

# BOARD OF APPEAL OF THE MAURITIUS TURF CLUB

**In the matter of:**

Gilbert ROUSSET  
(as Trainer of Maxamore)

Appellant

versus

MAURITIUS TURF CLUB

Respondent

**And in the matter of:**

Gilbert ROUSSET  
(as Trainer of Aspara)

Appellant

versus

MAURITIUS TURF CLUB

Respondent

## DECISION

### Background

1. This decision from the Board of Appeal comes as a result of two findings of guilt delivered on the 13<sup>th</sup> November 2018 by the Racing Stewards against the Appellant acting in his capacity as Trainer licensed by the Respondent.
2. The present decision determines the appeals to both findings together, considering the inquiries led by the Stewards were treated as connected cases and were heard at the same time.
3. The Appellant was in both cases charged with a breach of section 208 A (5) of the Rules of Racing.
4. The two findings of guilt come as a result of inquiries conducted on the case of horses Maxamore and Aspara both falling under the Appellant's charge.

The inquiries were conducted as a result of a post-race sampling exercise that yielded positive results for the detection of illicit substances in both horses.

5. In the case of both horses, the Certificate of Analysis of Quantilab concluded the detection of 16 beta hydroxyl stanozolol in equine urine and of stanozolol in equine blood.
  6. There are corroborating results between the Certificate of Analysis of Quantilab and the Test Report of the Hong Kong Jockey Club Laboratory for Maxamore. The effect of the said illicit substances which are anabolic steroids, is that they enhance the muscular system and the performance of the horse.
  7. As matters stand, an enquiry has been opened by the *police des jeux* in both the doping cases of Maxamore and Aspara. Even if certain suspects have already been arrested, the police enquiry is still ongoing in both cases.
  8. In the case of Aspara, there is before the Stewards an unequivocal confession of guilt by one Mr L. Lallbeeharry who was the groom of Aspara. During the Stewards Inquiry, he admitted being paid 100,000 MUR for injecting an illicit substance in Aspara's chest whilst it was in its box. He said this took place on the Monday preceding the race meeting.
  9. Prior to his arrest by the *police des jeux*, Mr L. Lallbeeharry is described as a trusted member of the Appellant's stables having been in the Appellant's loyal service for 10 years. Mr L. Lallbeeharry now faces criminal liability and prosecution for penal servitude. He has been banned for life from the Respondent's premises. Mr L. Lallbeeharry has maintained however having no involvement whatsoever in the doping of Maxamore.
  10. The sanction meted out by the Stewards against the Appellant in the case of Maxamore was for a 12 months disqualification as Trainer. In the case of Aspara, in considering the admission of guilt of Mr L. Lallbeeharry as being a special circumstance, the Stewards imposed a fine of 100,000 MUR. The Appellant challenges the finding of guilt in both cases. In the case of Aspara, the sentence imposed is not being challenged.
  11. There is no challenge by the Appellant as regards the sampling and testing process which for the purposes of these appeals may be deemed as having been conducted satisfactorily. It is admitted therefore by the Appellant that a "misdeed" was carried out and illicit substances were administered in both horses. The exact circumstances relating to each "misdeed" being committed remains unknown as a police enquiry in both cases are still ongoing.
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12. It is worth stating that both Maxamore and Aspara were winners of the races they had been enlisted in.
13. Maxamore won Race 2 of the race meeting held on the 12<sup>th</sup> May 2018, and Aspara won Race 2 of the race meeting held on the 26<sup>th</sup> May 2018. The sampling exercise took place on the same day the horses were confirmed winners of their respective races.
14. Whilst we take note the gravity of the facts before us which undeniably arises from a heinous act that disrupts the core of fair horse racing in Mauritius, addressing these issues remains a policy consideration that is not within the remit of the present forum.

### The Law

15. The role of the Respondent is worthy of attention and it was aptly summarised in the case of **Gujadhur G v The Mauritius Turf Club [2000 SCJ 27]**.

*“The MTC is more than a social club which is solely concerned with the welfare of its members. Its activity of organising horseracing has wider repercussions among the public. As L.J Woolf said in ex p. The Aga Khan (31 July 1991) the manner in which the Jockey Club exercised its powers is a matter of ‘public interest and public importance’ (See the article by David Pannick ‘Who is the subject to Judicial Review and in respect of what’ (1992) Public Law 1, 2-6).*

*Therefore when the MTC Stewards sit as a domestic tribunal that may be wielding powers ‘as great as, if not greater than, any exercised by courts of law.’ They are vested with authority to adjudicate upon matters involving civil consequences to individuals (See Wade-Administrative Law (7<sup>th</sup> Edition) Page 499).*

16. As was held in the case of **Gujadhur G (supra)**, members of the Respondent as well as trainers or jockeys are bound by the Rules which they have accepted by virtue of their membership or otherwise. The Appellant’s Trainer licence (Exhibit 17) creates an equal obligation towards the Respondent.
17. The relevant Rules of Racing for the purposes of this appeal are the Rules of 2018 which came into operation on the 31<sup>st</sup> March 2018.

18. Rule 208 A (5) reads:

*208 A(5) Notwithstanding paragraph 4 (b) when a sample taken at any time from a horse under the responsibility of a licensed trainer, after analysis is found to contain any illicit substance, the trainer and any other person in charge of such horse at the relevant time shall be guilty of an offence and be liable to any of the penalties provided in Rule 11 (d) unless that person can prove to the satisfaction of the Racing Stewards that he had, at all times, taken all reasonable and permissible measures to prevent the administration of such illicit substance.*

19. This Board believes that a proper interpretation of the rule is that once an illicit or prohibited substance has been found in the sample taken from a horse the licensed trainer of that horse is defacto liable unless he is able to prove to the satisfaction of the Racing Stewards that he/she had at all times taken all reasonable and permissible measures to prevent the administration of such illicit substance.
20. The Rules therefore creates a defence for the Licensed Trainer however the burden shifts on the Trainer to prove his defence. Hence once the MTC has established that the sample blood contains an illicit substance the onus shifts onto the Trainer to prove to the satisfaction of the Racing Stewards that he/she had taken all reasonable and permissible measures.
21. The gist of the Appellant's case before the Stewards and in the appeal before us, is that the Appellant had in both cases taken all reasonable and permissible measures to prevent the doping of Maxamore and Aspara. Evidence was given in support of the contention that the Appellant had discharged the duty of taking "*all reasonable and permissible measures*".
22. Submissions of both parties specifically on ground 4 of the appeal dealing with the finding of the Stewards that there exists an expectation to place cameras in all horse boxes in the stables were also heard. This is a focal aspect to this appeal.

### Findings

23. It is admitted in the case of Aspara, before the Stewards, that the administration of the illicit substance had been committed by the horse's own groom. For all intents and purposes, we note that this is an agreed fact before this Board of Appeal.
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24. It is also an agreed fact that the said groom although working under the orders and supervision of the Appellant and his assistant, the said groom was at all times an employee of the MTC. It is not for this Board of Appeal to adjudicate on the circumstances leading to each of the doping cases. The certainty in the identification of the perpetrators to both doping cases remains a matter for the police enquiry to look into.
25. In so far as the Aspara case is concerned, it falls well within the remit of our review to consider whether in the light of the admission of the groom, the Appellant had taken "*all reasonable and permissible measures*" to prevent the administration of the illicit substance from occurring, and whether he was able to show to the Racing Stewards that he had in fact taken all reasonable and permissible measures.
26. Rule 45 to 49 B of the Rules of Racing outlines the general obligations of Trainers and Assistant Trainers under the Rules. It is worth citing the following extracts outline the trainer's obligation as regards the security of the stable.
- 45(2) For the proper discharge and for the assistance of his duties and obligations, a trainer shall secure the services of an assistant trainer and shall thereby delegate to the latter his responsibilities in the supervision, control, security training and care of his racehorses in nominating horses to participate in races and the security of the stable yard. The appointment of an assistant trainer does not relieve the trainer in any way from his responsibilities for the care, control and supervision of his horses and conduct of his stable.*
- 45(3) Whilst the Mauritius Turf Club provides surveillance including closed circuit vision in stables to maintain and reinforce the security of stables, it does not in any way discharge the trainers from their responsibility regarding the security, supervision and control of their stable.*
27. The above Rules are the only cursory provisions as regards the obligations of Trainer in ensuring the security of their stables.
28. It is remarkable that there is otherwise no list of conditions, directives or guidance issued by the Respondent showing what its specific expectations are for the Stewards to be satisfied that the objective test of "*all reasonable and permissible measures*" is met. In the circumstances we therefore have to examine the evidence ushered before the Racing Stewards on behalf of the

Appellant to determine whether the Stewards were right or erred in their findings.

29. Witnesses for the Appellant have testified to explain the measures that were in place at the Appellant's stables at the material times. We retain the following:

- a. the appointment of an Assistant Trainer and former Chief Groom, Mr Seessurrun with 30 years standing at the Appellant's stable, and the holder since 2009 of an Assistant Trainer licence;
- b. appointment of two Chief Grooms to oversee the duties of Grooms;
- c. routine supervision of horse movements and groom movements escalated by Chief Groom to Assistant Trainer, and from Assistant Trainer to Trainer;
- d. monitoring of grooms by the Trainer and Assistant Trainer on the basis of *rapport* of trust created with the stable on the basis of clean track records;
- e. existence of strict stable protocols that involves reporting of incidents to the Chief Security Officer of the Respondent;
- f. padlocking of Runners in the stables;
- g. the appointment of Mr L. Lallbeeharry holding 10 years standing with the Appellant's stables as groom and night watchman.

30. In fact, evidence was given by the Appellant's Assistant Trainer to explain that the degree of trust on behalf of the Appellant and his stable in Mr L. Lallbeeharry was profound. Mr L. Lallbeeharry had a clean track record in his 10 years of service with the Appellant's stable, and was even trusted with despatch of cheques. His appointment we believe is to be construed as one of the reasonable and permissible measures of security taken by the Trainer in the discharge of his duties.

31. This Board is alive to the pecuniary gain that may be well rewarding to anyone in the position of a groom as Mr. Lallbeeharry and to that extent it is

not sufficient as a defence to state that one had full trust as one can foresee that such temptation may happen.

32. In the present case however it is not this which is reproached of the Trainer but rather his failure to equip his boxes with surveillance camera
33. In fact, it is only upon the opening of the police enquiry in the case of Aspara, that it became evident that there could have been interference by Mr L. Lallbeeharry in the case of Maxamore too. Until the confession was made, there was no way for the Appellant to have known that Mr L. Lallbeeharry was capable of a breach of trust of the extent that took place. There was no reason therefore to alter any protocol that was in place after the doping of Maxamore was confirmed.
34. Moreover, the evidence of Mr Baudot is relevant, in that he cannot ascertain when precisely the administration of the illicit substance took place in Maxamore. This leads us to conclude that in both cases, there is definite *mens rea*, expertise and knowledge of the administration of races in Mauritius by the persons who have caused the administration of the illicit substances to take place. These acts are criminal in nature and are intentionally expected to bypass any reasonable and permissible measure put in place by the trainer.
35. In both cases, the unlawful interference had been performed in such a way that there would not be any detection of illicit substances in the both runners for the purposes of pre-race sampling.
36. Therefore, we retain the proposition of learned Counsel for the Appellant that it is even possible that the administration of the illicit substance in the case of Maxamore could have taken place whilst the horse was under the control of the Respondent.
37. In determining whether the Appellant had taken all reasonable and permissible measures to prevent the doping from occurring, the Stewards found that the installation of cameras in all horse boxes is a clear measure that would enhance security and also act as a deterrent for wrongdoing. It is not denied that the installation of cameras is a measure that would enhance security and also have a deterring effect. We hasten to add that the Respondent itself has Security cameras affixed in the compound of Appellant's Yard. It has also come to light that the said security cameras of which the Respondent has sole control did pick up the suspicious presence of the groom Mr Lallbeeharry at an earlier time when he was not supposed to be there but yet no follow up or monitoring was effected by the Respondent nor did it advise the Appellant or his Assistant

38. It is our view that an omission in the imposition of a duty of that extent cannot by any standards lead to a failing by the trainer of an objective test set out in the second limb of Rule 208 A (5). The failure to install cameras in all boxes in the stables can only be reproached of the trainer if it was established that this was the norm in all stables and he had failed to follow suit. What the evidence shows is that some stables have security cameras in their boxes whilst many do not have. It is also worthy of note to see that the Respondent has not deemed it necessary to impose the requirement of security cameras on Trainers when issuing a Trainers License for this year.
39. It is important to note that Learned Counsel for the Respondent when probed on the issue of the non-introduction by the Appellant of cameras in the boxes of his stable offered no submissions as regards the basis for the finding by the Stewards that cameras had to be installed in all boxes. His stand was that we should treat the present matter as a rehearing. He even conceded that the 1 year disqualification was wrong and should we agree with his stand then a fine of Rs 150000/ on the same footing as the fine imposed in the Aspara case would be the appropriate sentence. We have considered his views and find that no submissions were made as to what examples of "*reasonable and permissible measures*" apart from the non-installation of cameras in the boxes was led in evidence at the inquiry. In short there is not enough evidence before us to treat the matter as a rehearing. We therefore decline to treat it as such.
40. For the abovementioned reasons, on the specific facts of this case we are of the view that the Stewards have erred in holding that it was a reasonable measure expected to be taken by the Appellant to introduce cameras in all horse boxes. Both appeals should therefore succeed.
41. Whilst the issue of sentencing does not arise in light of our finding on guilt, the question of sentencing deserves our consideration. In the case of Maxamore we reject the Appellant's proposition that the sentence imposed on the trainer is manifestly harsh and excessive.
42. In light of the compounding effect that doping has in diminishing the image of horse racing, there is ample precedent in international cases to show that trainers in charge of horses found to have been administered with illicit substances regularly face disqualification from the sport.

### Conclusion

43. We stand guided in our decision by the principle set out in the case of **Murray v Anderson and Abbobakar [1990 MR 99]**:



*With regard to domestic tribunals the principle is that where such a body is adjudicating on the fate of one of its members, though the latter is contractually bound to his club by the rules, there is also an implied term in the contract that any decision which might adversely affect the members should be reached in accordance with the principles of natural justice.*