

REPUBLIC OF KENYA



THE JUDICIARY  
OFFICE OF THE SPORTS DISPUTES TRIBUNAL  
APPEAL NO. AD 4 OF 2019

IN THE MATTER BETWEEN

ANTI-DOPING AGENCY OF KENYA.....APPLICANT

-versus-

NAOMI JEPNGETICH..... RESPONDENT

DECISION

**Hearing** : Decided on available documents

**Panel** : Mr. John Ohaga - Chair  
Ms. Mary N Kimani - Member  
Mr. Gichuru Kiplagat - Member

**Appearances:** Mr. Bildad Rogoncho, Advocate for the Applicant;

The Athlete did not make any appearance throughout the proceedings.

## The Parties

1. The Applicant is the Anti-Doping Agency of Kenya (hereinafter '**ADAK**' or '**The Agency**') a State Corporation established under Section 5 of the Anti-Doping Act, No. 5 of 2016.
2. The Respondent is a female adult of presumed sound mind, a National Level Athlete listed under ID No. 21932164, Tel: +254 715 618 691 and Email Address: [Naomi.jepngetich@yahoo.com](mailto:Naomi.jepngetich@yahoo.com) (hereinafter '**the Athlete**').

## Factual Background

3. In her Doping Control Form the Athlete states as having been born on 30.04.1980 and she has also listed as her representative one Edwin Kiprono Limo (neighbor) of ID No. 23533169. As a National Level Athlete the ADAK Anti-Doping Rules (ADR) apply to her.
4. On 23<sup>rd</sup> September 2018 during the Mombasa International Marathon in Mombasa Kenya, ADAK Doping Control Officers in an In- Competition testing collected a urine sample from the Respondent Athlete. Assisted by the DCO, the Athlete split the Sample into two separate bottles which were given reference numbers A 4162564 (the "**A Sample**") and B 4162564 (the "**B Samples**") in accordance with the prescribed WADA procedures.
5. All the Samples were sent to a WADA accredited Laboratory in Doha, Qatar. The Laboratory analyzed the A Sample in accordance with the procedures set out in WADA's International Standard for Laboratories (ISL). The A Sample returned an Adverse Analytical Finding ("**AAF**") for the following: S1.1B [...] Androsterone, S1.1B [...] Testosterone, S1.1B [...] Etiocholanone, S1.1B [...] 5aAdiol, (see test report in page 9-10 of the Charge Document).
6. The Doping Control Process is presumed to have been carried out by competent personnel and using the right procedures in accordance with the WADA International Standards for Testing and Investigations.
7. The findings were communicated to the Athlete by Mr. Japhter Rugut, the ADAK Chief Executive Officer through a Notice and mandatory Provisional Suspension Letter dated 11<sup>th</sup> December, 2018. In the said communication the Athlete was offered an opportunity to provide an explanation for the AAF

by 27<sup>th</sup> December, 2018 and the option for Sample B analysis (see page 13-15 of the Charge Document).

8. On 21<sup>st</sup> January 2019 a Notice to Charge of even date was filed at the Tribunal by the Applicant that stated that *"A notice of ADRV was served upon the athlete and a response has been obtained. The same has been evaluated and found that there is an Anti-Doping Rule Violation."* Therefore the Applicant requested a hearing panel be constituted to evaluate the case.
9. The following were the Tribunal's directions dated 23<sup>rd</sup> January 2019:
  - (i) Applicant shall serve the Mention Notice, the Notice to Charge, Notice of ADRV, the Doping Control Form and all relevant documents on the Athlete within 15days from date of directions.
  - (ii) The Panel constituted to hear this matter shall be as follows; John Ohaga, Panel Chair, Mary N. Kimani, Member and Edmond Gichuru Kiplagat, Member.
  - (iii) The matter to be mentioned on 14<sup>th</sup> February 2019 to confirm compliance and for further directions.
10. At the mention on 14<sup>th</sup> February 2019 the Applicant was represented by its Counsel Mr. Rogoncho. The Athlete was not present. The Applicant told the Tribunal that it had not served the Directions on the Athlete who it said had not been cooperative. She ignored the Counsel's telephone calls so he served the ADRV notice via WhatsApp and also forwarded the same via email but there had been no response from the Athlete. The Applicant requested three weeks to effect personal service. The Tribunal granted the request and ordered the matter be mentioned on 7<sup>th</sup> March 2019.
11. When the matter came up for mention on 7<sup>th</sup> March 2019, again the Athlete did not appear before the Tribunal. The Applicant's Counsel told the Tribunal that it had not yet filed the Charge Document as ordered at last sitting but that it had served the Athlete the Tribunal's Directions on 21<sup>st</sup> February 2019. The Applicant requested for additional time to prepare, file and serve the Charge Document. The Tribunal set the next mention for 28<sup>th</sup> March 2019.

12. A Charge Document was filed with the Tribunal on 21<sup>st</sup> March 2019 by the Applicant; Nos.1-4 items in the List of Documents in page 6 of the Charge Document were attached.
13. On 28<sup>th</sup> March 2019 the Applicant filed an Affidavit of Service at the Tribunal attached to which were copies of a WhatsApp and an email correspondence between the Applicant and the Athlete and at the mention on the same date Counsel appearing for the Applicant Mr. Rogoncho again requested for three weeks to serve the Charge Document to the Respondent Athlete. The Athlete still did not enter an appearance. The next mention was set for 17<sup>th</sup> April 2019.
14. At the mention on 27<sup>th</sup> June 2019 Counsel for the Applicant said the Athlete had been difficult to locate. He said they would like to try to again send her the mention date and thereafter another mention was set for 24<sup>th</sup> July 2019.
15. On 24<sup>th</sup> July 2019 the Applicant filed at the Tribunal an Affidavit of Service attached to which were copies of a WhatsApp and email it said it had sent to the Athlete. At a mention on the same date, Counsel for the Applicant present confirmed that the Athlete had been served through WhatsApp and email sent to her known contact addresses (see Affidavit of Service filed). The Tribunal set the hearing for 31<sup>st</sup> July 2019; the Applicant was to ensure service of the same upon the Athlete.
16. An Affidavit of Service was filed by the Applicant at the Tribunal on 31<sup>st</sup> July 2019; attached to it was a copy of an email with the Hearing Notice which the Applicant said it had forwarded to the Athlete.
17. The Hearing which had been postponed from 31<sup>st</sup> July 2019 to 1<sup>st</sup> August 2019 did not proceed; the Athlete made no appearance yet again. Counsel for the Applicant Mr. Rogoncho told the Tribunal that the Athlete had been very elusive. She refused to acknowledge receipt of any document. From her conduct Counsel for the Applicant opined that the Athlete was not desirous of pursuing her matter. Relying on Article 3.2.5 of ADAK ADR, Counsel urged the Tribunal to render a decision. Further he requested for a mention date which was set for 22<sup>nd</sup> August 2019 for submissions.
18. The Applicant's submissions were filed at the Tribunal on 21<sup>st</sup> August 2019. At the mention on 22<sup>nd</sup> August 2019 it was noted that the Athlete made no appearance and neither had any submissions been filed from her. The

Applicant, represented by Mr. Rogoncho confirmed having filed its submissions. A decision would be rendered on 25<sup>th</sup> September 2019.

### Ex parte Hearing

19. The hearing did not proceed on 1<sup>st</sup> August 2019 as the Athlete did not appear. The Tribunal acquiesced the Applicant's request to decide the matter based on the papers.

20. ADAK has preferred the following charge against the Athlete: -

*Presence of a prohibited substance Androsterone (A), Testosterone (T), Eticholanone (Etios) in the athlete's sample in violation of Article 2.1 of ADAK ADR, Article 2.1 of WADC and rule 32.2 (a) and rule 32.2(b) of the IAAF rules.*

### Submissions

Below is a summary of the main relevant facts and allegations based on Ex parte submissions.

#### **A. Summary of Applicant's Submissions**

21. Mr Rogoncho, Counsel for the Applicant, informed the Panel that the Agency wished to adopt and own the Charge Document dated 20<sup>th</sup> March 2019 and annexures thereto as an integral part of its submissions therefore we shall begin with the Charge Document first and tail off with the written submissions.

22. Notable in the Charge Document was the Applicant's No. 8 "The same letter also informed the athlete of her right to request for the analysis of the B-sample; and other avenues for sanction reduction including prompt admission and requesting for a hearing and gave a deadline of 27<sup>th</sup> December 2018 for the same." And No. 10: "The Respondent failed to respond to the charges after being served with the Notice of charge on 28<sup>th</sup> January 2019 and has since then seized [ceased] communication and was yet to respond as at the time of filing this Charge Document."

23. Further, at Nos. 11-12 of the Charge Document the Applicant preferred the charge of "Presence of a prohibited substance Androsterone (A), Testosterone (T), Eticholanone (Etios) in the athlete's sample" noting the "Respondent Athlete's

*AAF was not consistent with any applicable Therapeutic Use Exemption (TUE) recorded at the IAAF for the substance in question and there was no apparent departure from IAAF Anti-Doping Regulations or from WADA International Standards for Laboratories which may have caused the adverse analytical findings”.*

24. Moreover, at No. 13 the Applicant noted that “no plausible justification was advanced for the adverse analytical finding”.

25. Additionally, in the Charge Document the Applicant prayed:

a) *All competitive results obtained by the Respondent from and including 23<sup>rd</sup> September 2018 until the date of determination of the matter herein be disqualified, with all resulting consequences (including forfeiture of medals points and prizes)”, Article 10.1 ADAK ADR*

b) *Naomi Jepng’etich be sanctioned to a four-year period of ineligibility as provided by the ADAK Anti-Doping Code, Article 10 of ADAK and WADC Rules.*

c) *Costs, Article 10.10”*

26. The Applicant in its written submissions stated that the Athlete was a National level athlete therefore results management authority vested in ADAK which in turn delegated the matter to the Sports Disputes Tribunal as provided in the Anti-Doping Act No. 5 of 2016.

27. The Applicant also submitted the following regarding Background/Facts:

*“No. 13: The respondent was served with the ADRV Notice by, ADAK’s Senior Legal Officer, Mr. Bildad Rogoncho on 28<sup>th</sup> January 2019 vide email and WhatsApp on the respondent email address: [naomi.jepngetich@yahoo.com](mailto:naomi.jepngetich@yahoo.com) and telephone number respectively.*

*No. 15: Charge documents were prepared and filed by ADAK’s Advocates and the Athlete failed to present a response thereto.”*

28. The Applicant’s position was, “No.21: Article 7.10.2 of ADAK Rules states that if the Athlete or other Person against whom an anti-doping violation is asserted fails to dispute that association within the deadline specified in the notice sent by the Agency asserting the violation, then he/she shall be deemed to have admitted the



*violation, to have waived a hearing, and to have accepted the Consequences that are mandated by these Anti-Doping Rules or (where some discretion as to Consequences exists under these Anti-Doping Rules) that have been offered by the Agency.*

*No.22: The Applicant therefore submits that the respondent athlete waived her rights by not being desirous of participating in the proceedings."*

29. On intention, the Applicant submitted: *"No. 30: It is worthy to note that in the instant case; the Respondent has adamantly refused, declined and failed to disclose the origin of the prohibited substance and as such intention cannot be negated."*

### **Jurisdiction**

30. The Sports Disputes Tribunal has jurisdiction under Sections 55, 58 and 59 of the Sports Act No. 25 of 2013 and Sections 31 and 32 of the Anti- Doping Act, No. 5 of 2016 (as amended) to hear and determine this case.

### **Applicable Law**

31. *Article 2* of the ADAK Rules 2016 stipulates the definition of doping and anti-doping rule violations as follows:

*The following constitute anti-doping rule violations:*

*2.1 Presence of a Prohibited Substance or its Metabolites or Markers in an Athlete's Sample*

*2.1.1 It is each Athlete's personal duty to ensure that no Prohibited Substance enters his or her body. Athletes 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 Athlete's part be demonstrated in order to establish an anti-doping rule violation under Article 2.1.*

*2.1.2 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 Metabolites or Markers in the Athlete's A Sample where the Athlete*

*waives analysis of the B Sample and the B Sample is not analyzed;*

### Merits

32. In the following discussion, additional facts and allegations may be set out where relevant in connection with the legal discussion that follows.

33. The Tribunal will address the issues as follows:

*a. Whether the Respondent Athlete was properly enjoined in this matter;*

*b. Whether there was an occurrence of an ADVR, the Burden and Standard of proof;*

*c. Whether, if the finding in (a) is in the affirmative, the Athlete's ADRV was intentional;*

*d. The Standard Sanction and what sanction to impose in the circumstance.*

**a) Athlete properly enjoined in the matter.**

34. The Applicant in a copy of the email it addressed to the Athlete dated 28<sup>th</sup> January 2019 and through which it forwarded to her the ADRV Notice, alluded to a tele-conversation its Counsel had held with her in December 2018, (in this same email the Applicant's Counsel indicated to her that he had already sent the Athlete the same Notice through her mobile number 0715-618-691, *see page 16 of the Charge Document*).

35. From the contents of the aforementioned email correspondence, it would appear that initially the Applicant had telephonically interacted with the Athlete.

36. Then at the first mention on 14<sup>th</sup> February 2019, the Applicant's Counsel told the Tribunal he was having difficulties serving the Athlete the Tribunal's Directions as she had not been cooperative. Again on 7<sup>th</sup> March 2019 was a no-show at the Tribunal by the Athlete and the Applicant's Counsel requested additional time to procedurally serve her.



37. At the next mention on 28<sup>th</sup> March 2019 there was still no appearance by the Athlete. The Counsel said that even though he had filed the Charge Document with the Tribunal, he needed 3 weeks to serve the Athlete and during the mention on 27<sup>th</sup> June 2019 he expressed the difficulties he was encountering trying to locate her.
38. The Applicant filed an Affidavit of Service with the Tribunal on 24<sup>th</sup> July 2019 (dated 23<sup>rd</sup> July 2019 sworn by Bildad Rogoncho on 23<sup>rd</sup> July 2019) which stated he (Rogoncho) received from ADAK a Charge Document and a Mention Notice with instructions to serve her but on same day when he called her mobile phone number 0715-618-691, she declined to pick. Thus he proceeded to send the Charge Document and the Mention Notice via her WhatsApp which she received since she was online. He stated he also forwarded the two pleadings via her email and attached copies of both to the said Affidavit.
39. The Panel satisfied itself before proceeding to set a hearing date that the mobile phone number and email address stated in the copies attached to the said Applicant's Affidavit – produced as evidence by the Applicant – corresponded to the contacts written by the Athlete in her own handwriting on her Doping Control Form that she filled during the test that gave rise to the AAF.
40. A subsequent Affidavit was filed by the Applicant with the Tribunal on 31<sup>st</sup> July 2019 as proof that it had served the Hearing Notice via the Athlete's email.
41. It was the Panel's view that the matter had dragged on and it became increasingly clear that despite numerous attempts by the Applicant to correspond with and get the Athlete to respond to and/or appear at her own proceeding, the Athlete studiously omitted responding to the same. The Panel proceeded to entertain the matter in the absence of the Athlete after satisfying itself that the Applicant had exhausted all reasonable attempts to have the Athlete participate in her own proceedings in any manner, Article 8.3 of the WADA Code states:

*Waiver of Hearing: The right to a hearing may be waived either expressly or by the Athlete or other Person's failure to challenge an Anti-Doping Organization's assertion that an anti-doping rule*

*violation has occurred within the specific time period provided in the Anti-Doping Organization's rules.*

**b) The Occurrence of an ADRV, the Burden and Standard of proof.**

42. As used in WADC's Article 3.1:

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

43. The Applicant relied on Article 3.2.1 "Analytical methods or decision limits approved by WADA [...]" and the Panel was comfortably satisfied that the ADRV was proven on account of the following facts:

- (i) The laboratory analysis of the A Sample provided by the Athlete on 23<sup>rd</sup> September 2019 resulted in the AAF; for presence in the Athlete's body of Androsterone, Testosterone, Etiocholanone and 5aAdiol all non-specified substances.
- (ii) The Athlete had no Therapeutic Use Exemption to justify such presence
- (iii) The available documentation indicated the Athlete after Notification as under WADC's Article 7.3 (c) did not request for a test of her B Sample, and failing such request the B Sample analysis was deemed waived thereby confirming the A Sample results.

44. The Code surmises;

*Where use and presence of a prohibited substance has been demonstrated it is not necessary that intent, fault, negligence, or knowing use on the athlete's part be demonstrated in order to establish an ADRV.*

**d) Was the Athlete's ADRV intentional?**

45. The Applicant in its Charge Document prayed for the Athlete to be sanctioned to a four year period of ineligibility as provided by ADAK Anti-Doping Code Article 10 of ADAK and WADC Rules. Article 10.2.1 of WADC which speaks about the period of Ineligibility requires the Panel to examine the subject of intentionality.
46. The Applicant attested to telephonically liaising with the Athlete at onset but after that she apparently went mute. There is no written evidence of the explanation she may have rendered verbally/on the telephone and in her self-enforced absence the Panel shall adopt the Applicant's plea that the explanation she provided was not plausible.
47. The Applicant prayed for a sanction of 4 year period of Ineligibility as per Article 10.2.1 of ADAK ADR which requires the Panel examine the matter of intentionality. The provisions of Article 10.2.1 of the ADAK ADR which are a reproduction of the WADA Code expressly provide thus:

*The period of Ineligibility shall be four years where:*

*10.2.1.1 The anti-doping rule violation does not involve a Specified Substance, unless the Athlete or other Person can establish that the anti-doping rule violation was not intentional.*

48. The purport of the above provision is clear, that where the ADVR involves a non-specified substance as was the case presently, then the period of ineligibility for the Athlete shall be four (4) years unless the Athlete such violation was not intentional. As a starting point therefore, in the present case, the Athlete bears the burden of proof that the ADRV was not intentional and it naturally follows that the Athlete must also establish how the substance entered her body.
49. The question then is the threshold of discharging such burden of proof placed on the Athlete. In determining this, the Tribunal need not go further than the provisions of *Article 3.1 of the WADA Code which provide:*

*[...]. Where the Code places the burden upon the athlete or other person alleged to have committed an anti-doping rule violation to*

*rebut a presumption or establish specified facts or circumstances, the standard of proof shall be by a balance of probability.*

50. The main relevant rule in question in the present case is Article 10.2.3 of the ADAK ADR, which reads as follows:

*As used in Articles 10.2 and 10.3, the term "intentional" is meant to identify those Athletes who cheat. The term, therefore, requires that the Athlete or other Person engaged in conduct which he or she 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. An anti-doping rule violation resulting from an Adverse Analytical Finding for a substance which is only prohibited In-Competition shall be rebuttably presumed to be not "intentional" if the substance is a Specified Substance and the Athlete can establish that the Prohibited Substance was Used Out-of-Competition. An anti-doping rule violation resulting from an Adverse Analytical Finding for a substance which is only prohibited In-Competition shall not be considered "intentional" if the substance is not a Specified Substance and the Athlete can establish that the Prohibited Substance was unrelated to sport performance.*

51. The WADA 2015 World Anti-Doping Code, Anti-Doping Organizations Reference Guide (section 10.1 "What does 'intentional' mean?", p. 24) provides the following guidance:

*'Intentional' means the athlete, or other person, engaged in conduct he/she knew constituted an ADRV, or knew there was significant risk the conduct might constitute an ADRV, and manifestly disregard that risk.*

*Article 10.2 is clear that it is four years of ineligibility for presence, use or possession of a non-specified substance, unless an athlete can establish that the violation was not intentional, [...].*

52. As already pointed out by the Applicant, the Athlete was particularly evasive thereby making it very difficult for the Applicant to proceed with her matter. Further, the Applicant relied on Article 3.2.5 of ADAK ADR:

*The hearing panel on an anti-doping rule violation may draw an inference adverse to the Athlete or other Person who is asserted to have committed an anti-doping rule violation based on the Athlete's or other Person's refusal, after a request made in reasonable time in advance of the hearing, to appear at the hearing [either in person or telephonically as directed by the hearing panel] to answer questions from the hearing panel or the Anti-Doping Organization asserting the anti-doping rule violation.*

Which article the Panel rules is fully applicable in this case.

53. Consequently, the Panel finds the Athlete who was always under the stricture, in addition to omitting to give any justification for the cocktail of prohibited substances found in body, deliberately absented herself despite numerous requests and summons by the Applicant and Tribunal.
54. Additionally, as stated by the Applicant, “[...] *the Respondent has adamantly refused, declined and failed to disclose the origin of the prohibited substance and as such intention cannot be negated,*” totally shirking her responsibilities under the anti-doping rules. As averred by CAS 2008/A/1488 P. v. International Tennis Federation (ITF):

*To allow athletes to shirk their responsibilities under the anti-doping rules by not questioning or investigating substances entering their body would result in the erosion of the established strict regulatory standard and increased circumvention of anti-doping rules.*

55. In view of the above, the Tribunal finds that the Athlete had the intention to violate the anti-doping rule for she has failed, on a balance of probabilities, to demonstrate the lack of intention;
56. Accordingly, the Tribunal finds that the Athlete has not met her burden of proof.
57. Regarding No Fault/Negligence – No Significant Fault/Negligence, since as already concluded above, the Athlete, being responsible for her anti-doping rule violation under Article 2.1 of the WADC, did not discharge the burden of establishing a lack of intention, the Tribunal does not deem it necessary to assess whether the Athlete may have had no fault or negligence in committing the anti-doping rule violation: see Bisluke ‘para. 81. *The*

*rationale being that the threshold of establishing that an anti-doping rule violation was not committed intentionally is lower than proving that an athlete had no fault or negligence in committing an anti-doping rule violation.'*

58. This has further been reiterated in the decision of CAS in WADA v. Indian NADA & Dane Pereira CAS 2016/A/4609 where it observed:-

*The finding that a violation was committed intentionally excludes the possibility to eliminate the period of ineligibility based on no fault or negligence or no significant fault or negligence.*

59. The Panel notes that the behavior of the Athlete in this particular case is troubling and wishes to caution against such disposition.

### Sanctions

60. With respect to the appropriate period of ineligibility, Article 10.2 of the ADAK ADR provides that:

*The period of ineligibility for a violation of Article 2.1, 2.2 or 2.6 shall be as follows, subject to potential reduction or suspension pursuant to Article 10.4, 10.5 or 10.6:*

*10.2.1 The period of ineligibility shall be four years where:*

*10.2.1.1 The anti-doping rule violation does not involve a Specified Substance, unless the Athlete or other Person can establish that the anti-doping rule violation was not intentional*

....

61. The Tribunal notes that the standard sanction for an ADRV involving a non-specified substance is four (4) years, unless the Athlete can establish that the ADRV was not intentional.

62. Article 10.11.3 of the ADAK ADR is titled "Credit for Provisional Suspension or Period of Ineligibility" and states as follows:

*If a Provisional Suspension is imposed and respected by the Athlete or other Person, then the Athlete or other Person shall receive a credit*



*for such period of Provisional Suspension against any period of Ineligibility which may ultimately be imposed...*

63. As the Athlete very intentionally absented herself and categorically declined to participate in any manner in these proceedings, the Panel was not able to verify with her if she respected the Provisional Suspension imposed on her by the Applicant.

64. In regard to Disqualification, *Article 10.8* of the ADAK ADR reads as follows:

*Disqualification of Results in Competitions Subsequent to Sample Collection or Commission of an Anti-Doping Rule Violation*

*In addition to the automatic Disqualification of the results in the Competition which produced the positive Sample under Article 9, all other competitive results of the Athlete obtained from the date a positive sample was collected (whether In-Competition or Out-of-Competition), or other anti-doping rule violation occurred, through the commencement of any Provisional Suspension or Ineligibility period, shall, unless fairness requires otherwise, be Disqualified with all the resulting Consequences including forfeiture of any medals, points and prizes.*


## Decision

65. Consequent to the discussions on merits of this case, the following orders commend themselves to this Tribunal:

- i. The period of Ineligibility shall be four (4) commencing on the date of this decision;
- ii. The Respondent's results obtained from and including 23<sup>rd</sup> September 2018 until the date of determination of this matter be disqualified, with all resulting consequences including forfeiture of medals, points and prizes pursuant to *Article 10.1* of the WADA Code and the ADAK rules;
- iii. Each party shall bear its own costs;

iv. The Parties have a right of appeal as provided for under *Article 13* of WADA Code, Rule 42 of the IAAF Competition Rules and Article 13 of ADAK Rules.

Dated at Nairobi this 2nd day of October 2019



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John M Ohaga, Panel Chairperson



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Ms. Mary Kimani, Member



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Gichuru Kiplagat, Member