

In the matter between:

**SOUTH AFRICAN INSTITUTE FOR DRUG-FREE SPORT (SAIDS)      SAIDS/2019/07**

and

**TEGA ODELE**

held at

**Holiday Inn, Rosebank**

on

**20 JUNE 2019**

**In re: ALLEGED VIOLATION OF ANTI-DOPING RULE IN TERMS OF ARTICLE 2.1 OF  
THE 2017 ANTI-DOPING RULES OF SAIDS**

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**ANTI-DOPING TRIBUNAL FINDINGS AND SANCTION**

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**A      INTRODUCTION**

1. SAIDS was established as a statutory body by the South African Institute for Drug-Free Sport Act Nr.14 of 1997 as amended in 2006 as the Independent National Anti-Doping Organisation for South Africa. The South African Institute for Drug Free Sport (SAIDS) has responsibility and authority in respect of anti-doping measures in South Africa and does so in accordance with the SAIDS Anti-Doping Rules 2016 in conjunction with the World Anti-Doping Agency (WADA) Anti-Doping Code and the Prohibited List.

These proceedings are therefore governed by the South African Institute for Drug Free Sport Anti-Doping Rules 2016. Federations and athletes are subject to the jurisdiction of SAIDS in terms of Article 1 of the Anti-Doping Rules 2017 and must comply with the Anti-Doping Rules in terms of Section 10(1) (e) of the South African Institute for Drug-Free Sport Act No 14 of 1997.

2. The SAIDS Anti-Doping Hearing Panel has been appointed in accordance with Article 8 of the Rules to adjudicate whether the Athlete has violated the said Rules, and if so to decide on an appropriate sanction.

3. Mr. Odele was formally charged on 7 June 2019 and informed that an anti-doping hearing has been convened for **Thursday, 20 June 2019 at 17h00 at the Holiday Inn Express, Rosebank** to hear the charges against him. He was also advised that he was entitled to legal representation.
4. **The Independent Doping Panel comprised of:**
  1. Wergelé McKenzie (Chairperson)
  2. Dr. Dimakatso Ramagole, (MD)
  3. Prof. Yoga Coopoo (Sports Scientist)

## **B THE HEARING**

5. The hearing was duly convened on **Thursday, 20 June 2019** at 17h00 at the Holiday Inn Express, the Zone, Oxford Road, Rosebank, Johannesburg.
6. Mrs. Wafeekah Begg (Prosecutor) acted on behalf of SAIDS.
7. Mr. Odele appeared in person and had no legal representation.
8. Neither SAIDS nor Mr. Odele called any witnesses to testify.
9. Prior to the Hearing, Mr. Odele and the Panel Members were furnished with a Hearing Bundle consisting of:
  - 9.1 Adverse Analytical Finding, dated 20th May 2019;
  - 9.2 Doping Control Form dated 06 April 2019;
  - 9.3 ADAMS Analytical Test Report;
  - 9.4 Chain of Custody Form;
  - 9.5 Email: Correspondence from Coach Morne Nagel: 4 June 2019;
  - 9.6 Email: Correspondence between Wafeekah Begg, Khalid Galant & Tega Odele: 22-27 May 2019;
  - 9.7 Medical Report: dated 27 May 2019
  - 9.8 Charge Sheet: 6th June 2019
  - 9.9 Letter from UJ Athletics Manager: Roger Haitengi

## **C THE CHARGE**

10. The charge against the Athlete was set out in written correspondence addressed to the Athlete, dated 7th June 2019 and read as follows:

*“You are formally charged with an anti-doping rule violation in terms with Article 2.1 of the 2016 Anti-Doping Rules of the South African Institute for Drug-Free Sport (SAIDS).*

*On the 6th of April 2019, you provided a urine sample (4416304) during an in-competition test. Upon analysis, the Doping Control Laboratory in Bloemfontein, reported the presence of a prohibited substance in your urine sample. The substances identified in your sample were Metenolone and its metabolites, Metenolone LTM (1 $\alpha$ -Methyl-5 $\alpha$ -androst-1-en-16 $\alpha$ -ol-3,17-dione) and Metenolone M (1-methylene-5 $\alpha$ -androst-3 $\alpha$ -ol-17-one) which are categorised under Class S1 Anabolic Agents on the World Anti-Doping Code 2019 Prohibited List International Standard.”*

11. Mr. Odele was notified of the adverse analytical finding and his right to have his “B” Sample analysed on 20 May 2019.
12. Mr. Odele disputed the adverse analytical finding of his “A” sample before the hearing, but indicated that he did not have the financial resources to have an analysis of his “B” sample done.
13. SAIDS suggested that he approach the Law Clinic at the University of Johannesburg to assist him with Legal Representation.
14. **SUBMISSIONS**

The following submissions were made by Mr. Odele:

14.1 He is an international athlete who is doing his M.Com in Marketing Management at the University of Johannesburg.

14.2 He has never knowingly taken a prohibited substance;

14.3 He is not certain how a prohibited substance entered his body as he only uses supplements supplied by his coach as he cannot afford to buy other supplements.

14.4 The athlete suspects that the ingestion may have happened during his gluteal muscle treatment during June 2018. He received both clinical and herbal treatment in Nigeria, his home country, where a herbal doctor massaged him with Dogoyaro leaf.

14.5 Secondly, the athlete suspects that his Doping Control Form was contaminated by the Doping Control Officer, as his first form got wet (from an unknown substance) and that he had to complete and sign another Doping Control Form.

14.6 The athlete also questioned the chain of custody, alluding to fact that his sample could have been opened or mixed up with another athlete's sample before it reached the laboratory in Bloemfontein.

**PLEAD:**

15. **Not Guilty**

16. **ANTI-DOPING RULE VIOLATION**

**"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 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 analysed."

17. **"3.1 Burdens and Standards of Proof**

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

18. On 6 April 2019, Mr. Odele signed a second Doping Control Form (67684) with test mission code 04/17 after the Doping Control Officer informed him that his first Doping Control Form got wet. He acknowledged that he confirmed that the information on the second Doping Control form was correct and subsequently signed it on 06 April 2019, about 30 -45 minutes after having signed the first Doping Control Form.

19. On 6 April 2019, Mr. Odele declared on the Doping Control Form that he consumed the following supplements: SCF Recoup, SCF Whey, SCF B12, SCF Omega.

20. The ADAMS Anti-Doping Laboratory in Bloemfontein reported on 6 May 2019 the presence of a prohibited substance in the urine sample (4416304) of Mr. Odele. The substances identified in his sample was *Metenolone and its metabolites, Metenolone LTM (1a-Methyl-5a-androst-1-en-16a-ol-3,17-dione) and Metenolone M (1-methylene-5-a-androstan-3a-ol-17-one) which*

are categorised under ***Class S1 Anabolic Agents*** on the ***World Anti-Doping Code 2019 Prohibited List International Standard***. The "A" sample test results is therefore *prima facie* a contravention of Article 2.1 of the Anti-Doping Rules.

21. Mr. Odele alluded to the possible contamination of his "A" Sample during the chain of custody, without providing any evidence.
22. In terms of Article 3.2.2 "WADA accredited laboratories, and other laboratories approved by WADA, are presumed to have conducted Sample analysis and custodial procedures in accordance with the International Standard for Laboratories. The Athlete may rebut this presumption by establishing that a departure from the International Standard for Laboratories occurred, which could reasonably have caused the Adverse Analytical Finding." Mr. Odele did not rebut this presumption. In **CAS 2016/A/4700 WADA v Lyudmila Vladimirova Fedoriva** the Panel stated that "...the sole Arbitrator must start out from the clear assumption that the Doping Control Officer in charge had no personal interest to fabricate or consort any facts, or to bring false evidence to substantiate such a claim. The Athlete did not present any evidence to substantiate such a claim of impartiality, bias or corruptness on the part of the DCO."
23. SAIDS also informed Mr. Odele of his right to have his "B" Sample tested. He did not exercise this right, ostensibly because he could not afford it. He is thus deemed to have committed an Anti-Doping Rules Violation under the SAIDS Anti-Doping Rules.

#### **D THE VERDICT**

24. The Doping Hearing Panel has determined that Mr. Odele is guilty of violating Article 2.1 of the 2016 Anti-Doping Rule of the South African Institute for Drug-Free Sport (SAIDS) as set out in the charge sheet dated 7th June 2019.

#### **E THE SANCTION**

25. Article 10.2 of the Rules is headed "***Ineligibility for Presence, Use or Attempted Use, or Possession of a Prohibited Substance and Prohibited Method***"

Article 10.2.1 provides that the period of *Ineligibility* shall be four (4) 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.

- 10.2.1.2 The anti-doping rule violation involves a Specified Substance and SAIDS can establish that the anti-doping rule violation was intentional.
- 10.2.2 If Article 10.2.1 does not apply, the period of *Ineligibility* shall be two (2) years.
- 10.2.3 ... 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.
26. The substances identified in his sample was *Metenolone and its metabolites, Metenolone LTM (1a-Methyl-5a-androst-1-en-16a-ol-3,17-dione)* and are non specified substances for purposes of the Anti-Doping Rules in terms of Article 4.2.2.
27. According to Article 10.2.1.1 above, the period of ineligibility shall be four years where an ADRV does not involve a Specified Substance, unless the Athlete can establish that the ADRV was not intentional.  
Thus,
- (i) The Athlete must prove that he did not engage in conduct that he knew constituted an ADRV; or
- (ii) Prove he did not engage in conduct for which he knew that there was a significant risk that it might constitute or result in an ADRV and manifestly disregarded that risk; and
- (iii) The Athlete must establish the origin of the prohibited substance.
28. A mere denial of committing an ADRV, as *in casu*, does not suffice.  
(IWF vs Gibbs, CAS 2010/A/2230)
29. The Athlete also did not establish the origin of the Prohibited Substance, but merely alluded to the fact that it could be from a leaf used for massaging approximately 8 months before testing positive or maybe his sample was contaminated by the DCO. In CAS 2014/A/3820 WADA v Damar Robinson & JADCO THE Panel stated that "*In order to establish the origin of a Prohibited Substance by the required balance of probability, an athlete must provide actual evidence as opposed to mere speculation.*"
30. The Athlete did not meet this criteria and the panel is not convince that his conduct was not intentional.
- F REDUCTION OF THE PERIOD OF INELIGIBILITY: CONSIDERATIONS IN MITIGATION**
31. Article 10.5.2 is headed "*Application of No Significant Fault or Negligence beyond the Application of Article 10.5.1*"

“If an *Athlete* or other *Person* establishes in an individual case where Article 10.5.1 is not applicable, that he or she bears *No Significant Fault or Negligence*, then, subject to further reduction or elimination as provided in Article 10.6, the otherwise applicable period of *Ineligibility* may be reduced based on the *Athlete* or other *Person’s* degree of *Fault*, but the reduced period of *Ineligibility* may not be less than one (1)-half of the period of *Ineligibility* otherwise applicable. If the otherwise applicable period of *Ineligibility* is a lifetime, the reduced period under this Article may be no less than eight (8) years.

32. Mr. Odele testified that he only used supplements that he purchased from his coach and accepted that it was not contaminated because the other athletes use the same supplements. He admitted that he did not know what the components of those supplements are and that he never had it tested.
33. As an international athlete, Mr. Odele conceded that he was aware of the dangers of ingesting contaminated supplements and that he was aware of SAIDS and WADA as he has been tested before. Unfortunately, he did not bother to check whether he may contravene SAIDS’ Anti-Doping Rules. His reliance on his coach to supply him with approved supplements does not render him faultless.
34. In order for the Tribunal to decide whether the Athlete’s Anti-Doping Rule Violation was not intentional, the Athlete needs to establish that he did not know what he ingested or administered (the source of the prohibited substance) and continued an ADRV or that he did not know that there was a significant risk that the conduct might constitute or result in an ADRV and that he did not manifestly disregard that risk; and the athlete must establish the origin of the prohibited substance.  
Mr. Odele does not identify the origin of the banned substance, but suggests that it could be from a herbal massage that he received during August / September 2018, about eight (8) months before the test and if not that then maybe his sample was contaminated by the Doping Control Officer who got his first Doping Control Form wet. However, he concedes that second Doping Control Form reflected all his information correctly and he appended his signature to it.  
Thus, the Athlete leaves the Tribunal to speculate as to what the origin of the banned substance was.
35. Mr. Odele tested positive for an exogenous anabolic steroid, which is considered a performance enhancer and is thus in contravention of the SAIDS Rules and has not established that strict liability should not be applied. He failed to convince the Panel on a balance of probabilities how he ingested the banned substance or what its origin is. He thus failed to exercise “the greatest vigilance” or “the utmost caution” [CAS 2006/A/1133 *WADA v Stauber & Swiss Olympic*]

## 36. AGGRAVATING FACTORS

The Panel is convinced that a sanction of four (4) years ineligibility is appropriate for the following reasons:

- 36.1 Mr. Odele did not show that he acted with a duty of care or exercised the “utmost caution” to ensure that he did ingest any substances that are on the Prohibited List;
- 36.2 Mr. Odele is an experienced International and Olympic Athlete and should display a greater degree of personal care.
- 36.3 Mr. Odele did not identify the source of the prohibited substance. He was tested in competition and failed to provide sufficient proof that he had no intention of enhancing his performance.

## G DECISION

- 37. After considering all the evidence that was put before us and the arguments that were presented, the Panel finds that Mr. Odele fell short of the high standards imposed on an athlete to exercise utmost caution to avoid an anti-doping rule violation.
- 37. The Doping Hearing Panel hereby declares Mr. Odele **ineligible for a period of four (4) years with effect from 20<sup>th</sup> May 2019 (date of AAF) until 19<sup>th</sup> May 2023.**
- 38. Mr. Odele also forfeits any results, points, medals and prizes obtained during the event held on 6 April 2019 in terms of Article 10.1 of the Rules.

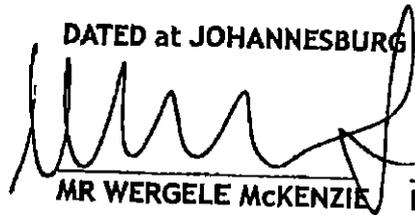
**Accordingly the Doping Hearing Panel’s Sanction is as follows:**

*“Having found Mr. Tega Odele, guilty of an Anti-Doping Rule violation in terms of Article 2.1 of the 2016 Anti-Doping Rule of the South African Institute for Drug-Free Sport (SAIDS) as particularised in the charge sheet served on Mr. Odele on 7 June 2019, Mr. Odele is hereby declared ineligible to participate in any competition or other activity as contemplated in Article 10.11.1 for a period of four (4) years with effect from 20<sup>th</sup> May 2019 i.e the date he was placed under provisional suspension.”*

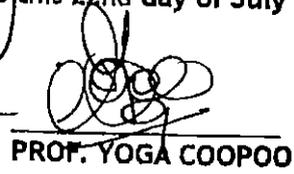
## RIGHT OF APPEAL

You are reminded of your Right to file an Appeal directly with CAS (Court of Arbitration for Sport) within 21 days of receipt of this Decision, in terms of Article 13.2.1 & Article 13.7.1 of the 2016 SAIDS Anti-Doping Rules.

DATED at JOHANNESBURG this 22nd day of July 2019.



MR WERGELE MCKENZIE



PROF. YOGA COOPOO



DR DIMAKATSO RAMAGOLE