

THE ASA DISCIPLINARY COMMITTEE

In the matter of Lindikhaya Mthangayi

DECISION

WHEREAS :

- Mr Lindikhaya Mthangayi ("the Athlete") has produced an in-competition "A" sample, collected on 5 September 2009 at the Nedbank Matha Series (21km), which tested positive to the presence of the Prohibited Specified Substance 4-Methyl-2-Hexanamine, which is chemically and pharmacologically related to Tuaminoheptane, as listed under the Prohibited List S6 (b) Specified Substances as published by WADA.
- Mr Mthangayi exercised his right to request having his "B" sample analysed.
- The Athlete's "A" and "B" samples were analysed at the University of the Free State, South African Doping Control Laboratory, Department of Pharmacology, which is a WADA accredited Laboratory ("the Laboratory").
- The Laboratory Report on the Athlete's "A" sample, reveals the presence of 4-Methyl-2-Hexanamine (a stimulant with chemical structure similar to Tuaminoheptane) and was issued on 16 September 2009. The Laboratory Report on the Athlete's "B" sample, confirmed the presence of 4-Methyl-2-Hexanamine, and was issued on 3 November 2009.
- In a letter dated 8 October 2009 addressed by ASA to the Athlete, the latter was advised that he had been provisionally suspended from all athletics competitions, with immediate effect, pending the resolution of his case. He was also invited to request a Hearing before this Tribunal in accordance with the IAAF Anti-Doping Rules.

- Mr Mthangayi addressed a letter to ASA, undated, in which he set out, *inter alia*, that :
 - (a) On the way back from the SA 10k in Stellenbosch on 29 August 2009, he learned that his brother had died in a car accident and that this caused him considerable stress because he was not a member of a burial society and had no money to bury his brother;
 - (b) Because of this stress he purchased Adcodol tablets for headaches and stress;
 - (c) He postponed his return to the training camp in order to first bury his brother on 13 September 2009;
 - (d) He would never risk taking drugs because he is continuously being tested and his training partner is strict about them ingesting supplements. The supplements which he was then using were Betavit, Turbovite, AMH Ultrate, Glutamine and sometimes Calcium, Magnesium and Hammex Nutrition Recoverite and Breakthru to stop cramps, and;
 - (e) He expressed his apologies for being careless by taking any tablets because the race in Bloemfontein was not in his mind because of his stress, but he decided to run in any event.
- The Hearing before this Tribunal was convened for Monday 8 March 2010 at 10h00.

NOW WE, MONTY HACKER (CHAIRMAN), PROFESSOR PAUL SINGH AND RISHI HANSRAJH:

Being the members of the Tribunal appointed by ASA, having heard and duly weighed and considered the contents of the Charge Sheet submitted in support of the commission of the doping offence, the evidence placed before the Tribunal,

the admissions of the Athlete, as well as all supporting documentation, and having heard as witnesses :

For ASA :

No witnesses were called, but ASA relied upon the documentation mentioned above and hereunder, the correctness whereof the Athlete admitted.

For Lindikhaya Mthangayi :

Lindikhaya Mthangayi.

Prosecuting for ASA :

Mr Chris Hattingh.

Present also was Mr Clifford Cobus, on behalf of ASA recording electronically the proceedings.

DO HEREBY MAKE AND PUBLISH THIS DECISION :

1. This Hearing before the Tribunal commenced on 8 March 2010, at 10h00 and it was concluded by approximately 12h30.
2. The Athlete pleaded guilty to the charge of having committed a Doping Offence in relation to the Specified Substance found in his urine sample.
3. The evidence before the Tribunal, which the Athlete admitted, was as follows, namely :
 - 3.1 The Laboratory "A" sample analysis already referred to;
 - 3.2 The Laboratory "B" sample already referred to;

- 3.3 The medications/supplements declared in the Athlete's doping control form, namely :
 - 3.3.1 Grandpa;
 - 3.3.2 Betavit;
 - 3.3.3 Turbovite;
 - 3.3.4 AMH Ultrate;
 - 3.4 Until pointed out at the Hearing by Mr Hattingh, he had no prior awareness of the fact that AMH Ultrate was the likely substance which caused the analysis of his urine sample to test positive for 4-Methyl-2-Hexanamine, a stimulant with chemical structures similar to Tuaminoheptane, and;
 - 3.5 Mr Hattingh, on behalf of ASA, conceded that the Athlete had not used this Specified Substance with the intention to enhance his athletic performance.
4. The evidence before the Tribunal was that the Athlete was totally oblivious to the fact that by ingesting the supplement (AMH Ultrate) it contained the Specified Substance 4-Methyl-2-Hexanamine, a stimulant with chemical structures similar to Tuaminoheptane and the Tribunal accepted that he had not intentionally ingested this substance with the object of enhancing his athletic performance at the Nedbank Matha Series in Bloemfontein on 5 September 2009.
 5. Mr Hattingh, addressing the Panel, stated that it was his recommendation, having accepted that the Athlete had not ingested the supplement AMH Ultrate with the intention of improving his performance, that the Athlete be found guilty of a doping offence, as charged, and that the sanction to be imposed upon him be reduced to a 6-month period of ineligibility, commencing from the date of his provisional suspension on 8 October

2009, because not only had the Athlete not knowingly committed a doping offence, but he had not intended that the ingesting of AMH Ultrate would improve his performance at the Nedbank Matha Series in Bloemfontein on 5 September 2009.

6. **CONCLUSION :**

We accept the evidence placed before us and also the recommendation of Mr Hattingh concerning the commission of the doping offence by Mr Mthangayi.

7. **DECISION :**

We therefore decide :

- A. That this Tribunal has jurisdiction to hear the case and receive all evidence presented to it.
- B. That ASA has fulfilled its burden of proof to establish that a doping offence has been committed in this case by Mr Lindikhaya Mthangayi who unwittingly and unknowingly ingested the Specified Substance 4-Methyl-2-Hexanamine, which resulted in his body fluids revealing the presence of the Prohibited Specified Substance, 4-Methyl-2-Hexanamine, a stimulant with chemical structures similar to Tuaminoheptane.
- C. Lindikhaya Mthangayi has pleaded guilty to the commission by him of a doping offence established by the results revealed in the Laboratory Reports on the analysis of his "A" and "B" samples. This constitutes a doping offence in respect of a Specified Substance as provided for in the WADA Anti-Doping Code in respect of the substance 4-Methyl-2-Hexanamine and we accordingly find him guilty of having committed this offence.

D. IAAF Rule 32.2(a) declares a doping offence to have been committed if there is present in an Athlete's body tissues or fluids, a prohibited substance or its metabolites and it furthermore points out that it is each Athlete's personal duty to ensure that no prohibited substance enters his body tissues or fluids. Furthermore, Rule 32.2(a)(i) states that it is not necessary that intent, fault or negligence or the knowing use on an Athlete's part, be demonstrated in order to establish an Anti-Doping Rule violation, under Rule 32.2(a). However, applying the principle applicable to exceptional circumstances as provided for in IAAF Anti-Doping Rule 38.12, as read with Rules 40.4 and 40.5(b), we find that this is a case for the reduction of the prescribed period of ineligibility for Specified Substances under specified circumstances.

E. We therefore find Lindikhaya Mthangayi guilty of having committed the doping offence with which he is charged, and we order as follows :


- (i) That in accordance with the provisions of Rule 40.4, as a first violation, Lindikhaya Mthangayi is hereby declared ineligible for a period of 6 (six) months commencing from 8 October 2009, being the date upon which he was provisionally suspended;
- (ii) Mr Mthangayi shall not be entitled to any payment or rewards from the date of his participation in the event at which he was tested on 5 September 2010 until the expiry of the 6 (six) month period of ineligibility hereby imposed upon him and no records established by him during this period are to be recognised. Furthermore, any payments or rewards received by him during this period are to be returned, and;

(iii) For the purpose of his reinstatement, the provisions of Rule 40.13 apply hereto.


F. The Tribunal commends Mr Mthangayi for his co-operation and candour.

G. Each of the parties shall bear their own costs relating to the Tribunal with ASA bearing the cost of Mr Hansrajh flying to Johannesburg for the Hearing.

DATED at JOHANNESBURG this 9th day of APRIL 2010.



MS HACKER (Chairman)



P SINGH


R HANSRAJH