

DETERMINATION

- 2.2 The Code is the core document produced by the World Anti-Doping Agency ("WADA") and provides the framework for the harmonization of Anti-Doping Policies, Rules and Regulations, across all sports and all countries around the world.
- 2.3 The South African Government has made a formal commitment to the Code and formally recognized the role of WADA through the Copenhagen Declaration of Anti-Doping In Sport (2003).
- 2.4 SAIDS is the statutory body established by the South African Government with the responsibility to promote and support the elimination of doping in sport in South Africa.
- 2.5 SAIDS has formally accepted the WADA Code and has adopted and implemented its Anti-Doping Rules in accordance with its responsibilities under the Code.
- 2.6 At the International Canoe Federation Board of Directors' Meeting held 26 to 30 November 2008, at Rome, Italy, the International Canoe Federation ("ICF") accepted the revised (2009) WADA Code. These Rules under the Code were adopted and implemented in conformity with the ICF's continuing efforts to eradicate doping in the sport of canoeing.
- 2.7 The Respondent is an international athlete who falls under and is bound by the ICF's Rules.
- 2.8 The Anti-Doping Rules so adopted by SAIDS and the ICF, are sports rules governing the conditions under which sport is played. Athletes, including the Respondent, accept these Rules as a condition of participation and are bound by them.
- 2.9 The SAIDS Anti-Doping Rules apply to SAIDS, each National Federation of South Africa and each participant in the activities of



the National Federations by virtue of the participants' membership, accreditation or participation in their National Federations or their activities and events. The Complainant in this matter has jurisdiction over the ICF and its members, including the Respondent who are consequently subject to the SAIDS Anti-Doping Rules and the ICF Rules.

3. **DISCIPLINARY COMMITTEE :**

3.1 A Disciplinary Committee was convened by the Complainant in order to determine whether, in this case, a doping violation in terms of the SAIDS Rules and as embodied in the charge aforementioned, was committed by the Respondent.

3.2 The Committee consisted of :

Monty Hacker, Chairperson and an admitted attorney of some 50 years standing;

Denver Hendricks, a sports administrator, and;

Dr Rob Collins, a medical practitioner of eighteen years standing and currently practising as a sports physician over the past five of those years.

Nick Kock and Chris Hattingh were the representatives of the Complainant.

3.3 The Respondent was represented by Advocate Louis Olivier S.C., instructed by Attorney Hulme Scholes.

3.4 The witnesses before the Panel were :

3.4.1 For the Complainant – Thandi Moeketsi, and;



3.4.2 For the Respondent - Patrick Reeves and the Respondent.

3.5 At the commencement of the Hearing, the parties raised no objection to the constitution of the Panel/Committee and the representatives of both the Complainant and the Respondent, addressed the Panel with opening statements.

**4. COMPLAINANT'S CASE AGAINST RESPONDENT -
COMPLAINANT'S OPENING ADDRESS BY MR KOCK :**

4.1 As set out in the charge aforementioned, the Complainant charges the Respondent with having committed a doping violation, more especially the contravention of SAIDS Rule 2.3.

4.2 SAIDS Rule 2.3 reads as follows :

"2.3 Refusing or failing without compelling justification to submit to *sample* collection after notification as authorized in these Anti-Doping Rules, or otherwise evading *sample* collection."

4.3 The onus of proving this contravention lies with the Complainant.

4.4 The Respondent's prior 2 (two) year sanction following a doping conviction was due to expire on 29 September 2011, and if convicted of contravening SAIDS Rule 2.3, this would arguably constitute the commission of a second doping offence by the Respondent.

5. RESPONDENT'S DEFENCE - OPENING ADDRESS BY MR OLIVIER :

- 5.1 The Respondent pleads not guilty to the charge;
- 5.2 The Respondent was never notified of the requirement that she submit to a doping test;
- 5.3 No request was made to the Respondent;
- 5.4 The Respondent was never requested to submit any sample;
- 5.5 The Respondent never refused to give a sample;
- 5.6 No warning was given to the Respondent, whether for her failure to submit or otherwise.

6. COMPLAINANT'S EVIDENCE :

- 6.1 Mrs Thandi Moeketsi :
 - 6.1.1 Mrs Thandi Moeketsi, a Doping Control Officer ("DCO"), testified that on 5 August 2011 she visited the home of the Respondent, with the object of conducting an out-of-competition testing on the Respondent.
 - 6.1.2 However, Mrs Moeketsi testified that she was unable to conduct the required out-of-competition testing on the Respondent because :
 - 6.1.2.1 after being admitted to the Respondent's residence by Patrick Reeves, the Respondent's husband, she was met with hostility in the form of protestation and loud shouting on the part of Mr Reeves;



- 6.1.2.2 during this tirade by Mr Reeves, he protested that the Respondent was no longer competing or training because of what her doping conviction had done to her, that she was very distressed, that they were on their way to the theatre;
- 6.1.2.3 Mr Reeves told her *"you will not test my wife, come tomorrow. You people can't just come at any time you want."*;
- 6.1.2.4 she was taken through to the bedroom and was able to see that the Respondent was on her bed, lying on her stomach, crying and that there was an elderly lady with her, rubbing her back;
- 6.1.2.5 although she tried to explain to Mr Reeves that the Respondent was not on RTP and that for this reason there is no specific time of arrival required for a DCO to conduct an out-of-competition test and that for this reason, the Respondent was obliged to submit to an out-of-competition test;
- 6.1.2.6 Mr Reeve continued shouting at Mrs Moeketsi, *"my wife will not test, she is not testing, I will sign whatever that needs to be signed. My wife has a life, she cannot sit around waiting for you guys, we are late, we are on our way to the theatre and you people can't just come at any time you want."*
- 6.1.2.7 with her head pounding from all the noise and shouting, she tried to ignore the noise and explained to Mr Reeves that even if his wife was no longer training or competing, she needed to be tested, but he refused to permit this;



- 6.1.2.8 at no time did Mrs Moeketsi speak to the Respondent; she only spoke to Mr Reeves;
- 6.1.2.9 in desperation, Mrs Moeketsi testified that she tried to telephone Fahmy Galant ("Fahmy"), to be guided on how to handle the situation, but unfortunately Fahmy was in a meeting and did not answer her call. As a result, she then called Zinzi who could not help her immediately, and said she would call her back;
- 6.1.2.10 whilst waiting for Zinzi to call her back, she requested Mr Reeves to write down on a piece of paper what he had said to her and to sign it. Whilst Mr Reeves was writing, he was called to the bedroom by the Respondent. When he returned from the bedroom, he had a 'phone in his possession and showed her the contents of a message on the screen. Whilst he was reading the message to her, Mrs Moeketsi's 'phone rang and it was Zinzi returning the call;
- 6.1.2.11 during Zinzi's return call, she asked Mrs Moeketsi which theatre they were going to and was told that Mrs Moeketsi did not know. Mrs Moeketsi then handed the 'phone to Mr Reeves for him to talk to Zinzi himself. This he did by continuing to shout at Zinzi, saying that he refused to permit the Respondent to be tested, saying that, *"my wife will not be tested", that they were late and that "we people are delaying them even worse, that I, Thandi Moeketsi, must come back the following day"*;
- 6.1.2.12 Mrs Moeketsi testified that she was unable to overhear what Zinzi's reply to Mr Reeves was, but she then heard



him say to Zinzi that she could take the matter as high as to Khalid, the CEO of SAIDS and the one responsible for this whole thing anyway. With this, he handed the 'phone back to Mrs Moeketsi who again spoke to Zinzi and was instructed by her to leave;

6.1.2.13 Mrs Moeketsi further testified that after being instructed by Zinzi to leave, the Respondent had by then come through to the kitchen with the elderly lady. She noticed that the Respondent was drinking water and was still crying, at which time Mr Reeves had gone into one of the other rooms. However, the Respondent did not say anything to her, nor indeed did Mrs Moeketsi say anything to the Respondent;

6.1.2.14 Mrs Moeketsi then picked up her bag and as she walked out to leave when the elderly lady apologized to her for the shouting, acknowledging that she was merely the messenger;

6.1.2.15 on her way to her car, Mrs Moeketsi received a call from Fahmy and reported to him what had transpired. She testified that Fahmy enquired who had asked her to leave and she told him that it was Zinzi. Fahmy then asked Mrs Moeketsi what had happened and she gave him her version of the scenario, after which Fahmy requested a full report from her, no later than Monday 8 August 2011.

6.1.3 Mrs Moeketsi identified the piece of paper on which she stated that Mr Reeves had written, in his own handwriting, the words, "*Test Not able to be performed, due to lack of correct documentation*". This she explained was a reference



to a letter written to the athlete (a copy whereof Mrs Moeketsi did not have in her possession), setting out that the Respondent had been removed from the National Registered Testing Pool (RTP) and that she had been included in the Level 1 RTP. She furthermore testified that the significance of this letter, insofar as Mr Reeves was concerned, was that he believed that it meant the Respondent was no longer liable for any missed tests and filing failures and that she did not have to provide a 60 minute time slot.

6.1.4 During cross-examination by Mr Olivier, Mrs Moeketsi testified that :

6.1.4.1 she had not asked the Respondent to provide a Sample, adding that the Respondent was far too upset and emotional at the time;

6.1.4.2 she had not left the Respondent's home on her own accord; she did so as instructed by Zinzi;

6.1.4.3 she was not told by Zinzi to ask the Respondent to provide a Sample;

6.1.4.4 she had not given any warnings to the Respondent;

6.1.4.5 she acknowledged having been asked by Mr Reeves to return the following day to test the Respondent and she explained that this could not be done as it would have been contrary to the Rules;

6.1.5 On re-examination by Mr Hattingh, Mrs Moeketsi testified that :

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- 6.1.5.1 she had been in the lounge of the residence during the incident;
- 6.1.5.2 both the Respondent and her mother (the lady with the Respondent) were able to hear what was being said during her discussion with Mr Reeves;
- 6.1.5.3 the Respondent was unable to see her from the bedroom, that is until she left the bedroom and came to the kitchen, when the Respondent was able to see Mrs Moeketsi;
- 6.1.5.4 after the Respondent called Mr Reeves to the bedroom and he returned with the 'phone, he showed her from what was on the screen that the athlete was no longer an RTP;
- 6.1.5.5 when the Respondent went from the bedroom to the kitchen, she was closer to Mrs Moeketsi than she had previously been when she was in the bedroom;
- 6.1.5.6 during the telephone conversation between Mr Reeves and Zinzi, she heard Mr Reeves repeat several times that the Respondent would not be testing;
- 6.1.6 At this point, having no further re-examination for Mrs Moeketsi, Mr Hattingh closed the Complainant's case and there followed argument for the discharge of the Respondent from the charge against her by Mr Olivier, which Mr Kock opposed;
- 6.1.7 After a short adjournment to deliberate on the application for the discharge of the Respondent, the Chairman announced

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the Panel's decision to dismiss the application for the Respondent's discharge.

7. RESPONDENT'S EVIDENCE :

7.1 The Respondent's first witness was Mr Patrick Reeves who testified that :

7.1.1 he referred to his statement in the bundle and explained that it was very important for him and the Respondent to attend a theatre at which a cousin of the Respondent, namely Rory Rootenberg was making his last appearance that night and that the Respondent's mother had flown up from the south coast to attend the performance, for which the family had received special invitations;

7.1.2 he explained the security arrangements at the complex where he and the Respondent live, that the intercom connection was direct to his or the Respondent's cellphones, and that when Mrs Moeketsi tried to connect to the Respondent, the latter was busy on her cellphone. This he explained was the reason why Mrs Moeketsi got through to him on his cellphone, leading to him admitting her into the Respondent's residence;

7.1.3 at the time when Mrs Moeketsi was admitted into the residence, the Respondent was speaking on her telephone to a friend of hers and the Respondent was emotionally drained because that conversation re-lived both the events which led to her doping suspension and the consequences which followed it. As a result, the Respondent was crying incessantly;

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- 7.1.4 exhibit B containing B1 to B10 was put to him by Mr Olivier and copied to the Panel by Mr Olivier. Mr Reeves explained that he was fully aware of the testing procedure, having gone through it with the Respondent over a period of time. He also explained that in respect of the Doping Control Forms B6 and B8, he was familiar with them and that B6 in particular indicates the time it took for the athlete to produce a Sample on 12 November 2010, being an out-of-competition test, namely, 34 minutes. The significance of this time period was to illustrate that the voiding of a urine sample in out-of-competition testing conditions, particularly at a time of stress, is a time consuming exercise;
- 7.1.5 Mr Olivier then put to him the provisions of the Code's International Standards for Testing, referring specifically to Rules 7.3.2, 7.4 and 7.4.6, with which Mr Reeves stated that he was conversant;
- 7.1.6 when questioned as to whether these provisions in IST Rules 5.4, 7.3.3, 7.4 and 7.4.6, had been put to the Respondent by Mrs Moeketsi, he answered that they had not;
- 7.1.7 he also testified that he did not prevent Mrs Moeketsi from speaking to the Respondent or from making contact with her;
- 7.1.8 Mrs Moeketsi did not insist on testing the Respondent after she had spoken to her controller, Zinzi;
- 7.1.9 Mr Reeves also referred to his undated letter addressed to Fahmy Galant, stating that that letter was in fact written on 23 August 2011;



7.2 Cross-examination by Mr Kock :

7.2.1 Mr Reeves stated that he had apologized for his outburst against Mrs Moeketsi, consisting of raising his voice;

7.2.2 He disputed that he had told Mrs Moeketsi that his wife cannot be tested, stating that what he did say to her was that his wife cannot test now;

7.2.3 No letter of authority had been shown to him by Mrs Moeketsi, nor had she produced any document, although she had a bag over her shoulder;

7.2.4 He insisted that Mrs Moeketsi's timing was bad and that he was not harassing her;

7.2.5 He did not ask Mrs Moeketsi to produce any documents;

7.2.6 When asked if he knew what Mrs Moeketsi had arrived for, he stated that he knew that she was from SAIDS, but she offered no reason;

7.2.7 The Respondent's cellphone was handed to him by the Respondent's mother and not by the Respondent;

7.2.8 He went to the bathroom when the Respondent was in the kitchen;

7.2.9 He did not call his wife to be tested;

7.2.10 There was no re-examination of the witness by Mr Olivier.

7.3 The Respondent, being the defence's second witness, Ms Carol Joyce :

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- 7.3.1 She testified that she is a 29-year old woman who married Mr Reeves during December 2010;
- 7.3.2 On 5 August 2011, she was still under suspension which was due to expire on 29 September 2011;
- 7.3.3 She was on the telephone speaking to a friend, Brad Fisher, when Mrs Moeketsi arrived at her home. Her discussion with Brad was about her suspension and the preceding Hearing. He responded to her emotional state by volunteering to help her to return to competition after her reinstatement;
- 7.3.4 She had undergone a number of Doping Control tests and was familiar with the procedure;
- 7.3.5 During her earlier tests, she had received the requisite notifications and warnings;
- 7.3.6 On 5 August 2011, her mother was with her having arrived especially to attend the Rory Rootenberg performance;
- 7.3.7 She did not speak to Mrs Moeketsi on 5 August 2011 and Mrs Moeketsi did not speak to her or ask her any questions.
- 7.4 Cross-examination by Mr Kock :
- 7.4.1 The Respondent acknowledged that she had attained the highest level in her sport as a paddler, having competed at the Beijing Olympics, that she was an elite athlete but had received no Anti-Doping education except for a USB band which enabled her to study Rules and the WADA website;
- 7.4.2 She was aware of the presence of Mrs Moeketsi, a Doping Control Officer, at her home on 5 August 2011;



- 7.4.3 When asked why the DCO was there, she answered that she was not in a fit mental state to think about it;
- 7.4.4 She had overheard her husband dealing with someone;
- 7.4.5 She acknowledged having been tested six or seven times before when she had read the Doping Control Forms presented to her;
- 7.4.6 She was aware of the consequences of not testing;
- 7.4.7 There had been no communication between her and Mrs Moeketsi on 5 August 2011;
- 7.4.8 She had given no thought to why Mrs Moeketsi was there;
- 7.4.9 At the time she was in a fragile, emotional state and that when she went to the theatre after Mrs Moeketsi had departed, she was not in a state to converse with anyone and did not do so;
- 7.4.10 It was her mother who called her husband from the bedroom and gave him her 'phone with the RTP message on it;
- 7.5 Mr Olivier declined to re-examine the Respondent and closed his case for the defence.

8. **ARGUMENT :**

- 8.1 For the Prosecution, Mr Kock argued for the conviction of the Respondent on the basis that :



- 8.1.1 Mrs Moeketsi arrived at the Respondent's home on 5 August 2011, identified herself and was prevented from testing the Respondent by Mr Reeves;
- 8.1.2 Mrs Moeketsi could not return the next day to test the Respondent – this is not permissible;
- 8.1.3 the Respondent was aware of Mrs Moeketsi's needs and requirements and left it to her husband to handle the situation;
- 8.1.4 the Respondent had clearly violated SAIDS Rule 2.3 and that as such, this constituted a second doping offence under Rule 10.7, which rendered her liable to a minimum sanction of 8 (eight) years and a maximum lifetime sanction.
- 8.2 Mr Olivier argued for the dismissal of the charge against his client because :
 - 8.2.1 on a clear interpretation of Rule 2.3, notification to the Respondent to submit to testing, was required to be given by Mrs Moeketsi and this was not done, and;
 - 8.2.2 there had been no intentional conduct on the part of the Respondent to evade the testing of her Sample by Mrs Moeketsi;
 - 8.2.3 the Respondent is not accountable for the behaviour or her husband, Mr Reeves;
 - 8.2.4 according to Mrs Moeketsi's own evidence, she did not speak to the Respondent or give her any notification whatsoever on 5 August 2011, informing her that she was required to submit to an out-of-competition Doping test and he

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furthermore submitted that SAIDS had failed to discharge the onus of proving, either that the Respondent received notification to submit to testing, or that she evaded testing;

8.2.5 on the contrary, the evidence was that if anyone either resisted or evaded testing of the Respondent, it was her husband, Mr Reeves, this notwithstanding the fact that no actual notification was given to this effect by Mrs Moeketsi, even to Mr Reeves;

8.2.6 Mr Olivier contended that Mrs Moeketsi had failed to discharge her duties as the Doping Control Officer for this particular out-of-competition test in that she failed to comply with the requirements of the Code's International Standard for Testing, insofar as concerns the requirements for prior notification of athletes in terms of the Code's Rules 5.3.1, 5.4.1, 5.4.3, 5.4.4, 7.3.2 and 7.4.6, and;

8.2.7 Mr Olivier expressed strong objection to the perception of an ulterior motive on the part of the Complainant in the e-mail sent by Khalid on 2 September 2011 to the ICAS counsellor, Andrea Dyer, in inviting the latter, during her counselling session with the Respondent, to ascertain whether the Respondent, "is in an abusive/power abusive relationship".

9. ANALYSIS OF THE EVIDENCE :

9.1 It is clear from the evidence that Mrs Moeketsi failed to notify the Respondent that she had arrived at the Respondent's home for the purpose of conducting an out-of-competition test and that the Respondent was required to submit to it.



- 9.2 It is clear that no such notification was given to Mr Reeves, nor was he requested by Mrs Moeketsi to convey any such notification to the Respondent.
- 9.3 It is also clear that Mrs Moeketsi was thrown off her rhythm by the conduct and outburst of Mr Reeves, conduct for which the Respondent cannot be held accountable.
- 9.4 The evidence of Mr Reeves contradicted that of Mrs Moeketsi. According to Mr Reeves, he told Mrs Moeketsi that the Respondent, *"would not test today"*. However, the evidence of Mrs Moeketsi, which was not challenged during her cross-examination, was that she had been told by Mr Reeves that, *"my wife will not test, she is not testing"*.
- 9.5 That the fact that Respondent was aware of the presence at her home of Mrs Moeketsi on 5 August 2011 does not in itself, constitute notice to the Respondent that she was required to submit to an out-of-competition doping test.
- 9.6 It is also clear that at the time in question, the Respondent was in a highly disturbed emotional state and that Mrs Moeketsi, despite having had the opportunity to communicate with and give notice to the Respondent, made no effort to do so.
- 9.7 It is also clear from the evidence that Mrs Moeketsi was not prevented from communicating with the Respondent by Mr Reeves.
- 9.8 No warning/s was/were given by Mrs Moeketsi to the Respondent.
- 9.9 It appears as though there is little or no relevance whatever in the reliance which Mr Olivier places on the Code's International Standards for Testing in Rules 5.3.2, 5.3.4 and 5.3.5 thereof, as

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well as Rules 5.4.2, 5.4.3 and 5.4.4. However, with regard to the Code's International Standards for Testing, as provided for in Rule 5.4.1, here the requirement for notification to the Respondent that she is required to undergo a Sample collection, at the same time informing her of her rights and responsibilities, is peremptory. It is therefore pertinent to record that no notification as required by SAIDS Rule 2.3, or by IST Rule 5.4 was given by Mrs Moeketsi, the Doping Control Officer, to the Respondent.

10. REPLY BY MR KOCK :

Mr Kock submitted that :

- 10.1 The Respondent was not unfamiliar with the out-of-competition testing procedure, and;
- 10.2 Sight must not be lost of the comment at the foot of SAIDS Rule 2.3 to the effect that "*refusing or failing to submit to Sample collection*", may be based on either intentional or negligent conduct of the athlete, while "*evading*" Sample collection contemplates intentional conduct by the athlete. This, he contended, meant that the Respondent, by her negligence, constitutes refusing or failing to submit to testing and that the Respondent's intentional conduct equates to evading.

11. CONCLUSION :

- 11.1 The mere presence of the DCO at the Respondent's home whilst engaging only the Respondent's husband in discussion and failing to communicate with the Respondent, does not assist the Complainant in discharging its onus of proving that notification of the requirement to submit to an out-of-competition test was given to the Respondent on 5 August 2011.



- 11.2 The evidence before the Panel failed to establish that notification of the requirement that the Respondent submit to an out-of-competition test was given to the Respondent on 5 August 2011.
- 11.3 Such notification is an essential element to the contravention relied upon by the Complainant in SAIDS Rule 2.3.
- 11.4 The failure on the part of SAIDS to establish that this essential element of notification was complied with by the DCO in this case means that the charge brought against the Respondent, that she had committed an Anti-Doping Rule violation in terms of Article 2.3 of the SAIDS Rules, is unsustainable.
- 11.5 Accordingly, the charge brought against the Respondent is hereby dismissed.

DATED at JOHANNESBURG ON THIS THE 31st DAY OF OCTOBER 2011.



MONTY HACKER
Chairman



DENVER HENDRICKS



DR ROB COLLINS