

**IN THE MATTER OF PROCEEDINGS BROUGHT UNDER THE ANTI-DOPING RULES OF
WORLD ATHLETICS**

Before:

Mr. Eduardo Amorim (Sole Arbitrator)

BETWEEN:

WORLD ATHLETICS

Anti-Doping Organisation

and

Mr. JAMES KIBET

Respondent

DECISION OF THE DISCIPLINARY TRIBUNAL

I. INTRODUCTION

1. The Claimant, World Athletics (“**WA**”) (formerly International Association of Athletics Federations (“**IAAF**”)), is the International Federation governing the sport of athletics worldwide. It has its registered seat in Monaco. World Athletics is represented in these proceedings by the Athletics Integrity Unit (“**AIU**”) which has delegated authority for results management and hearings,

THE INDEPENDENT EXPERTS

amongst other functions relating to the implementation of the 2019 IAAF Anti-Doping Rules (“**ADR**”), on behalf of WA pursuant to Article 1.2 of the ADR.

2. The Respondent, Mr. James Kibet (the “**Athlete**”), is a 32-year-old male long-distance runner from Kenya.
3. These proceedings concern the presence of 19-Norandrosterone (“**19-NA**”) and 19-Noretiocholanolone (“**19-NE**”), Metabolites of Nandrolone, which is a substance listed in category S1.1B Endogenous Anabolic Androgenic Steroids and their Metabolites and isomers, when administered exogenously of the WADA 2019 Prohibited List as a non-specified substance that is Prohibited at all times, in a urine sample collected from the Athlete on 1 November 2019 at the ‘Corsa dei Santi’ held in Rome, Italy.
4. The AIU charges the Athlete with a violation of Article 2.1 (“**Presence**”) and 2.2 (“**Use**”) ADR. The AIU in principle seeks a four-year period of Ineligibility to be imposed on the Athlete for the alleged Anti-Doping Rule Violation (“**ADRV**”) with respect to the Sample, as the Athlete allegedly failed to establish that the ADRV was committed unintentionally and/or to establish mitigating circumstances that could reduce the applicable sanction to a two-year Ineligibility period.
5. The Athlete admits that he has committed an ADRV for the presence of 19-NA/19-NE in his system and/or use thereof. However, he claims that he did not know how the Adverse Analytical Finding (“**AAF**”) occurred, and that it may have been the result of the use of pork fat, a substance traditionally used and ingested in the Athlete’s home country as a “medicine”. He also explains that he ingested pork fat syrup three times a day when he was in Italy, including in the morning before the race in which he provided his Sample for analysis. The Athlete also maintains that he did not have the intention to and has not used any Prohibited Substance.

II. JURISDICTION AND APPLICABLE RULES

6. No jurisdictional issues arise in this matter as to the roles of the AIU, the Sole Arbitrator or the applicability of the ADR to the Athlete.
7. It is not in dispute that the Athlete is an International-Level Athlete in the sense of Article 1.8 ADR. At all material times, the Athlete was a member of Athletics Kenya, a WA member

Federation and competed in the 'Corsa dei Santi', in Rome, Italy, a competition authorized and recognized by WA.

8. Being an International-Level Athlete, the Athlete is bound to the ADR on the basis of Article 1.6 ADR.
9. The Sample was collected pursuant to testing undertaken by the AIU on behalf of WA. The AIU therefore has jurisdiction of results management in relation to the Sample in accordance with Article 7.2.1 ADR.
10. World Athletics has established a Disciplinary Tribunal to hear alleged anti-doping rule violations and other breaches of the ADR in accordance with Articles 1.4 and 8.1.
11. This matter has been referred to the Disciplinary Tribunal in accordance with article 8.4.4 of the ADR.
12. World Athletics has, pursuant to art. 4.1 of the World Athletics Disciplinary Tribunal Rules, determined that the Disciplinary Tribunal shall have a secretariat which is independent of WA. Sport Resolutions act as secretariat to the Disciplinary Tribunal.
13. According to Article 1.5 in conjunction with Article 8.2(a) of the ADR, the WA Disciplinary Tribunal has jurisdiction over all matters where ADRVs are asserted.

III. **FACTUAL BACKGROUND**

A. Sample Collection and Analysis

14. On 1 November 2019, the Athlete provided a urine Sample In-Competition at the 'Corsa dei Santi' held in Rome, coded 4771516 (the "**Sample**").
15. Pursuant to testing conducted by the **Laboratorio Antidoping FMSI Federazione Medico Sportiva Italiana Largo Giulio Onesti 1**, a World Anti-Doping Agency ("**WADA**") accredited laboratory in Rome, Italy, the Sample provided by the Athlete revealed a result consistent with the presence of Exogenous 19-NA/19-NE.

B. Result Management

16. On 4 December 2019, the AIU issued a Notice of Adverse Analytical Finding to the Athlete and requested an explanation from him by 11 December 2019.
17. On 7 December 2019, the Athlete replied stating, in summary, that he was surprised with the result and unaware of any Prohibited Substance in his body fluids. The Athlete supplemented his response on 11 December 2019 in two separate emails directed to the AIU explaining how he used pork oil prior to the 1 November 2019 event in Italy – ingesting and using it as a body lotion. The Athlete did not request the analysis of the B Sample.
18. The AIU rejected the Athlete's explanation and, on 17 December 2019, issued a Notice of Charge in which it requested the Athlete to confirm how he wanted to proceed with the matter.
19. On 27 December 2019, the Athlete admitted to having committed an ADRV, and requested an opportunity to demonstrate that the pork fat he had brought from his home country and ingested prior to the 1 November event in Italy might have been a source of contamination for 19-NA/19-NE.
20. On 9 January 2020, the AIU informed the Athlete about the steps he would have to take in order to determine whether the substance he ingested was the source of 19-NA/19-NE in his Sample.
21. In two separate email communications with the AIU dated 12 January and 14 January 2020, the Athlete explained that he had not taken actions with respect to the analysis of the pork fat, and also requested the AIU to conduct the analysis of such material on his behalf due to the Athlete's financial hardship.
22. On 19 March 2020, after receiving images and a video of the pork fat he consumed, from the Athlete, which allegedly was the source of 19-NA/19-NE found in his Sample, as well as Google images of "Glorious Pork Joint" – the location where the Athlete claims the fat pork was obtained, from the Athlete – the AIU informed him that it was unable to proceed with the analysis of the material requested by the Athlete. The AIU also provided contact information of a food safety research laboratory in Germany that could possibly help him obtain the analysis he was seeking and instructed the Athlete to communicate directly with said laboratory.

23. On 3 April 2020, the AIU reiterated that it could not assist him with the analysis of the pork fat and explained that the Athlete would have to inform how he wanted to proceed with the matter. The Athlete had previously forwarded to the AIU his email communication with the German laboratory. In the email, a representative from the laboratory explained the steps and requirements involving a potential analysis of the Athlete's pork fat, and that the laboratory would not be able to proceed with the analysis at that time, especially because of COVID 19 restrictions.

C. Proceedings Before the World Athletics Disciplinary Tribunal

24. The present matter was referred to this Disciplinary Tribunal on 9 July 2020, and the Sole Arbitrator was appointed on 14 July 2020 as no objections were received to his appointment upon disclosure of declarations of independence.

25. The Athlete obtained pro bono legal assistance from Ms. Gemma White, and the parties attended the Preliminary Meeting, by telephone, before the Chair on 29 July 2020. On that occasion, they agreed that the AIU would file its Brief no later than 31 July 2020, and the Athlete would submit an Answer Brief no later than 19 August 2020. The parties also agreed that a remote hearing would take place on 2 October 2020.

26. The Athlete did not file his Answer Brief on the day the parties had previously agreed on. Due to the absence of the Athlete's submission within the established deadline, the Disciplinary Tribunal secretariat contacted the Athlete's counsel, and was informed that she was no longer able to represent the Athlete.

27. On September 4, 2020, the Disciplinary Tribunal secretariat confirmed that the Athlete had engaged with new pro bono counsel, Mr. Richard McLean, and a new Preliminary Meeting was scheduled for 18 September 2020. In the meeting, the parties agreed that the Athlete's Answer Brief would be filed no later than 11 December 2020 in order to provide him an opportunity to seek the pork fat analysis and allow counsel to become familiar with the matter. The AIU would submit its Answer Brief on 8 January 2021 and a hearing was scheduled for 22 January 2021.

28. On 11 December 2020, the Athlete's counsel informed the Disciplinary Tribunal secretariat that he would no longer represent the Athlete. On that same day, the Athlete filed a witness statement in which he provided (i) a summary of his personal and athletic background (ii) the substances the Athlete knowingly took, including pork fat, (iii) the results of his personal research regarding pigs and pork products, and (iv) the effects on his personal life in case of a confirmed ADRV.

The Athlete finally claimed that the ADRV he had admitted to was not intentional, that he had No Fault or Negligence or No Significant Fault or Negligence in connection with the ADRV, and reiterated his request for the AIU to test the remaining pork fat he kept from the 2019 event in Italy.

29. The AIU and the Athlete further agreed that the Chair would rule on the papers after the AIU's Reply Brief, and that the 22 January 2021 hearing was not necessary.

IV. POSITIONS OF THE PARTIES

A. The Athlete's Explanations

30. The Athlete submitted his witness statement and documentary (video recording) evidence to the Disciplinary Tribunal on 11 December 2020, in which he consolidated his assertions as summarized below:

- a. He has never had an AAF prior to the 1 November 2019 event in Italy;
- b. His latest test prior to 1 November 2019 occurred in April 2019, also in Italy, where he performed better compared with his performance in the 1 November event in which the AAF relating to his Sample was confirmed;
- c. He used to take Isostar, Amino Max, Omega 3 supplements, and pork fat during preparation for competitions, and has always cross-checked the label of the products he used against the WADA List of Prohibited Substances;
- d. He takes pork fat because it is traditionally used in Kenya as a medicine and to prevent and combat certain conditions such as the common cold;
- e. He could not confirm the quantity of pork fat he has used;
- f. He purchased the pork fat, which he believed might have been contaminated, at "Glorious Pork Joint" in Eldoret Town, Kenya. Previously, he used to buy pork fat from a butcher, and never had any issues.

31. Specifically, with regard to the pork fat, the Athlete presented the results of his own research on the material he claims might have been contaminated. According to the Athlete, the consumption of pork, especially pork fat from non-castrated pigs, may lead to an AAF. He also stated that, to his knowledge, castrated pigs are not farmed in Kenya. In order to support his claims, the Athlete

referred to an article titled “Feeding Effect of an Anabolic Steroid, Nandrolone, on the Male Rat Testis”.

32. The Athlete also attached a video recording of a pig farmer in Eldoret Town explaining how they farm and feed pigs using supplements.

B. The AIU’s Arguments

33. In its Reply Brief, the AIU argued that (i) the Athlete has a personal duty to ensure that no Prohibited Substance enters his body, and athletes are strictly responsible for any Prohibited Substance or Metabolites found in their samples; (ii) the Athlete has not challenged the presence of 19-NA/19-NE in the Sample analyzed by the WADA-accredited laboratory in Italy, and admitted to violation of the ADR; (iii) there was no valid Therapeutic Use Exemption (“**TUE**”) that would justify the presence of 19-NA/19-NE in the Athlete’s Sample; (iv) there were no apparent departures from the International Standard for Testing and Investigations (“**ISTI**”) or International Standard for Laboratories (“**ISL**”); and (v) the Athlete did not request analysis of the B Sample.
34. Further, the AIU requested this Disciplinary Tribunal to impose a four-year Ineligibility sanction, unless the Athlete can establish that the Anti-Doping Rule Violations were not intentional, and order the disqualification of the Athlete’s results between 1 November 2019 and 4 December 2019, including the Corsa dei Santi’ event.
35. The Sole Arbitrator confirms that, although the evidence and arguments are summarized here (and not set out in full), all evidence has been considered carefully, even if they have not been specifically summarized or referred to in the present arbitral award.

V. **MERITS**

A. The Alleged Violation of Articles 2.1 and 2.2 ADR

36. Article 2 ADR specifies the circumstances and conduct that constitute ADRVs. This includes Article 2.1.1 ADR, which provides the following:

“2.1.1 It is each Athlete’s duty to ensure that no Prohibited Substance enters his body. Athletes are responsible for any Prohibited Substance or its Metabolites or Markers found to be present in their Samples.[...]”

37. Article 2.1.1 ADR also provides that it is each athlete's personal duty to ensure that no Prohibited Substance enters his or her body. Athletes are strictly responsible for any Prohibited Substance or its Metabolites or Markers found in their samples:

"[...] Accordingly, it is not necessary that intent, Fault, negligence, or knowing Use on the Athlete's part be demonstrated in order to establish an Anti-Doping Rule Violation [...]."

38. With regard to the presence of a Prohibited Substance or its Metabolites or Markers in an athlete's sample, Article 2.1.2 ADR states the following:

"2.1.2 Sufficient proof of an Anti-Doping Rule Violation under Article 2.1 is established by any of the following: presence of a Prohibited Substance or its Metabolites or Markers in the Athlete's A Sample where the Athlete waives analysis of the B Sample and the B Sample is not analyzed; or, where the Athlete's B Sample is analyzed and the analysis of the Athlete's B Sample confirms the presence of the Prohibited Substance or its Metabolites or Markers found in the Athlete's A Sample; or, where the Athlete's B Sample is split into two bottles and the analysis of the second bottle confirms the presence of the Prohibited Substance or its Metabolites or Markers found in the first bottle."

39. The presence of a Prohibited Substance or its Metabolites or Markers in an athlete's Sample is therefore in principle sufficient to establish that an athlete has committed an ADRV pursuant to Article 2.1 ADR.

40. As to the Use or Attempted Use of a Prohibited Substance or Method, Article 2.2 ADR provides the following:

"2.2. Use or Attempted Use by an Athlete of a Prohibited Substance or a Prohibited Method

2.2.1 It is each Athlete's personal duty to ensure that no Prohibited Substance enters their body and that no Prohibited Method is Used. Accordingly, it is not necessary that intent, Fault, negligence or knowing Use on the Athlete's part be demonstrated in order to establish an Anti-Doping Rule Violation for Use of a Prohibited Substance or a Prohibited Method

2.2.2 The success or failure of the Use or Attempted Use of a Prohibited Substance or Prohibited Method is not material. It is sufficient that the Prohibited Substance or

Prohibited Method was Used or Attempted to be Used for an Anti-Doping Rule Violation to be committed.”

41. In the present case, the analysis of the Athlete’s Sample indicated the presence of 19-Norandrosterone and 19-Noretiocholanolone (“Norandrosterone”), which are Prohibited Substances under the WADA 2019 Prohibited List under the category S1 as Anabolic Agents and non-specified substances prohibited at all times.
42. Once informed about the AAF through the Notice of Charge, the Athlete admitted to having committed the Anti-Doping Rule Violation alleged by the AIU and did not request the analysis of his B Sample.
43. Therefore, considering that the Sample collected from the Athlete indicated the presence of 19-NA/19-NE, and that the Athlete admitted to ADRVs and waived the analysis of his B Sample, the ADRVs pursuant to Rules 2.1 and 2.2 ADR are established.

B. Consequences of the ADRV

44. Article 10.2 ADR provides as follows:

“10.2 The period of Ineligibility to be imposed for an Anti-Doping Rule Violation under Article 2.1, 2.2 or 2.6 that is the Athlete or other Person’s first anti-doping rule violation shall be as follows, subject to potential reduction or suspension pursuant to Article 10.4, 10.5 or 10.6:

10.2.1 The period of Ineligibility shall be four years where:

(a) The Anti-Doping Rule Violation does not involve a Specified Substance, unless the Athlete or other Person can establish that the Anti-Doping Rule Violation was not intentional.”

45. Considering that 19-NA is a Metabolite of Nandrolone, a non-specified substance, the period of Ineligibility to be imposed on the Athlete is in principle four years, unless the Athlete can establish that the ADRV was not intentional.
46. Here, in this regard, the Athlete requested an opportunity to argue mitigating circumstances pursuant to ADR 8.4.3(b).

47. In his witness statement dated 11 December 2020, the Athlete maintained that the AAF was due to the consumption of contaminated pork fat obtained in Eldoret Town, Kenya prior to the 1 November 2019 competition in Rome, Italy. In addition, the Athlete attached a video recording in which an apparent farmer provides explanations regarding pig farming, and cites an article named “Feeding Effect of an Anabolic Steroid, Nandrolone, on the Male Rat Testis”, but did not attach the article itself for this Sole Arbitrator to consider.

48. The Athlete has failed to provide evidence that he purchased the pork fat and/or other products he claimed to have used and ingested from the Glorious Pork Joint local market in Eldoret Town, Kenya.

49. He has also failed to prove that the pork fat he allegedly consumed contained Nandrolone and caused the AAF, and consequently was the source of contamination. I note that the Athlete has had more than 1 (one) year since he received the AIU’s Notice of Charge to analyze the pork fat he claimed could be the source of the Prohibited Substance found in his Sample.

50. Despite the allegations, statements and evidence produced, the Athlete has not been able to demonstrate, on the balance of probabilities, the origin of 19-NA/19-NE – or that the pork fat consumed by the Athlete before the 1 November 2019 event was the source of contamination which led to the AAF reported to the Athlete by the AIU on 4 December 2019. The Athlete also failed to demonstrate by evidence that the ADRV was committed unintentionally.

51. With regard to Article 10.10.2 ADR provides as follows:

“The period of Ineligibility shall start on the date that the decision is issued provided that:

(a) any period of Provisional Suspension served by the Athlete or other Person (whether imposed in accordance with Article 7.10 or voluntarily accepted by the Athlete or other Person in accordance with Article 7.10.6) shall be credited against the total period of Ineligibility to be served. [...]”

52. A Provisional Suspension was imposed on the Athlete pursuant to Article 7.10.1 ADR on 4 December 2019 and remained in force until the present decision. Since there is no indication that the Athlete did not comply with this Provisional Suspension, the period of the Provisional Suspension shall be credited against the total period of Ineligibility.

53. Accordingly, a four-year period of Ineligibility is to be imposed on the Athlete effectively running from 4 December 2019 until 11:59 pm on 3 December 2023.

54. Furthermore, Article 10.8 ADR provides the following:

“In addition to the automatic Disqualification, pursuant to Article 9, of the results in the Competition that produced the Adverse Analytical Finding (if any), all other competitive results of the Athlete obtained from the date the Sample in question was collected (whether In-Competition or Out-of-Competition) or other anti-doping rule violation occurred through to the start of any Provisional Suspension or Ineligibility period shall be Disqualified (with all of the resulting consequences, including forfeiture of any medals, titles, ranking points and prize and appearance money), unless the Disciplinary Tribunal determines that fairness requires otherwise.”

55. Given that the Athlete’s Sample was collected on 1 November 2019, the Athlete’s competitive results and consequences obtained between 1 November and 4 December 2019 are disqualified. The Athlete did not argue, and the Sole Arbitrator does not find that fairness requires otherwise.

VI. COSTS

56. The AIU and the Athlete have not made any requests regarding the costs incurred with respect to the present matter. Therefore, pursuant to Article 8.6.1 (j) ADR, the Sole Arbitrator understands that each party shall bear with their own costs separately in connection with this proceeding.

57. It is important to note that the Athlete was represented by pro bono counsel, and email communications between the parties demonstrate that the Athlete has discussed with the AIU his current difficult financial situation. The Sole Arbitrator understands that imposing any type of cost contribution on the Athlete at this point would cause even more hardship on him.

VII. ORDER

58. The Sole Arbitrator:

(i) Finds that the Athlete has committed an Anti-Doping Rule Violation pursuant to Articles 2.1 and 2.2 of the 2019 IAAF Anti-Doping Rules.

(ii) Imposes a period of Ineligibility of 4 (four) years on the Athlete under Article 10.2.1, commencing on the date of this decision. The Provisional Suspension imposed on the Athlete from 4 December 2019 until the date of the present decision shall be credited against the total period of Ineligibility.

(iii) Orders the disqualification of all results obtained by the Athlete between 1 November 2019 and 4 December 2019 with all resulting consequences, including the forfeiture of any titles, awards, medals, points and prize and appearance money, including the Corsa dei Santi' event held in Rome, Italy.

(iv) Dismisses all other and further motions or prayers for relief.

VIII. RIGHT TO APPEAL

59. Article 8.9.2 of the IAAF Anti-Doping Rules requires the Tribunal to set out and explain in its decision the rights of appeal applicable pursuant to Article 13 ADR.

60. As this proceeding involves an International-Level Athlete in the sense of Article 1.8 ADR, this decision may be appealed exclusively to the Court of Arbitration for Sport ("CAS"), located at *Château de Béthusy, Avenue de Beaumont 2, CH-1012 Lausanne, Switzerland* (*procedures@tas-cas.org*).

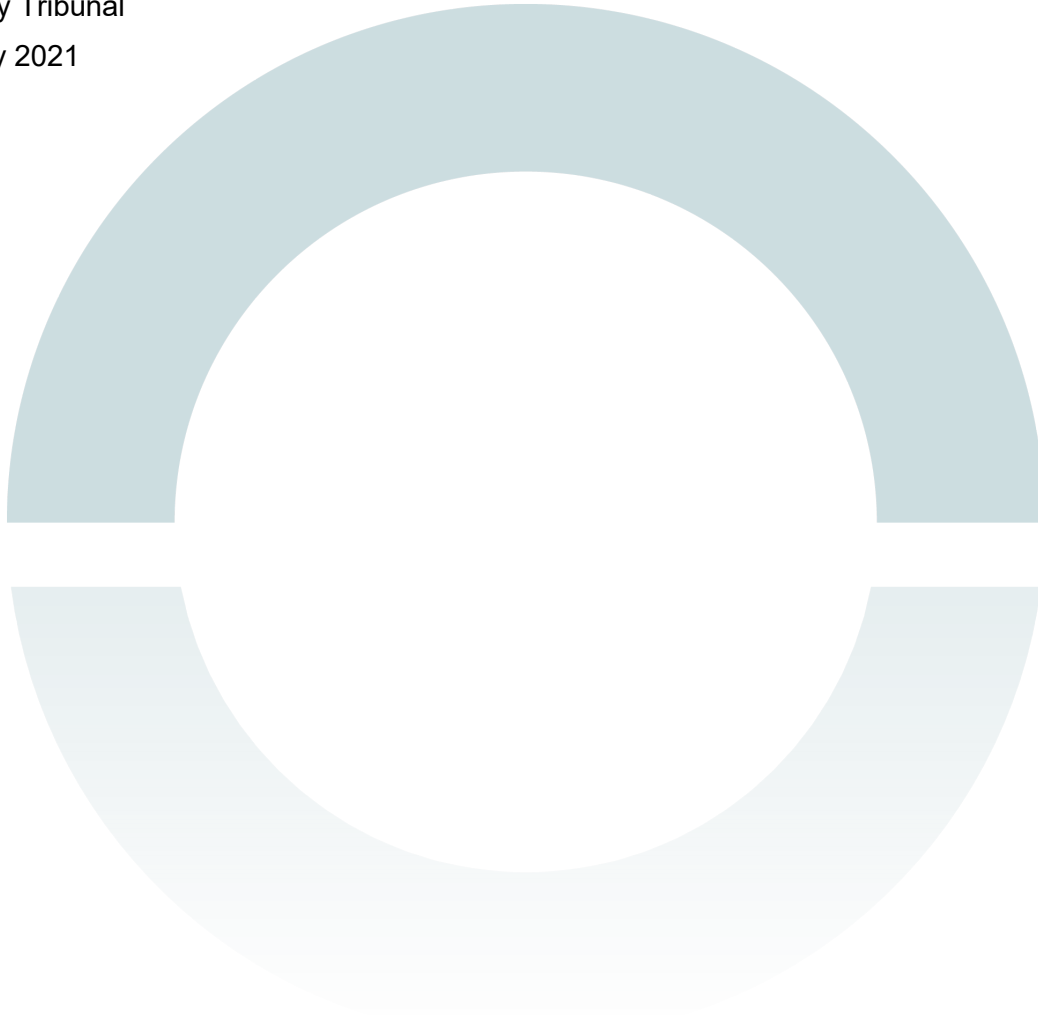
61. Pursuant to Article 13.7 ADR, the deadline for filing an appeal with CAS is 30 days from the date of receipt of the present decision by the appealing party and where the appellant is a party other than WA, a copy of the appeal must be filed on the same day with WA.

Eduardo Amorim

Eduardo Amorim (Sole Arbitrator)

Disciplinary Tribunal

29 January 2021



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