

SAIDS

IN THE MATTER OF LEBOGANG PHALULA

Committee	Adv J Lubbe SC Prof D Hendricks Dr S Motaung
Athlete	Ms Lebogang Phalula
Legal representative	Mr R Mayer from Fullard Mayer and Morrison
Prosecutor	Adv N de Kock
Observer ASA	Mr. C Hattingh

[1] Introduction

Lebogang Phalula (the athlete) has 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 27 August she provided a urine sample (A2632382) during an in-competition test. The said sample was analysed by the SA Doping Control Laboratory at the Free State University. In a report dated 9 September 2011 of the A sample, the presence of a prohibited substance is recorded and identified as the stimulant Methylhexanamine which is categorised under Class S6 "Stimulants" in specific (b):Specified Stimulants on the World Anti-Doping Code 2011 Prohibited List International Standard.

SAIDS on 28 September 2011 informed the athlete in writing that she is provisionally suspended with immediate effect.

[2] Plea

Mr Mayer, on behalf of the athlete, advised that the athlete admits the charge as well as the chain of evidence regarding the taking and testing of the urine sample. The only issue remaining is that of an appropriate sanction and he indicated that he intends calling the athlete and her twin sister. He also handed in a written report by r. E Matebula, a general practitioner who treated the athlete. Mr Mayer informed us that the doctor was requested to attend the hearing but that he has failed to do so. He also requested a certain Mr Livingstone Jabanga, a Gauteng Athletics' official and the chair of the club to which the athlete is affiliated to come and testify but this person also failed to heed the invitation.

Mr Mayer informed us that the evidence he intends presenting would indicate that on the day of the competition the athlete did not feel well. On the way to the event she was handed

tablets by Mr. Jabanga who advised her that she must compete in the race and that the tablets, which he described as “vitamins”, would assist her to feel better. After the race the athlete, who came third, was tested and a positive test resulted. After the positive test one of the remaining tablets handed to the athlete was sent to SAIDS with a request to have it tested. The result of the test is still pending.

- [3] The athlete testified that a few days before the event she felt ill and consulted her doctor on the 23rd or 24th of September 2011. She received two injections. On the day of the event she and her twin sister travelled by car with Jabanga. He gave her the pills and said it was just vitamins that will make her feel better. She trusted him not to give her any illegal substance. She has been tested many times and since the age of 14 she has been running for South Africa. She has never tested positive. During the race she felt strong and came in third. She was surprised that she had so much strength during the race. She even outran her twin sister to her surprise. After the race she was tested and was later advised that she has tested positive for the aforementioned stimulant. She was shocked and phoned Jabanga to enquire about the pill he gave her. He could not give her the correct names. She requested him to attend the hearing which he failed to do.

The athlete’s twin sister also testified. She corroborated her sister’s evidence in all material aspects.

At this stage the committee advised Mr. Mayer that in the interest of justice the hearing will be postponed to await the result of the test and to instruct Mr. Jabanga, through the offices of SAIDS, to attend the hearing. The hearing was accordingly postponed *sine die*.

- [4] The hearing resumed on 29 November 2011 in Johannesburg and the Chairperson and Mr. Hattingh taking part by way of a teleconference. The Committee was advised that the tablet was sent to SAIDS by the legal representative of the athlete returned a positive test for the said stimulant. Both SAIDS and Mr. Hattingh requested the presence of Mr. Jabanga at the hearing without success.
- [5] Mr Kock on behalf of SAIDS submitted that based on the facts and taking into account previous decisions an appropriate sanction would be a three (3) months suspension calculated from 29 September 2011 up to and including 28 December 2011. Mr Mayer on behalf of the athlete agreed with this submission. He further indicated that the athlete and her twin sister will fully cooperate with SAIDS in taking disciplinary action against Mr Jabanga.
- [6] Article 10.4 of SAIDS Rules makes provision that the period of suspension prescribed in Article 10.2 can be eliminated or reduced under specific circumstances. The legal representatives of SAIDS and the athlete submitted that this is such a case. We accept the evidence of the athlete that she had no intention to take a performance enhancing substance or to mask the use of a performance enhancing substance. Her evidence in this regard is corroborated by her twin sister. We however find and it was conceded by Mr Mayer that the athlete was at fault to accept pills from her club’s chairperson. The degree of fault is however tempered by the fact that Jabanga was a person the athlete trusted as a responsible person involved in the sport and Jabanga’s assurance that he would not give her an illegal substance.
- [7] The Committee is accordingly comfortably satisfied that the proposed sanction would be an appropriate sanction in the circumstances of this case. The athlete and her twin sister both gave credible evidence of how the substance entered her body and the committee has no

reason to doubt their evidence. She is a first time offender and has pleaded guilty from the outset. She has given her full cooperation and we accept that she has genuine remorse.

[8] Conclusion

For the reasons set out above:

- 7.1 An anti-doping rule violation in terms of Article 2, 1 has been established
- 7.2 The athlete shall be subjected to a period of ineligibility of three months calculated from 29 September 2011 up to and including 28 December 2011.

J Lubbe SC

For and on behalf of the Committee