

**SA INSTITUTE FOR DRUG FREE SPORT (SAIDS)
ANTI DOPING DISCIPLINARY HEARING**

ATHLETE: MR REUBEN THEBAKANG

SPORTS FEDERATION: SOUTH AFRICAN SOCCER ASSOCIATION

DATE: THURSDAY, 22ND MARCH 2012

PLACE OF HEARING: GARDEN COURT SOUTHERN SUN HOTEL
HULLEY ROAD
ISANDO
KEMPTON PARK

DISCIPLINARY PANEL: MR SIVEN SAMUEL (CHAIRPERSON AND LEGAL REPRESENTATIVE)
DR. ROB COLLINS (MEDICAL REPRESENTATIVE)
MR LEON FLEISER (SPORTS ADMINISTRATOR)

PROSECUTOR: ADV NIC KOCK

SCRIBE: MS SURPRISE MBATHA

SOUTH AFRICAN SOCCER REPRESENTATIVE: DR PATO CELE

ATHLETE'S REPRESENTATIVE: MR TAHBO MOLOTO

ANTI-DOPING RULE VIOLATION: ANTI-DOPING RULE VIOLATION IN TERMS OF ARTICLE 2.1 OF THE SAIDS ANTI-DOPING RULES

APPLICABLE LAW

SAIDS is an independent body established under Section 2 of the South African Institute for Drug-Free Sport Act 14 of 1997 (as amended), SAIDS has formally accepted the World Anti-Doping Code adopted and implemented by the World Anti-Doping Agency in 2003. In so doing, SAIDS introduced anti-doping rules and regulations to govern all sports under the jurisdiction of South African Sports Confederation and Olympic Committee, as well as any national sports federation. The SAIDS Anti-Doping Rules ("the Rules") were adopted and implemented in 2009. These proceedings are therefore governed by the Rules. This SAIDS Anti-Doping Disciplinary Panel has been appointed in accordance with Article 8 of the Rules, to adjudicate whether the Athlete has violated the said Rules, and if so the consequences of such a violation.

The Hearing commenced at 5:30pm.

The Panel was please to note that Dr Pato Cele a representative from the South African Football Association was in attendance at the hearing.

PROCEDURAL MATTERS

The Athlete was in attendance at the proceedings .The Athlete was represented by his agent, Mr Thabo Moloto.

THE EVIDENCE AND ARGUMENT

The Prosecutor presented a bundle of documents marked "A" to "F" as documentary and corroborative evidence to the oral evidence presented .The Athlete did not dispute the veracity of any of the documents presented. In fact the Athlete confirmed that he agrees with the contents of all documents presented. The charge against the athlete was set out in a written correspondence sent to the Athlete dated the 6th of March 2012 Annexure (A1 AND A2) The charge sheet reads as follows:

You have been charged with an anti-doping violation in terms of Article 2.1 of the 2009 Anti-Doping Rules of the South African institute for Drug-Free Sport (SAIDS). On 21st December 2011, you provided a urine sample (A2633687); 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-delta9-tetrahydrocannabinol-9-carboxylic acid (the concentration is 200ng/ml which is above the World Anti-Doping Agency decision limit of 18ng/ml which is a metabolite of Cannabinoids. Cannabinoids is categorized under Class S8 "Cannabinoids" on the World Anti-Doping Code 2012 Prohibited List International Standard.

The Athlete is an adult male, who returned the above positive test sample at a Premier Soccer League match which took place on the 21st December 2011. The Prosecutor tendered evidence about the Doping process that was undertaken. He presented the Doping Control Form ("C") as well as the Laboratory A-Sample Analysis Report ("D") which indicated the presence of the identified substance. The Chain of custody form of the doping control session was also presented as evidence ("F"). The prosecutor specifically highlighted that on the Doping Control form, the athlete had declared that he had taken supplements on the day of the test. One of the substance was a multi-vitamin tablets and the other was pain tablets.

THE ATHLETES EVIDENCE

The athlete stated that he was guilty of the charge. He testified that he had played soccer at school level. When he was 15 years old he played for Jomo Cosmo (under 17) team. He then played in the Vodacom League. In 2006 he played for Platinum Stars development team. After a few years in that team he was selected to play for the Platinum Stars Premier League team. He was aware that Doping Control tests were conducted at Premier League soccer matches. He was also aware that he could be tested for recreational drugs like cocaine and cannabis. He was also aware that the scope of the test included a test for steroids. He indicated that this was the first

time he was tested and he tested positive. He indicated that on the day prior to the match, he was invited to a party, where video games were being played. A few of his friends and members of his family were passing around a hubbly bubbly apparatus. He had taken about 6 puffs of this pipe. It had smelt sweet like flavoured tobacco. He had then felt dizzy. He had not consumed cannabis prior to that day and that his consumption was accidental. After he tested positive he confronted his friends about what the hubbly contained. His friends indicated that cannabis dagga was put into the hubbly bubbly apparatus. He was then cross examined by the prosecutor who indicated that *his version was not consistent with the concentration of metabolites of cannabinoids found in his urine.* The medical representative confirmed that the concentration found in the athletes urine sample was 200ng/ml. This high concentration would not occur unless there had been continuous consumption of cannabis for a period of time.

Prior to commenting on these submission's by the Prosecutor and the medical representatives the athlete and his agent requested that the hearing be adjourned so that they may have a discussion. Upon their return the athlete then indicated that he would like to take the panel into his confidence. He indicated that he had been smoking cannabis dagga daily since his injury some three weeks prior to the testing. He indicated that since the positive finding he had, at the request of his agent, taken a further test on the 24th of February. The test had been negative. The panel requested a copy of the test and same was handed in marked "Exhibit J". The athlete had indicated that he was remorseful. The athlete stated that since he received the letter on the 2/2/2012 he had not played with the club or played any sport. He further indicated that his club had taken disciplinary action against him and his club had suspended him.

THE PROSECUTORS ADDRESS

The prosecutor argued that the evidence proved that the athlete was guilty. He furthered argued that on the evidence presented, a suspension for a period of up to six months ineligibility was justified. Such ineligibility to commence on the date that notification was sent to the athlete, being the 2nd of February 2012. The Prosecutor stated that although the athlete initially had not been honest with the panel, the panel

should take into account that he took the panel into his confidence and admitted his consumption of Cannabis Dagga.

FINDING ON THE CHARGE

The presence of prohibited substance identified as *11-nor-delta9-tetrahydrocannabinol-9-carboxylic acid* in the sample (sample number A2633687) of the Athlete was uncontested. The Panel therefore determined that the Athlete is guilty of the offence as set out in the charge sheet, and is in violation of Article 2.1 of the 2009 Anti-Doping Rules of the South African Institute for Drug-Free Sport.

DISCUSSION ON EVIDENCE AND ARGUMENT AS TO SANCTION

Article 21.1 of the Rules reads as follows:

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.

This Article is the foundation of the strict liability principle that is applicable to anti-doping violations. There is a clear and definitive standard of compliance that all athletes are required to adhere to and it is on this basis that they are held accountable. The responsibility that rests on the athlete is therefore clear, and the liability that rests on the Athlete *in casu* has been established.

Even though the athlete initially did not admit to knowingly smoking Cannabis, he later gave an honest account of how the substance entered his body, which was in a form of an acceptance of guilt and an explanation of his actions which resulted in the adverse findings with regard to his urine sample.

Despite the strict standard, the Panel is however able to eliminate, or reduce the period of ineligibility and may award, at a minimum, a reprimand and, at a maximum, a period of two (2) years ineligibility. The question of whether it is appropriate to decide on a period "no ineligibility" or "some ineligibility" depends on the degree of fault the Panel considers to exist on the part of the Athlete.

Article 10.4 is the relevant provision and reads as follows:

10.4 Elimination or reduction of the period of ineligibility for specified substance under specific circumstances.

Where an athlete or other person can establish a specified substance entered in his or her body or came into his or her possession and that such specified substance was not intended to enhance the athletes sport performance or mask the use of a performance enhancing substance, the period of ineligibility found in article 10.2 shall be replaced with the following:

First violation: at a minimum, a reprimand and no period of ineligibility from future Events, and a maximum, two (2) years ineligibility.

To justify any eliminations or reductions, the athlete or other person must produce corroborating evidence in addition to his or her word which establish to the comfortable satisfaction of the hearing committee the absence of an intent to enhance a sport performance or mask the use of performance enhancing substance. The athlete or other persons degree of fault shall be the criteria considered in accessing any reduction of the period of ineligibility.

The issue before the panel is therefore whether circumstances exist such that it is able to consider any eliminations, or reductions, of the period of ineligibility as provided for under article 10.4. this entails a consideration of the degree of fault of the individual athlete and the appropriate sanction for the athlete viewed in light of that degree of fault.

In this regard there are a number of factors to consider:

1. The athlete has established how the specified substance entered his body;
2. The athlete disclosed to the hearing his mistake in an open and frank manner;

3. The concentration of Cannabis Dagga was 200ng/ml which was a little higher than the WADA DL of 18ng/ml;
4. The substance was used for many weeks prior to participation only for recreational purposes and not to enhance the athletes performance.
5. This is the first positive test of the athlete.

The above factors are mitigating factors relevant to the degree of fault. There are various issues in this matter however, that indicate a serious degree of fault on the part of the athlete:

6. The athlete is an adult sportsperson, participating at the highest level in his sport. He must have been fully aware of the consequence of his actions.
7. The substance is prohibited for possession and use in terms of laws of our country.

In reviewing the above, the sanction on the finding of guilty is as follows:

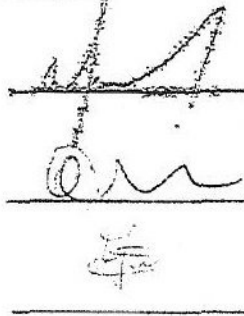
The athlete is ineligible to participate in any organized sport club or higher level or as envisaged, in article 10.4, for a period of three (3) months which period will be effective as of 2nd February 2011 (being the date of notification of the adverse findings and implementation of the provisional suspension), to terminate on 3rd May 2012.

DATED AT JOHANNESBURG ON THIS 21st DECEMBER 2011.

SIVEN SAMUEL (Chair)

DR. ROB COLLINS

MR LEON FLEISER



The image shows three handwritten signatures, each written on a horizontal line. The top signature is the most complex and appears to be 'SIVEN SAMUEL'. The middle signature is a cursive 'DR. ROB COLLINS'. The bottom signature is a cursive 'MR LEON FLEISER'.