



MOTORSPORT SOUTH AFRICA NPC

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MSA COURT OF APPEAL 441

HEARING HELD AT THE MSA OFFICE IN CAPE TOWN ON THURSDAY 11th JULY 2019

In the appeal of

CHARL VISSER (Junior) - APPELLANT

relating to his exclusion from the results of the Rotax Regional Championship event held at Killarney International Raceway on 15 June 2019.

Present:	Steve Harding	Court President
	Frank Creese	Court Member
	Kosie Swanepoel	Court Member
	Charl Visser (senior)	Father of the appellant
	David Walker	Entrant and Guardian of the appellant
	Kevin de Wit	Clerk of the Course
	Emile McGregor	Technical Consultant
	Jannie Habig	Technical Delegate: MSA Karting Commission

In attendance:	Lizelle van Rensburg	MSA Scribe
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FINDINGS

1. On 28 June 2019 Motorsport South Africa (MSA) appointed a panel to conduct a hearing of the appellant's appeal, designated MSA Court of Appeal 441, on Thursday, 11 July 2019.
2. The appeal related to the exclusion of the Appellant by the Stewards from the results of the day of the Rotax Regional Championship event held at Killarney International Raceway on 15 June 2019.

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



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

Directors: A. Roux (Chairman), A. Scholtz (Chief Executive Officer), A. Taylor (Financial), F. Alibhai, D. Easom,
G. Hall, A. Harri, E. Murray, M. Rowe, R. Schilling, Ms M. Spurr, S. Themba, S. Van der Merwe

BACKGROUND AND PROCEDURAL MATTERS

3. At the commencement of the hearing the court enquired as to whether there were any objections to the constitution of the appeal panel. In response thereto Mr Walker indicated that he objected to the presence of the Court President inasmuch as the Court President had held discussions with other members of the court in relation to the matter. The court advised Mr Walker that these discussions related to procedural matters, more specifically those arising from correspondence addressed by Messrs Walker and Visser (senior) and their attorney to MSA. Mr Walker was then asked whether he wished to persist with his objection and he indicated that he merely wished it noted.
4. The correspondence referred to in paragraph 2 above related to the presence of and admissibility of any evidence to be presented by the Stewards of the relevant race meeting, addressed by Messrs Walker and Visser (senior) to MSA, and subsequent correspondence addressed to MSA on their behalf by their attorneys. The Secretariat of MSA has no judicial or disciplinary powers. Its powers are limited, in the context of disciplinary and appeal matters, to secretarial and administrative issues relating to such matters. While MSA are afforded the opportunity to call witnesses or provide the evidence of specialists or experts whose evidence, they consider to be useful in assisting the court, they have no power to decide issues relating to the admissibility of any evidence. (*See paragraph 34 of the Memorandum of Incorporation of MSA; and refer GCR 220.*)
5. The court considers the above correspondence to have been an improper attempt to dictate to MSA and the court the way the hearing was to be conducted. Nonetheless, the court decided for pragmatic reasons to dispense with the evidence of the Stewards, inasmuch as this related purely to ancillary matters, and was unlikely to have any effect on the outcome of this hearing.
6. The parties were informed that the proceedings were being digitally recorded both by MSA and by the Court President. It was placed on record that the official recording would be that of MSA and that the recording by the court president served merely as an aide memoir for the writing of this judgement and, if necessary, as a backup.
7. The court questioned Mr Walker as to whether he in fact met the requirements of article 15 of the 2019 MSA National Karting Championship Regulations and Specifications ("MSA Karting Regs"), read with GCR 22. Messrs Walker and Visser responded that MSA had agreed, in writing, to his acting as the proxy for Mr Visser (senior) as entrant and guardian of Mr Visser (junior).

Inasmuch as both Mr Visser (senior) and Mr Walker were present to participate in the hearing the court took the view that nothing turned on this issue and proceeded to hear the matter.

8. At the request of the court, Mr Walker confirmed on behalf of the appellant that Messrs Swanepoel and Creese were both individuals appointed by the MSA Karting Commission Exco based on their experience and knowledge of karting technical matters. (*See article 11 of the MSA Karting Regs*).
9. The court president indicated that by virtue of his participation in the hearing of this appeal that he would not participate in the consideration of any application for leave to appeal to the National Court of Appeal, against the findings of this court, or indeed in any such appeal should leave be granted.
10. The appeal was brought following on leave to appeal granted in terms of GCR 212A on 25 June 2019 and the appellant timeously provided the required formulated appeal in terms of GCR 212 (iii) and GCR 219, ("the appeal document").
11. The factual background to the appeal is as follows.
 - a. The appellant participated in the races for the relevant class at the race meeting in question including qualifying, race 1, race 2 and race 3.
 - b. The appellant broke the lap record in heat 1, with the acknowledged consequence that his kart would accordingly be subjected to technical examination as provided for in the SR's of the event. (*refer SR 37*).
 - c. The appellant's engine and carburettor were examined after the conclusion of race 3, (the final race for his class for the day).
 - d. At the conclusion of the examination the technical consultant issued a message to the Clerk the Course recording his findings and making a proposal in relation to the applicable penalty. A copy of this document is annexed to the appeal document as annexure "A".
 - e. The carburettor was sealed with seal member 683367, boxed and the seals on the box were signed by Mr Visser (senior).
 - f. Annexure "A" was signed by the TC at 18:15, delivered to Mr Walker at 19:06, and at 20:10 the stewards imposed a penalty of exclusion from the results of the day, (i.e. qualifying, race 1, race 2 and race 3).

The above facts are common cause.

APPLICABLE REGULATIONS

12. The National Court of Appeal has frequently detailed the control of Motorsport and the applicable regulations and what it terms “the rules of the game”. (*See for example, paragraphs 19 to 22 of the findings in MSA National Court of Appeal No. 166*). In considering this appeal, the court has specifically considered the following regulations.
- a. The General Competition Regulations of Motorsport South Africa (“GCR’s”);
 - b. The 2019 National Karting Championship Regulations and Specifications (“MSA karting regs”);
 - c. The South African Rotax Max Challenge Sporting Regulations (SARMC regs);
 - d. The Global Rotax Max Challenge Technical Regulations (“GRMC technical regs”); and the
 - e. The supplementary regulations for the event in question (“SR’s”).

THE PROCEDURE FOLLOWED DURING THE APPEAL

13. All hearings of appeals in terms of the GCR’s are held de novo (*see GCR 208 viii*).
14. There is no prescribed procedure laying down the process to be followed in relation to an MSA Court of Appeal and it is accordingly up to the panel hearing the matter to determine such process. While normally the appellant, as *dominus litus*, would be called upon to lead evidence and make submissions to the court first, the court suggested that in this instance it would be useful to hear firstly from the technical consultant in regard to the reasons why he found the carburettor to be non-compliant with the applicable regulations. All parties agreed to this procedure.
15. Mr McGregor, the technical consultant, then gave evidence clarifying his findings that the carburettor was non-compliant inasmuch as the “float levels” (described as “carb levels” in annexure A) were non-compliant with the relevant regulation. (*See Art 6.10 of the GRMC technical regs*).
16. At this point it was agreed to examine the carburettor. Mr Visser (senior) confirmed his signature on the seals of the box, thereafter the box was opened, and the carburettor removed. The court examined the seal on the carburettor and verified that the number on the seal correlated with the number provided in annexure A. Thereafter, Mr Habig, the technical delegate of the karting commission, cut the seal and the carburettor housing was opened, the gasket removed, and the carburettor measured by Messrs Habig, McGregor, Swanepoel and Creese all of whom were in agreement that the carburettor was non-compliant. Messrs Walker and Visser were also offered the opportunity to check the measurement.

THE APPLICABLE REGULATIONS

17. The relevant regulation, article 6.10 of the GRMC technical regulations provides as follows:

“The height of the 2 arms of the float lever must be within the slot of the carburettor gauge (Rotax 277400) by their normal weight measured at carburettor housing without gasket in reverse upright position.”

The measuring procedure is further illustrated at page 28 of the relevant technical regulations by the following photograph:



18. Mr Habig utilised his own gauge, for the purposes of these measurements after the court had been given the opportunity to examine the gauge and determined that it was marked “Rotax 277400”. Mr McGregor also had available his own carburettor gauge with similar markings and the float level was measured according to the prescribed method using both gauges. The consensus between Mr Habig as technical delegate; the technical consultant Mr McGregor and the 2 expert members of the court was that while one of the 2 arms of the float lever was compliant with the regulations the other was non-compliant. The consensus estimate was that the non-compliance measured approximately 0,5mm, while Mr Visser (senior) suggested that this non-compliance was less at approximately 0,2mm.

19. As can be seen in the image in paragraph 17, the gauge itself, allows a certain level of tolerance in that the slot dimension is greater than the thickness of the float arm. The gauge is colloquially

described as a “go/no-go gauge”. In other words, should the float arm not pass through the gauge by however small a margin the carburettor will be non-compliant.

THE APPELLANT’S SUBMISSIONS

20. Messrs Walker and Visser (senior) were then both afforded the opportunity to address the court and make submissions on behalf of the appellant based on the formulated appeal.

21. Included in the submissions were the following:

- a. The technical examination took place after race 3 and that in terms of article 11 of the MSA karting regs it should be reasonably assumed that the contravention applied to the specific race only. (Paragraphs 5 to 9 of the formulated appeal);
- b. Article 4.5 of the GRMC technical regs provides for dimensional readings of components to be between +10°C and +30°C and no evidence was given of temperature. (Paragraphs 10 and 11 of the formulated appeal);
- c. That the appellant disputes that the technical consultant inspected the carburettor in the manner envisaged in the technical regulations. (Paragraph 12 of the formulated appeal);
- d. That the technical consultant failed to comply with GCR 252(vi) and all the technical regulations. (Paragraphs 13 and 14 of the formulated appeal); and
- e. That the Stewards failed to comply with GCR 175 in a variety of aspects.

22. In these findings we will deal with the question of whether the carb complied, followed by the items listed in subparagraph b, c, d and e above, before returning to deal with paragraph a.

COMPLIANCE OF THE CARBURETTOR

23. The court finds that the carburettor was non-compliant with the provisions of article 6.10 of the GRMC technical regs inasmuch as the height of one of the 2 arms of the float lever was not within the slot of the carburettor gauge. The court is satisfied that in terms of the measurements taken during the hearing the carburettor was non-compliant with the regulations.

THE TEMPERATURE ISSUE

24. The court finds regarding the submission advanced as detailed in paragraph 20 b above regarding the temperature to be irrelevant inasmuch as the test to be applied in relation to the float lever arms was simply whether they passed through the prescribed gauge or not. It is not a dimensional measurement and the temperature is accordingly irrelevant.

THE INSPECTION OF THE CARBURETTOR

25. The principal issue advanced in relation to the inspection of the carburettor was that the entrant, Mr Walker was not present during the examination of the carburettor. Mr McGregor advised that a mechanic from the team who brought the engine and carburettor to him for examination was present during the inspection. Mr Walker was aware that because of the lap record the kart would be subjected to technical examination after the event and had he wished to be present or represented by anyone other than the mechanic in question it was incumbent upon him to ensure that either he or such other representative was present.
26. While there is no requirement in the regulations for anyone to be present during the examination, the court agrees that it is good practice for the technical consultant to ensure that a representative of the team is present during such examination, and is satisfied that this requirement was met by the presence of the mechanic.

NON-COMPLIANCE BY THE TECHNICAL CONSULTANT WITH THE REGULATIONS

27. Regarding the contentions advanced in relation to GCR252(vi), there were no measurements taken or required to be signed for by the entrant/competitor and the technical officials. The test was a simple one; did the float lever arm pass through the gauge or not?
28. In respect of annexure A, while the court is of the view that this document could have been better compiled to reflect, with greater precision, the details of the non-compliance, by specifying that the float lever arms did not pass through the prescribed gauge rather than a simple but difficult to interpret statement "found carb level to be outside of spec", this does not imply any failure to perform the required inspection correctly. The contentions in this regard are rejected.

HEARING IN TERMS OF GCR 175

29. It was the submission of the appellant that the stewards failed to comply with GCR 175 in several aspects. It is clear from the contentions put forward by Mr Walker that he was in an earlier hearing with the Stewards with regard to an unrelated issue and that at the conclusion of that hearing, and, after all other parties had been excused, the Stewards discussed with Mr Walker the report which had been received from the technical consultant which found the kart of the appellant to be non-compliant with the regulations. It is explicit in the regulations that the consequences of such a finding by the technical consultant constitute an automatic exclusion from either the race in question (in certain circumstances) or from the entire race meeting. Mr Walker conceded that

apart from emphasising that he was not present when the carburettor was examined he did not request that the hearing be delayed in order for him to obtain information and make further submissions to the Stewards, and simply indicated that it was his intention to appeal.

30. From the timeline advanced by Mr Walker it would seem that the discussion with Mr Walker took place in advance of the imposition by the stewards of any penalty in respect of the contravention. While in this regard it may have been useful to the court to have heard evidence from the Stewards regarding the process followed, the Stewards were not present as a result of the objections of Messrs Walker and Visser (senior) as detailed in paragraphs 4 and 5 above. The court is of the view that Mr Walker as the entrant and guardian was indeed afforded a hearing relating to the contravention as envisaged in GCR 175.

THE PENALTY

31. The court is of the view that this was an inadvertent contravention, rather than a deliberate attempt to flout the rules in any way or to cheat, and that no additional sanction is warranted.
32. Turning finally to the penalty imposed by the Stewards the court is of the view that for a variety of reasons the penalty should only be imposed in relation to Race 3 on the day, and not to Qualifying, Race 1 and Race 2.
33. The court would like to express its gratitude to the parties for the non-confrontational and constructive way the appeal was conducted and express a particular word of thanks to Mr Habig for his guidance and assistance during the hearing.
34. Inasmuch as the appeal has been partially successful the court is of the view that 50% of the appeal fee should be refunded to the appellant.

FINDINGS

1. The penalty of exclusion from the results of the day imposed by the Stewards is set aside and substituted by a penalty of exclusion from Race 3 only.
2. MSA is to refund 50% of the appeal fee paid by the appellant in respect of this appeal.

Signed electronically

Court President

Steve Harding

Signed electronically

Court Member

Koos Swanepoel

Signed electronically

Court Member

Frank Creese

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

These findings were distributed via email on 16 July 2019.

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