

**CAS 2023/A/10180 World Athletics (WA) v. Norah Jeruto**

**ARBITRAL AWARD**

**delivered by the**

**COURT OF ARBITRATION FOR SPORT**

**sitting in the following composition**

President: Mr André Brantjes, Attorney-at-Law, Amsterdam, The Netherlands  
Arbitrators: Mr Romano F. Subiotto KC, Avocat, Brussels, Belgium, and Solicitor-  
Advocate, London, United Kingdom  
Ms Janie Soublière, Attorney-at-Law, Beaconsfield, Québec, Canada

**in the arbitration between**

**World Athletics (WA), Monaco**

Represented by Mr Nicolas Zbinden and Mr Adam Taylor, Attorneys-at-Law, Kellerhals  
Carrard, Lausanne, Switzerland

**- Appellant -**

**and**

**Norah Jeruto, Kazakhstan**

Represented by Mr Paul J. Greene and Mr Matthew D. Kaiser, Attorneys-at-Law, Global  
Sports Advocates LLC, Portland, Maine, United States of America

**- Respondent -**

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## **I. PARTIES**

1. World Athletics (the “Appellant”), appearing via the Athletics Integrity Unit (the “AIU”), is the international federation governing the sport of athletics worldwide. World Athletics has its registered seat in Monaco.
2. Ms Norah Jeruto (the “Respondent” or the “Athlete”) is a long-distance runner competing in the steeplechase. The Athlete currently represents Kazakhstan and resides in Kenya. The Athlete is the 2022 World Champion in the Women’s 3000-meter steeplechase and an International-Level Athlete for the purposes of the World Athletics Anti-Doping Rules (the “ADR”).
3. World Athletics and the Athlete are hereinafter jointly referred to as the “Parties”.

## **II. INTRODUCTION**

4. The present appeal arbitration proceedings concern an appeal lodged by World Athletics against a decision (the “Appealed Decision”) issued by the World Athletics Disciplinary Tribunal which acquitted the Athlete from a charge for an alleged violation of Rule 2.2 of the ADR (“*Use and/or Attempted Use*”) in relation to alleged abnormalities in the haematological module of her Athlete Biological Passport (“ABP”).
5. World Athletics requests the Panel to impose a four-year period of ineligibility on the Athlete; the Athlete seeks a confirmation of the Appealed Decision.

## **III. FACTUAL BACKGROUND**

6. Below is a summary of the main relevant facts, as established on the basis of the written submissions of the Parties and the evidence examined in the course of the proceedings and at the hearing. This background information is given for the sole purpose of providing a synopsis of the matter in dispute. Additional facts may be set out, where relevant, in connection with the legal discussion.

### **A. Blood doping and the ABP in general**

7. World Athletics’ uncontested explanation of the haematological module of the ABP is as follows:
8. The ABP consists of an electronic record that compiles and collates a specific athlete’s test results and other data over time and is unique to that particular athlete. The haematological module of the ABP records the values in an athlete’s blood samples of haematological parameters that are known to be sensitive to changes in red blood cell production.
9. The values collected and recorded include haematological concentration (“HGB” or “HB”) and percentage of immature red blood cells known as reticulocytes (“RET%”).

The ratio of the HGB and the RET% values is also used to calculate a further value, known as the “OFF-score”, which is sensitive to changes in erythropoiesis.

10. The marker values from the blood samples collected in the ABP programme are inputted into a statistical model, known as the “Adaptive Model”. The Adaptive Model uses an algorithm that considers both (i) the variability of such values within the population generally (i.e., blood values reported in a large population of non-doping athletes); and (ii) factors affecting the variability of the athlete’s individual values (including gender, ethnic origin, age, type of sport, and instrument-related technology).
11. The selected biological markers are monitored over a period and a longitudinal profile is created that establishes an athlete’s upper and lower limits within which the athlete’s values would be expected to be found under expected normal physiological conditions (i.e., the athlete is healthy and has not been doping).
12. The upper and lower limits are calculated, (per the WADA ABP Operating Guidelines) with a “specificity” of 99%. The Adaptive Model also calculates the probability of abnormality of the sequence of values in the ABP profile.
13. An athlete becomes his/her own point of reference and each time a blood sample is recorded, the Adaptive Model calculates where the reported HGB, RET% and OFF-score values fall within the athlete’s expected distribution. After each new test, a new range of expected results for the athlete is determined.
14. Three widely known substances or methods are used for blood doping, namely: (i) administering recombinant human erythropoietin (“rEPO”) (administered by injection to trigger erythropoiesis, the stimulation of the production of red blood cells); (ii) synthetic oxygen carriers (i.e., infusing blood substitutes such as a haemoglobin-based oxygen carrier (“HBOC”) or perfluorocarbons (“PFC”) to increase haemoglobin well above normal levels; and (iii) blood transfusions (i.e., infusing a matching donor’s or the athlete’s own (previously extracted) red blood cells to increase the haemoglobin well above normal).
15. World Athletics implements its ABP program in accordance with the International Standard for Results Management (the “ISRM”) through a procedure that is designed to afford an athlete due process in establishing whether an anti-doping rule violation (“ADRV”) has been committed.
16. The applicable procedure is set forth in Article C.1.3 of the ISRM and provides as follows:
  - “a) The review begins with the application of the Adaptive Model.*
  - b) In case of an Atypical Passport Finding or when the Athlete Passport Management Unit considers that a review is otherwise justified, an Expert conducts an initial review and returns an evaluation based on the information available at that time.*

- c) *In case of a “Likely doping” initial review, the Passport is then subjected to a review by three (3) Experts including the Expert who conducted the initial review.*
- d) *In case of a “Likely doping” consensus of the three (3) Experts, the process continues with the creation of an Athlete Biological Passport Documentation Package.*
- e) *An Adverse Passport Finding is reported by the Athlete Passport Management Unit to the Passport Custodian if the Experts’ opinion is maintained after review of all information available at that stage, including the Athlete Biological Passport Documentation Package.*
- f) *The Athlete is notified of the Adverse Passport Finding and offered the opportunity to provide explanations.*
- g) *If after review of the explanations provided by the Athlete, the Experts maintain their unanimous conclusion that it is highly likely that the Athlete Used a Prohibited Substance or a Prohibited Method, an anti-doping rule violation is asserted against the Athlete by the Passport Custodian.”*

**B. The Athlete’s ABP and its review**

17. Between 21 June 2016 and 2 May 2022, thirty-two valid ABP blood samples were collected from the Athlete<sup>1</sup>. Each of these samples was analysed by a WADA-accredited laboratory and logged in ADAMS (WADA’s web-based management tool for anti-doping data entry, storage, sharing, and reporting) using the Adaptive Model to constitute the Athlete’s longitudinal profile of haematological values. A summary table of the Athlete’s ABP, showing, *inter alia*, the Athlete’s HGB, RET% and OFF-scores for each of the valid samples is provided below, followed by the full profiles for HGB, OFF-score and RET%:

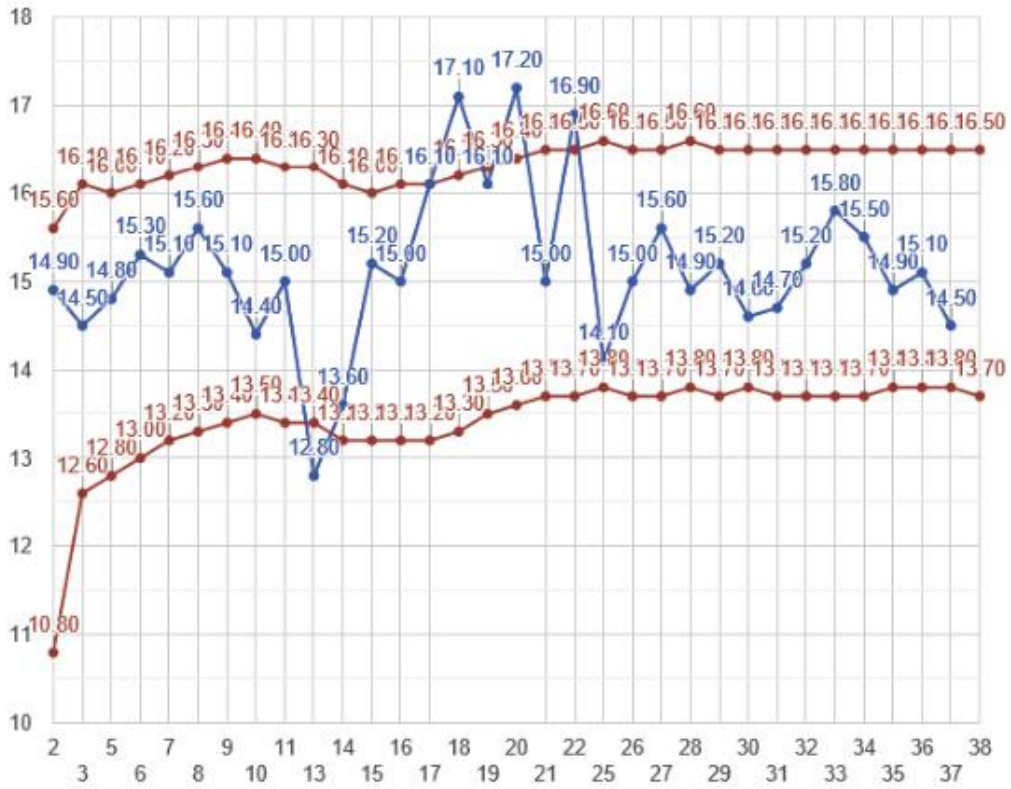
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<sup>1</sup> Samples 1, 4, 12, 23 and 24 were invalidated.

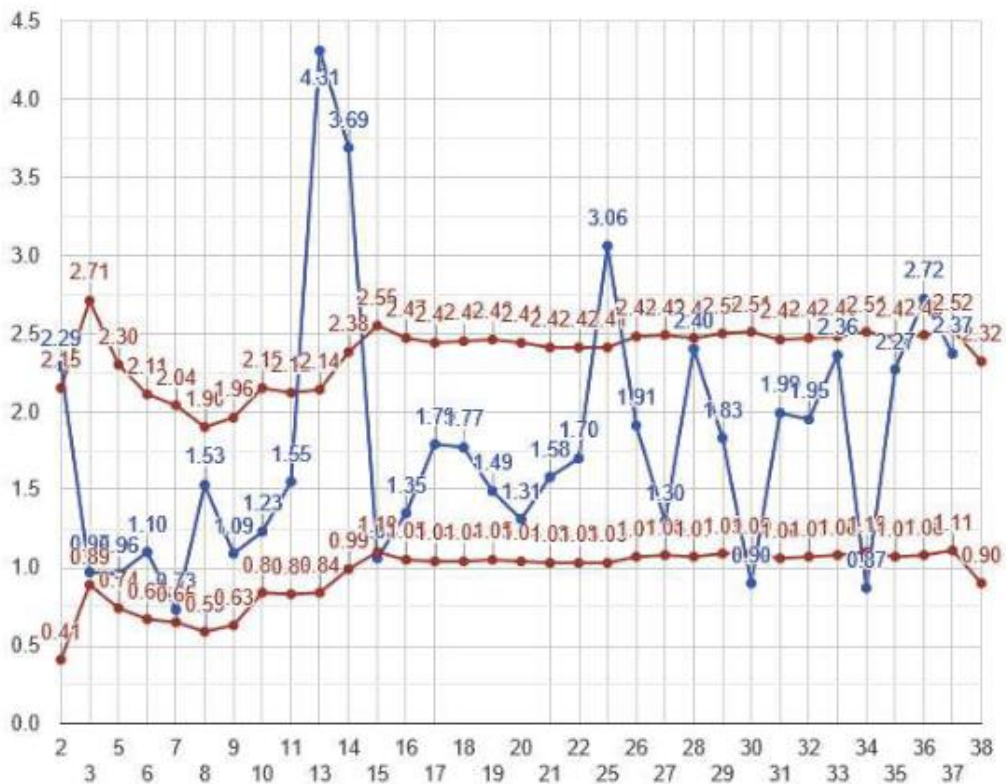
#	Sample code	Collection date	HGB	RET%	OFF-score	HCT	RET#	IRF	
1	126586	21.06.2016	Invalid						
2	363132	20.11.2017	14.9	2.29	58.2	39.8	0.1	3.2	
3	239024	09.05.2018	14.5	0.97	85.91	39.3	0.0445	3.9	
4	237797	23.05.2018	Invalid						
5	363281	25.07.2018	14.8	0.96	89.21	39.7	0.0453	1.9	
6	624913	10.11.2018	15.3	1.1	90.1	42.4	0.0529	3.8	
7	600722	26.11.2018	15.1	0.73	99.7	40.5	0.0339	12.4	
8	624101	14.01.2019	15.6	1.53	81.8	42.9	0.0779	7.3	
9	619629	16.04.2019	15.1	1.09	88.4	42	0.0532	5.6	
10	683611	10.09.2019	14.4	1.23	77.5	40.2	0.0565	5.7	
11	676792	20.11.2019	15	1.55	75.3	41.5	0.0722	6.5	
12	459835	02.03.2020	Invalid						
13	682195	18.03.2020	12.8	4.31	3.4	34.1	0.1698	12.6	
14	683374	26.03.2020	13.6	3.69	20.7	38.7	0.1576	10.1	
15	682214	21.05.2020	15.2	1.06	90.2	42.7	0.0506	8.5	
16	471564	05.07.2020	15	1.35	80.3	43.6	0.0666	6.6	
17	471570	06.09.2020	16.1	1.79	80.7	45.4	0.0925	17.1	
18	699341	28.09.2020	17.1	1.77	91.2	48.5	0.0959	10.1	
19	470018	02.10.2020	16.1	1.49	87.8	46.5	0.0767	15.5	
20	682160	05.11.2020	17.2	1.31	103.3	49.4	0.0715	8.4	
21	469998	20.12.2020	15	1.58	74.6	42.5	0.0762	6.5	
22	708549	30.12.2020	16.9	1.7	90.77	49	0.095	3.9	
23	478441	08.02.2021	Invalid						
24	478490	24.02.2021	Invalid						
25	683373	10.03.2021	14.1	3.06	36	38.5	0.1353	9.7	
26	699333	23.03.2021	15	1.91	67.1	41.3	0.0896	5.6	
27	489811	27.05.2021	15.6	1.3	87.59	44.6	0.0657	5.7	
28	479362	08.06.2021	14.9	2.4	56	43.6	0.1195	12.6	
29	702174	10.08.2021	15.2	1.83	70.8	44.8	0.093	17.3	
30	721061	20.08.2021	14.6	0.9	89.1	41.9	0.0431	4.4	
31	919547	25.09.2021	14.7	1.99	62.4	42.1	0.0971	17	
32	0054598	25.11.2021	15.2	1.95	75.2	41	0.0942	8	
33	469820	19.12.2021	15.8	2.36	65.8	44.3	0.118	17.4	
34	932606	05.01.2022	15.5	0.87	99	44.3	0.0432	2.8	
35	932860	20.01.2022	14.9	2.27	58.6	40.5	0.1056	9.9	
36	1038590	03.04.2022	15.1	2.72	52	42.2	0.1268	17.1	
37	932450	02.05.2022	14.5	2.37	52.6	38.8	0.1033	15.3	

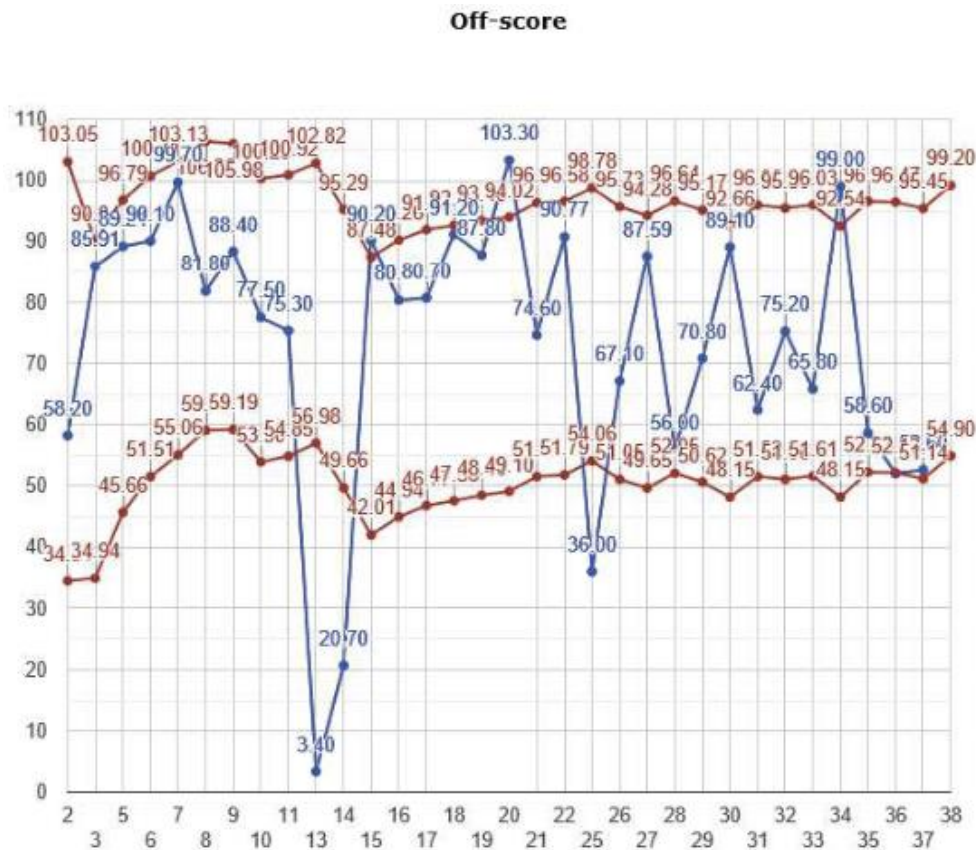
Units for the results are those presented in ADAMS. All the results are based on ADAMS information.

**HGB**



**RET%**





18. After the collection of blood sample 15 from the Athlete, her ABP generated an automated Atypical Passport Finding (the “APF”) in ADAMS, which was submitted to the Athlete Passport Management Unit. An anonymous two-step review of the Athlete’s profile followed. First, an evaluation of the profile was undertaken individually by single experts, who possess knowledge in one or more of the fields of clinical and laboratory haematology, sports medicine, or exercise physiology, as they apply to blood doping, and then a Panel of the same three experts: Dr Jakob Sehested Mørkeberg, Prof. Guiseppe D’Onofrio and Prof. Michel Audran (together the “Expert Panel”) undertook a further review.
19. On 24 August 2020, the Expert Panel issued its first joint opinion (the “First Joint Expert Opinion”) based on twelve of the Athlete’s blood samples and concluded:
- “Thus, on the basis of the available information, it is likely that a Prohibited Method had been used and highly unlikely that the biological profile is the result of any other cause.”*
20. On 28 December 2020, the Expert Panel issued a revised first joint opinion (the “Revised First Joint Expert Opinion”), with the following comments:
- “(…) In consideration of the current limits of the World Anti-Doping Agency’s Prohibited List, which does not consider the scientific evidence of blood withdrawal as an anti-doping rule violation, we recommend further testing and*

*investigation activity on this case and recommend specifically asking the Athlete about any possible cause of a decrease in HB associated with an increase in reticulocytes in March 2020.”*

21. On 24 June 2022, the Expert Panel issued its second joint expert opinion (the “Second Joint Expert Opinion”), based on thirty-two of the Athlete’s blood samples. The Expert Panel noted the following three alleged abnormalities and concluded:

*“(i) Samples 13-14 collected on 18 March 2020 and 26 March 2020 respectively show highly elevated RET% and low HGB, indicating a low, but recovering, HGB mass characteristic of a blood loss: bleeding or blood extraction (donation or withdrawal)<sup>2</sup>. Sample 14, collected eight days after Sample 13, confirms the progressive restoration of the red blood cell mass: an increase of haemoglobin, although still below the usual values of the Athlete, a decrease of RET% compared to Sample 13, but still well above the upper limit of the expected normal range, and only a small decrease of the immature reticulocyte fraction (‘IRF’). The increase in HGB appears to be the result of the accelerated reticulocyte release from the bone marrow. Sample 15, collected circa two months later on 21 May 2020, shows a recovery of HGB and normalization of the RET% and IRF to the Athlete’s normal values at the residence at altitude.*

*(ii) Samples 17-19 collected between 6 September 2020 and 2 October 2020 show an artificial stimulation of erythropoiesis via use of EPO at different doses in September and October with the view to increase the exercise capacity before competition based on relatively high IRF values (17.1, 10.1 and 15.5 respectively) HGB (16.1, 17.1 and 16.1 respectively) and an increase in red cell distribution width (‘RDW- SD’) (41.7fl, 42.9fl and 43,8fl respectively) which was not caused by altitude since the Athlete had been residing at altitude for six (6) months (since 13 March 2020). Sample 20 collected on 5 November 2020 has the highest HGB value and most abnormal OFF-score occurring before a competition in Kenya on 28 November 2020.*

*(iii) Sample 25 collected on 10 March 2021 has a high RET% (3.06%) with HGB (14.1) and Off-Score (36) like those in Sample 14 indicating possible recovery from blood withdrawal.*

*We therefore conclude that it is highly likely that a prohibited substance such as EPO has been used in September-October 2020 and that blood withdrawal has taken place in February or March 2020 and in the same period in 2021 and that it is unlikely that the passport is the result of any other cause.”*

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<sup>2</sup> World Athletics noted that the Athlete declared that she had not donated blood or lost blood as a result of any medical or emergency condition during the previous three months on the DCF’s for Samples 13-14.



22. On 28 July 2022, the AIU notified the Athlete of the APF.
23. On 26 September 2022, the Athlete responded to the Second Joint Expert Opinion. This extensive and fulsome submission included the following summary:

*“As the expert reports of Dr. Saltzman and Dr. Brandt explain, the abnormalities detected in [the Athlete’s] ABP profile were caused by two distinct medical conditions rather than blood doping or EPO injections as theorized in the [Second Expert Report]. Specifically,*

- *According to Dr. Saltzman, the deviations in samples 13-14 and sample 25 were caused by [the Athlete’s] gastrointestinal (GI) bleeding in February/March 2020 and February/March 2021, and*
- *According to Dr. Brandt, the deviation in samples 17-19 was caused by a viral infection (likely COVID-19) [the Athlete] contracted in August 2020.”*

24. On 23 March 2023, the Expert Panel issued its third joint expert opinion (the “Third Joint Expert Opinion”) in response to the Athlete’s submission dated 26 September 2022 and opined as follows:

*“It is thus our scientific and clinical opinion that the information provided by the Athlete and their Expert Specialists does not provide evidence capable of explaining: 1) the haematological picture of erythropoietic stimulation with low HB in samples 13-14, which is instead highly indicative of the previous manipulation, and 2) the aspects of erythropoietic stimulation with high HB in samples 17-19.*

*Conclusion*

*Based on the explanations provided by the Athlete, we confirm our previous opinion that a prohibited substance or method has likely been used. The information provided to date does not explain the ABP abnormalities, which are on the opposite indicative of blood manipulation.”*

**C. The proceedings before the World Athletics Disciplinary Tribunal**

25. On 5 April 2023, the AIU charged the Athlete with an ADRV (the “Notice of Charge”) and she was provisionally suspended.
26. On 13 April 2023, the Athlete filed her response to the Notice of Charge.
27. The matter was then remitted to the World Athletics Disciplinary Tribunal.
28. On 9 June 2023, WA filed its Brief.

29. On 21 July 2023, the Athlete filed her Answer Brief, including follow-up expert reports of Dr Saltzman and Dr Brandt that responded to the Third Joint Expert Report.
30. On 6 September 2023, WA filed its Reply, including a fourth joint expert report of the Expert Panel (the “Fourth Joint Expert Opinion”) as well as a report from consultant gastroenterologist Prof. J.Y. Kang.
31. On 20 September 2023, a hearing was held to hear witness/expert evidence and on 9 October 2023, the hearing concluded with closing submissions further to which the World Athletics Disciplinary Tribunal requested the Parties to file post-hearing submissions to summarize the scientific evidence heard.
32. On 27 October 2023, the World Athletics Disciplinary Tribunal issued the Appealed Decision with the following operative part:

*“a. The charges are dismissed.*

*b. No period of Ineligibility is imposed on the Athlete and no results are disqualified.*

*c. The Provisional Suspension is lifted with immediate effect.”*

33. The grounds of the Appealed Decision provide as follows:

***“a) Samples 13-15 and 25***

- *M1 bans administration or reintroduction of blood or blood products but it does not ban blood withdrawal. The World Athletics Expert Panel concluded:*

*‘... the variation observed in samples 13 and 14 plausibly reflects, in our opinion, the collection of blood or packed red blood cells in the context of a transfusion strategy. In consideration of the current limits of the World Anti-Doping Agency’s Prohibited List, which does not consider the scientific evidence of blood withdrawal as an anti-doping rule violation, we recommend further testing and investigation...’*

- *The AIU were unable to prove administration of blood or blood products in relation to samples 13-15 or 25, a conclusion confirmed by Prof D’Onofrio in cross-examination. Prof D’Onofrio said that it was possible to speculate on occasions when blood might have been administered but could do not more than that. His views on reinfusion were his own, not those of his expert panel colleagues. The AIU’s case was that it was to be inferred from the evidence of blood withdrawal that there was an attempted breach of M1: the blood withdrawal had no purpose other than as part of a strategy of blood doping. Hence the charge of ‘Attempted Use’. It was submitted that the*

*blood withdrawals was ‘a substantial step in a course of conduct planned to culminate in the commission of an anti-doping rule violation’.*

- *In our judgment this simply does not work. Assume for a moment that the Athlete did withdraw blood with a view to a subsequent administration of blood in breach of MI, the withdrawal cannot of itself constitute an attempt to administer blood any more than the purchase of a gun for a nefarious purpose can constitute attempted murder.*
- *Withdrawal of blood can possibly be seen as preparation of an ADRV, but it cannot be seen as Attempt, because Attempt would require also at least the intent of reinfusion. World Athletics have only been able to show the withdrawal of blood in Sample 13-14 and 25. That is not enough to constitute even an Attempted Use. We do not consider evidence of blood withdrawal can be regarded by itself as ‘a substantial step in a course of conduct planned to culminate in the commission of an anti-doping rule violation.’*
- *That is sufficient to deal with the Attempted Use charge based on Samples 13-15 and 25. However, we should add that, particularly in the light of Dr Saltzman’s evidence, we do not consider it would have been easy to reject the Athlete’s explanation as to what happened.*
- *Dr Saltzman’s evidence was that the Athlete’s anaemia in 2020 and 2021 was consistent with blood loss from GI bleeding from exacerbations of peptic ulcer disease. He particularly relied on her explanation of her vomiting ‘coffee grounds’, and her description of diarrhoea, foul smelling dark stools which he regarded as consistent with melena. He pointed out that she has had extremely poor care: Kenya has less than 30 gastroenterologists in a population of 40 million.*
- *Dr. Saltzman’s conclusion was:*

*‘Certainly possible that she had GI bleeding as a reason for these symptoms. And I never saw, at least when I looked over the reports, that there was any evidence of blood being given back to her. So to me, I think it’s a pretty simple case of some poor, you know, patient who’s not treated well, who has, you know, ongoing symptoms and then has recurrent symptoms, including bleeding’,*
- *Dr Kang explained in his report that bloody diarrhoea and blood in the stool were not consistent with GI bleeding. He also explained that urine in the blood was not consistent with GI bleeding. Nevertheless, the Athlete reported all three symptoms.*
- *Dr Kang and Prof D’Onofrio did not agree with Dr Saltzman’s conclusions, but given the disagreement between reputable experts, the majority of the*

*Panel would have been unwilling to hold that we were satisfied to the standard of comfortable satisfaction that an ADRV had been committed even if we had considered the evidence of blood withdrawal was sufficient of itself to constitute 'Attempted Use'.*

**b) Samples 17-19**

- *That leaves the charge based on Samples 17-19. The evidence of Prof D'Onofrio was the high peaks of haemoglobin were highly suspicious. He was asked whether those samples alone would have been sufficient for a case to be brought against the Athlete, to which his answer may be described as a slightly half-hearted yes. He considered that the data was consistent with administration of a relatively low dose of rEPO.*
- *Dr Brandt's evidence was that the combination of a high % IRF, increased RDW-SD, and no corresponding increase of RET% are consistent with a COVID-19 infection which causes stimulated isolated erythropoiesis. Dr Brandt put this to Prof D'Onofrio in an exchange between experts. Prof D'Onofrio said that he did not think that the results could be related to a mild infection and were more consistent with an EPO injection in small doses.*
- *Dr Brandt's evidence was that the Athlete's symptoms in August/September 2020 were consistent with a bout of COVID-19. The Athlete was prescribed rhinathiol promethazaine, a prescription drug which can be effective for COVID-19. She subsequently was prescribed a cream for mouth sores; mouth sores are sometimes an effect of COVID-19.*
- *World Athletics criticised Dr Brandt's evidence because, notwithstanding his haematological experience, he had no experience of ABPs and submitted that Prof D'Onofrio's evidence was more reliable. They also criticised Dr Brandt for having changed his position, and a lack of reference to stress erythropoiesis in his first report. They pointed out that on the evidence it would need to have been a serious illness to affect the ABP in the way alleged by the Athlete and the evidence did not on any view support that.*
- *We also had to take into account the Athlete's own evidence about her illness in August/September 2020. She was sufficiently unwell, she said, that she went to hospital. Her evidence was that she was told she did not have COVID-19 but said that she was told that she had tuberculosis.*
- *It was unsatisfactory that there was no documentary evidence in relation to the Athlete's hospital visit in September 2020. We found her evidence on this confused and difficult to rely on.*
- *In conclusion on this issue, we found the factual evidence somewhat unsatisfactory in relation to this period. The ABP showed abnormal results*

*consistent with a relatively low dose of EPO, which would have been an ADRV. We did not find resolution of this charge easy. We accept that there was at least room for the view that Dr Brandt's conclusions were somewhat speculative.*

- *However, the majority of the Panel is persuaded that, having heard the experts, and recognising that all the experts we heard from were distinguished practitioners, and taken into account their differing views, the sample results might also be explained by a bout of COVID-19. On balance we cannot say that World Athletics have proved their case in relation to Samples 17-19 so that we are comfortably satisfied. Whilst we recognise that compelling arguments were made here in favour of the view of the Expert Panel, we consider there is sufficient doubt on this part of the case that it would be unfair to convict the Athlete.*
- *Thus, we dismiss the charges.*

**c) ABP Cases Procedure**

- *Although in many doping cases scientific evidence is led before the Tribunal, ABP cases such as the present have the potential to involve a different level of complexity. It may be that even in such cases few are as complex, or involve a dispute as to the scientific evidence between reputable experts in the way this case did. Given the extent of the expert evidence, and disputes, with hindsight the Tribunal would have wished to have had more assistance in grappling with and understanding the expert evidence and the disagreements between the experts than it received here. That is not a criticism of the parties, advocates or their experts – it may be said it is for the Tribunal to case manage hearings so it obtains the assistance it needs. It may be that it is an issue that arises in a relatively small number of ABP cases.*
- *However, if in future, particularly in ABP cases, it appears there is likely to be a significant difference between experts, we would invite World Athletics to alert the Tribunal as soon as it becomes apparent, so that consideration may be given as to whether additional directions are required.”*

**IV. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT (“CAS”)**

34. On 24 November 2023, World Athletics filed a Statement of Appeal with CAS, challenging the Appealed Decision in accordance with Articles R47 and R48 of the 2023 edition of the CAS Code of Sports-related Arbitration (the “CAS Code”). In this submission, the Appellant nominated Mr Romano F. Subiotto KC as arbitrator.
35. On 12 December 2023, the Respondent nominated Ms Janie Soublière as arbitrator.

36. On 21 December 2023, World Athletics informed the CAS Court Office of a timetable for the filing of an Appeal Brief and an Answer.
37. On 19 January 2024, the CAS Court Office informed the Parties that, pursuant to Article R54 CAS Code, and on behalf of the President of the CAS Appeals Arbitration Division, the Panel appointed to decide the present case was constituted as follows:  
  
President: Mr André Brantjes, Attorney-at-Law in Amsterdam, The Netherlands  
Arbitrators: Mr Romano F. Subiotto KC, Avocat in Brussels, Belgium, and Solicitor-Advocate in London, United Kingdom  
Ms Janie Soublière, Attorney-at-Law in Beaconsfield, Québec, Canada
38. On 19 January 2024, World Athletics filed its Appeal Brief in accordance with Article R51 CAS Code.
39. On 1 April 2024, the Athlete filed her Answer in accordance with Article R55 CAS Code.
40. On 5 April 2024, following consultation of the Parties, the CAS Court Office informed the Parties on behalf of the Panel that a hearing would be held on 17 and 18 June 2024.
41. On 20 April and 23 April 2024 respectively, the Athlete and World Athletics returned duly signed Orders of Procedure to the CAS Court Office.
42. On 22 May 2024, a case management conference was held.
43. In a follow up to the case management conference, on 22 May 2024, the Athlete re-submitted into evidence a video of an interview between the Athlete and Dr Brandt, Haematologist and Professor at Vanderbilt Medical Centre, expert called by the Athlete.
44. On 27 May 2024, the CAS Court Office circulated a revised hearing schedule and invited the Athlete to tender a list of topics for the expert conferencing (hot tub) sessions and the PowerPoint presentation of Dr Brandt which he intended to refer to during the hearing.
45. On 31 May 2024, the Athlete tendered a list of suggested topics for both expert conferencing sessions and notified the CAS Court Office of Dr Brandt's PowerPoint presentation.
46. On 6 June 2024, World Athletics indicated it did not object to the use of the PowerPoint presentation as it appeared that the material to which it referred was already within Dr Brandt's report or its annexes. According to World Athletics, however, this lack of objection was conditional on the PowerPoint presentation not being admitted to the record as evidence or sent to the Panel in this matter, as it was only intended to be an aide-memoire at the hearing and not evidence itself on which

the Athlete could rely. As to the list of issues for the expert conferencing sessions, World Athletics indicated as follows:

- *For Hot Tub 1, World Athletics objects to question 1, as: (a) it is expressed as a question of law for the Panel (“enough to bring a case”) rather than as a focused question of science for the expert, and (b) it appears to be an artificial question, because the Joint Expert Panel looks at all samples in the passport.*
  - *For Hot Tub 1, World Athletics proposes the following question: ‘To what extent are the abnormalities in samples 17-19 explicable by reference to Covid-19 infection and/or stress erythropoiesis?’*
  - *For Hot Tub 2, World Athletics proposes the following question: ‘What amount of blood loss is required to explain the March 2020 and 2021 sample abnormalities?’*
47. On 13 June 2024, the Athlete responded to World Athletics’ letter of 6 June 2024, indicating, *inter alia*, that she agreed the PowerPoint presentation was only intended to be a demonstrative exhibit. Further, she maintained her proposed topic #1 but did not object to the inclusion of the two questions raised by World Athletics.
48. On 14 June 2024, World Athletics indicated Dr Kang would be heard remotely and on the same day the Athlete indicated that Dr Saltzman would also testify remotely.
49. On 16 June 2024 the Athlete notified the CAS Court Office of Dr Brandt’s revised PowerPoint presentation.
50. On 17 June 2024, the CAS Court Office informed the Parties that the hearing schedule would be discussed at the start of the hearing.
51. On 17 and 18 June 2024, a hearing was held in Lausanne, Switzerland. At the outset of the hearing, the Parties confirmed that they had no objection to the constitution and composition of the Panel.
52. The hearing was attended in person, unless indicated otherwise. In addition to the members of the Panel and Ms Andrea Sherpa-Zimmermann, CAS Counsel, the following persons attended the hearing:
- a) For World Athletics:
    - 1) Mr Tony Jackson, AIU Deputy Head of Case Management;
    - 2) Nicolas Zbinden, Counsel;
    - 3) Mr Adam Taylor, Counsel.
  - b) For the Athlete:
    - 1) Ms Norah Jeruto, the Athlete;

- 2) Mr Paul J. Greene, Counsel;
- 3) Mr Matthew D. Kaiser, Counsel.

53. The following persons were heard, in order of appearance:

- 1) Mr Norah Jeruto, the Athlete;
- 2) Mr Shadrack Kimutai Koech, the Athlete's husband, witness called by the Athlete (remote);
- 3) Mr Brian Kiplagat Kemboi, Clinical Officer at Iten Glory Health Centre ("IGHC"), witness called by World Athletics (remote);
- 4) Mr Harrison Kibet, Registered Clinical Medical Officer at the Glory Pharmacy, witness/expert called by the Athlete (remote);
- 5) Prof. Guiseppe D'Onofrio, Expert Haematologist and member of the Expert Panel, expert called by World Athletics;
- 6) Dr. Stephen J. Brandt, Haematologist and Professor at Vanderbilt Medical Centre, expert called by the Athlete;
- 7) Dr. J.Y. Kang, Consultant Gastroenterologist, expert called by World Athletics (remote);
- 8) Dr. John R. Saltzman, Gastroenterologist and Professor at Harvard Medical School with a special expertise in peptic ulcer disease and GI bleeding, expert called by the Athlete (remote).

54. All witnesses and experts were invited by the President of the Panel to tell the truth subject to the sanctions of perjury under Swiss law. The Parties had full opportunity to examine and cross-examine the witnesses and experts.

55. After the first day of the hearing on 17 June 2024, with no objection from World Athletics, the Athlete submitted a consolidated table of values for white blood cells and lymphocytes, compiled from the Laboratory Documentation Packages and Certificates of Analysis all of which were already included in the first instance hearing bundle which was part of the case file.

56. Two expert conferencing sessions were held:

- In the first, the Panel heard evidence from Prof. D'Onofrio and Dr Brandt concerning the ABP and haematology, including the alleged respiratory illness that, according to the Athlete, explained the abnormal blood values in samples 17-19.
- In the second, the Panel heard evidence from Prof. D'Onofrio, Dr Kang and Dr Saltzman concerning the ABP and gastroenterology, including the Athlete's alleged blood loss due to peptic ulcers that, according to the Athlete, explained the abnormal blood values in samples 13-15 and sample 25.

57. The Parties were given full opportunity to present their cases, submit their arguments and answer the questions posed by the members of the Panel.



58. Before the hearing was concluded, the Parties expressly stated that they had no objection to the procedure adopted by the Panel and that their right to be heard had been respected.

**V. SUBMISSIONS OF THE PARTIES AND REQUESTS FOR RELIEF**

59. The following summaries of the Parties' positions are illustrative only and do not necessarily comprise every submission advanced by the Parties. The Panel confirms, however, that it has carefully considered all the submissions made by the Parties, both written and oral, whether or not there is specific reference to them in the following summaries.

**A. The Appellant**

60. World Athletics' Appeal Brief, may be summarised as follows:

- This case involves an alleged Use ADRV against the Athlete arising out of abnormalities in the haematological module of her ABP. Those abnormalities were identified in multiple samples over an extended period of time.
- World Athletics' evidence at first instance gave a full description of those abnormalities and linked them to blood withdrawals and to the use of recombinant erythropoietin or "EPO". In contrast, the Athlete's explanations for these abnormalities – of gastrointestinal bleeding and an infection causing stress erythropoiesis – were unsupported by medical records, seemed to have limited clinical seriousness, and relied on scientifically-speculative expert evidence that did not respect the facts that the Athlete was actually adducing and did not attempt to grapple with causation.
- The World Athletics Disciplinary Tribunal at first instance made some limited attempts to acknowledge these problems for the Athlete, but then surprisingly decided in her favour, with no reasoning at all while acknowledging that it had not fully understood the science of the case. The Appealed Decision was unreasoned and wrong. It did not reflect the facts or the science.
- Furthermore, World Athletics has now made further investigations into the relevant health centre where the Athlete was allegedly treated for an infection (allegedly leading to stress erythropoiesis). World Athletics now alleges that the Athlete did not attend the IGHC at the relevant time, let alone in relation to an alleged infection or to receive tests and a prescription there, contrary to what she stated at first instance.

***The basis for the ADRV charge***

- At first instance, World Athletics relied upon several Joint Expert Opinions addressing the Athlete's ABP, in which the Expert Panel identified

abnormalities detected in blood samples collected from the Athlete between 21 June 2016 and 2 May 2022 – in particular in (i) samples 17-19 collected between September 2020 and October 2020 – that indicated EPO use; and (ii) samples 13-15 collected between March 2020 and May 2020 and ; (iii) sample 25 collected in March 2021 – that indicated blood manipulation.

- The Expert Panel’s view was that samples 13-15 and sample 25 were indicative of blood withdrawals, which, as opposed to blood reinfusions, are not a Prohibited Method under the WADA Prohibited List. World Athletics accepted at the hearing at first instance (and maintains within these appeal proceedings) that no Use ADRV could be established solely in relation to those samples.
- World Athletics argued at first instance that samples 13-15 and sample 25 constituted an Attempted Use ADRV but does not maintain those allegations in the present appeal before CAS. World Athletics does however argue that these samples constitute unexplained withdrawals that corroborate the overall and broader picture of manipulation and doping within the Athlete’s Passport and support the specific allegation of Use based on samples 17-19.
- World Athletics argued at first instance and maintains, as does the Expert Panel, that the values of samples 17-19 can only be explained as arising from EPO use, which is a Prohibited Substance and therefore should amount to an ADRV.

### ***The Appealed Decision***

- First, the World Athletics Disciplinary Tribunal conceded that it had failed to fully understand the scientific evidence put before it at first instance. To World Athletics, this was a surprising admission and explains the lack of analysis and reasoning in the Appealed Decision.
- Second, and likely as a result of the above, the World Athletics Disciplinary Tribunal failed to interrogate and/or draw appropriate conclusions about the Athlete’s expert evidence (some of which was speculative and did not recognise or apply the facts of the case). The World Athletics Disciplinary Tribunal failed to draw appropriate conclusions and/or inferences against the Athlete as a result of the lack of records of treatment for her alleged medical problems. It failed to place any or appropriate weight on the lack of seriousness of any medical problem she may supposedly have had (and which is now denied regarding August 2020) and the corresponding effect on the Athlete’s ABP causation theories. Examples of this widespread lack of analytical scrutiny are as follows:
  - As to the March 2020 and March 2021 samples, the World Athletics Disciplinary Tribunal decided that “*we do not consider that it would have been easy to reject the Athlete’s explanation*”. The entire sum of

reasoning in dismissing the detailed arguments made by World Athletics on the gastrointestinal symptoms, both factually and scientifically, was as follows: *“Dr Kang and Prof. D’Onofrio did not agree with Dr Saltzman’s conclusions but given the disagreement between reputable experts, the majority of the Panel would have been unwilling to hold that we were satisfied to the standard of comfortable satisfaction that an ADRV had been committed”*. There was no reasoning at all, save for the suggestion that both sides had reputable experts. That is not a reason: the experts’ opinions should have been scrutinised and distinguished. The World Athletics Disciplinary Tribunal therefore failed to provide any reasoned conclusion.

- As to the September 2020 samples, the World Athletics Disciplinary Tribunal found that *“it was unsatisfactory that there was no documentary evidence in relation to the Athlete’s hospital visit in September 2020. We found her evidence on this confused and difficult to rely on”*. It also found as follows: *“We found the factual evidence somewhat unsatisfactory in relation to this period. The ABP showed abnormal results consistent with a relatively low dose of EPO, which would have been an ADRV. We did not find resolution of this charge easy. We accept that there was at least room for the view that Dr Brandt’s conclusions were somewhat speculative”*. It also noted that *“compelling arguments were made here in favour of the view of the Expert Panel”*. However, it then found that there was *“sufficient doubt on this part of the case that it would be unfair to convict the Athlete”*. It is not at all clear what standard of proof the World Athletics Disciplinary Tribunal was applying with that final comment, but the standard is only *“comfortable satisfaction”*, nothing more. Again, the only actual reasoning given was a non-reason: *“having heard the experts, and recognizing that all the experts were heard from were distinguished practitioners, and taking into account their differing views, the sample results might also be explained by a bout of COVID-19”*. The World Athletics Disciplinary Tribunal did not even mention, let alone address, that the Athlete had explicitly said that she tested negative for COVID-19.
- In short, the World Athletics Disciplinary Tribunal’s lack of engagement with and understanding of the scientific issues led to a decision without reasons, that acknowledged the general calibre of the experts, as practitioners, but failed to even attempt to compare, critique or distinguish their evidence. This was unacceptable and led to the wrong decision.

#### ***Further investigation into the August 2020 infection story***

- Following the Athlete’s evidence at first instance about her visit to the IGHC testing and receipt of a prescription in August 2020 in relation to her alleged

infection, World Athletics made enquiries with the IGHC for the purposes of verifying the Athlete's account.

- According to Mr Brian Kiplagat Kemboi, a Clinical Officer at IGHC:
  - The Athlete does not appear in the IGHC's outpatient register for August 2020 (or, for completeness, for September 2020);
  - IGHC did not have the ability to test for COVID-19 or tuberculosis at the relevant time. This is confirmed by the contents of the IGHC's laboratory testing registers for August and September 2020.
  - Any patient presenting with potential COVID-19 or tuberculosis would be transferred to the Iten County Referral Hospital, that had greater facilities.
  - The Athlete is not named in the IGHC's laboratory testing register for August (or September 2020).
- The Athlete's evidence during the first instance proceedings – namely attending the IGHC in August 2020, testing negative for COVID-19 and positive for tuberculosis, and being prescribed Rhinathiol/Promethazine, is not true. This creates a further significant problem for her in proving the underlying facts to explain the abnormalities in her ABP for samples 17-19.

### ***Establishing the ADRV***

- The Athlete's ABP profile constitutes clear evidence that the Athlete has committed an Use ADRV based on the abnormalities in samples 13-15, samples 17-19, and sample 25. More specifically, the Expert Panel explained the abnormalities in samples 17-19 arise from EPO use and that the abnormalities in samples 13-15 and sample 25 are indicative of blood withdrawals.
- As already set out in detail, the explanations put forward by the Athlete at first instance for all of the abnormalities were unsubstantiated and speculative. It bears recalling that, whereas World Athletics bears the burden of establishing the ADRV, the burden is on the Athlete to prove (on a balance of probabilities standard) the facts on which she relies. World Athletics submits that she is unable to satisfy this burden on the evidence that she has adduced, both oral and written.
- Based on the expert evidence tendered and heard, including the Joint Expert Opinions and the expert report of Dr Kang, the Panel can be comfortably satisfied that the Athlete has committed an ADRV pursuant to Rule 2.2 of the ADR.

### *Consequences*

- Pursuant to Rule 10.2.1(a) of the 2020 ADR, the period of ineligibility is four years in circumstances where the ADRV is intentional and constitutes an athlete's first violation of the ADR. World Athletics submits that any form of blood manipulation is necessarily intentional. Therefore, the Athlete has failed to meet her burden to establish that her ADRV was not intentional and must therefore be subject to the mandatory four-year period of ineligibility.
- Pursuant to Rule 10.10 of the 2020 ADR, the period of ineligibility begins on the date that the CAS issues its decision in this matter. However, World Athletics accepts that any period of provisional suspension served by the Athlete from 5 April 2023 until 27 October 2023 (the date of the Appealed Decision) be credited against the period of ineligibility imposed pursuant to Rule 10.10.2(a) of the 2020 ADR, provided it has been effectively served.
- The first evidence of an ADRV in the Athlete's ABP is sample 17, collected on 6 September 2020. Pursuant to Rule 10.8 of the 2020 ADR, any competitive results obtained by the Athlete since that date must be disqualified with all resulting consequences, including the forfeiture of any medals, titles, ranking points and prize and appearance money unless the tribunal determines that fairness requires otherwise. In the present case, fairness does not require otherwise given the seriousness of the violation.

61. On this basis, World Athletics filed the following prayers for relief:

- “(i) The Appeal of World Athletics is admissible.*
- (ii) Norah Jeruto is found to have committed an anti-doping rule violation pursuant to Article 2.2 of the World Athletics Anti-Doping Rules.*
- (iii) Norah Jeruto is sanctioned with a four-year period of ineligibility starting on the date on which the CAS Appeals Division award enters into force. Any period of provisional suspension and/or ineligibility effectively served by Norah Jeruto before the entry into force of the CAS Appeals Division award shall be credited against the total period of ineligibility to be served.*
- (iv) All competitive results obtained by Norah Jeruto from 6 September 2020 until the date on which the CAS Appeals Division award enters into force are disqualified, with all resulting consequences (including forfeiture of medals, points and prizes).*
- (v) Norah Jeruto is ordered to bear the arbitration costs of these proceedings (if any).*

(vi) *Norah Jeruto is ordered to make a substantial contribution to WA's legal and other costs in connection with these proceedings.*"

## **B. The Respondent**

62. The Athlete's Answer, may be summarised as follows:

- World Athletics bears the burden of proving to the "*comfortable satisfaction of this hearing panel*" that the Athlete has committed an ADRV. This standard is stringent and is not easily met by anti-doping authorities, especially in ABP cases. As CAS panels have explained, the gravity of a particular alleged wrongdoing is relevant to the application of the comfortable satisfaction standard in any given case because the more serious the allegation, the more cogent the supporting evidence must be in order for the allegation to be proven.
- Here, World Athletics cannot prove its serious allegation as it relates to samples 17-19 (the only samples upon which World Athletics can rely to establish an ADRV in this appeal) because (i) World Athletics cannot disprove that the Athlete was sick and used Rhinathiol/Promethazine after going to the hospital in August 2020; (ii) the Athlete has established through her submissions and supporting expert testimony that the abnormalities in samples 17-19 were likely caused by contracting COVID-19 in August 2020; and (iii) World Athletics cannot establish that a credible doping scenario exists during that timeframe.

### ***The Athlete was undeniably sick in August 2020 with a respiratory illness and received treatment at IGHC***

- The contemporaneous pieces of evidence submitted overwhelmingly establishes that in August 2020 Ms. Jeruto was sick with a respiratory illness and went to the IGHC to get treatment. Collectively, these objective pieces of evidence corroborate the Athlete's testimony that she was sick in August 2020 with a respiratory illness.
- World Athletics attempts to discredit the Athlete and effectively calls her a liar by relying on a witness statement from IGHC clinical officer Mr Brian Kiplagat Kemboi and his handwritten medical clinic outpatient register and handwritten laboratory test register from August/September 2020. These registers, however, are unreliable on their face. Neither register have been verified as being genuine. More importantly, neither contains a complete record of all patients, who received treatment at IGHC in August 2020: the registers show multiple entries where the hospital staff failed to record the full name of the patient, who received treatment, if any at all.
- Besides omitting names, these registers cannot be regarded as reliable evidence because the outpatient register does not match the laboratory test

register (which only recorded patients who had a blood, stool or urine sample collected). For example, seven patients who were treated on 21 August 2020 do not appear in the outpatient register, proving there is no way the outpatient register shows all patients who were treated in a given day.

- Finally, although Mr Kimboi asserts that no one with the last name “Jeruto” appears in the hospital’s registers, he ignores that the Athlete’s family name is actually “Tanui”, which the Athlete routinely records on her doping control forms and which is consistent with her passport. Had Mr Kemboi looked for the Athlete’s actual surname, he would have found an adult female with the last name Tanui was treated on 18 August 2020 who – just like the Athlete – complained of chest pain, a cough, a cold and breathing difficulties and was diagnosed with “*broncospasm*”. The first name and age do not match the Athlete’s, but the other information is consistent with the symptoms of her illness that led to her taking Rhinathiol/Promethazine.
- Plainly, World Athletics cannot refute the Athlete’s credible evidence showing she was ill and visited IGHC in August 2020.

***Prof. D’Onofrio was wrong to criticize the medicine that the Athlete took in August 2020 and declared on 6 September 2020***

- World Athletics speculates that the Athlete was not “*sick enough*” to cause the irregularities seen in her ABP. World Athletics bases its argument on Prof. D’Onofrio’s belief that Rhinathiol/Promethazine is a “*strange*” medication to prescribe for a respiratory illness like COVID-19 because it is “*not an anti-inflammatory*” and is just a “*cough drug*”.
- Prof. D’Onofrio’s criticisms are completely unfounded because both active ingredients in Rhinathiol/Promethazine (Promethazine and Carbocisteine) are indeed anti-inflammatories. As clearly supported by medical literature submitted into evidence, Rhinathiol/Promethazine was not some strange “*cough medicine*” when the Athlete was prescribed it by the registered clinical officer at IGHC in August 2020. Expert evidence and literature confirm that it was in fact and at the relevant time routinely prescribed to treat respiratory illnesses and COVID-19 in Kenya.
- The Athlete would gain nothing by declaring her use of the medication on her doping control form if she had not been using it. She could not have been aware that she was about to be charged with an ADRV at the time.

***Dr Brandt explains how COVID-19 in August 2020 could have caused the Athlete’s ABP irregularities***

- In his 28 March 2024 report, Dr Brandt concludes that the blood marker irregularities seen in the Athlete’s ABP from samples 17-19 are “*highly compatible*” with those seen in a patient with COVID-19. Based on the signs

and symptoms the Athlete explained she was experiencing between August – November 2020 (including inter alia chest pains, cough fever, loss of energy, loss of smell, loss of taste, cold sores etc) as well as the timing of her illness, Dr Brandt concluded that the Athlete likely contracted COVID-19.

- According to Dr Brandt, the Athlete’s illness in August 2020 caused the irregularities seen in samples 17-19. His conclusion is based on the “*distinct pattern in reticulocyte maturity and number for Samples 17-19*” since such a distinct pattern is consistent with COVID-19 infection and not with doping. The discordance between IRF and RET% seen in the Athlete’s ABP data is consistent with a burst of immature red blood cells brought on by a COVID-19 infection in August 2020, not EPO use.
- Prof. D’Onofrio conceded that COVID-19 infection could explain the Athlete’s samples 17-19 abnormalities if it was severe enough. Prof. D’Onofrio had no basis to opine on the severity of the Athlete’s COVID-19 infection in August 2020, and therefore this argument that the Athlete’s values were not due to illness must be disregarded as mere speculation.

***The Joint Expert Panel’s “doping scenario” makes no sense and was abandoned by Prof. D’Onofrio during his testimony***

- It cannot be ruled out that the abnormalities seen in samples 17-19 are related to the Athlete’s illness rather than doping. This is all the more so given that World Athletics has not proffered any credible “doping scenario”.
- World Athletics cannot rely solely on ABP abnormalities over a 27-day period to meet its burden to prove that the Athlete has committed an ADRV. Rather, in order to prove an ABP case against the Athlete, World Athletics must establish not only that her ABP abnormalities were specifically due to EPO use and not a medical condition, but also that a credible “doping scenario” exists. This follows from CAS jurisprudence.
- Here, World Athletics’ “doping scenario” is not credible for two main reasons: (i) the Athlete’s ABP abnormalities did not occur at a time when she could have benefitted from blood doping (i.e., her levels do not coincide with her racing schedule); and (ii) the doping scenario initially put forth by the Expert Panel in June 2022 was abandoned by Prof. D’Onofrio during the first instance hearing.
- In the Second Joint Expert Opinion, the Expert Panel claimed as its “doping scenario” that the Athlete had used EPO at different doses in September and October 2020 to increase her “exercise capacity” in two competitions that supposedly took place in Kenya on 24 and 28 November 2020.
- Yet, during the first instance hearing, Prof. D’Onofrio (i) admitted that there was actually only one race in November 2020 the Athlete had competed in (on



28 November 2020) not two; (ii) changed his opinion of administration from “different doses” to “low doses”; and (iii) most critically, created a new reason why the Athlete allegedly took EPO (to help with training, not to gain any benefit in a race).

- Consequently, when comparing experts, Dr Brandt’s opinion must be given more weight because his is based on facts and reaches a logical conclusion. In contrast, World Athletics’ experts disregard the facts in the record and rely on speculative arguments to reach their unsubstantiated conclusion (a doping scenario they have backtracked on and changed over the course of these proceedings).

***Dr Saltzman explains how the Athlete’s blood loss in March 2020 and March 2021 is consistent with her longstanding peptic ulcer disease***

- Although World Athletics freely concedes that samples 13-15 and 25 are not evidence of an ADRV, Dr Saltzman’s report completely rebuts any lingering attempt by World Athletics to use them to discredit the Athlete.
- According to Dr Saltzman, upper gastrointestinal bleeding was the cause of the Athlete’s blood loss in March 2020 and March 2021. Dr Saltzman explained that the Athlete described having suffered from dark, foul-smelling diarrhoea, which is consistent with melena along with coffee ground emesis. Perhaps even more importantly, Dr Saltzman testified that he considered the Athlete to be credible and not someone who was trying to exaggerate her medical history or concoct a story to cover up a doping scheme.
- World Athletics criticised the Athlete for not recording on her doping control forms that she had blood loss related to black stool and coffee-ground vomiting in March 2020 and March 2021, calling her actions “*evasive and incorrect*”. World Athletics’ criticism is completely unjustified, however, because it unfairly presumes that the Athlete understood that she was experiencing blood loss that would have been sufficient enough to warrant a declaration on her doping control form.
- As compared to Dr Saltzman, Dr Kang took an unreasonable position in his attempt to prove the Athlete did not have a peptic ulcer. Dr Kang even acknowledged that his evidence was insufficient for World Athletics to meet its burden of “comfortable satisfaction”.
- When comparing experts, Dr Saltzman’s opinion must be given weight over Dr Kang’s because Dr Saltzman’s opinion is based on facts and reaches a much more logical and credible conclusion than the opinion of Dr Kang.

### **Conclusion**

- The Athlete is a clean athlete whose entire legacy and future is at stake. The evidence establishes that she is not a cheater who illegally took EPO and blood doped but rather a victim of the ABP system because World Athletics refuses to concede that she was suffering from two medical conditions (GI bleeding and respiratory illness) between March 2020 and March 2021. The Athlete implores this Panel to understand how poorly World Athletics had handled her case and save her from becoming an innocent victim or collateral damage in the war against doping.

63. On this basis, the Athlete filed the following prayers for relief:

- “A. *Find that WA has not met its burden of proof to establish an anti-doping rule violation and dismiss the charge;*
- B. *Order any other relief for Ms. Norah Jeruto that this CAS Panel deems to be just and equitable including an award of fees and costs in part or in whole.”*

### **VI. JURISDICTION**

64. Article R47 CAS Code provides as follows:

*“An appeal against the decision of a federation, association or sports-related body may be filed with CAS if the statutes or regulations of the said body so provide or if the parties have concluded a specific arbitration agreement and if the Appellant has exhausted the legal remedies available to it prior to the appeal, in accordance with the statutes or regulations of that body.*

*An appeal may be filed with CAS against an award rendered by CAS acting as a first instance tribunal if such appeal has been expressly provided by the rules of the federation or sports-body concerned.”*

65. Rule 13.2 of the ADR provides, *inter alia*, as follows:

***“13.2 Appeals against decisions regarding Anti-Doping Rule Violations, Consequences, Provisional Suspensions, Implementation of Decisions and Authority***

*The following decisions may be appealed exclusively as provided in Rules 13.2 to 13.7:*

[...]

*a decision that no anti-doping rule violation was committed*

[...]

**13.2.1 Appeals involving International-Level Athletes or International Competitions**

*In cases involving International-Level Athletes or arising from Persons participating in an International Competition, the decision may be appealed exclusively to CAS.*

[...]

**13.2.3 Persons entitled to appeal**

*(a) In cases under Rule 13.2.1, the following parties will have the right to appeal to CAS:*

[...]

*(ii) the other party to the case in which the decision was rendered;*

*(iii) the Integrity Unit on behalf of World Athletics.”*

66. The Appealed Decision contains the following notice:

*“This decision may be appealed to the Court of Arbitration for Sport (‘CAS’), located at Palais de Beaulieu Av. des Bergières 10, CH-1004 Lausanne, Switzerland ([procedures@tas-cas.org](mailto:procedures@tas-cas.org)), in accordance with Article 13 ADR.”*

67. That the Athlete is an International-Level Athlete is not disputed. The CAS jurisdiction is furthermore not disputed and confirmed by the signature of the Order of Procedure by both Parties.

68. It follows that CAS has exclusive jurisdiction to adjudicate and decide on World Athletics’ appeal against the Appealed Decision.

**VII. ADMISSIBILITY**

69. Article R49 CAS Code provides as follows:

*“In the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, or in a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against.”*

70. Rule 13.6.1(a) ADR provides as follows:

*“The time to file an appeal to the CAS will be thirty (30) days from the date of receipt of the reasoned decision by the appealing party. [...].”*

71. The Appealed Decision also contains the following notice:

*“In accordance with Art. 13.6.1(a) ADR, the deadline for filing an appeal with CAS is 30 days from the date of receipt of this decision.”*

72. The Appealed Decision was notified to the Parties on 27 October 2023. World Athletics filed its Statement of Appeal on 24 November 2023, i.e., within the time limit of 30 days of expiry of the time limit to appeal.

73. It follows that World Athletics’ appeal is admissible.

### **VIII. APPLICABLE LAW**

74. Article R58 CAS Code provides as follows:

*“The Panel shall decide the dispute according to the applicable regulations and, subsidiarily, to the rules of law chosen by the parties or, in the absence of such a choice, according to the law of the country in which the federation, association or sports-related body which has issued the challenged decision is domiciled or according to the rules of law that the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision.”*

75. Rule 13.7.4 of the ADR provides as follows:

*“In all CAS appeals involving World Athletics, the CAS Panel shall be bound by the World Athletics Constitution, Rules and Regulations (including these Anti-Doping Rules). In the case of conflict between the CAS rules currently in force and the World Athletics Constitution, Rules and Regulations, the Constitution, Rules and Regulations shall take precedence.”*

76. Rule 13.7.5 of the ADR provides as follows:

*“In all CAS appeals involving World Athletics, the governing law shall be Monegasque law and the appeal shall be conducted in English, unless the parties agree otherwise.”*

77. World Athletics relies on Rules 13.7.4 and 13.7.5 of the ADR and submits that the version of the ADR in force at the time of the relevant conduct shall govern the substantive aspects of the ADRVs on this appeal, i.e., the 2020 version of the ADR, and the procedural aspects shall be governed by the 2023 version of the ADR and all applicable International Standards.

78. The Athlete did not make any specific submissions on the applicable law and regulations.

79. It appears that all procedural steps set forth in Article C.1.3 of the ISRM were complied with. No objections were raised in this respect by the Athlete.
80. The Panel finds that Rules 13.7.4 and 13.7.5 of the ADR are applicable to the present proceedings. Substantive issues are governed by the 2020 version of the ADR, whereas procedural aspects are governed by the 2023 version of the ADR. The law applicable to the matter at hand is Monegasque law.

## **IX. MERITS**

### **A. Legal Discussion**

81. Rule 2.2 of the ADR provides:

*“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 their 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.*

*2.2.2 The success or failure of the Use or Attempted Use of a Prohibited Substance or Prohibited Method is not material. It is sufficient that the Prohibited Substance or Prohibited Method was Used or Attempted to be Used for an Anti-Doping Rule Violation to be committed.”*

82. Rule 3.1 of the ADR provides:

*“World Athletics 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 World Athletics 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. Where these Anti-Doping Rules places the burden of proof upon the Athlete or other Person alleged to have committed an Anti-Doping Rule Violation to rebut a presumption or establish specified facts or circumstances, the standard of proof shall be by a balance of probability.”*

83. Rule 10.2 of the ADR provides:

*“The period of Ineligibility for a violation of Rule 2.1, Rule 2.2 or Rule 2.6 will be as follows, subject to potential elimination, reduction or suspension pursuant to Rules 10.5, 10.6 and/or 10.7:*

*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.”*

84. It is against this legislative background that the Panel is required to assess whether the Athlete committed an ADRV for use based on her ABP and if so, to determine the applicable consequences. The legal discussion below addresses these points, and numerous other requisite legal and regulatory considerations, in sequence.

**B. Did the Athlete violate Rule 2.2 of the ADR?**

**a. Burden of proof and evidentiary particularities in ABP cases**

85. By its very nature, the alleged facts in an ABP case cannot be proven by direct means, *i.e.*, there is no concrete evidence of prohibited substances being used. Indeed, for example when blood transfusions are used, no prohibited substance ever enters an athlete’s body, so that no traces of any prohibited substance can be found.
86. It is of course difficult for anti-doping organisations to prove that an athlete used a prohibited method, as a method such as blood transfusion can be used in a private area, which would be impossible to witness unless an athlete would be chaperoned 24/7. Accordingly, in the context of an ABP, the anti-doping organisation is confronted with an “*état de nécessité en matière de preuve*” or “*Beweisnotstand*” since by its very nature the alleged facts, *i.e.*, doping, are not proven by direct means.
87. Faced with an alleged ADRV for use based on the ABP, the Athlete must submit detailed alternative plausible physiological scenarios to explain her blood values and other abnormalities. World Athletics, in addition to relying on the Adaptive Model as an indirect mean of evidence to establish that the ADRV occurred, must convince the Panel that that all potential explanations other than doping have been excluded and that a doping scenario is plausible.
88. The Panel, like a Joint Expert Panel, must therefore assess the Athlete’s passport as a whole and decide on the plausibility of the ADRV weighing all the evidence before it. This includes the ABP, but also the evidence and arguments brought forward by both Parties, including, for Ms Jeruto, whether she is able to establish to the applicable standard of proof the facts upon which she relies to argue that physiological explanations explain her abnormal blood values, and, for World Athletics, whether it is able to establish to the required standard of proof that an ADRV has occurred and that a plausible doping scenario exists.

89. The Panel takes guidance from CAS jurisprudence in ABP cases according to which an anti-doping organisation is required to establish – in addition to the testing results – a “doping scenario”:

*“The Sole Arbitrator is satisfied to accept that the ABP is a reliable and accepted means of evidence to assist in establishing anti-doping rule violations and feels comforted in this conclusion by CAS jurisprudence and legal literature (see CAS 2010/A/2174, para. 9.8; VIRET M., Evidence in Anti-Doping at the Intersection of Science and Law, 2016, p. 735; LEWIS/TAYLOR (Eds.), Sport: Law and Practice, 2014, para. C.126).*

*The Sole Arbitrator is however mindful of the warnings expressed in legal literature that a pitfall to be avoided is the fallacy that if the probability of observing values that assume a normal or pathological condition is low, then the probability of doping is automatically high (VIRET, Evidence in Anti-Doping at the Intersection of Science and Law, 2016, p. 763, with further references to Dr Schumacher and Prof d’Onofrio 2012, p. 981; Sottas 2010, p. 121) and that it has been submitted in this context that ‘if the ADO is not able to produce a ‘doping scenario’ with a minimum degree of credibility (‘density’), the abnormality is simply unexplained, the burden of proof enters into play and the ADO’s case must be dismissed since there is no evidence pleading in favour of the hypothesis of ‘doping’ any more than for another cause’. (VIRET, Evidence in Anti-Doping at the Intersection of Science and Law, 2016, p. 774).*

[...]

*This view has indeed also been adopted in CAS jurisprudence and the Sole Arbitrator finds that another CAS panel summarised it nicely by stating that ‘abnormal values are (for the purposes of the ABP) a necessary but not a sufficient proof of a doping violation’ (CAS 2010/A/2235, para. 86). Although such panel continued by emphasising that it is not necessary to establish a reason for blood manipulation, the panel noted the coincidence of the levels with the athlete’s racing schedule and stated the following:*

*‘As Dr Sottas convincingly explained, in the same way as the weight of DNA evidence said to inculcate a criminal is enhanced if the person whose sample is matched was in the vicinity of the crime, so the inference to be drawn from abnormal blood values is enhanced where the ascertainment of such values occurs at a time when the Athlete in question could benefit from blood manipulation’. (CAS 2010/A/2235, para. 102).*

*The Sole Arbitrator agrees with these considerations and, as such, concludes that from the mere fact that an athlete cannot provide a credible explanation for the deviations in his or her ABP it cannot automatically be deduced that an anti-doping rule violation has been committed. Rather, the deviations in the ABP are to be interpreted by experts called to put into the balance various*

*hypothesis that could explain the abnormality in the profile values, i.e. a distinction is made between a 'quantitative' and a 'qualitative' assessment of the evidence.” (CAS 2016/O/4481, paras. 133-137)*

90. The Panel agrees with this approach and finds that a finding in favour of World Athletics in this case requires that it be comfortably satisfied that the Athlete’s alleged use of a prohibited substance or method is supported and explained by the blood values obtained in her ABP to the exclusion of all other plausible explanations other than doping.

**b. The quantitative assessment of the evidence**

91. The Panel notes that the Athlete’s ABP first generated an APF following the collection of sample 15. However, in its Revised First Joint Expert Opinion, the Expert Panel recommended further testing be conducted.
92. After further testing took place, the Expert Panel issued its Second Joint Expert Opinion based on thirty-two of the Athlete’s blood samples, concluding as follows:

*“We therefore conclude that it is highly likely that a prohibited substance such as EPO has been used in September-October 2020 and that blood withdrawal has taken place in February or March 2020 and in the same period in 2021 and that it is unlikely that the passport is the result of any other cause.”*

93. The Panel notes that the Athlete’s full profiles for HGB, RET% and OFF-score set forth in para. 16 *supra* clearly show that the Athlete’s blood values significantly deviate from the values that what would be expected under normal physiological conditions (i.e., the athlete is healthy and has not been doping). The selected biological markers indicate values significantly above the Athlete’s expected upper limits and below the Athlete’s expected lower limits. The Athlete does not contest this.
94. On this basis, the Panel accepts, as opined by the Expert Panel, that the Athlete’s blood values were abnormal. However, this singular conclusion is insufficient to draw an inference that the Athlete used a prohibited method. The abnormal values may have been caused by doping, but they may also have been caused by reasons entirely unrelated to doping.
95. It is for this reason that the second step in an ABP review is that it be interpreted by an Expert Panel who must proceed with a scientific assessment of any explanations advanced by an Athlete for such abnormal blood values. This is known as the qualitative assessment, to which the Panel now turns.

**c. The qualitative assessment of the evidence**

96. On the one hand, further to its qualitative assessment of the Athlete’s explanation the Third Joint Expert Panel’s opinion provided the following conclusion which was the



basis upon which World Athletics charged the Athlete with an ADRV and also the basis upon which it filed the present appeal.

*“It is thus our scientific and clinical opinion that the information provided by the Athlete and their Expert Specialists does not provide evidence capable of explaining: 1) the hematological picture of erythropoietic stimulation with low HB in samples 13-14, which is instead highly indicative of the previous manipulation, and 2) the aspects of erythropoietic stimulation with high HB in samples 17-19.*”

*Conclusion*

*Based on the explanations provided by the Athlete, we confirm our previous opinion that a prohibited substance or method has likely been used. The information provided to date does not explain the ABP abnormalities, which are on the opposite indicative of blood manipulation.”*

97. The Athlete on the other hand has submitted various physiological explanations for the abnormal findings in her blood values on the dates in question; namely, COVID-19 for samples 17-19 and stomach ulcers for sample 13-14. She maintains, as determined by the World Athletics Disciplinary Tribunal, that her explanations establish that she did not use EPO or any other prohibited method as alleged by World Athletics and that World Athletics does not satisfy its burden of proof to establish otherwise.
98. Given that World Athletics’ case is primarily based on samples 17-19, the Panel will first engage in its qualitative assessment of these sample.

*i. Samples 17-19*

99. As noted *supra*, the Panel accepts that the Athlete’s blood values in samples 17-19 are abnormal. The Panel is therefore tasked with assessing which allegation is more likely; World Athletics’ allegation that the abnormal blood values were caused by the administration of EPO, or the Athlete’s allegation that the abnormal blood values were caused by the physiological effects of contracting COVID-19.

**a. The Athlete’s treatment at IGHC**

100. The Athlete relies on the following evidence to corroborate her allegation that she had a respiratory illness in August 2020 and that this must have caused the abnormal blood values in samples 17-19:
- A photograph of the Rhinathiol/Promethazine box with her phone on 21 August 2020;
  - The Athlete declared Rhinathiol/Promethazine on her 6 September 2020 doping control form;

- The Athlete’s husband corroborated the Athlete’s sickness in August 2020, her trip to IGHC and her use of Rhinathiol/Promethazine medicine;
  - Rhinathiol/Promethazine is a prescription medication used to treat respiratory illnesses, meaning the Athlete needed to see a medical professional prior to obtaining it (which she did);
  - Mr Harrison Kibet, a registered clinical medical officer at Glory Pharmacy, confirmed that Rhinathiol/Promethazine was the primary drug prescribed by Glory Pharmacy for patients who had COVID-19 infection during the pandemic in 2020 and that it was available for purchase with a prescription in Glory Pharmacy in August 2020;
  - The Athlete developed blistering sores on her lips (a sign of COVID-19), which is corroborated by a contemporaneous photo taken in October 2020 and her declaration of Zytee RB on her 5 November 2020 doping control form.
101. As mentioned *supra*, World Athletics made enquiries with IGHC for the purposes of verifying the Athlete’s evidence at first instance regarding her visit to the ICHG. World Athletics relies on the testimony of Mr Brian Kiplagat Kemboi and submits that the lack of record of her in the ICHG registers means that the Athlete lied *inter alia* about attending the IGHC in August 2020, testing negative for COVID-19 and being prescribed Rhinathiol/Promethazine. As a result, she is unable to prove the underlying facts she relies upon to explain the abnormalities in her ABP for samples 17-19.
102. The Panel considers the photograph of a Rhinathiol/Promethazine box the Athlete took with her phone on 21 August 2020 to be compelling evidence. The authenticity of the photograph is not questioned by World Athletics and the Panel finds that it is persuasive contemporaneous evidence that the Athlete purchased Rhinathiol/Promethazine around 21 August 2020, as is the corroborating evidence of Mr. Kibet who runs the pharmacy where the Athlete purchased the Rhinathiol/Promethazine.
103. Of course, the photograph does not per se prove that the Athlete indeed ingested such medication, but the Panel finds that it could not be expected from the Athlete that she provides actual proof of ingestion. Rather, the Panel finds that the picture, particularly if considered in conjunction with the other evidence on file, is compelling evidence that the Athlete was using such medication at the time to treat her illness.
104. The most compelling of such corroborating pieces of evidence is the fact that the Athlete declared to have used Rhinathiol/Promethazine on her 6 September 2020 doping control form. At the time, the Athlete was not aware that there were suspicions against her based on her ABP, so there was no incentive to potentially try and cover up any doping activity. The Panel therefore considers this to be convincing contemporaneous evidence that the Athlete indeed administered Rhinathiol/Promethazine around 6 September 2020.

105. The Panel finds that Athlete's husband's witness statement not to be particularly meaningful, but it is nonetheless one of the elements that corroborated the Athlete's respiratory illness submission.
106. The Panel also accepts that Rhinathiol/Promethazine could be and was used to treat respiratory illnesses such as COVID-19 in Kenya at the time.
107. Although Prof D'Onofrio may have considered other medication more appropriate to treat respiratory illnesses such as COVID-19, the Panel finds that IGHC may not have had the knowledge and/or the means to prescribe such alternative medication. The Panel has no particular reason to question the testimony of Mr Kibet in this respect and the scientific literature tendered into evidence supports this finding.
108. The Panel agrees with the Athlete that the handwritten outpatient register of the IGHC is unreliable, as was Mr. Kemboi's testimony in relation to the same. The register contains many omissions. For instance, at least once the staff forgot to register the name of a patient. Also, on 21 August 2020, only two patients are recorded in the outpatient register, whereas there is information for nine patients in the laboratory test registered. Accordingly, seven patients that were treated on 21 August 2020 do not appear in the outpatient register. The mere fact that the name "*Norah Jeruto*" did not feature in the outpatient register is not considered particularly relevant by the Panel, because, based on the Athlete's passport, "*Norah Jeruto*" are the Athlete's given names. Her surname is "*Tanui*". The Athlete provided evidence that she signs doping control forms with the family name "*Tanui*".
109. Although the name "*Tanui*" features in the outpatient register and refers to a female that was treated on 18 August 2020 who complained of some of the same symptoms as the Athlete, the Panel does not find that this was a decisive record of the Athlete attending IGHC, given that the first name and the age registered differ. Nonetheless, as indicated *supra*, the Panel finds the outpatient register to be generally unreliable, as a consequence of which it cannot accept World Athletics' reliance upon it to contend that the Athlete did not visit IGHC to treat her alleged illness.
110. Finally, the Panel finds that, in view of the reality of the COVID-19 pandemic, the possibility that the Athlete contracted COVID-19 in August 2020 is not remote. COVID-19 was an illness contracted by millions around the world and scientific literature confirms that around August 2020, contaminations were peaking in Kenya. While a positive test would have been desirable to support her allegation, because COVID-19 tests were not routinely administered at the time in Kenya (if at administered at all) and considering all the compelling evidence supporting such a conclusion, the Panel finds the lack of a positive test for COVID-19 not to be an impasse for the Athlete. Given the documentary evidence in the case file, the expert evidence before it, the Athlete's evidence, *i.e.*, including *inter alia* her clear recollection of the symptoms, which prompted her to visit ICHG for treatment, and the reality of the pandemic at the time, for the Panel to accept that the Athlete was suffering from COVID-19 is by no means extraordinary. Rather, the Panel finds that

the Athlete has established to the required standard of proof that she had likely contracted COVID-19 at the time.

111. In support of this conclusion, the Panel also finds that whilst clearly being medically unsophisticated, the Athlete’s oral evidence with regards to her symptoms, her treatment, and the lasting effects of her illness was persuasive and credible. It is true that the Athlete’s witness statement in the present appeal arbitration proceedings before CAS is not entirely consistent with her oral testimony before the World Athletics Disciplinary Tribunal. In particular, while the Athlete testified in the first instance proceedings that she had tested negative for COVID-19, she now explains that she was confused when she said this and that she was never tested for COVID-19. The Panel finds that this part of the Athlete’s testimony does not discredit her overall credibility because Mr Kemboi testified that IGHC did not have the ability to test for COVID-19 or tuberculosis at the relevant time and because as stated above, she was and appears to remain medically unsophisticated.
112. For the above reasons, the Panel finds that the Athlete has proven the underlying facts on which she relies and accepts that during the material time, the Athlete suffered from a respiratory illness that was most likely COVID-19 and for which she sought treatment at the IGHC, where she was prescribed Rhinathiol/Promethazine which she used around the period 21 August 2020 – 6 September 2020.

**b. The expert evidence of Dr Brandt and Prof. D’Onofrio**

113. Two experts testified with respect to the evidence on file and the explanation for the Athlete’s abnormal blood values in samples 17-19:
- Dr Stephen Brandt, Haematologist and Professor at Vanderbilt Medical Centre, expert called by the Athlete.
  - Prof. Guiseppe D’Onofrio, Expert Haematologist and member of the Expert Panel, expert called by World Athletics.
114. Dr Brandt issued a third expert report on 28 March 2024 in which he, *inter alia*, assessed all the evidence given in the first instance proceedings before the World Athletics Disciplinary Tribunal. In this report, he drew the following conclusion:
- “In conclusion, it is my considered opinion as a specialist in Hematology and Internal Medicine that COVID-19 infection, and not administration of rEPO, is responsible for the variance in [the Athlete’s] ABP represented by Samples 17-19. I base my opinion on the signs, symptoms, and transmissibility of [the Athlete’s] illness, the epidemiology of COVID-19 in Kenya during the period at issue, published data on COVID-19’s effects on erythropoiesis, and the discordance between IRF and RET% in Samples 17-19.”*
115. To corroborate such conclusion, Dr Brandt, *inter alia*, considered as follows in his third expert report:

- The Athlete’s signs and symptoms are consistent with a diagnosis of mild-moderate SARS-CoV-2 (COVID-19) pneumonia (lung infection), the most frequent clinical manifestation of infection by the coronavirus. The fact that the Athlete experienced dysgeusia (altered taste) and anosmia (loss of smell) is particularly notable since they are among the most predictive symptoms of COVID-19 infection. The timing of the Athlete’s illness also coincided with one of the earliest peaks of COVID-19 incidence in Kenya.
  - It is incontrovertible that both anemia (abnormally decreased haemoglobin) and polycythemia (abnormally increased haemoglobin) can occur with COVID-19 infection, especially in seriously ill patients.
  - By affecting red cell size, shape, adhesiveness, and oxygen carrying capacity, stress erythropoiesis contributes importantly to early clinical manifestations of COVID-19. Some symptoms persist or recur after the acute effects of COVID-19 infection subside, leading to late, or delayed, manifestations of infection, probably as a result of “silent hypoxia”. This could explain the prolonged impairment in the Athlete’s training and race performance and, indirectly, for the increased OFF-score for sample 20 collected on 5 November 2020.
116. The Joint Expert Panel opined in its Third Joint Expert Opinion, and in opposition to the Athlete’s values, that the most common finding in mild-to-moderate COVID-19 is an absence of any abnormalities in the red cell series, and in severe hospitalized patients the most common finding is the presence of anaemia (*i.e.*, lower HGB). However, based on the evidence on record, the Panel is satisfied that Prof. D’Onofrio conceded during the first instance hearing that a COVID-19 infection could explain the abnormal blood values in samples 17-19, if the COVID-19 was severe enough.
117. The Panel accepts that COVID-19 may impact the red blood cell series if the COVID-19 is sufficiently serious. It may be most common to observe anaemia (*i.e.*, lower HGB), but it remained uncontested by Prof. D’Onofrio that polycythemia (*i.e.*, higher HGB) is sometimes also observed as a result of stress erythropoiesis as a result of the viral infection.
118. On this basis, the Panel finds that the Athlete established that COVID-19 may cause polycythemia, which may explain her abnormally high HGB values in samples 17-19. The only caveat is that polycythemia (*i.e.*, higher HGB) is allegedly only observed in severe cases of COVID-19.
119. The Panel finds it difficult to opine on the severity of the Athlete’s COVID-19 infection. However, the experts appear to agree that this is the basis upon which the feasibility of the Athlete’s COVID-19 hypothesis ultimately rests. Indeed, according to World Athletics, the Elahi study relied upon by Dr Brandt (Elahi S. Hematopoietic responses to SARS-CoV-2 infection, *Cell Mol Life Sci.* 2022;79(3)) sets out how increased severity of infection leads to increased red blood cell production, showing how the allegation is linked to the severity of the illness.

120. In the absence of reliable medical records and keeping in mind her lack of medical sophistication, the fact that she resides in rural Kenya and her focal occupation as an elite professional runner, the Panel finds clear indications that the Athlete contracted an important COVID-19 infection, made the effort of going to a hospital, sought out, was prescribed and took medication to treat what Dr Brandt clearly referred to as medium-to-serious-COVID-consistent-reported-symptoms, and that she took a significant amount of time off training and competing. All of these elements are consistent with and support the Athlete’s allegations that she contracted an important bout of COVID-19. Should the Athlete only have contracted a minor infection, she likely would only have treated herself with lemon water, as, she explains, her parents, from whom she had likely contracted the COVID had done and would not have gone to the hospital. She certainly would not have taken time off her training or competition schedule.
121. The Panel finds that another convincing element of Dr Brandt’s expert testimony is the following analysis from his third expert report:

**“The blood markers in Samples 17-19 are indicative of infection, not doping”**

*In addition to the measurements that go into the calculation of the ABP, I noted a distinct pattern in reticulocyte maturity and number for Samples 17-19 also consistent with COVID-19 infection (but not doping).*

#	Sample code	Collection date	HGB	RET%	OFF-score	HCT	RET#	IRF
15	682214	21.05.2020	15.2	1.06	90.2	42.7	0.0506	8.5
16	471564	05.07.2020	15	1.35	80.3	43.6	0.0666	6.6
17	471570	06.09.2020	16.1	1.79	80.7	45.4	0.0925	17.1
18	699341	28.09.2020	17.1	1.77	91.2	48.5	0.0959	10.1
19	470018	02.10.2020	16.1	1.49	87.8	46.5	0.0767	15.5
20	682160	05.11.2020	17.2	1.31	103.3	49.4	0.0715	8.4
21	469998	20.12.2020	15	1.58	74.6	42.5	0.0762	6.5
22	708549	30.12.2020	16.9	1.7	90.77	49	0.095	3.9

*Specifically, the immature reticulocyte fraction (IRF) was markedly increased (17.1%, 10.1%, and 15.5%, respectively) relative to the IRF (6.6%) in the July 5, 2020 sample, Sample 16. While reticulocyte percentage (RET%) also increased from Sample 16 (1.35%) to Sample 17 (1.79%), it changed by a much lower amount than IRF and then progressively decreased in Samples 17-19 (1.79%, 1.77%, and 1.61%, respectively). In contrast, IRF varied with no specific pattern across these samples, and then declined in Samples 20 to 22 (8.4%, 6.5%, 3.9%, respectively). In contrast, RET% progressively increased (1.31%, 1.58%, and 1.7%, respectively) over Samples 20-22. While IRF is ordinarily proportional to RET% [10], the two varied in discordant fashion in Ms. Jeruto during the periods encompassing Samples 17-19 (September-October 2020) and Samples 20-22 (November-December 2020).*

*This discordance between IRF and RET% is compatible with COVID-19 infection and is against doping. First, increased IRF with a subnormal or normal reticulocyte count is associated with acute infection and human immunodeficiency virus infection, among other etiologies [10]. [...]*

122. The Panel considers this to be a credible and persuasive analysis. Dr Brandt's contention that IRF is ordinarily proportional to RET% is rooted in scientific literature and remained undisputed by Prof. D'Onofrio. The Panel accepts that the Athlete's IRF blood values in samples 17-19 were significantly higher in relative terms than the Athlete's RET% values in the same samples. This difference could not be explained by Prof. D'Onofrio. Furthermore, also the contention of Dr Brandt that increased IRF with a subnormal or normal reticulocyte count is associated with acute infection and human immunodeficiency virus infection, among other etiologies, is confirmed in scientific literature and remained uncontested by Prof. D'Onofrio.
123. Dr Brandt's hypothesis is further corroborated by the markedly low white blood cell count (WBC) in sample 17. Based on the evidence on record, the WBC of 3.04 in sample 17 was the lowest such value of all thirty-two samples collected from the Athlete.
124. On this basis, the Panel finds that Dr Brandt's third expert report provides a compelling and scientifically probable explanation for the abnormal blood values recorded in samples 17-19 of Ms Jeruto's ABP.
125. Consequently, the Panel accepts that the Athlete's allegation that COVID-19 caused the abnormal blood values in samples 17-19 is realistic.

### **c. World Athletics' doping scenario**

126. World Athletics has only made scarce submissions to corroborate the existence of a plausible doping scenario. While the Expert Panel's opinion initially was that the Athlete would have used EPO for the purposes of a competition (which as noted below proved to be a relatively meaningless local race in which the Athlete performed poorly by her standard), an alternative suggestion was then raised that the Athlete may have experimented with micro-dosing around August 2020 or that she did so for training purposes. The Panel does not consider this to be particularly compelling given that such explanation can always be invoked with any abnormal blood values. It is not a doping scenario specific to the Athlete's case.
127. Samples 17-19 do not coincide with any competitions in which the Athlete took part and where she may have benefited from higher HGB values. The Athlete merely competed in a local race in Kenya on 18 November 2020 and did not perform well, to her standards. There is no sign in her ABP of any blood doping prior or after this relatively meaningless race, notably prior to or after her winning the World Championships in 2022.

128. The Panel also considers Dr Brandt’s expert opinion relevant in discrediting World Athletics’ doping scenario. According to Dr Brandt, not only can the Athlete’s blood values be associated with active infection and human immunodeficiency virus infection, among other etiologies (as addressed above), but the Athlete’s blood values provide evidence against doping. According to Dr Brandt:

*“[T]hese blood markers provide evidence against doping. In a placebo-controlled study of immature and total reticulocytes following administration of rEPO according to a schedule that simulated microdosing [11], mean IRF and RET% increased with administration and decreased after discontinuation of rEPO (compare second line of graphs in Figure 2 from paper to second line of graphs in Figure 1 in this reference). Likewise, peak increases in IRF and RET% were nearly identical (58% and 51%, respectively) and occurred at the same time, during week 2 of rEPO administration. This is quite different from what happened with IRF and RET% in Ms. Jeruto’s samples.”*

129. The Panel finds that Dr Brandt’s oral evidence, which was based on scientific literature, persuasive. Focusing on the Athlete’s White Blood Cell count (WBC), Red Blood Cells, lymphocytes and the Immature reticulocyte fraction (IRF), his opinion was that Covid 19 in August 2020 could have caused the Respondent’s ABP irregularities. The values detected in samples 17-19 support the Athlete’s physiological explanation that the contracted COVID -19 and that the abnormal ABP readings could have been the result of stress erythropoiesis as a result of the viral infection. This expert opinion is corroborated by the low value of WBC in sample 17 of 6 September 2020. To this Panel, the fact that only the Athlete’s IRF increased in these three samples, that the RET# & RET% decreased from Sample 17 to 19, and that they all resumed normality along with the Athlete’s progressive return to normal health are also not indicative of EPO use.
130. The evidence heard does not sufficiently explain why the administration of EPO in “low doses” would not also have caused an increase in overall RET% and RET#, the hallmark indicators of exogenous EPO administration. Crucially, there was no such analogous increase in the Athlete’s blood values and all experts agreed that viral infections (like COVID-19) could result in elevated IRF, reduced WBC and reduced lymphocytes – all of which are manifested in the Athletes’ biological passport for the samples in question.
131. Keeping in mind that RET# and RET% are the hallmark indicators of exogenous EPO administration, the evidence heard also does not sufficiently explain why the administration of EPO in “low doses” (i.e. micro-dosing), would not also have caused an increase in overall RET# and RET% as it did for the IRF.
132. Consequently, although a doping scenario cannot be wholly discarded, the Panel finds that World Athletics’ allegation that the Athlete’s abnormal blood values were caused by her EPO administration are not particularly convincing in the face of the expert



evidence adduced and heard. The allegations are certainly not sufficiently compelling for World Athletics to satisfy its evidentiary burden in this regard.

**d. Conclusion**

133. In weighing the evidence on file and balancing which scenario is more likely to have occurred and noting that World Athletics bears the burden of establishing that the Athlete used a prohibited substance or a prohibited method to the Panel's comfortable satisfaction, the Panel finds that the Athlete's allegation that her abnormal blood values in samples 17-19 were caused by COVID-19 is more likely to have occurred than a doping scenario based on the administration of EPO.

*ii. Samples 13-15 and sample 25*

134. World Athletics submits the values of samples 13-15 and sample 25 may be indicative of blood loss or blood withdrawals, neither of which are an ADRV. Additionally, the Expert Panel opined in its Revised First Joint Expert Opinion that additional testing was required in light of the values in samples 13-15. The Panel infers that it is no different for sample 25.
135. World Athletics concedes in its Appeal Brief that "*no Use ADRV could be established solely in relation to those samples*" and no longer argues (as it did in the first instance proceedings before the World Athletics Disciplinary Tribunal) that these samples constituted an Attempted Use ADRV. Accordingly, the Panel finds that samples 13-15 and sample 25 are not in themselves sufficient evidence of blood doping and do not support World Athletics' allegations with regards to samples 17-19.
136. As advanced by World Athletics, the Panel finds that evidence of blood withdrawals could hypothetically support allegations of a Use ADRV based on a blood transfusion. Indeed, should the Athlete have engaged in blood transfusions, this blood would normally have to have been withdrawn at an earlier stage, unless the blood would be provided by a donor. However, as noted in the Second Joint Expert Opinion, the Expert Panel considered it highly likely that "*a prohibited substance like EPO has been used*". The administration of EPO does not require prior blood withdrawals. Accordingly, the Panel does not see any causal connection between the alleged blood withdrawals that may be the cause of the values in samples 13-15 and sample 25 on the one hand, and the high HGB levels in samples 17-19 on the other hand. The evidence based on samples 13-15 and sample 25 therefore does not in any way bolster the evidence adduced in relation to samples 17-19, and as stated above blood loss or blood withdrawal are not considered ADRVs.
137. The Panel notes that the Expert Panel later changed its conclusion and no longer specifically referred to EPO as the highly likely cause of the abnormal blood values (Second Joint Expert Opinion), but more generally contended that "*a prohibited substance or method has likely been used*" (Third Joint Expert Opinion), which may be considered to include blood transfusions even though World Athletics did not

specifically make this argument. The Panel finds this undermines the weight of the Expert Panel's observations in this regard.

138. The Panel notes in any event that there are no concrete indications on record suggesting that the Athlete may have engaged in blood transfusions prior to samples 17-19. The Panel generally understands that while a period of microdosing with EPO may show an extended period of high HGB values, a blood transfusion would only show a short peak of high HGB. This appears inconsistent with the prolonged period of high HGB between 6 September 2020 (sample 17) and 2 October 2020 (sample 19), unless multiple blood transfusions would have taken place, which is unlikely.
139. Given that the Panel does not consider samples 17-19 indicative of a doping scenario and because an ADRV cannot be established on the basis of samples 13-15 and 25 alone, the Panel finds that World Athletics' allegations in relation to these samples fails.
140. Although the Panel does not consider it *per se* necessary to enter into any more detail, for completeness, the Panel nonetheless wishes to make a few remarks with respect to the evidence related to samples 13-15 and sample 25.

**a. The Athlete's gastrointestinal bleeding scenario**

141. The experts Dr Kang, Prof. D'Onofrio and Dr Saltzman were heard in an expert conferencing session on the ABP and gastroenterology. In their written submissions and oral evidence during the hearing, both Parties and their renowned and reputable experts offered the Panel a clear and detailed view on the case.
142. Ultimately, both Parties' experts conceded that stomach ulcers could cause acute blood loss by means of gastrointestinal bleeding. This bleeding could have caused the values in the Athlete's samples 13-15 and sample 25. The Panel accepts this evidence and Dr Saltzman's expert opinion that the Athlete's detailed, compelling and credible accounting of her emesis and possible melena allows for a finding that she was suffering from gastrointestinal tract issues at the time these samples were collected and that this, and the blood loss resulting from the same, could explain to the required standard of proof the abnormal findings found in samples 13-15 and sample 25. Accordingly, the Panel rejects the allegation that the Athlete withdrew blood at the time with the view of reinfusing herself at a later date.
143. It is true that the Athlete failed to disclose the details of any blood loss in the three months prior to samples 13-15 and sample 25 on the relevant doping control forms, although this is information that should be disclosed. However, the Panel finds that the Athlete's explanation that she was not aware that her tar-like stool and coffee grind-like vomit amounted to blood loss is not an entirely extraordinary explanation for an uneducated and medically unsophisticated person. This assessment is corroborated by Dr Saltzman's compelling evidence.

144. The Panel finds it to be a particularly relevant fact that the Athlete was diagnosed with peptic ulcer disease in 2017. This is contemporaneous evidence that the Athlete was suffering from peptic ulcers. The severity and extent of the Athlete's disease is more difficult to establish, but the mere fact that the Athlete suffered from such disease in the past bolsters the credibility of her allegations.
145. The Panel also considers it relevant that the Athlete provided uncontested evidence that she underwent an endoscopy in 2022. The Parties' experts debated the quality, reliability and results of this endoscopy and whether or not its finding that it did not appear to confirm the presence of injury outcomes that could have caused the haemorrhagic symptoms described by the Athlete was reliable. While this debate was left unsettled, the Panel does find the mere fact that the Athlete underwent an endoscopy to be consistent with her allegation and history of stomach issues, because it shows that the Athlete was apparently still suffering from discomfort to such extent that an endoscopy was needed and effectively performed.
146. Consequently, the Panel accepts the Athlete's allegation that the abnormal blood values in her samples 13-15 and sample 25 could have been caused by blood loss due to peptic ulcers.

**b. World Athletics' doping scenario**

147. The Panel finds that the same arguments with respect to World Athletics' doping scenario set forth above in the context of samples 17-19 also apply to samples 13-15 and 25.
148. In addition, as also addressed *supra*, the Panel finds that there is no causal connection between any alleged blood withdrawals and the alleged administration of EPO by the Athlete.
149. In view of the above, and although it cannot be entirely discarded, the Panel finds that World Athletics has failed to put forward a credible doping scenario in which the Athlete might have engaged in blood withdrawals.

**c. Conclusion**

150. In weighing the evidence on file, the Panel finds that the Athlete's allegation that the abnormal blood values in her samples 13-15 and 25 were caused by blood loss due to peptic ulcers is more likely than a doping scenario based on withdrawal (and presumed reinfusion) of blood.

**C. Overall conclusion and applicable consequences**

151. The Panel finds this to be a unique case. The elements that are favourable to the Athlete are her credibility, supported by tangible and persuasive contemporaneous evidence underpinning her factual account of events, her clear lack of medical sophistication and apparent medical conditions in Kenya at a peak time for the COVID-19 virus when

limited testing was available, and the Panel’s finding that World Athletics did not put forward a credible and specific doping scenario that could, to the Panel’s comfortable satisfaction, either exclude the physiological explanations brought forward by the Athlete or identify doping as the reason for the Athlete’s abnormal blood values.

152. For the above reasons, the Panel finds that World Athletics has not established that the Athlete has violated Rule 2.2 of the ADR.
153. Given that the Ms. Jeruto is not liable for a violation of Rule 2.2 of the ADR, the first Appealed Decision is upheld, and no consequences are to be imposed upon her, *i.e.*, no period of ineligibility and no disqualification of results.

**D. Conclusion**

154. Based on the foregoing, the Panel holds that:
  - a. The appeal filed by World Athletics against the Appealed Decision is dismissed.
  - b. The Appealed Decision is upheld.
155. All other and further motions or prayers for relief are dismissed.

**X. COSTS**

(...).

\* \* \* \* \*

## **ON THESE GROUNDS**

### **The Court of Arbitration for Sport rules that:**

1. The appeal filed on 24 November 2023 by World Athletics against the decision issued on 27 October 2023 by the World Athletics Disciplinary Tribunal is dismissed.
2. The decision issued on 27 October 2023 by the World Athletics Disciplinary Tribunal is upheld.
3. (...).
4. (...).
5. All other and further motions or prayers for relief are dismissed.

Seat of arbitration: Lausanne, Switzerland

Date of notification of operative part: 25 June 2024

Date: 25 March 2025

## **THE COURT OF ARBITRATION FOR SPORT**

André Brantjes  
President of the Panel

Romano F. Subiotto  
Arbitrator

Janie Soublière  
Arbitrator