

**DECISION OF THE SOUTH AFRICAN INSTITUTE FOR DRUG-FREE SPORT
ANTI-DOPING DISCIPLINARY COMMITTEE**

In the disciplinary hearing of

GREGORY TSHEPO NKOANA

LEGISLATIVE & LEGAL BACKGROUND / FRAMEWORK

1. The South African Institute for Drug-Free Sport, "**SAIDS**", is a corporate body established under section 2 of the South African Institute for Drug-Free Sport, Act 14 of 1997, as amended, "the Act".
2. The main objective which **SAIDS** has is to promote and support the elimination of doping practices in sport which are contrary to the principles of fair play and medical ethics in the interests of the health and well being of sportspersons.
3. On 25 November 2005 **SAIDS**, formally accepted the World Anti-Doping Code, "the Code", which the World Anti-Doping Agency, "WADA", had adopted on 5 March 2003.
4. By doing this **SAIDS**, as the National Anti-Doping Organisation for South Africa, introduced anti-doping rules and principles governing participation in sport under the jurisdiction of SASCOC, the South African Sports Confederation and Olympic Committee, or any national sports federation.
5. The Anti-Doping Rules 2009, as published by **SAIDS**, ("the **Rules**"), which are applicable to the present proceedings, incorporate the mandatory provisions of the Code as well as the remaining provisions adapted by **SAIDS** in conformance with the Code.
6. Wheelchair Basketball South Africa, "**WBSA**", as the national federation governing the sport of wheelchair basketball in South Africa, has adopted and implemented **SAIDS** anti-doping policies and rules which conform to the Code, as amended and the **Rules**.

PANEL CONSTITUTION

7. This **SAIDS** Anti-Doping Disciplinary Committee hearing panel, consisting of John Bush - Chairperson and Legal Representative, Dr Sello Motaung - Medical Practitioner and Professor Yoga Coopoo - Sports Administrator, ("the **Panel**") was appointed by **SAIDS** in accordance with the provisions of Article 8 of the **Rules**, to adjudicate whether the athlete Gregory Tshepo Nkoana ("**Nkoana**") had committed an anti-doping rule violation in accordance with the **Rules** and if so what the consequences should be.

CHARGE RELATING TO ANTI-DOPING VIOLATION

8. The charge against **Nkoana** is contained in a letter which was addressed and couriered to him on 31 October 2011. (A copy of the letter is - Exhibit A.)

The relevant portion of the letter relating to the charge reads as follows:

"You have been charged with an anti-doping rule violation in terms of article 2.1 of the 2009 Anti-Doping Rules of the South African Institute for Drug-Free Sport (SAIDS).

On the 13 August 2011 you provided a urine sample (A2532381) during an in-competition test. Upon analysis, the South African Doping Control Laboratory at the University of Free State reported the presence of a prohibited substance in your urine sample.

The substance identified was 11-nor-delta 9 tetrahydrocannabinol-9- carboxylic acid (the concentration is about 170ng/ml which is above the World Anti Doping Agency decision limit of 18ng/ml), a metabolite of Cannabis. Cannabis is categorised under **Class S8. Cannabinoids** on the World Anti-Doping Code 2011 Prohibited List International Standard.

9. Article 2.1 of the **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.

PROCEEDINGS

10. The prosecutor for **SAIDS** in this matter was Mr Nic Kock, "**Kock**".
11. The hearing began at 17h45 on 22 November 2011 with the self introduction of all those present at the hearing. **Nkoana** was represented by Marcus Retief, "**Retief**", his team coach, who advised that although English was not **Nkoana's** mother tongue **Nkoana** was comfortable with the hearing being conducted in English. He advised that **Nkoana** would be calling his mother Kedibone Celia **Nkoana** and Janice Ramsay, his team manager, as witnesses.
12. Charles Saunders, CEO of and representing WBSA was present throughout the proceedings. He made a valuable contribution in providing advice concerning WBSA's commitment to anti-doping control measures, education and related activities.
13. Ms Surprise Mbatha took minutes of the proceedings, which were also recorded.
14. The Chairman outlined the procedure relating to the hearing.
15. **Kock** read the charge, as contained in the letter dated 31 October 2011 addressed to and received by **Nkoana**. He asked whether there was anything in the letter which was disputed. Retief advised that nothing was in issue as he accepted **Kock's** suggestion that everything was common cause. This letter was accepted into evidence as Exhibit A.

16. The remaining documents which were in the hearing pack relating to the charge were then identified by **Kock** and accepted by **Retief** on **Nkoana's** behalf without any objection, as the following exhibits

- Exhibit B Letter SAIDS to **Nkoana** dated 27 August 2011, containing notification of adverse analytical finding, invitation for "B" sample analysis and provisional suspension;
- Exhibit C University of the Orange Free State: Report on A-Sample Analysis 2532381 dated 5 September 2011
- Exhibit D Doping Control Form 43628 - Test Mission Code 163/11 - dated 12 July 2011
- Exhibit E Chain of Custody Form dated 17 August 2011 with seal numbers
- Exhibit F Correspondence exchanged between SAIDS and **Nkoana**, being the e-mails dated 27, 28 and 30 September, as well as 11, 12, 17 and 31 October 2011

Kock then dealt with **Nkoana's** waiver of his right to have his "B" sample analysed.

ANTI-DOPING RULE VIOLATION – PROSECUTION'S SUBMISSIONS

17. **Kock** advised that because of the adverse analytical finding and athlete's being responsible for what was found in their bodies the transgression under the **Rules** had been established and the matter of sanction then needed to be considered.

EVIDENCE IN MITIGATION OF MANDATORY SANCTION

18. At this point in the proceedings **Retief** advised that **Nkoana** admitted he was guilty and would lead evidence in mitigation of sanction through

- his mother (Mrs Kedibone Celia Nkoana) as to why the substance was taken
- Mrs Ramsay as to his character

19. In assisting **Nkoana** and not to "trip him up", **Kock** posed some initial questions to him. In answering these **Nkoana** provided testimony which revealed that he had

- participated in wheelchair basketball for 4-5 years
- played no other sports
- played at national team level
- been educated about anti-doping by his club. This was about two years back when after one of his team members had been found with a banned substance, which he thought was also dagga
- been told – along with the rest of the team - that as professionals in the league not to use marijuana/dagga
- been tested before.... in 2010, with the results negative
- not smoked dagga or ingested it in any other way other than as the medicine
- no knowledge that there was dagga in the medication he had taken
- taken the medicine which his mother gave him during winter. This was every night for flu over the years that his mother had been a Sangoma, with this being her 11th year
- found out about the dagga when Janice (Ramsay) called him to tell him
- a "sore heart" when told that his flu remedy had dagga in it as he didn't believe it

- asked his mother who confirmed that the medicine included dagga
- not previously used any illegal substances
- not participated in any sport following his suspension.

20. Charles Saunders advised that WBSA

- ✓ was tough on the athletes and even levied fines
- ✓ made sure that they were not allowed to participate whilst under suspension. This also affected the club, which knew the procedure and could really not afford such suspension
- ✓ was extremely strict, making sure that in the education process everyone knew that doping would not be tolerated
- ✓ had serious concerns within the under 23s, where, apart from reasons for use related to disability, the coming of age rites, which included circumcision resulted in many players using dagga, with 6/7 players being suspended after being tested for use
- ✓ provided support for the rehabilitation of players following testing, as well as working through the schools and no matter what workshops were done the problem persisted.

21. Retief advised that

- **Nkoana** was not aware of what was in the concoction his mother gave him
- doping would have been out of character for someone tapping at the national team
- this would have been stupid thing to do
- he had a bad time after being suspended with constant calls to check when he could come back
- it was **Nkoana's** responsibility to know what he consumed
- he had accepted full responsibility for his actions and although this did not excuse him he hoped the **Panel** would be lenient on **Nkoana**
- the very high levels of dagga – “setting an all time high” in the words of the Prosecutor – were related to the preparation of the muti (medicine) and not smoke ingestion

22. Retief then called upon **Nkoana's** mother to lead evidence on how the substance entered **Nkoana's** body.

23. In direct testimony Mrs Nkoana stated that she

- was very sorry to everyone for this
- gave her son Tshepo (**Nkoana**) a flu remedy
- included garlic, honey, dagga and some herbs
- did not tell her patients what she put in her medicine
- had given this medicine to him for a month
- practiced as a traditional healer (Sangoma) for 10-11 years
- gave him the same muti that she gave to all her patients

24. In response to questions from Dr Motaung, **Nkoana** stated that

- he took the muti for flu on a daily basis every winter
- was previously tested in May 2010
- he was shaking as it was very cold

25. In replying to Professor Coopoo's questions **Nkoana** said that

- he took the same medication when he was tested late in May 2010

- he did not take any other medication
 - the medication which he mentioned on the doping control form, being the suppository, was for piles
 - took supplements prescribed by the team doctor at national team camps.
26. Further questions posed to both Mrs Nkoana and **Nkoana**, as well as general statements made by the Panel members and Mr Saunders revealed that
- Mrs Nkoana boiled up a quantity of dagga in the muti as a cold/flu remedy
 - as a traditional healer she did not and would not tell her clients, even her son, what was in the muti
 - she would not give it to him again next winter
 - there was a lack of awareness about the effects of dagga among athletes especially the youth which
 - restricts performance
 - constipates
 - stays in the system
 - was not good for sport
 - slows down the athlete
 - its use within the passage to manhood and acceptance culturally needed to be dealt with through education
 - youngsters do not have much of a choice as it is used widely
 - the brew could energise the athlete
27. **Nkoana** added furthermore that the overall effect of the muti was such that
- his nose would be unblocked
 - his coughing stopped
 - he would take it when he got home by taxi shivering cold after training at the Carlton Centre
 - he played the same in summer or winter
 - there was no difference in his performance
28. Mrs Ramsay then testified that
- she was the manager of the Discovery Eagles basketball team for 3 years
 - she had known **Nkoana** or "KB" (Kabelo), who referred to her affectionately as "Mom", for between 4 to 5 years,
 - **Nkoana** was
 - part of the squad
 - selected as vice-captain of the team
 - passionate about basketball
 - required to travel to practice Monday to Thursday from 7pm-10pm which involved getting home at 1-2am
 - missed 5 practices in 3 years –through sickness, work shifts or transport
 - playing and trying his 'level best' to get into the national squad
 - 'knocking on the door' for the Paralympics
 - unlikely to destroy his 'career' - dream and his intentions - by taking dagga
29. **Nkoana** thereafter said he was sorry for taking the stuff (dagga).
30. In his concluding remarks Charles Saunders pleaded for the creating of greater awareness about anti-doping. He stated that although WBSA had signed players' contracts in place **SAIDS** could help with

- more booklets needed to be distributed to the players who did not have access to pc's and the web
 - workshops, supported by the medical commission, which provided information and discussion as to what is going on to coaches, management and players
31. He also drew the Panel's attention to the fact that the paralysis which wheelchair athletes suffered from resulted in spasms requiring medication. Although not medically interested in taking more drugs, this was indeed a reality in disabled sport - for prevention rather than cure.

It was also pointed out that although there were Therapeutic Use Exemptions (TUEs – catered for under the Rules) and the possibility of working with WADA, studies have not shown consistent experiences.

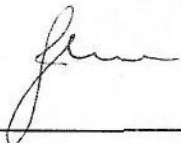
This concluded the leading of evidence / testimony, comment and discussion concerning the mitigation of the applicable sanction

PROSECUTION – PROPOSED SANCTION

32. In his closing remarks, before dealing with the Prosecution's recommended sanction, **Kock** complimented all persons present at the hearing in support of **Nkoana**, especially WBSA as the national federation, concerning too, the work which it had also done with regard to creating (anti-doping)awareness. He recommended that WBSA work through Mr Fahmy Galant at **SAIDS** for the booklets and available information in dealing with the educational component of WBSAs further requirements.
33. **Kock** went on to alert **Nkoana** to the reality that if three persons in a team had tested positive the result would be nullified with consequences for the team.
34. As regards sanction **Kock's** submission was that because **Nkoana** had satisfactorily established, on a balance of probability
- ✓ how the prohibited and specified substance had entered his body and had corroborating evidence as regards this;
 - ✓ that the prohibited substance and specified substance was not intended to enhance his sport performance;
 - ✓ that this violation was his first,
- a 3 (three) month period of ineligibility from 27 September 2011 to 27 December 2011 be imposed upon **Nkoana**.
35. He also warned **Nkoana** to be extra careful of what he took into his body as a second offence could result in a sanction of up to 4 (four) years ineligibility

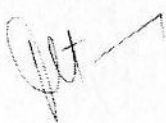
PANEL DECISION & REASONS

36. After a short adjournment for deliberation by the **Panel** members the hearing was re-convened for the **Panel** decision to be delivered by the Chairperson.
37. The **Panel** having accepted that **Nkoana's** violation of Article 2.1 of the **Rules** had not only been proven by the **SAIDS** prosecution, but also admitted by **Nkoana**, needed only to consider and decide upon
- 37.1 an appropriate sanction in accordance with Articles 10.1 and 10.2 of the **Rules**;
- 37.2 whether once this was determined there was any basis for any possible elimination or reduction of any period of ineligibility which might be imposed upon **Nkoana**, under Articles 10.4 of the **Rules**, which provided for a reprimand as the minimum and two year period of ineligibility as the maximum sanction for a first anti-doping violation involving a specified substance under specific circumstances.
38. The Chairperson delivered the **Panel's** decision on sanction, which was reached with due regard to the circumstances, **Nkoana's** conduct, the cultural and other societal norms and imperatives relating to the use of cannabis / dagga / marijuana, as well as its effect on enhancing sport performance and all the other evidence led in mitigation of sanction, as it
- imposed a 2 (two) month period of ineligibility on Nkoana, running from 27 September 2011 - coinciding from the date of notification of the adverse analytical finding - to 27 November 2011.**



John Bush

Chairman



Dr Sello Motaung

Member



Prof Yoga Coopoo

Member

13 March 2012