



**TAS / CAS**

TRIBUNAL ARBITRAL DU SPORT  
COURT OF ARBITRATION FOR SPORT  
TRIBUNAL ARBITRAL DEL DEPORTE

**CAS 2021/A/8343 World Anti-Doping Association v. Ethiopian National Anti-Doping Office & Mohammed Aman**

**ARBITRAL AWARD**

**delivered by the**

**COURT OF ARBITRATION FOR SPORT**

**sitting in the following composition:**

Sole Arbitrator: Carine Dupeyron, Attorney-at-Law in Paris, France

**in the arbitration between**

**World Anti-Doping Association, Montreal, Canada**

Represented by Mr Adam Taylor, Kellerhals Carrard, Lausanne, Switzerland.

**Appellant**

**and**

**Ethiopian National Anti-Doping Office, Ethiopia**

**Respondent 1**

**Mr. Mohammed Aman, Addis Ababa, Ethiopia**

**Respondent 2**

## **I. THE PARTIES**

1. The World Anti-Doping Association (the “**WADA**” or the “**Appellant**”) is an international independent agency which key activities are to conduct scientific research, to develop anti-doping capacities, and to monitor the application of the World Anti-Doping Code. WADA is based in Montreal, Canada.
2. The Ethiopian National Anti-Doping Office (the “**ETH-NADO**” or the “**First Respondent**”) is a national entity established by the Federal Democratic Republic of Ethiopia which aims at promoting an effective way of fighting against doping in all sports. This body protects the rights of Ethiopian athletes to compete in a doping free sporting environment. ETH-NADO is located in Addis Ababa, Ethiopia.
3. Mr. Mohammed Aman (the “**Second Respondent**”) is a world-class Ethiopian athlete who competes in the middle-distance running disciplines. He is a former World Championship gold medalist in several disciplines.
4. The First and Second Respondents are referred to collectively as the “**Respondents**”. The Appellant and the Respondents are referred to individually as a “**Party**” and collectively as the “**Parties**”.

## **II. FACTUAL BACKGROUND**

5. Below is a summary of the relevant facts and allegations based on the Appellant’s and the First Respondent’s written submissions and evidence adduced during the procedure. Additional facts and allegations found in the Appellant’s and/or the First Respondent’s written submissions and evidence may be set out, where relevant, in connection with the legal discussion that follows. While the Sole Arbitrator has considered all the facts, allegations, legal arguments and evidence submitted in the present proceedings, she refers in the present Award only to the submissions and evidence she considers necessary to explain her reasoning.
6. Mr. Aman is an athlete practicing the sport of Athletics.
7. On 30 January 2021, ETH-NADO Doping Control Officers (hereafter “**DCO**” or collectively “**DCOs**”) notified the Second Respondent for an out-of-competition urine testing at the Addis Ababa Stadium where he was training. Mr. Aman agreed with the notification but asked one of the DCOs if he could get his passport that he had left in his car.
8. The DCO agreed to Mr. Aman’s request and accompanied him to his car. Once Mr. Aman got in, he drove off at speed and left the stadium. At that time, Mr. Aman did not provide any explanation for his action to the DCOs.
9. On 1 February 2021, DCOs went to Mr. Aman’s house to try to collect urine sample for the second time. They found both Mr. Aman’s servant who said that the Second Respondent had gone training and his mother, Ms. Aderu Buseri who added that his

- phone was not working and that she did not know where her son was. The sample collection personnel therefore wrote an Unsuccessful Attempt Report on the same day.
10. On 15 February 2021, ETH-NADO sent a Notice of Charge to the Second Respondent charging him with an Anti-Doping Rule Violation (hereafter the “**ADRV**”) of Article 2.3 of the 2021 Amended ETH-NADO’s Anti-Doping Rules (hereafter the “**ETH-NADO Rules**”) for evading, refusing or failing to submit to sample collection without a compelling justification. As a consequence, Mr. Aman was provisionally suspended from participating in all competitions, events or other activities that are organized by the ETH-NADO and any other World Anti-Doping Code Signatories until the resolution of the matter.
  11. On 17 February 2021, Mr. Aman provided a written response seeking to explain his conduct on 30 January 2021. He explained that he had agreed to submit to sample collecting when notified by a DCO but asked permission to take his ID that was still in his car. In the meantime, Mr. Aman stated that his phone rang and that, when he answered, he was told that one of his wife’s uncle, Mr. Jemal Mustafa Emam, got involved in a car accident. He then said that since his wife was pregnant, he did not want to share the news with her over the phone. He therefore “*forgot all and instinctively went home, brought [his] relatives and threw to the place that means Bale Robe*”. He qualified his action as “*his first major mistake*”. Mr. Aman then qualified his failure to notify the sample collection personnel as “*his second major mistake*”. Nevertheless, he justified it by the emotional distress he had at the time. In addition, Mr. Aman noted that he negligently remained out of the international database for the past two years because of his muscle ache which was his “*third mistake*”. Lastly, he emphasized the importance of his “*serious psychological depravity, depression, loneliness and despair that have plagued [him] for so long from international competition*” and of how much “*the sudden death of a family member [...] additionally distorted [his] whole personality and led [him] to this special event*”.
  12. On 5 March 2021, a hearing took place before the Independent Hearing Panel appointed by ETH-NADO (hereafter the “**First Instance Panel**”) to determine whether Mr. Aman committed an ADRV and what should be the appropriate sanction.
  13. On 13 March 2021, the First Instance Panel found that the violation of Article 2.3 of the ETH-NADO Rules has been established and imposed a period of ineligibility of four years upon Mr. Aman (hereafter the “**Decision**”).
  14. On 15 April 2021, Mr. Aman filed an appeal before the ETH-NADO Anti-Doping Appeal Panel (hereafter the “**Appeal Panel**”) against the Decision. He submitted evidence such as certificates from the Goba Hospital and the Farmer’s Association to support his allegations regarding the accident of Mr. Emam.
  15. On 9 June 2021, the Appeal Panel overturned the Decision, holding that the ETH-NADO did not prove to its comfortable satisfaction that Mr. Aman had no compelling justification. It therefore acquitted Mr. Aman of the Article 2.3 of the ETH-NADO Rules charge (hereafter the “**Appealed Decision**”).

16. On 6 August 2021, the Appealed Decision was sent to World Athletics which requested the case file on 12 August 2021 and received it on 17 August 2021.

### III. THE APPEALED DECISION

17. The Appeal Panel found that it was necessary to prove the following issues to rule on the present case:

*“1. Has the appellant violated the anti-doping rule or not?  
2. If it said the appellant violated anti-doping rule, is the punishment rendered by first hearing panel fair or not?”*

18. As to the first question, the Appeal Panel considered that:

*“Starting from the testimony given above by witness primarily it is necessary to answer the question of "could the [ETH-NADO] prove as [Mr. Aman] committed anti-doping rule violation to hearing panel by balancing/convincing way (to its comfortable satisfaction greater than a mere balance of probability)?"*

*Pursuant to article 2.3 of amended Ethiopian anti-doping rule in 2021, evading, refusing or failing to submit a sample collection without compelling justification when requesting by duly authorized organ is violation of antidoping law. However, it is clear from the content of the provision that if the act was committed for a compelling reason, it would not result in a violation of the law.”*

19. On the question of the existence of a compelling justification, the Appeal Panel held that:

*“As stated above 1st and 2nd witness testified (While [Mr. Aman] was on training at the Addis Ababa Stadium, the experts asked for [Mr. Aman] a sample and he agreed and went to the car to get a passport, then as he did not return) It is a matter that is not denied by [Mr. Aman]. This means they did not prove whether [Mr. Aman] face compelling justification or not, after he went to the car to get a passport. 5th to 7th witnesses also did not prove whether [Mr. Aman] face compelling justification or not. When we come to the testimony of the 3<sup>rd</sup> witness, -she gave the same testimony as the testimony of the 1<sup>st</sup> and 2<sup>nd</sup> witnesses, however, she went with [Mr. Aman] when [Mr. Aman] said I will bring my passport from a car and they allowed for him, and she testified as he went by starting his car. Further, she testified that she did not see or hear him talking on the phone as he went to the car. However, she also gives her additional testimony that she was not sure as the appellant was visible for her. As she was not sure as he was properly seen from where she was after he went to the car, it means she may not see or hear him when he talks by phone. Therefore the 3<sup>rd</sup> witness did not confirm as [Mr. Aman] went by facing compelling justification or not. It cannot be said that a person cannot go by shocking when he received a phone call as his relative die. The case that has to be proved by evidence also as this situation happen or not happen and as [Mr.*

*Aman] went by starting his car.* However, it was not proved pursuant to standard stipulated by law. On the other day on 01/01/2021, the sample collection personnel (SCP) went to [Mr. Aman] house and did not find him and after that, he did not submit a sample by coming forward. From the scratch [Mr. Aman] said I went to Bale zone and I stayed in morning. In this regard the witnesses presented by respondent did not confirm as this did not happen and [Mr. Aman] was in a position to submit a sample. Generally, for the above reasons. It cannot be said the lower plaintiff current respondent proved for disciplinary tribunal organ in balanced/ convincing way (to its comfortable satisfaction greater than a mere balance of probability) as lower defendant current appellant without having compelling justification deliberately evade, refuse or fails to submit a sample.”

20. As to the second question, the Appeal Panel decided that

“While the first hearing panel has to be acquit [Mr. Aman], the decree be rendered as [Mr. Aman] to defend by saying that the respondent prove with balanced / convincing way (comfortable satisfaction greater than a mere balance of probability) as [Mr. Aman] commit anti-doping law violation, without proving with the standard required by rule as [Mr. Aman] commit the act and as there was a high doubt situation, it did not considered the standard of evidence assessment stipulated under Article 3.1 of the Ethiopian Anti-Doping rule. In this regard, the appeal panel confirm, while [Mr. Aman] acquitted from the suit presented on him, the punishment rendered by disciplinary tribunal organ by saying be violated law stipulated under Ethiopian anti-doping law article 2.3, does not follow the Anti-Doping rule and it has fundamental error of Anti-Doping rule and facts.”

#### IV. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

21. On 22 September 2021, pursuant to Articles R47 and R48 of the CAS Code of Sports-related Arbitration (“CAS Code”), WADA filed a Statement of Appeal before the CAS against both the ETH-NADO and Mr. Aman with respect to the Appealed Decision.
22. On 7 October 2021, WADA requested a 30 day-extension to file its Appeal Brief.
23. The Respondents did not file any objection and further to the CAS Court Office’s authorisation, the Appellant submitted its Appeal Brief on 8 November 2021. Together with the Appeal Brief, the Appellant made several requests for the production of documents, which it asked to be examined “*should the Athlete maintain that his explanations and/or the documents he supplied are genuine.*”.
24. On 9 November 2021, the CAS Court Office granted to the Respondents a 20 day-deadline from the receipt of WADA’s Appeal Brief to file their Answers.
25. On 30 November 2021, pursuant to Article R55 of the CAS Code, the First Respondent filed its Answer to the Appeal Brief (hereafter the “**First Respondent’s Statement of Defense**”).

26. On 1<sup>st</sup> December 2021, the CAS Court Office advised the Parties that the First Respondent's Statement of Defense will be notified to the other Parties upon receipt of the Second Respondent's Answer. However, the CAS Court Office stressed that the Second Respondent's deadline to file its Answer had not started yet, due to the fact that to date he had not received the CAS Court Office letter dated 9 November 2021.
27. On 16 December 2021, the CAS Court Office mentioned in a letter sent to the Parties that it had not received the Second Respondent's Answer, or any communication from him in this regard. The CAS also pointed out that pursuant to Article R55 of the CAS Code, if a Respondent fails to submit his Answer by the stated time limit, the Sole Arbitrator may still proceed with the arbitration and deliver the Award. The Parties were also invited to inform the CAS Court Office by 23 December 2021 whether they would prefer a hearing.
28. On 20 December 2021, the Appellant sent a letter to the CAS Court Office arguing that, in its view, no hearing was required in this case. The Appellant noted that, should a hearing be held, it would call relevant witnesses.
29. On 4 January 2022, the Parties were informed that, pursuant to Article R50 of the CAS Code, the Deputy President of the CAS Appeals Arbitration Division decided to submit the case to a sole arbitrator.
30. On 24 January 2022, the CAS Court Office informed the Parties that Ms. Carine Dupeyron was appointed as sole arbitrator by the Deputy President of the CAS Appeals Arbitration Division in accordance with Article R54 of the CAS Code (hereafter the "**Sole Arbitrator**"). No objection to her appointment was filed by the Parties.
31. On 7 March 2022, the Sole Arbitrator invited the Second Respondent to either object or produce the documents asked by WADA in its Appeal Brief on or before 17 March 2022, prior to deciding on the need to hold a hearing.
32. On 24 March 2022, the CAS Court Office noted that the Second Respondent neither objected nor produced the requested documents.
33. On 30 March 2022, noting the absence of the Second Respondent's intervention in the proceedings, the CAS Court Office informed the Parties that the Sole Arbitrator had decided that no hearing was needed as she deemed herself sufficiently well-informed to decide on the case.
34. On 11 April 2022, the Order of Procedure summarizing the proceeding was signed by WADA.
35. It must be underlined here that the Second Respondent was systematically notified of all the procedural steps of the present proceeding by email, at the following address: [soreti2001@yahoo.com](mailto:soreti2001@yahoo.com), and by letter at the following address:

R-New House 2013,  
Unique name "Athletes Village"

Woreda 9,  
Around Summit Soft Drink Factory,  
Near Medhanealem Church,  
Addis Ababa, Ethiopia

36. This postal address is the one to which the DCOs presented themselves for the urine test on 1 February 2021 and to which all the letters relating to the first and second instances were sent.
37. However, despite these repeated notifications, the Second Respondent never, at any time, participated in the proceedings.

## V. SUMMARY OF THE PARTIES' POSITIONS

### A. The Appellant's Position

38. WADA hereby challenges the Appealed Decision whereby the Appeal Panel overturned the Decision, considering that ETH-NADO did not prove to its comfortable satisfaction that Mr. Aman had no compelling justification when he evaded from sample collection.

#### *1. The Athlete committed an ADRV*

39. For the Appellant, the commission of the ADRV under Article 2.3 of the ETH-NADO Rules is clear, and it submits that the Athlete has indeed refused to submit to sample collection, alternatively failed to submit to sample collection or evade sample collection.
40. The Appellant then turns to the different defenses put forward by the Athlete in the previous proceedings and denies them.

#### *2. The Second Respondent's explanation for leaving the sample collection is based on fraud*

41. In its Appeal Brief, the Appellant contends that Mr. Aman's excuse about his wife's uncle death is false.
42. The Appellant first refers and criticizes two documents communicated by the Athlete before the Appeal Panel, a one-page handwritten document in English allegedly relating to the arrival of Mr. Emam at the Goba R1 Hospital in Bale Robe (the "**Goba Hospital certificate**"), and a one-page handwritten document in Ahmaric from the Farmers Association announcing the death of Mr. Emam (the "**Farmers' Association document**"). For WADA, these documents are certainly fabricated since:

- As to the Goba Hospital certificate, this is a handwritten document on a blank paper drafted in English, which only refers to an intravenous ("IV") drip treatment; this dramatically differs from the way Mr. Aman has been portraying Mr. Emam's condition, i.e. with no pulse and requiring immediate CPR or other emergency life-

saving treatment; the Appellant adds that no death certificate was attached to this document; all of these factors thus point out to the lack of authenticity of this paper;

- As to the Farmers' Association document, WADA asserts that there is no explanation as to why and how the funeral would or could have taken place on the same day as the individual died; the Appellant also questions the fact that the death and funeral would have been announced *via* the medium of a handwritten note on a piece of lined paper rather than over the phone.
43. This is confirmed by the investigation launched by WADA in parallel with the CAS proceedings with the assistance of Mr. Yidersal, Director General of the First Respondent, and WADA's Intelligence and Investigations department. Specifically, the evidence collected during this investigation established that (i) there was no record at the Goba Referral Hospital of the admission of any Mr. Emam on 30 January 2021, (ii) no person named Mr. Emam died or was buried on 30 January 2021 according to the Agarfa Woreda Anbentu Farmers Association Kebele, and (iii) the Bereka First Level Clinic had no record of Mr. Emam.
44. Furthermore, the Appellant contends that Mr. Aman's story is full of inconsistencies and self-contradictions.
45. Regarding the inconsistency in the timing of the Athlete's story, WADA highlights that the journey from Addis Ababa to Bale Robe (where the funeral allegedly took place) is approximately a 7-to-9-hour drive. Therefore, it would not have been possible for the Second Respondent to pick up his family and attend the funeral on the same day.
46. Regarding the Athlete's contradictions, WADA stresses that:
- the Second Respondent's explanation on how his wife knew that her uncle died kept changing between the first instance and the appeal: in front of the First Instance Panel, the Second Respondent said that his wife called him to announce Mr. Emam's death while he wrote, in view of the appeal, that he drove home since he did not want to warn his pregnant wife over the phone.
  - the Second Respondent stated before the First Instance Panel that he received a call once in his car; nevertheless, he said during the appeal proceeding that he received missed phone calls when he was going to his car.
  - Mr. Aman's excuse about the fact that he could not get out of the car for one minute to warn the DCO is entirely unrealistic.
  - the Second Respondent said that his phone was switched off during his whole stay at Bale Robe because he forgot his charger at his place and had no means to charge it whatsoever; however, his coach gave evidence that Mr. Aman called him from his mobile phone during this exact period in order to explain that he could not attend training.



- the First Instance Panel found it impossible that the Mr. Aman's mother would not have known about Mr. Emam's death, since he was considered as a close relative in accordance with Ethiopian tradition; however, on 1 February 2021, Mr. Aman's mother told the DCOs that she did not know where her son was and made no mention of any family death justifying his absence.
  - the Second Respondent's communication with Ms. Tadese without making any reference to the sample collection incident is not credible.
47. Lastly, Mr. Aman's explanation is directly contradicted by Ms. Setu's witness statement who accompanied him to his car but neither saw him on the phone nor believed that he had a phone with him at the time. WADA anticipates Mr. Aman's defense by saying that the CAS already held that DCOs are professionals who have no personal interests to bring untrue accusations against an athlete, and therefore very substantial counterevidence must be presented to rebut a DCO's version of the facts (see CAS 2016/A/4700 at paras. 57-60; CAS 2015/A/4163 at paras. 74, 89(a) and 91-92). However, to date, Mr. Aman has not provided any genuine evidence.
48. The Appellant further refers to the fact that there is no evidence supporting the existence of the alleged phone call received on 30 January 2021. Therefore, according to WADA, this excuse is false and denied by evidence.
49. Nevertheless, if the Sole Arbitrator were not accepting these explanations, the Appellant contends that Mr. Aman intentionally fled the stadium after being notified of doping control which amounts to a violation of Article 2.3 of the ETH-NADO Rules and did not have any compelling reason.

**3. *Alternatively, the Second Respondent's explanation is not a "compelling justification"***

50. WADA argues that even assuming the Second Respondent's explanations were true, the Sole Arbitrator would find that none of them amount to a compelling justification pursuant to Article 2.3 of the ETH-NADO Rules.
51. First, the Appellant recalls that it is Mr. Aman's burden to prove that he had a compelling justification for the refusal or failure to submit to sample collection. WADA highlights that the compelling justification requirement is objective, construed narrowly and the refusal or failure to submit to the test must be unavoidable. If it remains "*physically, hygienically and morally possible*" for the sample collection, the refusal cannot be deemed to have been compellingly justified.
52. In the present circumstances, WADA claims that Mr. Aman's failure to carry out the sample collection was completely avoidable when considered objectively since it was physically, hygienically, and morally possible for him to stay and submit himself to the testing. WADA emphasizes that (i) the test only takes a short amount of time, (ii) there was no emergency for Mr. Aman to leave, and (iii) his wife's uncle was not a close relative on his part of the family.

53. WADA then cites several case laws in which the compelling justification was denied whereas the excuses were more serious than Mr. Aman's:
- *CCES v. Boyle* (SDRCC n° 07-0068), where the athlete found himself suddenly and violently ill during the training;
  - CAS 2005/A/925, where the samples were sent to a laboratory that the athlete was at the time suing for erroneous analysis of her previous samples;
  - *UKAD v. Six* (NADP Tribunal decision of 26.09.12), where the athlete asked to get back to his place to assist his wife with their sick children;
  - CAS 2016/A/4631, where sample collection would be physically impossible because (i) an athlete fainting unconscious upon seeing a needle, (ii) an athlete was stone drunk, (iii) an athlete who experienced an epileptic fit; however in that case, it was note that depression and anxiety triggering a “panic attack” would not suffice;
  - *ITF v. Mak* (independent tribunal decision of 07.11.17), where an athlete had a genuine crisis of anxiety (phobia) because he had to give blood;
  - CAS 2008/A/1557, where the team coach and the President to players order to delay the doping control so they could attend a team meeting.
54. In light of these illustrations, WADA submits that Mr. Aman's excuses do not qualify as compelling justifications.

#### ***4. The Second Respondent's conduct was intentional, alternatively negligent***

55. The Appellant cites the commentary to Article 2.3 in the WADA Code and Article 10.3.1 of the ETH-NADO Rules, which provide that the athlete must prove that his conduct was not intentional.
56. In the present case, WADA's position is that, based on these above elements, the athlete's conduct was intentional.

#### ***5. The consequences of the ADRV and the lack of compelling justification***

57. The Appellant submits that the relevant period of ineligibility to be imposed upon Mr. Aman is four years pursuant to Article 10.3.1 of the ETH-NADO Rules. Furthermore, pursuant to Article 10.10 of said Rules, WADA requests that the Second Respondent shall be disqualified from all other competitive results including forfeiture of any medals, points and prize from the date of 30 January 2021 when the ADRV occurred, through the commencement of the period of ineligibility.

58. Finally, WADA reiterates that no separate tampering ADRV is charged or prosecuted within these proceedings, as any such ADRV would fall within the future purview of World Athletics or the ETH-NADO.
59. Finally, pursuant to Article R64.5 of the CAS Code, WADA requests that the Respondents pay the costs of the arbitration, and it also requests that the Respondents pay to WADA a substantial contribution to its legal and other costs.

**B. The Appellant's Request for relief**

60. In its request for relief, the Appellant request CAS to decide the following:

1. *The Appeal of WADA admissible.*
2. *The decision dated 9 June 2021 rendered by the ETH-NADO Anti-Doping Appeal Panel in the matter of Mohammed Aman is set aside.*
3. *Mohammed Aman is found to have committed an anti-doping rule violation pursuant to Article 2.3 of the ETH-NADO Rules.*
4. *Mohammed Aman 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 or ineligibility effectively served by Mohammed Aman before the entry into force of the CAS Appeals Division award shall be credited against the total period of ineligibility to be served.*
5. *All competitive results obtained by Mohammed Aman from and including 30 January 2021 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).*
6. *The Respondents are ordered, jointly and severally, to bear the arbitration costs of these proceedings.*
7. *The Respondents are ordered to make a substantial contribution to WADA's legal and other costs in connection with these proceedings.*

**C. The First Respondent's Position and Request for Relief**

61. The First Respondent filed its Statement of Defense on 30 November 2021.
62. The defense of ETH-NADO essentially focused on whether it should be a party to this arbitration, or not. In its view, its participation is unnecessary, as it has properly carried out its mission under the domestic procedure, it gave its continuous support to WADA in obtaining the case file and conducting its document investigation and has no grievance against the Appeal Decision.

63. For the same reason, and also as it uses government finance and only has budgets for local tribunals and appeals, it should not bear the arbitration costs and WADA's legal costs in connection with this proceeding.
64. Besides this argument, ETH-NADO does not make any argument as to the merits of the case. Its request for relief is limited to requesting the Sole Arbitrator to reconsider the bearing of the arbitration costs and other costs requested by WADA.

**D. The Second Respondent's Position**

65. The Second Respondent has neither filed any brief nor expressed any opinion in the present proceedings before CAS, despite the CAS Court Office notifications referred to above by email and by DHL at his residence.
66. The Sole Arbitrator will thus refer hereunder to the defense and evidence that Mr. Aman put forward in the proceedings before the ETH-NADO, as detailed in the Decision and Appeal Decision and which were provided by WADA as part of the record.
67. Before the First Instance Panel, the Second Respondent's defense was summarized as follow:

*“In his written submission dated 17 Feb. 2021(10/06/2013 E.C.), the Athlete has admitted the facts provided in the charge and tried to defend himself by invoking justifications for his action.*

*In his written submission mentioned above, the Athlete admitted the notification of Sample Collection by the DCOs of ETH-NA DO on the date of 30 Jan 2021 (22/05/2013) E.C.) at the National Stadium (Addis Ababa Stadium) but he alleged that he received a telephone call about the car accident of a close relative of his wife while he was going to his car to bring his passport with the permission of the Doping Control Personnel. He explained in his words that [...] (I forgot everything and left for home unconsciously, then together with my family we headed to Bale Robe, where the incident had occurred). According to his written explanation, he was highly shocked with the incident. This makes him to lose his mind at least for the time being. The Athlete admitted in his written submission this situation as his first mistake.*

*He also recognized his failure of reporting the incident in the subsequent days as his second fault and he argued that he was compelled to behave in this manner due to the seriousness of the incident. He also stated orally at the hearing that his mobile phone was switched off because he forgot his mobile charger at home and the area where the incident occurred is a rural area and could not charge his phone.*

*The Athlete also accepted as his third mistake his failure to report when the DCOs of ETH-NADO went to his home to collect the Sample on 01 February 2021 (24/05/2013 E.C.). He argued that the muscle pain he experienced for the*

*last two years and the related psychological problem and frustration contributed for his negligence to notify his where about.*

*As-concluding remarks, the Athlete requested the Hearing Panel to consider his long service and his contribution to his country in athletics at the international level to be taken as a mitigating factor.”*

68. Then, Mr. Aman appealed the Decision and submitted an appeal memorandum to support his application. The Appeal Panel summarized Mr. Aman’s submission as follow:

*“In the memorandum of an appeal filed by an appellant:- The four-year punishment and suspension imposed on me without receiving any sample from me, finding anything in my blood and properly investigating evidence has no acceptance. I want without informing at the time due to unexpected family problem, this solely considered as serious mistake, as this taking into consideration for me. As he has out of any competition due to his leg pain, he is out of any International Anti-Doping Agency RTD and his reinsertion also not renewed for more than two years, as it considered for him. In addition he requested the discipline appellate appeal panel organ as the decision rendered without considered for him:-*

- *As he has a flawless athlete when he compete in the world of sports*
- *Making country known internationally in the field of sports in which he participated*
- *In his behavior as he has been good, transparent and popular*

*Rather than its lesson, it excludes him from the world of sport and it is not supported by well evidence, even if he is guilty in accordance with the penalty imposed on him, it was not proportionate. He attached documentary evidence along with the appeal. In addition to the appellant's points in his appeal, he appeared during the hearing and said he agreed to submit a sample during the Addis Ababa Stadium training session when he requested to submit a sample by Ethiopian Anti-Doping office and as when he went to get his ID out of his car, his wife called to him by crying and telling him to come quickly and since she was pregnant, he was shocked and did not submit the sample and he started the car and drove home, and when he arrived at home she told him as her uncle died, and he went to Oromia region Bale zone the place called Agarfa on that day for funeral. As they went to Bale zone for funeral and stay ten days and he said when the experts arrived at his residence on Monday, he did not return from his place of burial and he mentioned as they went on Saturday and on the next day Sunday he told to Ethiopian Athletics Federation's Doctor Kidist by calling to her the occurred problem and as he report when he return. When he returned by staying ten days at Bale as Kidist told him to report back and then after as he received the charge sheet and he told as it has not correct to gone without*

*notifying to experts during that time. His wife uncle was injured Saturday morning and he went to the funeral Saturday morning. He said the funeral took place around 10pm on Saturday Bale Argafa. By mentioning as he unable to give the requested sample because of the above problem at the time, the decision rendered by the disciplinary tribunal without considering and confirming the evidence was inadequate and even if he is guilty the punishment imposed on him was not proportionate and did not consider his past good behavior and contribution to the country and asked the appellate body to look for him.”*

## **VI. JURISDICTION**

69. Article R47 of the CAS Code states that:

*“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”.*

70. Turning to the relevant sports body in the present circumstances, Rules 13.1.3, 13.2.1 and 13.2.3.1 of the ETH-NADO Rules confer jurisdiction to the CAS as follows:

### *“13.1.3 WADA Not Required to Exhaust Internal Remedies*

*Where WADA has a right to appeal under Article 13 and no other party has appealed a final decision within ETH-NADO’s process, WADA may appeal such decision directly to CAS without having to exhaust other remedies in ETH-NADO’s process.*

### *13.2.1 Appeals Involving International-Level Athletes or International Events*

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

### *13.2.3.1 Appeals Involving International-Level Athletes or International Events*

*In cases under Article 13.2.1, the following parties shall have the right to appeal to CAS: (a) the Athlete or other Person who is the subject of the decision being appealed; (b) the other party to the case in which the decision was rendered; (c) the relevant International Federation; (d) ETH-NADO and (if different) the National Anti-Doping Organization of the Person’s country of residence or countries where the Person is a national or license holder; (e) the International Olympic Committee or International Paralympic Committee, as applicable, where the decision may have an effect in relation to the Olympic Games or Paralympic Games, including decisions affecting eligibility for the Olympic Games or Paralympic Games; and (f) WADA.”*

71. WADA's right to appeal stems from Article 13.2.3.1(f) of the ETH-NADO Rules, since Mr. Aman is an International-Level Athlete.
72. In light of the above, the Sole Arbitrator is satisfied that the jurisdiction of the CAS is established. The Sole Arbitrator further notes that the jurisdiction of the CAS has not been challenged by any of the Parties in the present proceedings.

## VII. ADMISSIBILITY

73. Article R49 of the 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 21 days from the receipt of the disputed decision appealed against...”*

74. Article 13.6.1 of the ETH-NADO Rules provides that:

*“The time to file an appeal to CAS shall be twenty-one (21) days from the date of receipt of the decision by the appealing party. The above notwithstanding, the following shall apply in connection with appeals filed by a party entitled to appeal, but which was not a party to the proceedings that led to the decision being appealed:*

- (a) Within fifteen (15) days from the notification of the decision, such a party/parties will have the right to request a copy of the full case file pertaining to the decision from the Anti-Doping Organization that had Results Management authority;*
- (b) If such a request is made within the fifteen (15) day period, then the party making such a request will have twenty-one (21) days from receipt of the file to file an appeal to CAS.*

*The above notwithstanding, the filing deadline for an appeal filed by WADA shall be the later of:*

- (a) Twenty-one (21) days after the last day on which any other party having a right to appeal could have appealed, or*
- (b) Twenty-one (21) days after WADA's receipt of the complete file relating to the decision.”*

75. World Athletics, being a party with a right to appeal that was not a party at first instance, had a deadline of 21 days to appeal following receipt of the case file. It received the case file on 17 August 2021. Its deadline to appeal was therefore 7 September 2021 at the earliest.

76. WADA had a deadline of 21 days after the last day on which World Athletics could have appealed. Therefore, the earliest possible deadline for WADA's appeal would be 21 days after the expiry of World Athletics' deadline, namely 28 September 2021.
77. The Statement of Appeal by WADA was sent to CAS on 22 September 2022 by email.
78. Thus, the Sole Arbitrator is satisfied that this Appeal was timely filed within the time-limits specified in the ETH-NADO Rules and the proceedings are therefore admissible.

### **VIII. APPLICABLE LAW**

79. In accordance with Article R58 of the CAS Code:

*“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.”*

80. The Sole Arbitrator, therefore, notes that the relevant anti-doping rule apply primarily, and subsidiarily and due to the location of the ETH-NADO, Ethiopian law and case law shall apply.

### **IX. DEFAULTING PARTY**

81. Article R44.5 of the CAS Code pertaining to default proceedings states as follows:

*“If the Claimant fails to submit its statement of claim in accordance with Article R44.1 of the Code, the request for arbitration shall be deemed to have been withdrawn.*

*If the Respondent fails to submit its response in accordance with Article R44.1 of the Code, the Panel may nevertheless proceed with the arbitration and deliver an award.*

*If any of the parties, or its witnesses, has been duly summoned and fails to appear at the hearing, the Panel may nevertheless proceed with the hearing and deliver an award.”*

82. According to CAS case law applying Article R44.5 of the CAS Code, Panels confronted with a defaulting have decided to proceed (see, *inter alia*, CAS 2012/A/2986; CAS 2011/A/2604; CAS 2006/A/1904).



83. In the present case, the Sole Arbitrator notes that the Second Respondent has been granted the opportunity to participate in the proceedings, as all communications and notifications sent by the CAS Court Office were sent to the last known email and postal address of the Second Respondent.
84. Having reviewed the record, the Sole Arbitrator decides that the fact that the Second Respondent did not appear before the CAS does not prevent her from deciding on the claim brought by WADA against ETH-NADO and Mr. Aman.
85. Thus, in accordance with Article R44.5 of the CAS Code, the Sole Arbitrator proceeds with the arbitration and delivers this Award.

**X. ETH-NADO'S INVOLVEMENT IN THE CASE**

86. As a preliminary point, the Sole Arbitrator rules on ETH-NADO's presence as a First Respondent in this arbitration.
87. The First Respondent challenges its involvement as a Respondent in the present proceeding because it considers having fully fulfilled its mission at the local level regarding Mr. Aman's case and specifies that it supported WADA with its document investigation. The First Respondent asserts that this is only if it had failed its responsibility or committed improper actions regarding the case of Mr. Aman that it could be legitimately considered as a Respondent.
88. WADA did not make any submission regarding the participation of ETH-NADO, but requested that both Respondents be ordered to pay the arbitration costs and a contribution to its legal fees.
89. Based on her analysis of the submission by ETH-NADO, the Sole Arbitrator will determine whether it has jurisdiction over the First Respondent, and whether the First Respondent has been duly brought to this arbitration by WADA.
90. On the (implicit) jurisdictional objection of ETH-NADO, the Sole Arbitrator recalls that ETH-NADO, as a signatory to the World Anti-Doping Code (hereafter "**WADA Code**"), is bound by the arbitration clause contained in Article 13.2.3 of said Code, which was incorporated to the ETH-NADO Rules at Article 13.2.3.1 and clearly grants to WADA the right to appeal an ETH-NADO decision before the CAS with the ETH-NADO as a Respondent. The CAS' jurisdiction is, in that regard, unaffected by the Parties' position on the merits. The fact that the First Respondent complied with its obligations towards WADA is irrelevant in deciding whether it should be involved as a Respondent in this arbitration. The Sole Arbitrator refers in that regard to CAS 2019/A/6226 in which the Respondent developed the same argument when challenging the jurisdiction of the CAS (see paras. 90-95).
91. On the existence of a dispute, the Sole Arbitrator underlines that WADA has made a claim against ETH-NADO for costs, which the First Respondent denies. This is sufficient to characterize the existence of a dispute to be decided by the Sole Arbitrator.

92. In light of the above, the Sole Arbitrator concludes that she has jurisdiction over the First Respondent and that there is a dispute involving the Appellant and the First Respondent that she has to decide.

## **XI. THE MERITS**

### ***1. The applicable standard of proof***

93. Pursuant to Article 3.1 of the ETH-NADO Rules:

*“ETH-NADO shall have the burden of establishing that an anti-doping rule violation has occurred. The standard of proof shall be whether ETHNADO has established an anti -doping rule violation to the comfortable satisfaction of the hearing panel, bearing in mind the seriousness of the allegation which 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 place 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, except as provided in Articles 3.2.2 and 3.2.3, the standard of proof shall be by a balance of probability.”*

94. Therefore, the Sole Arbitrator agrees with the First Instance and Appeal Panels and applies the standard of proof of comfortable satisfaction which is greater than a mere balance of probability but less than proof beyond reasonable doubt.

### ***2. Mr. Aman’s violation of Article 2.3 ETH-NADO Rules***

95. Article 2.3 of the ETH-NADO Rules provides that the following constitute Anti-Doping Rule Violations:

*“Evading Sample collection; or refusing or failing to submit to Sample collection without compelling justification after notification by a duly authorized Person.”*

96. Applying this article, the Appeal Panel ruled as follows:

*“The appeal panel by making the litigation as a starting point, he finds as it is necessary to prove the following two issues:*

*1. Has the appellant violated the anti-doping rule or not?*

*2. If it said the appellant violated anti-doping rule, is the punishment rendered by first hearing panel fair or not?”*

97. While the wording referred to the Appeal Panel does not faithfully reflect the application ETH-NADO cited above, the second issue in practice has addressed the existence of a compelling justification for the Second Respondent.

98. In line with this structure, the Sole Arbitrator considers that she must address the following two issues:
- (i) Has the Second Respondent escaped, refused or failed to submit to sample collection?
  - (ii) Did the Second Respondent had a compelling justification to do so?
99. As a side note, the Sole Arbitrator highlights that, unlike in the Appeal Panel's reasoning, the "fairness" of the punishment imposed upon the Athlete shall not be assessed.
- (i) *The Second Respondent's behavior towards the sample collection*
100. In assessing whether the Second Respondent evaded, refused or failed to submit to sample collection, the Sole Arbitrator points out that both the Appellant and Respondents agree on what happened on 30 January 2021, i.e. Mr. Aman originally consented to the sample collection at the Addis Ababa Stadium but then he did not submit to it, as he stated he had to get his ID in his car and drove out of the place without giving any explanation to the DCO who accompanied him to the parking.
101. This set of facts has been established by seven witnesses during the first instance hearing as well as by Ms. Melkitu Sete's witness statement, the DCO submitted by the Appellant in the present proceeding.
102. In light of the above, the Sole Arbitrator holds that the Second Respondent evaded the sample collection.
- (ii) *The existence of a compelling justification*
103. Regarding the existence of a compelling justification, the Sole Arbitrator highlights that there is no consensus between the Parties on the circumstances surrounding Mr. Aman's evasion from sample collection.
104. The key disagreement between the Appellant and the Second Respondent lies on the veracity of the reasons justifying the Athlete suddenly leaving the stadium on 30 January 2021.
105. In short:
- The Second Respondent contended in the first instance and in the appeal proceedings that, when he was on his way to his car accompanied by a DCO or alternatively when he was looking for his ID in his car, he received a phone call announcing that his wife's uncle, Mr. Emam, died. Mr. Aman claims that he got stunned by the news and instinctively drove to his house to collect his family before attending to the funeral in Bale Robe. According to Mr. Aman, the emotional distress in which he found himself would justify the fact that he evaded from sample collection without giving notice to any DCO. Thereafter, he was unreachable for several days as he did not have his phone charger. To support his

allegations, the Appellant produced in the previous instances documents from the hospital where Mr. Emam would have been sent after his car accident and a written affidavit from a local farmer's association referring to his funerals on 30 January 2021.

- The Appellant denies that Mr. Aman's relative was ever involved in a car accident in which he supposedly died and that he was consequently buried on the same day at Bale Robe. The Appellant bases its criticisms on the numerous inconsistencies that arose out of the Second Respondent's story, but also on the investigation it conducted with the assistance of ETH-NADO which revealed that the documents produced from the hospital and the farmers' association were forged. Therefore, WADA submits that Mr. Aman evaded from sample collection without a compelling justification.
106. Before addressing the truthfulness of Mr. Aman's story, the Sole Arbitrator recalls that while the Appellant has the burden to demonstrate that the Athlete did not submit to sample collection, the latter has the burden to prove the existence of a compelling justification to the comfortable satisfaction of the Sole Arbitrator.
107. As mentioned above, the Second Respondent justifies his behavior by a series of elements that, from his point of view, should be regarded altogether as a compelling justification. The Sole Arbitrator analyses these elements hereinafter.
108. First, Mr. Aman alleges that he received a phone call while he was in his car and was told that Mr. Emam suffered a car accident and died. However, the details of this event have changed, and no evidence has been provided by the Second Respondent to support his allegations regarding the existence of such call. The Sole Arbitrator notes in that regard that the absence of the Second Respondent in this proceeding, although he participated in the first and appeal instances, did not allow to proceed with the request for documents made by WADA, in particular the record of the Athlete's phone calls on that day. Not only is that call not established, but the DCO who accompanied the Athlete in his car, Ms. Melkitu Sete, testified that after searching in his car, "*he suddenly started the car and drove off very fast,*" and she confirmed that she had "*an unobstructed view of him for the entire time, save for when he briefly bent down in the car and continued searching for something*" and that "*During this whole episode, [she] did not see Mr Aman with a phone at any time.*"
109. Second, regarding the two documents provided by the Second Respondent, the Goba Hospital certificate, and the Farmers' Association document, they raise numerous concerns as to their authenticity. The signatories are not identified, they are not written on the concerned organizations' letterheads. On their content:
- the certificate signed and sealed by the Ambentu Farmers Association had a medical certificate attached to it but no death certificate;
  - the Second Respondent's certificate signed by the Goba Hospital does not substantiate Mr. Aman's story: it does not declare that Mr. Emam had suffered a car accident and was requiring immediate life-saving treatments.

110. These two pieces of evidence are plainly contradicted by the certificates the Appellant submitted further its fact investigations: (i) the Goba Referral Hospital's declaration, (ii) the Bale Zone Administration's declaration, and (iii) the Bereka First level clinic's declaration. The Athlete's Goba Hospital certificate is directly contradicted by the certificate the Appellant submitted in which the Goba Hospital declares that no record was found about Mr. Emam, and the certificate that the Appellant obtained from the same Farmers Association does not confirm the funerals and surprisingly does not contain the same seal.
111. Having regard to the high threshold of the compelling justification as illustrated in the case law cited above, and in light of the grave deficiencies and inconsistencies in the Athlete's proof, the Sole Arbitrator holds that the Second Respondent failed to demonstrate to her comfortable satisfaction that he had a compelling justification.
112. For the sake of clarity, the Sole Arbitrator highlights that the Second Respondent's past performances and the fame he brought to Ethiopia are irrelevant while assessing the existence of a compelling justification under Article 2.3 of the ETH-NADO Rules.
113. In light of this, the Sole Arbitrator determines that the Second Respondent has committed an ADRV of Article 2.3 of the ETH-NADO Rules (he intentionally evaded sample collection) and therefore shall serve a four-year period of ineligibility in accordance with Article 10.3.1 of ETH-NADO Rules.

### ***3. The application of the Ineligibility sanction***

114. Regarding the commencement date of the 4-year period, Claimant requested that the ineligibility period starts on the date on which the CAS Appeals Division award enters into force, with any provision suspension or ineligibility effectively served before the entry into force of the CAS Appeals Division award be credited against the total ineligibility period to be served. Claimant also requested that all competitive results from 30 January 2021, which is the date the ADRV was committed, be disqualified, through the commencement of the period of Ineligibility, with all resulting consequences.
115. In that respect, the Sole Arbitrator refers to Article 10.13 of ETH-NADO Rules, which provides that "the period of Ineligibility shall start from the date of the final hearing decision providing for ineligibility or, if the hearing is waived or if there is no hearing, on the date Ineligibility is accepted or otherwise imposed." Article 10.13.2 follows and provides for credit for provisional suspension and period of ineligibility served, and Article 10.10 of the ETH-NADO Rules deals with the disqualification of results in competitions subsequent to sample collection or commission of an ADRV.
116. In the absence of a hearing in this case, the Sole Arbitrator applies the above-cited provisions and determines that the 4-year sanction period of the Athlete will start at the date the Ineligibility is imposed, i.e. the date of issuance of the present CAS Award. Any period of provisional suspension and previous ineligibility period already served by Mr. Aman shall be credited in accordance with Article 10.13.2.1 of the ETH-NADO Rules.

117. Finally, the Sole Arbitrator decides that in application of Article 10.10 of the ETH-NADO Rules, all competitive results from 30 January 2020 be disqualified, with all ensuing consequences in accordance with the ETH-NADO code. The Sole Arbitrator notes that no fact justifying an exception to that rule based on “fairness” has been brought to her attention.

## **XII. COSTS**

(...).

## **ON THESE GROUNDS**

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

1. The appeal filed on 22 September 2021 by WADA against the ETH-NADO and Mr. Aman with respect to the decision rendered by the Ethiopian Anti-Doping Office on 9 June 2021 is upheld.
2. The decision rendered on 9 June 2021 by the Ethiopian Anti-Doping Office is set aside.
3. Mr. Aman has committed an antidoping rule violation and is sanctioned with a period of four (4) years of ineligibility starting from the date of this Award. Any period of provisional suspension and of ineligibility already served by Mr. Aman shall be credited against this 4-year period.
4. All competitive results from 30 January 2021 be disqualified, with all ensuing consequences in accordance with the ETH-NADO Rules.
5. (...).
6. (...).
7. All other and further motions or prayers for relief are dismissed.

Seat of arbitration: Lausanne, Switzerland

Date: 20 February 2025

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

Carine Dupeyron  
Sole Arbitrator