

DISCIPLINARY COMMISSION

Sitting on behalf of the Norfolk County Football Association

IN THE MATTER OF A NON-PERSONAL HEARING

of

**MR KUDA MDIANYAMA
OF COSTESSEY SPORTS FC**

THE COMMISSION'S DECISION AND REASONS

BACKGROUND & HEARING

1. The Disciplinary Commission ("the Commission") convened via WebEx video conference on Thursday 13th September 2018 by way of a non-personal hearing. The Commission adjudicated in respect of charges brought by Norfolk County FA against Kuda Mdianyama as result of alleged misconduct in a match between Mulbarton Wanderers FC Reserves and Costessey Sports FC First (Sat) on Saturday 15th August 2018.

THE COMMISSION

2. The members appointed to the Commission were :-
 - i) Trevor Cobb (Council Member of Norfolk County FA)
 - ii) Raffi Coverdale (Independent Member)
 - iii) Shaun Turner (Independent Member)
3. Matt Lemmon (Norfolk County FA) assisted the Commission as Secretary

THE CHARGE(S)

4. Norfolk County FA charged Kuda Mdianyama as follows :-
 - i) Breach of FA Rule E3 – Improper Conduct against a Match Official (including threatening and/or abusive behaviour)
5. The particulars of the charge against Kuda Mdianyama are that it was alleged that after being sent off, he made an attempted movement towards the Referee by “feinting a sudden step forward” which led to him being quickly ushered to the side by other players. It was reported that this caused the Referee to feel threatened by the alleged actions. It is further alleged that following the game, he apologised to the Referee and shook his hand.

THE REPLY

6. Kuda Mdianyama accepted the charge and confirmed he was content for the matter to be heard in his absence by correspondence.

THE RULES

7. Pursuant to the FA Handbook 2018-19 Season, FA Rule E3(1) provides as follows :-

“A participant shall at all times act in the best interests of the game and shall not act in any manner which is improper or brings the game into disrepute or use any one, or a combination of, violent conduct, serious foul play, threatening, abusive, indecent or insulting words or behaviour.”

THE BURDEN AND STANDARD OF PROOF

8. In this instance the burden of proof is on the County. The applicable standard of proof is the civil standard of the balance of probability. The balance of probability standard means that the Commission is satisfied an event was more likely than not. Therefore, if the evidence is such that the Commission can say “we find it more probable than not” the burden is discharged, but if the probabilities are equal it is not.

THE EVIDENCE

9. The following is a summary of the principal evidence and submissions provided to the Commission. It does not purport to contain reference to all the evidence and submissions; however, the absence in these reasons of any particular point, evidence or submission, should not imply that the Commission did not take such point, evidence or submission into consideration when the Members determined the matter. For the avoidance of doubt, the Commission has carefully considered all the evidence and materials furnished with regard to this case.
10. The documents before the Commission comprised of: a Referee's report dated 19th August 2018; the response to the Charge; and administrative correspondence between Norfolk County FA and the Club Secretary of Costessey Sports FC.
11. The Referee's report indicated that Kuda Mdianyama was dismissed from the Field of Play in the 94th minute of the match for the use of Offensive, Insulting and Abusive Language at the Referee, following the Referee issuing a yellow card for a foul tackle. At this point it is reported that Kuda Mdianyama said "fucking what, fuck off" followed immediately by "fucking com'on then, com'on." It is further reported that Kuda Mdianyama continued this verbal threat "by putting his body weight forward and fainting a movement towards myself (2 to 3 yards away) clearly in an attempt to threaten myself." The Referee stated he had a clear and unobstructed view of the incident at all times. As the Referee showed the red card, it is further reported that "Kuda made another attempted movement towards myself, by fainting a sudden step forward". He was then ushered aware by players from both sides. The Referee stated that the felt extremely vulnerable, exposed and threatened by the incident.
12. Furthermore, the Referee reported that after the game had been completed, Kuda Mdianyama apologised for his actions and shook his hand.
13. Neither Kuda Mdianyama nor Costessey Sports FC submitted any written response to the charge, other than signing the charge notification.

FINDINGS

14. The Commission studied the evidence very carefully, being conscious of the

burden and standard of proof. The Members noted that Kuda Mdianyama had responded by accepting the Charge and felt that the Referee had submitted a strong report based on what he had witnessed on the day.

15. The Commission Members reminded themselves that for the charge to be proven, on the balance of probabilities, the following must be taken into consideration :-
 - i) Did Kuda Mdianyama act as reported by the Referee?
 - ii) Did this conduct amount to a breach of FA Rule E3?
16. The Commission first considered the alleged actions of Kuda Mdianyama and noted that he had accepted the charge in its entirety. The Commission reminded itself that the original actions including the foul and abusive language and the first attempt to threaten the referee had been dealt with by means of a red card and therefore were not part of this misconduct charge. The Commission further considered the report submitted by the Referee and found this to be a well written and very clear account of the allegations. For these reasons, the Commission found it more likely than not that Kuda Mdianyama did commit the threatening action alleged by the Referee after the sending off.
17. In summary, the Commission unanimously found the Charge against Kuda Mdianyama to be proved.

PREVIOUS DISCIPLINARY RECORD

18. The Secretary confirmed Kuda Mdianyama had no previous misconduct offences on his record.

SANCTION

19. The Commission carefully considered all the relevant FA Rules and the Sanction Guidelines issued by The FA.
20. The Commission found this to be an unacceptable action that was repeated on two occasions causing the Referee to feel threatened. The Commission further accepted that no actual contact was made.

21. The Commission noted that the recommended sanction for a proven offence is a 12 match suspension and up to a £100 fine. In considering the sanction to impose, the Commission took into account the fact that the Referee clearly stated that he felt “vulnerable, exposed and threatened” by the actions, and also that neither the Participant nor the Club had submitted a written response to the charge despite being chased by Norfolk County FA. By way of mitigation, the Commission considered that the Participant had accepted the charge, apologised to the Referee after the match, and had a previous clean disciplinary record.
22. Taking all of the circumstances into account and remembering the recommended sanction guideline for this offence, the Commission unanimously decide to impose the following sanction :-
 - i) Kuda Mdianyama is fined the sum of £75.
 - ii) Kuda Mdianyama is suspended from all football activity for 12 matches.
 - iii) Costessey Sports receive five penalty points on their Club disciplinary record.

APPEAL

23. This decision is subject to appeal in accordance with the relevant FA Appeal Regulations.

Trevor Cobb (Chair)
Raffi Coverdale
Shaun Turner

17th September 2018