

In the matter between :

South African Institute for Drug-Free Sport (SAIDS) Complainant

and

André Koekemoer Junior

Respondent

DETERMINATION

1. CHARGE :

The Respondent was charged on 6 March 2012 with an Anti-Doping Rule violation for contravening Article 2.1 of the 2009 Anti-Doping Rules of SAIDS, on 8 February 2012, in that he provided a urine sample (A2633629) during the Top Ten Athletics Championships which, upon analysis by the South African Doping Control Laboratory at the University of the Free State, found the presence of the prohibited substance identified as Stenozolol and metabolites, 3'-hydroxystanozolol, 4β-hydroxystanozolol and 16β-hydroxystanozolol, which are categorized under Class S1 "Anabolic Agents" on the World Anti-Doping Code 2011 Prohibited List International Standard.

2. JURISDICTION :

- 2.1 In terms of Section 10(1)(e) of the South African Institute for Drug-Free Sport Act No. 14 of 1997, National Sports Federations must adopt and implement Anti-Doping Policies and Rules which

conform with the World Anti-Doping Code ("the Code") and with the requirements as set out in the SAIDS Anti-Doping Rules.

- 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 The International Association of Athletics Federations ("IAAF") adopted the Code and following an International Review of the Code by all signatories, with the new WADA Anti-Doping Code 2009 having been agreed with an effective implementation date of 1 January 2009, these Rules under the Code were adopted and implemented in conformity with the IAAF's continuing efforts to eradicate doping in the sport of athletics.
- 2.7 The Respondent is a schoolboy athlete who falls under and is bound by the Athletics South Africa (ASA) and the IAAF Rules, to which ASA is bound.
- 2.8 The Anti-Doping Rules so adopted by SAIDS, ASA and IAAF, are sports rules governing the conditions under which athletes participate in the sport of athletics. 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 IAAF and its members, including the Respondent, who are consequently subject to the SAIDS Anti-Doping Rules and the IAAF 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 sitting as a Tribunal, consisted of :

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

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

Mr Yusuf Carrim, a sports administrator representative.

3.3 The Complainant was represented at the hearing by Nicolas Kock, who was charged with the duty of prosecuting the Respondent.

3.4 There being no witnesses present at the Hearing for either SAIDS or the Respondent, save for the desire of the Respondent's father

(André Koekemoer Senior) to testify via a teleconference call, the Hearing proceeded in the presence of the members of the Tribunal and the Prosecutor before the tabled evidence contained in the package presented by SAIDS, consisting of :

- 3.4.1 The Complainant's letter to the Respondent dated 6 March 2012, advising the Respondent of the doping offence committed by him and the fact that he had been *provisionally suspended on that day*;
 - 3.4.2 The Doping Control Form which was signed by the Respondent;
 - 3.4.3 The Respondent's A sample Laboratory analysis dated 21 February 2012;
 - 3.4.4 The Chain of Custody Form;
 - 3.4.5 The exchange of correspondence between the Complainant and the Respondent and/or the Respondent's father.
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- 3.5 The Hearing before the Tribunal was held at the Holiday Inn, Rosebank, The Zone, Oxford Road, Johannesburg, Gauteng, on 14 June 2012, following upon the consideration by the Tribunal of the package referred to in 3.4 above. It emerged from this package that the Respondent, as a matric student, was unable to attend, and that he would be represented at the Hearing by means of a teleconference call with his father and natural guardian. Telephonic contact was then made with Mr Koekemoer Senior who informed the Tribunal that his son, the Respondent, was a very responsible young man, a conscientious scholar and a successful young athlete, who was at all times mindful of the need to adhere to the IAAF Anti-Doping Rules, which he strictly observed. The Respondent's father furthermore informed the Tribunal that the only supplements which his son used were those recorded in the

Respondent's Doping Control Form, namely USN Creatin, SSN Protein and Unique (4 pills). He furthermore informed the Tribunal that these substances were always carefully purchased on behalf of the Respondent by his older sister, who, together with the Respondent, took careful note of the labelling of these products, satisfying themselves that they did not contain prohibited substances. In addition, Mr Koekemoer Senior informed the Tribunal that he had questioned the Respondent as to whether he had ingested any prohibited substances and accepted the Respondent's assurances that he had not. He also had the Respondent questioned by a military sports administrator who, likewise, received a similar answer from the Respondent. Mr Koekemoer Senior informed the Tribunal that both he and his friend, the military sports administrator, were satisfied that the Respondent had been truthful with them and that both of them were mystified as to how the anabolic steroid with which the Respondent is charged (Stenozolol), could possibly have entered the Respondent's body, so as to have been found in his bodily fluids by the Laboratory, as evidenced by its sample analysis (dated 21 February 2012) being the report issued on the Respondent's A sample contained in the package before the Tribunal.

- 3.6 Questioned by Mr Kock, Mr Koekemoer Senior stated that he had tried, unsuccessfully, to establish the source from which the anabolic steroid Stenozolol entered the Respondent's system. He also stated that his son (the Respondent) was a recreational athlete and that as such, he had no aspirations to become an Olympian in his chosen events, namely the 100 metres and the 200 metres sprints. He also stated that the Respondent only ingested the substances which he had declared on his Doping Control Form and that this was the first time that the Respondent had been tested for doping. He added that, to the best of his knowledge, none of the Respondent's friends had been tested. He also declared that his son's trainer, an elderly gentleman by

the name of George Stevens, who assisted the Respondent with training, was also unable to explain the presence of the prohibited substance which was found in the Respondent's urine sample. Finally, the Respondent's father was unable to suggest any factors which the Tribunal might take into consideration for the purpose of considering Exceptional Circumstances, which might allow for the imposition of a reduced period of suspension. In answer to a question put to him by Mr Kock, he assured the Tribunal that 'the Respondent had not, since being provisionally suspended in terms of the Complainant's letter to him dated 6 March 2012, participated in any sporting activities.

4. COMPLAINANT'S CASE AGAINST RESPONDENT – PRESENTED BY MR KOCK :

4.1 As set out in the charge aforementioned, the Complainant charged the Respondent with having committed an Anti-Doping Rule violation, more especially the contravention of SAIDS Rule 2.1.

4.2 SAIDS Rule 2.1 reads as follows :

"2.1 The Presence of a Prohibited Substance or its Metabolites or Markers in the 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 Rule violation under Article 2.1.

2.1.2 Sufficient proof of an Anti-Doping Rule violation under Article 2.1 is established by :

The presence of a Prohibited Substance or its Metabolites or Markers in the Athlete's A Sample where the Athlete waives his right to have his B Sample analysed, and the B Sample is not analysed."

- 4.3 The onus of proving this contravention lies with the Complainant.
- 4.4 The Respondent, by failing to call for the testing of his B Sample had waived the analysis of his B Sample and consequently, his A Sample, as analysed by the South African Doping Control Laboratory at the University of the Free State on 15 February 2012, therefore conclusively revealed the presence of Stenozolol and metabolites, 3'-hydroxystanozolol, 4 β -hydroxystanozolol and 16 β -hydroxystanozolol ("the prohibited substances").
- 4.5 The Respondent, in a letter addressed to him by SAIDS dated 6 March 2012, was advised of the Laboratory's findings aforementioned at his Top Ten Competition on 8 February 2012, and was invited to elect to have his B Sample tested, whilst being notified that he had been provisionally suspended with immediate effect, from competing and participating in any authorised or organised sport or any international or national level event, organized as per Article 10.10 "Status During Ineligibility" as of the date of that letter. In that same letter, the Respondent was advised of his right, through a written submission to the Complainant, within seven days after receipt of the letter of

6 March 2012, to respond to the assertion that an Anti-Doping Rule had been violated by him.

4.6 The only written submissions received on behalf of the Respondent consisted of two e-mails from the Respondent's father. In the first of them dated 14 March 2012, the Respondent's father reported that he had investigated the matter and concluded, without bias, that the Respondent had not taken Stenozolol knowingly or willingly and that all his supplements were purchased for him by family member, as reflected in the Doping Control Form, that his circle of friends do not include persons knowledgeable in respect of banned substances, that his trainer would not promote the usage of banned substances and that immediately after having been tested, he had not expressed any concern that the analysis of his urine sample would prove to be positive. In the second of these e-mails addressed to the Complainant by the Respondent's father, dated 28 May 2012, he pointed out that he and the Respondent accept and abide by the Complainant's two year suspension ruling and that they do not request a Hearing. He further pointed out that, despite the assistance of independent sources, he had been unable to establish that the Respondent had knowingly used prohibited/banned substances and could therefore only conclude that the declared products used by the Respondent, "may have had banned substances not declared on the labels".

4.7 Mr Kock acknowledged that there had been co-operation with the Complainant both by the Respondent and his father and that he therefore sought to have the Tribunal find the Respondent guilty of having committed an Anti-Doping Rule offence, as per the Laboratory's analysis, and that the sanction to be imposed on the Respondent should be a two-year suspension, commencing from 6 March 2012.

5. SUBMISSIONS BY MR KOCK :

- 5.1 That the charge against the Respondent had been proved by the Laboratory analysis of the Respondent's A Sample because the mere presence of the prohibited substances found in the Respondent's bodily fluids constitutes a doping offence.
- 5.2 That no evidence either in mitigation or at all had been presented by or on behalf of the Respondent.
- 5.3 That there had been co-operation with the Complainant and the Tribunal by the Respondent and his father.
- 5.4 That the Respondent, as a first-time offender, be found guilty of committing the Anti-Doping offence as charged and that a two year suspension sanction be imposed on the Respondent, to commence retrospectively from the date upon which he was provisionally suspended, namely 6 March 2012.

6. CONCLUSION :

- 6.1 The Tribunal, after deliberation, accepted the evidence and submissions of the Complainant, as well as the evidence presented on behalf of the Respondent by his father.
- 6.2 Accordingly, the Respondent is found guilty of contravening SAIDS Anti-Doping Rule 2.1.
- 6.3 The sanction imposed upon the Respondent, André Koekemoer (Junior), is a two year suspension commencing 6 March 2012.
- 6.4 The sanction imposed in 6.3 above replaces the Respondent's provisional suspension on 6 March 2012 and the Respondent's ineligibility during this two year sanction shall preclude him from competing and participating in any authorised or organised sport

whether at local, national or international level as per Article 10.10 "Status During Ineligibility" for the duration of the sanction hereby imposed by the Tribunal.

DATED at JOHANNESBURG ON THIS THE 6TH DAY OF JULY 2012.



MONTY HACKER
Chairman

**With YUSUF CARRIM and DR ROB
COLLINS having concurred with this
Determination**