



MOTORSPORT SOUTH AFRICA NPC

Reg. No 1995/005605/08

www.motorsport.co.za

2nd Floor, Meersig 1, Cnr. Upper Lake Lane & Constantia Boulevard, Constantia Kloof, Roodepoort
e-mail: msa@motorsport.co.za Telephone (011) 675 2220

MSA COURT OF APPEAL 485

HEARING WAS HELD VIA ZOOM ON 31 JULY 2024 AT 17H30

Court:	Mr. Steve Harding	-	Court President
	Mr. Iain Pepper	-	Court Member
	Mr. Anthony Taylor	-	Court Member
	Ms. Nthabiseng Motsie	-	Court Member
In Attendance:	Mrs. Zamokuhle Nkomo	-	Appellant and Mother of Manelisi Nkomo
	Mr. Riaan Swart	-	Respondent and Father of Jesse Swart
	Mr Luan Oelofse	-	Clerk of the Course
	Mr. Ian Richards	-	MSA Steward
	Mr. Craig Martin	-	Club Steward
	Mr. Vic Maharaj	-	MSA Sporting Services Manager
	Ms. Samantha Van Reenen	-	MSA Sporting Services Manager – Cars, Karting and Legal
	Mrs. Allison Vogelsang	-	MSA Circuit Sport Coordinator

INTRODUCTION AND PROCEDURAL MATTERS

1. At the commencement of the hearing, which was heard remotely using the Zoom platform, the Court President indicated that the court was originally comprised of 4 members namely himself, Steve Harding, Mr Iain Pepper, Mr Anthony Taylor and Ms Nthabiseng Motsie. He advised that Ms Motsie was unfortunately not available due to urgent personal circumstances. As the remaining members of the court still constituted a quorum*, the court intended to proceed with the matter.

**see GCR 210*

2. The Court President then enquired as to whether there was any objection to the court as constituted. The parties indicated that they were happy with the court as constituted.
3. This appeal is an appeal brought by Mrs Zamokuhle Nkomo on behalf of her minor son Manelisi Nkomo, against the findings of the stewards in relation to a collision which occurred involving her son and Jesse Swart during race 2 of the National Rok Karting event held at

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



MEMBER OF



sport, arts & culture

Department:
Sport, Arts and Culture
REPUBLIC OF SOUTH AFRICA

Directors: A. Roux (Chairman), A. Scholtz (Chief Executive Officer), R. Beekun (Financial),
Mrs. D Abrahams, Mrs. D. Ballington, K. Govender, Ms. T. Human, FC. Kraamwinkel, Mrs. S Labuscagne Jonck, M. Rowe, V. Maharaj (Executive), G. Waberski
Honorary President: R. Schilling

Vereeniging on 18 May 2024. Jesse Swart was represented in this appeal by his father Mr Riaan Swart.

4. The Clerk of the Course found after a hearing in terms of GCR 175 attended by both drivers and their parent/ entrant that Competitor 16, Manelisi Nkomo, had committed a "Push Out" with advantage as defined in SSR 9 d of the applicable regulations* against Competitor 67, Jesse Swart, and imposed a 5 position penalty for the heat.

**MSA National ROK Karting Standing Supplementary regulations*

5. The appellant then submitted a protest against the decision of the Clerk of the Course to the Stewards. After a hearing the Stewards found Competitor 16, Nkomo, at fault dismissed the protest, upheld the penalty imposed and declared the protest fee forfeit.
6. The appellant then launched this appeal with the required leave in terms of GCR 212 A. The appellant advanced 3 grounds of appeal namely, that the incident report was filed out of time and should not have been accepted by the Clerk of the Course, that the incident was in fact attributable to competitor 67 cutting in or alternatively should have been regarded as a racing incident, and finally that the 5 place penalty was excessive given that competitor 16 lost several places as a result of the incident.

INCIDENT REPORT

7. The first ground of appeal was based on SSR 41 of the applicable regulations. The appellant contended that the race was finished, and the results were published at 15:31 and that the incident report was filed at 16:04. This was more than 30 minutes after the incident and the appellant contended that it should therefore not have been accepted given that SSR 41 b expressly provides that incident reports will not be accepted more than 30 minutes after the incident occurring.
8. The Clerk of the Course, Mr Oelofse, explained that an incident report had been received from Competitor 67 at 15:36. This incident report was in his view too vague and he requested the competitor to let him have a more detailed incident report which was received at 16:04. (The first report was omitted from the documents sent to MSA and did not form part of the bundle. It has however subsequently been furnished to the court by MSA)
9. SSR 41 reads as follows:
 41. *INCIDENT FORM*
Completion of this form within 30 minutes of observing an incident serves to bring an issue to the attention of senior race officials at an event.
 - a) *It shall not replace a formal protest and the race officials shall not be obliged to act on its contents.*
 - b) *Forms will not be accepted after 30 minutes of the incident occurring.*
 - c) *Any competitor who considers himself/herself sufficiently aggrieved, and requires an issue to be formally investigated, is advised to rather lodge a formal protest/appeal as per the relevant GCR's within the stipulated time limits.*
10. In the view of this court the above quoted SSR 41 b) empowers the race officials not to accept late incident forms, however it does not prevent them acting on any report or in regard to any

incident whether or not a report was received. The court considers that the Clerk of the Course is at all times empowered to act in regard to any incident, *mero motu*, that is to say of his own accord.

CONSIDERATION OF THE ON-TRACK INCIDENT

11. The court considered video evidence which was originally submitted to the Clerk of the Course during the GCR 175 hearing, and the Stewards hearing the protest, by Competitor 67. This video was taken from an on-board camera mounted on a kart following closely behind the 2 competitors concerned.
12. The Court is of the unanimous view that Competitor 67 left the door wide open as a result of his very wide approach to the corner where the incident took place. Competitor 16 took advantage of the opportunity presented to overtake Competitor 67 on the inside and was fully alongside kart number 67 before the collision took place.
13. The Court is of the view that at that point Competitor 67 should have backed out and conceded the corner. The Court considers that the collision should be treated as a racing incident and that no sanction should be applied to Competitor 67 for causing the collision. Indeed, no such relief was contended for by the Appellant.
14. Given the Court's finding that the collision should be considered as a racing incident there is no need for the Court to consider, the question of the penalty imposed by the Clerk of the Course and confirmed by the Stewards. The Court however considers the penalties prescribed by SSR 9 d) to be mandatory.

FINDINGS

15. In the circumstances the appeal against the decision of the Stewards to dismiss the protest succeeds with the following consequences:-
 - a. Competitor 16 is to be reinstated in the results without the 5 place penalty;
 - b. The protest fee is to be refunded to the appellant: and
 - c. The appeal fee is to be refunded to the appellant less an amount of 25% which shall be retained by MSA in respect of administrative costs.

The date of this judgement is the 8 August 2024.

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