

DECISION OF THE ATHLETICS INTEGRITY UNIT IN THE CASE OF MR JUSTUS KIMUTAI

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 Justus Kimutai is a 29-year-old Kenyan long-distance runner who at all material times was an International-Level Athlete for the purposes of the ADR (the "**Athlete**").¹
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)."*

WHEREABOUTS FAILURES

4. Rule 2.4 ADR sets out that the following shall constitute an Anti-Doping Rule Violation:

"2.4 Whereabouts Failures by an Athlete in a Registered Testing Pool

Any combination of three missed tests and/or filing failures, as defined in the International Standard for Results Management, within a 12-month period by an Athlete in a Registered Testing Pool."

5. A Missed Test and a Filing Failure are defined in the International Standard for Results Management ("**ISRM**") respectively as follows:

¹ See the Athlete's World Athletics profile at <https://www.worldathletics.org/athletes/kenya/justus-kipkosgei-kimutai-14669632>.

*“**Missed Test:** A failure by the Athlete to be available for Testing at the location and time specified in the 60-minute time slot identified in their Whereabouts Filing for the day in question, in accordance with Article 4.8 of the International Standard for Testing and Investigations and Annex B.2 of the International Standard for Results Management.*

*“**Filing Failure:** A failure by the Athlete (or by a third party to whom the Athlete has delegated the task) to make an accurate and complete Whereabouts Filing that enables the Athlete to be located for Testing at the times and locations set out in the Whereabouts Filing or to update that Whereabouts Filing where necessary to ensure that it remains accurate and complete, all in accordance with Article 4.8 of the International Standard for Testing and Investigations and Annex B.2 of the International Standard for Results Management.”*

6. In short, an athlete violates Rule 2.4 of the ADR where he or she has any combination of three Missed Tests and/or Filing Failures within any twelve-month period, that period beginning on the day of the first relevant Missed Test/Filing Failure.

THE ATHLETE’S COMMISSION OF AN ANTI-DOPING RULE VIOLATION

7. In this instance, the Athlete has had three Whereabouts Failures in the twelve-month period beginning on 30 December 2020, specifically:
 - (i) a Missed Test on 30 December 2020;
 - (ii) a Missed Test, alternatively a Filing Failure, on 18 October 2021; and
 - (iii) a Missed Test, alternatively a Filing Failure, on 20 December 2021.

1. First Whereabouts Failure - Missed Test on 30 December 2020

8. In summary, a Doping Control Officer (“**DCO**”) and Blood Collection Assistant (“**BCA**”) attended the address indicated in the Athlete’s Whereabouts information for 30 December 2020 during the Athlete’s specified 60-minute time slot between 19:00 and 20:00 and met various third parties, who informed the DCO that the Athlete was not present because he had left the location that morning and not yet returned. The DCO called the Athlete at 19:55, but the call did not go through. The DCO and BCA remained at the specified location until 20:00, the end of the Athlete’s 60-minute time slot. At 20:04, as the DCO was driving away from the location, he encountered the Athlete driving towards him. The DCO and the Athlete stopped their cars and the DCO told the Athlete that he had arrived too late. The Athlete told the DCO that he felt bad for having missed the test.
9. Therefore, on 8 January 2021, the AIU wrote to the e-mail address provided in ADAMS as the Athlete’s e-mail address and notified the Athlete of an apparent Missed Test which occurred on 30 December 2020 and requested his explanation by no later than 22 January 2021.
10. The AIU received no response or any explanation from the Athlete for the apparent Missed Test that occurred on 30 December 2020 by 22 January 2021.

11. On 5 February 2021, the AIU therefore wrote to the Athlete and confirmed the Missed Test on 30 December 2020. The Athlete was afforded the right to request an administrative review of that decision by no later than 19 February 2021 and advised that, if he failed to do so, the Missed Test would be considered as his first Whereabouts Failure in the twelve-month period beginning on 30 December 2020 for the purposes of Rule 2.4 ADR.
12. No request for an administrative review was received by 19 February 2021.
13. Therefore, the AIU recorded a Whereabouts Failure (a Missed Test) against the Athlete effective 30 December 2020 as his first Whereabouts Failure in the twelve-month period beginning on 30 December 2020.

II. Second Whereabouts Failure - Missed Test/Filing Failure on 18 October 2021

14. In summary, a DCO and a Chaperone attended the address indicated in the Athlete's Whereabouts information for 18 October 2021 during the Athlete's specified 60-minute time slot between 19:00 and 20:00 and various third parties informed the DCO that the Athlete was not present because he had travelled to the USA. The DCO and Chaperone remained at the Athlete's specified location until 20:05 but the Athlete was not available for Testing.
15. Therefore, on 29 October 2021, the AIU notified the Athlete of an apparent Whereabouts Failure which occurred on 18 October 2021 and requested the Athlete's explanation by no later than 12 November 2021.
16. The AIU received no response or any explanation from the Athlete for the apparent Whereabouts Failure that occurred on 18 October 2021 by 12 November 2021.
17. On 29 November 2021, the AIU therefore confirmed the Whereabouts Failure on 18 October 2021. The Athlete was afforded the right to request an administrative review of that decision by no later than 13 December 2021 and advised that, if he failed to do so, the Whereabouts Failure would be confirmed against him as his second Whereabouts Failure in the twelve-month period beginning on 30 December 2020 for the purposes of Rule 2.4 ADR.
18. No request for an administrative review was received by 13 December 2021.
19. Therefore, the AIU recorded a Whereabouts Failure (Missed Test/Filing Failure) against the Athlete effective 18 October 2021 as his second Whereabouts Failure in the twelve-month period beginning on 30 December 2020.

III. Third Whereabouts Failure - Missed Test/Filing Failure on 20 December 2021

20. In summary, a DCO and BCA attended the address specified by the Athlete in his Whereabouts information for 20 December 2021 during the Athlete's specified 60-minute time slot between 19:00 and 20:00 but were unable to locate him for Testing. The DCO was informed by a third party that the Athlete was currently in the USA. The DCO remained at the Athlete's specified location until 20:00 but the Athlete was not available for Testing.
21. Therefore, on 3 January 2022, the AIU notified the Athlete of an apparent Whereabouts Failure which occurred on 20 December 2021 and requested the Athlete's explanation by no later than 17 January 2022.

22. On 6 January 2022, the AIU received the Athlete's response by e-mail. The Athlete did not provide an explanation for the apparent Whereabouts Failure that occurred on 20 December 2021. However, the Athlete declared that he had suffered serious knee and ankle injuries over the last year, which had failed to improve and that he had therefore (and in addition to economic challenges that presented due to the COVID-19 pandemic) decided to focus on other projects outside of Athletics. The Athlete confirmed that he was no longer interested in running and wanted to be removed from the World Athletics International Registered Testing Pool ("IRTP")².
23. On 12 January 2022, the AIU wrote to the Athlete and confirmed the Whereabouts Failure on 20 December 2021. The Athlete was afforded the right to request an administrative review of that decision by no later than 26 January 2022 and advised that, if he failed to do so, the Whereabouts Failure would be confirmed against him as his third Whereabouts Failure in the twelve-month period beginning on 30 December 2020 for the purposes of Rule 2.4 ADR.
24. No request for an administrative review was received by 26 January 2022.
25. Therefore, the AIU recorded a Whereabouts Failure (Missed Test/Filing Failure) against the Athlete effective 20 December 2021 as his third Whereabouts Failure in the twelve-month period beginning on 30 December 2020.

DISCIPLINARY PROCEEDINGS

26. On 4 March 2022, following the conclusion of the results management procedures relating to the abovementioned Whereabouts Failures, the AIU issued a Notice of Allegation of Anti-Doping Rule Violation to the Athlete for a violation of Rule 2.4 ADR (including the imposition of a Provisional Suspension) and invited him to respond by no later than 11 March 2022.
27. The AIU received no response to the Notice of Allegation.
28. Therefore, on 17 March 2022, the AIU issued a Notice of Charge to the Athlete confirming that he was being charged with an Anti-Doping Rule Violation under Rule 2.4 ADR ("the Charge") and invited the Athlete to respond confirming how he would like to proceed with the Charge by no later than 27 March 2022.
29. On 21 March 2022, Ms Charlotte Kurgoy from Athletics Kenya sent the Athlete a copy of the Charge via WhatsApp message and asked the Athlete to check his e-mail for the same. The Athlete responded to the WhatsApp message and provided Ms Kurgoy with a new e-mail address for him; Ms Kurgoy then forwarded the Charge a second time to the new email address and informed the Athlete that he was to respond to the Charge (including by reference to his e-mail sent to the AIU on 6 January 2022).
30. However, the Athlete failed to respond to the AIU confirming how he wished to proceed with the Charge by 27 March 2022.

² Notwithstanding the Athlete's request, the Athlete had not been notified of his inclusion in the IRTP for Q1 2022 and was therefore already effectively removed from the IRTP as of 1 January 2022.

31. On 5 April 2022, the AIU therefore wrote to the Athlete and informed him that he was to respond to the AIU indicating how he would like to proceed with the Charge by no later than 6 April 2022, including in circumstances where he was no longer focussing on Athletics (as was his position set out in his e-mail of 6 January 2022) and that, if he failed to do so by that date, he would be deemed to have admitted the Anti-Doping Rule Violation and accepted the Consequences set out in the Charge and the AIU would then issue a final decision in his case.
32. The Athlete failed to respond to the Charge by 6 April 2022. The Athlete is therefore deemed to have admitted the Anti-Doping Rule Violation, accepted the Consequences specified in the Charge and to have waived his right to a hearing before the Disciplinary Tribunal in accordance with Rule 8.5.2(f) ADR.

CONSEQUENCES

33. This is the Athlete's first Anti-Doping Rule Violation.
34. On the basis that the Athlete is deemed to have admitted the Anti-Doping Rule Violation under Rule 2.4 ADR and accepted the Consequences set out in the Charge, the AIU confirms by this decision the following Consequences for a first Anti-Doping Rule Violation:
 - 34.1. a period of ineligibility of two (2) years commencing on the date of this decision, with credit for the period of Provisional Suspension since 4 March 2022 (i.e., until 3 March 2024);
 - 34.2. disqualification of the Athlete's results since 20 December 2021, with all resulting Consequences, including the forfeiture of any titles, awards, medals, points prizes and appearance money.

PUBLICATION

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

RIGHTS OF APPEAL

36. This decision constitutes the final decision of the AIU pursuant to Rule 8.5.6 ADR.
37. Further to Rule 13.2.3 ADR, the Athlete, the World Anti-Doping Agency ("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.

Monaco, 15 April 2022