MOTORSPORT SOUTH AFRICA NPC
Reg. No 1995/005605/08
www.motorsport.co.za

Second Floor, 1 Meersig, Constantia Boulevard,Constantiakloof, Roodepoort. P.O. Box 6677, Weltevreden, 1715

e-mail: allison@motorsport.co.za Telephone (011) 675 2220. Fax: (011) 675 2219. National Number: 0861 MSA MSA (0861 672 672)

NATIONAL COURT OF APPEAL ARISING FROM THE FINDINGS OF COURT OF ENQUIRY 1127 C. HEARING HEALD IN THE MSA BOARDROOM ON THE 21st JULY 2014 AT 18:00

Present:	Advocate André P Bezuidenhout	Court President
	Advocate George Avvakoumides	Court Member
	Mr Arnold Chatz	Court Member
	Mr Mike Clingman	Court Member
	Attorney Jannie Geyser	Court Member
	Mr Wayne Riddell	Sporting Services Manager: MSA
	Miss Allison Atkinson	MSA Scribe
	Mr Angus McKenzie	Advocate for the Appellant
	Mr Kevin Hutcheon	Attorney for the Appellant
	Mr Ryan Blewitt	Hutcheon Attorneys
	Mr John Di Bella	Appellant
	Mrs Avril Di Bella	Witness
	Mr Kevin de Wit	Witness
	Mr Dick Shuttle	Witness
	Mr Neil Basilio	Witness
	Mr Lungile Mginqi	Witness

INTRODUCTION

This is the judgment of National Court of Appeal 159. The Appeal hearing took place on 21 July 2014 between 17h30 and 20h40. Judgment was reserved. This is the written Judgment of the National Court of Appeal. The Appeal panel was duly constituted. Proceedings were mechanically recorded. For the purposes of this Judgment reference is only made to the material issues as the remainder of the proceedings are of record.

The Appellant is John Di Bella ("the Appellant"). The Appellant prosecutes the Appeal for himself and on behalf of his minor son, Turidu Di Bella ("Turidu").

The Appeal arises from the findings of Motorsport South Africa ("MSA") Court of Enquiry 1172(C) ("the COE") which dealt with incidents that transpired at the Aldo Scribante Racetrack in Port Elizabeth on 21 March 2014 ("the event").

It is common cause that Mr Hector North ("Mr North"), the father of Jordan North ("Jordan") filed a protest with the stewards at the event as a result of the incidents that transpired. The Appellant did not file any protest. The stewards enquired into the incidents and made a finding. That finding was set aside by MSA as a result of a technicality regarding the renewal of a licence of the stewards. MSA accordingly commissioned the COE to enquire into the incidents.

The COE effectively investigated two separate incidents, one on-track and one off-track. The on-track incident involved the alleged bumping of Turidu by Jordan during a practice session at the event. When Turidu and Jordan returned to the pits a further incident took place between the Appellant and Mr North pursuant to which a complaint was filed by Mr North with the Clerk of the Course. (Reference to "*the incident*" herein covers both the on-track and the off-track incidents.)

The COE held that an altercation did in fact take place between the Appellant and Mr North and as a result of the conduct of the Appellant and Mr North, three penalties were handed down:

Turidu was placed under observation for the next twelve months and should he or his crew be found guilty of contravening GCR 172 iv) during this time, his competition licence shall be suspended for a period of twelve months;

The Appellant was placed under observation for the next twelve months and should he again contravene GCR 172 during this time, he shall be barred from entering any official area during any MSA sanctioned kart race meeting. The effect of this penalty would mean that upon a future contravention of GCR 172 by the Appellant, he shall receive a life-time bar from entering any official area during a MSA sanctioned kart race meeting;

Jordan was placed under observation for the next twelve months and should he or his crew be found guilty of contravening GCR 172 iv) during this time, his competition licence shall be suspended for a period of three months.

Avril Di Bella ("Mrs Di Bella"), the spouse of the Appellant was the parent / guardian who entered Turidu at the event. No penalty was imposed by the stewards against Mrs Di Bella. The COE likewise did not impose any penalty against Mrs Di Bella.

The Appellant was granted leave to Appeal to this National Court of Appeal. The Notice of Appeal attacks the whole of the judgment of the COE which effectively means that both the penalty against Turidu and the penalty against the Appellant form the subject matter of this National Court of Appeal.

The Appellant was represented by attorneys and Counsel during these proceedings.

An Appeal Bundle, comprising exhibits "A" to "U29", was placed before this National Court of Appeal. In addition, a condonation bundle comprising exhibits "A" to "D" was relied on by the Appellant. The Appeal Bundle contained all the relevant documents referred to by the parties.

No Appeal was filed by Jordan against the penalty imposed on him.

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 Committee, 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. Mr Wayne Riddell represented MSA in this capacity. The exercise of the sporting powers by MSA is 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*)
(see *Article 19 of the MSA Memorandum*)

CONDONATION

The GCR's make no express provision to condone the late filing of a Notice of Appeal.

On 17 June 2014, MSA informed the Appellant that leave to Appeal to the National Court of Appeal was granted. On 27 June 2014, the Appellant submitted his Appeal documents to MSA whereupon the Appellant was informed that pursuant to the provisions of GCR 212 B), paragraph 3, the Appeal was out of time. On the same day, Hutcheons Attorneys of Bedfordview, acting for the Appellant, filed an application for the condonation for the late filing of the Notice of Appeal. The application for condonation was supported by an affidavit of Ryan Blewitt who explained that the exclusive reason for filing the Notice of Appeal one day late on 27 June 2014 (instead of 26 June 2014) was occasioned by an administrative oversight by the attorneys who were under the impression that the seven days lapse on 27 June 2014. It appears from the affidavit that the Appellant was always intent in prosecuting the Appeal, consulted with Counsel and took all further steps to prosecute the Appeal through the payment of the necessary fees.

Procedural Directive 1 was issued to inform the parties that the application for condonation will be considered at the commencement of the hearing.

There is a peculiar feature in this Appeal that the Appellant originally embarked thereon to cite Mr North as the Respondent in the matter (we return to this issue later in this judgment). Mr North, in an e-mail dated 9 July 2014 confirmed that he will not oppose the application for condonation filed by the Appellant.

In the current instance it appeared to this National Court of Appeal that there were exceptional circumstances which necessitated that this National Court of Appeal grants the condonation. MSA has an inherent power to condone the late filing of appeal documents. No interested party raised any objection to the application for condonation and in particular, MSA did not oppose the application. To have dismissed the Appeal because it was filed one day late as a result of the administrative error by the attorney of the Appellant, would have disposed of the matter on a technicality, without dealing with the merits. The importance of the matter was of such a nature that this National Court of Appeal decided to grant the condonation based on the exceptional circumstances and no dilatory conduct by the Appellant being shown.

THE CITING OF MR NORTH AS THE RESPONDENT AND HIS REQUEST FOR PROCEDURAL DIRECTIVES

On 10 July 2014 Mr North raised objection through an e-mail to MSA, to the fact that he was cited as a Respondent by the Appellant.

On 16 July 2014, Schwarz-North attorneys of Hyde Park, acting for Mr North, filed a written submission with MSA seeking several directives.

On 17 July 2014, Procedural Directive 2 was issued, informing all relevant parties that the citing of Mr North as the Respondent had no legal consequence and that the National Court of Appeal will consider the Appeal of the Appellant in terms of the GCR's and the National Court of Appeal Procedures. The Appellant was informed that he was *dominus* to prosecute his Appeal and that it was for MSA or any other interested party to present evidence at the Appeal should MSA or any other party so elect. The request for Procedural Directives as requested by Mr North was accordingly declined.

The citing of Mr North as a Respondent was unfortunate and unnecessary. The Appeal of the Appellant was between him and MSA and he was fully entitled to challenge the penalties imposed on him / Turidu by the COE. Appeal proceedings are not designed to hit back at other competitors. If the Appellant originally filed a protest against Mr North or against Jordan the position would clearly have been different. The citing of Mr North as the Respondent was clearly an afterthought by the Appellant. There was no reason in fact or the GCR's to cite Mr North as the Respondent.

On 21 July 2014 Mr North informed MSA that in view of Procedural Directive 2, he would not attend the National Court of Appeal hearing.

LEGAL AND FACTUAL ISSUES WHICH ARISE IN THIS APPEAL

The Notice of Appeal contains ten grounds upon which the Appeal was pursued. In essence the following grounds were raised:

that the Appellant's version of the incident should have been accepted by the COE;

that the COE should have found that Jordan deliberately or recklessly or carelessly bumped Turidu from behind;

that the COE erred as it was not common cause that the Appellant instructed Turidu to "*take Jordan out*";

in consequence of these errors, it is alleged that the COE erred in its finding that the Appellant contravened the provisions of GCR 172 iv);

that the COE failed to take into account that the Appellant had been provoked before the incident occurred, that the seriousness of the incident was over-emphasised and that Appellant's previous contravention of GCR 172 was likewise over-emphasised.

The Notice of Appeal also contains grounds that Mr North and Jordan should have received heavier penalties for their conduct during the incident.

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

whether the evidence supports the grounds of Appeal;

whether the penalties imposed were appropriate in terms of the GCR's and based on the evidence.

PROCESS FOLLOWED DURING THE APPEAL

All hearings of Appeals in terms of the GCR's are held *de novo*. (see *GCR 208 viii*)

The Appellant, through his legal representatives presented the evidence of Lungile Mginqi ("Mr Mginqi"), Neil Basilio ("Mr Basilio") and the Appellant.

The Appellant also submitted written submissions prepared by his Counsel.

All interested parties were given an opportunity to address the National Court of Appeal.

MSA did not lead any evidence.

At the commencement of the Appeal, the Appellant's Counsel was informed as to certain important aspects which the National Court of Appeal required ventilation on during the Appeal.

THE MATERIAL GCR's

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*)

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").

The "*rules of the game*" of motorsport are structured in main on the Articles of MSA and the GCR'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 are individually defined.)
(see *GCR 1*)

It is expected of every entrant and competitor to acquaint themselves with the GCR's constituting the "*rules of the game*" and to conduct themselves within the purview thereof.

(see *GCR 113 read with GCR 122*)

It is clear from the entry form of Turidu that his mother, Mrs Di Bella, signed his entry and took the prime responsibility for him as she is a major. Turidu is ten years old and did not attend the National Court of Appeal.

The Appellant raised no objection as to his *locus standi* either in the COE or in this National Court of Appeal. He was clearly on the evidence part of the pit personnel or service crew of Turidu. In view of the findings of this National Court of Appeal we deemed it unnecessary to extend any penalty towards Mrs Di Bella.

GCR 172 details misconduct in eleven different categories. GCR 172 iv) provides that any act which is prejudicial to the interest of MSA or motorsport generally shall be deemed a breach and disciplinary action may be taken against offenders. Prejudicial acts are specifically included through reference, including:

intimidation either on-track or off-track;

verbal and / or physical abuse;

acts (including comments and / or gestures) which would reasonably be considered by the general public to be offensive or inappropriate.

(see *GCR 172 iv)*)

GCR 177 provides for a scale of penalties. It does not provide for a penalty that any competitor can be "*placed under observation*" and that contraventions of the GCR's during this time of "*under observation*" may result in the competition licence being suspended. It is not competent to suspend a penalty subject to the fulfilment of a condition ("*observation*") which in itself is vague and not precise.

(see *GCR 177*)

THE FACTS

Mr Mginqi was present when the on-track incident happened between Turidu and Jordan. He testified that during the practice session he was standing approximately 50 metres from the incident and it was visible to him that an intentional manoeuvre was executed by Jordan to bump Turidu. Mr Mginqi attended the event as his son (competitor 91) was also competing in the same event. Jordan was substantially faster than Mr Mginqi's son and overtook him. He testified that Jordan "*smashed Turidu nicely from the back*". He believed that the movement was pre-meditated. He did not see the kart of Turidu after the incident. In Mr Mginqi's view it was not common that persons bump each other but there is a general view between parents that Jordan frequently bumps competitors.

Upon examination, Mr Mginqi's evidence was virtually nullified. He indicated that the incident happened going into a corner. Turidu did not go off the track and he could not say whether the incident occurred as a result of the braking by Turidu (where he previously stated that it was an intentional act by Jordan). No protest was filed by Mr Mginqi to report the incident with the Clerk of the Course and he conceded that he could not be one hundred percent sure as to whether the braking of Turidu did not occasion the incident. Mr Mginqi marked his position from where he stood on a map of the track. He indeed marked two corners where the karts could have been when the incident occurred and he was not sure at which one of the two the incident happened. Upon a question by one of the Court Members, Mr Mginqi positively confirmed that the incident happened in the braking area. Upon a consideration of the two marks that Mr Mginqi made on the map his version that the two karts were travelling parallel to him, can simply not be correct.

Mr Basilio runs his own racing team under the style of "*Neil Basilio Racing*". Turidu was a client of him since August 2013. He testified that he witnessed the incident and similarly placed two marks being "X" and "Y" on a

separate map. “X” reflecting where he was standing and “Y”, the area in which the accident happened. He was approximately ten to twelve metres from where the incident occurred and nothing obstructed his view. The karts were coming towards a left hand turn and approached the corner at the braking point. In his view Jordan braked later and bumped into Turidu. The incident happened at a speed of more than 60 km/h. He blamed Jordan for an intentional act. The reason why he states that it was an intentional act lies therein that if Jordan wanted to pass Turidu he could have done so as there was enough space available. Jordan did not use the left hand side of the track.

According to Mr Basilio there was no severe damage on the kart of Turidu. The kart has a plastic bumper which became dislodged. The plastic bumper was placed back in position by pressing it back. There was only one previous incident which he could refer to between Jordan and another competitor. The complaint against Jordan was thrown out in that instance.

Upon questioning Mr Basilio by one of the Court Members, he conceded that it would be hard for him to tell whether the incident did not happen under braking conditions where Turidu may have braked harder.

The Appellant testified that he saw the incident from a distance of approximately thirty to forty metres. He marked his position and that of the karts as “A” and “B” on the same map as where Mr Basilio made his marks.

In the Appellant’s view, Jordan was to be blamed and it was not the first bump on the lap. Jordan indeed bumped Turidu before the corner at least two to three times. The Appellant was angry as bumping in his view is dangerous. He raced before and he knows what it is about. One should not be bumping. He acknowledges that accidents happen but he could see that Jordan’s conduct was intentional. The Appellant is sixty three years old and also raced for three years in 100’s. This happened approximately fifteen years ago. When Turidu returned to the pits, the Appellant wanted Jordan to hear a specific statement. He stated that if Jordan bumps Turidu again, Turidu must bump him back. Turidu is a soft spoken boy. In a previous incident where Turidu bumped another competitor he indeed cried when he came off the track after the Appellant reacted to the bump by saying “*it was good that you bumped him*”. The Appellant testified that he would hate to see that kids racing karts would “*go over*”, in other words roll the kart and break their necks.

When questioned about other incidents it appeared that there was only one incident in which the Appellant complained about Jordan. The Clerk of the Course in that instance dismissed the complaint. The conduct of Jordan complained of in that instance was for “*weaving*” (moving from side to side).

The Appellant testified that he decided that he was not going to complain (to the Stewards), that he will not be petty and why would he waste his time.

Turidu is an enthusiastic kart competitor who intends to compete in national events. The Appellant supports Turidu in his racing endeavours. He prepares the karts and rebuilds the engines.

The Appellant conceded that he made a mistake in not reporting the incident.

Mrs Di Bella informed the Court that notwithstanding the Appellant's instruction to Turidu to bump Jordan that she would have ensured that he would not do so.

None of the three witnesses corroborate each other as to where the incident therefore happened.

THE MERITS

It is the Appellant's case that a gross miscarriage of justice occurred. The Appellant carries the onus in this regard.

Proof of a fact generally means that the institution receiving the evidence, received probative material with regard to such fact and has accepted such fact as being the truth for purposes of this specific case. The process of consideration is one of evaluation.

(*see Principles of Evidence, Schwikkard and Van der Merwe at 19 and further*)

In addition to the evidence presented to this National Court of Appeal, the following should be emphasised which appear from the Appeal Bundle:

in the application for leave to Appeal the Appellant stated the following:

"*Avril and John Di Bella, (motivated by concern for the safety of their son on track and concerned for the apparent reckless disregard of Jordan for the safety of competitors including Turidu), upon Turidu and Jordan returning to the pits and with the sole purpose to caution Jordan against further actions threatening the safety of competitors and unsportsmanlike conduct, announced to both Jordan and Turidu that in the event that Jordan were to bump Turidu again, that Turidu was to bump Jordan in return.*"

(*see Appeal Bundle "D4", paragraph 5*)

there is no evidence that Jordan was threatening the safety of competitors or conducted himself in an unsportsmanlike manner;

in the Appellant's Heads of Argument the following submission was made on behalf of the Appellant:

"*The Appellant contends that when Turidu returned to the pits a few minutes later he approached his son*

and instructed him, in essence, to bump Jordan back should Jordan bump him again. He gave him this instruction because he had observed that Jordan had made a habit of driving with scant regard for his fellow competitors."

(*see Heads of Argument, Appeal Bundle, paragraph 9*)

there is no evidence that Jordan has made a habit of driving with scant regard of his fellow competitors;

the evidence of the Appellant in the COE was also presented to the National Court of Appeal. His evidence from page 19 to 20 is of extreme importance. The essential parts state the following:

"*...now, that annoyed me.*"
"*...now he comes off so I said to my son no, he was behind Mr North's son, and I said to him, now he bumped you like that. I said to him, you know what, nobody cares about the law here so next time he does that you bump him back. That's it. Bump him back, that's what you are going to do. You are going to bump him back, because that's it. Nobody cares...*"
"*Ok, I am from old school, I don't go to Court sentencing and that. I am not like that. When I grew up, we used to sort things out. We used to sort our own problems out, I don't go to Court. We don't do things like that.*"

(*see Appeal Bundle U20 and U21*)

there is no place in motorsport for self-help. The only way to sort things out in motorsport is through the application of the "*rules of the game*" and if any person feels aggrieved as to the conduct of another competitor, to raise it with the Stewards who are competent to deal with incidents within the ambit of the "*rules of the game*".

The evidence of the three witnesses presented by the Appellant differs in material respects. Each of the three witnesses for the Appellant contradicts each other where the incident occurred and Mr Mginqi and Mr Basilio concede that the incident could have taken place as a result of a braking manoeuvre into the corner.

Counsel for the Appellant faintly attempted to convince us that the Appellant was provoked to act in the way he did. We can find no evidence in this regard. There is no reliable evidence that the conduct of Jordan was intentional to bump Turidu.

The conduct of the Appellant following the incident and his statement to his son in hearing distance of Jordan resulted in the report of Mr North to the stewards. The Appellant readily conceded that he was wrong to not report the incident. His reasoning in his evidence before the COE that he was from the old school and did not rely on Courts to solve matters does not exonerate him. Motorsport operates in a democratic society where the rule of law prevails. We reiterate that there is no place for self help. If competitors widely resort to the

conduct promoted by the Appellant, motorsport will fall into disrepute. There is a fine line between healthy sportsmanship and a destructive competition spirit. The "*rules of the game*" sufficiently provide that a competitor who is prejudiced through the reckless or negligent conduct of another competitor can ask for sanction against wrongdoers. Moreover, the marshals, Clerk of the Course and Stewards are all doing their duty at race events to ensure that motorsport takes place within well defined rules and regulations.

When competitors operate outside the realms of the rule of law such conduct must be severely criticised.

The conduct of the Appellant by enticing his son to bump Jordan was unbecoming. It constituted intimidation off the track and the general public at motorsport will find this offensive and inappropriate. The conduct of the Appellant enticed lawlessness at karting events and cannot be condoned.

This National Court of Appeal considered whether Turidu and Jordan have done wrong during the events which unfolded on and off the track for which they should be sanctioned. No finding can be made as to the on-track incident where Jordan collided with the kart of Turidu. The evidence presented by the Appellant was not convincing and he stands as a single witness as to the intentional bumping. Likewise, there is nothing which Turidu did wrong during the off-track incident.

There is accordingly no evidence that Jordan or Turidu should be sanctioned. Turidu was merely spoken to by the Appellant and received an instruction to do something (bumping) in the future. He is a ten year old boy who should not suffer the consequences of the conduct of his father, the Appellant. Jordan, likewise, reported the incident to his father Mr North who in turn reported the matter to the stewards.

In our view, there is accordingly no reason why Turidu or Jordan should be sanctioned.

As to the legal and factual issues which arose in this Appeal:

the Appellant has not shown that the COE was wrong in not accepting his version of the incident;

the Appellant has not shown that Jordan deliberately, recklessly or carelessly bumped Turidu from behind;

the evidence in this National Court of Appeal shows that, on the Appellant's own admission, he instructed Turidu to bump Jordan in future karting events (the Appellant's ostensible excuse that his instruction would not be followed by Turidu or that it was conditional upon Turidu being bumped by Jordan do not exonerate the Appellant);

the Appellant has not shown that the COE erred in its finding that the Appellant contravened the provisions of GCR 172 iv);

the Appellant has not shown that there was provocation that exonerates him from a penalty being imposed, has not shown that the incident was not serious and has not shown that the Appellant's previous contravention of GCR 172 was over-emphasised.

As to the material legal and factual issues:

the evidence submitted by the Appellant does not support the Appeal insofar as his Appeal is concerned;

the conviction and penalties imposed on Turidu and Jordan should be set aside;

as to the penalty imposed on the Appellant, the penalty should be revisited taking into account the mitigating and aggravating facts.

The Appellant has not shown that Mr North and Jordan should have received any / or heavier penalties for their conduct during the incident.

FINDINGS

This National Court of Appeal finds that:

the Appellant is found to have contravened GCR 172 iv) in that he acted prejudicial to the interest of MSA by intimidating a competitor (Jordan) and for acting in a manner which would reasonably be considered by the general public to be offensive and inappropriate;

the conviction and penalty against Turidu be set aside;

the conviction and penalty against Jordan be set aside.

In considering an appropriate penalty for the Appellant, the following aspects were particularly taken into account:

the original penalty imposed by the COE would effectively mean that the Appellant would be barred for life from entering any official area during any MSA sanctioned kart race meeting if he is again contravenes GCR 172. This sanction is over-harsh;

the Appellant has a previous conviction in that COE 1099 found on 2 July 2012 that he was in breach of GCR 172 vi). Turidu received a three race ban as a result of the Appellants conduct in that instance. The Appellant

was reprimanded in that instance that MSA viewed his conduct in a very dim light;

the Appellant's Counsel persisted that the penalty of COE 1099 was not serious. This National Court of Appeal does not accept this submission. A three race ban is a serious penalty. It is clear that in COE 1099 Turidu was penalised for the conduct of the Appellant. There is no evidence that Turidu in that instance personally also did anything wrong. He received the three race ban as a result of the conduct of the Appellant;

the Appellant during examination by the President of this National Court of Appeal showed remorse for his conduct and insight into the negative impact of his conduct during the incident. Had it not been for this insight by the Appellant, this National Court of Appeal would have imposed a far heavier sentence. It is to be pointed out that a fine penalty of R200 000.00 can be imposed in terms of appendix "R" of the GCR's.

Karting is one of the grass root levels of motorsport in which junior competitors at different levels compete. Karting should be fostered by the motorsport fraternity. It is the entry level of motorsport by young ones. International and national motorsport has shown that international motorsport superstars, for example, Michael Schumacher and Lewis Hamilton started their racing careers in karting. During these formative years, the parents of young ones play a major role in the development of the racing careers of young ones. The conduct of parents at race events has a major impact on their children. Unfortunately, the enthusiasm of parents sometimes goes outside the boundaries of healthy competition. The current incident is an example thereof. Motorsport is dangerous and officials will always take care that dangerous or reckless driving will be penalised. Competitors in karting and their parents can rely on the officials. The Appellant's intention to guard for the safety of his son cannot be disregarded. The manner in which he conducted himself was, unfortunately, unacceptable. Parents cannot entice their children to breach the "*rules of the game*". Parents must encourage their children to comply with the GCR's and to follow the rules and regulations when it comes to protests. The officials should investigate dangerous or reckless driving and parents cannot take the law into their own hands by intimidating other competitors.

The following penalty is imposed:

the Appellant is fined an amount of R30 000.00 (thirty thousand rand) in terms of appendix "R", article 11;

the amount of R22 500.00 (twenty two thousand five hundred rand) imposed in terms of sub-paragraph 71.1 above, is suspended for a period of three years on condition that the Appellant does not again, during the period of suspension, contravene GCR 172;

in addition to the fine, the Appellant in terms of GCR 177 v) is prohibited from entering any competitor in terms of GCR 19 read with GCR 113 or be a part of the pit personnel or service crew of any competitor for a period of twelve months. This penalty is wholly suspended for a period of three years on condition that the

Appellant, does not again, during the period of suspension, contravene GCR 172.

Mrs Di Bella as the parent / guardian could strictly speaking be treated as the entrant of Turidu. As such, Mrs Di Bella therefore would fall within the ambit of GCR 113 xiv). Mrs Di Bella had the prime responsibility for the acts of all persons connected with the entry of Turidu and for ensuring that they (Turidu, the pit personnel and service crews which included the Appellant) comply with the GCR's. To such extent, Mrs Di Bella was indeed responsible as entrant and could technically, be sanctioned for the conduct of the Appellant. No penalty is imposed on Mrs Di Bella.

(see *GCR 113 xiv)*)

COSTS

The Appellant was successful in the Appeal insofar as the penalty imposed on Turido is set aside. It is directed that 50% of the Appeal fee be repaid to the Appellant.

The remainder of the Appeal fee is forfeited to MSA in view thereof that the Appellant's Appeal is unsuccessful.

Handed down at Johannesburg on this the 25TH day of JULY 2014.

Electronically Signed
Adv André P Bezuidenhout
Court President

Electronically Signed
Adv George Avvakoumides
Court Member

Electronically Signed
Mr Arnold Chatz
Court Member

Electronically Signed
Mr Mike Clingman
Court Member

Electronically Signed
Attorney Jannie Geyser
Court Member

These findings distributed via email.
159262/098