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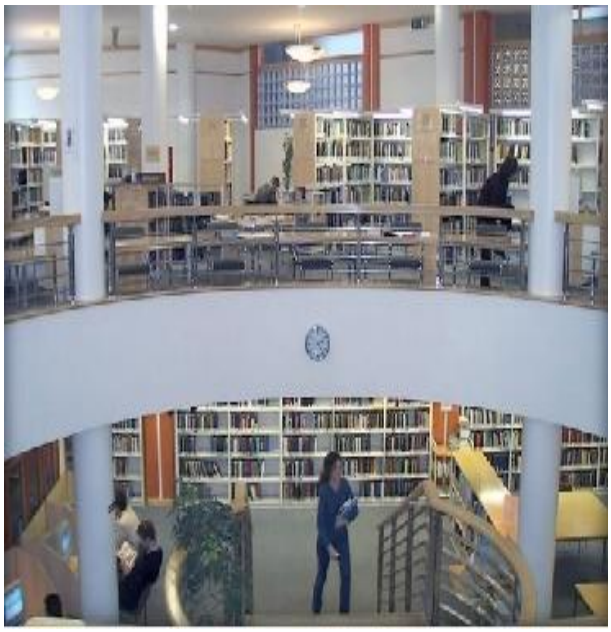

Title

THE JURISDICTION OF THE ARBITRAL TRIBUNAL ON SPORT OF THE REPUBLIC OF CAMEROON COMPARED-WITH THE JURISDICTION OF THE GENEVA ARBITRAL TRIBUNL ON SPORT.

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ABSTRACT

This Thesis seeks to highlight a comparative analysis of the jurisdiction of the arbitral tribunal on sport of the Republic of Cameroon and the Jurisdiction of the Geneva arbitral tribunal on sport. It dwells on the scopes and competences of these tribunals. It also touches on the issue of recognition of some arbitral awards by these tribunals, especially the Cameroonian experience.Furthermore, this treatise, sought to know which dispute settling institution is competent to hear claims on sport i.e., should such claims be heard by national courts, government institutions or National sports arbitral tribunal as in the Court of Arbitration on Sport in Lausanne Switzerland?.

This treatise is divided in three Chapters. Chapter one dwells on parties' autonomy and limits to autonomy, while chapter two highlights and compares the norms governing arbitration both in CAS and in Cameroon, and chapter three is on state control over arbitration in Cameroon. This work has a conclusion and recommendations to the Cameroonian policy makers. The research portrays that, disputes relating to sport are entertained by the arbitral tribunal on sport of the National Federations by virtue of that country's affiliation to the World Football governing Body (FIFA).

DEDICATION

This piece of work is dedicated to my three late sisters Pamela, Onorine, and Nancy. May your souls rest in perfect peace**.**

ACKNOWLEDGEMENTS

A treatise of this nature certainly had the blessings of several actors, however, not at the forefront of things but played a no nonsense role in its realization. Their pieces of advice on how to go about this work was of great importance.

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INTRODUCTION

The greatest emotions and passions that are globally and intensely felt around the world are those for sports. Sport is a rallying force, which brings people together, sometimes to celebrate with ecstasy their victory or to groan and bemoan with tears of defeat. "Its symbolism is awesome .It brings out the noblest human qualities (good sportsmanship, the quest for excellence, a sense of community) and the basest (chicanery and mob violence). Sport is an international commodity and a resource for international diplomacy and politics".[1] Being so, gives the reason why the sport milieu is fraught with a plethora of disputes; that need resolution. The need then for Sport Tribunals to be set up to deal with these disputes.

Sport which over the years has been considered by many of its admirers and lovers, as only a medium for entertainment is now based on rules and regulations that has attracted the attention of legal theorists in the lex sportiva. Sports literature is now interlaced with law.[2]Sport is a big business today, and accounts for about three percent of world trade and about one percent of the Gross Domestic Product of fifteen countries of the European Union. Also more than two million jobs have been created by sport related activities.[3]It is not surprising that, with so much money at stake in sport; sport disputes are on the rise. Sport claims are not limited to injuries and disciplinary issues but cover a wide range of disputes, like broadcasting rights, licencing, sport

[1] Jan Paulson, Arbitration of International Sport,file://p:Arbitration on International sport disputes.htm
[2]Ken Foster, Readings in law and popular culture, The Juridification of sport. Edited by Steve Greenfield and Guy Osborn. P.1
[3] IAN Blackshaw,The Court of Arbitration for Sport: An International Forum for Settling Disputes Effectively "Within the Family of Sport" Entertainment Law,Vol.2,No 2,Summer 2003,pp.61-83 PUBLISHED BY FRANCK CASS,LONDON.

sponsorship, merchandizing, and a host of others. This is a good omen for lawyers.[4] Today, sport is a sphere of its own and brings to focus its own role as sports tribunals increasingly settle sports related disputes, and courts of many countries are gradually ceding resolution of sports disputes to sports arbitral tribunals.

As a consequence, the jurisdictions of these arbitral tribunals have taken the lead in resolving sports disputes from the disciplinary committees or dressing room negotiations, which at first constituted people without legal knowledge.[5]Juridification of sporting rules and regulations is now making significant inroads into the arena of sport. That is why today, many sporting organizations have legal advisers trained in the law of sports and many work as sports arbitrators both at the national and International levels. Furthermore, sports tribunals are increasingly exercising more power, not only to arbitrate sports disputes but could resolve disputes arising out of commercial contracts relating to sports. This justifies the juridifcation of sporting norms.

However, the manner in which disputes are brought to these arbitral tribunals gives course for concern; especially in Cameroon. It is a well established norm in International Commercial arbitration that the parties to a dispute before an arbitral tribunal; must be preceded by an arbitration agreement which gives the arbitrators the jurisdiction to hear the matter and render their award. The arbitration agreement can cover those disputes at hand (compromis) or disputes that can ensue in future (clause compromissoire).[6]While this principle can trigger arbitration under Rule 27 of the statute of the Court of Arbitration on sports in Lausanne

[4] Ibid supra.
[5] Ken Foster, Readings in Law and Popular Culture:Jurisdification of Sport,editedby Steve Greenfield &Guy Osborn.p1
[6] Varady Tibor, John Barceló, and Arthur von Mehren, International Commercial Arbitration Transnational perspective 3rd Ed. pp.85-89.

Switzerland, the Rules and Regulations of the Cameroon's arbitral tribunal, whether in football or in the other sport disciplines is not a prerequisite. Under Cameroon's Rules, the parties are not obliged to come to an agreement before a dispute is submitted to the arbitral tribunal on sports. So, Cameroon has adopted a mandatory concept of sport arbitration. Further, complications arise as to which body has competence to hear sport disputes in Cameroon: as statistics have shown, parties to a sport dispute are confused as to where to seek resolution. Court of justice or arbitral tribunal? This arguably, is due partly ,if not, wholly to the fact that there is no arbitration agreement that can draw the dividing line between disputes to be heard by the arbitral tribunal on sport and the ordinary law courts in Cameroon.

All in all, arbitration law is out to promote parties' autonomy to arbitrate with respect to their arbitration agreement, which doesn't only give the contours that the arbitrators will follow in settling their dispute, but equally, gives the arbitrators jurisdiction. In International commercial arbitration, the parties' autonomy is both the source of the arbitrators' jurisdiction to arbitrate and jurisdiction of the tribunal. In spite of the mandatory rules of arbitration, litigants still take sports disputes to the courts of law. The mandatory rule of sport arbitration compels parties to arbitration even if they were not prepared. This means that a party to a dispute can contest an arbitral award rendered by a Cameroonian arbitral tribunal on sport, as was the case in First options.[7]

As such, the principle of competenz-competenz and the concept of arbitrability are of no moment in Cameroonian sport arbitral jurisdiction, where court proceedings are to be stayed while an arbitral award is given a res judicata effect or the invalidity of contract winnowed from

[7] Arbitration of International Business Disputes .Studies in Law and Practice. By William W.Park pages 82 -83.

the arbitration clause i.e. disputes capable of being resolved through arbitration.[8] An arbitrator is not given the opportunity to decide on his jurisdiction as in the case of the court of arbitration on sports in Lausanne or in Commercial arbitration. Though the court of arbitration on sports (CAS) has never declared its self incompetent.

It is trite learning that arbitration is a consensual issue and therefore, is the private initiative of the parties to a dispute to submit their claims to an arbitral tribunal. Arbitration law is all about the enforcing of consensual negotiation between the parties with one thing in mind: their agreement should be effected as agreed by the parties. The lofty intention of parties to a dispute, choosing to settle their differences through arbitration is to avoid the heavy machinery of the ordinary law courts that grinds very slowly but not always sure; a characteristic of these state institutions. To quote some eminent scholars in arbitration Law, Varady, Barceló, von Mehren, hold that arbitration as:

> Seen in a modern perspective, and in a cultural setting where courts represent the established tradition, arbitration can be regarded as an unorthodox and innovate method of settling disputes. In this context, arbitration is response to questions that have been left unanswered within the judicial system, an innovative institution that meets specific needs that courts do not deal with satisfactorily[9]

Many Countries embrace arbitration as one alternative way of dispute settlement, which gives much flexibility to the parties to structure the arbitral process the way it is convenient for them.

In some countries like the United Kingdom, the concept of Competence-Competence allows arbitrators leeway to appreciate their own jurisdiction without waiting for the court to determine it for them. Better still, arbitrators will be expected to surrender an issue of

[8] Fouchard Gaillard Goldman on International Commercial Arbitration. Edited by Emmanuel Gaillard and John Savage pages 312 -313.
[9] Biljana Djuricin, Course Title: Arbitration Law, University of Montenegro Yugoslavia.1999.

jurisdiction to the courts.Furthermore, the courts could still compel arbitration after a review has been done.[10]

France seems to have advanced, much further in this concept of competence – competence, where court intervention is stayed to allow the arbitral process to continue until an award is made. This insinuates further that, courts shall not intervene with the hearing of a matter just because of the challenge by one party on the validity of the arbitration clause. Conversely, in France the court can have jurisdiction when the arbitration clause is defective as enshrined in the Nouveau Code de Procedure Civile. This means that France is pro arbitration.

In the United States, the situation looks much complex because, the courts can go ahead to stay an arbitral process without regard to the fact that the arbitral process was already on motion. At times the American law can prove more accommodating to arbitrators than it does in some countries. An American court can send back jurisdictional matters to the arbitrators for them to determine The courts in the United States have adopted the German formal concept of Competenz-Competenz clause, where the court can step in, in the heart of an arbitral process to review when the parties have submitted a jurisdictional issue to final and binding arbitration. This implies that if the parties have not agreed to submit their claim to an arbitral jurisdiction, the courts will still hear the matter. Arbitration law is the exercise of private ordering and adjudication which results in an award that the state governments make sure that these awards are enforced just as it does with judgments from courts of law, by reflecting the parties' autonomy as stipulated in their arbitral agreement.[11]

[10]William W.Park Arbitration of International Business Disputes 93

[11] Thomas J.Stipanwich, Symposium-Rethinking The Federal Arbitration Acts: An Examination Of Whether And How The Statute Should Be Amended; Article: The Arbitration Penumbra; Arbitration Law and the Rapidly Changing Landscape of Dispute Resolution. Fall, 2007 8 Nev.L.J.427.Lexis Nexis.

Similarly, it is widely acknowledged that an arbitrator's jurisdiction to hear a dispute will depend inter alia on the following concepts: (i) the existence of the arbitration agreement;(ii)the scope of the arbitration agreement ;and (iii)public policy that on occasion overrides the litigants' wishes"[12]This therefore, buttresses the point that the arbitrators derive their jurisdictions from the parties' agreement and which to an extent ousts the courts jurisdiction ,until such a time there is an issue on due process that the courts can come in to review the arbitrators decisions.

With respect to sport arbitration in Cameroon, the state controls arbitration, which sets in limits and stifles the recognition and enforcement of arbitral awards. Furthermore, ordinary law courts hear cases relating to sport as was in the case between Bamboutos and the Football Federation. The threshold question is, which institution is competent to hear claims on sport? The government of Cameroon goes under the guise that "la paix social est menacée" (social peace is threatened).[13] It will not be surprising then, that government institutions prohibit the arbitral tribunal from going ahead with a hearing for reasons on maintaining social order in Cameroon. The argument raised by the government of Cameroon on public policy cannot be relegated to the second position, but the decision of the arbitral tribunal on sport with respect to the Bamboutos corrupt scandal calls for the government to denounce such practices.

It has been submitted that in International Commercial arbitration ,like in sports arbitration, setting aside of an arbitral award can be allowed when the award infringes article V (I) (a) to (e) on due process and (II) (a) and (b) on public policy of the New York Convention of June 10th 1958.[14]Public policy under article V (II) seems to be a reason put forward by the Cameroonian authorities for setting aside and recognizing arbitral awards on maintaining social

[12] William W .Park, Arbitration of International Business Disputes p.87.
[13] Bertille Missi Bikoum,Newspaper , MUTATIONS posted October 3rd and accessed Nov.4th 2008
[14]Tibor Varady, John Barceló, and Arthur von Mehren, Documents supplement to International Commercial Arbitration .A transnational perspective 3rd Ed. pages 2 - 3.

peace. Though, sports awards in Cameroon are not considered as foreign awards like in the (CAS) whose awards are rendered according to the UN convention. To quote from one source, "bribery or influence peddling, as well as both active and passive corruption, are sanctioned by criminal law in most, if not all countries and is equally against international public policy."[15] No criminal code in any civilized nation would not make allusion against corrupt practices. So it sounds controversial that the Cameroon government sermonizes fairness and Justice but is championing the course for laws to be violated. Bribery cannot prohibit arbitration. Because Bamboutos Mbouda is affiliated with the Football Federation, which in its article 34(1) stipulates that all disputes must be referred by clubs to the FA.This could be taken to mean, that all disputes related to sport should be submitted to the FA's arbitral tribunal on sport and not to courts.

Following this, Public opinion on the other hand holds that, State prohibition of arbitration in Cameroon in most of the time is smeared with political over tones. This point could be corroborated with the fact that a top government official who hails from Mbouda, the seat of the Bamboutos social football club and works at the presidency of the Republic claimed that: "The team from Bamboutos is for that locality as the indomitable lions (Cameroon's National team) are for Cameroon. This means that if the official who made this statement did not hail from the seat of Bamboutos Football club, the decision of the arbitral tribunal would not have been contested. The confirmation of this decision would be a blow on the political success that the ruling party, Cameroon Peoples Democratic Movement has achieved, in Bamboutos since

[15] Andrea K. Bjorklund,Mandatory Rules Of Law And Investment Arbitration, copyright© 2007 Hans Smit and Juris publishing, Inc.The American Review of International Arbitration,175 .Fall 2007 .Accessed Jan.3rd 2009, Lexis Nexis.

2002".[16] The question that arises is, why did the government allow the high court in Yaoundé to hear Bamboutos' claim when the arbitral tribunal relegated them to Division III?One would not be wrong to hold that ,the government knew the outcome of the court's decision. Furthermore, it took the court over thirty -five adjournments for them to render their judgment. This is procedurally incorrect. Cameroonians are confounded beyond words, why the prime minister and the Sport Minister had to take the issue of Bamboutos' relegation as a state issue, when competent bodies were there to mediate, conciliate or arbitrate the impasse. Government intervention some times limits the choice of the parties when they abide to the structure that they have chosen as a dispute settlement mechanism the most hit is the tribunal on sport.[17] Even as in Cameroon, where arbitration agreement is not required for the arbitral tribunal on sport to hear a claim, it is argued severally, that the fact that a club affiliates with the Football Association, impliedly, authorizes the arbitral tribunal of the FA to apply its Statutes.

This Thesis seeks to investigate and compare the jurisdictions of these sports tribunals with focus on (the Homologation and Disciplinary committee of sports in Cameroon and the Court of Arbitration on sports, with its seat in Lausanne, Switzerland. It highlights their competences and scopes of activities. The work also makes an in-depth analysis on which institution in Cameroon has jurisdiction to hear sport disputes; courts of Justice, Government institutions or arbitral tribunal for sport?

It also outlines the methods used to arrive to the findings, which were primary and secondary sources. The chief primary sources are the Statutes of the court of arbitration on Sport (CAS), the International Council for Arbitration on Sport (ICAS) and the Statutes of the Arbitral Tribunal of Cameroon's Football Federation. With respect to secondary sources, books on sport

[16] Bertille Messi Bikoum,News paper MUTATION: The bamboutos issue submitted to the Prime Minister for arbitration.3rd October accessed Nov.4th 2008.
[17] Ibid as in 16 supra.

by doctrinal writers will be consulted, and journals, sport news papers and electronic sources will also be examined. Norms governing International Arbitration and the relevant International instruments like the New York Convention, UNCITRAL Model Law, and the Swiss Code on Private International Law shall also be consulted to beef up the research etc. This research will be limited to Football since Football is the main sport in Cameroon, whose tribunal is more active. A thorough analysis shall be made in the pages ahead

CHAPTER ONE

PARTIES'AUTONOMY AND LIMITS TO PARTIES' AUTONOMY

1.1 Parties' autonomy in general

It is a well entrenched principle that arbitration law is a consensual issue and therefore is the private initiative of the parties to a dispute to submit their claims to an arbitral tribunal. Arbitration law is all about the enforcing of consensual negotiation between the parties with one thing in mind; their agreement should be effected as agreed by the parties. The lofty intention of parties to a dispute, choosing to settle their differences through arbitration is to avoid the heavy machinery of the ordinary law courts that grinds very slowly, a characteristic of these state institutions. Many Countries have acknowledged the fact that arbitration as one alternative way of dispute settlement, that gives a plethora of flexibility on the parties to structure the arbitral process the way it is convenient to them.

Arbitration law is the exercise of "private ordering and the exercise of adjudication" that results in an award that the state governments make sure that these awards are enforced just as it does

with judgments from courts of law, by reflecting the parties' autonomy as stipulated in their arbitral agreement.[18]All in all, arbitration law is out to promote parties' autonomy to arbitrate, with respect to their arbitration agreement, which doesn't only give the contours that the arbitrators will follow to settle their dispute but equally gives the choice of the tribunal by the parties but also the jurisdiction of the arbitrators.

In International commercial arbitration, the parties' autonomy is both the sources of the arbitrators' jurisdiction to arbitrate and jurisdiction of the tribunal. This is particularly true with International Commercial Arbitration, and sport arbitration, as it is the case in the court of arbitration on sport in Lausanne. Without party's agreement or arbitration clause clearly worded in the contract or separately, the jurisdiction of the arbitral tribunal will be of no moment. A tribunal could also lack jurisdiction when a dispute before it does not fall within the arbitration agreement or some condition precedent to arbitration has not been obtained prior to arbitration.[19] The arbitral tribunal's source of authority is from the parties consent to settle their dispute through arbitration and the tribunal must act as per that arbitration agreement; for it is the law of the parties. Courts are not supposed to exert pressure on arbitral tribunals to apply rules other than those which the parties have agreed upon. This is not to rule out the fact, that courts can help in enforcing arbitral decisions, or compel parties to arbitration.According to article 7

of the UNCITRAL Model Law 1985 on the definition of an arbitration agreement;

> 1)"Arbitration agreement" is an agreement by the parties to submit to arbitration all or certain disputes which has arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not. An arbitration agreement may be in the form an arbitration clause in a contract or in the form of a separate agreement.

[18]Thomas J. Stipanwich,Symposium-Rethinking The Fedearl Arbitration ACT:An Examination Of Whether And How The Statute Should Be Amended:Article:The Arbitration Penumbra; Arbitration Law And The Rapidly Changing Landscape Of Dispute Resolution.Copyright©2007 Nevada Law Journal Fall 2007.accessed Nov.4th 2008.Lexis Nexis.

[19] International Commercial Arbitration .A Handbook by Mark Huleatt-James and Nicholas Gould. page 62.

> 2) The arbitration agreement shall be in writing. An agreement is in writing if it is contained in a document signed by the parties or in an exchange of letters, telex, telegrams or other means of telecommunication which provide record of the agreement, or in an exchange of statement of claim and defense in which the existence of an agreement is alleged by one party and not denied by another. The reference in a contact to a document containing an arbitration clause constitutes an arbitration agreement provided that the contract is in writing and the reference is such as to make that clause part of the contract.[20]

The mandatory rule adopted by the Cameroonian authorities seems inimical to the role arbitration plays in sport dispute resolution. The mandatory concept of arbitration can stifle parties' autonomy. Parties to a sport dispute are not given the opportunity to concert before resolving to settle their differences in an arbitral tribunal. This breeds in a lot of havoc especially; when a dispute ensues the parties do not really know where to go since the courts too do receive sport cases as well. Or a party might tactfully wait to see which way is favorable, if the tribunal's award is hostile they turn to the ordinary law courts. The further danger is that one party may want the matter heard by the court, or to attempt resolving the issue without going to the court or tribunal. Because of the mandatory rules on sport, the arbitral tribunal is automatically seized. The grey part of this mandatory rules system is that, it has two sides of a coin. The first side is that with sport-related claims on discipline, the mandatory concept of arbitration could be, arguably very accommodating. This is so because it is an offense that National Sport Federations cannot accept to negotiate with the accused party.Concersely, if the other side of the coin is turned, it could be thought that in claims that do not fall within the ambit of discipline, the parties can negotiate their issue without going to arbitration or to a court of law.Mnadatory rules would not mean arbitration in this sense. For instance, if a broadcast right is infringed by the other party to the agreement; both parties can decide to resolve their issue

[20] Tibor Varady, John J. Barceló III, Arthur T.von Mehren, Documents Supplements International Commercial Arbitration, A Transnational Perspective 3rd ed.p.26.

without necessarily making recourse to arbitration. At this juncture, the National Federations would have nothing to loose if they don't compel arbitration.Though, if the Federation owns the broadcasting rights ,that is when it becomes difficult as section 72(1) of the FIFA's Statute posits that all broadcasting rights are pertain to FIFA and its Confederations. But this cannot totally rule out the fact that it could be negotiated without recourse to arbitration. But on disciplinary issues it would be recommended to compel arbitration to deter such behaviors in the future. For instance, the case that forms the subject of this treatise is the corrupt scandal between Bamboutos Football club of Mbouda and the Federal social club of Noun. It is common sense to believe that both teams would not take the other to the court or tribunal. So the mandatory concept will certainly compel them to arbitration. And if it later transpired that the other team did not leave up to the agreement to allow a goal to be scored or if Bamboutos failed to perform their own obligation after the match, the Noun Football club will not lift their voice for both know it is an illicit act punishable in law.

Arguably, the officials limit party autonomy in the name of preserving social peace. If the very aim of arbitration is to settle disputes in a much quicker way, and to maintain confidentiality amongst others, then the mandatory concept should give way to a modern concept as in the Court of Arbitration on sport at Lausanne, where parties' autonomy is given priority and makes the proceedings quicker and conforms to International arbitration norms.

1.2 LIMITS TO PARTIES TO ARBITRATE IN CAMEROON

Under the Rules and Regulations of the MTN elite one on foot-ball and other sporting Federations in Cameroon; the parties to a dispute before the arbitral tribunal are not required to have an arbitration agreement to trigger a hearing before a tribunal. It suffices that an aggrieved party tenders his case before the Homologation and disciplinary Committee (Arbitral Tribunal on

Sport) who in turn fixes a date for hearing. Arbitration being a private dispute settling mechanism, to resolving disputes is normally the easiest and most convenient way to settling disputes, especially when both parties agree to go to arbitration. The Cameroonian experience makes arbitration to be more of court proceedings which compels parties to arbitrate without seeking their consents, that is mandatory.

Furthermore, government institutions can place limitations on the arbitral tribunal from going ahead with a hearing for reasons usually referred to, as maintaining social order. Restrictions on party autonomy some times can be justified, for there are cases where because of public policy considerations the government can stop the matter from being heard by arbitrators. This is true with cases on criminal offences that only courts must hear. In this sense mandatory rules cannot be questioned for it is government policy to guard against public disorder. With respect to Cameroon, Public opinion holds that a public policy consideration under the Bamboutos corrupt scandal case is unfounded. The public feels it is ploy to maintain Bamboutos Mbouda in the Elite one.Espacially, when the decision of the arbitral tribunal is hostile to state officials they will stop arbitration. Public policy cannot be relegated to the second position all the same, but the decision of the arbitral tribunal on sport with respect to the Bamboutos corrupt scandal merits government support to denounce such practices. Because corruption is against international public policy. No criminal code in any civilized nation would not make allusion and frown against corrupt practices. So it sounds controversial then to hear the government limits arbitration because it wants to preserve social peace, when social peace was not at stake. In a case in Kenya, **World Duty Free Company Ltd V Republic of Kenya** that involved former Kenyan president Daniel A. Moi, where one Ali gave 2million dollars to Moi to secure a contract: Ali argued that the payment of that amount to president Moi was legal and was in

accordance with the Kenyan practice of Harambee, whose roots lie in collective contributions towards community projects. The tribunal determined that in fact the payment was a bribe. The tribunal determined that "bribery or influence peddling, as well as both active and passive corruption, are sanctioned by criminal law in most, if not all countries. Bribery is contrary to the international public policy of most, if not all states……contracts obtained by corruption cannot be upheld by this tribunal"[21] The interference by the government in sport arbitral process, equally limits the choice of the parties when they abide to the structure that they have chosen as a dispute settlement mechanism either the court or the tribunal.[22] Even as in Cameroon where arbitration agreement is not required for the arbitral tribunal on sport to hear a claim, it is argued severally, that the fact that a club affiliates with the FA authorizes the arbitral tribunal of the FA to apply its Statutes. So the limits set by government on the arbitral tribunal to enforce its decision against Bamboutos are far fetched. For public policy considerations cannot stop arbitration when teams affiliate to the Football Federation.

1.3 PARTIES AGREEMENT TO ARBITRATE UNDER (CAS)

While under the Statutes of the statutes of Cameroon's sport arbitral tribunal the parties are not required to provide an arbitration agreement, the court of arbitration on sport in Lausanne has a contrary procedural rule. Under Rule 27 of the Statute of the Court of Arbitration on Sport based in Lausanne Switzerland, parties' agreement is of primordial importance to trigger a matter before the court. This procedural rule applies whenever the parties have agreed to refer a sports-

[21] Andrea K.Bjorklund, Mandatory rules of law and investment arbitration, 2007.The American Review of International Arbitration .18 Am.Rev.Int'l Arb.175.Top of Form. Lexis Nexis.

[22] The Statute of the Court of Arbitration (CAS)

related dispute to the CAS.Such disputes may arise out of an arbitration clause inserted in a contract or regulations or of a later arbitration agreement(ordinary arbitration proceedings)or involve an appeal against a decision rendered by a federation, association or sports-related body where the statutes or regulations of such bodies, or a specific agreement provides for an appeal to the CAS(appeal arbitration proceedings)"[23] The arbitrators' source of jurisdiction is derived from the parties' agreement duly signed by both parties. Under (CAS) rules there are no limits to arbitrate, and parties' autonomy is given priority with respect to the arbitration clause in their contract or agreement.

Admittedly, the Court of Arbitration on Sport, some of the times can go ahead with a dispute without arbitration agreement. The parties could later agree to arbitrate. If not so the President of the Division can decide to appoint the a sole arbitrator but the parties can mutually agree to choose within fifteen days, but if they fail within this time limit the president of the Division shall proceed to appoint the sole arbitrator to the panel. If the parties by virtue of an arbitration agreement or the decision of the president of the Division, three arbitrators will be appointed, the plaintiff shall appoint one while the respondent shall appoint its own depending on the number to be appointed. In the absence of both parties appointing the arbitrators within the time limit set by the court office the president of the Division shall go ahead to appoint in place of the parties. The two arbitrators will in turn agree mutually to appoint a chairman; if both fail to do so within the time limit set by the court office the president of the Division shall appoint the Chairman to the panel.[24]

[23] Ibid as in 20 supra.
[24] R .40.2 Procedural Rules of the Court of Arbitration on Sport.

CHAPTER TWO

THE NORMS GOVERNING ARBITRATION

2.1 Arbitral Norms.

It is undeniable that in regulating people's activities in any given Community, courts of Justice or Arbitral tribunals must set up rules so as to make people's behaviors predictable. When one fails to respect these rules then he has failed to face –up to reality and chaos immediately ensues; neccestating courts or arbitral tribunals to intervene to settle the dispute. But the question that usually arises is to know which of these Institutions is competent to listen to the disputes relating to sport? Parties involved in International Commercial arbitration transactions as well as in sport arbitration certainly are in search of three points to resolve their disputes:

> First, a neutral forum to fairly interpret their rights and resolve their disputes without undue national court interference second, the potential for recourse to a fair and impartial court to set aside an award that is by corruption, fraud or an absence of due process and third, assurance that the award can be speedily enforced in summary fashion without court review merits. [25]

In Cameroon, this issue still creates a lot of problems within the administration as well as in sporting circles where those involved in sport disputes hardly know where to seek redress.

[25]Dan H. Freyer & Hamid G. Gharavi. Salans, Finality and Enforceability of Foreign Arbitral Awards: From "Double Exequatur" to the Enforcement of Annulled Awards, World Bank's ICISD Foreign Investment Law journal Spring 1998.

This is partly, if not wholly caused by the fact that parties to sport disputes do not know the right body to table their problems. Without denying the fact that courts of Justice can listen to disputes arising from sports as was the case with Bambutos Football club, indicted for corrupting the Noun Social club to stay back in division one. For corruption is an offense punishable by Cameroon's penal code. But we think that when a matter is with the Homologation Committee or if the Committee has already handed down its decision then the court should declare its incompetence and allow the matter to be appealed at the Court of Arbitration on sport (CAS) in Lausanne, Switzerland as stipulated in article 34(2) of Cameroon's Foot ball Association Rules.

Furthermore, in Cameroon, the rules of the Football governing body is clear that, when a dispute ensues between clubs the matter shall be referred by any of the parties to the Homologation and Disciplinary Committee of the Football Federation and not to ordinary law courts. Article 34 (1) of the Rules and Regulations of the Cameroon Football Federation is instructive to this norm. The clubs and players must exploit all avenues available to settle their disputes within the rules of the Federation before making recourse to the court of Arbitration of sport in Lausanne Switzerland as in article 34 (2)"The clubs of MTN Elite one players and officials shall recognize and agree that once all avenues are exhausted within FECAFOOT, their only recourse shall be the court of Arbitration for sports(CAS) at Lausanne,Switzerland.These arbitration proceedings shall be governed by the sports Arbitration code of CAS whose decisions shall be final and binding" [26]

In International arbitration, whether Commercial or in Sport, parties' agreement is a norm that cannot be overlooked. The parties at the time of contracting must insert in their contract the mode of settling a dispute when it arises.Therefore, if both agree to take their dispute to a court then they have a right to it, since a contract is a mini-legal system to the parties to that

[26] Cameroon Football Federation: Regulations of the 2008/2009 MTN Elite One Season.

contract. On the other hand, if they chose to settle their claim through arbitration; then they must be a clearly worded arbitration agreement or clause that gives the arbitral tribunal and the arbitrators the authority to settle their dispute. Giving preference to arbitration must be consensual.

It has been submitted, that parties to any claim before an arbitral tribunal should chose their language and appoint arbitrators to hear the dispute. The language to be employed by the arbitration must be the language chosen by the parties to the agreement. The seat of the tribunal should equally be chosen by the parties and the applicable law should be that made mention of by the parties. The parties are supposed to choose the substantive and procedural law to be applied to their dispute. In the absence of which, the applicable law becomes that of the seat of arbitration (lex arbitri).This is what prevails in the CAS, even though the issue of the seat has never been a problem, since CAS has a permanent seat in Lausanne Switzerland, however, the CAS under R28 of the procedural rules can hold their session in another location but after they must have consulted with the parties.[27] Similarly, in Cameroon the parties do not have the problem of the seat of the HDC. Cameroon being a bilingual Country would have had two languages for arbitration proceedings, whereby the parties can mutually agree on one of the languages (French or English) to be the language of the proceedings. Anglophone Cameroon, usually feels marginalized in this respect, and usually nurses doubts as to the fairness of a decision of this tribunal. But given the nature of both institutions, litigants have always held that arbitration enjoys a virtue as the best forum to settle disputes since it works in camera, decisions are rendered in record time, and above all is more private to the parties concerned.

However, we do not rule out the fact that the court remains a state institution bestowed with the powers to review arbitral decisions, when the court thinks fit. The issue is that of

[27] Procedural rules (CAS) R.28

arbitrability and timing .The vexing question to be posed is which of the two institutions has the competence to hear a sport dispute? Even though it is not a tug of war between both Institutions, it seemingly looks as though usurpation of powers is been mutually suspected between them, which rather it should be a matter of principle and fairness, in handling disputes for public peace and serenity.

It is widely acknowledged that an arbitrator's jurisdiction to hear a dispute will depend inter alia on the following concepts: (i) the existence of the arbitration agreement;(ii)the scope of the arbitration agreement ;and (iii)public policy that on occasion overrides the litigants' wishes"[28]It therefore, buttresses the point that the arbitrators derive their jurisdictions from the parties' agreement and which to an extent ousts the courts jurisdiction ,until such a time there is an issue on due process that the courts can come in to review the arbitrators decisions.

2.2 Arbitration of sport disputes by tribunals or by the courts of justice

An arbitral tribunal and a court of Justice are both institutions competent to settle sport-related disputes. On another note, the fact that in Cameroon arbitration agreement is not a requirement, to lodge a dispute before the arbitral tribunal for sport, clearly shows that the ordinary law courts have jurisdiction, but then Cameroon has a mandatory concept of arbitration for sport, which automatically gives this arbitral tribunal a leeway to hear dispute relating to sport since the clubs are affiliated to the FA and the FA too affiliates to (FIFA) the world governing body for Sport. The affiliation by National Federations to FIFA has a contagious effect to clubs affiliated to the National Federations.FIFA'S Rules automatically runs down to

[28] William W .Park, Arbitration of International Business Disputes p.87.

clubs through the national Federations. This is to the effect that all sport disputes must be settled through sport arbitral tribunals and not in ordinary law courts.

In the some countries like the United Kingdom, the concept of Competence- Competence allows arbitrators the leeway to appreciate their own jurisdiction without waiting for the court to determine it. Better still, arbitrators will be expected to surrender an issue of jurisdiction to the courts.[29]

France seems to have advanced much further in this concept of competence –competence, where court intervention is stayed to allow the arbitral process to continue until an award is made. Article 1458 of the Nouveau code de procedure civile declares that if the arbitral tribunal has already been seized with a matter the French courts shall have to acknowledge its incompetence. "Whenever a dispute submitted to an arbitral tribunal by virtue of an arbitration agreement is brought before the court of the state, such court shall decline jurisdiction. If the arbitral tribunal has not yet been seized of the matter, the court should also decline jurisdiction unless the arbitration agreement is manifestly null. In neither case may the court determine its lack of jurisdiction on its own motion".[30]What this means is that the dividing line between who should hear the dispute is when the arbitration clause gives jurisdiction to the arbitral tribunal and the courts come to review after an award has been made. It further insinuates that courts shall not intervene with the hearing of a matter just because of the challenge by one party on the validity of the arbitration clause. Conversely, in France the court can have jurisdiction when the arbitration clause is defective.

[29] Ibid as seen in 28 above p 93.
[30] Tibor Varady, John Barceló III,Arthur T.Von Mehren.International Commercial Arbitration 3rd edition p.91

In the United States, the situation looks much complex because the courts can go ahead to stay an arbitral process with disregard that the arbitral process was already in motion. The courts in the United States have adopted the German formal concept of Competenz-Competenz clause, where the court could step in, in the heart of an arbitral process to review when the parties have submitted a jurisdictional issue to final and binding arbitration. This implies that if the parties have not agreed to submit their claim to an arbitral jurisdiction the courts will hear the matter. But today in Germany such restrictions to courts have given way for courts jurisdiction to challenge awards when they become final.[31] At times the American law could prove more accommodating to arbitrators than in some countries. The court could send back jurisdictional matters to the arbitrators for them to determine. The question the courts should ask is whether there was consent to arbitrate? For if both parties did not consent to arbitrate it could be that `the consent was void or or had never been present in their agreement. Or there was consent to arbitrate but one party was forced to arbitrate by fraud.[32] The Federal American Act enacts in its section 3:

> If any suit or proceeding be brought in any of the courts of the United States upon any issue referable to arbitration under an agreement in writing for such arbitration, the court in which such suit is pending upon being satisfied that the issue involved in such a suit or proceeding is referable to arbitration under such an agreement, shall on application of one of the parties stay the trial of the action until such arbitration has been had in accordance with the terms of the agreement, providing the applicant for the stay is not in default in proceeding with such arbitration.[33]

In the United States there will be no intervention of the court when the parties have agreed to submit their case to arbitration in a clearly worded agreement and not recitals.

[31] William W.Park. Symposium-RETHINKING THE FEDERAL AMERICAN ACT: article, determining an Arbitrator's Jurisdiction: Timing and Finality in American law. march 3rd 2007.Lexis Nexis accessed March 2nd 2009.Lexis Nexis

[32] Ibid supra.

[33] Tibor Varady, John J.Barcelo III, Arthur T.von Mehren: Documents Supplement to International Commercial Arbitration pages 79-80 Third Edition.

Settling sport disputes by arbitral tribunals is increasingly becoming the sanest way of resolving sports disputes as Mr. Justice Drake pointed out in the litigation between Paul Elliott and Dean Saunders over an injury that finished Elliott's career:

> One witness expressed the view that an incident such as the on, with which this action is concerned, should be settled in the dressing room rather than in a law court. By the term "in the room" he doubt meant within the bounds of the appropriate Body of Football Association or league. That would be fine, Provided affair and just tribunal to investigate and decide And decide the claim and, second, atleast equally important, That the dressing room by some means provide the money To meet the injured party's compensation, which might very, Easily be in the order of, say, a million pounds or more. [34]

An arbitral tribunal shall have jurisdiction to hear claims before it, only if there is an arbitration clause or agreement in the parties' contract. This therefore implies that the courts could still here sports claims so long they have not been submitted to arbitration for determination.

In the Cameroonian case, which came up last two years before the Homologation and Disciplinary Committee of the Football Federation, between **Bambutos Football club of Mbouda and Federal Football club of Noun,** the FA said the court was not competent to hear the case because it was a sport dispute which the tribunal on sport had already rendered its award. The legal adviser of the Mbouda team preferred to prosecute the matter before the Mfoundi High Court in Yaoundé, arguing inter alia that it was a corrupt case punishable under Cameroon's penal code article 184.[35]So the court was competent to hear the matter because it was a criminal offense.

Arguably, this argument could be tenable, but the legal adviser seemed to have ignored the fact that the arbitral tribunal had already made its award and a court could only intervene to

[34] Ken Foster, Readings in Law and Popular Culture: The Juridification of sport p.164 ed by Steve Greenfield and Guy Osborn.
[35]Section 184(a) (1) (2) Law No-77-23 of December 6th 1977 of Law No.65/LF/24 OF NOV.12 1965 & Law No. 67/LF/June 12 1967 Instituting the Cameroon Penal Code.

when due process was violated. This does not augur well with the norms of international arbitration.Furthermore, the legal adviser of the Bamboutos club knows too well the Rules and Regulations of FECAFOOT, and cannot contend that it was a criminal matter and had to be heard in an ordinary law court. Why did he not initiate the matter in a law court when it ensued, and had to wait until the arbitral tribunal at the first instance made its award, and later on he advised the officials to appeal at the appeals Commission? This, without any strand of doubt, will be taken to mean that if the award from the sport arbitral tribunal was to his favor, he would not have gone to court. He was merely, hanging on a serpent to survive as dieing man will do in his position. In a controversial sport dispute between West Ham and Sheffield United, the FA found for Sheffield that could lead West Ham paying huge sums of money to Sheffield United over the transfer of Carlos Tevez to Manchester United. The legal adviser for West Ham told the officials it was possible to over turn the decision of the English Football Association at the court of Arbitration on Sport[36]. When West Ham was preparing to go to CAS Mr.Joorabchian an Iranian citizen leaving in England insisted the matter should rather go to an ordinary law court. The World Football governing Body issued a declaration to the effect that the issue was suppose to be heard by CAS.Mr.Joorabchian said the CAS was going to take a long time to render an award and he had an "economic right" to the player since he wanted Tevez to play with Manchester United at Old Trafford[37]The officials of the Bamboutos club were supposed to forward their appeal to the Court of Arbitration on Sport in Lausanne and not to a national court, because they are affiliated to a sport Fedeartion.This holds true with the action brought against West Ham by Mr.Joorabchian in an ordinary law court in England.

[36] Jason Burt, The Independent (London): West Ham to Challenge ruling East London club Prepare to take Tevez Fight to CAS.September 25th, 2008 Thursday Fourth Edition p.60.Lexis Nexis,accessed March 3rd 2009

[37] Simon CAS, Daily mail (London): We will see you in court, (1) West Ham sued in Tevez row now (2) Tevez tug of war goes all the way to court. July 25th 2007 Wednesday.p.88.LexisNexis accessed March 3rd 2009.

2.3 The Jurisdiction of the Homologation and disciplinary committee and the Courts in Cameroon

It is an undisputable fact that, in Commercial arbitration; like in sport arbitration, the relationship between the courts and the arbitral tribunals has always not been so cordial.Espacially, during the process of examining a matter before an arbitral tribunal. There is always the question as to whose jurisdiction the matter should be reposed? Should judicial intervention be allowed at all, or at any time as in the United States? Or when should the courts in Cameroon intervene? Or should there be a review mechanism within the court system or not, that can act as a safety valve for judges, litigants and arbitrators to settle this imbroglio of Competence –Competence and arbitrability?

The jurisdiction of the arbitral tribunal of Cameroon, has competence to hear all sport disputes because of the mandatory concept of arbitration of sport claims. But statistics have shown that the court sometimes meddles with matters already with the arbitration tribunal or when the tribunal has already rendered its award as the Bamboutos case. Legal minds can explain this in part, if not wholly, to the fact that Cameroon's arbitration process is none – consensual. The case which is the subject of this Thesis is the corrupt scandal during a first Division Championship's march organized by the Cameroon Foot ball Federation(FECAFOOT).This march was played in Cameroon's second largest city stadium in Douala, between **Bamboutos Mbouda and Federal Social club of Noun** on September 22nd 2007.It was the thirtieth and last day of play and both teams were facing relegation into the second Division; the only way for Bamboutos Mbouda to stay back in the elite one, was to go on a march fixing deal with Federal de Noun, since Federal was already out of the race ,for a win

would not have sailed them through the relegation zone. On the other hand, Bamboutos needed a win to stay back in Division one. It was alleged that officials of the FA caught flagrant delicto; officials of both teams exchanging an envelope suppose to have as content money to corrupt Federal's goal keeper to allow Bamboutos to score the winning goal that came in at the 85th minute; which sailed them through the relegation zone. The FA then referred the matter for investigation to the Homologation and Disciplinary Committee (arbitral tribunal) and they found that the allegations against both teams were founded. For the reasons of their findings, the tribunal handed down an award relegating Bamboutos to Division II in accordance with Rules of the FA.

The officials of the Bamboutos social club refused recognition of this award and petitioned the matter at the appeals Commission as per article 33 (1)(2) of the Rules and Regulations of FECAFOOT, but this structure added more salt on their wound by ruling that the award from the First instance was too lenient and went further to relegate the team to Division III.Following this decision ,the officials of Bamboutos turned for help ,by filing a suit against FECAFOOT in the High Court in Mfoundi Yaoundé. After adjourning the matter for more than thirty –five times, the court finally handed down a judgment in July 2008; finding Bamboutos football club not guilty and asked FECAFOOT to pay a symbolic one franc as damages.

The FA on its part refused the enforcement of the court decision but reiterated its stance, that the award was final and that the court was not competent to hear the issue. According to the Football Governing Body FECAFOOT, the court would have declared itself incompetent to try the case. Obviously, this is not the opinion of Bamboutos Mbouda whose leaders argued that it was a case on corruption and they were right to lodge a complaint in a civil court under article 134 of Cameroon's penal code.

Conversely, the Football Governing Body argued that article 62(3) of the World's Football Governing Body (FIFA) stipulates that:

> The Associations shall insert a clause in their statutes or regulations stipulating that it is prohibited to take disputes in the Association or Disputes affecting leagues, members of the leagues, clubs, members of clubs, players, officials and other Association officials to ordinary Courts of law, unless the FIFA regulations or binding legal provisions Specifically provide for or stipulate recourse to ordinary courts of law. Instead of recourse to ordinary courts of law, provisions shall be made or arbitration. Such disputes shall be taken to an independent and duly constituted arbitration tribunal recognized under the rules of the Association or Confederation or to CAS.The Associations shall also ensure that this stipulation is implemented in the Association, if necessary by imposing a binding obligation on its members. The Associations shall impose sanctions on any party that fails to respect this obligation and ensure that any appeal against such sanctions shall likewise be strictly submitted to arbitration, and not to ordinary courts of law.[38]

This provision is highly reflected in article 34(1) of the FECAFOOT Statutes which is echoed thus: "Pursuant to article 82 of the statute of FECAFOOT, clubs in MTN Elite One, players and officials shall not be authorized to refer disputes before ordinary law courts, but before the sole jurisdiction of FECAFOOT"[39]

With the above analysis, the Bamboutos affair is subject to be heard by the appeals panel of the Court of Arbitration for Sport in Lausanne, Switzerland as stipulated in its R47 of the procedural rules of CAS ,and not in the high court in Yaoundé. After all the court was not reviewing whether due process was violated by the arbitral tribunal on sport. If we were to go by the principle of due process, the Bamboutos affair with FECAFOOT was subject to be heard by the Court of Arbitration on Sport in Lausanne; for having passed through the two stages needed for settling sport claims in Cameroon that is, the First instance of the arbitral tribunal and the Appeals Commission of FECAFOOT. The only structure that has jurisdiction is CAS and not the

[38] FIFA Statutes, Regulations Governing the Application of the Statutes standing orders of the Congress 2007.
[39] Rules and Regulations 2008/2009 of MTN Elite One season of FECAFOOT.

High court in Yaoundé .The High court was not called upon by Bamboutos officials to set-aside or refuse the recognition of the award of the arbitral tribunal .And even, if it did ask the court to do so, it would not have still respected due process, for it was not a Foreign award as in the UN Convention article V.Article V of this Convention necessitates one to draw the inference that its sphere is reposed within Foreign awards. For this reason the High court did not have the competence to hear the matter.

2.4 The Jurisdiction and scope of the Geneva arbitral tribunal

The Court of Arbitration on Sport (CAS) in Lausanne Switzerland was created in 1983 by the International Olympic Committee; CAS is now under the Administrative authority of the International Council for Arbitration on Sport (ICAS).[40]

Like the Homologation and Disciplinary Committee (Arbitral Tribunal) of Cameroon's Football Association, the Court of Arbitration for Sport (CAS) in Lausanne Switzerland, equally settles sport related claims .While the jurisdiction of Cameroon's arbitral tribunal is limited to the territorial confines of the country, and to sport disputes concerning only Cameroon's Champions league; the Court of Arbitration on Sport in Lausanne enjoys a much more wider scope. It entertains claims across the world of sports not limited only to football but other sporting disciplines. Unlike in Cameroon where each sporting discipline has its own arbitral tribunal.The CAS equally, hears cases of appeal from Federations, Associations or from sport related bodies in so far as the statutes or the rules of the these Bodies permit. An appeal could be filed with

[40] Gabrielle Kaufmann-Kohler, Laurent Levy, Court of Arbitration on sport: Defining Characteristics of court of arbitration for sport. A.L.R 1998, 1(7), N108-109)Lexis Nexis.

CAS if a party is not satisfied with the decision or award from the First Instance of the Tribunal if the rules of this instance clearly provide so.

In its section 12 of the statutes of the Court of Arbitration on sport, this enacts, that this organ has as mission the following:

> a) to resolve the disputes that are referred to them through ordinary arbitration
> b) to resolve through the appeals arbitration procedure disputes concerning the decisions of federations, associations or other Sports-related bodies, insofar as the statutes or regulations of the said sports-related bodies or a specific agreement so provides;
> c) to give non-binding advisory opinions at the request of the IOC,the IFs,WADA,the Associations recognized by the IOC and the Olympic Games organizing Committees (OCOGs).[41]

The jurisdiction of the Court of Arbitration on Sport (CAS) is not limited to the arbitration of sport related disputes. It also extends to mediation as a means of settling especially commercial and financial disputes, whose rules were introduced in May 1999.The first cases to be heard by Ousmane Kane, first counsel to hear mediation cases once said "The International Council of Arbitration and Sport took the initiative to introduce these rules alongside arbitration. As they encourage and protect fair play and the spirit of understanding, they are made to measure for sport"[42]According to the CAS mediation rules the parties must provide a mediation agreement for their dispute to be mediated by mediators from CAS.However, CAS mediation rules are limited to the pecuniary nature of the sport related dispute and clearly excludes mediation connected to doping and disciplinary issues as seen below:

> CAS Mediation is a non-binding and informal procedure based on mediation agreement in which each party undertakes to attempt in good faith to negotiate with the other party, and with the assistance of a CAS

[41] Section 12 Statutes of the court of arbitration (CAS) Lausanne Switzerland
[42] IAN Blackshaw,The Court of Arbitration for Sport: An International Forum for Settling Disputes Effectively "Within the Family of Sport" Entertainment Law,Vol.2,No.2 Summer 2003,pp.61-83 PUBLISHED BY FRANCK CASS,LONDON.Lexis Nexis.

> mediator, with a view to settling sports –related dispute. CAS mediation is provided solely for the resolution of disputes related to CAS ordinary procedure. All disputes related to disciplinary matters, as well as doping issues, expressly excluded from CAS mediation.[43]

In a landmark case decided in an English High court **Cables & Wireless plc v IBM United Kingdom (2002) All ER (Comm.) 1041,** Mr. Justice Colman held that "an agreement to refer disputes to mediation is contractually binding"[44]In this case, IBM wanted Cables to mediate the claim that arose out of their contract in which both agreed to mediate their future claims. Cables Wireless refused doing so when a dispute arose that the mediation clause in the contract was unenforceable. It was argued by the judge, that an agreement to mediate is like an agreement to arbitrate and so was legally enforceable. This goes a long way to buttress the fact that, the jurisdiction of the court of arbitration on sport in Lausanne is wide, and extended to mediation as a dispute settling means. Unlike in Cameroon where it is limited only to arbitration even though with mediation and conciliatory commissions within the structure. These bodies hardly attempt resolving disputes .Rather; ordinary people who are not members of these bodies do attempt to resolve through their own initiative.

Though CAS has wide powers to settle sport disputes across the world and in any discipline; CAS is not without limitations. The Statute of FIFA under its article 61 (3) doesn't deal with appeals from:

a. violations of the laws of the Game;
b. suspensions of up to four matches or up to three months(with the exception of doping decisions);

[43] CAS Mediation Rules.
[44] Ken Foster, Readings in Law and popular culture, Jurisdification of Sport, ed.by Steve Greenfield and Guy Osborn.p.164.

c. Decisions against which an appeal to an independent and duly constituted arbitral tribunal recognized under the rules of an association or a Confederation may be made.[45]

The jurisdiction of CAS extends to conciliation. Before the president of the Division sends to the panel a matter to be heard by the arbitrators, the panel may attempt to settle the dispute by Conciliation .If such a conciliation forum ripens up to an award, it will be taken to mean that the parties to the dispute consented.[46]

With respect to the applicable law to the proceedings in the Court of Arbitration on sport (CAS) the parties to a claim before the tribunal can decide to choose their rules of law, without which Swiss law will be applicable; the parties can authorize the panel of arbitrators to go ahead and decide ex aequo et bono.[47]In Cameroon the applicable law is that of the Homologation and Disciplinary Committee. This could be so because the tribunal in Cameroon doesn't deal with cases of International Arbitration. Its sphere of influence is limited to the country's frontier. The language of the proceedings in CAS is either French or English. And the parties to the dispute choose the language that is most convenient to them.

2.5 Appointment and the Composition of sports arbitrators in the Geneva arbitral tribunal compared with the Cameroon's experience

The creation of an Arbitral tribunal will not fulfill its purpose if these tribunals are not fleshed with people who can interpret the statutes and manage the process of settling sport related disputes with fairness .The arbitrators as they are called are expected to be well behaved and experts in their fields of specialization. In sport related disputes, the arbitrators are supposed

[45] Statutes FIFA.
[46] Procedural rules of CAS R42.
[47] Ibid as in46 supra R45

to be people fully drilled in law and who have good knowledge on sports and with a good command of the language as designated by the parties to the dispute. English and French are being used in CAS arbitral proceedings. While Cameroon being a bilingual country uses only French as the language of the tribunal. It is not like in other international commercial tribunals where the arbitrators could be people from other walks of life. In Cameroon, the arbitral tribunal is not required to have arbitrators who are knowledgeable in law. In both tribunals, that is CAS and HDC, the method of appointing arbitrators to the tribunals differs in significant respect. In Cameroon, the president of the FA is in charge of appointing arbitrators, depending on the issue at hand. While in CAS the appointment is made by the parties to the dispute as agreed in their arbitration agreement. This is so because Cameroon has a none-consensual method of arbitration while in the CAS parties' agreement is important and they select from the list of arbitrators appointed to the CAS by the International Council for Arbitration of Sport (ICAS).

The Composition of both tribunals, CAS and HDC are equally different. While in Cameroon only two arbitrators usually sit in minor disputes, in the CAS a sole or three arbitrators could sit to settle a dispute, however it depends on the agreement of the parties to the claim and the complexity of the issue before the panel. In the pages ahead we shall make a full appraisal of how this arbitral tribunals work.

2.5.1 Homologation and Disciplinary Committee of Cameroon

The Homologation and Disciplinary Committee of the Football Association is the most popular arbitral tribunal on sport in Cameroon. This is because football is the most popular sport in Cameroon. Its lovers usually refer to football as the "le sport roi" meaning the main sport. The other sport tribunals are not well constituted and active like the HDC. The arbitrators of this tribunal are not required, to have had legal training to be appointed as arbitrators. But most are

retired professional footballers, who know just rules of the game and not legal rules for settling sport disputes.Perhaps, this accounts for the several poor awards usually slammed on some football clubs.

Even though, the FA has legal advisers, they do not usually sit on the panel of arbitrators, when a claim is before the Homologation and Disciplinary Committee. Most of the time they are out to protect the interest of the FA and not to dish out pieces of advice on the interpretation of the Statutes of the FA.When a problem ensues, may be, from poor interpretation of the Rules, they come in to defend the FA when dragged to an ordinary court or to the appeals Committee of the FA as per article 33(1) of the Rules and Regulations of the FA.[48]

The appointment of the arbitrators in the arbitral tribunal of Cameroon's FA is the sole responsibility of the president of that Institution.Usually; only two arbitrators are appointed .And the arbitrators are usually known especially in minor cases. The arbitrators could be one of the vice presidents or the two vice presidents. When it is a serious case the president could appoint the vice president and the Secretary General or the General Manager of the FA.This Commission has a permanent president. As concerns serious cases three or more arbitrators could be appointed by the president of the FA.For instance during the 2007 Football season,the qualifying matches for the Cup of Cameroon met with many unfortunate incidents that the Homologation and Disciplinary Committee had to arbitrate .In a match played in Garoua between **Public Works Department Social Club Bamenda v Cotton sport of Garoua** where only two arbitrators were appointed when the Manager and the coach of the team from Bamenda threatened the lives of the match officials with death if they were designated to handle a match in their home field in Bamenda.[49]The composition of this tribunal varies from dispute to dispute.

[48] Cameroon Football Federation: Regulations of the 2008/2009 MTN Elite One Season.
[49] Disciplinary Code of FECAFOOT article 98.

2.5.2 The Court of Arbitration on Sport in Lausanne

The Court of Arbitration for sport (CAS) in Lausanne, Switzerland, like other Commercial arbitral Institutions has a battery of more than one hundred and fifty sport arbitrators and about fifty mediators.ICAS has as mission to … "Facilitate the settlement of related sport disputes through arbitration and mediation and to safe guard the independence of the CAS and the rights of the parties. To this end it looks after the administration and financing of the CAS"[50].

One of ICAS' role is to appoint arbitrators to the CAS.Which implies that ICAS only appoints arbitrators to the CAS; while the parties to a dispute before CAS are required to choose from the list of arbitrators, those whom they want to hear their claim. The panel is usually composed of one or three arbitrators. If an arbitration agreement does not make mention of the number of arbitrators ,the president of the Division shall decide ,however he must take into consideration the complexity of the claim[51] The parties to the dispute might agree on the method to appoint an arbitrator but in the absence of such an agreement the arbitrators shall be appointed by the president of the Division, however if there is an arbitration agreement or the president of the Division can decide to appoint three arbitrators or both parties to the dispute shall be allowed to appoint their arbitrators within the time limit set by the Court Office. If the parties fail to appoint, the president of the Division shall appoint on their behalf two arbitrators who will intend appoint the president .If the two arbitrators fail to appoint a president within the time limit set, the president of the Division shall proceed to appoint the president of the panel. [52]

The method of appointment of arbitrators to hear a dispute at the CAS is fundamentally different from the Cameroonian experience .Where the president of the FA does the appointment in all cases. This is partly due to the absence in Cameroon's arbitral procedural rules of an

[50] Section 2 Statute of CAS.
[51] Section R.40 (1) Procedural rules of CAS.
[52] Ibid as in 51 R40.2

arbitration agreement. When a matter is on appeal, it shall be submitted to three arbitrators, unless the appellant otherwise agreed with the respondent ex ante that the panel will be composed of a sole arbitrator. In the absence of any agreement to the number of arbitrators the president of the Division shall proceed as usual to appoint a sole arbitrator to the panel and will certainly take in to consideration the circumstances of the dispute.[53]The arbitrators are appointed mutadis mutandis in both the first Instance and when a matter is on appeal.

[53] Ibid 52 , supra R 50

CHAPTER THREE

STATE CONTROL OVER ARBITRATION

3.1 Public Policy Consideration

It is the public policy of each state in the world to have as responsibility, to maintain law and order, as a means to promote social cohesion. In doing so, states usually prohibit certain activities which they deem could jeopardize the most needed peace; that can stifle the relation amongst the institutions of the state or can lead to a social or political unrest. Control thus, does not affect the jurisdiction of the arbitral tribunal, but it is a means by states to guard against societal norms which if not quickly forestalled could lead to regrettable consequences in the future. However, such controls over state Institutions should have limits so as to give these Institutions the leeway to perform their duties to the fullest.

In Commercial arbitration ,like in sports arbitration setting aside of an arbitral award can be allowed ,when the award infringes article V (I) (a) to (e) on due process and (II) (a) and (b) on public policy of the New York Convention of June 10th 1958.[54]Public policy under article V (II) seems to be a reason put forward by the Cameroonian authorities for setting aside and recognizing arbitral awards on "maintaining social peace"[55]. This is undeniably true. For instance, at the wake of English football fans hooliganism, and following the disorder perpetrated by English fans during Euro 2000 in Chaleroi, the United Kingdom introduced the

[54] Varad, Barceló III, von Mehren Documents supplement to International Commercial Arbitration .A transnational perspective 3rd Ed. .Pages 2 - 3.
[55] Bertille Missi Bikoum, MUTATION, posted October 3rd & accessed Nov.4th 2008.http://www.camfoot.com

Football Disorder Act 2000, to curb violence so as to maintain peace during encounters across Europe when its clubs or National team was involved[56]. While the court of arbitration on sport (CAS) does not face such a problem since it is autonomous and if its decisions are contested it is by individuals or Federations and not a state where the Constitution can bestow such powers on the executives. Even so, the decisions rendered by the CAS are usually deemed final as soon as it is communicated to the parties concerned. I will be very quick to add that, this does not rule out the fact, that appeals are not entertained by the CAS.But it has some limitations that we shall see before this chapter ends. The International Council for arbitration on Sport (ICAS) over sees the activities of (CAS) but it does not prohibit arbitration nor control the arbitral awards, recognition and enforcement.

The Control by the state, of state Institutions in Cameroon is a common currency, especially, when the state wants a policy pass through. This extends to the government controlling sport arbitration, not only to maintain social cohesion but as the public feels it is usually to favor a particular group of people. So state control may some of the times politically motivate.

3.2 Limits to setting aside and recognition of Arbitral awards

In International Commercial Arbitration, like in sport arbitration; the lofty aim of an award is to be final, and accepted by the parties to the dispute. It will not serve the purpose if an award is made without the possibility of enforcing it. An award must be capable of being enforced and not to be set aside by an ordinary law court.

[56] Geoff Pearson, Readings in law and popular culture, Contextualizing the Football Disorder Act, Edited by Steve Greenfield and Guy Osborn. Page 101.

As a matter of principle, an arbitral award is considered final when it has been rendered. Even though in some codes and Arbitration Acts, an award is considered effective on the day of its award as in the Dutch Code of Civil procedure and in the Swiss Act on Private International Law, it is final at the moment it is communicated to the parties. The award before enforcement doesn't require any scrutiny by the country of origin as highlighted in article V of the New York Convention. So the issue of double exequatur is not of any moment under the UN Convention. Where notarization confirmation renders the award to be enforced.[57]We should not loose sight of the fact that, this Convention applies only to foreign awards, seeking enforcement and recognition in a foreign territory. But in Cameroon the award made by the arbitral tribunal does not fall within this confine, and that the Cameroonian authorities might refer to it as a case infringing National policy. Setting aside in Cameroon on most occasions will be politically motivated .For instance, it is widely believed that the Bmaboutos FECAFOOT saga, prolonged because Mbouda has been voting massively for the ruling party during political consultations. Political pundits, ponder why the prime minister could stoop too low to arbitrate this issue between Bamboutos and FECAFOOT when other state issues were pending in his office. So a strong attachment to the government can lead the government to limit an award. If the Statutes of FECAFOOT are interpreted as it should be, then an ordinary law court or the State will not have control over arbitration. For article 33 (1) of the Statute of FECAFOOT is clear that if a party to a dispute before the tribunal ,is not satisfied with the decision of the tribunal then the issue should be referred to the Appeals Commission of the HDC.And it goes further in its article 34 (1) and (2) that the players, officials of clubs must take all their claims before the arbitral tribunal (HDC) and if they are not satisfied with their awards ,that club or official can make recourse to the CAS in Lausanne Switzerland. Article 62 of the World's Football Governing body already

[57] Varady, Barceló III, Von Mehren, Int, national Commercial Arbitration, 3rd edition. Pages 688-689

cited above, equally makes allusion to this. The enforcement and recognition of an award rendered by the sport arbitral tribunal in Cameroon is highly controversial because the government comes in, when there is an interest to protect though; most of the time it goes under public policy considerations as will be seen below.

3.2.1 Cameroon's Ministry of sports prohibition of arbitration

The Ministry of Sport and Physical Education is one of Cameroon's several Ministerial departments; in charge of sport. This Ministry is working in close collaboration with Sport Federations. Over the years the relationship between the Federations and the Ministry of sport, especially the FECAFOOT has never been very smooth. There is a lot of administrative bottlenecks and tug of war between these two Institutions. The Federations are placed under the Ministry of Sport, though they do have some autonomy but their decisions are usually scrutinized by the Minister of sport. The long standoff, between FECAFOOT and the Ministry of sport, does not only concern arbitration of sport disputes. It extends to a wide range of issues, like the appointment of coaches to the Indomitable Lions; Cameroon's National Football team, fixing a date for the local Champions league to begin, test matches between the Lions and other teams and a host of others. For instance, the German coach, Otto Pfister who coaches the lions today, was not short listed among the five contenders by the FA.The Minister went ahead to appoint him without consulting FECAFOOT, whose officials were taken aback by the Minister's one man show. Following the 1972 Decree on the organization of the FECAFOOT, the FA is the body empowered with technical expertise while the Ministry is in charge of Administration and Financial Management.

Furthermore, the Minister of Sport in September last year prohibited FECAFOOT from going ahead with the MTN Elite One Championship; this prohibition came as a result of the inability of FECAFOOT clearing the dust over the Bamboutos affair. On October 3rd 2007, for the first time Cameroonians were taken aback as the Ministry of Sport and the Prime Minister were solely involved in arbitrating a sport dispute. Football lovers kept on asking the question why the Conciliation Commission of FECAFOOT could not be invited to resolve the impasse once and for all.[58] The prime Minister had instructed the Minister of sport to ban the take off of the Championship so that Bamboutos Mbouda could be reinstated into Division one. At the same time the Minister of sport was trying to sort out things with FECAFOOT officials, the Prime Minister on the same day invited the same officials to attempt conciliation between Bamboutos and FECAFOOT. The threshold question is, how could the Prime Minister go too low to arbitrate a dispute emanating from football? And how could the Bamboutos Mbouda affair become a state issue when competent bodies were there to resolve the issue? Since sport arbitration is not the attributes of the prime Minister. Public opinion is that, since the Secretary General at the Prime Minister's office hails from Mbouda, he could have influenced the Head of Government behind the scene. This point could be corroborated with the fact that a top government official who hails too from Mbouda and works at the presidency of the Republic said « l'équipe de Bamboutos est pour le département dont elle Porte le nom ce que sont les lions indomptables pour le Cameroun. La confirmation de cette décision serait un coup de grâce porté sur les succès politiques que le RDPC a engrangé dans les Bamboutos dépuis l'année 2002. »[59] My literal translation looks thus: "The team from Bamboutos is for that locality as the indomptables lions is for Cameroon. The confirmation of this decision would be a blow on the

[58] Brice Mbeze, CAMEROON TRIBUNE, posted October2nd.2008, accessed Nov.1st 2008.http/www.camfoot.com.
[59] Bertille Missi Bikoum,Newspaper , MUTATIONS posted October 3rd and accessed Nov.4th 2008.http:/www.camfoot.com

political success that the Cameroon Peoples Democratic Movement has achieved in Bamboutos since 2002. ". Parliamentarians from Bamboutos and the Governor of the Western province of Cameroon also added their voices by calling on the sport Ministry to prohibit the decision of the arbitral tribunal on sport. The Governor went on to say he had a premonition they will be an agitation of the population if the issue was not quickly diffused.[60]

Admittedly, public policy can be a reason for setting aside an award, but in the present case it clearly shows that the prohibition by the government, of an arbitral tribunal's decision not to be enforced, might be highly politically motivated. The question that arises is, why did the government allow the high court in Yaoundé to hear Bamboutos' claim when the arbitral tribunal relegated them to Division III?One would not be wrong to hold that ,the government knew the outcome of the court's decision. Furthermore, it took the court over thirty adjournments for them to render their judgment. This procedurally is not correct. Despite all this, the FA stood its ground and did not waver at any time what so ever, to accede to the pressure exerted on the them.Arguably, their decision was correct for they kept on invoking article 62 of the FIFA Code which stipulates that all claims by football clubs must be brought first before the FA's arbitration tribunal, both in the First instance and the appeal commission, before making recourse to the CAS for appeal. Furthermore, they argued on the strength of articles 56 and 93 of the Disciplinary code of FECAFOOT that punishes Corruption and Cheating during encounters.[61] Sport too cultivate values that are against corruption.FIFA's Correspondence of December 19th 2007 to remind the Minister of Sport to heed FIFA's governing rules seemed to have fallen on deaf ears.[62]. Disputes relating to sport must not be taken to ordinary law courts as Bamboutos

[60] Ibid as in 55
[61] Disciplinary Code FECAFOOT.
[62] Iya Mohammed, president of FECAFOOT, A Correspondence to the sport Minister, The case of Bamboutos Mbouda.camfoot.com posted November 3rd 2008 and accessed March 1st 2009

did, but must be resolved by the Homologation and Disciplinary Committee through arbitration, Mediation or conciliation by Football Federations.

3.2.2 The position in the court of arbitration of sports (CAS)

The legal status of the CAS awards is presumed to be final and binding on all the parties as soon as the decision of CAS is made known to the parties. It is enforced by the rules of International Private Law, just like in other International Commercial Arbitration disputes; taking into account the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards that came into force on June 10th 1958.The status of the CAS is also recognized by the European Convention on the Recognition of the legal personality of International Non-Governmental Organizations. The parties who are not satisfied with the CAS awards can petition the award in Lausanne ,Switzerland where the seat is based, however ,they are limitations with respect to the type of petitions as enshrined in article 190(2) of the Swiss Federal Code of Private International Law of December 18th of 1987:

> a) if a sole arbitrator was designated irregularly or the arbitral tribunal was constituted irregularly;
> b) if the arbitral tribunal erroneously held that it had or did not have jurisdiction
> c) if the arbitral tribunal ruled on matters beyond the claims submitted to it or if it failed to rule on one of the claims;
> d) if the equality of the parties or their right to be heard in adversarial proceedings was not respected;
> e) if the award is incompatible with Swiss public policy.[63]

ICAS would have been the Body that one would have thought can interfere with CAS arbitration since ICAS supervises the activities of CAS.But when one carefully peruses the statute in its Section 6 [64]which clearly outlines the attributes of CAS no where in it is it

[63] Swiss Code on Private International Law of Dec.18th 1987..
[64] Section 6 Statute of CAS & ICAS

mentioned that ICAS is authorized to intermeddle with CAS decisions or prohibit the CAS from arbitrating a particular case. Perhaps, that is the reason why all CAS decisions are always final and binding on the parties.CAS has no particular problem when it comes to enforcing its awards unlike in Cameroon. Cameroon's Ministry of Sport equally, supervises the activities of the FA but one come away with the impression that there is a lot of interferences in the activities of the FA by the Sport Ministry, which on many occasions has some political overtones. The issue is how does the government balance public policy consideration on protecting social peace and safeguarding its own laws and public morals? When the government violates legislations of FECAFOOT, to institute a team into the Elite One that was involved in corrupt practices. What precedence will this set if the decision of the arbitral tribunal is set aside by the government? It is common sense to believe that other clubs that will find themselves in this predicament will certainly have that proclivity to turn down any award from FECAFOOT.

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Conclusion

After a survey of the jurisdictions of the arbitral tribunals for sport in Cameroon, and that of the Court of Arbitration for Sport in Lausanne, Switzerland; one quickly sees the different ways the parties to a sport dispute initiate their cases before these tribunals. The different methods used to initiate a case before these disputes settling institutions leaves one with the impression that, Cameroon's concept of mandatory rule of sport arbitration is far from being adequate in resolving sport claims that will not be contested. How ever, this does not mean that mandatory rules have not succeeded elsewhere in arbitration. The grey part of this mandatory rules system is that, it has two sides of a coin. The first side is that with sport-related claims on discipline, the mandatory concept of arbitration could be, arguably very accommodating. This is so because it is an offense that National Sport Federations cannot accept to negotiate with the accused party. Secondly, if the other side of the coin is turned, it could be thought that in claims that do not fall within the ambit of discipline, the parties can negotiate their issue without going to arbitration or to a court of law.Mnadatory rules would not mean arbitration in this sense. For instance, if a broadcast right is infringed by the other party to an agreement; both parties can decide to resolve their issue without necessarily making recourse to arbitration. At this juncture, the National Federations would have nothing to loose if they don't compel arbitration. Though, if the Federation owns the broadcasting right, that is when things could become difficult as section 72(1) of the FIFA's Statute, posits that all broadcasting rights pertain to FIFA and its Confederations. But this cannot totally rule out the fact that it could be negotiated without recourse to arbitration. But on disciplinary issues it would be recommended to compel arbitration

to deter such behaviors in the future. For instance, the case that forms the subject of this treatise is the corrupt scandal between Bamboutos Football club of Mbouda and the Federal social club of Noun. It is common sense to believe that both teams would not take the other to the court or tribunal. So the mandatory concept will certainly compel them to arbitration. And if it later transpired that the other team did not leave up to the agreement to allow a goal to be scored or if Bamboutos failed to perform their own obligation after the match, the Noun Football club will not lift their voice for both know it is an illicit act punishable in law.

The concept of parties' autonomy that propels the authority of the arbitrators is highly limited in Cameroon ,thereby compelling sport claims to be heard without parties'agreement.With this confusion inherent in Cameroon's arbitral process, the courts then take advantage as another dispute settling body to stretch its snail pace attitude ,a characteristic of these Institutions .When these courts come into the arbitral process it does not only give leeway for litigants to pick and choose which institution favor them in the end. With the mandatory concept of sport arbitration in Cameroon, the parties do not choose their laws and are not free to choose their arbitrators who often cast doubts on the arbitrators' impartiality. It is widely acknowledged that when the litigants appoint their own tribunal, there is the tendency that they will concur to the outcome of the tribunals' award.

In the CAS it is a norm that before any case is examined by the arbitrators, there must be an arbitration agreement. If in the absence of an arbitration agreement, and if the parties do not later agree to go to arbitration, the CAS will not be able to hear the matter. This is particularly important because without the parties' arbitration agreement the arbitral tribunal will not be constituted. So, the arbitral tribunal will be created if and only if, there is parties' agreement that sets the process to settle their dispute i.e. their own law, a third party whom they

chose because of their neutrality i.e. the arbitrator(s), an opportunity that they will be heard all through the proceedings, i.e. fairness, and of course final award rendered by the neutral third party, that is sure to be accepted by the litigants. This is basically, the importance of arbitration. The parties have the opportunity to appoint the arbitrators to the tribunal. Since an arbitration agreement is the parties own law, it is their mini- legal system, where the arbitrators derive their authority. Even though CAS has a reputation for settling sport- related disputes, CAS has never declared itself incompetent in any dispute before it. This means the arbitrators do not usually declare that they lack jurisdiction. Further more, one can liken CAS to a solute solvent hypothesis in Chemical Science, where CAS plays the role of a universal solvent in settling sport- related claims without an arbitration agreement. So CAS entertains and dissolves all solutes and never to declare itself incompetent. This is corroborated by R 52 of the CAS procedural rules that authorizes the CAS to receive appeal cases even though; there is no arbitration agreement.[65] What this means, is that, appeal cases from Cameroon can be forwarded to CAS even if the parties in Cameroon never had an arbitration agreement. It could be inferred that CAS, uses this method not to allow any dispute unsettled or further, it could be that CAS certainly wants to whittle down potential disputes that might arise between National Federations and state institutions or between clubs and the National Federations. But one thinks that, affiliation with any National Federation means, a club or party to a dispute has accepted to accede to FIFA's Rules. And a club or a litigant cannot turn round to say there is no arbitration agreement to arbitrate at CAS.

If International Norms on arbitration is anything to go by, then Cameroon's mandatory concept of sport arbitration is not doing any good to resolving sport disputes. This is so because, an arbitration agreement is the sanest way to authorize the arbitrators to settle a dispute to the

[65] CAS procedural rules.

parties' satisfaction, since they choose their own law and way they think their dispute can be resolved. An arbitration agreement certainly gives the arbitrators the jurisdiction and the parameters that the arbitrators are suppose to tow while seeking resolution of the dispute. This can be one of the reasons of the drafters of the UNCITRAL Model Law in article 7 cited in chapter two of this Thesis. A court coming in, to settle disputes should not come in at the heart of an arbitral process for these foils the parties' intention. The timing is usually of primordial importance, when the court should come in. Following International arbitration norms as engraved in the principle of competence-competence, however arguable, the courts come in only when the arbitration agreement was tainted by the violation of due process as in article V(1) (a & e) on due process or through article V (11) (a & b) on public policy considerations of the New York Convention. Courts will stay their intervention until the arbitral tribunal renders its award and if tainted with irregularities they can come in for a review. In Cameroon this is not what obtains, for courts can intervene even when the sport arbitral tribunal process is on motion or when the award has been made with no irregularities as was the case with Bamboutos and the FA.

With respect to prohibition of arbitration by the Ministry of sport on maintaining social peace or public policy, one would hold that it is a concept widely accepted, but it should be used in deserving cases. Even though the UN Convention makes allusion to public policy though limited to Foreign awards, in its article V (2) (a & b) the government can intervene when the matter is not arbitrable. From the Bamboutos affair it was already arbitrated upon, which means it was arbitrable.And the award by the arbitral tribunal of the Cameroon's FA was not contrary to public policy. It was an issue of corruption, which is abhorred worldwide. So this corrupt scandal could not stop arbitration by the sport arbitral tribunal. If the arbitral tribunal's decision was

against public policy, then the High Court in Yaoundé would not have had standing too. Since, according to the principle of competence-competence the courts usually intervene only to review the decision of the arbitral tribunal when due process was violated.

In a nut shell, it would be foolhardy, to presume that an arbitration agreement is a panacea for a reasoned award. An arbitration agreement is not synonymous to an award that will be accepted without further appeal. But then without parties' autonomy their claim cannot be heard in a tribunal that will suit their whims. And for this to happen an arbitration clause must be inserted in their contracts to assure that if a dispute arises out of their contract or transaction they will know where to seek resolution. If the Cameroonian system made arbitration agreement a requirement the Court in Cameroon would have not intervened in the Bamboutos imbroglio except that the Ministry of sport would have ordered arbitration to stop. Or if the arbitral tribunal's award was contrary to one or some of the rules outlined under article V of the New York Convention. To have an arbitration process worth the name, and to diffuse the cold war and tension between the judges and the arbitrators it is of paramount importance that parties' autonomy should be respected by state institutions and their dispute should be settled according to the law set forth by the parties in their arbitration agreement. International Arbitration norms should be applied and adhered to, for the sake of comity of nations. Since the high mark of civilization is when people are able to live with rules, even though it is not their own, which can enhance the predictability of their behaviors in the society at large.

RECOMMENDATION

a) As recommendation for Cameroon's decision makers on sport, they should take it as a point of duty or challenge to fashion their arbitral tribunal on sport by first introducing arbitration agreement that will help parties to a sport dispute know where to seek resolution when it arises. By this the parties will create the way their dispute will be resolved and accepted by the parties. This will keep the courts aside until such a time there is an issue that needs the attention of the court.

b) Commission for conciliation and Mediation should be given more powers to attempt resolving issues through these mediums, or giving advisory opinions. Until no solution is sought before the officials can make recourse to the arbitral tribunal.

c) The composition of the arbitral tribunals should be made up by people who have legal training and knowledge in sport .i.e. the Arbitrators. They should be able work hand in gloves with the other experts on football who do not have legal knowledge. The parties should choose their arbitrators

d) A more accommodating Statute should be written that will include when the courts can intervene in a dispute. Courts should intervene when there is no sign of arbitration .Mandatory Rules should be default rules in the absence of arbitration tribunal It should be well defined in the Statute how sport disputes are to be disposed with by the Litigants and the FA.For instance, there should be a clause that immediately you affiliate with the National Federation you are bound by their rules on resolving disputes. These clauses should be included on the licences of the players so that they read before signing. It should be made in a way that affiliating with the National Federation should be a form of contract; with the arbitration agreement being that the clubs submit all disputes to arbitration when they ensue. Officials of these clubs should cease

taking sport claims to ordinary law courts. This clause should look like an arbitration agreement that will have a contagious effect to appeal at the CAS.

e) The relationship between the Federations and the Ministry of Sport should be well defined. This firm line drawn between the Ministry and the FA will help outline those things the FA should or should not do. Then the rest could be for the Ministry of sport. Who does what? and when? Will not be heard again. Etc.The symbiotic interaction between the two institutions following the 1972 Decree should be revisited and more autonomy should be accorded to FECAFOOT because they have the technical expertise on sport.

f) Though sport cannot be kept away from politics government should avoid taking arbitrary decisions for selfish aims.

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