

**BEFORE THE NEW ZEALAND RUGBY UNION JUDICIAL COMMITTEE**

**No. 5/18**

**BETWEEN**

**DRUG FREE SPORT NEW ZEALAND**

**Applicant**

**AND**

**SHANAN KAPENE**

**Respondent**

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**DECISION ON APPLICATION AND SANCTIONS**

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**Judicial Committee:**

Barry Paterson QC, Chair  
Dr Ian Murphy  
Ben Castle

**Counsel:**

Paul David QC and David Bullock for applicant  
Damien Pine for respondent

**Registrar:**

Stuart Doig


1. The applicant (**DFSNZ**) has filed an application under the Sports Anti-Doping Rules 2014 (**SADR**) alleging that at various times in 2014 the respondent, Mr Kapene, purchased from an online website trading under the name "NZ Clenbuterol" Testosterone Enanthate, Clenbuterol and Tamoxifen, all of which are prohibited under the provisions of the 2014 WADA Prohibited List.
2. The application alleges that Mr Kapene infringed Rule 3.2 (Use or Attempted Use of a Prohibited Substance) and Rule 3.6 (Possession of a Prohibited Substance) of SADR.
3. Detailed witness statements from four witnesses were filed in support of this application. Those statements gave details of the evidence upon which DFSNZ relied in bringing the application.
4. Mr Kapene, through his counsel, admitted the allegations but requested to be heard on the matter of the sanction. He also filed a statement giving reasons for the purchases and was provisionally suspended under the provisions of the SADR.
5. The parties have now filed a joint memorandum of Counsel and have submitted that the appropriate sanction for breach of the provisions of the SADR is a period of two years' ineligibility backdated by 12 months from the date on which Mr Kapene volunteered to be provisionally suspended, namely 15 August 2018. The parties have waived their right to a hearing.
6. The Committee has considered the contents of the witness statements filed on behalf of DFSNZ and a statement filed by Mr Kapene in which he states:
  - (a) He purchased Testosterone and Clenbuterol to lose excess weight in the off-season and gain muscle for aesthetic reasons and not to enhance sports performance; and
  - (b) He took Tamoxifen to address the side effects experienced; and
  - (c) He did not know that the substances were prohibited.
7. Mr Kapene accepts that his degree of fault under the SADR was significant in relation to the violations. DFSNZ accepts there is no evidence that warrants reducing the Period of Ineligibility under Rule 14.5 SADR or increasing the

Period of Ineligibility under Rule 14.6 SADR. The backdating of the commencement of the Period of Ineligibility has been suggested because Mr Kapene admitted the violations shortly after being confronted with them and this timely admission combined with delay in bringing the application, it allows this Committee to backdate the commencement date of the Period of Ineligibility by up to 12 months.

### **Decision**

8. On the basis of both parties' agreement recorded in the joint memorandum of counsel and the facts disclosed in the witness statements, this Committee's view is that the proposed sanction is appropriate in terms of the SADR. Therefore, the sanction imposed on Mr Kapene is a period of 2 years Ineligibility commencing on 15 August 2017.
9. During the Period of Ineligibility, Mr Kapene is prohibited from participating in any capacity in a *Competition* or activity (other than authorised anti-doping education or rehabilitation programs) authorised or organised by any *Signatory* or *Signatory's* member organisation, or other member organisation of a *Signatory's* member organisation, or in *Competition* authorised or organised by any professional league or any *International* or *National-level Event Organisation* or any elite or national-level sporting activity funded by a governmental agency.
10. Under the provisions of Rule 5.2.3 of the New Zealand Rugby Union Anti-Doping Regulations (26 July 2012), Mr Kapene is entitled to have the finding and/or sanction referred to a Post-Hearing Review Body.

Dated 15 November 2018

  
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**Barry Paterson QC**  
**Chairman, Judicial Committee**