



MALTA FOOTBALL ASSOCIATION

Patron H.E. Dr. George Vella, President of Malta

THE CONTROL AND DISCIPLINARY BOARD

Circular No. 11 - 2018-2019
Sitting No. 134 - 2018 - 2019

Date: April 29, 2019

Members Present:- Dr. Stephen Muscat, Mr. Franco Montesin, Dr. Karl Sammut, Mr. Mario Grima, Mr. Joe Fenech, Dr. Robert Dingli

Excused:- Mr. Antoine Dalli

Absent:- Dr. Dirk Urpani, Dr. Peter Paul Sammut

Prosecutor:- Dr. Adrian Camilleri, Dr. Nicolal Lubrano (Excused)

Charge against **Danny Kabeya (108731) (player of Qormi FC)** for having failed a doping test which occurred after the match between Mosta FC vs Qormi FC (Premier League) played on 15th of December 2018 where it results that you have tested positive for benzoylcognine (the urinary *main metabolite of Cocaine which belongs to Class S6a - Non-Specified Stimulants*) and this in breach of *inter alia* Article 2 and 10 of Wada Code 2015 and *inter alia* Article 4 and 6 of the MFA Doping Charter.

When the case was called there were present Dr. Kirill Micallef Stafrace in his capacity of Chairman of the Medical Committee within the Malta Football Association and Mr. Rodney Pisani in his capacity as Deputy General Secretary, head of the Competitions Department within the same Association.

The Board connected with Mr. Danny Kabeya (the 'Player') via *Skype*.

The Board heard the statement of Dr. Kirill Micallef Stafrace, explaining the import of the medical report issued by the Medical Committee with respect to the case in question.

The Board heard the Player in his defence.

Decision

The Board:

After having seen the charge brought against the Player;

After having seen the medical report dated 4th February, 2019 issued by the Medical Committee within the Malta Football Association;

After having seen all the documentation at the Board's disposal;

After having seen the relative sections of the WADA CODE 2015 and the Doping Charter of the Malta Football Association (hereinafter referred to as the 'Doping Charter'), applicable at time of the offence;

Considers the following:

Article 2.1 of the Wada Code 2015 states that:

*"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**".*

Article 2.1.2 of the Wada Code 2015 states that:

"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...."

Therefore once the Player has been found positive for benzoylecognine (*main metabolite of Cocaine*) duly found in the WADA PROHIBITED LIST as a **non-specified substance** the Player shall be considered to be in violation of article 2.1 of the Wada Code and **it is not necessary that intent, fault or negligence, or knowing use on the Athlete's part be demonstrated to prove such violation.**

Therefore the Board does not have any option other than finding the Player guilty of violating article 2.1 of the Wada Code.

With regards to the penalty to be inflicted:

The Player is not contesting the test *per se* and actually denies having assumed any cocaine or other prohibited substance that could justify the findings of the said test.

The Player fails to substantiate the afore-mentioned statement he provides to this Board and this Board is morally convinced that the Player actually assumed cocaine.

As to the intention to cheat or otherwise on the part of the Player, which may be a mitigating factor in the penalty that is inflicted when guilt is established, unfortunately for the Player, he took the line of defence to deny actually assuming any cocaine and did not offer any other explanation, falling short of stating that he did not intend to cheat or possibly that he assumed cocaine only socially, which the Board may have considered a good enough explanation that may have induced this Board to apply the scaling-down of the penalties contemplated by the Wada Code 2015.

In accordance with the Wada Code 2015, if a player intended to cheat, whatever the substance, the period of ineligibility is four (4) years. Otherwise, the period of ineligibility is two (2) years – unless the player can show that he had had no significant fault or negligence, in which case ineligibility may be reduced by up to a maximum of one year (that is, to a minimum ineligibility of one year).

It has been established that the substance is of **a non-specified nature**. The fact that the substance in question is not a specified substance in the WADA list excludes *a priori* the scaling down of the penalty under the Doping Charter (*vide article 6.1.2 which specifically refers to 'specified substances'*), which may otherwise have been applicable in terms of the *lex mitior* principle contemplated under article 25.2 of the WADA Code.

Therefore:

After having seen articles 2 and 10 of the WADA Code and the relevant articles from the Doping Charter, the Board finds the Player guilty of a doping offence under the same article

2 of the WADA Code in terms of the charge brought against him and condemns him to a period of ineligibility of four (4) years from all football activities.

Any temporary suspensions served by the Player with regard to the above shall be deducted from the said suspension and therefore the period of ineligibility shall commence to run from the **14th January, 2019** up to and including the **13th January, 2023**.

1. Charge against **Qormi FC** due to Danny Kabeya (108731) (Player of Qormi FC) having failed a doping test which occurred after the match between Mosta FC vs Qormi FC (Premier League) played on 15th of December 2018 where it results that he has tested positive for benzoylecognine (the urinary *main metabolite of Cocaine which belongs to Class S6a - Non-Specified Stimulants*) and this in breach of *article 6 (1.4)* of the MFA Doping Charter;

The Board:

After having seen the charge brought against Qormi FC “the Club” as a consequence of the positive doping result of Mr. Danny Kabeya (Player of Qormi FC);

After having seen the medical report dated 4th February, 2019;

After having seen all the documentation at the Board’s disposal;

After having seen the relative sections of the WADA CODE 2015 applicable at time of the offence;

Considers the following:

The Board makes reference to the decision given by the same Board in relation to Mr. Danny Kabeya.

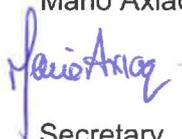
The Board firmly believes that the Club was not in any way involved or cognisant of the facts which resulted in the said decision;

Therefore:

The Club is being acquitted from all charges brought against it as the Board firmly believes that it was not in any way involved or cognisant of the facts which resulted here above.

However, the Club is being fined fifteen Euros (€15) for failing to attend this sitting, despite the fact that they were duly informed.

Mario Axiaq



Secretary
Disciplinary and Control Board