



**TAS / CAS**

TRIBUNAL ARBITRAL DU SPORT  
COURT OF ARBITRATION FOR SPORT  
TRIBUNAL ARBITRAL DEL DEPORTE

**CAS 2023/A/10293 Abdul-Samad Habeeb Khaleefa Alorayan and al. v. Sheikh Ahmad Al Jaber Al Abdullah Alsabah**

## **ARBITRAL AWARD**

**delivered by the**

### **COURT OF ARBITRATION FOR SPORT**

**sitting in the following composition**

President: Dr Ghada M. Darwish Karbon, Attorney-at-Law, Doha, Qatar  
Arbitrators: Prof Ulrich Haas, Professor in Zurich, Switzerland and Attorney-at-Law in Hamburg, Germany  
Dr Ismail Selim, Attorney-at-Law, Cairo, Egypt

**in the arbitration between**

**Abdul-Samad Habeeb Khaleefa ALORAYAN, Kuwait**

**Faleh Baddah Saleh ALOTAIBI, Kuwait**

**Ali Massaoud Mahmoud HAYAT, Kuwait**

**Saleh Abdulaziz Ahmad ALSAR'AWI, Kuwait**

**Fuad Abdul-Redha Khalil MESHARI, Kuwait**

Jointly represented by Mr Ali Abbes and Mr Mohamed Rokbani, Global Sports Consulting, Monastir, Tunisia

**- Appellants -**

**and**

**Sheikh Ahmad Al-Jaber Al-Abdullah ALSABAH, Kuwait**

Assisted by Dr Muhammad Jamil Ibrahim, Counselor in Kuwait

**- Respondent -**

\* \* \* \* \*

## **I. THE PARTIES**

1. Mr Abdul-Samad Habeeb Khaleefa ALORAYAN (the “First Appellant”) is a Kuwaiti national holding the position of former Vice President of the board of directors of the Kuwait Tennis Federation (“KTF”).
2. Mr Faleh Baddah Saleh ALOTAIBI (the “Second Appellant”) is a Kuwaiti national holding the position of former General Secretary of the board of directors of the KTF.
3. Mr Ali Massaoud Mahmoud HAYAT (the “Third Appellant”) is a Kuwaiti national holding the position of former Assistant General Secretary of the board of directors of the KTF.
4. Mr Saleh Abdulaziz Ahmad ALSAR’AWI (the “Fourth Appellant”) is a Kuwaiti national holding the position of former Member of the board of directors of the KTF.
5. Mr Fuad Abdul-Redha Khalil MESHARI (the “Fifth Appellant”) is a Kuwaiti national holding the position of former Member of the board of directors of the KTF.
6. Mr Abdul-Samad Habeeb Khaleefa Alorayan, Mr Faleh Baddah Saleh Alotaibli Alorayan, Mr Ali Massaoud Mahmoud Hayat, Mr Saleh Abdulaziz Ahmad Alsar’awi and Mr Fuad Abdul-Redha Khalil Meshari are jointly referred to as the “Appellants”.
7. Sheikh Ahmad Al-Jaber Al-Abdullah ALSABAH (the “Respondent”) is a Kuwaiti national holding the position of former President of the board of directors of the KTF.
8. The Appellants and the Respondent shall jointly be referred to as the “Parties”.

## **II. INTRODUCTION**

9. This case revolves around the decision of the National Sports Arbitration Tribunal in Kuwait (“NSAT”) dated 6 December 2023 (“Appealed Decision”) invalidating the extraordinary meeting of the executive members of the board of directors of the KTF (“KTF Board”) held on 9 April 2023 and the subsequent General Assembly Elections held on 27 April 2023 (the “KTF General Assembly Elections”).
10. The Appellants maintain that the Extraordinary Meeting of the KTF Board convened based on a valid request and, therefore, the subsequent KTF General Assembly Elections were duly convened. The Appellants further submit that the decision of the KTF Board to hold the elections on 27 April 2023, and subsequent results of the KTF General Assembly Elections, and the consequences thereof, are to be upheld thus reversing the Appealed Decision, whereas the Respondent seeks that the Appealed Decision be upheld.
11. On 08 June 2023, the Respondent filed a request for arbitration with the NSAT challenging the validity of the KTF General Assembly Elections held on 27 April 2023. The request was registered under number 20230608001. On 6 December 2023, the NSAT rendered the Appealed Decision that states in its operative part as follows:

*“First: accept the dispute in form.*

*Second: on the merits the cancellation of the summons to the meeting of the Board of Directors of the Kuwait Tennis Federation No. (3) dated April 9, 2023 and its consequences, the most important of which is the invalidation of the electoral general meeting of the Federation held on April 27, 2023, as well as the decisions rendered during this meeting including the decision to elect a new Board of Directors of the Federation for the next session (2023-2027), with all the consequences that result from it.*

*Third: require the respondents to bear 75% of the costs and expenses of the decision as well as attorneys' fees amounting to four thousand (4,000) Kuwaiti dinars, and the defendants to bear the remaining 25%.*

*Fourth: Reject other requests”.*

### **III. FACTUAL BACKGROUND**

12. Below is a summary of the main relevant facts, as established on the basis of the written submissions of the Parties, the hearing and the evidence examined in the course of the proceedings. This background information is given for the sole purpose of providing a synopsis of the matter in dispute. Additional facts may be set out, where relevant, in connection with the legal discussion.

#### **A. Background Facts**

13. On 28 April 2019, the Parties were elected as members and President respectively of the KTF Board for a period of four years 2019-2023, starting from 28 April 2019 until 27 April 2023, in accordance with Article 35 of the KTF Statutes.
14. The KTF Board was composed of the following President and seven members: Sheikh Ahmad Al-Jaber Al-Abdullah ALSABAH (the Respondent in this procedure) - President for the period from 28 April 2019 to 28 April 2023; Abdul-Samad Habeeb Khaleefa ALORAYAN (the First Appellant in this procedure) - Vice-President for the period from 28 April 2019 to 28 April 2023; Faleh Baddah Saleh ALOTAIBI (the Second Appellant in this procedure) - General Secretary for the period from 28 April 2019 to 28 April 2023; Ali Salim Dihani - Treasurer, for the period from 28 April 2019 to 28 April 2023; Ali Massaoud Mahmoud HAYAT (the Third Appellant in this procedure) - Deputy General Secretary for the period from 28 April 2019 to 28 April 2023; Saleh Abdulaziz Ahmad ALSAR'AWI (the Fourth Appellant in this procedure) Member for the period from 28 April 2019 to 28 April 2023; Khalid Ali Hassan Muslim - Member for the period from 28 April 2019 to 28 April 2023; Fuad Abdul-Redha Khalil MESHARI (the Fifth Appellant in this appeal) - Member for the period from 28 April 2019 to 28 April 2023.
15. On 10 January 2023, Mr Ali Salim Dihani, Treasurer, officially submitted his resignation from the board of directors in writing.
16. On 17 January 2023, the KTF Board through a letter informed the Public Authority for Sports of the resignation.

17. On 24 January 2023, the Public Authority for Sports requested for the details of the resigned member in order to remove him as a signatory from the bank account.
18. On 24 January 2023, the Secretariat of the KTF provided the requested details of the resigned Treasurer to the Public Authority for Sports.
19. On 5 April 2023, the KTF Board met to set the date for the general election of the new board of directors for the period 2023-2027.
20. On 5 April 2023, the KTF Board agreed to set the date for the ordinary general meeting of the KTF to be held on 2 May 2023 at seven o'clock in the evening, at its headquarters located in the Sheikh Jaber Al-Abdullah Al-Jaber Al-Sabah International Tennis Complex, to elect the new board of directors of the KTF for the period 2023-2027.
21. On 5 April 2023, the KTF Board also agreed to entrust Mr Faleh Baddah Al-Otaibi, General Secretary, with the implementation of the procedures for the general assembly.
22. On 9 April 2023, following an urgent request to schedule an extraordinary meeting made by four members of the KTF Board in a letter dated 5 April 2023, the General Secretary sent out a notice of meeting and, on 27 April 2023, a meeting of the KTF Board was held to change the date of the ordinary general election assembly of the KTF, which was previously set during a meeting of 5 April 2023, to be held on 2 May 2023.
23. This request, as well as the proposed date for the meeting, was transmitted by the General Secretary to the Respondent. The Respondent did not raise any objection, reluctance, or reservation regarding the holding of the meeting or its validity. Also, the Respondent did not present any suggestion or proposal for the agenda of the meeting.
24. On 9 April 2023, the KTF Board meeting decided to modify the date of the ordinary general election assembly of the KTF, session 2023-2027, from 2 May 2023 to 27 April 2023, at seven o'clock in the evening at the KTF's headquarters located at the Sheikh Jaber Al-Abdullah Al-Jaber Al-Sabah International Tennis Complex, to elect the new board of directors of the KTF, session 2023-2027. The Respondent did not attend this meeting; accordingly, the meeting was chaired by the vice president in his absence.
25. Following this meeting, on 9 April 2023, the General Secretary initiated the necessary procedures and steps for the calling and holding of the general election assembly in accordance with the instructions of the board of directors and in application of the statutory provisions governing general assemblies.
26. On 9 April 2023, the General Secretary informed all clubs members about the date of the assembly to be held on 27 April 2023, convened them to provide their

representative for the date of the KTF General Assembly Elections and the time limit for the candidatures.

27. On 16 April 2023, the General Secretary sent the agenda of the assembly and a list of the names of the candidatures to all the KTF's clubs.
28. On the same day, the General Secretary sent an invitation to the Kuwait Olympic Committee with the agenda of the assembly and a list of the names of the candidatures. The General Secretary informed the Kuwait Olympic Committee of the date of the KTF General Assembly Elections.
29. Therefore, the sports clubs, members of the general assembly of the KTF, were informed of the date of the KTF General Assembly Elections, scheduled for 27 April 2023. They were also informed that the opening date for candidacies was 10 April 2023, and that the deadline for receiving candidacies was 15 April 2023, at the end of working hours, in accordance with the text of Article 40, Paragraph 6 of the KTF Statutes.
30. On 27 April 2023, the KTF General Assembly Elections were held, and the Respondent did not attend. A new board of directors was elected for the period 2023-2027 and effectively began its functions.
31. On 8 June 2023, the Respondent filed a request for arbitration before the NSAT claiming the nullity of the KTF general elective assembly held on 27 April 2023 and the decisions taken at that meeting, including the decision to elect the new board of directors of the KTF for the next term 2023-2027 and all the implications that will follow, particularly the reinstatement of the KTF's board of directors to resume the electoral process procedures of the KTF in order to elect a new board of directors for the term of 2023-2027, in accordance with the correct provisions of the KTF Statutes and to oblige the defendants to compensate the claimant - as determined by the arbitration chamber.
32. On 6 December 2023, the NSAT rendered its decision on the merits ("the Appealed Decision") that stated in its operative part as follows: "*... the cancellation of the convocation for the meeting of the Board of Directors of the Kuwait Tennis Federation No (3) dated April 9, 2023, and its consequences, the most important of which is the invalidation of the federation's general election assembly held on April 27, 2023, as well as the decisions made during that assembly, including the decision to elect a new Board of Directors of the federation for the next session 2023-2027, with all the consequences that follow*".
33. On 21 December 2023, the Appealed Decision was notified to the Appellants.

#### **IV. THE PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT**

34. On 11 January 2024, the Appellants filed a Statement of Appeal, in French, with the Court of Arbitration for Sport ("CAS"), challenging the Appealed Decision, in

accordance with Articles R47 and R48 of the 2023 edition of the CAS Code of Sports-related Arbitration (the “CAS Code”). In their submission, the Appellants nominated Prof Ulrich Haas as arbitrator. Furthermore, on 24 April 2024, the Appellants filed a request for provisional and conservatory measures in accordance with Article R37 of the CAS Code. In addition, the Appellants requested an extension for the deadline until 28 March 2024 to file their Appeal Brief.

35. On 22 January 2024, the CAS Court Office informed the KTF that an appeal had been lodged by the Appellants and of its right to request its participation in these proceedings within a deadline of 10 days.
36. By separate letter of the same day, the CAS Court Office also informed the Respondent of the appeal filed by the Appellants and of the opening of this procedure with reference *TAS 2024/A/10293 Abdul Samad Habeeb Khaleefa Alorayan et al. c. Sheikh Ahmad Al Jaber Al Abdullah Alsabah*.
37. On 30 January 2024, the CAS Court Office noted the Respondent’s silence on the Appellants’ request for an extension of the time limit to file their Appeal Brief and thus granted said request.
38. On the same day, the KTF informed the CAS Court Office that it did not wish to intervene in the present proceedings.
39. On 5 February 2024, the Respondent objected to French being the language of the CAS proceedings and requested that the proceedings be conducted in Arabic.
40. On 16 February 2024, the Respondent – in a letter to the CAS Court Office – *inter alia* – reiterated its request for Arabic to be the language of the procedure and nominated Dr Ismail Ahmed Abdel Wahab Salim as arbitrator.
41. On 21 February 2024, in light of the issues related to the language of the proceedings, the CAS Court Office invited the Respondent to state whether he would agree to conducting a bilingual procedure in English and in French as proposed by the Appellants.
42. On 23 February 2024, the CAS Court Office noted the Respondent’s agreement to a bilingual procedure and confirmed that the proceedings would be conducted in English and in French.
43. On 26 February 2024, the CAS Court Office noted the Respondent’s objection to conducting a bilingual procedure in English and in French and informed the Parties that the President of the CAS Appeals Arbitration Division, or her Deputy, would issue an Order on Language pursuant to Article R20 of the Code in due course.
44. On 7 March 2024, the President of the CAS Appeals Arbitration Division decided that the language of this arbitral procedure is English.
45. On 27 March 2024, the Appellants filed their Appeal Brief.

46. On 5 April 2024, the Respondent filed a request for extension of one hundred days of the deadline to file his Answer.
47. On 25 April 2024, the CAS Court Office noted that, in the absence of communication from the Appellants in this regard, the Respondent's request for an extension of the limit to file his Answer was granted.
48. On 26 April 2024, the Appellants filed a request for provisional measures.
49. On 5 May 2024, the Respondent submitted his comments with respect to the Appellants' application for an order on provisional and conservatory measures, requesting that it be dismissed.
50. On 24 May 2024, the President of the CAS Appeals Arbitration Division issued an Order with the following operative part:
  - “1. The Application for Stay requested by [the Appellants] [...] in the matter CAS 2023/A/10293 Abdul Samad Habeeb Khaleefa Alorayan and al. v. Sheikh Ahmad Al Jaber Al Abdullah Alsabah, is dismissed.*
  - 2. The costs of the present order shall be determined in the final award or in any other final disposition of this arbitration”.*
51. On 23 June 2024, the Respondent filed his Answer in accordance with Article R55 of the CAS Code.
52. On 4 July 2024, the CAS Court Office informed the Parties, on behalf of the President of the CAS Appeals Arbitration Division, pursuant to Article R54 of the CAS Code, that the Panel appointed to decide the case was constituted as follows:

President: Dr Ghada M. Darwish Karbon, Attorney-at-Law, Doha, Qatar

Arbitrators: Prof Ulrich Haas, Professor in Zurich, Switzerland and Attorney-at-Law in Hamburg, Germany

Dr Ismail Selim, Attorney-at-Law, Cairo, Egypt
53. On 10 July 2024, the Respondent stated his preference for the Panel to issue a decision based solely on the Parties' written submissions.
54. On 12 July 2024, the indicated their preference for a hearing to be held.
55. On 9 August 2024, the CAS Court Office informed the Parties that the Panel had decided that the matter *CAS 2024/A/10293* would be heard on 30 September 2024, by videoconference, in furtherance of the proceedings.
56. On 3 and 9 September 2024 respectively, the Appellants and the Respondent returned their duly signed copies of the Orders of Procedure.

57. On 30 September 2024, a hearing was held by videoconference. At the outset of the hearing, the Parties confirmed the capacity they were attending in and there was an introduction of the constitution and composition of the Panel.
58. In addition to the members of the Panel, Ms Amelia Moore, Counsel to the CAS and the following persons to these proceedings attended the hearing:
- a) For the Appellants:
    - 1) Mr Faleh Baddah Saleh ALOTAIBI, Second Appellant & former Secretary of the KTF;
    - 2) Mr Ali Abbes, Counsel;
    - 3) Mr Mohamed Rokbani, Counsel;
    - 4) Mr Mufeed Mohamed Khamis Hussein, Interpreter.
  - b) For the Respondent:
    - 1) Mr Mohamed Gameil Ibrahim Abdelmageed, Counsel;
    - 2) Ms Mai Abdulhamied Tayel Elshamy, Interpreter.
59. The following people were heard, in order of appearance:
- 1) Mr Faleh Baddah Saleh ALOTAIBI, Former General Secretary of KTF, called by the Appellants.
60. At the outset of the hearing, it was found that the Respondent did not attend the hearing contrary to the list of participants previously submitted. The Panel indicated that it required an authorization letter from the Respondent or a signed Power of Attorney in favour of the representative who claimed to be attending the hearing on behalf of the Respondent. Upon no objection by the Appellants, the proceedings began whilst the representative of the Respondent produced the requested letter of authorization in the course of the hearing. The Letter of Authorization was therefore admitted on file.
61. The Parties at the hearing confirmed that they had no objection as to the competence of the Panel and its constitution.
62. During the hearing, the Appellants informed the Panel that Mr Faleh Baddah Saleh ALOTAIBI was available for a short time to testify and provide oral evidence where necessary.
63. The Panel also considered it relevant to ask certain questions to Mr Faleh Baddah Saleh ALOTAIBI the former General Secretary of KTF, who attended the hearing as Appellant.
64. The Panel agreed to hear evidence from the document on enforcement submitted by the Respondent's representative subject to the condition that the scope of the questions asked would not go beyond the subject matter of the current proceedings.



65. The Parties were given full opportunity to present their cases, submit their arguments and answer the questions posed by the members of the Panel.
66. Before the hearing was concluded, the Appellants and the Respondent expressly stated that they had no objection to the procedure adopted by the Panel and that their right to be heard had been respected.

## **V. SUBMISSIONS OF THE PARTIES AND REQUESTS FOR RELIEF**

### **A. The Appellant**

67. The Appellants' submissions, in essence, may be summarised as follows:
- This scope of the appeal is to determine whether the call for the meeting of the KTF Board on 9 April 2023 was in accordance with the KTF Statutes or not.
  - The Appealed Decision passed by the NSAT must be declared null and void because it has been issued on the basis of a false understanding and misinterpretation of Article 38.2 of the Statutes of the KTF. It is fully clear and is evidenced by the facts and supporting documents that the Appellants had followed the due process and acted in good faith in convening the KTF Board meeting of 9 April 2023.
  - The Appellants submit that the error in setting the date of the general assembly on 2 May 2023, could have negatively affected the functioning of the KTF and the legality of the entire general assembly due to the fact that it will be directed by a board that did not have any capacity at that moment due to the end of its mandate, and any party could challenge the validity of general assembly and its decisions.
  - Furthermore, to avoid that *lacuna* and legal error, five members of the board of directors submitted a request to urgently convene a meeting of the board of directors to change the date of the General Assembly.
  - First of all, the Statutes of KTF clearly regulate the procedures for requesting and holding meetings of the board of directors. Regarding the board of directors meeting, and in accordance with Article 38.2 of the Statutes of KTF “2. *The General Secretary convenes meetings upon a request from (50%+1) of the Board of Directors members requesting a meeting, and coordinates with the President to convene it within 7 days*”.
  - Additionally, it is important to emphasize that, according to the Statutes of KTF (Article 35.1), the board of directors of the KTF is composed of 8 members.

- Starting from 10 January 2023, date of the resignation of the member Mr Ali Salim Al Duhani, the number of members of the existing board of directors at that time became seven (7) instead of eight (8) members. Accordingly, contrary to the grounds of the Appealed Decision and with respect to the above-mentioned article, the majority required to request a meeting of the board of directors is Four (4) members. In this respect, Article 38.2 of the Statutes requires a majority of (50%+1) i.e. majority of more than half. In the case at hand five (5) members requested a meeting to be held, or at least four (4) members (if the General Secretary cannot be considered as a part of the requesting members). In all cases, the majority required by Article 38.2 of the Statutes was obviously existing and the request was legal and correct because it represents more than the required majority.
- In this respect, the request made by five or four members out of seven is sufficient to reach the majority required by Article 38.2 of the Statutes because it exceeds the threshold of 51 %. The Appealed Decision of the NSAT was based on a misunderstanding and wrong interpretation of the rules of majority required for the validity of the meeting request and the validity of the decision. Once the threshold of 51% is crossed, the request becomes valid, and as long as the number of members is seven, the request filed by four members is considered sufficient to establish its validity.
- Regarding the intention of the legislator, the Appellants sustain that in many articles of the Statutes, (Articles 26.1, 28.1 et 37.1), the legislator refers to the Absolute Majority and mentions 50 + 1 which proves that by indicating (50 + 1) the legislator means nothing but the Absolute majority, i.e. more than 50 %. It's clear that the request was presented by more than 50% of the members of the KTF Board and for this reason it should be considered as valid and legal.
- In their request signed by four members, the members stated the following:

*“We, the undersigned, present to you the best compliments and with reference to the subject in question, article 35-1 of the Statutes having defined the mandate of the federation for a period of 4 years and that the mandate of the current Board of Directors having started on 04/28/2019, the holding of the ordinary general meeting on 05/02/2023 decided at meeting no. 2/2023 will be tainted by defects which could lead to its nullity in the event that the current president presides over the general assembly due to the end of his legal mandate in his capacity as president of the Federation. In accordance with the provisions of article 38.2 of the Statutes, we kindly ask you to take the necessary steps to convene an urgent meeting of the Board of Directors in order to modify the date of the general meeting so that it is consistent with the mandate of the Board. Knowing that this issue is highly important and urgent. Please accept our respectful greetings,”*
- The request presented by the members of the board of directors to hold an urgent meeting of the board of directors had as a purpose to avoid the legal

error that occurred during meeting No 2 of the year 2023. This error was related to the designation of a date to hold the general assembly of the Federation later than the date of the end of the legal mandate of the outgoing board of directors.

- Bearing in mind the above, the meeting was requested not only by four members, but effectively by five members of the board (including the General Secretary himself). On 6 April 2023, due to the urgency of the matter, the General Secretary – at the time – sent the request and the proposed date for holding meeting No 3 to the Respondent. The Respondent did not answer to this letter sent by the General Secretary, did not present any objection, reluctance or reservation on his part. There is therefore no reason here to claim a lack of coordination, since the invitation was sent by email to the Respondent immediately after the receipt of the request from the members with a total absence of any reservation or objection from the Respondent. In addition, the Respondent was present at the headquarters of the KTF on the same day of meeting No 3 of the year 2023 and met with the General Secretary without expressing, submitting, commenting or having reservations about the meeting.
- For all those reasons, the KTF Board met on 9 April 2023. Five members were present at the said meeting. The quorum required for the validity of the meeting was respected in accordance with Article 40.1 of the Statutes of the KTF. Without presenting any reason, the Respondent was, intentionally, absent from the meeting despite knowing about it. Due to his absence, the meeting was led by the Vice-President in conformity with Article 36.3 of the Statutes of KTF. During the said meeting and in accordance with its agenda, the members of the board of Directors present “*agreed to change the date of the Ordinary Electoral General Assembly of the Kuwait Tennis Federation, session 2023-2027, from Tuesday 02/05/2023 to Thursday 04/27/2023 at 7p.m. headquarters of the federation located at the Sheikh Jaber Al-Abdullah Al-Jaber Al-Sabah International Complex for Tennis in order to elect the new Board of Directors of the federation, session 2023-2027*”.
- The decision to modify the date of the ordinary electoral general assembly was taken unanimously by the members present while Article 40.2 required only the majority for the validity of the board of directors’ decision, which proves that all members of the board present were aware of the importance of the matter and the necessity to respect the rules and the Statutes of the KTF related to the validity and compliance of the convocation and holding of the Ordinary Electoral General Assembly with the statutory rules.
- Despite notifying the Al-Qadissiyah club to which the Respondent belongs, of the opening of applications for position on the board of directors, Al-Qadissiyah club did not take the initiative of submitting the name of the Respondent as a candidate to the board of directors of the KTF in accordance with Article 35.3 of the Statutes of the KTF. It follows, therefore, that Al-

Qadissiyah club did not wish to propose him as a candidate for the session 2023-2027.

- Consequently, all procedures and requirements provided for in the Statutes of KTF were followed and respected. No member of the KTF or candidate objected to the correctness of the procedures followed or mentioned any violation of the statutory rules. Moreover, the members of the KTF declared that the general assembly meeting was held and constituted in accordance with the articles of the Statutes of the KTF and the annexed minutes of the General Assembly. Also, they approved the agenda of the meeting without any reservation or objection.
- According to Article 19 of the Kuwaiti Code of Civil and Commercial Procedures, the nullity or invalidity of the election procedure can be pronounced only in case the law clearly stipulates its nullity or that it affects the rights of the opponent which caused to him a harm. The second paragraph of the same article adds that in case that the procedure does not result in harm to the opponent, it shall not be ruled as null despite being stipulated. In light of the above and in view of the case at hand, the law did not mention any nullity for any procedure taken by the Appellants.
- The Appellants argue strongly that the Respondent did not suffer any harm or damage:
  - the Respondent was duly informed of the meeting held on 9 April 2023;
  - the request and invitation to the meeting were made in accordance with the statutory rules;
  - the meeting of 9 April 2023 modified only the date of the General Assembly of the KTF in order to avoid the legal error that already had been made by fixing the date of the general assembly after the end of the mandate of the existing board of directors without any other modification;
  - no conditions of eligibility were modified or rectified;
  - the decision to modify the date of the election was taken by the unanimity of the members present to the meeting;
  - the Respondent did not present any objection, reserve or opposition;
  - the Respondent was not a candidate for the new election and no club suggested him as candidate.
- However, there would be real and irreparable harm if the general assembly was to be held on 2 May 2023, i.e., after the end of the KTF Board's term, which would have inevitably led to a flagrant violation of the provisions of the Statutes and to the illegality of the general assembly which was, fortunately, avoided by the KTF Board's members during the meeting of 9 April 2023.
- During the said KTF general assembly elections, a new board of directors was elected by the members of the assembly in accordance with the rules of the Statutes of the KTF. The KTF general assembly elections took place in

accordance with the statutory provisions and no member presented any objection or request for cancellation of the assembly. The new elected board of directors has started its work for the session 2023-2027.

- For all the above facts and for the reasons, it is clear that the KTF board meeting of 9 April 2023 was held in conformity with the provisions of the Statutes especially Article 38.2 and all procedures of the call for the KTF general assembly elections have respected the rules of the KTF without any harm or damage caused to the Respondent.

68. On this basis, the Appellants submit the following prayers for relief:

“1. *admit this Brief of Appeal, and*

*On the merits:*

2. *Annul in full the challenged Decision passed by The Kuwaiti Sports Arbitration Tribunal number 20230608001 of December 6, 2023*
3. *Order the Respondent, to bear in full the procedural costs of these arbitration proceeding as well as a contribution of the legal fees, costs and expenses borne by the Appellant, in relation to this Appeal and the first instance degree in an amount in an amount to be determined at the discretion of the Panel.*
4. *Grant any other relief or orders the honourable panel deems reasonable and fit to the case at stake”.*

## **B. The Respondent**

69. The submissions of the Respondent, in essence, may be summarised as follows:

- The Respondent argues that the Appellants lack the *locus standi* and capacity to file the appeal as their interest and standing in the appeal has ceased and as such the appeal should not be admitted.
- The Parties filed their resignations from the KTF Board to the Kuwaiti Olympic Committee, although the latter had not issued any official confirmation of the resignation. The resignation of the Appellants therefore amounts to a cessation of their interests and standing in the appeal case.
- The General Secretary of the KTF at the time had unilaterally, and without coordination with the Respondent in his capacity as the President of the KTF Board at the time, convened a meeting of the board of directors (meeting No 3 of 2023) to discuss the changing of the date of the upcoming KTF General Assembly Election. The General Secretary independently took measures to convene this assembly without involving the Respondent. In violation of the provisions of the KTF Statutes which had set forth certain requirements to be fulfilled for validly convening KTF Board and General Assembly meetings.

On the basis of such irregularity, the Respondent filed a request for arbitration with the NSAT seeking amongst other things to annul the KTF General Assembly Meeting Elections and the decision emanating from same; one that the NSAT found merits in and granted the request.

- The implication of the provision of the Article 38.2 of the KTF Statutes is that the required majority for requesting a meeting of the KTF Board is that 50% plus 1 of the board members must sign the letter requesting the meeting, otherwise it is deemed invalid. It follows therefore, that the letter must be signed by five members and in this case, same was signed by four members making it invalid.
- As the membership of the KTF Board has remained eight and should remain so until the end of the term in April 2023, because no decision was issued by the KTF General Assembly– until the expiration date of the tenure of the KTF Board, the resignation of Mr Ali Salem Al-Dihani cannot be deemed accepted.
- Assuming but not conceding that the number of the members of the board of directors is seven, four members signing the letter requesting to hold a board meeting No 3 will still be considered invalid because it did not meet the requirement of 50% + 1 of the members which equal to four members and half plus an additional member and when rounded off is equal to five members.
- All the guarantees stipulated in the Statutes are fundamental guarantees, especially those related to the procedures for the formation of the KTF Board and its general assembly. The main aim of the legislator to prevent any individual or position from monopolizing the management of the KTF should not be neglected. This is because any form of neglect may lead to the collapse of the Federation and its management.
- Notwithstanding the fact that the Statutes did not expressly provide for penalties for any act of neglect of the requirements in its provisions, the Respondent suffered severe material and moral damages as a result of the Appellants breach of the Statutes. It is illogical for the Respondent to nominate himself for elections or announce his candidacy for presidency of the Federation in a process that was already marred with irregularities and thus invalid. That would have been interpreted as a waiver of his rights to seek a redress before the NSAT and now before the CAS.
- The letter requesting the meeting of the board signed by the four members is most likely a fabricated document provided by the Appellants following the initiation of the claim before NSAT as same was signed on 5 April 2023, the same date as the date of the meeting of the KTF Board. In addition, the letter was not stamped with the Federation’s seal as is customary.
- Not only did the invitation by the General Secretary to the Respondent not refer to the request submitted by some of the members of the KTF Board, it further did not clarify the reasons for the meeting. The meeting was held 9

April 2023, i.e. only 3 days after the submission of the meeting request on 5 April 2023, which goes against Article 38.3 of the KTF Statutes, which requires that the agenda must be sent to the KTF Board members at least 3 days before the meeting.

- Article 54.1 of the KTF Statutes specifically provides for the role of the General Secretary as follows: “*Sending written invitations for the regular meetings of the Board of Directors or the Executive committee and sending invitations for the general assembly and participating with the president in determining the agenda*”.

70. In his Answer, the Respondent submits the following prayers for relief:

*“First: To reject the present Appeal for not being based on a valid basis of fact and law.*

*Second: And to oblige the Appellants by compensating Respondent with compensation estimated by the arbitration court for the material and moral damages that he suffered as a result of their insistence on taking invalid measures to hold the Kuwaiti Tennis Federation’s electoral general assembly on Thursday 27/04/2023 in violation of the provisions of the Federation’s Statutes.*

*Third: Hold the Appellants liable for all arbitration expenses and fees before the Court of Arbitration for Sports, National Sports Arbitration Tribunal, Kuwait”.*

## **VI. JURISDICTION**

71. In the case at hand, the Swiss Private International Law Act (“PILA”) is applicable, because the seat of the arbitration is in Switzerland and because all the Parties – at the time of the execution of the arbitration agreement – had their seat / domicile / seat outside Switzerland (Article 176 para. 1 PILA). In accordance with Article 186 para. 1 of the PILA, the Panel has the power to decide upon its own jurisdiction.

72. Article R47 para. 1 of the CAS Code provides as follows:

*“An appeal against the decision of a federation, association or sports-related body may be filed with CAS if the statutes or regulations of the said body so provide or if the parties have concluded a specific arbitration agreement and if the Appellant has exhausted the legal remedies available to it prior to the appeal, in accordance with the statutes or regulations of that body”.*

73. In the absence of a specific arbitration agreement, in order for the CAS to have jurisdiction to hear an appeal, the statutes or regulations of the sports-related body the decision of which is appealed against must expressly recognise the CAS as an arbitral body of appeal.

74. Article 45 of the NSAT Rules of Procedure provides that:

*"Arbitral awards issued by the Arbitration Chambers shall be considered as enforceable titles and shall be final and binding on the parties to the dispute as soon as they are signed by the President of the Board of Directors of the National Sports Arbitration Tribunal (NSAT), without prejudice to the right of appeal to the Court of Arbitration for Sports (CAS) in accordance with the regulations and rules relating to the jurisdiction of the CAS, as well as the rules skills linked to international sports federations".*

75. The jurisdiction of CAS is not contested by the Parties and is further confirmed by the Order of Procedure duly signed by them.
76. It follows that the Panel has jurisdiction to adjudicate and decide on the present dispute.

## **VII. ADMISSIBILITY**

77. Article R49 of the CAS Code provides as follows:

*"In the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, or in a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against".*

78. The Appealed Decision was issued on 6 December 2023 and communicated to the Parties on 21 December 2023. The Appellants filed their Statement of Appeal on 11 January 2024. Accordingly, the appeal was filed within the time limit for appeal of 21 days. The appeal complied with all other requirements of Article R48 of the CAS Code, including the payment of the CAS Court Office fee.
79. It follows that the appeal is admissible.

## **VIII. LEGAL INTEREST**

80. In principle, if a request lacks legal interest, it is not admissible. The question of admissibility is of a procedural nature and governed by Article 182 of the PILA. Since the CAS Code, on which the Parties have agreed, does not provide any guidance on legal interest, this panel is guided by the respective provisions applicable before Swiss state courts. According thereto Art. 59 of the Swiss Code of Civil Procedure ("CCP") provides for domestic state court proceedings as follows:

*"1 The court shall consider an action or application provided the procedural requirements are satisfied.*

*2 Procedural requirements are in particular the following:*

- a. the plaintiff or **applicant has a legitimate interest**;*
- b. the court has subject matter and territorial jurisdiction;*
- c. the parties have the capacity to be a party and the capacity to take legal action;*
- d. the case is not the subject of pending proceedings elsewhere;*



*e. the case is not already the subject of a legally-binding decision;  
f. the advance and security for costs have been paid.*” (emphasis added)

81. Thus, a reasonable legal interest is a condition for access to justice. A court shall only be bothered to decide the merits of a request, if the applicant has a sufficient legal interest in the outcome of the decision. If – on the contrary – the request is not helpful in pursuing the applicant’s final goals, the scarce judicial resources shall not be wasted on such matter (CAS 2016/A/4602, no. 48).
82. In the case at hand, the question arises if the Appellants have any legal interest in pursuing their claim. The Panel finds that the threshold for accepting a legitimate legal interest should not be set too high and that there is only lack of legitimate legal interest, if the claim filed is frivolous (CAS 2016/A/4602, no.49). In the Panel’s view this is not the case here. Instead, the Appellants have a legitimate legal interest in clarifying whether they acted lawfully by challenging the Appealed Decision.

## **IX. APPLICABLE LAW**

83. Article R58 of the CAS Code provides as follows:

*“The Panel shall decide the dispute according to the applicable regulations and, subsidiarily, to the rules of law chosen by the parties or, in the absence of such a choice, according to the law of the country in which the federation, association or sports-related body which has issued the challenged decision is domiciled or according to the rules of law that the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision ”.*

84. The Parties did not make any express submission on the applicable laws, however, they made references to the KTF statutes and other relevant statutes in their submissions.
85. At the outset of the hearing, also in view of the absence of any express submissions of the Parties in relation to the applicable law, the Panel decided that the case shall be decided according to provisions of the KTF statutes and where necessary the laws of Kuwait as the country where the federation, Parties and the tribunal who issued the Appealed Decision is domiciled.

## **X. THE MERITS**

### **A. The Main Issues**

86. The Panel notes the reoccurring issues raised in the submissions of the Parties and, on this basis, shall streamline the issues for determination.
87. As argued explicitly by the Appellants and as implicitly confirmed by the submissions of the Respondent, the matter in dispute pivots around two questions, i.e.:

- whether the Appellants have standing to appeal in relation to the Appealed Decision, and

- whether the letter requesting the extraordinary meeting of the KTF Board violates the applicable provisions (the issue of the majority requirement).

88. At the outset, it should be made clear that the Panel does not favour either of the Parties and limits itself to analyse the “cold” legal arguments and facts to resolve the dispute submitted before it. The Panel finds that there is an overarching interest for all stakeholders directly involved in the management of the KTF, but also for others, that are not directly involved in the present arbitration, to move on and avoid a *status quo* that would irreparably damage the sport of tennis in Kuwait in the long term.
89. This has consequences for the way in which the Panel adjudicates and decides on the matter at hand. However, the parties confirmed that there has been an *ad hoc* committee that was set up and the same conducted elections on 26 September 2024 and, as such, the decision of the Panel will only ratify or otherwise the actions or decisions previously carried out by the Appellants before the recent election.

## **B. Standing to Appeal**

90. The question of who has standing to appeal is a question of the merits implying that if the Appellants’ standing to appeal is denied, then the Appellants’ appeal against, albeit admissible, must be dismissed. This is the position affirmed by the Swiss Federal Tribunal. (SFT 128 III 50 of 16 October 2001, at 55; SFT 4A\_424/2008 of 22 January 2009, para. 3.3.; CAS 2008/A/1639, para. 3).
91. In principle, whoever was a party in the proceeding before the previous instance has the right to appeal before the appeal instance. Since the Appellants (and the Respondent) were all legitimately held according to the applicable law on the merits to be the correct parties in the proceeding before the NSAT, they must be considered to have standing to appeal in this matter before the CAS. The Panel is comforted in its view by the CAS jurisprudence. In the matter CAS 2008/1583&1584 the panel held at para 9.5.1 as follows:

*“... not just any effect on the complainant's legal position should suffice in order to justify a right to appeal. Rather the decision taken by the association must directly interfere with the rights of the person. The latter is always the case if the matter concerns the accused or the addressee of the (potential) measure by the association or disciplinary measure”.*

92. To conclude, therefore, the Panel finds that the Appellants have standing to appeal.

## **C. The majority requirement**

93. The Panel now addresses the second issue, i.e. whether the Appellants met the requirement of 50% + 1 of the members requesting the meeting or not. In resolving the issue, the Panel in the outset shall first determine the total number of the board of

directors, based on the documentary evidence submitted by the Parties evidencing the resignation of the Treasurer via a letter dated 10 January 2023 and further correspondence to and from the Public Authority for Sports on 17 January 2023, 24 January 2023 and 28 January 2023 requesting the Treasurer's details in order to cancel him as signatory to the KTF's account. The Federation providing the requested information suffices as a proof of the acceptance of the resignation. The Panel therefore finds that the number of the members of the KTF Board at the time the letter requesting for the extraordinary meeting was drafted was seven members.

94. Whether sufficient members requested the meeting of the KTF Board is a matter of interpretation of Article 38.2 of the Statutes. The legal draftsmen are not able to foresee all possible situations while drafting and as such the tribunal/courts are saddled with interpreting the provisions to mirror the intentions of the draftsmen.
95. Article 38.2 of the Statutes does not expressly define 50% + 1 to mean absolute majority. However, other articles, specifically Articles 26.1, 28.1 and 37.1 of the same Statutes, define absolute majority to mean 50% + 1. On that basis we can infer that the intention of the draftsmen in Article 38.2 also was to refer to absolute majority.
96. On the basis of the above, the Panel finds that the absolute majority in a board of directors consisting of seven members is four.

**D. The obligation to coordinate**

97. The Respondent further argued that the General Secretary violated Article 38.2 of the Statutes by directly sending the invitation to the KTF Board meeting of 9 April 2023 to the members without fulfilling his obligation to coordinate with the President of the KTF Board (i.e. Respondent). The Panel is of the view that such obligation to coordinate entails a certain communication to take place between the General Secretary and the President of the KTF Board. The term coordination covers a wide range of behaviors. Coordination entails some sort of communication between the relevant persons. In any event, there is only an obligation to coordinate in case the actions to be taken are not clear and evident to the persons responsible for sending out the invitation. The Panel notes that there is no proof of any communication to have taken place. However, it is not clear to the Panel what actions should have been coordinated by the persons responsible, since it appears that the Respondent was knowledgeable of what was going on, did not object and the extraordinary assembly needed to take place before the term of the members of the board would come to an end. It is telling that the Respondent did not submit how he would have wanted to do things differently and what his input would have been in case the General Secretary would have consulted with him. Be that as it may, even if there was something to coordinate, the Panel, on balance, is of the view that the annulment of the invitation to the KTF Board meeting of 9 April 2024, including the subsequent and consequent KTF General Assembly Meeting Elections, would be a disproportionate consequence.

98. Although the provisions of Article 19 of the Kuwaiti Code of Civil and Commercial Procedures was enacted to apply to set a balanced criteria to the validity or invalidity of procedures before state courts in the field of civil litigation, the Panel is of the view that it may seek guidance from them in light of the absence of specific provisions applicable to sports club governance in this regard. The Panel finds that neither the Respondent nor the KTF were harmed from an alleged lack of coordination within the meaning of Article 38.3 of the Statutes. Indeed, the Respondent was duly notified with the invitation and was thus well aware of the KTF Board meeting of 9 April 2023 and its purpose and did not object thereto at the time of the event. Further, such meeting aimed to rectify a legal error that would have exposed the next elections of the KTF's Board to a far greater risk, i.e. of being invalid.
99. It follows therefore that the Appellants complied with the requirement of convening a meeting on the requisition of an absolute majority of the members. Any possible absence of coordination with the Respondent does not tantamount to the invalidation of the invitation to such meeting. The Panel finds therefore that the meeting was validly convened.

**E. Conclusion**

100. Based on the foregoing, the Panel finds that:
- a) The Appellants have distinguishable interests in the outcome as well as standing in the present appeal arbitration proceedings.
  - b) The Appeal Brief is accepted and the Respondent's request to reject the present appeal as not being based on valid basis of facts and law is dismissed.
  - c) The Appealed Decision is set aside.
101. All other and further motions or prayers for relief are dismissed.

**COSTS**

(...).

\* \* \* \* \*

## **ON THESE GROUNDS**

### **The Court of Arbitration for Sport rules that:**

1. The appeal filed on 11 January 2024 by Messrs Alorayan, Alotaibi, Hayat, Alsar’Awi and Meshari against the decision of the NSAT issued on 6 December 2023 and communicated on 21 December 2023 is upheld.
2. The Appealed Decision number 20230608001 of 6 December 2023, rendered by the NSAT is annulled.
3. The extraordinary meeting of the board of directors of the KTF convened following the letter from four members of the board of directors of the KTF is deemed valid.
4. The general assembly election of the KTF of 27 April 2023 is valid.
5. (...).
6. (...).
7. All other and further motions or prayers for relief are dismissed.

Seat of arbitration: Lausanne, Switzerland

Date: 30 January 2025

## **THE COURT OF ARBITRATION FOR SPORT**

Dr Ghada M. Darwish Karbon  
President of the Panel

Prof Ulrich Haas  
Arbitrator

Dr Ismail Selim  
Arbitrator