

REPUBLIC OF KENYA



**THE JUDICIARY
OFFICE OF THE SPORTS DISPUTES TRIBUNAL
ANTI-DOPING CASE NO. 23 OF 2019**

IN THE MATTER BETWEEN

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

-VERSUS-

RECHO JERUBET KOSGEL..... RESPONDENT

DECISION

HEARING: 20th August, 2020

PANEL:	1. Mrs. Njeri Onyango	Panel Chairperson
	2. Peter Ochieng	Member
	3. Mr. Gabriel Ouko	Member

APPEARANCES

**MR. BILDAD ROGONCHO - COUNSEL REPRESENTING ADAK- ADVOCATE
NO APPEARANCE FOR THE DEFENDANT**

ABBREVIATIONS AND DEFINITIONS

The following abbreviation used herein have the indicated

ADAK –Anti-Doping Agency of Kenya

ADR-Anti-doping Rule

ADRV-Anti Doping Rule Violation

AK-Athletics Kenya

IAAF-International Association of Athletics Federation

S.D.T- Sports Dispute Tribunal

WADA- World Anti-Doping Agency

All the definitions and interpretations shall be construed as defined and interpreted in the constitutive document both local and international.

THE PARTIES

1. The Applicant is the Anti-Doping Agency of Kenya (hereinafter ‘ADAK’) A State Corporation established under *section 5* of the *Anti-Doping Act No 5 of 2016* (as amended)¹.
2. The Respondent is a Female adult of presumed sound mind and an Elite International Level Athlete².

JURISDICTION

3. The Sports Disputes Tribunal has jurisdiction under Section 55, 58, and 59 of the Sports Act No 25 of 2013³ and Section 31 and 32 of the Anti-Doping Act No. 5 of 2016 (as amended)⁴ to hear and determine this case.

APPLICABLE LAWS

4. The Respondent is a Female athlete; therefore, the IAAF Competition Rules, IAAD Anti-Doping Regulations, the WADC, and the ADAK ADR apply.

FACTUAL BACKGROUND

5. On 17th November, 2018, during an in-competition testing in China, CHINADA, Doping Control Officers collected a urine sample from the Respondent. Assisted by a DC. The Respondent split the samples into two separate bottles which were given reference Numbers A 6369228 (the ‘A’ sample) and B 6369228 (the ‘B’ sample) in accordance with the prescribed WADA procedures.
6. Both Samples were transported to the Anti-Doping WADA accredited laboratory in Seibersdorf, Austria (‘the Laboratory’). The Laboratory then analyzed the A Sample in accordance with the procedures set out in WADA's International Standard for Laboratories (ISL). Both analyses of the “A” Sample returned an Adverse Analytical Finding (“AAF”) presence of a prohibited substance *Androsterone (A)* and *Eticholanone (Etios)*.
7. The Respondent Athlete’s AAF was not consistent with any applicable Therapeutic Use Exemption (TUE) recorded at the WA for the substances in question and there is no apparent departure from the WA Anti-Doping Regulations or from WADA International Standards for Laboratories, which may have caused the adverse analytical findings⁵.

¹ Mr. Rogoncho appeared for ADAK

² The Respondent did not appear in this matter and has accordingly not participated in these Proceedings

³ Act No. 23 of 2013, Laws of Kenya.

⁴ Act No. 5 of 2016, Laws of Kenya

⁵ World Anti-Doping Agency

8. The findings were communicated to the Respondent athlete by a Letter from ADAK Chief Executive Officer (CEO) Mr. Japhter K. Rugut through a Notice of Charge and Mandatory Provisional Suspension dated 6th May 2019. In the said communication the Athlete was given an opportunity to explain the analytical findings in the “A” Sample by 20th May 2019.
9. The aforementioned letter also informed the Athlete of her right to request for the analysis of B-sample; and other avenues for sanction reduction including prompt admission and requesting for a hearing, and was given a deadline of 20th May 2019 for the same.
10. The Respondent neither responded to the above communication from ADAK nor requested for testing of the ‘B’ sample. ADAK, therefore, filed the current Charge; the Notice to Charge was filed on 8th July, 2019.

PROCEDURAL BACKGROUND

11. On 17th July, 2019, the SDT Chairperson received the Notice of Charge and issued the following directions:
 - i) The Applicant shall serve the Mention Notice, the Notice to Charge, the Notice of ADRV, the Doping Control Form, and all relevant documents on the Respondent by Thursday, 8th August, 2019.
 - ii) The Panel Constituted to hear this matter shall be as follows:
 - a. Ms. Njeri Onyango;
 - b. Gilbert M T Ottieno;
 - c. Peter Ochieng
 - iii) The matter shall be mentioned on Thursday, 15th August, 2019 to confirm compliance and for further directions.
12. The matter came up for mention on 21st August 2020 Mr. Rogoncho was present for ADAK. There was no appearance for the Respondent. ADAK was directed to file and serve the Charge Document. The matter was set for mention for further directions on 12th September, 2019.
13. On 12th September, 2019 ADAK filed and served the Substantive Charge with relevant supporting documents as follows;
 1. Doping Control Form dated 17th November, 2018.
 2. Test report dated 3rd April, 2019
 3. ADRV Notice dated 6th Mar 2019
 4. Copy of email thread dated 8th May, 2019 and 7th May, 2019.
 5. Copy of email dated 15th May 2019
 6. World Anti-Doping Code

7. IAAF Rules

8. ADAK Anti-Doping Rules

ADAK requested for time to serve the Respondent with the Charge document. The matter was set for mention on 3rd October, 2019.

14. At the Mention on 3rd October, 2019, Mr. Rogoncho appearing for ADAK, informed the Panel that the Athlete/Respondent had been served via email. He further informed the Panel that the Respondent had responded and indicated that she was out of the country and consequently, requested for an adjournment, which ADAK had no objection to. The matter was set for a further Mention on 7th November, 2019.
15. The Mention set for 7th November 2019 was vacated and the matter was further Mentioned 14th November, 2019. Mr. Rogoncho for ADAK requested the Panel for time to get in touch with the Athlete Respondent who had asked for a hearing in the Month of December. The matter was set for Hearing on 11th December, 2019.

HEARING AND SUBMISSIONS

16. At the Hearing on 11th December 2019, Mr. Rogoncho for ADAK was present. There was no appearance for the Respondent. Mr. Rogoncho informed this Panel that the Respondent was duly served with the Hearing Notice and was fully aware of the hearing date. It was, however, indicated that she was in the United States of America from her emails. The hearing was therefore adjourned to 20th February, 2020.
17. On 20th February, 2020, the matter did not proceed for hearing as earlier directed. The Panel noted that the Respondent was duly notified of the ADRV on 7th May, 2019. The Panel further noted that ADAK had not filed an Affidavit of Service for previous mention dates. The matter was set for hearing on 20th March, 2020. ADAK was directed to issue a Hearing Notice and avail evidence of service of the Charge Documents and the Hearing Notice.
18. The matter did not proceed on 20th March 2020 due to the Chief Justice's directive of 16th March, 2020 banning physical court sessions in efforts to combat the spread of the Covid-19 Pandemic.
19. On 4th June, 2020 SDT Chairman, issued direction in this matter as follows;
- i. The matter be mentioned on 18th June 2020 at 2:30 pm; and
 - ii. Mr. Gabriel Ouko shall replace Mr. GMT Ottieno on the Panel.
20. The Matter was mentioned on 17th June, 2020. Mr. Rogoncho was present for ADAK. He informed the Panel that the Athlete/Respondent was still out of the Country and that she was waiting for the Covid-19 travelling restrictions to be lifted to enable her travel back to the country. The matter was set for a further mention on 30th July, 2020.

21. At the Mention on 30th July, 2020, Mr. Rogoncho confirmed to the Tribunal that the Respondent was still out of the Country. He also informed the Tribunal that the Respondent had sent an email to ADAK indicating that she will make her way back to the Country once the international flights resumes and that she will appear before the Tribunal once she arrives. Mr. Rogoncho proposed that the Respondent be given 21 days from the date of the mention to arrange and make good her promise to participate in the proceedings. The matter was adjourned to 20th August, 2020.
22. The matter was mentioned on 19th August, 2020. Mr. Rogoncho informed the Tribunal that the Respondent was still out of the country and had not revealed which part of the World she was in. Further, that the Respondent had informed him via email on 8th August, 2019 that she will come back to the Country. Mr. Rogoncho proceeded to say that he had sent a mention notice but she did not respond. He proceeded to request for leave to file the Applicant's submissions and invoke relevant rules for the Respondent's failure to participate in the proceedings. Mr. Rogoncho confirmed to the Tribunal that ADAK has taken into account the circumstances of Covid-19 Pandemic and that he had indulged the Respondent for a while to no avail. The Tribunal directed as follows;
- i. Leave is hereby granted to the Applicant to file and serve its submissions within **fourteen (14) days**, that is on or before **Wednesday, 2nd September, 2020**;
 - ii. The Applicant shall notify the Respondent of the leave to file submissions, serve the Respondent with the submissions her absence notwithstanding, and file an appropriate Affidavit of Service as proof of service; and
 - iii. The matter shall come up for mention before the Tribunal on **Wednesday, 2nd September** at **2:30 pm** via Microsoft Teams or such other medium as the Tribunal shall determine to confirm filing and service of submissions.

ADAK SUBMISSIONS

23. ADAK filed written submissions on 2nd September, 2020. It is ADAK's position that under Article 3 the ADAK ADR and WADC Rules, it has the burden of proving ADRV to the Comfortable satisfaction of the Hearing Panel.
24. ADAK further holds that under Article 3.2 facts relating to Anti-Doping rule violation may be established by **reliable means**, including **admissions** and the methods of establishing facts and sets out the presumptions. Which include;

- a) **Analytical methods or decision limits....**
- b) WADA accredited Laboratories and other Laboratories approved by WADA are **presumed to have conducted Sample analysis** and custodial procedures in accordance with the international standards for laboratories procedures in accordance with the international standards for laboratories.
- c) Departures from any other International Standards or other anti-doping rule or policy outlined in the code or these Anti-Doping **Rules which did not cause an Adverse Analytical Finding** or other Anti-Doping rule violation shall **not invalidate** such evidence or results.
- d) The facts established by a decision of a court or a professional disciplinary tribunal of competent jurisdiction which is not a subject of the pending appeal shall be irrebuttable evidence against an athlete or other person to whom the decision pertained of those facts unless the athlete or other persons establishes that the decision violated principles of natural justice.
- e) The hearing panel in a hearing.

25. ADAK submits that in this instance, an analytical method has established the presence of a prohibited substance. The Athlete did not challenge the process and outcome and did not request for testing of the '*B*' *Sample*. ADAK thus poses that it has met its burden of proving the ADRV to the comfortable satisfaction of the hearing panel.

26. ADAK also submits that under Article 22.1 the athlete has a duty to;

- a. To be knowledgeable of and comply with anti-doping rules,
- b. To be available for sample collection always,
- c. To take responsibility, in the context of anti-doping, for what they ingest and use,
- d. To inform medical personnel of their obligation not to use Prohibited Substances and Prohibited Methods and to take responsibility to make sure that any medical treatment received does not violate these Anti-doping rules.
- e. To disclose to his or her International federation and to the agency any decision by a non-signatory finding that he or she committed an Anti-Doping rule violation within the previous 10 years.

f. To cooperate with Anti-doping organizations investigating Anti-doping rule violations.

27. ADAK further submits that the Respondent as an Athlete is under duty uphold the spirit of sport as embodied in the preface to the Anti-Doping rules which provides as follows;

“The spirit of sports is the celebration of human spirit, body and mind and is reflected in values we find in and through sports including;

- *Ethics, fair play and honesty*
- *Healthy*
- *Excellence in performance*
- *Character and education*
- *Fun and joy*
- *Dedication and commitment*
- *Respect for the rules and laws*
- *Respect for self and other participants*
- *Courage*
- *Community and solidarity”*

28. It is ADAK’s submission that the Respondent be charged with presence of Prohibited substance, a violation of Article 2.1 of the ADAK ADR⁶. *Androsterone (A) and Eticholanone (Etios)* are Non-specified substances and attracts a period of ineligibility of 4 years.

29. ADAK submitted that where the 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. Further, that under Article 10.2.1 the burden of proof shifts to the Respondent/Athlete to demonstrate *no fault, negligence or intention* to entitle him or her to a reduction of sanction.

30. ADAK submitted that the Respondent failed to establish the origin of the substance found in her system. She responded by stating her willingness to participate in the Proceedings but she did not establish the origin.

31. ADAK places reliance on the decision in **Arbitration CAS 2014/A/3615 World Karate Federation 9WKF) v. George Yerolimpos**⁷ where it states that the person charged cannot discharge that burden of proof merely by showing that he made reasonable efforts to

⁶ Anti-Doping Agency of Kenya, Anti-Doping Rules, 2016.

⁷ Arbitration CAS 2014/A/3615 World Karate Federation 9WKF) v. George Yerolimpos

establish the source but that they without success...mere assertion as to what the source is, without supporting evidence, is sufficient.

32. ADAK also submitted that it is not sufficient for an Athlete merely to make protests of innocence and suggest that the prohibited substance may have entered her body inadvertently from some supplements, medicine, or other product. Rather, the Athlete must adduce concrete evidence to demonstrate that the supplement, medicine or other product, that she took contained the substance in question. The mere fact that the Athlete took the substance, she used at the time of the alleged offense does not prove on the balance of probability that violation was not intentional. ADAK supported this by placing reliance on **CAS 2017/A/5260 World Anti-Doping Agency (WADA) v South Africa Institute for Drug-Free Sports (SAIDS) & Demarte Pena**.
33. ADAK places reliance on CAS 2014/A/3820, par 77 – and submits that to prove a lack of intention, the athlete must clearly demonstrate that the substance was not intended to enhance her performance. ADAK also relies on the case of **Kurt Foggo –vs- National Rugby League (NRL) CAS A2/2011**, where the Panel observed that;

"The athlete must demonstrate that the substance was not intended to enhance the athlete's performance. The mere fact that the athlete did not know that the substance contained a prohibited ingredient does not establish the absence of intent."
34. ADAK's position is that for an ADRV to be committed non-intentionally, the Athlete must prove that, by a balance of probability, she did not know that her conduct constituted an ADRV or that there was no significant risk of an ADRV. It relied on the case of and **CAS 2016/A/4626, par. 45, CAS 2014/3820, par. 77** and **CAS 2014/A/3820 par. 79** respectively.
35. According to ADAK, the Respondent failed to demonstrate how the prohibited substances entered her body. They submitted that the Respondent ought to have clearly demonstrated that the substance was not intended to enhance her performance.
36. ADAK submitted that failure by the Respondent to explain the concrete origin of the prohibited substance only means that she could not prove the lack of intent. It relied on the case of **International Association of Athletics Federation (IAAF) v Russian Athletic Federation (RUSAF) Vasily Kopeykin**.
37. On fault and negligence, ADAK submitted that the Respondent is charged with the responsibility to be knowledgeable and to comply with Anti-doping rules and take responsibility in the anti-doping context for what they ingest and use.

38. ADAK relies on the decisions of **DIMIYA KUTROVSKY v. ITF** – Page 26⁸ the Panel observed that;

'the athlete's fault is measured against the fundamental duty that he or she owes under the Programme and the WADC to do everything in his or her power to avoid ingesting any Prohibited Substance.'

39. ADAK argued that the Respondent failed to carefully consider the consequences of whatever as ingested and administered into her. Further, the Respondent was not keen on upholding her duties under the rules and regulations and that she ought to have known better the responsibilities bestowed upon her as an International level athlete.

40. On the issue of knowledge, ADAK argued that the Respondent is an Athlete competing at international level and who also knows that she is subject to doping controls as a consequence of her participation in national and/or international competitions cannot simply assume as a general rule that the products/medicines she ingests are free of prohibited/specified substances. It relied on the case of **CAS A2/2011 Kurt Foggo v. National Rugby League (NRL)** where the panel observed that an Athlete's lack of knowledge that a product contains a prohibited substance is not enough to demonstrate the absence of athlete's intention to enhance sport performance.

41. On Sanctions, ADAK proposes a period of ineligibility of 4 years on the basis that the Respondent has not adduced evidence in support of the origin of the prohibited substance. Further, the Respondent has failed to establish the origin of the prohibited substance and as thus cannot and should not benefit from any reduction.

DECISION

42. A review of the Doping Control Form completed by the Respondent at the time of Sample collection dated 17/11/2018 shows no disclosure by the Respondent on whether she was on medication and painkillers and supplements used at the time.

43. Upon notification of the AAF by the letter of 6th May 2019, the Respondent did not respond admitting or denying the claims as made by ADAK.

44. The Respondent failed to respond to the Charges as filed at the Tribunal by ADAK. She also failed to participate in these proceedings despite being fully aware about them

45. The Respondent kept on seeking adjournments and postponement of the hearing of this matter, The Tribunal is satisfied that the Respondent had been adequately notified of these

⁸ CAS 2012/A/2804

proceedings and the dates set for hearing but failed to avail herself or make arrangements to participate in them in any way, hence waiving her right for hearing.

ANALYSIS

46. The Panel in making its determination shall consider
- a) Whether the ADRV has been proved to the Required Standard of proof
 - b) Whether or not there was an intention to violate the applicable anti-doping regulations
 - c) What degree of fault and/ or negligence to be assigned to the athlete's conduct?
 - d) What period of ineligibility to be imposed?
47. The Panel is of the view that the facts of the AAF as per the Laboratory results are not disputed, as far as the 'A' Sample results go and that there was no request for 'B' sample analysis.
48. The Panel also notes that there was no applicable TUE at the time of Sample Collection.
49. This Panel from the foregoing therefore finds that the fact of the AAF has not been contested. There being no contest, this Panel finds that the Charge regarding the presence of a Prohibited Substance "*Androsterone (A)*" and "*Eticholanone (Etios)*" in the Respondent's Urine Sample has been proved to the required standard under both the ADAK ADR and WADC article 3.2.
- "The facts relating to the anti-doping rule violation may be established by any reliable Means including admissions and methods of establishing facts and set out the presumptions which include, results obtained by*
- a) *Analytical methods or decision limits*
 - b) *WADA accredited Laboratories approved by WADA...."*
50. Based on the above, this Panel finds that in this instance there is an AAF from a WADA accredited laboratory which has not been challenged. The Respondent also failed to respond to the charges or provide any explanation how *Androsterone* and *Eticholanone* entered her system. ADAK has also stated that the Respondent deliberately ignored, disregarded and dissociated herself with these proceedings and hence no assistance received from the Respondent in pursuing the source of the AAF.
51. The provisions of Article 10.2.3 of the WADC and ADAK rules provide that in order for a violation under the code to be deemed "intentional" the athlete should have known that the conduct constitutes an anti-doping rule violation and that there was a significant risk that

the conduct could constitute or result in an anti-doping rule violation and that he or she manifestly disregarded that risk.

52. It is this panel's position that a failure to explain to a reasonable satisfaction the origin of the prohibited substance would mean that the athlete cannot prove lack of intent. In the words of **Arbitrator Yves Frontier** on page 77.

77. " it appears to me that logically I cannot fathom nor rule on the intention of an athlete without having initially been provided with evidence as to how she had ingested the product which, she says contained clenbuterol; with respect to the contrary view I fail to see how I can determine whether or not an athlete intended to cheat if I do not know how the substance entered her body"

53. This panel is also of the view that apart from proving lack of intention, the Respondent must show as well that the substance was not intended to enhance her performance in the decision of **CAS A2/2011 KURT FOGGO VS NATIONAL RUGBY LEAGUE (NRL)** as relied by ADAK, the panel was of the view that:

"The athlete must demonstrate the substance was not intended to enhance the athlete's performance. The mere fact that the athlete did not know the substance contained a prohibited ingredient does not establish absence of intent..."

54. In the present case, the Respondent failed to attend hearing before the SDT despite numerous notifications through email. It is notable that the Respondent has in the panel's view, made no efforts to establish the origin of the substance stated in the AAF. For instance, she took SDT on a wild goose chase with her promises that she will personally present herself before the it. The Tribunal resolved that the Respondent was intentionally avoiding the proceedings by withholding information about whereabouts. ADAK for that reason made submissions on the matter and submitted that the Respondent did not disclose anything about the origin of the prohibited substance.
55. Based on the foregoing, the panel having considered the circumstances as set out in the Charge document is of the view that the Respondent made no effort to counter ADAK's Claim against her. As a matter of fact, she failed to file any response, request for analysis of the '**B**' sample or participate in the proceedings. The burden of proof shifts to the Athlete to demonstrate *no fault, negligence or intention* to entitle him or her to a reduction of sanction.
56. The rule of thumb is that it is an Athlete's personal duty to ensure that no prohibited substance enters his or her body and that 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 by the analysis of the Athlete's sample which confirms the presence of the prohibited substance.

57. In **CAS 2018/A/4643 Maria Sharapova –vs- International Tennis Federation**, the panel therein set out factors for consideration in the assessment of the degree of fault on the part of the athlete as follows;

- i) Professional Experience
- ii) Age
- iii) Perceived and actual degree of risk
- iv) Any impairment
- v) Disclosure of Medication on the Doping Control form
- vi) Admission of the ADRV in a timely manner
- vii) Any other relevant factors and specific circumstances that can explain the Athlete's conduct.

58. Article 2 of the WADC states that'

"Athletes or other persons shall be responsible for knowing what constitutes ADRV and the substances and methods which have been included on the Prohibited list"

59. Additionally, Article 2.1 WADC states that;

"It is each athlete's personal duty to ensure that no Prohibited Substance enters his/her body. Athletes are responsible for any Prohibited Substance or its Metabolites or Markers found to be present in their sample. Accordingly, it is not necessary that intent, fault, negligence or knowing on the athlete's part be demonstrated in order to establish an ADRV under this Article.

60. Article 10.2 of the WADA Code states thus,

"The participant can establish how a Specified Substance entered his/her body or came into his/her possession and can further establish, to the comfortable satisfaction of the Independent Tribunal, that such Specified Substance was not intended to enhance the Player's sports performance or to mask the use of a performance-enhancing substance, the period of ineligibility established shall be replaced (assuming it is the participant's first anti-doping) offence with, at a minimum, a reprimand, and non-period of ineligibility and at maximum, a period of two years. To qualify for any elimination or reduction, the

participant must produce corroborating evidence in addition to his/her word that establishes, to the comfortable satisfaction of the Independent Tribunal, the absence of intent to enhance sports performance or mask the use of a performance-enhancing substance. Where the conditions set out are satisfied, the participant's degree of fault shall be the criterion considered in assessing any reduction of the period of ineligibility."

- 61.** In this instance, we find that the Respondent was grossly negligent having failed to;
- a. take responsibility, in the context of anti-doping, for what she ingested and used.
 - b. explain the how *Androsterone* and *Eticholanone* entered her system.
- 62.** This panel finds that:
- a. The ADRV has been established as against the Athlete
 - b. The Athlete failed to establish no intention to commit an ADRV.
 - c. The Respondent failed to establish the origin of the prohibited substance.
 - d. The Respondent failed to give any explanation for her failure to exercise due care in observing the products ingested to and used and as such the ADRV was as a result of her negligent acts.
 - e. The origin of the offending substance has not been established
- 63.** The Panel notes that the Respondent has no known previous charge (s) or ADRV.
- 64.** Under Article 2.1, Article 10.2.1.2 of ADAK ADR, regular sanction of a four-year period of ineligibility where the ADRV involves a specified substance “and the agency...*can establish that the ADRV was intentional...*
- 65.** Any period of ineligibility may be eliminated under Article 10.4 if it can be established that there was " *no significant fault or negligence*"
- 66.** The period of ineligibility can be reduced to a maximum of 2 years if the ADRV is promptly admitted (Article 10.6.3) but contingent upon:
- i. The athlete's degree of fault and
 - ii. Assessment of the seriousness of the ADRV, contrary to article 10.2 ADR
- 67.** Considering the panel's finding on the degree of fault, further considering the substance leading to the AAF and lack of explanation on the manner of entry to the body, this panel is of the view that the Respondent cannot benefit on the basis no fault or negligence rules.

SANCTION

- 68.** Having reviewed the circumstances of this matter, the panel imposes the following sanctions
- a. The Period of ineligibility shall be for 4 years from 20th May 2019 the date of the provisional suspension pursuant to Article 10.2.2 of the WADC.

- b. The disqualification of the in-competition in China results of 17/11/2018 and any subsequent event pursuant to Article 9 and 10 of the WADA code.
- c. Each party to bear its own costs.
- d. Parties have a right to appeal pursuant to Article 13 of the WADC and ADAK ADR.
- e. Any other prayers and motions are dismissed.

Dated at Nairobi this 1ST day of OCTOBER 2020.

Signed:



**Mrs. J Njeri Onyango, Member
Panel Chairperson**

Peter Ochieng, Member

Mr. Gabriel Ouko, Member

Covid-19 Protocol: This decision has been delivered by the Tribunal remotely by circulation to the parties' representatives by email and subsequent release to eKLR. A copy of the fully signed decision will be available for collection by the parties from the Tribunal registry in due course.