



MOTORSPORT SOUTH AFRICA NPC

Reg. No 1995/005605/08

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MSA COURT OF ENQUIRY 1230

HEARING HELD AT THE MSA OFFICE IN CAPE TOWN AT 18H00 ON 14th NOVEMBER 2019

Present:

Steve Harding	-	Court President
Arlene Brown	-	Court Member
Claudio Piazza-Musso	-	Court Member
Charl Visser	-	Complainant – Father of Competitor Charl Visser
Aldrin van Zijl	-	Defendant – Father of Competitor Kai van Zijl
David Walker	-	Witness

In attendance: Lizelle van Rensburg - MSA Sport Coordinator

1. The members of the court were introduced by the Court President and the parties were afforded the opportunity to indicate any objection to the membership of the court. No objections were offered.
2. The president of the court indicated that, procedurally, there was an issue to be considered and decided upon, before any consideration could be given to proceeding with the enquiry itself.
3. The court then proceeded to read into the record a letter received from the attorneys for Mr Aldrin van Zijl as requested in terms of that letter.
4. After reading the letter in full the court enquired of Mr Van Zijl whether he wished to add any further submissions in relation to this preliminary issue. Mr Van Zijl had nothing to add.
5. In essence the letter raised a number of points, principal among which was the contention that MSA had no jurisdiction to deal with the matter inasmuch as it was principally a complaint of criminal conduct and that the Court of Enquiry should therefore be deferred contending that *“MSA cannot hear this matter and/or take any action against our client until a criminal court has decided that an assault has indeed taken place. This determination cannot be lawfully made by MSA or any administrative body such as the COE.”*

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, 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

6. The letter raised a number of other points, amongst which are included the fact that the incident took place after the official closing of the event; that the notice to Mr van Zijl relates to a Court of Enquiry (governed by GCRs 154 and 211) while the body of the notice refers to a hearing (governed by GCR 220); and finally that the power of the court to investigate whether Mr Van Zijl had breached any of the GCRs, SSRs and or SRs at the event in question was excessively broad.
7. The court then proceeded to deal with these preliminary issues. It found that in as much as the jurisdictional question is concerned, that the fact that the conduct in question was also criminal in nature, was no bar to the hearing of this matter by an MSA Court of Enquiry. Firstly, MSA has every right (and indeed it can be argued a duty) to investigate incidents of this nature whether they form the subject of a complaint by any other party or not. This is so regardless of whether such incident took place after the official closing of the event or not. Secondly, the complainant in this instance, Mr Visser had the right to multiple remedies which included not only the right to lay criminal charges (which had not been laid at the time of this hearing), the right to bring a civil claim and the right to bring the matter to the attention of MSA for appropriate action. These remedies are not mutually exclusive and Mr Visser's right to exercise any or all of them lies entirely within his own discretion. The different remedies are in any event subject to different standards of proof as the proof required in a criminal matter is proof beyond reasonable doubt while in civil or administrative proceedings the test is the balance of probabilities. The court pointed out, by way of a parallel, that criminal conduct in the workplace frequently results in both disciplinary processes in terms of labour law and criminal prosecution. A further current example was given by the court of the cricketer Goolam Bodi, who was suspended by CSA for a period of 20 years, after disciplinary proceedings which took place substantially before the criminal matter which ultimately resulted in his being sentenced to a five-year term of imprisonment for match fixing had been concluded.
8. The court then advised Mr van Zijl that it intended to proceed with the Court of Enquiry and further that the only issue in contention was that set out in paragraph 1 of the notice dated 16 October 2019 convening this enquiry relating to the allegation of an assault on Mr Visser by Mr Van Zijl at the Rotax National Karting event held at Zwartkops on 22 September 2019 and that the only GCR which was considered to be breached was GCR 172 iv which deals, inter alia, specifically with physical abuse.
9. As far as the contention made that the letter was contradictory inasmuch as it was unclear as to whether this was a court of enquiry in terms of GCR 211 or a hearing in terms of GCR 220, the court determined that on a proper reading of the GCRs, and in particular GCRs 211 and 210, GCR 220 clearly simply deals with the procedure to be followed in the conduct of the enquiry.
10. Having advised Mr Van Zijl of these findings he was asked whether he wished to participate in the hearing or withdraw from the hearing as intimated in the letter from his lawyer. Mr Van Zijl then indicated that he would not participate further on the advice of his lawyer and left the hearing.

11. The court observes that there appears to be an increasing tendency amongst karting competitors to engage the services of lawyers to interact with MSA in an apparent attempt to have the administration of MSA intervene in matters which are rightly within the province of an appointed court. MSA is to be commended for leaving this matter to the court to determine.
12. The court then proceeded to hear from Mr Visser and Mr Walker in relation to the events that transpired after the event in question. Mr Visser told the court that he had received a single punch to the chest which caused him extreme pain and caused him to stagger backwards. He also dealt with the fact that he has suffered extensively with heart disease and that the consequences of the blow were extremely painful for him and gave rise to considerable concern about the potential long-term damage to his health. Mr Walker did not witness the punch in question but saw Mr Visser staggering backwards shortly thereafter.
13. The court did not hear from any other witnesses. The court accepts the uncontroverted version of Mr Visser and has no doubt that the assault did indeed take place.
14. Messrs Visser and Walker were then excused after the court had indicated that its findings would be given in writing as soon as possible.

FINDINGS:

15. The court is of the view that the seriousness of incidents of this nature in Motorsport and in particular in the discipline of karting, in which a considerable number of the participants are children and teenagers, must be discouraged and where adults set inappropriate examples the punishment should serve as a deterrent to others.
16. The court concluded that the appropriate penalty in this instance is that Mr Van Zijl be suspended as an entrant in terms of GCR 22 until 30 June 2020.
17. A further penalty of an additional 12 months suspension, this penalty is however suspended conditional upon Mr Van Zijl not being found by any MSA administrative body to have contravened any of the provisions of GCR 172 before 31 December 2021 and further upon Mr Van Zijl not attending any karting event sanctioned by MSA or at any karting track approved by MSA during the period from today's date until 30 June 2020.
18. Mr Van Zijl is further ordered to contribute an amount of R2,500 to the costs of MSA in convening this Court of Enquiry.
19. Mr Van Zijl is reminded of his rights as set out in GCR 212B.

These findings are published via email on the 15th November 2019.