



# MOTORSPORT SOUTH AFRICA NPC

Reg. No 1995/005605/08

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**COURT OF APPEAL 435**  
**APPEAL LODGED BY MR JODY van ZUMMEREN**  
**AGAINST THE DECISION TO RE-INSTATE COMPETITOR DONALD THERON AT THE SECOND ROUND OF**  
**THE DIRT OVAL NATIONAL CHAMPIONSHIP HELD IN CAPE TOWN ON THE**  
**18<sup>th</sup> OF NOVEMBER 2017**  
**HEARING HELD AT THE MSA OFFICE IN CAPE TOWN ON TUESDAY 23<sup>rd</sup> JANUARY 2018**

Present:	Joy Dolinschek	-	Court President
	Tony Norton	-	Court Member
	John Coetzee	-	Court Member
	Jody van Zummeren	-	Competitor
	Donald Theron	-	Competitor
	Phil Herholdt	-	Clerk of the Course
	Neva van der Merwe	-	MSA Steward
	Wynand van Niekerk	-	Club Steward
	Leone Liebenberg	-	Race Secretary
	Wade Grimbeek	-	DO4SA Appointed Official
	Ian Long	-	DO4SA Appointed Official
	Elton Gilmer	-	Witness / Representative for J van Zummeren
	Steyn Wepener	-	Representative for D Theron
<b>In attendance:</b>	Lizelle van Rensburg	-	MSA Scribe

The Appeal is heard by the appointed MSA Appeal Court in accordance with the provisions of GCR220.

The Court President introduced herself and the court members. There were no objections to the composition of the court.

## 1. Court of Appeal 435

This hearing arises from an Appeal submitted by competitor Jody van Zummeren.

The Court President requested everyone to introduce himself or herself and state the positions they held in respect of the event. It became immediately obvious that some officials

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Directors: Adv. G. T. Avvakoumides (Chairman), A. Scholtz (Chief Executive Officer), A. Taylor (Financial), D. Easom, J. Fourie G. Hall, A. Harri, E. Murray, M. Rowe, R. Schilling, Ms M. Spurr, S. Van der Merwe

had changed positions/been added and even held more than one official position. For the purpose of the hearing the positions as per the officials sign on sheet was used by the Court.

#### **Annexure A**

The appeal arises from the Dirt Oval event held at Tygerberg Raceway on the 18<sup>th</sup> of November 2017.

The Appellant Jody van Zummeren submits that competitor Donald Theron was incorrectly re-instated after an on track incident between Theron and Davey. Competitor van Zummeren further appeals a number of errors in the administration and actions by the various officials. **OT 25.9**

## **2. Evidence Lead**

2.1 The Clerk of the Course (Phil Herholdt) and the MSA Steward (Neva vd Merwe) both stated that they had not been sent SR's. The CofC stated that he had asked for the SR's on the day, but these were not available, the MSA Steward supported this. Asked about the incident between competitors #32 and #33 and possible deployment of the black & orange flag, Mr. Herholdt further stated that he had not deployed the black & orange flag to the competitor after the incident as in his opinion #32 was circulating at an acceptable race speed. In his opinion, the incident with competitor #33 was an accident, nothing that had put competitor #32 off line or out of the race. He stated that he was not aware of the incident report or that it was being reviewed.

To the question regarding the posting of the results, Mr. Herholdt said he had posted them at approximately 23.00 and signed them off as final at 23.55. He has no idea who altered them afterward.

2.2 The Race Secretary and Chief Lap scorer, Ms Leone Liebenberg, said that an amendment to the original SR's had been circulated to competitors on or about the 7<sup>th</sup> of November 2017. Two different sets of SR's were tabled. One having been issued on about the 17<sup>th</sup> of October 2017 and the second on about the 7<sup>th</sup> of November 2017. The second set of SR's was 'published' with no permit number.

In reply to a question regarding the posting and alteration of the results, Ms Liebenberg replied it is a function of the scorers and that the Stewards had told them to change the points. Ms Liebenberg confirmed that the 'dropping' of 1 heat is in the second set of SR's.

2.3 Mr Long – Stand in Steward at the protest/management meeting. Tabled a written apology from Competitor #33 Davey, admitting that he did make contact with #32 albeit accidentally.

2.4 Mr. Grimbeek stated that he has a law degree but has never used or practiced law and was indeed one of the assistant Clerks of the Course. However, the race under discussion was immediately prior to the race in which his child participated and therefore he was not available to Clerk during the race under discussion. (2.1 Modified's) and that he had only reviewed the protest tendered by Mr. van Zummeren.

As regards the incident under discussion here, Mr. Grimbeek stated that there are two C of C's at the event with each handling various classes. Mr. Mornè vd Merwe was the Clerk for the 2.1 Modified and that he Wade Grimbeek was with Ms. Vd Merwe while Mr. Herholdt was at the prize giving venue signing off results.

Mr. Grimbeek stated that incident reports are given to the Club Steward, someone who knows the rules, who then makes recommendation/s to the C of C.

- 2.5 Ms vd Merwe, in her capacity as MSA Steward, stated that incident reports were handed to her by the Club Steward. That the incident report related to this incident and at least one other matter were unsigned when handed to her. She queried when these had been received at which point they were signed and timed in her presence.

Ms vd Merwe confirmed that none of the incident reports were dealt with by the CofC and that she had dealt with them all, making comments on each. At 00:45, she was told that #32 had to be reinstated. The results were posted/alterd while she was still looking at the footage.

- 2.6 Mr Wynand v Niekerk stated that he too has a law degree, but is not representing Competitor Theron. He said the same thing had happened at the Kimberley event with regard to incident reports and that it was decided thereafter that incidents would be dealt with by the Stewards.

(No documents were made available to the Court in support of this statement, neither was a bulletin available/ issued in this regard.)

- 2.7 Mr Theron - Competitor #32 explained that he was lying 1<sup>st</sup> in the championship and SA2, Jody v Zummeren was second. He #32 had a 6 point advantage. Four laps from the end of the final #33 collided with his left side of the car, causing a flat tyre. He immediately submitted an incident report as required and handed it to the Club Steward, Mr. W v Niekerk.

To a question regarding his 'retirement' of the vehicle, he said that he was obliged to move over and could/should have moved to the infield. Mr. Theron stated that #33 had approached him before prize giving and apologized for his part in the incident.

- 2.8 Mr Jody van Zummeren, the Appellant and competitor #SA2, referring to the incident report and the protest procedures, stated that he was not informed of what was going on and only found out 2 hours later just before prize giving.

Mr van Zummeren having submitted his protest was advised that the protest would be heard on either Wednesday or Thursday of the following week. He was not informed of the day, date, place or time of the protest hearing but on the Thursday morning, he was told that the decision of the C of C was upheld and that #32 had been reinstated.

In addition, Mr Zummeren also brought to the Courts attention that competitors were only told at drivers briefing that 1 heat would have to be dropped and that same is not in the original SR's.

- 2.9 Mr Long and Mr Grimbeek, in their capacities as supplementary Stewards:- Mr. Long stated he, Mr Grimbeek and Mr Chris Liebenberg had a management meeting at the home of Mr Liebenberg where the decision was made to uphold the Clerks decision and re-instate Mr. Theron #32. It is clear that #33 made contact with #32.

### **3. Court References**

GCR 78  
 GCR 87  
 GCR 88  
 GCR 141 vii)  
 GCR 144  
 GCR 151 & 151 i)  
 GCR 152 xxviii)  
 GCR 156 xix)  
 GCR 201 ii)  
 GCR 202  
 GCR 226 v) b) & c)  
 OT 25.9  
 OT 35.4  
 OT 42

### **4. Court Findings**

- 4.1 That Tygerberg Raceway issued a second set of SR's, with changes other than the officials and program. The major change was the dropping of a heat and thus altering the sporting regulations. The organisers were unable to provide the Court with proof that MSA had received a copy of the second version of the SR's or a list of the competitors to whom this second version was sent. The second version of the SR's is thus found to be invalid and the dropping of a heat is set aside.
- 4.2 Tygerberg Raceway omitted to ensure that race officials more specifically the MSA Steward and the Clerk of the Course were provided with copies of the SR's, either prior to the event or at the event.
- 4.3 That Mr. Grimbeek signed on as an assistant Clerk of the Course, he is the father of a competitor and was one of the DO4SA appointees to hear the protest i.e. affectively becoming a Steward.

It is noted that DO4SA have appointed a knowledgeable person, in the capacity of 'Club Steward' to advise competitors. The Court recommends that such an appointment should be titled as 'Competitor liaison' and not 'Club Steward'.

- 4.4 The MSA Steward does not hold the appropriate licence for Dirt Oval. Had the second version of the SR's been forward to MSA, this would have been pointed out to the organisers. This however does not exonerate the MSA Steward, nor is the MSA Steward exonerated from ensuring that she was in possession of ALL relevant documentation.

- 4.5 The Clerk of the Course had no idea that the results had been altered. He is required to check the results and any amendments thereto and convey it to the Stewards in both their provisional and final publishing.
- 4.6 That the Stewards and particularly the MSA Steward compromised herself/themselves by being involved in various incident reports and therefore could not in any case hear the protest.
- 4.7 That Competitor Van Zummeren was not informed of date, time or place when his protest would be heard.
- 4.8 That the Stewards and DO4SA substitute Stewards erred in their decision to reinstate Competitor Theron based on OT 25.9. That OT 25.9 deals with a competitor who was unable to complete a race. Video footage confirms that competitor Theron did indeed complete the race.
- 4.9 That OT 35 – Classification of a finisher would indeed have been the appropriate regulation.
- 4.10 A R10,000.00 fine is imposed on the organisers, being in breach of GCR's 78, 87, 88, 141vii), and 226v)b)c)
- 4.11 The Clerk of the Course (Phil Herholdt) erred in his application of his duties. His Dirt Oval officials licence is withdrawn for three months from the 1<sup>st</sup> February 2018 and which withdrawal is suspended for the same period provided no further errors in the application of duties are committed. The Clerk of the Course is to review the GCR's with regard to his duties, authority etc.
- 4.12 The MSA Steward does not hold a licence for this category, and severely compromised herself and fellow officials as well as the competitors. The MSA Steward is hereby instructed to write the MSA Dirt Oval facet examination within 30 days from the publication of these findings.
- 4.13 The Club Steward Mr. W v Niekerk is severely reprimanded and is instructed to write the MSA Dirt Oval facet examination within 30 days from the publication of these findings.
- 4.14 Competitor #32 Theron's re-instatement in accordance with OT25.9 which is set aside.
- 4.15 Competitor #33 Davey is excluded from the final and competitor Theron (#32) is to be awarded the points which competitor Davey would have scored. – OT 35.4
- 4.16 The organisers are instructed to re-score the event, including the heat, which was erroneously dropped.
- 4.17 The Appeal of Mr. Van Zummeren fails in respect of the on circuit incident, but is successful in terms of the administrative errors, 50% of the Appeal fee is returned.
- 4.18 The Court recommends that ALL officials be licenced according to the status of the event at which they are participating.

4.19 Costs to the amount of R3, 000.00 are awarded against the organisers.

All Parties are reminded of their rights in terms of GCR 212 B

These findings were distributed via email on 06<sup>th</sup> February 2018.

**161427/144**