

REPUBLIC OF KENYA



THE JUDICIARY  
OFFICE OF THE SPORTS DISPUTES TRIBUNAL  
DOPING CASE NO. 01 OF 2022

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

VERSUS

SOLOMON LEKUTA ..... ATHLETE

**DECISION**

**Panel:**

E Gichuru Kiplagat – Chairperson  
Gabriel Ouko – Member  
Allan M Mola – Member

**Appearances:**

Mr. Bildad Rongocho, Advocate instructed by the Anti-Doping Agency of Kenya for the Applicant  
The Athlete represented himself.

**Abbreviations:**

ADAK – Anti Doping Agency of Kenya  
ADAK ADR- Anti-Doping Rules 2016  
WADA Code- World Anti-Doping Agency Code  
DCO- Doping Control Officer  
ADAMS- Anti-Doping Administration and Management System. ISRM-  
International Standard for Results Management  
ISTI- International Standard for Testing and Investigation

## **Introduction**

### **Parties**

1. The Applicant is the Anti-Doping Agency of Kenya (hereinafter referred to as **ADAK**), a state corporation established under section 5 of the Anti-Doping Act, No. 5 of 2016.
2. The Athlete is a male adult of presumed sound mind, a National Level Athlete, more specifically, a middle distance runner, (hereinafter referred to as **the Athlete**).

### **Factual Background**

3. Upon reading the Notice to Charge dated 31<sup>st</sup> January 2022 presented to the Tribunal on 31<sup>st</sup> January 2022 by Mr. Bildad Rogoncho on behalf of the Applicant the Tribunal on 2<sup>nd</sup> February 2022 ordered as follows:
  - i. The Applicant shall serve the Notice to Charge, the Notice of ADRV, the Doping Control Form, this direction No. 1 and all relevant documents on the Athlete by Monday 28<sup>th</sup> February 2022;
  - ii. The panel constituted to hear this matter shall be:
    - a. E Gichuru Kiplagat;
    - b. Gabriel Ouko;
    - c. Allan M Mola.
  - iii. The matter shall be mentioned on Thursday 3<sup>rd</sup> March, 2022 to confirm compliance and for further directions
4. The matter came up for mention on 9<sup>th</sup> June 2022 when Mr Rogoncho for the Applicant informed the tribunal that the athlete was unable to join the Teams Platform due to network issues. The tribunal directed the matter to be mentioned on 23<sup>rd</sup> June 2022.

5. On 28<sup>th</sup> July 2022 the matter came up for mention, Mr. Rogoncho for the Applicant informed the tribunal that the athlete had requested to attend the matter via a phone call and he sought from the tribunal leave to call the athlete so that he could address the tribunal. The athlete was able to join the Teams Platform via phone call, where he confirmed that he did not want *pro bono* representation and that he was ready to be allocated a hearing date. The tribunal directed its secretariat to conduct the matter on the said hearing date by conveying the questions Mr. Rogoncho would ask and in turn conveying the Respondent's answers to the tribunal. The matter was listed for hearing on 4<sup>th</sup> August 2022.

## **Hearing**

6. The hearing was heard *inter-partes* on 04/08/2022.
7. Mr. Rogoncho represented the Applicant and the Athlete represented himself on the phone.
8. Solomon Lekuta stated that he was born in 1999 and that he lives in Kajiado Central in Ikuro. He stated that he had only attended school to nursery level. He currently is not working and is a herdsman on the border of Kenya and Tanzania.
9. He stated that he started running in 2016. He further stated that he has participated in both local and international races. He stated that has been to Algeria, Finland, Italy, China and Sweden to compete. He stated that he usually runs the 800m and 1500m and has never run the marathon. He started going overseas in 2017.
10. He stated that he could not run in 2019 and 2020 due to Tuberculosis. He went back to racing in 2021 but he got an injury to his knees for which he used Masai herbal medicine to treat.
11. When asked why in his DCF it was written that his home is Nyahururu he said that was wrong and it should be Kajiado. He was asked if he remembers being tested on 4 October 2021 and he replied to the negative. He however says that

he had been tested many times and could not remember every occasion accurately.

12. He was asked if he remembers ADAK officials taking a sample when he lived in Nyahururu and he stated to the negative. He did however state that he lived there a while ago, last time being in 2021.
13. When asked if he knew the substance that was found in his body, he stated that he did not. He stated that he asked somebody to read for him and they told him it was a steroid.
14. When asked how it got into his body, he stated that he did not know. He did however state that he used to go to different chemists when he was in pain and they would give him medicine for his knees. When questioned whether they knew he was an athlete he stated that he did not tell them.
15. When questioned as to whether he was ever given an injection he affirmed that he did. He stated that this was done in a chemist in a place called Ngatu in Kajiado but he could not tell if the person giving the injection was a doctor or not. When asked why he did not go to a hospital he stated that he was in pain and needed a quick pain relief.
16. When questioned on the places that he trained in he stated Nyahururu and Kaptagat. He stated that he had one manager known as Valentine of "Global" who was from the Netherlands. They met after he won a race in Eldoret in 2017. He claims not to know where the manager lives and they only communicate by WhatsApp. All the communication between them was translated to him by a friend.
17. When questioned on how he used to travel if he could not read he stated that he was always part of a team, and when alone he would just show people his papers and would be directed on where to go.
18. When asked who were the athletes that he had trained with he mentioned Kinyamal and Faith Kipyegon who are elite international athletes. This was in Kaptagat. In Nyahururu he had trained with Henry Togom.

19. Further, when quizzed on why he did not check on the medicine he was taking was banned or not on the internet he stated that he did not know how to do it. When asked if he had been tested, he confirmed that it had been done many times. When asked why he was tested, he stated that it was to check for “bad substances”. He confirmed to have heard about doping many times. He stated he uses the phone to see pictures on Facebook. However, he stated that he does know how to use e-mail.
20. When questioned on the substance that was found in his body was one that required a doctor’s prescription, he could not answer how he got it without the same. He could only state that he was in pain.
21. When asked if he knew that he needed to be careful about everything going into his body he stated that he was only weary during competition.
22. The case closed with Mr. Rogoncho for the Applicant requesting to put in his written submissions by 25<sup>th</sup> August, 2022. The athlete did not wish to make any further submissions.

## **Parties’ Submissions**

### **The Applicant’s Submissions**

23. The Anti-Doping Agency of Kenya proceeded to adopt and own the charge documents dated 1<sup>st</sup> March 2022 and the annexures thereto as an integral part of its submissions.
24. The Athlete herein is charged with an Anti-Doping Rule Violation of Presence of a prohibited substance known as ***19-Norandrosterone*** in contravention of the ADAK ADR (herein referred to as ADAK Rules).
25. The athlete noted is a National Level Athlete and therefore the result management authority vests with ADAK which in turn delegated the matter to the Sports Disputes Tribunal as provided for in the Anti-Doping Act No 5 of 2015 to constitute a hearing panel which the athlete was comfortable with.

The matter was set down for hearing and the athlete failed to appear for hearing and mentions on several occasions due to technical challenges but he finally appeared virtually on 04/08/2022.

### **Athlete's Submissions**

26. The athlete chose not to make any further submissions.

### **Background/Facts**

27. The Applicant states that the Respondent is a male Athlete hence the WA competition rules, WA Anti-Doping Regulations, the WADC and the ADAK ADR apply to him.

28. The Applicant further notes that on 4th October 2021, an ADAK Doping Control Officer (DCO) collected a urine sample from the Athlete. Assisted by the DCO, he split the Sample into two separate bottles, which were given reference numbers A 7033216 (the "A Sample") and B 7033216 (the "B Sample") in accordance with the prescribed WADA procedures.

29. Both Samples were transported to the Laboratory for Doping Analysis – South African Doping Control Laboratory in Bloemfontein, (the "Laboratory"). The Laboratory analyzed the A Sample in accordance with the procedures set out in WADA's International Standard for Laboratories (ISL). Both analysis of the A Sample returned an Adverse Analytical Finding ("AAF") presence of a prohibited substance *19-Norandrosterone*.

30. The respondent did not request a sample B analysis thus waiving his right to have the B-Sample analyzed.

31. The Doping control process was carried out by competent personnel and using the right procedures in accordance with the WADA International Standards for Testing and Investigations<sup>1</sup>.

32. The findings were communicated to the Respondent athlete by Japhter K. Rugut EBS, the ADAK Chief Executive Officer through a Notice of Charge and mandatory Provisional Suspension dated 30<sup>th</sup> November 2021. In the said communication the athlete was offered an opportunity to provide an explanation for the same by 20<sup>th</sup> December 2021.

33. The Respondent failed to respond to the charges after being served with the Notice of Charge. The Charge documents were prepared and filed by ADAK's Advocates, and the Athlete failed to present a response thereto.
34. The Applicant stated that the athlete though aware of the pendency of this matter deliberately decided to ignore, disregard, and dissociate himself with these proceedings. ADAK therefore invoked **Rule 3.2.5 as read with Rule 7.10.2 of the ADAK Anti-Doping Rules** and urged this Panel to render a Decision in this matter.

### Legal Position

35. The applicant submits that under Article 3 the ADAK ADR and WADC the rules provides that the Agency has the burden of proving the ADRV to the comfortable satisfaction of the hearing panel.

### Presumptions

36. It further provided at Article 3.2 that facts relating to anti-doping rule violation may be established by **any reliable means** including **admissions** and the methods of establishing facts and sets out the presumptions. Which include;
- a) ***Analytical methods or decision limits*** .
  - b) *WADA accredited Laboratories and other Laboratories approved by WADA are **presumed to have conducted sample analysis** and custodial procedures in accordance with the international standards for laboratories*
  - c) *Departures from any other International Standards or other anti-doping rule or policy set forth in the code or these Anti-Doping **Rules which did not cause an Adverse Analytical Finding** or other anti-doping rule violation shall **not invalidate** such evidence or results.*
  - d) *The facts established by a decision of a court or a professional disciplinary tribunal of competent jurisdiction which is not a subject of pending appeal shall be irrebuttable evidence against an athlete or other person to whom the decision pertained of those facts unless the athlete or other persons establishes that the decision violated principles of natural justice.*
  - e) *The hearing panel in a hearing.*

### Roles and Responsibilities of the Athlete

37. That under Article 22.1 the Athlete has the following Roles and responsibilities;

- a) To be knowledgeable of and comply with the anti- doping rules,
- b) To be available for Sample collection always,
- c) To take responsibility, in the context of anti-doping, for what they ingest and use,
- d) To inform medical personnel of their obligation not to use Prohibited Substances and Prohibited Methods and to take responsibility to make sure that any medical treatment received does not violate these Anti-doping rules,
- e) To disclose to his or her international federation and to the agency any decision by a non-signatory finding that he or she committed and Anti-Doping Rule Violation within the previous 10 years,
- f) To cooperate with Anti-doping organizations investigating Anti-doping rule violations.

38. The athlete herein is also under duty to uphold the spirit of sports as embodied in the preface to the Anti-Doping Rules which provides as follows;

*“The spirit of sports is the celebration of human spirit, body and mind and is reflected in values we find in and through sports including:*

- *Ethics, fair play and honesty*
- *Health*
- *Excellence in performance*
- *Character and education*
- *Fun and joy*
- *Dedication and commitment*
- *Respect for the rules and laws*
- *Respect for self and other participants*
- *Courage*
- *Community and solidarity.”*

### **Anti-Doping Agency of Kenya Position**

39. The burden of proof expected to be discharged by the Anti-Doping Organisation under Article 3 of the ADAK Rules and WADC was ably done by prosecution.



## Proof of Anti-Doping Rule Violation

40. The Athlete is charged with presence of a Prohibited Substance, a violation of Article 2.1 of the ADAK ADR. **19-Norandrosterone** is a Non- Specified Substance and attracts a period of ineligibility of 4 years.
41. ADAK submitted that 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.
42. Similarly, ADAK noted that in Article 10.2.1 of WADA Code 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.
43. The Applicant therefore urged the Tribunal to find that an ADRV has been committed by the Respondent herein.

## Origin

44. In the instant case, the athlete failed to establish the origin of the substance found in his system. He responded by stating his willingness to participate in the tribunal. It is the Applicant's contention that the athlete herein has failed to establish origin.
45. In **Arbitration CAS 2014/A/3615 World Karate Federation (WKF) v. George Yerolimpos** the court stated that the person charged cannot discharge that burden of proof merely by showing that he made reasonable efforts to establish the source but that they were without success...mere assertion as to what the source is, without supporting evidence, is sufficient.
46. It is clear from the above-mentioned case that it is not sufficient for an athlete merely protest his innocence and suggest that the prohibited substance may have entered his body inadvertently from some supplements, medicine, or other product. Rather, the athlete must adduce concrete evidence to demonstrate that the supplement, medicine or other product, that he took contained the substance in question. The mere fact that the athlete took the substance, he used at the time of the alleged offense does not prove on the balance of probability that violation was not intentional.
47. Furthermore in **CAS 2017/A/5260 World Anti- Doping Agency (WADA) v South Africa Institute for Drug- Free Sports (SAIDS) & Demarte Pena** the court stated that an athlete has a stringent requirement to offer persuasive evidence that the explanation he offers for an Adverse Analytical Finding

(AAF) is more likely than not to be correct, by providing specific, objective and persuasive evidence of his submissions .

48. In that regard, we do submit that the origin of the prohibited substance has not been established.

## **Intention**

49. In **CAS 2016/A/ 4626** the court stated in paragraph 45 that for an ADRV to be committed non-intentionally, the Athlete must prove that, by a balance of probability, he did not know that his conduct constituted an ADRV or that there was no significant risk of an ADRV. According to established case-law of **CAS 2014/A/3820** at paragraph 77 the proof by a balance of probability requires that one explanation is more probable than the other possible explanation. Thus, for that purpose, an athlete must provide actual evidence as opposed to mere speculation in.

50. A failure to explain the concrete origin of the prohibited substance only means that an athlete cannot prove the lack of intent. In the matter of **International Association of Athletics Federation (IAAF) v Russian Athletic Federation (RUSAF) & Vasily Kopeykin** the court stated that in order to meet such burden of proving lack of intent without establishing source cannot merely rely on protestation of innocence, lack of a demonstrable sporting incentive to dope, diligent attempts to discover the origin of the prohibited substance or the athlete's clean record. Supporting lack of intent without establishing the origin of the prohibited substance requires truly exceptional circumstances.

51. Therefore, to prove lack of intention, the Athlete must demonstrate how the prohibited substance entered his body. We submit further that the athlete must clearly demonstrate that the substance "was not intended to enhance" his performance. It does not suffice to say that one did not know that the supplement, medication or product used contained a banned substance. In Arbitration **CAS A2/2011 Kurt Foggo v. National Rugby League (NRL)** the panel observed that "The athlete must demonstrate that the substance was not intended to enhance the athlete's performance. The mere fact that the athlete did not know that the substance contained a prohibited ingredient does not establish absence of intent.

52. The Applicant contends that it is an established standard in the CAS jurisprudence that the athlete bears the burden of establishing that the violation was not intentional. It follows then that he must necessarily establish how the substance entered his body.

53. We therefore agree with the Applicant as the Respondent is unable to weight the likelihood based on absence of evidence.

### **Fault/Negligence**

54. 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.

55. The Respondent must not only demonstrate that he did not and could not reasonably know or suspect that he was ingesting a prohibited substance, but he must satisfy the threshold requirement of establishing how the prohibited substance entered his system by a balance of probability in *Article 3.1 of ADR states “ No Fault or No Negligence: The Athlete’s or other Person’s establishing that she did not know or suspect, and could not reasonably have known or suspected even with the exercise of utmost caution, that she had used or been administered the prohibited substance or prohibited method or otherwise violated an anti-doping rule. Except in the case of a minor, for any violation of Article 2.1, the Athlete must establish how the prohibited substance entered his system*

56. The Applicant argues to benefit from the institute of no fault or negligence, the Respondent must establish how the prohibited substance entered her system. The Respondent did not give any explanation how *19-Norandrosterone* entered his system. In the **Arbitration CAS 2011/A/2414 Zivile Balciunaite v Lithuanian Athletics Federation (LAF) & International Association of Athletics Federations (IAAF) Par 12.5** states the athlete is responsible for the presence of a prohibited substance in her body system. The Appellant is an experienced athlete and even if it would be true- what was never proven in this case- that the prohibited substance suddenly appeared in her body by taking Duphaston, it already is negligent by the Appellant willing to compete in a continental or world championship, to use a medical product *“not leaving no reasonable stone unturned”* in researching whether such a substance might cause effects prohibited by anti-doping rules.

57. It is clear from the foregoing that the athlete ought to have known better the responsibilities bestowed upon him as a national level athlete. He was thus grossly negligent.

## Knowledge

58. The applicant contends that the principle of strict liability is applied in situations where urine/blood samples collected from an athlete have produced adverse analytical results. It means that each athlete is strictly liable for the substances found in his or her bodily specimen, and that an anti-doping rule violation occurs whenever a prohibited substance (or its metabolites or markers) is found in bodily specimen, whether or not the athlete intentionally or unintentionally used a prohibited substance or was negligent or otherwise at fault.
59. The Applicant holds that an athlete competing at international level and who also knows that he is subject to doping controls as a consequence of his participation in national and/or international competitions cannot simply assume as a general rule that the products/ medicines he ingests are free of prohibited/specified substances.
60. We submit that it cannot be too strongly emphasized that the athlete is under a continuing personal duty to ensure that ingestion of a substance will not be in violation of the Code. Ignorance is no excuse. To guard against unwitting or unintended consumption of a prohibited substance, it would always be prudent for the athlete to make reasonable inquiries on an ongoing basis whenever the athlete uses the product.
61. In Arbitration **CAS A2/2011 Kurt Foggo v. National Rugby League (NRL)** the panel observed that an athlete's lack of knowledge that a product contains a prohibited substance is not enough to demonstrate the absence of athlete's intention to enhance sport performance.

## Sanctions

62. 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."
63. 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.

64. 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

65. In the circumstances, the Respondent has failed to establish the origin of the prohibited substance and as thus cannot and should not benefit from any reduction.

## **Conclusion**

66. Article (WADA 2.1.1) emphasizes that it is an athlete's personal duty to ensure that no prohibited substance enters his or her body and that 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 by the analysis of the athlete's sample which confirms the presence of the prohibited substance.

67. We find that ideal considerations while sanctioning the athlete are:

- a) The ADRV has been established as against the athlete.
- b) The failure by the athlete to establish no intention to commit an ADRV.
- c) Failure by the athlete to establish the origin of the prohibited drug.
- d) The knowledge and exposure of the athlete to anti-doping procedures and programs.
- e) The Respondent herein has failed to give any explanation for his failure to exercise due care in observing the products ingested and used and as such the ADRV was as a result of his negligent acts.

68. The maximum sanction of 4 years ineligibility ought to be imposed as no plausible explanation has been advanced for the Adverse Analytical Finding.

69. From the foregoing, we urge the panel to consider the sanction provided for in Article 10.2.1.2 of the ADAK Rules and sanction the athlete to 4 years ineligibility.

70. It is our submission that ADAK has made out a case against the Athlete and that there was indeed an Anti-Doping Rule Violation by the Athlete, and a sanction should ensue.

## **Jurisdiction**

74. The Sports Disputes Tribunal has jurisdiction to hear and determine this matter in accordance with the following laws:
- a. Sports Act, No. 25 of 2013 under section 58.
  - b. Anti-Doping Act, No. 5 of 2016 under section 31(a) and (b).
  - c. Anti-Doping Rules under Article 8.
75. Consequently, the Tribunal assumes its jurisdiction from the above-mentioned provisions of law.

## **Applicable Rules** \_\_\_\_\_

76. Section 31 (2) of the Anti-Doping Act provides that:
- the tribunal shall be guided by the Anti-Doping Act, the Anti-Doping Regulations 2021, the Sports Act, the WADA Code 2021, and International Standards established under it, the UNESCO Convention Against Doping in Sports amongst other legal resources, when making its determination.**

## **Merits** \_\_\_\_\_

### **Did the Athlete commit the charged anti-doping rule violation?**

77. The Applicant's prosecution is based on the charge of **Presence of a prohibited substance 19— Norandoresterone** in the athlete's **sample** as outline at paragraph 5 of its charge.
78. Article 2.1 of the ADAK ADR and, similarly Article 2.1 of the Code provide the charge to be determined as follows:
- '2.1 Presence of a Prohibited Substance or its Metabolites or Markers in an Athlete's Sample.'***

79. The Tribunal shall conduct its analysis of the merits on the premise that the B Sample was waived by the Athlete.
80. The Tribunal notes that there is no dispute between the Athlete and the Applicant about the following matters:
- (a) A urine Sample was collected on 4<sup>th</sup> October 2021 by the Applicant;
  - (b) The Athlete received the ADRV Notice dated 30<sup>th</sup> November 2021 from the Applicant.
  - (c) That a prohibited substance 19-norandrosterone was present in the Athlete's body and there was therefore an AAF;
  - (e) The Athlete had been tested severally since 2017.
81. The Tribunal further notes that the following facts are in dispute:
- (a) The Athlete denied negligently or intentionally consuming the prohibited substance;
  - (b) That he did not educate himself on anti-doping programs and policies;
  - (c) The Athlete failed to concretely establish origin of prohibited substance in his urine.
82. Article 3 of the ADAK ADR provides that the Applicant shall have the burden of establishing the anti-doping rule violation. The standard of proof employed by the Applicant herein shall be to the comfortable satisfaction of the panel.
83. If it is determined that the Applicant has satisfactorily proved the charge as against the Applicant, the burden of proof shall shift to the Athlete to satisfy the Tribunal on a balance of probabilities that the violation did not occur because of her intention, fault, or negligence.
84. Article 3.2 of the ADAK ADR and the Code provides that facts related to the anti-doping rule violations may be established by any reliable means,

including admissions, the credible testimony of third persons, and reliable documentary evidence.

85. From the testimony that was received from the athlete he could not establish the origin of the substance. He also did not deny that the substance was in his body. All he could say was that he had Tuberculosis and painful knees and for that reason visited various chemists which provided him with medicine that he did not know and the constitution of which he was not aware. Simply denying and claiming ignorance as to how the substance could have got into his system is no defence.

### **Was the violation committed by the athlete intentional?**

86. Article 3.1 of the ADAK ADR and the Code shifts the burden to the Athlete to prove, on a balance of probabilities that the violation committed was not intentional.

87. Article 10.2.3 of the Code provides that ‘intentional’ should be construed as to:

*Identify those Athletes or other Persons who engage in conduct which they 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.*

88. Similarly, the WADA Anti-Doping Organizations Reference Guide under section 10.1 provides that:

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

89. Consequently, in determining whether there was intention to commit the violation, there are two aspects to be reviewed:



- a. Whether the Athlete knew the action constituted an ADRV or knew there was significant risk of committing an ADRV; and
- b. Whether he manifestly disregarded the risk.

90. The athlete in his own testimony has admitted to going to various chemists to get medication without any visit to a hospital and without seeking any doctor in order to get a prescription for his ailments. In so doing the athlete was putting himself at significant risk of committing an ADRV.

91. Further the athlete in his testimony also admits to being aware of issues of drug violations and having the knowledge that certain substances were banned. Despite knowing that he disregarded the risk and went ahead to take medication that he did know and without going through proper channels of seeking a doctor's advice. The fact that he was getting injections at a chemist without a prescription and without even knowing that the person giving the injection was a doctor shows a complete disregard of risk.

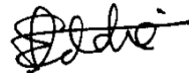
92. We do take cognizance of the athlete's low level of education, however, the fact that the athlete has been tested many times, and the fact that he acknowledges that there are banned substances that he should not take; and further due to the fact that he had a smart phone with which he could use to check any medication he was taking tilts away any excuses on lack of education. This is further confirmed by the fact that he is internationally travelled and hence more aware. The athlete also had a manager who could have advised him accordingly.

## Decision

93. Consequent to the discussion on merits of this case, the Tribunal commends itself with the following orders:

- a) The athlete is sanctioned with a period of ineligibility of four (4) years;
- b) The period of ineligibility shall run from the date of provisional suspension that is to say with effect from 30<sup>th</sup> November, 2021;
- c) Each party shall bear its own costs;
- d) The right of appeal is provided for under Article 13 of the ADAK ADR and the Code.

Dated at Nairobi this 19<sup>th</sup> day of            October            2022



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**E. Gichuru Kiplagat, Panel Chairperson**



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**Gabriel Ouko, Member**



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**Allan Owinyi, Member**