

**IN THE APPEAL BOARD OF THE SOUTH AFRICAN INSTITUTE FOR DRUG  
FREE SPORT**

CASE NO.: **SAIDS/2018/36/A05**

In the matter between:

**MAMOROLLA TJOKA**

APPELLANT

and

**THE SOUTH AFRICAN INSTITUTE FOR DRUG-  
FREE SPORT**

RESPONDENT

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**DECISION OF THE APPEAL COMMITTEE**

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Chairperson: Ms Thabiso Kutumela

Appeal Board Members: Adv Derick Block

Adv Diederick Jankowitz

Counsel for the Appellant: Adv M E Teele KC

Prosecutor for SAIDS: Mr Shane Wafer

Date of Appeal: 28 June 2023

Appeal took place at: by agreement between the parties, the Appeal was conducted Virtually via a web based video conferencing platform.

## **INTRODUCTION**

1. An appeal has been brought to this Appeal Committee in terms of Article 13 of the SAIDS Anti-Doping Rules. This is an appeal against the findings of a three-member panel of the South African Institute for Drug Free Sport.
2. The Appellant / Athlete is Ms Mamorallo Tjoka, a Lesotho National who competes within the territory of the Republic of South Africa, on occasion, under the auspices of Athletics South Africa.
3. The Respondent is the South African Institute for Drug-Free Sport (“**SAIDS**”,) established in terms of the South African Institute for Drug-Free Sport Act no.14 of 1997, as amended, as the independent National Anti-Doping Organisation for South Africa.

## **JURISDICTION**

4. The Appeal Committee (“**Committee**”) is established in terms of Article 13 of the SAIDS Anti-Doping Rules.
5. All members of the Committee have confirmed that there are no circumstances likely to affect their impartiality with respect to any of the parties.
6. SAIDS was established by Parliament as a statutory body through the South African Institute for Drug-Free Sport Act.14 of 1997 as amended in 2006 as the independent National Anti-Doping Organization for South Africa.
7. SAIDS is a signatory to the World Anti-Doping Agency (WADA) and is required to adopt policies, procedures and legal action that are in line with WADA and the World Anti-Doping Code.
8. SAIDS has the necessary authority and responsibility for planning, coordinating, implementing, monitoring and advocating improvements in Drug Testing in Sport. It aims to promote the participation in sport free from the use of prohibited substances or methods intended to artificially enhance

performance, thereby rendering impermissible doping practices which are contrary to the principles of fair play and medical ethics, in the interest of the health and well-being of sport persons.

9. The issue of Jurisdiction was decided at the hearing of 30 July 2022 and a ruling was delivered on 17 November 2022 wherein the appeal committee found *“that [SAIDS] had the requisite jurisdiction [to] conduct the out-of-competition testing within the six-month period preceding the National Event in question and to conduct results management, in the manner it did in casu”*.
10. The SAIDS Appeal Board has the jurisdiction to hear this matter.

### **FACTUAL BACKGROUND**

11. On 7 October 2018 the Respondent requested the Appellant to submit “A” and “B” urine samples during an out-of-competition test for testing in accordance with the 2016 SAIDS Anti-Doping Rules and the WADA Code.
12. The Doping Control Officer who was authorised to test the Appellant, reports that the Appellant evaded, refused and/or failed to submit to sample collection.
13. The Appellant was charged on 12 June 2019 with:
  - a. An Anti-Doping Rule violation in terms of Article 2.3 of the 2015 SAIDS Anti-Doping Rules, for evading, refusing or failing to submit to sample collection after receiving notification as authorised in the SAIDS Anti-Doping Rules, or other anti-doping rules, and
  - b. In terms of Article 2.5 of the Rules, tampering or attempted tampering with any part of Drug Control by means of subverting the Doping Control process, (but which would not otherwise be included in the definition of Prohibited Methods), but includes without limitation, intentionally interfering or attempting to interfere with a Doping Control official, providing fraudulent information to an Anti-Doping organisation or intimidating or attempting to intimidate a potential witness.

14. The hearing of first instance took place on 03 July 2019 and 01 August 2019. The Independent Doping Hearing Panel (“**the Panel**”) found the Appellant guilty of contravening the SAIDS Anti-Doping Rules 2.3 and 2.5. The Panel noted that this was the Appellant’s second ADRV offence committed within a ten year period.
15. Furthermore, the Panel declared the Appellant ineligible from participating in any organised sport wherever she may be, whether in South Africa, Lesotho or elsewhere in the world, for a period of eight years, commencing retrospectively from the date of the commission of her offences, namely 7 October 2018.

### **GROUND OFS OF APPEAL AND THE APPELLANT’S CASE**

The Appellant’s grounds of appeal are set out below:

#### Jurisdiction

16. The Appellant argued that the hearing of first instance should have been held in Lesotho and not in South Africa.

#### Participation of the Appellant

17. In the initial hearing there was no participation by the Appellant. The Appellant argued that she should have been made aware that she could have participated in the proceedings virtually (by telephone or otherwise).
18. The Appellant further submitted that this Committee should consider allowing the Appellant to place her version to the Committee. Furthermore the Appellant’s representatives requested to cross-examine some of the witnesses for the prosecution.

## **SUMMARY OF RESPONDENTS' CASE**

19. On the ground of jurisdiction the Respondent stated that this matter has been ruled upon by way of a written decision from the hearing that took place on 30 July 2022. The Respondent further states that SAIDS had out of competition jurisdiction to test the Appellant, and to hear the matter at the hearing of first instance.
20. With regard to the second ground which is that the Appellant was not present at the hearing of first instance, the Respondent took the Committee through the bundle of documents purporting to indicate that the Appellant voluntarily elected not to be present at the hearing.
21. The Respondent also requested that this Committee award costs against the Appellant for wasting SAIDS time and resources.

## **THE COMMITTEE'S FINDINGS**

### Jurisdiction

22. The Committee found that there was no basis to interfere with the decision of 17 November 2022 and therefore that ruling stands.

### Participation of the Appellant

23. On 2 July 2019 the Appellant wrote to Ms Wafeekah Begg (Legal Manager: SAIDS) and stated the following:

*“Dear Ms Wafeekah Begg*

*Kindly take note that I am instructed by my counsel that I should not go to the hearing due to the interim court order. ...”*

24. There is a distinction with an appellant stating that they cannot appear for logistical reasons vis-à-vis an appellant not appearing because they refuse to submit to the jurisdiction of SAIDS.
25. Nowhere does the Appellant say that she has a difficulty in appearing because of logistical issues or any other issue. On the contrary, the Appellant relies on legal advice to say that she does not submit to the jurisdiction of SAIDS.
26. The Committee finds that the Appellant voluntarily elected not to be present at the hearing of first instance on instruction of her own counsel. She had an opportunity to request that the matter be heard virtually and she failed to make that request.
27. The Appellant requested this Committee to allow her to put her version on the record and to allow her legal representative to cross-examine some of the witnesses for the prosecution. Effectively what the Appellant is trying to do is to lead new evidence that was not placed before the hearing of first instance.
28. The Committee has a discretion to allow the leading of new evidence. However, in order to present new evidence before the Appeal, the Appellant has to show good cause and indicate why new evidence has to be heard and why it was not presented at the hearing of first instance.
29. The Appellant has not shown good cause, to the contrary, the facts before the Committee indicate that evidence was not led at the hearing of first instance on account of the Appellant's election not to appear before the Panel.
30. Furthermore, this Committee has to take into account the lapse of time since the hearing of first instance. It is trite that with the lapse of time memories fade and the quality of evidence becomes affected and as such it is not in the interest of justice to reopen the case and recall SAIDS witnesses.

**ORDER**

31. The Appeal is dismissed.
32. The period of ineligibility shall be 8 (eight) years commencing from 7 October 2018 and the decision of the Panel is upheld.
33. Each party to pay its own costs with regard to this Appeal.

**DATED at JOHANNESBURG on this the 18<sup>th</sup> day of JULY 2023.**

*Kutumela*

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**MS THABISO KUTUMELA (CHAIRPERSON)**