

**IN THE SOUTH AFRICAN INSTITUTE FOR DRUG-FREE SPORT**

**ANTI-DOPING HEARING PANEL**

HELD AT HOLIDAY INN ROSEBANK (JOHANNESBURG)

In the matter of: Mr Thandani Ntshumayelo

Date of Hearing: 16 August 2016

---

**RULING**

---

**1. INTRODUCTION**

- 1.1 The South African Institute for Drug Free Sports ("SAIDS") brought charges against the Athlete Mr. Ntshumayelo ("the athlete") for Adverse Analytical Findings.
- 1.2 The hearing was held on 16 August 2016 in Johannesburg and the athlete was represented by Mr Kabelo Mashego a legal representative.

**2. COMPOSITION OF THE PANEL**

- 2.1 The Hearing Panel was appointed by SAIDS a statutory body created by section 2 of South African Institute for Drug-Free Sport Act 14 of 1997, as amended in 2005 when SAIDS accepted the World Anti-doping code. The SAIDS Anti-doping Rules which were published by SAIDS are applicable to the present proceedings. ("**the Rules**")

2.2 The SAIDS Anti-doping Hearing Panel ("**the Panel**") has been Appointed in terms of Article 8.1 of the Rules. The Article states that:

*"The Registrar shall appoint an independent Doping Hearing Panel consisting a minimum of, but not being limited to, three (3) members to hear and adjudicate cases. The Hearing Panel should consist of at least the following:*

*a) A Legal practitioner who shall act as a chairman;*

*b) A medical practitioner and/or a person with analytical and /or forensic pharmacology or endocrinology; and*

*c) Either a second person from category (a) or (b) or an additional member who shall be, or has previously been, a sports administrator or an athlete".*

2.3 The appointment of the Hearing Panel complied with Article 8.1 in that the Hearing Panel consisted of the following members:

Mr. Mandla Tshabalala (A Legal Practitioner; Chairperson); Dr. Rob Collins (Sports Physician) and Prof. Yoga Coopoo (Sports Scientist).

2.4 The pro-forma prosecutor for SAIDS was Mr. Farai Razano.

### **3. JURISDICTION**

3.1 The Panel had to determine whether it has jurisdiction to adjudicate on this matter, and in doing so we were guided by the SAIDS Anti-Doping Rules 2015.

3.2 in terms of Article 1.3 of the Rules the Panel will have jurisdiction to adjudicate and shall apply to the following:

*"1.3.1 These Anti-Doping Rules shall apply to the following persons (including minors), in each case, whether or not such Person is a national of or resident in South Africa:*

*All Athletes and Athletes Support Personnel who are member or licence holders of any National Federation in South Africa, or of any member or affiliate organisation of any National Federation in South Africa(including any clubs, teams, associations or leagues); all Athlete and Athlete Support Personnel who participate in such capacity in Events, Competitions and other activities organised, convened, authorised or organised by any Federation in South Africa or by any member or Affiliate organisation of any National Federation in South Africa(including any clubs, teams, associations or leagues), wherever held;*

*any other Athlete or Athlete support Person or other who, by virtue of an accreditation, a licence or other contractual arrangement, or otherwise, is subject to the jurisdiction of any National federation in South Africa (including any clubs, teams, associations or leagues), for purposes of anti-doping;*

*all Athlete and Athlete Support Personnel who participate in any capacity in any activity organised, held, convened, or authorised by the organiser of a National Event or of a national league that is not affiliated with a National Federation; and*

*all Athletes who do not fall within one of the foregoing provisions of this Article 1.3.1 but who wish to be eligible to participate in International Events or National Events (and such Athletes must be available for testing under these Anti-Doping Rules for at least six (6) months before they will be eligible for such Events).*

**1.3.2** *These Anti-Doping Rules shall also apply to all other Persons over whom the Code gives SAIDS Jurisdiction, including all*

*Athlete who are nationals of or resident in South Africa, and all Athletes who are present in South Africa, whether to compete or to train or otherwise.*

*1.3.3 Persons falling within the scope of Article 1.3.1 or 1.3.2 are deemed to have accepted and to have agreed to be bound by these Anti-Doping Rules, and to have submitted to the authority of SAIDS to enforce these Anti-Doping Rules and to the jurisdiction of the hearing panels specified in Article 8 and Article 13 to hear and determine cases and appeals brought under these Anti-Doping Rules, as a condition of their membership, accreditation and/or participation in their chosen sport".*

3.3 The Athlete is a Professional Footballer and therefore SAIDS Rules are applicable to him.

#### **4. APPLICABLE RULES**

4.1 The prosecutor presented to the panel and the athlete that the rules to dispense with during the proceedings shall be those of SAIDS.

#### **5. CHARGE**

5.1 The charge favoured by SAIDS against the Athlete is contained in a letter of 15 July 2016, which letter was addressed to the athlete. The charge preferred against the athlete reads as follows:

*"You are formally charged with an anti-doping rule violation in terms of Article 2.1 of the 2015 Anti – Doping Rules of the South African Institute for Drug-Free Sport (SAIDS). On 09 January 2016, you provided a urine sample (3927421) 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 Benzoyllecgonine, a metabolite of Cocain. The substance is categorised under Class S6-Stimulants on the World Anti-Doping Code 2016 Prohibited List International Standard."*

## **6. PLEA**

6.1 The Athlete pleaded guilty to the charge.

## **7. PLEAS EXPLANATION**

7.1 The Athlete confessed in evidence that he did take three lines of cocain in a party and that he was influenced by friends to take the cocain and as a result committed a mistake.

7.2 The Athlete confessed that he indeed took the substance three days prior to the date in which he was tested.

7.3 The Athlete further testified that he took the substance knowingly that it was cocain and that it was a banned substance.

## **8. BURDEN OF PROOF**

8.1 The SAIDS rules places a burden of proof on the prosecution to prove to the comfortable satisfaction of the hearing panel, that the athlete violated an anti-doping rule. In terms of Article 3.1 of the SAIDS anti-doping rules:

*"SAIDS has the burden of establishing that an anti-doping violation has occurred. The standard of proof shall be whether SAIDS has established an anti-doping rule violation to the comfortable satisfaction of the hearing panel bearing in mind the seriousness of the allegation that is made. This standard of proof in all cases is greater than a mere balance of probability but less that proof*

beyond reasonable doubt. Where the Anti-Doping rule places burden of proof upon the athlete or other person alleged to have committed an anti-doping rules violation rules to rebut a presumption or establish specified facts or circumstances, the standard of proof shall be by balance of probability, except as provided in Article 10.4 and 10.6 where the athlete must satisfy a higher burden of proof".

- 8.2 Article 3.2 outlines the methods of establishing facts and presumption, and Article 3.2.2 specifically states that:

*"WADA accredited laboratories and other laboratories approved by WADA, are presumed to have concluded sample analysis and custodial procedure in accordance with the international standard for Laboratories. The Athlete or other person may rebut this presumption by establishing that a departure from the International Standard for Laboratories occurred, which could reasonably have caused the Adverse Analytical Finding. If the Athlete or other person rebuts the preceding presumption by showing that a departure from the International Standard for Laboratories occurred which could reasonably have caused the Adverse Analytical Finding, the SAAIDS shall have the burden to establish that such departure did not cause the Adverse Analytical Finding".*

- 8.3 Both Sample A and B of the Athlete were tested by a WADA accredited Laboratory.

## **9. THE LAW**

- 9.1 The charge against the athlete constitutes a breach of Article 2.1 of the South African Institute for Drug-Free Sport, which rule states that "The presence of a prohibited substance or its Metabolites or Makers in the Player's sample." Article 2.1.1 specifically states that:

*"It is each Player's personal duty to ensure that no Prohibited Substance enters his body. Players are responsible for any Prohibited Substance or its Metabolites or Makers 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 rule violation under Article 2.1"*

- 9.2 Now the question is how does SAIDS prove the presence of the banned substance in the body of the Athlete, and the answer to the question is found in Article 2.1.2 which states that:

*"Sufficient proof of an anti-doping rule violation under Article 2.1 is established by any of the following: presence of a prohibited substance or its metabolite or Markers in the Athlete's A sample where the Athlete waives analysis of the B Sample and the B Sample is not analysed or where the Athlete's B Sample is analysed and the analysis of the Athlete's B Sample confirms the presence of the Prohibited substance or its Metabolites or Markers found in the Athlete's A Sample; or, where the Athlete's B Sample is split into two (2) bottles and analysis of the second bottle conforms the presence of the prohibited substance or its Metabolites or Markers found in the first bottle".*

- 9.3 Article 2.2 which is headed "Use or attempted Use by an Athlete of a Prohibited Substance or a prohibited Method". In particular Article 2.2.1 states that:

*"It is each Athlete's personal duty to ensure that no Prohibited Substance enters his/her body. 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 for Use of a Prohibited Substance or prohibited Method."*

- 9.4 The above provision is founded on strict liability that is applicable to anti-doping violations.
- 9.5 Athletes are required to adhere to a standard set by the anti-doping rules on the basis that they could be held accountable for what enters their systems and the rules do not in any way accept ignorance of the anti-doping provisions or prohibited list.
- 9.6 The laboratory analysis report on Mr Ntshumayelo's urine sample A and B, shows presence of a prohibited substance. Sufficient proof of an anti-doping rule violation has therefore been established in accordance with Article 2.1.2.
- 9.7 According to Article 10.2.1, the period of ineligibility shall be four years.

#### **10. ELIMINATION OR REDUCTION OFF PERIOD OF INLEGIBILITY**

- 10.1 To be able to address the Panel and to be successful in reducing or eliminating the period of ineligibility, the Athlete needed to address the Panel on Article 10 of the SAIDS anti-doping rules which deals with sanctions.
- 10.2 Specifically, if the athlete wants to be successful in his quest for elimination or reduction of period of ineligibility, the athlete must address the Panel on Article 10.4 which deals with elimination or reduction of the period of ineligibility for specified Substance under the Specific Circumstances
- 10.3 Article 10.4 Specifically states that:

*"If an Athlete or other Person establishes in an individual case that he or she bears No Fault or Negligence, then the otherwise applicable period of ineligibility shall be eliminated".*

- 10.4 The above provision places the onus on the Athlete to establish that he bears No fault and Negligence.



10.5 The other provision which an Athlete may argue and to reduce the period of ineligibility based on No Significant Fault or Negligence is Article 10.5.1 which states that:

*“Reduction of Sanctions for specified substances or contaminated products for violation of Article 2.1, 2.2 and 2.6”.*

10.6 For the Athlete to be able to reduce the period of ineligibility, he or she must be able to establish no Significant Fault or Negligence and identify the source of the substance (in this case, an allegedly contaminated supplement).

10.7 If the Athlete is successful in establishing that the substance came from a contaminated product, the period of ineligibility shall be at a minimum reprimand or no period of ineligibility, and a maximum, two (2) years of ineligibility, depending on the Athlete's or other person's degree of fault.<sup>1</sup>

10.8 However, the Prosecution's argument on the Sanctions leaned on Article 10.2 and specifically Article 10.2.1 which states that:

*“the period of ineligibility shall be four (4) years”.*

10.9 However, the above provision contains two exception in Article 10.2.1.1 and 10.2.1.2.

10.10 The above exceptions states that:

*“10.2.1.1 The anti-doping rule violation does not involve the specified substance unless the Athlete or other Person can establish that the anti-doping rule violation was not intentional*

---

<sup>1</sup> Article 10.5.1.1 and 10.5.1.2 respectively.

10.2.1.2 *The anti-doping rule violation involved is specified substance and SAIDS can establish that the anti-doping violation was intentional”.*

10.11 If the above provisions are being successfully argued by the respective parties and it is found that they are not applicable, the period of ineligibility shall be reduce to two (2) years.<sup>2</sup>

10.11 Intention requires that the Athlete or other person engaged in conduct which he or she knew constitute an anti-doping rule violation or knew that there was a significant risk that the conduct might constitute or result in an anti-doping rule violation and manifestly disregard that risk.<sup>3</sup>

10.12 In *casu*, we are dealing with an unidentified substance, one should take into account that the Athlete confessed to taking the substance before the Panel.

10.13 During the closing argument, the Prosecution relied on Article 10.2.1 in its argument for the sanction on the basis that the Athlete intentionally took the cocaine knowing that it was cocaine and knowing that it is banned substance.

10.14 The prosecution also argued that Article 10.4 and 10.5 would not be of assistance to the Athlete as there is no negligence on the part of the Athlete but intention coupled with the fact that the Athlete confessed to taking the cocaine intentionally.

## **11 RULING**

11.11 The prosecution was successful in his argument to the comfortable satisfaction of the Athlete that the Athlete used the substance intentionally knowingly that it was cocaine and knowingly that it is a banned substance.

---

<sup>2</sup> Article 10.2.2.

<sup>3</sup> Intention is defined in Article 10.2.3 of the Rules.

11.12 Therefore the Panel came to the unanimous finding that the Athlete intentionally consumed cocaine knowingly that it is cocaine and knowingly that it was a banned substance.

11.13 Therefore the Athlete is found guilty for anti-doping violation as charged.

## **12 SANCTIONS**

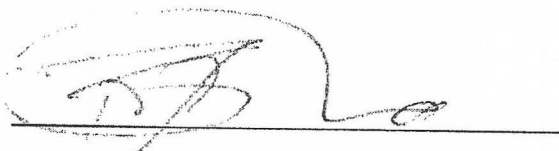
12.1 The Panel imposed the following sanctions against the Athlete:

12.1.1 A period of ineligibility shall be four (4) years in terms of Article 10.2.1.

12.1.2 The Athlete shall serve the period of ineligibility from the date of the provisional suspension ; 17 May 2016.

---

Date: 16 August 2016



Mr. Mandla Tshabalala

**For and on behalf of  
Dr. Rob Collins and Prof. Yoga Coopoo**