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# Decision of the Athletics Integrity Unit in the Case of Mr Josphat Kipkemboi Kemei

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## Introduction

1. World Athletics has 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. Mr Josphat Kipkemboi Kemei ("the **Athlete**") is a 29-year-old long-distance runner from Kenya.<sup>1</sup>
3. This decision is issued by the AIU pursuant to Rule 8.5.6 ADR, which provides as follows:

*"8.5.6 In the event that the Athlete or other Person either (i) admits the violation and accepts the proposed Consequences or (ii) is deemed to have admitted the violation and accepted the Consequences as per Rule 8.5.2(f), the Integrity Unit will promptly:*

- (a) issue a decision confirming the commission of the violation(s) and the imposition of the specified Consequences (including, if applicable, a justification for why the maximum potential sanction was not imposed);*
- (b) Publicly Report that decision in accordance with Rule 14;*
- (c) send a copy of the decision to the Athlete or other Person and to any other party that has a right, further to Rule 13, to appeal the decision (and any such party may, within 15 days of receipt, request a copy of the full case file pertaining to the decision)."*

## The Athlete's Commission of Anti-Doping Rule Violations

4. Rule 2 ADR sets out that the following shall constitute an anti-doping rule violation:

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

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<sup>1</sup> <https://worldathletics.org/athletes/kenya/josphat-kipkemboi-kemei-14983522>

[...]

## 2.2 *Use or Attempted Use by an Athlete of a Prohibited Substance or a Prohibited Method*

5. On 16 April 2023, the Athlete provided a urine Sample In-Competition in Yangzhou, China, which was given code 6510883 (the **"First Sample"**).<sup>2</sup> The results of the analysis of the First Sample were initially reported as negative on 15 May 2023.
6. On 15 February 2024, the Athlete provided a Blood Serum Sample Out-of-Competition in Eldoret, Kenya, which was given code 5805057 (the **"Second Sample"**).<sup>3</sup>
7. On 29 February 2024, the Athlete provided a Blood Serum Sample Out-of-Competition in Kaptagat, Kenya, which was given code 5804521 (the **"Third Sample"**).<sup>4</sup>
8. On 15 March 2024, the Athlete provided a Blood Serum Sample Out-of-Competition in Iten, Kenya, which was given code 8014588 (the **"Fourth Sample"**).<sup>5</sup>
9. On 17 March 2024, the World Anti-Doping Agency ("**WADA**") accredited laboratory in Lausanne, Switzerland ("the **Lausanne Laboratory**") reported to ADAK that analysis of the Second Sample had revealed the presence of methoxy polyethelene glycol-epoetin beta ("**CERA**") (the **"Second Adverse Analytical Finding"**).
10. On 25 March 2024, the Lausanne Laboratory reported to ADAK that analysis of the Third Sample had revealed the presence of CERA ("the **Third Adverse Analytical Finding**").
11. CERA is a Prohibited Substance under the WADA 2024 Prohibited List under the category S2. Peptide Hormones, Growth Factors, Related Substances and Mimetics. It is a Non-Specified Substance prohibited at all times.
12. ADAK reviewed the Second Adverse Analytical Finding and the Third Adverse Analytical Finding in accordance with Article 5 of the International Standard for Results Management ("**ISRM**") and determined that:
  - 12.1.1. the Athlete did not have a Therapeutic Use Exemption ("**TUE**") that had been granted (or that would be granted) for the CERA found in the Second Sample and the Third Sample; and

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<sup>2</sup> The First Sample was collected under the Testing Authority of the AIU – World Athletics pursuant to the 2023 World Athletics Anti-Doping Rules in force from 31 March 2023 (enclosed).

<sup>3</sup> The Second Sample was collected under the Testing Authority of the Anti-Doping Agency of Kenya ("**ADAK**") and pursuant to the ADAK Anti-Doping Rules set out in the Anti-Doping Act (No.5 of 2016) ("**the Act**").

<sup>4</sup> The Third Sample was collected under the Testing Authority of ADAK and pursuant to the ADAK Anti-Doping Rules set out in the Act.

<sup>5</sup> The Fourth Sample was collected under the Testing Authority of ADAK and pursuant to the ADAK Anti-Doping Rules set out in the Act.

- 12.1.2. there was no apparent departure from the International Standard for Testing and Investigations (“**ISTI**”) or from the International Standard for Laboratories (“**ISL**”) that could reasonably have caused the Second Adverse Analytical Finding or the Third Adverse Analytical Finding.
13. Therefore, on 2 April 2024, ADAK issued the Athlete with two Anti-Doping Rule Violation Notices dated 2 April 2024 in respect of the Second Adverse Analytical Finding and the Third Adverse Analytical Finding, imposing a Provisional Suspension (effective from 22 April 2024), and invited the Athlete to provide his detailed written explanation by no later than 22 April 2024.
14. On 4 April 2024, the Athlete sent an e-mail to ADAK responding to the two Anti-Doping Rule Violation Notices issued on 2 April 2024 stating “*Accept*”.
15. On 19 April 2024, the Lausanne Laboratory reported to ADAK that analysis of the Fourth Sample had revealed the presence of CERA (“the **Fourth Adverse Analytical Finding**”).
16. Also on 19 April 2024, following a request for further analysis of the First Sample made by the AIU, the WADA accredited laboratory in Beijing, China, reported that the further analysis had revealed the presence of 5 $\alpha$ -androstane-3 $\alpha$ ,17 diol (“**5 $\alpha$ Adiol**”), 5 $\beta$ -androstane-3 $\alpha$ ,17 diol (“**5 $\beta$ Adiol**”), Androsterone, and Etiocholanolone consistent with exogenous origin (the “**First Adverse Analytical Finding**”).
17. 5 $\alpha$ Adiol, 5 $\beta$ Adiol, Androsterone and Etiocholanolone are Metabolites of Testosterone which is a Prohibited Substance under the WADA 2023 Prohibited List under the category S1.1 Anabolic Androgenic Steroids (AAS). It is a Non-Specified Substance prohibited at all times.
18. The AIU reviewed the First Adverse Analytical Finding in accordance with Article 5 of the ISRM and determined that:
- 18.1. the Athlete did not have a TUE that had been granted (or that would be granted) for the 5 $\alpha$ Adiol, 5 $\beta$ Adiol, Androsterone and Etiocholanolone found in the First Sample; and
- 18.2. there was no apparent departure from the ISTI or from the ISL that could reasonably have caused the First Adverse Analytical Finding.
19. On 22 April 2024, the AIU wrote to ADAK requesting confirmation of the status of ADAK’s Results Management in relation to the Fourth Adverse Analytical Finding.
20. Following clarification from ADAK, on 1 May 2024, the AIU requested that ADAK agree to delegate its authority for Results Management in relation to the Second Adverse Analytical Finding, the Third Adverse Analytical Finding and the Fourth Adverse Analytical Finding to the AIU, to ensure expediency of Results Management and to avoid duplicity of disciplinary proceedings.
21. On 8 May 2024, ADAK agreed to delegate its authority for Results Management to the AIU and provided the AIU with copies of the two Anti-Doping Rule Violation Notices sent to the Athlete on 2 April 2024 and the Athlete’s response of 4 April 2024.

22. On 14 May 2024, the AIU notified the Athlete of the First Adverse Analytical Finding and the Fourth Adverse Analytical Finding in accordance with Article 5.1.2.1 of the ISRM, including that the Adverse Analytical Findings may result in Anti-Doping Rule Violations pursuant to Rule 2.1 ADR and/or Rule 2.2 ADR and of the imposition of an immediate Provisional Suspension.
23. The Athlete was also informed of his rights, inter alia, to request the B Sample analysis for the First Sample and the Fourth Sample, to request copies of the laboratory documentation supporting the First Adverse Analytical Finding and the Fourth Adverse Analytical Finding and to admit the Anti-Doping Rule Violations and potentially benefit from a one-year reduction in the period of Ineligibility pursuant to Rule 10.8.1 ADR.
24. On 15 May 2024, the Athlete sent two e-mails to the AIU stating “*Accept*” and “*I Accept*”.
25. On 16 May 2024, the AIU received an Admission of Anti-Doping Rule Violations and Acceptance of Consequences Form signed by the Athlete.

## Consequences

26. In accordance with Rule 10.9.3(a) ADR, the Anti-Doping Rule Violations that arise from the Adverse Analytical Findings shall be considered together as one single first violation, and the sanction imposed will be based on the violation that carries the more severe sanction, including the application of Aggravating Circumstances.
27. Rule 10.2 ADR specifies that the period of Ineligibility for an Anti-Doping Rule Violation under Rule 2.1 ADR or Rule 2.2 ADR shall be as follows:
  - “10.2.1 *Save where Rule 10.2.4 applies, the period of Ineligibility will be four years where:*
    - (a) *The anti-doping rule violation does not involve a Specified Substance or a Specified Method, unless the Athlete or other Person can establish that the anti-doping rule violation was not intentional.*
    - (b) *The anti-doping rule violation involves a Specified Substance or a Specified Method and the Integrity Unit can establish that the anti-doping rule violation was intentional.*”
28. 5 $\alpha$ Adiol, 5 $\beta$ Adiol, Androsterone and Etiocholanolone are Metabolites of Testosterone, which is a Prohibited Substance under the WADA 2023 Prohibited List under the category S1.1 Anabolic Androgenic Steroids. It is a Non-Specified Substance prohibited at all times.
29. CERA is a Prohibited Substance under the WADA 2024 Prohibited List under the category S2. Peptide Hormones, Growth Factors, Related Substances and Mimetics. It is a Non-Specified Substance prohibited at all times.
30. The period of Ineligibility to be imposed is therefore a period of four (4) years, unless the Athlete demonstrates that the Anti-Doping Rule Violations were not intentional.

31. The Athlete has not demonstrated that the Anti-Doping Rule Violations were not intentional. Therefore, the mandatory period of Ineligibility is a period of Ineligibility of four (4) years.

32. However, Rule 10.4 ADR specifies that the period of Ineligibility may be increased if Aggravating Circumstances are present as follows:

*“10.4 If the Integrity Unit or other prosecuting authority establishes in an individual case involving an anti-doping rule violation other than violations under Rule 2.7 (Trafficking or Attempted Trafficking), Rule 2.8 (Administration or Attempted Administration), Rule 2.9 (Complicity or Attempted Complicity) or Rule 2.11 (Acts by an Athlete or other Person to discourage or retaliate against reporting) that Aggravating Circumstances are present which justify the imposition of a period of Ineligibility greater than the standard sanction, then the period of Ineligibility otherwise applicable will be increased by an additional period of Ineligibility of up to two (2) years depending on the seriousness of the violation and the nature of the Aggravating Circumstances, unless the Athlete or other Person can establish that they did not knowingly commit the anti-doping rule violation.”*

33. Aggravating Circumstances are defined in the Rules as being:

*“**Aggravating Circumstances:** Circumstances involving, or actions by, an Athlete or other Person which may justify the imposition of a period of Ineligibility greater than the standard sanction. Such circumstances and actions shall include, but are not limited to: the Athlete or other Person Used or Possessed multiple Prohibited Substances or Prohibited Methods, Used or Possessed a Prohibited Substance or Prohibited Method on multiple occasions or committed multiple other anti-doping rule violations; a normal individual would be likely to enjoy the performance-enhancing effects of the anti-doping rule violation(s) beyond the otherwise applicable period of Ineligibility; the Athlete or Person engaged in deceptive or obstructive conduct to avoid the detection or adjudication of an anti-doping rule violation; or the Athlete or other Person engaged in Tampering during Results Management. For the avoidance of doubt, the examples of circumstances and conduct described herein are not exclusive and other similar circumstances or conduct may also justify the imposition of a longer period of Ineligibility.” (emphasis added)*

34. The analysis of the First Sample revealed the presence of Metabolites of Testosterone consistent with exogenous origin. Furthermore, analysis of the Second Sample, the Third Sample and the Fourth Sample revealed the presence of CERA. This constitutes clear evidence of the Athlete's Use of multiple Prohibited Substances, which is expressly identified in the definition of Aggravating Circumstances.

35. In addition, the presence of CERA in Samples collected from the Athlete over a 30-day period, between 15 February 2024 and 15 March 2024 also constitutes evidence of the Athlete's Use of a Prohibited Substance (CERA) on multiple occasions, which is also expressly identified in the definition of Aggravating Circumstances.

36. The AIU therefore concludes that this justifies an increase of the period of Ineligibility, unless the Athlete can establish that he did not knowingly commit the Anti-Doping Rule Violations.

37. The Athlete has failed to establish that he did not knowingly commit the Anti-Doping Rule Violations. Therefore, the period of Ineligibility to be imposed is a period of Ineligibility of six (6) years.
38. However, Rule 10.8.1 ADR provides that an athlete potentially subject to an asserted period of Ineligibility of four (4) years or more may benefit from a one (1)-year reduction in the period of Ineligibility based on an early admission and acceptance of sanction:

*“10.8.1 One year reduction for certain anti-doping rule violations based on early admission and acceptance of sanction.*

*Where the Integrity Unit notifies an Athlete or other Person of an anti-doping rule violation charge that carries an asserted period of Ineligibility of four (4) or more years (including any period of Ineligibility asserted under Rule 10.4), if the Athlete or other Person admits the violation and accepts the asserted period of Ineligibility no later than 20 days after receiving the Notice of Charge, the Athlete or other Person may receive a one (1) year reduction in the period of Ineligibility asserted by the Integrity Unit. Where the Athlete or other Person receives the one (1) year reduction in the asserted period of Ineligibility under this Rule 10.8.1, no further reduction in the asserted period of Ineligibility will be allowed under any other Rule.”*

39. A Notice of Allegation was issued to the Athlete by the AIU on 13 May 2024. On 15 May 2024, the AIU received an Admission of Anti-Doping Rule Violations and Acceptance of Consequences Form signed by the Athlete confirming that he admitted the Anti-Doping Rule Violations and accepted the asserted period of Ineligibility of six (6) years.<sup>6</sup>
40. The Athlete shall therefore receive a one (1) year reduction in the asserted period of Ineligibility pursuant to Rule 10.8.1 ADR based on an early admission and acceptance of sanction.
41. On the basis that the Athlete has admitted the Anti-Doping Rule Violations under Rule 2.1 ADR and Rule 2.2 ADR, in accordance with Rule 10.2.1 ADR and the application of Rule 10.4 ADR and Rule 10.8.1 ADR, the AIU confirms by this decision the following Consequences for a first Anti-Doping Rule Violation:
- 41.1. a period of Ineligibility of five (5) years commencing on 22 April 2024 (the date of Provisional Suspension imposed by ADAK); and
  - 41.2. disqualification of the Athlete’s results on and since 16 April 2023, with all resulting Consequences, including the forfeiture of any medals, titles, awards, points, prizes, prize money and appearance money.

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<sup>6</sup> The Notice of Allegation of Anti-Doping Rule Violations was issued to the Athlete by the AIU in accordance with Article 5.1.2 of the ISRM, prior to a Notice of Charge issued in accordance with Article 7 of the ISRM. Considering the Athlete’s signed admission and acceptance of Consequences on 16 May 2024, no Notice of Charge was ever issued.

42. The Athlete has accepted the above Consequences for his Anti-Doping Rule Violations and has expressly waived his right to have those Consequences determined by the Disciplinary Tribunal at a hearing.

## Publication

43. In accordance with Rule 8.5.6(b) ADR, the AIU shall publicly report this decision on the AIU's website.

## Rights of Appeal

44. This decision constitutes the final decision of the AIU pursuant to Rule 8.5.6 ADR.
45. Further to Rule 13.2.3 ADR, WADA and ADAK 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 13.6.1 ADR.
46. If an appeal is filed against this decision by WADA or ADAK, the Athlete will be entitled to exercise his right of cross-appeal in accordance with Rule 13.2.4 ADR.

Monaco, 16 May 2024