

MOTORSPORT SOUTH AFRICA

NATIONAL COURT OF APPEAL, 173

18 May 2021

ZANE PEARCE

APPELLANT

IN RE: Appeal against the decision of MSA Court of Enquiry 1248

MSA NATIONAL COURT OF APPEAL FINDINGS

1. **PRESENT:**

The following persons attended the hearing by way of Zoom virtual hearing in various capacities and are the following:

- 1.1 Advocate George Avvakoumides SC in his capacity as Court President.
- 1.2 Advocate Paul Carstensen SC in his capacity as Court Member.
- 1.3 Attorney Steve Harding in his capacity as Court Member.
- 1.4 Mrs. Lizelle van Rensburg in her capacity as MSA Western Cape Sport Coordinator.
- 1.5 Mrs. Allison Vogelsang in her capacity as MSA National Sport Coordinator, Circuit and Karting.
- 1.6 Mr. Vic Maharaj in his capacity as MSA Sporting Services Manager.

- 1.7 Mr. Roger Pearce in his capacity as the promotor of the applicable race series.
- 1.8 Mr. Zane Pearce, the appellant, together with his son Gareth Pearce.
- 1.9 Mr. Peter Collins in his capacity as event race secretary.

2. **INTRODUCTION:**

- 2.1 This is the judgment of National Court of Appeal 173.
- 2.2 The Appellant is Zane Pearce (“the Appellant”).
- 2.3 The Appeal arises from the findings of Motorsport South Africa (“MSA”) Court of Enquiry 1248 (“COE 1248”) which dealt with events which transpired at an event held on 5 December 2020 at the Killarney International Raceway in Cape Town (“the event”).
- 2.4 The Appellant filed his Notice of Appeal pursuant to the judgment of the MSA COE 1248 which judgment was handed down on 9 March 2021.

(See Appeal Bundle, Exhibit “D1”).
- 2.5 The Appellant claims that he admits the allegations that his driver, Gareth Pearce, was not being in possession of a motorsport racing license as required in terms of GCR 121 (i) but submits that the penalties imposed are inappropriate for the alleged offence. The COE 1248 handed down a variety of penalties pursuant to its findings:
 - Car # 2 and its drivers are hereby excluded from the results of the SAES event held at Killarney on 05th December 2020 and MSA is

instructed to ensure that the results are amended to reflect this exclusion. Any awards made to the team and/or its members are to be returned to the Organiser within seven days of this finding being published.

- In terms of GCR 184, Mr Gareth Pearce is suspended from holding a competition licence from MSA for a period of five years from the date of publication of these findings. Mr Gareth Pearce is further fined an amount of R10000, of which R8000 is suspended for a period of five years provided he does not contravene any GCR that relates to the holding of a competition licence.
- In terms of GCR 184, Mr Zane Pearce's competition licence and entrant's licence is hereby suspended for a period of five years from the date of these findings first being published.
- Subject to Mr Zane Pearce not being found to have contravened any GCR, SR, SSR or other rule relative to an un-licenced participation in a motorsport event whether it relates to himself or a person participating in any team of which he is the entrant or deemed entrant, three years of this suspension is in itself suspended for a period of five years. The import of this is that Mr Pearce may not participate in any form, in any event, held under the auspices of MSA for the period commencing on the date of these findings first being published through to and including the 31st December 2022.
- Administration costs of R2000 are levied against Mr Zane Pearce.

(see Appeal Bundle, exhibit "D1 and D2")

(The above findings were made by COE 1248 in terms of GCR 220 by default after the non-appearance of the Appellant)

2.6 The Appellant was not represented by attorneys during these proceedings but chose to represent himself.

2.7 An Appeal Bundle, comprising exhibits “A” to “H”, was placed before this National Court of Appeal (“the Appeal Bundle”).

3. **THE CONTROL OF MOTORSPORT:**

The control of motorsport in South Africa is held by MSA, a Non Profit Company in terms of the Company’s Act 61 of 1973. MSA holds the sporting authority to govern motorsport as it is the delegated authority by the FIA, CIK and FIM. MSA is structured with a Board of Directors, a Secretariat, a National Court of Appeal, an Executive Council, 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. Mrs. Allison Vogelsang represented MSA in this capacity. The exercising of the sporting powers by MSA is done 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 2, 3 and 6 of the MSA Memorandum of Incorporation)

(see Article 19 of the MSA Memorandum of Incorporation)

4. **LEGAL AND FACTUAL ISSUES WHICH ARISE IN THIS APPEAL:**

4.1 The notice of appeal reads as follows:

National Court of Appeal
Motor Sport South Africa

RE: COURT OF APPEAL ZANE PEARCE

Dear Sirs

Firstly, I apologize for not using the services of a lawyer as I unfortunately do not have the funds to be able to afford one so if the format and presentation is wrong, please bare with me.

I am appealing against the COE 1248 findings that were held via zoom on 22nd February 2021.

I am appealing against the decision by the COE against Mr Gareth Pearce and Mr Zane Pearce to impose the following fines:

1) The suspension of a competition licence from MSA for five years and a fine of R10000, of which R8000 is suspended for a period of five years for Mr Gareth Pearce because he contravened GCR58(ii), GCR121(i), GCR172(ii)C GCR184.

2) The suspension of a competition licence from MSA for a period of five years suspended for three years for Mr Zane Pearce in terms of GCR184.

The basic grounds for my appeal is that I did submit an entry form that clearly shows Mr Gareth Pearce as an entrant. A copy of the entry form is attached.

I did log on to MSA's website to purchase a one day licence for my son Mr Gareth Pearce as I had done for the previous race at Dezzis. Unfortunately, after completing all the requested information and authorizing the payment, unbeknown to me, the licence was not issued.

During the race weekend it never occurred to me that Gareth Pearce did not have a valid licence. As I had entered him in the race, I thought the race secretary would have informed me if any of my drivers did not have a valid race licence.

I do fully understand the seriousness of not having a valid racing licence and the ramifications and liability that MSA could have been subjected to. I would never ever have allowed my son to participate in the race if I knew he did not have a valid race licence. I had absolutely nothing to gain. I have been racing bikes and cars for over 45 years and never breached any MSA GCR rules.

I am going to include previous relevant correspondence with this appeal.

I sincerely apologize to MSA for this breach and humbly ask that my appeal is accepted. I really had no idea that my son was racing with no valid licence.

Please use my email address zane@tworld.co.za for all correspondence.

Yours faithfully



4.2 In the National Court of Appeal's view the following material legal and factual issues crystallized in this Appeal:

- 4.2.1 whether the explanation given for the failure to have applied for, and obtained, a license for the event was adequate;
- 4.2.2 whether the sanctions against the Appellant are sustainable.
- 4.3 To the extent necessary, and in the absence of representation, the appeal was properly constituted in terms of GCR 178, and no person raised any objection thereto.

5. **PROCESS FOLLOWED DURING THE APPEAL:**

- 5.1 The Appellant was granted leave to appeal by a tribunal of the National Court of Appeal after an application for leave to appeal in terms of GCR 212 B which included an explanation for the failure to attend COE 1248 which had been convened as a remote hearing utilising the Zoom Platform. MSA is requested to ensure that all summons and notices requiring attendance at a hearing to be held remotely provide a contact number for the relevant MSA Secretariat member responsible for the meeting and the appointed Court President so that the Court can be appraised of any difficulty encountered in accessing the hearing.
- 5.2 At the commencement of the appeal, the President of the National Court of Appeal requested if anyone had objection to the composition of the MSA National Court of Appeal. There were no objection and this being the case the hearing proceeded.
- 5.3 All hearings of Appeals in terms of the GCR's are held de novo. In practical terms, this means that this National Court of Appeal adjudicates the matters

raised before it by the parties and attendees. The hearing of appeals de novo does not mean that this National Court of Appeal serves as a verification institution to verify the correctness of each and every event, appointment and incident which transpired during the event, and which may not have been brought to the attention of this National Court of Appeal.

(see GCR 208 viii)

5.3 The Appellant stated his case and submitted that he had gone online on MSÁ's website to apply for the day license for Gareth to participate in the event. He laboured under the impression that, although the system did not confirm the successful application, the license would be issued, as he had inserted the card details for payment, but this did not go through successfully. He admitted that he acted incorrectly to assume the system had recorded the application but submitted that this was not done with any bad intention. All other parties present were invited to make submissions. Mr. Collins submitted that he had not received any documents directly because all emails are not sent to him but rather to the promotor. As such, he was not aware of the absence of a license.

6. **THE MATERIAL GCR's AND THE APPEAL BUNDLE:**

6.1 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)

6.2 All participants involved in motorsport events subscribe to this authority. As such, a contract is concluded based on the “rules of the game”. There exists a ranking structure in the MSA Rules and Regulations. (General Competition Rules are referred to as “GCR’s”, Standing Supplementary Rules are referred to as “SSR’s” and Supplementary Regulations published for each event are referred to as “SR’s”). The “rules of the game” of motorsport are structured in main on the Articles of MSA, the GCR’s, the SSR’s and the SR’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, SSR’s and SR’s are individually defined.)

(see GCR 19)

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

(see GCR 113 read with GCR 122)

6.4 GCR 175 details the necessity for a hearing prior to the imposition of any penalty.

“175. 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, the

Jury, a MSA Court of Appeal or MSA National Court of Appeal as the case may be, shall summon the parties concerned before them. Such summons shall either be delivered personally, or in appropriate cases by post, fax or e-mail to the relevant address. Every notice summoning an individual to a hearing shall state the capacity (e.g., defendant, witness, etc.) in which he/she is being required to attend. The procedure at any hearing by the Stewards of the Meeting or the Jury, acting as a court of first instance, shall be in accordance mutatis mutandis with GCR's relating to "hearing of protests". The procedure at any hearing of any appeal by a MSA Court of Appeal, or National Court of Appeal, shall be in accordance with Part "X" of the GCR's. In the event of a MSA Court of Appeal or the National Court of Appeal, hearing an appeal or conducting a court of enquiry concerning the imposition of civil penalties, the competitor will be deemed to have committed the offence or offences alleged by the provincial authorities or the law enforcement officer concerned, and the onus will be on the competitor to prove that he is not guilty of having committed the offence alleged."

(see GCR 175)

- 6.5 Part VIII of the GCR's provides for penalties to be imposed upon a breach by a person subject to the GCR's. GCR 177 details a scale of penalties in order of an increasing severity. It provides that:

"177. SCALE OF PENALTIES

The following scale indicates penalties in order of increasing severity:

- i) Reprimand
- ii) Fine
- iii) Time Penalty
- iv) Exclusion
- v) Suspension and withdrawal of licence
- vi) Disqualification (may only be inflicted by MSA or by the FIA/CIK/FIM)
- vii) In addition to any other penalty, forfeiture of championship points, which shall only be imposed by MSA or the National Court of Appeal, (except as provided for GCR 176). One or more of the above penalties may be imposed as a result of a single finding, or an option of paying a fine introduced. A fine may not, however, be imposed in lieu of exclusion for non-compliance with the technical regulations or specifications unless the contravention is of a minor nature that the appointed Technical Consultant agrees would afford absolutely no advantage to the competitor.”

(see GCR 177)

6.6 Courts of Enquiry are empowered through the provisions of GCR 211, which provides that:

“211. COURTS OF ENQUIRY

MSA shall be entitled to convene a Court of Enquiry to investigate a breach of any of the GCR's, SSRs or SRs, whether or not such breach has been the subject of a protest and/or appeal.

- i) Such Court of Enquiry shall be entitled to impose any of the penalties referred to in the GCR's, SSRs and SRs;
- ii) In the first instance, such Court of Enquiry will be convened as an MSA Court of Appeal, and any decision made by it may be considered by the National Court of Appeal.
- iii) Any MSA Court of Appeal or National Court of Appeal sitting as a Court of Enquiry shall not be precluded from imposing a penalty notwithstanding that no penalty was imposed by any other court referred to in the GCR's."

(see GCR 211)

6.7 Hearings, which include the hearings of Courts of Enquiry, are empowered through the provisions of GCR 220, which provides that:

"220. HEARINGS

All parties concerned shall be given adequate (generally a minimum of 7 days) notice of the hearing, and they shall be entitled to call witnesses. Every notice summoning an individual to a hearing shall state the capacity (e.g., defendant, witness, etc.) in which he/she is being required to attend. The hearing may proceed to judgement in default of appearance by any party or witness. In the case of an appeal to a MSA Court, the parties concerned shall state their cases personally. Representation by a fellow competitor or club member is allowed, but such person may not be a practising attorney or advocate or be entitled to be admitted as either. Where the appellant is a practising attorney or advocate, MSA reserves the

right to appoint a practising attorney or advocate as a member of the Court. Notwithstanding the foregoing legal representation is allowed in hearings conducted by the National Court of Appeal. Where an appellant intends exercising his/her right to legal representation, MSA is to be advised of this fact, and the identity of the representative, at least seven days prior to the scheduled hearing. MSA shall then decide whether or not to obtain legal representation of its own and/or to allow the other parties in the hearing to obtain legal representation. Where an appellant fails to advise MSA of his/her intention to exercise his/her right to legal representation in terms of this regulation, the court shall be empowered to take appropriate action so as to prevent prejudice to MSA and/or the other parties involved in the hearing. Hearings are not public and are reserved for the parties and representatives of the promoter and organisers concerned. MSA may, however, invite parties deemed relevant to the proceedings, to the hearing, in the capacity of observers. MSA are entitled to call upon witnesses, specialists or experts whose evidence they deem to be useful in assisting the court. The parties involved in the hearing are also entitled to call witnesses including specialists or experts, but it is their responsibility to ensure their attendance. Where a technical matter is concerned, the court shall consider the report of the scrutineers and recommendations of the MSA Technical Consultant (where applicable), and may not ignore these. The merits of, or grounds for appeal, may not be heard before the court has established that the appeal has been lodged in terms of GCR 214 and GCR 219. The appellant may call witnesses in this regard. The appeal court shall then give a finding on the admissibility of hearing the appeal. An appellant

dissatisfied with the finding may appeal to the higher court but shall confine the appeal to showing why the lower court erred in finding the original appeal to be inadmissible. If the higher court finds that in the circumstances prevailing at the time the appeal to the lower court/s was correctly lodged, the grounds of the appeal shall be referred to the lower appeal court involved for hearing.”

(see GCR 220)

7. **THE FACTS:**

The material facts of the matter are not in dispute. The Appellant does not raise any defence against the allegations against him but merely submits that he was mistaken and submits the penalties are too severe under the circumstances.

(see the Appeal Bundle, Exhibit “A1”)

8. **THE MERITS:**

8.1 The Appellant admits his wrongdoing. It is the Appellant’s case that the penalties are too severe. There are no material facts in dispute in this matter.

8.2 The “rules of the game” within which MSA and all its structures operate, appear from the GCR’s, SSR’s and SR’s. The disciplinary structures of MSA, i.e., decisions by the Stewards, Courts of Enquiry, Courts of Appeal and National Courts of Appeal, depend on the mandating provisions of the “rules of the game”. The authority of the disciplinary structures is not

limitless. The disciplinary structures can only operate legitimately within the confines of the mandating provisions. All penalties imposed on persons subject to the “rules of the game” must therefore be in compliance with the mandating provisions.

9. **FINDINGS:**

- 9.1 The National Court of Appeal finds that the Appellant was correctly found by the COE 1248 to be guilty of having entered Mr. Gareth Pearce in a race whilst not being in possession of a license and the Appellant should have been aware of this fact. The fact that Messrs. Zane and Gareth Pearce were not present at the COE 1248 hearing is of no significance because they did not have any internet connection at the time.
- 9.2 The COE 1248 correctly found that the absence of a competition licence on the part of Mr. Gareth Pearce is an extremely serious offence. The ramifications and liability that MSA, the organizers and officials could have been subjected to, had Mr. Gareth Pearce been involved in an incident where either he, or a fellow competitor, was seriously or fatally injured due to Mr. Gareth Pearce’s on-track actions were far reaching.
- 9.3 The conduct of Mr Zane Pearce, in allowing Mr Gareth Pearce to participate in the event whilst not in possession of the required competition licence is regarded in as serious a light as that of Mr. Gareth Pearce’s actions.

- 9.4 It was determined that Mr Gareth Pearce and Mr Zane Pearce, the entrant who allowed Mr Gareth Pearce to compete without holding the requisite MSA competition licence, had contravened GCR 58 (ii), GCR 121 (i), and GCR 172 (ii) c).
- 9.5 On the question of the sanction the National Court of Appeal finds that the penalties were too severe and are replaced with the following:
- 9.6
- 9.6.1 Gareth Pearce is excluded from the results of the event.
- 9.6.2 The Appellant and Gareth Pearce are suspended from all MSA motorsport sanctioned events, their licences are similarly suspended for a period of 3 years, which suspension is wholly suspended for a period of 3 years on condition that they are not found guilty of the same offences within the period of 3 years, from the date of this judgement.
- 9.6.3 Gareth and Zane Pearce are fined R10 000.00 each. The fines will be allocated as to R16 000.00 for the fines and R4 000.00 for costs.
- 9.6.4 Any appeal fee paid in this appeal will be apportioned to the said fines accordingly and to the extent that there is any shortfall, the

Appellant is ordered to make payment of the shortfall to MSA within 3 days of this decision.

9.6.5 In terms of regulation 212 B the fee of R10000.00 in respect of the application for leave to appeal shall be refunded.

Handed down at Pretoria on 20th July 2021.

Electronically Signed

Adv George Avvakoumides SC

Adv Paul Carstensen SC

Attorney Steve Harding