

REPUBLIC OF KENYA



THE JUDICIARY
OFFICE OF THE SPORTS DISPUTES TRIBUNAL

ANTI-DOPING CASE NO. E021 OF 2024

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

-versus-

ALLAN KIPKOECH..... RESPONDENT

DECISION

Hearing: Proceeded via written submissions

Panel: Gichuru Kiplagat Panel Chairperson
Peter Ochieng Member
Benard Murunga Member

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

The Parties

1. The Applicant (ADAK) 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 a charge document against the Respondent by the Applicant dated 03/04/2024.
4. The Applicant brought charges against the Respondent that on 31/08/2023 an ADAK Doping Control Officer collected a urine sample from the Respondent and gave it code numbers A12501104 ("A" sample) and B 1250104 ("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 *S1.1 Anabolic Androgenic Steroids (ASS)/Pregnanediol, Androsterone, Androstane, Ketoetiocholanolone, Androstenediol, Etiocholanolone, Adilos, Epitestosterone and Testosterone* which are prohibited under class S1 of the 2023 WADA prohibited list.
6. The findings were communicated to the Respondent by ADAK through a Notice of Charge and mandatory provisional suspension vide letter dated 13/02/2024. The Respondent never responded to the charges. The Applicant further states that there was negligence on his part and he did not request a sample B analysis.
7. Moreover, the Applicant states that the Respondent has a personal duty to ensure what whatever enters her body is not prohibited.

8. Subsequently, ADAK preferred the following charges against the Respondent:

Presence of prohibited substances S1.1 Anabolic Androgenic Steroids(ASS)/Pregnanediol,Androsterone,Androstane,Ketoetiocholanolone,Androstanediol,Etiocholanolone,Adilos,Epitestosterone and Testosterone

9. The Applicant further stated that the Respondent had no TUE recorded at the material time and that there was no apparent departure from the WADA International standards or laboratories which may have caused adverse analytical finding. Furthermore, the Applicant states that there is no plausible explanation by the Respondent to explain the adverse analytical finding.

10. The Applicant contends that this Tribunal has jurisdiction to entertain the matter under Section 31 of the Anti-Doping Act as amended.

11. The Applicant prays for:

- a) The athlete be sanctioned to a four year period of ineligibility as provided by the ADAK Anti-Doping Rules (ADR).
- b) In the alternative and if ADAK can prove that the ADRV was intentional then the athlete be sanctioned to a four year period ineligibility as provided by the ADAK ADR.
- c) Disqualification of results in the event during which the ADRV occurred and in competitions after sample collections or commission of the Anti-Doping Rule Violation (ADRV) with all resulting consequences including forfeiture of medal, points and prizes.
- d) Automatic publication of sanction.
- e) Costs of the suit.

The Response

12. The Respondent neither filed a response nor participated in these proceedings.

Written Submissions

13. The Applicant waived its right to a hearing and agreed to have the matter disposed of by way of written submissions. The Applicant filed written submissions dated 29/05/2024 which were largely premised on its pleadings.

Decision

14. The panel had occasion to analyse all documents filed by the Applicant and taken into account the Applicant's written submissions. These are our findings.

15. *Anabolic* *Androgenic* *Steroids*
(ASS)/*Pregnanediol, Androsterone, Androstane, Ketoetiocholanolone, Androst anediol, Etiocholanolone, Adilos, Epitestosterone and Testosterone* which is prohibited under Class S1 of the 2023 WADA prohibited list is alleged to have been found in the Respondent's urine sample. This is a non-specified substance and prohibited at all times (in-and-out of competition).

16. Article 2 of the World Anti-Doping Code (WADC) states that:

"Athletes or other persons shall be responsible for knowing what constitutes an anti-Doping rule violation and the substances and methods which have been included on the prohibited list"

17. Additionally Article 2.1 WADC provides 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 sample. Accordingly, it is not necessary that intent, fault negligence or

knowing on the athlete's part be demonstrated in order to establish an anti-doping rule violation under WADC Article 2.1."

18. Additionally, Article 2.1.2 WADC provides what sufficient proof of an anti-doping rule violation is that is to say:

"presence of a prohibited substance or its metabolites or markers in the athlete's A sample where the Athlete waves analysis of the B sample and the B sample is not analyzed or....."

19. Article 2.1 of the WADA code establishes "strict liability" upon the athlete. Once presence is established as in this case the onus is upon the athlete to render an explanation and to dispel the presumption of guilt on her part. Such explanation must however be assessed while bearing in mind sections of Article 2.1.1 of WADC as set out above and emphasized.

20. In the instant case the presence of a prohibited substance has been established in the Athlete's A sample but the athlete neither participated in these proceedings nor filed any response. The Applicant made various attempts to reach out to him in vain. This leaves the Tribunal with no other choice but to impose automatic consequences against the Respondent. This being a non-specified substance the onus was on the athlete to demonstrate that his use of the prohibited substance was not intentional. Unfortunately, the Tribunal does not have the benefit of hearing his side of the story or his rebuttals. Indeed, by his conduct and failure to challenge the ADRV the Respondent waived his right to hearing under Article 8.3 of the Code.

Conclusion

21. In the circumstances, the Tribunal imposes the following consequences:

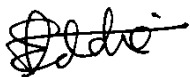
- a. The period of ineligibility (non-participation in both local and international events) for the Respondent shall be for 4 years from 04/07/2024 pursuant to Article 10.2.1.1 of the WADC;
- b. Disqualification of results in the event during which the ADRV occurred and in competitions after sample collections or commission of ADRV with all resulting consequences including forfeiture of medal, points and prizes pursuant to Articles 10.1, 10.10 and 10.11 of the WADC;
- c. Automatic publication of sanctions pursuant to Article 10.15 of the WADC .
- d. Each party to bear its own costs;
- e. Parties have a right to Appeal pursuant to Article 13 of the WADC and Part IV of the Anti-Doping Act No.5 of 2016.

22. The Tribunal thanks all the parties for their extremely helpful contribution and the cordial manner in which they conducted themselves.

Dated and delivered at Nairobi this ___ 4th ___ day of ___ July ____, 2024.

Signed:

Gichuru Kiplagat



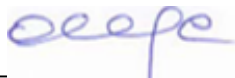
Panel Chairperson, Sports Disputes Tribunal

Signed:
Peter Ochieng



Member, Sports Disputes Tribunal

Signed:
Bernard Murunga



Member, Sports Disputes Tribunal