

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

ATHLETE : TOTO TWANI

SPORTS FEDERATION : BOXING SOUTH AFRICA

DATE OF HEARING : 30 NOVEMBER 2010

PLACE OF HEARING : HATHAWAY HOUSE
EAST LONDON

DISCIPLINARY PANEL : TONY IRISH (CHAIR)
DR MZWAKHE QOBOSE
MS. BEVERLEY PETERS

PROSECUTOR : KHALID GALANT

ATHLETE REPRESENTATIVE : WELCOME NCITHA (TRAINER)

CHARGE : ANTI-DOPING RULE VIOLATION IN
TERMS OF ARTICLE 2.3 OF THE SAIDS
ANTI-DOPING RULES

The Athlete is a boxer and appeared at a SAIDS disciplinary hearing on 30 November 2010 charged with a violation of article 2.3 of the SAIDS Anti – Doping Rules relating to a **refusal or failure without compelling justification to submit to sample collection after notification as authorised in the Anti-Doping Rules, or otherwise evading sample collection.**

The Athlete was assisted in the hearing by his trainer, Welcome Ncitha, who agreed to also act as English / Xhosa interpreter. Neither the Athlete nor the Prosecutor objected to Mr Ncitha acting in this capacity. Dr. Qobose speaks Xhosa and was in a

position to identify any translation inaccuracies. Accordingly acting as representative and interpreter was not considered inappropriate, and in fact assisted the process.

The Athlete confirmed that he had received a copy of the letter from SAIDS advising him of his rights under the SAIDS Anti-Doping Rules.

Boxing South Africa had been invited to attend the hearing in observer capacity but did not do so.

The Prosecutor summarised the case to be put forward in support of the charge and handed in documentary evidence consisting of the Athlete's Doping Control Form, the Doping Control Officer's (DCO's) Report Form, the Athlete's Log Form and a letter from the DCO to SAIDS dated 27 September 2010 setting out the facts on which the charge was based.

The lead DCO, Ms Nobetsu Mxokozeli, gave evidence under oath. She confirmed the accuracy of the documentary evidence and gave a detailed account of the events of the 26th September 2010 being the evening on which the Athlete had been notified of his selection for a doping control test following completion of his mini-flyweight bout at the People Boxing Promotion Tournament taking place at Sinyabi Rise, Mdantsane, East London.

The DCO was cross examined by the Athlete and clarification questions were asked by the panel.

The Athlete gave evidence under oath. He admitted to having been notified of the sample collection test, as well as being accompanied by a chaperone when watching the main bout of the evening as he was not ready to provide his urine sample. He conceded that he left the venue without providing the sample and explained that he had been put under pressure by his brother-in-law to leave with him as this was his form of transport home.

The Athlete's evidence focussed on the fact that he is illiterate, uneducated and does not understand English. There was no evidence suggesting otherwise. He pointed out that although he had signed the Doping Control Form he does not read or write English and he did not fully understand or appreciate the seriousness of the implications of not providing the sample. He conceded however that the DCO had

communicated verbally in Xhosa that he was required to provide the sample. No other evidence pointing to any compelling justification for failing to provide the sample was led.

The hearing was adjourned and following deliberation by the panel it was reconvened for a decision on the charge. The panel informed the Athlete of its decision to find him **guilty of the charge under article 2.3 in that he had failed, without compelling justification, to submit to sample collection after notification as authorised in the Rules.**

It was explained to the Athlete that he could face a sanction involving a period of ineligibility of two (2) years. The Athlete was asked whether the panel should consider any mitigating factors. The Athlete again put forward his illiteracy, lack of any formal education and his failure to appreciate the wrongfulness, and seriousness, of failing to provide the sample. He offered to be tested at any other time and said that he had never used any banned substances. This was the first occasion he had ever been selected for testing. The whole experience had been new to him. He pleaded that the panel take into account his lack of education and understanding of the process and the fact that he lives in a poor community, supports his grandmother and has no other means of earning a living.

The panel explained that it would adjourn for further deliberation on the sanction and this would be provided to SAIDS in due course and the Athlete would be advised accordingly.

After further deliberation the panel ruled that the sanction should be that of the imposition of **a period of ineligibility of twelve (12) months from the date of the hearing. However the period of interim suspension of approximately six (6) weeks from 19 October 2010 to 30 November 2010 would be credited against this as provided for in clause 10.9.2. of the SAIDS Rules. Accordingly the Athlete would be prohibited from competing as a boxer until 19 October 2011.**

The panel considered that while no compelling justification for the failure to submit to the sample collection existed there nevertheless existed factors which detracted from the degree of fault or negligence on the part of the Athlete. The test relating to fault or negligence should be flexible enough to accommodate very real factors such as the illiteracy and lack of education of the Athlete. These factors did impact upon the

Athletes ability to fully understand the significance and seriousness of his actions. It is perhaps worth consideration by SAIDS for the future that in circumstances where an athlete clearly does not read, write or understand English that an informal script be read out to such athlete by the DCO in his home language.

Disciplinary Panel: T. Irish, Dr M Qobose, Ms Beverly Peters

Date: 15 December 2010