

DECISION OF THE ATHLETICS INTEGRITY UNIT IN THE CASE OF MR MICHAEL NJENGA KUNYUGA

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 Michael Njenga Kunyuga ("the **Athlete**") is a 36-year-old road 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 Anti-Doping Rule Violations:

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

[...]

*2.5 Tampering or Attempted Tampering with any part of Doping Control by an Athlete or other Person"*²

¹ <https://worldathletics.org/athletes/kenya/michael-njenga-kunyuga-14792203>

² Tampering is defined in the ADR as follows: *"Intentional conduct that subverts the Doping Control process but that would not otherwise be included in the definition of Prohibited Methods. Tampering shall include, without limitation, offering or accepting a bribe to perform or fail to perform an act, preventing the collection of a Sample, affecting or making impossible the analysis of a Sample, falsifying documents submitted to an Anti-Doping Organisation or TUE committee or hearing panel, procuring false testimony from witnesses, committing any other fraudulent act upon the Anti-Doping Organisation or hearing body to affect*

5. On 15 May 2022, the Athlete provided a urine Sample In-Competition at the Riga Marathon held in Riga, Latvia, which was given code 4598037 (the “**Sample**”).
6. On 28 July 2022, the World Anti-Doping Agency (“**WADA**”) accredited laboratory in Dresden, Germany (the “**Laboratory**”) reported an Adverse Analytical Finding in the Sample based on the presence of 19-Norandrosterone (a Metabolite of Nandrolone (19-nortestosterone) or Nandrolone precursors) consistent with exogenous origin (the “**Adverse Analytical Finding**”).
7. Nandrolone (19-nortestosterone) (including its Metabolites) is a Prohibited Substance under the WADA 2022 Prohibited List under the category S1.1: *Anabolic Androgenic Steroids*. It is a Non-Specified Substance prohibited at all times.
8. The AIU reviewed the 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 19-Norandrosterone found in the 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 Adverse Analytical Finding.
9. On 1 August 2022, the AIU notified the Athlete of the Adverse Analytical Finding in accordance with Article 5.1.2.1 of the ISRM, including that the 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 informed of his rights, *inter alia*, to request the B Sample analysis, to request copies of the Laboratory Documentation Package supporting the Adverse Analytical Finding (“**LDP**”) 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. The AIU also requested that the Athlete provide an explanation for the Adverse Analytical Finding.
11. On 18 August 2022, the Athlete provided his initial explanation for the Adverse Analytical Finding to the AIU, which, in summary, set out that he had experienced knee and back pain in 2021 and took pain killers which had an adverse effect on his stomach, so he stopped taking them.
12. The Athlete further explained that, in January 2022, he had been advised to seek alternative medication for his knee pain because he could not manage his training load, so he went for a check-up at the Nyahururu County Referral Hospital and was prescribed with injections of Depomedrol every three (3) months.
13. To support his initial explanation, the Athlete submitted two medical documents dated 18 January 2022 purporting to be from the Nyahururu County Referral Hospital, namely (i) a Laboratory Request and Report Form, and (ii) a letter from a doctor at the Nyahururu County

Results Management or the imposition of Consequences, and any other similar intentional interference or Attempted interference with any aspect of Doping Control.”

Referral Hospital, confirming that the Athlete had been diagnosed with osteo-arthritis and that he was to be treated by intramuscular injection of Depomedrol (methylprednisolone) and vitamin B complex every three (3) months, i.e., on 18 January 2022, 18 April 2022 and 18 July 2022 (the Nyahururu Documents”).

14. On 1 September 2022, the AIU wrote to the Athlete noting that his explanation and documents related to ingestion of Depomedrol and vitamin B complex did not explain the presence of 19-Norandrosterone (a Metabolite of Nandrolone or Nandrolone precursors) in the Sample. The AIU afforded the Athlete until 8 September 2022 to submit any additional information to explain the presence of 19-Norandrosterone in the Sample if he wished to do so.
15. On 8 September 2022, the Athlete filed a further explanation stating that he had been in Iten on 18 April 2022 (circa 4.5 hours away from Nyahururu) and had sought medication for his knee pain there. The Athlete alleged that he had attended the Iten County Referral Hospital on that date where ‘*they looked for an alternative medication*’ based on his description of his knee pain and that he had been injected with a medicine identified on a Prescription Form which he enclosed with his further explanation (the “Iten Prescription”).
16. The Iten Prescription is a Prescription Form that purports to be from the Iten County Referral Hospital, dated 18 April 2022, which refers to an intramuscular injection of “*Nandrolosone 25mg*” given to the Athlete on 18 April 2022.
17. On 9 September 2022, the AIU requested the assistance of the Anti-Doping Agency of Kenya (“**ADAK**”) in order to determine the veracity of the Athlete’s asserted medical treatment at the Iten County Referral Hospital and the authenticity of the Iten Prescription.
18. On 16 September 2022, ADAK forwarded the Iten County Referral Hospital’s formal response to the AIU’s questions, which confirmed that:
 - 18.1. the Athlete had visited the Iten County Referral Hospital on 18 April 2022, however;
 - 18.2. the Iten County Referral Hospital had no record of any prescription for the Athlete in its “drug system”;
 - 18.3. there was no record of any injection being given to the Athlete at the Iten County Referral Hospital on 18 April 2022; and
 - 18.4. the Iten County Referral Hospital does not stock Nandrolone.
19. On 22 September 2022, the AIU requested further assistance from ADAK to determine the veracity of the Athlete’s asserted medical treatment at the Nyahururu County Referral Hospital on 18 January 2022 and the authenticity of the Nyahururu Documents.
20. On 14 October 2022, ADAK forwarded the Nyahururu County Referral Hospital’s formal response, which confirmed that:
 - 20.1. records held by the Nyahururu County Referral Hospital’s central records department contained no trace of the Athlete;
 - 20.2. the Athlete was not seen as a patient at the Nyahururu County Referral Hospital on 18 January 2022;

- 20.3. the Nyahururu Documents contained no record of any unique identifier for the Athlete such as an outpatient number; and
 - 20.4. the Nyahururu Documents did not originate from the Nyahururu County Referral Hospital.
21. On 12 April 2023, the AIU interviewed the Athlete, in particular, in relation to the events leading up to his apparent treatment at the Nyahururu County Referral Hospital on 18 January 2022 and the Iten County Referral Hospital on 18 April 2022, the Nyahururu Documents, the Iten Prescription, and that information obtained by the AIU indicated that the Nyahururu Documents and the Iten Prescription were forged/fraudulent documents.
22. In summary, the Athlete stated in interview as follows:
- 22.1. the Athlete had attended the Nyahururu County Referral Hospital on 18 January 2022 for treatment of his knee pain and received a prescription for appropriate treatment (i.e., Depomedrol);
 - 22.2. the Athlete did not obtain the (Depomedrol) medication prescribed to him during that visit on 18 January 2022 because the Nyahururu County Referral Hospital did not stock that medicine and the Athlete did not have time to try to find it elsewhere;
 - 22.3. on 18 April 2022, the Athlete went to Iten to collect running kit/equipment, and went to the Iten County Referral Hospital;
 - 22.4. the Athlete did not have the prescription issued to him by the Nyahururu County Referral Hospital on 18 January 2022 with him, but had pictures of that prescription on his phone and he was given a new prescription at the Iten County Referral Hospital in the form of the Iten Prescription;
 - 22.5. the Iten County Referral Hospital did not have the ('Nandrosolone' [sic]) medicine that had been prescribed to the Athlete, so he gave the Iten Prescription to a driver who drove to Eldoret to get it;
 - 22.6. the Athlete could not recall the name of the doctor who treated him at the Iten County Referral Hospital.
23. After AIU representatives informed the Athlete in interview on 12 April 2023 that it had investigated the authenticity of the Nyahururu Documents and the Iten Prescription, the interview was interrupted because the Athlete's connection was lost. Despite several attempts, the AIU was unable to reestablish contact with the Athlete again that day.
24. On 13 April 2023, AIU representatives reestablished contact with the Athlete and completed the interview. The AIU confronted the Athlete with the information obtained from the Nyahururu County Referral Hospital and the Iten County Referral Hospital regarding the Nyahururu Documents and the Iten Prescription respectively. The Athlete maintained that he went to the Nyahururu County Referral Hospital on 18 January 2022 and the Iten County Referral Hospital on 18 April 2022 and was provided with the Nyahururu Documents and the Iten Prescription that he had submitted to the AIU.

25. Based on the above information and evidence, the AIU considered that the Athlete had failed to explain the provenance of the Nyahururu Documents and the Iten Prescription. The AIU concluded that the Athlete had provided false/misleading information to the AIU in the context of Rule 5.7.10, and that the Nyahururu Documents and the Iten Prescription that the Athlete had submitted to the AIU to support his explanation for the Adverse Analytical Finding were forged/falsified documents³ constituting a further violation of Tampering in accordance with Rule 2.5 ADR.
26. Therefore, on 3 August 2023, the AIU issued the Athlete with a (further) Notice of Allegation of Anti-Doping Rule Violation for committing a violation pursuant to Rule 2.5 ADR⁴ and provided him with an opportunity to submit an explanation and to confirm how he wanted to proceed by no later than 10 August 2023.
27. The Athlete failed to respond by 10 August 2023 (or at all).
28. The AIU therefore remained satisfied that the Athlete had committed Anti-Doping Rule Violations, and, on 15 September 2023, issued the Athlete with a Notice of Charge in accordance with Rule 8.5.1 ADR and Article 7.1 ISRM confirming that he 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 and 10.9.3(c) ADR (i.e., four (4) years for the Presence/Use of a Non-Specified Substance and a further four (4) years for Tampering or Attempted Tampering during the Results Management of the Presence/Use Anti-Doping Rule Violations, to be served consecutively).
29. The AIU invited the Athlete to respond to the Charge confirming how he wished to proceed by 29 September 2023. The letter confirmed that if the Athlete failed to challenge the AIU’s assertion of the Anti-Doping Rule Violations or the Consequences, or failed to request a hearing by 29 September 2023, then he would be deemed to have waived his right to a hearing, admitted the Anti-Doping Rule Violations and accepted the Consequences set out in the Charge.

³ The AIU notes further that it is a criminal offence in Kenya for someone to issue forged/falsified medical certificates. See section 42.1(e) of the Anti-Doping Act No 5 of 2016 (<http://kenyalaw.org:8181/exist/rest//db/kenyalex/Kenya/Legislation/English/Acts%20and%20Regulations/A/Anti-Doping%20Act%20-%20No.%205%20of%202016/docs/Anti-DopingAct5of2016.pdf>):

“42. Offences

(1) A person or body who

[...]

(e) presents to the [Anti-Doping] Agency a false document or makes a false statement with the intent to deceive or mislead an investigating officer

commits an offence and shall be liable, upon conviction, to a fine not exceeding one hundred thousand shillings or to a term of imprisonment not exceeding one year or to both such fine and imprisonment.”

⁴ A Provisional Suspension was also imposed upon the Athlete in relation to the alleged violation of Rule 2.5 ADR pursuant to Rule 7.4.2 ADR.

30. The Athlete failed to respond to the Charge by 29 September 2023.
31. On 2 October 2023, the AIU therefore wrote to the Athlete confirming that, due to his failure to respond to the Charge by 29 September 2023, he was deemed to have (i) waived his right to a hearing, (ii) admitted the Anti-Doping Rule Violations and (iii) accepted the Consequences specified in the Charge.
32. The AIU reminded the Athlete that he had until no later than 5 October 2023 by which to sign and return an Admission of Anti-Doping Rule Violations and Acceptance of Consequences Form (that was enclosed with the Charge) to benefit from an automatic one (1) year reduction in the period of Ineligibility, pursuant to Rule 10.8.1 ADR.
33. The Athlete failed to sign and return the Admission of Anti-Doping Rule Violations and Acceptance of Consequences Form by the 5 October 2023 deadline.
34. On 6 October 2023, the AIU wrote to the Athlete giving him a further (and final) opportunity to respond to the Charge by no later than 9 October 2023, and informed him that if he failed to respond, the AIU would (i) issue a final decision recording the imposition of the Consequences specified in the Charge and (ii) Publicly Report that decision in accordance with Rule 14.3.2 ADR, unless the AIU, in its sole discretion, referred the matter to the Tribunal.
35. The Athlete failed to respond by 9 October 2023.

CONSEQUENCES

36. Rule 10.2 ADR specifies that the period of Ineligibility for an Anti-Doping Rule Violation under Rule 2.1 (Presence) or Rule 2.2 ADR (Use) 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.*”
37. 19-Norandrosterone is a Metabolite of Nandrolone (19-nortestosterone). Nandrolone (including its Metabolites) is a Prohibited Substance under the WADA 2022 Prohibited List under the category S1.1: *Anabolic Androgenic Steroids*. It is a Non-Specified Substance prohibited at all times.
38. 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.
39. The Athlete has failed to demonstrate that the Anti-Doping Rule Violations were not intentional. Therefore, the mandatory period of Ineligibility is a period of four (4) years.
40. Rule 10.3.1 ADR specifies that the period of Ineligibility for an Anti-Doping Rule Violation under Rule 2.5 ADR (Tampering) shall be 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.”

(emphasis added)

41. The Athlete has not established that any exceptional circumstances 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.

42. 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.

[...].”

(emphasis added)

43. 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 Finding) and therefore falls squarely within this provision. The violation of Rule 2.5 ADR shall therefore be treated as a stand-alone first violation and the four (4)-year period of Ineligibility for the Rule 2.5 ADR 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).

44. The Athlete failed to admit the Anti-Doping Rule Violations and accept the Consequences specified by the AIU in the Notice of Charge within twenty (20) days in accordance with Rule 10.8.1 ADR. The Athlete cannot therefore benefit from the one (1)-year reduction in the period of Ineligibility in accordance with this provision.

45. On the basis that the Athlete is deemed to have 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 10.2.1 ADR Rule 10.3.1 ADR, Rule 10.9.3(c) ADR, Rule 9 ADR and Rule 10.10 ADR, the AIU confirms by this decision the following Consequences for a first Anti-Doping Rule Violation:

- 45.1. a period of Ineligibility of eight (8) years commencing on 1 August 2022 (the date of Provisional Suspension); and
- 45.2. disqualification of the Athlete's results since and including 15 May 2022, with all resulting Consequences, including the forfeiture of any titles, awards, medals, points, prizes and appearance money.

PUBLICATION

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

RIGHTS OF APPEAL

47. This decision constitutes the final decision of the AIU pursuant to Rule 8.5.6 ADR.
48. Further to Rule 13.2.3 ADR, the Athlete, 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.
49. 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, 31 October 2023