed to substantiate how Mr. DM had tried to remove the BAZ President and other officials from their positions.

Charge 5: Dismissed - The Panel noted that Mrs. Zumburani did not raise the issue of clothing during the proceedings, and Mr. DM explained that the context referred to a player refusing to play due to a lack of proper clothing.

Charge 6: Guilty - Mr. DM accepted the charge, but he argued that information about Ghana's President's arrest was already in the public domain.

Charge 7: Guilty - Mr. DM admitted to knowing the affairs of the Council, given his position as a Council Member and Chair of the Athletes' Commission.

Charge 8: Guilty - Mr. DM accepted the charge but contextualized his statement as an attempt to motivate athletes and emphasize their power.

Please note: At no point in time at the level of the hearing did Mr. DM raise any objection pertaining to the jurisdiction of the BCA Judicial Panel hearing his case. It is worthy to note also that Mr. DM was clearly explaining his right to a legal counsel which he did not exercise and therefore it is humbly submitted that no knowledge of the law is not a defense.

II. Basis of the Legal Complaint

Considering the Judicial Panel's findings of guilt on Charges 2, 6, 7, and 8, we hereby present this legal complaint to the Independent Hearing Panel of the Badminton World Federation against Mr. Donald Mabo for misconduct and violations of the Badminton World Federation Code of Conduct for Elected Officials and the Constitution of the Badminton Confederation Africa.

Complaint 1.

Mr. DM stated that BCA had paid money to BAZ for the Championships, and they allegedly pocketed the fund and players were not given their dues, yet as a Council Member and a BCA Athletes Chair, was privy to how the Member Associations use the grants received from the BCA to support their teams. Mr. DM instead chose to peddle false hoods bringing disrepute to the BCA and did not act as an official worthy to represent the organization, contravening Article 1 Clause 1.1 of the BWF code of conduct for elected officials: To ensure and maintain the highest standards of conduct for elected officials of the BWF and its Continental Confederations.

Complaint 2.

Mr. DM compared the Zimbabwe context to Nigeria, Ghana and Kenya and showed the players confidential emails that he received as a Badminton Confederation Africa Council Member, acting beyond his powers, Contrary to Article 4 Clause 4.4 of the BWF Code of Conduct for elected officials Duties to Exercise Powers: Elected Officials shall exercise and delegate only those powers which are so defined in the rules for the body they represent.

Complaint 3.

Mr. Mabo declared that as a Badminton Confederation Africa Council Member he knew everything that was going on in the Badminton Confederation Africa. He further stated as the Chair of the Badminton Confederation Africa Athletes' Commission, his duty was to empower all athletes and tell them the truth. Contrary to Clause 4.2 read together with Clause 4.4

Complaint 4.

Mr. DM further misguided players by saying that he can do and say whatever he pleases on the Badminton Confederation Africa Council. He could be fired by anybody, not even the President nor Secretary General" Contrary to clause 4.4 of the Code of ethics of the BWF elected officials.

III. Conclusion

We urge the Independent Hearing Panel to conduct a thorough review of the evidence, arguments, and submissions presented in this legal complaint and make a fair and just

decision in this matter. The integrity of the sport and its governing bodies must be upheld, and appropriate measures must be taken to ensure that elected officials adhere to the highest standards of conduct.

We trust that your panel will diligently address this matter, and we are available to provide any further information or assistance you may require in reaching a resolution.

D. DECISION ON QUESTION 2: APPLICABLE RULES

Jurisdiction

62. Article 31 of the BWF Constitution recognises the IHP as a judicial body of the BWF.
63. The IHP is authorised by Article 29 of the BWF Constitution to “*penalise a Member, player, coach, competition official, or other person for infringement of the Statutes, for misconduct during competition, or for actions that bring the game of Badminton or the Federation into disrepute.*”
64. In accordance with Article 7.5 of the Procedures, the IHP has jurisdiction to decide matters, *inter alia*, regarding alleged breaches of the “*Code of Conduct for Elected Officials (BWF Statutes, Section 2.2.2)*”.
 - 64.1. The Panel noted (as set out in **Part B** above) that this matter was originally referred to the IHP in the form of two questions on agreement of the Parties, through Article 7.5.6 of the Procedures as a decision decided by the BWF Council.
 - 64.2. As a result of its orders following its decision on Question 1 (set out at [43] to [45] above), this matter was to be heard by the Panel as a first-instance body if BCA chose to exercise its right as “*Investigating Party*” to submit the IHP Complaint.
 - 64.3. As such, the procedure relating to Question 2 shall occur in accordance with the Procedures; the only exception being the decision of the Panel in Question 1 that Article 15.4 of the Procedures (requiring the matter to be assessed by the Referral Officer) was non-applicable.
65. Mabo challenged the jurisdiction of the IHP to determine Question 2 in the IHP Response. The challenge is set out in full below:
 - 4.1 *There is currently no valid complaint before the IHP;*
 - 4.1.1 *In terms of the BWF Complaints procedures, complaints connected with the handling of governance areas under the BWF Constitution may only be filed by the relevant Member Association.*
 - 4.1.2 *It is common cause in this case that the complaint herein was not lodged by the Badminton Association of Zimbabwe and instead was lodged by BCA.*

4.1.3 Further to the above, the complaint was not lodged within 10 days from the facts giving rise to the complaint. It must, in this regard, be noted that the ignorance by Badminton Association of Zimbabwe that BCA did not have the jurisdiction to hear the complaint cannot be used as an excuse for its failure to lodge the complaint within the stipulated 10 days.

4.2 The involvement of BCA in this matter could only have been in the capacity of Investigating Party;

4.2.1 In terms of Part 4, paragraph 10.1 of the BWF Judicial Procedures, “Continental Confederations shall have the power to initiate and/or to pursue investigations into the potential or alleged breaches of the Statutes and/or regulations subject to their jurisdiction as set out in the following articles and when doing so shall be the ‘Investigating Party’.”

4.2.2 It is common cause, however, that the participation of BCA in this matter was that of an arbiter in the dispute. BCA’s referral of the dispute to the IHP to be heard de novo is not authorized by any provision of the BWF statutes and is, consequently, invalid.

4.2.3 Further BCA’s insistence on disciplinary action being taken against me instead of advising BAZ to lodge the complaint if it is so minded to pursue it any further amounts to a gross abuse of the BWF process as it is no longer the interests of BAZ but those of BCA being pursued against me.

4.3 The complaint as currently couched does not comply with the requirements of clause 32 of BWF Constitution:

4.3.1 Clause 32 of the BWF Constitution provides that:

“The judicial bodies of the Federation shall provide fair procedures to all parties involved and shall respect their fundamental rights. They recognise in particular:

32.1 that a person who may have a conflict of interest shall not be a member of the decision-making body;

32.2 the right of the person charged to know the charge;

32.3 the right to know the penalties which might be imposed;

32.4 and at their own expense, the right to be heard, to present a defense, to produce evidence and to be assisted by counsel.”

4.3.2 It is my considered view that there are currently no charges levelled against me and instead, the email of 3rd August 2023 only contains vague complaints and duplicated allegations of breaches of BWF Code of Conduct for Elected Officials.

4.3.3 Further to the above, I have not been advised, to date, of the penalties which might be imposed on me for the allegations of BCA. This constitutes a direct violation of the BWF Constitution.

4.4 In the premises of the above, it is my considered position that the IHP should dismiss the complaints levelled against me by BCA.

66. The BCA provided the following position in response (set out in full):

Mr. Mabo's assertion that there is a lack of jurisdiction in this matter has been duly noted. However, it is important to emphasize that this issue should have ideally been raised before the submission process commenced. As per established legal procedures, questions of jurisdiction are typically addressed at the outset of any legal process to avoid unnecessary delays and complications.

We understand the importance of ensuring a fair and transparent process, but it is essential to adhere to established legal procedures and timelines. Therefore, we respectfully request that the hearing proceed as scheduled, based on the existing framework.

67. The BWF provided the following (unsolicited) position on jurisdiction (set out in full):

If the Panel deems it relevant, we would like to intervene on the topic of jurisdiction only. Essentially, we would argue that:

- *The BCA has the power to investigate Mr Mabo's case, and to refer the case to the IHP.*
- *The IHP has jurisdiction over the dispute.*
- *The Judicial Procedures – not the Complaint Procedures – are applicable to the dispute. Indeed, the 'complaints' were mischaracterised as "governance-related complaints", while they were really charges (the specificity of which is being questioned by Mr Mabo). The section on "Governance-related complaints" of the Complaint Procedures is meant to address complaints by member associations who would feel aggrieved, for example, by how procedures at an AGM were followed.*

68. Having considered the positions of the Parties and the BWF, the Panel made the following decision on its jurisdiction to determine Question 2:

- 68.1. as a threshold issue and as set out in the (interim) decision on Question 1, this matter has been referred to the Panel via the BWF Council following agreement of the Parties to proceed in such matter. Furthermore, the Panel has original jurisdiction to determine matters relating to potential violations of the Code of Conduct. Given such, the Panel *prima facie* has jurisdiction to determine Question 2;
- 68.2. the challenges by Mabo are incorrect in both fact and law, and therefore dismissed accordingly;

- 68.3. the first challenge incorrectly references the BWF Complaint Procedures. Those rules do not govern disciplinary and ethics matters, which are governed by the (BWF Judicial) Procedures. As set out above, Article 7.5 of the (BWF Judicial) Procedures expressly provides the IHP with jurisdiction to determine alleged violations of the Code of Conduct; there is no mention of such in the BWF Complaint Procedures. Simply put, they have no application at all to the determination of the current matter;
- 68.4. the second challenge alleges that BAZ was the proper party to lodge the IHP Complaint. The challenge fails to acknowledge that the BCA has the power and right to both investigate the matter and lodge a complaint as an “*Investigating Party*” pursuant to the Procedures. As set out in the orders following its (interim) decision on Question 1 (which Mabo received in full prior to submitting the IHP Response), the Panel specifically identified the BCA as an “*Investigating Party*” and requested it submit the IHP Complaint in accordance with the Procedures;
- 68.5. the third challenge alleges that Clause 32 of the BWF Constitution was violated in that Mabo failed to receive protected procedural rights. This is not the case. Clause 32.2 sets out that Mabo has the “*right to know the charge*” against him. Mabo was provided with the full IHP Complaint and Supporting Evidence (which set out the alleged violations of the Code of Conduct). Clause 32.3 sets out that Mabo has “*the right to know the penalties which might be imposed.*” Mabo is clearly aware of the applicability of the Procedures to this matter; specifically, Article 41.1 of the Procedures sets out the penalties which might be imposed by the IHP on “*Covered Persons*” such as Mabo, as identified in the (interim) decision on Question 1. Both protected procedural rights provided for in the BWF Constitution have thus been appropriately complied with.
69. As a result, the Panel has jurisdiction to hear this matter.

Burden of proof and standard of proof

70. Article 32.2 of the Procedures provides that the “*burden of proof regarding an allegation of breach rests on the Investigating Party*”. In this matter, this is the BCA.
71. Article 32.1 of the Procedures states that the “*standard of proof...shall be the balance of probabilities...a matter will be found proved if it is more likely to have occurred than not*”.

Violations

72. Mabo is alleged to have violated the following provisions of the Code of Conduct:

1. PURPOSE

1.1 To ensure and maintain the highest standards of conduct for elected officials of the BWF and its Continental Confederations.

4. SPECIFIC PROVISIONS FOR CONDUCT

Elected Officials are required to follow the specific provisions outlined in this Code of Conduct:

...

4.2 Duty of Diligence and to Act in Good Faith: *Elected Officials must become familiar with and abide by the regulations and the terms of reference of the body they were elected to.*

Elected Officials must be familiar with the governance and operations of the body they represent, through attending meetings and reviewing the minutes of missed meetings and to keep up to date with all the material provided to the meetings on which basis decisions are made.

Elected Officials must reasonably attend all meetings for the body they represent.

...

4.4 Duties to Exercise Powers: *Elected Officials shall exercise and delegate only those powers which are so defined in the rules for the body they represent.*

E. DECISION ON QUESTION 2: PROCEDURAL REQUEST(S), EVIDENCE, POSITIONS OF THE PARTIES

73. Below is a summary of the relevant facts and allegations based on the Parties' written submissions, pleadings, and evidence. Additional facts and allegations found in the written submissions, pleadings and evidence may be set out, where relevant, in connection with the findings at **Part F**.

Evidence

74. The Supporting Evidence is set out in full below:

1. *On 25 March 2022, BCA received a complaint from the Badminton Association of Zimbabwe (BAZ) against the Chair of the BCA Athletes Commission, Mr. Donald Mabo (Annex 1). The complaint relates to Mr. Donald Mabo's conduct during the All-Africa Senior Championships 2022 which was held in Uganda from 14 to 20 February 2022, where Mr. DM was on official duty for the BCA as Chairperson of Athletes Commission and de facto Council Member.*
2. *BAZ alleged that DM conducted a meeting with the Zimbabwe players present in Uganda (Annex 2), without the knowledge of the association as there were no officials who accompanied the team. During that meeting, BAZ alleged that DM lied to players, interfered in their local politics, accused BAZ officials of siphoning funds and equipment, encouraged the players to rebel against the association by engaging media and other stakeholders.*
3. *BAZ also alleged that DM compared the 'Zimbabwe situation' to ongoing governance cases in Kenya, Nigeria and Ghana. In addition, some information mentioned in the BAZ complaint regarding Ghana are confidential and known to the BCA Council only and the BWF. This matter is currently being investigated by the BWF. Note: the last part was not in the BAZ complaint but included as findings in the PIC report – see number 24 below and Annex 9.*
4. *BAZ added that the players believed the claims of the DM and thereafter acted on his recommendation. This eventually resulted in the regulatory sports body in Zimbabwe to start an investigation that BAZ is now responding to.*

5. *In BAZ opinion, DM action brought much harm to the association, the sport in Zimbabwe, the relationship with their players and they risked losing their license to their regulator.*
 6. *On receipt of the complaint, the Executive Board met on 29 March and decided to set up a Preliminary Investigation Committee (PIC) composed of 3 EB members (out of 7) to assess the validity of the claims made by BAZ.*
 7. *On 31 March 2022, the PIC, through the BCA Secretariat, wrote to both parties (BAZ & DM) to inform them of the setting up of the PIC (Annexes 3 & 4).*
 8. *On 5 April 2022, the PIC requested BAZ for further submission and evidence of the claims made (Annex 5). BAZ then submitted an audio recording (Annex 6) of the alleged meeting held by DM with the Zimbabwe players in Uganda.*
 9. *On 5 May 2022, the PIC wrote to the DM, through the BCA Secretariat, and asked for his response to the allegations made by BAZ (Annex 7).*
 10. *On 12 May 2022, DM sent his reply (Annex 8).*
 11. *On 24 May 2022, the PIC submitted their report and recommendation to the EB (Annex 9). Note: The President of BAZ, Mrs. Chipo Zumburani, is the Treasurer of BCA and a member of the EB. She was excused during all EB meetings, deliberations and communications in regards to this case.*
 12. *On 26 June 2022, the BCA Council met in South Africa and decided to forward the case to its Judicial Panel. During the discussion, both DM and Chipo Zumburani were excused. It was also decided that DM to step down and thus be excluded from the BCA Council, until the end of the hearing process. Another member of the Athletes Commission to be invited to sit on Council in the interim.*
 13. *On 29 June 2022, BCA was in possession of an apology letter sent by DM to BAZ (Annex 10).*
 14. *On 6 July 2022, the Chair of the Judicial Panel, Mrs. Odette Assembe Engoulou, appointed the Hearing Panel for this case as per the provision of BCA's Constitution.*
75. The documents provided as part of the Supporting Evidence are described below:
- 75.1. Annex 1: the initial complaint made by the BAZ to the BCA on 25 March 2022. The complaint includes an approval letter from the Zimbabwe Sports and Recreation Commission for the BAZ athletes to participate in the All Africa Championships 2022, an email from BCA providing the financial support to be given to BAZ to participate in the competition, an email from BAZ to BCA requesting payment of the team hotel bill at the competition, and a copy of the BAZ Annual Report 2020;
 - 75.2. Annex 2: the team list for the BAZ team at the All Africa Championships 2022;

- 75.3. Annex 3: letter dated 31 March 2022 from BCA to BAZ confirming receipt of the Complaint and decision to establish the IPIC;
- 75.4. Annex 4: letter dated 31 March 2022 from BCA to Mabo notifying of the Complaint and decision to establish the IPIC;
- 75.5. Annex 5: letter dated 5 April 2022 from the IPIC to the BAZ requesting provision of further submissions and evidence;
- 75.6. Annex 6: purported recording of the meeting held between Mabo and the BAZ athletes (“**Recording**”) at the All Africa Championships 2022 (“**Meeting**”). The Recording lasts approximately forty-two (42) minutes. The matters stated (if the lead voice is presumed to be that of Mabo) generally accord with those outlined in the IHP Complaint;
- 75.7. Annex 7: letter dated 5 May 2022 from the IPIC to Mabo setting out eight (8) allegations made against him by BAZ and requesting his response;
- 75.8. Annex 8: letter dated 12 May 2022 from Mabo to the IPIC responding to and denying the allegations made against him by BAZ. Pertinently, Mabo noted in the latter that no specific violations of any regulations had been put to him;
- 75.9. Annex 9: IPIC decision dated 24 May 2022 to refer the matter to the BCAJP. This letter identified the provisions of the BCA and BWF regulatory framework that Mabo was alleged to have violated;
- 75.10. Annex 10: letter dated 29 June 2022 from Mabo to BAZ apologising for the meeting with BAZ athletes at the All Africa Senior Championship 2022;
- 75.11. Annex 11: email dated 11 July 2022 from BCA to BAZ notifying of the IPIC decision to refer the matter to the BCAJP;
- 75.12. Annex 12: email dated 11 July 2022 from BCA to BAZ notifying of the IPIC decision to refer the matter to the BCAJP and setting out his procedural rights.

IHP Response

76. The IHP Response provides Mabo’s defence to the IHP Complaint. The relevant sections are set out in full:

Response to the BCA Complaints

5. *In terms of Complaint 1, I am alleged to have contravened Article 1, clause 1.1 of the BWF Code of Conduct for Elected Officials. Clause 1.1 states the purpose of the Code of Conduct only. There is, therefore, no allegation that I breached any of the duties imposed upon me in clause 4 of the Code of Conduct.*
6. *In Complaint 2, BCA alleges that I have acted beyond my powers contrary to clause 4.4 of the BWF Code of Conduct for Elected Officials. The said clause 4.4 provides that “elected Officials shall exercise and delegate only those powers which are so*

defined in the rules for the body they represent.” It is not clear how my meeting with BAZ players went beyond my powers as the Chairperson of the Athletes Commission.

7. *Under Complaint 3, BCA alleges that I violated clause 4.2 as read with clause 4.4 of and I assume these are the clauses in the Code of Conduct for Elected Officials. In particular, I am alleged to have stated that I knew everything that was going on in the BCA and that I had a duty to empower athletes and to tell them the truth. It is, however, unclear how I violated the Code of Conduct.*
8. *With respect to Complaint 4, it is worth noting that the BWF Code of Ethics does not have a clause 4.4. It is, therefore, unclear how what I am alleged to have said violates a non-existent clause in the BWF Code of Ethics.*
9. *By way of a general response to the allegations made by BCA against me, I state that:*
 - 9.1 *The BCA allegations arose from a number of complaints that were brought to my attention by Zimbabwean Athletes over how the Badminton Association of Zimbabwe was treating them.*
 - 9.2 *The Complaints ranged from the BAZ allegedly forcing the athletes to sign Indemnity forms which indicated that the players would take personal responsibility for any injuries, loss or damage to property they were to sustain.*
 - 9.3 *According to the players, they were forced to pay for their PCR tests, they lacked playing equipment and uniforms, were not given allowances. Their other complaints related to lack of preparation and the hand picking of Athletes, lack of information regarding the trip to Uganda and embarrassment they felt when they received donations from an Egyptian Player Adham Hatem.*
 - 9.4 *It is important to note from the onset that I did not convene the meeting with the Zimbabwean athletes in Uganda but was only invited to attend their meeting in my capacity as Chairperson of the Athletes Commission.*
 - 9.5 *It is a fact that each Member Association participating in the Africa Senior Championship receives a Grant whenever they are attending the Competition and this is the fact that I communicated to the athletes. This is common practice and the BCA can confirm this position. What I did not state, however, during the Meeting was that the funds were pocketed by the BAZ.*
 - 9.6 *During the meeting I merely advised the athletes of the options available to them if they strongly felt that their complaints were justified because at that point, I considered their complaints were an internal affair at that stage.*
 - 9.7 *During the meeting I came to learn that the reason why a Zimbabwean Athlete, Ashel Dsiva, never played against a Zambian Player Kalombo Mulenga was because he felt embarrassed to go on Court for lack of good presentable playing Kit and equipment . If this is true, then it is indeed sad.*

9.8 *I never shared confidential emails but merely discussed the WhatsApp conversations relating to Kenya, Nigeria and Ghana. For the record, issues relating to Kenya, Nigeria and Ghana were all over the media at the time and were, consequently, in the public domain and the players were already aware of them.*

9.9 *As a Member of BCA Council, I am expected to have knowledge of what goes on in the BCA, which I do. The reason why am there is to represent the views of athletes and to ensure that their voices are heard and taken into account by the BCA at all times. Above all, I have a duty to represent the rights and interests of the players to the BCA Council and to ensure the athletes' voices are heard at the highest level of Badminton.*

9.10 *I wish to conclude by stating that I never abused my office as Chairperson of the BCA Athletes Commission but as you may be aware it is my duty to look into the welfare of athletes and bridge the gap between Athletes and Continental body.*

9.11 *On the contrary, it is my considered view that the BCA is the one that is involved in the abuse of the BWF procedures in order to protect the BAZ President, who is a Member of the World Badminton Federation and also a Member of the Badminton Confederation of Africa, holding a Treasury position.*

F. DECISION ON QUESTION 2: FINDINGS

77. While the Panel has carefully considered all the facts, evidence, allegations, and arguments submitted, the Panel refers in these findings only to the submissions and evidence it considers necessary to explain its reasoning.
78. The Panel noted the jurisprudence of the Court of Arbitration for Sport (CAS) when dealing with the assessment of evidence. In this matter, the standard of proof is one of balance of probabilities.
79. In a recent decision involving the BWF, the CAS stated “...*the application of any standard of proof must take into account the nature of the allegation and the potential consequences against the person charged with the offence...As such the Panel considers it necessary... to have "a high degree of confidence in the quality of the evidence" supplied by the Respondent in discharging the standard of proof.*” (CAS 2020/A/7606 *Nikita Khakimov v. BWF*).

Threshold evidentiary matters

80. As a threshold evidentiary matter, the Panel addressed the issue of the Recording.
81. The Panel was concerned that no evidence had been presented regarding its legality (particularly with respect as to whether it was legally or illegally obtained), its veracity and authenticity, the chain of custody of the recording, the identity of the parties present, the identity of the voices heard, and the privacy rights of the individuals heard.

82. Notwithstanding these concerns, Mabo had not challenged the Recording in any manner – whether as to its legality, the veracity of the statements attributed to him, that his voice purportedly appeared on the Recording, or the veracity of the Recording as a whole.
83. The Panel noted that a meeting with the BAZ athletes had certainly occurred (as admitted by Mabo), and given Mabo’s lack of concern, the Recording was likely a recording of that meeting.
84. In this respect, the Panel decided that it would approach the Recording with caution but admit it as evidence to be considered as part of its decision on Question 2.

Complaint 1

85. Complaint 1 alleges that Mabo had stated in the Meeting that BCA had paid money to BAZ for the All-Africa Senior Championships 2022 and had “*pocketed*” that money. The statement is alleged to have been in contravention of Article 1.1 of the Code of Conduct.
86. Mabo denies making that statement and posited that Article 1.1 was not possible to be violated by any individual.
87. The Panel agreed with Mabo’s position.
 - 87.1. Article 1.1 does not place any duty or personal obligation on an individual bound by the Code of Conduct.
 - 87.2. Rather, based on the construction of the Code of Conduct, being both the first clause and found under the heading “*Purpose*”, Article 1.1 is very clearly designed as a general statement of purpose for the Code of Conduct itself.
 - 87.3. In this respect, Article 1.1 was not one which could ever be breached by the action or inaction of an individual bound by the Code of Conduct.
88. As such, whether the alleged statement was made by Mabo was therefore irrelevant.
89. Given this, the Panel dismissed the complaint.

Complaint 2

90. Complaint 2 alleges that Mabo had, in the Meeting, compared the situation of the BAZ athletes to others within Africa and showed confidential emails that he received as a BCA Council Member. These actions were said to be “*acting beyond his powers*” in violation of Article 4.4 of the Code of Conduct.
91. Article 4.4 provides that “*Elected Officials shall exercise and delegate only those powers which are so defined in the rules for the body they represent*”.
 - 91.1. Mabo is an “*Elected Official*” for the purposes of the Code of Conduct.
 - 91.2. The complaint refers to conduct undertaken directly by Mabo (i.e. “*exercised*”), as opposed to conduct delegated to a third-party.

92. The question for the Panel was therefore whether the conduct of Mabo was an exercise beyond the powers defined in the rules for the BCA Council or the BCA Athletes' Commission (i.e. the bodies he was purporting to represent at the time of the Meeting).
93. After reviewing the Recording, the Panel:
- 93.1. was satisfied on the balance of probabilities that Mabo had compared the situation of Zimbabwean athletes with those from other African countries; and
- 93.2. was not satisfied on the balance of probabilities that Mabo had showed confidential emails obtained in his capacity as a BCA Council Member. Mabo stated in the IHP Response that he had discussed WhatsApp conversations relating to those countries. No evidence was provided by the BCA beyond the mere assertion that confidential emails had been referred to; the Recording confirmed that Mabo showed his phone screen to attendees of the Meeting, but nothing was stated about the source of the information shown.
94. In any event, it was unclear to the Panel as to how the conduct of Mabo would be considered conduct exercised beyond the powers of the BCA Council or the BCA Athletes' Commission.
- 94.1. The concept of "*powers*" from a governance perspective generally means the authority, usually deriving from a written document (e.g., a constitution, regulation, or terms of reference), to undertake a certain act or task. Acting "*beyond*" those "*powers*" would generally occur if the person or body that was granted certain powers acted in a manner (e.g. make a decision) which was either within the powers of another person or body or which was not set out within its own powers.
- 94.2. A generic example of acting beyond power would be the executive body of a sports federation making a disciplinary decision when the exclusive power to make such decisions is granted to the judicial body by the company constitution.
- 94.3. The "*powers*" of the BCA Council are set out in Clause 13 of the BCA Constitution ("*roles and responsibilities*") and refer to matters such as implementing the decisions of General Meetings, appointing the Judicial Panel, and developing the strategic plan of the BCA.
- 94.4. The "*powers*" of the BCA Athletes' Commission are set out in Clause 1 of the BCA Athletes' Commission Terms of Reference ("*responsibilities*") and refer to matters relating to liaison with and education of African badminton athletes.
95. The actions of Mabo that had no correlation to the powers of either body; nor does the Panel find that had he acted beyond those powers, whether in an official capacity as a "*Covered Person*" or in his own personal capacity.
96. Given this, the Panel dismissed the complaint.

Complaint 3

97. Complaint 3 alleges that Mabo had, in the meeting, declared that as a BCA Council Member he “*knew everything that was going on in the BCA*” and that as Chair of the BCA Athletes’ Commission, his “*duty was to empower all athletes and tell them the truth*”. These statements were alleged to have violated Article 4.2 read together with Article 4.4 of the Code of Conduct.
98. Article 4.2 imposes three (3) specific duties on “*Elected Officials*”. Mabo is clearly an “*Elected Official*” for the purposes of the Code of Conduct. The duties are:
- 98.1. “*Elected Officials must become familiar with and abide by the regulations and the terms of reference of the body they were elected to*”;
- 98.2. “*Elected Officials must be familiar with the governance and operations of the body they represent, through attending meetings and reviewing the minutes of missed meetings and to keep up to date with all the material provided to the meetings on which basis decisions are made*”; and
- 98.3. “*Elected Officials must reasonably attend all meetings for the body they represent.*”
99. After reviewing the Recording, the Panel was satisfied on the balance of probabilities that Mabo had made the statements alleged (or words to those effects) in the Meeting.
100. The operation of Article 4.4 and applicability to Mabo is described at [94] above.
101. It was unclear to the Panel as to how Mabo, making those statements, violated any of the duties outlined in Article 4.2 or acted beyond the powers of the BCA Council or BCA Athletes’ Commission in violation of Article 4.4.
- 101.1. The duties of “*Elected Officials*” set out in Article 4.2 refer specifically to knowledge of the BCA Athletes’ Commission Terms of Reference and the governance of Commission meetings. They are completely irrelevant to the conduct referred to in the complaint.
- 101.2. The actions of Mabo had no correlation to the powers of either body; nor does the Panel find that had he acted beyond those powers, whether in an official capacity as a “*Covered Person*” or in his own personal capacity.
102. On the contrary, the Panel found it concerning that the BCA would consider that the Chair of the BCA Athletes’ Commission would be in violation of its rules by merely stating to athletes within his jurisdiction that his role was “*to empower athletes and tell them the truth*”. One would think that this was precisely the role of the Chair of a body representing the interests of athletes.
103. Given this, the Panel dismissed the complaint.

Complaint 4

104. Complaint 4 alleges that Mabo had, in the Meeting, misguided those athletes by stating that he can “*do and say whether he pleases on the BCA Council*” and that he could [not]

be fired by anybody. This was alleged to have violated “*clause 4.4 of the Code of ethics of the BWF elected officials.*”

105. After reviewing the Recording, the Panel was satisfied on the balance of probabilities that Mabo had made the statements alleged (or words to those effects) in the Meeting.
106. The Panel noted that this complaint cited the BWF Code of Ethics (as opposed to the Code of Conduct) as having been violated. The BWF Code of Ethics does not have an Article 4.4.
 - 106.1. The Panel proceeded on the basis that the BCA had made an error and instead meant to cite Article 4.4 of the Code of Conduct.
 - 106.2. The Panel did not consider that taking this approach caused harm to Mabo in any way, considering its decision below.
107. The operation of Article 4.4 and applicability to Mabo is described at [94] above.
108. It was unclear to the Panel as to how Mabo, making those statements, acted beyond the powers of the BCA Council or BCA Athletes’ Commission in violation of Article 4.4.
109. The actions of Mabo had no correlation to the powers of either body; nor does the Panel find that had he acted beyond those powers, whether in an official capacity as a “*Covered Person*” or in his own personal capacity.
110. Given this, the Panel dismissed the complaint.

Conclusion

111. Considering its determinations regarding the four (4) complaints, the Panel determined that the IHP Complaint be dismissed in full.

Costs

112. Having heard no submissions on costs, the Panel made no order as to costs, whilst noting that it may be requested to make a costs order in future, in accordance with Article 40 of the Procedures.

DECISION ON QUESTION 1

1. The referral of the matter by the BWF Council is admissible.
2. The Badminton Confederation Africa Judicial Panel was not competent to render the decision dated 10 February 2023.
3. The Independent Hearing Panel is the competent body to hear and decide on the matter.
4. The matter shall proceed in accordance with the instructions on Question 2 as referred by the BWF Council.

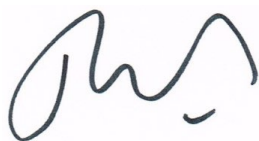
DECISION ON QUESTION 2

1. The Independent Hearing Panel has jurisdiction to determine Question 2.
2. The complaint dated 3 August 2023 of the Badminton Confederation of Africa is dismissed in full.

Note: This reasoned decision is communicated within 45 days of the date of the conclusion of the hearing, in accordance with Article 35.3 of the BWF Judicial Procedures.

The 21-day time limit to appeal to the Court of Arbitration for Sport commences after the service of the reasoned decision, in accordance with Article 38.1 of the BWF Judicial Procedures.

In accordance with Article 40 of the Procedures, a party may apply to the hearing panel to make an order for costs, but such application shall be made within 7 days of the notification to that party of this reasoned decision.



Enric Ripoll

James Kitching

Yuri Yagi

(Chair, on behalf of the Panel)

7 December 2023