

## **Decision**

**(with grounds for decision)**

rendered by

**Francois Strydom**  
**Chairman, BIIU DRC**  
**(sitting as Sole Arbitrator)**

In the matter

**DRC Case no. 1/2023**  
**“Challenge of postponement of**  
**AFBC Extraordinary Congress”**

between

**Mr Moses Muhangi**

**- Claimant**

and

- 1) Mr Siena Azania Omo-Agege**  
**(personally)**
- 2) The AFBC Board of Directors**  
**(as a body)**

**- Respondents**

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### Parties

1. The Claimant is Mr Moses Muhangi of Uganda.
2. The Respondents are:
  - 2.1 Mr Siena Azania Omo-Agege of Nigeria.
  - 2.2 The Board of Directors of the African Boxing Confederation (AFBC).

### Background

3. On 30 September 2023 the AFBC Board of Directors resolved to postpone the AFBC Extraordinary Congress scheduled for 13 October 2023 at which an election for the AFBC presidency was to take place. The AFBC Board also passed decisions or comment on a few other issues as appear from the Minutes of the Board meeting.
4. On 3 October 2023 the Claimant, a candidate in the AFBC presidential elections, submitted a complaint about the postponement of the AFBC Extraordinary Congress and the alleged conflict experienced by Mr Omo-Agege, the Interim AFBC President but also a candidate in the presidential elections. The complaint was directed to IBA, the BIIU and the AFBC Ethics Committee.
5. On 4 October 2023 the BIIU Managing Director, pursuant to his powers under Art. 4 of the BIIU Procedural Rules, invited further submissions from the Claimant regarding the admissibility of the case before the BIIU.
6. On 4 October 2023 the Claimant amplified his complaint and addressed the issue of admissibility.
7. On 6 October 2023 the BIIU Managing Director referred the Claimant's complaint to the DRC Chairman for the purpose of the opening of proceedings before the DRC.
8. On 9 October 2023 the DRC Chairman registered the case, opened the procedure and notified all parties of the DRC proceedings.
9. The Respondents were afforded an opportunity to deliver their written submissions by no later than 11 October 2023 at 13:00. This short deadline was necessitated by the proximity of the original elections date of 13 October 2023.
10. The written response of the AFBC Interim President, Mr Omo-Agege was received on 10 October 2023 at 21:52. No separate response was received on behalf of the AFBC Board of Directors.

### Procedure

11. This matter is dealt with the DRC Chairman, sitting as Sole Arbitrator, as provided for in art. 31.3(a) of the BIIU Rules.
12. Given the urgency of the matter, this case was conducted on an expedited basis with one round of submissions to be received from each side and the case decided based on the documentary evidence alone without an oral hearing.
13. The Sole Arbitrator has carefully considered all the parties' contentions and requests for relief, whether recorded or summarized herein, or not. This decision document records the main grounds for the decision and does not purport to be an exhaustive account of the Sole Arbitrator's reasoning. It is pointed out that the decision was prepared in very urgent circumstances.

### The Issues & Respondent's answer

14. The Respondents were invited to additionally address the following issues in their written submissions for consideration by the DRC:
  - 14.1 The jurisdiction of the DRC to hear the complaint.
  - 14.2 Whether Mr Omo-Agege experienced a conflict of interest in convening, chairing, and participating in the meeting of the AFBC Board of Directors on 30 September 2023?
  - 14.3 If there was an impermissible conflict of interest on the part of Mr Omo-Agege, whether this (a) rendered void all the decisions taken at the meeting, or (b) rendered all or some of the decisions voidable by the DRC considering all relevant circumstances, or (c) such conflict of interest is irrelevant to the validity of the decisions?
  - 14.4 What would be the practical consequences if the Claimant's complaint is upheld and the

postponement of the the AFBC Extraordinary Congress scheduled for 13 October 2023 declared void?

15. It was also pointed out to the Respondents that the DRC shall not consider whether a breach of IBA Regulations and AFBC Regulations have taken place with a view of imposing a sanction under any Disciplinary and Ethics Code or Code of Conduct. This is the responsibility of the relevant judicial body of the AFBC or, possibly, by the BIIU Tribunal (see art. 25 of the BIIU Rules).
16. According to Mr Omo-Agege's written response:
  - 16.1 The Respondents do not object to the jurisdiction of the DRC to hear the complaint.
  - 16.2 It is denied that Mr Omo-Agege experienced a conflict of interest during the Board meeting. Reliance is placed on the general powers of the AFBC President as stated in Art. 30.1 (a), (b) and (g), namely, to convene and chair meetings of the Board and to perform other duties and tasks as he may be entrusted with by the Board. In addition, it is pointed out that the Board's decision was unanimous and Mr Omo-Agege's participation accordingly inconsequential.
  - 16.3 In terms of Art. 18.1(a) of the AFBC Constitution an Extraordinary Congress may be convened by the Board of its own motion at any time if considered necessary or desirable. Furthermore, the reasons for the postponement of the Extraordinary Congress are cogent and verifiable.
  - 16.4 It is alleged that the Claimant lacks *locus standi* to bring the present complaint as he is under disciplinary sanction by the AFBC at present. No details are given of the disciplinary procedure.
  - 16.5 Regarding Mr Omo-Agege's closing remarks at the Board meeting, which were minuted and objected to by the Claimant, the remarks in thanking Mr Luyoyo for his support in the upcoming elections were made in the spirit of promoting cooperation and strengthening unity, good friendship and brotherliness amongst the members of the AFBC Board of Directors.
  - 16.6 The Respondent requested the dismissal of the complaint for lacking in merit and for being frivolous and vexatious.

#### The main dispute

17. The Claimant objects to the fact that the Acting President convened and presided over the Board meeting of 30 September 2023 and voted upon the motion to postpone the Elective Congress which had been scheduled to take place in South Africa on 13 October 2023. As the Acting President is a Candidate in the Presidential elections, it is contended that the motion to postpone the elections created a conflict of interest for him and that he was accordingly precluded from chairing the Board meeting or taking part in it. The Claimant draws attention to the requirements of Art. 27.5 of the AFBC Constitution and Art. 40 of the AFBC Disciplinary Code.
18. Art. 27.5 of the AFBC Constitution reads as follows:

*"In the event that a motion put to a Board meeting in any way affects the position of the President and/or the Vice-President chairing the meeting, then neither shall preside over the debate and the vote on the motion. In such circumstances, those other Directors attending the meeting shall elect one of their number to preside over the meeting."*

19. To the above one may add Art. 27.8 of the AFBC Constitution which provides as follows:

*“All Directors shall be entitled to vote on all matters put to the vote at meetings of the Board; save only that any Director with a conflict of interest regarding such matter shall not be entitled to vote on the same.”*

20. Enforcement of the AFBC Disciplinary Code is a matter for the BIIU Tribunal and it is also for the Tribunal to decide whether a conflict of interest exists and whether it affect the performance of the duties of a person bound by the Code for purposes of evaluating whether a breach of the rule against conflicts of interests has taken place (Art. 40.4 of the Code).

21. However, although Art. 40 of the Code is not directly relevant in the present proceedings before the DRC, the description in Art. 40.2 of when a conflict arises is useful for present purposes. Art 40.2 reads as follows:

*“Any Person bound by this Code shall not perform his duties (in particular, preparing or participating in the taking of a decision) in situations in which an existing or potential conflict of interest might affect such performance. A conflict of interest arises if a Person bound by this Code has, or appears to have, secondary interests that could influence his ability to perform his duties with integrity in an independent and purposeful manner. Secondary interests include, but are not limited to, gaining any possible advantage for the Persons bound by this Code themselves or related parties.”*

22. In the light of the direct application of Art. 27.5 and 27.8 of the AFBC Constitution to the facts under consideration, the DRC concludes that the present dispute indeed arises from the provisions of the AFBC Constitution.

#### Jurisdiction

23. According to Art. 46.1 of the AFBC Constitution any dispute arising from the Constitution will be submitted exclusively to the Court of Arbitration for Sport for resolution. It is curious that no specific mention is made of the DRC as an intermediate dispute-resolution forum whereas elsewhere in the AFBC Constitution, for example, Art. 45, express recognition is given to the role of the BIIU Tribunal.

24. However, both Art. 5.7 and Art. 46.3 of the AFBC Constitution makes it clear that in the case of contradictions between the AFBC Constitution and Regulations and the IBA Constitution and Regulations, the latter shall prevail.

25. The Boxing Independent Integrity Unit (BIIU) is established by the IBA Constitution, see Art. 36 thereof. The BIIU Compliance Unit includes *inter alia* the Dispute Resolution Chamber (DRC) which shall be responsible to settle disputes in boxing within the scope of its competence. This competence is circumscribed by Art. 30 of the BIIU Rules. In terms of Art. 30(1) the DRC is competent to hear *inter alia* “disputes of international dimension arising from” the IBA Constitution and Regulations, as well as a Confederation Constitution and its Regulations.

26. The present dispute potentially affects all the national federation members of the African Confederation and thus clearly has an international dimension. As pointed out above, the present dispute arises directly from the provisions of the AFBC Constitution. It is accordingly found that the DRC does enjoy jurisdiction to adjudicate the present dispute in terms of the IBA Constitution, read with the BIIU Rules. To the extent that the AFBC Constitution provides otherwise, the position under the IBA Constitution prevails.

Locus standi of Claimant

27. It is common cause that the Claimant is a Candidate in the upcoming AFBC Presidential Elections, as approved by the BIU Nomination Unit. It follows that he has a direct and substantial interest in any decision regarding the elections. The DRC has insufficient evidence of the allegation by Mr Omo-Agege that the Claimant is under disciplinary sanction to assess the impact thereof on the Claimant's legal standing to bring the present complaint. It will thus be assumed in favour of the Claimant that he is not disqualified from bringing the present complaint.

Was there a conflict of interest?

28. Mr Omo-Agege is currently the Interim AFBC President, but he is also a Candidate in the upcoming AFBC Presidential elections. The relevant motion was to postpone the elections which were due to take place on 13 October 2023. The question to be answered is whether the motion affected, actually or potentially, the position of Mr Omo-Agege, or put differently whether he has a secondary interest in the sense of gaining any possible advantage, in his capacity as Candidate. It is sufficient for the existence of a conflict of interest if the danger exists that the secondary interest could influence his ability to perform his duties in an independent manner. In the assessment of the DRC, such a conflict indeed existed, and Mr Omo-Agege was thus precluded by Art. 27.5 and 27.8 of the AFBC Constitution from presiding over the meeting at the time that the motion to postpone the elections was considered and he was further precluded from voting on such motion.
29. It is pointed out that the mentioned conflict did not affect other business, unrelated to the elections, conducted at the Board meeting of 30 September 2023, nor the convening of the meeting as such. It is not correct, as contended by the Claimant, that the meeting was illegally constituted and as such that all decisions taken at the meeting were irreparably void.

What are the consequences of having acted in a conflicted manner?

30. The Claimant contends that the effect of Mr Omo-Agege having presided over the meeting and having voted on the motion to postpone the elections is that the resolution passed by the Board is irregular, illegal and void *ab initio*. Accordingly, the resolution should not be allowed to stand.
31. In law a distinction is drawn between acts which are automatically *void* and acts which are *voidable* at the election of an affected party or by decision of a judicial authority. Conflicted acts are usually of the second type because it is recognised that the conflicted act is not always or necessarily harmful for the organisation and may therefore be upheld despite of the conflict experienced by the official in the decision-making. The AFBC Constitution itself does not state that a breach of the prohibition against acting under a conflict of interest renders the relevant act or decision void or a nullity. Instead, indirect enforcement of the prohibition is sought by making the violation of the AFBC Constitution a regulatory offence (Art. 12 of the AFBC Disciplinary Code) and/or a breach of the Ethics Rules of Conduct (Art 40 of the Code) for which the offender may be sanctioned. In the view of the DRC the risk of such disciplinary steps is sufficient to deter officials from acting under a conflict of interest and it would be counter-productive if the conflicted act is tainted with nullity without a consideration of the circumstances and consequences operating in each case.
32. The DRC finds that, because of the Acting President's violation of Art. 27.5 and 27.8 of the AFBC Constitution, the Board decision to postpone the elections is merely voidable, and not void *in initio* as contended for by the Claimant.

Should the resolution to postpone the elections be declared void?

33. The DRC notes that the relevant decision was taken unanimously by the 10 directors present at the meeting. Two directors were absent. There is no reason to believe that if Mr Omo-Agege had not chaired the meeting and had not voted on the motion, that the other directors would have voted differently. A vote of 9 – 0 would still have been unanimous. The conflicted actions had no causal effect on the postponement of the elections. This is particularly so if one recognises that the Elective Congress was organised to take place on occasion of and parallel to the Mandela African Boxing Cup competition in South Africa and that this competition was postponed by the joint decision of IBA, AFBC and SANABO “*motivated by the difficulty most delegates have faced in obtaining visas , and the haste observed in the organization of the event which ultimately led to the postponement*” (according to an announcement published on the IBA website on 4 October 2023).
34. Another important consideration is the potential ramifications of a decision by the DRC at this juncture to the effect that the Board resolution to postpone the elections is void and accordingly that the elections must proceed on the original scheduled date of 13 October 2023, one day away from the date on which this decision is released. The postponement of the Elective Congress has been announced on the AFBC website on 4 October 2023 and notification presumably sent to all AFBC national federations simultaneously. Not only is a physical meeting impossible at such short notice, but also a virtual meeting with the necessary arrangements for electronic voting. Unfortunately, the horse has bolted, and the DRC cannot get it back into the stable in time by voiding the decision to postpone the elections.
35. In the circumstances the DRC declines to declare the postponement decision void and unenforceable. The Board’s decision to postpone the Extraordinary Congress stands.

Costs

36. In terms of Art. 85.2 of the BIIU Procedural Rules the Claimant was obliged to pay an advance of US\$ 500 in respect of the procedural costs of the proceedings upon submission of a claim before the DRC. This was not done, presumably because of the urgency of the matter.
37. In terms of Art. 85.5 of the Procedural Rules the DRC will decide the amount that each party is due to pay, in consideration of the parties’ degree of success and their conduct during the procedure. According to Art. 85.6 (b) a party that has been ordered to pay procedural costs is obliged to pay where the decision has been notified with grounds (as in the present case).
38. Considering the outcome of the complaint in favour of the Respondents, but also the limited success achieved by the Claimant in proving the existence of the conflict of interest, the DRC directs the Claimant to pay 60% of the procedural costs, that is US\$ 300, and the Respondents to pay 40% of the procedural costs, namely US\$ 200. These costs must be paid within 10 days into IBA’s bank account as stipulated in Art. 85.4 of the Procedural Rules.
39. In terms of Art 86 of the Procedural Rules no costs of the parties related to the proceedings before the DRC are awarded.

Right of Appeal

40. This decision enters into force as soon as notification to the parties occurs.
41. The parties are informed that decisions passed by the DRC may be appealed against in front of the Court of Arbitration for Sport and that the time limit for any such appeal is 21 days after receipt of the decision (with grounds) to be appealed - Art. 89 of the Procedural Rules.

**ON THE ABOVE GROUNDS**

The DRC rules that:

1. The complaint filed by Mr Moses Muhangi, the Claimant, is dismissed.
2. The Claimant is directed to pay a contribution to the procedural costs in the sum of US\$ 300.
3. The Respondents are directed to pay a contribution to the procedural costs in the sum of US\$ 200.
4. All other requests for relief (falling within the jurisdiction of the DRC) are dismissed.

**Boxing Independent Integrity Unit  
Dispute Resolution Chamber**

**Francois Strydom  
Chairman**

**Date: 12 October 2023**