

**IN THE MATTER OF PROCEEDINGS BROUGHT UNDER THE ANTI-DOPING RULES  
OF THE INTERNATIONAL ASSOCIATION OF ATHLETICS FEDERATIONS**

*Before:*

*Michael J Beloff QC (Chair)*

**BETWEEN:**

**International Association of Athletics Federations (IAAF)**

*Anti-Doping Organisation*

**-and-**

**Jemimah Jelagat Sumgong**

*Respondent*

---

**DECISION OF THE DISCIPLINARY TRIBUNAL**

---

## A. INTRODUCTION

1. The Claimant, the International Association of Athletics Federations (the "**IAAF**"), is the International Federation governing the sport of athletics worldwide<sup>1</sup>. It has its registered seat in Monaco.
2. The Respondent, Ms. Jemimah Jelagat Sumgong (the "**Athlete**") is a 33-year-old female long-distance runner from Kenya. She finished first in the Women's Marathon at the XXXI Olympic Games in Rio de Janeiro on 14 August 2016 and is the current Olympic Champion<sup>2</sup>.
3. Following an investigation conducted by the Athletics Integrity Unit (the "**AIU**") pursuant to Article 5.10.1 of the IAAF Anti-Doping Rules ("**ADR**")<sup>3</sup>, the AIU has discovered evidence of a potential Anti-Doping Rule Violation ("**ADRV**") other than an Adverse Analytical Finding ("**AAF**"), Atypical Finding, Adverse Passport Finding or a Whereabouts Failure by the Athlete, namely that she provided fraudulent medical information during first-instance disciplinary proceedings under the ADR, in an attempt to corroborate a false explanation for an AAF for recombinant erythropoietin ("**r-EPO**"). In consequence the AIU has laid a charge of Tampering (Art. 2.5 of the ADR) against the Athlete.

## B. FACTUAL BACKGROUND

### I. AAF for r-EPO

---

<sup>1</sup> The IAAF is represented in these proceedings by the Athletics Integrity Unit ("**AIU**") which has delegated authority for results management and hearings on behalf of the IAAF pursuant to Article 1.2 of the IAAF Anti-Doping Rules ("**ADR**"), effective 3 April 2017.

<sup>2</sup> She was represented on a pro-bono basis in these proceedings by Mr. Adam Taylor (Crown Office Chambers, London) instructed by Mr. Jason Torrance (Solicitor, FJG Solicitors, London, as had been arranged for her by Sport Resolutions after on 29 July 2018 making contact with her by telephone (on her husband's mobile) but, as will be explained below, ceased to provide any instructions to them after 17 September 2018. I am grateful to those lawyers for their assistance.

<sup>3</sup> <https://www.iaaf.org/download/download?filename=0d75481e-55ef-4c25-b154-da5a08bc9a26.pdf&urlslug=IAAF%20Anti-Doping%20Rules>

4. On 28 February 2017, the Athlete was subject to Out-of-Competition testing in Kapsabet, Kenya and provided a urine sample coded 3089085 (the "**Sample**").
5. The Sample was sent to the WADA-accredited laboratory in Lausanne, the Laboratoire Suisse d'Analyse du Dopage (the "**Laboratory**") and was analysed in accordance with the WADA International Standard for Laboratories. The analysis resulted in an AAF for the presence of r-EPO.
6. The 2017 WADA Prohibited List provides that r-EPO is prohibited under S.2 (Peptide Hormones, Growth Factors, Related Substances and Mimetics). It is a Non-Specified Substance.

## *II. First Explanation for the AAF*

7. On 4 April 2017, the Athlete attended a meeting at the offices of the Anti-Doping Agency of Kenya ("**ADAK**") with representatives of ADAK and the World Anti-Doping Agency ("**WADA**") and was handed correspondence from the IAAF notifying her of the AAF in the Sample.
8. On that occasion the Athlete's immediate response was that she could not explain how r-EPO came to be present in the Sample. She requested some time to consider the matter after which she would provide her explanation<sup>4</sup>.
9. On 6 April 2017, the AIU received correspondence from the Athlete's Agent, Mr. Federico Rosa (the "**Agent**") enclosing pictures of a handwritten letter purportedly from the Athlete that provided for the first time<sup>5</sup> an explanation for the presence of r-EPO in the Sample, namely that the Athlete sought hospital treatment for a headache and abdominal pain that had begun on 19 February 2017 and progressively worsened, that she was treated on the evening of 22 February 2017 at an unspecified hospital by an unnamed doctor who told her that she had experienced a loss of blood and gave her medicine. The Athlete claimed that she

---

<sup>4</sup> See the statement of ADAK representative Mr. Eddie Nyoro (undated) (paragraphs 7-21).

<sup>5</sup> The Athlete had not previously disclosed this information to representatives of ADAK or WADA during the meeting on 4 April 2017 and it was not included on the relevant Doping Control Form.

had no intention to enhance her performance because she did not know what type of medicine she had been given by the doctor. The Athlete also confirmed that she had not informed the doctor that she was an International-Level Athlete.

### *III. Interview with ADAK on 21 April 2017*

10. On 21 April 2017, the Athlete attended an interview with Mr. Nyoro and another representative of ADAK, recorded in an Interview Synopsis document. During this interview, the Athlete provided an alternative explanation for the presence of r-EPO in the Sample<sup>6</sup> to the following effect, namely that, after receiving notice from the IAAF, she went to Reale Hospital to speak to a doctor who informed her that the AAF could only have been caused by injection. This information reminded her of treatment she had received at Kenyatta National Hospital ("**KNH**") in Nairobi on (or around) 22 February 2017 (as recorded at 4hr:13min:06 sec of the Interview Synopsis document). Prior to receipt of that treatment she had begun to bleed (heavy, painful menstrual bleeding) whilst travelling from Kapsabet to Moi Airbase, Nairobi (recorded at 2hr:29min:50sec of the Interview Synopsis document). On arriving in Nairobi, she also began to experience abdominal pain. She took a taxi to KNH (because, according to her, she was bleeding heavily), but she did not go to the emergency room. Instead, she visited a doctor after waiting for approximately 15-20 minutes having arrived at approximately 7:30-8:00am (recorded at 4hr:27min:10sec of the Interview Synopsis document). From this doctor she received medical treatment which included two white tablets. Because she was sick she did not question what the tablets were. After taking the tablets, she felt better, although her abdominal pain remained. After resting for 20 minutes, the Athlete informed the doctor that the abdominal pain was now sharp. The same doctor then treated the Athlete with an injection into the buttocks. The Athlete did not know what the injection was and did not, because of her fear of needles, look at the

---

<sup>6</sup> The Athlete stated that her original explanation provided via the Agent on 6 April 2017 was not intended to be her explanation for the presence of r-EPO. She had provided this to the Agent to accommodate his repeated (and, to her, frustrating) requests for an urgent explanation, but confirmed this was not her actual explanation (recorded at 4hr:17min:20sec to 4hr:22min:00sec of the Interview Synopsis document).

syringe or its contents. She did not ask for the doctor's name, did not see a nametag and left at approximately 10:00am. She did not tell anyone about this treatment (recorded at 4hr:36min:00sec to 4hr:47min:50sec of the Interview Synopsis document).

11. The Athlete suggested that it was this treatment at KNH on or around 22 February 2017 that explained the presence of r-EPO in the Sample (recorded at 5hr:07min:17sec of the Interview Synopsis document).
12. After the interview had concluded, the Athlete contacted Mr. Nyoro by telephone and informed him that she had also received a blood transfusion whilst at KNH, but that she had forgotten to disclose this information to him during the interview itself<sup>7</sup>.

#### *IV. Further Explanation and Medical Records*

13. On 26 April 2017, the Athlete provided five (5) pictures to Mr. Nyoro via WhatsApp. These pictures included a further handwritten explanation; and handwritten medical information purporting to be from KNH detailing a diagnosis of a ruptured ectopic pregnancy and treatment received including a blood transfusion and injection of erythropoietin ("**EPO**").
14. By letter dated 4 May 2017, ADAK requested disclosure of medical information from KNH in relation to the asserted treatment that the Athlete received on or around 22 February 2017.
15. On 9 June 2017, ADAK received a reply to its letter dated 4 May 2017 from Dr Peter Michoma, Acting Head of Department, Reproductive Health, KNH. Dr Michoma stated that the Athlete had not visited KNH or received any treatment there on either 22 or 23 February 2017 as follows:

*A) In reference to the note dated 23<sup>rd</sup> February, 2017 written on a continuation sheet purporting to have originated from Kenyatta National*

---

<sup>7</sup> The Statement of Mr. Nyoro para 43.

Hospital I clarify that the said document is **not authentic** and confirm it is a **fake** one for the following reasons;

- (i) Each and every time a patient is treated at the KNH an individual file is created by the Health Information Department with a unique hospital number. From a manual and computer search in the Hospital system there is no indication that the above named had ever been seen and treated at Kenyatta National Hospital on or before the 23<sup>rd</sup> February, 2017.
- (ii) Ectopic pregnancy<sup>8</sup> is a gynecological [sic] emergency that is surgically managed through the hospital theatres. All cases of patients operated in our theatres are manually recorded in a serialized register; there is no record in our hospital indicating that the said person was operated here.
- (iii) All patients with ectopic pregnancy managed at Kenyatta National Hospital are eventually admitted to acute gynaecology ward after surgery for a period of four (4) days. Each admission is recorded manually in a serialized patient register. The said patient name is not appearing in our acute gynaecology ward admission register.
- (iv) Upon discharge the patient is usually given a discharge summary which is written on a case summary sheet indicating the Date of Admission, Date of discharge, Diagnosis, Treatment, Medication and next appointment date and the clinic for review, a document which is not what she is presenting.
- (v) The purported use of **erythropoietin injection** is not standard practice in management of ectopic pregnancy at our facility. There is no record indicating that Ms. Jemima Jelagat Sumgong ever received the said medication for whatever ailment.
- (vi) The author of the note dated 23<sup>rd</sup> February 2017 is an imposter who is not known to this institution.

16. Dr Michoma also stated that the Athlete had visited KNH on 18 April 2017 three days prior to the interview with ADAK on 21 April 2017, to seek a second

---

<sup>8</sup> The reference to ectopic pregnancy is explained in the next paragraph.

opinion about treatment she had previously received in June 2009 (details of which are set out in a letter from the Defence Forces Memorial Hospital dated 30 August 2017) as follows:

*B) The Accident and Emergency card number 7708 dated 18<sup>th</sup> April, 2017, I confirm that it **is authentic** and is backed by records in custody of our Health Information Department. However, I clarify the following facts:*

*(i) The said patient, Ms. Jemima Jelagat Sumgong had presented at our Accident and Emergency Department and seen by one of our Gynaecology Resident Doctor as per standard procedure.*

*(ii) The reason for coming to this hospital [KNH] on 18<sup>th</sup> April, 2017 was to seek a second opinion concerning treatment for ectopic pregnancy she had been offered in Rwanda in 2009 where she had been done surgery.*

*(iii) Patient stated that she was on Jadelle implant for family planning. She was not pregnant at the moment she was being seen on this particular day, her last period had been on 28<sup>th</sup> March 2017 and had not missed her monthly periods.*

*(iv) Since her case on this particular day was not a medical emergency, she was advised to seek follow up through our hospital Gynaecology Outpatient Clinic (GPC – Clinic 18). So on this particular day, Ms. Jemima Jelagat Sumgong **was not** done any laboratory test, no [sic] any radiological investigation and more importantly there was neither any medication prescribed nor administered to this patient on said date.*

*(v) The 18<sup>th</sup> April, 2017 is the only and last recorded date that the said patient consulted physician at Kenyatta National Hospital [...]*

#### *V. First Instance Decision: AAF*

17. By decision dated 31 October 2017 (the "**Decision**"), the Republic of Kenya Sports Disputes Tribunal (the "**Kenyan Tribunal**") determined that the explanations provided by the Athlete were not sufficient to demonstrate how r-EPO had entered

her body, or the origin of the Prohibited Substance or that the violation was not intentional.

18. The Kenyan Tribunal concluded that the Athlete had committed an ADRV for the presence of r-EPO in the Sample and imposed a period of Ineligibility of four (4) years. The Athlete did not appeal the Kenyan Tribunal's decision to CAS as she was entitled to do.
19. The Decision also records the Athlete's position in relation to the comments made by Dr Michoma (see above paragraphs 15 and 16). In response to those comments, the Athlete simply restated that she did attend KNH on the relevant date i.e. on or about 22nd February 2017. Counsel for the Athlete also suggested that the doctor who attended and treated her at KNH that day was an imposter because it was a well-known fact that there had been a doctors' strike at that time which explained the lack of a proper record of the Athlete's visit.
20. Paragraph 49 of the Decision records the Kenyan Tribunal's concern regarding the explanation submitted by the Athlete:

49. [...] She provided the treatment note appearing at page 22 of the Charge Document but which was disputed by the KNH by the letter dated 9th June 2017. **We note with concern that the narrative by the Athlete of the events leading to the visitation and treatment at the hospital are inconsistent at best. Indeed, we might go so far as to state that the Athlete's attempt to explain how the substance entered her body bordered on an attempt to deceive the Panel in view of the Hospital's denial that the Athlete attended the Hospital for any treatment whatsoever.** (emphasis added)

## C. JURISDICTION AND APPLICABLE RULES

### I. Jurisdiction

The Athletics Integrity Unit



21. Article 1.2 ADR entered into force on 3 April 2017 and specifies the delegated authority of the AIU for the following:

1.2 *In accordance with Article 16.1 of the IAAF Constitution, the IAAF has established an Athletics Integrity Unit (“**Integrity Unit**”) with effect from 3 April 2017 whose role is to protect the Integrity of Athletics, including fulfilling the IAAF’s obligations as a Signatory to the Code. **The IAAF has delegated implementation of these Anti-Doping Rules to the Integrity Unit, including, but not limited to the following activities in respect of International-Level Athletes and Athlete Support Personnel: Education, Testing, Investigations, Results Management, Hearings, Sanction and Appeals.** The references in these Anti-Doping Rules to the IAAF shall, where applicable, be references to the Integrity Unit (or to the relevant person, body or functional area within the Unit). (emphasis added)*

22. In accordance with the foregoing Article, the AIU has gathered intelligence and investigated the submission of documents by the Athlete to ADAK on 26 April 2017 pursuant to Article 5 ADR, which provides:

5.10.1 *In addition to conducting Testing in accordance with Article 5 above, **the Integrity Unit shall have the power to gather anti-doping intelligence and conduct investigations in accordance with the requirements of the Code and the International Standard for Testing and Investigations into matters that may evidence or lead to the discovery of evidence of an Anti-Doping Rule Violation.** Such investigations may be conducted in conjunction with, and/or information obtained in such investigations may be shared with, other Signatories and/or relevant authorities. The Integrity Unit shall have discretion, where it deems appropriate to stay its own investigation pending the outcome of investigations being conducted by other Signatories and/or relevant authorities. (emphasis added)*

23. I accordingly accept that the AIU had the requisite power to undertake an investigation that might evidence, or lead to the discovery of evidence of, an ADRV by the Athlete, as an International- Level athlete.

24. Article 7.2 ADR which confers jurisdiction for results management on the AIU in certain circumstances, provides so far as material as follows:

*7.2 The Integrity Unit shall have results management responsibility under these Anti-Doping Rules in the following circumstances:*

*7.2.3 For potential violations arising in connection with any investigation conducted pursuant to Article 5.*

*[...]*

*7.2.5 For potential violation of these Anti-Doping Rules where no testing is involved and where the potential violation involves:*

*(a) Any International-Level Athlete, Athlete Support Person or other Person who has any involvement in any capacity in International Competitions or with International-Level Athletes*

25. I accordingly accept that the AIU also had responsibility for results management for potential ADRVs resulting from investigations and/or where the potential violation involves the Athlete as an International-Level Athlete.

26. The application of the ADR to athletes, athlete support personnel and other persons is set out in Article 1.7 ADR, which provides so far as material as follows:

*1.7 These Anti-Doping Rules also apply to the following Athletes, Athlete Support Personnel and other Persons, each of whom is deemed, by condition of his membership, accreditation and/or participation in the sport, to have agreed to be bound by these Anti-Doping Rules, and to have submitted to the authority of the Integrity Unit to enforce these Anti-Doping Rules:*

*a) all Athletes, Athlete Support Personnel and other Persons who are members of a National Federation or of any affiliate organisation of a National Federation (including any clubs, teams associations or leagues);*

*b) all Athletes, Athlete Support Personnel and other Persons participating in such capacity in Competitions and other*

*activities organized, convened, authorized or recognized by (i) the IAAF (ii) any National Federation or any member or affiliate organization of any National Federation (including any clubs, teams, associations or leagues) or (iii) any Area Association, wherever held;*

*c) all Athlete Support Personnel and other Persons working with, treating or assisting an Athlete participating in his sporting capacity; and any other Athlete, Athlete Support Person or other Person who, by virtue of an accreditation, licence or other contractual arrangement, or otherwise, is subject to the jurisdiction of the IAAF, of any National Federation (or any member or affiliate organization of any National Federation, including any clubs, teams, associations or leagues) or of any Area Association, for purposes of anti-doping.*

27. The applicable rules are the ADR, which apply to all athletes who are members of a National Federation and to all athletes participating in competitions organised, convened, authorised or recognised by the IAAF.
28. Before the imposition of the Provisional Suspension for the AAF on 3 April 2017, the Athlete had competed both nationally and internationally in competitions organised, convened, authorised and recognised by the IAAF, including in the London Marathon on 24 April 2016 which she won. (The Athlete had also been entered to compete in the 2017 London Marathon in the Elite field on 23 April 2017 (with runner no. 101) but did not compete due to the imposition of the Provisional Suspension.)
29. The Athlete was in the International Registered Testing Pool on 28 February 2017 when the Sample was collected and on 26 April 2017 when the documents were submitted to ADAK. She was (and remained) a member of her National Federation, Athletics Kenya, notwithstanding the Provisional Suspension and ultimate period of Ineligibility that was imposed. The Athlete also submitted to the jurisdiction of the Kenyan Tribunal for the determination of whether she had committed an ADRV and, if so, of the appropriate sanction.
30. I accept accordingly that the Athlete is and was at all material times subject to the ADR and to the authority of the AIU

31. Furthermore, Article 1.9 ADR specifies those athletes that are classified as International-Level athletes under the ADR so far as material as follows:

1.9 *Within the overall pool of Athletes set out above who are bound by and required to comply with these Anti-Doping Rules, each of the following Athletes shall be considered to be an International-Level Athlete ("**International-Level Athlete**") for the purposes of these Anti-Doping Rules and therefore the specific provisions in these Anti-Doping Rules applicable to International-Level Athletes shall apply to such Athletes:*

(a) **An Athlete who is in the International Registered Testing Pool:**

[...]

(c) **Any other Athlete whose asserted Anti-Doping Rule Violation results from** (i) Testing conducted under the Testing Authority of the IAAF; **(ii) an investigation conducted by the IAAF** or (iii) any of the other circumstances in which the IAAF has results management authority under Article 7; (emphasis added).

32. As set out above, on 28 February 2017 (the date of the collection of the Sample) and on 26 April 2017 (the date that the Athlete submitted medical documents to ADAK) the Athlete was in the International Registered Testing Pool and had provided whereabouts information to the IAAF for that purpose.

33. I accept accordingly that the Athlete is and was at all material times an International-Level Athlete pursuant to Article 1.9(a) ADR for the purposes of the ADR.

34. Additionally, the asserted ADRV against the Athlete arises from intelligence gathered from an investigation under the authority delegated to the AIU pursuant to Article 1.2 ADR and conducted by the AIU pursuant to Article 5 ADR. I accept accordingly that the Athlete is and was at all material times also an International-Level Athlete pursuant to Article 1.9(c) ADR for the same purposes.

## The IAAF Disciplinary Tribunal

35. The IAAF has established the Disciplinary Tribunal in accordance with Article 1.5 ADR, which provides that it shall determine ADRVs committed under the ADR.
36. Article 8.2(a) ADR sets out that the Tribunal shall have jurisdiction over all matters in which:
- (a) *An Anti-Doping Rule Violation is asserted by the Integrity Unit against an International-Level Athlete or Athlete Support Person in accordance with these Anti-Doping Rules;*
37. I accept accordingly that I have jurisdiction to hear and determine the ADRV asserted against the Athlete pursuant to Article 8.2(a) ADR<sup>9</sup>.

### *Proceedings*

38. On 25 July 2018 after a preliminary meeting with the parties, which the Athlete and the AIU attended by telephone, I issued the following directions (the “**Directions**”) with which both parties agreed and whose essential provisions I quote in full:
- 1.1 *I will hear this matter sitting alone under Article 8.7.2 (a) of the IAAF Anti-Doping Rules.*
- 1.2 *By 5pm (BST) on **Wednesday 8 August 2018**, The AIU is to submit its brief with arguments on all issues that the IAAF wishes to raise at the hearing, accompanied by written witness statements from each fact and/or expert witnesses in support of the evidence that the Integrity Unit intends to place before the hearing, setting out the evidence that the IAAF wishes the Panel to hear from the witnesses and/or experts and enclosing also copies of the documents that the Integrity Unit intends to rely upon;*
- 1.3 *By 5pm (BST) on **Wednesday 22 August 2018**, the Athlete is to submit an answer brief addressing the IAAF’s arguments and setting out*

---

<sup>9</sup> It being agreed that I would determine the matter as a sole arbitrator, see paragraph 38.

*arguments on the issues that the Athlete wishes to raise at the hearing, accompanied by written witness statements from the Athlete and from each of the Athlete's other witnesses (be they of fact and/or expert) that the Athlete intends to call at the hearing, setting out the evidence that the Athlete wishes to place before the Panel at the hearing, enclosing also copies of documents upon which the Athlete intends to rely; (I note that while it will be for the Athlete, with the advice of pro bono (ie a free of charge) lawyer to be provided by Sports Resolutions [sic], to determine how she conducts her defence against the IAAF's charges, it appears that one issue will be the authenticity of the hospital document submitted with her statement of 26th April 2017)*

1.4 By 5pm (BST) on **Wednesday 5 September 2018**, the AIU may submit its reply brief, responding to the Athlete's answer brief, together with the production of any rebuttal witness statements and/or other documents upon which the AIU may wish to rely;

1.5 A hearing to be held on **Thursday 27 September 2018**, at the offices of Sport Resolutions in London, UK (the parties attending either in person or by phone/video conference). A hearing time is to be determined.

39. On 08 August 2018 the AIU filed its Appeal Brief which referred *inter alia* to the provision by the Athlete of the handwritten medical information ("**the KNH Document**") that purported to be from KNH detailing a diagnosis of a ruptured ectopic pregnancy and treatment received on 23 February 2017 including a blood transfusion and injection of EPO, and which was relied on by her as an explanation ("**the Explanation**") for the presence of EPO in her system in an Out-of-Competition test carried out in Kapsabet on 28 February 2017.
40. The AIU's position was that the KNH Document was false, relying for that purpose on the statement, in a letter dated 9 June 2017 from Dr Peter Michoma (Acting Head of Department, Reproductive Health, KNH) that the Athlete had not visited KNH or received any treatment at that institution on either 22 or 23 February 2017, whereas she had only visited KNH on 18 April 2017, to seek a second opinion concerning

treatment for ectopic pregnancy she had been offered in Rwanda in 2009 where she had had surgery<sup>10</sup>.

41. On 31 August 2018<sup>11</sup> the Athlete (with the assistance of her pro bono lawyers) filed her Answer Brief in which she asserted for a number of reasons, including an assault on the adequacy of Dr Michoma's statement,<sup>12</sup> that the AIU had failed to prove to the necessary high standard that either the KNH Document or the Explanation were false. The Answer Brief also laid stress on the fact that on 22/23 February 2017 there had been a national doctors strike which might have affected the way contemporary records were compiled<sup>13</sup>.

42. At paragraph 26 of the Answer Brief the comment was made that:

*The IAAF appears to overlook the fact that the Athlete has a history of ectopic pregnancy, as explained within the Defence Forces Memorial Hospital note of 30 August 2017, which described an emergency laparotomy for ectopic pregnancy on 29 June 2009. The establishment of a similar issue in the Athlete's past medical history undermines the IAAF's contention that the KNH Document is fraudulent.*

43. The AIU, however, submitted that the Athlete's whereabouts information for that period appeared to contradict the statement made in her explanation on 26 April 2017 since it suggested that she was in Kapsabet on those dates.

44. On 13 September 2018 the AIU accordingly sought an order<sup>14</sup> that the Athlete be directed to:

- (i) *provide full details regarding her travel to Nairobi on 22 February 2017 (including, without limitation, mode of transport, company (if*

---

<sup>10</sup> see paragraphs 15 and 16 above.

<sup>11</sup> The AIU had previously agreed to an extension for the Athlete to file her Answer Brief (from 22 August 2018 until 31 August 2018).

<sup>12</sup> paragraphs 22-23 of the Answer Brief.

<sup>13</sup> paragraphs 27-29 of the Answer Brief.

<sup>14</sup> The AIU requested that the deadline to submit its Reply Brief by 5pm 14 September be suspended pending the outcome of this application, a request which I acceded to by way of holding operation.

*applicable), flight/bus number (if applicable), estimated departure and arrival time etc.)*

*(ii) produce evidence of that travel (e.g. reservation, ticket etc) or other proof that she was in Nairobi on 22 and/or 23 February 2017.*

*(iii) to provide her voluntary consent for the AIU to access to her full medical records/history directly and requests an extension to paragraph 1.4 of the Directions to file its reply either (i) 14 days after receipt of the above information and consent from the Athlete (ii), 14 days after it is determined that this application should be rejected.*

45. The AIU supported its application by stating that since the Athlete, was subject to a final and binding decision that imposed a period of Ineligibility of four years (until 2 April 2021) she would suffer no prejudice from the application or the order sought.

46. On 14 September 2018 the Athlete through her pro bono lawyers objected to the application. In summary (and paraphrase) it was argued:

(i) Given the nature of the charge made against the Athlete, the burden to prove the case is on the AIU to my comfortable satisfaction.

(ii) For a charge of this nature, i.e. one in which the burden of proof is on the AIU and is not a strict liability offence, before the Athlete was charged the AIU would have put this matter through an independent review.

(iii) If the consequence of both the AIU's investigation and the independent reviewer's determination was that there was sufficient evidence to proceed with a charge against the Athlete, the AIU should not now be afforded an order for the Athlete to provide them with information that may or may not assist them with proving a charge they chose to bring based upon their assessment of the evidence available.

(iv) The Athlete should not be forced potentially to assist in proving a charge made against her.

(v) The extension the AIU earlier granted to the Athlete was not granted in order that she could gather evidence or attempt to improve her case but so that she



had time to review submissions prepared on her behalf: she has very limited resources and lacks ready access to a computer.

- (vi) the AIU has had adequate time to reply to the Athlete's Answer Brief.
- (vii) If, upon its review of the Answer Brief, the AIU had now determined that its case was not as strong as it had initially believed, that was entirely its own responsibility and it should not now be granted the opportunity to attempt to improve their case because it now believed that case to be inadequate.
- (viii) There would be prejudice to the Athlete if I acceded to the application i.e. the opportunity for AIU to try and strengthen its case and the increased uncertainty and stress involved in adjourning the hearing for an indeterminate length of time. Fairness, applying the test in Rule 8.6.1(c) of the IAAF Anti-Doping Rules, did not require an adjournment or any of the steps proposed by AIU.

47. On 14 September 2018 the AIU responded. In summary (and paraphrase) it was argued:

- (i) The detail and documentation sought is clearly relevant to these proceedings given the contradiction between her version of events as to her travel to Nairobi and her whereabouts record.
- (ii) It was disappointing that the Athlete was adopting a highly technical position with respect to the AIU's legitimate production request, rather than seeking positively to establish the facts upon which her defence relied.
- (iii) In any notional *de novo* CAS proceedings by way of appeal from my decision on the charge the AIU could successfully make the same application.
- (iv) The order sought was conducive to procedural economy and would enable me, as Chair to consider all the relevant facts and evidence.

48. The AIU added that if the Athlete *"refuses to comply (voluntarily), the AIU reserves its right to ask the Panel (i.e. me) to draw adverse inferences"*.

49. Under Article 8.6(e) of the ADR I have power:

*...to order any party to make any property, document or other thing in its possession or under its control available for inspection by the Disciplinary Tribunal and/or any other party<sup>15</sup>.*

50. On 17 September 2018 I ruled on the application which I approached on the basis that the presumptive position is that a Disciplinary Panel or sole arbitrator should have access to all relevant information to enable it, or him/her, to make a just decision on a disciplinary charge, subject to the overriding obligation to be fair to the defendant to that charge.
51. I bore in mind that it was for the AIU to make out its case against the Athlete to the appropriate standard. It seemed however, clear beyond argument that if on the 22 and 23 February 2017 the Athlete was in Kapsabet she could not have received treatment at the KNH on the latter date and any evidence she relied upon to say that she did could not be correct. Given that the AIU had raised the issue as to her whereabouts on those days it was clearly in her interests to supply any material she could, including the kind of travel related document sought (if such still existed) over and above her own bare statement, in order to support her own case: it was apparent from the Answer Brief (see paragraph 26 cited in paragraph 42 above) that it was indeed her case that her medical history is relevant to the likelihood of her having received the treatment at KNH of the kind she alleged on the date she alleged.
52. It was implicit in the application that, whatever its outcome, the AIU would anyhow seek to cross-examine the Athlete on this issue.
53. In my view it was not unfair to require (as I did) the Athlete to produce within 14 days any documents (if any such existed) bearing on her travel to and from Nairobi on the 22 and 23 February 2017 (or in lieu an explanation why such could not be produced including, if it were the case, that her travel generated no such documents) and/or on her presence in Nairobi on those

---

<sup>15</sup> ...and under article 8.6.1(c) of the IAAF Anti-Doping Rules discretion to adjourn, postpone or suspend the proceedings as I see fit.

dates since they would be clearly relevant to a key issue in the case. Moreover, the task was not inherently onerous.

54. As to the full medical records I reminded myself that the AIU more circumspectly sought only that the Athlete “voluntarily” grant AIU access to them. I was therefore disinclined to make an order to that effect but in lieu invited the Athlete to decide, also within 14 days, whether to agree to such access. I specifically noted that she might wish to take advice from her lawyers as to the possible consequences of her decision one way or the other.
55. I also modified the directions for filing of the AIU’s Reply Brief until 14 days after receipt of the above documents (if any) or explanation in lieu and agreement (or refusal to agree) from the Athlete.
56. I concluded by observing that it had not been argued that the Athlete’s athletic career would be prejudiced by the delay in the proceedings consequent on the above and that, in my view, the order I made best advanced the interests of justice.
57. On 21 September 2018 both parties confirmed that they were content to adjourn the hearing date of 27 September 2018.
58. Between 21 September and 02 October 2018 no material was produced by the Athlete in respect of my order of 17 September. Accordingly, SR<sup>16</sup> wrote to Mr. Torrance (AIU cc’d) to request an update on the position.
59. On 02 October 2018 Mr. Torrance explained that communication with the Athlete remained difficult, but that he had spoken to her husband who had assured him that “she would respond shortly”. Accordingly, I directed a new deadline for the Athlete to file material by 10 October 2018 with consequential extension for the AIU.
60. By 10 October 2018 still no material had been received from the Athlete.

---

<sup>16</sup> i.e. Sport Resolutions, which acts as Secretariat to the Disciplinary Tribunal.

61. On 12 October 2018 Mr. Torrance confirmed that no response was received from the Athlete in respect of my Order dated 17 September 2018.
62. On 15 October 2018 SR emailed Athletics Kenya and the Anti-Doping Agency of Kenya to see whether they could assist in tracing the Athlete. SR did not receive a response to these e-mails.
63. On 31 October 2018 with my approval SR wrote to the parties to request indications as to how they wished to proceed in this matter given the Athlete's said lack of response.
64. On 02 November 2018 the AIU proposed to proceed as set out in paragraph 15 of my Order dated 17 September, i.e. that it would have 14 days from 02 November within which to file its Reply Brief i.e., by no later than 5pm GMT on Friday 16 November 2018. I approved this proposal.
65. On 16 November 2018 the AIU filed its Reply Brief which summarised and elaborated upon its submission in the Appeal Brief that the KNH continuation document was a forgery and further relied upon the discrepancy between the whereabouts information and her claims as to treatment at KNH on 22 or 23 February 2017 which it summarised at paragraph 27 as follows:

*In short it is clear from the Athlete's whereabouts that she was in Kapsabet on 23 February 2017. As such, she did not attend KNH or receive treatment there on the morning of 23 February 2017. The KNH Continuation Sheet is a forgery and the related explanations- travelling from Kapsabet to Moi airbase on 22 February 2017, taking a Taxi to KNH, being treated with EPO and a blood transfusion, resting until evening time on 23 February 2017 at the School Hostels, traveling to Ngong and recovering there for four days before travelling back to Kapsabet – are entirely fabricated.*

66. On 23 November 2018 the AIU proposed that the case might be properly considered by me on the basis of the papers alone. The Athlete was to be given 7 days to confirm an oral hearing or accept that she was content for the case to be determined on the papers.

67. On 28 November 2018 SR contacted the Chief Executive at Athletics Kenya to seek alternative means of contacting the Athlete. Athletics Kenya confirmed that they were able to contact the Athlete's husband (Mr. Talam) and provided Mr. Talam's number (through which he had earlier indicated the Athlete could be contacted) in an e-mail. Mr. Torrance was also copied in this e-mail.
68. On 30 November 2018 Mr. Torrance confirmed that, further to the AIU's letter of 23 November 2018 attempts were made to contact the Athlete by e-mail and the telephone number provided by Athletics Kenya without success and that in the circumstances he did not object to the proposal set out in the AIU's letter of 23 November.
69. In summary the Athlete did not comply with my order of 17 September 2018. Indeed, since that date the Athlete has failed to communicate with the AIU, SR, her pro bono lawyers or me, despite numerous efforts to contact her both by email and by telephone made to addresses or numbers which had previously been successfully used for that purpose<sup>17</sup>.

#### **D. NATURAL JUSTICE**

70. The threshold issue is whether in light of the Athlete's record of recent non-engagement with the proceedings I can proceed to a determination of the charges on the papers as invited to do by the AIU.
71. The existence of my power to do so is not in doubt. The ADR 8.6 (Powers of the Disciplinary Tribunal) provides:

*8.6.1 The Disciplinary Tribunal, and any Panel of the Disciplinary Tribunal, shall have all powers necessary for, and incidental to, the discharge of its responsibilities, including (without limitation) the power, whether on the application of a party or of its own motion:*

---

<sup>17</sup> For example, on 29 August 2018 Mr. Talam, the Athlete's husband confirmed to SR, via telephone, that the e-mail address and phone number it had on file were indeed correct.

...

*(i) to make any other procedural direction or take any other procedural steps which the Disciplinary Tribunal considers to be appropriate in pursuit of the efficient and proportionate management of any Proceeding or matter pending before it; and*

*8.6.2 Any procedural rulings may be made by the Chairperson of the Disciplinary Tribunal or the Chair of a Panel alone. (emphasis added)*

72. The real question is rather whether I can fairly exercise those powers to accede to the AIU's invitation.

73. A not dissimilar problem occurred in the case of *IAAF v Bett*<sup>18</sup> where I held:

12. *Since this issue of non-communication is not unique to this case, the Panel must emphasise that athletes faced with charges brought by the AIU cannot by such evasive expedient avoid the Panel's consideration and determination of them.*

13. *To determine a hearing in the absence of a defendant is in no way discrepant with acknowledged principles of justice. In *R v Jones* 2002 UKHL 5, Lord Bingham said:*

*"[8] The European Court of Human Rights and the Commission have repeatedly made clear that it regards the appearance of a criminal defendant at his trial as a matter of capital importance: see, for example, *Poitrimol v France* (1993) 18 EHRR 130, at p 146, para 35; *Pelladoah v Netherlands* (1994) 19 EHRR 81, at p 94, para 40; *Lala v Netherlands* (1994) 18 EHRR 586, at p 597, para 33. That court has also laid down (1) that a fair hearing requires a defendant to be notified of the proceedings against him: *Colozza v Italy* (1985) 7 EHRR 516, at pp 523-524, para 28; *Brozicek v Italy* (1989) 12 EHRR 371;*

---

<sup>18</sup> In that case Mr. Bett (SR/Adhocsport/178/2018 and SR/Adhocsport/212/2018) was aware of the date fixed for the hearing but failed to confirm attendance so that the matter was ultimately determined on the papers. In this case the Athlete has made it by non-communication in effect impossible to fix a date for a hearing at all.

**[9] All these principles may be very readily accepted. They are given full effect by the law of the United Kingdom. But the European Court of Human Rights has never found a breach of the Convention where a defendant, fully informed of a forthcoming trial, has voluntarily chosen not to attend and the trial has continued."**

14. *The position must be accepted a fortiori where disciplinary as distinct from criminal proceedings are concerned.*

74. In so far as it is an essential element of natural justice that a person charged knows the case against him or her and has had an adequate opportunity to respond. It is clear beyond argument that those criteria are met in the Athlete's case. Not only has she seen the AIU Appeal Brief, but she has provided her answer<sup>19</sup>.
75. The issue which requires further consideration is whether she could reasonably expect me in all the circumstances to reach a determination on the papers.
76. The timeline set out at paragraphs 58 to 70 above shows that every effort has been made to make contact with the Athlete during the time when she ceased to engage with the proceedings<sup>20</sup>. Communication was essayed with email addresses and numbers which had previously succeeded in establishing the same. See e.g. footnote no.2, footnote no.15, and paragraph 69 above. There is no evidence, in particular, that the emails were not received. Had the Athlete for whatever reason changed her contact details it was clearly incumbent upon her to notify interested parties of any such change.
77. In my view, the Athlete cannot sensibly have surmised, given what had already transpired in terms of directions, that the process would become frozen until such time as she chose to resume contact. Whatever her reason for non-communication, its effect left me no realistic option but to decide the matter on the papers (It is

---

<sup>19</sup> The Answer Brief was based, as was proper, on instructions that she gave her pro bono lawyers. See paragraph 42 above.

<sup>20</sup> Indeed, I took the initiative in suggesting that assistance be sought from Athletics Kenya.

relevant that her pro bono lawyers have accepted that I should indeed take that course.).

78. I have accordingly decided that I should accede to the AIU's application, reminding myself that the obligation to act fairly extends to both parties and that the sport of track and field has its own interest in the resolution of this kind of case. I have of course considered with care the Athlete's Answer Brief and the arguments and evidence in support of it.

### *I. Applicable Rules*

79. Article 2.5 ADR provides that the following conduct shall constitute an ADRV:

***Tampering or Attempted Tampering with any part of Doping Control***

*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,** intentionally interfering or attempting to interfere with a Doping Control official, **providing fraudulent information to an Anti-Doping Organization,** or intimidating or attempting to intimidate a potential witness. (emphasis added)*

80. Tampering is defined in the ADR, as follows:

***Tampering:** Altering for an improper purpose or in an improper way; bringing improper influence to bear; interfering improperly; obstructing, **misleading or engaging in any fraudulent conduct to alter results or to prevent normal procedures from occurring.** (emphasis added)*

81. Doping Control is defined in the ADR as:

***Doping Control:** All steps and processes from test distribution planning through to ultimate disposition of any appeal including all steps and processes in between such as provision of whereabouts information, Sample collection and handling, laboratory analysis, TUEs, results management and hearings.*



82. It follows that Tampering, as such term applies to Doping Control, can occur, *inter alia*, where an athlete interferes, is misleading, and/or provides fraudulent information to an Anti-Doping Organisation or engages in fraudulent conduct to prevent normal procedures from occurring in the context of results management and/or hearings.

83. Furthermore, Article 5.10.4 ADR specifies that providing false information in the context of the investigation process may also lead to proceedings being brought for a Tampering violation:

*If an Athlete or other Person subverts or Attempts to subvert the investigation process (e.g., by providing false, misleading or incomplete information and/or by destroying potential evidence), proceedings may be brought against him for violation of Article 2.5 (Tampering or Attempted Tampering).*

84. Article 3.1 ADR provides that the IAAF shall have the burden of establishing that an ADRV has occurred to the comfortable satisfaction of the Tribunal:

*The IAAF or other Anti-Doping Organisation shall have the burden of establishing that an Anti-Doping Rule Violation has been committed. The standard of proof shall be whether the IAAF has established the commission of the alleged Anti-Doping Rule Violation to the comfortable satisfaction of the hearing panel, bearing in mind the seriousness of the allegation that 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.*

85. Additionally, Article 3.2 ADR states that facts relating to ADRVs may be established by any reliable means.

86. In relation to the Decision, Article 3.2.5 ADR provides specifically:

*The facts established by a decision of a court or professional disciplinary tribunal of competent jurisdiction that is not the subject of a pending appeal shall be irrebuttable evidence against the Athlete or other Person to whom the decision pertained of those facts, unless the Athlete or other Person establishes that the decision violated principles of natural justice.*

87. The case of *IAAF v Rita Jeptoo* (CAS 2015/O/4128) provides in my view useful signposts to the approach to be adopted in a case such as this. Ms. Jeptoo, also a Kenyan Athlete, tested positive for r-EPO following an Out-of-Competition test in September 2014 and was charged with the commission of an ADRV accordingly.
88. The matter was heard at first instance by the relevant tribunal of the Athlete's National Federation (Athletics Kenya), which imposed a period of Ineligibility of two years on Ms. Jeptoo (pursuant to the IAAF Anti-Doping Rules in force at the time, which were based on the 2009 version of the World-Anti-Doping Code).
89. The IAAF submitted an appeal against the first instance decision in that matter to CAS requesting (amongst other things) an increase in the period of Ineligibility to four years due to the presence of so-called aggravating circumstances (see Article 10.6 of the 2009 World Anti-Doping Code) (*IAAF v Athletics Kenya & Rita Jeptoo*, CAS 2015/A/3979). CAS allowed the IAAF appeal and imposed a period of Ineligibility of four years on Ms. Jeptoo.
90. Notwithstanding the IAAF appeal to CAS, Ms. Jeptoo submitted a cross-appeal of the first instance decision, requesting that the two-year period of Ineligibility imposed be reduced on the basis that she bore No Fault or Negligence for the ADRV.
91. In support of her appeal, Ms. Jeptoo submitted a fabricated 'medical report', which purported to show that she had been injected with r-EPO by a doctor as treatment for 'profuse bleeding' following an alleged life-threatening road accident that she experienced whilst she was on a training run.
92. Following investigation, the IAAF charged Ms. Jeptoo with a second ADRV of Attempted Tampering pursuant to Article 2.5 of the 2015 World Anti-Doping Code.
93. In *IAAF v Rita Jeptoo*, CAS 2015/A/3979 the CAS Panel held:
  - (i) as a general principle, that "tampering can also cover an athlete's behaviour in the course of a first instance or appeal hearing", noting that the non-exhaustive list of examples of Tampering in the IAAF Anti-Doping Rules included "intentionally interfering with a Doping Control

official, providing fraudulent information...or intimidating or attempting to intimidate a potential witness" (CAS 2015/O/4128, paragraph 146).

- (ii) an athlete has a right to defend himself or herself and make submissions in support of any defence, and that the mere exercise of this right would not, in of itself, amount to Tampering ie. to be found guilty of tampering, the athlete must do more than simply put the prosecuting authority to proof of its case (ditto paragraphs 147 and 150).
- (iii) that "any behaviour of the athlete in the judicial proceeding before a first instance tribunal must meet a high threshold in order to be qualified as tampering" (ditto para 148(ii)).
- (iv) "the threshold of legitimate defence is trespassed and, thus, a "further element of deception" is present where the administration of justice is put fundamentally in danger by the behaviour of the athlete. This is the case where a party to the proceedings commits a criminal offence designed to influence the proceedings in his or her favour." (ditto paragraph 151)
- (v) "forging a document for the use of a judicial proceeding is a criminal offence not only in Monegasque law ... but also under Swiss law... This surely exceeds the above threshold of legitimate defense".
- (vi) Accordingly, on the facts, Ms. Jeptoo had committed the offence of Tampering by submitting the forged document (paragraph 153)<sup>21</sup>.

94. I respectfully adopt, *mutatis mutandis*, the analysis of the CAS panel in CAS 2015/A/3979.

---

<sup>21</sup> The CAS Panel ultimately decided not to impose an 8-year sanction on Ms. Jeptoo because the deceptive conduct had taken place in 2014 under the pre-2015 Code version of the IAAF Anti-Doping Rules and so had been treated as an 'aggravating factor' when assessing the appropriate sanction in her case in the IAAF's appeal against the first instance decision of the Athlete's National Federation. At paragraph 151, the CAS Panel made it clear however that **"had the Athlete submitted the forged document as an isolated event in 2015, the Panel would have qualified this behaviour not only as tampering but would have issued a separate period of ineligibility for this anti-doping rule violation in line with the provisions for a second offence"**.

### C. ANTI-DOPING RULE VIOLATION

95. The concerns of the Kenyan Tribunal as to the Athlete's veracity, as set out at paragraph 20 above seem to me to be well founded. For my part I find that there is compelling evidence demonstrating that the Athlete submitted false medical documents to an Anti-Doping Organisation (ADAK) and to the Tribunal. Notwithstanding the vigorous critique made of it in the Answer Brief the evidence of Dr Michoma who was, given his office, in a position to pronounce upon the validity of those documents and who had no motive or reason to misrepresent the position is by itself sufficient to justify that conclusion absent any substantial evidence as distinct from speculation to the contrary. His contention that the author of the documents was an impostor is intrinsically more plausible than the hypothesis of the Athlete's Counsel at the hearing before the Kenyan Tribunal that she was actually treated by an impostor. A doctors' strike might explain an absence of orthodox records but not ones which did not square with other admitted medical evidence (see paragraph 96).
96. The fact that the Athlete had been previously treated for an ectopic pregnancy, while true, does not in my view assist her. There is no evidence of any further ectopic pregnancy whose consequences might require treatment on the dates in question. On the contrary the documentation of her visit to KNH on 18 April speaks only to such a pregnancy in 2009 which would be remarkable if she had suffered an intervening episode.
97. Moreover the Athlete's failure to provide any response to the point made by the AIU that her alleged presence at the KNH on 22/23 February 2017 is discrepant with her whereabouts information for those dates means that the point, formidable on its face, remains in effect unchallenged. To put the matter colloquially she could not be in two places at once.
98. Finally, the Athlete's "evolving" - to borrow the AIUs euphemism- explanations for the AAF coupled with her later failure to engage with the proceedings at all, must also tell strongly against her.

99. As to the law the Athlete's supply of a false explanation for the presence of r-EPO before and the submission of the false medical documents by her to the Kenyan Tribunal can only be analysed as a deliberate attempt to prevent the administration of justice in her case and improperly to affect the outcome of the hearing in respect of the AAF for r-EPO. Perjury and forgery inevitably go beyond the bounds of legitimate defence under any civilized system of law.
100. I emphasise that my findings of fact are based on the cumulative evidence and record. The factors mentioned in paragraphs 95-99 above are strands which intertwine
101. I am therefore comfortably satisfied (giving all due weight to the seriousness of the charge and the impact upon the Athlete if it is found proven) that the Athlete has committed a second ADRV of Tampering, pursuant to Article 2.5 ADR<sup>22</sup>.

## **D. CONSEQUENCES FOR THE ANTI-DOPING RULE VIOLATIONS**

### *I. Period of Ineligibility*

102. Article 10.3 ADR provides the sanction to be imposed for an ADRV under Article 2.5 ADR (Tampering) as follows:

#### **10.3 Ineligibility for Other Anti-Doping Rule Violations**

*The period of Ineligibility imposed for Anti-Doping Rule Violations under provisions other than Article 2.1, 2.2 or 2.6 shall be as follows, unless Article 10.5 or 10.6 is applicable:*

##### **10.3.1 For an Anti-Doping Rule Violation under Article 2.3 or Article 2.5 that is the Athlete's or other Person's first**

---

<sup>22</sup> In its Appeal Brief, the AIU asserted that: "The Athlete (like Ms. Jeptoo) has committed a criminal offence in both Monegasque and Swiss law. She is liable to prosecution and a fine/imprisonment under Kenyan law pursuant to Section 42(1)(e) of the Anti-Doping Act. The AIU understands that the Kenyan authorities are considering instituting criminal proceedings against the Athlete under the Anti-Doping Act" - Without prejudice to paragraph 99 above it is unnecessary for me to form any view on the particularities of the criminal law of jurisdictions in whose law I am not professionally qualified. I merely note the AIUs position which may well be right but plays no part in my decision.

**anti-doping offence, the period of Ineligibility imposed shall be four years** unless, in case of failing to submit to Sample collection, the Athlete can establish that the commission of the anti-doping rule violation was not intentional (as defined in Article 10.2.3) in which case, the period of Ineligibility shall be two years. (emphasis added)

103. The period of Ineligibility shall be four years, unless the Athlete can establish No Significant Fault or Negligence (Article 10.5.2 ADR) or that any of the provisions of Article 10.6 ADR are applicable.

104. Since the Athlete has not demonstrated that any of those provisions are applicable, the period of Ineligibility, if it were a first violation, would be four years.

105. Article 10.7.4(a) ADR states:

*[...] an Anti-Doping Rule Violation will only be considered a second Anti-Doping Rule Violation if the Integrity Unit can establish that the Athlete or other Person committed the second Anti-Doping Rule Violation after the Athlete or other Person received notice, or after the Integrity Unit made a reasonable attempt to give notice, of the first alleged Anti-Doping Rule Violation.*

106. The Athlete received written and verbal notice of the first ADRV relating to the presence of r-EPO in the Sample on 4 April 2017 in the presence of ADAK and WADA representatives.

107. The Athlete then submitted the medical information in support of her explanation for that violation via WhatsApp to Mr. Nyoro on 26 April 2017 after the Athlete had received notice of the first ADRV. I accept that her conduct on 26 April 2017 therefore falls to be considered as a second ADRV.

108. Article 10.7 ADR applies to second violations of the ADR. It provides so far as material as follows:

***Multiple Violations***

*10.7.1 For an Anti-Doping Rule Violation that is the second anti-doping offence of the Athlete or other Person, the period of Ineligibility shall be the greater of:*

- (a) *six months;*
- (b) *one-half of the period of Ineligibility imposed for the first anti-doping offence without taking into account any reduction under Article 10.6; or*
- (c) *twice the period of Ineligibility that would be applicable to the second Anti-Doping Rule Violation if it were a first Anti-Doping Rule Violation, without taking into account any reduction under Article 10.6. [...]*

109. The period of Ineligibility to be imposed for this, the Athlete's second violation, shall therefore be eight years pursuant to Article 10.7.1(c).

110. The period of Ineligibility shall commence on the date of issue of my decision pursuant to Article 10.10.2.

## *II. Disqualification of Results and Other Consequences*

111. The Athlete has been subject to a period of Ineligibility for the first ADRV since 3 April 2017. There are therefore no results to be disqualified in relation to this, the Athlete's second violation, pursuant to Article 10.8 ADR.

112. Article 8.6(j) ADR provides the Tribunal with the power to impose costs orders where it is proportionate to do so (according to Article 8.9.3 ADR).

113. Further, the AIU notes that it has absolute discretion (and the Tribunal has discretion where fairness requires) to establish an instalment plan for payment of costs pursuant to Article 10.10.1 ADR. The AIU reserves its rights in full in that respect.

## **E. ORDER**

114. For the above reasons I rule as follows:

- (i) I have jurisdiction to decide on the subject matter of this dispute.

- (ii) The Athlete has committed an ADRV of Tampering with any part of Doping Control pursuant to Article 2.5 ADR.
- (iii) That this ADRV constitutes the Athlete's second ADRV and therefore, a period of Ineligibility of **eight years** is imposed upon the Athlete;
- (iv) The period of Ineligibility imposed shall commence on the date of my award;
- (v) The IAAF is awarded a contribution towards its legal costs of (USD) \$1000 (it will be for the IAAF to decide whether to seek to enforce this part of my Order).

## **F. RIGHT TO APPEAL**

115. This decision may be appealed to the CAS in accordance with Article 13 ADR and its subsections.



**Michael J Beloff QC**

Panel Chair

London, UK

17 January 2019





Sport Resolutions (UK)  
1 Salisbury Square  
London EC4Y 8AE

T: +44 (0)20 7036 1966

Email: [resolve@sportresolutions.co.uk](mailto:resolve@sportresolutions.co.uk)  
Website: [www.sportresolutions.co.uk](http://www.sportresolutions.co.uk)

Sport Resolutions (UK) is the trading name of The Sports Dispute Resolution Panel Limited