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Our Ref: 6/2743/008

Your Ref: Tba

Date: Wednesday, July 6, 2016

Court of Arbitration for Sport (CAS) Head Office,
Château de Béthusy
Avenue de Beaumont 2
CH-1012 Lausanne
SWITZERLAND

'By e-mail: info@tas-cas.org'

Dear Sirs,

- CAS 2015/A/3979 - INTERNATIONAL ASSOCIATION OF ATHLETICS FEDERATIONS (IAAF) v ATHLETICS KENYA & RITA JEPTOO**
- CAS 2015/O/4128 - INTERNATIONAL ASSOCIATION OF ATHLETICS FEDERATIONS (IAAF) V ATHLETICS KENYA & RITA JEPTOO**

We refer to the above matters and your various correspondences of today.

We have been compelled to write this letter at this time, a few hours before the scheduled commencement of the IAAF Appeals against the Athlete in the face of the withdrawal of her Advocates from further representing her in the matter. We also write against the Counsel to CAS's admission that he has not managed to get in touch with the Athlete in the course of the day and therefore not addressed a number of key issues that ought to be dealt with before tomorrow's hearing takes off.

In our letter to CAS on 4th July, 2016, we indicated that the undersigned had put on hold his plans to travel to Lausanne for the hearing of the appeals in view of the circumstances outlined therein. Those circumstances went to the root of the fairness of this process and the right to a fair trial especially as regards an athlete who is specifically incapacitated from ably participating in the appeal by her undoubted limited educational background. The information regarding the withdrawal by the Athlete's Advocate from representing her and the additional circumstances set out below have made the undersigned make the difficult decision of cancelling his trip to Lausanne for hearing.

As stated earlier, CAS is anchored on the pillars of justice and fairness in the conduct of appeals related anti-doping matters whose ramifications are, as in the present case, extremely dire. Athletics Kenya as an integral party to these proceedings advocates for fairness in

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competitions by supporting all anti-doping measures in the sport of athletics; it, similarly, stands for and supports fairness in proceedings such as these.

Being the Federation in charge of athletics in a country that has been represented in various fora by the Athlete herein, Athletics Kenya is acutely aware of the Athlete's circumstances, her level of education and her current financial status, positions that render her extremely vulnerable unless ably assisted in the conduct of this appeal. Most of these positions have been noted and articulated in the correspondences from her former Advocates. We are aware that she had intended to call a number of witnesses in defence of her position in this appeal. As her Co-respondents, Athletics Kenya was looking forward to cross-examining her and the rest of the witnesses that she had, through her former Advocates, indicated she would call in order to facilitate the just and fair determination of these appeals.

Unfortunately, with the departure of her Counsel only hours before the hearing, and being aware of her level of education and even the fact that she was in need for a translator in order to understand the proceedings, we believe there cannot be a fair trial if she is not afforded ample opportunity not only to have proper legal representation but also avail the witnesses whom she deemed would advance her defence to these appeals.

With respect, we do not agree with the Court's decision to insist on proceeding on with the hearing of the appeal despite the various positions advanced in opposition to tomorrow's hearing by her Counsel on record. First, the issue of the venue where she was to be present for the trial via video-conference has been confirmed unavailable due to the declaration of 7th July, 2016 as a Public holiday in Kenya. As is the case with all public holidays, not much official business is transacted on this day. If the venue is unavailable for the trial, how else can she ably undertake a trial where her witnesses can be reached and cross-examined in order to bring out the truth in these appeals? Is there any fairness in a process that defies these realities and chooses to proceed with the appeals in the face of her stated incapacities? We do not think so! Along with the unavailability of the venue and the videoconference facilities is the critical issue regarding two of her witnesses whom her former Advocates regarded as extremely critical because they profess the Muslim faith.

Today, we have followed the news in the various Media Outlets regarding the arrest of the Athlete's former Manager, Federico Rosa and her former Coach, Claudio Berardelli. We attach hereto some of the Media reports to this extent. More accounts of these arrests are all over the media and we believe that IAAF and CAS should by now be aware of these. Indeed, it has been reported that the former has been placed in custody for three days to facilitate investigations and possible prosecution in relation to anti-doping related allegations. The duo were witnesses scheduled to appear before CAS in this case. Athletics Kenya is interested in cross-examining them on the various aspects of their testimonies.

The evidence of Federico Rosa and Claudio Berardelli who, by reason of their incarceration as above cannot be subjected to cross examination during the hearing is extremely critical because of the following two reasons:

- i) In the appeal brief by IAAF in CAS 2015/A/3979, under the sub-heading **'Athlete discloses course of injections by doctor in September 2014 to boost her blood levels'** at pages 3-5, IAAF has meticulously set out the case for the enhancement of the period of illegibility against the Athlete with reference to the verbatim report arising from the conversation recorded by Federico Rosa and Claudio Berardelli [without the Athlete's knowledge or consent] in Mid-September, 2014.

- ii) In the appeal brief by IAAF in CAS 2015/O/4128, under the sub-heading 'Explanation given by the Athlete to her coach and manager, 28 October 2014' at pages 4-6, IAAF has also set out the case for the enhancement of the period of illegibility against the Athlete with reference to the verbatim report arising from the conversation recorded by Federico Rosa and Claudio Berardelli [without the Athlete's knowledge or consent] in Mid-September, 2014.

The centrality of the above evidence to the eventual outcome of the two appeals is obvious. As the two are now in detention and definitely not available for cross-examination, their absence deprives Athletics Kenya of a huge opportunity to establish certain fundamental matters which are necessary for not only this appeal but also in its engagement with the duo given their involvement in matters of athletics in Kenya and especially as the country prepares for the upcoming Rio Olympic Games.

As a Federation that is aware of the Athlete's level of education, we are not without sympathy to her present circumstances. In her email sent to CAS today and copied to us, the Athlete stated thus:

"Hii me Rita Jeptoo because of problems of the appeal .Mumenisumbua sana always very low . very difficult no lawyer to help me no hope no justice.Not . You promise me to help with a pro bono lawyer but lots of problems right now. coming a lone,Need lawyer please

Yours

Rita"

To paraphrase the Athlete, she is saying that she is disturbed a great deal because of the problems arising from the appeal. It would appear that she is not even aware that there are two appeals facing her! She decries the lack of justice in this matter. She is hopeless. She asks for a lawyer as she is coming alone. We are not sure even where she claims she is going to. The presumption is that she is going to the hearing. And where was this hearing to which she is going to have taken place? It was at Strathmore University via videoconference. She seems even not aware that the said facility is no longer available because of the declaration of 7th July, 2016 a Public holiday!


We cannot close our eyes to the huge injustice that the Athlete is facing. The appeals herein are predicated on very complex circumstances. It requires serious experts to have the same understood. Expecting an athlete with her level of education to understand these complex explanations, some which are from a Professor who is lined up to testify on behalf of IAAF is beyond comprehension. For instance, how will the Athlete, without the help of experts, understand the Athlete Biological Passport programme (ABP) which is a central thesis in the case for the cancellation of her Boston Marathon results? How will the Athlete, without such expert medical advice, understand her ABP profile as graphically represented at page 14 of the Appeal Brief in CAS 2015/A/3979?

Athletics Kenya is prepared for its case herein. Its submissions are succinct. But it cannot close its eyes to the handicap that the Athlete, its Athlete, faces. It cannot take part in a process that is definitely not guaranteeing the Athlete a fair trial. It cannot close its eyes to the very important issues raised by the Athlete and which CAS appears not to address. It won't close its eyes to the very spectre of an injustice being occasioned upon an Athlete from its Federation in circumstances where an adjournment to enable the Athlete be better prepared with all the necessary facilities and assistance to ably face these appeals appears to be the only possible course in the matter.

We urge CAS to adjourn this hearing and to take the necessary steps to ensure that the Athlete's rights to a fair trial and appeal process is safeguarded. The Athlete's rights in these circumstances should not be sacrificed on the altar of convenience. The least that can be done now is to adjourn the hearing scheduled for tomorrow.

Thanking you.

Yours Faithfully
TRIPLEOKLAW LLP


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cc *The President,*
Athletics Kenya