

HEARING BEFORE THE ANTI-DOPING PANEL OF THE SOUTH AFRICAN INSTITUTE FOR DRUG-FREE SPORT (Instituted in terms of section 17(2) (a) of Act No. 14 of 1977, as amended by Act No. 25 of 2006)

HELD BY MEANS OF A VIRTUAL ZOOM MEETING ON FRIDAY 9 JUNE 2023 AT 17H30

THE SOUTH AFRICAN INSTITUTE FOR

DRUG-FREE SPORT CASE REF. TBD

Applicant

and

ATHLETE: RAMOLEFI PAUL MOTSIELOA

Respondent

THE FINDINGS OF THE SOUTH AFRICAN INSTITUTE FOR DRUG-FREE SPORTS' DISCIPLINARY TRIBUNAL:- RE ALLEGATION OF AN ANTI-DOPING RULE VIOLATION ARTICLE 2.5 OF ADR - "TAMPERING OR ATTEMPTED TAMPERING WITH ANY PART OF DOPING CONTROL BY AN ATHLETE OR OTHER PERSON"

The panel consisted of the following duly appointed Members and other persons present:

Mr Raymond Hack	-	Chairperson
Dr. Andy Branfield	-	Member
Ms Yoliswa Lumka	-	Member
Mr Shane Wafer	-	Acting Prosecutor on behalf of SAIDS
Ms Christina Skhosana	-	SAIDS
Mr Ramolefe Paul Motsieloa	-	The athlete
Mr Tsebo Mahlophe	-	Translator on behalf of Athlete

BACKGROUND TO PROCEEDINGS:

1. On 25 September 2022, SAIDS was authorised to conduct a test mission at the "2022 Elliot Madeira Marathon" (the Event) held in Mthatha, Eastern Cape, South Africa.
2. At the Event, Mr Paul Ramolefi Motsieloa (the Athlete) who recorded the name "Thabo Ntoko" on his Doping Control Form (DCF) was duly notified and participated in a urine sample collection session submitting a urine sample under sample number 180617V.
3. The said sample was sent to the South African Doping Control Laboratory (SADoCoL) a World Anti-Doping Agency (WADA) accredited laboratory in Bloemfontein, South Africa, where it was analysed in accordance with the International Standard for Laboratories (ISL).

For purposes of this matter, the result of the sample was as follows:

Subject: *FW: Report Doping –*

Website Form **Date:** 27 September 2022 at 17:20

To: *Elske Schabort* | SAIDS elske@saidso.org.za,

Mike Sales 27827769820@vodamail.co.za

FAHMY GALANT *General Manager* **email:** fahmy@saidso.org.za **tel:** +27 (0)

21 686 1634 | **cell:** +27 (0) 82 499 8756

Sport Affected: Running Doping

Location: Mthatha

The use of dexamethasone at Elliot Madeira Marathon 2022 event that took place on 25 September 2022. The athlete involved was Ramolefi Motsieloa, marathon 2nd position and he was tested after the event.

4. On 11 January 2023, following its investigation (detailed below) SAIDS notified the Athlete of an alleged ADRV for Tampering or Attempting to Tamper with any part of the Doping Control by an Athlete in terms of Article 2.5 of the SAIDS ADR.
5. SAIDS initially did not implement an optional Provisional Suspension, in accordance with Article 7.4.2 of the ADR. However, SAIDS invited the Athlete to accept a Voluntary Provisional Suspension (VPS).
6. On 3 February 2023 the Athlete provided a response to SAIDS stating that he disputed the potential ADRV and indicating that the photograph provided and reflecting his race number (number 169) was of him as well as the DCF being his, but he did not know how the name "Thabo Ntoko" that had been recorded therein.
7. On 27 February 2023, the Athlete was formally charged with a violation of Article 2.5 of the ADR. SAIDS at this stage exercised its discretion to implement an optional Provisional Suspension in accordance with Article 7.4.2 of the ADR.
8. On 4th March 2023 the Athlete provided SAIDS with a further submission indicating that he pleads "not guilty" to the charges levelled against him, stating that he was paid for the race and is therefore not sure how an Athlete having been paid can then be charged with contravening the ADR.
9. On 1 April 2023 the Athlete indicated to SAIDS that he wanted to convene a hearing in the matter and signed a Hearing Request Form (HRF).
10. On 14 April and pursuant to Article 8 of the ADR, the SAIDS Registrar appointed an Independent Doping Hearing Panel (IDHP) to hold a hearing on 9th June 2023.

11. On 19 May 2023, SAIDS provided the Athlete and the Independent Doping Hearing Panel (IDHP) with the hearing bundle of documents.

EVIDENCE PRESENTED BY SAIDS:

12. The Prosecutor then set out the submissions in regard to the charges

- 12.1 The SAIDS investigation process and explained:
- 12.2 The charges against the Athlete and the respective burdens of proof in the matter;
- 12.3 He indicated the ADRV and the evidence submitted to the fact that in his opinion SAIDS had discharged its burden of proving that an ADRV had occurred;
- 12.4 He argued that the Athlete's version as submitted in the papers was inaccurate;
- 12.5 He referred to the relevant authorities to determine the potential *Consequences*;
- 12.6 And addressed the fact that this was the Athlete's second ADV violation.

SAIDS'S EXPLANATION IN REGARD TO ITS INVESTIGATION

1. With due consideration of the tip-off received and after conducting an internal investigation, SAIDS was able to verify that it did test the Athlete finishing in 2nd place at the Event (with race number #169), however, the name "Thabo Ntoko" was listed in the Test Mission order for the Athlete in 2nd place instead of the name "Ramolefi Motsiello").
2. On the day of the Event, SAIDS *Doping Control Officer* ("**DCO**")

Sample Collection Personnel ("**SCP**") Mr. Mervin Meyer, was not able to verify the identity of the Athlete using documentary identification (ID or passport), as the Athlete did not have his passport or a form of physical identification. As a result, SAIDS SCP conducted a third party identification by way of the Athlete's asserted "manager" Mr. Tsitso Tsieame who identified the Athlete as "Thabo Ntoko".

3. He highlighted that the DCF reflected the name "Thabo Ntoko" was the name on the Personal Information Form ("**PIF**"). The SCP would confirm to SAIDS (as is also contained in his statement) that the Athlete who had completed DCF (#77406) was wearing race number #169, as evidenced by the photo of the Athlete. The SCP had also recorded the Athlete's race number #169 on the *Athlete* PIF during the test procedure.
4. Upon review of the photograph of the Athlete in the SAIDS bundle, the SCP is seen standing next to the runner wearing race number #169 with his clipboard marked "Merv" (for Mervin).
5. In its investigation, SAIDS was unable to locate an *Athlete* registered under the name "Thabo Ntoko". SAIDS therefore requested the Secretary General of the Federation of Athletics Lesotho ("**FAL**"), Mr. Makara Thibinyane, to confirm the identify of both "Ramolefi Motsieloa" and "Thabo Ntoko."

6. In response Mr. Thibinyane was able to provide a request for a permit from the ASA-sanctioned races from 24th August 2022-31st December 2022. On this list of *Athletes*, the name "Thabo Ntoko" was not present, however, the name "Ramolefi Motsieloa" was listed.

7. In order to confirm that the *Athlete* competing under race (#169) was in fact Ramolefi Motsieloa, and not Thabo Ntoko, SAIDS requested confirmation from Mr Nick Bester of Nedbank Athletics as well as via Lesotho Nedbank Athlete Manager, Mr Lifitso Mabua, together with Dr. Makhetha Mosotho, the Lesotho RADO Zone VI Member Country representative and Mr Makara Thibinyane from FAL, that the Athlete with race number 169 was in fact Ramolefi Motsieloa. All the abovementioned persons confirmed that the photo of the Athlete provided was in fact Mr Ramolfi Motsieloa.

8. SAIDS was therefore able to positively confirm that the 2nd place finisher in the Event wearing (race no.169) of the Event was in fact Ramolefi Motsieloa. Furthermore, the photo identification card provided by FAL of Mr Ramolefi Motsieloa which positively confirms the picture provided of the Athlete.

9. The Prosecutor then called and its only witness Mr Mervyn Meyer who confirmed the contents of his affidavit of 1 June 2023, and explained again the events of the day and what had transpired in regard to the Athlete and the steps taken by him to identify the Athlete.

THE PROSECUTOR'S SUBMISSION IN RESPECT OF THE CHARGES AGAINST THE ATHLETE

The Athlete is charged with a violation of Article 2.5 of the SAIDS ADR for *Tampering or Attempted Tampering* with any part of *Doping Control* by an *Athlete* or *Other Person*.

1. He stated that in his opinion the Athlete had offered no evidence whatsoever to support any defence to the charge, no less any persuasive proof to suggest he did not *Tamper* with any part of the Doping Control.
2. He contended that the Athlete in his correspondence had only offered bare denials of all charges and had presented no evidence to suggest that he is not Ramolefi Motsieloa, and is in fact Thabo Ntoko.
3. He then proceeded to offer an explanation of the ADRV charges and the possible defences that were available to the

Athlete in this matter.

THE ANTI-DOPING RULE VIOLATION

For purposes of the record, SAIDS set out to explain the ADRV and the violation in full:-

1. The purpose of Article 2 of the SAIDS ADR is to specify the circumstances and conduct which constitutes ADRVs. Hearings in doping cases will proceed based on the assertion that one or more of these specific rules have been violated.
2. *Athletes or other Persons* shall be responsible for knowing what constitutes an ADRV.

VIOLATION OF ARTICLE 2.5 OF THE SAIDS ADR

Article 2.5 of the SAIDS ADR states as follows:

"2.5 Tampering or Attempted Tampering with any part of Doping Control by an Athlete or Other Person"

1. In terms of Article 3.1 of the ADR, SAIDS shall have the burden of establishing that an ADRV has occurred. The standard of proof shall be whether SAIDS has established an ADRV to the comfortable satisfaction of the hearing panel, bearing in mind the seriousness of the allegation which is made.
2. This standard of proof in all cases is greater than a mere balance of probabilities but less than proof beyond all reasonable doubt. Where the ADR

place the burden of proof upon the Athlete alleged to have committed an ADRV, to rebut a presumption or establish specified facts or circumstances, except as provided in Articles 3.2.2 and 3.2.3 the standard of proof shall be by a balance of probability.

3. Pursuant to Article 3.2 of the ADR, facts related to ADRVs may be established by any reliable means, including admissions.
4. The charge of "*Tampering or Attempted Tampering with any part of Doping Control by an Athlete or Other Person*" is a non-analytical charge, meaning that there has been no *Adverse Analytical Finding ("AAF")* (i.e., positive test result), indicated by any *WADA-accredited* laboratory.
5. The charges being brought against the Athlete are rooted in the actions of the Athlete's conduct in *intentionally Tampering with the Doping Control by recording a false name on the DCF and Athlete PIF in order to subvert the Doping Control process.*
6. SAIDS submits that the documentary evidence alone presented in the hearing bundle, by way of photographs, ID documents and the admissions made in correspondence by the various representatives confirming the identity of the Athlete is sufficient to prove a violation of Article 2.5 of the SAIDS ADR.

7. SAIDS presented testimonial evidence as well as a written statement provided by the DCO Mervin Meyer (attached hereto marked as **Annexure "RM1"**), to prove its charge to the comfortable satisfaction of the IDHP.
8. As set out in the ADR, facts related to ADRVs may be established by any reliable means, which will include the evidence presented by SAIDS witnesses and DCO's both in the DCO's written statement and his testimony before the IDHP.

HAS AN ANTI-DOPING RULE VIOLATION BEEN COMMITTED BY THE ATHLETE?

THE ATHLETE'S SUBMISSION:

9. The Athlete disputed that he had ever been tested at the Event by Mr Meyer and further disputed that Mr Meyer had proceeded with him to obtain any form of identification either in the vehicle, or from the driver or third party referred to in Mr Meyer's affidavit.
10. He contended that the photograph reflecting his number was merely for identification and had nothing to do with any testing procedure.
11. He submitted that the evidence given by him was true, and inquired whether the panel found his evidence to be correct.
12. He was unable to shed any light on the fact that the relevant forms reflected the name "Thabo Thoko" and advised the panel that he had no knowledge of anyone by that name, and always participated under the name of Ramolefi Paul Motsieloa.

CLOSURE OF EVIDENCE

13. At the closure of the case presented by SAIDS and the subsequent evidence given by the Athlete, the panel excused both SAIDS and the Athlete in order to deliberate on the matter.

DELIBERATION:

14. The panel deliberated on the written submissions as well as the verbal submissions by the Prosecutor, the submission by Mr Meyer and that of the Athlete.
15. The panel examined as to whether a violation had occurred in terms of Article 2.5 of the SAIDS ADR, which requires that if an *Athlete, Tamperers* or *Attempts to Tamper* with any part of the *Doping Control* Process.
16. The WADC 2021 *International Standard for Results Management* ("**ISRM**") defines *Tampering* (which is identical to the definition provided in the SAIDS ADR as:

*"Intentional conduct which subverts the Doping Control process but which would not otherwise be included in the definition of Prohibited Methods. Tampering shall include, without limitation, offering or accepting a bribe to perform or fail to perform an act, preventing the collection of a Sample, affecting or making impossible the analysis of a Sample, **falsifying documents submitted to an Anti-Doping Organization** or TUE committee or hearing panel, procuring false testimony from witnesses, committing any other fraudulent act upon the Anti-Doping Organization or hearing body to affect Results Management or the imposition of Consequences, and any other similar intentional interference or Attempted interference with any aspect of Doping Control."*

FINDINGS:

After due consideration, discussion and examination of all the evidence presented by means of written submissions and the Zoom hearing, the Committee finds as follows:-

1. THAT the athlete, **RAMOLEFI PAUL MOTSIELOA** is found "Guilty" of a violation in terms of Article 2.5 of the SOUTH AFRICAN INSTITUTE FOR DRUG FREE SPORTS ADR for tampering or attempting to tamper with any part of doping control by an athlete or person in respect of the Event which took place at the 2022 Ellior Madeira Marathon.
2. THAT the Athlete, **RAMOLEFI PAUL MOTSIELOA** should be suspended for a period of 8 (eight) years, in accordance with Article 10.3.1 and 10.9.1 of the ADR, for his second ADRV (Anti Doping Rule Violation).
3. THAT such suspension should take into account any ineligibility period already served in respect of this matter.
4. THAT the results and benefits received from the 2022 Elliot Madeira Marathon Charity Race are to be expunged and forfeited.

THUS DATED at JOHANNESBURG on this the 10th day of JUNE 2023



Raymond Hack (CHAIRPERSON)

THUS DATED at JOHANNESBURG on this the 10th day of JUNE 2023



Dr Andy Branfield (Member)

THUS DATED at JOHANNESBURG on this the 10th day of JUNE 2023



Ms Yoliswa Lumka (Member)