

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

In the matter of

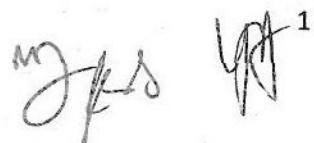
UNATHI NTETA

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. Athletics South Africa, as the national federation governing the sport of athletics in South Africa, has adopted and implemented SAIDS anti-doping policies and rules which conform to the Code and the Rules.
7. This SAIDS Anti-Doping Disciplinary Committee hearing panel, consisting of Mr John Bush (Chair), Dr Nasir Jaffer and Mr Yusuf "Jowa" Abrahams ("the Committee") was appointed by SAIDS in accordance with the provisions of Article 8 of the Rules, to adjudicate whether the athlete Unathi Nteta ("Nteta") had violated the Rules and if so what the consequences should be.
8. The charge against Nteta is contained in a letter which was addressed and couriered to him on 9 June 2011. (A copy of the letter is attached as Annexure 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 26 March 2011 you provided a urine sample (A2532007) during an in-competition test after your event at the South African High School Athletics Championships as per the normal procedure for drug testing in sport. Upon analysis, the South African Doping


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Control Laboratory at the University of Free State reported the presence of a prohibited substance in your sample.

The substances identified were:

1. Methandienone and its metabolites, 17-epithethandienone, epimetendiol and 6B-hydroxymethandienone, which is classified as an Anabolic Agent and falls under the **Class S1, "Anabolic Agents"** on the World Anti-Doping Code 2011 Prohibited List International Standard.
2. Methylhexaneamine which is classified as a Stimulant and falls under the **Class S6, Stimulants** 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.

10. The prosecutor for SAIDS in this matter was Mr Nic Kock "**Kock**". Mr Fahmy Galant, "**Galant**" was the SAIDS representative.
11. The hearing began at 19h00 on 30 June 2001 with the introduction of those present at the hearing. The Chairman then questioned **Nteta**, who spoke Xhosa and was 18 years of age, **whether** he understood English and was happy to proceed in English. **Nteta** advised that he was not happy proceeding in English. As it was clearly evident that an interpreter was required for **Nteta** the hearing panel decided to delay proceedings in order for an interpreter to be found.
12. Following attempts to contact suitable interpreters it was accepted that Ms Zinzi Sitoto of SAIDS, who was fortuitously in the vicinity, and a Xhosa speaker, be appointed to act as interpreter in terms of 8.4.7 of the Rules. This was in the absence of Ms Norma Nonkonyana of Western Province Athletics, "WPA", who had been expected to act as interpreter but could not make the first evening of the hearing. Ms Nonkonyana was appointed as interpreter for the second evening of the hearing, which took place in the evening of 20 July 2011.
13. **Nteta** appeared to suggest that he would represent himself. The hearing panel accepted however that he would receive support from both Mr Andrew Smit, the Club Captain of the Atlantic Athletic Club and Mr Jakes Jacobs, representing Western Province Athletics, "WPA", who were present at the hearing, relating to matters within their own knowledge concerning **Nteta's** circumstances, the charge and possible sanction. This was particularly necessary in the absence of Ms Norma Nonkonyana on the first evening of the hearing.
14. Ms Dolores Dick recorded the proceedings and produced the minutes of the hearing for both evenings.
15. **Kock** read the charge and thereafter read and explained the provisions of Article 2.1 regarding SAIDS right to prosecute under Article 8.4 of the Rules. **Nteta** advised that he had received the



letter containing the details of the charge and hearing, which included the results of the B-Sample analysis.

16. It was established within the initial questioning by **Kock** that **Nteta**

- was 18 years of age
- lived in Crossroads
- was in Grade 11 (for the second time) at the New Eisleben Secondary School in Crossroads, Cape Town.
- lived with his aunt, as his parents lived in the Eastern Cape
- had not had any injuries and was not carrying any injuries
- was a member of the Atlantic Athletic Club because the club offered transport to races which was not on offer in Nyanga
- did not train with the club, based at Green point, but in Nyanga
- had not joined any gym
- ran the 1500m and 5000m events
- was tested after the 5000m event in which he ran 14:48/14:49
- had a 5000m best of 14:45
- had the B-sample tested because he wasn't sure that the A-sample was his
- was shocked as he did not know what was in his urine
- had seemingly not been told, neither did he understand what was in his system, as this had not been explained to him, no information had been volunteered and he had not asked it either.


In an aside the Chairman noted that Mr Smith would presumably provide testimony regarding this.

17. Having expressed his disbelief that **Nteta** had still not understood what was in his system **Kock** then turned to and dealt with the Doping Control Form, "DCF".

The following relevant evidence arose from the information provided by **Nteta** in replying to the questions then put to him

- the Doping Control Officer "DCO" filled out the form with the information which he (**Nteta**) had provided to the DCO
- **Nteta** had participated in two events at the championships
- he had used the three products which had been recorded by the DCO under the medication declaration, namely, Vitathion, VO2 and Wild, which when checked against the product labels handed over to Mr Kock was in fact Wired, on the 26 March 2011, on the day of the championships.
The Chairman noted, in reading the wired label, which had been passed around for examination, that the very fine print warned that Wired contained banned substances!
- the products had been bought at Dischem, a shop in Bellville, after **Nteta** had read an advertisement
- these had been recommended by the person at the shop when he had asked for something to help with recovery
- **Nteta** paid for the supplement products out of funds from his brother and his own savings in not buying lunch. The club did not provide support for these as had been initially and possibly confusedly been thought was the case.

18. **Nteta's** further responses supported by the clarifying testimony of Jakes Jacobs and Andrew Smit to **Kock's** questioning regarding



- the testing of his B-sample, as well as
 - events leading up to such testing
 - the reasons for the delay and timing of such testing,
 - including Nteta's apparent lack of knowledge and/or understanding about what was in his system, established that
- the club – Atlantic Athletic Club had paid the R 700 required for the testing of Nteta's B-sample
 - this had seemingly been paid without the club knowing or telling Nteta what products were in what was in **Nteta's** system, simply because **Nteta** was a junior without money
 - Mr Charlie Piedt, who was the manager/convener of the Western Province High Schools team, had read and explained the contents of the notification of adverse analytical findings, including the requirements for the testing of his B-Sample, as set out in the SAIDS letter dated 21 April 2011, to **Nteta**
 - **Nteta** was apparently so shocked to hear that because of the banned substance found to be in his system he could not race anymore and was disqualified, he did not ask what the it was that was found to be in his system.
19. In providing further testimony regarding the reason for and purchase of the supplement products, as listed on the DCF, from Dischem **Nteta** mentioned that he
- told the shop assistant in the sports supplement area, to whom he had been referred by other employees, that he was an athlete running in competitions
 - needed something for his energy when he was tired and for his stomach pains which he referred to as "pricks"
 - was advised by the person who assisted him at Dischem to use the VO2 for energy, Wired for recovery and Vitathion for his stomach.
20. **Kock** provided clinical understanding when he advised that *geranium oil* contained *methylhexanemine*, the specified stimulant referred to in the charge sheet.
21. It was accepted that as **Nteta**, on his own admission, had taken the products listed on the DCF on race day at least 30 minutes before the race, the evidence suggested that such products purchased from Dischem were the most probable source for the prohibited substances which had entered **Nteta's** body.
21. In response to further questions asked by the panel members and **Kock**, **Nteta** advised that he
- carried on competing for about a month before the test results were provided
 - had been involved in serious competitive running since 2007
 - had not received any nutritional advice from his coach, who had been only been coaching him for a year regarding what he took
 - had neither received any advice from his club Atlantic about the use of drugs
 - had not taken anything other than Powerade before going to Dischem
 - would not purchase Wired again because it contained banned substances
 - had not participated in any other sports since testing positive
 - had paid for and participated in a training camp which he had 'gate crashed' at the High Performance Centre in Pretoria which Castor Semenya's coach had run in December 2010
 - did not receive any supplements from the coach, eating only energy products and food.
- 22 In providing some insight into **Nteta's** membership of the Atlantic Athletic Club and the arrangements relating to this, Andrew Smit the club captain, testified that

- it was a battle to communicate with **Nteta**, which was generally via sms
- the Chairman Greg Chislett had informed him (Smit) about the result of the initial testing
- he had then contacted **Nteta** who advised that he was aware of the result and that according to **Nteta** he was banned
- the club had helped pay for the B-Sample testing
- **Nteta** had told him he was taking Wired only after the results of the B-sample testing were known

23. Smit went on to state in his testimony and in response to questions posed to him that **Nteta**, who was a junior and rated as an elite athlete by the club,

- did very well from club incentives, making more than a few thousand rands a year, which was paid into his bank account
- generally finished in the top 3 in races, which he could race in C-category, junior and senior
- received other support from the club in the form of kit and shoes, as well as transport to and from races
- was not one to take substances
- did not have a coach or any mentor appointed by the club
- did not receive any educational support
- was left to his own devices regarding nutrition
- was a quiet, solo individual
- could have had more involvement from him (Smit) and the club – other than responses to calls for shoes and meeting at races, which contact, due to the geography was mainly achieved by phone.

24. The hearing panel agreed to adjourn the continuation of the hearing to 20 July 2011. This followed a brief adjournment, after a request from **Kock** that SAIDS be permitted to deal with an unusual case in a possible two pronged approach towards possible sanctioning. **Kock** emphasized that this was based on the need for fair treatment within his belief of human rights, which required support for

24.1 *more conclusive evidence of the likely source of the steroid and methylhexaneamine, and thus how these were likely to have entered **Nteta's** system, which required the testing of the wired product;*

24.2 the consideration of **Nteta's** level of literacy, understanding and education in determining the degree of fault on **Nteta's** part.

It was agreed that **Nteta** would be required to produce evidence of his grades over the past years, specifically his report cards for December 2010 and June 2011, to SAIDS offices.

25. At the resumed hearing **Nteta** accepted Ms Norma Nonkonyana's appointment as interpreter and Ms Zinzi Sitoto's appointment as the previous interpreter, even as a SAIDS employee.

26. **Kock** reported on the testing results of the three products which had been identified on the DCF, namely *VO2*, *Wired* and *Vitathion* which had been purchased and sent to the University of the Free State (SADOCOL – South African Doping Control Laboratory).

He mentioned that although the samples were clearly not from the same containers which **Nteta** had used previously, the prohibited stimulant *Methylhexaneamine* was found to be

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present in the *Wired* sample. No traces of either the specified stimulant *Methylhexaneamine* or the anabolic agent *Methandienone* were found in the *Wired*, *Vitathion* or *VO2* samples.

He also advised that although **Nteta** had been mentioned he had purchased these products at *Dischem*, which had been visited, it was in fact from *MedKem*, which is a 24 hour chemist, which **Nteta** advised was correct. **Kock** challenged **Nteta** on this change, with **Nteta** standing his ground in implying his earlier mention of *Dischem* was a mistake.

27. **Kock** read from the bottom of one of the labels stating that the product contained banned substances. He then questioned whether **Nteta** understood whether this meant that these must not be used. In his response **Nteta** stated that "products are supposed not to be used by athletes because they contain banned substances".
28. Throughout what then resulted in a short reading exercise **Nteta** showed obvious difficulty in reading what was written in English on the label of the product handed to him picking up only certain words and the parts in bold print. Although it was not proven that this was due to eyesight problems it was accepted that it was a language issue, where identifying, reading and understanding were of concern.
28. He was asked to look at the *VO2 Max* bottle and responded by reading that the label said there were no banned substances.
29. As explained by **Kock**, although **Nteta** had tested positive for the presence of the *Methandienone*, an anabolic agent, the onus, resting on **Nteta** to establish how this banned substance entered his body, had not been discharged.
30. Dr Nasir Jaffer advised that this substance could remain in the body for up to 18 months depending on the athlete in terms of dosage and metabolism.
31. **Nteta** not knowing and thus not being able to establish how the *Methandienone* had entered his body then mentioned, in response to questions exploring other possibilities, that he had also taken *Energade* and *Ensure* (?), a food supplement/ meal replacement since September 2010.
32. He advised that he had started taking the *USN VO2 Max* and the *Wired* products in January and February/March 2011 respectively. In his opinion the *VO2 Max* had helped improve his performance through speed sessions, where his chest had burned.
33. Although **Nteta** said he felt fine he needed to boost himself more during the school athletics season. It was then that he was exposed to the advertising material and started taking *Wired* which was finished at the time of the testing. According to his testimony this second product did not improve his times and he did not feel different. He wondered whether this was because he had not been taking it long enough.
34. Whilst **Nteta** ought to have possibly informed the manager and coaches of the Western Province High Schools Team, such as Mr Charles Piedt that he was taking such products he did not.
35. Given a final opportunity to establish how the *Methandienone* had entered his system **Nteta** speculatively suggested that it could have come from Vitamin B he took, or even the meat of one of the cows which had previously been injected, which had died and was eaten whilst he was on holiday in the Eastern Cape in December 2010.

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36. **Kock** commented on the December and March reports, which **Nteta** had handed in and accepted as evidence before the panel, stating that he was worried about certain marks being around 24 %.

Such reports showed that **Nteta's** Grade 11 aggregate for December 2010 was 24.7 % and March 2011 36.6 %, with English up from 20% in December to 24 % - but still a failure. The June 2011 report was not available.

37. In his address regarding sanction for the violations of the Rules which **Nteta** had not contested **Kock** noted that

- multiple violations i.e. more than 1 of the Rules provided for a sanction of 4 year period of ineligibility

38. **Kock** went on to mention that **Nteta**

- saved his lunch money or borrowed to buy the supplements but did not ask for advice from his club Atlantic as to what was safe
- got his club Atlantic to pay for the testing of the B-Sample
- did not read or chose to ignore the Wired label showing it contained a banned substance
- was required to establish how the prohibited substance entered his body under exceptional circumstances for the purposes of any reduction of sentence (SAIDS had gone the extra mile in trying to assist with this)
- had not presented any evidence of anyone having given him the products or trying to sabotage him
- did not produce any arguments for the reduction of any sanction
- showed lack of experience, a poor level of literacy which affected his ability to ask the right questions and understanding of the "banned" warning on the product label

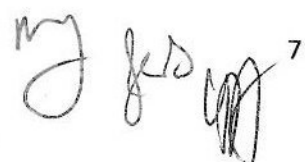
39. In referring to the Atlantic Club's support of **Nteta**, **Kock** stated that

- the minimal support provided by the Club was shocking
 - there had been no mentoring
 - **Nteta** had been left to his own devices
- This was a "Molotov cocktail" - a recipe for disaster

40. In conclusion and in spite of all these facts **Kock** stated further that **Nteta** was fully responsible for his actions.

Having tested positive for two substances – one prohibited the other specified, the SAIDS prosecution called on the hearing panel to consider imposing upon **Nteta** the sanction of a period of ineligibility of 2 years 3 months up until 21 July 2013, with the 3 month period of provisional suspension already served from 21 April 2011 to be included.

41. Although he had no questions **Nteta** responded by saying that he understood the sanction which SAIDS had asked for but the possibility of 4 years was so long.



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42. The panel then adjourned for deliberation on the possibility of reaching a decision on sanction. The panel decision which was delivered and explained by the Chairman, in the presence of **Nteta**, following such deliberations, was such that

Nteta be suspended for a period of ineligibility of 18 (eighteen) months. This period would be deemed to have commenced on and run from the 21 April 2011, the date of notification of the adverse analytical finding, to 21 October 2012, (not the 21 November as originally noted) both days inclusive, with the time covering the provisional suspension from the 21 April to 20 July 2011 being included as time already served.

The net effect was that Nteta would still have to serve 15 months with effect from 20 July 2010 to 19 October 2012

It was also decided that SAIDS be asked to remind ASA of its role and responsibility towards

1. educating and informing its affiliates, clubs and thus athletes concerning anti-doping where this was lacking;
 2. ensuring that clubs, such as the Atlantic Athletic Club, which provide support for the development of their athletes, be encouraged to continuously educate their members regarding doping in sport, the use of prohibited substances and in particular stimulants which had become a growing problem.
43. The following are the expanded and more detailed reasons for the decision reached by the panel, which were announced by the Chairman in broad terms on 20 July, in finding sufficient grounds for the reduction of the period of ineligibility.
- 43.1 exceptional circumstances were found to exist under the provisions of rule 10.5 - specifically 10.5.2 - with regard to it having being established that there had been no significant fault or negligence on the part of **Nteta** even though **Nteta** had failed to establish how the *Methandienone* had entered his system.
- 43.2 even if this could be established objectively speaking, in the panel's subjective view **Nteta's** age, lack of experience, naiveté, low level of literacy and education, poor academic record, second year repeat of Grade 11, his lack of wherewithal, resources, know-how and support, whether- financially or otherwise, were all considered sufficient to add up to **Nteta** being faced with a truly exceptional set of circumstances, in establishing on his own, not only how the *Methandienone* had entered his system but in order to do so, its likely source or where it had been originated from, and /or at the very least, by virtue thereof also being excused from such objective standard



based upon the equality principles provided in the South African Constitution, where everyone is considered equal before the law.

43.3 when such factors are measured against the application of principles of equality with regard to each individual citizen having equal rights of access to the law **Nteta** was clearly in a disadvantaged position tantamount to exceptional circumstances in the panel's view due to the such factors, seen in the light of the following.

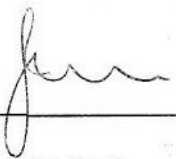
43.3.1 Such disadvantage was clearly an exceptional circumstance on its own, giving rise to **Nteta** being unable to establish how the Prohibited Substance entered his system, as required under 10.5.1 or 10.5.2 of the rules, through no fault of his own but by virtue of circumstances of birth and such other factors referred to in 43.2.

43.3.2 The panel's acceptance that **Nteta's** testimony and answers to questions were truthful, in spite of some contradictions and inconsistencies, possibly due to misunderstandings brought about through poor levels of literacy and language, and also considering his suggestion of the cow having been injected, which displayed some knowledge of hormone injections, as a possible source of the *Methandienone*.

43.3.3 Although the existence of strong motives to enhance performance due to incentives and personal circumstances may have been present **Nteta** had not achieved his best time at the event by 3-4 seconds.

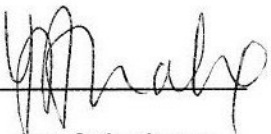
43.3.4 The lack of access to legal aid or other financial resources for **Nteta** to have had assistance in the preparation of his case, notwithstanding the support of Western Province Athletics and SAIDS who "walked the extra mile" as far as it could in trying to assist in determining the likely source of the Prohibited Substances and thus how these entered **Nteta's** system.

43.5.5 The finding in the Court of Arbitration in Sport decision WADA vs. Thompson – CAS 2008/A/1490 which support the panel's findings, although provided after the panel's decision was made.



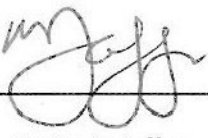
John Bush

Chairman



Yusuf Abrahams

Member



Dr Nasir Jaffer

Member

23 September 2011