

CAS 2025/A/11841 World Anti-Doping Agency (WADA) v. Anti-Doping Agency of Kenya (ADAK) & Paniel Mkungo

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, David Baker 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

&

Paniel Mkungo, Kapsabet, Kenya

Represented by Ms Eunice Lumallas, Attorney-at-Law at LAK Advocates, 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 Panuel Mkungo (the “**Athlete**” or the “**Second Respondent**”) is a long-distance runner from Kenya. The Athlete is considered an International-Level Athlete for the purposes of the ADAK Anti-Doping Regulations (“**ADAK ADR**”) and has been competing in running events since at least 2012.
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 8 May 2025 by the Sports Disputes Tribunal of Kenya (the “**SDT**”) in the matter SDTADK No. E046 (the “**Appealed Decision**”). The Appealed Decision held that the Athlete had committed an anti-doping rule violation (“**ADRV**”) based on the presence of a prohibited substance in his sample. The SDT further found that the ADRV was not intentional and imposed a period of Ineligibility of one (1) year on the Athlete. As the occurrence of an ADRV is not disputed between the Parties, the scope of the present dispute before the Court of Arbitration for Sport (the “**CAS**”) is limited to determining the appropriate length of the period of Ineligibility: the Appellant seeks the imposition of a four (4) year period of Ineligibility, whereas the Respondents request the Appealed Decision to be confirmed.
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 refers only to the submissions and evidence considered necessary to explain its reasoning.

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

B. Background Facts

7. On 10 January 2024, the Athlete was administered the following medications at the Mother Francisca Mission Maternity and Health Centre (the **“Hospital”**) by Mr Tomasson Walter (the **“Doctor”**):
 - “IM Diclo” (Diclofenac, a non-steroidal anti-inflammatory drug);
 - “IM Diprospan” (Betamethasone, a corticosteroid);
 - “PO Neurobion” (Vitamins).
8. On 13 February 2024, the Athlete was further administered the following medications at the Hospital:
 - “IM Diprospan” (Betamethasone, a corticosteroid);
 - “PO Etoricoxib” (non-steroidal anti-inflammatory drug);
 - “PO Myospaz PRN” (muscle relaxant).
9. On 12 March 2024, the Athlete was subject to an out-of-competition doping control (the **“Doping Control”**).
10. On 27 May 2024, the WADA-accredited laboratory in Stockholm, Sweden reported an Adverse Analytical Finding (**“AAF”**) for the presence of exogenous testosterone (the **“Prohibited Substance”**), classified under category S1.1 Anabolic Androgenic Steroids (AAS) of the 2024 WADA Prohibited List. The Prohibited Substance is designated as a non-Specified Substance and is prohibited at all times.
11. On 12 June 2024, ADAK notified the Athlete of potential ADRVs, informing him of the AAF, inviting him to provide an explanation, and imposing a mandatory provisional suspension as of 2 July 2024 (the **“Initial Notice”**). The Athlete was further informed of his right to request the analysis of the B Sample.
12. On 17 June 2024, the Athlete responded to the Initial Notice as follows (the **“Response to the Initial Notice”**) [sic]:

“Good afternoon

My name are panuel mkungo: This is in regards to the email that was sent to me on 12th June 2024 .it wasn't my intention but due to seeking medical attention.Attached are my hospital booklet that has my treatment whenever I am sick.secondly there is No need to do sample B Test.I believe and trust that I have offered my full explanation as attached.

Thanks

Looking forward for your positive feedback.”

13. The Response to the Initial Notice included a number of medical records from the Hospital, which corroborate the Athlete’s aforementioned administration of medication at that facility.

C. The Proceedings Before the SDT

14. On 7 August 2024, ADAK formally charged the Athlete with an ADRV under Article 2.1 of the ADAK ADR (the “**Charge Letter**”). By the Charge Letter, ADAK sought, *inter alia*, that a four-year period of Ineligibility be imposed upon the Athlete.
15. On 17 October 2024, the Athlete filed his response to the Charge Letter, denying intent to ingest any prohibited substance and asserting that the source of the Prohibited Substance must have been a medication administered to him during visits to the Hospital on 10 January and 13 February 2024.
16. The SDT held two hearings on 21 November 2024 and 30 January 2025.
17. On 8 May 2025, the SDT Panel rendered the Appealed Decision. The operative part thereof provides as follows:

“Having reviewed the circumstances of this matter, it is the Finding and Ruling of this Honorable Tribunal that;

- a) *The ADRV has been established as against the Respondent;*
 - b) *The maximum sanction of One year ineligibility is hereby imposed because a plausible explanation has been advanced for the AAF. The period of Ineligibility shall be from 2nd July 2024, being the date of the Mandatory Provisional Suspension, until 1st July 2025;*
 - c) *All competitive results obtained by the Respondent Athlete from and including 12th March 2024 are disqualified including prizes, medals and points; [...]*”
18. The relevant grounds of the Appealed Decision are set out as follows:

On the commission of the ADRVs:

*“202. The Athlete is charged with an ADRV based on an AAF on a specified [sic] substance being **S1.1 Anabolic Androgenic Steroids (AAS)/ Pregnanediol, Androstosterone, Androstane, Ketoetiocholanolone, Androstenediol, Etiocholanolone, Adilos, Epitestosterone and Testosterone** which is prohibited at all times in and out of competition. The facts displayed from the Applicant’s documents do show that the Applicant upon receipt of the test report from the Swedish Testing Laboratory notified the Respondent and served him with the entire laboratory package and report. Based on those documents the Respondent did make attempts to obtain B sample testing. By his own admission the B sample testing didn’t happen due to what he said was*

financial constraints.

[...]

208. *Under the above circumstances we find that the Applicant has established the presence of a prohibited substance in the Respondent sample collected and therefore has discharged his burden of proof to the comfortable satisfaction of the panel as required by the ADAK ADR. The burden therefore shifted to the Respondent in response to the charge.”*

(Emphasis in the original)

On whether the Athlete committed the ADRV intentionally:

“215. *It is the view of the panel that the Respondent has been able to establish, on a balance of probabilities, the absence of intent to commit an ADRV by providing authenticated medical documentation and expert testimony. The prohibited substance was through prescribed medication confirmed by the prescribing clinical officer for a legitimate medical condition. It is the view of the panel that was not intentional under Article 10.2.1 of the ADAK ADR.*

[...]

218. *On the issues of Origin, it is the view of the panel that the Responded was able to provide uncontroverted evidence of the expert witness who confirmed that they indeed they gave the Respondent the steroid injections for the hip condition and confirmed in their testimony that an injection of steroids would be traceable months after an injection.”*

(Emphasis in the original)

On the reduction of the period of Ineligibility based on No Significant Fault or Negligence:

“221. *In his Statement of Response, the Athlete stated that he is an International Level Athlete. He also admitted to having attended many international races and having been tested very many times during those races. The Panel takes note of the knowledge and exposure of the Respondent athlete. It is clear from the foregoing that the Respondent ought to have been aware of the responsibilities bestowed upon him as an international level Respondent. The Respondent’s knowledge of his personal duty to ensure that no prohibited substance enters their body and failure to take any tangible precautions to ensure that whatever he ingested did not contain any prohibited substance displays his negligence and therefore puts him at fault. The failure by the athlete to inform the doctor that he was an athlete as confirmed by the doctor confirms the athlete’s negligence. Further the fact that he did not see it important to record in his DCF all the medication that he knew he had been given and were in his medical book including the steroid injections rest on the Respondent athlete.*

222. The doctor in his testimony did confirm that he would have treated the Respondent athlete with the same medication given the severity of his problem at the time. So, it would not have made any difference if the athlete had indeed informed the doctor that he was an athlete. This in the view of the panel reduces the level of fault of the athlete.

The Panel therefore finds the Respondent to be partly negligent.

[...]

224. It is the Panel's position that the Respondent herein having been found partly negligent by failing to disclose on the DCF all the medication that he had been taking can benefit from a reduction of the period of ineligibility."

(Emphasis in the original)

19. On 24 August 2025, WADA received the Appealed Decision.
20. On 5 September 2025, WADA submitted a case file request to ADAK.
21. On 23 September 2025, WADA received the case file.

III. THE PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

22. 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.
23. 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 issues² 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.
24. 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.
25. The Respondents did not provide their position on submitting the present procedure and the WADA Appeals to the same sole arbitrator.
26. On 5 November 2025, the CAS Court Office informed the Appellant that DHL had been

²

Registered as CAS 2025/A/11839; CAS 2025/A/11840; CAS 2025/A/11842.

unable to deliver the CAS Court Office's letter of 16 October 2025 to the Athlete because the address provided was incomplete. The CAS Court Office therefore requested that the Appellant provide a valid postal address for the Athlete, together with a telephone number and email address.

27. On 11 November 2025, the Appellant informed the CAS Court Office that it had been unable to identify an alternative email or postal address for the Athlete and suggested that all future correspondence and documentation be sent to the Athlete through Ms Eunice Lumallas, the legal representative who represented him in the first-instance proceedings.
28. On the same day, the CAS Court Office requested the Athlete's Ms Lumallas to confirm whether she continued to represent the Athlete in the present CAS proceedings.
29. On 13 November 2025, the Appellant filed its Appeal Brief in accordance with Article R51 of the CAS Code.
30. On 17 November 2025, the CAS Court Office acknowledged receipt of the Appeal Brief and invited the Respondents to submit their respective Answers within twenty (20) days, pursuant to Article R55 of the CAS Code.
31. On 3 December 2025, Ms Lumallas informed the CAS Court Office that it is "*assumed*" that she is representing the Athlete in the present proceedings; however she is "*yet to get instructions.*"
32. On 13 January 2026, the First Respondent submitted its Answer.
33. On 13 January 2026, the CAS Court Office acknowledged receipt of the First Respondent's Answer and noted that it had been filed after the prescribed time limit. The CAS Court Office invited the Appellant to submit its comments on the admissibility of the First Respondent's Answer. The Appellant informed the CAS Court Office that it had no objection to the admissibility of the First Respondent's Answer on 20 January 2026.
34. In the same letter, 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
35. On 26 February 2026, the Second Respondent submitted his Answer through the CAS e-filing platform.
36. On 2 March 2026, the CAS Court Office acknowledged receipt of the Second Respondent's Answer and noted it had been filed after the prescribed time limit. In view thereof, the CAS Court Office invited the Appellant and the First Respondent to submit their respective comments on the issue of admissibility of the Second Respondent's Answer.
37. On 3 and 4 March 2026, the First Respondent and the Appellant, respectively, informed

the CAS Court Office that they had no objection to the admissibility of the Second Respondent's Answer. The Appellant further informed that it did not consider a case management conference ("CMC") or a hearing necessary in this case.

38. Neither of the Respondents indicated their preference as to whether a CMC or a hearing should be held.
39. On 17 March 2026, the CAS Court Office informed the Parties that in view of the lack of any objections to the Respondents' belated Answers, the Sole Arbitrator had decided to admit them to the file. The CAS Court Office further informed the Parties that the Sole Arbitrator considered herself sufficiently well informed with the written submissions filed in this procedure, and consequently, no hearing would be held in this matter.
40. On 9 April 2026, the CAS Court Office sent the Order of Procedure to the Parties and invited them to sign and return a copy by 16 April 2026. The CAS Court Office further informed the Parties that the evidentiary proceedings had been closed and that the Arbitral Award would be notified to the Parties within a maximum period of four months.
41. Between 16 and 28 April 2026, the Parties returned duly signed copies of the Order of Procedure to the CAS Court Office.
42. 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 or referred to in the present Award.

IV. THE POSITIONS OF THE PARTIES

43. 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

44. The Appellant submits the following in substance:

a. The ADRV was intentional

- The burden of establishing lack of intent lies solely on the Athlete.
- The Athlete failed to establish the source of the Prohibited Substance. His theory that the Diprospan injections received at the Hospital must have caused the AAF lacks any basis. Diprospan's active compounds are two salts of Betamethasone (betamethasone dipropionate and betamethasone sodium phosphate), which is a long-acting corticosteroid with immunosuppressive and anti-inflammatory properties. Diprospan does not contain the Prohibited Substance, and therefore simply cannot be the source for the AAF.

- No other drug on the list of substances administered to the Athlete at the Hospital contained the Prohibited Substance.
- Since the Athlete failed to establish the source of the Prohibited Substance, he did not discharge his burden of proof regarding lack of Intent. Further, the Athlete has not put forward any other scenario to meet his burden to demonstrate that the violation was not intentional.
- Even assuming that one of the injections administered to the Athlete was the source of the Prohibited Substance (*quod non*), the Athlete committed the ADRV with indirect intent.
- The Athlete has the duty of establishing (on a balance of probability) that he did not know that his conduct might result in an ADRV and did not manifestly disregard that risk. The Athlete has failed to meet his burden to rebut the presumption of (indirect) Intent:
 - The Athlete received injections of medications. CAS case law is clear that, where medications are involved, there is a heightened duty of care (e.g. CAS 2023/A/9525). The Athlete nonetheless failed to disclose to the Doctor that he was a professional athlete even though Article 20.4 of the ADAA ADR specifically requires athletes to inform medical personnel of their obligation not to use Prohibited Substances.
 - The Athlete was tested at least five times before the Doping Control and was thus well aware of his anti-doping responsibilities. Moreover, the Athlete is an international-level competitor with over a decade of experience in elite sport.
 - The Athlete made no effort to seek specific assurances from the Doctor, who is not a specialist in sports medicine, that the prescribed medication did not contain any prohibited substances. Nor did the Athlete take any steps to verify this independently. He allowed the injection to be administered without knowing, or even inquiring, what substance was being introduced into his body.
 - Diprosan was administered by injections, which is a serious and invasive process. This should have placed the Athlete on even greater alert.
- In view of the above, even if source were considered established (*quod non*), the Athlete has not established a lack of Intent, which is his burden, such that the ADRV must be deemed intentional.

b. On the appropriate period of Ineligibility

- CAS panels have consistently imposed a four-year period of Ineligibility in cases with similar circumstances (e.g. CAS 2016/A/4609, CAS 2016/A/4512, CAS 2020/A/7536).

- The SDT imposed a reduced sanction of one year of Ineligibility on the Athlete, deviating from the standard four-year period.
- The Prohibited Substance is a non-Specified Substance, and as such, the standard sanction is a four-year period of Ineligibility unless the Athlete can prove a lack of Intent. The Athlete has manifestly failed to establish the source of the Prohibited Substance in his Sample. Further, the Athlete has not provided any evidence whatsoever to establish a lack of intent in the absence of source. In any event, even if the Athlete's explanation as to source was accepted, this is a textbook case of indirect intent.
- Accordingly, the standard four-year period of Ineligibility must apply. Furthermore, pursuant to Article 10.10 of the ADAK ADR, any competitive results obtained by the Athlete from and including 12 March 2024 until the date when the CAS award enters into force must be disqualified.

45. 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 8 May 2025 rendered by the Sports Disputes Tribunal in the matter of Mr Panuel Mkungo (SDTADK No. E046) is set aside.*
- 3. Mr Panuel Mkungo 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 Panuel Mkungo is sanctioned with a period of ineligibility of four years starting on the date on which the CAS award enters into force. Any period of provisional suspension or ineligibility effectively served by Mr Panuel Mkungo 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 Panuel Mkungo from and including 12 March 2024 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

46. The First Respondent submits the following in substance:

a. The ADRV was not intentional

- ADAK acknowledges that an ADRV occurred, however submits that it was non-intentional.

- Based on the applicable standard for establishing the origin of a prohibited substance (balance of probabilities, as opposed to scientific certainty), the SDT found, on uncontested evidence, that: (i) the Athlete was treated at the Hospital; (ii) he received steroid injections for a diagnosed hip condition; (iii) the Doctor testified, as an expert witness, that such steroids may remain detectable for months; and (iv) the medication was administered for legitimate therapeutic purposes.
- The SDT found that the Athlete rebutted Intent by: (i) producing authenticated medical records; (ii) calling the Doctor as an expert witness; (iii) demonstrating therapeutic motivation, not performance enhancement.
- The Athlete's conduct, in particular his failure to inform the Doctor of his status as an athlete and to record the medication on the doping control form, constituted partial negligence and not indirect intent.

b. On No Significant Fault or Negligence

- The SDT fairly balanced the Athlete's exposure to anti-doping education, his failure to disclose medication, and the fact that disclosure would not have altered the administered treatment.

c. On the appropriate period of Ineligibility

- The one-year sanction imposed by the SDT falls within CAS-recognised proportionality parameters and reflects partial negligence, legitimate medical origin, and proportional deterrence.
- WADA's request for a four-year sanction ignores the fault-based architecture of Article 10 of the ADAK ADR and would convert strict liability into strict punishment.

47. The First Respondent requests the following relief:

“Based on the foregoing, ADAK respectfully requests the Panel to rule that:

- i. The appeal is admissible but all relief sought against ADAK on costs or 4-year mandatory sanction is dismissed.*
- ii. The SDT decision dated 8th May 2025 is **confirmed**, including:*
 - a. the finding of an ADRV under Article 2.1;*
 - b. the sanction of **one (1) year ineligibility upheld**, or be varied as the CAS deems fit in accordance with its sanction reduction window, with credit for time served.*
- iii. No arbitration costs or legal fees are imposed on ADAK.*
- iv. Each party bears its own costs.”*

C. The Second Respondent's Position

48. The Second Respondent submits the following in substance:

a. The ADRV was not intentional

- The Athlete does not contest that the ADRV was committed; however, he submits that the ADRV was not intentional.
- The steroid was administered to treat a debilitating injury and not to enhance performance. The Athlete's subsequent race performances objectively demonstrate no performance benefit.
- The Athlete, with a consistent 12-year international career and a clean testing history until this isolated incident, had no rational motive to cheat while injured and under medical care.
- The source of the Prohibited Substance was legitimately identified as prescribed steroid injections for a diagnosed medical condition (*chronic hip arthritis*).
- Before the SDT, the Athlete discharged his burden of proving how the Prohibited Substance entered his system. The SDT accepted uncontroverted evidence submitted by the Athlete, namely (i) authenticated medical records confirming diagnosis and treatment of a hip injury; (ii) expert testimony from the prescribing clinical officer confirming that he had administered a Betamethasone (steroid) injection to the Athlete for a hip condition and explaining that such steroids may remain detectable in an athlete's system for a period ranging from three months to one year; and (iii) a temporal proximity between the administration of the injection in February 2024 and the out-of-competition test conducted on 12 March 2024, a timeframe consistent with the expert testimony regarding detectability.

b. On the appropriate period of Ineligibility

- The Athlete is a semi-literate individual from a humble background. He relied, as any reasonable patient would, on the expertise of a medical professional. The clinician himself testified that he would have prescribed the same treatment even if he knew the patient was an athlete, as it was medically necessary. This drastically undermines any claim of manifest disregard of risk.
- The SDT correctly determined that the Athlete bore No Significant Fault or Negligence. The Appealed Decision found partial negligence based on
 - (i) the Athlete's failure to explicitly inform the Doctor of his elite athlete status even though the Athlete testified in the first-instance proceedings that he did so;

- (ii) the Athlete's failure to list all medications on the DCF although he provided his medical booklet to ADAK.
- However, the SDT also rightly mitigated this negligence by noting
 - (i) the Doctor's testimony that knowledge of athlete status would not have changed the treatment;
 - (ii) the Athlete's financial constraints and lack of access to specialized sports medicine;
 - (iii) the legitimate medical origin of the substance.
- The appropriate sanction, considering that the Athlete bore No Significant Fault or Negligence in relation to a non-intentional ADRV stemming from prescribed medical treatment, is a one-year period of Ineligibility.
- WADA's appeal is an unjustified and overzealous attempt to substitute its own rigid interpretation of fault for the SDT's careful, context-sensitive analysis. It seeks to impose a devastating, disproportionate, and punitive four-year sanction on the Athlete, who has already been severely punished, despite clear evidence of therapeutic use and an otherwise impeccable career.

49. The Second Respondent requests the following relief:

"For the reasons set forth above, the Athlete, Panuel Mkungu, respectfully requests the Court of Arbitration for Sport to:

- a. Dismiss the appeal filed by WADA in its entirety.*
- b. Confirm and uphold the decision of the Sports Disputes Tribunal dated 8th May, 2025, including:*
 - i. The finding of an ADRV under Article 2.1 of the ADR;*
 - ii. The finding that the violation was not intentional;*
 - iii. The sanction of a One (1) year period of ineligibility with credit for the period already served from 2nd July, 2024;*
 - iv. The disqualification of competitive results from 12th March, 2024*
- c. Order that WADA bear the costs of the present arbitration proceedings.*
- d. Order that WADA make a significant contribution to the Athlete's legal costs and expenses incurred in defending this appeal.*
- e. Grant any other relief the Panel deems just and appropriate."*

V. JURISDICTION

50. 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.”

51. It is uncontested that the Athlete is an “International-Level Athlete” for the purpose of the ADAK ADR.

52. Article 13.2.1 of the ADAK ADR provides that cases involving International-Level Athletes may be appealed exclusively to CAS:

“13.2.1 Appeals Involving International-Level Athletes or International Events

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

53. Article 13.2.3.1 para. (f) of the ADAK ADR provides that WADA has the right to appeal decisions involving International-Level Athletes:

“13.2.3.1 Appeals Involving International Level Athletes or International Events

In cases under Article 13.2.1, the following parties shall have the right to appeal to CAS:

[...]

(f) WADA.”

54. Paragraph 226(e) of the Appealed Decision provides as follows:

“Parties have a right to appeal pursuant to Article 13 of the WADC and ADAK ADR”.

55. The Parties did not contest the jurisdiction of the CAS. Rather, they expressly confirmed it through their respective signing of the Order of Procedure.

56. Accordingly, CAS has jurisdiction to entertain WADA’s appeal.

VI. ADMISSIBILITY

57. Article R49 of the 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.”

58. The ADAK ADR provides as follows:

“Art. 13.6.1. Appeals to CAS

[...] 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."*

- 59. WADA received the complete case file on 23 September 2025. Hence, the 21-day time limit to file the Appeal expired at 11:59 PM of 14 October 2025. WADA's Statement of Appeal submitted on 14 October 2025 was, therefore, filed in time.
- 60. 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.

VII. APPLICABLE LAW

- 61. 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."

- 62. 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.

VIII. SCOPE OF REVIEW

- 63. 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. [...]"

- 64. 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."

- 65. Against this background, the Sole Arbitrator finds that her power to review the facts and

the law of the present case is not limited.

IX. MERITS

A. The Issues

66. At the outset, the Sole Arbitrator has to identify the issues which must be resolved in the present Appeal.
67. Some of them are not in dispute between the Parties. In particular, the Parties agree and do not challenge that:
 - The Athlete committed – and admitted – the ADRV under Article 2.1 (Presence) of the ADAK ADR, as evidenced by the AAF;
 - The prohibited substance found in the Athlete’s A Sample is exogenous testosterone, a non-Specified Substance prohibited at all times;
 - The Athlete waived the analysis of the B Sample.
68. WADA also requests that the Athlete is found to have committed an ADRV under Article 2.2 (Use) of the ADAK ADR (below at **B.1**). Furthermore, 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.2**);
 - What the consequences of the findings under Section B.1 are regarding the Athlete’s sanction (below at **B.3**).

B. The Analysis

1. Does the Athlete’s ADRV fall under Article 2.2 (Use) of the ADAK ADR?

69. The Sole Arbitrator notes that, in addition to Article 2.1 (Presence), the Appellant requests that the Athlete is found to have committed an ADRV under Article 2.1 (Presence) “*and/or*” Article 2.2 (Use). While both provisions were referenced in the Initial Notice, the Appealed Decision addressed only Article 2.1 of the ADAK ADR.
70. The Sole Arbitrator further observes that the analytical findings underlying the ADRV are not disputed and that the Athlete accepted the results of the A Sample analysis already in his Response to the Initial Notice stating that “*it wasn’t my intention but due to seeking medical attention. Attached are my hospital booklet that has my treatment whenever I am sick. secondly there is No need to do sample B Test. [sic]*”.
71. The Sole Arbitrator recalls that, pursuant to Article 3.2 of the ADAK ADR, “[f]acts related to Anti-Doping rule violations may be established by any reliable means, including admissions.” The Comment to Article 2.2 of the WADA Code further clarifies that

“[i]t has always been the case that Use or Attempted Use of a Prohibited Substance or Prohibited Method may be established by any reliable means. As noted in the Comment to Article 3.2, unlike the proof required to establish an anti-doping rule violation under Article 2.1, Use or Attempted Use may also be established by other reliable means such as admissions by the Athlete, witness statements, documentary evidence, conclusions drawn from longitudinal profiling, including data collected as part of the Athlete Biological Passport, or other analytical information which does not otherwise satisfy all the requirements to establish “Presence” of a Prohibited Substance under Article 2.1.

For example, Use may be established based upon reliable analytical data from the analysis of an A Sample (without confirmation from an analysis of a B Sample) or from the analysis of a B Sample alone where the Anti-Doping Organization provides a satisfactory explanation for the lack of confirmation in the other Sample.”

72. In the present case, the undisputed analytical findings, together with the Athlete’s acceptance of the A Sample result, are capable of supporting a finding that the Athlete used the Prohibited Substance.

73. In light of the above, the Sole Arbitrator finds that the Athlete has committed ADRVs under both Article 2.1 and 2.2 of the ADAK ADR.

2. Was the ADRV committed intentionally?

74. The SDT rejected a finding of Intent for the ADRV, arguing that the Athlete successfully established the origin of the Prohibited Substance (the medications administered to him during his hospital visits on 10 January and 13 February 2024) *“by providing authenticated medical documentation and expert testimony”*, which – in the SDT’s view – demonstrated that the Prohibited Substance entered the Athlete’s body *“through prescribed medication confirmed by the prescribing clinical officer for a legitimate medical condition”*.

75. 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).

76. Article 10.2.3 of the ADAK ADR defines the term *“intentional”* 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. [...]”

77. The Appealed Decision entirely disregards the concept of indirect Intent and simply finds that the Athlete did not act with Intent, based on its conclusion that the Athlete successfully established the source of the Prohibited Substance.

78. 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 Code³ 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.”

79. 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)

80. 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.
81. The Athlete explained before the SDT that, during January and February 2024, he was treated at the Hospital for a chronic hip arthritis. In particular, he received Diprosan injections, which were administered by the Doctor. Thus, it is the Athlete’s case that said Diprosan injections must have caused the AAF. The Athlete also relies on this theory in these appeals proceedings, reiterating the submissions and evidence advanced in first instance.
82. WADA does not dispute that the Athlete received the Diprosan injections. The issue, however, is whether this explanation plausibly establishes the source of the Prohibited Substance.
83. WADA submits that this explanation is scientifically implausible. It relies on two publicly available internet sources listing the ingredients and properties of Diprosan.⁴

³ 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.

⁴ <https://www.drugs.com/medical-answers/diprosan-3571060/> & <https://go.drugbank.com/drugs/DB00443>.

Pursuant to the information on these websites, Diprospan's active compounds are two salts of Betamethasone (betamethasone dipropionate and betamethasone sodium phosphate), which is a long-acting corticosteroid with immunosuppressive and anti-inflammatory properties. Neither of the two sources submitted by WADA lists the Prohibited Substance (exogenous testosterone) as an ingredient of Diprospan. The Doctor's testimony that he administered a Betamethasone (steroid) injection to the Athlete, which substance may persist for a long time in the body, does not explain how Betamethasone could result in the presence of the Prohibited Substance (exogenous testosterone). There is simply no scientific link between the Diprospan injections and the presence of exogenous testosterone in the Athlete's body, based on the evidence proffered in these CAS proceedings.

84. Given that it is the Athlete's burden of proof to rebut the presumption of Intent, the Athlete should have addressed the two internet sources relied upon by WADA to counter his theory. Neither the Athlete nor ADAK even mention such evidence in their respective Answers. They have also not requested a hearing, but simply rely on the documentary record produced during the first instance proceedings, which has been disproven by WADA.
85. The SDT plainly accepted the Athlete's explanation without scientifically testing it, just as ADAK, as the competent Results Management Authority, failed to challenge the scientific viability of the Athlete's evidence in even the most basic sense.
86. In light of the foregoing, the Sole Arbitrator concludes that the Athlete has failed to establish, on a balance of probabilities, that the Diprospan injections were the source of the Prohibited Substance.
87. In the absence of 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. 78), 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).
88. 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 used medications, 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.
89. 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.

3. What is the Athlete's sanction?

90. 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.

91. 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).
92. 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.
93. In the present case, the result of a strict application of Article 10.13 of the ADAK ADR (with the period of Ineligibility to start on the date of the notification of this Award on 31 July 2026) would be that the Athlete would be ineligible to compete until 30 July 2029 (with credit of the 1-year period of Ineligibility which had been imposed by the SDT Panel and served by the Athlete). In view of Article 10.10 of the ADAK ADR, pursuant to which WADA requests that all competitive results of the Athlete obtained from the date the Sample was collected (i.e. from 12 March 2024) be disqualified, the Athlete would be effectively barred from winning any medals, points or prizes (and thus effectively be “erased” from his sport) for a period of 5 years and 3.5 months from the date of sample collection. Had the SDT Panel worked properly, it would have found, based on the rather clear facts of the case, that the Athlete had acted intentionally, and it would have imposed the proper sanction of 4 years, to expire on 1 July 2028. This detrimental difference of 13 months is the result of the blatantly erroneous application of the ADAK ADR by the SDT Panel, and it is significant, in view of the fact that the delay could bar the Athlete, *inter alia*, from participation in the 2028 Olympic Games (beginning on 14 July 2028), for which he would be principally eligible to compete had the SDT Panel applied the correct sanction.
94. The Sole Arbitrator finds that the failure of the SDT Panel to correctly apply the law is not attributable to the Athlete. Irrespective of whether the Athlete formally raised Article 10.13.1 of the ADAK ADR as a defence, it is clear to the Sole Arbitrator that the Athlete had not submitted any facts at first instance which would have justified a finding of non-intent. In such circumstances, it would be unfair for the Athlete to bear the consequences, and be ineligible to win any points or prizes for effectively more than five years (including through the 2028 Olympic Games). Hence, the Sole Arbitrator finds that, based on Article 10.13.1 of the ADAK ADR, the period of Ineligibility shall start from 2 July 2024, *i.e.* on the first day of the period of Ineligibility imposed by the SDT Panel.
95. 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. 12 March 2024) shall be disqualified, with all resulting consequences, including forfeiture of any medals,

points and prizes.

X. 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 Panuel Mkungo with respect to the decision rendered on 8 May 2025 by the Sports Disputes Tribunal is upheld.
2. The decision rendered on 8 May 2025 by the Sports Disputes Tribunal is amended as follows:
 - a. Panuel Mkungo is found to have infringed Article 2.1 and Article 2.2 of the ADAK ADR.
 - b. Panuel Mkungo is sanctioned with a period of ineligibility of four (4) years, commencing on 2 July 2024, 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 before 2 July 2024.
3. All competitive results obtained by Panuel Mkungo from and including 12 March 2024 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: 31 July 2026

THE COURT OF ARBITRATION FOR SPORT

Annett Rombach
Sole Arbitrator