

BEFORE THE ANTI-DOPING TRIBUNAL OF SOUTH AFRICA

HELD IN JOHANNESBURG

CASE NO. SAIDS/2014/31/A03

THE SOUTH AFRICAN INSTITUTE FOR

DRUG FREE SPORT

Applicant

and

JOSEPH MPHUTHI

Respondent

**THE FINDINGS OF THE SOUTH AFRICAN INSTITUTE FOR DRUG-FREE SPORTS'
APPEAL TRIBUNAL HELD ON THURSDAY 11 FEBRUARY 2016**

The Appeal Board consisted of the following Appeal Board Members -

Mr Raymond Hack - Chairperson

Professor Denver Hendricks - Member

Dr. Phathokuhle Zondi - Member

The aforementioned members were duly appointed to consider and adjudicate upon the merits of an appeal lodged by the South African Institute for Drug Free Sport (SAIDS) against the Judgment handed down by the SAIDS Disciplinary Committee at its hearing on the 8TH day of July 2015.

1. INTRODUCTION

1.1 The appeal in question arose as a result of the Respondent (Mr Joseph Mphuthi, a marathon runner) who was requested to provide a urine sample at an in competition test at the Loskop Marathon, run under the auspices of Athletics South Africa (ASA). In terms of the rules and regulations relating to analysis of samples, the sample from the Respondent was collected and analysed at the Bloemfontein laboratory which is duly accredited to perform such analyses, by the World Anti-Doping Agency (WADA).

1.2 From the evidence submitted at the original Disciplinary Hearing on 8 July 2015, it is evident that there was a substantial delay in the analysis of the sample as a result of various retirements, departures



and bereavements of members of the laboratory staff. However, it is clear from the evidence submitted that the integrity of such analysis was not compromised, and the Respondent did not suffer any prejudice as a result of such delay.

- 1.3 The Laboratory analysis, which showed the presence of a substance prohibited under the 2014 Prohibited List, was forwarded to SAIDS on 18 February 2015, and such analysis disclosed an anabolic agent listed under the heading S1 on the SAIDS Prohibited List.
- 1.4 SAIDS, upon receipt of the analytical report of 18 February conducted an internal review as required by their rules and regulations, and duly forwarded the matter to its internal committee for consideration on 20 February 2015. The Internal Committee thereafter delivered a decision that the matter should be referred for a formal hearing, and should proceed on 3 March 2015.
- 1.5 The Applicant duly notified the Respondent in writing on 12 March 2015 through his National Federation that an adverse analytical finding had been returned. The Respondent was requested to advise as to whether he required the "B" sample analysis, and he duly communicated such request to the Applicant. The "B" sample analysis was duly performed on 26 March 2015.
- 1.6 Arising out of the above the Applicant brought formal charges against the Respondent for breach of Article 2.1 of the SAIDS Anti-Doping Rules 2009, and the Respondent was formally advised of this on 19 June 2015 by means of written notification to both the Respondent and the Federation, which notification clearly stipulated and stated that the Respondent was suspended from all athletic activities pending formal hearing.
- 1.7 Such formal hearing was duly convened and took place on 8 July 2015 and was concluded in terms of which the Disciplinary Panel found that:-
 - The Respondent is guilty of having committed the anti-doping violation for which he had been charged (Article 2.1);
 - The Respondent should serve a two (2) year period of ineligibility commencing on the date of sample collection, being 12 April 2014 to run to 12 April 2016 (Article 10.2);

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- The Respondent is disqualified from the results of the Loskop marathon and required to forfeit any medals and prizes; This shall include the disqualification from any results and forfeiture of medals or team prizes which may have been awarded to Mphuthi (Article 9);
- The Respondent shall not be entitled (during such period of ineligibility) to participate in any capacity in any SASCOC Team Competition or activity (other than authorised anti-doping education or rehabilitation programs) authorized or organised by any signatory, signatory's member organisations, including a National Sports Federation or a club or other member organisation of a signatory's member organisation, including a National Sports Federation, or in competitions authorised or organised by any professional league or any international or national level event organisation (Article 10.10);
- The Respondent shall be mindful that as a condition of regaining eligibility at the end of such period he will be required to make himself available for out of competition testing by SAIDS, ASA (as the applicable National Sports Federation) and/or any Anti-Doping Organisation having testing jurisdiction, and shall, if requested, provide current and accurate whereabouts information as provided in Article 5.5 (Article 10.11);
- The Respondent, or SAIDS or WADA, as well as all those other entities stipulated in Article 13.2 have the right to appeal this decision within 21 (twenty-one) days of the date thereof.

SAIDS APPEAL

2. On the 10 September 2015 SAIDS duly lodged a notice of appeal against the aforementioned decision of the Disciplinary Committee, such Notice of Appeal being within the time period referred to in the Applicant's Rules and Regulations.
 - 2.1 On 3 December 2015 the matter was duly set down for hearing by the Applicant having given all relevant parties notification of the proposed appeal.
 - 2.2 On 11 February the matter came before the Appeals Tribunal held at the Holiday Inn International Hotel in Rosebank Johannesburg before the parties referred to herein, and also present at the hearing were attorney Mr Michael Murphy and Mr Nic Kock representing the Applicant.

- 2.3 The Respondent chose to represent himself with the assistance of two colleagues from his running club, and the matter was formally recorded by the transcriber, Mr Sam Davis Mahiya.
- 2.4 Prior to the submissions by the parties, the Chairman inquired as to whether the parties accepted the composition of the tribunal, and whether they had any objection to the members making up the tribunal. Both the Applicant and the Respondent individually or through their respective advisors, confirmed that they were happy with the composition of the tribunal, and the hearing thereafter proceeded.

SUBMISSIONS BY THE APPLICANT

3. The Applicant, through its advisor Mr Murphy, referred to the submitted written Heads of Argument and reiterated the contents of the Heads of Argument.

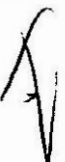
SUBMISSIONS BY THE RESPONDENT

4. The Respondent was then requested to present his submissions, and he advised the tribunal of what he understood by the hearing, and the notification (letter of suspension) that he received. Arising out of the evidence submitted by the Respondent, it became clear to the panel that:-
 - 4.1 The Respondent was not adequately conversant in English and should have at the least had the assistance of either his National Federation and/or an independent translator in presenting his case both to the Disciplinary Committee and to the Appeal Tribunal.
 - 4.2 It was clearly apparent to the Tribunal that the Respondent may have been given incorrect and unhelpful information by a Mr de Jager, purportedly from the Federation.
 - 4.3 From the oral evidence tendered by the Respondent it was evident that the Respondent could not understand and/or was unclear as to what was meant by the original notification that he "was suspended pending a formal hearing" and as such the Respondent competed in two major events after the suspension date, right up to and inclusive of the 2015 Comrades marathon, which took place on 1 June 2015.

Upon conclusion of the evidence submitted by both the Applicant and the Respondent, the parties were duly excused, thus allowing and enabling the Committee to deliberate on the matter.

FINDINGS AND REASONS

5. After having deliberated and re-examined the documentation submitted in the form of the original transcript relating to the hearing, the written Heads of




Argument presented by the Applicant, and the Respondent's testimony, together with the responses received from the Respondent in terms of direct questions posed by members of the tribunal, the tribunal unanimously concluded that –

- 5.1 The Disciplinary Committee had erred in its interpretation of Article 10.9 of the SAIDS Anti-Doping Rules namely the commencement of the ineligibility period, wherein they found that the ineligibility period should be operative from the date of the sample collection, and not the date of the hearing;
- 5.2 The tribunal felt that "no undue prejudice had been suffered by the Respondent" as even though there was a delay in notifying the athlete of the urine test result, the athlete had continued to participate in events during this time. When the athlete was eventually notified of the positive finding in 2015, the process between notification and the disciplinary hearing had been expedited efficiently. As a result of the fact that the Respondent was formally notified on 18 June 2015 of a formal breach of Article 2.1 of the SAIDS Anti-Doping Rules, as well as the fact that a formal hearing had taken place resulting in a sanction and verdict being pronounced on 8 July 2015, the tribunal felt that the eligibility date for the sanction should commence on 8 July 2015 and not on the date of the sample collection, as determined by the original Disciplinary Panel.
- 5.3 The Committee was not asked to make a finding on the fact that the Respondent had not adhered to the notification of suspension of the 19 June. However, the committee again raised its concerns in regard to the assistance (if any) that had to be given to the Respondent or other athletes in his position by the National Federation, and directed that correspondence be addressed by the Applicant directly to both the National Federation and to SASCOC requesting that they ensure that athletes under their control and supervision are adequately educated and/or represented in anti-doping matters, should they not be in a position to engage their own legal personnel.
- 5.4 The Committee also noted with disappointment the delays in the response mentioned in # 1.2, but felt that SAIDS should investigate and obtain some type of assurance from the laboratory that these unfortunate incidents would not in the future prejudice the time frame in which the analysis had to be carried out, as this was detrimental to the Athletes whose (in some instances) career and income is derived from Sport, and therefore time is of the essence.
The possibility of alternative laboratories should be considered even if out of Africa in view of what has been referred to above, and also



SAIDS should be satisfied that the necessary succession plan is in place at the laboratory, thus ensuring that delays of this nature will no longer take place.

THUS DATED at JOHANNESBURG on this the 11th day of FEBRUARY 2016



Raymond Hack (CHAIRPERSON)



Professor Denver Hendricks



Dr. Phatho Zondi