

**SA INSTITUTE FOR DRUG FREE SPORT (SAIDS)
ANTI DOPING DISCIPLINARY HEARING**

ATHLETE: SIVIWE HASHENI

ATHLETE'S REPRESENTATIVE: SIPHATHO HANDI

SPORTS FEDERATION: SOUTH AFRICAN INSTITUTE FOR DRUG FREE SPORTS

DATE: 17 JULY 2012

PLACE OF HEARING: 1 MONA CRESCENT, NEWLANDS, CAPE TOWN
(Via Skype with the athlete)

DISCIPLINARY PANEL ("PANEL"): JEROME VINCENT THOMAS (TRIBUNAL
CHAIRPERSON & LEGAL REPRESENTATIVE)
DR. NASIR JAFFER (MEDICAL REPRESENTATIVE)
NORMA NONKONYANA (SPORTS ADMINISTRATOR
REPRESENTATIVE)

PROSECUTOR: RAHIDEN CULLIS

SAIDS REPRESENTATIVE: FAHMY GALANT

MINUTE TAKER: RAYANAH REZANT

ANTI-DOPING RULE VIOLATION: ANTI-DOPING RULE VIOLATION IN TERMS OF
ARTICLE 2.1 OF THE SAIDS ANTI-DOPING RULE

LEGAL FRAMEWORK

SAIDS is an independent body established under Section 2 of the South African Institute for Drug-Free Sport Act 14 of 1997 (as amended). SAIDS has formally accepted the World Anti-Doping Code adopted and implemented by the World Anti-Doping Agency in 2003. In so doing, SAIDS introduced anti-doping rules and regulations to govern all sports under the jurisdiction of South Africa Sports Confederation and Olympic Committee, as well as any national sports federation.

The SAIDS Anti-Doping ("the Rules") were adopted and implemented in 2009. These proceedings are therefore governed by the Rules. This SAIDS Anti-Doping Disciplinary Panel has been appointed in accordance with Article 8 of The Rules.

HEARING

The hearing took place on 17 JULY 2012 at 18H36 at the SAIDS offices in Newlands, Cape Town with the athlete via Skype.

The Chairperson opened the hearing and explained the procedure to be followed.

BACKGROUND AND CHARGES

The athlete was tested for prohibited substances on 31 March 2012. The analysis conducted by the South African Doping Control Laboratory at the University of the Free State indicates the following substance identified in the sample: 11-nor-delta9-tetrahydrocannabinol-9-carboxylic acid in concentration of 55ng/ml which is above the WADA decision limit of 18ng/ml and is a metabolite of Cannabinoids.

The Athlete was notified on 18 May 2012 that: **"This adverse analytical finding constitutes a breach of Article 2.1 'The Presence of a Prohibited Substance or its Metabolites or Markers in the Athletes Sample' of the South African Institute for Drug-Free Sport's (SAIDS) Anti-Doping Rules'**

CONCESSIONS MADE BY THE ATHLETE:

The athlete conceded the following during the hearing:

1. That he had received the communications regarding the notification of the adverse finding and the charges were put to him timeously and in order.
2. That he did not request his "B" sample to be tested and that it was common cause that the substance reported was present in his system and was a prohibited substance which was found during an in-competition test at the Eastern Cape Junior Flyweight Championship Fight and that he duly waived any right in respect to further sample testing.
3. That he was happy to proceed with the assistance of Ms. Nonkonyana translating where necessary.
4. The charges were put to the Athlete who pleaded guilty and explained that he had ingested and washed in muti medicine which he obtained from a Traditional Healer before the boxing match.
5. He further explained that he believes in Traditional Healing as a cultural belief and that the medicine would protect him.
6. The contents of the muti medicine were unknown to the athlete but it did appear to contain grass though he was not aware that it contained marijuana. However, he knew what dagga was.

7. The Traditional Healer gave it to him and made little cuts on his back and rubbed the muti in.
8. The athlete also drank it which caused him to vomit.

VIOLATION

9. Article 2.1 of the SAIDS Rules reads as follows:

2.1 Presence of a *Prohibited Substance* or its *Metabolites* or *Markers* in an *Athlete's Sample*.

2.1.1 It is each Athlete's personal duty to ensure that no Prohibited Substance enters his or her body. Athletes are responsible for any Prohibited Substance or its Metabolites or Markers found to be present in their Samples. Accordingly it is not necessary that intent, fault, negligence, or knowing Use on the Athlete's part be demonstrated in order to establish an anti-doping violation under Article 2.1."

10. From the concessions made by the athlete as described above, it is clear that the Athlete violated the SAIDS Rules as the Rules are applied in terms of strict liability and accordingly no intent, fault, negligence, or knowing Use need be proved.

ISSUES FOR CONSIDERATION

11. Article 10.4 of the SAIDS Rules reads as follows:

" Where an *Athlete* or other *Person* can establish how a Specified Substance entered his or her body or came into his or her possession and that such Specified Substances was not intended to enhance the Athlete's sport performance or mask the use of a performance-enhancing substance, the period of *Ineligibility* found in Article 10.2 shall be replaced with the following:

First violation: At a minimum, a reprimand and no period of *Ineligibility* from future *Events*, and at a maximum, two (2) years *Ineligibility*.

To justify any elimination or reduction, the *Athlete* or other *Person* must produce corroborating evidence in addition to his or her word which established to the comfortable satisfaction of the hearing Committee the absence of an intent to enhance sport performance or mask the use of a performance enhancing substance. The *Athlete* or other *Person's* degree of fault shall be the criteria considered in assessing any reduction of the period *Ineligibility*. "

This Article is applicable to the case at hand as Dr. Jaffer confirmed that wild dagga which would contain the substance reported is commonly found in mixtures of wild herbs which are typically used in muti medicine mixtures and is a specified substance as defined. In addition the Panel was comfortably satisfied that there was no intent to enhance performance or mask usage and that the explanation was an honest one. In addition the Athlete had advised his coach of the muti medicine as corroborating evidence in this regard.

12. Article 10.5.1 of the SAIDS Rules reads as follows:

"No Fault or Negligence

If an *Athlete* establishes in an individual case that he or she bears *No Fault or Negligence*, the otherwise applicable period of *Ineligibility* shall be eliminated. When a Prohibited Substance or its *Markers* or its *Metabolites* is detected in an *Athlete's* Sample in violation of *Code* Article 2.1 (Presence of *Prohibited Substance*), the *Athlete* shall also establish how the *Prohibited Substance* entered their system in order to have the period of *Ineligibility* eliminated.

In the event that this Article is applied and the period of *Ineligibility* otherwise applicable is eliminated, the anti-doping rule violation shall not be considered a violation only for the limited purpose of determining the period of *Ineligibility* for multiple violations under Article 10.7. ”

This Article has no application as there are no grounds upon which a No Fault or Negligence defence could be based and that accordingly this Article was not relevant to a possible reduction in the ineligibility period.

13. Article 10.5.2 of the SAIDS Rules reads as follows:

“No Significant Fault or Negligence

If an Athlete or other Person establishes in an individual case that he or she bears No Significant Fault or Negligence, then the period of Ineligibility may be reduced, but the reduced period of Ineligibility may not be less than one-half of the period of Ineligibility otherwise applicable. If the otherwise applicable period of Ineligibility is a lifetime, the reduced period under this Section may be no less than 8 years. When a Prohibited Substance or its Markers or Metabolites is detected in an Athlete’s Sample in violation of Code Article 2.1 (Presence of Prohibited Substance), the Athlete shall also establish how the Prohibited Substance entered their system in order to have the period of Ineligibility reduced.”

This Article has no application as there are no grounds upon which a No Significant Fault or Negligence defence could be based and that accordingly this Article was not relevant to a possible reduction in the ineligibility period.

14. Article 10.5.3 of the SAIDS Rules reads as follows:

“Substantial Assistance in Discovering or Establishing Anti-Doping Rule Violations. The SAIDS Anti-Doping Disciplinary Committee or SAIDS Anti-Doping Appeal Board may, prior to

a final appellate decision under Article 13 or the expiration of the time to appeal, suspend a part of the period of *Ineligibility* imposed in an individual case where the *Athlete* or other *Person* has provided Substantial Assistance to an *Anti-Doping Organization*, criminal authority or professional disciplinary body which results in the *Anti-Doping Organization* discovering or establishing an anti-doping rule violation by another *Person* or which results in a criminal or disciplinary body discovering or establishing a criminal offence or the breach of professional rules by another *Person*. After a final appellate decision under Article 13 or the expiration of time to appeal, the SAIDS Anti- Doping Disciplinary Committee or SAIDS Anti-Doping Appeal Board may only suspend a part of the applicable period of *Ineligibility* with the approval of WADA and the applicable International Federation. The extent to which the otherwise applicable period of *Ineligibility* may be suspended shall be based on the seriousness of the anti-doping rule violation committed by the *Athlete* or other *Person* and the significance of the *Substantial Assistance* provided by the *Athlete* or other *Person* to the effort to eliminate doping sport. No more than three-quarters of the otherwise applicable period of *ineligibility* may be suspended. If the otherwise applicable period of *Ineligibility* is a lifetime, the non-suspended period under the section must be no less than 8 years. If the SAIDS Anti-Doping Disciplinary Committee or SAIDS Anti-Doping Appeal Panel suspends any part of the period of *Ineligibility* under this Article, it shall promptly provide a written justification for its decision to each *Anti-Doping Organization* having a right to appeal the decision. If the SAIDS Anti-Doping Disciplinary Committee or SAIDS Anti-Doping Appeal Panel subsequently reinstates any part of the suspended period of *Ineligibility* because the *Athlete* or other *Person* has failed to provide the Substantial Assistance which was anticipated, the *Athlete* or other *Person* may appeal the reinstatement pursuant to Article 13.2. "

This Article has no application to the present facts. Accordingly this Article was not relevant to a possible reduction in the ineligibility period.

DECISION

15. The Panel found that the Athlete was an honest witness and disclosed all relevant factors.

16. In that a violation had occurred Articles 10.1.1 and 10.2 of the SAIDS Rules have application and provide as follows:

Disqualification of Results in an Event During which an Anti-Doping Rule Violation Occurs

"An Anti-Doping rule violation occurring during or in connection with an *Event*, may upon the decision of the ruling body of the *Event*, lead to *Disqualification of all the Athlete's individual results obtained in that Event with all Consequences*, including forfeiture of all medals, points and prizes, except as provided in Article 10.1.2."

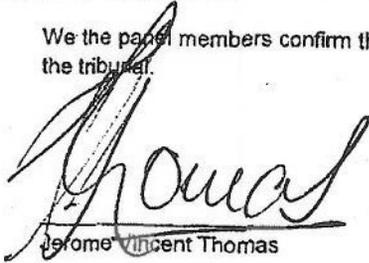
Imposition of Ineligibility for Prohibited Substances and Prohibited Methods

"The period of *Ineligibility* imposed for a violation of *Code Article 2.1 (Presence of Prohibited Substance or its Metabolites or Markers)*, *Code Article 2.2 (Use or Attempt Use of Prohibited Substance or Prohibited Method)* and *Code Article 2.6 (Possession of Prohibited Substances and Prohibited Methods)* shall be as follows, unless the conditions for eliminating or reducing the period of *Ineligibility*, as provided in Articles 10.4 and 10.5, or the conditions for increasing the period of *Ineligibility*, as provided in Article 10.6, are met: First violation: Two (2) year's – *Ineligibility.*"

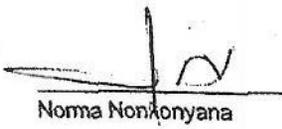
17. The base period of ineligibility for a first violation is two years.
18. The Panel taking into account the lack of intent to enhance performance and the right of the Athlete to cultural expression and practice justifies the application of Article 10.4 as quoted above and accordingly imposes a 3 month ineligibility period, taking into account time served as of 18 May 2012 and therefore being completed on 18 August 2012. The Athlete indicated that he understood that were he to again be found guilty of a violation the consequences could be significant and he agreed to merely wash in muti medicine in future and not to ingest same.
19. The Athlete did win the match and so forfeits the prize money in the amount of R 8000-00 [Eight Thousand Rand] in terms of Article 10.1.1.

Date of Hearing 17 July 2012 – Siviwe Hasheni

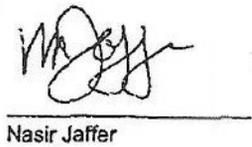
We the panel members confirm that the decision above properly reflects the decision of the tribunal.



Jerome Vincent Thomas



Noma Nonkonyana



Nasir Jaffer