

**BEFORE THE INDEPENDENT DOPING HEARING PANEL OF THE SOUTH  
AFRICAN INSTITUTE FOR DRUG FREE SPORT**

**In the matter between:**

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

**AND**

**THE ATHLETE**

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**AWARD**

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**INTRODUCTION**

- 1 The South African Institute for Drug-Free Sport (“SAIDS”) was established as a statutory body under the South African Institute for Drug-Free Sport Act, Act 14 of 1997, with the objective of acting as the National Anti-Doping Organisation (“NADO”) for South Africa. In accordance with Article 20.5.1 of the World Anti-Doping Code (“WADC”), SAIDS has the necessary authority and responsibility to be independent in its operational decisions and activities from both sporting entities and governmental bodies.
- 2 The minor athlete (the “Athlete”), who was legally represented throughout these proceedings accepted the authority of SAIDS, the appointment of this

Panel, and the binding nature of the SAIDS Anti-Doping Rules (“ADR”) currently in force.

### **THE UNCONTENTIOUS ISSUES**

- 3 The Athlete competed in a judo competition on 26 June 2022, where he underwent a doping test. On 2 September 2022, the Athlete was notified of an Adverse Analytical Finding (“AAF”) in respect of the Prohibited Substance Prednisone and its Metabolite, Prednisolone<sup>2</sup> detected in the Athlete’s A Sample. Prednisone and its Metabolite, Prednisolone<sup>2</sup> is a Glucocorticoid listed under Category S9 of the 2022 WADC Prohibited List. It is a non-threshold Specified Substance which is prohibited In-Competition.
- 4 Following the notification of the AAF, the Athlete was invited to accept a Voluntary Provisional Suspension in terms of Article 7.4.4 of the ADR, which the Athlete did not agree to.
- 5 Having admitted the presence of a banned substance, the Athlete elected not to have his B-Sample tested.
- 6 On 5 October 2022, the Athlete was charged with a violation of Articles 2.1 and 2.2 of the ADR and thereafter this Panel was convened. At the first hearing, on 12 April 2023, the Athlete sought and was granted a postponement. The matter reconvened on 2 May 2023.
- 7 From the outset the Athlete accepted the correctness of the AAF, and as the evidence disclosed, he admits taking the Prednisone in the form of tablets

minutes before competing in a judo competition. He explained that his legs were itchy and asked his mother for help. She was the one who gave him the tablets. This was corroborated by his mother, who will also remain nameless to protect the identity of the minor Athlete.

- 8 On the admitted facts we find that SAIDS has established an Anti-Doping Rule Violation (“ADRV”) and, in terms of ADR 10.2 read with ADR 10.2.2 we must, dependant on factors discussed below, impose a two-year period of Ineligibility.

#### **ISSUES IN DISPUTE**

- 9 The first issue we are asked to decide is the Athlete’s contention for a reduction of the two-year period by relying on ADR 10.6 (no Significant Fault or Negligence). SAIDS suggest a period of 6 months.
- 10 The second issue concerns a consequence of the ADRV dealing with disqualification. Here the Athlete is seeking the result of a team rowing competition to remain untouched by the ADRV. SAIDS have contended that once the ADRV is established, the results of a disqualification must follow.

#### **FIRST ISSUE: NO SIGNIFICANT FAULT OR NEGLIGENCE**

- 11 As SAIDS has established the ADRV, it is for the Athlete to comfortably satisfy the requirements dealt with below to be granted a lesser period of sanction.

- 12 Dependant on the facts, the 2-year period of Ineligibility could be reduced under ADR 10.5 (no fault or negligence), ADR 10.6 (No Significant Fault or Negligence) or ADR 10.7 (substantial assistance and other matters).
- 13 In our view ADR 10.5 is of no relevance because the conduct of the Athlete is riddled with fault and negligence, and for obvious reasons ADR 10.7 is of no relevance.
- 14 That leaves ADR 10.6 as a potential means of reducing the period of Ineligibility if the Athlete can establish No Significant Fault or Negligence. This is a cornerstone of the strict liability principal we are obliged to apply.
- 15 To benefit from the provisions of ADR 10.6 the Athlete must establish his protected status (ADR 10.6.1.3) and the absence of Significant Fault or Negligence (ADR 10.6.1.1). Having established his protected status as a minor, all that is left for us to consider is the question of No Significant Fault or Negligence.
- 16 In determining the fault to be attributed to the Athlete, we are guided by the Marin Cilic and Robert Lea cases<sup>1</sup> on the degrees of fault relative to the period of Ineligibility:

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<sup>1</sup> Marin Cilic v. International Tennis Federation (ITF), CAS 2013/A/3335, CAS 2013/A/3335 International Tennis Federation and Robert Lea v. United States Anti-Doping Agency (USADA) CAS 2016/A/4371

- 16.1 considerable degree of or considerable fault, with a sanction range from 16 to 24 months, and a “standard” significant fault leading to a suspension of 20 months;
  - 16.2 moderate degree of fault, with a sanction range from 8 to 16 months, and a “standard” normal degree of fault leading to a suspension of 12 months; and
  - 16.3 light degree of fault, with a sanction range from 0 to 8 months, and a “standard” light degree of fault leading to a suspension of 4 months.
- 17 These degrees of fault are determined by considering firstly, the relevant objective factors describing what standard of care could have been expected from a reasonable person in the Athlete’s situation. The subjective elements, the second stage, consider what could have been expected from this Athlete.
- 18 The wording of ADR 10.6.3 emphasises that the presence of fault is not in issue because it has already been established. It is a case of determining the degree of fault and this in turn is achieved by investigating the peculiar facts of each case.
- 19 More emphasis is placed on the objective elements to determine which level of fault an athlete should be placed in (considerable, moderate, or light). Thereafter the subjective elements are a guide to move the athlete up or down a particular level.

- 20 However, this approach is not cast in stone, and this is one of those cases where the distinction between objective and subjective issues must be approached in a less rigid way.
- 21 The objective facts disclose a thoughtless disregard for anti-doping procedures which exist for many obvious reasons. The facts also disclose that there was a total disregard for what the Athlete ingested. It is nothing but luck that resulted in the Athlete ingesting a specified substance that had almost no performance enhancing effect. But for this luck, the Athlete would be facing the maximum sanction.
- 22 This case is unique because its objective facts suggest that the Athlete's degree of fault is considerable. In other words, according to Cilic we should place the Athlete's period of Ineligibility within the parameters of considerable fault (16 to 24 months), and then use the subjective facts to move that period up or down. However, we are of the view that even the minimum period of 16 months would be too harsh.
- 23 What is to be considered as examples of reasonable conduct to be expected from an Athlete is found in Cilic, which supplies the following examples:
- 23.1 reading the label of the product used (or otherwise ascertain the ingredients);
- 23.2 cross-check all the ingredients on the label with the list of prohibited substances;

- 23.3 make an internet search of the product;
  - 23.4 make use of medication check tools;
  - 23.5 ensure the product is reliably sourced;
  - 23.6 consult appropriate experts in these matters and diligently instruct them before consuming the product.
- 24 The Athlete's decision to take the Prednisone was a rushed one shortly before competing in the judo competition. The Athlete was experiencing itchiness and a rash on his legs. His mother, who was with him, had Prednisone tablets with her which were prescribed for her son a long time ago and gave them to him seconds before the competition started.
- 25 Most of the Cilic examples do not strictly apply to the Athlete's case, but this is not a closed list. Although there was some evidence that the mother googled information about the tablets, we find that, on her own version she could not have spent sufficient time to responsibly form an educated view on this issue and viewed on its own does not contribute to any objective factor justifying a reduction in the 2-year period. Additionally, what renders the evidence from the mother unconvincing was her statement that after a time she remembered that the Prednisone was a banned substance.
- 26 The Athlete is duty bound to have paid more attention. There is by now a plethora of case law supporting the contention that athletes cannot rely on the conduct of others (be it coaches or parents) to justify their conduct.

- 27 The Athlete took the tablets from his mother and ingested them. Should this fact, objectively speaking, that an Athlete trusted his parent, permit a reduction of the 2-year period? We think not. The Athlete could have taken the far more reasonable and obvious decision not to compete. When questioned about this, the Athlete and his mother had no reasonable explanation.
- 28 In our view, the approach of SAIDS to concede that the Athlete's fault falls within a light level of fault is exceedingly generous which we cannot agree with.
- 29 We doubt that SAIDS would have been so generous after the fullness of time and considering the mother's evidence that she knew the tablets she gave the Athlete were banned but did not think of it at the time. In the same breath the mother's evidence was that these tablets were in her "kit" for a long time.
- 30 It is difficult to conjure a more negligent act than that. It might seem attractive to argue that this is not the Athlete's fault or negligence. That would be wrong because it is now well known that Athlete's cannot rely on this line of argument.
- 31 Emotions aside (this was an emotional matter), the Athlete's conduct, from an objective point of view, can only be described as so remarkably irresponsible, that one cannot ignore the significance of his fault and negligence.



32 On the facts, the only objective evidence available to us when deciding which level of fault to start with (high, moderate, or light) is as already stated, that Prednisone has zero performance enhancing attributes as ingested by the Athlete.

33 For this reason, we bring the level of fault down from the maximum period of Ineligibility of 2 years to a moderate degree of fault, with a sanction range from 8 to 16 months.

34 We will now consider the subjective elements to determine the period of Ineligibility between the range of 8 to 16 months.

35 Again, Cilic provides helpful examples to consider:

35.1 an athlete's youth and/or inexperience;

35.2 language or environmental problems encountered by the athlete;

35.3 the extent of anti-doping education received by the athlete (or the extent of anti-doping education which was reasonably accessible by the athlete); and

35.4 any other "personal impairments" such as those suffered by:

35.4.1 an athlete who has taken a certain product over a long period of time without incident;

35.4.2 an athlete who has previously checked the product's ingredients;

35.4.3 an athlete who is suffering from a high degree of stress;

35.4.4 an athlete whose level of awareness has been reduced by a careless but understandable mistake.

36 The Athlete is a phenomenal young man. He is in his final year of school and taking extra courses in applied maths. His aim is to go into a career in actuarial science. He was well spoken, forth right and mature beyond his years. He is also a gifted athlete who attended the Junior Commonwealth Games. Whilst his anti-doping education was lacking, it is not insignificant.

37 Despite the maturity displayed by the Athlete we will accept that his youth and inexperience allow for a credit to be applied to the period of Ineligibility.

38 The last example tendered by Cilic (careless understandable mistake) could describe the situation the Athlete found himself in. In other words:

38.1 Was the Athlete's level of awareness reduced? We will accept that in the heat of the moment this was the case. Our primary reason for this is the candour displayed by the Athlete on this point.

38.2 Was the mistake (ingesting the tablets) careless? We are unable to find otherwise.

- 38.3 Was this careless mistake understandable? This must not be confused with sympathy. We are mindful that the maternal relationship between the Athlete and his mother could be used to explain the mistake into something that resembles an explanation. That is not correct, because that maternal relationship should have resulted in the Athlete not competing and being taken to a doctor.
- 39 However, after considering the evidence of the Athlete and his mother, we are prepared to accept that the mistake was, at least to some extent understandable
- 40 After considering the evidence we find the period of Ineligibility of 12 months to be generous but also appropriate.

## **SECOND ISSUE: DISQUALIFICATION**

- 41 The Athlete accepts, as he must, that the result he obtained in the judo competition leads to an automatic disqualification. Under ADR 9:

*“An anti-doping rule violation in Individual Sports in connection with an In-Competition test automatically leads to Disqualification of the result obtained in that Competition with all resulting Consequences, including forfeiture of any medals, points and prizes.”*

- 42 There is a footnote to ADR 9 which states:

*“For Team Sports, any awards received by individual players will be Disqualified. However, Disqualification of the team will be as provided in Article 11. In sports which are not Team Sports but where awards are given to teams, Disqualification or other disciplinary action against the team when one or more team members have committed an anti-doping rule violation shall be as provided in the applicable rules of the International Federation.”*

43 Moving to events in December of 2022, the Athlete contends that the result he achieved in a rowing competition should remain untouched by the ADRV.

44 Relevant to this argument is, ADR 10.10, which reads:

*“In addition to the automatic Disqualification of the results in the Competition which produced the positive Sample under Article 9, **all other competitive results of the Athlete** obtained from the date a positive Sample was collected (whether In-Competition or Out-of-Competition), or other anti-doping rule violation occurred, through the commencement of any Provisional Suspension or Ineligibility period, shall, unless fairness requires otherwise, be Disqualified with all of the resulting Consequences including forfeiture of any medals, points and prizes”. (Our emphasis)*

45 After the date of the doping test on 26 June 2022 and after being notified of the AFF and after receiving the notice of charge the Athlete competed in the Standard Bank National Boat Race sanctioned by Rowing South Africa on 9 and 10 December 2022. The Athlete’s team was placed third. In the context of the evidence, one gets the impression that this was a significant

achievement that the Athlete wanted to protect from the consequences of the ADRV.

46 Our understanding of the evidence is that during the period October 2022 to March 2023 the Athlete participated in multiple rowing competitions.

47 As the ADRV is established our mandate is to apply ADR 9, ADR 10.6.3 and 10.10. We have no authority to go beyond ADR 10.10, and SAIDS have not sought any sanction beyond this.

48 The fact that the Athlete's disqualification under ADR 10.10 may result in a team disqualification is irrelevant. SAIDS will make this award and sanction available to Rowing South Africa who will then apply their own rules and make up their own minds on what to do.

### **FAIRNESS**

49 Should fairness come to the assistance of the Athlete so that "*all other competitive results*" of the Athlete are not disqualified?

50 A good starting point in answering this question is to consider the evidence offered by the Athlete on this point. Clearly, he is remorseful, and significantly, stated that had he known about the potential of the disqualification of other events he would not have participated. Yet he elected to remain ignorant of the whole affair and not only compete in individual rowing events, but also in team rowing events.

51 The Athlete's mother testified that in permitting her son to compete in the rowing events she relied upon the discussions and emails she had had with individuals from SAIDS. According to her SAIDS had no objection to the Athlete competing in the rowing events. Whilst the emails from SAIDS are not an example of clarity, there is nothing to suggest that SAIDS would not object or even condone the Athlete's participation in the rowing events.

52 The high mark of the emails relied upon in support of the argument that the Athlete would not suffer from disqualifications were sent in September 2022:

*"Hi Wafeekah*

*I'm not sure, my option were only except suspension or test B sample. [the Athlete's] B sample will show exactly the same result. Please is there someone I can speak to about this. I'm mother alone in this case, and I don't want my son to get suspended from all sports in his last year of school ! Could you indicate when we will have a conclusion or decision on his verdict? Could he continue practicing in sports while waiting verdict and not participate in competition, or does suspension mean no practice?"*

53 In response thereto we were referred to the following:

*"He can continue in sports if he likes until the final decision is reached but if a sanction is rendered, the sanction will start from date of the decision and not from date from when you accepted the voluntary provisional suspension..."* and

*“... But if you choose not to put him on provisional suspension then he can play school sport until this case is decided.”*

54 Admittedly this correspondence presents some confusion, but by no means supports the Athlete’s case. In any event it is not in dispute that the Athlete and his mother knew of the Notice of Charge sent after these emails. Paragraphs 3.1 and 3.2 of the Notice of Charge does way with any confusion:

*“3.1 Pursuant to Article 7.4.2 of the SAIDS ADR, you are not provisionally suspended pending the resolution of the case and may continue to participate in Competitions, Events and other activities organized, convened, authorised, or recognized by other World Anti-Doping Code Signatories.*

*3.2 However, pursuant to Article 10.10 of the SAIDS ADR, any competitive results obtained from the date of your AAF through the commencement of any Provisional Suspension or period of Ineligibility will be Disqualified, unless fairness requires otherwise.”*

55 When confronted by such obvious references, the mother had no answer that can assist the Athlete. Our opinion on this score is that the Athlete and his mother knew or at the very least ought to have known that there was a risk of disqualification, but continued regardless and did not, at all, consider what would be fair in the circumstances. For example, if fairness was seriously considered, the Athlete, his mother and the school would have candidly discussed the unfortunate situation the Athlete had placed himself in. This could have resulted in a candid discussion with South African Rowing

or the other competitors. In the absence of this, it is difficult to ignore the irony of the Athlete's attempt to rely on fairness after admitting to a doping violation.

56 There were other examples in the correspondence that illustrate the absence of confusion. Additionally, the evidence disclosed that at least from 25 October 2022, (the Boat Race was in December 2022), the Athlete's mother had employed attorneys because she was, understandably, struggling to comprehend what was going on. Yet nowhere in the correspondence made available is this issue canvassed. At the very least the Notice of Charge should have alerted the lawyers that there was in fact no agreement permitting the Athlete to compete without the risk of disqualification. These are not facts supportive of applying fairness to assist the Athlete.

57 It is also difficult to understand how the solitary fact of perceived confusion between SAIDS and the Athlete's mother can result in a finding that fairness should be applied to assist the Athlete. We do however consider the evidence from Andrew Grant who is the director of rowing at the Athlete's school to be relevant for the following reasons:

57.1 The concept of a "director of rowing" implies an elevated level of competition and of substantial significance to the school and by implication to the Athlete. This director explained to us the importance of rowing at the school and that there is a reputation to uphold.



- 57.2 In an unbelievable twist of events, we learnt from the director of rowing that he knew of the Athlete's AAF, the school is well versed in anti-doping education, but nonetheless permitted the Athlete to compete.
- 58 We will accept the evidence from the Athlete, his mother, and the director of rowing that the rowing culture of the school as instilled in the Athlete is of immense importance that culminates each year with the race the Athlete participated in.
- 59 That being the case, one would have expected far more diligence from all the role players. Here, we re-emphasise the Athlete's choice to remain ignorant and the school's nonchalant attitude to an anti-doping matter. We also refer to footnote 60 of Article 10.10 which permits clean Athletes or other persons to pursue whatever right they have against the Athlete resultant from his ADRV. To our mind this applies to the Athlete's team members who may suffer a team disqualification and for whatever reason accrue a claim against the Athlete.
- 60 SAIDS referred us to several decisions regarding other athletes attempting to utilise fairness to avoid disqualification. None of these cases assist us on the fact pattern presented by the Athlete. However, this body of case law makes it abundantly clear that to apply the concept of fairness to avoid

disqualification is very rare.<sup>2</sup> We do not think any tendered evidence can persuade us to apply the concept of fairness to aid the Athlete because to do so would be the opposite of what is considered fair play.

Accordingly, the Athlete is sanctioned as follows:

### **INELIGIBILITY**

- 1 The Athlete is guilty of an Anti-Doping Rule Violation (“ADRV”) for violations of Articles 2.1 and 2.2 of the South African Institute for Drug-Free Sport Rules (“ADR”).
- 2 The Athlete’s period of Ineligibility from participating in sports is 12 months which is to commence from the date of this award being 14 June 2023.

### **DISQUALIFICATION**

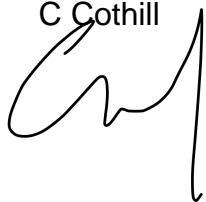
- 3 In terms of Article 9 of the ADR, the Athlete is disqualified from the judo competition he competed in on 26 June 2022, with all resulting Consequences, including forfeiture of any medals, points, and prizes.

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<sup>2</sup> CAS 2020/O/6759 World Athletics v. Russian Athletic Federation & Natalya Antyukh; CAS 2021/A/7840 40 WADA v. ICF Aleksandra Dupikv; CAS 2019/A/6161 Lyukman Adamsv. IAAF; CAS 2017/O/5039 International Association of Athletics Federation (IAAF) v. Russian Athletic Federation (RUSAF) and Anna Pyatykh; CAS 2017/O/4980 International Association of Athletics Federations (IAAF) v. Russian Athletic Federation (RUSAF) and Svetlana Vasilyeva

- 4 In terms of Article 10.10 of the ADR, all other competitive results of the Athlete obtained from 26 June 2022 (whether In-Competition or Out-of-Competition) to the date of this award (14 June 2023) are disqualified with all the resulting Consequences including forfeiture of any medals, points, and prizes.

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