

DECISION OF THE ATHLETICS INTEGRITY UNIT IN THE CASE OF MS TABITHA GICHIA WAMBUI

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. Ms Tabitha Gichia Wambui ("the **Athlete**") is a 37-year-old middle and long-distance runner from Kenya¹.
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

[...]

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

[...]

2.5 Tampering or Attempted Tampering with any part of Doping Control by an Athlete or other Person"

¹ <https://worldathletics.org/athletes/kenya/tabitha-wambui-gichia-14289490>

5. On 19 September 2021, the Athlete provided a urine Sample, In-Competition, at the ‘Copenhagen Half Marathon’ held in Copenhagen, Denmark, which was given code 6437171 (the “**First Sample**”).
6. On 17 October 2021, the Athlete provided a urine Sample In-Competition at the ‘PKO Poznań Half Marathon’ held in Poznań, Poland, which was given code 0002697 (the “**Second Sample**”).²
7. On 18 October 2021, the World Anti-Doping Agency (“**WADA**”) accredited laboratory in Oslo, Norway reported an Adverse Analytical Finding in the First Sample for the presence of metabolites of Nandrolone (or Nandrolone precursors) consistent with exogenous origin, namely 19-Norandrosterone (“**Norandrosterone**”)³ and 19-Noretiocholanolone (together the “**Metabolites**”) (the “**First Adverse Analytical Finding**”).
8. The AIU reviewed the First Adverse Analytical Finding in accordance with Article 5 of the International Standard for Results Management (“**ISRM**”) and determined that:
 - 8.1. the Athlete did not have a Therapeutic Use Exemption (“**TUE**”) that had been granted (or that would be granted) for the Metabolites found in the First Sample; and
 - 8.2. 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 First Adverse Analytical Finding.
9. Therefore, on 20 October 2021, the AIU notified the Athlete of the First Adverse Analytical Finding in accordance with Article 5.1.2.1 of the ISRM, including that the First Adverse Analytical Finding 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.
10. The Athlete was also informed of her rights, *inter alia*, to request the B Sample analysis, to request copies of the laboratory documentation supporting the First 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.
11. On 22 October 2021, the AIU received (via the Athlete’s Authorised Athlete Representative, (“the **Manager**”)) an Admission of Anti-Doping Rule Violations and Acceptance of Consequences Form signed by the Athlete (“the **Acceptance Form**”). By signing the Acceptance Form, the Athlete admitted that she had committed Anti-Doping Rule Violations for (i) the presence of Metabolites of Nandrolone (or Nandrolone precursors) in the First Sample consistent with exogenous origin and (ii) the use of exogenous Nandrolone (or Nandrolone precursors) and accepted the specified period of Ineligibility.
12. On 26 October 2021, the AIU acknowledged receipt of the Acceptance Form and confirmed that the AIU would issue a final decision recording the imposition of the accepted Consequences shortly.

² The Second Sample was collected by the Polish Anti-Doping Agency (“**POLADA**”).

³ Norandrosterone is a metabolite of nandrolone and nandrolone precursors.

13. On 27 October 2021, the Manager wrote to the AIU asserting that the Athlete had received medical treatment on 15 September 2021 and that this medical treatment should be taken into account in the final decision in this matter. The Manager also enclosed a medical certificate dated 15 September 2021 in corroboration.
14. On 28 October 2021, the AIU replied to the Manager specifying that the medical document that had been submitted failed to establish how the Metabolites had entered the Athlete's system because none of the referenced medication appeared to contain Nandrolone or a Nandrolone precursor. Furthermore, the AIU pointed out that, by signing and returning the Acceptance Form, the Athlete would stand to benefit from a one (1)-year reduction in the period of Ineligibility. The AIU requested that the Athlete confirm her position in writing by no later than 1 November 2021.
15. On 29 October 2021, the Manager responded to the AIU stating that he wanted to collect further evidence and to revoke the Acceptance Form to conduct further investigation. The AIU responded immediately requesting that the Athlete provide her position directly to the AIU in a signed written statement. The AIU then received a letter, signed by the Athlete, confirming that she wished to revoke the Acceptance Form.
16. On 2 November 2021, the AIU confirmed that the Athlete was to submit any further explanation and supporting documents that she wished to rely on in relation to the First Adverse Analytical Finding by no later than 8 November 2021.
17. Following extensions granted to the Athlete to submit her explanation until 29 November 2021 (requested by the Manager), on 26 November 2021, the Athlete (via the Manager) submitted an explanation to the AIU per the following (repeated verbatim):

“Tabitha has been investigating her timeline in the meanwhile and has found out how the substance has entered her body. Enclosed you find declarations of her doctor about the situation and medical history. This shows that she has not taken the substance on purpose to benefit her but that it was used by the doctor to improve her medical status at the time.

We would like to ask if miss Gichia may apply for a retroactive Therapeutic Use Exemption (TUE).

We trust on it that the evidence/statements enclosed in this email suffices to show her sincere intentions.”

18. Enclosed with this explanation was a medical document from the Kiambu Level 5 Hospital (“the **Hospital**”) which recorded three (3) separate visits by the Athlete on 12 February 2021, 6 April 2021 and 26 May 2021⁴. According to this medical document, the Athlete had been injected with Nandrolone (“Deca”) (i.e., Deca Durabolin) on 6 April 2021 (to treat a headache and general body weakness) and on 26 May 2021 (to treat abdominal pain and loss of appetite).

⁴ The AIU noted that although the medical documents referred to significant medical treatment received by the Athlete on 26 May 2021, according to publicly available information, she had competed in the Athletics Kenya Pre [Olympic]-Trials on 27 and 28 May 2021, i.e., one day following the asserted treatment at the Hospital.

19. Following receipt of the above, the AIU requested the assistance of the Anti-Doping Agency of Kenya (“**ADAK**”) in the context of an investigation to determine the veracity of the Athlete’s asserted medical treatment and the supporting medical documents from the Hospital.
20. On 21 December 2021, ADAK provided to the AIU a letter from the Medical Superintendent of the Hospital dated 6 December 2021 according to which:
 - 20.1. the Athlete did not attend the Hospital on the dates referenced in the medical documents (i.e., 12 February 2021, 6 April 2021 and 26 May 2021);
 - 20.2. the Hospital had no record of the outpatient number appearing on the medical document;
 - 20.3. the stamp appearing on the medical document does not belong to the Hospital; and
 - 20.4. the documents were not issued by the Hospital.
21. On 23 December 2021, the WADA accredited Laboratory in Warsaw, Poland reported an Adverse Analytical Finding in the Second Sample for the presence of 19-Norandrosterone consistent with exogenous origin⁵ (the “**Second Adverse Analytical Finding**”).
22. On 25 January 2022, the authority for Results Management of the Second Adverse Analytical Finding was referred by the Polish Anti-Doping Agency (“**POLADA**”) to the AIU.
23. On 3 February 2022, following the initial review required by the ISRM, the AIU issued the Athlete with a further Notice of Allegation of Anti-Doping Rule Violations and requested the Athlete’s written explanation for the Second Adverse Analytical Finding by 10 February 2022. This Notice of Allegation specified that, due to their timing, the First Adverse Analytical Finding and the Second Adverse Analytical Finding would be treated together as a single first Anti-Doping Rule Violation.
24. On 10 February 2022, the Manager wrote to the AIU on behalf of the Athlete and confirmed that she relied on the same explanation presented for the First Adverse Analytical Finding (on 26 November 2021) to explain the Second Adverse Analytical Finding⁶.
25. On 5 April 2022, representatives of the AIU interviewed the Athlete in person in Kenya with respect to her explanations for the First Adverse Analytical Finding and the Second Adverse Analytical Finding. The Athlete was informed that the AIU had conducted further investigations into the medical documents from the Hospital, which had determined that those documents were falsified/forged. After being confronted with that information the Athlete admitted:
 - 25.1. that the medical documents she had submitted to explain the First Adverse Analytical Finding and the Second Adverse Analytical Finding were fabricated/forged; and

⁵ The GC/C/IRMS analysis on the Second Sample was conducted by the WADA-accredited laboratory in Lausanne Switzerland (the “**Lausanne Laboratory**”).

⁶ The Manager wrote to the AIU that: “[...] we repeat our explanation that the First and Second Adverse Analytical Finding were caused by urgently needed and legitimate medical treatment [...]”

25.2. to doping with Nandrolone.

26. Therefore, on 20 June 2022, the AIU issued the Athlete with a Notice of Charge in accordance with Rule 8.5.1 ADR and Article 7.1 ISRM confirming that she was being charged with Anti-Doping Rule Violations under Rule 2.1 ADR, Rule 2.2 ADR and Rule 2.5 ADR (“the **Charge**”) and that those Anti-Doping Rule Violations warranted a total period of Ineligibility of eight (8) years pursuant to Rules 10.2.1(a) ADR and 10.9.3(c) ADR (i.e., four (4) years for the Presence/Use of a Prohibited Substance⁷ and four (4) years for Tampering or Attempted Tampering to be served consecutively⁸). The AIU invited the Athlete to respond to the Charge confirming how she wished to proceed by no later than 4 July 2022⁹.

27. On 27 June 2022, the Athlete received (via the Manager) an Admission of Anti-Doping Rule Violations and Acceptance of Consequences Form signed by the Athlete.

CONSEQUENCES

28. Collectively, the Anti-Doping Rule Violations pursuant to Rule 2.1 ADR, Rule 2.2 ADR and Rule 2.5 ADR constitute the Athlete’s first Anti-Doping Rule Violation pursuant to Rule 10.9.3 ADR.

29. Rule 10.2 ADR specifies that the period of Ineligibility for an Anti-Doping Rule Violation under Rule 2.1 or Rule 2.2 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.”*

⁷ The AIU obtained an independent expert scientific opinion in relation to the concentrations of the Metabolites in the First Sample and the Second Sample to determine whether or not the Athlete had Used a Prohibited Substance on multiple occasions. The opinion of the independent expert was that the likelihood that the two Adverse Analytical Findings were the result of the same single administration of Nandrolone was quite high.

⁸ In accordance with Rule 10.9.3(c), *“If the Integrity Unit establishes that an Athlete or other Person committed a violation of Rule 2.5 in connection with the Doping Control process for an underlying asserted anti-doping rule violation, the violation of Rule 2.5 will be treated as a stand-alone first violation and the period of Ineligibility for such violation must be served consecutively (rather than concurrently) with the period of Ineligibility, if any, imposed for the underlying anti-doping rule violation. Where this Rule 10.9.3(c) is applied, the violations taken together will constitute a single violation for purposes of Rule 10.9.1.”* (emphasis added)

⁹ The AIU informed the Athlete that she had until 4 July 2022 (and in any event until no later than 11 July 2022) to sign and return an Admission of Anti-Doping Rule Violation and Acceptance of Consequences Form (enclosed with the Notice of Charge) to benefit from an automatic one (1)-year reduction in the eight (8)-year period of Ineligibility pursuant to Rule 10.8.1 ADR and that, if she failed to do so by that date, she would be deemed to have admitted the Anti-Doping Rule Violations and accepted the Consequences set out in the Charge, and the AIU would then issue a final decision in her case.

30. The Metabolites are metabolites of Nandrolone (or a Nandrolone precursor) which is a non-Specified Substance according to the WADA 2021 Prohibited List under the category S1.1 Anabolic Androgenic Steroids (AAS).
31. 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.
32. The Athlete has failed to demonstrate that the Anti-Doping Rule Violations were not intentional. Therefore, the mandatory period of Ineligibility for the Anti-Doping Rule Violations pursuant to Rule 2.1 ADR and Rule 2.2 ADR is a period of Ineligibility of four (4) years.
33. In addition, Rule 10.3.1 ADR specifies the period of Ineligibility to be imposed for a breach of Rule 2.5 (Tampering or Attempted Tampering) as follows:

“10.3.1 For violations of Rule 2.3 or Rule 2.5, the period of Ineligibility will be four (4) years except: (i) in the case of failing to submit to Sample collection, if the Athlete can establish that the commission of the anti-doping rule violation was not intentional, the period of Ineligibility will be two (2) years; (ii) in all other cases, if the Athlete or other Person can establish exceptional circumstances that justify a reduction of the period of Ineligibility, the period of Ineligibility will be in a range from two (2) years to four (4) years depending on the Athlete’s or other Person’s degree of Fault; or (iii) in a case involving a Protected Person or Recreational Athlete, the period of Ineligibility will be in a range between a maximum of two (2) years and, at a minimum, a reprimand and no period of Ineligibility, depending on the Protected Person or Recreational Athlete’s degree of Fault.”

34. The Athlete has not established any exceptional circumstances that exist to justify any reduction in the period of Ineligibility of four (4) years to be imposed for the Anti-Doping Rule Violation committed pursuant to Rule 2.5 ADR.
35. Rule 10.9.3(c) states as follows:

10.9.3 Additional rules for certain potential multiple violations

[...]

(c) If the Integrity Unit establishes that an Athlete or other Person committed a violation of Rule 2.5 in connection with the Doping Control process for an underlying asserted anti-doping rule violation, the violation of Rule 2.5 will be treated as a stand-alone first violation and the period of Ineligibility for such violation must be served consecutively (rather than concurrently) with the period of Ineligibility, if any, imposed for the underlying anti-doping rule violation. Where this Rule 10.9.3(c) is applied, the violations taken together will constitute a single violation for purposes of Rule 10.9.1.

36. The Athlete committed the violation of Rule 2.5 ADR in connection with the Doping Control process (specifically during Results Management of the Adverse Analytical Findings) and therefore falls squarely within this provision. The violation of Rule 2.5 shall therefore be treated as a stand along first violation and the four (4)-year period of Ineligibility must be served consecutively to the four (4)-year period of Ineligibility imposed for the violations of Rule 2.1 ADR and Rule 2.2 ADR (i.e., a total period of Ineligibility of eight (8) years).

37. 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.”

38. The Charge was issued to the Athlete on 20 June 2022 and on 27 June 2022, the AIU received an Admission of Anti-Doping Rule Violations and Acceptance of Consequences Form signed by the Athlete in which the Athlete admitted the Anti-Doping Rule Violations and accepted the asserted period of Ineligibility of eight (8) years.

39. The Athlete shall therefore receive a one (1) year reduction in the asserted period of Ineligibility pursuant to Rule 10.8.1 based on an early admission and acceptance of sanction.

40. On the basis that the Athlete has admitted the Anti-Doping Rule Violations under Rule 2.1 ADR, Rule 2.2 ADR and Rule 2.5 ADR and in accordance with Rule 10.9.3(c) ADR and the application of Rule 10.8.1 ADR, the AIU confirms by this decision the following Consequences for a first Anti-Doping Rule Violation:

40.1. a period of Ineligibility of seven (7) years commencing on 20 October 2021 (the date of Provisional Suspension); and

40.2. disqualification of the Athlete’s results on and since 19 September 2021, with all resulting Consequences, including the forfeiture of any titles, awards, medals, points prizes and appearance money.

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

PUBLICATION

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

RIGHTS OF APPEAL

43. This decision constitutes the final decision of the AIU pursuant to Rule 8.5.6 ADR.
44. Further to Rule 13.2.3 ADR, WADA and the Anti-Doping Agency of Kenya (“**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.
45. If an appeal is filed against this decision by WADA or ADAK, the Athlete will be entitled to exercise her right of cross-appeal in accordance with Rule 13.2.4 ADR.

Monaco, 11 July 2022