

**MOTORSPORT SOUTH AFRICA
NATIONAL COURT OF APPEAL 169**

**FIRST APPELLANT
Jan Andries Saaiman**

**SECOND APPELLANT
Pieter-Arnu Saaiman**

**IN RE
Appeal arising from the findings of
MSA Court of Enquiry 1213**

**DATE OF HEARING
29 August 2018**

Present (Officials):

**Advocate André P Bezuidenhout
Attorney Steve Harding
Lizelle van Rensburg**

**Court President
Court Member
Sport Co-Ordinator:
MSA**

INTRODUCTION

1. On 29 August 2018, Motorsport South Africa (“MSA”) enrolled National Court of Appeal 169 (“the appeal”). The appeal was dealt with at the Killarney Raceway at the office of Motorsport South Africa (“MSA”). There was no objection to the constitution of the appeal panel and the appeal was properly constituted.
2. This is the written judgment of the National Court of Appeal (“NCA”) 169. The Appeal hearing took place on 29 August 2018 between 17h34 and 18h07. Judgment was reserved. Proceedings were mechanically recorded. For the purposes of this Judgment reference is only made to the material issues as the remainder of the proceedings are of record.
3. There are two Appellants in this matter being Jan Andries Saaiman (“the First Appellant”) who is the natural parent in terms of GCR 19 of Pieter-Arnu Saaiman (“the Second Appellant”). The Second Appellant was not present at the hearing. In terms of GCR 19, the First Appellant is, for all purposes, deemed to be the competitor.

(see GCR 19)
4. The Appellants were represented in these proceedings by Adv F van Zyl SC assisted by Adv PS Bothma, on the instruction of Attorney SC van Niekerk of De Klerk & Van Gend Attorneys.
5. The Appeal Bundle initially comprised annexures “A1” to “I4”, individually marked. It was supplemented with annexure “J” during the hearing which is a letter dated 7 June 2018 addressed from the First Appellant to all participants, parents and administrators of Zone 7. There was no objection to receiving the letter and it became part of the Appeal Bundle.
6. This NCA acknowledges the able contribution of all the attendees and participants at the hearing, their capacity which appears from the attendance register, a copy of which is attached hereto as annexure “A”.

THE INCIDENT AND EVENTS THAT FOLLOWED

7. The Appeal arises from the findings of Court of Enquiry 1213 (“COE 1213”) which dealt with events that transpired following a racing accident which occurred during the first race of the 125 CC High School Class at the Motocross Event held at Zone 7 on 26 May 2018 (“the event”). The Second Appellant was riding in the 125 CC High School Class and had fallen on the back straight at a double jump. The First Appellant was the first person on the accident scene and immediately went to the Second Appellant’s assistance. The First Appellant is not only the father of the Second Appellant, but also a registered medical practitioner in South Africa and a Specialist Cardiologist. The First Appellant has a very substantial medical background which stands uncontested and he was, *inter alia*, instrumental in the development of the Netcare 911 emergency service.

(see Appeal Bundle, C6, paragraph 18)

8. The events which transpired during the incident requires our attention:
- 8.1 the First Appellant was first person to reach the Second Appellant who was lying in an awkward position;
- 8.2 the First Appellant immediately applied medical assistance to his son;
- 8.3 between two to five minutes transpired from the time that the accident happened, until the Marshall and the medical staff arrived at the accident scene where the Second Appellant was being treated by the First Appellant;
- 8.4 the First Appellant was asked to stand away so that the medical staff could take over to attend to the Second Appellant;
- 8.5 the Marshall and medical staff were told by the First Appellant to “*fuck off*”;
- 8.6 when the Clerk of the Course arrived at where the Second Appellant was lying, the First Appellant struck him on the neck.
9. The events outlined above, constitute the incident.

10. The Clerk of the Course reported the incident to Motorsport South Africa (“MSA”) and advised that steps needed to be taken as a result of the First Appellant’s conduct. The Steward’s report likewise reported that a Court of Enquiry be appointed to investigate the matter further.

(see Appeal Bundle, C16 and C17)

11. MSA convened COE 1213 for 26 May 2018 and the First Appellant was cited in the notice to appear at the said COE. His citation was “*Father of Competitor (Defendant)*”.

(see Appeal Bundle, F3)

12. COE 1213 ultimately convened on 30 June 2018 and the First Appellant failed to appear. In his absence:

- 12.1 the COE enquired into the incident and convicted the Second Appellant to have acted in breach of GCR 172 vi) and GCR 172 x);

(see Appeal Bundle, G1 and G2)

- 12.2 handed down a penalty against the Second Appellant the effect of which was that his competition licence was withdrawn for three years, of which two years and six months were suspended;

- 12.3 costs of R1 500.00 was awarded against the Second Appellant.

13. The First and Second Appellants filed a Leave to Appeal application in terms of the GCR’s to a panel of this NCA. Leave to Appeal was granted to this NCA on 16 July 2018 and the Appellants properly prosecuted their appeal in terms of the GCR’s.

14. The grounds of appeal are contained under cover of a suitable notice, supported by an affidavit of the First Appellant. It is, *inter alia*, alleged in the grounds of appeal that:

- 14.1 a gross miscarriage of justice took place and that the conviction against the Second Appellant was unsustainable and inappropriate;

- 14.2 that the penalty imposed against the Second Appellant by COE 1213, was

inappropriate for the offence.

(see *Appeal Bundle, C9 paragraph 32, read with C10, paragraph 34*)

15. The main contentions of the Appellants are that the Second Appellant was not called to COE 1213, he did not appear before it, he was convicted and sentenced in his absence and that the basic tenet of fair justice providing for *audi alterem partem* (hearing the other side) was not observed.
16. The Second Appellant is totally open and frank as to his wrongdoing. He acknowledges the material facts albeit that he states that he forcefully pushed the Clerk of the Course away from him and he concedes that he might have made contact with his neck in that process. As a rider, he contends that he did not intend to hit the Clerk of the Course, but we find it unnecessary to deal with this minor difference as the First Appellant concedes that he made contact with the neck of the Clerk of the Course.

(see *Appeal Bundle, C8, paragraph 27*)

PROCESS FOLLOWED DURING THE APPEAL

17. All hearings of appeals in terms of the GCR's are held *de novo*.

(see *GCR 208 viii*)
18. There was no need to hear evidence during the hearing as the material facts were common cause and MSA accepted the factual submissions made by Counsel acting for the Appellants.
19. All interested parties were given an opportunity to address the NCA. Mr Jan Thorsen, the MSA Steward on the day, addressed the NCA and provided meaningful information.

THE CONTROL OF MOTORSPORT, THE GCR'S AND THE SSR'S

20. Motorsport events cannot take place without the involvement of officials. Officials are instrumental in the organisation of an event and to ensure that the governing of the event takes place within the ambit of the GCR's, SR's and SSR's.

21. Officials at motorsport events mostly render their services for no or little monetary gratification. They do so for the love of the sport.
22. GCR 143 to GCR 171 detail the importance of officials and the key roles that they play in motorsport events.

(see GCR's 143 to 171)

23. It is apposite to deal with the control of motorsport and where the officials and the “*rules of the game*” originate from.
24. MSA is a Non-Profit Company in terms of the Companies Act 61 of 1973 and Act 71 of 2008. MSA holds the sporting authority to govern motorsport as it is the delegated authority by the *Federation Internationale de l'Automobile* (“FIA”), *Commission Internationale de Karting* (“CIK”) and *Federation Internationale de Motocyclisme* (“FIM”). MSA is structured with a Board of Directors, a Secretariat, a National Court of Appeal, Specialist Panels, Sporting Commissions and Regional Committees. The Secretariat of MSA does not serve as bodies governing discipline of motorsport. It only attends to secretarial issues. The exercise of the sporting powers by MSA is in terms of the sporting codes of the FIA, CIK and FIM. As such, MSA has the right to control and administer South African National Championship competitions for all motorsport events. The National Court of Appeal of MSA is the ultimate final Court of Judgment of MSA.

(see Articles 3 to 7 of the MSA Memorandum)

(see Article 35 of the MSA Memorandum)

25. The participation of motorsport competitors in events managed by MSA is based on the law of contract. MSA has the sporting authority and is the ultimate authority to take all decisions concerning organizing, direction and management of motorsport in South Africa.

(see GCR INTRODUCTION – CONTROL OF MOTORSPORT)

26. MSA is an international and nationally recognised sporting body by the Government of South Africa. Its sporting platform is substantial. It has approximately eight thousand licence holders and it sanctions approximately five hundred sporting events every year in South Africa. The organisation of events under the control of MSA is a quality certification stamp which ensures that all

participants can be assured that competition takes place within the boundaries of fair sporting events, with certainty as to good administration and results. For national events, national prizes and championships are awarded and organisers and promoters receive substantial accreditation for having the MSA stamp of approval for their events.

27. All participants involved in MSA sanctioned motorsport events subscribe to this authority. As such, a contract is concluded based on the "*rules of the game*". There exists a ranking structure in the MSA Rules and Regulations. (General Competition Rules are referred to as "GCR's"). The "*rules of the game*" of motorsport are structured in the main on the Memorandum of MSA and the GCR's. Any competitor who enters a motorsport event subscribes to these "*rules of the game*". (Reference in this judgment to "*rules and regulations*" intends to refer to the broad meaning of the "*rules of the game*". Specific references to GCR's are individually defined.)

(see GCR 1)

28. In addition to the GCR's there are also Supplementary Regulations ("SR's") that an organiser and promoter of a competition is obliged to issue and Standard Supplementary Regulations ("SSR's") issued by MSA.

(see GCR 14 & GCR 16)

29. The GCR's, SR's and SSR's thus constitute the "*rules of the game*" of motorsport.

30. It is expected of every entrant and competitor to acquaint themselves with the GCR's and to conduct themselves within the purview thereof.

(see GCR 113 read with GCR 122)

31. The Clerk of the Course is the person with the supreme authority for the conduct of a meeting or the competition.

(see GCR 156)

32. He / she is the person that reports back on the success of the event, controls the implementation of the "*rules of the game*" and is the person who impose penalties.

(see GCR's 156 and 157)

33. GCR 172 provides for the breach of rules and in particular, deals with the abuse of

officials by competitors and / or their family members and / or members of their pit crew:

“172. BREACH OF RULES

...

x) *Abuse of officials by competitors and / or their family members and / or members of their pit crew. Such breach of the rules may result in the competitors concerned, if found guilty following a hearing, being suspended for a period of up to six months or for up to six events (whichever is more appropriate), for a first offence.”*

34. The seriousness of the abuse of officials is clear from the penalty provision which provides that even for a first offender suspension for a period of up to six months or for up to six events, can be imposed.
35. A scale of penalties is provided for in terms of GCR 177. A fine is listed second on the list, and exclusion, the final penalty.

LEGAL AND FACTUAL ISSUES WHICH ARISE IN THIS APPEAL

36. The Appellants are *dominus litus* in this appeal to the NCA and submitted their formulated appeal.

(see Appeal Bundle, C3 and further)

37. The following aspects crystallised as to the legal and factual issues which require our consideration:

37.1 the First Appellant was called to the COE 1213 and did not appear. No judgment was handed down against him. This NCA will consider whether findings should be made against the First Appellant and whether a sanction should be handed down against him;

37.2 the Second Appellant was not called to COE 1213. In his absence, he was held to have acted in contravention of GCR 172 vi) and GCR 172 x) and was punished as previously recorded. This NCA is required to consider whether:

37.2.1 a gross miscarriage of justice took place as a result of the findings of the COE 1213 handed down against the Second Appellant;

37.2.2 whether the penalty imposed on the Second Appellant was wholly inappropriate.

THE MERITS

38. The success of motorsport events is largely determined through the attendance of qualified officials who apply the “*rules of the game*”. The involvement of officials at an event is regulated by Part VII of the GCR’s. The list of officials is identified in GCR 143 and the obligations of the different officials are detailed in the GCR’s.
39. The role that the Stewards play is defined in GCR’s 151 and 152. The duties and authorities of the Clerk of the Course is specifically dealt with in GCR 156 and it appears therefrom that the Clerk of the Course is the supreme authority for the conduct of the meeting. The Clerk of the Course acts on behalf of the organisers and promoters.
40. The First Appellant did not appear at COE 1213. His Counsel informed this NCA during the hearing that he acknowledged that he was *persona non grata* at Zone 7 and he therefore did not consider it necessary to attend COE 1213. What the First Appellant did not appreciate, was the fact that the Second Appellant ran the risk of sanction and it was only when the sanction was imposed that the First Appellant realised the impact of his non-appearance at COE 1213.
41. GCR 122 demands that every person taking part in the organising of a competition and in taking part in the event, shall acquaint themselves with the GCR’s. It provides as follows:

“122. ACQUAINTANCE WITH AND SUBMISSION TO THE RULES

Every person, group of persons, etc., organising a competition or taking part therein shall by doing so or by and upon applying for an organising permit, or by and upon applying for a licence from MSA or by and upon

entering for a competition, be deemed to have and recognise that they have:

- i) made themselves acquainted with these rules;
- ii) submitted themselves, without reserve, to the consequences resulting from these rules and any subsequent alteration thereof and agreed to pay as liquidated damages any fines or costs imposed upon them within the maxima set out in Appendix R;
- iii) renounced, under pain of disqualification (see GCR 186) the right to **have recourse except with the written consent of MSA to any arbitrator or tribunal not provided for in these rules;**
- i) agreed to exonerate and keep indemnified the promoters, MSA and its respective directors, employees, officials, their servants, agents and representatives from and against all liability whatsoever to any such person or body or group of persons respectively in respect of or in connection with any meeting, competition or event held under these rules from whatsoever cause arising or alleged to have arisen;
- ii) in the case of competitors (whether entrants, drivers or passengers) in competitions, agreed to exonerate and keep indemnified all other competitors, their servants or agents from and against all liability whatsoever to such entrants, vehicle owners or possessors, driver, co-drivers or passengers in connection with the driving of their vehicles or any other act, omission or occurrence during the course of a race or official practice therefor;
- iii) agreed as set out in sub-paragraph iv) and v) of this rule with each and all the persons and bodies referred to in those sub-paragraphs so that each and any of these persons and bodies shall be entitled to the benefit of such agreements;
- iv) agreed to be examined by a Doping Control/Alcohol Control Officer prior, to, during or following a motor sporting event, meeting or competition, further agreed to allow a sample of blood and/or urine to be taken for laboratory analysis by the Doping Control/Alcohol Control Officer concerned, to determine the presence or otherwise of alcohol or prohibited drugs as listed in the MSA Anti- Doping Code in accordance with the procedures for testing as prescribed by WADA and contained in the MSA Anti-Doping Code;
- v) fully accepted that, should the analysis of the samples taken reveal the presence of alcohol or drugs, or the refusal to allow samples of

blood and/or urine to be taken, will result in MSA taking disciplinary action as envisaged in its Anti-Doping Code - as prescribed by WADA.”

(see GCR 122)

42. It is important to emphasise that:

42.1 it is of critical importance in motorsport events that all the involved role-players understand the rules of the sport, how the administration takes place and particularly, the important roles which officials have in the running of motorsport events. Without officials, there can be no sporting events;

42.2 the First Appellant was blissfully unaware (his own making) as to the consequences of his conduct on the Second Appellant, his son at a COE.

43. Mr Thorsen stated that the availability of officials at motorsport events was a “*dying breed*”. The abuse of officials cannot be tolerated and no opposing submission in this regard was made by the Appellants.

44. It is important to record what steps the First Appellant took, following the incident:

44.1 on 7 June 2018, he addressed a letter of apology to all participants, appellants and the administrators of Zone 7. He recorded that he had no excuse for his poor behaviour. In the final paragraph of the letter, he accepted his liability;

(see Appeal Bundle, J)

44.2 on the same date, he also addressed a letter to MSA with an urgent appeal for safety intervention. In this letter, he accepted that he abused the officials, that it was unprofessional and inexcusable. He took full responsibility for his conduct. He recorded that his emotions got the better of the situation, but as a frustrated medical professional and parent, he was relieved. He further offered to contribute to essential safety improvement.

(see Appeal Bundle, J)

45. It is against this background that we must determine whether the findings of COE 1213 should be upheld. We believe not, in view of the following:

45.1 the Second Appellant was not called to the COE 1213;

45.2 the notice to the First Appellant was deficient in numerous regards. He was called on to attend as the "*Father of competitor (Defendant)*". GCR 19 and GCR 22, provide as follows:

*"19. **COMPETITOR** means any person or body whose entry is accepted for, or who competes in any competition, whether as an entrant, driver, co-driver, navigator, passenger or rider, provided that, where any person so involved is a minor, the natural or court-appointed legal guardian of such minor will be deemed to be the competitor for purposes of the motorsport regulations."*

...

*"22. **ENTRANT** means any person, persons or body who enters a vehicle in a competition and who is in possession of a licence. In the case of minors, the parent or court-appointed legal guardian is automatically deemed to be the entrant and he / she shall not be required to be in possession of a licence separate to that of his / her minor child. Should a parent or legal guardian not be willing or able to act as the entrant for his or her minor child, he or she shall advise MSA accordingly and nominate an alternative entrant to act on his or her behalf. Any such alternative entrant for a minor driver / rider must hold an entrants licence issued by MSA and, unless MSA has granted specific written approval to the contrary following a formal request, such alternative entrant may only represent one minor driver / rider."*

45.3 the deficiency of the notice (Annexure F3), renders the findings of COE 1213, incompetent. The correct citation would have been:

"To: Jan Andries Saaiman –

1) cited in his representative capacity as the natural parent of Pieter-

*Arnu Saaiman and deemed as the competitor in terms of GCR 19;
2) cited in his personal capacity as the entrant of Pieter-Arnu Saaiman
in terms of GCR 22.”*

- 45.4 the only manner in which a minor can be engaged in terms of the GCR's, is through the citation of his parents / legal guardian provided for in terms of GCR 19 and GCR 22 that the parent / legal guardian is deemed to be the competitor / entrant. As can be seen from the notice issued to the First Appellant, that did not take place;
- 45.5 the Second Appellant was not properly represented at COE 1213, for the same reasons as outlined above.
46. The appeal of the Second Appellant must accordingly be successful. The penalty needs to be set aside and in addition also the cost order in the amount of R1 500.00 that was awarded against the Second Appellant. It appears from the Stewards report (Appeal Bundle, C17) that the Second Appellant was excluded from the results for the day. In view of our findings, his exclusion must likewise be set aside and if he scored any points, same must be reinstated. The Second Appellant had no blame in the conduct of the First Appellant.
47. As to the First Appellant:
- 47.1 his natural instinct as a parent was to assist his son. Neither the Clerk of Course nor the Stewards contended at any point that the mere assistance of the First Appellant breached any GCR;
- 47.2 the abuse by the First Appellant followed from him not identifying himself clearly to the officials as a medical practitioner. He was, on his own version, irate and emotional. The First Appellant swore at the officials and assaulted the Clerk of the Course. A proper identification would have avoided the abuse of the officials.
48. We find that the First Appellant's conduct of swearing at the officials and for striking the Clerk of the Course against the neck, was in contravention of GCR 172 x).

49. As to an appropriate punishment, the First Appellant has publicly apologised on numerous scores for his conduct and tendered to contribute to the safety upgrade at Zone 7. He offered a contribution of R20 000.00 in this NCA.
50. The First Appellant informed us that the Second Appellant intends to follow a career in international motorsport. Indeed, from the Appeal Bundle, it appears that the First Appellant follows the Second Appellant when he competes in different events across South Africa. Whilst his conduct towards the officials is deplorable, his support for his minor son, appears unwavering and is admirable. The support of minor children in motorsport must be fostered.
51. A punishment for the First Appellant must be balanced. The message to competitors and persons involved in motorsport, must be that the person and the appointment of officials are sacrosanct. Whilst persons can disagree with officials, they can never assault them and cause them physical harm. The circumstances of the event are such that this NCA has understanding for the parental urge which the First Appellant had to rush to the assistance of his son. As a medical practitioner, his failure to have identified himself clearly to the officials, solely rests on his shoulders. He was the person who was best appointed to explain cryptically at that moment to the Marshall, the medical staff and the Clerk of the Course that he was a qualified medical practitioner and that he was attending to the treatment of his son and there is no doubt that in those circumstances, all the officials would have respected the First Appellant's assistance, given the circumstances.
52. Whilst we are of the view that the First Appellant has full insight in the consequences of his abuse of the officials and that there is no need to exclude him from motorsport events in the future, the message that goes out to the motorsport fraternity must be sufficient to indicate this NCA's disapproval for the conduct of the First Appellant. The Clerk of the Course is commended for not retaliating at that moment and for reporting the matter to MSA within the structures of the sport.
53. The maximum fine which this National Court of Appeal can impose in terms of Appendix R-10, is an amount of R200 000.00. Had it not been for the frankness of the First Appellant admitting his wrongdoing and apologising for his conduct, this NCA would have excluded the First Appellant for a considerable period of time from motorsport to demonstrate the disapproval for his conduct which lead to the abuse and assault of officials. In the instance of a fine, likewise, the acceptance of

wrongdoing by the First Appellant, together with his frankness and apology, compels us to take that into account and to reduce a fine which we normally would have imposed in a much higher amount, to the amount which we impose below.

54. Considering the personal circumstances of the First Appellant, the facts of the matter, the interest of the motorsport community to impose a balanced punishment and reflecting a message to would-be offenders, we are of the view that a substantial fine must be imposed on the First Appellant.

FINDINGS

55. The NCA finds that:

55.1 the findings of COE 1213 as to the Second Appellant, both the conviction and the sentence, as well as the fine imposed, are set aside. The results of the Second Appellant, if any, during the event, should be reinstated;

55.2 the First Appellant is held in contravention of GCR 172 x), in that on 26 May 2018, at Zone 7, he abused officials by swearing at them and by striking the Clerk of the Course on the neck;

55.3 the First Appellant is fined an amount of R40 000.00. It is recommended to MSA that a portion or all of this amount be allocated for safety upgrades at Zone 7, or any other motocross facility, in the sole discretion of MSA;

55.4 the First Appellant is ordered to pay an amount of R10 000.00 in terms of GCR 196 for the cost of the NCA.

HANDED DOWN AT CAPE TOWN ON THIS THE 31ST DAY OF AUGUST 2018.

Electronically Signed

Adv André P Bezuidenhout
Court President

Electronically Signed

Mr Steve Harding
Court Member