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## DECISION OF THE ATHLETICS INTEGRITY UNIT IN THE CASE OF MS NELLY JEPKOSGEI

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### Introduction

1. In April 2017, World Athletics (formerly the IAAF) established the Athletics Integrity Unit ("AIU") whose role is to protect the integrity of the sport of Athletics, including fulfilling World Athletics' obligations as a Signatory to the World Anti-Doping Code (the "**Code**"). World Athletics has delegated implementation of the World Athletics Anti-Doping Rules ("**ADR**") to the AIU, including but not limited to the following activities in relation to International-Level Athletes: Testing, Investigations, Results Management, Hearings, Sanctions and Appeals.
2. Ms Nelly Jepkosgei is a 29-year-old Kenyan middle-distance runner (who was eligible to compete for Bahrain from 13 August 2021) and an International-Level Athlete for the purposes of the ADR (the "**Athlete**").
3. This decision is issued by the AIU pursuant to Article 8.4.7 ADR, which provides as follows.

*"8.4.7 [i]n the event that [...] the Athlete or Athlete Support Person admits the Anti-Doping Rule Violation(s) charged and accedes to the Consequences specified by the Integrity Unit (or is deemed to have done so), a hearing before the Disciplinary Tribunal shall not be required. In such a case, the Integrity Unit [...] shall promptly issue a decision confirming [...] the commission of the Anti-Doping Rule Violation(s) and the imposition of the Specified Consequences [...]."*

### The Anti-Doping Rules

4. Rule 2.5 ADR provides that the following conduct shall constitute an Anti-Doping Rule Violation under the ADR:

*"2.5 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"*

5. Tampering is defined broadly 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."*

6. Doping Control is defined as follows:

*"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.”*

7. Moreover, Rule 5.10.9 ADR expressly provides that, if an athlete obstructs or delays an investigation by providing false, misleading or incomplete information or documentation to the AIU, then proceedings may be brought against them for a violation of Rule 2.5 ADR (Tampering or Attempted Tampering).

### **The Athlete’s Commission of an Anti-Doping Rule Violation**

8. In accordance with the Athlete’s obligations as a member of the World Athletics Registered Testing Pool in 2020, the Athlete submitted her Whereabouts information to the AIU for Quarter 1 of 2020, including a 60-minute time slot for 18 March 2020 between 20:00 and 21:00 hours at her home address in Kapsabet, Kenya.
9. On 18 March 2020, a Doping Control Officer (“**DCO**”) made an attempt to test the Athlete at that address during the designated 60-minute time slot. The Athlete was not present and the DCO was advised by the Athlete’s husband that the Athlete had received a phone call informing her that her sister had been in a road traffic accident such that the Athlete had had to leave her home address in an emergency before the DCO’s arrival.
10. The DCO was informed by the Athlete’s husband that the Athlete would not return home before the end of the 60-minute time slot. The DCO nevertheless remained at the Athlete’s specified home address for the remainder of the 60-minute time slot, but the Athlete did not return. Accordingly, the DCO filed an Unsuccessful Attempt Report with the AIU and the AIU notified the Athlete of an apparent Missed Test in accordance with the applicable Anti-Doping Rules and Regulations.
11. On 15 April 2020, the Athlete submitted, through her Authorised Athlete Representative (“the **AR**”) a written explanation for the apparent Missed Test on 18 March 2020. The explanation indicated that the Athlete’s sister had been in a serious car accident and admitted to hospital and that the Athlete had attended that hospital at the time of her 60-minute time slot. The AIU was advised that the Athlete was waiting for correspondence from the hospital to corroborate her explanation, noting that this had been difficult to obtain due to the COVID-19 pandemic.
12. On 15 June 2020, the AIU received an e-mail from the AR, enclosing a copy of a Discharge Summary document for the Athlete’s sister (“the **Discharge Summary**”). The e-mail confirmed that the Athlete’s sister had been admitted to hospital on 18 March 2020 and had “*remained there for some days*” and that “*the hospital could not do any other letter*”.
13. In addition, the e-mail from the AR stated as follows: “*As mentioned in the previous e-mail, when Nelly heard that her sister had an accident she rushed to the hospital, without think[ing] about her whereabouts [be]cause she was very worried for her sister. Of course, she was supposed to call me to change it, but most likely in that condition we would have done the same.*”
14. On 17 June 2020, the AIU received from the AR copies of the Athlete’s birth certificate and that of her sister.
15. On 7 July 2020, the AIU wrote to the Athlete via the AR and requested further details about the car accident involving the Athlete’s sister on 18 March 2020.
16. On 14 July 2020, the AR wrote to the AIU and confirmed that the Athlete’s sister had been admitted to the Kapsabet County Referral Hospital.

17. Following further requests by the AIU for clarification, on 17 September 2020, the AR confirmed (on behalf of the Athlete) that the accident had occurred at approximately 18:00 hours on 18 March 2020 and that it had happened on the “*Eldoret Kapsabet highway*”.
18. On 21 September 2020, the AIU contacted representatives of ADAK and requested their assistance in determining the veracity of the Athlete’s explanation and the authenticity of the Discharge Summary that was purported to corroborate the Athlete’s explanation for the apparent Missed Test on 18 March 2020.
19. On 19 October 2020, the AIU received a report from ADAK following its enquiries with the Kapsabet Police Station and the Kapsabet County Referral Hospital (assisted by the Kenya Police Department of Criminal Investigations (the “DCI”)). More particularly, the ADAK report confirmed the following:
  - (i) On 13 October 2020, DCI and ADAK representatives had visited Kapsabet Police Station to make enquiries about any accidents that had occurred within their jurisdiction on 18 March 2020, including any accident involving the Athlete’s sister, who had been transferred to the Kapsabet County Referral Hospital. It was confirmed that there were no records of the car accident alleged by the Athlete on 18 March 2020 or of any accident report filed by an individual bearing the Athlete’s sister’s name. Only two “*hit and run*” accidents were recorded in the police records for 18 March 2020 and these had occurred at different times of the day to the accident asserted by the Athlete and involved only minor damage to vehicles rather than any serious injuries to individuals.
  - (ii) On the same date, DCI and ADAK representatives had visited the Kapsabet County Referral Hospital to enquire about the admission of the Athlete’s sister on 18 March 2020 and to ascertain the authenticity of the Discharge Summary. The Medical Superintendent of Kapsabet County Referral Hospital confirmed that the Athlete’s sister did not appear in the hospital records as having been admitted on 18 March 2020 and that the specific number given on the Discharge Summary related to a patient with a different name. He also confirmed that the doctor’s name and signature given on the Discharge Summary did not belong to any staff member of the Kapsabet County Referral Hospital and that the Discharge Summary was a forged document.
20. On 21 December 2020, the Athlete was interviewed by the AIU about her explanation for the apparent Missed Test on 18 March 2020 and the documents that had been provided to the AIU in support of such explanation. The Athlete confirmed that she was fully aware of the explanation that had been provided to the AIU (including the details and documents provided on her behalf by the AR) and that she had been the person to obtain the Discharge Summary, which she had sent to the AR for forwarding to the AIU.
21. Based on the above, the AIU concluded that the Athlete had committed an Anti-Doping Rule Violation in accordance with Rule 2.5 ADR (Tampering or Attempted Tampering) and, on 1 February 2021, issued a Notice of Charge to the Athlete for a violation of Rule 2.5 ADR (including the imposition of a Provisional Suspension) and invited the Athlete to confirm how she would like to proceed with the matter by no later than 22 February 2021.
22. On 18 February 2021, the Athlete confirmed that she admitted the Anti-Doping Rule Violation and accepted the specified Consequences and returned a signed Admission of Anti-Doping Rule Violation and Acceptance of Consequences Form.

### Consequences

23. This constitutes the Athlete's first Anti-Doping Rule Violation under the ADR. The mandatory period of Ineligibility for an Anti-Doping Rule Violation pursuant to Rule 2.5 ADR is a period of Ineligibility of four (4) years in accordance with Rule 10.3.1 ADR.
24. However, Rule 10.8.1 of the World Athletics Anti-Doping Rules in force from 1 January 2021 ("the **2021 ADR**") provides that an athlete may receive a one-year reduction in the period of Ineligibility if they admit the Anti-Doping Rule Violation and accept the asserted period of Ineligibility within 20 days after receiving the Notice of Charge.
25. The Athlete was issued with a Notice of Charge on 1 February 2021 and returned a signed Admission of Anti-Doping Rule Violation and Acceptance of Consequences Form on 18 February 2021. In accordance with the legal principle of *lex mitior*, and pursuant to Rule 10.8.1 of the 2021 ADR, the period of Ineligibility to be imposed on the Athlete is therefore three (3) years.
26. On the basis that the Athlete admitted the Anti-Doping Rule Violation under Rule 2.5 ADR and in accordance with Rule 10.3.1 ADR and the application of Rule 10.8.1 of the 2021 ADR pursuant to the legal principle of *lex mitior*, the AIU confirms by this decision the following Consequences for a first Anti-Doping Rule Violation:
  - 26.1. a period of Ineligibility of three (3) years commencing on 1 February 2021; and
  - 26.2. disqualification of the Athlete's results since 15 June 2020, with all resulting Consequences, including the forfeiture of any titles, awards, medals, points prizes and appearance money.
27. The Athlete has accepted the above Consequences for her Anti-Doping Rule Violation and has expressly waived her right to have those Consequences determined by the Disciplinary Tribunal at a hearing.

### Publication

28. In accordance with Rule 8.4.7(b) ADR, the AIU shall publicly report this decision on the AIU's website.

### Rights of Appeal

29. This decision constitutes the final decision of the AIU pursuant to Rule 8.4.7 ADR.
30. Further to Rule 13.2.4 ADR, WADA and the Bahrain Olympic Committee have a right of appeal against this decision to the Court of Arbitration for Sport in Lausanne, Switzerland, in accordance with the procedure set out at Rule 13.7.2 ADR.
31. If an appeal is filed against this decision by WADA or the Bahrain Olympic Committee, the Athlete will be entitled to exercise her right of cross-appeal in accordance with Rule 13.9.3 ADR.

Monaco, 1 March 2021