

**IN THE MATTER OF PROCEEDINGS BROUGHT UNDER THE ANTI-DOPING RULES  
OF THE INTERNATIONAL ASSOCIATION OF ATHLETICS FEDERATIONS**

*Before:*  
*Michael J Beloff QC (Sole Adjudicator)*

BETWEEN:

**International Association of Athletics Federations (IAAF)**

***Anti-Doping Organisation***

**-and-**

**Glory Onome Nathaniel**

***Respondent***

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**DECISION OF THE DISCIPLINARY TRIBUNAL**

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**A. Introduction**

1. The Claimant, the International Association of Athletics Federations ("**IAAF**"), is the international federation governing the sport of Athletics worldwide.<sup>1</sup> It has its registered seat in Monaco.

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<sup>1</sup> The IAAF is represented in these proceedings by the Athletics Integrity Unit ("**AIU**") which has delegated authority for results management and hearings on behalf of the IAAF pursuant to Article 1.2 of the IAAF Anti-Doping Rules.

2. The Respondent, Ms Glory Onome Nathaniel (“the **Athlete**”) is a 23-year-old Nigerian hurdler / sprinter who has won medals in major international competitions in 2017 and 2018<sup>2</sup>. She has been charged by the IAAF with an Anti-Doping Rule Violation (“**ADRV**”).

## **B. Factual Background**

3. On 5 August 2018, the Athlete underwent an In-Competition doping control in Asaba, Nigeria, during the African Championships in Athletics (“the **Event**”). The Athlete provided a urine sample with reference number 4224798 (“the **Sample**”).
4. On 16 August 2018, the Sample was analysed by the WADA-accredited laboratory in Doha, Qatar (“the **Laboratory**”) and revealed the presence of the parent compound stanozolol as well as its metabolites 3'-hydroxy-stanozolol, 4-hydroxy-stanozolol and 16 $\beta$ -hydroxy-stanozolol (“the **Adverse Analytical Finding**”).
5. Stanozolol is listed in S1.1a. Exogenous Anabolic Androgenic Steroids of the WADA 2018 Prohibited List<sup>3</sup>. It is a non-specified substance and is prohibited at all times.
6. On 30 August 2018, the AIU notified the Athlete (who had a previous clean record) of the Adverse Analytical Finding via her National Federation, informing her that a Provisional Suspension had been imposed (effective immediately) and of her right to have the B Sample analysed and inviting her to provide an explanation for the Adverse Analytical Finding.
7. On 14 September 2018, the Athlete provided her initial response to the notification from the AIU via her National Federation. In summary, the Athlete stated that she had never seen or used stanozolol and had no idea how it was present in the Sample, but “*want[ed] to believe that there is [sic] a mistake somewhere*”. The Athlete also requested analysis of the B Sample.
8. On 4 October 2018, the AIU wrote to the Athlete confirming that the B Sample analysis (which started on 26 September 2018) had confirmed the presence of stanozolol and

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<sup>2</sup> <https://www.iaaf.org/athletes/nigeria/glory-onome-nathaniel-282995>

<sup>3</sup> [https://www.wada-ama.org/sites/default/files/prohibited\\_list\\_2018\\_en.pdf](https://www.wada-ama.org/sites/default/files/prohibited_list_2018_en.pdf)

its metabolites 3'-hydroxy-stanozolol, 4-hydroxy-stanozolol and 16 $\beta$ -hydroxy-stanozolol in the Sample. The AIU requested that the Athlete confirm her explanation for the Adverse Analytical Finding by no later than 11 October 2018.

9. On 10 October 2018, the Athlete sent an e-mail to the AIU confirming that she had no evidence to show how stanozolol was present in her Sample and that it was "*still a mystery*" to her.
10. On 25 October 2018 the AIU issued the Athlete with a Notice of Charge for violations of Article 2.1 ADR and Article 2.2 ADR pursuant to Article 8.4.2 ADR ("the **Charge**") and invited her to confirm how she wished to proceed with the matter by no later than 4 November 2018.
11. By e-mail on 3 November 2018, the Athlete requested an extension of two weeks to respond to the Notice of Charge and mentioned, for the first time, that she had been the victim of sabotage. The Athlete confirmed that she had made a report to the police in Nigeria who would be undertaking an investigation on 5 November 2018<sup>4</sup>. The AIU agreed to the Athlete's request for an extension.
12. On 19 November 2018, the Athlete informed the AIU "*that athletics federation of Nigeria has planned to set up a panel any moment from now to question all the suspect [sic] involved in the case for hearing*". The AIU responded confirming that the National Federation had no jurisdiction to hear or determine the case against the Athlete and that the Athlete should respond to the Notice of Charge by no later than 26 November 2018 to confirm how she wished to proceed with the matter.
13. On 26 November 2018, the Athlete confirmed that she admitted that stanozolol had been found in her Sample and requested that the matter be determined by the Disciplinary Tribunal ("the **Tribunal**"). The Athlete stated, "*I still stand that I have never used these substance [sic] to enhanced [sic] or to treat any illness*". The Athlete also confirmed that she had been summoned to appear before her National Federation on 28 November 2018 in relation to the presence of stanozolol in the Sample.

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<sup>4</sup> The outcome of that investigation, if any, was not in evidence in these proceedings.

14. On 28 November 2018 the Athlete gave evidence before a Fact Finding Committee (“the **FFC**”) convened by the Athletics Federation of Nigeria (“**AFN**”) to investigate the allegation (“the **Allegation**”) that Blessing Ogundiran (“**Blessing**”), another Nigerian athlete, had used a substance to influence the result of the doping control test conducted on the Athlete. No record has been produced of what transpired on that occasion, but it can be inferred from what happened thereafter that the FFC thought that there was a *prima facie* case fit for investigation by it.
15. On 9 December 2018 the FFC held a full hearing into the Allegation.
16. On 19 December 2018, the President of the AFN provided the AIU, pursuant to its request on 12 December 2018, with information concerning the hearing before the FFC, as set out in the Report of the FFC (“the **Report**”).
17. The Report sets out a summary of the evidence heard by the FFC. This included oral testimony from a number of persons, including:
  - 17.1. Coach Akeem Oyewole, the coach of the Athlete and of Team Blessed<sup>5</sup> to which at the material time she belonged (“**Coach Akeem**”);
  - 17.2. Blessing; and
  - 17.3. Coach Abiodun Ibrahim Friday (“**Coach Friday**”), Blessing’s coach but not on that occasion, the Athlete herself.
18. In broad summary, the testimony that was reported as given to the FFC by Coach Akeem, Blessing and Coach Friday was as follows:
  - 18.1. Coach Akeem stated that during a training camp, Blessing had suddenly stopped eating with the other girls in the camp and that this was surprising to him because all athletes normally eat together. In addition, when asked specifically what evidence he had that Blessing had put something in the Athlete’s food, Coach Akeem alleged that (i) Blessing had decided not to run in the final of the Commonwealth Games trials in Abuja in December 2017 because she had heard

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<sup>5</sup> According to Coach Akeem the name Blessed occurred to him in a dream.

that anti-doping tests would be conducted; (ii) two other athletes coached by Coach Friday had tested positive in 2016 and 2017, and; (iii) Coach Friday had discovered that the Athlete had tested positive whilst the details were still confidential.

18.2. Blessing confirmed that Coach Akeem had begun coaching her in December 2017. In addition, she confirmed that she had fasted with the Athlete for a one-day period. Blessing also alleged that Coach Akeem provided athletes with supplements and injected athletes at the camp.

18.3. Coach Friday confirmed that he was Blessing's coach up until leaving for a period of travel abroad and that he and Coach Akeem had agreed that Coach Akeem would coach Blessing. It is additionally recorded in the Report:

*"The committee asked him why did Blessing Ogundiran snap another athlete vitamin and sent to him? The committee asked him to say all that he knows about this case and he said that and what relationship does she have with Basira and Rashidat? He said both her is athletes until he travelled and Basira was in Bahrain. He said that the communication between him and Akeem was very cordial because he always want to play along with him. He showed the committee a video clip where Akeem Oyewole was talking with a white man regarding some supplements and other drugs. He forwarded the video to the chairman."* [sic]

19. The FFC also heard evidence from other individuals as set out in the Report and in an additional summary report provided to the AIU. A broad precis of this information is as follows:

19.1. Coach Ayodele Solaja – confirmed that he had discovered that the Athlete had tested positive via the National Federation Facebook page;

19.2. Athlete Kemi Francis – confirmed that athletes in the camp in Sagamu ate lunch and dinner together and that she had never been injected by Coach Akeem. She stated that she did not think Blessing could have spiked the Athlete's food with stanozolol;

19.3. Coach Olatunji Olawale - confirmed that he had discovered that the Athlete had tested positive via Facebook;

19.4. Athlete Yinka Ajayi – confirmed that she is a teammate of the Athlete, Blessing and Athlete Kemi Francis and that she had never been injected by Coach Akeem. She confirmed that she purchased supplements herself and that she was surprised that the Athlete had tested positive;

19.5. Athlete Samson Nathaniel – (“**Samson**”) confirmed that he discovered the Athlete (his sister) had tested positive through Coach Olatunji Olawale on 31 August 2018 and that Coach Akeem did not provide him supplements or inject him;

19.6. Athlete Akindele Atanda (“**Akindele**”) – confirmed that Coach Akeem had never provided him with supplements or injected him.

The information provided to the AIU on 19 December 2018 also included a number of additional documents to which reference will be made in this award where appropriate.

20. The Report concluded that “*It is not impossible that both coaches [i.e. Coach Akeem and Coach Friday] have been giving supplements and/or prohibited substances to their athletes [...]*” and that “*It is not impossible that the food/drugs of the athlete in question [the Athlete] could be lased [sic] with prohibited substance but cannot be proved*”. In addition, the Report recommended that the findings be forwarded to the IAAF/AIU and the Nigeria Anti-Doping Committee.

21. On 8 January 2019, the AIU received a copy of a video referred to by Coach Friday in his *viva voce* testimony before the FFC.

### **C. The Proceedings**

22. On 17 January 2019, a Preliminary Meeting was convened between the parties before Michael J Beloff QC, Chair of the IAAF Disciplinary Panel, and Procedural Directions (“the **Directions**”) were issued for the determination of this matter including that he, with the Athlete’s agreement, could act as Sole Adjudicator (see ADR Article 8.5.1).

23. On 8 February 2019 the AIU filed its brief on behalf of the IAAF according to the Directions.

24. On 6 March 2019 the Athlete filed her answer brief likewise.
25. On 29 March 2019 the AIU filed its reply brief likewise.
26. On 2 April 2019 a hearing was held at the offices of Sport Resolutions before Michael J Beloff QC, the Sole Adjudicator. The parties were represented as follows; for IAAF Ross Wenzel and Huw Roberts, Counsel; for the Athlete David Phillips QC, Andrew Ford, Adam Flacks and Nicholas Damski of Lipman Karas LLP<sup>6</sup>. Mr Wenzel and Mr Phillips QC had carriage of the advocacy on behalf of their respective clients. Tony Jackson of the AIU was also present.
27. The Athlete gave evidence (and made at the end of the hearing, a personal statement) by video and telephone, from Lagos. Also heard on the Athlete's behalf by the same way and from the same place were Samson, Coach Akeem and Akindele – all of Team Blessed. Olwakemi Adekoya ("**Kemi**"), also of Team Blessed, gave evidence by video from Bahrain. Heard on the IAAF's behalf were Basirah Sharifa Nasir - formerly coached by, *inter alios*, Coach Akeem - by telephone from the USA, and Professor Christiane Ayotte, expert witness, by telephone from Montreal, Canada. The hearing logistics were efficiently arranged by Sport Resolutions.

## **D. Jurisdiction and Applicable Rules**

### **I. Jurisdiction**

28. Article 1.2 ADR states as follows:

*"In accordance with Article 16.1 of the IAAF Constitution, the IAAF has established an Athletics Integrity Unit ("**Integrity Unit**") with effect from 3 April 2017 whose role is to protect the Integrity of Athletics, including fulfilling the IAAF's obligations as a Signatory to the Code. The IAAF has delegated implementation of these Anti-Doping Rules to the Integrity Unit, including, but not limited to the following activities in respect of International-Level Athletes and Athlete Support Personnel: Education, Testing, Investigations, Results Management, Hearings, Sanction and Appeals. The references in these Anti-Doping Rules to the IAAF shall, where*

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<sup>6</sup>Lipman Karas LLP commendably provided their services pro bono.

*applicable, be references to the Integrity Unit (or to the relevant person, body or functional area within the Unit)."*

29. The application of the ADR to athletes, athlete support personnel and other persons is set out in Article 1.7 ADR, including:

*1.7 These Anti-Doping Rules also apply to the following Athletes, Athlete Support Personnel and other Persons, each of whom is deemed, by condition of his membership, accreditation and/or participation in the sport, to have agreed to be bound by these Anti-Doping Rules, and to have submitted to the authority of the Integrity Unit to enforce these Anti-Doping Rules:*

- a) all Athletes, Athlete Support Personnel and other Persons who are members of a National Federation or of any affiliate organisation of a National Federation (including any clubs, teams associations or leagues);*
- b) all Athletes, Athlete Support Personnel and other Persons participating in such capacity in Competitions and other activities organized, convened, authorized or recognized by (i) the IAAF (ii) any National Federation or any member or affiliate organization of any National Federation (including any clubs, teams, associations or leagues) or (iii) any Area Association, wherever held;*
- c) all Athlete Support Personnel and other Persons working with, treating or assisting an Athlete participating in his sporting capacity; and*
- d) any other Athlete, Athlete Support Person or other Person who, by virtue of an accreditation, licence or other contractual arrangement, or otherwise, is subject to the jurisdiction of the IAAF, of any National federation (or any member or affiliate organization of any National Federation, including any clubs, teams, associations or leagues) or of any Area Association, for purposes of anti-doping.*

30. The applicable rules are the ADR, which apply to all athletes who are members of a National Federation and to all athletes participating in competitions organised, convened, authorised or recognised by the IAAF.

31. On 5 August 2018, the Athlete was a member of Athletics Federation of Nigeria, an IAAF Member Federation, and was participating in the Event, the Area Senior



Championships (outdoor) for the area of Africa, a competition that is authorised and recognised by the IAAF.

32. Article 7.2 ADR confers jurisdiction for results management on the AIU in certain circumstances, including:

*7.2 The Integrity Unit shall have results management responsibility under these Anti-Doping Rules in the following circumstances:*

*7.2.1 For potential violations arising in connection with any Testing conducted under these Anti-Doping Rules by the Integrity Unit, including investigations conducted by the Integrity Unit against Athlete Support Personnel or other Persons potentially involved in such violations.*

33. The Sample was collected pursuant to Testing undertaken by the AIU on behalf of the IAAF. The AIU therefore has jurisdiction for results management in this matter.

34. The IAAF has established the Tribunal in accordance with Article 1.5 ADR, which provides that the Tribunal shall determine Anti-Doping Rule Violations committed under the ADR.

35. Article 8.2(a) ADR sets out that the Tribunal shall have jurisdiction over all matters in which:

*(a) An Anti-Doping Rule Violation is asserted by the Integrity Unit against an International-Level Athlete or Athlete Support Person in accordance with these Anti-Doping Rules;*

36. Article 1.9 ADR specifies those athletes that are classified as international-level athletes for the purpose of the ADR as follows:

*1.9 Within the overall pool of Athletes set out above who are bound by and required to comply with these Anti-Doping Rules, each of the following Athletes shall be considered to be an International-Level Athlete ("**International-Level Athlete**") for the purposes of these Anti-Doping Rules and therefore the specific provisions in these Anti-Doping Rules applicable to International-Level Athletes shall apply to such Athletes:*

[...]

(b) *An Athlete who is entered for or is competing in any of the following International Competitions:*

[...]

iii. *Area Senior Championships*

37. By participating in the Event, the Athlete is an international-level athlete pursuant to Article 1.9(b)(iii) ADR.

38. Accordingly the Sole Adjudicator has the requisite jurisdiction to hear and determine Anti-Doping Rule Violations alleged against the Athlete, as an International Athlete pursuant to Article 8.1(a) ADR.

## II. Applicable Rules

39. Article 2 ADR specifies the circumstances and conduct that constitute Anti-Doping Rule Violations.

40. Article 2.1 ADR specifies:

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

*2.1.1 It is each Athlete's duty to ensure that no Prohibited Substance enters his body. Athletes are responsible for any Prohibited Substance or its Metabolites or Markers found to be present in their Samples. Accordingly, it is not necessary that intent, Fault, negligence, or knowing Use on the Athlete's part be demonstrated in order to establish an Anti-Doping Rule Violation under Article 2.1.*

41. With regard to the presence of a prohibited substance or its metabolites or markers in an athlete's sample, Article 2.1.2 ADR states:

*2.1.2 Sufficient proof of an Anti-Doping Rule Violation under Article 2.1 is established by any of the following: presence of a Prohibited Substance or its*

*Metabolites or Markers in the Athlete's A Sample where the Athlete waives analysis of the B Sample and the B Sample is not analyzed; or, where the Athlete's B Sample is analyzed and the analysis of the Athlete's B Sample confirms the presence of the Prohibited Substance or its Metabolites or Markers found in the Athlete's A Sample; or, where the Athlete's B Sample is split into two bottles and the analysis of the second bottle confirms the presence of the Prohibited Substance or its Metabolites or Markers found in the first bottle.*

42. The presence of a prohibited substance or its metabolites or markers in an athlete's sample is therefore sufficient to establish that an athlete has committed an anti-doping rule violation pursuant to Article 2.1 ADR.

Article 2.2 ADR specifies:

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

*2.2.1 It is each Athlete's personal duty to ensure that no Prohibited Substance enters his body and that no Prohibited Method is Used. Accordingly, it is not necessary that intent, Fault, negligence, or knowing Use on the Athlete's part be demonstrated in order to establish an Anti-Doping Rule Violation for Use of a Prohibited Substance or a Prohibited Method.*

43. Article 3.1 ADR provides that the IAAF shall have the burden of establishing that an anti-doping rule violation has occurred to the comfortable satisfaction of the Tribunal:

*3.1 The IAAF or other Anti-Doping Organisation shall have the burden of establishing that an Anti-Doping Rule Violation has been committed. The standard of proof shall be whether the IAAF has established the commission of the alleged Anti-Doping Rule Violation to the comfortable satisfaction of the hearing panel, bearing in mind the seriousness of the allegation that is made. This standard of proof in all cases is greater than a mere balance of probability but less than proof beyond a reasonable doubt.*

44. Article 3.2 ADR states that facts relating to anti-doping rule violations may be established by any reliable means.

45. In that regard, Article 3.2 ADR also states:

3.2.2 *Compliance with an International Standard (as opposed to another alternative standard, practice or procedure) shall be sufficient to conclude that the procedures addressed by the International Standard were performed properly.*

3.2.3 *WADA-accredited laboratories, and other laboratories approved by WADA, are presumed to have conducted Sample analysis and custodial procedures in compliance with the International Standard for Laboratories. The Athlete or other Person may rebut this presumption by establishing that a departure from the International Standard for Laboratories occurred that could reasonably have caused the Adverse Analytical Finding. In such an event, the IAAF shall have the burden to establish that such departure did not cause the Adverse Analytical Finding.*

3.2.4 *Departures from any other International Standard, or other anti-doping rule or policy set out in the Code or these Anti-Doping Rules that did not cause the facts alleged or evidence cited in support of a charge (e.g., an Adverse Analytical Finding) shall not invalidate such facts or evidence. If the Athlete or other Person establishes the occurrence of a departure from an International Standard or other anti-doping rule or policy set out in the Code or these Anti-Doping Rules that could reasonably have caused the Adverse Analytical Finding or other facts alleged to constitute an Anti-Doping Rule Violation, then the IAAF or other Anti-Doping Organisation shall have the burden to establish that such departure did not cause such Adverse Analytical Finding or the factual basis for the Anti-Doping Rule Violation.*

## **E. Anti-Doping Rule Violations**

46. The AIU reviewed the Adverse Analytical Finding in accordance with Article 7.3 ADR. The review did not reveal a valid Therapeutic Use Exemption ("**TUE**") that would justify the presence of stanozolol or its metabolites in the Sample.

47. Furthermore, no apparent departures from the International Standard for Testing and Investigations ("**ISTI**") or International Standard for Laboratories ("**ISL**") had been identified.

48. Analysis of the B Sample confirmed the presence of stanozolol and its metabolites in the Sample. The Athlete for her part also accepts that stanozolol and its metabolites are present in the Sample and does not dispute the Adverse Analytical Finding.
49. It is each athlete's strict personal duty to ensure that no Prohibited Substance enters their body or is used. Accordingly, it is not necessary for the IAAF to demonstrate intent, fault, negligence or knowing use by the Athlete to establish that an Anti-Doping Rule Violation occurred. An athlete is strictly liable for the presence/use of any Prohibited Substances.
50. Therefore, based on the foregoing, the Sole Adjudicator is comfortably satisfied that the Athlete has committed Anti-Doping Rule Violations pursuant to Article 2.1 ADR ("presence") and Article 2.2 ADR ("use"). The violation of those Articles is not itself in issue; rather what is in issue is the consequence of that violation.

## **F. Consequences for the Anti-Doping Rule Violations**

### **I. Period of Ineligibility**

51. Article 10.2 ADR provides the sanction to be imposed for anti-doping rule violations under Article 2.1 ADR and Article 2.2 ADR as follows:

#### **10.2 Ineligibility for Presence, Use or Attempted Use, or Possession of a Prohibited Substance or Prohibited Method**

*The period of Ineligibility to be imposed for an Anti-Doping Rule Violation under Article 2.1, 2.2 or 2.6 that is the Athlete or other Person's first anti-doping rule violation shall be as follows, subject to potential reduction or suspension pursuant to Article 10.4, 10.5 or 10.6:*

*10.2.1 The period of Ineligibility shall be four years where:*

- (a) The Anti-Doping Rule Violation does not involve a Specified Substance, unless the Athlete or other Person can establish that the Anti-Doping Rule Violation was not intentional*

10.2.2 If Article 10.2.1 does not apply, the period of Ineligibility shall be two years.

10.2.3 As used in Articles 10.2 and 10.3, the term "intentional" is meant to identify those Athletes or other Persons who cheat. The term, therefore, requires that the Athlete or other Person engaged in conduct that he knew constituted an Anti-Doping Rule Violation or knew that there was a significant risk that the conduct might constitute or result in an Anti-Doping Rule Violation and manifestly disregarded that risk.

52. Given the classification of stanozolol listed in S1.1a of the WADA 2018 Prohibited List (see paragraph 5 above), her period of Ineligibility must therefore be four years pursuant to Article 10.2.1(a) ADR, unless the Athlete can establish that the Anti-Doping Rule Violations were not intentional.
53. In contradistinction to the provisions which bear on disproof of fault or negligence (see below) the provision as to disproof of intention makes no reference to proof of source as a *sine qua non*. For the purposes of satisfying this burden of disproof, several CAS cases have held that the athlete must necessarily establish how the substance entered his/her body<sup>7</sup> whereas other CAS cases have held that such establishment, while not always necessary, will normally be so and that the exceptions to that norm will be extremely rare<sup>8</sup>. The Sole Adjudicator is an adherent to the latter line of case law. In fact if not in form, as appears below, the Athlete pins her colours to the mast of establishing the source of the stanozolol in her urine.
54. The Sole Adjudicator adopts the persuasive reasoning in:
- (i) CAS 2014/A/3820 **WADA v Damar Robinson & JADCO** case, where the Panel held: "In order to establish the origin of a Prohibited Substance by the required balance of probability, an athlete must provide **actual evidence** as opposed to mere speculation" (emphasis added);

<sup>7</sup> See e.g. CAS 2016/A/4377 **WADA v. IWF & Alvarez** para 51 CAS 2016/A/4585 **Fabien Whitfield v. FIVB**, at para 45

<sup>8</sup> See e.g. See CAS 2016/A/4534 **Villanueva v. FINA** in which the CAS Panel referred to the "narrowest of corridors" (para. 37) and CAS 2016/A/4919 **WADA v. WSF & Iqbal**, in which the CAS Panel held that "in all but the rarest cases the issue is academic" (para. 66).

- (ii) CAS 2010/A/2230 **International Wheelchair Basketball Federation v. UK Anti-Doping & Gibbs**, an alleged spiking case where the Sole-arbitrator expressed the athlete's burden in the following terms:

*"To permit an athlete to establish how a substance came to be present in his body by little more than a denial that he took it would undermine the objectives of the Code and Rules. **Spiking and contamination – two prevalent explanations volunteered by athletes for such presence – do and can occur; but it is too easy to assert either; more must sensibly be required by way of proof, given the nature of the athlete's basic personal duty to ensure that no prohibited substances enter his body.** The Sole Arbitrator has sympathy with athletes who are – as, he accepts they can be – victims of spiking without evidence to prove its occurrence; but the possible unfairness to such athletes is outweighed by the unfairness to all athletes if proffered, but maybe untruthful, explanations of spiking are too readily accepted"* (emphasis added)

- (iii) CAS OG 16/25 **WADA v. Yadav & NADA** where the Panel "found the sabotage(s) theory possible, but not probable and certainly not grounded in real evidence" and concluded, "the nature and quality of the defensive evidence put forward by the athlete, in light of all the facts established, must be such that it leaves the tribunal actually satisfied (albeit not comfortably so) that the athlete's defence is more likely than not [to be] true".

55. Article 10.4 Elimination of the Period of Ineligibility where there is no Fault or Negligence and Article 10.5 Reduction of the Period of Ineligibility where there is No Significant Fault of Negligence can only be engaged where the athlete has established "how the prohibited substance entered his or her system" (see ADR Definitions). Proof of source is a necessary but not sufficient precondition of the athlete availing himself or herself of either article.<sup>9</sup>

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<sup>9</sup> The comment to the WADA code 2015 on which Article 10.4 is based states that it can apply where "an Athlete could prove, that despite all due care, she was sabotaged by a competitor" but would not apply to (b) the Administration of a prohibited substance by the Athlete's personal trainer" or (c) sabotage of the Athlete's food by a coach or other person within the Athlete's circle of associates. The meaning of this not entirely clear comment does not require elucidation in the present case for reasons which appear hereafter.

56. The Athlete did not seriously challenge the above legal propositions (in so far as she addressed them at all). Rather she claimed that on the facts she satisfied the burden which lay upon her.

## **G. Merits**

57. The three key questions for the Sole Adjudicator are (as tabulated by the Athlete) questions of fact:

57.1. Is he satisfied that the Athlete did not take the Prohibited Substance intentionally within the meaning of Article 10.2.3 of the ADR?

57.2. For this purpose has the athlete established how the substance entered her body?

57.3. Has the athlete demonstrated that she bears No Fault or Negligence ("**NFN**"), or No Significant Fault or Negligence ("**NSFN**")?

It is important to bear in mind that the burden of proof lies upon the Athlete, who must establish her case for an elimination or reduction of the sanction otherwise appropriate to her admitted ADRV on the balance of probabilities.

58. As appears from her Answer Brief the Athlete has explored the possible explanations as to how Stanozolol came to be in her system absent intentional ingestion which she has always denied. These are:

58.1. Through her own negligence;

58.2. The innocent contamination of her diet;

58.3. The contamination of her diet by Coach Akeem; and

58.4. The contamination of her diet (i.e. spiking) by Blessing.

59. While *ex abundanti cautela* not formally withdrawing any of these four possibilities she says that the latter is "the most probable explanation indeed; [she] believes it is the only possible explanation" (Brief para 11). The Sole Adjudicator is therefore not disposed to consider the other three; if the Athlete does not advance any of them or



adduce any evidence to support them, he can see no good reason for him to do so. It follows that proof of spiking of her diet (or food) by Blessing is the only way in which the Athlete can disprove deliberate ingestion.

60. Mr Phillips QC beguilingly submits that the case turns on whether the Sole Adjudicator believes with the benefit of sight and sound of the Athlete her averment that she was not guilty of deliberate ingestion. If he believes her, then *ex hypothesi* a four year ban for the ADRV is ruled out.
61. Mr Phillips QC observed by way of preface and with no little force that the Athlete and her witnesses were handicapped by not being able to give their evidence face to face with the Sole Adjudicator, a handicap compounded by technical difficulties in communication with Lagos where those who gave evidence on her behalf (herself included) had strong and unfamiliar - to English ears - regional accents.
62. The Sole Adjudicator has some sympathy with that observation; but Mr Phillips QC realistically recognized that he could not submit that the proceedings were in consequence a nullity - the problems encountered in this case were after all by no means unique in the context of international sports arbitration and did not affect the Athlete only; the AIU's ability to cross-examine was also in some measure compromised. For his part the Sole Adjudicator considers that he must make his determination on the basis of what oral evidence was before him in the form which it actually took as well as on the documentary evidence in the agreed bundle.
63. Common lawyers, as distinct from their civilian counterparts, traditionally place emphasis on the advantages of seeing and hearing witnesses, preferably in proximity; but, if only because experience tells that the most seemingly honest witnesses may be in fact accomplished liars and vice-versa, the advantages can be exaggerated<sup>10</sup> not least because of the factors alluded to in paragraphs 61 and 62 above. The Sole Arbitrator considers that context is at least as important as countenance and would not rule in the Athlete's favour merely because she appeared genuine in her denials of deliberate ingestion, ignoring all other factors which might lead him to conclude that she had not passed the 50% threshold required to disprove the presumption of

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<sup>10</sup> See the discussion in 'The Judge as Juror', Tom Bingham, *Current Legal Problems*, Vol.38 at pages 1-27, particularly at pages 9-12.

deliberate ingestion inherent in the ADR (any more than he would rule against the Athlete merely because Blessing appeared by telephone genuine in her denials of spiking irrespective of all other factors which might lead him to conclude that Blessing was not telling the truth). Any proper adjudicative exercise axiomatically requires an holistic evaluation of all relevant and admissible evidence.

64. In the Sole Adjudicator's view the Athlete must show, to buttress her denial of deliberate ingestion, in what place and at what time the alleged spiking occurred, by what means that spiking was effected and what motivated that spiking - in short the where, when, how and why of the spiking. The Sole Adjudicator will consider these questions initially by reference to the lay evidence, and then turn to the expert evidence of Professor Ayotte.
65. As to the 'where', the Athlete's case was that the spiking by Blessing was carried out at the training camp in Sagamu; as to the 'when', this occurred at some time on any, or all of, 19, 20 and 21 July 2018 (before Team Blessed travelled to the National Training Camp at Ozoro prior to participation thereafter in the African Championships in Asaba); as to the 'how', that Blessing, while on solo cooking duty, put stanazolol into the food of the Athlete and other members of Team Blessed; and as to the 'why', that Blessing was for various reasons an unhappy and disaffected member of the Team.<sup>11</sup>
66. Mr Wenzel observed that all those who gave evidence for the Athlete (denying in particular that Coach Akeem ever gave them prohibited substances by injection or otherwise) were close to her as fellow members of Team Blessed, under the aegis of Coach Akeem, and in Samson's case, as her sibling too. This does not mean that the Sole Adjudicator cannot give credence to their evidence, but he notes that if their version of events was incorrect, it was likely to be the product of a collective conspiracy to concoct a story calculated to exculpate the Athlete, and by the same token to inculpate Blessing, rather than of inadvertent error. Seen from that perspective it is not irrelevant that they would have a motive to lie. The Sole Adjudicator bears the point in mind, while recognizing it could equally be said of Blessing, that her denial of spiking must, if incorrect, be deliberately so.

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<sup>11</sup> One member of Team Blessed, Kemi Francis, said to the FFC that she didn't think that Blessing would have spiked the Athlete's food; but also that Coach Akeem has never injected her.

67. Mr Wenzel also said that - as was the case - the Athlete's sabotage theory was a late arrival on the scene. While that by itself is no ground necessarily to reject it, the Sole Adjudicator also bears this point in mind.
68. Turning to the evidence itself there were, in the Sole Adjudicator's view, no obvious inconsistencies between the versions of events given by those persons who gave evidence (as summarised) before the FFC (see paragraphs 17-19 above) and before the Sole Adjudicator so as per se to undermine their credibility<sup>12</sup>.
69. However, there were collisions of evidence on the circumstantial matters said on the Athlete's side to justify the inference of spiking<sup>13</sup>.
- (i) Samson's whereabouts information had him located in Ozoro on the three days he claimed to be in Sagamu and, if so he could not have given true testimony about events at the latter location;
  - (ii) The Athlete, Samson and Akindele all alleged that on at least three occasions Blessing did not eat from the communal pot, claiming to be fasting. Blessing disputes that at the material time she fasted more than once and asserts (which the Athlete disputes) that she did so together with the Athlete;
  - (iii) Samson and Akindele claimed that Blessing purchased noodles from a local store outside the camp, contrary to her claim to be fasting, and both the Athlete and Samson commented on Blessing's previously healthy appetite, which made her fasting the more surprising;<sup>14</sup>
  - (iv) Samson claimed to have challenged Blessing as to why she made such purchases when there was ample food in the camp and asserted that when so challenged she did not respond; Blessing said one of her two purchases was actually made at the request of Samson;

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<sup>12</sup> Blessing's own description before the FFC and in her witness statement of the circumstances of a dispute with Coach Akeem over money he claimed she owed him turned out to be complementary rather than in collision-although the Sole Adjudicator notes that Coach Akeem has his own discrepant version.

<sup>13</sup> The most coherent accounts of the evidence on the Athlete's side are to be found in the witness statements of her witnesses, clarified in a letter from Lipman Karas to the AIU of 22 March 2019. The oral evidence added little, if anything.

<sup>14</sup> This latter point cuts both ways. It is often those with healthy appetites who may most need to fast.

(v) The Athlete alleged that Blessing on occasion prepared food alone. Blessing asserts that food preparation was always a communal female activity; indeed she was barred from cooking duties by Coach Akeem because she was wrongly sharing it with persons outside the camp;

(vi) Various examples of aberrant behaviour were alleged against Blessing by the following persons;

- (Samson, the Athlete, Akindele) that she went through the bag of a teammate, Yinka Ajayi, to obtain a supplement and sent a photograph of the supplement to Coach Friday<sup>15</sup>.
- (Akindele) that she entered Coach Akeem's room without permission and claimed that she was looking for soap.
- (The Athlete) that she became detached from the Team in late July and forbore to tell them that she would not be returning after the African Championships.

70. In short the Athlete and her witnesses sought to paint a picture of Blessing as a person disappointed by her failure, alone among Team Blessed, to qualify for the Commonwealth Games in the Gold Coast, Australia in March 2018 and increasingly disaffected with and isolated from both the Team and its coach as illustrated, *inter alia*<sup>16</sup>, by such episodes of strange behaviour, and who gave vent to her feelings by exploiting the opportunity presented to her role as a camp cook, on several occasions to contaminate, with stanozolol either sent to her by Coach Friday from the USA or purchased in Nigeria, the Team's food, which she scrupulously avoided consuming herself. An alternative theory that she was persuaded to such hostile action by Coach

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<sup>15</sup> Blessing did agree that she sent a photograph of a supplement to Coach Friday, but in February, not May as the Team Blessed witnesses asserted. But on what was allegedly taken from Yinka Ajayi's bag-tablet or container-there was no consensus among those who made the Allegation. According to the IAAF's evidence Letter of 29 March 2019 to Lipman Karas, Blessing no longer has the mobile phone on which the photograph was taken-she says it was taken from her by Coach Akeem (as he agrees), and Coach Friday no longer retains the phone on which it was stored.

<sup>16</sup> Mentioned also in this context are issues between Coach Akeem and Blessing as to whether and when he ceased to train her, and as to whether she refused to give him money due to him.

Akeem's rival coaches (founded on Coach Akeem's evidence as to his previous relations with them) was pressed less forcefully.

71. The Sole Adjudicator concludes that the scenario so depicted, even if accepted as to its constituent facts, and without reference to any other matters, might raise a possibility that Blessing spiked the Athlete's food but is unpersuaded that it makes such act a probability - to adopt the classic jurisprudential phraseology, one "grounded in real evidence" or "actual evidence as opposed to mere speculation". There may be some straws with which to make bricks of the Athlete's case; but whereas bricks cannot be made without straw, straw is not itself sufficient to make bricks.
72. In the Athlete's brief at paragraph 35 it is stated "*At the time Blessing's behaviour was dismissed as unusual and anti-social. In hindsight her behaviour was suspicious and supports the explanation that she contaminated Team Blessed's food*", which the Athlete ate. But suspicion is not the same as proof. More was required to validate the explanation.
73. Crucially it was accepted by the Athlete that no-one who gave evidence for her had actually witnessed Blessing spiking any food - as Mr Phillips QC put it in closing "there was no smoking gun"; and circumstantial evidence that she had actually done so would have had to be far more cogent than any- even taking it at its face value<sup>17</sup>- adduced before the Sole Adjudicator. There is some cogent, if not dispositive force in Mr Wenzel's argument that there would be little purpose in Blessing's spiking Team Blessed's food so as to cause Adverse Analytical Findings in those tested, when there was no reason to anticipate any imminent tests.
74. The Athlete's position is further weakened by consideration of the counter case that Coach Akeem made use of injections of substances as part of his training regime (which both he, the Athlete and her other witnesses all denied). In this context two items of evidence have particular salience; the first is the WhatsApp exchange between Coach Friday and Coach Akeem, on 26 December 2017, when the former transferred Blessing to the latter; the second is the evidence of Basirah Sharifa Nasir, a former Nigerian athlete once coached as a teenager by Coach Akeem, then in Bahrain.

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<sup>17</sup> For this, and the further reasons set out below, it is unnecessary for the Sole Adjudicator to resolve the conflicts of evidence on such circumstantial matters or-to pursue his own preferred metaphor- to test the strength of each straw.

75. As to the first, in the inter-coach dialogue Coach Akeem asks Coach Friday *"say when you give her the Winstrol<sup>18</sup> you add anything join same time"*. He inquires further about Winstrol, asking about *"the doose"* [sic]<sup>19</sup> and the frequency of its administration. Coach Akeem suggested at the hearing that he was eliciting information of this kind in order to expose a Nigerian doping supply ring but the suggestion is fatally undermined by other parts of the interchange which make it clear that he was concerned, rather, to learn what he could as Blessing's putative coach e.g. *"we need a little work on the left leg"*, *"we cannot rush her in all the therapy"*. Coach Akeem also claimed that he never coached Blessing but only took her into the camp to provide her with accommodation, a claim belied by his own unequivocal witness statement: *"As agreed with Coach Friday I began training Blessed early in February 2018"*. Finally, Coach Akeem was unable to provide any explanation as to why, if he were a reputable coach of integrity, he would choose to take under his wings an athlete that he knew previously to have been using Prohibited Substances.
76. As to the second, Ms Nasir alleged that under Coach Akeem's regime she was the recipient of not only tablets and injections on a regular basis, but on one occasion a drip. She depicted Coach Akeem as an authoritarian figure who often hit her and on one occasion used a belt (but not the buckle) to beat her. When she was charged with an ADRV and was required to return to Bahrain for the hearing before the Bahrain Athletics Federation she averred that Coach Akeem warned her to say that he never gave her anything; and, frightened as she was, told the Bahrain panel that she had no explanation for the metenolone found in her system and was banned for 3 years and 6 months.
77. Ms Nasir's evidence was, for what that was worth, given with emphasis, conviction and detail and she was unshaken by Mr Phillip's tenacious cross-examination. It is entirely plausible, in the Sole Adjudicator's view, that Ms Nasir was at the material time ambitious to advance her athletic career (as was her mother) and would not wish to sacrifice the advantage she gained from Coach Akeem's coaching by making complaints about his unorthodox training techniques.

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<sup>18</sup> The trade name for stanozolol.

<sup>19</sup> i.e. dose.

78. But far more significant, in the Sole Adjudicator's view, is that while, as an ex athlete, living in the USA and recent mother, Ms Nasir had nothing to lose in career or social terms by making serious allegations against Coach Akeem; she had nothing to gain by that exercise. Further she had no apparent reason to make false (and highly damaging) allegations against him. Mr Phillips QC observed that her evidence appeared to result from a grudge against Coach Akeem. In the Sole Adjudicator's view, if her allegations against Coach Akeem were correct, that was the explicable source of any grudge; and no theory was proposed, nor any evidence adduced as to why she would otherwise bear a grudge.
79. The Sole Adjudicator is accordingly disposed to accept that Ms Nasir's evidence was in its essentials true. It also lends weight to Blessing's allegations that Coach Akeem in 2018 was continuing to inject athletes in Team Blessed under his aegis, including Blessing herself on the occasion of the Commonwealth Games Trials (in February 2018) and at the Sagamu camp before the African Championships<sup>20</sup>.
80. The Sole Adjudicator makes it clear that it is not his function to pronounce on whether Coach Akeem or Kemi (another team member who later tested positive for stanozolol, in her case at the Asian Games<sup>21</sup>) was guilty of an ADRV. Any finding on such matters will be for another Tribunal if any charges are brought or pursued against either of them. However, the Sole Adjudicator reminds himself again that it is for the Athlete to displace the presumption of intentional ingestion of stanozolol. The existence of a plausible alternative theory in actual support of the presumption, and, in the Sole Adjudicator's view, as presently advised, amounting to a prima facie case, is at least worthy of note and can be weighed in the balance.
81. The Sole Adjudicator comes finally to the expert report of Professor Ayotte, Director of the WADA accredited laboratory in Montreal. The undisputed facts, upon which Professor Ayotte gave her opinion were that the Athlete's sample and two samples

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<sup>20</sup> Some time was spent in cross-examination as to whether her claim that she received injections "some thirty minutes before the competition on each day" in the former event could be truthful, but ultimately the Sole Adjudicator was far from persuaded that she must have been lying. Mr Phillips QC and the witness seemed often (without fault on either side) to have been at cross purposes on such matters as what she meant by 'competition' and precisely where she was claiming the injections took place.

<sup>21</sup> Kemi too relies on the same sabotage theory as the Athlete; see letter from her lawyer Paul Greene to an officer in the Nigerian policy anti-doping squad dated 2 November 2018.

from Kemi were collected approximately three weeks apart. The Athlete's thesis of spiking by Blessing of both her and Kemi's food during the three-day window had to accommodate those facts critically. Professor Ayotte was clear that such could not be the case, given that the levels of stanozolol and its metabolite in Kemi's samples were far higher than those in the Athlete's, whereas if the thesis were correct, the reverse would be anticipated. She explained in answer to a probing question from Mr Phillips QC that there was no evidence from the Laboratory readings that the bodies of the Athlete and Kemi metabolized stanozolol in a different way.

82. Professor Ayotte also observed that:

- (i) The amounts detected in all the above samples were relatively high, which is inconsistent with administration so long before the doping control tests.
- (ii) Stanozolol, if orally administered, is readily metabolized and does not accumulate. Larger doses will produce larger results; but not over a longer period.
- (iii) The detection period for stanozolol is relatively short; only trace amounts of its metabolites should have been detected so long after the stanozolol was said, on the Athlete's version, to have been taken, not the amounts actually found by the laboratory.<sup>22</sup>

83. Professor Ayotte, concluded that *"it was extremely unlikely that the stanozolol results report for the three samples are due to oral administration having last occurred 15 and 35 days earlier"*. Scientists have a natural and explicable disinclination to state that something is impossible<sup>23</sup> given that scientific knowledge is always advancing. But "extremely unlikely" suffices to deal a fatal blow to the Athlete's argument, especially since she introduced no expert evidence to contradict Professor Ayotte whose well reasoned report the Sole Adjudicator anyhow accepts in its entirety. Mr Phillips QC conceded that to resurrect that argument the Athlete would need to rely on other evidence sufficient to convert a possibility that the source of the Athlete's Adverse

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<sup>22</sup> The Cologne report which identified longer periods of detection was not concerned with the same substance as was detected in the Athlete's and Kemi's samples, and was included by Professor Ayotte for contrast.

<sup>23</sup> In the same way that lawyers have a natural disinclination, if for different reasons, to state that a client's case cannot be lost.



Analytical Finding was spiking of her food with stanozolol by Blessing into a probability. The Sole Adjudicator has already explained why she has been unable to do so.

84. In short, in the Sole Adjudicator's view, the Athlete has presented no sufficient evidence to support the spiking allegation made against Blessing and is accordingly unable to establish the source of the stanozolol in the Sample to the required standard. Therefore, the Sole Adjudicator, absent any other evidence at all to contrary effect,<sup>24</sup> cannot be satisfied that the Athlete has demonstrated on the balance of probability that the Anti-Doping Rule Violations asserted against her were not intentional.

## **H. ORDER**

85. In light of the above The Sole Adjudicator:

- (i) Rules that the Tribunal has jurisdiction to decide on the subject matter of this dispute.
- (ii) Finds that the Athlete has committed Anti-Doping Rule Violations pursuant to Article 2.1 ADR and Article 2.2 ADR.
- (iii) Imposes a period of Ineligibility of four years upon the Athlete, commencing on the date of this Award in accordance with Article 10.2.1(a) ADR. The period of provisional suspension imposed on the Athlete from 30 August 2018 until the date of this Award shall be credited against the total period of Ineligibility, provided that it has been effectively served by the Athlete.
- (iv) Orders the disqualification of the Athlete's result in the 400m at the African Championships in Athletics obtained on 5 August 2018 with all resulting consequences, including forfeiture of any medals, titles, awards, points and prize and appearance money in accordance with Article 9 ADR.
- (v) Orders the disqualification of any results obtained by the Athlete between 5 August 2018 and 30 August 2018 with all resulting consequences including the

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<sup>24</sup> Such as might engage the exceptional criteria referred to in footnote 8 above.

forfeiture of any titles, awards, medals, points and prize and appearance money pursuant to Article 10.8 ADR.

- (vi) Awards the IAAF, the successful party, a contribution towards its legal costs of £1000, but stipulates that no steps should be taken for its enforcement unless the IAAF can demonstrate to the Sole Adjudicator a prima facie case that the Athlete has funds to satisfy it.

## **I. RIGHT TO APPEAL**

- 86. This decision may be appealed to the CAS in accordance with Article 13 ADR and its subsection.

*Michael J Beloff QC*

**Michael J Beloff QC (Sole Adjudicator)**

London, UK

5 May 2019



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