



# MOTORSPORT SOUTH AFRICA NPC

Reg. No 1995/005605/08

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## MOTORSPORT SOUTH AFRICA COURT OF ENQUIRY 1276

### PARTIES:

Joshat Kinyua  
Grant Nairn-Mason

### DATE OF HEARING:

8 August 2024

### OFFICIALS:

|                         |   |
|-------------------------|---|
| Mr Steve Harding        | Court President                               |
| Adv Veruschka September | Court Member                                  |
| Ms. Nthabiseng Motsie   | Court Member                                  |
| Mr Vic Maharaj          | MSA Sporting Services Manager                 |
| Ms. Samantha van Reenen | MSA Sporting Services – Cars, Karts and Legal |
| Mr Rashaad Monteiro     | MSA Sporting Safeguarding Officer             |

### IN ATTENDANCE:

|                      |   |
|----------------------|---|
| Mr Joshat Kinyua     | Complainant/Father of competitor Amani Kinyua                   |
| Mr Grant Nairn-Mason | Respondent/Father and Entrant of competitor Mattao Nairn- Mason |
| Mr James Moore       | Respondent/Father and Entrant of competitor Jack Moore          |
| Mr Luan Oelofse      | Clerk of the Course   |
| Sparky Bright        | Technical Panel   |

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



**sport, arts & culture**  
Department:  
Sport, Arts and Culture  
REPUBLIC OF SOUTH AFRICA

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

**PRELIMINARY MATTERS**

1. These are the written findings of Motorsport South Africa (“MSA”) Court of Enquiry 1276 which was heard on 8 August 2024.
2. The hearing was conducted in an online format with the parties, officials and witnesses all attending virtually via the Zoom platform.
3. The members of the Court were introduced to the parties and there was no objection to the composition of the Court.
4. The court was convened in terms of the provisions of GCR 211 and the MSA Safeguarding Policy based on reports submitted to MSA by Mr Kinyua on behalf of his minor son Amani following an incident which occurred on 18 May 2024 during the 2<sup>nd</sup> round of the ROK Karting Championship held at Vereeniging Kart Circuit. The court was specifically directed to investigate whether Mr Grant Nairn-Mason was guilty of breaching, inter alia, GCR’s 172 iv), vi) or any part of the MSA Safeguarding Policy or the MSA Karting Code with a view to taking appropriate action.
5. Given the nature of Courts of Enquiry there is no fixed or laid down procedure for their conduct which therefore falls to be determined by the court. In this instance the court was of the view that it should first hear evidence from MSA and the Clerk of the Course in regard to the circumstances which gave rise to the incident before allowing the parties to ventilate the issue before the court.

**BACKGROUND**

6. The court then heard from Mr Sparky Bright, in his capacity as the Chairman of the MSA Technical Panel who explained that this particular championship was run on the basis of pool engines. The concept relating to pool engines is that the engines are provided by the championship promoters approved engine provider, and allocated amongst competitors by means of a random draw, and similarly swapped amongst the competitors from time to time as determined by the organisers of the event.
7. At the time of the event in question the applicable regulations did not specify any particular OKJ engine. This lacuna gave rise to an assumption on the part of both the competitors, and in this instance, particularly their parents and MSA that only a single pool of identical OKJ engines, would be in use during the championship.

*Refer Art 19 MSA National ROK Karting Technical Regulations*

*Version 4 dd 26 February 2024*

8. At the particular event in question, it transpired that the series promoter had acquired a 2<sup>nd</sup> set of pool OKJ engines with a different specification relating primarily to the carburetor. The court later heard evidence that the performance characteristics of the 2 engines were different. The initial and original pool of engines were of the DDJ specification of the OKJ engine and engines of this specification were used for the first round of the championship in Cape Town and were the same as the practice engines which had been acquired by the majority of competitors. For the 2<sup>nd</sup> round of the championship the pool engines supplied by the engine service provider of the series promoter were of the DJT specification. Mr Bright testified that MSA was not aware of the change in specification and had not authorised the change.
9. The court then heard from Mr Luan Oelofse, the Clerk of the Course for the event. Mr Oelofse testified that the change in engines gave rise to considerable dissatisfaction amongst competitors and their parents. After investigating with the promoters and establishing that there were not enough DDJ engines available as some of them had been sent to another circuit for a regional event, he decided to convene a meeting of the competitors in order to explain the situation. 2 meetings were held, at the first held in the morning of the Friday practice day it was agreed that it would be best to test using the available DJT engines and then to have a further meeting at the end of the day.
10. A 2<sup>nd</sup> meeting took place on the Friday after practice, at which there was a lot of frustration and heated discussion, but the parties eventually came to an agreement that everyone would run the new engines. Mr Oelofse testified that in addition to the initial random allocation of the engines, 2 additional engine swaps were conducted during the course of the day, again on the basis of a random draw, as well as 2 engine swaps on the Saturday, the first after practice 1 and 2, the 2<sup>nd</sup> after qualifying and race one and before races 2 and 3.

**THE ALLEGED INCIDENT**

11. The court bundle provided by MSA included an official complaint by Mr Kinyua and a reporting form provided by MSA in terms of its safeguarding policy. These documents accused Mr Nairn-Mason of harassment, intimidation and discrimination and Mr James Moore of discrimination. Despite Mr Moore being described as a respondent in the notice convening this court, the

court was not charged with investigating him in any way. He nonetheless participated fully in the hearing.

12. It is common cause that despite the engine swaps Amani Kinyua was consistently faster than the remainder of the class, and that the range of performance of the competitors was not as close as it had been during the first round of the championship. It seems that Mr Moore and Mr Nairn-Mason attributed the divergences in performance to the change in engines and suggested that something had to be wrong if one competitor was consistently faster than the rest of the field. They both contended that their concerns would have been the same regardless of the identity of the faster competitor and that the concerns and criticisms raised by them were not directed at Amani Kinyua and that his involvement was coincidental.
13. Mr Kinyua was asked what specifically gave rise to the allegation of discrimination made against Mr Moore. It appeared from the testimony of Mr Kinyua that this allegation of discrimination was based on the fact that Mr Moore alleged that the difference in performance was 0,5 or 0,6 of a second when in fact it was at most 0,29 of a second. Whether this was merely inaccuracy or deliberate exaggeration the court does not see this as an act of discrimination. As pointed out above this court was in any event not convened to investigate any breach of the regulations by Mr Moore.
14. With regard to the allegations against Mr Nairn-Mason he was candid with the court and indicated that he used language which was inappropriate and apologised for the use of the same. With regard to the express accusations made of discrimination, harassment and intimidation it would seem that the allegation of discrimination arises from the fact that the performance of Amani Kinyua was singled out as a reason for the dissatisfaction with the change in engines. The allegation of harassment and intimidation rested on an alleged interaction between Mr Nairn-Mason and Amani Kinyua which took place when Mr Kinyua was not present and any evidence given by Mr Kinyua in this regard has to be treated as hearsay. Mr Nairn-Mason denied that any interaction of this nature had taken place. Mr Kinyua declined to allow his son Amani to testify in this regard. While this court is not strictly bound by the laws of evidence given the conflict between the 2 versions and the fact that the allegation made is hearsay, the court cannot make a finding in this regard.
15. While the court accepts that the suggestion that the allegation that Amani was faster by reason of the change of engine specification was perceived by Mr Kinyua and Amani as discriminatory, the court finds that neither Mr Nairn-Mason nor Mr Moore had any intent to

discriminate and accepts the evidence of both them that they would have raised the same concerns regardless of the identity of the fastest competitor. In the circumstances the court finds no breach of the MSA Safeguarding Policy.

### **CONCLUSIONS AND FINDINGS**

16. The court determines that in regard to the use of inappropriate language that Mr Nairn-Mason's actions constituted a clear breach of GCR 172 iv) and vi) and the MSA Karting Code of Conduct.

### **SANCTIONS**

17. This court is left with the duty to determine an appropriate sanction to be imposed upon Mr Nairn-Mason for his conduct. In doing so it has examined the findings of several Courts of Enquiry faced with a similar issue, over the past 3 years. Mr Nairn-Mason's candid acknowledgement of the wrongdoing and apology are considered as mitigating factors
18. In this instance we are of the view that a fine of R3,000 is appropriate and that there is no necessity for the imposition of any additional sanction.
19. Mr Nairn-Mason is further ordered to make payment of an additional amount of R3,000 as a contribution to the costs of MSA in convening this court of enquiry.

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

### **CONCURRING DECISION (Adv. Veruschka September)**

#### **Introduction**

20. I have read the decision of my fellow Court members, Mr. Steve Harding and Ms. Nthabiseng Motsie. I cannot agree with the reasoning leading up to the finding of breach and related sanction for the reasons given below.

#### **The nature of the dispute in context**

21. The facts of the dispute are as set out in the main decision. The nature of this dispute must however be contextualised. Save for what is stated below, I agree with the summary recordals of main facts in the main decision as presented through the evidence placed before the Court.
22. Motorsport South Africa ("MSA") is committed to ensure a safe environment in which all individuals are treated with respect and dignity. These commitments are mirrored in the policies of both the South African Sports Confederation and Olympic Committee and the *Federation Internationale De L'Automobile* to which MSA is a member. The MSA Safeguarding

Policy (*“the Policy”*) aims to safeguard the interests of all involved in South African motorsport, but particularly those of children and vulnerable persons. Harassment, intimidation and discrimination are forms of misconduct detrimental for the safety of those involved in motorsport and violates the sporting environment and the integrity and reputation of MSA. All practices detrimental to the human dignity and the physical and mental health of all participants in the activities of motorsport shall not be tolerated at MSA.

23. The allegations of harassment, intimidation and discrimination with which this Court is tasked to interrogate are serious allegations especially given that the alleged misconduct was aimed at a child competitor of 12 years at the time, Mr Amani Wairati Kinyua (*“Amani”*) participating in the second round of the ROK Karting Championship held at Vereeniging Kart Circuit on 17 and 18 May 2024. The entire enquiry thus pivots on the alleged misconduct of Mr Grant Stuart Nairn-Mason (*“Mr Nairn-Mason”*) against Amani.<sup>1</sup>

### **The conflicting versions**

#### *The aggrieved party*

24. Amani was represented by his father, Mr Josphat Kibogo Kinyua (*“Mr Kinyua”*). Mr Kinyua had provided a written statement before the hearing and supplemented his evidence orally at the hearing. Amani was neither present nor available at the hearing. Mr Kinyua clarified to the Court that he chose to not have Amani provide his own personal version to the Court and that he understood the consequence of his decision.
25. Mr Kinyua relied upon the following facts, distilled to its essence, amongst others, to support his allegations of harassment, intimidation and discrimination against Mr Nairn-Mason in respect of Amani:
- 25.1 That the discrimination against Amani was Mr Nairn-Mason’s use of false or incorrect statistics to discredit Amani’s consistent fastest performance in 4 of 6 practice rounds despite the engine swaps (which is described more fully in the main decision). The Reporting Form (Appendix A), which was completed by Mr Kinyua, indicates as other specific information *“Young Black Athlete”* but no mention of any discrimination based on race was relied upon at the hearing;
- 25.2 Issue was being taken against the lead time that Amani had to his fellow competitors as compared to that during the first round of the championship;
- 25.3 That Mr Nairn-Mason used profanity about performance multiple times, in front of the competitors, to express his points and frustration in an open meeting which indirectly dealt with Amani being the fastest competitor due to the engine swaps. Mr Nairn-Mason’s unacceptable use of language resulted in Mr Kinyua asking Amani to leave the meeting;

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<sup>1</sup> Despite the original Reporting Form, submitted by Mr Kinyua, accusing a certain Mr James Moore of *“Discrimination”*, MSA confined the investigative enquiry to only deal with the conduct of Mr Nairn-Mason. No consideration has thus been given to any of the allegations against Mr James Moore, who was present during the hearing.

- 25.4 That Mr Nairn-Mason approached and intimidated Amani at a restaurant when he was with two of his friends and in Mr Kinyua's absence. Mr Nairn-Mason uttered words to Amani to the effect that he is not good, he just had a better engine.

*Mr Nairn-Mason version*

26. Mr Nairn-Mason had provided an affidavit before the hearing and supplemented his evidence orally at the hearing. His minor son, Mattao Nairn-Mason, competed in the OKJ class together with Amani. His version to the above allegations are summarised as follows, amongst other things:
- 26.1 That he denied that he discriminated against Amani;
- 26.2 That he attributed the divergences in performance to the change in engines and suggested that something had to be wrong if Amani was consistently faster than the others. His issue would have been no different regardless of the identity of the competitor;
- 26.3 That he went to Mr Kinyua afterwards and apologised to the effect that it was not about Amani but about the disparity in the engines; he apologised again to Mr Kinyua during the hearing restating his view;
- 26.4 That he admitted to using profanity, as alleged. He apologised for his conduct in this respect and indicated that it was not aimed personally at Mr Kinyua or Amani. No other parent or person in the meeting indicated that they had taken offence and others ventilated their frustrations in similar terms;
- 26.5 That he denied having spoken or approached Amani directly, in his father's absence, at all as alleged above. He did not verbally intimidate or harass Amani, nor did he engage in any form of alleged discrimination.

**Analysis**

27. The MSA Policy defines Discrimination to mean *"treating, proposing to treat or requesting, assisting, instructing or encouraging another person to treat a person less favourably than someone else on the basis of an attribute or personal characteristic including: age, disability, athletic ability, athletic longevity, marital status, parental or career status, physical features, irrelevant medical record, irrelevant criminal record, political belief or activity, pregnancy, breastfeeding, race, ethnicity, religious belief or activity, sex or gender, sexual orientation, transgender orientation, socio-economic/financial status, trade union membership or activity.* [own emphasis as underlined]
28. The MSA Policy also regulates that *"[h]arassment and abuse can be based on any grounds including race, religion, colour, creed, ethnic origin, physical attributes, gender, sexual orientation, age, disability, socio-economic status and athletic ability. It can include a once-off incident or a series of incidents. It may be in person or online. Harassment may be deliberate, unsolicited and coercive. Harassment and abuse often result from an abuse of authority, meaning the improper use of a position of influence, power or authority by an individual against another person."* [own emphasis as underlined]

29. It is apparent from the facts that Mr Nairn-Mason indirectly differentiated Amani from the rest of his competitors by virtue of him being the fastest competitor. However, such differentiation was, in my view, rationally connected to the change in engines and the perceived impact that it had on the competitors' performance. It just so happened that Amani was the fastest competitor at the time. Mr Nairn-Mason gave unchallenged evidence that his issue would have been no different regardless of the identity of the competitor. In fact, it is also common cause that Mr Nairn-Mason was one of several parents of minor competitors aggrieved by the engine swaps. I therefore find that Mr Nairn-Mason's differentiation of Amani did not constitute discrimination because it was not premised on Amani's athletic ability but instead on achieving fair play to all competitors borne out of the change in engines. It is common cause that in the end Amani proved his fast performance irrespective of the engine that he used.
30. Mr Nairn-Mason admitted to using profanity multiple times, in front of the competitors, to express his points and frustration in an open meeting which dealt with Amani being the fastest competitor perceived to arise out of the engine swaps. While no other parent or person in the meeting indicated that they had taken offence and others ventilated their frustrations in similar terms, it does not excuse his conduct in the presence of minor competitors whose health and well-being need to be safeguarded. The conduct was inappropriate to the extent that Mr Kinyua had told Amani to leave the meeting.
31. Turning to the remaining issues, the Court did not have the benefit of Amani giving his version on the allegation that Mr Nairn-Mason intimidated or harassed him directly in the absence of his father. While Mr Kinyua's evidence on this aspect does constitute hearsay evidence, hearsay evidence is admissible if it is in the interests of justice to do so. The versions on this issue are however mutually destructive. On the one hand, Mr Kinyua alleges the occurrence of an incident that intimidated or harassed Amani. On the other hand, Mr Nairn-Mason denies that the incident took place at all. Due to the gravity and seriousness of an allegation that a child has been intimidated or harassed by an adult in the absence of the child's parent or guardian which is misconduct that MSA does not tolerate, I am inclined to not admit the hearsay evidence of Mr Kinyua absent direct evidence from Amani. Mr Kinyua's choice that Amani not appear before the Court is respected as is his acknowledgement that he accepts the consequence of his decision. In the result, the version of Mr Nairn-Mason will prevail.

### **Findings and Sanction**

32. In the result, I agree with the decision of my fellow Court members that Mr Nairn-Mason is guilty of breaching GCR 172 iv) and vi) in relation to his use of inappropriate language in the presence of Amani and the other minor competitors at the open meeting.
33. For this breach, I agree with my fellow Court members that a fine is appropriate. To that end, the Court has a wide discretion to impose fines for breaches of the GCR's. Given Mr Nairn-Mason's acknowledgement of wrongdoing and his apology in addition to consideration of other judgments of a similar nature to which this Court is not bound, a fine of R3,000.00 (three thousand hundred rand) is appropriate in addition to payment of R3,000.00 (three thousand rand) as a contribution to the costs of MSA in convening this Court of enquiry.