

## DECISION OF THE ATHLETICS INTEGRITY UNIT IN THE CASE OF MR JOEL MAINA MWANGI

### 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 Joel Maina Mwangi is a 37-year-old Kenyan long-distance runner and is an International-Level Athlete for the purposes of the ADR ("the **Athlete**")<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 AN ANTI-DOPING RULE VIOLATION

4. Rule 2 ADR sets out that the following shall constitute an Anti-Doping Rule Violation:

*"2.2 Use or Attempted Use by an Athlete of a Prohibited Substance or a Prohibited Method[...]"*
5. On 25 January 2022, the AIU was notified of a decision rendered by the National Anti-Doping Prosecutor Office of Italy ("**PNA**") against the Athlete (the "**Decision**"), and according to which:
  - 5.1. On 26 September 2021, the Athlete provided a urine Sample at the 'Maratonina Città di Arezzo' held in Arezzo (Italy), which was given code 4776298 (the "**Sample**")

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<sup>1</sup> <https://worldathletics.org/athletes/kenya/joel-mwangi-maina-14208963>

- pursuant to testing authorised by the Commission of the Italian Ministry of Health (the “Commission”) in accordance with applicable Italian law<sup>2</sup>.
- 5.2. Analysis of the Sample revealed the presence of Nandrolone metabolites, 19-Norandrosterone and 19-Norethiocholanolone.
  - 5.3. On 17 November 2021, upon notification of the above test results, the Athlete wrote to the PNA that he had received two injections of Deca-Durabolin on 15 and 26 July 2021 to treat an inflammation of the right ankle tendon<sup>3</sup>. Deca-Durabolin is an injectable anabolic preparation, the pharmacologically active substance of which is Nandrolone.
  - 5.4. On 18 November 2021, the Athlete further wrote to the PNA: “*I Joel mwangi accepted that I had used the Substance {durabolin} that was found in my urine test after the control at Arrezzo. I didn't use it intentionally but as a cure to the problem I had by then in my right leg ankle and tendon inflammation which cause the pain up to my spine and ended up bieng diagonised with swollen in my tendon which trasmitted the pain to my back and ended up injected with above mentioned drug of which it was my first time to develop such complication and first time to injected because of the inflammation in my tendon of which I haven't ever had before.*” (emphasis added)
  - 5.5. On 25 January 2022, the Athlete formally admitted the presence of exogeneous 19-Norandrosterone and 19-Norethiocholanolone in the Sample and accepted a period of ineligibility of two (2) years starting on 19 November 2021 to conclude the proceedings initiated by the PNA.
6. Upon review, however, the AIU concluded on behalf of World Athletics that it could not recognize the Decision as an anti-doping rule violation<sup>4</sup> under the World Anti-Doping Code (“the Code”) and it would therefore take no steps to enforce the Decision (outside of Italy). The reason for this was that only Anti-Doping Organisations<sup>5</sup> may authorize testing to be conducted under the Code. The Ministry of Health is not an Anti-Doping Organisation and, by regulation, samples authorised by its Commission fall expressly outside of the scope of Code<sup>6</sup>.

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<sup>2</sup> More particularly, pursuant to Italian Law 376/2000 and the Ministerial Decree dated 14 February 2021.

<sup>3</sup> In particular, the Athlete wrote that: “*During my training in Kenya I had ankle and tendon problem ,, due to big pain I visited the doctor, after the examine ,, inject me durabolin which I came to knew later.*” He also attached a medical certificate dated 17 November 2021 from the Mama Lucy Kibaki Hospital confirming the diagnosis and the dates of the injections.

<sup>4</sup> Under Rule 2.1 (Presence of a Prohibited Substance or its Metabolites or Markers in an Athlete’s Sample).

<sup>5</sup> An Anti-Doping Organisation is defined in the Code as “WADA or a Signatory that is responsible for adopting rules for initiating, implementing or enforcing any part of the Doping Control Process...”. The Italian Ministry of Health is not a Code Signatory: cf. <https://www.wada-ama.org/en/what-we-do/world-anti-doping-code/code-signatories>

<sup>6</sup> Under Article 1.1 of the Ministerial Decree dated 14 February 2021 : “*These provisions apply to the controls ordered and carried out by the Commission for the supervision and control of doping and for the protection of health in sporting activities, hereinafter referred to as the Commission, not falling within the anti-doping activities envisaged and regulated by the WADA Anti-Doping Code and the related International Standards, pursuant to the provisions of law of 26 November 2007 no. 230, in relation to which the Sporting Anti-Doping*”

7. The AIU was nevertheless satisfied that the Athlete had committed an anti-doping rule violation under the Rules (and the Code) on the following basis:
  - 7.1. As an athlete affiliated to the Italian Athletics Federation (“**FIDAL**”) and Athletics Kenya (“**AK**”), the Athlete was and is subject to the Rules as a minimum under Rule 1.4.2(f)(ii).
  - 7.2. The Sample was collected and analyzed in accordance with processes consistent with the International Standard for Testing and Investigations (“**ISTI**”) and the International Standard for Laboratories (“**ISL**”) <sup>7</sup>.
  - 7.3. The Athlete unequivocally admitted the use of Nandrolone (i.e. two Deca-Durabolin injections on 15 and 26 July 2021). Nandrolone is a Prohibited Substance under the WADA 2021 Prohibited List under the category S1: *Anabolic agents*. It is a Non-Specified Substance prohibited at all times.
  - 7.4. It is a violation of the Rules for an athlete to Use a Prohibited Substance (Rule 2.2).
  - 7.5. Use of a Prohibited Substance may be established by any reliable means and the AIU considered the Athlete’s admission to constitute reliable means for the purposes of a Rule 2.2 violation <sup>8</sup>.
8. Therefore, on 23 June 2022, the AIU notified the Athlete of the alleged Anti-Doping Rule Violation pursuant to Rule 2.2 ADR and of the imposition of an immediate Provisional Suspension.
9. The Athlete was also informed of his rights, *inter alia*, to provide an explanation and to admit the Anti-Doping Rule Violation and potentially benefit from a one-year reduction in the period of Ineligibility pursuant to Rule 10.8.1 ADR.
10. On 24 June 2022, the AIU received an Admission of Anti-Doping Rule Violation and Acceptance of Consequences Form signed by the Athlete.

## CONSEQUENCES

11. This is the Athlete’s first Anti-Doping Rule Violation.
12. Rule 10.2 ADR specifies that the period of Ineligibility for an Anti-Doping Rule Violation under 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:*

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*Regulations approved by CONI as National Anti-Doping Organization, hereinafter CONI / NADO, apply and to which the Commission itself complies.”* (our translation, emphasis added)

<sup>7</sup> The Sample was collected by an experienced sample collection agency, the Italian Sports Medicine Federation, and analysed by the WADA-accredited Laboratory in Rome, Italy (the “**Laboratory**”).

<sup>8</sup> The comment to Rule 2.2 states as follows: “As noted in the Comment to Rule 3.2, unlike the proof required to establish an anti-doping rule violation under Rule 2., Use or Attempted Use may also be established by other reliable means such as admissions by the Athlete...”

- (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.”*
13. Nandrolone (when administered exogenously) is a Prohibited Substance under the WADA 2021 Prohibited List under the category S1.1 Anabolic Androgenic Steroids (AAS). It is a Non-Specified Substance prohibited at all times.
14. The period of Ineligibility to be imposed is therefore a period of four (4) years, unless the Athlete demonstrates that the Anti-Doping Rule Violation was not intentional.
15. The Athlete has not demonstrated that the Anti-Doping Rule Violation was not intentional. Therefore, the mandatory period of Ineligibility is a period of Ineligibility of four (4) years.
16. However, Rule 10.8.1 ADR provides that an athlete potentially subject to an asserted period of Ineligibility of four (4) years 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.”*
17. The Athlete was notified of the potential Anti-Doping Rule Violation under Rule 2.2 and that it might result in a period of Ineligibility of four (4) years on 23 June 2022<sup>9</sup>.
18. On 24 June 2022, the Athlete returned the Admission of Anti-Doping Rule Violation and Acceptance of Consequences Form signed.
19. The Athlete is entitled therefore to 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.
20. On the basis that the Athlete has admitted the Anti-Doping Rule Violation under Rule 2.2 ADR, in accordance with Rule 10.2.1 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:

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<sup>9</sup> This Notice of Allegation of an Anti-Doping Rule Violation was issued to the Athlete in accordance with Article 5.3.2.1 of the ISRM, prior to a Notice of Charge issued in accordance with Article 7 of the ISRM.

- 20.1. a period of Ineligibility of three (3) years commencing on 23 June 2022 (the date of Provisional Suspension); and
  - 20.2. disqualification of the Athlete's results on and since 15 July 2021, with all resulting Consequences, including the forfeiture of any titles, awards, medals, points prizes and appearance money.
21. The Athlete has accepted the above Consequences for his Anti-Doping Rule Violation and has expressly waived his right to have those Consequences determined by the Disciplinary Tribunal at a hearing.

## PUBLICATION

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

## RIGHTS OF APPEAL

23. This decision constitutes the final decision of the AIU pursuant to Rule 8.5.6 ADR.
24. Further to Rule 13.2.3 ADR, WADA, the National Anti-Doping Organization of Italy ("NADO Italia") 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.
25. If an appeal is filed against this decision by WADA, NADO Italia or ADAK, the Athlete will be entitled to exercise his right of cross-appeal in accordance with Rule 13.2.4 ADR.

Monaco, 29 June 2022