CAS 2024/A/10366 World Anti-Doping Agency v. Anti-Doping Agency of Kenya & Jackline Wambui

ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition

Sole Arbitrator: Mr André Brantjes, Attorney-at-Law, Amsterdam, The Netherlands

in the arbitration between

World Anti-Doping Agency (WADA), Lausanne, Switzerland

Represented by Mr Ross Wenzel, General Counsel, and Ms Marissa Sunio, Associate Director, Corporate Legal Affairs, WADA, Montreal, Quebec, Canada

- Appellant -

and

Anti-Doping Agency of Kenya (ADAK), Nairobi, Kenya

Represented by Mr Bildad Rogoncho, Head of Legal Services, and Mr Stanley Mwakio, Corportation Secretarial and Legal Services Department, ADAK, Nairobi, Kenya

- First Respondent -

and

Jackline Wambui, Kenya

- Second Respondent -

* * * * *

I. PARTIES

1. The World Anti-Doping Agency ("WADA" or the "Appellant") is an international independent agency leading a collaborative worldwide movement for doping-free sport. It is a Swiss foundation with its registered seat in Lausanne, Switzerland, and with its administrative headquarters in Montreal, Quebec, Canada.

2. The Anti-Doping Agency of Kenya ("ADAK" or the "First Respondent") is the National Anti-Doping Agency of Kenya.

3. Ms Jackline Wambui (the "Athlete" or the "Second Respondent") is a Kenyan middle/long-distance runner. The Athlete is not an International-Level Athlete for the purposes of the ADAK Anti-Doping Rules (the "ADAK ADR") or the World Athletics Anti-Doping Rules (the "WA ADR").

4. ADAK and the Athlete are hereinafter jointly referred to as the "Respondents" and together with WADA as the "Parties".

II. INTRODUCTION

5. The present appeal arbitration proceedings concern an appeal lodged by WADA against a decision (the "Appealed Decision") rendered by the Appeal Panel of the Kenya Sports Disputes Tribunal on 25 January 2024, whereby the first instance decision of the Kenya Sports Disputes Tribunal (the "First Instance Decision") was confirmed. By means of both the First Instance Decision as well as the Appealed Decision, the Athlete was found guilty of an Anti-Doping Rule Violation ("ADRV") for violations of Articles 2.1 and 2.2 of the ADAK ADR and a two-year period of ineligibility was imposed on her, crediting the provisional suspension served since 20 December 2021.

6. WADA requests that a four-year period of ineligibility is imposed on the Athlete and that all competitive results obtained by the Athlete from 21 September 2021 until the CAS Award enters into force are disqualified, with all resulting consequences.

7. The Athlete did not participate in the present appeal arbitration proceedings. ADAK submits that WADA's appeal is to be upheld.

III. FACTUAL BACKGROUND

8. 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. Background facts

9. On 21 September 2021, an ADAK Doping Control Officer collected a urine sample from the Athlete in-competition.

10. The WADA-accredited South African Doping Control Laboratory – Bloemfontein (the "Bloemfontein Laboratory") analysed the Athlete's A sample, which returned an adverse analytical finding ("AAF") for the presence of 19-norandrosterone ("19-NA") and 19-noretiochlanolone ("19-NE"), metabolites of Nandrolone (19-nortestosterone), a non-specified substance included in Section S.1.1 Anabolic Androgenic Steroids of the 2021 WADA Prohibited List (the "WADA Prohibited List") that is prohibited at all times.

11. The Athlete is deemed to have waived her right to the analysis of her B sample.

B. The first instance proceedings before the Kenya Sports Disputes Tribunal

12. On 30 November 2021, ADAK issued an ADRV notice (the "ADRV Notice") to the Athlete in relation to a potential ADRV pursuant to Articles 2.1 and 2.2 of the ADAK ADR relating to the presence of 19-norandrosterone (a Metabolite of Nandrolone) in a sample collected form the Athlete on 21 September 2021.

13. On 20 December 2021, the Athlete was provisionally suspended, pending determination of the matter.

14. On 4 January 2022, the Athlete responded to the ADRV Notice in writing.

15. On 9 June 2022, a hearing took place before the Kenya Sports Disputes Tribunal. The hearing was attended by the Athlete.

16. On 29 September 2022, the Kenya Sports Disputes Tribunal issued its decision (the "First Instance Decision"), with the following operative part:

> "*a. The applicable period of ineligibility of two (2) years is hereby upheld;*
>
> *b. The credit for provisional suspension served since 20th December 2021 from 5.00 pm is upheld;*
>
> *c. The period of ineligibility shall be from the date of this decision for fourteen (14) months and three (3) weeks;*
>
> *d. Each party shall bear its own costs;*
>
> *e. The right of appeal is provided for under Article 13 of the ADAK ADR and the Code.*"

17. The grounds of the First Instance Decision provide, *inter alia*, as follows:

"*It may be argued that the Athlete telling the medical person in the 'recognized' or bona fide hospital that she was an athlete acted as an alert/notice against being treated with prohibited substances, however, let it not be in contention that it is not; WADC'/ADAK ADR's Article 2.1.1 clearly states that 'It is the Athletes' personal duty to ensure that no Prohibited Substance enters their bodies. Athletes are responsible for any Prohibited Substance or its Metabolites or Markers found to be present in their Samples.' In other words, even if the Athlete delegated her responsibility to the doctor, she would still be held totally responsible for any resultant ADRV by the Policy.*

Yet in the entirety of the Athlete's written explanation, it is clear that the issuer of treatment still injected her with a proscribed substance and in subsequent medical notes advised the Athlete to avoid strenuous exercises, the latter part being indication the said doctor understood the Athlete's pre-treatment information that she was an athlete. Why the doctor prescribed and/or administered the proscribed medication to an athlete who explained to him that she was one remains a mystery for now.

In highlighting the behavior of aforementioned doctor, it is not the panel's intention to excuse the Athlete for not being fully versed with her anti-doping knowledge despite having been tested from 2017-2021 or even excusing her obviously lower educational attainments in formal school but to gauge her intent to deliberately engage in the misconduct as defined in Article 10.2.3; in advocating herself with the doctor, we gauge that she knew there was medication he should not use to treat her. Exactly which was the proscribed medication she said 'she could only rely on the doctor's skill and expertise'.

Consequently, on the totality of the evidence and all the circumstances outline in this case we do not clearly identify that the manifest disregard of the ADRV risk by the Athlete was present. On the contrary the now authenticated medical documents corroborated her medical wellness objective explanation and also, she established origin of the prohibited substance hence disproved intention and/or proved on a balance of probabilities that she did not, or did not attempt to cheat; the Panel in Iannone (CAS 2020/A/6978) reasoned as follows: '134. […] it is clear that the athlete cannot rely on simple protestations of innocence or mere speculation as to what must have happened but must instead adduce concrete and persuasive evidence, establishing, on a balance of probabilities, a lack of intent (…)."

18. On 13 February 2023, the First Instance Decision was notified to WADA.

19. On 28 February 2023, following a request of WADA, ADAK provided WADA with the case file related to the First Instance Decision.

C. The appeal proceedings before the Appeal Panel of the Kenya Sports Disputes Tribunal

20. On 23 March 2023, WADA filed an appeal against the First Instance Decision with the Appeal Panel of the Kenya Sports Disputes Tribunal. WADA named the Athlete and ADAK as respondents.

21. On 12 May 2023, WADA's appeal was consolidated with an appeal that was filed against the First Instance Decision by World Athletics.

22. On 14 September 2023, WADA filed its appeal brief with exhibits with the Appeal Panel of the Kenya Sports Disputes Tribunal.

23. On 30 November 2023, a hearing took place before the Appeal Panel of the Kenya Sports Disputes Tribunal. The hearing was not attended by the Athlete. Neither the Athlete, nor ADAK, filed any responses to the appeal briefs of WADA and World Athletics or made any submissions at the hearing.

24. On 18 December 2023, the Appeal Panel of the Kenya Sports Disputes Tribunal orally delivered the operative part of the Appealed Decision to the Parties.

25. On 25 January 2024, the written Appealed Decision with grounds was notified to the Parties. The operative part provided as follows:

> "*Conclusion*
>
> *42. In the circumstances, the Tribunal orders as follows:*
>
> *a. The decision of the First Instance Panel dated 29/09/2022 be and is hereby upheld;*
>
> *b. Each party to bear its own costs of the appeal.*"

26. The grounds of the Appealed Decision may be summarised as follows:

> "*As we have stated, the prohibited substance is a non-specified substance. The burden of proof therefore shifts to the Athlete to demonstrate to the hearing panel that the use of the prohibited substance was not intentional as per WADC Article 10.2.1.1. A case that involves a non-specified substance is presumed intentional unless the athlete can establish that it was not intentional.*
>
> *To determine whether the Athlete had the intention to cheat one has to establish origin. Comment number 58 of the WADC to Article 10.2.1.1 of WADC provides that:*
>
> > *'While it is theoretically possible for an athlete or other person to establish that the ADRV was not intentional without showing how the prohibited substance entered one's system, it is highly unlikely that under a doping case in Article 2.1 an athlete will be successful in providing that the athlete acted unintentionally without providing the source of the prohibited substance.'*

In an email dated 13/02/2023 from ADAK which forms part of the list of documents submitted by the Appellants in this appeal, ADAK points out that the athlete was able to prove origin and that she did not intend to dope. The First Instance Panel relied on ADAK's authenticated medical records to reach its conclusion.

WADA in its oral submissions indicated that origin was not proved as COX B the drug which the Athlete used did not contain the prohibited substance nandrolone. We beg to disagree. The Athlete was given other medications alongside COX B which included one, deca-durobin start. One of the ingredients that make up deca-durobin start is nandrolone as seen from available medical literature. We therefore agree with the findings of the First Instance Panel that the Athlete was able to establish origin.

WADA also indicate that the medical record is not dated and that the Outpatient Register of Oloolua Dispensary has incorrect tallies of the patients attended to on the different dates the Athlete visited the Dispensary hence creating doubt as to whether she was attended to in the facility.

On the issue of the undated medical record we do not find it a challenge just because it is not dated. WADA ought to provide incontrovertible evidence to the comfortable satisfaction of the Panel that the medical report is either a forgery or that it has verified that the Athlete did not visit Oloolua Dispensary for treatment. Equally, the mere fact that the number of patients differ on the Outpatient Register cannot invalidate a document unless concrete evidence is provided that there is some degree of fraud. In any event the local Kenyan NADO which is ADAK have since authenticated the medical record. The Appellants have not established otherwise.

We also do not agree with AIU that Oloolua Dispensary did not stock Deca Durabolin (i.e. Nandrolone) as no material of evidentiary value has been presented to us to support these assertions.

We find the First Instance Panel applied the law and facts correctly to reach the decision on consequences imposed to the Athlete. The upshot of this is that we are not persuaded that the Appellants have made a case for us to vacate the decision of the First Instance Panel."

IV. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

27. On 22 February 2024, WADA 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, WADA applied for the appointment of a sole arbitrator. WADA also requested that its appeal be consolidated with the appeal filed against the Appealed Decision by World Athletics as per Article R52 CAS Code.

28. On 17 June 2024, in the absence of any response from ADAK and the Athlete within the time limit granted, the CAS Court Office informed the Parties that the Deputy Division President had decided to consolidate the proceedings referenced as *CAS 2024/A/10344 World Athletics v. Jackline Wambui & Anti-Doping Agency of Kenya* and *CAS 2024/A/10366 World Anti-Doping Agency v. Anti-Doping Agency of Kenya & Jackline Wambui*, in accordance with Article R52.5 CAS Code.

29. On 11 July 2024, WADA and World Athletics filed their respective Appeal Briefs in accordance with Article R51 CAS Code.

30. On 15 July 2024, the CAS Court Office acknowledged receipt of WADA's Appeal Brief and granted the Respondents a deadline of 20 days to submit an Answer. The Respondents were also informed that, if they would fail to file an Answer, the Sole Arbitrator could nevertheless proceed with the arbitration and deliver an Award.

31. On 7 August 2024, ADAK filed its Answer in accordance with Article R55 CAS Code.

32. On 12 August 2024, the CAS Court Office acknowledged receipt of ADAK's Answer and informed the Parties that it would be notified together with the Athlete's Answer, upon its receipt.

33. On 23 October 2024, the CAS Court Office informed the Parties that it had not received an Answer from the Athlete to date, indicating that the Sole Arbitrator could nevertheless proceed with the arbitration and deliver an Award.

34. On 28 October 2024, following an invitation from the CAS Court Office to the Parties to indicate their preference, ADAK requested a physical hearing to be held.

35. On 29 October 2024, WADA and World Athletics indicated that, given that ADAK supported their case on the merits and that the Athlete did not file an Answer, they preferred an Award to be issued based solely on the Parties' written submissions. WADA and World Athletics also requested that, if no hearing would be held, they be invited to file a short submission on costs.

36. On 7 November 2024, the CAS Court Office informed the Parties that the CAS Court Office would issue a Termination Order in *CAS 2024/A/10344 World Athletics v. Jackline Wambui & Anti-Doping Agency of Kenya*, as a consequence of which only the proceedings in *CAS 2024/A/10366 World Anti-Doping Agency v. Anti-Doping Agency of Kenya & Jackline Wambui* would proceed.

37. On 22 November 2024, the CAS Court Office informed the Parties that, in accordance with Article R54 of the CAS Code, the Panel to had been constituted as follows:

    Sole Arbitrator: Mr André Brantjes, Attorney-at-law in Amsterdam, The Netherlands

38. On 27 November 2024, the CAS Court Office informed the Parties that the Sole Arbitrator had decided to hold a hearing by videoconference.

39. On 13 March 2025, the CAS Court Office requested the Athlete to confirm receipt of the delivery of the CAS Court Office opening letter of 27 February 2024, to which the Athlete did not respond within the deadline granted.

40. On 7 April 2025, following an invitation of the CAS Court Office to ADAK to confirm its agreement that its postal address be used for deliveries to the Athlete, ADAK did not respond within the deadline granted. On this basis, the CAS Court Office informed the Parties that it was considered that ADAK did not voluntarily want to take on the responsibility of notifying the Athlete.

41. On 14 April 2025, following an invitation of the CAS Court Office to provide its position on how it wished to proceed, WADA provided the CAS Court Office with the email address used by the first instance tribunal of the Kenya Sports Disputes Tribunal and the Athlete's email address registered in ADAMS. WADA indicated that it was not known to WADA (nor apparently to ADAK) why the Athlete's email address on correspondence of the CAS Court Office was changed on or about 15 March 2024. WADA also indicated that it appeared that the Appeal Briefs were successfully delivered to the Athlete by DHL as per the CAS Court Office correspondence dated 23 October 2024.

42. On 17 April 2025, the CAS Court Office added the supplementary contacts details of the Athlete provided by WADA to its letter head and provided the Athlete with copies of the written submissions exchanged in the present proceedings, by email. A download link to the entire case file was also provided. Finally, the Parties were informed that the suggested hearing dates of 23 and 24 April 2025 were vacated.

43. On 26 May 2025, the CAS Court Office invited the Athlete to clarify who is Ms Elisabeth Shali, the person who signed the DHL report on 25 July 2024 regarding the shipment of the Appeal Brief by CAS Court Office letter of 15 July 2024, to which invitation the Athlete did not respond within the deadline granted.

44. On 18 June 2025, the CAS Court Office sent a copy of the case file to the Athlete by courier. It was subsequently confirmed by DHL that this shipment was not delivered.

45. On 8 July 2025, the CAS Court Office informed the Parties as follows:

> "*DHL has informed the CAS Court Office that the shipment with the complete case file addressed to the Athlete has not been delivered.*
>
> *The Parties are advised that the CAS Court Office uses the Respondents' addresses as indicated by the Appellant, which is the sole responsible for providing the correct address of the Respondents. Furthermore, the Sole Arbitrator wishes to draw the Parties' attention to the fact that the Appellant is also the sole responsible for any possible annulment of a future Award and/or possible difficulties in enforcing such a future Award.*

WADA is kindly requested to inform the CAS Court Office how it wishes to proceed by 11 July 2025 at the latest, i.e. if WADA is prepared to assume responsibility for the proper notification of the Athlete by email only."

46. On 9 July 2025, ADAK informed the CAS Court Office that "*we may not wish to proceed in the absence of the athlete*".

47. On the same date, WADA informed the CAS Court Office, *inter alia*, as follows:

"*After further inquiries with ADAK, WADA does not have any additional contact information for the Athlete beyond what has already been provided.*

WADA refers to the various points from its email dated 14 April 2025, specifically the phone number and email addresses confirmed by ADAK and found in ADAMS, the change of the Athlete's email on CAS correspondences starting on or about 15 March 2024, and the CAS correspondence dated 23 October 2024. WADA is also aware that the Athlete attended the virtual hearing when the national appellate decision was read on 18 December 2023, meaning that she was successfully notified and invited to attend.

Based on the above, it is WADA's view that the notices of appeal, briefs, and other CAS correspondence have reached the Athlete's 'scope of control' (i.e. her inbox) and therefore she has had the opportunity to 'obtain knowledge of its content'. (CAS 2022/A/8598, paras. 122-123).

As ADAK has not challenged WADA's case against the Athlete, and unless the Athlete appears, it is WADA's position that the CAS may proceed with the case and issue a decision without a hearing."

48. On 18 September 2025, the CAS Court Office informed the Parties as follows:

"*1. The Sole Arbitrator has decided not to hold a hearing in this matter, amongst others as he deems himself sufficiently well-informed to decide this case based solely on the Parties' written submissions, without the need to hold a hearing, and also noting that the Appellant and the First Respondent consider that in the absence of the Athlete, no hearing is necessary.*

2. Consequently, and further to the Appellant's request in its email of 29 October 2024 ('If there is no hearing, WADA requests the right to file a short submission on costs') the Parties, on behalf of the Sole Arbitrator, are granted the opportunity to submit short submissions on costs, within seven (7) days upon receipt of this letter by email.

3. The Sole Arbitrator notes that the Appellant did not point to any legal basis warranting a disqualification of results beyond the period of ineligibility served following the First Instance Decision (which was

subsequently confirmed by the Appealed Decision). Therefore, the Athlete appears to have been eligible to compete again as form 20 December 2023 and until the date of the present Award, as it was indicated in para. c) of the operative part of the First Instance Decision that 'The period of ineligibility shall be from the date of this decision for fourteen (14) months and three (3) weeks'. The Parties, on behalf of the Sole Arbitrator, are granted the opportunity to respond briefly to this, within seven (7) days upon receipt of this letter by email.

4. *Finally, the Parties are requested to sign and return a copy of the Order of Procedure to the CAS Court Office by 25 September 2025.*" (emphasis omitted)

49. On 25 September 2025, WADA filed a submission with the CAS Court Office, *inter alia*, arguing that ADAK, as the responsible Results Management Authority, must bear the arbitration costs, irrespective of the operational and institutional independence of the hearing panels at first and second instance. Reference is made to CAS jurisprudence in this respect. WADA argues that it had no choice but to file an appeal to CAS in view of the major deficiencies in the Appealed Decision – including the remarkable failure to even consider indirect intent, despite it being a major part of WADA (and the AIU's) appeal – WADA should not have to bear the costs of the CAS arbitration. ADAK is an entity with a far greater capacity (than the Athlete) to meet any obligation to pay its costs. ADAK did not file substantive arguments before the Appeal Panel of the Kenya Sports Disputes Tribunal. The Athlete should not be punished (in terms of costs) by the faulty interpretation and application of the rules. As to the disqualification of the Athlete's results obtained after having served the period of ineligibility imposed with the First Instance Decision (and as confirmed by the Appealed Decision), WADA argues that the purpose of disqualification is to "*correct any unfair advantage and remove any tainted performances from the record*". While a period of ineligibility has a limit, the time period for disqualification does not. According to WADA, there are many examples where athletes' results have been disqualified after a resumption of participation pursuant to a challenged decision. WADA further submits that disqualification of results is the rule, fairness is the exception. The burden is on athletes to establish that the fairness exception should apply to save their results. It is not for WADA to hypothesise as to potential reasons of fairness in order to meet the Athlete's burden for her, nor for the tribunal to do so *sua sponte*.

50. On 7 October 2025, outside the prescribed deadline, the First Respondent submitted its submission of costs, alleging *inter alia,* that "*it is both disproportionate and inconsistent with CAS jurisprudence to impose WADA's costs on ADAk. Rather, the appropriate order is that each party bears its own legal costs, with arbitration costs apportioning in accordance with the CAS Code.*" (emphasis omitted)

51. On 8 October 2025, WADA submitted a response to ADAK's submission of costs which stated: "*WADA acknowledges receipt ofADAK's submission which we note was filed after the deadline; this was also admitted by ADAK in its email to the CAS. By*

filing late, ADAK had the benefit of having sight of WADA's submission before filing its own.

However, given that nothing in ADAK's submission disturbs the position set out by WADA in its submission, nor the prevailing CAS case law on costs, WADA limits itself simply to noting that the two cases cited by ADAK in support of their position (i.e. 2020/A/6759 WA v. RUSAF & Antyukh; 2013/A/3347 WADA v. POC & Koterba), are both examples where the Appellant/Claimant was in fact awarded the arbitration costs."

52. On 13 October 2025, the CAS Court Office informed the Parties that the Sole Arbitrator would decide on the admissibility of WADA's correspondence of 8 October 2025 in the final Award.

V. SUBMISSIONS OF THE PARTIES AND REQUESTS FOR RELIEF

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

A. The Appellant

54. WADA's Appeal Brief, in essence, may be summarised as follows:

- According to Article 10.2.1.1 of the ADAK ADR, the period of ineligibility shall be four years where an Article 2.1 and/or 2.2 ADRV does not involve a Specified Substance, unless the Athlete can establish that the ADRV was not intentional.

- An athlete has the burden of establishing that the ADRV was not intentional, failing which the ADRV will be deemed intentional. To satisfy this burden, the principle is that an athlete must first establish the origin of the prohibited substance.

- The Athlete has not established the origin of the prohibited substance. The ADRV is intentional even accepting *arguendo* the essence of the Athlete's explanation of origin.

- The Athlete explained that she received a Cox-B injection (and a Deca-durabolin injection) at the Oloolua Dispensary for severe pain and swelling in her knee. The Athlete claimed she informed the doctor that she was an athlete and that he cautioned her to reduce strenuous exercise to enable proper healing along with her prescription, including injection.

- While the Appealed Decision process was ongoing, the Athletics Integrity Unit of World Athletics (the "AIU") conducted an investigation which confirmed that the Athlete did not inform the doctor that she was an athlete (see the messages of Ms Munteyian). Further, the same AIU investigation found evidence which confirms the Athlete already had the Deca-durabolin with her when she went to the Oloolua Dispensary (see the messages of Ms Munteyian). This makes clear that the Athlete did not provide sufficient explanations for how the 19-NA and 19-NE ended up in her system.

- Even if the Athlete's explanation were accepted, the Athlete could clearly not have demonstrated a lack of indirect intent on the balance of probabilities. Rather, this is an obvious and clearcut case of indirect intent.

- Indirect intention is subject to two requirements:

  - The Athlete knew that there was a significant risk that her conduct might constitute or result in an ADRV; and

  - She manifestly disregarded that risk.

- In short, the Athlete conducted zero checks with any person prior to being injected with Nandrolone, a product that she had apparently purchased herself (albeit from a source that has never been disclosed). She allowed herself to be injected without any enquiry as to what substances were in the injection. She undertook no verification whatsoever, not even the most basic steps as doping doing an internet search. When medication is injected into your body to treat an injury, the risk that it might contain a prohibited substance is inherent and obvious.

- If the Athlete really did tell the doctor that she was an athlete subject to the ADAK ADR, then it would demonstrate that she understood the risk that medication, especially an injection, could contain prohibited substances. However, the Athlete manifestly disregarded any risk and got the injection without taking any precautions; this is the textbook example of indirect intent.

- On the basis of the above, the Athlete cannot be found to have satisfied her burden of proof to prove a lack of intent. Therefore, WADA requests that a period of ineligibility of four years be imposed on the Athlete.

55. On this basis, WADA filed the following prayers for relief in its Appeal Brief:

"*1. The appeal of WADA is admissible.*

2. The decision dated 18 January 2024 rendered by the Appeal Panel of the Kenya Sports Dispute Tribunal in the matter of Ms Jackline Wambui is set aside.

3. *Ms Jackline Wambui is found to have committed an anti-doping rule violation under Article 2.1 and/or 2.2 of the ADAK ADR.*

4. *Ms Jackline Wambui is sanctioned with a four-year period of ineligibility starting on the date on which the CAS award enters into force. Any period of provisional suspension or period of ineligibility effectively served by Ms Wambui before the entry into force of the CAS award shall be credited against the total period of ineligibility to be served.*

5. *All competitive results obtained by Ms Jackline Wambui from 21 September 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 arbitration costs (if any) shall be borne by ADAK, or in the alternative, by the Respondents jointly and severally.*

7. *WADA is granted a significant contribution to its legal and other costs.*"

B. The First Respondent

56. The ADAK's Answer, in essence, may be summarised as follows:

- The first instance tribunal of the Kenya Sports Disputes Tribunal erred in concluding that the evidence tendered was insufficient to warrant a four-year period of ineligibility. The documentary evidence produced by ADAK was conclusive in establishing the ADRV against the Athlete.

- The Athlete denied the charges and responded to the ADRV Notice by a letter dated 4 January 2022 wherein she stated that on 25 August 2021 and subsequently on 30 August 2021, she visited a local hospital enduring severe pain to her ankle and knee which were also swollen. The Athlete asserted that she was treated and prescribed medication by a doctor and insisted no performance enhancing substances were used during her treatment.

- The Athlete's AAF was not consistent with any applicable Therapeutic Use Exemption ("TUE") recorded at World Athletics for the substance in question and there was no apparent departure from the WA ADR or from WADA's International Standard for Laboratories which may have caused the AAF.

- No plausible explanation was advanced for the AAF. Therefore, it was deemed to constitute an ADRV.

- The Athlete, in her evidence in chief made the following admissions:

    - Admitted to having been tested "*severally* [sic]" since 2017.

- Admitted to not confirming and crosschecking the ingredients of the medication before ingesting them.
- Admitted to not indicating any medication she had been using in the Doping Control Form ("DCF").
- Admitted to never attending any Anti-Doping workshop or education program.
- Admitted to never taking time to do any research on the fight against doping.
- Finally, the Athlete denied that she negligently or intentionally consumed any prohibited substance with the intention of enhancing her performance.

- The Sole Arbitrator should take into account the statements and opinions of all the Parties. It is on the basis of this evaluation and balancing of the various submissions that the Sole Arbitrator will form his/her own opinion on the facts and consequences that follow there.
- The Sole Arbitrator may impose a sanction of up to four-year period of ineligibility on the Athlete.
- The Athlete has not demonstrated no fault / negligence on her part, as required by the World Anti-Doping Code to warrant a sanction reduction.

57. On this basis, ADAK filed the following prayers for relief:

"*1. The Appellant's Appeal be allowed.*

2. The Decision dated 18th January 2024 rendered by the Sports Disputes Tribunal of Kenya in the matter of ADAK Vs Jackline Wambui be and is hereby set aside.

3. The Arbitration Costs be borne by the Second Respondent and world athletics.

4. The First Respondent be granted a contribution to its legal costs as the Sole Arbitrator shall deem fit."

C. The Second Respondent

58. The Athlete did not participate in the present appeal arbitration proceedings, she did not file an Answer nor any prayers for relief.

VI. JURISDICTION

59. Article R47 CAS Code provides, *inter alia*, 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.*"

60. Article 13.2.2.3.4 of the ADAK ADR provides as follows:

> "*The decision may be appealed as provided in Article 13.2.3 and Publicly Discloses as provided in Article 14.3.*"

61. It is not in dispute that the Athlete is not an International-Level Athlete for the purposes of the ADAK ADR.

62. Article 13.2.3.2 of the ADAK ADR, i.e. the provision that governs appeals involving "*Other Athletes or Other Persons*", not International-Level Athletes, provides as follows:

> "*In cases under Article 13.2.2, the following parties shall have the right to appeal:* […]*; and (f) WADA.*
>
> *For cases under Article 13.2.2, WADA, the International Olympic Committee, the International Paralympic Committee, and the relevant International Federation shall also have the right to appeal to CAS with respect to the decision of the ADAK's Appeal Panel.*"

63. It follows that CAS has exclusive jurisdiction to adjudicate and decide on WADA's appeal against the Appealed Decision.

VII. ADMISSIBILITY

64. 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.*"

65. Article 13.6.1 of the ADAK ADR provides as follows:

> "*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 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 case file relating to the decision.*"

66. As argued by WADA, the AIU received the Appealed Decision on 25 January 2024 and could have appealed to CAS within 21 days (i.e., by 15 February 2024). It follows that the deadline for WADA to file its appeal is 7 March 2024 (i.e., 21 days after 15 February 2024).

67. Because WADA filed its appeal on 22 February 2024, it follows that the appeal is admissible.

VIII. APPLICABLE LAW

68. 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.*"

69. WADA submits that, as the Appealed Decision was rendered under the ADAK ADR, the ADAK ADR are applicable to the present proceedings.

70. ADAK submits that the IAAF Competition Rules, the IAAF Anti-Doping Regulations, the World Anti-Doping Code and the ADAK ADR are applicable in the present appeal.

71. The Athlete did not make any submissions on the applicable regulations.

72. The "*INTRODUCTION*" to the ADAK ADR provides, *inter alia*, as follows:

> "*These Anti-Doping Rules shall apply to ADAK.* […] *These Anti-Doping Rules shall also apply to all Persons identified in Section 3 of the Anti-Doping Act, 2016, and all other Persons over whom the Code gives the Agency jurisdiction, including all Athletes who are nationals of or resident in Kenya, and all Athletes who are present in Kenya, whether to compete or to train or otherwise.*"

73. The Athlete's alleged ADRV was committed on 21 September 2021. At that time the 2016 ADAK ADR was in force and it still was at the time WADA filed its appeal with CAS. According, substantive as well as procedural issues are all governed by the 2016 ADAK ADR.

IX. PRELIMINARY ISSUE

74. The Sole Arbitrator is confronted with the somewhat unusual situation of a respondent who did not participate in the proceedings.

75. Article R44.5 of the CAS Code (entitled "*Default*") provides the following in this respect:

> "*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.*"

76. As to the requirement that respondents must have been duly summoned, this will be addressed in more detail below.

77. Guidance as to how to deal with such default of appearance can be found in legal doctrine. In particular, the Sole Arbitrator is guided by comparative research into non-participation in international arbitration proceedings, where the following conclusion is drawn:

> "*Non-participation is not common in international adjudication and arbitration. But when a party does choose not to appear it raises a range of procedural challenges for all involved. The rules make clear that default of appearance is no bar to a court or tribunal proceeding to resolution of the dispute, in circumstances where the parties have given their prior consent to that process. While the option of non-participation is theoretically open to parties, they should carefully consider whether such a course is to their legal, practical, and strategic advantage. If the option is pursued, it will be important for the court or tribunal to consider how to forge ahead to a fair and just outcome without compromising principles of due process or efficiency. In essence, this requires at all times giving proper notice to all parties and extending to them the opportunity to present their case. Additionally, rather than rubber-stamping the claimant's case, it will be incumbent on the court or tribunal to test the claims in law and fact. This exercise entails a delicate balance of robust assessment of the claims while acting fairly and impartially to both parties.*" (LEVINE, Default and Non-Participation in Cases Before

International Courts and Arbitral Tribunals, Max Planck Encyclopedia of International Procedural Law (OUP, 2023), para. 133)

78. In rendering this Award, the CAS Court Office and the Sole Arbitrator have been careful in ensuring that the due process rights of the Athlete have been respected. The CAS Court Office and the Sole Arbitrator attempted to strike a fair balance between such due process rights and WADA's interest in conducting efficient proceedings. Although this balance may occasionally have swayed somewhat in favour of safeguarding due process rights at the expense of efficiency, the Sole Arbitrator trusts the Parties appreciate the efforts made to respect the Athlete's right to be heard despite her non-appearance.

79. As to the assessment of the facts and the law underpinning the merits of WADA's appeal against the Athlete, the Sole Arbitrator notes that it is held in legal doctrine that, on the one hand, "*the non-defaulting party 'may not benefit from a lighter evidentiary standard simply because its adversary is absent'*" (LEVINE, Default and Non-Participation in Cases Before International Courts and Arbitral Tribunals, Max Planck Encyclopedia of International Procedural Law (OUP, 2023), para. 94, with reference to: CARON, KAPLAN, UNCITRAL Arbitration Rules: A Commentary (OUP 2013, 672)). However, on the other hand, "*a participating party 'should not be put at a disadvantage because of the non-appearance of the [non-participating party] in the proceedings'*" (LEVINE, Default and Non-Participation in Cases Before International Courts and Arbitral Tribunals, Max Planck Encyclopedia of International Procedural Law (OUP, 2023), para. 79, with reference to: Arctic Sunrise, Netherlands v. Russian Federation, Provisional Measures Order, 22 November 2013, ITLOS Reports 2013, para. 243). There is a delicate tightrope to walk between robust testing of the evidence and being seen to step too far into the shoes of an advocate for the absent party (LEVINE, Default and Non-Participation in Cases Before International Courts and Arbitral Tribunals, Max Planck Encyclopedia of International Procedural Law (OUP, 2023), para. 104).

80. Also here, the Sole Arbitrator engaged in a delicate exercise in trying to strike a fair balance and avoiding the pitfall of being "*overly 'deferential' towards or 'overcorrect' for the absent respondent*" (LEVINE, Default and Non-Participation in Cases Before International Courts and Arbitral Tribunals, Max Planck Encyclopedia of International Procedural Law (OUP, 2023), para. 104, with references).

X. MERITS

A. The Main Issues

81. The main issues to be decided by the Sole Arbitrator are the following:

i. Was the Athlete properly notified of the appeal filed against her by WADA?
ii. Did the Athlete violate Articles 2.1 and/or 2.2 of the ADAK ADR?
ii. What shall be the consequences thereof?

i. Was the Athlete properly notified of the appeal filed against her by WADA?

82. The physical address of the Athlete, as indicated by WADA in its Statement of Appeal, refers to a street in a town: Maragara Road, Ngong, Kajiado County in Kenya. This is the Athlete's physical address as provided and signed for by the Athlete on the DCF when the relevant urine sample was collected from her on 21 September 2021.

83. While the Statement of Appeal was not delivered by DHL, DHL confirmed that the Appeal Brief was delivered and documentary evidence was provided thereof. Receipt of the Appeal Brief was acknowledged by a person by the name of Elisabeth Shali. It is unclear what is the relationship of this person with the Athlete and/or whether this person forwarded the Appeal Brief to the Athlete. The Sole Arbitrator finds that, regardless of who accepted to receive the package from DHL, the package came into the Athlete's sphere of control, which suffices for the Athlete to be duly summoned.

84. However, this is not the only indication that the Athlete was duly summoned of the pending appeal proceedings against her before CAS. The Athlete was also notified by email at the following three email addresses: acklinewambu@gmail.com, agapelove@gmail.com and agapelove17@gmail.com.

85. Between 15 March 2024 and 17 April 2025, the email address acklinewambu@gmail.com was used to communicate with the Athlete. It is unknown where this email address was derived from, but also WADA (in its Appeal Brief) and ADAK (in its Answer) rely on this email address. There is no indication that this email was indeed ever used by the Athlete, as a consequence of which the Sole Arbitrator considers the use of this email address inappropriate and insufficient to duly summon the Athlete.

86. However, before 15 March 2024, the email address agapelove17@gmail.com was used, and after 17 April 2025, the email addresses acklinewambu@gmail.com, agapelove@gmail.com and agapelove17@gmail.com were used collectively.

87. According to WADA, the email address agapelove@gmail.com is the official registered email address of the Athlete in ADAMS. The email address agapelove17@gmail.com was the email address that was allegedly used by the first instance tribunal of the Kenya Sports Disputes Tribunal, although no evidence of such contention was provided by WADA. The email address agapelove17@gmail.com was also the email address provided and signed for by the Athlete on the DCF when the relevant urine sample was collected from her on 21 September 2021.

88. With this, the Sole Arbitrator finds that the Athlete indicated that she wished to be contacted on the email address agapelove17@gmail.com with respect to this doping control.

89. While an email address may ordinarily be insufficient for a proper notification of a respondent, the Sole Arbitrator finds that these additional warranties in the matter at hand suffice for the Athlete to have been duly summoned in the context of Article R44.5 of the CAS Code.

90. Consequently, the Sole Arbitrator finds that the Athlete was properly notified of the appeal arbitration proceedings initiated against her and ADAK by WADA.

ii. Did the Athlete violate Articles 2.1 and/or 2.2 of the ADAK ADR?

91. Article 2 of the ADAK ADR provides as follows:

> "*2.1 Presence of a Prohibited Substance or its Metabolites or Markers in an Athlete's Sample*
>
> *2.1.1 It is the Athletes' personal duty to ensure that no Prohibited Substance enters their bodies. Athletes are responsible for any Prohibited Substance or its Metabolites or Markers found to be present in their Samples. Accordingly, it is not necessary that intent, Fault, negligence or knowing Use on the Athlete's part be demonstrated in order to establish an Anti-Doping rule violation under Article 2.1.*
>
> *2.1.2 Sufficient proof of an Anti-Doping rule violation under Article 2.1 is established by any of the following: presence of a Prohibited Substance or its Metabolites or Markers in the Athlete's A Sample where the Athlete waives analysis of the B Sample and the B Sample is not analyzed; or, where the Athlete's B Sample is analyzed and the analysis of the Athlete's B Sample confirms the presence of the Prohibited Substance or its Metabolites or Markers found in the Athlete's A Sample; or, where the Athlete's A or B Sample is split into two (2) parts and the analysis of the confirmation part of the split Sample confirms the presence of the Prohibited Substance or its Metabolites or Markers found in the first part of the split Sample or the Athlete waives analysis of the confirmation part of the split Sample.*
>
> *2.1.3 Excepting those substances for which a Decision Limit is specifically identified in the Prohibited List or a Technical Document, the presence of any reported quantity of a Prohibited Substance or its Metabolites or Markers in an Athlete's Sample shall constitute an Anti-Doping rule violation.*
>
> *2.1.4 As an exception to the general rule of Article 2.1, the Prohibited List, International Standards, or Technical Documents may establish special criteria for reporting or the evaluation of certain Prohibited Substances.*
>
> *2.2 Use or Attempted Use by an Athlete of a Prohibited Substance or a Prohibited Method.*
>
> *2.2.1 It is the Athletes' personal duty to ensure that no Prohibited Substance enters their bodies 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."

92. Nandrolone (19-nortestosterone) is a non-specified substance listed as an Anabolic Androgenic Steroid under Section S.1.1 of the 2021 WADA Prohibited List (the "WADA Prohibited List") that is prohibited in- and out-of-competition.

93. The Respondents do not advance any arguments related to the procedures applied by the Bloemfontein Laboratory, and the Sole Arbitrator has no reason to question the compliance by the Bloemfontein Laboratory with all applicable standards, including the International Standard for Laboratories (the "ISL").

94. As held in the First Instance Decision, the Athlete did not request an analysis of her B sample, thus waiving her right to the same.

95. Consequently, with the waiver of her B Sample analyses, pursuant to Article 2.1.2 of the ADAK ADR, sufficient proof of an ADRV under Articles 2.1 and 2.2 of the ADAK ADR is provided, which conclusion aligns with the findings in the First Instance Decision as well as in the Appealed Decision.

iii. What shall be the consequences thereof?

96. Article 10.2 of the ADAK ADR provides as follows:

"*The period of Ineligibility for a violation of Article 2.1, 2.2 or 10.2 Ineligibility for 2.6 shall be as follows, subject to potential elimination, reduction or Presence, Use or Attempted Use or suspension pursuant to Article 10.5, 10.6 or 10.7:*

10.2.1 The period of Ineligibility, subject to Article 10.2.4, shall be four (4) years where:

10.2.1.1 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.

10.2.1.2 The Anti-Doping rule violation involves a Specified Substance, or a Specified Method and ADAK can establish that the Anti-Doping rule violation was intentional."

97. Pursuant to Article 10.2.1.1 of the ADAK ADR, since Nandrolone (19-nortestosterone) is a non-specified substance, the period of ineligibility to be imposed

on the Athlete is four years, unless the Athlete can establish that the ADRV was not intentional.

a. Did the Athlete establish that the infringement of Articles 2.1 and 2.2 of the ADK ADR was not intentional?

98. Article 10.2.3 of the ADAK ADR provides as follows:

> "*As used in Article 10.2, the term 'intentional' is meant to identify those Athletes or other Persons who engage in conduct which they knew constituted an Anti-Doping rule violation or knew that there was a significant risk that the conduct might constitute or result in an Anti-Doping rule violation and manifestly disregarded that risk. An Anti-Doping rule violation resulting from an Adverse Analytical Finding for a substance which is only prohibited In-Competition shall be rebuttably presumed to be not 'intentional' if the substance is a Specified Substance and the Athlete can establish that the Prohibited Substance was Used Out-of-Competition. An Anti-Doping rule violation resulting from an Adverse Analytical Finding for a substance which is only prohibited In-Competition shall not be considered 'intentional' if the substance is not a Specified Substance and the Athlete can establish that the Prohibited Substance was Used Out-of-Competition in a context unrelated to sport performance.*"

99. Since Nandrolone (19-nortestosterone) is prohibited at all times, none of the exceptions set forth in the second part of Article 10.2.3 of the ADAK ADR are applicable, as a consequence of which it is for the Athlete to establish that the infringement of Articles 2.1 and 2.2 of the ADAK ADR was not intentional.

100. In this respect, it is WADA's position that the Athlete's conduct would fall at least within the second limb of Article 10.2.3 of the ADAK ADR ("indirect intention").

101. The Sole Arbitrator agrees with WADA that the minimum threshold for "intent" is "indirect intent", or "*dolus eventualis*". Accordingly, this concept of "indirect intention" is subject to two requirements:

(i) The Athlete knew that there was a significant risk that her conduct might constitute or result in an ADRV; and

(ii) She manifestly disregarded that risk.

102. According to WADA, based on a plain reading of the World Anti-Doping Code and case law on indirect intent, the Athlete, even if her explanation were accepted, could clearly not have demonstrated a lack of indirect intent on the balance of probabilities. Rather, according to WADA, this is an obvious and clearcut case of indirect intent.

103. As stated in the First Instance Decision, the Athlete apparently argued as follows in the first instance proceedings:

"*In her submissions the Athlete stated that she did not deny the AAF as alleged by the Applicant but rather that on or about 25th August 2021 she visited Ololua Dispensary, Ngong to see a doctor as her knee and ankle were swollen and shewas experiencing excruciating pain to a point where she could not train.*

Indicating to the doctor that she was an athlete, he examined her and then prescribed COX-B 200mg injection, Pregabalin 300mg tablets and Volini gel for application on affected areas. The doctor advised her that she showed symptoms common with patients afflicted by arthritis and cautioned her to reduce strenuous exercises to enable proper healing.

It was subsequent to service by the Applicant with the charge that she was informed the constitution of the drugs prescribed to her, namely COX-B, contained nondralene (19- norandrosterone) a prohibited substance the Athlete asserted."

104. The Athlete's handwritten response to the ADRV Notice of 4 January 2022 provides as follows:

"*To C.E.O. ADAK*

Ref: Anti-Dopin [sic] *rule violation notice*

I write to confirm that I received the letter from Adak on 12.31.2021. I want to state as follows, I denie [sic] *the charges because on 8/25/2021 I went to hospital with severe pains on my ankle and knee and much swollen. After a long period of staying in the house with this problem I decided to go for short long run very easy to see whether feel the responce* [sic] *of this problem after periods of seeing physical how it response* [sic]. *I falled* [sic] *down after I was getting of the path I was going to where cased* [sic] *me extreem pains and much extrem* [sic] *swollen and decided to go to hospital from that point where I took* [illegible] *from a friend and went to hospital. I explained everything to the doctor and told doctor am an athlete. Therefore he treated me according and level of his knoledge* [sic] *with the medication, where I have attached the doctors report and medication. I did not used this substance to enhance performance but for medication purposes. I am clean athlete and have tested since 2017,2018, 2019, so many times and have been tested all negative.*

Please assist me in this matter please."

105. The doctor's prescription attached to the Athlete's handwritten response, referring to visits on 25 August 2021 and 30 August 2021, provides, *inter alia*, as follows:

"*Treatment given i.e COX-B 200mg OD * 10/7, injection deca-durobin start*"

106. The Athlete's handwritten response is also accompanied by handwritten notes allegedly issued by the Oloolua Dispensary. These notes, *inter alia*, refer to the word "*Athlete*" and to "*Avoid Strenuous exercises for 3/52*".

107. In the absence of more recent submissions from the Athlete, the Sole Arbitrator deems it appropriate to assess whether the Athlete established that her ADRV was not intentional based on the evidence available, including the evidence provided by the AIU that was not available in the first instance proceedings before the Kenya Sports Disputes Tribunal, but that became available in the proceedings before the Appeal Panel of the Kenya Sports Disputes Tribunal and was taken into account in the Appealed Decision.

108. This "new" evidence relied upon by WADA should, according to WADA, confirm that the Athlete did not inform the doctor that she was an athlete and that the Athlete already had the Deca-durabolin with her when she went to the Oloolua Dispensary. Based on this evidence, WADA argues that the Athlete did not provide sufficient explanations of how the 19-NA and 19-NE ended up in her system.

109. In this respect, WADA relied on the following WhatsApp conversation between Mr Tony Jackson, Deputy Head of Case Management of the AIU, and Ms Lydia Munteyian, the County Director Health, Kajiado County Government:

> Mr Jackson: "*it is said that the Athlete brought the steroid injection to be given. Does this mean that the Athlete was not prescribed the steroid injection by the clinician at the Oloolua dispensary? Does it mean that the patient arrived with vials and asked to be injected with it on both 25 Aug and 30 Aug? Is that a permitted practice?*"
>
> […]
>
> Ms Munteyian: "*It's also true that the client brought in the drugs ,she bought from a local chemist.*
>
> *She also dint* [sic] *report that she is an athlete.*"

110. As set forth in more detail *supra*, in assessing whether the Athlete established that the infringement of Articles 2.1 and 2.2 of the ADAK ADR was not intentional, the Sole Arbitrator engaged in a delicate exercise in trying to strike a fair balance and avoiding the pitfall of being "*overly 'deferential' towards or 'overcorrect' for the absent respondent*" (LEVINE, Default and Non-Participation in Cases Before International Courts and Arbitral Tribunals, Max Planck Encyclopedia of International Procedural Law (OUP, 2023), para. 104, with references).

111. The Sole Arbitrator observes that it is the Athlete's submission that she indicated at the Oloolua Dispensary that she was an athlete, whereas this is denied by Ms Munteyian. It is therefore the word of the Athlete against the word of Ms Munteyian

and the Sole Arbitrator did not have the benefit of hearing direct evidence from either of these persons.

112. Restricted by the limited direct evidence at his disposal, the Sole Arbitrator first of all finds that the burden of proof to establish that the ADRV was not intentional lies with the Athlete. Accordingly, if the evidence provided is inconclusive, the Athlete failed to satisfy her burden of proof.

113. The Sole Arbitrator nonetheless accepts that the Athelte made it known that she was an athlete. This follows from the reference to "*Athlete*" in the contemporaneous handwritten notes of the Oloolua Dispensary. Furthermore, as argued in the First Instance Decision, the advice to "*Avoid Strenuous exercises for 3/52*" also suggests that there was awareness the Athlete was an athlete. The Sole Arbitrator also notes that, prior to Ms Munteyian's statement by WhatsApp message of 14 June 2023 that "[the Athlete] *dint* [sic] *report that she is an athlete*", she stated that the documents submitted by the Athlete indeed came from the Oloolua Dispensary and that "*The client had visible knee injury and was athlete*". Finally, the Sole Arbitrator notes that Ms Munteyian was not present when the Athlete visited the Oloolua Dispensary on 25 and 30 August 2021 and that she therefore does not have any first-hand knowledge of the factual circumstances. According to Ms Munteyian, the person who administered the injection was a person by the name "*mburu*", which name also features in the handwritten answers given by the Oloolua Dispensary to questions of the AIU ("*Joseph* [illegible] *Mburu, Clinical officer, 7252*").

114. However, the Sole Arbitrator finds that the practical relevance of this is limited. It is not contended by the Athlete that she indicated being a "professional athlete" or that she was an "athlete subject to anti-doping regulations". The Athlete's statement that she was an "athlete" may have been taken to mean that she was an amateur athlete. This is considered relevant, because the doctor could well have issued a different prescription on the basis of such information.

115. Furthermore, as to WADA's contention that the Athlete brought the Deca-durabolin to the Oloolua Dispensary herself, the Sole Arbitrator accepts such statement based on the evidence provided. In the handwritten answers given by the Oloolua Dispensary to questions of the AIU, it was confirmed that the Oloolua Dispensary did not stock Deca-durabolin. WADA's contention is also corroborated by Ms Munteyian confirmations ("*She brought the steroid injection to be given*" and "*It's also true that the client brought in the drugs ,she bought from a local chemist*"). The Sole Arbitrator has no reason to question such evidence, also because it remained uncontested by the Athlete.

116. The Sole Arbitrator finds that there was no medical emergency in the sense that the injection of Deca-durabolin had to be administered to the Athlete without delay. Accordingly, there was time for the Athlete to consider whether an injection of Deca-durabolin was appropriate in the circumstances, verify the composition of Deca-durabolin and assess whether there were any anti-doping risks involved related to such administration, which she apparently did not do. Indeed, the Sole Arbitrator

finds that, even a basic research, either an inspection of the package of Deca-durabolin or a basic internet search, would have set off alarm bells as it would have revealed that the active substance of Deca-durabolin is Nandrolone (19-nortestosterone). There is no evidence on file suggesting that the Athlete made any inquiry as to the components of Deca-durabolin. To the contrary, according to ADAK, as set forth in its Answer, the Athlete admitted during her evidence in chief in the first instance proceedings "*to not confirming and crosschecking the ingredients of the medication before ingesting them*". Under such circumstances, the Sole Arbitrator finds that the Athlete cannot simply hide behind the advice of a doctor to establish that the ADRV was not intentional.

117. In this respect, the Sole Arbitrator finds himself comforted by CAS jurisprudence, providing as follows:

> "[…] [I]*t is a key principle of the fight against doping that an athlete cannot blindly rely on his support staff, including doctors. An athlete has a personal duty to ensure that no prohibited substance enters his or her body. He is responsible for the conduct of people around him from whom he receives food, drinks, supplements or medications, including his doctor, and cannot therefore simply say that he trusts them and follows their instructions* [further reference to CAS 2007/A/1370 & CAS 2007/A/1376]. *It is clear to the Sole Arbitrator that by limiting himself to trusting Dr. Porcellini, without carrying out any research with regard to the activities of the Farmacia Rivazzurra, the Appellant has not made good faith efforts 'to leave no reasonable stone unturned' and has thus significantly disregarded his positive duty of caution* [with further reference to CAS 2009/A/1870]. […]" (CAS 2014/A/3798, para. 93)

> "*The Sole Arbitrator finds that, even if it were true, the Player cannot simply hide behind his contention that he asked Dr. Pawar and the team doctor whether the medication prescribed contained any prohibited substances and relied on their assurance that it did not.*" (CAS 2016/A/4609, para. 72)

118. Based on the above, the Sole Arbitrator finds that the Athlete knew or ought to have known that there was a significant risk that an injection of Deca-durabolin, or any injection for that matter, would result in an ADRV and that the Athlete manifestly disregarded that risk by nonetheless allowing the injection to be administered.

119. Consequently, the Sole Arbitrator finds that the Athlete did not succeed in establishing that the infringement of Articles 2.1 and 2.2 of the ADAK ADR was not intentional.

b. What sanctions are to be imposed on the Athlete?

120. In accordance with Article 10.2.1 of the ADAK ADR, since the Athlete did not succeed in establishing that the infringement of Articles 2.1 and 2.2 of the ADAK ADR was not intentional, a four-year period of ineligibility is to be imposed on the Athlete.

121. Article 9 of the ADAK ADR provides as follows:

> "*An Anti-Doping rule violation in Individual Sports in connection with an In-Competition test automatically leads to Disqualification of the result obtained in that Competition with all resulting Consequences, including forfeiture of any medals, points and prizes.*"

122. Consequently, also considering that no objection was raised in this respect by the Athlete, the Sole Arbitrator sees no reason why the Athlete's results in the competition she competed in on 21 September 2021 should not be disqualified, with all resulting consequences, including forfeiture of any medals, points and prizes.

123. Article 10.10 of the ADAK ADR provides as follows:

> "*In addition to the automatic Disqualification of the results in the Competition which produced the positive Sample under Article 9, all other competitive results of the Athlete obtained from the date a positive Sample was collected (whether In-Competition or Out-of-Competition), or other Anti-Doping rule violation occurred, through the commencement of any Provisional Suspension or Ineligibility period, shall, unless fairness requires otherwise, be Disqualified with all of the resulting Consequences including forfeiture of any medals, points and prizes.*"

124. WADA requests that all competitive results obtained by the Athlete from 21 September 2021 until the date on which the present Award enters into force are disqualified, with all resulting consequences (including forfeiture of medals, points and prizes).

125. The Sole Arbitrator notes that the disqualification of results in the matter at hand concerns two different periods, i.e., the period between 21 September 2021 until the date the provisional suspension was imposed on 20 December 2021, and the period between 20 December 2023, i.e., the date the Athlete served the two-year period of ineligibility imposed on her by means of the First Instance Decision (that was confirmed by the Appealed Decision), and the date of the present Award.

126. With respect to the first period, there is little controversy. As to the second period, one may question whether the wording of Article 10.10 of the ADAK ADR allows for a disqualification and, if so, whether it would be fair to do so. It was for this reason that the Sole Arbitrator invited the Parties to comment on this issue by CAS Court Office letter dated 18 September 2025.

127. While the Athlete and ADAK remained silent, WADA argued, *inter alia*, that Article 10.10 of the ADAK ADR also warrants the disqualification of results obtained after a resumption of participation, that the burden is on athletes to establish that the fairness exception should apply to save their results and that it is not for WADA to hypothesise as to potential reasons of fairness in order to meet the Athlete's burden for her, nor for the tribunal to do so *sua sponte*.

128. Having considered the matter, the Sole Arbitrator finds that Article 10.10 of the ADAK ADR, in principle, requires the disqualification of results until the commencement of "*any* […] *Ineligibility period*", i.e., also results obtained after the first but before the second part of the period of ineligibility.

129. The Sole Arbitrator feels himself comforted in this conclusion by CAS jurisprudence:

> "*In general, CAS Panels have confirmed that the equivalents to Article 10.8* [in the present case Article 10.10 of the ADAK ADR] *of the SAIDS ADR allow the disqualification of results from the period between the expiry of the ineligibility period and the imposition of an additional ban (e.g. CAS 2008/A/1470). Results may remain valid if fairness so requires in the circumstances of each case (e.g. TAS 2009/A/2014). The factors to be assessed in the fairness test include, but are not restricted to, the athlete's intent and degree of fault, as well as the length of the disqualification period.*" (CAS 2018/A/5990, para. 203)

130. The Sole Arbitrator finds that, the above considerations notwithstanding, specific circumstances may warrant the potential application of the fairness exception. However, the Sole Arbitrator notes that the Athlete did not put forward any argument suggesting that the fairness exception is to be applied in the matter at hand.

131. The Sole Arbitrator also finds that it would be unfair to leave any results obtained by the Athlete intact. This would mainly be unfair for athletes who may have competed against the Athlete within the first two years following 20 December 2023, as the Athlete should have been ineligible to compete during this period.

132. In any event, the Sole Arbitrator notes that it derives from publicly available records (the Athlete's profile on the website worldathletics.org) that the Athlete does not appear to have obtained any competitive results after she became eligible to compete on 20 December 2023.

133. On this basis, the Sole Arbitrator finds that, in line with WADA's request, all competitive results of the Athlete from 21 September 2021 until the date of the present Award are disqualified, with all of the resulting consequences, including forfeiture of any medals, points and prizes.

134. Article 10.13 of the ADAK ADR provides as follows:

> "[…] [E]*xcept as provided below, the period of Ineligibility shall start on the date of the final hearing decision providing for Ineligibility or, if the hearing is waived or there is no hearing, on the date Ineligibility is accepted or otherwise imposed.*"

135. The Sole Arbitrator finds that there have been no meaningful delays not attributable to the Athlete that require starting the period of ineligibility at an earlier date, nor has this been contended by the Athlete. Although there have been delays in the proceedings, the Sole Arbitrator finds that this was mainly caused by the Athlete's

failure to participate in the present appeal arbitration proceedings. Accordingly, the four-year period of ineligibility imposed on the Athlete shall, in principle, commence on the date of the present Award.

136. Article 10.13.2.1 of the ADAK ADR provides as follows:

> "*If a Provisional Suspension is respected by the Athlete or other Person, then the Athlete or other Person shall receive a credit for such period of Provisional Suspension against any period of Ineligibility which may ultimately be imposed. If the Athlete or other Person does not respect a Provisional Suspension, then the Athlete or other Person shall receive no credit for any period of Provisional Suspension served. If a period of Ineligibility is served pursuant to a decision that is subsequently appealed, then the Athlete or other Person shall receive a credit for such period of Ineligibility served against any period of Ineligibility which may ultimately be imposed on appeal.*"

137. Noting that the Athlete was provisionally suspended since 20 December 2021 and that she was subsequently sanctioned with a two-year period of ineligibility by means of the First Instance Decision issued on 29 September 2022 (that was subsequently confirmed by the Appealed Decision), the Athlete shall receive credit for both the provisional suspension served as well as for the period of ineligibility served in accordance with the First Instance Decision (as confirmed by the Appealed Decision). However, the Athlete appears to have been eligible to compete again as from 20 December 2023 until the date of the present Award. Accordingly, this period is not credited against the four-year period of ineligibility imposed, with the consequence that the Athlete is yet to serve a remaining two-year period of ineligibility.

B. Conclusion

138. Based on the foregoing, the Sole Arbitrator holds that:

a. The Athlete was properly notified of the appeal arbitration proceedings initiated against her and ADAK by WADA.
b. The Athlete violated Articles 2.1 and 2.2 of the ADAK ADR.
c. A four-year period of ineligibility is imposed on the Athlete, commencing as from the date of issuance of this Award, crediting any period of provisional suspension or period of ineligibility effectively served before the entry into force of the present Award.
d. All competitive results obtained by the Athlete in competitions taking place in the period 21 September 2021 through to the date of issuance of the present Award are disqualified, with all resulting consequences, including forfeiture of any medals, points and prizes.

139. All other and further motions or prayers for relief are dismissed.

XI. COSTS

(…)

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ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed on 22 February 2024 by the World Anti-Doping Agency against the decision issued on 25 January 2024 by the Appeal Panel of the Kenya Sports Disputes Tribunal is upheld.

2. The decision issued on 25 January 2024 by the Appeal Panel of the Kenya Sports Disputes Tribunal is set aside.

3. A four-year period of ineligibility is imposed on Ms Jackline Wambui, commencing as from the date of issuance of this Award, crediting any period of provisional suspension or period of ineligibility effectively served before the entry into force of the present Award.

4. All competitive results obtained by the Athlete in competitions taking place in the period 21 September 2021 through to the date of issuance of the present Award are disqualified, with all resulting consequences, including forfeiture of any medals, points and prizes.

5. (…).

6. (…).

7. All other and further motions or prayers for relief are dismissed.

Seat of arbitration: Lausanne, Switzerland
Date: 27 October 2025

THE COURT OF ARBITRATION FOR SPORT

André Brantjes
Sole Arbitrator