CAS 2025/A/11842 World Anti-Doping Agency (WADA) v. Anti-Doping Agency of Kenya (ADAK) & Stanely Njihia Kamau

ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

Sole Arbitrator: Ms Annett Rombach, Attorney-at-Law, Frankfurt am Main, Germany

in the arbitration between

World Anti-Doping Agency (WADA), Montreal, Canada

Represented by Messrs Nicolas Zbinden and Mario Flores Chemor, Attorneys-at-Law at Kellerhals Carrard, Lausanne, Switzerland

Appellant

and

Anti-Doping Agency of Kenya, Nairobi, Kenya

Represented by Mr Bildad Rogoncho, Head of Legal Services at the Anti-Doping Agency of Kenya, Nairobi, Kenya

First Respondent

&

Stanely Njihia Kamau, Nyahururu, Kenya

Represented by Ms Diana Owiyo, Legal Associate at Agola Law, Nairobi, Kenya

Second Respondent

I. THE PARTIES

1. The World Anti-Doping Agency (**"WADA"** or the **"Appellant"**) is a private law foundation constituted under Swiss law in 1999 to promote and coordinate at international level the fight against doping in sport on the basis of the World Anti-Doping Code (the **"WADA Code"** WADA has its registered seat in Lausanne, Switzerland, and its headquarters in Montreal, Canada.

2. The Anti-Doping Agency of Kenya (the **"ADAK"** or the **"First Respondent"**) is the national anti-doping organisation for the country of Kenya, recognized as such by WADA. It has its registered seat in Nairobi, Kenya.

3. Mr Stanely Njihia Kamau (the **"Athlete"** or the **"Second Respondent"**) is a long-distance runner from Kenya. The Athlete is considered a National-Level Athlete for the purposes of the ADAK Anti-Doping Regulations (the **"ADAK ADR"**) and has been competing in running events since 2013.

4. ADAK and the Athlete are collectively referred to as the **"Respondents"**. The Appellant and the Respondents are collectively referred to as the **"Parties"**. [1]

II. FACTUAL BACKGROUND

A. Introduction

5. The present dispute arises from an appeal against a decision rendered on 31 July 2025 by the Sports Disputes Tribunal of Kenya (the **"SDT"**) (the **"Appealed Decision"**). In the Appealed Decision, the SDT determined that the Athlete had committed an anti-doping rule violation (the **"ADRV"**) pursuant to Article 2.1 of the ADAK ADR (Presence of a Prohibited Substance or its Metabolites or Markers in an Athlete's Sample). The SDT found that the ADRV was not intentional and imposed a period of Ineligibility of two (2) years on the Athlete. The Appellant argues that the ADRV was intentional and seeks the imposition of a period of Ineligibility ranging from four (4) to six (6) years.

6. Below is a summary of the main relevant facts and allegations based on the Parties' written submissions, pleadings and evidence adduced during these proceedings. Additional facts and allegations may be set out, where relevant, in connection with the legal discussion that follows. Although the Sole Arbitrator has considered all the facts, allegations, legal arguments and evidence submitted by the Parties in the present proceedings, the present Award only refers to the submissions and evidence considered

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[1] Capitalized terms not otherwise defined in this Award shall have the meaning ascribed to them in Appendix: Definitions of the ADAK ADR and, where applicable, in the 2021 World Anti-Doping Code and its International Standards.

necessary to explain its reasoning.

B. Background Facts

7. On 17 September 2023, a urine sample collected from the Athlete during an In-Competition doping control returned an Adverse Analytical Finding for *triamcinolone acetonide*, a substance prohibited In-Competition under the 2023 WADA Prohibited List. Following review of the matter, including the Athlete's explanation and supporting medical documentation, the World Athletics TUE Committee granted a retroactive Therapeutic Use Exemption ("**R-TUE**"), and on 23 July 2024, proceedings were closed, concluding that no ADRV had been committed.

8. On 16 December 2023, the Athlete was subject to a further In-Competition doping control (the "**Doping Control**") at Ulinzi Stadium in Nairobi, Kenya. During the Doping Control, the Athlete provided a urine sample (the "**Sample**") which was split into A and B Samples. The Sample was transported for analysis to the South African Doping Control Laboratory in Bloemfontein (the "**Bloemfontein Laboratory**").

9. On 4 March 2024, WADA suspended the accreditation of the Bloemfontein Laboratory, and the Sample was therefore referred to the WADA-accredited laboratory in Lausanne, Switzerland (the "**Lausanne Laboratory**") for further analysis.

10. On 21 June 2024, ADAK informed the Athlete that, as the volume of the A Sample was insufficient for analysis, the Lausanne Laboratory would open and analyse the B Sample. The Athlete was invited to attend the procedure in person or to appoint a representative. The Athlete did neither. Accordingly, an independent witness was appointed in accordance with the applicable International Standard for Laboratories ("**ISL**").

11. On 19 August 2024, the Lausanne Laboratory reported that the analysis of the Athlete's B Sample had revealed an Adverse Analytical Finding for recombinant erythropoietin ("**rEPO**"). REPO is a non-Specified Substance prohibited at all times and classified under S2 (Peptide Hormones, Growth Factors, Related Substances, and Mimetics) of the 2023 WADA Prohibited List (the **"Prohibited Substance"**).

12. In accordance with the applicable WADA Technical Document – TD2024EPO, two experts provided second opinions confirming the presence of rEPO, *i.e.* exogenous EPO that had been externally administered, as opposed to endogenous EPO naturally produced by the body. At the time, the Athlete did not dispute the identification of rEPO in his Sample.

13. On 24 September 2024, ADAK formally notified the Athlete of a potential violation of Article 2.1 (Presence) of the ADAK ADR and invited him to provide an explanation and to request the laboratory documentation package for his Sample (the **"Initial Notice"**). ADAK further informed the Athlete that he would be provisionally suspended with effect from 14 October 2024.

14. On 1 October 2024, the Athlete responded to the Initial Notice via WhatsApp, denying the allegations. He did not request the laboratory documentation package for his Sample.

C. The Proceedings Before the SDT

15. On 7 November 2024, ADAK filed with the SDT a charge letter, together with supporting evidence (the **"Charge Letter"**). ADAK sought, *inter alia*, that a four (4) year period of Ineligibility be imposed on the Athlete.

16. On 20 January 2025, the Athlete filed a submission titled "Defence & Counterclaim", in which he sought the dismissal of the charges (the "**Response**"). In the Response, the Athlete asserted, *inter alia*, that:

- he had no intention to cheat, had exercised reasonable care, and that alleged gaps and irregularities in the Sample collection, handling, transfer, and analysis undermined the reliability of the analytical result;
- the chain of custody was incomplete, in particular due to the absence of full documentation relating to the transfer of the Sample from Nairobi to the Bloemfontein Laboratory, the lack of testimony from the Doping Control Officer and Assistant Doping Control Officer, and the absence of key records, thereby giving rise to reasonable doubt as to the integrity of the Sample;
- he had been diagnosed with arthritis and treated with an intramuscular *Kenacort*-injection at Nyahururu Hospital (the "**Hospital**") under the care of clinician Dr Isaac Korir, and had also been administered *Kenacort* out-of-competition from Dr Mwangi for a legitimate medical condition;
- he had previously been granted the R-TUE for *Kenacort* following an earlier adverse analytical finding, which, in his view, demonstrated that the substance had been used for genuine medical purposes and without intent to enhance performance, and that, having acted in good faith on medical advice and with limited anti-doping education, he bore at most No Significant Fault or Negligence.

17. The Athlete submitted, *inter alia*, the following documents in support of his Response: (i) a medical file from the Hospital containing medical observations, treatment notes and prescriptions; (ii) a letter dated 22 November 2024 issued by the Athlete's treating clinician at the Hospital, Dr Isaac Korir,[2] and (iii) Dr Korir's witness statement dated 11 January 2025.

18. In relevant part, Dr Korir's letter dated 22 November 2024 reads as follows:

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[2] The veracity of Dr Korir's letter was put into question during the proceedings before the SDT, as an employee from the Hospital declared that there was no record of the Athlete having ever been treated there (paras. 99-107 of the Appealed Decision). However, the SDT held that the possibility that the Athlete had received treatment "*off the record"* could not be excluded (para. 106 of the Appealed Decision).

"[…] The above named athletes [sic] *have been on management in our health facility due to gouty arthritis. Has been on medication include injection kenacort which is a DM.ARD and may cause positive EPO.*

The drug is useful as part of management of his condition. […]*"*

19. Dr Korir's witness statement dated 11 January 2025 reads as follows:

"Given the severity of the athlete's condition, I determined that immediate intervention was necessary to prevent further joint damage and ensure his ability to maintain normal physical activities, including running. After considering available treatment options, I prescribed and administered Kenacort via intermuscular injection. The decision was guided by:

1. *Kenacort being a medically approved effective treatment for gouty arthritis.*
2. *The lack of alternative treatments capable of providing comparable relief for his conditions within the required timeframe.*
3. *The urgency to address the athlete's condition to prevent irreversible joint damage.*

The treatment protocol involved Kenacort injections administered on 5th June 2023, 5th September, 2023, 5th December, 2023 (3 dosages) over a 6-month period, from June to December 2023. This was consistent with standard medical guidelines for managing gouty arthritis.

At the time of prescribing Kenacort, I was unaware of the specific anti-doping regulations governing the use of corticosteroids, including the requirement for a Therapeutic Use Exemption (TUE). My decision was solely based on medical judgement and the necessity to alleviate the patient's condition. I informed Stanley that Kenacort had steroids however I did not advise him regarding potential implications regarding anti-doping regulations, as I was unaware of these rules. However, I now recognize the importance of considering such factors when treating athletes.

I emphasize that the administration of Kenacort was solely intended to address Stanley Njihia's diagnosed medical condition. At no point was the treatment prescribed or administered to enhance his athletic performance or provide an unfair advantage."

20. On 8 May, 22 May and 5 June 2025, hearings were held before the SDT.

21. On 31 July 2025, the SDT Panel rendered the Appealed Decision. Its operative part reads as follows:

"In light of the analysis and findings in the paragraphs above, it is the finding of this Court that the following orders are just to issue

i. *The Respondent herein is hereby found liable of committing an ADRV under article 2.3 of the Anti- doping regulations*

ii. *The period of ineligibility is hereby imposed at two years from the date of the provisional suspension already imposed.*

iii. *The period of ineligibility shall commence from the date of the provisional suspension being, 14th October, 2024* […]*"*

22. The reasoning of the Appealed Decision can be summarized as follows:

- The SDT found that ADAK had complied with the WADA Code, ISTI and ISL procedures concerning Sample collection, handling, transportation and transfer. It rejected the Athlete's objections regarding the absence of the DCO's testimony, chain-of-custody documentation, temperature deviations, independent-witness verification and sample splitting, holding that there was no material evidence that the Sample's integrity had been compromised. The SDT specifically accepted the opening and splitting of the B Sample in the presence of an independent witness after the Athlete had been informed of his opportunity to attend or appoint a representative.

- The SDT further held that the laboratory analysis established the presence of the Prohibited Substance in the Sample and that the Athlete had therefore committed the ADRV under Article 2.1 of the WADA Code. While the SDT accepted the Athlete's medical records as credible and admissible, it concluded that the medical necessity of the treatment did not eliminate the ADRV.

- The SDT found that the ADRV was not intentional within the meaning of Article 10.2.1.1 of the WADA Code. It accepted that the Prohibited Substance had been administered in a *bona fide* medical context and was unrelated to sports performance but held that the Athlete nevertheless knew about the TUE process and failed to obtain a further TUE before using the medication. The SDT therefore found negligence arising from the Athlete's failure to apply for the required TUE, while also finding that ADAK had not established intentional or reckless use.

- The SDT imposed a two-year period of ineligibility, rather than the four-year sanction sought by ADAK. The sanction was ordered to run from the date of the provisional suspension, 14 October 2024.

23. On 24 August 2025, the Appealed Decision was notified to WADA. On 5 September 2025, WADA requested the case file. On 23 September 2025, WADA received elements of the case file.

III. THE PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

24. On 14 October 2025, the Appellant filed its Statement of Appeal with the CAS against the Appealed Decision, pursuant to Articles R47 *et seq.* of the CAS Code of Sports-

related Arbitration (the **"CAS Code"**) (the **"Appeal"**). In its Statement of Appeal, the Appellant requested the appointment of a sole arbitrator.

25. On 16 October 2025, the CAS Court Office informed the Parties about the Appeal, requested the Appellant to file its Appeal Brief in accordance with Article R51 of the CAS Code and noted the Appellant's choice to proceed with its Appeal in the English language. In addition, the Respondents were invited to inform the CAS Court Office whether they agreed to the appointment of a sole arbitrator. The CAS Court Office further informed the Parties that WADA had filed additional appeals raising similar issues[3] and invited them to indicate whether they agreed to submit the present Appeal and the other similar appeals filed by WADA (collectively referred to as the **"WADA Appeals"**) to the same sole arbitrator.

26. On 21 October 2025, the Appellant requested a twenty-day extension of the time limit to file its Appeal Brief and informed the CAS Court Office that it had no objection to the appointment of the same sole arbitrator in the WADA Appeals.

27. The Respondents did not provide their position on submitting the present procedure and the WADA Appeals to the same sole arbitrator.

28. On 4 November 2025, the CAS Court Office informed the Parties that, in the absence of any submission by the Respondents on the composition of the Panel, the Sole Arbitrator would be appointed in accordance with Article R54 of the CAS Code.

29. On 12 November 2025, the Second Respondent notified the CAS Court Office of the appointment of his legal representative. The Second Respondent further requested an extension to file his Answer which was subsequently granted by the CAS Court Office.

30. On 17 November 2025, the CAS Court Office acknowledged receipt of the Appeal Brief (filed by the Appellant, within the duly extended time limit, on 13 November 2025) and invited the Respondents to submit their respective Answers within twenty (20) days pursuant to Article R55 of the CAS Code.

31. On 15 December 2025, the CAS Court Office acknowledged receipt of the Second Respondent's Answer and "counterclaim" (filed on 10 December 2025) and noted the First Respondent's failure to submit its Answer within the prescribed deadline. The CAS Court Office invited the Parties to express their respective preferences for a hearing and a case management conference ("**CMC**") to be held.

32. On 19 December 2025, Second Respondent indicated his preference for a hearing and a case management conference to be held.

33. On 26 December 2025, the Appellant informed the CAS Court Office that exhibits were missing from the Second Respondent's Answer and objected to the admissibility of the "counterclaim" raised by the Second Respondent in his Answer (the "**Objection**"). The Appellant further requested that the Sole Arbitrator issue a preliminary decision on the

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[3] Registered as CAS 2025/A/11839; CAS 2025/A/11840; CAS 2025/A/11841.

(in)admissibility of the Second Respondent's counterclaim.

34. On 29 December 2025, the CAS Court Office invited the Respondents to comment on the Appellant's Objection by no later than 5 January 2026. The Respondents did not file any comments on the Objection.

35. On 13 January 2026, pursuant to Article R54 of the CAS Code, and on behalf of the Deputy President of the CAS Appeals Arbitration Division, the CAS Court Office informed the Parties that the Panel appointed to decide the present matter was constituted as follows:

Sole Arbitrator: Ms Annett Rombach, Attorney-at-law, Frankfurt am Main

36. Separately, the CAS Court Office confirmed receipt of the First Respondent's Answer of the same day. The Appellant and the Second Respondent were invited to provide their comments on the admissibility of the Answer by 20 January 2026.

37. By e-mail of 20 January 2026, WADA informed the CAS Court Office that it did not object to the admissibility of the First Respondent's Answer.

38. By correspondence of 1 April 2026, the CAS Court Office informed the Parties of the Sole Arbitrator's decisions (i) to admit the First Respondent's Answer and (ii) to reject the Second Respondent's Counterclaim, for reasons which are explained further below in this Award. The CAS Court Office again invited the Parties to inform whether they preferred a hearing and/ or a CMC to take place.

39. On 7 April 2026, the Appellant communicated that it did not consider a hearing or CMC necessary in these proceedings.

40. On 8 April 2026, the First Respondent submitted its amended answer (the "**Amended Answer**").

41. On 9 April 2026, the CAS Court Office invited the Appellant and the Second Respondent to comment on the admissibility of the Amended Answer. The Respondents were once again invited to express their views on the necessity of a hearing and/or a CMC.

42. On 15 April 2026, the First Respondent informed the CAS Court Office that it did not request to hold a hearing.

43. On 16 April 2026, the Second Respondent informed the CAS Court Office that it preferred a hearing to take place and objected to the admissibility of the First Respondent's Amended Answer. The Appellant did not object to the admissibility of the Amended Answer.

44. On 21 April 2026, the CAS Court Office informed the Parties of the Sole Arbitrator's decisions (i) to admit the Amended Answer to the file and (ii) to hold a hearing via videoconference.

45. On 26 May 2026, after consultation with the Parties, the CAS Court Office informed

the Parties, , that the remote hearing would be held on 8 July 2026.

46. On 30 June 2026, and 1 July 2026, respectively, the Appellant and the First Respondent returned duly signed copies of the Order of Procedure. Despite several reminders to do so, the Second Respondent did not sign the Order of Procedure.

47. On 8 July 2026, a hearing was held by videoconference. In addition to the Sole Arbitrator and Ms Andrea Sherpa-Zimmermann, CAS Counsel, the following persons attended the hearing:

For the Appellant: Mr Nicolas Zbinden, Legal counsel;
Mr Mario Flores Chemor, Legal counsel;
Mr Ross Wenzel, WADA;
Ms Marissa Sunio, WADA;
Mr Cyril Troussard, WADA;

For the First Respondent: Ms Phyllis Mwangi, Legal counsel;
Ms Daisy Kurgat, Legal counsel;

For the Second Respondent: Mr Stanely Njihia Kamau, the Second Respondent;
Ms Diana Owiyo, Legal counsel.

48. At the outset of the hearing, all Parties confirmed that they had no objection to the constitution of the panel. The Respondents informed the Sole Arbitrator that they waived their right to cross-examine the Appellant's expert Professor Saugy, following which the Parties presented their respective cases.

49. Before the hearing was concluded, all Parties expressly stated that they had no objections to the procedure adopted by the Sole Arbitrator and that their respective rights to be heard and to be treated equally had been respected.

50. After the Parties' final and closing submissions, the hearing was closed and the Sole Arbitrator reserved her detailed decision for this written Award.

51. On 22 July 2026, the CAS Court Office informed the Parties that the evidentiary proceedings were closed.

52. On 24 July 2026, the Second Respondent communicated, through his legal counsel that he was "*very much confused*" and "*thought we would do a formal hearing*". The CAS Court Office advised the Second Respondent that the hearing had taken place on 8 July 2026.

53. In reaching the present decision, the Sole Arbitrator has carefully taken into account all the evidence and the arguments presented by the Parties, even if they have not been summarised in the present Award.

IV. THE POSITIONS OF THE PARTIES

54. The following outline of the Parties' positions is illustrative only and does not necessarily comprise every submission advanced by the Parties. The Sole Arbitrator

confirms, however, that she has carefully considered all the submissions made by the Parties, whether or not there is specific reference to them in the following summary.

A. The Appellant's Position and Request for Relief

55. The Appellant submits the following in substance:

- The Appealed Decision cannot stand. A proper assessment of the evidence can only lead to the following conclusions:
    - the Athlete has failed to establish the source of the rEPO found in his Sample. He has therefore failed to rebut the presumption that his ADRV was intentional, and he has not identified any specific product that could have caused the Adverse Analytical Finding ("**AAF**");
    - even if source were established, the Athlete acted with (at least) indirect intent;
    - the standard four-year period of Ineligibility therefore applies. Because of Aggravating Circumstances, it should be increased to up to six (6) years, given that rEPO is typically taken in courses.

On the ADRV

- The analysis of the Athlete's Sample revealed the presence of rEPO. This is a non-Specified Substance prohibited at all times under S2 of the 2023 WADA Prohibited List. The AAF was confirmed by two second opinions under TD2024EPO.
- The SDT correctly rejected the Athlete's allegations of departures from the ISTI and other procedural flaws. Since the Athlete has not filed a separate appeal, these issues fall outside the scope of the present appeal. His Counterclaim is inadmissible under the applicable rules.

On the source of the Prohibited Substance

- Under Article 10.2.1 of the ADAK ADR, the period of Ineligibility for a non-Specified Substance is four (4) years unless the Athlete establishes that the ADRV was not intentional. The burden of proof lies solely with the Athlete. Anti-doping organisations are not required "to hypothesise, still less prove" a scenario.
- Under established CAS jurisprudence, proof of source is a "crucial, almost indispensable element for an athlete to disprove intent" (CAS 2023/A/9377). It requires actual evidence as opposed to mere speculation (CAS 2014/A/3820). Protestations of innocence, the lack of a sporting incentive to dope, and a clean record carry no substantive weight.
- The SDT erred in accepting that injections of *Kenacort* were the source of the rEPO. The active ingredient of *Kenacort* is triamcinolone acetonide, a corticosteroid. *Kenacort* does not contain erythropoietin and therefore cannot be the source of the AAF.

- Dr Korir's statement that *Kenacort* is a DMARD and "*may cause positive EPO*" is supported by no evidence or literature, and he did not explain how such a result could occur. Professor Saugy's expert opinion expressly excludes *Kenacort* as the source of the AAF and attributes the finding to the administration of rEPO.
- No other substance administered to the Athlete at the Hospital contained rEPO.
- The timeline also rules out the Athlete's explanation. The last *Kenacort* injection was given on 5 December 2023, eleven days before the Sample was collected, while rEPO is typically undetectable in urine 3–4 days after injection. The Athlete's tests twelve days after the June and September 2023 injections were negative for rEPO.
- rEPO use is inherently deliberate, since it is administered by injection and in structured courses. Claims of lack of intent must therefore be approached with particular caution.

On indirect Intent (in the alternative)

- Even if the *Kenacort* injections were the source, the Athlete acted with indirect intent within the meaning of Article 10.2.3 of the ADAK ADR. In particular:
- Medications carry a notoriously high risk of containing prohibited substances, which triggers a heightened duty of care (CAS 2023/A/9525);
- The Athlete had been tested at least five times before the Sample was collected and has over a decade of experience in elite sport;

On Aggravating Circumstances

- Under Article 10.4 of the ADAK ADR, Aggravating Circumstances justify an additional period of Ineligibility of up to two (2) years.
- The use of rEPO necessarily involves multiple uses. In addition, the Athlete presented a version of events that he knew to be false, most likely to evade the consequences of the ADRV. The sanction should therefore be increased to up to six (6) years.

On Costs

- ADAK, as the Results Management Authority, is responsible for the erroneous Appealed Decision and must bear the arbitration costs. The independence of the SDT is irrelevant in this respect (CAS 2023/A/9451, 9455 & 9456, para. 430; CAS 2022/A/9286). ADAK should also pay a significant contribution to WADA's legal costs.

56. The Appellant requests the following relief:

"WADA respectfully requests the CAS to rule as follows:

1. The appeal of WADA is admissible.

2. *The decision dated 31 July 2025 rendered by the Sports Disputes Tribunal in the matter of Mr Stanely Njihia Kamau (SDTADK No. E068) is set aside.*
3. *Mr Stanely Njihia Kamau is found to have committed an anti-doping rule violation under Articles 2.1 and/or Article 2.2 of the ADAK ADR.*
4. *Mr Stanely Njihia Kamau is sanctioned with a period of ineligibility between four and six years starting on the date on which the CAS award enters into force. Any period of provisional suspension or ineligibility effectively served by Mr Stanely Njihia Kamau 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 Mr Stanely Njihia Kamau from and including 16 December 2023 are disqualified, with all resulting consequences (including forfeiture of medals, points and prizes).*
6. *The arbitration costs 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's Position and Request for Relief

57. With its Answer, the First Respondent initially submitted the following in substance:

On the ADRV

- The ADRV was properly established on the basis of the laboratory analysis reporting the presence of rEPO, which was neither scientifically challenged nor contested by the Athlete, and was further supported by the Athlete's own admissions.

- It is undisputed that, at the time of the Doping Control, the Athlete did not hold a valid TUE for the Prohibited Substance.

- The medical circumstances surrounding the Athlete's treatment – in particular his use of *Kenacort* prescribed for arthritis – are, however, central to the proper legal assessment of the Athlete's degree of fault, the question of Intent, and the proportionality of any sanction imposed.

On the source of the Prohibited Substance

- The applicable standard for establishing source is the balance of probabilities, requiring credible, athlete-specific evidence, not scientific certainty.

- The Athlete received *Kenacort* injections in a *bona fide* medical setting. It is not contended that *Kenacort* chemically produced rEPO; rather, this treatment is relied on only as factual context for assessing whether the Athlete's conduct was negligent or intentional.

- Proof of source is not a binary or absolute threshold. The failure to establish the source of a prohibited substance on the balance of probabilities does not automatically establish that the violation was intentional. The assessment of Intent remains a separate enquiry.

- Panels are generally not required to choose strictly between competing scientific narratives where the surrounding circumstances and the athlete's conduct support a certain assessment. Even where medical documentation is imperfect or not precisely articulated, this does not necessarily preclude lack of Intent.

On indirect Intent (in the alternative)

- Indirect Intent under Article 10.2.3 of the ADAK ADR requires that the athlete knew of a significant risk that his conduct might result in an anti-doping rule violation and nevertheless manifestly disregarded that risk.

- The evidence indicates medical naivety and imprudence, but not a conscious acceptance of a doping risk. The Athlete has no repeated positive samples in a long testing history and no prior pattern of violations.

- The Athlete did not use supplements, gym products, fat-burners or diuretics for sporting gain. The injections in question were administered by hospital staff rather than sourced or self-administered by the Athlete.

- While the Athlete's denial, clean record or lack of sporting incentive cannot replace proof of source, such factors may nevertheless be relevant when assessing whether indirect Intent has been rebutted.

- Even if CAS jurisprudence attaches significant weight to scientific evidence of an exogenous origin, negligence should not automatically be equated with indirect intent where the Athlete relied on orthodox medical treatment, did not seek performance enhancement, and acted within a clinical treatment context; manifest disregard should generally be inferred only from clear, risk-embracing behaviour, so the Athlete's conduct is submitted to fall, at most, within No Significant Fault or Negligence.

On the appropriate period of Ineligibility

- The sanction should either: (i) remain with the two (2) years period of Ineligibility imposed; or (ii) be varied only marginally, remaining within the two (2) year range applicable to non-intentional violations with reductions for No Significant Fault or Negligence. Full credit should be granted for the period of provisional suspension already served.

- A reduction under Article 10.6 may apply where the ingestion occurred for medical reasons unrelated to sporting advantage, the Athlete relied on ordinary medical treatment, and the conduct was careless but did not involve conscious risk-taking.

- Sanctions in the range of approximately 12–24 months have been upheld in cases where No Significant Fault or Negligence is established, even where the source explanation is not fully proven, provided the violation is considered non-intentional and supported by contextual evidence.

58. The First Respondent requested the following relief:

> *"ADAK respectfully requests the Panel to rule that:*
>
> *1. The appeal is **admissible**, but all relief sought **against ADAK on costs or 4-year mandatory sanction is dismissed**.*
>
> *2. The finding of an ADRV is **confirmed**, but the **2-year period** as imposed by the Sports Disputes Tribunal Decision is:*
>
> *i. **upheld**; or*
>
> *ii. varied only within the **permissible NSFN reduction corridor, capped at 2 years**, granting full credit for provisional suspension served.*
>
> *3. The arbitration costs and legal fees sought by the Appellant are **not imposed on ADAK**".*
>
> [Emphasis in original]

59. Following the filing of its Answer, the First Respondent subsequently submitted the Amended Answer, in which it declared and requested the following:

> *"ADAK withdraws its Statement of Defence* [the Answer] *dated 9 January 2025* [sic] *and requests that it be struck from the record.* […]
>
> *Upon review of the record and applicable jurisprudence, ADAK does not contest the core submissions advanced in the Appeal. The Athlete has not established the source of the prohibited substance, and the evidentiary threshold required to rebut intent has not been met.* […]
>
> *Accordingly, the applicable sanction is a four-year period of ineligibility, subject to any determination on aggravating circumstances."*

60. On costs, ADAK submits, in the Amended Answer, that it should not be ordered to bear the arbitration costs or contribute to the Appellant's legal fees. It relies on CAS 2017/A/5369 to argue that it would be inappropriate to order costs against a NADO that had prosecuted the case properly and sought the appropriate sanction.

61. The First Respondent ultimately seeks the following relief:

> *"1. Strike the previous Statement of Defence from the record;*
>
> *2. Set aside the decision of the Sports Disputes Tribunal;*
>
> *3. Impose a period of ineligibility consistent with the rules;*
>
> *4. Decline to order costs or legal fees against ADAK."*

C. The Second Respondent's Position and Request for Relief

62. The Second Respondent submits the following in substance:

On the commission of the ADRV

- The Appellant failed to prove that the Athlete committed an ADRV.
- CAS jurisprudence is unequivocal that an ADRV for EPO cannot be upheld in the absence of analytical records from the laboratory. WADA only produced collection level checklist documents.
- No testimony from the DCO (Ms Maureen Wanjau) was available before the SDT despite an order compelling her attendance. Consequently, the validity and integrity of the Sample collection, sealing, storage, and transfer procedures could not be tested through cross-examination of the individual who directly handled the Sample. The Athlete therefore requests that, in the *de novo* proceedings before the CAS, Ms Wanjau be summoned for examination. In the case she again fails to appear without adequate justification, an adverse inference should be drawn regarding the reliability of the collection process and the asserted ADRV.
- The Appellant must produce an unbroken, chronological record showing who handled the Sample at every stage. Any missing link, missing timestamp, or undocumented transfer creates uncertainty about the Sample's integrity.
- No temperature monitoring logs exist for the transport of the Athlete's Sample from Nairobi to South Africa, and from South Africa to Lausanne. The absence of temperature logs is particularly critical as the Prohibited Substance is a protein-based hormone that is highly temperature sensitive. EPO degrades rapidly outside proper storage conditions. Without temperature logs, the stability and integrity of the Sample cannot be verified.
- The fact that the Sample passed through a non-compliant laboratory should raise questions as to whether proper laboratory procedures were followed. WADA, to this day, has not disclosed what violations led to the shutdown of the Bloemfontein Laboratory.
- Furthermore, the B Sample was only analysed because the A Sample contained an insufficient volume. This deviation renders the analytical process uncompliant with the strict procedures mandated under the ISL.
- The SDT has failed to produce the underlying laboratory documentation package necessary to scientifically substantiate the presence of exogenous EPO, including electropherograms, SAR-PAGE/IEF migration patterns, calibration data, quality control and quality assurance logs, and B Sample confirmation records. Thus, there is no reliable scientific basis upon which it can be concluded that the Prohibited Substance identified in the Sample was in fact exogenous EPO originating from the Athlete's body.

On the source of the Prohibited Substance

- Since *Kenacort*, which was prescribed to the Athlete for arthritis treatment, does not contain EPO and cannot account for the reported finding, the source of the Prohibited Substance must instead be attributed to procedural and/or scientific deficiencies within the anti-doping process, including sample mishandling, degradation, mix-up, contamination, and/or laboratory error.

On (indirect) intent

- The Athlete has never knowingly or intentionally used the Prohibited Substance and did not seek performance enhancement.
- The Athlete has competed as a professional athlete for approximately twelve (12) years and has never returned a positive sample (but for one case in which he subsequently obtained a TUE).
- His prior application for, and disclosure through, an R-TUE demonstrates his openness to regulatory scrutiny and is inconsistent with any intent to engage in doping.

On the appropriate period of Ineligibility

- WADA has not established that the Athlete engaged in intentional doping. Accordingly, any extension of the applicable period of Ineligibility beyond the standard sanction of two years would be unsupported and unjustified.
- No Aggravating Circumstances have been established on the evidence. Consequently, no additional period of Ineligibility may be imposed.
- The imposition of a six (6) year period of Ineligibility would be manifestly disproportionate and would effectively terminate the Athlete's sporting career. The imposed two (2) year sanction is, in the circumstances, sufficient – if not itself excessive – particularly in light of the alleged procedural irregularities and the absence of reliable evidence demonstrating intentional doping.

63. The Second Respondent requests the following relief:

> *"1. An order dismissing the appeal/prosecutions prayer for an aggravated sanction on the grounds that the prosecution has failed to establish intentional use of aggravating circumstances.*
>
> *2. An order conforming the current period of ineligibility already imposed on the Athlete as final, and declining to impose any additional or extended sanction.*
>
> *3. In the alternative, an order reducing the period of ineligibility to the minimum provided under the applicable rules, considering the procedural irregularities chain of custody gaps, and lack of proof of intent.*

4. A declaratory order that the analytical results are unreliable due to unresolved chain of custody gaps and the testing of the sample in a laboratory later found to be non-compliant with WADA standards.

5. An order that the costs of these proceedings be borne by the Prosecution/ADO given the lack of evidentiary foundation and the serious procedural defects in the handling of the sample.

6. *An order annulling the asserted Anti-Doping Rule violation has been established against the Athlete and that no sanction is applicable.*

7. *An order annulling the asserted Anti-Doping Rule Violation on account of fundamental breaches of the International Standards for Testing and Investigations and the International Standards for Laboratories.*

8. Any other orders that the Tribunal may deem fit."

[Emphasis in original]

V. JURISDICTION

64. Article R47 para. 1 of the CAS Code provides – in its pertinent parts –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."*

65. Both the Respondents and WADA agree that the Athlete is a "National-Level Athlete" for the purpose of the ADAK ADR.

66. The ADAK ADR, which is applicable to the procedural aspects of the Appeal, provides as follows in respect of CAS's jurisdiction for appeals involving National-Level Athletes:

> *"**Art. 13.2.3.2 "Appeals Involving Other Athletes or Other Persons":** […] the following parties shall have the right to appeal: […] (f) WADA. For cases under Article 13.2.2 [Appeals Involving Other Athletes or Other Persons], WADA […] shall also have the right to appeal to CAS with respect to the decision of the ADAK's Appeal Panel."*
>
> *"**Art. 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 ADAK's process, WADA may appeal such decision directly to CAS without having to exhaust other remedies in ADAK's process."*

67. Although decisions concerning National-Level Athletes fall within Article 13.2.2 ADAK ADR and are ordinarily appealable within the national appellate structure,

Article 13.2.3.2(f) ADAK ADR expressly grants WADA an independent right of appeal. Furthermore, pursuant to Article 13.1.3 ADAK ADR, where no other party has appealed a final decision within ADAK's internal process – as is the case here – WADA is not required to exhaust internal remedies and may file its appeal directly with CAS.

68. The Parties did not contest the jurisdiction of the CAS. The First Respondent expressly confirmed it through its signing of the Order of Procedure, and the Second Respondent submitted arguments on the merits of the case, which constitutes a tacit agreement to CAS jurisdiction.

69. The CAS, consequently, has jurisdiction to decide on the Appeal filed against the Appealed Decision.

VI. ADMISSIBILITY

70. Article R49 of the CAS Code provides – in its pertinent parts – 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. The Division President shall not initiate a procedure if the statement of appeal is, on its face, late and shall so notify the person who filed the document."*

71. The ADAK ADR provides as follows:

> *"**Art. 13.6.1.** – […] 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."*

72. WADA received elements of the case file on 23 September 2025. Hence, the 21-day time limit to file the Appeal expired at 11:59 PM on 14 October 2025. WADA's Statement of Appeal submitted on 14 October 2025 was, therefore, filed in time.

73. The Statement of Appeal also complied with the requirements of Article R48 of the CAS Code. In addition, the admissibility of the Appeal is not challenged by any Party.

74. The Appeal is therefore admissible.

VII. ADMISSIBILITY OF THE FIRST RESPONDENT'S (AMENDED) ANSWER

75. It is not contested that both the First Respondent's Answer and the Amended Answer were filed belatedly. Despite an express opportunity to comment, neither Party objected to the admissibility of the Answer.

76. The Second Respondent, however, objected to the admissibility of the Amended Answer. In view of the limited scope of the Amended Answer, which did not introduce any new evidence or legal arguments, but was meant only to clarify the First Respondent's position, the Sole Arbitrator, taking account of all of the circumstances, including that the submission did not delay the proceedings, decided to admit the Amended Answer to the record.

VIII. ADMISSIBILITY OF THE SECOND RESPONDENT'S "COUNTERCLAIM"

77. Together with his Answer, the Second Respondent filed a "counterclaim", by which he sought from the Sole Arbitrator, *inter alia*, an "*order annulling the asserted Anti-Doping Rule Violation on account of fundamental breaches*" to the International Standards with the result that "*no sanction is applicable*".

78. The Sole Arbitrator dismissed the "counterclaim" on 1 April 2026 (see above at para. 38). A counterclaim is inadmissible. The applicable regulatory framework (including the ADAK ADR) does not provide for the possibility to introduce counterclaims in response to an appeal lodged by the counterparty. Counterclaims in appeal procedures are also not foreseen by the CAS Code (MAVROMATI/REEB, The Code of the Court of Arbitration for Sport, 2nd ed. 2025, Article R55, para. 14 with references to CAS jurisprudence).

79. Hence, if a respondent wants to challenge parts of or the entire decision, it must principally file an independent appeal with the CAS within the applicable time limit for appeal (MAVROMATI/REEB, Ibid.; CAS 2021/A/7888, paras. 113, 114; CAS 2010/A/2098, paras. 4 et seqq.).

80. Exceptions may, however, apply based on the applicable rules of the federation (MAVROMATI/REEB, Ibid.). While the ADAK ADR does not contemplate for a party's right to lodge a counterclaim, it provides for the possibility of a cross appeal. Article 13.2.4 of the ADAK ADR (which is an exact copy of Article 13.2.4 of the WADA Code) provides as follows:

> *"13.2.4 Cross Appeals and other Subsequent Appeals Allowed*
>
> *Cross appeals and other subsequent appeals by any respondent named in cases brought to CAS under the Code are specifically permitted. Any party with a right to appeal under this Article 13 must file a cross appeal or subsequent appeal at the latest with the party's answer."*

81. Pursuant to Article 13.2.4 of the ADAK ADR, a cross appeal may be filed by a respondent still as late as with the answer. Therefore, the question arises whether the Second Respondent's "counterclaim" can be characterized as a cross appeal. The label given to a remedy by the party relying on it is not necessarily decisive in determining which remedy that party intended to pursue. Where the designated remedy does not exist or is manifestly inadmissible, it can principally be possible to re-characterise it as a functionally equivalent, admissible remedy. In the present case, the Second Respondent

challenges the SDT's finding that he committed an ADRV. In other words, he challenges an independent part of the Appealed Decision which has not been challenged by the Appellant. This is precisely the function that a cross appeal serves under Article 13.2.4 of the ADAK ADR. Therefore, the fact that the Athlete labelled his requested relief as a "counterclaim" does not in itself render a potential cross appeal inadmissible.

82. However, even if – for the benefit of the Athlete – the "counterclaim" is to be interpreted to serve as a cross appeal, it must comply with the admissibility requirements applicable to cross appeals. Therefore, the Sole Arbitrator needs to establish what these formal requirements involve. While certain regulations (e.g. the Tennis Anti-Corruption Program, TACP, which defines in its Article I.4.b. that a cross appeal must be clearly identified as such either by a separate document or as a clearly identified and separate section of the answer) are rather clear that cross appeals must comply with the requirements of ordinary appeals, the ADAK ADR (just as the WADA Code) is silent in this respect. In fact, the WADA Code contains a footnote (no. 88) explaining that the provision on cross appeals became necessary in view of the fact that the CAS Code, since 2011, "*no longer permit*[s] *an Athlete the right to cross appeal when an Anti-Doping Organization appeals a decision after the Athlete's time for appeal has expired"*.

83. Article R55 of the 2004 version of the CAS Code ("**2004 CAS Code**") had provided for the Respondent's right to file a "counterclaim" with its Answer to an appeal, without that any additional court office fee or other special admissibility requirements applied to such counterclaim. Had WADA intended to copy this "counterclaim" established in Article R55 of the 2004 CAS Code one-by-one into its own regulatory framework, it could have simply adopted the label "counterclaim" to this new remedy. Instead, it chose to identify this remedy, within the context of the appeal system, is a "cross appeal", *i.e.* an independent appeal remedy becoming available once an appeal is filed and the time limit for the other party to file an ordinary appeal relating to other aspects of the same decision expired. As footnote 88 of the WADA Code demonstrates, the rationale behind a party's right to file a cross appeal is to relieve the cross appellant of the risk of time limit expiry when its personal choice as to the filing of an appeal is made dependent on whether the counter party files an appeal. This is reasonable and serves procedural efficiency, because it prevents that a party is forced to file an appeal for safety reasons when it does not know whether the counterparty will file an appeal or not.

84. While Article 13.2.4 of the WADA Code (and, in turn, Article 13.2.4 of the ADAK ADR) is intended to protect a party against the risk of its appeal being time-barred where it wishes to make its appeal contingent on whether the other party appeals, the provision is not intended to relax any other formal requirements applicable to an ordinary appeal. In fact, there is no reason why a cross-appellant should be privileged over an ordinary appellant with respect to the formal appeal requirements (including, e.g., payment of a court office fee). Therefore, despite the fact that neither the WADA Code nor the ADAK ADR expressly state that the formal requirements for ordinary appeals are equally applicable to cross-appeals, the legislative history and the purpose of the cross appeal-system enshrined in these regulations demonstrate that a cross appeal requires compliance with, *inter alia*, Article R48 of the CAS Code. This does make sense also

to prevent that parties who initially decided not to challenge a decision take advantage of lowered filing requirements when – without an appeal filed by the other party – it would have been required to file an ordinary appeal. As a conclusion, the Sole Arbitrator finds that a cross appeal must principally meet the admissibility threshold in place for ordinary appeals, unless the federation rules expressly state otherwise.

85. Undisputedly, the Second Respondent has not complied with these requirements. Hence, his "counterclaim" is inadmissible even if interpreted as a cross appeal. As a result, the Athlete's request to summon Ms Maureen Wanjau (the DCO) for examination on sample collection must also be dismissed.

IX. APPLICABLE LAW

86. For appeal proceedings, Article R58 of the CAS Code provides the following:

> *"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 the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision."*

87. The "*applicable regulations*" for the purposes of Article R58 of the CAS Code are those contained in the ADAK ADR because the Appeal is directed against a decision which was passed applying the ADAK ADR.

X. SCOPE OF REVIEW

88. According to Article R57 of the CAS Code:

> "*The Panel has full power to review the facts and the law. It may issue a new decision which replaces the decision challenged or annul the decision and refer the case back to the previous instance. […]*".

89. The unlimited scope of review is also confirmed by Article 13.1.1 ("Scope of Review Not Limited") of the ADAK ADR, which provides as follows:

> "*The scope of review on appeal includes all issues relevant to the matter and is expressly not limited to the issues or scope of review before the initial decision maker. Any Party to the appeal may submit evidence, legal arguments and claims that were not raised in the first instance hearing so long as they arise from the same cause of action or same general facts or circumstances raised or addressed in the first instance hearing."*

90. Against this background, the Sole Arbitrator finds that her power to review the facts and the law of the present case is not limited.

XI. MERITS

A. The Issues

91. At the outset, the Sole Arbitrator has to identify the issues which must be resolved in the present Appeal.

92. In this respect, the Sole Arbitrator notes that the question whether the Athlete committed an ADRV under Article 2.1 (Presence) and/or Article 2.2 (Use) of the ADAK ADR, which the Athlete appears to challenge on several premises, is not part of the Appeal and would have required the filing of a separate appeal by the Athlete meeting the applicable formal requirements. No (cross) appeal challenging that part of the Appealed Decision has been lodged by the Athlete (see supra, Section **VIII**.) or any other party.

93. Hence, the ADRV, and the presence of rEPO, a non-Specified Substance prohibited at all times under the 2023 WADA Prohibited List, in the Athlete's Sample remain outside the scope of these appeal proceedings and must be considered unchallenged.

94. What is at the centre of the dispute between the Parties is the applicable consequences to the ADRV. In this respect, it is disputed between the Parties:

- Whether the ADRV was committed intentionally (below at **B.1**);
- What the consequences of the findings under Section B.1 are regarding the Athlete's sanction (below at **B.2**).

B. The Analysis

95. The applicable sanction to the Athlete's ADRV depends on whether the ADRV was committed intentionally or not.

96. The SDT rejected a finding of Intent for the ADRV, treating the *Kenacort* injections given to the Athlete under Dr Korir's prescription as the source of the Prohibited Substance. The SDT accepted as credible the Athlete's medical evidence, which shows intramuscular *Kenacort* treatment for arthritis. It also relied on Dr Korir's letter which states that the Athlete received *Kenacort* injections, described as a "DMARD" that "*may cause positive EPO*". The SDT concluded that the Athlete did not act with Intent, because the ingestion "*occurred under a bona fide medical context*".

97. According to Article 10.2.1 of the ADAK ADR, the standard period of Ineligibility is four (4) years for an ADRV involving a non-Specified Substance, unless the Athlete can establish that the ADRV was not intentional. Hence, it is for the Athlete to demonstrate that he did not act with Intent. The applicable standard of proof for such demonstration is "balance of probability" (Article 3.1 of the ADAK ADR).

98. Article 10.2.3 of the ADAK ADR defines the term "intentional" as follows:

> *"*[…] *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. […]*"*

99. Very clearly, the definition of Intent is not limited to athletes who cheat. Rather, Article 10.2.3 of the ADAK ADR includes indirect Intent in the definition of "intentional", and establishes the following requirements:

(i) the Athlete knew that there was a significant risk that his conduct might constitute or result in an anti-doping rule violation; and

(ii) he manifestly disregarded that risk.

100. The Appealed Decision entirely disregards the concept of indirect Intent and simply finds that the Athlete did not act with Intent, based on general credibility considerations and the assumption that the Athlete did not intend to enhance his sporting performance, because he acted in a "*bona fide medical context*". Its conclusion relies on the assumption that the Athlete successfully established the source of the Prohibited Substance.

101. The significance of the establishment of source for a finding of (non-)Intent is described in footnote no. 58 to Article 10.2.1.1 of the WADA Code[4] as follows:

"While it is theoretically possible for an Athlete or other Person to establish that the anti-doping rule violation was not intentional without showing how the Prohibited Substance entered one's system, it is highly unlikely that in a doping case under Article 2.1 an Athlete will be successful in proving that the Athlete acted unintentionally without establishing the source of the Prohibited Substance."

102. Regarding the establishment of source, CAS jurisprudence (e.g. CAS 2017/A/5260, para. 153; CAS 2021/O/8111, para. 76) has repeatedly emphasized that an athlete must present objective and persuasive evidence in order to establish the source of a prohibited substance. In this respect, it has been held that (CAS 2017/A/5260, para. 153):

"[…] the ***mere allegation of a possible occurrence of a fact cannot amount to a demonstration that that fact did actually occur*** *(CAS 2010/A/2268; CAS 2014/A/3820):* ***unverified hypotheses are not sufficient*** *(CAS 99/A/234- 235). Instead, the CAS has been clear that an athlete has a stringent requirement* ***to offer persuasive evidence*** *that the explanation he offers for an AAF is more likely than not to be correct, by providing specific, objective and persuasive evidence of his submissions. In short, the Sole Arbitrator cannot base his decision on some speculative guess uncorroborated in any manner".*

(Emphasis added)

[4] While this footnote is not contained in the ADAK ADR, the Sole Arbitrator may still take it into consideration, because Article 10 of the WADA Code (including its footnotes) belongs to those Code provisions which must be implemented by the signatories without substantive change, Article 23.2.1 WADA Code.

103. Hence, the Sole Arbitrator's initial task is to assess, based on the (additional) evidence presented in these CAS appeals proceedings, whether the Athlete succeeded, on the balance of probabilities, to establish the source of the Prohibited Substance. If this is not the case, the threshold for the Athlete to establish lack of Intent becomes significantly higher.

104. Before the SDT and in these appeal proceedings, the Athlete has asserted that the source of the Prohibited Substance was the *Kenacort* injections given to him at the Hospital between June and December 2023 to treat gouty arthritis. In his own words, "[t]*he only reason the erythropoietin was found in my urine sample was because of the medical necessity of using Kenacort as drug for treating my arthritis*". To support this statement, the Athlete relies on the letter of Dr Korir dated 22 November 2024, which states that Kenacort "*is a DM.ARD and may cause positive EPO*", and on Dr Korir's witness statement dated 11 January 2025. According to that statement, *Kenacort* was injected on 5 June, 5 September and 5 December 2023.

105. WADA submits that this explanation is scientifically impossible. The active ingredient of *Kenacort* is triamcinolone acetonide, a corticosteroid. *Kenacort* does not contain erythropoietin and cannot be the source of a finding for recombinant EPO. WADA relies on the expert report of Professor Martial Saugy (the "**Saugy Expert Report**"), which rejects the Athlete's explanation on the following grounds:

- *Kenacort* is a glucocorticoid and, as such, is classed as a conventional synthetic DMARD ("*disease modifying antirheumatic drug*"). Classing a drug as a DMARD, however, says nothing about whether it can cause a finding for rEPO.
- Scientific literature on glucocorticoids and erythropoiesis shows that glucocorticoids may stimulate the maturation of red blood cells, but without increasing the concentration of even endogenous EPO.
- rEPO is, by definition, produced outside the human body. The only possible source of rEPO in an athlete's urine is the administration (by injection) of rEPO itself. rEPO cannot result from any biochemical process triggered by another medication.
- Accordingly, Dr Korir's explanation that *Kenacort* could have caused the AAF is "*totally implausible*". The source of the rEPO "*is due to the administration of r-EPO*" and "*cannot be the administration of Kenacort*".

106. The Sole Arbitrator finds the Saugy Expert Report persuasive and reliable. Its conclusions are scientifically coherent, rest on established knowledge of the physiology of erythropoiesis, are supported by recent scientific literature, and are consistent with the evidence on record. The analytical result itself confirms that the EPO detected in the Sample was exogenous: two independent experts provided second opinions under TD2024EPO, and the Athlete was excluded as a carrier of the EPO c.577del variant. The Sole Arbitrator has no reason to doubt Professor Saugy's credibility, given his more than three decades of experience in anti-doping science, including as Director of the Swiss Laboratory for Doping Analyses.

107. The Saugy Expert Report also stands unchallenged. Neither Respondent filed any expert evidence to the contrary. At the outset of the hearing, both Respondents expressly waived their right to cross-examine Professor Saugy.

108. Nor does the evidence of Dr Korir support the idea that the *Kenacort* injections were the source of the AAF:

- His letter of 22 November 2024 contains a single sentence on the matter: *Kenacort* "*may cause positive EPO*". It cites no scientific study or literature and gives no explanation of any mechanism by which a corticosteroid could lead to the detection of recombinant EPO. It also expresses only an abstract possibility ("may") and does not state that *Kenacort* actually caused the AAF in the Athlete"s case. Such a statement is an unverified hypothesis of the kind that CAS jurisprudence consistently treats as insufficient (CAS 2017/A/5260, para. 153; see above).

- Dr Korir admitted that he was "*unaware of the specific anti-doping regulations*" when he prescribed *Kenacort*. He does not claim any expertise in anti-doping science or in the analytical detection of rEPO. He was not offered as an expert witness in these proceedings, and neither WADA nor the Sole Arbitrator could examine him on his statements.

- His credibility was also called into question before the SDT. A Health Records Officer of the Hospital testified that there was no record of the Athlete having been treated there. ADAK further submitted that Dr Korir was a clinical officer rather than a physician, whereas his letter is signed as "Orthopaedic/Trauma Specialist". The Sole Arbitrator does not need to decide these matters. Even if Dr Korir's account of the treatment were accepted in full, it would only establish that *Kenacort* was administered, not that *Kenacort* caused the finding for rEPO.

109. The timeline makes the Athlete's explanation even less plausible. The last *Kenacort* injection was given on 5 December 2023, eleven days before the Sample was collected on 16 December 2023. rEPO is typically undetectable in urine three to four days after administration. In addition, the Athlete was tested on 17 June and 17 September 2023, each time twelve days after a *Kenacort* injection, and neither test returned a finding for rEPO. The Athlete has not explained, even theoretically, why the December injection, unlike the two earlier ones, should have led to an AAF for rEPO. Finally, no other medication the Athlete received at the Hospital contained rEPO.

110. For these reasons, the Sole Arbitrator concludes that the Athlete has failed to establish, on a balance of probabilities, that the *Kenacort* injections were the source of the Prohibited Substance.

111. Without proof of source, and while it remains theoretically possible for an athlete to establish that the ADRV was not intentional, it is "*highly unlikely*" (according to footnote no. 58 to Article 10.2.1.1 of the WADA Code, quoted above at para.101), that an athlete will be successful in proving that he or she acted without Intent. While CAS jurisprudence is not entirely consistent on what it requires for an Athlete to prove an

unintentional ADRV despite failure to prove source, it is common sense that such Athlete needs to walk through the "*narrowest of corridors*" (e.g. CAS 2016/A/4534) and that "*in all but the rarest cases the issue is academic*" (CAS 2016/A/4676 & 4919).

112. In the present case, the Athlete has not presented any evidence that would take him even close to a walk through "*the narrowest of corridors*". He relies solely on the *Kenacort* injection, failing to submit any "*rare set of facts*" (CAS 2019/A/6313) which could allow for the theoretical possibility to exclude Intent despite his failure to prove source, beyond the scientifically implausible theory invoked in these proceedings.

113. Consequently, the Sole Arbitrator finds that the Athlete has failed to rebut the presumption of Intent enshrined in Article 10.2.1 of the ADAK ADR.

C. What is the Athlete's sanction?

114. With respect to the applicable period of Ineligibility, Article 10.2.1 of the ADAK ADR provides for a standard period of Ineligibility of four (4) years. For intentional ADRVs, the provisions on No Fault or Negligence (Article 10.5 of the ADAK ADR) and No Significant Fault or Negligence (Article 10.6.2 of the ADAK ADR) do not apply. Accordingly, the Athlete cannot benefit from any fault-based reductions.

115. WADA requests that such sanction be increased due to Aggravating Circumstances. In this respect, Article 10.4 of the ADAK ADR provides as follows:

> *"Aggravating Circumstances which may increase the Period of Ineligibility. If ADAK establishes in an individual case involving an Anti-Doping rule violation* […] *that Aggravating Circumstances are present which justify the imposition of a period of Ineligibility greater than the standard sanction, then the period of Ineligibility otherwise applicable shall be increased by an additional period of Ineligibility of up to two (2) years depending on the seriousness of the violation and the nature of the Aggravating Circumstances unless the Athlete or other Person can establish that he or she did not knowingly commit the Anti-Doping rule violation."*

116. As to the meaning of "Aggravating Circumstances", the Appendix ("Definition") to the ADAK ADR provides as follows:

> *"Aggravating Circumstances: Circumstances involving, or actions by, an Athlete or other Person which may justify the imposition of a period of Ineligibility greater than the standard sanction. Such circumstances and actions shall include, but are not limited to: the Athlete or other Person Used or Possessed multiple.*
>
> *Prohibited Substances or Prohibited Methods, Used or Possessed a Prohibited Substance or Prohibited Method on multiple occasions or committed multiple other Anti-Doping rule violations […]"*

117. In support of its claim that Aggravating Circumstances apply in the present case, WADA emphasizes that the use of rEPO is inherently deliberate, given its method of administration, typically via injection and in structured courses, which inevitably entails

multiple uses. However, the Sole Arbitrator observes that the present case involves only one sample which indicates the use of the Prohibited Substance. The assumption that performance-enhancing use of rEPO presupposes multiple use, *i.e*. an injection every two to three days, does not, in the Sole Arbitrator's view, necessarily justify the imposition of an increased period of ineligibility absent any proof for repeated use (see also CAS 2017/A/5021, para 89). If WADA's view were adopted, every detection of rEPO would automatically trigger Aggravating Circumstances.

118. Hence, the Sole Arbitrator does not find that Aggravating Circumstances have been established. The period of Ineligibility is four years.

119. The period of Ineligibility shall principally commence upon notification of the Award (Article 10.13 of the ADAK ADR), with credit to be given for any period of Provisional Suspension and/or period of Ineligibility served by the Athlete, provided that it has been effectively served (Article 10.13.2.1 of the ADAK ADR).

120. Pursuant to Article 10.13.1 of the ADAK ADR, where there have been substantial delays in the hearing process or other aspects of Doping Control, and the Athlete can establish that such delays are not attributable to him, the period of Ineligibility may start at an earlier date commencing as early as the date of Sample collection.

121. The timeline of this case shows such delays. The Sample was collected In-Competition on 16 December 2023 and sent to the Bloemfontein Laboratory. On 4 March 2024, more than two and a half months later, WADA suspended that laboratory's accreditation. Because of the suspension, the Sample had to be sent to the Lausanne Laboratory. On 21 June 2024, ADAK told the Athlete that the A Sample volume was too small and that the B Sample would be opened and split. The Lausanne Laboratory reported the AAF on 19 August 2024. ADAK did not notify the Athlete until 24 September 2024, and the Provisional Suspension took effect on 14 October 2024. Almost ten months therefore passed between Sample collection and the start of the Provisional Suspension. During that time the Athlete did not know of any AAF and could continue competing. However, Article 10.10 of the ADAK ADR now disqualifies all his results from that period with retroactive effect.

122. None of these delays can be attributed to the Athlete. The laboratory's loss of accreditation, the transfer of the Sample, the insufficient volume of the A Sample, and the time needed for analysis, second opinions and the exclusion of the EPO c.577del variant all lay with the anti-doping system. The same applies to ADAK's notification more than a month after the AAF was reported. The Athlete's failure to attend the opening of the B Sample did not delay the process either. In accordance with the ISL, the procedure went ahead in the presence of an independent witness.

123. The first-instance proceedings also took a considerable time. ADAK filed the Charge Letter on 7 November 2024. On 23 January 2025, at ADAK's request, the SDT granted ADAK twenty-one days to finalize its correspondence with the laboratories. The hearings were held only on 8 May, 22 May and 5 June 2025, ADAK filed its submissions on 4 July 2025, and the Appealed Decision followed on 31 July 2025. The Appealed

Decision applied the wrong sanctioning regime. It accepted, without any scientific scrutiny, an explanation of source that was plainly implausible, and it disregarded the concept of indirect Intent altogether. WADA therefore had to appeal. This appeal accounts for roughly a further year before the sanction became final. The SDT's failure to apply the ADAK ADR correctly is not attributable to the Athlete. ADAK prosecuted the case and is responsible for the Appealed Decision.

124. The Sole Arbitrator is aware that the Athlete raised procedural objections before the SDT and that, in these proceedings, he requested an extension for his Answer, filed an inadmissible "counterclaim" and did not sign the Order of Procedure. However, pursuing a defence cannot generally be held against an athlete. In any event, this conduct did not substantially prolong the proceedings. The decisive delays arose during Results Management, before the Athlete even knew of the AAF, and from the SDT's erroneous decision.

125. Applying Article 10.13 of the ADAK ADR strictly would have the following effect. The Athlete would be ineligible until 13 October 2028, with credit for the Provisional Suspension served continuously since 14 October 2024. At the same time, his results from 16 December 2023 would be disqualified. In effect, he would be excluded from his sport for almost four years and ten months from the date of Sample collection. This is significantly longer than the standard sanction of four years, and the excess results from delays for which the Athlete is not responsible. It would be unfair for the Athlete to bear these consequences, whether or not he formally relied on Article 10.13.1 of the ADAK ADR.

126. The Sole Arbitrator therefore finds that, under Article 10.13.1 of the ADAK ADR, the period of Ineligibility shall start on 16 February 2024, that is two months after the date of Sample collection (a still acceptable period that may be required to analyze a sample and notify an AAF). The period of Provisional Suspension and Ineligibility the Athlete has served since 14 October 2024 is credited against it.

127. Furthermore, based on Article 10.10 of the ADAK ADR, all competitive results of the Athlete obtained from the date the positive sample was collected (i.e. 16 December 2023) shall be disqualified, with all resulting consequences, including forfeiture of any medals, points and prizes.

XII. COSTS

(…)

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The Appeal filed by the World Anti-Doping Agency on 14 October 2025 against the Anti-Doping Agency of Kenya and Stanely Njihia Kamau with respect to the decision rendered on 31 July 2025 by the Sports Disputes Tribunal is upheld.

2. The decision rendered on 31 July 2025 by the Sports Disputes Tribunal is amended as follows:

a. Stanely Njihia Kamau is found to have infringed Article 2.1 of the ADAK ADR.

b. Stanely Njihia Kamau is sanctioned with a period of ineligibility of four (4) years, commencing on 16 February 2024, with credit to be given for any period of Provisional Suspension and/or period of Ineligibility effectively served by the Athlete provided that it has been effectively served before 16 February 2024.

3. All competitive results obtained by Stanely Njihia Kamau from and including 16 December 2023 until the date of this Award are disqualified, with all the resulting consequences (including the forfeiture of medals, points and prizes).

4. (…).

5. (…).

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

Seat of arbitration: Lausanne, Switzerland
Date: 14 October2026

THE COURT OF ARBITRATION FOR SPORT

Annett Rombach
Sole Arbitrator