

IN THE SOUTH AFRICAN INSTITUTE FOR DRUG-FREE SPORT

ANTI-DOPING DISCIPLINARY COMMITTEE

HELD AT HOLIDAY INN ROSEBANK

In the matter of: Mr. Odinga Mdingi

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**RULING**

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Composition of the Panel

1. This committee was appointed by the South African Institute for Drug-Free Sport (SAIDS). SAIDS is a statutory body created by section 2 of South African Institute for Drug-Free Sport Act 14 of 1997, as amended in 2005 when SAIDS accepted the World Anti-doping code. The Anti-doping Rules 2009 Published by SAIDS are applicable to the present proceedings. ("**the Rules**")
2. The SAIDS Anti-doping Disciplinary Committee ("**the Committee**") has been

Appointed in terms of Article 8.1 of the Rules. The committee consisted of Mandla Tshabalala, Dr John Patricios and Mr. Greg Fredericks.

The pro-forma prosecutor for SAIDS was Mr Cullis.

3. The athlete failed to attend the hearing. The prosecution made a submission that the hearing should proceed in the athlete absence and in fact relied on Article 8.4.5 which states that:

*“A failure by any party or their representative to attend a hearing after notification will be deemed to be an abandonment of their right to a hearing. This right may be reinstated on reasonable grounds.”*

4. The prosecution further stated that the athlete was informed and served with all necessary and relevant documents for the hearing. The prosecution further submitted that, the failure of athlete to attend the hearing amounts to the abandonment of the hearing.

#### **RULING ON THE PROSECUTION SUBMISSION**

The panel was satisfied that the athlete was properly informed of the hearing and that his actions (failure to attend the hearing) amount to abandonment of the hearing. In the premise we decided to proceed with the hearing in the athlete's absentia.

#### **CHARGE**

The charge against Mr. Odingi Mdingi ("the athlete") is contained in a letter dated 19 July and 09 August 2012, which letters were addressed to the athlete.

### **RIGHT TO HAVE THE "B" SAMPLE TESTED**

Article 2.1.2 of the Rules points out the implication of a positive "A" sample where the opportunity for a "B" sample is waived. Article 2.1.2 of the Rules reads as follows:

*"Sufficient proof of an anti-doping rule violation under Article 2.1 is established by either of the following: presence of a Prohibited Substance or its Metabolites or Markers in the Athlete's A Sample where the Athlete waives analysis of the B Sample and the B Sample is not analyzed; or, where the Athlete's B Sample is analyzed and the analysis of the Athlete's B Sample confirms the presence of the Prohibited Substance or its Metabolites or Markers found in the Athlete's A Sample."*

The athlete waived the right to have the "B" sample tests.

### **PLEA TO THE CHARGE**

The athlete could not plead to the charge as he was absent from the hearing.

### **CLOSING STATEMENT (PROSECUTION)**

The prosecution in its aggravating stated that the intake of metabolite of cannabis is prevalent in Wheel Chair Basketball. He further pleaded with the panel that it is time to send a message to those who intend using the substance in future that there are serious consequences to the use of such substance. In requesting a possible sanction the prosecution relied on two precedences. He stated in the case against

one Tebagang and one Classen, both athletes were found guilty of using the same substance as in the present case and in both cases a sanction of 6 months was imposed. Therefore he requested that we follow the same precedence and impose a sanction of six (6) in the present case.

### **APPLICABLE ARTICLES**

What is of relevance at this stage and in the letter of 19 July 2012 is a portion relating to the charge, which reads as follows:

*"Please be informed that the analytical report received from the South Africa Doping Control Laboratory confirmed the presence of 11-nor-delta9-tetrahydrocannabinol-9-carboxylic acid (the concentration is about 160ng/ml which is above the World Anti Anti-Doping Agency decision limit of 18ng/ml) which is metabolic of Cannibinoids in your urine sample (sample number 2635407) provided during an in-competition test on 30 June 2012 at 12:55 after your match at the Supersport Series Wheelchair Basketball Championships."*

This constitutes a breach of Article 2.1 of the South African Institute for Drug-Free Sports (SAIDS) which states that *"The presence of the prohibited substance or its metabolites or markers in the athlete's samples."*

In particular Article 2.1.1 which states that:

*"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"*

In order to secure a guilty verdict from the Committee, the pro forma prosecutor, Mr Cullis, needed to discharge the burden of proof as contemplated in Article 3.1 of the Rules which states that:

Rule 3.1 Burdens and Standards of Proof

*"SAIDS has the burden of establishing that an anti-doping rule violation has occurred. The standard of proof shall be whether SAIDS has established an anti-doping rule violation to the comfortable satisfaction of the hearing panel bearing in mind the seriousness of the allegation that is made. The standard of proof in all cases is greater than a mere balance of probability but less than proof beyond a reasonable doubt."*

A Doping Control Form from SAIDS for the in-competition testing of the athlete signed by the athlete acknowledging that he has read the notice was presented into evidence.

The athlete conceded on the Doping Control Form that he has been notified of his selection for doping control and that he gives his consent to provide samples for anti-doping research.

## **FINDINGS**

"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". There was prohibited substance found in the athlete's body after he was tested, it is upon the athlete to take reasonable steps in ensuring that no banned substance enter his body, and it was not the case in this matter.

It is evident from the charge that the athlete has violated the SAIDS Rules. There is overwhelming evidence from the analytical report received from the Doping Control Laboratory which confirmed the presence of a metabolite of Cannabis in the athlete's urine. The presence of the aforesaid metabolite constitutes a violation of the SAIDS rules. In these circumstances, the prosecution has proved to the comfortable satisfaction of the panel that the athlete has in fact violated Article 2.1.1 of the Rules. Therefore the athlete is found guilty as pleaded.

## **SANCTIONS**

After the panel thoroughly deliberated the possible sanction, we unanimously came to the following sanction:

*That the athlete is hereby suspended for a period of six (6) months from the date of receiving the analytical report/result from the South African Doping Control Laboratory. Meaning that the suspension shall be effective from 19 July 2012 up to and including 18 January 2013.*

## REASONS

The panel was guided by the previous rulings on cases involving the same substance as in the present case. As a result we found the suspension against the athlete fitting.

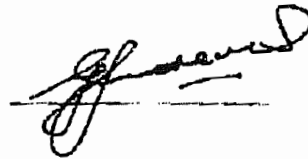
Date: 11 September 2012



Mandla Tshabalala



Dr. Jofin Patricios



Greg Fredericks