

BEFORE THE ANTI-DOPING APPEAL TRIBUNAL OF SOUTH AFRICA

Instituted in terms of section 17(2)(a) of Act No. 14 of 1997, as amended by Act No. 25 of 2006)

Case No.: AT 02/2012

In the matter between:-

WORLD ANTI-DOPING AGENCY (WADA)

(APPELLANT)

versus

Mr Nzuzo Ngxongo

(FIRST RESPONDENT)

and

**SOUTH AFRICAN INSTITUTE FOR
DRUG-FREE SPORT (SAIDS)**

(SECOND RESPONDENT)

DECISION

1. On the 15th November 2011 the First Respondent (the Athlete) was found Guilty of violation of Article 2.1 of the SAIDS Anti-Doping Rules by the SAIDS Anti-Doping Disciplinary Committee in that a urine sample provided by the Athlete on 6th August 2011 at the South African National Bodybuilding Championships tested positive for Furosemide.
2. Furosemide is a prohibited substance, which is classified under "S5"(Diuretics) on the 2011 WADA Prohibited List. It is a Specified Substance for the purposes of such list.
3. On the same day (15th November 2011) the Disciplinary Committee imposed a sanction of 18 months ineligibility after "taking into account time served as of 30th August 2011 and therefore being completed on 28th February 2013".
4. It is against this sanction that WADA has lodged this appeal.
5. It is not clear whether the Athlete lodged an appeal or a cross-appeal but whatever the position might have been is irrelevant as he sent an email to SAIDS on 24th April 2012 in which he states: " This is with regard to the appeal which I had proposed against the decision of SAIDS Anti-Doping Disciplinary Committee on 15th November 2011. I would like to withdraw my appeal..." (See copy of email attached hereto).
6. WADA requested the hearing to proceed on the basis of their written submissions.

7. SAIDS was represented by Nic Kook who, at the commencement of the hearing, indicated that SAIDS did not oppose the Appeal by WADA nor the granting of the relief sought by WADA.
8. It is apparent not only from the Articles dealing with the sanction to be imposed, but also from the submission by WADA, the Athlete, SAIDS and the Disciplinary Committee itself that the appropriate sanction in this case is one of two (2) years ineligibility.
9. Consequently we do not intend analyzing these Articles as all the parties the Disciplinary Committee and ourselves are in agreement with what the appropriate sanction should be, namely, a period of 2 years ineligibility.
10. It is common cause that the Athlete has been under suspension since 30th August 2011.
11. The Disciplinary Committee found that there were mitigating factors which justified the imposition of a lesser sanction. We do not agree that the factors mentioned are indeed mitigating factors.
12. In any event, we are satisfied that the so-called mitigating circumstances do not satisfy the test as "No Significant Fault or Negligence" as stipulated in Article 10.5.2 to qualify for a reduction in the period of ineligibility.
13. In order to qualify for such a reduction the Athlete must show that he exercised the utmost caution and made every conceivable effort to avoid taking the prohibited substance. This he failed to do.
14. In the result the appeal succeeds against paragraph 14 of the Decision of the Disciplinary Committee which is set aside and substituted with the following:
 - 14.1 A period of two (2) years' ineligibility is imposed on the Athlete from date hereof;
 - 14.2 The Athlete is to be credited with the period of ineligibility he served from 30th August 2011 to date hereof;
 - 14.3 The period of ineligibility therefore expires on 29th August 2013.
15. No order is made as to costs

Dated at Cape Town on this 3rd day of May 2012



Alex Abercrombie (Chairperson)
Prof. Yoga Coopoo
Dr. Ephraim Nematswereni