



# MOTORSPORT SOUTH AFRICA NPC

Reg. No 1995/005605/08

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## MOTORSPORT SOUTH AFRICA COURT OF ENQUIRY NO 1273

Held virtually on the 7<sup>th</sup> of May 2024 on Zoom and recorded.

**Court composition:**

Adv. Francois v d Merwe	Court President
Adv. Veruschka September	Court Member
Mr Steve Harding	Court Member

**Attendance:**

Mr Ed Murray	Complainant
Mr Mitch Coetzee	Complainant
Ms Vanessa Wood	Complainant
Ms Marlene Swanepoel	Witness
Mr Vic Maharaj	MSA Sporting Services Manager
Ms Allison Vogelsang	MSA Circuit Sport Coordinator
Ms Samantha van Reenen	MSA Sporting Services Manager – Cars, Karting and Legal

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



MEMBER OF



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Honorary President: R. Schilling

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## JUDGEMENT

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### INTRODUCTION

1. Motorsport South Africa (“**MSA**”) convened a formal enquiry on 7 May 2024 in terms of the provisions of Rules 154 and 211 of the MSA General Competition Rules (“**GCR’s**”) into the conduct of Mr Mohammed Wally (“**Mr Wally Senior**”) and Mrs Maysurah Wally (“**Mrs Wally**”) (collectively referred to as “**the respondents**”) during Round 1 of the Northern Regions Regional SARMC Rotax Karting Championship held at Zwartkops Raceway on 24 February 2024 (“**the event**”).
2. The respondents are the parents of a minor, Mr Muhammad Wally (“**Mr Wally Junior**”), who competed at the event. It is alleged that Mr and Mrs Wally’s aggressive and intimidatory conduct against Mr Ed Murray, Mr Mitch Coetzee and Ms Vanessa Wood brought MSA and motorsport into disrepute.
3. The terms of reference of this enquiry are twofold:
  - 3.1. to investigate whether Mr Wally Senior and/or Mrs Wally, based on their conduct during the event, are guilty of breaching, *inter alia*, GCRs 172 iv), vi), x) and/or any part of the MSA Karting Code of Conduct; and
  - 3.2. determine what action to take in response to its findings concerning paragraph 3.1 above.
4. The hearing was first set down for 10 April 2024. Upon receipt of the notification, Mrs Wally personally emailed MSA on 15 March 2024 to request

that the hearing be postponed until the beginning of May 2024 for religious reasons in addition to which Mr and Mrs Wally would be away on pilgrimage from 26 March 2024 until their return to South Africa of 26 April 2024. MSA granted the postponement request and the online hearing was duly rescheduled to 7 May 2024.

5. Before the hearing, the respondents, through their legal representative, wrote to MSA to inform that they would not attend the hearing because they believed the matter was *lis pendens*. MSA, through its legal representative, disputed this assertion and informed the respondents that the hearing would proceed as scheduled. Several exchanges of correspondence took place including a letter dated 6 May 2024 in which the respondents affirmed, through their legal representative, that they will not attend the hearing on 7 May 2024. The exchanged correspondence was provided to this Court before the hearing.
6. Despite the respondents' written correspondence, the Court stood the matter down at its commencement for twenty minutes to allow an eventuality that the respondents may attend. The respondents elected to not attend the hearing by the time that the hearing resumed. Neither respondents had applied for a postponement nor presented their argument of *lis pendens* before this Court. This Court accordingly was not charged to consider the respondents' *lis pendens* argument, and following GCR 220, the hearing proceeded in the respondents' elected default of appearance.
7. No objections were raised to the composition of the Court.

### **THE EVIDENCE RECEIVED:**

8. This Court was provided with three complaints, as listed in the court bundle. All three complainants confirmed their statements as correct. The complainants were also requested to testify in each instance.
9. The first complaint was from **Mr Edward Murray**. The relevant parts of his evidence can be summarised as follows:
  - 9.1. On the day of the event, while sitting in front of their spares sales counter, Mr and Mrs Murray were approached by Mr Wally Senior, who started shouting very threateningly at them.
  - 9.2. The threats made were, *inter alia*, that Mr Wally Senior would take them down, that he was going to sue them for everything that they were worth and that he now had all the evidence he needed to show that they had been conspiring against him and his minor son and that it was against the law to abuse children.
  - 9.3. The threats continued for a couple of minutes. Despite Mr Wally Senior's attempt to block the exit, Mr and Mrs Murray left through their shop.
  - 9.4. Ten to fifteen minutes later, when exiting the shop, Mr Wally Senior again accosted both Mr and Mrs Murray for a second time. During the exchange, Mr Wally Senior stated that Allah would strike Mr Murray down, that it does not cost a lot to arrange a hit in South Africa, and that he had already spent R2 million on legal fees with another matter. Mr Wally Senior also stated that he was in contact with the FIA and

Bombardier Racing, for whom Mr Murray is the distributor in South Africa.

10. The second complaint was from **Mr Mitch Coetzee**, the Clerk of the Course (“COC”) on the day of the event. The relevant parts of his evidence can be summarised as follows:

10.1. He investigated an incident in which Mr Wally Junior assumed a so-called “*aero tuck*” position during a race that was deemed dangerous. The incident was then handed over to the Stewards for further investigation.

10.2. Mr Wally Junior and another competitor also had an on-circuit incident, which he also investigated and similarly referred to the Stewards for further investigation.

10.3. After the race day had ended, he was in the Control Tower preparing all his documents. He was sitting in the same area as the Stewards. The respondents came up the stairs into the same area and started shouting and screaming at Ms Vanessa Wood, the third complainant. Ms Wood remained calm throughout and informed Mr Wally Senior that if he continued with his behaviour, he would have to leave. Ms Wood asked Ms Marlene Swanepoel to call security to remove Mr Wally Senior.

10.4. As Mr Wally Senior was about to leave, he turned to Mr Coetzee and stated, “*Mitch, my friend, you will also see*”. Upon enquiring as to what was meant by this statement, Mr Wally Senior stated that there was a court case coming Mr Coetzee’s way and that he had already spent

R2 million on another matter. Mr Coetzee enquired whether Mr Wally Senior was trying to intimidate him, to which Mr Wally Senior replied, "*You will see*".

- 10.5. He stated that there was no conduct directed at him from Mrs Wally but that he witnessed Mrs Wally screaming at Ms Wood, the third complainant.
11. The third complaint was received from **Ms Wood**, a Steward on the day of the event. Her evidence can be summarised as follows:
  - 11.1. She and Mr Hennie de Beer<sup>1</sup> investigated an incident in which Mr Wally Junior assumed an "aero tuck" position during a race for which he received a black and white flag. After the investigation, the Stewards imposed a penalty on Mr Wally Junior. Mrs Wally accompanied Mr Wally Junior and both of them were unhappy with the penalty. They initially refused to sign the penalty form but they did sign the penalty form later.
  - 11.2. While Mr Coetzee, the second complainant, was investigating the on-circuit incident, Ms Wood stepped outside onto the balcony. Then, Mr Wally Senior came up the stairs and walked towards her. After she greeted him, Mr Wally Senior became aggressive and loud, saying to Ms Wood, "*Listen my dear, you will see.*" She did not know what he was talking about and asked him what he meant. He then said very aggressively and loudly, "*I have affidavits that show you and Ed*

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<sup>1</sup> On 6 May 2024, the Court received a written statement from a certain Mr Hennie de Beer, who was a witness and Club Steward for the event. It is recorded that the Court did not consider this statement at all. Mr Hennie de Beer was also absent at the hearing.

*Murray plotted against my son*". She stated that she did not know what he was talking about, to which he said that he had emails. He also threatened her that he would sue her. She enquired whether she may take that as a direct threat towards her, to which he replied, "Yes, *you will see.*" Despite her moving away, he continued to scream at her in full view of other competitors standing around.

- 11.3. After investigating the second on-track incident, Mr Wally Junior was penalised. Mrs Wally and Mr Wally Junior again refused to sign the penalty form.
- 11.4. After the event, the respondents came to Ms Wood and indicated that they wanted to sign the penalty form because they wanted to appeal the penalty. Ms Wood allowed them to sign the penalty form. During this process, Mr Wally Senior leaned over the table at which Ms Wood was sitting, put his hands on the table and started berating Ms Wood, stating that she was biased and racist towards Mr Wally Junior and that she had been harassing him for years. Ms Wood interrupted Mr Wally Senior and said he should stop berating her, calm down and leave. At that stage, Mrs Wally started raising her voice and yelling at Ms Wood. Both respondents threatened that they would sue her and that "*she would see*". This continued for some time until Ms Wood again stated that this had gone far enough, and she asked the respondents to calm down and leave; otherwise, she would ask security to remove them.
- 11.5. According to Ms Wood, the situation was out of control despite her remaining calm and not getting involved in the argument. The situation

only subsided when Ms Wood instructed Ms Swanepoel to call track security, after which the respondents left.

- 11.6. According to Ms Wood, this conduct has been ongoing for a long time and has escalated in severity. Each time, it has become more volatile and aggressive. The situation has become untenable, and she feels unsafe.
  - 11.7. Ms Wood has been involved in motorsport for 30 years and an official for ten years.
  - 11.8. Upon questioning from this Court, Ms Wood confirmed that Mrs Wally signed all relevant documents for this event in her capacity as parent/legal guardian of Mr Wally Junior, including the entry for Mr Wally Junior.
12. Ms Marlene Swanepoel, the Assistant COC at the event, appeared as a witness and confirmed that:
    - 12.1. she observed the events detailed by Ms Wood; and
    - 12.2. she heard the threats that the respondents would sue Ms Wood, and she could hear the words "*you will see*" repeated by Mr Wally Senior.
  13. In addition to the complaints, and at the request of this Court, the "**SIGN ON REGISTER**" ("*the register*") for the event was provided to the Court. The register is reproduced below for reference:



MOTORSPORT SOUTH AFRICA		SIGN ON REGISTER COMPETITORS / ENTRANTS						
E:	24/02/2024	MSA PERMIT NO:	17506					
IS:	SENIOR MAX	CLUB / ORGANISER:	RKC					
UE:	ZIKR	STATUS:	REGIONAL/CLUB					
NAME OF EVENT:	NR REGIONAL 1 / RKC CLUB 1 / SARMC 1							
THIS EVENT IS HELD UNDER THE GENERAL COMPETITION RULES AND STANDING SUPPLEMENTARY REGULATIONS OF MOTORSPORT SOUTH AFRICA AND THESE SUPPLEMENTARY REGULATIONS.								
ON SIGNING THIS REGISTER, I ACCEPT AND UNDERSTAND GCR93 AND GCR94, AND ALL THE RULES AND REGULATIONS GOVERNING THIS EVENT.								
Competitors Name & Surname	Race No	Competitor's Signature	Licence No	Under 18 years Guardian's Signature	Entrant	Entrant's Licence No	Name of person signing on behalf of Entrant	Entrant's Signature
Kian Gries	220							
Ethon Potander	215							
Ken + swartz	258	K.S						
Ndzabo KLUZO	282							
Khanyi Ngwenya	272	K.N						
Janco Schoeman	270							
Jordan Moodley	914	*		914				
WILHELMUS WALLY	299							
Swaino Wilson	226							
Reghardt Lubbe	255							
Mayco Pa Lur	235							
Jakobus Sewnargin								
								Liam Polome 216

14. The register contains, *inter alia*, the following words:

**“THIS EVENT IS HELD UNDER THE GENERAL COMPETITION RULES AND STANDING SUPPLEMENTARY REGULATIONS OF MOTORSPORT SOUTH AFRICA AND THESE SUPPLEMENTARY REGULATIONS.**

**ON SIGNING THIS REGISTER, I ACCEPT AND UNDERSTAND GCR93 AND GCR94, AND ALL THE RULES AND REGULATIONS GOVERNING THIS EVENT.”**

15. Mr Wally Junior is listed as the competitor in column 1, line 8 of the register. His competition number, 299, and signature appear next to his name. A signature also appears, alongside Mr Wally Junior, under the guardian's signature.

## **THE REGULATORY FRAMEWORK:**

16. The relationship between competitors, drivers, entrants, and MSA is based on the law of contract.
17. The terms of the contract for the event are regulated and administered in terms of the provisions of *inter alia* (1) the 2024 MSA SARMC National Karting Sporting Regulations Version 2 – 24 January 2024 Ref: 163131 (“***the Rotax Sporting Regulations***”); and (2) the GCRs, also referred to as the “*Handbook*”. MSA has the sporting authority and is the ultimate authority to make all decisions concerning the organising, direction and management of motorsport in South Africa.

### **The Rotax Sporting Regulations**

18. The following provisions of the Rotax Sporting Regulations are relevant in the present matter.
  - 18.1. All drivers, entrants and officials participating in the SARMC 2024 undertake, on behalf of themselves, their employees and agents, to observe all the regulations which govern the event including the Handbook. [Regulation 6]
  - 18.2. It is the entrant’s responsibility to ensure that all persons concerned by his entry observe all the provisions of *inter alia* the Rotax Sporting Regulations. [Regulation 7.2.1, page 8 and Regulation 11]
  - 18.3. The person having charge of an entered kart during any part of an event is responsible jointly with the entrant and/or separately for ensuring that the provisions are observed. [Regulation 7.2.1, page 8 and Regulation 11]

- 18.4. All participants (Drivers, Entrants, mechanics, Officials) must respect the rights, dignity and value of their fellow participants regardless of gender, sexual orientation, ability, physical appearance, race, skin colour, language, political opinion, family disability, cultural background or religion. [Regulation 36 b)]
- 18.5. All participants must encourage and take responsibility for their actions at all times. [Regulation 36 c)]
- 18.6. All participants are required to display courtesy and etiquette to other members and participants in *inter alia* race events. Any disputes or problems that may arise during an event must be addressed in a respectful manner, to the correct person (official) at the event. [Regulation 36 g)]
- 18.7. Regulation 36 deals with a Licence Penalty System that binds licensees to abide by the applicable regulations when a MSA license to enter the SA Rotax Max challenge or any associated karting event is obtained. Further, team members, parents and or guardians' misconduct will lead to licence penalty points for competitors. A list of transgressions that may attract penalty point deductions include *inter alia* (a) '*physically or verbally abusing an official*' [Regulation 39(4)(f)]; and (b) '*public misbehaviour/poor conduct – causing disturbance or public spectacle unbecoming of a sporting event. Retaliation is seen in the same light as aggression and will not be accepted as an excuse or a defence in a plea for mitigation*' [Regulation 39(4)(k)].

## The GCRs, also known as the Handbook

19. The following definitions in the GCRs are relevant in the present matter.

19.1. "**COMPETITOR**" means any person or body whose entry is accepted for or who competes in any competition, whether as an entrant, driver, co-driver, navigator, passenger or rider, provided that, where any person so involved is a minor, the natural parent or court-appointed legal guardian of such minor will be deemed to be the competitor for purposes of the motorsport regulations.

19.2. "**LICENCE**" means the written authority given by MSA to: i) Any competitor to participate in, or to take part in, in any capacity whatsoever, in any competition...

19.3. "**DRIVER/RIDER**" means any person who drives/rides any vehicle/machine in competition and who is in possession of a licence.

19.4. "**ENTRANT**"<sup>2</sup> means any person, persons or body who enters a vehicle in a competition and who is in possession of a licence. In the case of minors, the parent or court-appointed legal guardian is automatically deemed to be the entrant and he/she shall not be required to be in possession of a licence separate to that of his/her minor child. Should a parent or legal guardian not be willing or able to act as the entrant for his or her minor child, he or she shall advise MSA accordingly and nominate an alternative entrant to act on his or her behalf. Any such alternative entrant for a minor driver/rider must hold an entrants licence issued by MSA and, unless MSA has granted

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<sup>2</sup> Subject to the provisions of Regulation 126, any person, in order to qualify as an entrant, must be the holder of a licence issued by MSA.

specific written approval to the contrary following a formal request,  
such alternative entrant may only represent one minor driver/rider.

20. The following rules are relevant to the present matter:

20.1. **GCR 91: ENTRIES**

i) *An entry is an offer by an intending entrant to enter into a contract with the organiser of an event. It must be signed by the entrant/competitor on the official form and, once accepted, it is a contract which binds the competitor to take part in the competition for which he has entered, and it binds the organiser to fulfil towards the competitor all conditions of the entry, except in the case of established "force majeure".*

20.2. **GCR 96: ENTRY SUBMISSION**

*“Any entry, including those submitted electronically (via e-mail or online), shall be considered a binding intention by the entrant to take part in the event concerned and he/she shall be liable for payment of the relevant entry fee unless the entry is formally withdrawn within 2 working days of the closure of entries. Where an entry is submitted electronically and does not bear the signature/s of the entrant/competitor, the entrant/competitor shall be required to sign the entry form and any other required declaration/undertaking at documentation for the event.”*

20.3. **GCR 113: ENTRANT**

*“In particular entrants shall:*

- ii) *be bound by the provisions of the sporting codes applicable to the event, such agreement being signified by the signature of the holder on the licence;*
- iii) *sign the entry form and pay the required entry fee after ascertaining that the details thereon are correct...*
- xiv) *have the prime responsibility for all acts and omissions of all persons connected with his entry (notably his driver(s), mechanic(s), pit personnel, passengers and service crews) and for ensuring that they comply with the rules and regulations, and be responsible for the payment of any fines levied on such persons.*
- xv) *ensure that they sign on at documentation with his driver(s) / rider(s), in order to formalise their legal standing at the event in question.*

20.4. **GCR 122: ACQUAINTANCE WITH AND SUBMISSION TO THE RULES**

*“Every person, group of persons, etc., organising a competition or taking part therein shall by doing so or by and upon applying for an organising permit, or by and upon applying for a licence from MSA or by and upon entering for a competition, be deemed to have and recognise that they have:*

- i) *made themselves acquainted with these rules;*
- ii) *submitted themselves, without reserve, to the consequences resulting from these rules and any subsequent alteration thereof*

*and agreed to pay as liquidated damages any fines or costs imposed upon them within the maxima set out in Appendix R;”*

#### 20.5. **GCR 172: BREACH OF RULES**

*“Any of the following offences in addition to any other offences specifically referred to previously or hereafter, shall be deemed to be a breach of these rules.*

*iv) Any proceeding or act prejudicial to the interests of MSA or of motor sport generally shall be deemed a breach of the regulations and disciplinary action may be taken against offenders.*

*By way of clarification, it is confirmed that the following shall be included in the definition of “prejudicial acts” as per the above:*

- Intimidation, either on track or off track.*
- Verbal and or physical abuse.*

*...*

*It is stressed that the above list is not exhaustive, and that each case will be treated on an individual basis.*

*vi) Misbehaviour or unfair practice ...*

*x) Abuse of officials by competitors and/or their family members and/or members of their pit crew. Such breach of the rules may result in the competitors concerned, if found guilty following a*

*hearing, being suspended for a period of up to six months or for up to six events (whichever is more appropriate), for a first offence.”*

**20.6. GCR 173: PENALTIES**

*“Any person directly or indirectly involved in motor sport committing a breach of the CSIs of the FIA, CIK or FIM, the GCR’s, SSRs and Official instructions of MSA, any conditions of an Organising Permit, special track rules, SRs for the competition or official instructions to competitors, may be penalised by the Clerk of the Course, Stewards of the Meeting, a MSA Court of Appeal, MSA or the National Court of Appeal, as the case may be.”*

**20.7. GCR 184: PRECLUSION FROM PARTICIPATION OR SUSPENSION OF COMPETITOR**

*“A sentence of suspension may only be pronounced by the Stewards, MSA Court of Appeal, MSA or National Court of Appeal. It is reserved for serious offences. It may be either National or International. While in force it will entail the loss of any right to take part in any capacity whatsoever in any competition held on the territory of the ASN or FMN where the sentence was pronounced in the case of a National suspension, or on any territory in which the authority of the FIA/CIK/FIM is recognised in the case of an international suspension. In all cases it will result in an immediate withdrawal of the competition licence from the person concerned.”*



**EVALUATION OF THE EVIDENCE:**

21. Respect is paramount in the motorsport community, not only for the officials but for all participants, including drivers, team members, and support staff. Each member plays a vital role, contributing uniquely to the dynamics and success of the sport. Creating an environment of mutual respect and appreciation is essential, as it fosters teamwork and enhances the overall spirit of the sport. Recognising and valuing every contribution, whether on the track or behind the scenes, ensures that the motorsport community thrives. Such a positive atmosphere not only boosts morale but also promotes safety and efficiency during events. Ultimately, respect is the foundation that allows the motorsport community to operate smoothly and ensures that each event is conducted in a professional and friendly manner. Without a culture of respect, the collaborative spirit necessary for successful motorsport events would diminish. This too is embodied in the MSA Karting Code of Conduct.
  
22. Motorsport officials perform their duties out of passion rather than for financial gain, underscoring the need to provide them with a respectful, appreciative, and supportive environment. They must be appropriately recognised and rewarded for their essential role. As cornerstones of motorsport, officials ensure fair competition, adhering to the rules, contributing significantly to the success and smooth operation of events. Officiating not only offers fun and life-changing experiences but also fosters leadership and personal development. It serves as an effective strategy in the sport and recreation industry to keep individuals engaged in a non-playing capacity. Without these officials, motorsport events cannot occur.

23. The uncontested evidence presented by the complainants conclusively demonstrates a severe breach of GCR 172 iv, vi, and x by *both* respondents. The behaviour of the respondents, as detailed in this judgment, is found to be wholly unacceptable in the realm of motorsport.
24. Mr Wally Junior was not notified to attend these proceedings at all, so no finding or penalty can be made or imposed against him.
25. As per GCR 113, an entrant shall have the prime responsibility for all acts and omissions of **all persons** connected with his entry, for ensuring that they comply with the rules and regulations, and for paying any fines levied on such persons.
26. It is this Court's finding that Mrs Wally's legal standing at the event has been established (see GCR 113 xv) in that she is bound, in addition to being the licence holder, as the "*entrant*" and/or "*competitor*" (as defined in the GCR's) for at least the following reasons:
  - 26.1. MSA confirmed that Mr Wally Junior, with the assistance of his parent - Mrs Wally, applied for his MSA licence which was duly granted.
  - 26.2. It was Ms Wood's testimony that Mrs Wally signed all documents for this event in her capacity as parent/legal guardian of Mr Wally Junior, including the entry for Mr Wally Junior.
27. Based on the evidence, no contractual relationship has been established between Mr Wally Senior and MSA. Therefore, this Court has no jurisdiction over Mr Wally Senior. Mrs Wally, however, also bears responsibility for Mr Wally Senior's conduct, given his close connection to Mr Wally Junior's entry.

28. This Court further finds that any consequence of the decision below, which impacts Mr Wally Junior's existing MSA licence to participate in Karting competitions and events, is remediable in terms of the underlined process recorded in paragraph 19.4 above. Any such consequences could thus be nullified in respect of Mr Wally Junior.
29. For clarity, the findings below would not prevent Mrs Wally from attending events as a spectator.

**FINDINGS OF THIS ENQUIRY:**

The Court accordingly makes the following finding:

1. Mrs Wally is found to have breached GCRs 172 iv, vi and x.
2. Mrs Wally is suspended for a period of 6 months in terms of GCR 172 x), read with GCR 184, for a first offence. For clarity, Mrs Wally will not be able to act as Mr Wally Junior's entrant or represent him in any capacity during the period of suspension.
3. Mrs Wally is ordered to pay a fine in the amount of R30,000.00 to MSA.
4. No order is made against Mr Wally Senior for lack of jurisdiction against him.

Competitors are reminded of their rights in terms of GCR 212 B.

Dated at Pretoria on 30<sup>th</sup> May 2024.

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