



**Republic v Malik (Criminal Case E143 of 2025)  
[2025] KEMC 314 (KLR) (26 September 2025) (Sentence)**

Neutral citation: [2025] KEMC 314 (KLR)

**REPUBLIC OF KENYA  
IN THE JKIA LAW COURTS  
CRIMINAL CASE E143 OF 2025  
AN THUKU, SPM  
SEPTEMBER 26, 2025**

**BETWEEN**

**REPUBLIC ..... PROSECUTION**

**AND**

**AMAN MALIK ..... RESPONDENT**

**SENTENCE**

**Introduction**

1. “Faster, Higher, Stronger – Together” is the Olympic motto that galvanizes and unites people across the world. For nearly sixteen days every four years people of all ages and nations are glued to a device watching their favourite sport or race, and most times supporting their country to cheer them for gold. Most often settle for silver or bronze. Many also keep track of the medal scores to see how well their country is performing.
2. Media outlets in various forms and social media handles help keep even those with a nominal interest in sports, updated on the international races where the particular country is participating.
3. Here in Kenya the news headlines both print and voice were awash with Kenya’s participation in the just concluded World Athletics Championships in Tokyo, Japan which took place between September 13 and 21, 2025. For example the Daily Nation had the headline “Kenya writes history at World Athletics Championships” on Monday September 22, 2025 in an article by James Mwamba.<sup>1</sup>
4. But there is a dark cloud looming in the horizon regarding Kenya and its participation in athletics on a global stage. This comes from the World Anti-Doping Agency (WADA) which issued a 21-day notice to the Anti-Doping Authority of Kenya (ADAK). WADA released a statement on September 12, 2025, a day before the start of the World Athletics Championship in Tokyo. The gist of the notice

<sup>1</sup> See <https://nation.africa/kenya/sports/athletics/kenya-writes-history-at-world-athletics-championships-conclude--5201456>



is that Kenya has not done enough to fight doping in Kenya. One of the consequences of this ban is that Kenya will lose all rights to host any championships.

5. This is the reason that it is serendipity that this sentencing comes at this time. The events leading to this case happened earlier in the year. But Providence ordained that the culmination would be at this particular time.
6. The rest of the sentencing proceeds as follows – the charges, the law, a summary of the mitigation and Pre-Sentence Reports, a consideration of Victim Impact Statements from the Pharmacy and Poisons Board, Anti-Doping Authority of Kenya and Athletics Kenya, Critical Factors, Sentencing Guidelines and finally the Sentencing.

### **The Charges**

7. Aman Malik (“Aman”) is 18 years old and he is from India. Based on information made available to the court, Aman travelled to Kenya and registered as an athlete. In fact he went to Iten allegedly to train as an athlete and indeed he was arrested in Iten. “Curisouser and curisouer.”, a phrase said by Alice in the book “Alice in Wonderland”, is the phrase that comes to mind. So what are the charges he faces?
8. Aman faces four counts. In count 1, he is charged with unlawful importation of drugs contrary to rule 3(1) of the Pharmacy and Poisons Rules as read with section 51 of the *Pharmacy and Poisons Act*, Cap 22 – Laws of Kenya.
9. The particulars of the offence are that on May 5, 2025 at Iten Township within Elgeyo Marakwet County, Aman unlawfully imported drugs without an import licence.
10. In count 2, Aman is charged with transporting prohibited substance contrary to section 42(2)(a) of the *Anti-Doping Act* No. 5 of 2016.
11. The particulars of the offence are that on May 5, 2025 at Iten Township within Elgeyo Marakwet County, unlawfully transported prohibited substances namely Somatropin for Injection (Recombinant Human Growth Hormone for injection) within Kenya.
12. In count 3 Aman is charged with transporting prohibited substance contrary to section 42(2)(a) of the *Anti-Doping Act*, No. 5 of 2016.
13. The particulars of the offence are that on May 5, 2025 at Iten Township within Elgeyo Marakwet County, unlawfully transported prohibited substances namely Mildronate 500 within Kenya.
14. In count 4, Aman is charged with transporting prohibited substance contrary to section 42(2)(a) of the *Anti-Doping Act* No. 5 of 2016.
15. The particulars of the offence are that on May 5, 2025 at Iten Township within Elgeyo Marakwet County, unlawfully transported prohibited substances namely Diclofenac Sodium injection 25mg/ml within Kenya.
16. Aman is represented by pro bono counsel as per the Judiciary Pro Bono Counsel Scheme, Mr. David Lusweti. The court would like to appreciate Mr. Lusweti for his service in representing Aman. Mr. Mulama led the prosecution team.
17. He was arraigned in court on August 29, 2025 at the time pleaded guilty to two out of the four counts. At the time he was unrepresented. The court set a date for the facts and this happened on September 12, 2025. Just before the facts were read to him, Mr. Lusweti informed the court that Aman wanted to plead guilty to all four counts. The charge was read afresh and Aman pleaded guilty to all four counts.



18. Mr. Mulama stated that they had no previous records on Aman. He did recommend that the court call for Victim Impact Statements. Thus, the court requested for Victim Impact Reports from the Pharmacy and Poisons Board, Anti-Doping Authority of Kenya and Athletics Kenya. The court also requested for a Pre-Sentence Report. Mr. Lusweti informed the court that he would mitigate after seeing the Victim Impact Statements. Mr. Lusweti filed his mitigation.

### **The Law**

19. Count 1 ought to read Rule 3(1) as read with Rule 45 of the Pharmacy and Poisons (Amendment) Rules, 2022. Section 51 is the penal section. All three are reproduced below.

#### Rule 3(1)

3B. (1) A person shall not import any biological therapeutic without a valid import licence issued under rule 3.

#### Rule 45

45. A person who commits an offence under these Rules for which no penalty is provided shall, on conviction, be liable to the penalties prescribed in section 51 of the Act.

#### Section 51

Any person guilty of an offence under the provisions of this Act shall, except as otherwise provided, be liable on conviction to a fine not exceeding one million shillings or to imprisonment for a term not exceeding two years, or to both such fine or imprisonment, and in addition to any penalty imposed under this Act the court may order any article in respect of which the offence has been committed or which has been used for the commission of such offence to be forfeited.

20. Section 42(2)(a) of the *Anti-Doping Act*, No. 5 of 2016 states:

(2) A person or body who—

- (a) unlawfully transports or transfers prohibited substances, within or outside Kenya;
- (b) ...
- (c) ...

commits an offence and shall be liable, on conviction, to a fine of not less than three million shillings or to imprisonment of not less than three years or to both such fine and imprisonment.

In case of corporate bodies, in addition to the fine, the trading licence of the respective corporate body shall be withdrawn for a period of not less than one year.

### **Mitigation and Pre-Sentence Report**

21. Mr. Lusweti in his submissions in mitigation makes a passionate plea for the court to find that Aman is a misguided youth. His involvement in this crime according to Mr. Lusweti is borne out of ambition, immaturity and poor judgment. He states that Aman came to Kenya to train to be an athlete and lift his family out of poverty. He argues that Aman is already suffering because of this case; in that his athletics career has been destroyed, because of his association to doping he may not be able to compete internationally and he is suffering far from home. Mr. Lusweti presents proposals to the court to



consider which are non-custodial and custodial. In conclusion, Mr. Lusweti urged the court to temper justice with mercy and impose a sentence that lends itself to rehabilitation.

22. I thank the Probation Officer who prepared the report. The Pre-Sentence Report presents a picture of Aman that draws sympathy and pity. Aman’s father is dead but his mother is alive though elderly and sickly. He is the last born; his older brother lives in Mumbai while his sister lives in Canada. His childhood was a life of struggle though he has a basic education. He has not yet gone to college. In terms of circumstances of the offence, Aman states it was his coach Avdesh Nagar who brought him the prohibited substances; Avdesh took them to Aman in April this year. It is Aman’s claim that he did not know that the substances were prohibited. Aman is remorseful and this is a view held by a representative of ADAK whom the probation officer interviewed. The recommendation is that Aman is not fit for a non-custodial sentence. Aman pleads for leniency and requests to be repatriated back to India.

### **Victim Impact Statements**

23. I read the Victim Impact Statements. I will start with the report prepared by Otieno Dennis Odera, Senior Regulatory Officer, Pharmacy and Poisons Board. It provides a detailed picture of the lay of the land and specifically with the charge facing Aman.
24. In summary, his statement outlines the widespread harm caused by the illegal supply and use of performance-enhancing drugs among Kenyan athletes, implicating not just elite competitors but also students and recreational runners. Victims include the athletes themselves—who face serious health risks like cardiovascular damage, endocrine disorders, psychiatric issues, and even death from counterfeit or contaminated substances—as well as their families, teammates, and the broader sporting community. The misuse leads to career and educational ruin, family financial strain, loss of national reputation, and damage to Kenya’s athletics and tourism sectors. Economically, the issue imposes steep costs on individuals and institutions, from medical bills to law enforcement operations. The statement emphasizes the foreseeability of these harms and calls for strict judicial remedies: destruction of seized drugs, compensation for victims, professional bans, mandatory education, and continued cooperation with investigations—all to protect public health and restore integrity in Kenyan sport.
25. I wish in particular to reproduce two sections of his report which in my view is food for thought for those interested in keeping Kenya doping free. The first section is titled “Health and Clinical Harms (to Individual Athletes)”. The statement reads as follows:

3) Health and Clinical Harms (to Individual Athletes)

From a regulatory and clinical standpoint, the foreseeable harms are grave and well-documented:

- Cardiovascular and hematological risks: EPO and stimulants can precipitate hypertension, thrombosis, arrhythmias, and sudden cardiac events, particularly at altitude training hubs where dehydration and polycythemia (high hemoglobin level in blood) risks are higher.

Endocrine/reproductive toxicity: Anabolic steroids cause hypogonadism, infertility, menstrual disturbances, virilization, and growth abnormalities in youth.

Hepatic/renal strain and electrolyte collapse: Oral agents and diuretics provoke liver enzyme derangements, renal stress, and life-threatening electrolyte imbalance.

Psychiatric sequelae and dependence: Aggression, mood disorders, anxiety, sleep disturbance, and dependence patterns are frequently reported.



Infectious and toxicologic harms from illicit supply: Counterfeit or mishandled injectables (poor asepsis, broken cold chain) lead to sepsis, abscesses, toxic reactions, and dose inconsistency.

Illustrative (anonymized) signals experienced by PPB:

- A recreational runner presented with a hypertensive crisis after using a “fat-burn/stamina” injection bought online; the vial was found unregistered and mislabeled.
- A collegiate athlete admitted to non-prescribed diuretics for “weight-cut,” later collapsing due to severe hypokalaemia.
- Two counterfeit EPO vials seized lacked active ingredients; a third contained contaminants. All three posed immediate danger to life.

26. The second section that is important to consider is titled “Integrity of Competition and National Reputation”. Mr. Odero makes the following observation:
- 5) Integrity of Competition and National Reputation Clean athletes become invisible victims. They lose selection slots, podium places and bonuses to doped competitors; some exit sport entirely due to perceived futility. Federation and national image harm: Recurrent doping scandals erode trust in Kenya’s distance-running tradition, depress fan engagement, and invite increased foreign scrutiny and testing burdens. Event and tourism impacts: Risk to hosting rights diminishes event revenue streams and local economic multipliers.
27. The Anti-Doping Authority also provided a Victim Impact Statement prepared by Peninah Wahome, the Acting Chief Executive Officer from the Anti-Doping Agency of Kenya.
28. The Adak statement is summarized as follows. It reveals that the distribution and use of unregulated substances like Somatropin and Meldonium pose serious health risks to athletes, including long-term organ damage and hormonal imbalance, while also undermining the integrity of sport in Kenya by creating an uneven playing field. Clean athletes suffer both psychological and career setbacks, and Kenya’s international reputation in athletics is at risk of damage and heightened scrutiny. The broader community faces public health hazards due to unregistered injectables and antibiotic misuse, which can lead to disease transmission and antimicrobial resistance. Aggravating factors include the scale and concealment of the doping operation, linked to an international network, while mitigating factors note Aman’s cooperation and lack of prior offenses. The statement recommends strong sentencing, enhanced monitoring of training hubs, and increased athlete education and health checks, concluding that the sophistication and scope of the doping operation demand a robust legal and preventative response.
29. When Aman was arrested he had an entire suitcase filled with the prohibited substances, supplements and medication which as a non-medical practitioner, he ought not to have and hence the charge in count 1. The ADAK Victim Impact Statement has a summary of a table of the items which Aman was found with, which I consider important to reproduce below. I thank ADAK for this summary it highlights the scale and magnitude of the offences.



| Category / Example                     | Typical Use  | Potential Harm to Athletes & Population  |
|--|--|--|
| Performance-Enhancing & Masking Agents | Human Growth Hormone, Meldonium, Levocarnitine, Dipyridamole, Mannitol | Growth hormone can cause abnormal organ growth, diabetes, and joint disorders. Meldonium alters metabolism and masks fatigue. Mannitol and other masking agents can hide the presence of other drugs and cause severe dehydration and electrolyte imbalance. |
| Stimulants & Energy Boosters           | Caffeine blends, Panax Ginseng, Cordyceps sinensis, Coenzyme Q-10      | Elevated heart rate, arrhythmias, anxiety, and risk of heart attack when misused at high doses.  |
| Amino Acids & Metabolic Supplements    | Creatine Monohydrate, L-carnitine, Inosine, Mecobalamin blends         | Overuse can damage kidneys/liver and disrupt natural metabolism.   |
| Analgesics & Anti-inflammatory         | Diclofenac, Paracetamol (multiple vials), Montelukast, Levocetirizine  | Chronic misuse leads to gastrointestinal bleeding, liver toxicity, and kidney damage.  |
| Antibiotics & Antimicrobials           | Amoxicillin/Clavulanic acid, Azithromycin, Metronidazole               | Non-prescribed use accelerates antibiotic resistance, posing a community health hazard.  |
| Injectables & Equipment                | Insulin syringes, infusion sets, clear vials with erased labels        | Risk of unsafe injections, spread of blood-borne infections (HIV, hepatitis), and clandestine intravenous drug administration.   |
| Unidentified/Brown Dried Substance     | Unknown  | Unknown potency or toxicity—high risk of poisoning or contamination.   |
| Vitamins & Herbal Mixes                | Moringa, Vitamin B complex, Iron/Zinc mixes                            | Generally safe when used correctly, but unsupervised high-dose intake can cause organ stress and interact dangerously with other drugs.  |



30. The report also emphasizes the damage to Kenya’s reputation and highlights aggravating factors for ADAK which include that there is large scale distribution of these substances, there is a sophisticated network and that this case has the characteristics of organized crime. Aman was not acting alone. The prohibited substances were brought into Kenya. The court had the benefit of seeing the items as produced in court; the labels on some of the items were in a foreign language.
31. Additionally, among the items listed in the inventory were used syringes and an agreement. The agreement is between Aman and Reuben Mosin and is dated November 19, 2024. The terms of the agreement were explicit. Aman was to supply all that it takes to ensure Reuben wins. Reuben was to share half of his winnings with Aman. It is a one page agreement. This fact alone elevates Aman’s involvement from a misguided youth to a person deeply entrenched in doping. He knew exactly what he was doing. He did not come to Kenya to train as an athlete. He came to earn a living using a trade that is devious and dangerous for the individual athlete and for the nation of Kenya.
32. The third Victim Impact Statement for consideration is that prepared by Barnaba Korir, Executive Member and Chairman Youth Development on behalf of Athletics Kenya (AK). A summary of the statement is that doping has had a deeply damaging impact on athletics in Kenya, undermining fair competition, endangering athletes’ health, and threatening careers through bans and sanctions. It also tarnishes Kenya’s international reputation and discourages clean athletes, especially the youth. With Kenya accounting for nearly 40% of recent global doping cases, the country has been placed under Category A by the World Anti-Doping Agency. A multi-agency Steering Committee exists which now treats doping as a matter of national security. Athletics Kenya (AK) condemns Aman’s actions, reaffirming its zero-tolerance stance and support for clean sport. In conclusion, the statement implores the court to weigh the significant harm caused to athletes, the sport, and the nation when delivering its judgment.
33. There are other factors for consideration when it comes to doping and these are explained below.

### **Critical Factors**

34. The UNESCO International Convention against Doping in Sport defines doping as the “occurrence of an anti-doping rule violation (ADRV).”<sup>2</sup> Similarly, the World Anti-Doping Code (WADC 2003) provides that “doping is defined as the occurrence of one or more of the anti-doping rule violations set forth in Articles 2.1 through 2.11 of the Code.”<sup>3</sup>
35. The said ADRVs include:<sup>4</sup>
  - a. the presence of a prohibited substance or its metabolites or markers in an athlete’s bodily specimen;
  - b. use or attempted use of a prohibited substance or a prohibited method;
  - c. refusing, or failing without compelling justification, to submit to sample collection after notification as authorized in applicable anti-doping rules or otherwise evading sample collection;

<sup>2</sup> Article 2(9), International Convention against Doping in Sport (adopted 19 October 2005, entered into force 1 February 2007) 2419 UNTS 201.

<sup>3</sup> Article 1, World Anti-Doping Agency, World Anti-Doping Code (first adopted 5 March 2003, as amended 1 January 2025) (WADA Code).

<sup>4</sup> Article 2(3), International Convention against Doping in Sport.



- d. violation of applicable requirements regarding athlete availability for out-of-competition testing, including failure to provide required whereabouts information and missed tests which are declared based on reasonable rules;
  - e. tampering, or attempting to tamper, with any part of doping control;
  - f. possession of prohibited substances or methods;
  - g. trafficking in any prohibited substance or prohibited method;
  - h. administration or attempted administration of a prohibited substance or prohibited method to any athlete, or assisting, encouraging, aiding, abetting, covering up or any other type of complicity involving an anti-doping rule violation or any attempted violation.
36. It is important to note that the Convention applies specifically to athletes.<sup>5</sup> An athlete is any person who competes in sport at the international level, or at a national level, as defined by each National Anti-Doping Organization. The national antidoping organisation is also allowed to extend the definition to lower levels of competition.<sup>6</sup> This framing shows that international anti-doping norms are focused on individuals participating in organised sport, primarily within competitive contexts.
37. Kenya having ratified the Convention incorporates this international framework into domestic law through the *Anti-Doping Act*, 2016. Section 2 defines doping as “the use of prohibited substances and methods in any sporting activity whether competitive or recreational in order to artificially enhance performance.”<sup>7</sup> It is clear that the anti-doping regime widens the scope of regulation beyond the international standard, creating liability for non-athletes as well. The Act also adopts WADA’s Prohibited List as in defining prohibited substances and methods in doping regulation.<sup>8</sup>

### Categories of Prohibited Substances and Methods

38. A central element in this definition is the concept of a prohibited substance or method. The Prohibited List, maintained and annually updated by the World Anti-Doping Agency (WADA),<sup>9</sup> indicates these banned substances and methods typically because they meet one or more of three criteria:<sup>10</sup>
- a. they enhance or have the potential to enhance performance;
  - b. they represent an actual or potential health risk to athletes; or
  - c. they violate the spirit of sport.
- The WADA Prohibited List identifies categories of banned substances and methods, which include the following:
- a) Anabolic Agents

<sup>5</sup> Article 2(4), International Convention against Doping in Sport.

<sup>6</sup> Article 2(4), International Convention against Doping in Sport.

<sup>7</sup> Section 2, *Anti-Doping Act* (No. 50 of 2016).

<sup>8</sup> Section 2, *Anti-Doping Act* (No. 50 of 2016).

<sup>9</sup> World Anti-Doping Agency, The Prohibited List, 2025. -< <https://www.wada-ama.org/en/prohibited-list>> accessed 25 September 2025.

<sup>10</sup> USA Drug Agency, -<<https://www.usada.org/athletes/substances/prohibited-list/>>- Accessed on 23rd September, 2025.



These include anabolic-androgenic steroids (AAS), synthetic derivatives of testosterone that promote muscle growth and increase strength. They are banned because they provide an unfair performance advantage and carry severe health risks, including cardiovascular disease, liver damage, hormonal imbalance, and psychiatric effects.<sup>11</sup>

b) Peptide Hormones, Growth Factors, and Related Substances

This group includes erythropoietin (EPO), human growth hormone (hGH), and related substances that stimulate natural hormone production. They are prohibited because they increase red blood cell count, oxygen transport, and muscle growth, thereby boosting endurance and recovery. However, they also increase the risk of blood clots, stroke, abnormal growth, and organ dysfunction.<sup>12</sup>

c) Beta-2 Agonists

Commonly used in asthma medications, beta-2 agonists dilate the airways and, in high doses, can stimulate muscle growth and fat loss. They are banned because of their performance-enhancing properties beyond therapeutic use. Certain substances in this category may be permitted with a Therapeutic Use Exemption (TUE).<sup>13</sup>

c) Hormone and Metabolic Modulators

This category includes drugs that alter hormone levels, such as aromatase inhibitors and selective estrogen receptor modulators (SERMs), as well as substances that influence metabolism like meldonium. They are banned because they can mask the side effects of steroid use, improve recovery, or enhance endurance by modifying energy metabolism.<sup>14</sup>

d. Diuretics and Masking Agents

These substances increase urine production and are often used to rapidly reduce body weight or dilute urine samples to mask the presence of prohibited substances. They pose health risks including dehydration, electrolyte imbalance, and kidney damage. Their use undermines the reliability of doping control systems.<sup>12</sup>

e. Stimulants, Narcotics, Cannabinoids, and Glucocorticoids (In-Competition)

Stimulants (e.g., amphetamines, cocaine) boost alertness, reaction time, and endurance but pose risks of addiction, cardiovascular failure, and psychological harm.

Narcotics (e.g., morphine, oxycodone) mask pain, enabling athletes to push beyond safe physical limits, which can lead to severe injury or death.

Cannabinoids (e.g., THC) are banned in-competition because of their potential to impair judgment and safety, as well as their contravention of the “spirit of sport.” Moreover, cannabis is classified as an illicit drug in most countries worldwide, meaning its prohibition in sport also aligns with broader criminal and public health frameworks.<sup>15</sup>

<sup>11</sup> Mayo Clinic, ‘Performance-enhancing drugs: know the risks’ Accessed on 23 September, 2025.

<sup>12</sup> Handelsman DJ, ‘Performance Enhancing Hormone Doping in Sport’ in Feingold KR, Ahmed SF, Anawalt B, (eds) Endotext [Internet], South Dartmouth (MA): MDText.com, Inc. 2000).

<sup>13</sup> Kindermann W, Meyer T, ‘Inhaled beta2 agonists and performance in competitive athletes’ 40(1) British journal of sports medicine (2006).

<sup>14</sup> Bethesda MD, ‘LiverTox: Clinical and Research Information on Drug-Induced Liver Injury’ [Internet], National Institute of Diabetes and Digestive and Kidney Diseases 2012.

<sup>15</sup> Huestis, M, Mazzoni, I, & Rabin, O, ‘Cannabis in sport: anti-doping perspective’ 41(11) Sports medicine, 2011, 950.



Glucocorticoids, although debated to enhance performance, remain powerful anti-inflammatories, and are prohibited in-competition when administered by injection or orally, when used concurrently with other drugs as they enhance recovery and mask pain, risking long-term harm to joints and immune function.<sup>16</sup>

## 7. Prohibited Methods

In addition to substances, the Prohibited List identifies methods of doping, such as:

Blood doping<sup>17</sup> (e.g., transfusions, artificial oxygen carriers), which increases oxygen delivery to muscles but raises the risk of heart attack, stroke, and embolism. Chemical and physical manipulation, including sample substitution or intravenous infusions, which compromise the integrity of doping controls and pose medical risks.

### **Why Doping is considered wrong**

39. The ethics of sport have long been contested, and nowhere is this clearer than in the debate over performance enhancement. Scholars such as Thomas Murray argue that sport is fundamentally about the cultivation of human excellence through disciplined effort, respect for rules, and fair competition, and that doping undermines these core values.<sup>18</sup> At the same time, the proportionality of anti-doping policies themselves has been questioned. Critics point to concerns about athletes' rights to privacy, bodily autonomy, and free will, particularly in the context of invasive testing regimes and strict liability rules.<sup>19</sup> This raises the tension between preserving the integrity of sport and respecting the rights of athletes as individuals.
40. Against this backdrop, the World Anti-Doping Agency (WADA) has attempted to articulate a coherent justification for its anti-doping regime. WADA, exercising its sole discretion, may prohibit a substance or method if it satisfies any two of three requirements:<sup>20</sup>
- a. that it has the potential to enhance, or does enhance, sport performance;
  - b. that its use represents an actual or potential health risk to the athlete; or
  - c. that its use violates the spirit of sport as described in the Code's introduction.
41. The second criteria is grounded in medical and scientific evidence, reflecting a concern for an athlete's welfare. The first and third, have proven far more controversial as to whether they truly justify the existence of the Code.

<sup>16</sup> Vernec A, Slack A, Harcourt PR, 'Glucocorticoids in elite sport: current status, controversies and innovative management strategies- a narrative review' 54(1)Br J Sports Med. 202).

<sup>17</sup> Mcliffen M, WebMD ' Blood Doping: types, risks and effects' Accessed on 23rd September, 2025.

<sup>18</sup> Murray T, Good Sport: Why Our Games Matter – and How Doping Undermines Them Oxford University Press; 2018.

<sup>19</sup> Duffy J, 'Proportionality of sanctions under the WADA Code: CAS jurisprudence and the need for a strict approach' 24(1) Australasian Dispute Resolution Journal 2013 31.

<sup>20</sup> Article 4.3.1 WADA Code 2003.



### **Unfair advantage argument**

The assumption underlying this criterion is that performance enhancement, whether actual or potential, creates an unfair advantage.<sup>21</sup> A common justification for banning doping is that it creates unfair advantage.

However, Sandel and other scholars critique this reasoning and observe that natural genetic inequality is already an inherent feature of sport—some athletes are simply born with physiological advantages, such as higher lung capacity or muscle composition, for example: Michael Phelps.<sup>22</sup>

42. These inequalities are accepted as legitimate, and indeed, celebrated. On this basis, scholars like Sandel argue enhanced genetic differences are no worse than natural ones, especially if enhancements could be made widely available.<sup>23</sup> Thus, if genetic or biomedical enhancements in sport are to be considered morally objectionable, it cannot be because of fairness alone. Instead, the objection must rest on deeper concerns.

### **The spirit of sport**

43. The WADA Code presents the “spirit of sport” as the fundamental rationale for its existence. Article 18.1 (Education) and 18.2 (Programmes and Activities) expressly incorporate the notion as the philosophical foundation of anti-doping measures.<sup>24</sup> The Code describes the spirit of sport as encompassing the following values: fair play, honesty, excellence, health, fun, teamwork, dedication, respect for rules, courage, and community.<sup>25</sup>

However, despite WADA’s detailed articulation of this principle, its meaning and utility remain contested in academic and policy debates.<sup>3</sup>

### **Effects of Doping**

44. Several reports and studies indicate that among Kenyan athletes, the most frequently detected banned substances are nandrolone (an anabolic-androgenic steroid), erythropoietin (EPO) (a “blood booster”), and corticosteroids.<sup>26</sup>

### **Key Findings from Kenyan Context**

45. A WADA/AIU report covering the period 2004 to ~2018 showed that 138 Kenyan athletes tested positive for prohibited substances. Among those, nandrolone was most prevalent, followed by corticosteroids, then EPO.<sup>27</sup> In the Kenyan sample of Adverse Analytical Findings (AAFs), nandrolone made up about 35% of all substances detected; corticosteroids about 13%; and EPO around 12%.

<sup>21</sup> R A Vlad and others, ‘Doping in Sports, a Never-Ending Story?’ (2018) *Clujul Medical* 91(4) 361.

<sup>22</sup> Athletes like Michael Phelps are admired and rewarded not only for their discipline but also for their extraordinary natural attributes: his long torso, wingspan, and hyper-flexible ankles etc.

<sup>23</sup> Michael J Sandel, *The Case Against Perfection: Ethics in the Age of Genetic Engineering* Harvard University Press 2007, 11

<sup>24</sup> Article 18.1 WADA Code 2003.

<sup>25</sup> McNamee, M.J, ‘The spirit of sport and anti-doping policy: An ideal worth fighting for *Play True I* 2013 14–16

<sup>26</sup> <Sportstar+3AP News+3World Anti Doping Agency+3> Accessed on 25th September 2025.

<sup>27</sup> Antidoping Database, ‘One in three doping cases in Kenya linked to norandrosterone’ July, 2025.



## Physical health

46. Performance-enhancing drugs (PEDs) carry well-documented and sometimes severe physical health risks.

### Nandrolone (Anabolic Steroid)<sup>28</sup>

Nandrolone is a synthetic derivative of testosterone, the male sex hormone. Athletes misuse it to increase muscle mass and strength. However, the health consequences are severe:

**Cardiovascular risks:** It raises blood pressure, disrupts cholesterol balance, and accelerates the buildup of fatty deposits in arteries, increasing the chance of heart attacks and strokes.<sup>1</sup>**Endocrine disruption:** In men, it can shrink the testicles and cause infertility; in women, it can disrupt menstrual cycles and cause masculinisation.<sup>1</sup>**Psychiatric effects:** Users report aggression, mood swings, and even depression when withdrawing.**Liver damage:** Prolonged use has been tied to liver stress and, in rare cases, tumors.<sup>1</sup>

### Erythropoietin (EPO)<sup>29</sup>

EPO is a hormone that stimulates the production of red blood cells, which carry oxygen. Athletes inject it to improve stamina and endurance. Misuse thickens the blood, leading to:

**Increased clotting risk:** Thicker blood makes clots more likely, which can block blood vessels, causing strokes or heart attacks.**Strain on the heart:** The heart has to pump harder to move the thicker blood, increasing the risk of heart failure.**Unnatural oxygen levels:** While this can boost endurance, it destabilises normal body regulation and has been linked to sudden deaths in endurance sports.

### Corticosteroids<sup>30</sup>

Corticosteroids (e.g. prednisone, triamcinolone) are strong anti-inflammatory drugs used in medicine to treat asthma, arthritis, and other conditions. In sport, athletes abuse them to reduce pain and allow quicker recovery. Misuse causes:

**Metabolic effects:** Weight gain, high blood sugar, and eventually diabetes.**Bone loss:** Long-term use weakens bones (osteoporosis), raising the risk of fractures.**Immune suppression:** The body becomes more vulnerable to infections.**Muscle wasting and hormonal imbalance:** Athletes may actually harm their strength over time.

### Diuretics (Masking Agents)<sup>31</sup>

Diuretics are drugs that increase urine production, often used in medicine to treat high blood pressure or kidney problems. In doping, they are abused to hide the presence of other drugs by diluting urine samples. Side effects include:

**Dehydration:** The body loses too much water, impairing performance rather than helping.**Electrolyte imbalance:** Critical minerals like potassium and sodium drop, which can cause muscle cramps, irregular heartbeat, or even sudden cardiac arrest.**Kidney damage:** Overuse strains the kidneys, which can fail under prolonged stress.

<sup>28</sup> Kanayama, G., Hudson, J. I. & Pope, H. G. "Long-Term Psychiatric and Medical Consequences of Anabolic-Androgenic Steroid Abuse: A Looming Public Health Concern?" *Drug and Alcohol Dependence* 98, no. 1–2 (2008): 1–12.

<sup>29</sup> Antidoping Database, 'One in three doping cases in Kenya linked to norandrosterone' July, 2025.

<sup>30</sup> Gaida JE, Cook J. 'Treatment options for patellar tendinopathy: critical review.' *10(5) Curr Sports Med Rep.* 2011 Sep-Oct;10(5):55-70.

<sup>31</sup> Sica DA. 'Diuretic-related side effects: development and treatment' *6(9): J Clin Hypertens (Greenwich).* 2004, 532-540.



## Other effects

47. Doping produces immediate and long-term harms to athletes that go well beyond physical and psychological health. Conviction for an anti-doping rule violation commonly results in loss of competition results and medals, lengthy bans from competition, withdrawal of endorsement deals, and severe reputational harm that often outlasts the sanction itself. For example, Marion Jones — once the most marketable sprinter in the United States — saw multimillion-dollar endorsement deals evaporate and substantial legal and financial troubles after admitting to using performance-enhancing drugs; she was stripped of Olympic medals and later declared bankrupt.<sup>32</sup>
48. High-profile Kenyan cases illustrate similar dynamics at the national level. Asbel Kiprop (Olympic 1500m champion) and Jemima Sumgong (2016 Olympic marathon champion) both received long bans after testing positive for EPO; in addition to sporting sanctions, both suffered reputational damage, loss of income, and public censure in Kenya and internationally.<sup>33</sup> Teams and national federations likewise distance themselves from sanctioned athletes, producing immediate career fragility and long-term stigma.<sup>34</sup>
49. Shame and social ostracism are common themes reported by athletes and those studying doping behaviour: interviews and qualitative studies show that fear of disgrace and moral condemnation are powerful deterrents, and conversely that being caught produces isolation, loss of social capital, and difficulty returning to professional life.<sup>35</sup>

## Effects on a nation

50. At the national level, systemic doping scandals can produce diplomatic, sporting, economic, and reputational consequences. The Russian state-sponsored doping scandal (exposed by investigative journalism and official reports beginning in 2014) led to major sanctions: Russia was banned from competing under its flag at some major events, had results annulled, and experienced widespread reallocation of medals.<sup>18</sup> The scandal damaged Russia's international sporting reputation, triggered heavy governance scrutiny, and had political ramifications (including international censure and ongoing legal battles with WADA and the IOC).<sup>36</sup>
51. Economic consequences for the country can include lost opportunities to host events, reduced sports tourism, diminished sponsorship flows into national federations, and costs associated with defending or responding to allegations (legal and compliance costs). In addition, clean athletes suffer collateral damage — their results are questioned and they may have limited opportunities while the country's systems are under sanction.<sup>37</sup>

<sup>32</sup> ESPN, 'Legal issues have left Marion Jones nearly broke' (24 June 2007) accessed 25 September 2025.

<sup>33</sup> AP, 'Former Olympic champion Kiprop banned for four years for doping' (20 April 2019) accessed 25 September 2025;

<sup>34</sup> The Guardian, 'Jemima Sumgong banned' (25 January 2019) accessed 25 September 2025.

<sup>35</sup> International Olympic Committee, '1967 Creation of the IOC Medical Commission' accessed 25 September 2025.

<sup>36</sup> Reuters, 'France's Fourcade lands another gold...after Russian medals reallocated' (19 Sept 2025) (example of reallocation and long-term consequences) accessed 25 September 2025.

<sup>37</sup> WADA compliance reports, IOC decisions and public inquiries into Russian lab data and state involvement (2015–2019) — WADA and IOC official documents accessed 25 September 2025.



## Why Doping is criminalized

52. Similar to the discussion above, the question whether doping should be treated as a criminal offence, rather than solely as a matter for sport disciplinary systems, has generated sustained legal, ethical and policy debate.

Proponents of criminalisation advance a set of interlocking arguments: that stronger deterrent sanctions are necessary to protect the integrity of sport, to safeguard athlete health, and to dismantle organised trafficking and supply networks that profit from prohibited substances.

### 1. Deterrence

Criminalisation can provide a stigmatic deterrent that goes beyond sporting bans. Unlike regulatory suspensions, a criminal record carries long-term consequences for employment and social standing in most offences.<sup>38</sup> The symbolic weight of a conviction may discourage athletes from doping more effectively than a temporary ban. In addition, scholars argue that criminalisation can have an educative function: over time, laws shape public morality. Just as the criminalisation of drink driving shifted public perceptions of its moral acceptability, doping laws could help entrench the idea that doping is morally wrong.<sup>39</sup>

### 2. Public Perception and Sponsorship

Spectators and sponsors expect to see performances based on talent and hard work, not chemical enhancement. The fallout from high-profile scandals, such as Maria Sharapova's suspension, shows how quickly sponsors distance themselves from tainted athletes due to public intolerance for doping.<sup>40</sup> Empirical studies confirm that fans and sponsors demonstrate "no tolerance" for substances like EPO, amphetamines, or anabolic steroids, and that companies reduce support when athletes or teams are involved in doping scandals. Criminalisation, by involving the independent authority of the criminal justice system, could restore credibility to anti-doping enforcement and reassure the public that offenders receive proportionate punishment.

### 3. Justifications in Principle

**Moral Wrongfulness & Fraud Model:** Doping constitutes a form of cheating that undermines fair play and the integrity of competition. By analogy to fraud, it is dishonest conduct that causes financial and reputational harm to competitors, sponsors, and the public, even if no physical harm occurs.<sup>41</sup> **Harm Principle:** Even if doping primarily harms the athlete, the law may intervene to prevent self-harm as in the case of drug laws. Substances like anabolic steroids and EPO can cause serious long-term damage, often exceeding harms associated with recreational drugs such as cannabis.<sup>42</sup> **For minors, paternalistic intervention is even more justified to protect their health and development.** **Secondary Harm & Public Interest:** Doping

<sup>38</sup> See Sentencing Council, *Fraud, Bribery and Money Laundering Offences Definitive Guideline* (October 2014) accessed 25 September 2025.

<sup>39</sup> Bottoms A, *Morality, crime compliance and public policy*. In: Bottoms A, Tonry M (eds) *Ideology, crime and criminal justice* 2002.

<sup>40</sup> Summers C 'The spirit of sport: the case for criminalisation of doping in the UK' 16(1) *International Sports Law Journal*, 2017, 217.

<sup>41</sup> Summers C 'The spirit of sport: the case for criminalisation of doping in the UK' 224.

<sup>42</sup> Summers C 'The spirit of sport: the case for criminalisation of doping in the UK' 224.



sends damaging signals to youth and amateur athletes, encouraging imitation and eroding trust in sport.<sup>43</sup> By undermining belief in clean sport, doping diminishes the inspirational and participatory value of major sporting events, thereby causing a wider harm to society. Additionally, sport has exceptional societal importance, with governments investing heavily in promoting participation for public health and national prestige.

### Sentencing Guidelines, 2023

53. There are Sentencing Guidelines, 2023 that guide the courts on sentencing and the indicators relevant to this case are considered below.
54. The Sentencing Guidelines are favourable to Aman who has pleaded guilty at the earliest possible stage. In paragraph 4.3.1 and 4.3.9 the Guidelines provides:
- 4.3 Accused persons pleading guilty
- 4.3.1 Although a guilty person is entitled not to admit the offence and to put the prosecution to proof of its case, an acceptance of guilt, reflected in a guilty plea—
- i. normally reduces the impact of the crime upon the victims;
  - ii. saves victims and witnesses from having to testify; and
  - iii. is in the public interest in that it saves public time and money on investigations and trial.
- 4.3.9 In the case of a mandatory minimum sentence, the discount cannot go below that minimum term set by statute.
55. The principle in this section is that the court is called upon to take into account the benefits that accrue to the court when an accused person pleads guilty. However, where a mandatory minimum sentence is provided for, the court cannot go below what it stipulated in statute. The penal section in the *Anti-Doping Act* carries with it a minimum sentence and that is what Aman faces.
56. It may seem to some that the lengthy sentencing remarks are overkill, perhaps like using a hammer to kill a fly. But like Shakespeare wrote in Hamlet, “there is method in the madness”. Courts are called upon to protect society. Sometimes they are the last hope for the populace that is ravaged upon by forces outside it.
57. This court takes its mandate seriously to keep communities safe and to protect society. It draws its mandate from the national anthem and in this particular case from the stanza which says “Amkeni ndugu zetu Tufanye sote bidii Nasi tujitoe kwa nguvu Nchi yetu ya Kenya Tunayoipenda Tuwe tayari kuilinda” which translates “Let one and all arise With hearts both strong and true Service be our earnest endeavour And our homeland of Kenya Heritage of splendour Firm may we stand to defend.”
58. As a nation, we have a heritage of athletes that bring Kenya accolades, make us world reknown whenever we show up in international spaces, unite us against all odds and make us walk with our heads held high – proud to be Kenyans. May we all stand firm to defend our nation against doping.
59. What now remains for this court is pronounce sentence against Aman.

<sup>43</sup> Summers C ‘The spirit of sport: the case for criminalisation of doping in the UK’224.



## **Sentencing**

60. In conclusion, Aman is sentenced as follows:
- a) Count 1 – Aman is sentenced to pay a fine of Kshs 1 million (One Million) in default he will serve 12 months in prison.
  - b) In Count 2 – Aman is sentenced to three years in prison.
  - c) In Count 3 – Aman is sentenced to three years in prison.
  - d) In Count 4 - Aman is sentenced to three years in prison.
61. The sentences in Counts 1, 2, 3 and 4 are to run Concurrently. Aman has 14 days right of appeal.

## **Return of the Exhibits**

62. Upon completion of the prison term or if there is no appeal lodged within 14 days the then let Pexhibit 1 – passport and Yellow Fever Card together with his phone and school leaving certificates be returned to Aman or his advocate by the investigating officer.
63. However, the investigating officer is to make photocopies the passport and Yellow Fever Card and present copies to the registry for the court record 14 days from today.

## **Destruction of Exhibits**

64. If there is no appeal lodged within 14 days, the items produced that are the domain of the Anti-Doping Authority of Kenya as listed in Counts 2, 3 and 4 are to be surrendered to ADAK by the investigating officer for further action by ADAK. The Investigating Officer is to keep a signed inventory for the court record which will be presented to the court at the next mention.
65. All the other substances not classified as prohibited substances under the [Anti-Doping Act](#) of Kenya are to be forfeited for disposal to the Pharmacy and Poisons Board if there is no appeal within 14 days. This is to be done in line under section 46(3) of the Pharmacy and Poisons Board Act. The Investigating Officer to keep a signed inventory for the court record which will be presented to the court at the next mention.

## **Repatriation**

66. Upon completion of the prison term Aman is to be repatriated through the Immigration Department back to his country of origin.
67. Mention to confirm the orders as directed by the court. Mention on October 29, 2025.

**DATED, SIGNED AND DELIVERED AT JKIA LAW COURTS THIS 26<sup>TH</sup> DAY OF SEPTEMBER 2025.**

.....

**NJERI THUKU**

**SENIOR PRINCIPAL MAGISTRATE**

**JKIA LAW COURTS**

**SEPTEMBER 26th 2025**

In the presence of: -



.....Court Assistant  
.....State Counsel  
.....Defence Pro Bono Counsel for Accused  
..... Accused  
..... Language

