Republic v Sports Disputes Tribunal & another; Meto (Ex parte Applicant) (Judicial Review Application E111 of 2025) [2025] KEHC 11996 (KLR) (Judicial Review) (8 August 2025) (Judgment)

Neutral citation: [2025] KEHC 11996 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)

JUDICIAL REVIEW

JUDICIAL REVIEW APPLICATION E111 OF 2025

RE ABURILI, J

AUGUST 8, 2025

BETWEEN

REPUBLIC ..... APPLICANT

AND

THE SPORTS DISPUTES TRIBUNAL ..... 1ST RESPONDENT

THE ANTI-DOPING AGENCY OF KENYA (ADAK) ..... 2ND RESPONDENT

AND

NANCY JELAGAT METO ..... EX PARTE APPLICANT

JUDGMENT

1. Pursuant to leave of this court granted on 16th April 2025, the ex parte applicant filed a substantive motion dated 2nd May 2025. The application seeks the following orders:

    a. Certiorari to bring into this Court and quash the 2nd Respondent's decision and/or notice to charge the Applicant herein, dated the 2nd September, 2024, for an alleged Anti-Doping Rule Violation (ADRV) at the Sports Disputes Tribunal.

    b. Certiorari to bring into this Court and quash the 1st Respondent's (Elynah Shiveka, Allan Owinyi & Mary Kimani) proceedings and decision contained in the decision delivered on and/or dated the 27th February, 2025, in SDTADK E062 OF 2024 Anti-Doping Agency of Kenya –VS- Nancy Jelagat Meto, and all consequential decisions and/or directions arising therefrom.

c. Prohibition directed at the 1st Respondent prohibiting them from carrying out and/or continuing with any proceedings against the Applicant in relation to the decision to charge and/or notice to charge dated the 2nd September, 2024.

d. Mandamus compelling the 2nd Respondent's Chairperson to constitute and/or establish a hearing panel (Results Management Panel) in accordance with the Anti-Doping Regulations Legal Notice 211 of 2020 and the World Anti-Doping Code International Standard for Results Management, 2023.

2. The application is supported by the statutory statement dated 8th April 2025 and the verifying affidavit sworn by Nancy Jelagat Meto on the same date.

3. The ex parte applicant's case is that she is an international athlete and a member of the World Athletics, an international sport organization. She alleges that on or about 2nd September,2024, the 2nd respondent vide a notice to charge of even date addressed to the Chairperson of the 1st respondent requested for *the constitution* of a panel in view of the 2nd respondent's intentions to file charges against the applicant for an alleged Anti-doping Rule Violation (ADRV).

4. The events leading up to the notice to charge are that the 2nd respondent through its Doping Control Officer (DCO) conducted an out of competition test upon the applicant and during this test, a urine sample was collected from the Applicant which the 2nd respondent alleged had presence of a substance which is a prohibited substance as per the World Anti-Doping Agency's prohibited list, 2024.

5. That pursuant to the alleged adverse analytical finding of the urine sample of the applicant, the 2nd respondent decided to charge the applicant with an alleged commission of an Anti-Doping Rule Violation before the 1st respondent.

6. It is the Applicant's case that the notice to charge was given to her only recently by the 1st respondent on the 19th March, 2025, when she requested to be supplied with the pleadings in the case to enable her to prepare her defence. According to her, the notice dated 2nd September 2024 is addressed to the chairperson of the 1st respondent.

7. That the said notice to charge was neither at any time made available to her, nor was she sure whether or not the same should have been made available to her from the onset, being not the recipient thereto.

8. The applicant states that she did respond to the said charge document and, amongst other things, she denied the jurisdiction of the 1st respondent to hear and determine the commission or otherwise of the alleged violation.

9. The issue of the jurisdiction is said to have been canvassed by way of submissions and a decision by the 1st respondent delivered on 27th February, 2025. However, that on 22nd January, 2025, the 1st respondent requested the parties to appear before it to clarify certain questions it had regarding the parties' submissions.

10. That during the aforesaid date, the applicant clarified that the Anti-Doping Regulations upon which the 1st respondent based its submissions are those which were gazetted in 2020, whilst the 2nd respondent maintained that it was using the Regulations for 2016.

11. Parties were thereafter requested to file further submissions in respect of the laws upon which their submissions were based, and leave was granted to the Applicant to, in addition, file a rebuttal to the 2nd respondent's submissions. According to the applicant, the 2nd respondent opted not to submit on the laws it was relying on in its submissions, despite the request by the 1st respondent.

12. That the 1st respondent's ruling on the issue of its jurisdiction was initially slated to be delivered on the 20th February, 2025, but was adjourned to 27th February, 2025, for reasons that the 1st respondent, on the particular week, was to be engaged in a "stakeholder engagement" with the 2nd respondent.

13. The applicant places reliance on Article 19(1) of *the Constitution* on the Bill of Rights and argues that the respondents have an obligation under Article 21(1) of *the Constitution* to respect the Bill of Rights. She also relies on Article 47 on the right to fair administrative action.

14. She further relies on Section 7(3) of the *Anti-Doping Act* on the 2nd respondent's power to delegate any aspect of doping control or anti-doping education to a delegated third party and section 31(a) on the 1st respondent's jurisdiction to hear and determine cases on anti-doping rule violations on national and lower-level athletes and athlete support personnel.

15. The applicant also relies on Article 8.1.1 of The Anti-Doping Regulations(2016) (Repealed), which is said to have provided that all disputes relating to anti-doping rule violations shall be referred to the Tribunal established under the *Sports Act*, 2013.

16. Further, she relies on Article 8.1.1.1 of The Anti-Doping Regulations (2020) which is said to provide that 2nd respondent shall establish a Hearing Panel (Results Management Panel) which under the *Anti-Doping Act*, has jurisdiction to hear and determine whether an Athlete or other Person, subject to these Anti-Doping Rules, has committed an Anti-Doping rule violation, and if applicable, to impose relevant consequences.

17. According to the applicant, under Article 8.2.1, when the 2nd respondent sends a notice to an Athlete or other Person notifying them of a potential Anti-Doping rule violation, and the Athlete or other Person does not waive a hearing in accordance with Article 8.3.1 or Article 8.3.2, then the case shall be referred to the Hearing Panel for hearing and adjudication, which shall be conducted in accordance with the principles described in *Anti-Doping Act*, Articles 8 and 9 of the International Standard for Results Management.

18. The applicant also states that Article 8.1.2.2 of the Regulations provides that upon appointment by the Chair as a member of the 2nd respondent's Hearing Panel, each member must sign a declaration that there are no facts or circumstances known to him or her which might call into question their impartiality in the eyes of any of the parties other than those circumstances disclosed in the declaration.

19. The applicant relies on Article 8.1 of the World Anti-Doping Code which is said to provide that for any person who is alleged to have committed an anti-doping rule violation, the Anti-Doping Organization with responsibility for Results Management shall provide, at a minimum, a fair hearing within reasonable time by a fair, impartial and Operationally Independent hearing panel in compliance with the WADA International Standard for Results Management.

20. The applicant's further case is that Article 7.5 of WADA International Standard for Results Management provides that, subject to Article 7.6, in the event that the Athlete or other Person requests a hearing, the matter shall be referred to the Results Management Authority's hearing panel and be dealt with pursuant to Article 8.

21. It is her case that Article 8.3 provides that the applicable rules shall provide for an independent person or body to determine in their discretion, the size and composition of a particular hearing panel to adjudicate an individual case. Further, that at least one appointed hearing panel member must have a legal background.

22. She also relies on Article 8.4 which is said to provide that upon appointment to a hearing panel, each hearing panel member shall sign a declaration that there are no facts or circumstances known to him/her which might call into question their impartiality in the eyes of any of the parties, other than any circumstances disclosed in the declaration.

23. Article 8.5 is said to provide that the parties shall be notified of the identity of the hearing panel appointed to hear and determine the matter and be provided with their declaration at the outset of the Hearing Process. Further, that the parties are to be informed of their right to challenge the appointment of any hearing panel member if there are grounds for potential conflicts of interest within seven (7) days from the grounds for the challenge having become known.

24. The ex parte applicant also filed written submissions dated 10th June 2025 in which she states that the 1st respondent's decision to clothe itself with jurisdiction to adjudicate over the alleged Anti-Doping Rule Violation was a decision that was marred with irrationality, non-adherence to procedure, bias and ultra vires.

25. It is also her submission that the gravamen of the dispute between the parties herein is the manner of interpretation of Section 31 of the *Anti-Doping Act*, 2016 and Article 8 of the Anti-Doping Regulations in particular and the decision arising therefrom. Further, that the two legal provisions touched on the jurisdiction of the 1st respondent and in particular, the two distinct issues being: whether or not the 1st respondent had jurisdiction to adjudicate over an allegedly committed Anti-Doping Rule Violation by an international level athlete such as the applicant and whether or not a hearing panel to adjudicate over an alleged ADRV is such as established by the 1st respondent or otherwise.

26. The applicant relies on De Smith's Judicial Review 7th Edition, Sweet & Maxwell (2013) at page 127, where, according to her, the writer observes that the court operates on the notion that where a body's power is derived from the statute of subordinate legislation under the statute, then the body in question is amenable to judicial review. She further relies on pages 206 and 250, where the writer, according to what has been reproduced by the applicant, gives instances when a body errs in law to include when it is acting beyond the mandate donated to it by statute and when its acts in breach of fundamental human rights.

27. The applicant submits that it was an uncontested fact that she is an international-level athlete and that by virtue of her status as an international-level athlete, the 1st respondent could not try an alleged Anti-Doping Rule Violation alleged to have been committed by her. That in its decision dated the 27th February, 2025, the 1st respondent, despite express provisions of the law, assigned itself jurisdiction over the applicant, acting contrary to the law and the powers conferred upon it.

28. It is also her submission that at paragraphs 85-86 of the impugned decision, the 1st respondent shifts the argument from being its jurisdiction over the applicant to being one of the 2nd respondent over Results Management. According to the Applicant, she did not at any time challenge the 2nd respondent's authority to undertake testing or subsequent Results Management arising therefrom by virtue of her international-level status, but rather the adjudicatory process of the Results Management process being undertaken by the 1st respondent.

29. The issue it is submitted, was that the forum of the adjudicatory process of the Results Management ought not to be the 1st respondent by virtue of the status of the applicant and equally by virtue of Article 8 of the Regulations.

30. The applicant's submission is that the 1st respondent in assuming jurisdiction over her alleged violation of anti-doping rule as an international athlete, did not in any way consider the provisions of Section 31(1) of the *Anti-Doping Act*, save for quoting the same under paragraph 86 of the said impugned decision.

31. The 1st respondent is said to have erroneously observed that the *Anti-Doping Act* "clarifies the only instance when the Tribunal cannot have jurisdiction over an international-level athlete, which is at appellate level...". It is the applicant's submission that the issue of the appellate jurisdiction was not in contest or in issue.

32. Further submission was that a reading of the entire Section 31 provides a holistic approach to the issue of the first instance jurisdiction against the applicant by virtue of her status. The applicant submits that it can be clearly seen that Section 31 is split into categories and that the first category deals with the issue of the first instance adjudicatory powers of the 1st respondent, while the second category deals with the appellate adjudicatory powers of the 1st respondent.

33. It is the applicant's submission that it was quite irrational of the 1st respondent in its impugned decision to try and tie Section 31(6) to Section 31(1) as Section 31 (1) is in the first category of the said Section and Section 31(6) is the secondary category of the said Section. Further, that the introductory part of Section 31 (6), that is, "For the avoidance of doubt," does not relate in any way to Section 31(1) but is in reference to Section 31(4) -(5). She submits that, in fact Section 31 (6) supports Section 31 (1) in ousting both first instance and appellate jurisdiction of the 1st respondent over international level athletes.

34. It was submitted that the 1st respondent is said to have, at page 90 of its decision, observed thus "... jurisdiction should be conferred by law and appreciating that this should ordinarily be beyond a narrow reading of the law including Section 31 of the *Anti-Doping Act*". The applicant submits that to reason that jurisdiction should be interpreted beyond the confines of statute and to appropriate jurisdiction thereafter is not procedurally improper, but it is equally ultra-vires and biased.

35. The applicant also submits that it was contradictory for the 1st respondent to agree with the submissions of the applicant that indeed it did not have jurisdiction over her alleged Anti-Doping Rule Violation by virtue of her status as an international level athlete by dint of Section 31(1) and in the same breath go on to hold that it still has jurisdiction over the said alleged violation by virtue of Section 31(6).

36. The 1st respondent, it is submitted, also misinterpreted Article 8 of the Anti-Doping Regulations, and under paragraph 87 of impugned decision, and that instead of interrogating the meaning of Article 8 of the Regulations as stated in law, it erroneously purported to cast aspersions as to the independence or otherwise of the hearing panel envisaged under Article 8 of the Regulations.

37. According to the applicant, a clear reading of Article 8.1.1.1 of the Regulations is that the 2nd respondent shall establish a hearing panel, whether such hearing is independent or otherwise, was not an issue; the issue was whether or not it (and/or its hearing panel) was the one envisaged under the law.

38. The applicant submits that the 1st respondent went on about its independence and designated itself as a delegated third party on behalf of the 2nd respondent, which cannot be the case. Further, that delegated third parties cannot be entities such as the 1st respondent but organisations of similar fashion as the 2nd respondent.

39. Articles 7.1 of the World Doping Code, Article 7.5 of the International Standard for Results Management and Article 7.1.1 of Anti-Doping Regulations, it is submitted, do not mandate any

results management to be undertaken within the borders of Kenya and therefore the 1st respondent misinterpreted clear legal provisions and erroneously inserted its own thoughts into said legal provisions and this was done at paragraph 121 of the impugned decision. It is also the applicant's submission that the 2nd respondent had delegated its mandate to Athletics Integrity Unit, an international outfit, to undertake the Results Management process on its behalf, not in Kenya.

40. The applicant submits that the assertion by the 1st respondent that "...no athlete should slip between the cracks in the universal fight against doping in sports" in its decision, at paragraph 123, does not only exhibit a lack of fairness in arriving at its decision of having jurisdiction over the alleged violation committed by the applicant, but also militates against the applicant's right to fair hearing and fair administrative action.

41. She also submits that under paragraph 125 of the impugned decision the 1st Respondent states that "Its jurisdiction extends beyond traditional judicial constraints, reflecting the unique nature of anti-doping in sports" and that in so asserting and arriving at the decision that it had jurisdiction over her Anti-Doping Rule Violation her status as an international level athlete notwithstanding, it acted irrationally, ultra vires and with bias.

42. The respondents did not comply with directions of the court to file their responses to the application within the timelines given to allow the applicant a rejoinder and only waited until the matter was reserved for judgment is when they sneaked in their reply and submissions, without leave of court.

Analysis and Determination

43. Having considered the application, affidavit and material in support of the application as well as the written submissions by the Applicant, the issues that arise for determination are:

    a. Whether the 1st Respondent had jurisdiction under the *Anti-Doping Act* to hear and determine Anti-Doping Rule Violation proceedings against the ex parte applicant who claims to be an international athlete.

    b. Whether the 2nd Respondent was obligated under the Anti-Doping Regulations and WADA Code to constitute a distinct Hearing Panel (Results Management Panel) for adjudicating the Anti-Doping Rule Violation.

    c. Whether the 2nd Respondent followed the correct procedure under the Anti-Doping Regulations and WADA Code in initiating the proceedings.

    d. What orders should this court make including on costs, if any?

44. Issues a to c will be determined simultaneously, noting that they all concern jurisdiction of the Tribunal.

45. Before I embark on analyzing the substantive issues that have been raised, I must first address why there is no reference to any of the respondents' responses or written submissions. The court, in its directions of 6th May 2025, upon observing that the applicant had filed its substantive motion dated 16th April 2025, directed the applicant to serve the motion and all other documents that had been filed in support of the leave application and any orders of the court upon the respondents.

46. The respondents were granted 10 days to file and serve their responses to the application and the applicant 10 days from the date of service by the respondents to file and serve a further affidavit, if need be, together with her written submissions.

47. The respondents were granted 10 days from the date of service by the Applicant to file and serve a supplementary affidavit together with written submissions. The matter was set for a mention on 11th June 2025, for purposes of fixing a judgment date. When the matter came up on 11th June 2025, the respondents had not entered appearance nor filed any response. This was despite counsel for the applicant, Mr. Olieti, confirming that they had been served.

48. The Court confirms from the record that the applicant filed an affidavit of service sworn by Mr. Olieti Raphael Okubo an advocate of the High Court of Kenya on 13th May 2025 detailing that physical service had been effected upon the respondents on 12th May 2025 and the service acknowledged by the 1st and 2nd respondent's official stamps being affixed on Mr. Olieti's copies. The stamped copies are on record before this court.

49. In utter disregard of this court's directions that were issued almost two months prior, the 2nd respondent on 4th July 2025 purportedly filed a replying affidavit sworn on 27th June 2025, this was after the close of pleadings and the matter already having been reserved for judgment and without obtaining any leave of the court or at all and in total disregard of the timelines set for disposal of the application. This court has on various occasions emphasised the importance of complying with court's directions and the need to avoid trial by ambush, where a party secretively files documents when the matter is pending judgment such that the adverse party has no opportunity to respond thereto.

50. This position has also been reiterated by the Supreme Court in Okoiti & 3 others v Cabinet Secretary for the National Treasury and Planning & 10 others (Application E029 of 2023) [2023] KESC 69 (KLR) (8 September 2023) (Ruling). So serious is the non-compliance with court directions that courts, this court included, have struck out pleadings and written submissions for having been filed outside the timelines set. Having established as much, this court finds that in the interest of procedural integrity and fairness to the applicant, it will not take the said affidavit into account in the determination of this matter, and as such, the same is struck out from the record for being filed outside the timelines set by the court and without leave.

51. Now onto the framed issued issues for determination.

    a. Whether the 1st respondent had jurisdiction under the *Anti-Doping Act* to hear and determine Anti-Doping Rule Violation proceedings involving the ex parte applicant who claims to be an international-level athlete.

    b. Whether the 2nd Respondent was obligated under the Anti-Doping Regulations and WADA Code to constitute a distinct Hearing Panel (Results Management Panel) for adjudicating the Anti-Doping Rule Violation.

    c. Whether the 2nd Respondent followed the correct procedure under the Anti-Doping Regulations and WADA Code in initiating the proceedings.

52. Having determined the issue of the 2nd respondent's affidavit, this court now proceeds to determine whether the 1st respondent had jurisdiction under the *Anti-Doping Act* to hear and determine the Anti-Doping Rule Violation proceedings against the ex parte applicant who claims to be an international-level athlete.

53. The ex parte applicant challenges the jurisdiction of the 1st respondent, the Sports Disputes Tribunal, to adjudicate anti-doping charges brought against her. She avers, and it is not contested, that she is an international-level athlete within the meaning of the World Anti-Doping Code and the Anti-Doping Regulations 2020. Her case is that by virtue of her status and the applicable statutory and regulatory

frameworks, the Tribunal was divested of jurisdiction to hear and determine alleged Anti-Doping Rule Violations (ADRVs) against her.

54. Section 31(1) of the *Anti-Doping Act* expressly limits the Tribunal's jurisdiction at first instance. It provides as follows:

> 31. Jurisdiction of Sports Tribunal
>
> (1) The Tribunal shall have jurisdiction to hear and determine cases on-
>
> (a) anti-doping rule violations on national and lower level athletes and athlete support personnel;
>
> (b) anti-doping rule violations on other persons subject to the Anti-Doping Rules;
>
> (c) anti-doping rule violations arising from national and lower level events;
>
> (d) Therapeutic Use Exemptions (TUE) decisions of Anti-Doping Agency of Kenya (ADAK); and
>
> (e) matters of compliance of sports organisations in the first instance and appellate level.
>
> (2) The Tribunal shall be guided by the Code, the International Standards established under the Code, the 2005 UNESCO Convention Against Doping in Sports, the *Sports Act* (Cap. 223), and the Agency's Anti-Doping Rules, amongst other legal sources.
>
> (3) The Tribunal shall establish its own procedures.
>
> (4) Appeal level disputes involving national and lower level athletes, athlete support personnel, sports federations, sports organisations, professional athletes and other persons subject to the Anti-Doping Rules shall be resolved by the Tribunal—
>
> (a) which shall consist of a panel of three members appointed by the Chairperson of the Tribunal; and
>
> (b) after the panel members have signed a no conflict of interest declaration in form provided by the Agency.
>
> (5) The World Anti-Doping Agency, the International Olympic Committee, the International Paralympic Committee, and the relevant International Federations shall have the right to a second appeal to the Court of Arbitration for Sports (CAS) with respect to the appeal decisions of the Tribunal.
>
> (6) For the avoidance of doubt, the Tribunal shall not have jurisdiction over Appeals involving International Level athletes or arising from the participation in International Events or national crimes related to doping.

55. This section clearly delineates the scope of the Tribunal's jurisdiction. It empowers the Tribunal to hear and determine cases relating to ADRVs involving national and lower-level athletes, support personnel,

and violations arising from national level events, among other related matters. Critically, Section 31(6) provides as follows:

> " For the avoidance of doubt, the Tribunal shall not have jurisdiction over Appeals involving International Level athletes or arising from the participation in International Events or national crimes related to doping."

56. While Section 31(6) refers expressly to appeals, it cannot be read in isolation. It is this court's finding that the section is a clarificatory provision, introduced with the phrase "For the avoidance of doubt," and is designed to reinforce the substantive jurisdictional boundaries already set out in Section 31(1). To adopt a narrow interpretation, as the Tribunal did, and confine Section 31(6) solely to appellate proceedings, would be to ignore the underlying purpose and structure of the jurisdictional scheme, which clearly excludes international level ADRVs from the remit of the Tribunal at both first instance and appellate levels.

57. The Tribunal, in its impugned decision, acknowledged the applicant's status as an international level athlete but nevertheless concluded it had jurisdiction to hear the matter. The Tribunal stated as follows at paragraph 73 of the impugned:

> " 73. The Panel agrees with the Athlete that she is indeed an International-Level Athlete; it notes that there was some amount of flippancy by the Applicant in referencing her categorization and we decry the flip, flop, neither here, nor there, designation by the Applicant of the Athlete, so that in their Charge Document the Applicant designated the Athlete as a National-Level-Athlete while in their submissions, the Applicant acknowledged her International Level-Athlete status. In the Notice to Charge dated 2nd September 2024, it was the Applicant's statement, "TAKE NOTICE that the applicant herein intends to file charges herein against one Kenyan female national level athlete who's in-competition sample collected on 12th June, 2024 returned an Adverse Analytical Finding (AFF).", whereas the Applicant's own documents on record indicated the given fact, which was that the Applicant itself collected the Urine Sample Out-of-Competition.
>
> 74. Thereby, by virtue of her Kenyan nationality, the Athlete fell under the Applicant's jurisdiction and it behooves the Applicant to know the designation/status of at least its own nationals, (if necessary by liaising with the Athlete's IF), as this is crucial information for a first instance adjudication panel, to enable it set out the appropriate appeal route under Code Article 13."

58. Despite establishing as herein above, it went ahead to reach the conclusion that it had jurisdiction by interpreting Section 31(6) as applying only to appeals, and reasoned that since the instant proceedings were at first instance, the Tribunal retained jurisdiction. It went further to suggest that jurisdiction should be interpreted "beyond a narrow reading of the law," and invoked policy considerations such as the need to ensure that "no athlete slips through the cracks" in the global anti-doping framework.

59. This line of reasoning is flawed. Jurisdiction is not founded on policy preferences or equity; it must flow from clear statutory authority. As the applicant rightly submits, the Tribunal's interpretation renders Section 31(1) impractical insofar as it clearly limits the Tribunal's mandate to national and lower-level athletes and events. If the Tribunal were to have original jurisdiction over international athletes, Section 31(1) would have stated so expressly. The Tribunal's reading collapses the distinction between national

and international regimes, a distinction that is fundamental to the structure of the World Anti-Doping Code and the national anti-doping framework.

60. In this case, it is not in dispute that the Applicant is an international-level athlete subject to the jurisdiction of the International Federation and the World Anti-Doping Agency (WADA). The Applicant also relies on Article 8 of the Anti-Doping Regulations, 2020, which provides that for any person who is asserted to have committed an Anti-Doping rule violation, ADAK shall provide a fair hearing within a reasonable time by a fair, impartial, and operationally Independent hearing panel in compliance with the Code and the International Standard for Results Management.

61. Article 8.1.1.1 of the 2020 Regulations provides that it is the 2nd Respondent, not the Tribunal, that is mandated to establish such a hearing panel for adjudication. Article 8.3 of the International Standard for Results Management further reinforces that this hearing panel must be legally competent, independent and appropriately composed, a role the 1st respondent does not play in relation to international athletes.

62. The ADRV proceedings, which are the subject of this judicial review application, stemmed from an out-of-competition test, a context regulated by the International Standard for Results Management (ISRM) and the World Anti-Doping Code. Article 8.1.1 of the 2020 Anti-Doping Regulations provides that the authority to hear and determine ADRVs lies with a hearing panel established by the Results Management Authority, in this case, ADAK or its authorised delegate, such as the Athletics Integrity Unit (AIU), not the 1st Respondent.

63. The Tribunal's suggestion that it could act as a "delegated third party" of ADAK for purposes of adjudicating the ADRV was also without legal foundation.

64. While Section 7(3) of the *Anti-Doping Act* permits the 2nd Respondent (ADAK) to delegate aspects of doping control or anti-doping education to a third party, such as the 1st Respondent, this delegation is not absolute. The scope of delegation is circumscribed by the Act itself, including the jurisdictional limits set out under Section 31(1). That provision expressly limits the Tribunal's jurisdiction to cases involving national and lower-level athletes, and explicitly excludes international-level athletes and violations arising from international events. Therefore, even where ADAK may delegate results management or hearing responsibilities, such delegation cannot override statutory limitations on the Tribunal's jurisdiction. To hold otherwise would render the clear provisions of Section 31 nugatory and open the door to ultra vires action under the guise of delegation. Moreover, such delegation would still have to comply with the Code and international standards, which prescribe distinct processes for international-level athletes.

65. The Tribunal also appears to have misconstrued the legal issue before it by shifting focus from its own jurisdiction to that of the 2nd respondent's results management authority. As rightly put, the applicant did not contest the 2nd respondent's mandate to conduct testing or initiate results management proceedings. Her challenge was directed solely at the adjudicatory role assumed by the 1st respondent. The Tribunal's conflation of these distinct functions was legally erroneous and complicated the central jurisdictional issue.

66. In view of the clear statutory limits in Section 31, read with the Anti-Doping Regulations, the World Anti-Doping Code, and the International Standards, I find that the 1st respondent acted without lawful authority in assuming jurisdiction over the applicant's case. Its decision was made in contravention of the express provisions of the law and was tainted by error of law, irrationality, and a failure to appreciate the statutory framework within which it operates.

67. Accordingly, the 1st Respondent's assumption of jurisdiction over the Applicant's alleged ADRV was ultra vires, procedurally irregular, and legally untenable. Its decision dated 27th February 2025 is therefore amenable to judicial review and liable to be quashed.

68. The Applicant's reliance on Articles 8.1.1 and 8.1.1.1 of the Anti-Doping Regulations (2020) is persuasive. These provide that ADAK shall establish a Hearing Panel (Results Management Panel) to determine whether an athlete has committed an ADRV. The Regulations define the composition, impartiality and independence of such a panel. Article 8 provides for the right to a fair hearing before an impartial and independent panel.

69. Article 8.4 of the International Standard for Results Management requires that each hearing panel member to sign a declaration of impartiality, and Article 8.5 provides parties the right to challenge members for potential conflicts of interest. The World Anti-Doping Code at Article 8.1 likewise mandates an impartial and operationally independent hearing panel. There is no evidence that the Tribunal was constituted in accordance with these requirements or that it was designated by ADAK as a compliant results management panel.

70. Given the finding that the Sports Disputes Tribunal lacked jurisdiction to hear and determine the applicant's alleged Anti-Doping Rule Violation (ADRV) on account of her status as an international-level athlete, it follows that the applicable procedure is that set out under Article 8 of the Anti-Doping Regulations, 2020.

71. That provision mandates that the results management process, including the hearing of any asserted ADRV, must be conducted by an independent and impartial hearing panel constituted by the Results Management Authority or a body with proper jurisdiction under the World Anti-Doping Code.

72. Accordingly, the applicant remains subject to this internationally recognized procedure, which is designed to ensure fairness, due process, and conformity with the Code, and not proceedings before the 1st respondent, whose statutory and regulatory mandate does not extend to such matters.

73. The importance of a structurally independent adjudicatory panel cannot be overstated. Article 7.5 of the International Standard for Results Management mandates referral to a hearing panel that is distinct from the testing authority. The Tribunal's designation of itself as a "delegated third party" raises structural concerns, as the Regulations contemplate organizations similar to ADAK, not an external quasi-judicial body like the Tribunal.

74. The Applicant's case engages constitutional values under Article 47 and the *Fair Administrative Action Act*. A regulatory process that purports to exercise quasi-judicial functions must adhere to principles of impartiality, timeliness, and procedural fairness. The Tribunal's failure to provide timely notice, its involvement in stakeholder engagements with the prosecuting body, and its reliance on jurisdiction not conferred by statute render the process constitutionally suspect.

75. The Tribunal's assumption of jurisdiction over the Applicant, an international-level athlete, was unlawful, ultra vires Section 31(1) of the *Anti-Doping Act*, and contrary to the Anti-Doping Regulations (2020), the World Anti-Doping Code, and the International Standard for Results Management.

76. The question of jurisdiction is foundational in any judicial or quasi-judicial proceeding. Jurisdiction is not merely a procedural matter; it goes to the very heart of a decision-maker's competence to entertain

a dispute. As was famously stated by Nyarangi, JA in Owners of the Motor Vessel "Lillian S" v Caltex Oil (Kenya) Ltd [1989] KLR 1:

> "Jurisdiction is everything. Without it, a court has no power to make one more step. Where a court has no jurisdiction, there would be no basis for a continuation of proceedings pending other evidence. A court of law downs tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction."

77. Jurisdiction is not assumed; it must be affirmatively established and it is trite that a court must down its tools the moment it determines that it lacks the jurisdiction to proceed. This jurisdictional principle finds anchorage in Samuel Kamau Macharia & Another v Kenya Commercial Bank Limited & 2 others [2012] eKLR, where the Supreme Court made it clear that:

> "A court's jurisdiction flows from either *the Constitution* or legislation or both. Thus, a court of law can only exercise jurisdiction as conferred by *the Constitution* or other written law. It cannot arrogate to itself jurisdiction exceeding that which is conferred by law. We agree with counsel for the first and second Respondents in his submission that the issue as to whether a court of law has jurisdiction to entertain a matter before it is not one of mere procedural technicality; it goes to the very heart of the matter, for without jurisdiction, the court cannot entertain any proceedings...Where *the Constitution* exhaustively provides for the jurisdiction of a court of law, the court must operate within the constitutional limits. It cannot expand its jurisdiction through judicial craft or innovation. Nor can Parliament confer jurisdiction upon a court of law beyond the scope defined by *the Constitution*. Where *the Constitution* confers power on Parliament to set the jurisdiction of a court of law or tribunal, the legislature would be within its authority to prescribe the jurisdiction of such a court or tribunal by statute law."

78. In light of the foregoing, this Court finds that the 1st respondent lacked jurisdiction to hear and determine the charges brought against the applicant. Its decision to proceed with the matter despite this clear jurisdictional bar was ultra vires, legally unreasonable, and made in error of law. As the Supreme Court affirmed in Macharia, jurisdiction must be conferred by law. It cannot be assumed by implication or extended through equitable or pragmatic considerations.

79. The Court of Appeal in the case of Kenya National Examination Council v Republic Exparte Geoffrey Gathenji & 9 Others, Nairobi Civil Appeal No.266 of 1996, elaborated what Judicial Review Orders entail as follows: -

> "That now bring us to the question we started with, namely the efficacy and scope of mandamus, prohibition and certiorari. These remedies are only available against public bodies such as the council in this case. What does an Order of Prohibition do and when will it issue? It is an order from the High Court directed to an inferior tribunal or body which forbids that tribunal or body to continue proceedings therein in excess of its jurisdiction or in contravention of the laws of the land. It lies, not only for excess of jurisdiction or absence of it but also for a departure from the rules or natural justice. It does not, however, lie to correct the course, practice or procedure of an inferior tribunal, or a wrong decision on the merits of the proceedings – See Halsbury's Law of England, 4th Edition vol.1 at Pg.37 paragraph 128." When those principles are applied to the present case, the Council obviously has the power or jurisdiction to cancel the results of an examination. The question is how, not whether, that power is to be exercised. If the Council of prohibition would be ineffectual against the conviction because such an order would not quash the conviction.

> The conviction could be quashed either on an appeal or by an order of certiorari. The point we are making is that an order of prohibition is powerless against a decision which has already been made before such an order is issued. Such an order can only prevent the making of a decision. That, in our understanding, is the efficacy and scope of an order of prohibition.
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> ...
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> ...Only an order of CERTIORARI can quash a decision already made and an order of certiorari will issue if the decision is made without or in excess of jurisdiction, or where the rules of natural justice are not complied with or for such like reasons. In the appeal before us, the respondents did not apply for an order of certiorari and that is all we want to say on that aspect of the matter."

80. Accordingly, and guided by the binding pronouncements in the Lillian S and S.K.Macharia, this Court, in relation to the impugned proceedings before the Tribunal, finds that the same were a nullity ab initio for want of jurisdiction.

81. The general rule is that costs follow the event, and the applicant is ordinarily entitled to costs having succeeded in these proceedings. However, the Court is mindful that both the 1st and 2nd Respondents are public bodies funded by public resources.

82. Thus, the failure to comply with statutory jurisdictional limits and the directions of this Court arose from the conduct of officers acting on behalf of these institutions, yet the burden of paying costs falls on the public. This is not to say that the Court cannot award costs against public entities for acts and omissions of public officers making wrong decisions. However, the entity in this case was exercising quasi-judicial functions and the matters which are subject of these proceedings are still live for determination on merit. I therefore would not condemn them to pay costs of the proceedings.

83. Accordingly, this Court makes the following orders:

    a. An order of Certiorari is hereby issued removing into this Court and quashing the 2nd Respondent's decision and/or notice to charge the Applicant herein, dated the 2nd September, 2024, for an alleged Anti-Doping Rule Violation (ADRV) at the Sports Disputes Tribunal.

    b. An order of certiorari is hereby issued removing into this Court and quashing the 1st Respondent's proceedings and decision rendered on 27th February, 2025, in SDTADK E062 OF 2024, and all consequential decisions and/or directions arising therefrom.

    c. An order of prohibition is hereby issued directed at the 1st Respondent, prohibiting it from carrying out and/or continuing with any proceedings against the Applicant in relation to the notice to charge dated 2nd September, 2024.

    d. An order of mandamus is hereby issued compelling the 2nd Respondent's Chairperson to constitute and/or establish a hearing panel (Results Management Panel) in accordance with the Anti-Doping Regulations Legal Notice 211 of 2020, the World Anti-Doping Code (2021), and the International Standard for Results Management (2023).

    e. As there are pending matters in respect of the complaint by the exparte applicant, and in view of the order No. d above. each party shall bear their own costs of these proceedings.

    f. It is so ordered.

    g. This file is closed.

DATED, SIGNED, AND DELIVERED VIRTUALLY AT NAIROBI THIS 8TH DAY OF AUGUST, 2025

R.E. ABURILI

JUDGE