

**BEFORE THE SOUTH AFRICAN INSTITUTE FOR DRUG-FREE SPORT  
ANTI-DOPING COMMITTEE**

**CASE NO: SAIDS/2017/55**

**In the matter between :**

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

**and**

**ONKE MANGXOLA**

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**DETAILS OF HEARING**

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Date of hearing :	8 March 2018
Place of hearing:	Sports Science Building, Newlands
Athlete :	Mr Onke Mangxola
Tribunal Chairperson :	Adv RGL Stelzner SC
Tribunal Member :	Dr Craig Thompson
Tribunal Member :	Prof Elmarie Terblanche
Representative for SAIDS :	Ms Wafeekah Begg

## INTRODUCTION

1 Mr Onke Mangxola (hereinafter “the athlete”) is a 24 year old amateur natural  
body building champion.

2 He was tested positively for a prohibited substance, after submitting urine  
samples during an in-competition test, on 30 September 2017.

3 The samples tested positively for the presence of furosemide in his A sample.

4 He was offered to have a B sample tested but declined.

5 He was further informed that the substances are prohibited substances and their  
presence in his urine sample constituted an adverse analytical finding and was  
*prima facie* a breach of article 2.1 of the 2016 SAIDS anti-doping rules.

6 He was further advised that SAIDS was of the view that an optional provisional  
suspension was appropriate and he was consequently provisionally suspended  
from competing and participating in any organised sport, in particular amateur  
natural body building, with effect from 7 November 2017.

7 On 8 November 2017 the athlete, promptly advised SAIDS in writing that he  
admitted using the substance and thereafter gave his full co-operation, save for  
identifying the name of the friend who supplied it to him.

- 8 In his typed submission, in response to the charge of 7 November 2017, and in his evidence before the tribunal the athlete explained that he used the diuretic in question not knowing that it was prohibited.

### THE EVIDENCE

- 9 According to the athlete :

- 9.1 He was not aware that using a diuretic was not allowed in natural body building ;
- 9.2 This was the first time he had used the diuretic for a competition ;
- 9.3 It was recommended to him by an athlete who competes in the same federation and someone that he trusted ;
- 9.4 He had asked the athlete if the substance was allowed and his friend had said it was and that he could use it because it was not a steroid ;
- 9.5 He trusted him because his friend had been competing longer than him and had also won several titles ;
- 9.6 Previously, at other competitions, for example the Ironman Classic, which took place roughly a month before, his samples would have revealed that he had not used a diuretic ;

- 9.7 The world championship was just around the corner and he had spent many hours preparing for it ;
- 9.8 His sponsor had already spent funds booking flights and accommodation for him to realise his dream ;
- 9.9 He did not dispute taking a diuretic but he did this not knowing it was a banned substance ;
- 9.10 He gave the assurance that he would not take a diuretic again and would familiarise himself (better) with the rule and types of banned substances to avoid this from happening again.
- 10 These written submissions were made at the time in support of a request that he be permitted to participate in the world championships in France.
- 11 The evidence before the hearing was along similar lines.
- 12 He expanded on the above by stating that the athlete who supplied him with the diuretic was a friend and student at CPUT, and was someone he trusted. He did not, however, wish to provide the friend's name.
- 13 The athlete confirmed that he knew about steroids and that these were banned and that they were not allowed in natural body building. He explained, however, that he thought there were different types of diuretics, some which could be purchased over the counter, some which were allowed and some which were not

permitted. He thought the diuretic in question was permitted, given that this friend, whom he trusted based on his friend's greater experience in competing in the discipline, was not prohibited.

- 14 His explanation for not listing this specific diuretic as medication on the doping control form was that he thought only the supplements which he took needed to be mentioned and this was listed on the doping control form.
- 15 His friend told him that he had got it over the counter. The athlete had been tested before, negatively. He took it the morning before because his friend advised him he could. He accepted that he was judged on muscle size, definition, muscle mass, symmetry, posing routine and stage presence and that the diuretic would have made him look better ("more vascular") for purposes of the competition.
- 16 He, however, stated that he did not think the diuretic would be able to do much for him, given that it was the exercise and diet that went into preparing for the competition that made all the difference. The diuretic would not have made any difference and he did not take it intentionally, in the sense knowing that it was prohibited, nor in order to cheat, i.e. to gain any unfair advantage over others.
- 17 He admitted, freely, what he did was wrong. Now that he knew that it was banned, he undertook never to do it again. He did not want to break the rules at the time. He claims he could not have asked anyone else and in any event did not do so. He has suffered as a result, *inter alia* being excluded from participating in

the world natural body building competition in France, which was scheduled to occur shortly after the competition in which he was tested.

18 He did not use steroids and he did not use the diuretic in order to mask the use of steroids.

19 His answer to the question in this regard was that there was “nothing to mask”.

20 His knowledge of anti-doping regulations was, to the extent that he knew that steroids were prohibited, he was of the opinion that not all diuretics were prohibited.

21 He did not have a list from his federation as to what should not be taken, as far as diuretics were concerned.

22 He accepts, however, he could have checked it out on the website, but he did not do so at the time because he did not think it was prohibited, his friend from CPUT, Bellville, having given him that assurance.

23 His normal body weight is 85 kg but in competition, as a result of dieting, it goes down to  $\pm$  76 kg, well within the range in which he competes.

24 He was informed that, whatever the sanction would be, he could, should he cooperate fully with SAIDS and provide SAIDS with *inter alia* the identity of the supplier in question and assist SAIDS further with its investigations in this regard, be eligible to a reduction, subject to certain further conditions.

#### THE ISSUES

- 25 At the hearing itself the athlete, acting in person, admitted the various documents and their contents as contained in a bundle of documents presented by SAIDS to the hearing, with numbered items 1 - 6.
- 26 These included the adverse analytical finding and the doping control form.
- 27 It was confirmed with the athlete that the adverse analytical finding was indeed admitted and that the explanation that was being tendered on the athlete's behalf to explain the manner in which the prohibited substances entered the athlete's body was the one set out in his statement.
- 28 The athlete as a result pleaded guilty to breaching article 2.1 of the SAIDS anti-doping rules ("the rules").
- 29 Doping violations may be proven "by any reliable means". Any reliable means includes admissions of guilt, credible third party testimony, or reliable analytical data from athlete samples.
- 30 In the circumstances the doping violation with which the athlete was charged was in the panel's view satisfactorily and conclusively proven.
- 31 The issue before the tribunal was therefore that of an appropriate sanction.

ARGUMENT

- 32 The hearing continued with Ms Begg, for SAIDS, arguing first that the evidence, in the form of concessions obtained from the athlete through cross-examination, probed that he had used the diuretic intentionally.
- 33 She argued, based on this evidence, that according to the athlete he had taken the diuretic the morning before the competition.
- 34 He did so in order to make himself look leaner.
- 35 A more defined look would have better fitted the athlete in the competition, given that that was one of the criteria.
- 36 He was well educated, holding a social work degree from the University of the Western Cape.
- 37 Taking, as the athlete put it, a pill from a blank container, in circumstances where he had access to information, *inter alia* the name of Mr Hoosain Bester, chairman of the Western Province Body Building Association, was mentioned, and the fact that the athlete could phone Mr Bester and discuss whatever he wished to discuss with him in this regard, pointed to intentional use and cheating.
- 38 SAIDS argued that the athlete was an educated university student in his final year of studies competing at national level. He was an educated athlete and should have been aware of anti-doping regulations and the purpose it serves.



- 39 In support of this argument it was submitted that he had access to advice from the local union.
- 40 There was no proof submitted in support of any of these submissions. These are simply statements and arguments without evidence, although the athlete conceded he could have phoned a representative of the local sporting union if he required advice.
- 41 It was conceded by SAIDS that if the panel decides that SAIDS has not established the requirements of article 10.2.1.2, then in terms of article 10.5.1.1 (specified substances), the athlete will need to establish no significant fault or negligence in order for the period of ineligibility to be at a minimum a reprimand and a maximum period of ineligibility of 2 years, depending on the athlete's or other person's degree of fault.
- 42 The athlete was unrepresented but competently presented his case and quite clearly accepted that he was negligent.
- 43 The athlete accepted that he was negligent and, ultimately, did not seek to motivate a reduction of the 2 year period, in the process impliedly accepting that there was no basis on which to do so in that he did not show that there was no significant fault or negligence on his part.
- 44 That is in accordance with the authorities submitted by Ms Begg on behalf of SAIDS.

## THE SUBSTANCE

- 45 Furosemide, which was found in the athlete's sample, is a diuretic that is classified as a specified substance under Class S5 Diuretics and Masking Agents of the 2017 World Anti-Doping Code Prohibited List International Standard.
- 46 Dr Thompson, the medical member of the panel, advises that the substance is relatively freely available, although a prescription would be required, for the treatment of chronic conditions such as high blood pressure and heart failure.
- 47 Diuretics increase the rate of urine flow and sodium excretion in order to adjust the volume and composition of body fluids.
- 48 Diuretics are often abused by athletes to excrete water for rapid weight loss and to mask the presence of other banned substances.
- 49 SAIDS' further submissions, which were not contradicted or challenged, was that the diuretics are quickly absorbed and have a very short half-life, with the prohibited substances being undetectable in the urine of the athlete if the samples are not collected within 24 – 48 hours after their last administration.
- 50 The reason for these substances being prohibited in sport is because they accelerate the removal of metabolites of anabolic steroids from the system and, where used to temporarily increase the loss of fluid / water weight, gives certain

athletes potentially an unfair advantage in meeting for example the weigh-in requirements for his or her weight classification.

51 It was not argued that it enhances performance in the present matter, simply that it could have made the athlete look leaner which would have benefitted him in the competition.

52 The argument in essence was that use of the substances is not in keeping with the spirit of the sport. It also carries a health risk.

DID THE ATHLETE PROPERLY EXPLAIN HOW THE SUBSTANCES ENTERED HIS BODY

53 The athlete candidly provided the explanation as to how the substance which was detected entered the athlete's body.

CONSEQUENCE

54 In accordance with article 2.1.2 sufficient proof of an anti-doping rule violation under article 2.1 has been established by the presence of a prohibited substance or its metabolites in the athlete's sample.

55 The anti-doping rule violation has accordingly been established by SAIDS to the comfortable satisfaction of the hearing panel.

56 In determining the appropriate sanction regard needs to be had to rules 10.2.1.1 and 10.2.1.2.

- 57 The athlete proved that the tablet given to him by his friend was the source of the prohibited substance. This was not challenged.
- 58 Given that the athlete established how the prohibited substance entered his system, the athlete could have claimed a reduction in the prescribed sanction of two years' ineligibility if he was able to show there was no significant degree of negligence or fault in his ingesting whatever he ingested and which gave rise to the prohibited substances entering his body.
- 59 The period of ineligibility would be four years where the anti-doping rule violation involves a specified substance (as is the case here) and SAIDS can establish that the anti-doping rule violation was intentional.
- 60 In terms of rule 10.2.3 the term "intentional" is intended to apply to those athletes who cheat.
- 61 The definition of the term further requires SAIDS to prove that the athlete engaged in conduct which he knew constituted 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 disregarded that risk.
- 62 The question therefore is whether SAIDS has proven that the prohibited substances were taken intentionally in contravention of the code.

- 63 Intentional in the sense used by article 10.2 of the rules includes recklessness, which would require SAIDS to prove that there was a realisation on the part of the athlete that there was a real possibility that he would be contravening the rule and a reconciliation by him with the occurrence of the eventuality in the sense of a deliberate decision to proceed with the act, in this case taking of diuretics, with indifference to its appreciated consequences.
- 64 SAIDS would need to prove the manner in which the rule was contravened and ideally that the athlete knew he was taking diuretics for the specific purpose which was in contravention of the rules.
- 65 The standard of proof in this regard is further for the anti-doping organisation, *in casu* SAIDS, to establish the intentional anti-doping rule violation to the comfortable satisfaction of the hearing panel, bearing in mind the seriousness of the allegation which is made.
- 66 This standard of proof in all cases is greater than a mere balance of probability but less than proof beyond a reasonable doubt.

### CONCLUSION

- 67 The committee was not reasonably satisfied that SAIDS proved that the use of the diuretic was taken intentionally in order to cheat.

- 68 The athlete created a very good impression, made concessions freely and, as set out above, admitted to having been negligent.
- 69 He furthermore promptly admitted the offence, within a day of being charged therewith, and proceeded throughout the hearing to make all concessions that needed to be made.
- 70 In the circumstances, the athlete's assurance that he did not view the diuretics as a masking agent, that this was the first time that he had used them, and that he had learnt his lesson, are all accepted.
- 71 The athlete is furthermore given the benefit of the doubt as to the assurances he claimed were given to him by his fellow athlete.
- 72 In the process, the committee concluded therefore that intentional use as defined in the SAIDS anti-doping code and policies, was not established to the committee's reasonable comfort and satisfaction. Article 22.1.
- 73 In the circumstances, the committee concluded further that the period of ineligibility to participate in competitive sport, in particular that of natural body building, should be for a period of 2 years.

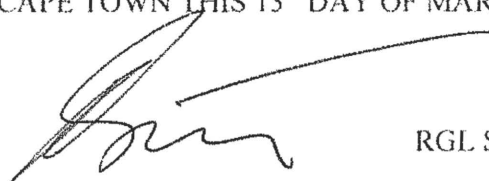
74 Given the prompt admission of guilt by the athlete, as set out above, the committee furthermore concluded that this period of ineligibility should run from the date of the sample, which was 30 September 2017.

75 In the circumstances, the finding of the committee is that the athlete is ineligible to participate in competitive sport, including that of natural body building, for a period of 2 years from 30 September 2017 to 29 September 2019.

76 There is no order as to costs.

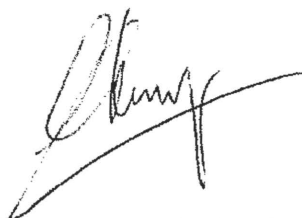
77 The athlete is informed of his right to appeal.

SIGNED AT CAPE TOWN THIS 13<sup>th</sup> DAY OF MARCH 2018



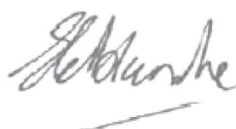
RGL STELZNER SC

SIGNED AT STELLENBOSCH THIS 13<sup>th</sup> DAY OF MARCH 2018



DR CRAIG THOMPSON

SIGNED AT STELLENBOSCH THIS 13<sup>th</sup> DAY OF MARCH 2018



PROF ELMARIE TERBLANCHE