



MOTORSPORT SOUTH AFRICA NPC

Reg. No 1995/005605/08

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MOTORSPORT SOUTH AFRICA NATIONAL COURT OF APPEAL, 163

**APPELLANT
JACQUES DORMEHL**

**IN RE
Appeal arising from the findings of
MSA Court of Enquiry 1162**

**DATE OF HEARING
30 November 2015**

Present (Officials):

**Advocate André P Bezuidenhout
Advocate Paul Carstensen SC
Attorney Jannie Geysler
Mr Wayne Riddell**

**Court President
Court Member
Court Member
Sporting Services
Manager: MSA**

MOTORSPORT SOUTH AFRICA IS THE ONLY RECOGNISED MOTORSPORT FEDERATION IN SOUTH AFRICA



sport & recreation
Department:
Sport and Recreation South Africa
REPUBLIC OF SOUTH AFRICA

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NATIONAL COURT OF APPEAL 163

1. On 18 November 2015, Motorsport South Africa (“MSA”) enrolled National Court of Appeal 163 (“the appeal”). The appeal was properly constituted and there was no objection to the constitution of the appeal panel. The Appellant complied with all requirements for the payment of the appeal fees.
2. This is the written judgment of NCA 163. The Appeal hearing took place on 30 November 2015 between 18h30 and 23h00. 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. The Appellant is Jacques Dormehl (“Mr Dormehl” and “the Appellant”, where applicable).
4. The Appeal arises from the findings of MSA Court of Enquiry 1162 (“the COE”) which dealt with incidents that started on 10 October 2015 at the 2015 Monster SA National Motocross prize giving held at Teza, outside Richards Bay (“the event”) and which followed into the evening on 10 October 2015.
5. The COE convicted Mr Leon Durow (“Mr Durow”) and the Appellant for the incidents which were recorded in the written ruling of the COE. Mr Durow has not appealed the findings of the COE.
6. The Appellant was convicted in terms of GCR 172 iv) and GCR 176 for three separate incidents being:

“1. Alleged altercation at the track between competitors’ fathers Wayne Smith and Jacques Dormehl.

...

3. Alleged altercation at the Protea hotel after the prize giving between Jacques Dormehl and various competitors present.

4. Alleged pointing of a firearm against the heads (sic) of Garric Pretorius (this in the presence of minors at the hotel).”

(see Annexure “H2” of the Appeal Bundle)

7. Leave to Appeal was granted to the NCA and the Appellant was represented at the

hearing by Robyn Wills Attorney of Pietermaritzburg who instructed Advocate M Ripp SC (“Adv Ripp SC”) and Adv W Carstens. The NCA is indebted to the legal representatives for their able contribution in the matter.

8. The appeal bundle comprises exhibits “A” to “T”. Three video clips were also submitted to the NCA and neither the Appellant nor any other interested party raised any objection to the NCA in accepting the three video clips as authentic evidence.
9. It is apposite to again emphasise that the following approach, whilst not exhaustive, is the cornerstone of the process and procedure adopted during National Courts of Appeal (“NCA”):
 - 9.1 the NCA is a sporting tribunal, constituted by the specific provisions of the General Sporting Regulations (“GCR’s”);
 - 9.2 the NCA is not a Court of law. That being said, to ensure justice to all parties, the general rules of evidence in legal matters, are largely followed to ensure fair hearings;
 - 9.3 hearings of the NCA are held *de novo* and the procedure followed is laid down in the GCR’s as well as developed practice that the appellant in a NCA is *dominus litus*, affording each of the interested parties an opportunity to produce evidence and to participate in the hearings to ensure that justice prevails within the ambit of the GCR’s;
 - 9.4 the appellant in a NCA will know its case and appreciate on what issues the burden of proof will rest on the Appellant to put forward his / her case. The calling of witnesses is an essential part of a NCA to ensure that the evidence of witnesses is tested by other interested parties to ensure that the truth prevails. This long-standing acceptable procedural approach cannot be ousted by parties by introducing in Appeal bundles long-winded correspondence and e-mails between parties which have no probative value and which are contested;
 - 9.5 the administration of the NCA is conducted by the officials of MSA who have an equally high duty as the Appellants, to participate actively, to ensure that

appeal records are not over-wide, clearly marked, succinct and devoid of any confusion, multiple overlap, repetition and inclusion of inadmissible documents;

9.6 it is the obligation of the parties involved in an appeal to ensure that their witnesses are available to testify during a NCA. Parties in a NCA cannot rely thereon that witnesses previously testified at hearings and fail to call such witnesses to the NCA. Whilst events in previous tribunals, for example the meeting of Stewards, etc, have probative value, the NCA cannot be expected to make findings on disputed evidence which is not ventilated;

9.7 whilst hearings are held *de novo*, the findings of the earlier tribunals naturally stand until interrupted by a finding of a NCA.

THE CONTROL OF MOTORSPORT

10. The control of motorsport in South Africa is held by MSA, 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. Mr Wayne Riddell represented MSA in this capacity. 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)

LEGAL AND FACTUAL ISSUES WHICH ARISE IN THIS APPEAL

11. The Notice of Appeal (annexure “M”) details the grounds of Appeal of Mr Dormehl. Eleven grounds are advanced claiming that a gross miscarriage of justice transpired at the COE.

(see Annexure “M” of the Appeal Bundle)

12. In essence, Mr Dormehl contends that:

12.1 the COE erred in that there were several procedural and fairness requirements not met during the COE;

(see Grounds 1, 2, 4, 5, 6, 8 and 9)

12.2 that the incident at the Protea Hotel Umfolozi (“the Protea Hotel”) was at a private venue whereby MSA had no involvement whatsoever and that the incident does not fall under the jurisdiction of MSA;

(see Ground 3)

12.3 the penalty imposed followed without providing the Appellant sufficient opportunity to make representations as to a suitable sanction;

(see Ground 7)

12.4 that the best interest of the minor child of the Appellant, Cayle, was not considered by the COE in the penalty imposed;

(see Ground 10)

12.5 that the penalty of disqualification and suspension was incorrectly imposed on the Appellant.

(see Ground 11)

13. In the NCA’s view, the following material, legal and factual issues crystallized in the Appeal:

13.1 whether the facts support the conviction of the Appellant;

13.2 whether a gross miscarriage of justice transpired during the COE on the grounds of procedural and fairness requirements;

13.3 whether MSA has jurisdiction over the events at the Protea Hotel;

13.4 whether the penalty imposed on the Appellant was inappropriate;

13.5 whether the best interest of the minor child of the Appellant was ignored by the COE in the penalty imposed.

PROCESS FOLLOWED DURING THE APPEAL

14. All hearings of appeals in terms of the GCR's are held *de novo*.
(see *GCR 208 viii*)
15. At the commencement of the hearing of the NCA and following Procedural Directive 1, the Appellant advanced certain points *in limine* and submitted that the appeal should succeed based on the points alone. The NCA was not persuaded that the points *in limine* were determinative or would be upheld, reserved judgment thereon, and directed that the appeal continue on the merits and that the Appellant presents his evidence.
16. Mr Dormehl, through his legal representatives, produced video evidence and also called three witnesses during the proceedings, being Mr Leon van Eeden ("Mr Van Eeden"), Mr Zane Odendaal ("Mr Odendaal") and the Appellant himself. MSA made available the evidence of Mr Ashleigh Mayberry ("Mr Mayberry") and Mr Garric Pretorius ("Mr Pretorius").
17. After completion of the evidence, Counsel orally presented the case of the Appellant to the NCA.
18. All interested parties were given an opportunity to address the NCA.

THE MATERIAL GCR's and SSR's

19. 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*)

20. All participants involved in motorsport events subscribe to this authority. As such, a contract is concluded based on the “*rules of the game*”.

21. There exists a ranking structure in the MSA Rules and Regulations. (General Competition Rules are referred to as “GCR’s”).

22. The “*rules of the game*” of motorsport are structured in 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*)

23. It is expected of every entrant and competitor to acquaint themselves with the GCR’s constituting the “*rules of the game*” and to conduct themselves within the purview thereof.

(see *GCR 113 read with GCR 122*)

24. Under the heading “*Introduction*” to the GCR’s the following is recognised by MSA:

“SO THAT THE ABOVE POWERS MAY BE EXERCISED IN A FAIR AND EQUITABLE MANNER MSA HAS DRAWN UP THE PRESENT GCR’S AND SSR’S. THE PURPOSE OF THESE GCR’S AND SSR’S AND THEIR APPENDICES IS TO ENCOURAGE AND FACILITATE MOTOR SPORT IN SOUTH AFRICA...”.

(own emphasis)

(see *GCR’s Part I, Introduction*)

25. A competitor is defined in GCR 19 as:

*“19. “**COMPETITOR**” means any person or body whose entry is accepted for, or who competed 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 parent or guardian of such minor will be deemed to be the competitor for the purposes of the GCR's."

(own emphasis)

(see GCR's definition 19)

26. GCR 118 makes reference to the consumption of alcohol. It provides as follows:

"CONSUMPTION OF ALCOHOL

It is forbidden for any competitor to consume alcohol while taking part in an event, or in the time period between a competitor completing an event and the relevant race officials at the event giving a decision on any protest and / or appeal that he / she may have lodged. Offenders shall be excluded from the event and shall be reported to MSA for possible further action. Likewise, action may be taken against any competitor where persons associated with him / her cause unnecessary problems for the race officials as a result of being under the influence of alcohol."

(see GCR 118)

27. The attendance of competitors at prize giving is an important feature of motorsport to celebrate the result of the event. It is indeed required that competitors are present at prize giving. GCR 121 provides in this regard that:

"Drivers, co-drivers and passengers must be aware of the articles, rules and regulations governing the competition they are entered in. In particular, they:

...

ix) ... They must also be present, unless by prior agreement with the organisers at any prize-giving or ceremony where their presence is required by the regulations."

(own emphasis)

(see GCR 121)

28. In addition persons taking part in motorsport are obliged to be examined by an alcohol control officer and to allow a sample of blood to be taken for laboratory analysis. GCR 122 vii) provides that:

“Every person...taking part...:

vii) agree to be examined by a ... alcohol control officer prior to, during or following a motorsporting event ... and further agree to allow a sample of blood and / or urine to be taken for laboratory analysis by the alcohol control officer concerned to determine the presence or otherwise of alcohol...”

(see GCR 122)

29. In terms of GCR 122 viii) should the analysis reveal the presence of alcohol, it will result in MSA taking disciplinary action.

30. GCR 172 deals with a variety of offences. These offences are formulated to ensure that motorsport takes place within the boundaries of the GCR's and to ensure the integrity of motorsport competition. The offences discourage a breach of the GCR's and is clearly defined to advance the participation of persons in motorsport and to protect the public integrity of the sport which is followed by a large audience both nationally and internationally. GCR 172 iv) and GCR 172 vi) are of particular importance in this appeal. It provide as follows:

“Any of the following offences in addition to any other offences specifically referred to previously or hereafter, shall be deemed to be a breach of these rules. ...

iv) Any proceeding or act prejudicial to the interests of MSA or of motor sport generally shall be deemed a breach of the regulations and disciplinary action may be taken against offenders.

By way of clarification, it is confirmed that the following shall be included in the definition of “prejudicial acts” as per the above:

- Intimidation, either on track or off track.*
- Verbal and / or physical abuse.*
- The distribution / publication via e-mail, cell phone text message or internet website and social media of comments which may be deemed abusive and / or slanderous and / or demeaning and / or inappropriate.*

- Acts (including comments and / or gestures) which would reasonably be considered by the general public to be offensive or inappropriate.

It is stressed that the above list is not exhaustive and that each case will be treated on an individual basis.

...

vi) *Misbehaviour or unfair practice.*”

(own emphasis)

(see GCR 172)

31. GCR 177 provides for a scale of penalties in order of increasing severity which a disqualification being listed as the most severe penalty.

(see GCR 177 vi))

EVIDENCE RECEIVED

32. Oral evidence was presented and video clips received by the NCA.

33. The video clips reflected the following:

33.1 exhibit “P” recorded the events at the Protea Hotel where Mr Dormehl features prominently. In the video clip, Mr Dormehl can clearly be seen and several persons were pushing and pulling on each other. Mr Pretorius, a witness who testified, was seen as trying to approach Mr Dormehl physically. He was constantly pushed away by one of the persons in the video clip identified as a certain “Sven”. In the video clip, Mr Dormehl can be seen as being involved in a verbal altercation and he is ultimately pushed away and led out of the lounge by Mr Odendaal who accompanied him to the Protea Hotel. The last footage on the video clip shows Mr Dormehl walking out of the lounge with Mr Odendaal, whilst insults are hurled at Mr Dormehl. The persons, who were in the lounge, clearly did not want Mr Dormehl’s presence there and he was pushed and verbally pressurised to leave the room;

33.2 exhibit “Q” recorded events at a sponsor’s tent at the race event at approximately 20h00. The recording showed several persons pulling and

pushing each other and Mr Dormehl can be seen as trying to separate certain persons from each other;

33.3 exhibit "R" is a further video clip recorded in the lounge area of the Protea Hotel and it shows several persons scattering in different directions and a female voice shouting "*he has got a gun*".

34. It is emphasised that the Appellant did not challenge the authenticity of any one of the video clips or challenged their content.

35. At the COE, the Appellant, when asked by a Court member whether he had anything with him that resembled a firearm, answered that he was in possession of his son's toy gun. This version was admitted by the Appellant during the NCA as having been a lie. The Appellant submitted that he was put under pressure at the COE and that he lied. He did not explain what pressure he was put under. During his evidence at the NCA, he informed the NCA that he was in possession of a firearm, but that it was in his pocket, that it was unloaded as he previously removed the cartridges. When asked as to why he carried the firearm with him, he informed the NCA that he was concerned as to his safety as the Protea Hotel is in close proximity of a township and that there was a security risk.

36. The appeal bundle contains disturbing reports, generally carrying an undertone of unruly and undisciplined behaviour at motocross events, which were filed with MSA following the event:

36.1 Mr Wayne Smith ("Mr Smith") filed a report to MSA on 14 October 2015 (exhibit "A2") in which he complained of the unacceptable behaviour of Mr Dormehl and Mr Durow at the event and thereafter. Mr Smith testified at the COE but was strangely not called at the NCA. It is the Appellant's case that Mr Smith's wife, Sarah Martin ("Ms Martin"), invited him to the Protea Hotel to attend. No supporting evidence was provided by the Appellant and no explanation was given as to why Mr Smith and / or Ms Martin were not called to the NCA. The report of Mr Smith, if it was to be believed, placed Mr Dormehl as one of the central figures of the events for which he was convicted by the COE. The COE had the benefit of hearing the evidence of Mr Smith, Ms Martin, Mr Broodryk, Mr Mayberry and Mr Pretorius (the last two mentioned testified in the NCA);

- 36.2 Ms Martin's complaint is contained in the Appeal bundle (exhibit "A4"). There is no explanation as to why she was not called to the NCA;
- 36.3 Mr Kevin Kelly ("Mr Kelly"), a sponsor in the series, voiced his complaint on 13 October 2015 (exhibit "A6"). According to Mr Kelly, he cancelled his sponsorship as a result of the way that parents behaved at racing events. Mr Kelly describes in his report that continuous fighting, arguments, fist swinging, unsportsmanlike behaviour, bad language and threats moved him to ultimately withdraw his sponsorship which for a period of a year was approximately R1 million. He did not testify at the NCA;
- 36.4 the reports of Mr Mayberry (exhibit "A9") and Mr Pretorius (exhibit "A12") are also contained in the appeal bundle. Mr Mayberry was not a witness of the events that transpired at the Protea Hotel. Reference is made by Mr Mayberry thereto that a certain Shawn Docherty ("Mr Docherty") was directly involved in the firearm incident. Mr Docherty was also not called to the NCA hearing, Mr Pretorius' version in his report was that Mr Dormehl returned to the hotel "...to cock a gun at my head...".
37. Further reports were also submitted to MSA which largely contained hear-say evidence:
- 37.1 the report of Mr Craig Barthes constitutes hear-say and requires no further consideration (exhibit "A13"). He did not testify at the NCA;
- 37.2 Mr Darryl Fitz-Gerald also filed a report (exhibit "A14"). He also reported hearing an argument and swearing at the bar but as to the events at the Protea Hotel, he was largely absent. He did not testify at the NCA;
- 37.3 Ms Maritza Rautenbach filed a report (exhibit "A15"). Her report is of a hear-say nature as the manager on duty in the bar made a report which she restated. She did not testify at the NCA.
38. The Appellant submitted exhibit "S", being a letter from Mr De Klerk, the General Manager of the Protea Hotel. Mr De Klerk was not called to testify and his version records that "*the hotel's involvement was not needed or requested during this*

argument... between the participants of the MX race on 10 October 2015.

39. Mr Van Eeden testified in the Appellant's case. He testified that it costs an amount of R80 000.00 to R100 000.00 per event to prepare the track for the event. The national event was held at his premises and there was an incident between Mr Smith and Mr Dormehl. There was no physical incident and it was just a verbal incident/ Mr Smith and Mr Dormehl walked away and resolved the matter. The video clip at the beer tent showed the first incident where several persons were involved. Mr Dormehl was indeed trying to defuse the situation. Mr Dormehl did use strong language but the shouting came from both sides of those involved. According to Mr Van Eeden, the event starts and closes at a certain time and after prize giving, MSA's involvement terminates. In response to questions by the NCA, Mr Van Eeden explained that the Protea Hotel was approximately 6 km away from the track and that several of the competitors resided there.
40. Mr Odendaal testified that he was at the event and he served as a mechanic for one of the competitors. He drove Mr Dormehl to the Protea Hotel and he was not drinking alcohol that evening. When he arrived at the Protea Hotel, Mr Smith and Mr Dormehl had drinks at the bar and then went to the lounge area. In the lounge there was an incident that food was being thrown around and Mr Dormehl then tried to discipline the persons who threw food around. Mr Pretorius was abusive to Mr Dormehl. According to Mr Odendaal the persons in the lounge were drunk. Mr Dormehl responded to Mr Pretorius (saying "*fuck off*") and confronted him. A certain "*Sven*" got involved and a physical pushing started. Mr Dormehl was leaving the premises when Mr Docherty followed him. At that point in time, Mr Dormehl turned around and was out of sight for a period of time, behind certain pillars. This was for approximately 15 seconds. There was swearing between Mr Dormehl and Mr Docherty. In response to questions from the NCA Mr Odendaal stated that although he knew that Mr Dormehl had a firearm, he did not see him point it. The firearm could have been in Mr Dormehl's pocket. Mr Dormehl left and there was no involvement by security.
41. Mr Dormehl testified that he had words with Mr Smith at the prize giving but that the issue was sorted out between them and that they had a drink together later. Mr Dormehl confronted Mr Smith because he believed that Mr Smith phoned a sponsor. Mr Dormehl has never met Mr Mayberry. When Mr Mayberry approached him, he (Mr Mayberry) allegedly said that he will put him to sleep. At the beer tent

of a sponsor after the prize giving, there was no fist fight, but only pushing. He (Mr Dormehl) was invited to the Protea Hotel by Ms Martin. Whilst in the lounge he asked the “boys” to calm down as they were throwing food at each other. Mr Pretorius responded “*fuck you old man, I will fuck you up*”. Sven involved himself and started pushing him around. According to Mr Dormehl, Mr Odendaal escorted him out and he was threatened. He ultimately got to the door. Mr Dormehl then walked back to approximately 10 metres from them and said “*don’t threaten me, I am armed*”. He then turned around and walked out. He admitted that he lied to the COE by stating that he had his son’s toy gun. No security person came to resolve the matter. He had a firearm being a .38 special revolver on him but he did not draw the firearm. It was unloaded and in his right pocket. He carried the firearm because of the proximity of the township to the Protea hotel. He took the bullets out earlier that day. He put the firearm in his pocket because he was scared to leave it in the car. According to Mr Dormehl, Mr Smith has a vendetta against him.

42. Mr Mayberry testified that he was at the prize giving approximately twenty meters away from Mr Smith and Mr Dormehl. When Mr Mayberry looked at Mr Dormehl, Mr Dormehl stated “*wat wil jy maak groot seun?*” Mr Mayberry then answered that he will knock Mr Dormehl out. The incident between Mr Smith and Mr Dormehl interrupted prize giving. Adv Ripp SC cross-examined Mr Mayberry and he explained that his report to MSA (exhibit “A9”) was not a carefully crafted statement and that he believes that his version is consistent.

43. Mr Pretorius testified that he attended the event and that he later ended up at the Protea Hotel. Mr Pretorius was sitting on a couch when Mr Smith and Mr Dormehl had an altercation. Mr Dormehl asked him to “*shut up*”. He did not see any plates being broken. There was a verbal altercation and Mr Dormehl left. He came back with a firearm and Mr Pretorius ran towards him and said “*shoot me*”. He explained that he did so because he was intoxicated. The firearm was silver and he does not know whether it was loaded. The size (length) of the firearm was between 4 to 8 inches. He stated that Mr Dormehl did put the firearm away when people grabbed him. He explained that his reference to the word “*cock*” in his statement was intended to mean “*point*”. In cross-examination from Adv Ripp SC, he explained that he could not hear the detail of the argument between Mr Dormehl and Mr Smith. According to Mr Pretorius they were talking in loud voices and they were drinking at the time. He did not see anything broken.

THE MERITS

44. It is Mr Dormehl's case that a gross miscarriage of justice occurred. Mr Dormehl carries the onus to establish the gross miscarriage of justice. In addition, the evidence must be established on the evidential basis of a balance of probabilities.
45. The NCA has direct evidence as well as circumstantial evidence available in determining what indeed happened during the three incidents.
46. Proof of a fact generally means that the institution receiving the evidence, received probative material with regard to such fact and has accepted such fact as being the truth for purposes of this specific case. The process of consideration is one of evaluation.
(see Principles of Evidence, Schwikkard and Van der Merwe at 19 and further)
47. It is clear that most of the role-players involved in this matter liberally made use of alcohol at and following the prize-giving. On their own versions they were at different levels of intoxication during the incidents. The report of Mr Smith (exhibit "A1") confirms this. Mr Pretorius likewise confirmed his use of alcohol. The use of alcohol substantially contributed to the disorder that followed prize giving and the events thereafter.
48. Turning to the video footage produced during the NCA:
 - 48.1 there is no video footage available for the events at prize giving;
 - 48.2 the video footage as to the incident as the event at the sponsor's tent is not conclusive to make any finding against the Appellant in that regard. Indeed, the evidence of Mr Van Eeden tends to support what the NCA viewed at the sponsor's tent that Mr Dormehl was trying to keep arguing persons apart;
 - 48.3 the two video clips as to the incident at the lounge at the Protea Hotel are of strong probative value for the reasons detailed below.
49. The NCA did not have the benefit of all the available witnesses testifying to elucidate the facts in dispute. The absence of witnesses was not sufficiently

explained or at all, by any of the parties.

50. Unfortunately, there are numerous witnesses who testified at the COE, who did not testify at the NCA. It is the responsibility of MSA to ensure that witnesses who can elucidate the facts in dispute should be informed that their attendance is required. Notice was given by MSA but there appears to be no explanation from the witnesses as to why they did not attend the NCA. There is accordingly no acceptable explanation as to why Mr Smith, Ms Martin, Mr Broodryk and Mr Docherty did not testify at the NCA. The Appellant did not present the evidence of Ms Martin to establish that he was invited to the Protea Hotel as he claimed. No explanation was afforded by the Appellant as to why he did not call on Ms Martin to testify as to this important aspect, at the hearing.

51. As to the first incident at prize giving:

51.1 Mr Mayberry's version in his report was initially that Mr Dormehl "*will kill*" Mr Smith. This version was not repeated by Mr Mayberry in his testimony at the NCA. That there was a verbal altercation at prize giving, appears even from the evidence of Mr Dormehl at the NCA. The verbal altercation between himself and Mr Mayberry resulted in strong words being exchanged between them;

51.2 the NCA cannot find that there was an altercation that should be sanctioned. On the objective, produced evidence, Mr Smith and Mr Dormehl excused themselves from the prize giving and resolved their issue.

52. As to the third incident at the Protea Hotel:

52.1 the best evidence available is a combination of the video material and the versions of all the witnesses. Upon the available evidence, it is clear that after Mr Dormehl arrived at the Protea Hotel, that there was a verbal incident which was followed by a pushing and shoving. From the video footage, it is not only Mr Dormehl who was guilty of misconduct. Insults were verbally thrown at Mr Dormehl and even Mr Pretorius could be seen on the video trying to physically get to Mr Dormehl. It has not been established on a balance of probability that Mr Dormehl should be sanctioned for this incident.

53. As to the fourth incident:

53.1 this was the most serious incident involving the firearm. The NCA is unconvinced as to Mr Dormehl's version that he only carried the firearm in his pocket. If he truly feared for his safety going to an area where there is a township next to the Protea Hotel, he would have loaded the firearm. This he did not do, according to his own version. His explanation as to why he carried the firearm in his pocket, therefore makes no logical sense as it was an unloaded firearm. He also lied to the COE claiming that he had his son's toy gun with him. He does not explain why he did not afford the explanation that he feared for his safety when the COE asked him for an explanation. As an objective fact, Mr Dormehl was armed with a firearm. His witness, Mr Odendaal could not see him for a period of 15 seconds. This is the crucial period when the alleged pointing of the firearm occurred. Mr Pretorius' evidence in this regard together with that of a woman shouting on the video "*he has a gun*" convinced the NCA that Mr Dormehl's version should be rejected. It is reiterated that the Appellant did not dispute the video clip that recorded the events when the outcry regarding the firearm was made. That comment "*he has a gun*" together with the evidence of Mr Pretorius leads us to the finding that Mr Dormehl was armed and pointed the firearm at Mr Pretorius. The probabilities, in our view, support our findings particularly so when one considers that Mr Dormehl had been verbally and physically pushed from the lounge of the Protea Hotel. In his evidence to the NCA, he raised a further version to state that he informed the persons that followed him, that he was armed. This version he also did not raise with the COE;

53.2 Mr Odendaal could not contribute to the critical moment where it was alleged that Mr Dormehl pointed a firearm at Mr Pretorius. According to Mr Odendaal there was a period of approximately 15 seconds where he could not see Mr Dormehl as his view to Mr Dormehl was obscured by pillars. Mr Odendaal could accordingly not exclude that Mr Dormehl pointed a firearm as he did not keep Mr Dormehl in his vision at all relevant times. It is extraordinary and odd that Mr Odendaal did not follow Mr Dormehl back towards the lounge and kept him in his sight in view thereof that Mr Odendaal could be seen on the one video clip guiding Mr Dormehl away from the lounge and removing him from the verbal and physical altercations. Mr Odendaal gave no reasonable explanation as to why he did not follow Mr Dormehl when Mr

Dormehl returned towards the lounge.

54. As to the grounds of appeal raised by the Appellant:

Grounds 1, 2, 4, 5, 6, 8 and 9

54.1 these grounds turn on the procedural and fairness requirements of hearings;

54.2 Ground 1: on 21 October 2015, the Appellant was informed through notice (exhibit "B2") to attend the COE. The Appellant was identified as the father of competitor Dormehl and he was advised that an investigation was being convened to investigate allegations of assault by himself at the 2015 Monster SA National Motocross prize giving and other subsequent gatherings on 10 October 2015. The Appellant was afforded seven days' notice as it required in terms of the GCR's. The Appellant was sufficiently informed as to the capacity in which he had to attend and the ground of appeal is held to be without merit;

54.3 Ground 2: COE's are mandated to enquire into incidents at events. The Appellant was sufficiently informed as to the incident which was to be enquired into and the ground of appeal is held to be without merit;

54.4 Ground 4: the events enquired into and the conduct of several persons can take place at the same hearing. This ground of appeal is held to be without merit. The NCA will deal with the first, third and fourth incidents in its findings, based on the evidence presented to it;

54.5 Ground 5: the COE dealt with the application for postponement. The NCA cannot hold that the discretion to refuse the postponement was incorrect. This ground of appeal is held to be without merit. The NCA in appeal dealt with the matter *de novo* and the prejudice complained of at the COE was not raised in the NCA;

54.6 Ground 6: the COE dealt with the application for postponement. The NCA cannot hold that the discretion to refuse the postponement was incorrect. This ground of appeal is held to be without merit. The NCA in appeal dealt with the matter *de novo* and the prejudice complained of at the COE was not

raised in the NCA;

54.7 Ground 8: the COE dealt with the application for postponement. The NCA cannot hold that the discretion to refuse the postponement was incorrect. This ground of appeal is held to be without merit. It must also be noted, in respect of grounds 5, 6 and 8, that whilst the NCA believes that the COE ought not to have placed such reliance on the heading of the application for postponement, the grounds and reasons set out by the applicants in the affidavit were vague, as well as being devoid of detail or merit. Thus, it is the view of the NCA that the COE correctly refused the postponement. The NCA in appeal dealt with the matter *de novo* and the prejudice complained of at the COE was not raised in the NCA;

54.8 Ground 9: it is contended that GCR 175 is inconsistent with the Constitution of the Republic of South Africa as it places a reverse onus on the Appellant. The COE did not consider the imposition of civil penalties and no allegation was made regarding offences alleged by provincial authorities or law enforcement authorities. This ground of appeal is held to be without merit;

Ground 3

54.9 Ground 3: a plain reading of GCR 172 shows that the GCR is applicable to “*on track*” and “*off track*” incidents. The GCR itself states that the list is not exhaustive and that each case will be treated on an individual basis. A substantial contingent of the competitors at the event resided at the Protea Hotel. Approximately twenty entrants were referred to. The incident in the lounge involved competitors of the event. They were at the Protea Hotel for the purposes of attending the event. The NCA finds that the attendance of the Appellant at the Protea Hotel was sufficiently linked to the event to resort the incident as being under the jurisdiction of MSA. In this regard, the GCR specifically provides for intimidation on or off the track and misbehaviour which is linked to motorsport events. The competitors were associated with each other and were socialising together at the Protea Hotel. The social gathering at the Protea Hotel was closely linked to the attendance of the competitors at the event (they resided at the Protea Hotel to attend the event) and took place within hours after the prize giving. On the evidence presented the NCA finds that the persons present in the lounge of the Protea

Hotel at the time, were all linked to the event. This ground of appeal is held to be without merit;

Ground 7

54.10 Ground 7: the Appellant excused himself from the COE and failed to participate in the hearing. In view of the findings of the NCA, this ground becomes academic as the NCA will impose its own penalty and has considered the circumstances of the Appellant to impose an appropriate penalty;

Ground 10

54.11 Ground 10: the Appellant excused himself from the COE and failed to participate in the hearing. In view of the findings of the NCA, this ground becomes academic as the NCA will impose its own penalty and has considered the circumstances of the Appellant to impose an appropriate penalty. In addition, the provision of GCR 19 provides that a minor may also be assisted by a guardian for the purposes of competing;

Ground 11

54.12 Ground 11: the Appellant excused himself from the COE and failed to participate in the hearing. In view of the findings of the NCA, this ground becomes academic as the NCA will impose its own penalty and has considered the circumstances of the Appellant to impose an appropriate penalty.

55. The GCR's are designed to provide a fair and equitable manner for MSA to govern motorsport. From the body of evidential material presented to the NCA, it is clear that motocross events particularly where minors are involved are frequently subject to severe incidents of alcohol abuse, verbal and physical altercations and incidents which bring the sport into disrepute. The participation of motorsport is based on the law of contract where participating role-players engage with each other within the rules of the game to conduct themselves within the purview thereof. The GCR's are there to encourage and facilitate motorsport in South Africa.

56. The Appellant is not a newcomer in motorsport. For several years, the Appellant assisted Cayle in his motorsport endeavours. As such, the Appellant is the competitor who enters events within the ambit of GCR 19.
57. GCR 172 *inter alia* serves to protect the public integrity of the sport. Verbal and physical abuse is not acceptable and undermines the spirit of motorsport. The intimidation of other participants in motorsport, on and off the track, should be severely criticised. There is no place in motorsport for verbal and physical abuse. Intimidation off the track will not be tolerated.

FINDINGS

58. The NCA finds that:

58.1 the appeal against the COE on the procedural and fairness requirements (grounds 1, 2, 4, 5, 6, 8 and 9) is dismissed;

58.2 on the facts presented to the NCA and in view of the NCA's findings regarding incidents 1 and 3 which were enquired into at the COE, Mr Dormehl's appeal as to incidents 1 and 3, is successful in that it has not been established on a balance of probability that Mr Dormehl acted in contravention of GCR 172 iv) and GCR 172 vi);

58.3 the NCA, in view of its findings regarding incident 4, will reconsider the penalty imposed on the Appellant and will take into account the interest of the minor child, Cayle, in the penalty imposed;

58.4 Mr Dormehl contravened GCR 172 iv) and GCR 172 vi) in that on 10 October 2015 at the Protea Hotel at a post-event social gathering of motorsport competitors and role-players and after the 2015 Monster SA National Motocross event, Mr Dormehl pointed a firearm at a competitor to wit, Mr Pretorius;

58.5 in doing so, Mr Dormehl intimidated Mr Pretorius and misbehaved. Therefore, his conduct fell within the ambit of GCR 172 iv) and GCR 172 vi).

59. The consumption of alcohol at events is forbidden until protests and appeals have been lodged. The use of alcohol at the event, clearly impacted on the conduct of the participants and the use of alcohol before or at prize giving ceremonies, should be considered by MSA. The use of alcohol is socially acceptable, but the abuse of alcohol clearly impacted on the orderly running of the prize giving and the events that followed immediately thereafter.
60. MSA should not hesitate to apply GCR 122 vii) when necessary.

PENALTY IMPOSED

61. The Appellant is a first time offender. He is a businessman. The incident is of a serious nature but it is taken into account that the involvement of alcohol impacted substantially on all the relevant role-players. Mr Pretorius and the attendees in the lounge at the Protea Hotel are not without blame and their conduct clearly contributed to the verbal and physical altercation. Insults were thrown towards the Appellant as can be seen from the video footage.
62. The NCA is of the view that:
- 62.1 a permanent disqualification is not called for in the current instance in view thereof that there was no injury to any person. The penalty of a permanent disqualification imposed by the COE is set aside;
- 62.2 a penalty of a fine together with a suspension of the licence of the competitor will be an appropriate penalty. Taking into account that Cayle was not involved at all in any of the incidents, the NCA is of the view that the suspension of the licence should be suspended in totality as directed below;
- 62.3 taking into account all the circumstances of the matter, the interest of MSA, the interest of the Appellant and all the presented evidence, the following penalty should substitute the penalty of the COE:
- 62.3.1 the fine of R25 000.00 imposed by the COE is set aside and substituted with a fine of R50 000.00;

- 62.3.2 the competitor's licence is suspended for a period of 24 months from 1 January 2016. The suspension in itself is suspended on condition that the Appellant is not again convicted within the next two years for a contravention of GCR 172 iv) or GCR 172 vi) committed during the period of suspension;
- 62.3.3 no licence may be issued to the Appellant before the fine of R50 000.00 is paid;
- 62.3.4 the disqualification notice served on the Appellant is set aside.

ADDITIONAL RULINGS

63. The prevalence of physical and verbal altercations at motocross events, particularly where minors are involved, are of such a concerning nature that MSA should take the following steps with immediate effect:

- 63.1 Clerks of Course for 2016 must be directed in terms of the SSR's and SR's to specifically report to MSA after an event as to the abuse of alcohol at or during prize giving;
- 63.2 Clerks of Course for 2016 must be directed in terms of the SSR's and SR's to bring to the attention of competitors, in particular parents and guardians of minors, that their conduct during motorsport events will be closely monitored during 2016 and that MSA reserves the right to issue directives regarding the use of alcohol at motorsport events;
- 63.3 all competitors in motocross events licensed during 2015 and competitors applying for licenses for 2016, must be served with a copy of this judgment with a notice to draw their attention to these additional rulings;
- 63.4 at all driver's briefings during 2016 at motocross events, Clerks of Course must inform the competitors of these additional rulings.

ADMINISTRATIVE COSTS

64. Rule 13 of Appendix R provides discretion as to appeal fees. 50% of the appeal fee of the Appellant is forfeited in view thereof that the Appellant was not found guilty of incidents 1 and 3.

HANDED DOWN AT JOHANNESBURG ON THIS THE 14TH DAY OF DECEMBER 2015.

Electronically Signed

**Adv André P Bezuidenhout
Court President**

Electronically Signed

**Adv Paul Carstensen SC
Court Member**

Electronically Signed

**Mr Jannie Geyser
Court Member**

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