

SA INSTITUTE FOR DRUG FREE SPORT (SAIDS)

ANTI DOPING DISCIPLINARY HEARING

ATHLETE: MR THABISO KEKANA

SPORTS FEDERATION: ATHLETICS SOUTH AFRICA

DATE: 2 OCTOBER 2012

PLACE OF HEARING: HOLIDAY INN EXPRESS

UMHLANGA

2 NCONDO PLACE

CORNER OF NCONDO PLACE AND NTUSI ROAD

OFF UMHLANGA ROCKS DRIVE

DISCIPLINARY PANEL: MR SIVEN SAMUEL (CHAIRPERSON AND LEGAL

REPRESENTATIVE)

DR. MIKE MARSHALL (MEDICAL

REPRESENTATIVE)

MS BEVERLEY PETERS (SPORTS
ADMINISTRATOR)

PROSECUTOR: MR RAHIDIEN CULLIS

ATHLETICS SOUTH AFRICA : NONE

**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 5:30 pm.

PROCEDURAL MATTERS

The Athlete was not in attendance at the proceedings. The hearing was conducted through a teleconference facility, the athlete communicating with the panel via telephone. The Athlete confirmed having being timeously advised of the adverse finding. He further confirmed that he had been fully appraised of his rights under the SAIDS anti-doping rules. The Athlete elected not to request a B sample testing and waived his rights in relation to this.

The Athlete confirmed that he had elected to represent himself at the hearing. The rights of the Athlete were explained to him and he acknowledged that he understood his rights and the process that was to follow. He was ready to proceed.

THE CHARGE

The charge was put to the Athlete and he pleaded not guilty. He stated he knew nothing about the substances concerned and did not take any drugs.

THE EVIDENCE

The Prosecutor presented a bundle of documents marked "A" to "G" as documentary and corroborative evidence to the oral evidence presented.

The charge against the Athlete was set out in written correspondence sent to the Athlete on the 05 SEPTEMBER 2012 ("G1" and "G2"). The charge against the Athlete 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 20 April 2012, you provided a urine sample (2634641); 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 were 19-Norandrosterone and 19-Noreticholanolone, metabolic and/or precursors of the Anabolic Agents, Nandrolone. Nandrolone is categorized under Class S1, "anabolic Agents", in specific 1(a) Exogenous, on the World Anti-Doping Code 2011 Prohibited List International Standard.

The Athlete is an adult male, 22 years of age, who returned the above positive test sample at the Yellow Pages Series 3 on 20 April 2012 at 22h28. The Prosecutor tendered evidence about the testing process that was undertaken. He presented the

Doping Control Form ("C") as well as the Laboratory A-Sample Analysis Report ("B") which indicated the presence of the identified substance. He also tendered the chain of custody form of the doping control session as evidence ("E").

The Prosecutor specifically highlighted that, on the Doping Control Form, the Athlete had declared that he had taken four substances prior to being tested.

THE ATHLETES EVIDENCE

On the day in question he had a headache prior to the event. He also got injured during the event. After the event he went to the doctor on duty at the event. The doctor prescribed and dispensed medication. The doctor asked the athlete if he had any allergies. The Athlete answered in the negative. The doctor gave him an injection and some other medication. The Athlete testified that the only way he could have tested positive for the identified substances was if the substances were contained in the medication prescribed by the doctor concerned.

The panel decided that in view of the Athlete's testimony about the medication dispensed by the doctor and the corroboration of same in the doping control form, it would be necessary to ascertain from the doctor if there could be any connection between the identified substance and the medication prescribed. The Athlete was advised and the hearing was adjourned for a written response by the doctor which was to be sent to all parties.

It was agreed that upon the receipt of the doctor's response, the Athlete and the Prosecutor will submit written arguments to the panel on the question of the findings and sanctions (if necessary).

The doctor concerned was Eben Nel who submitted the following report: -

" 1. I saw Mr Kekana only after his event in which he sustained a minor injury to his leg. That was the only contact I had with the mentioned patient.

2. The treatment I advised was Voltaren (Declofenac) and Repiral gell. This was prescribed at the time of my consultation.

3. The above mentioned medication/treatment was the only prescribed medication/treatment that I advised. I was not made aware through medical history from the patient or co-lateral history, of any other medication or treatment that was given to, or taken by the patient.

4. The above mentioned treatment advised by me can not, according to my knowledge, lead to positive testing for metabolites or pre-cursors of nandrolone.

5. My contact with the patient was brief and he was treated for a minor injury. "

The Athlete's response to the doctors report was: -

"Ok Dr Nel but me to I never take any substance in my life and I don't even no how thy look like this metabolites and/or precursors of Nandrolone I am not going 2 accept something I didn't take it?"

The Prosecutors Arguments: -

"In this matter the athlete failed to establish how the substance entered his system, we are therefore of the opinion that he cannot rely on the provisions of Article 10.5 of the World Anti-Doping Rules 2009 for a reduction in sanction. The amount of nandrolone found in the athletes system is also extremely high, we therefore humbly submit that an appropriate sanction of 2 years be imposed.

Our authority for the above-mentioned sanction comes from the well-known case of Mcdermot, where the panel stated: "where the athlete fails to establish how the substance enters his system, he cannot rely on Article 10.5 for a reduction."

FINDING ON THE CHARGE

The Panel determined that the Athlete is Guilty of the offence as set out, 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.

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 of "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

Substances under Specific Circumstances

Where an *Athlete* or other *Person* can establish how a Specified Substance entered his or her body or came into his or her possession and that such

Specified Substance was not intended to enhance the *Athlete's* 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 at a maximum, two (2) years' *Ineligibility*.

To justify any elimination or reduction, the *Athlete* or other *Person* must produce corroborating evidence in addition to his or her word which establishes to the comfortable satisfaction of the hearing Committee the absence of an intent to enhance sport performance or mask the use of a performance enhancing substance. The *Athlete* or other *Person's* degree of fault shall be the criteria considered in assessing 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 elimination, or reduction, 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 the light of that degree of fault.

The Athlete's evidence was a bare denial. It is clear that the substance was found in his body . he failed to tender an explanation as to how the substance entered into his body. The quantity of the of the substance found was high.

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 two (2) years which period will be effective as of 22 May 2012 (being the date of notification of the adverse finding and implementation of provisional suspension), to terminate on 21 may 2014.

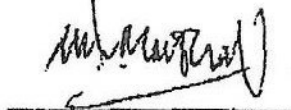
The Athlete must be advised of his right to appeal.

DATED AT DURBAN THIS 12TH DECEMBER 2012.

SIVEN SAMUEL (Chair)



DR. MIKE MARSHALL



MS BEVERLEY PETERS

