

REPUBLIC OF KENYA



THE JUDICIARY

OFFICE OF THE SPORTS DISPUTES TRIBUNAL

ANTI-DOPING CASE NO. E040 OF 2023

ANTI-DOPING AGENCY OF KENYA.....APPLICANT

-versus-

MATHEW KIPLAGAT SAWE..... RESPONDENT

DECISION

Hearing: Proceeded by way of written submissions.

Panel: Gichuru Kiplagat Panel Chairperson
Allan Owiny Member
Peter Ochieng Member

Appearances: Mr.Rogoncho for the Applicant
N/A by the Respondent

The Parties

1. The Applicant is a State Corporation established under Section 5 of the Anti-Doping Act No.5 of 2016.
2. The Respondent is a male athlete competing in national events.

Background and the Applicant's Case

3. The proceedings have been commenced by way of filing charge documents against the Respondent by the Applicant dated 05/09/2023.
4. The Applicant brought charges against the Respondent that on 26/04/2022 an ADAK Doping Control Officer collected a urine sample from the Respondent and gave it code numbers A 7022036 ("A" sample) and B 7022036 ("B" sample) under the prescribed World Anti-Doping Agency (WADA) procedures.
5. The "A" sample was subsequently analysed at the WADA accredited laboratory in Qatar and an Adverse Analytical Finding revealed the presence of prohibited substance **Glucocorticoids/triamcinolone acetonide and its metabolite 6B-hydroxy-Triamcinolone acetonide** under the 2022 WADA prohibited list.
6. An ADRV Charge was instituted upon the Respondent at the Sports Disputes Tribunal in Nairobi where after the Respondent provided medical records to be used as evidence in his defence.
7. Upon seeking verification and authentication of the medical records provided by the Respondent from the Meru Teaching and Referral Hospital, the Applicant established in writing from the Medical Institution vide letter dated 21/10/2022 that the medical records were fraudulent.

8. The findings were communicated to the Respondent by Sarah Shibutse, Chief Executive Officer of ADAK through Notices of Charge and mandatory provisional suspension dated 22/08/2023. The Respondent never made any response.
9. Subsequently, ADAK preferred the following charges against the Respondent:

**Tampering or attempted tampering with any part of
Doping Control**

10. The Applicant that:

- a) The athlete be sanctioned to a four-year period of ineligibility as provided by Article 10 of the World Anti-Doping Code and ADAK Anti-Doping Rules.
- b) Costs of the suit, Article 10.

11. The Applicant contends that this Tribunal has jurisdiction to entertain this matter under Section 31B(a) of the Anti-Doping Act.

The Response

12. The Respondent never filed any response and never participated in the proceedings before the tribunal.

Hearing

13. The matter proceeded by way of written submissions. Adak filed written submissions dated 06/12/2023.

Analysis

14. The panel has taken into account the pleadings and written submissions by the Applicant. We make the following findings.

15.The Respondent has been charged with a non-analytical ADRV namely that of “tampering or attempted tampering with any part of Doping Control” contrary to Article 2.5 of the Code. The Respondent submitted a medical record dated 24/04/2023 from Meru Teaching and Referral Hospital for his defence. However, the Applicant has since confirmed vide a letter dated 21/10/2022 from the medical institution that the medical record was forged and not authentic.

16.We note that the Respondent choose not to participate in these proceedings. This means that automatic consequences will be imposed against the Respondent. Indeed, by his conduct the Respondent waived his right to hearing under Article 8.3 of the Code.

Conclusion

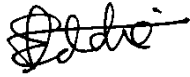
17.It is therefore in consideration of this, as well as the parties’ submissions that the Tribunal imposes the following consequences:

- a. The period of ineligibility (non-participation in both local and international events) for the Respondent for violation of Article 2.5 of the Code shall be for 4 years from the end of the Period of Ineligibility for the first ADRV being 10th July 2026 to 9th July 2030 pursuant to Article 10.3.1 of the Code;
- b. Each party to bear its on costs;
- c. Parties have a right to Appeal pursuant to Article 13 of the Code and Section 31 the Anti-Doping Act;
- d. Orders accordingly.

Dated and delivered at Nairobi this ___ 29th ___ day of ___February___, 2024.

Signed:

Gichuru Kiplagat



Panel Chairperson, Sports Disputes Tribunal

Signed:
Allan Owiny



Member, Sports Disputes Tribunal

Signed:
Peter Ochieng



Member, Sports Disputes Tribunal