

**BEFORE THE ANTI-DOPING SOUTH AFRICA TRIBUNAL**

**(Institute in terms of section 1792)(a) of Act N. 14 of 1997, as amended by Act No.25 of 2006)**

In the matter between:

**SOUTH AFRICAN INSTITUTE FOR DRUG –FREE SPORT (SAIDS)**

versus

**Olebogeng Masire**

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**DECISION**

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**1. HEARING**

- 1.1. This is a unanimous decision of the Anti-Doping Disciplinary Committee established in terms of Article 8 of the South Africa Institute for Drug Free Sports (“**SAIDS**”) Anti-Doping Rules (dated 2009) (“**Anti-doping Rules**”), in respect of the disciplinary hearing and sentence in the case of an adverse analytical finding of the sample belonging to Olebogeng Jonas Masire (“**athlete**”).
- 1.2. The Anti-Doping Disciplinary Committee (“**Committee**”) is comprised of the following members, -
  - 1.2.1. Mr Metja Ledwaba (Chairperson);
  - 1.2.2. Dr Rob Collins (Medical Representative); and
  - 1.2.3. Mr Leon Fleiser (Sports Administrator).
- 1.3. The matter was prosecuted by Mr Rahidien Cullins from the South African Institute of Drug Free Sport
- 1.4. Ms Karabo Matlogela provided the services of an interpreter and Ms Jabu Zikhali took minutes of the proceedings.

- 1.5. The hearing was first scheduled to commence on 9 October 2012 and upon realising that the athlete is not proficient in English and in need of an interpreter, the Committee decided to postpone the hearing so that an interpreter could be arranged for the athlete. The Hearing resumed on 3 December 2012.

## 2. BACKGROUND

- 2.1. The athlete is a 30 year old male person, who is a half marathon distance runner, employed by the Gold Fields as a Recreational Officer. He belongs to the Goldfields Athletic Club in Carletonville and a much unsophisticated individual. His highest educational standard is standard seven (currently know as grade 9). The athlete represented himself in the hearing.
- 2.2. On 14 April 2012, the athlete's urine sample was provided by him during an in-competition testing after having participated in the South African Athletics Championships. The urine sample was tested by the South African Doping Control Laboratory. The tests carried out by the South African Doping Control Laboratory on his urine sample number 2634 392 confirmed the presence of 19-Norandrosterone, a metabolite and/or precursor of the Anabolic Agent, Nandrolone.
- 2.3. The urine sample was sent to the *Laboratoire de Control du Dopage, INRS* in Qubec (under sample number 2634 608) for IRMS Analysis to confirm the presence of the 19-Norandrosterone. The IRMS results were consistent with exogenous origin of the 19-norandrosterone, i.e. confirms that it originates from an external source.
- 2.4. The certificates of analysis done in respect of both tests have been provided and were considered by the Committee. It would appear that the urine sample analyses were done by the South African Doping Control Laboratory on 23 April 2012 and by the *Laboratoire de Control du Dopage, INRS* on 18 May 2012. The Report on the Sample that was notified to the athlete is dated 21 May 2012
- 2.5. The athlete was notified by way of correspondence to him dated 24 May 2012 of the reports and adverse finding and further that the finding constitutes a breach of Article 2.1 – *The Presence of Prohibited Substances or its Metabolites of Markers in the Athlete's Sample*, he is provisionally suspended with immediate effect and that SAIDS will appoint an Anti-Doping Disciplinary Committee as per Article 8 –

Disciplinary Procedure. A copy of the letter of notification is attached as **Annex A** to this decision.

- 2.6. On 10 September 2012, the Athlete was notified of charges brought against him, through a correspondence directed to him from SAIDS. The charges notified in the letter related to the presence of prohibited substances in the Athlete's urine sample (identified as 2634 608) - 19-Norandrosterone, a metabolite and/or precursor of the Anabolic Agent, Nandrolone and that Nandrolone is categorized under Class s1 "Anabolic Agent" in specific 1(a) Exogenous, in the World Anti- Doping Code 2012 – Prohibited List International Standards. The letter also notified the Athlete of the hearing date of 9 October 2012. A copy of the notification of the charges is attached as **Annex B**.

### 3. HEARING AND PRELIMINARY MATTERS

- 3.1. On considering the information provided, the Committee, -

3.1.1. For purposes of Article 1.2 – *Application to Persons, the Athlete is a member of a National Sports Federation*, was satisfied that the Anti Doping Rules applied to the Athlete by virtue of his affiliation to a National Federation i.e. Athletic South Africa or its club or team, through his membership with the Gold Fields Running Club;and

3.1.2. With reference to Article 8.3 – *Hearing Before a SAIDS Anti-Doping Disciplinary Committee*, read with Article 7.3.1.1, 7.3.4, 7.7.2 and 7.7.3 – *Adverse Analytical Findings*, has been provided with information in the form of the Adverse Analytical Finding Review sheet and accompanying correspondence between SAIDS and the South African Doping Control Laboratory, attached to this decision as **Annex C**, which forms basis of SAIDS assertion that there has been an Anti-Doping Rule Violation and proceeded to establish the Committee to conduct the hearing.

- 3.2. However, the Committee further noted with reference to Article 8.3.7 – *Hearings Before a SAIDS Anti-Doping Disciplinary Committee*, that it would appear from the letter sent to the athlete dated 24 May 2012 and the electronic mail from Fahmy

Galant of SAIDS to Chris Hattingh of the same date<sup>1</sup>, that the result management process in Article 7 - *Adverse Analytical Findings* were completed latest on that date i.e. 24 May 2012. If this is the case then the hearing ought to have been finalised by no later than 24 August 2012. The Committee therefore sought clarity as to any arrangements (in terms of 8.3.8.1) or exceptional circumstances that can enable the hearing to be finalised after the three months period prescribed in Article 8.3.7 - *Adverse Analytical Findings*. In response to this enquiry from the Committee in the first hearing, the prosecutor on 3 December 2012, presented to the Committee an agreement of the same date, i.e. 3 December 2012, in terms of which the Athlete agreed to waive any right in terms of Article 8.3.7 to have the hearing completed with the prescribed three months period. This agreement is attached as **Annex D** to this decision.

3.3. The Committee on considering the agreement as concluded on the date of the hearing and the fact that the Athlete is a much unsophisticated person, possibly not understanding the impact of the agreement and the failure of the hearing to be held within the stipulated three months period, spend time engaging with the Athlete to be enquire on his understanding of the impact of the delay in the hearing, the import of the agreement that was presented by the Prosecutor and the fact that if the hearing were to proceed and he is found guilty he could face a maximum sentence of a two year suspension. After such engagement, the Athlete confirmed that he does give his consent to the hearing taking place after the three months prescribed period.

3.4. From the hearing as conducted, the Committee made the following key observations,

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3.4.1. the Adverse Analytical Findings attached as part of **Annex A** and **B** establishes the presence of 19-Norandrosterone, a metabolite and/or precursor of the Anabolic Agent, Nandrolone. Nandrolone is categorized under Class s1 "Anabolic Agent" in specific 1(a) Exogenous, in the World Anti- Doping Code 2012 – Prohibited List International Standard;

3.4.2. the Athlete denies any knowledge of taking such substances and cannot explain how it got into his system, even after it has been explained to him that the further

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<sup>1</sup> Refer to Annex A

tests done at the *Laboratoire de Control du Dopage, INRS* in Qubec (under sample number 2634 608) for IRMS Analysis indicated that IRMS results were consistent with exogenous origin of the 19-norandrosterone, i.e. confirms that it originates from an external source;

3.4.3. the Athlete indicated that the only explanation that he has for such substances, would be the medication that he had obtained from the Gold Fields Health and presented a copy of a letter that confirmed the prescriptions that he has since 3 September 2010 up to and including 17 September 2012. The letter is attached as **Annex E**. The Committee has with the assistance of Dr Rob Collins confirmed and advised the Athlete that none of the prescribed medication on the list has the prohibited substance 19-Norandrosterone;

3.4.4. the Hearing further considered the supplements that the Athlete mentioned on the doping list forms, being V02 Max Tab, Carbon Load and Multi vitamin, all of which the Athlete indicated to be USN substances that he bought from a local pharmacist and uses them daily. The Committee is advised by Dr Rob Collins that on the face of it none of the supplements would contain the prohibited substance. In an attempt to eliminate the possible presence of the prohibited substance through contaminated containers, it was considered prudent by the Committee to invite the athlete to make available the containers that he still has to be subjected to further testing. Arrangements were for the Athlete to make the containers that he still had, which he indicated to be those of the Sito Power and the Multivitamin. The Committee has been advised by SAIDS that the containers have been duly tested and found to be negative of traces of the 19-norandrosterone; and

3.4.5. nothing of note was provided by the Athlete in the form of mitigation of possible sentence following the positive test results that confirmed the presence of 19-Norandrosterone, a metabolite and/or precursor of the Anabolic Agent, Nandrolone.

#### 4. **DECISION**

4.1. In arriving at its decision, the Committee has with reference to the above facts,

considered Anti-doping Rules, in particular the following provisions, -

- 4.1.1. Article 2.1 – *Presence of a Prohibited Substance or its Metabolic or Markers in an Athlete*, which makes it the Athlete’s responsibility to ensure that no Prohibited Substances enters the Athlete’s body. This article provides for strict liability<sup>2</sup> on the part of the offending athlete in such cases;
- 4.1.2. Article 8.3.7, which requires that hearings should be completed within three months of the completion of the results management process and 8.3.8, which provides that unless where agreed otherwise between the parties the hearing shall commence within 14 days of the notification date (8.3.8.1), decision of the Committee to be made within 20 days of the notification date (8.3.8.2) and written reasons within 30 days of the notification period (8.3.8.3);
- 4.1.3. Article 3.2.1 – *Methods of Establishing Facts and Presumptions*, which provides for presumption of compliant testing where tests are carried out by WADA approved laboratories<sup>3</sup>;
- 4.1.4. Article 6.1 – *Use of Approved Laboratories* – enjoins SAIDS to send Doping Control Samples only to WADA accredited laboratories. The samples were tested by the University of the Free States – South African Doping Control Laboratory/Department of Pharmacology, which is a WADA accredited laboratory<sup>4</sup>;
- 4.1.5. Article 4.2.1 – *Prohibited Substances and Prohibited Methods Identified on the Prohibited List* – provides for a list of Prohibited Substances, through a Prohibited Substances List, which is published by WADA from time to time;
- 4.1.6. Article 10.2 – *Imposition of Ineligibility for Prohibited Substances and Prohibited Methods* prescribes a two years Ineligibility sanction in the case of presence of Prohibited Substances or its Markers, unless the conditions in Article 10.4 and

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<sup>2</sup> Article 2.1 states “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.”

<sup>3</sup> Article 3.2.1 states that “WADA- accredited laboratories are presumed to have conducted *Sample* analysis and custodial procedures in accordance with International Standard for Laboratories.”

<sup>4</sup> ASA through Fahmy Galant have confirmed that the University of the Free States – South African Doping Control Laboratory/Department of Pharmacology, is a WADA accredited laboratory.

10.5 are present.

4.1.7. Article 10.4 confers a discretion on the a committee considering the matter to impose a sanction by way of a reprimand as a minimum up to a two years ineligibility period, in the case where the person found guilty of the transgression can establish how a Specified Substance entered his or her body or his or her possession and that such a Specified Substance was not intended to enhance the Athlete's sport performance or mask the use thereof in.

4.1.8. Article 10.5 provides for possible elimination of the Ineligibility period or a reduction of the Ineligibility Period by not more than half of the prescribed period, through Articles 10.5.1 and 10.5.2<sup>5</sup> respectively, as discussed further below, -

4.1.8.1. In terms of 10.5.1 where the athlete bears *No Fault or Negligence*<sup>6</sup> the Ineligibility Period can be eliminated. However as a condition of the for this Article to a complete elimination of the Ineligibility, the Athlete shall establish how the Prohibited Substances entered their system;

4.1.8.2. In terms of 10.5.2 where the athlete bears *No Significant Fault or Negligence*<sup>7</sup>, then the period for Ineligibility can be reduced by not more than half. In the case of *No Significant Fault or Negligence* the Article 10.5.2 also requires that the Athlete shall establish how the Prohibited Substances entered their system. The significant difference between the *No Fault or Negligence* and *No Significant Fault or Negligence* (both of which would apply only if the athlete has established how the prohibited substances entered his system) appears to be that the latter will only apply where the Athlete is not able to establish that they did not know or suspect that they *Used* or been administered the *Prohibited Substances*.

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<sup>5</sup> The other provisions of sub articles to Article 10.5 are not discussed further for the simple reason that they could not conceivably be said to be applicable to the evidence presented before the Committee.

<sup>6</sup> "*No Fault or Negligence*" is defined to mean - "*The Athlete establishing that they did not know or suspect, and could not reasonably have known or suspected even with exercise of utmost caution, that they had Used or been administered the Prohibited Substances or Prohibited Method*"

<sup>7</sup> "*No Significant Fault or Negligence*" is defined to mean - "*The Athlete's establishing that their fault or negligence, when viewed in the totality of the circumstances and taking into account the criteria for No Fault or Negligence, was not significant in relationship to the anti doping rule violation.*"

4.1.9. Article 10.9 – *Commencement of Ineligibility Period*, which provides for crediting the period of Provisional Suspension against the total period of Ineligibility (Article 10.9.2) and for early commencement of the Ineligibility Period in the case of delays relating to the hearing not attributable to the Athlete<sup>8</sup>.

4.2. The Committee decides as follows, -

4.2.1. all of the testing procedures and administrative requirements relating to the decision by SAIDS to prefer the charges brought against the Athlete have been met to the satisfaction of the Committee;

4.2.2. insofar as the dates for the completion of the hearing and the commencement therewith, the Athlete has evidently in terms of **Annex D** (i) waived his right in terms of Article 8.3.7 to have the hearing completed within three months of the notification and (ii) gave his consent to the hearing commencing on 3 December 2013, some 6 months after the notification process. This has bothered the Committee hence the Committee's approach as discussed in paragraph 3.3 above, to spend considerable time with the Athlete to make sure that he understands the import of the consent that he granted in **Annex D**, bearing in mind the extent to which he is an unsophisticated person who had no representation in the hearings. Nonetheless the athlete was adamant to proceed with the hearing notwithstanding the explanations given to him by the Committee of the impact (in his favour) of the delay in commencing with the hearing. The Committee thus decided to proceed with the hearing;

4.2.3. the evidence before the Committee is uncontested in establishing that the Athlete is in terms of Article 2.1 guilty of having in his system the prohibited substances in the form of 19-Norandrosterone, a metabolite and/or precursor of the Anabolic Agent, Nandrolone;

4.2.4. on the evidence presented the conditions in Article 10.4 - *No Fault or Negligence* and 10.5 - *No Significant Fault or Negligence* could not be said to have been present. The Athlete after much probing by the Committee was adamant that he does not know how the substance got into his system and could

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<sup>8</sup> Other provisions of Article 10.9 are not discussed here also for simple reason that they could not conceivably



as such not offer an explanation as to how they got into his system. This means that he could not meet the requirements of Articles 10.4 - *No Fault or Negligence* and 10.5 - *No Significant Fault or Negligence*. Under the circumstances, the Committee is left with no option but to impose the Ineligibility Period of two years as it is enjoined to do in terms of Article 10.2. It should also be noted that the Committee also took the further step in eliminating the possibility that the containers of the products that the Athlete agree to have consumed could have been contaminated<sup>9</sup>.

4.2.5. Having regard to the provisions of Article 10.9 – *Commencement of Ineligibility Period*, -

4.2.5.1. the Committee notes that in terms of Articles 10.9.2 the period of the suspension of the Athlete should be credited against the two years of the Ineligibility Period; and

4.2.5.2. bearing in mind the considerable delay in the commencement of the hearing which delays can hardly be said to be attributable to the Athlete, the Committee decides that the period of the Ineligibility shall commence on the date of the Sample Collection which date is according to the records before the Committee 14 April 2012. The two years Ineligibility period shall therefore end on 14 April 2014.

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**METJA LEDWABA**  
(Chairperson)

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be said to be applicable to the evidence presented before the Committee.

<sup>9</sup> Reference can be had to what has been discussed in paragraph 3.4.4 above.