

**IN THE MATTER OF PROCEEDINGS BROUGHT UNDER THE ANTI-DOPING RULES
OF THE INTERNATIONAL ASSOCIATION OF ATHLETICS FEDERATIONS**

Before:

Monty Hacker (Chair)

BETWEEN:

WORLD ATHLETICS

Anti-Doping Organisation

-and-

VINCENT KIPSEGECHI YATOR

Respondent

DECISION OF THE DISCIPLINARY TRIBUNAL

1. The claimant, World Athletics, is the governing body of the sport of Athletics worldwide. It is represented in these proceedings by the Athletics Integrity Unit ("**AIU**") which has delegated authority for results management and hearings on its behalf pursuant to article 1.2 of the 2019 edition of the IAAF Anti-Doping Rules ("**ADR**").

2. The respondent Mr Vincent Kipsegechi Yator is a 30 year old marathon runner from Kenya, who competes as a Kenyan International Level Athlete. He was a podium finisher in the 2019 Honolulu Marathon in Hawaii.
3. These proceedings concern the consequences to be imposed on the Athlete for:
 - 3.1. Pursuant to article 2.1 of the ADR, the admitted presence of Prednisone-Prednisolone and metabolites of testosterone (androsterone and etiocholanolone), **Non-Specified** Prohibited Substances, consistent with exogenous origin in a Sample collected from the Athlete on 7 July 2019 ("the **First Charge**"), also known as ("**the First AAF**"), and;
 - 3.2. Pursuant to article 2.2 of the ADR, the use of prednisone, prednisolone, exogenous testosterone, trimetazidine and clomiphene, Prohibited Substances ("the **Second Charge**").
4. The Athlete denies Intentional administration of the non-specified substances and relies upon article 10.5.2 ADR in asserting that he has acted with No Significant Fault or Negligence (**NSF**) in order to reduce the period of Ineligibility to be imposed for his Anti-Doping Rule Violations ("**ADRV**") to 2 years in lieu of the mandatory four year period of Ineligibility for which the AIU contends.

A. Factual Background

5. On 7 July 2019, the Athlete provided a urine sample code 126 6851 at an in-competition test at the Australia Gold Coast Marathon (the "Sample").
6. Analysis of the Sample was carried out by the World Anti-Doping Agency ("**WADA**") accredited laboratory, The Australian Sports Drug Testing Laboratory in New South Wales, Australia on 24 September 2019, revealed the presence of Prednisolone, Prednisone, and their metabolites, and metabolites of testosterone consistent with exogenous origin. Prednisone and Prednisolone (and their metabolites) are specified substances prohibited only in-competition, when administered orally, rectally or by

intravenous or intramuscular methods. Testosterone (and its metabolites) is a non-specified substance prohibited at all times.

7. The Athlete's explanation, called for by the AIU, for the presence of these prohibited substances, was given by him in an email dated 14 August 2019. In it he stated that he had been involved in a road accident which occurred in February 2018 and resulted in him being admitted to hospital and being prescribed medication. In a subsequent email addressed by the Athlete to the AIU, the Athlete stated that he was treated with prednisone five mg tablets on 22 June 2019, which he continued taking until 29 June 2019. He also stated that on 20 June 2019 he received hydrocortisone intravenously.
8. The AIU responded indicating that the presence of prednisone and prednisolone in the Sample could not reasonably have been caused by the Athlete's treatment he received for his alleged involvement in the accident he had referred to. The AIU therefore requested the Athlete to provide a full list of all medication that he had used in the two-week period prior to the Gold Coast Marathon, in order to assist with establishing the source of the prednisone and prednisolone in the Sample.
9. Between 15 August and 26 August 2019, the Athlete and the AIU engaged in correspondence to clarify the Athlete's explanation for the presence of prednisone and prednisolone in the Sample. Questioned further by the AIU the Athlete provided a certificate from the Reale hospital reflecting that as an outpatient on 23 June 2019 he had been prescribed Locam MR and Vastarel MR for use over a two-week period to treat his myalgia and chronic low back pain.
10. The Athlete provided three (3) documents in support of his asserted medical treatment which appeared to have originated from the Garissa County Hospital including:
 - 10.1 a medical Report confirming that he was treated at the Hospital on 20 June 2019 for an allergic reaction, for which he was prescribed several medications including "tabs prednisone mg BD" - the "**First Garissa County Hospital medical report**";

- 10.2 a one half paged photograph from General Outpatient record (dated 20 June 2019), referring to "prednisolone five MG BD x 5/7";
- 10.3 a photograph of what appeared to be a portion of the prescription and which appears to mention "prednisolone," and;
- 10.4 it was confirmed by the Athlete that he ingested two 5 mg tablets per day of prednisone between 22nd June to 29th of June 2019, as prescribed.

11. On 26 August 2019 the AIU requested that the Athlete clarify his ingestion of the medication prescribed to him at the Reale hospital on 23 June 2019. On the same day (26 August) the Athlete responded stating that he used the medications prescribed to him (i.e. Locam MR and Vastarel MR) for one week, until the pain he was experiencing had stopped.

12. Following a report of an Atypical passport finding of the Steroid Module of the Athlete's biological passport, the Sample also underwent analysis by way of a confirmation procedure including analysis by GC/C/IRMS. The GC/C/IRMS analysis revealed the presence of metabolites of testosterone (androsterone and etiocholanolone) that were consistent with exogenous origin ("the second AAF"). Therefore, on 1 October 2019, the AIU wrote to the Athlete to inform him of the second AAF and requested that the Athlete provide an explanation and confirm whether or not he requested the B Sample to be analysed, by no later than 8 October 2019. No such request was however received from the Athlete. The AIU also, on 1 October 2019, imposed a Provisional Suspension upon the Athlete with immediate effect in accordance with article 7.10.1 ADR.

13. On 5 October 2019 the Athlete replied to the AIU with his explanation for the second AAF. In summary, the Athlete reasserted that he had sustained multiple injuries in the road accident and set out additional information relating to an injection he had received at the end of April 2019 to boost his libido. With this he reported that his sexual urge was diminishing, a topic on which he had, early in 2019 opened up to a doctor, receiving advice that he see a fertility specialist. However, since receiving medication he had seen no improvement. As an aside he noted that he sought to be

forgiven as he had taken medication only with the interest of recovering from his ailment, it never having crossed his mind that the drugs were prohibited.

14. On 9 October 2019 the Athlete provided a variety of documentation consisting, *inter alia*, of copies of press articles and photographs concerning different medical reports from the hospital, examinations he had undergone and police reports. This also included a 5 October 2019 medical report from the Garissa County hospital ("**the Second Garissa County Hospital medical report**"). This report showed that the Athlete had experienced a problem with his reproductive system following his involvement in a road accident during February 2018, after which he remembered being on some tablets (clomid), but with no change.
15. On 10 October 2019, following the **Second Garissa County Hospital medical report**, the Athlete submitted a subsequent report which he received from the Senior Deputy Director Medical Services, Garissa County Hospital dated 9 October 2019 ("the **Third Garissa County Hospital Medical Report**"), which dealt with the Athlete's treatment for his low libido with clomid in April 2019 and which the **Third Garissa County Hospital Medical Report** states, later necessitated a change to one testosterone injection on 24 April 2019. This **Third Report** further indicated that the severe injuries the Athlete had sustained in his road accident may have contributed to the severity of his asthmatic attack and his reduced libido with possible erectile dysfunction which, in turn, necessitated the testosterone injection. In this regard the **Third Report** stated that the Athlete had not notified the clinician who saw him, that he was an athlete adding, that had he made this disclosure the testosterone injection would have been avoided, so as not to affect his athletic career.
16. On 13 October 2019 the Athlete confirmed to the AIU that he had not received any other testosterone injection apart from the one he received on 24 April 2019, as appears from Exhibit 28.
17. On 14 October 2019 the AIU requested that the Athlete provide details of his ingestion of "clomid" and provide any supporting medical documents;

18. On 17 October 2019, the Athlete sent a further "Republic of Kenya Ministry of health (form 50)" dated 10 April 2019 concerning him having been prescribed "tabs Clomid 50 mg ODX5/7";
19. On 25 November 2019, the AIU sent the Notice of Charge to the Athlete (with a copy to the Tribunal Secretariat, Sport Resolutions) for anti-doping rule violations as set out below:
 - 19.1 Pursuant to article 2.1 ADR, the presence of prednisone, prednisolone, and metabolites of testosterone (androsterone and etiocholanolone) consistent with exogenous origin in a Sample collected from the Athlete on 7 July 2019 ("the **first charge**"); and
 - 19.2 pursuant to article 2.2 ADR the use of prednisone, prednisolone, exogenous testosterone, trimetazidine and clomiphene ("the **second charge**").
20. On 3 December 2019 the Athlete's counsel, Mr Mwani indicated that the Athlete denied all the charges against him.
21. On 20 December 2019 the Athlete's summary response to the Notice of Charge confirmed that the Athlete **now** admitted the **first charge**, but that he was not certain as to how the prednisolone, prednisone or metabolites of testosterone (androsterone and etiocholanolone) consistent with exogenous origin entered his system. However, the Athlete summary response was silent concerning his asserted use of trimetazidine and clomid.

B. APPLICABLE RULES

22. No jurisdictional issues arose in this matter as to the roles of the AIU, the tribunal or concerning the applicability of the ADR to the Athlete. It is accordingly necessary only to refer to the Rules relevant to the charges. It is not in dispute that according to WADA's Prohibited List, prednisone, prednisolone and clomiphene (and their metabolites) are specified substances and that testosterone (and its metabolites) and trimetazidine are non-specified substances.

23. Although the AIU formally charged the Athlete with violations of article 2.1 and 2.2 ADR, the AIU made it clear that the primary Charge the Athlete faced was a violation of article 2.1 ADR (presence of prednisone, prednisolone and metabolites of testosterone consistent with exogenous origin), which has been established and admitted. There was however no Laboratory analytical evidence placed before the tribunal to directly consider the article 2.2 ADR (in respect of the Athlete's use of trimetazidine and clomiphene).
24. However, despite what is stated in paragraph 22 above, the "presence" of prednisolone, prednisone or metabolites of testosterone (androsterone and etiocholanolone) in the Sample has been acknowledged by the Athlete. As a consequence of which, a violation of article 2.1 ADR (presence) is established. The fact of the commission by the Athlete of the article 2.2 ADR in respect of trimetazidine and clomiphene has arisen and been established from the very production by the Athlete himself of the documentary proof of use by him of Vastarel MR and clomid respectively. This emerged from his use thereof as appears from the Second and Third Garissa County Hospital Medical Reports (appearing at pages 185 to 187 respectively of the Hearing bundle and page 194 thereof), absent any analytical proof thereof having been produced by the AIU in order to establish the commission of ADR 2.2. violation by the Athlete.
25. Article 10.2 ADR provides the sanction to be imposed for anti-doping rule violations under article 2.1 ADR as follows:

10.2 Ineligibility for Presence, Use or Attempted Use, or Possession of a Prohibited Substance or Prohibited Method

The period of Ineligibility to be imposed for an Anti-Doping Rule Violation under article 2.1, 2.2 or 2.6, if that is the Athlete or Other Persons first

anti-doping rule violation it 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:

(a) 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

10.2.2 If Article 10.2.1 does not apply, the period of Ineligibility shall be two years.

10.2.3 As used in Article 10.2.1 (a), the term "Intentional" is meant to identify those Athletes or other Persons who cheat. The term therefore, requires that the Athlete or other Person engaged in conduct that 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.

D MERITS

26. There exists a risk in doping violation cases that continuous reference to authorities and the drawing of comparisons with the facts in other decisions can overcomplicate analysis and prevent the wood from being seen for the trees. Whilst the sole Arbitrator appreciates the efforts of counsel for both parties to rely on various authorities, in his view the issues in this particular case have been simply identified, with the resolution turning on the facts which are clearly identified and have been established by the Athlete's own acts and omissions, exposing so great a degree of carelessness by him as to justify the sole Arbitrator disregarding published articles which might, by the wildest stretch of imagination interpret the Athlete's behaviour as constituting an absence of intention on his part to commit an ADRV.

27. What is abundantly clear from the evidence relied upon by both parties is that:

- 27.1 the Athlete's challenge to the AIU's reliance on his use of clomid to prove his commission of this A.D.R.V under article 10.2 has no merit despite the fact that neither the laboratory's analysis of his Sample, nor the evidence of Prof Saugy identified his use of clomid. This is because the very documents which the Athlete produced to the AIU, clearly established that he had ingested (or used) clomid as far back as 10 April 2019. It therefore became un-necessary for the AIU to establish use by the athlete based on any specific scientific analytical result;
- 27.2 In considering the likelihood of the Athlete's alleged unintentional use as provided for in article 10.3, the sole Arbitrator finds that the evidence has clearly established that there exists no basis for any such acceptance because:
- 27.2.1 the Athlete had little or any knowledge of or familiarity with the IAAF 2019 Anti-Doping Rules and cared not for them;
- 27.2.2 the Athlete showed no desire to acquire any such knowledge;
- 27.2.3 by his own evidence the Athlete had received no Anti-Doping Rules education, did not know what substances were or were not prohibited and took no steps whatsoever to enable him to meaningfully or otherwise question the lawfulness of any of the substances which had been prescribed for him to ingest or which were either being unwittingly ingested by him or injected into him;
- 27.2.4 at no stage did he question the doctors who prescribed medication for him to take (whether by mouth or by injection), on whether any one or more of these medications had the potential to jeopardise his career as an International Level Athlete;
- 27.2.5 it is the sole Arbitrator's belief that article 10.2.3 was designed by WADA to provide the mechanism to disqualify any athlete on the grounds of Intentionality if he or she ought to have known that there existed a significant risk that the intentional (and/or careless and/or negligent and/or reckless) use of prohibited (or even unknown) substances becomes established when

the Athlete manifestly disregards the risk and likelihood of testing positive to a prohibited substance. This intentionality (by obvious carelessness, disregard and recklessness on the part of the Athlete) extinguishes the very absence of intention which the Athlete may seek to rely on, unless exceptional circumstances determine otherwise, and;

27.2.6 In mitigation of any such "Intentionality" the Athlete's replying affidavit, appearing at pages 225 to 230 of the hearing bundle, asserts that the Athlete:

27.2.6.1 had never committed an anti-doping rule violation;

27.2.6.2 had a freak road accident in which he sustained severe injuries which had caused him to unintentionally and involuntarily ingest prohibited substances which, at the time, he was unaware of;

27.2.6.3 had learned from a doctor who had treated his chest injuries following his road accident, that these injuries had contributed to his asthma attack and his reduced libido with possible erectile dysfunction, which necessitated him to be injected with testosterone;

27.2.6.4 on the advice of his counsel he believed that his established presence or use of prohibited substances was unintentional and that accordingly he was entitled to rely upon Anti-Doping Rule 10.5 on the ground of No Significant Fault or Negligence, to either have any sanction of ineligibility eliminated or substantially reduced, and;

27.2.6.5 had been made aware of the consequences for him following a finding of guilt against him in this matter, including the disqualification of his results;

27.2.6.6 did not admit the presence of trimetazidine and clomiphene (clomid) and believed, on his counsel's advice, that the analytical evidence relied upon by the AIU had failed to establish his use of these prohibited substances, thereby effectively disproving the commission by him of the **second charge** under Rule 2.2. (However, despite the fact that there existed no such analytical evidence produced by the laboratory to establish the Athlete's use of clomid, this matters not, because a

Kenya Ministry of Health (Form 50), which is part of the hearing bundle at page 196, records "Tabs Clomid 50 mg ODx5/7" as having been prescribed for his use on 10 April 2019 and he has furthermore acknowledged this use);

27.2.7 In considering the merits of what the Athlete relies upon in paragraph 26.2.4 above, the sole Arbitrator is unable to accept that there is any merit in the points raised in mitigation of "Intentionality". In these circumstances it has therefore been established to the comfortable satisfaction of the sole Arbitrator that no room exists to find that the Athlete did not intend to commit an ADRV, as provided for in Rule 10.2.3.

27.3 Having regard to what is set out in paragraph 26.2 above and particularly what is stated in paragraph 26.2.5, the sole Arbitrator finds that there is no room to consider a lesser sanction for the Athlete than a period of four years of ineligibility as is otherwise provided for in articles 10.3, 10.4, 10.5 and 10.6.

28. The Athlete's ignorance of his rights and obligations including his right to have applied for one or more therapeutic use exemptions, does not assist his defence of the charges against him. Furthermore, his evidence given at the hearing did not assist him as he, for the reasons already stated, has failed to discharge the burden he bears of establishing his absence of intent to commit an ADRV, by a balance of probability. To the contrary, the sole Arbitrator finds, applying the standard of proof greater than a mere balance of probability but less than proof beyond a reasonable doubt that the AIU has discharged its burden of establishing that the anti-doping rule violations with which the Athlete has been charged have indeed been committed by the Athlete intentionally.

29. The sole Arbitrator, after careful consideration of the evidence, rejects the Athlete's defence to the Charges for the following additional reasons:

29.1 The doping control form, to be found at Page 106 of the hearing bundle, signed by the Athlete, fails to disclose the presence of the Athlete's medications which the analysis of his Sample established and he furthermore failed to establish or even

identify the ingestion by him of whatever substance or substances had been the cause of the laboratory's findings appearing at page 109 of the bundle;

29.2 His testimony on the number of doping control tests to which he had submitted prior to 7 July 2019 was, at; the very least, unreliable and bordered on perjury;

29.3 He was tardy, if not slow in responding to the numerous requests he received from the AIU to produce information and documentary evidence to explain the presence of prohibited substances in his system,

29.4 He asserted that he had only been injected with testosterone on one occasion on 24 April 2019, whereas the evidence of Prof Saugy suggested that he had been injected with testosterone on more than one occasion and in all likelihood within a period of five days prior to 7 July 2019, when he was tested for this matter;

29.5 There is however no suggestion that the athlete has been dishonest. The impression created by his testimony was that he was confused and appeared not to have understood questions which were put to him by both Mr. Wenzel, on behalf of the AIU as well as questions put to him by the Chair. One possible explanation for this might be that the language in which the questions were put to him were in English which is not his home or generally spoken language. There is however no doubt that he had no clear recollection of what he had been ingesting or what it was that he allowed to enter his system;

29.6 Furthermore, the fact that he was so totally unaware of any of the IAAF Anti-Doping Rules, in the opinion of the sole Arbitrator, presents a serious shortcoming of the Kenyan Athletics Federation, particularly since the Athlete is no novice to international level athletics competitions and participates therein to the knowledge of his Federation, which will no doubt have been made aware of the many tests the Athlete has undergone over the past five or more years.

30. It follows therefore that the Athlete has not discharged the burden which lay upon him to establish, by a balance of probability that his ADRV was not intentional. His denials and his previous clean record do not, by themselves carry any weight. The Medical personnel at the several hospitals where he was treated during 2018 and 2019 would most likely not have been aware of him as an active Kenyan National or

International athlete for whom there would have existed a need for them to avoid prescribing a variety of prohibited medicines for fear of causing prejudice to his athletic career. He, on the other hand had every reason to place his trust in the medical personnel who treated him, but he owed it to himself to divulge to them the fact that he was a professional Athlete and could not afford to prejudice his career by using prohibited substances. It is also a fact that he made no such disclosures to them to protect his interests in this regard.

31. In those circumstances there is no scope at all for the Athlete to rely on No Significant Fault or Negligence to reduce his otherwise prescribed 4-year period of Ineligibility.
32. Furthermore, the Athlete cannot rely upon a (prompt) admission under article 10.6.3 ADR to reduce that period either. It is a condition precedent to the application of that article that there be a prompt admission of the ADRV itself: its palpable purpose is to save time and cost under article 10.6.3 ADRV, but even if that condition is satisfied any reduction of that period of Ineligibility (down to the 2 year minimum) is at the discretion of the AIU and (WADA) depending on the seriousness of the violation and the Athlete's degree of fault.
33. In respect of the **First Charge** there is no doubt that the athlete admitted to his ADRV in respect thereof, but he certainly did not do so in respect of the **second Charge**, with his defence thereof persisting, through his counsel until the very end of the matter, by ignoring his awareness of his use of clomid as far back as 10 April 2019. Even on the premise that there had been a prompt admission of the **second Charge**, the AIU's stance was that it was not prepared to reduce the four-year sanction and article 10.6.3 therefore had no application. Furthermore, the sole Arbitrator agrees that in the circumstances such a reduction would not have been appropriate for the following reasons:

- 33.1 He finds that the ADRV was committed Intentionally and accordingly the Athlete's level of fault was very high;
- 33.2 The Intentional use of testosterone in competition is a serious offence;
- 33.3 The prolonged exchange of correspondence between the AIU and the Athlete, albeit of the Athlete's making, increased delays and costs for both parties.
34. The sole Arbitrator therefore concludes that the ADRV committed by the Athlete was Intentional for the purposes of articles 10.2.3 and 10.2.1 (a) of the Rules and that he must therefore impose on the Athlete a period of Ineligibility for 4 years which, in terms of article 10.2 ADR, commences as from the date of the present decision. However, the period of provisional suspension imposed on the Athlete from 1 October 2019 until the date of the Tribunal's award shall be credited against the total period of Ineligibility imposed on the Athlete.
35. Pursuant to article 10.8 ADR, competitive results obtained from the date when the first anti-doping rule violation was committed (i.e., the Athlete's admitted use of clomid from 10 April 2019) through to the start of any provisional suspension or Ineligibility period shall be disqualified (with all of the resulting consequences, including forfeiture of any medals, titles, ranking points and prize in appearance money).
36. The sole Arbitrator recognises that the Athlete has laboured under substantial financial and educational handicaps in mounting his defence, engaging the services of Mr Mwani and coping with his own language difficulty, all amid an absence of an anti-doping education. Moreover, the disqualification of his results and the consequent forfeiture(s) are considered by the sole Arbitrator to be sufficient of a punishment for the Athlete not to be burdened with a costs order as sought by Mr Wenzel. Accordingly, the sole Arbitrator is averse to making a costs order against the Athlete as it will have the additional effect of depriving the Athlete of the opportunity to exploit his sporting talents to earn money.

37. The sole Arbitrator recognises that the Athlete also suffered from the fact that he did not benefit from the support (both moral and financial) of the Kenyan Athletics Federation. However, Mr. Mwani could have done no more for the Athlete's defence than he did and the Chair is grateful for his assistance despite the fact that in the Chairman's view, the Athlete did not have a viable defence to the Charges he faced.
38. The sole Arbitrator also expresses sympathy for the ordeal which the Athlete faced following the injuries which he sustained in a road accident for which he was not blameworthy. It is perhaps the medication with which he was prescribed following this accident which might have led, over time, to his exposure to the prohibited substances which may well have caused his present circumstances. However, these circumstances, in no way whatsoever excuse his ADRVs and do not exonerate him from them.
39. This decision may be appealed to the CAS in accordance with article 13 ADR and its subsections.

ORDER

40. The sole Arbitrator:
- 40.1 Finds that the Athlete has committed anti-doping rule violations pursuant to articles 2.1 and 2.2 of the 2019 IAAF Anti-Doping Rules;
- 40.2 Imposes a period of Ineligibility of 4 (four) years upon the Athlete under article 10.2.1 (a) ADR, commencing on the date of the issue of this award in accordance with article 10.10.2 ADR. The period of provisional suspension imposed on the Athlete from 1 October 2019 until the date of the issue of this award shall be credited against the total period of Ineligibility;
- 40.3 Orders the disqualification of all results obtained by the Athlete between 10 April 2019 and 1 October 2019, with all resulting consequences including the forfeiture of any titles, awards, medals, points and prizes and appearance money.

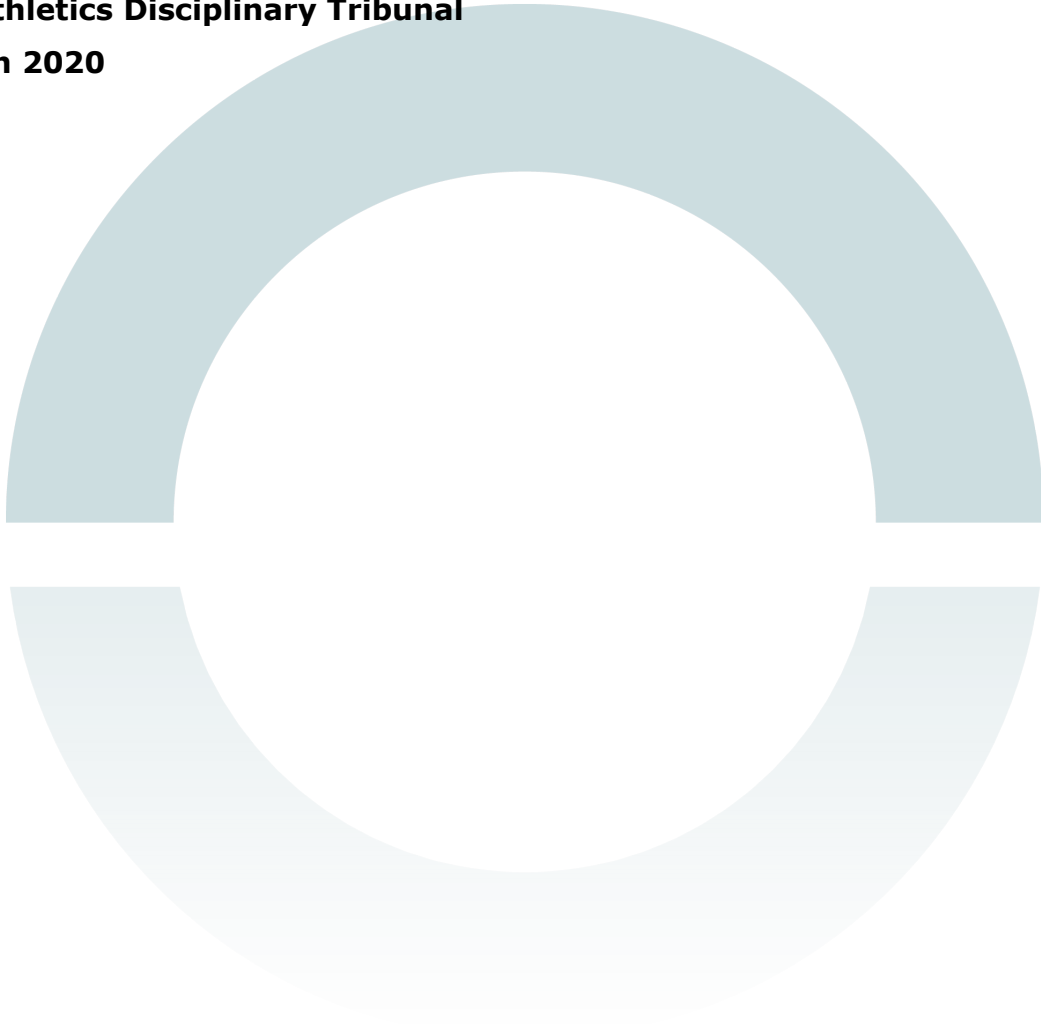


MONTY HACKER

Chair of the Panel

World Athletics Disciplinary Tribunal

27 March 2020





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