



# MOTORSPORT SOUTH AFRICA NPC

Reg. No 1995/005605/08

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## COURT OF APPEAL 450

HEARING HELD IN SHED 1 AT ZWARTKOPS RACEWAY ON TUESDAY 20 OCTOBER 2020 AT 17H30

<b>Present:</b>	Tony Taylor	-	Court President
	Nomkhosi Nharmuravate	-	Court Member
	Richard Leeke	-	Court Member
	Maysurah Wally	-	Appellant
	Mohammad Wally	-	Father of Competitor Muhammad Wally
	Ian Richards	-	Club Steward
	Allison Vogelsang	-	MSA Circuit Sporting Coordinator
	Vic Maharaj	-	MSA Sporting Services Manager
<b>Attending via telephone:</b>	Wayne Riddell	-	Clerk of the Course
<b>Apologies:</b>	Paddy Venske	-	Court member
	Retlafenya Ramphenyane	-	Court Member
	Eric Schultz	-	MSA Steward
	Rob Laubscher	-	Chief Marshal
	Fayaaz Alibhai	-	Witness
	Aqil Alibhai	-	Competitor

### INTRODUCTION

The court members and attendees were introduced, and no objections were raised against the composition of the court, nor against the Clerk of the Course attending the hearing via telephone.

### THE HEARING

The appeal is against the decision of the Stewards of the National Rok Karting event held on 12<sup>th</sup> September 2020, whereby Competitor 99, Muhammad Wally, was excluded from the results of Heat 4 after failing to report to the Clerk of the Course in terms of Appendix H, point 6 (display of a black and white diagonal flag), said flag having been shown to the competitor after an alleged avoidable on-track incident between himself and fellow competitor Aqil Alibhai.

The appeal is based on the following factors:

1. The penalty was too harsh given the nature of the infringement;
2. The Clerk of the Course, in contravention of Appendix H, point 6 of the GCRs, did not personally show the Black and White diagonal flag;

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Department:  
Sport, Arts and Culture  
REPUBLIC OF SOUTH AFRICA

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

3. The Clerk of the Course failed to summon competitor 99 to his office; the competitor was aware of the need to see the Clerk of the Course but understood in terms of the COVID19 protocols that he would be summoned to see the Clerk of the Course.

Having heard the Appellant, the Clerk of the Course and the Club Steward as well as viewing relevant footage, the court noted the following:

- a. It is the opinion of the Court that it is an accepted practice or norm for the various flags to be displayed under the direction of the Clerk of the Course and not necessarily by him / her personally. The court acknowledges that the wording of the rule is vague and recommends that MSA revisit the relevant clauses in the GCRs and Appendix as relates to the displaying of flags.
- b. Having reviewed the video footage, the Court did not find any evidence to support the contention that competitor 99 had made “avoidable contact” with competitor 14, which was the alleged offence which gave rise to the Clerk of the Course issuing the instruction to show competitor 99 the black and white diagonal flag.
- c. In the evidence led by the Clerk of the Course, it was stated that competitor 99 had been summoned by an announcement on the public address system on three occasions that he was required to see the Clerk of the Course. The court could not understand why the Clerk of the Course had not used the digital notice board (WhatsApp) to inform the competitor to report to him.
- d. The Clerk of the Course, in his evidence, stated that the penalty of exclusion was imposed as a direct result of the competitor failing to attend upon him after having been shown the black and white diagonal flag.

#### **FINDINGS**

1. Competitor 99, Muhammad Wally, has contravened Clause 6 of Appendix H in that he failed to report to the Clerk of the Course after having been shown a black and white diagonal flag. The rule clearly places the onus on the competitor to report to the Clerk of the Course.

The 2020 National Karting Championship Regulations and Specification (162083) article 11 c.) iv) provides that the penalty for “Contravention of flag signal during Race – Black / Yellow” would attract a three place penalty. However, Article 11 d.) states that if a flag signal is disregarded the penalty is exclusion. Given that the relevant wording in point 6 of appendix H states that the Clerk of the Course “may render offenders liable to be penalised”, the offence of ignoring a yellow flag would, in the opinion of the Court, be a far more serious offence and the Clerk of the Course should take cognisance thereof when imposing the penalty.

2. Competitor 99 was shown a black and white diagonal flag following a supposed incident which the Clerk of the Course felt was avoidable and the requirement was that the competitor should see the Clerk of the Course in order that the incident could be discussed and a decision reached as to whether the incident was avoidable or not, with an appropriate penalty being imposed, if required.

The competitor did not attend upon the Clerk of the Course and hence the discussion envisaged did not take place and therefore no penalty was imposed for the original alleged offence.

The Clerk of the Course, in addressing the competitor’s failure to report to him immediately after the race was completed was, in effect, the investigation of a second infringement and as such the competitor, in terms of GCR 175 was entitled to a hearing.

For the sake of clarity the clause concerned is included in these findings:

*NECESSITY FOR A HEARING PRIOR TO THE IMPOSITION OF ANY PENALTY:*

*Except where circumstances make it impossible to do so, before imposing any penalty, the Clerk of the Course and / or Stewards of the Meeting .... As the case may be, **shall summons the parties concerned***

***to appear before them.*** Such summons shall either be delivered personally or, in appropriate cases by e-mail ...

At no time did the Clerk of the Course, by his own admission, attempt to summon the competitor to a hearing. The Clerk of the Course stated that there was, in terms of the COVID-19 protocols, no need to hold a hearing. To the contrary, General Circular 5 of 2020 at point 27 states:

*Hearings at events involving race officials and competitors to be held electronically as far as practically possible to minimize in-person contact. In exceptional circumstances, if a hearing has to be held in person the number of people must be limited and all necessary COVID-19 protocols are to be adhered to.*

Also worth noting is the statement in General Circular 5 of 2020 at item 22:

*Physical notice board must be replaced by an online/electronic system (messaging apps such as WhatsApp or Telegram may be used) to disseminate information to competitors at all times.*

**Therefore:**

- 1 The procedure envisaged in GCR 175 was not followed and the competitor was not afforded the opportunity to defend himself which is one of the major tenets of the rules of the game as envisaged by the GCR's and the appendices. The penalty of exclusion is hereby reversed and MSA is instructed to ensure that Competitor 99, Muhammad Wally, is reinstated in heat 4 in the OKJ results.
- 2 The Appeal fee is to be refunded to the appellant less administration costs of R1000-00 as per Appendix R 12 (iii)
- 3 Officials are reminded of the need to grant competitors their right to a hearing and to ensure that all procedures are followed correctly. It is of the utmost importance that officials ensure, when imposing penalties or reviewing such penalties, that the punishment fits the alleged infringement. This Court could not find any valid reason for the imposition of an exclusion when reviewing what transpired.
- 4 Muhammad Wally is cautioned to ensure that he is fully aware of the flag signals, their meanings and the rules regarding such flags.

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

These findings are distributed via email on 27 October 2020 at 14h00

**Ref. 162295/158**