

**SA INSTITUTE FOR DRUG-FREE SPORT (SAIDS)  
ANTI-DOPING DISCIPLINARY HEARING**

<b>PLAYER</b>	<b>MR LUKHANYO NOMZANGA</b>
<b>SPORTS FEDERATION</b>	<b>SARU</b>
<b>DATE</b>	<b>WEDNESDAY 9 MARCH 2016</b>
<b>VENUE</b>	<b>SAIDS OFFICES, NEWLANDS CAPE TOWN, SOUTH AFRICA</b>
<b>DISCIPLINARY PANEL (“PANEL”)</b>	<b>PROF DEBBIE HAMMAN (CHAIRPERSON &amp;LEGAL REPRESENTATIVE) DR GEORGE VAN DUGTEREN (MEDICAL REPRESENTATIVE) MR YUSUF ABRAHAMS (SPORTS ADMINISTRATOR REPRESENTATIVE)</b>
<b>INTERESTED PARTY</b>	<b>MR MANDISI TSHONTI (SARPA)</b>
<b>PROSECUTOR</b>	<b>ADV NICOLAS KOCK</b>
<b>ATHLETE REPRESENTATIVE HENDRIKSE</b>	<b>MR BAREND KELLERMAN OF KELLERMAN ATTORNEYS</b>

**SCRIBE**

**MS T FUNDA**

**ANTI-DOPING RULE VIOLATION**

**VIOLATION IN TERMS OF REGULATION 21.2.1**

**of the 2015 WORLD RUGBY Anti-Doping  
Regulations**

### **APPLICABLE LAW/LEGAL FRAMEWORK**

SAIDS is an independent corporate body established under Section 2 of the South African Institute for Drug-Free Sport, Act 14 of 1997, as amended ("the Act"). SAIDS has formally accepted the World Anti-Doping Code ("WADC"), adopted and implemented in 2003 by the World Anti-Doping Agency ("WADA"), and revised in 2015. SAIDS has thereby introduced anti-doping rules and regulations to govern all sports under the jurisdiction of SASCOC, the South African Sports Confederation and Olympic Committee as well as any other national sports federation.

The South African Rugby Union (**SARU**), as the National Federation governing the sport of rugby in South Africa, has adopted and implemented SAIDS anti-doping policies including the World Rugby Anti-Doping Regulations ("**Regulations**") which conform to the Code and the rules. The mandatory provisions and principles of the Code have been incorporated into the revised World Rugby Anti-Doping **Regulation 21**. These Anti-Doping Rules apply to all Member Unions and Associations and also apply to Players, Players Support Personnel, each of whom is deemed, as a condition of his participation in the game of Rugby, to have agreed to be bound by these Anti-Doping Rules.

These proceedings are therefore governed by **Regulation 21**.

The Panel has been appointed in accordance with **Regulation 21** to adjudicate whether the Player has committed a violation of the said **Regulations**, and if so, the consequences of such a violation.

### **PROCEDURAL MATTERS**

The Player, **Mr Lukhanyo Nomzanga**, had been given proper notice of the inquiry in terms of **Regulation 21.7. 3.1 and Regulation 21.14** and was at all times leading up to the enquiry represented by his legal representative. Documentation presented by the Prosecution included the Doping Control Form, Sample Analysis Report and Chain of Custody Form. The Player declined the opportunity to have his "B"-Sample tested.

All parties confirmed having received the bundle of documents.

The Player did not dispute the Adverse Analytical Finding, and as such admitted that an anti-doping violation had been committed.

A written and signed document setting out the Player's history of participation and the events leading up to the Adverse Analytical Finding was handed to the Prosecutor and Panel members by the Player's legal representative, Mr Kellerman.

The Player elected to attend the hearing and was represented by Mr B Kellerman.

The proceedings were conducted in English. Ms T Funda recorded the proceedings.

The Hearing began at 17h00 with those present being welcomed by the Chairperson and invited to introduce themselves.

The Chairperson briefly outlined the procedure relating to the Hearing after receiving confirmation that all parties had received the documents and notices.

The Prohibited Substance found in the Player's Sample was *Methylhexaneamine*. It is categorised as a Specified Substance and is prohibited In-Competition. Mr Kellerman intimated that the Player's arguments on an appropriate sanction would be based on **Regulation 21.10.5.1.1 Specified Substances**. The Prosecutor concurred.

## **CHARGE RELATING TO ANTI-DOPING RULE VIOLATION**

The Player was tested for a Prohibited Substance in an In-Competition test on 27 June 2015. The analysis was conducted by the South African Doping Control Laboratory at the University of the Free State. The sample identified *Methylhexaneamine*, a Specified Substance under **Class S6-Stimulants** on the World Anti-Doping Code 2015 Prohibited List.

The Player was notified on 13 August 2015 that: “ **This adverse analytical finding constitutes a breach of Regulation 21.2.1' The Presence of a Prohibited Substance or its Metabolites or Markers in a Player's Sample' of the World Rugby Anti-Doping Regulations**”.

The charge against the Player is contained in written correspondence dated 18 February 2016. The charge sheet reads as follows:

*You are formally charged with an anti-doping rule violation in terms of Article 21.2.1 of the 2015 World Rugby Anti-Doping Regulations.*

*On 27 June 2015, you provided a urine sample (2822509) during an in-competition test. Upon analysis, the South African Doping Control Laboratory reported the presence of a prohibited substance in your urine sample. The substance identified in your sample was*

*Methylhexanamine. This substance is categorised under **Class S6 - Stimulants** on the World Anti-Doping Code 2015 Prohibited List International Standard.*

## **CONCESSIONS MADE BY THE PLAYER**

Mr Kellerman confirmed that

- 1 The Player had received the communications regarding the notification of the Adverse Analytical Finding and that the charges put to him were in order.
- 2 All the documents were uncontested, in effect acknowledging a violation of the 2015 World Rugby Anti-Doping Regulations as contained in **Regulation 21.2.1**.
- 3 He had not requested his 'B' sample be tested.
- 4 It was common cause that the substance reported was present in his system and was a Prohibited Substance which was found in an In-Competition test.

Both the Prosecutor, on behalf of SAIDS, and Mr Kellerman confirmed they had agreed that the source of the Specified Substance was the "HELLFIRE" supplement the Player had purchased two years prior to the Adverse Analytical Finding and that the Hearing would thus be about establishing the degree of Fault or Negligence for the purposes of a possible reduction of sanction as set out in **Regulation 21.10.5.1.1**.

## **SUMMARY OF EVIDENCE AND ARGUMENT**

In opening, the Player described his personal circumstances and history of participation in the game of rugby, playing for his high school in a township in East London and for two clubs in the Western Cape before being recruited by the Border Rugby Football Union to play for the Border Bulldogs in 2014. He is currently employed by the Union but has not participated in any rugby activities since receiving written notice of his provisional suspension on 13 August 2015.

The Player's testimony was supported and amplified by a document entitled "Plea Explanation and Summary of Facts" (Heads of Argument) bearing the Player's signature, submitted to all participants at the Hearing by his legal representative.

A summary of this documented testimony showed that he had ingested a supplement, "HELLFIRE", which he had purchased off the shelf at a Game store in 2013 as a pre – workout supplement. He had not known it contained a banned stimulant. He had not known at the time that there were three different versions of "HELLFIRE", some safe to use and others not. There was no indication on the labelling of the product which gave cause for concern or alarm.

He recorded on the Doping Control Form that he had used the product two days prior to the match as a pre-workout supplement. He had not hidden the fact that he had used the supplement in the hope of not being caught.

In his oral testimony he indicated that the reasons for using the supplement were to avoid losing muscle mass due to increased cardio sessions on the rugby field, to increase his protein intake and to work harder in the gym. He believed that using supplements was cheaper than enriching his diet with natural foods.

He confirmed that the original container of the "HELLFIRE" had been discarded inadvertently while left with the Medical Team Manager for safekeeping. His explanation is corroborated by a letter from the Medical Team Manager dated 13 October 2015. After being informed of the Adverse Analytical Finding, he had, as instructed by his legal representative, purchased a similar container of "HELLFIRE" in 2015 for the purposes of a further laboratory analysis. He was still unaware of the different products in the "HELLFIRE" range. Some of the products in the range are safe to use and others not. This laboratory analysis showed the presence of *Methylhexanamine* in the supplement as confirmed by the laboratory analysis report dated 3 December 2015.

Under cross examination by the Prosecutor, the Player confirmed that he had not received any advice on supplements from the clubs he had played for. He had received no doping education from the Border Bulldogs team personnel or from SAIDS.

He had thus relied on his own limited knowledge of what doping in sport involves and a housemate and fellow player's recommendations regarding the use of supplements. He also observed other players at the Border Bulldogs taking the supplement. He believed that because other players were using it, it was safe to use. He had not spoken to other players about supplements at the Border Bulldogs training sessions. He had not approached team support personnel or the Medical Team Manager, Mr Denzel van Heerden who he referred to as the "trainer", for advice.

Questioning from the Panel focused on the Player's level of awareness of doping, in particular, perceived risks attached to the use of supplements. The Player responded to Dr van Dugteren's questions regarding his knowledge of doping and his level of awareness of the risks in using supplements. He was certain that none of the clubs or Border Bulldogs had drawn players attention to the risks of using supplements.

The Player testified that he was wholly unaware of the WADA Prohibited Substances and the strict rules relating thereto. His understanding of doping was that it was about injecting substances into the body. The only incident of doping he was aware of was the American sprinter Marion Jones.

On further questioning by Dr Van Dugteren, the Player confirmed that that he now knows more about doping and supplements and that he would in future seek advice, in particular from the team trainer who is referred to, in Border Rugby communications, as the Medical Team Manager, on the use of supplements.

Mr Kellerman engaged with the Player. Summarised, it emerged that

- It was the first time the Player had been tested. He is therefore a first time offender who has given his full cooperation.
- He was resolute in his contention of not having received any anti-doping education at any time during his playing career.
- He scrutinised the label on the container of the “HELLFIRE”. He was unyielding in his assertion that the label contained no warning. He did not think it necessary to enquire, other than checking the label on the container, about the use of the supplement “HELLFIRE” because his perception of doping was that it involved injecting steroids into the body.
- As a result, he was not aware of any risks attached to using supplements.
- He was also unaware that, at the time, there were three versions of “HELLFIRE”. He had simply selected a container off the shelf at Game.

He further explained that he regretted the incident. The impact of the Adverse Analytical Finding on his life has been significant as he has been unable to train with his team and play for the Border Bulldogs for the past seven months. He was remorseful and would be extremely careful of what he ingested in future. He would at all times approach the team trainer for advice and not rely on his own observations or a teammate’s recommendations.

The Prosecutor referred to the lack of knowledge relating to doping in general displayed by senior administrators at Border Bulldogs (document dated 19 August 2015). He commented that when senior members of a Union lacked awareness of doping matters, it was not difficult to understand why players levels of awareness were similarly compromised.

The Prosecutor agreed with Dr Van Dugteren that doping programmes today hinge on internet based information and that in a diverse community, not everyone has access to the internet, instead having to rely on reading rapidly changing labelling and product presentation. The Prosecutor acknowledged that though an internet search is a button away, it was, as this Player had testified, a world away for some. He thus accepted that the Player’s inexperience amounted to a marked lack of awareness, exacerbated by the absence of any doping education. Nevertheless he maintained that the Player had been Negligent in the use of the supplement as he had not consulted the support staff, a medical practitioner or the Medical Team Manager at the Border Bulldogs. He had used supplements without seeking advice despite having had opportunities to do so.

The Prosecutor did not argue that the Player’s Negligence was *significant* in relation to the anti-doping rule violation. A reduced period of ineligibility was therefore possible under **Regulation 21.10.5.1.1**. He argued for a period of ineligibility of between seven (7) and twelve (12) months.

Mr Kellerman concluded his arguments by stating that the Player accepted that an anti-doping rule had been violated. He conceded there had been some Negligence on the part of the Player that deserved to be sanctioned. However he emphasised that the Player was inexperienced, had received no anti-doping education and thus knew of no reason to suspect that using supplements carried a risk. Mr Kellerman submitted that the negligence was *not significant* in relation to the anti-doping violation. He referred to several recent South African

cases which dealt with the inadvertent use of Prohibited Substances in supplements where significant reductions of the period of ineligibility had been granted.

Mr Kellerman argued for a reduced sanction in terms of **Regulation 21.10.5.1.1** (Specified Substances). He asked for a sanction that would satisfy a general sense of justice and be consistent with similar decisions. He suggested a sanction of seven (7) months period of ineligibility, credit being given for the period of provisional suspension in terms of **Regulation 21.10.11.3.3**. The Player had already missed the entire pre-season programme and an important part of a major rugby competition during the temporary suspension. The Player had respected and adhered to the suspension at all times.

## **VIOLATION: REGULATION 21.2**

**Regulation 21.2** states that Players or other Persons shall be responsible for knowing what constitutes an anti-doping rule violation and the substances and methods which have been included on the Prohibited List.

### **Regulation 21.2.1 Presence of a Prohibited Substance or its Metabolites or Markers in a Player's Sample**

**Regulation 21.2.1** reads as follows:

It is each Player's personal duty to ensure that no Prohibited Substance enters his or her body. Players 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 Player's part be demonstrated in order to establish an anti-doping rule violation under **Regulation 21.2.1** (Presence).

This strict liability principle regarding a *violation* of an anti-doping rule is applicable to all anti-doping rule violations. There is a clear and definitive standard of compliance all Players must adhere to and it is on this basis they are held accountable. Ignorance of anti-doping provisions is not accepted as an excuse for a rule *violation*. This is commented on in the **Regulations: Appendix 2 Comment 1**. An anti-doping rule *violation* is committed without regard to a Player's Fault. This principle has consistently been upheld by CAS. A Player's Fault or Negligence is considered and assessed when determining the *consequences* or appropriate sanction.

The Athlete's legal representative conceded that a violation of **Regulation 21.2.1** had taken place.

## **FINDING ON THE CHARGE**

Given the admission made, the Panel unanimously found that the presence of the Prohibited Substance identified as *Methylhexanamine* was proven. The Panel has therefore determined that the Player is guilty of the anti-doping rule violation as set out, and is in violation of **Regulation 21.2.1** of the **2015 World Rugby Anti-Doping Regulations**.

## **DISCUSSION ON EVIDENCE AND ARGUMENT AS TO SANCTION**

The relevant provisions on appropriate sanctions for *this* anti-doping rule violation are as follows:

### **Regulation 21.10: Sanctions on individuals**

#### **Regulation 21.10.2.1 : The period of Ineligibility shall be 4 years where:**

**21.10.2.1.2** The anti-doping rule violation involves a Specified Substance and World Rugby (or the Association, Union or Tournament Organiser handling the case as applicable) can establish that the anti-doping rule violation was intentional.

**21.10.2.2** If Regulation 21.10.2.1 does not apply, the period of Ineligibility shall be two years.

#### **Regulation 21.10.4 : Elimination of the Period of Ineligibility where there is No Fault or Negligence**

#### **Regulation 21.10.5: Reduction of the Period of Ineligibility based on No Significant Fault or Negligence**

##### **21.10.5.1.1 : Specified Substances**

Where the anti-doping rule violation involves a Specified Substance, and the Player or Other Person can establish No Significant Fault or Negligence, then the period of Ineligibility shall be, at a minimum, a reprimand and no period of Ineligibility, and at a maximum, two years of Ineligibility, depending on the Player's or Other Person's degree of Fault.

## **ISSUES FOR THE PANEL TO CONSIDER**

The determination of an appropriate sanction is a fact specific enquiry. The Panel must therefore consider the following:



**1 Is the sanction of a period of 4 years Ineligibility as provided for in Regulation 21.10.2.1.2 applicable in this case?**

The Player had declared use of the supplement “HELLFIRE™” on the Doping Control Form and had not sought to conceal that use.

It was not argued by the Prosecutor on behalf of SAIDS that the Player’s anti-doping rule violation was *intentional* as required by **Regulation 21.10.2.1.2**. Where the anti-doping rule violation involves a Specified Substance, the onus of proving intent rests on SAIDS.

**Regulation 21.10.2.3** is meant to identify those Players who cheat. The term “intentional” requires that the Player engaged in conduct he or she *knew* was a an anti-doping rule violation or *knew there was a significant risk* that their conduct might result in an anti-doping rule violation and *manifestly disregarded that risk*.

SAIDS would need to prove the Player intended to cheat because he *knew* the supplement contained a Prohibited Substance. For the reasons detailed in this decision, including his full disclosure on the Doping Control Form, the Panel does not believe that the Player knew that the supplement contained a Prohibited Substance. He did not use the supplement to cheat.

Furthermore, SAIDS did not assert that the Player *knew there was a significant risk* that his conduct might result in an anti-doping rule violation *but manifestly disregarded that risk*.

No evidence was given or argument made that the Player was reckless to the point to which he could be described as having manifestly disregarded the risk.

The Panel finds that the 4 year period of ineligibility is not applicable.

**1 Is the sanction of a 2 year period of Ineligibility as provided for in Regulation 21.10.2.2 applicable?**

The sanction will apply *unless* a reduction is appropriate either because there was *No Fault or Negligence* or because there was *No Significant Fault or Negligence* on the part of the Player. This requires an examination of **Regulation 21.10.4 (no Fault or Negligence)** and **Regulation 21.10.5 (no Significant Fault or Negligence)**.

**2 Is a reduction of the sanction of a 2 year period of Ineligibility as described in Regulation 21.10.4 possible?**

A reduction of the period of ineligibility would be possible if the Player can prove he had *No Fault or Negligence*.

The Player's legal representative conceded that there was a degree of Negligence on the part of the Player.

This provision therefore has no application as there are no grounds upon which a *No Fault or Negligence* defence could be based.

### **3 Is a reduction of the sanction of a 2 year period of Ineligibility in terms of Regulation 21.10.5. - specifically Regulation 21.10.5.1.1 – Specified Substances, applicable?**

A reduction in ineligibility would be possible if the Player can prove he had *No Significant Fault or Negligence* in using the supplement containing the Specified Substance. Thus if the Fault or Negligence is *not* significant, an opportunity arises to reduce a sanction that would otherwise be implemented.

In conducting this assessment, the Panel is bound to do so within the framework of **Regulation 21**, together with the relevant **Appendices** and **Schedules** which contain important definitions and comments.

According to **Appendix 1**, in establishing his absence of *Significant Negligence*, the Player must, unless he is a Minor, also show, on a balance of probability, how the substance entered his system. Though the original container was unavailable, the supplement acquired in 2015 for the purpose of the laboratory analysis was identified as similar to the one purchased by the Player in 2013 and used by him up until June 2015. The Panel considered the evidence reliable and sufficient to establish how the prohibited substance was ingested (**SAIDS v Dladla 2014 p7**) and proceeded to assess the Player's degree of Negligence.

**Appendix 1** defines **Fault** as any breach of duty or lack of care appropriate to a particular situation. Factors to be taken into account in assessing a Player's degree of Fault include, but are not limited to, the Player's experience, the degree of risk that should have been perceived by the Player and the level of care and investigation exercised by the Player in relation to what should have been the perceived level of risk. The circumstances considered must be specific and relevant to explain the Player's departure from the expected standard of behaviour.

The Panel's task is to express to what extent this particular Player's circumstances caused him to veer from the expected standard of care. This means that each case is subtly different from other cases (**UKAD v Ben Murphy 2015 para 25**).

**No Significant Fault or Negligence** is defined in **Appendix 1** as where the Player, in establishing that his 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 relation to the anti-doping rule violation*.

## DISCUSSION ON NO SIGNIFICANT FAULT OR NEGLIGENCE: GENERAL

The Panel has found that the Player's Fault or Negligence was *unintentional* for the reasons set out above.

The Panel must however establish that the Fault is *less than significant* for a possible reduction of the two year period of ineligibility. If the Panel finds that the Player's Fault or Negligence is *less than significant*, the Panel must still gauge the *degree* of Fault categorised as *less than significant*, as that will eventually determine the period of ineligibility which can range from a reprimand and no ineligibility, to a maximum of a two year period of ineligibility (***Drug Free Sport New Zealand v Quentin Gardiner ST 06/15 para 7***).

Mr Kellerman maintained that his client's actions should not be measured against the standard of a senior professional rugby player as he had not been in the professional ranks for a substantial amount of time but had just embarked upon his professional career. Copies of recent and relevant South African cases supporting his submission were made available to the Panel members and other participants at the Hearing.

The supplementary industry in South Africa is an unregulated one. ***SAIDS v Omaticus (2011/24 para 32.6)*** highlights the lack of industry standards for the manufacturing and labelling of supplements.

The Panel sought guidance on the issue of assessing a Player's Negligence from both South African and international cases. Two cases are briefly referred to.

In a recent case, ***UKAD v Ben Murphy (2015 para 22-28)***, the assessment of a Player's Fault or Negligence under the new 2015 rules is discussed at length. Summarised, a Panel must carefully consider the facts and circumstances of the matter to see whether they explain the Player's departure from the Panel's view of the expected standard of behaviour. Factors a Panel must assess include the Player's experience, the degree of risk that should have been perceived by the Player and the level of care exercised by the Player in relation to what *should have been* the perceived level of risk. In the ***Murphy*** case it was acknowledged that a Player's lack of awareness stems from inexperience in doping matters. And when a perceived level of risk, spawned by a lack of awareness, is less than what should have been perceived, a Player will not appreciate the correct degree of risk, and will likely take inadequate steps to satisfy the expected and the level of care.

A Panel must decide whether a Player's Fault or Negligence is significant when viewed in the totality of the circumstances in his particular case (***SAIDS v Gideon Muller 2012/16 para 45.2.4.3***). Thereafter a Panel must weigh any efforts and precautions exercised by the Player in their totality. If those efforts are non-existent or minimal, then the Player has fallen short of the standard of care required. The Panel must then identify the reasons which may have prevented the Player from complying with his duty of care or caused him to depart from the required standard of care.

## **PLAYER'S FAULT OR NEGLIGENCE**

The following main elements emerged from the evidence given by the Player himself at the Hearing as well as from the Plea Explanation/Heads of Argument.

He had received no anti-doping education.

He had declared on the Doping Control Form that two days prior to the match he had used the sport supplement "HELLFIRE".

The Player had used no other substances or products aside from those indicated on the Doping Control Form.

He had not hidden the fact that he had taken the supplement hoping he would not be caught.

The Player's perception of doping was limited to the injecting of steroids. This limited perception led him to conclude that the level of risk in using supplements was low.

Examining the label on the supplement container for information including warnings and observing fellow players were the precautions he took.

He did not seek advice from the "trainer" who was in fact the Team Medical Manager at the Border Bulldogs, or consult any other persons.

He had observed other players using the supplement resulting in him incorrectly assuming that using the supplement was not problematic.

He had not considered whether an improved diet could have given him the same benefits i.e. protection of muscle mass, increased protein intake and intensified gym workouts.

He was a first time offender.

## **PANEL ASSESSMENT OF FAULT OR NEGLIGENCE**

### **The Panel finds as follows:**

- 1 The Player was a credible and consistent witness. He had given an honest and open account of the events leading up to the hearing, disclosing all relevant factors, including his knowledge and understanding of doping. His disclosure was frank as he did not suspect there was anything untoward about the substances he listed on the Control Form. His

naivety and simplistic knowledge of doping in sport was apparent throughout questioning by both the Prosecutor and members of the Panel.

- 2 The Player was unflinching in his submission that the "HELLFIRE" he purchased in 2013 had no warning on the label he had examined. The Panel had, for reasons stated in the previous paragraph, no cause to disbelieve the Player.
- 3 The Player was inexperienced in doping matters and had received no anti-doping education. He displayed a marked lack of awareness of the risks in using supplements.
- 4 As a consequence, the Player's perception of doping was very limited. He had no idea there was a risk attached to using a supplement which, on the face of it, seemed "official" i.e. contained no illegal or prohibited substances. His limited perception led to a predictably low perceived level of risk. As a result he took limited steps to address that low perceived level of risk.
- 5 The Player did not satisfy himself as to the need for using the supplement. He did not make a meaningful assessment of whether the benefits offered by the supplement could have been achieved by improving his diet.
- 6 The fact that other Players in the team were using the supplement gave him a false sense of security as regards use thereof. He had, by observing and following their conduct, in effect, given way to peer pressure.
- 7 The Panel agreed that a Player playing for the period and at the level of this Player could reasonably be expected to know more about his responsibilities with regard to anti-doping matters.
- 8 The efforts and precautions the Player took, whilst the Panel acknowledges the reasons for his lack of awareness and low perception of risk, were inadequate. The Player should have taken more precautions. He should have enquired about the need to use the supplement and he should have properly assessed the risk of using the supplement. He failed to take those further steps.
- 9 His actions fell short of his expected duty of care. Therefore the Panel finds that the Player was negligent. He did not seek advice when he had opportunities to do so. Furthermore, he made incorrect assumptions and ultimately took too few precautions.

10 When viewed in the totality of the specific and relevant circumstances, and taking into account the criteria for No Fault or Negligence, the Panel found that the Player's Fault and Negligence *was not significant in relation to the anti-doping violation*. However his degree of Fault or Negligence was not negligible and cannot be described as being at the lowest end of the scale.

11 The Panel accepted, for the reasons discussed on page 10 of this decision, that the only real probability was that the *Specified Substance* was present in the "HELLFIRE" supplement. The evidence was sufficient for the Panel to be satisfied, as required, that on a balance of probabilities, the *Methylhexanamine* entered the Player's system through his consumption of the "HELLFIRE" supplement.

Having concluded that the Player's Fault or Negligence was less than significant, a reduction of the two year period of ineligibility is justified, since the requirements of **Regulation 21.10.5.1.1** have been met.

Similar relevant circumstances arose in *Drug Free Sport New Zealand v Quentin Gardiner ST (06/15)*. In that case the Player's negligence was found to be *less than significant* due to him receiving no anti-doping education, accepting assurances from team mates and taking the precaution of checking the label of the container which showed no warnings or indications that it contained banned substances. The Player in the case before us is in a similar situation. Though the negligence was found in *Gardiner* to be less than significant, the Tribunal nevertheless gauged the degree of negligence above the lower end of the scale as he had not examined the label of the product batch he had actually ingested, had sourced the supplement from a friend and not through a reputable supplier, and had used the supplement *immediately before and during* competition. The Player in the case before this Panel *did* examine the label of the container he actually used, *sourced* the supplement from a Game Store and did *not use* the supplement *immediately before or during* competition.

## CONCLUSIONS

### A Finding

An anti-doping rule violation has been established pursuant to **Regulation 21.2.1**.

### B Applicable Sanction

The sanction on the finding of guilty is as follows:

- (i) A period of ineligibility of **eight (8) months** pursuant to **Regulation 21.10.5.1.1** is imposed.
- (ii) The period of ineligibility will be effective as from **13 August 2015** (being the date of notification by SAIDS to the Player of an Adverse Analytical Finding retroactively, from which date the Player, **Mr Lukhanyo Nomzanga**, was provisionally suspended and ceased participation), to terminate at midnight on **13 April 2016**.
- (iii) The Player's status during this period of ineligibility shall be as detailed in **Regulation 21.10.12**.
- (iv) SAIDS will adhere to the confidentiality and reporting obligations as set out in **Regulation 21.14** and draw the Player's attention to the appeals and post-hearing review procedures as contained in **Regulation 21.13**

#### **Note**

The Panel noted the evidence of the Player that he had not received any anti-doping education. SARU may need to investigate whether rugby Unions and Associations are complying with their anti-doping education obligations in terms of the **2015 World Rugby Anti-Doping Regulations**.

In addition, the Panel urged Mr M Tshonti (representing SARPA) to, in protecting the interests of Players, ensure that the Unions and Associations comply with their obligations regarding anti-doping education.

This done and signed at Cape Town, 18<sup>th</sup> March 2016.



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**Professor Deborah Hamman (Chairperson)**

**For and on behalf of the SAIDS Anti-Doping Disciplinary Panel**

**Dr George Van Dugteren, Mr Yusuf Abrahams**