

REPUBLIC

OF KENYA



THE JUDICIARY
OFFICE OF THE SPORTS DISPUTES TRIBUNAL
APPEAL NO. AD 27 OF 2019

IN THE MATTER BETWEEN

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

-versus-

STEPHEN KIMANI MAINA..... ATHLETE

DECISION

Hearing: Athlete opted to admit the violation but wished to participate in the Proceeding by making submissions on any sanction or penalty which might be imposed, (see Notice of wish to participate on sanctions filed by the Respondent Athlete and filed with the Tribunal on 04 December 2019).

Panel : Mr. Gabriel Ouko - Panel Chair
Ms. Mary N Kimani - Member
Mr. Gilbert MT Ottieno - Member

Appearances: Mr. Bildad Rogoncho, Advocate for the Applicant;

Mr. Edward Rombo of Rombo & Company Advocates, for the Athlete

I. The Parties

1. The Applicant is the Anti-Doping Agency of Kenya (hereinafter 'ADAK' or 'The Agency') a State Corporation established under Section 5 of the Anti-Doping Act, No. 5 of 2016.
2. The Respondent is a male adult of presumed sound mind, an Elite and International Level Athlete, of Email Address: kimanimaina97@gmail.com (hereinafter 'the Athlete').

II. Factual Background

3. The Athlete is an International Amateur Level Swimming Athlete hence the KSF Competition Rules, FINA Anti-Doping Regulations, the WADA Code and the ADAK Anti-Doping Rules (ADR) apply to him.
4. On 12th April, 2019, ADAK Doping Control Officers in an In - competition testing during the Kenya Swimming Federation National Swimming Trails in Nairobi, Kenya collected a urine sample from the Respondent Athlete. Assisted by the DCO, the Athlete split the Sample into two separate bottles which were given reference numbers A 4363248 (the "A Sample") and B 4363248 (the "B Sample") in accordance with the prescribed WADA procedures.
5. Both Samples were sent to a WADA accredited Laboratory in Doha, Qatar. The Laboratory analyzed the A Sample in accordance with the procedures set out in WADA's International Standard for Laboratories (ISL). The analysis of the A Sample returned an Adverse Analytical Finding ("AAF") being the presence of a prohibited substance *Amphetamine*, (see test reports in page 8-9 of the Charge Document).

6. The Doping Control Process is presumed to have been carried out by competent personnel and using the right procedures in accordance with the WADA International Standards for Testing and Investigations.
7. The findings were communicated to the Athlete by Mr. Japhter Rugut, the ADAK Chief Executive Officer through a Notice and Optional Provisional Suspension from participating in any FINA and KSF-sanctioned Competitions dated Monday 6th May 2019. In the said communication the Athlete was offered an opportunity to provide an adequate explanation for the AAF by 20th May 2019, (see page 12 of the Charge Document).
8. The Athlete responded to the Notice from ADAK in emails dated Friday, 14th June 2019 and Tuesday 25, June 2019, see the copies in page 15-16 of the Charge Document.
9. The response and conduct of the Athlete was evaluated by ADAK and it was deemed to constitute an Anti-Doping Rule Violation. A Notice to Charge dated 8th August 2019 was filed by ADAK on similar date.
10. On 26th August 2019 the Tribunal issued the following directions
 - (i) Applicant shall serve the Mention Notice, the Notice to Charge, Notice of ADRV, the Doping Control Form and all relevant documents on the Respondent Athlete by Wednesday, 11th September 2019.
 - (ii) The Panel constituted to hear this matter shall be as follows; Mrs. Njeri Onyango Panel Chair, Mr. Robert Asembo, Member and Mr. Gilbert MT Ottieno, Member.
 - (iii) The matter to be mentioned on 26th August 2019 to confirm compliance and for further directions.
11. The Charge Document (various attachments) was filed at the Tribunal on 19th September, 2019 and at the mention on same date Counsel for the

Applicant, Mr. Rogoncho confirmed that the Agency had effected service on the Athlete who was based in the USA. Another mention was fixed for 16/10/2019 for further directions.

12. On 15th October 2019 a Notice of Appointment of Advocate was filed at the Tribunal for the Respondent Athlete by Messrs. Rombo & Company Advocates.
13. When the matter came up for mention on 16th October 2019 Mr. Mwakio held brief for Mr. Rogoncho Counsel for the Applicant. Mr. Rombo for the Athlete was also present and requested 21 days to file his response which was allowed. The matter was placed for mention on 14/11/2019.
14. At the mention on 14th November 2019 Mr. Mwakio held brief for Mr. Rogoncho while Mr. Peter Njoroge, who held brief for Mr. Rombo told the Tribunal that there was no response from the Athlete who is based in the USA. A further mention was slated for 28/11/2019.
15. On 4th December 2019 a Notice of Wish to Participate on Sanctions was filed at the Tribunal by the Respondent Athlete's Counsel. During a mention on the same date Mr. Mwakio held brief for Mr. Rogoncho for the Applicant while Mr. Edward Rombo appeared for the Athlete and he confirmed they had filed a statement showing their position. Mr. Mwakio requested 15 days to file their submissions. The Tribunal ordered that the Applicants file and serve their submissions within 15 days and that the Athlete may file further response on or before 17th January 2020. The matter was listed for oral submissions on 24th January 2020.
16. During the mention on 22nd January 2020 the following Counsel were in appearance; Mr. Rogoncho and Mr. Mwakio for the Applicant and Mr. Rombo for the Athlete. Mr. Rombo confirmed that he had received submissions of the Applicant and was not ready to proceed with oral

submissions. The Tribunal ordered that the Panel be reconstituted as follows: Mr. Gabriel Ouko, Panel Chair, Mr. GMT Ottieno, Member and Mary N. Kimani, Member. As Counsel did not wish to highlight, the decision would be rendered on 27th February 2020.

17. The submission in hard copy by ADAK was filed at the Tribunal on 28th January 2020. Receipt of soft copies was recorded as February 5, 2020 from ADAK's Counsel Mr. Mwakio while Mr. Rombo's were received on February 23, 2020.

III. The Hearing

18. By consent both parties dispensed with the hearing and agreed the decision be rendered on 27th February, 2020 relying on the papers only.

IV. Submissions

19. Below is a summary of the main relevant facts and allegations based on Parties written submissions.

A. Applicant's Submissions

20. Mr. Rogoncho, Counsel for the Applicant, informed the Panel that the Agency wished to adopt and own the Charge Document dated 13th February 2019 and the annexures thereto as an integral part of its submissions.

21. He submitted that the Athlete is an International Level Swimmer and therefore the results management authority vested in ADAK which in turn delegated the matter to the Sports Disputes Tribunal as provided for in Anti-Doping Act No. 5 of 2015 to constitute a hearing panel which the Athlete was comfortable with.

22. In No. 10 of its submissions the Applicant stated; *“The respondent did not request a sample B analysis thus waiving his right and confirmed that the results would be the same with those of sample A in any event.”*
23. Further the Applicant stated in its No. 12 that, *“The matter was referred to ADAK by AIU, after the B sample returned an AAF, vide an email dated 30th April 2019 for results management and adjudication.”*
24. The Applicant summarized the Athlete’s response to its notification of the AAF thus: *“He refuted that he negligently or intentionally consumed any substance with the intention of performance enhancement. Furthermore, he stated that all substances, he consumed leading up to the competition in Nairobi and to his knowledge none of the substances are on the WADA prohibited list.”*
25. The Applicant’s legal position was that it was its task to prove the ADRV to the comfortable satisfaction of the hearing panel and further it relied on Art. 3.2 Namely: *“that facts relating to ADRV may be established by **any reliable means including admissions and the methods of establishing facts**”;* it set out the presumptions which included *“(a) Analytical methods... (b) WADA accredited labs... **are presumed to have conducted sample analysis and custodial procedures in accordance with IS for laboratories...**”*
26. The Applicant also spelled out the roles and responsibilities as laid down in ADR/ WADC Art. 22.1 (a) – (f) and the Athlete’s duty *“as embodied in the preface to the Anti-Doping Rules”*.
27. It was the Applicant’s position that it had ably discharged its burden of proof under Art. 3 of ADAK Rules and WADC; that *“[...] in his defense the Respondent made several admissions and a few general denials. The respondent made the following admissions:*
- a) *He admitted to ingesting the prohibited substance.*

- b) *He admitted to being aware of the existence of energy boosting prohibited substances and methods.*
- c) *He admitted that he is aware of sample collection rules as he has been an active participant in swimming events,*
- d) *He admitted to not being sick when he ingested the substance*

28. Regarding proof of an ADRV the Applicant said in its No 24 that, *“The Athlete is charged with presence of Prohibited Substance, a violation of Article 2.1 of the ADAK ADR. Amphetamine is a Specified Substance and attracts a period of Ineligibility of 4 years.”*

29. It was the Applicant’s assertion that, *“No. 25, Where use and presence of a prohibited substance has been demonstrated it is not necessary that intent, fault, negligence, or knowing use on the athlete’s part be demonstrated in order to establish an ADRV and stepping away from swimming is not one of the sanctions under ADAK ADR rules.”, and “No. 26 Similarly, Article 10.2.1 the burden of proof shifts to the athlete to demonstrate no fault, negligence or intention to entitle him or her to a reduction of sanction.”*

30. On the matter of origin the Applicant emphatically contested establishment of origin of banned substance by the Athlete at its No. 28 saying, *“...He confirmed that he ingested the prohibited substance, but he does not tender evidence on where, how, when, prescribed or not and if prescribed, by who, when and how.”*

31. The specific pronouncements made by the Applicant in regard to the issue of intention are as follows:

“30. On the outset, it is important to state that in the case of CAS 2016/A/4716 Cole Henning v. South African Institute for Drug-Free Sport (SAIDS), the Court held that;

“Identification of the origin of the prohibited substance is a prerequisite to negate intention”

31. *It is worthy to note that in the instant case; the Respondent confirms that he took the drugs but does not tender evidence on where, how, when, prescribed or not and if prescribed by who, when and how.*

32. *The drug in question is amphetamine, it is used to enhance performance. It is used to increase muscle strength, acceleration & endurance, it can lead to addiction.*

33. *In the USA, amphetamine is in the restrictive national drug schedule and is only allowed for medical treatment.*

34. *The assertion that he took the prohibited substance to stay awake in the demanding long hours of a 3rd year mechanical engineering student sitting for an exam is a crime in America.*

35. *It is the Applicant’s submission that the Respondent has failed to prove a lack of intention to cheat based on his explanation.”*

32. *On Fault/Negligence and knowledge the Applicant reiterated that, “The Respondent is charged with the responsibility to be knowledgeable of and comply with the Anti-doping rules and to take responsibility in the context of anti-doping for what they ingest and use. The respondent hence failed to discharge his responsibilities under rules 22.1.1 and 22.1.3 of ADAK ADR.”, and further that, “...the athlete ought to have known better the responsibilities bestowed upon him as an international level athlete. He was thus grossly negligent.”*

33. The Applicant invoked Articles 10.2.1.2 (ADRV involving a Specified Substance) and 10.4 (Elimination of the Period of Ineligibility where there is No Fault or Negligence) of ADAK ADR stating the following regard to Sanction:

“40. For an ADRV under Article 2.1, Article 10.2.1.2 of the ADAK ADR provides for a regular sanction of a four-year period of ineligibility where the ADRV involves a specified substance “and the agency ... can establish that the (ADRV) was intentional”.

41. On its face Article 10.4 creates two conditions precedent to the elimination or reduction of the sentence which would otherwise be visited on an athlete who is in breach of Article 2.1. the athlete must: (i) establish how the specified substance entered his/her body (ii) that the athlete did not intend to take the specified substance to enhance his/her performance. If, but only if, those two conditions are satisfied can the athlete Adduce evidence as to his/her degree of culpability with a view of Eliminating or reducing his/her period of suspension.

42. In the circumstances, the Respondent has not adduced evidence in support of the origin of the prohibited substance. Bearing this in mind, we are convinced that the respondent has not demonstrated no fault/negligence on his part as required by the ADAK ADR rules and the WADA code to warrant sanction reduction.”

34. The Applicant prayed for the maximum sanction of 4 years of ineligibility be imposed on the Athlete arguing that no plausible explanation had been advanced for the AAF.

B. Athlete’s Submissions

35. The Athlete's in his 'Notice of Wish to Participate on Sanctions' stated: *"I admit the violation but wish to participate in the Proceeding by making submissions on any sanction or penalty which might be imposed."*
36. The Athlete's submission via his Counsel as to penalty were brief and as follows:
- "1. He is an amateur sportsman and did not take the prohibited drug with the intent to cheat or enhance any sporting performance.*
- 2. He is a full time student at the George Mason University, USA and has been part of the University Swimming Team for the last 4 years but as a result of the ADRV, he has had to voluntarily step away from the team which is a major personal set back as he has identified with the team, the sport, the great work ethic, the benefits of being a varsity athlete and this is already a severe punishment that he is having to deal with.*
- 3. He was in the process of preparing for his exams and took the drugs as included in the ADAK form with the intent to assist him in keeping up awake with the demanding long hours and schedule of a 3rd year mechanical engineering final exams.*
- 4. He declared on the ADAK form all the substances he was taking/had taken, a clear demonstration that he had nothing to hide and that he did not in any way intend to enhance his performance.*
- 5. He has represented Kenya at many international competitions since the age of 14 (all at an amateur level) and he is very aware of the pride and honour of wearing the*

national colours and it is an achievement he would not want to jeopardize that great honour out of a careless mistake.

6. He has been swimming in the US as a student since he was 15 and has interacted with the top swimmers in the world and is alive to the fact that his performance would not in any way benefit from engaging in performance enhancing drugs and he would have no personal or financial benefit as his ranking does not place him in any position to benefit from the benefit of taking PED.

7. He awfully regrets the mistake and takes it as a huge lesson to be more vigilant in the future in all aspects of his life bearing in mind the set back this ADRV will have on his otherwise spotless swimming career.

8. He is a young man of 22 and is aware that the full potential for male swimmers is 25 and therefore he believes that he still has an opportunity for a comeback and continue to represent Kenya - an honor which he takes seriously if given a chance again."

V. Jurisdiction

37. The Sports Disputes Tribunal has jurisdiction under Sections 55, 58 and 59 of the Sports Act No. 25 of 2013 and Sections 31 and 32 of the Anti- Doping Act, No. 5 of 2016 (as amended) to hear and determine this case.

VI. Applicable Law

38. Article 2 of the ADAK Rules 2016 stipulates the definition of doping and anti-doping rule violations as follows:

The following constitute anti-doping rule violations:

2.1 Presence of a *Prohibited Substance* or its *Metabolites* or *Markers* in an *Athlete's Sample*

2.1.1 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 *Samples*. Accordingly, it is not necessary that intent, *Fault*, negligence or knowing *Use* on the *Athlete's* part be demonstrated in order to establish an anti-doping rule violation under Article 2.1.

2.1.2 Sufficient proof of an anti-doping rule violation under Article 2.1 is established by any of the following: presence of a *Prohibited Substance* or its *Metabolites* or *Markers* in the *Athlete's A Sample* where the *Athlete* waives analysis of the *B Sample* and the *B Sample* is not analyzed ...

VII. MERITS

39. In the following discussion, additional facts and allegations may be set out where relevant in connection with the legal discussion that follows.

40. The Tribunal will address the issues as follows:

- a. Whether there was an occurrence of an ADVR, the Burden and Standard of proof;*
- b. Whether, if the finding in (a) is in the affirmative, the Athlete's ADVR was intentional;*
- c. Reduction based on No Fault;*
- d. The Standard Sanction and what sanction to impose in the circumstance.*

A. The Occurrence of an ADRV, the Burden and Standard of proof.

41. As used in WADC's Article 3.1:

The anti-doping organization shall have the burden of establishing that an anti-doping rule violation has occurred. The standard of proof shall be whether the anti-doping organization has established an anti-doping rule violation to the comfortable satisfaction of the hearing panel, bearing in mind the seriousness of the allegation which is made. This standard of proof in all cases is greater than a mere balance of probability but less than proof beyond a reasonable doubt. [...]. Where the Code places the burden upon the athlete or other person alleged to have committed an anti-doping rule violation to rebut a presumption or establish specified facts or circumstances, the standard of proof shall be by a balance of probability.

42. From the submissions by both parties, it is not clear to this Panel if the Athlete had been notified by the AIU/ADAK as specified under WADC's Article 7.3(c) in regard to his 'A' Sample and/or after the decision was made to conduct the test on his Sample 'B', it is also not clear if he was notified pursuant to Article 7.3(d)-(e). It is noted that the WADC has couched the Article 7.3 relating to notification in a 'shall' rather than 'may' term:

"Art. 7.3 Notification After Review Regarding Adverse Analytical Findings: If the review of an Adverse Analytical Finding under Article 7.2 does not reveal an applicable TUE or entitlement to a TUE as provided in the International Standard for Therapeutic Use Exemptions, or departure that caused the Adverse Analytical Finding, the Anti-Doping Organization shall promptly notify the Athlete, in the manner set out in Articles 14.1.1 and 14.1.3 and its own rules, of:

(a) the Adverse Analytical Finding; (b) the anti-doping rule violated; and (c) the Athlete's right to promptly request the analysis of the B Sample or, failing such request, that the B Sample analysis may be deemed waived; (d) the scheduled date, time and place for the B Sample analysis if the Athlete or Anti-Doping Organization chooses to request an analysis of the B Sample; (e) the opportunity for the Athlete and/or the Athlete's representative to attend the B Sample opening and analysis within the time period specified in the International Standard for Laboratories if such analysis is requested; and (f) the Athlete's right to [...]"

43. Therefore, the Panel will be inclined to disregard the Applicant's contention in No. 10 of its submissions, as the email dated 30th April 2019 referred to by the Applicant in its No. 12 of same submissions, is not adduced as evidence and/or for perusal by the Panel. Similarly, perusal of documents submitted by ADAK also reveal no notification as per WADC's Article 7.3 in regard to the Athlete's Sample 'B'.
44. Nonetheless, the Applicant also relied on Article 3.2.1 "*Analytical methods or decision limits approved by WADA [...]"* and the Panel was comfortably satisfied that there was breach of Article 2.1 of ADAK ADR by the Athlete on account of the fact that the Athlete admitted to use of prohibited substance, see his '*Notice of Wish to Participate on Sanctions*' filed on 4th December 2019.
45. Therefore on issue of establishment of ADRV, suffice it to conclude that as submitted by the Applicant, "*Where use and presence of a prohibited substance has been demonstrated it is not necessary that intent, fault, negligence, or knowing use on the athlete's part be demonstrated in order to establish an ADRV.*"

46. The Athlete, bound by the principle of "Strict Liability" and with no TUE to justify the presence of the prohibited substance in his body, was in commission of an ADRV.

B. Was the Athlete's ADRV intentional?

47. The Applicant established the occurrence of the ADRV; in addition, the Applicant is required to establish 'intent' since the proscribed substance traced in the Athlete's body was a Specified Substance. Contrary to the attestation by the Applicant in No.26 of its submissions, the burden would only shift to the Athlete to demonstrate No Fault/Negligence or lack of intention to entitle him to a reduction of sanction *if* the substance was non-Specified. In this case, the Applicant bears the burden of proof that the ADRV by the Athlete was intentional (Article 10.2.1.2 of the ADAK ADR).

48. The main relevant rule in question in the present case is Article 10.2.3 of the ADAK ADR, which reads as follows:

As used in Articles 10.2 and 10.3, the term "intentional" is meant to identify those Athletes who cheat. The term, therefore, requires that the Athlete or other Person engaged in conduct which he or she knew constituted an anti-doping rule violation or knew that there was a significant risk that the conduct might constitute or result in an anti-doping rule violation and manifestly disregarded that risk. [...]

49. The WADA 2015 World Anti-Doping Code, Anti-Doping Organizations Reference Guide (section 10.1 "What does 'intentional' mean?", p. 24) provides the following guidance:

'Intentional' means the athlete, or other person, engaged in conduct he/she knew constituted an ADRV, or knew there was significant risk the conduct might constitute an ADRV, and manifestly disregard that risk.

Article 10.2 is clear that it is four years of ineligibility for presence, use or possession of a non-specified substance, unless an athlete can establish that the violation was not intentional, [...].

50. The Athlete said he did not take the prohibited drug with the intent to cheat or enhance any sporting performance and that, "No. 4. He declared on the ADAK form all the substances he was taking/had taken, a clear demonstration that he had nothing to hide and that he did not in any way intend to enhance his performance."
51. In the DCF the Athlete listed "Beta Alanine, Creatine, Coamoxiclau, Fexofenadine, Concepta, Ibuprophen, Kie-alkaline, Vitamine C". In particular he pleads that he "took the drugs as included in the ADAK form with the intent to assist him in keeping up awake with the demanding long hours and schedule of a 3rd year mechanical engineering final exam". The Athlete did not identify which among the various substances he 'included' in his DCF was the origin of his AAF which left a glaring gap in his claim to having demonstrated no intention to cheat.
52. Further, he did not adduce actual evidence to show the origin of the banned substance found in his body or as the Applicant puts it, "the Respondent confirms that he took the drugs but does not tender evidence on where, how, when, prescribed or not and if prescribed by who, when and how.", which then reduced his insistence of not having the intent to cheat or performance enhance to hearsay or mere speculation.
53. With the origin of the Amfetamine tracked in the Athlete's body still in doubt despite the Athlete having a chance to adequately explain and proffer evidence, actual or corroborative, to anchor occurrence of his AAF, this Panel accepts the Applicant's submission that the Athlete has failed to prove a lack of intention based on his explanations.

C. Reduction Based on No Fault or Negligence/No Significant Fault or Negligence/Knowledge

54. Since it is already concluded above that the Applicant succeeded in establishing that the anti-doping rule violation was committed intentionally, the Panel does not deem it necessary to assess whether the Respondent may have had No fault or Negligence in committing the anti-doping rule violation.
55. The rationale being that the threshold of establishing that an anti-doping rule violation was not committed intentionally is lower than proving that an athlete had no fault or negligence in committing an anti-doping rule violation.
56. Additionally, the Tribunal finds that the above reasoning also applies to “no significant fault or negligence” (Article 10.5 of the ADAK Rules). The Tribunal observes that the comment to Article 10.5.2 of the ADAK Rules takes away any possible doubts in this respect:
- “Article 10.5.2 may be applied to any anti-doping rule violation except those Articles where intent is an element of the anti-doping rule violation [...] or an element of a particular sanction (e.g., Article 10.2.1) [...]”.*
57. In regard to knowledge, this Panel takes cognizance of the fact that even though the Athlete was an amateur sportsman the Doping Program was not new to him and even if it were, ignorance of sports doping by adherents of the Code would be not be an adequate shield; as averred by **CAS 2008/A/1488 P. v. International Tennis Federation (ITF)**: *To allow athletes to shirk their responsibilities under the anti-doping rules by not questioning or investigating substances entering their body would result in the erosion of the established strict regulatory standard and increased circumvention of anti-doping rules. A player’s ignorance or naivety cannot be the basis upon which he or she is*

allowed to circumvent the very stringent and onerous doping provisions. There must be some clear and definitive standard of compliance to which all athletes are held accountable.

58. The Athlete in his email dated 25th June, 2019 (in page 15 of the Charge Documents) raised the matter of Breach of Confidentiality pointing the Applicant to its own Article 14.1.5. The Athlete did not canvass the matter further but did invite the Applicant to look into disclosure aspects concerning his ADRV with a view to guarding against leakages in future. This Panel finds it prudent to caution that, going forwards, the Applicant and appropriate personnel at the applicable National Olympic Committee, National Federation, and team (in a Team Sport) endeavor to strictly adhere to the standards spelt out in the International Standards for the Protection of Privacy and Personal Information (ISPPPI).

D. Sanctions

59. With respect to the appropriate period of ineligibility, Article 10.2 of the WADC/ADAK ADR provides that:

The period of ineligibility for a violation of Article 2.1, 2.2 or 2.6 shall be as follows, subject to potential reduction or suspension pursuant to Article 10.4, 10.5 or 10.6:

10.2.1 The period of ineligibility shall be four years where:

10.2.1.2 The anti-doping rule violation involves a Specified Substance, and the Anti-Doping Organization can establish that the anti-doping rule violation was intentional

....

10.2.2 If Article 10.2.1 does not apply, the period of Ineligibility shall be two years.

60. Article 10.11.3 of the ADAK ADR is titled "Credit for Provisional Suspension or Period of Ineligibility" and states as follows:

If a Provisional Suspension is imposed and respected by the Athlete or other Person, then the Athlete or other Person shall receive a credit for such period of Provisional Suspension against any period of Ineligibility which may ultimately be imposed. ...

61. In regard to Disqualification, Article 10.8 of the ADAK ADR reads as follows:

Disqualification of Results in Competitions Subsequent to Sample Collection or Commission of an Anti-Doping Rule Violation

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 the resulting Consequences including forfeiture of any medals, points and prizes.

62. It is also noted by the Panel that this was the Athlete's first ADRV. Additionally we concur with the Applicant's submission that stepping away from swimming is not a sanction option.

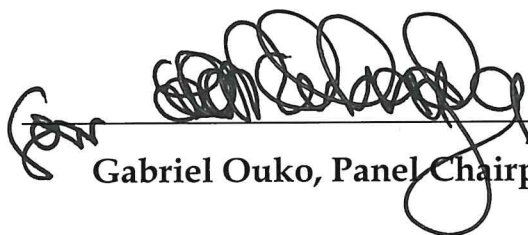
VIII. DECISION

63. Consequent to the discussions on merits of this case:


- (i) The applicable period of Ineligibility of 4 years is hereby upheld;
- (ii) The period of Ineligibility shall be from 20th May 2019 when the Athlete was Provisionally Suspended;

- (iii) All Competitive results obtained by the Respondent Athlete from and including 12th April 2019 are disqualified including prizes, medals and points;
- (iv) Each party shall bear its own costs;
- (v) The right of appeal is provided for under Article 13 of WADA Code, FINA Competition Rules and Article 13 of ADAK Rules.

Dated at Nairobi this 3rd day of June, 2020



Gabriel Ouko, Panel Chairperson



Ms. Mary N. Kimani, Member



GMT Ottieno, Member