



# MOTORSPORT SOUTH AFRICA NPC

Reg. No 1995/005605/08

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## MOTORSPORT SOUTH AFRICA COURT OF APPEAL 479

**MAYSURAH WALLY obo MUHAMMAD WALLY**

Appellant

and

**MOTORSPORT SOUTH AFRICA**

Respondent

### **Court Panel:**

Court President: Adv. Sean Kelly

Court Member: Mr. Steve Beaumont

Court Member: Mr. Jaryd Thomas

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## APPEAL JUDGEMENT

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### **I. INTRODUCTION:**

1. The present application was brought in terms of section 212 A(ii) of Motorsport South Africa's General Competition Rules ('GCRs').
2. Mrs. Maysurah Wally ('the appellant'), on behalf of her minor son ('the competitor' or 'Mr Wally'), is appealing the decision to ban Mr. Wally for three (3) months from competing in the Rotax Karting Series.
3. The appeal panel was convened, and arguments were heard from both the appellant and Mr. Ed Murray, the promoter of the series in which Mr. Wally competes, on 4 September 2024.
4. The panel wishes to emphasise that in the following considerations, it will only refer to the facts, arguments and documentary evidence, which it considered pertinent for the assessment of the

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**sport, arts & culture**  
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Sport, Arts and Culture  
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Honorary President: R. Schilling

matter at hand. Failure to not expressly mention something, should not be interpreted to mean that it was not considered.

## **II. BACKGROUND FACTS:**

5. Mr. Wally participated in Motorsport South Africa's ('MSA') sanctioned karting events during the 2023 racing season.
6. Prior to the 2023 karting season, Mr. Wally sought permission from MSA to compete under his Kuwaiti-issued competition license. In a letter dated 22 February 2023, MSA approved that request, subject to two (2) conditions. The conditions stipulated were as follows:
  - 6.1. Mr. Wally and his family abide by all of MSA's applicable regulations and Karting Code of Conduct; and
  - 6.2. MSA is in receipt of a valid start permission from the Kuwaiti ASN for the events entered.
7. On 14 February 2024, the appellant received an email from Ms. Allison Vogelsang ('Ms. Vogelsang') informing her that Mr. Wally had reached his allocation under the License Penalty System ('LPS system') for the 2023 season.
8. Ms. Vogelsang further stated, in the same email, that Mr. Wally's ban was for three (3) months and started on 9 September 2023. She noted that due to there being no events during the period of November, December and January, his ban would run over February, March, and April 2024.
9. The appellant's main argument was that the LPS system did not apply to Mr. Wally as he was not racing on an MSA-issued license but rather a Kuwaiti license. The basis of the argument was that section 35 of the 2023 MSA SARMC National Karting Sporting Regulations, only applied to holders of an MSA karting license.
10. The appellant argued that because he had not purchased an MSA license, this section did not apply to him. The appellant raised two further concerns. First, the current system of deducting points takes away the right to appeal decisions, and second, if the LPS system did apply to Mr. Wally, why was the ban only communicated in February 2024.

**III. OBJECTIONS:**

11. Before going into the merits of this appeal, it must be noted that the appellant did initially raise a procedural concern regarding one of the members of the panel.
12. The appellant noted that they had reservations about Mr. Steve Beaumont ('Mr. Beaumont') serving on the panel as he had a relationship with Mr. Ed Murray, who was the promoter of the Rotax series.
13. The Court President enquired as to whether the appellant wished to lodge an objection to Mr. Beaumont serving on the panel, however, the appellant agreed to continue with Mr. Beaumont acting as a court member.

**IV. APPLICABLE LAWS:**

14. The Fédération Internationale de l'Automobile (FIA) is the international governing body for motorsport. MSA is the national sporting authority (ASN) of the sport in South Africa. As such, MSA must comply with the statutes and regulations of the FIA.
15. The FIA released a manual for ASNs to guide them in their development. Chapter 1, section 4 of the FIA Manual notes '*...an ASN and its affiliates are subject to the same legal responsibilities as any other entity in the country.*' While, there is little room to argue to the contrary, for completeness and in the absence of the express provision in the MSA regulations, it was necessary to establish that the laws of the Republic of South Africa apply to this dispute.
16. Section 6.2 of the same FIA manual further acknowledges that organising competitions requires entering agreements with, *inter alia*, competitors. The appellant during their arguments acknowledged that agreeing to participate in such events is a contractual agreement.
17. In light of the above the law of the Republic of South Africa, more specifically contractual law, in conjunction with the MSA rules and regulation apply to this dispute.

**V. ISSUES:**

18. The main issue of this appeal is whether the LPS system did in fact apply to Mr. Wally. Alternatively, whether the fact that he was competing under a Kuwaiti license meant that

section 35 of the MSA SARMC National Karting Regulations 2023 ('the 2023 MSA SARMC regulations') did not apply to him.

## VI. MERITS

### A) Applicability of the 2023 MSA SARMC Regulations to Mr. Wally

19. Section 35 of the 2023 MSA SARMC regulations states as follows:

*"...there need to be consequences for our actions and so when you take an MSA license to enter the SA Rotax Max Challenge and any associated karting event you choose to follow and abide by the regulations including the LPS [emphasis added].*

*The LPS is not intended to remove rights but rather to make everyone more conscious of when their actions impact the rights of others involved in our sport and create an unpleasant environment."*

20. Further to the above, section 35(1), under the heading 'The Code of Conduct LPS system:' states that *"Competitors will start with 12 points when purchasing an MSA Karting license" [emphasis added].*

21. In the 2024 MSA SARMC regulations, the LPS system is dealt with in section 39. While the first part of section 39 remains the same, as section 35 of the 2023 version, the provisions under the heading 'The Code of Conduct LPS system' have been amended slightly. Subsection 1 now provides: *'Competitors will start with 12 points when purchasing an MSA karting license or given permission to participate in the series' [emphasis added].*

22. The above-highlighted provisions of section 35 of the 2023 MSA SARMC regulations is what the appellant argued demonstrates that the provision does not apply to Mr. Wally. The appellant additionally stated that the amendment in the 2024 regulations further substantiates their argument that the LPS system did not apply to Mr. Wally.

23. When it comes to interpreting contracts, the Constitutional Court, in the *University of Johannesburg v Auckland Park Theological Seminary*, held that it is incorrect to only examine the ordinary grammatical meaning of the words.<sup>1</sup>

24. After examining the *Endumeni* judgement, the court held that a 'unitary' approach must be used when interpreting contracts<sup>2</sup>. The court explained that a unitary exercise means:

*"interpretation is to be approached holistically: simultaneously considering the text, context and purpose."*<sup>3</sup>

25. The court further held:

*"...the context and purpose must be taken into account as a matter of course, whether or not the words used in the contract are ambiguous. A court interpreting a contract has to, from the onset, consider the contract's factual matrix, its purpose, the circumstances leading up to its conclusion, and the knowledge at the time of those who negotiated and produced the contract."*<sup>4</sup>

26. From the above, it is apparent that the whole contract, its context and purpose need to be examined when interpreting a contract.

27. As only the 2023 MSA SARMC regulations applied during that season, only these provisions will be examined.

28. Section 2 of the 2023 MSA SARMC states:

*"All the parties concerned (FIA, CIK-FIA, ASN, organisers, entrants, and circuits) undertake to apply and observe the rules governing the race events' [emphasis added].*

29. Further to the above, section 4 outlines the regulations and expressly states:

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<sup>1</sup> *University of Johannesburg v Auckland Park Theological Seminary and another* 2021 (8) BCLR 807 (CC) at para 63.

<sup>2</sup> *University of Johannesburg* at para 65.

<sup>3</sup> *Ibid.*

<sup>4</sup> *University of Johannesburg* at para 66.

*“All drivers, entrants and officials participating in the SARMC 2023 undertake, on behalf of themselves, their employees and agents, to observe all these regulations.” [emphasis added]*

30. Additionally, section 32 sets out the code of conduct for drivers. These provisions are phrased in a manner that requires all participants to follow the rules and regulations. More specifically, section 32(i) states that all drivers must read and understand the rules and regulations applicable to that event. Notably, as seen from section 4 above, the 2023 MSA SARMC regulations applied at the Rotax karting events.
31. Section 34 of the 2023 MSA SARMC regulations is titled ‘Penalty Clause’. This section provides that participants shall be punished with a penalty in accordance with this section and possibly face the imposition of LPS points as per section 35. What is important to note is that this section does not differentiate between MSA license holders and international license holders.
32. In addition to the above, the remaining provisions of section 35 (the LPS system), outside of subsection 1, are phrased to be applicable to all participants. This can be gleaned from wording such as ‘all competitors’ and ‘any competitor’.
33. From reading the regulations, it is clear that the purpose of the 2023 MSA SARMC regulations is to outline the rules and regulations for all participants for the Rotax series. It further outlines the consequences of non-compliance with the regulations.
34. In light of the Constitutional Court judgement on interpreting contracts, it is clear to see that while section 35(1) contains the words ‘purchasing an MSA karting license’ which potentially limits its application, the purpose and context of the regulations as a whole indicate that the LPS system, and all its provisions, should be interpreted to apply to all the drivers/competitors that have been approved by MSA to partake in the Rotax series.
35. What is dispositive of the fact that the provisions of section 35 do apply to Mr. Wally is that section 34 expressly states that penalty points and LPS points can be imposed on participants, of which Mr. Wally was one. This is in addition to the fact that Mr. Wally and his parents agreed to abide by the applicable regulations.
36. To find that the provisions of the LPS system do not apply to Mr Wally would lead to the interpretation that he is bound by all the regulations in the document, except the provisions which impose sanctions for non-compliance. This would render the rest of the regulations

redundant, as Mr. Wally would potentially be able to circumvent other parts of the MSA SARMC regulations as there would be no consequences for such.

37. It is for the above reasons that the panel finds that the provisions of section 35 (the LPS system) did apply to Mr. Wally.

B) Appellant's Two additional Concerns

38. The first additional concern raised by the appellant was that the ban should have been communicated to Mr. Wally earlier or at the time the ban was established.
39. Section 35 of the MSA SARMC regulations does not provide a timeframe within which the ban must be communicated to the competitor. While it is advisable, for such a decision to be communicated within a reasonable period, the absence of any authority, in terms of the regulations, means that this panel cannot find that the delay in communicating the decision invalidated the decision. However, in the future MSA is advised to notify the parties as soon as possible.
40. The second additional concern raised by the appellant was that the current system of deducting points takes away the right to appeal decisions.
41. The panel does not agree with the arguments raised by the appellant in this regard. Section 35 states that in the instances where the appeal is successful, not only will the sanction be removed, but no penalty points will be applicable.
42. Thus, the panel finds that the current system does not take away the right to appeal, but rather it dissuades competitors from abusing or frivolously utilising the appeal system in any and all circumstances.

C) Implementation of the Suspension

43. Section 218 of the GCRs states:

*"The introduction of an appeal by a person suspended or precluded from further participation shall suspend the sentence or penalty imposed by the body concerned. However, should the appeal not subsequently be upheld, the appellant shall automatically be excluded from the event/s participated in 'under appeal'."*

44. In light of this panel finding that Mr. Wally is subject to the LPS system, and in accordance with section 218 of the GCRs, Mr. Wally will be excluded from the event/s that he participated in during the period of February, March, and April 2024. This will also result in Mr. Wally being unable to obtain any championship points during this period.

45. It is noteworthy that the second part of section 218 of the GCRs states:

*“Furthermore, the events participated in ‘under appeal’ shall not reduce the sentence/penalty originally imposed, which shall take effect from the date on which the appeal is turned down.”*

46. From the ordinary reading of this section, Mr. Wally’s suspension is to take effect from the day on which his appeal failed. Thus, not only would he be excluded from races and unable to earn points during February, March, and April 2024, but he would further face a 3-month suspension from the date of this unsuccessful appeal being published.

47. However, to impose a further three-month suspension after the date of this judgment would be akin to sanctioning Mr. Wally twice and in conflict with the common law principle of double jeopardy.

48. The GCRs expressly state that the provisions of section 218 are to prevent prejudice to other competitors. The panel finds that excluding Mr. Wally from races during February, March, and April 2024 is in line with the purpose of the provisions, and further, that no other competitor will be prejudiced by not imposing a further 3-month ban on Mr. Wally, as he will automatically be excluded from the previous events, and any points he earned will be rescinded.

#### C) Penalty Point Deductions

49. Lastly, section 35 of the MSA SARMC regulations outlines the consequences of unsuccessful appeals. More specifically, section 35(4)(c) states that 6 points will be deducted for any unsuccessful appeal. Additionally, section 35 also states:

*“An MSA Court shall be entitled to deduct any number of penalty points up to the maximum of 12, which will automatically trigger a 3-month ban. Alternatively, an MSA Court may impose any other form of penalty open to it.*



*MSA Courts are entitled to hear matters, and impose penalties, outside of the LPS system where deemed warranted."*

50. While there was no specific request to consider the penalty points, should this appeal be unsuccessful, the provisions of section 35 require the panel to consider same.
51. Mr. Wally was banned from September 2023, however, the ban would only run over February, March, and April 2024.
52. Section 35 does not indicate when the points deductions will take place, in instances where the competitor has been banned (as such reached 0 points), and has subsequently been unsuccessful in their appeal. However, section 35(3)(b) states that only after the competitor has served a ban will their points reset to 12. A points deduction while the competitor is on 0 points would serve no purpose. As such, it can be reasoned that any points deduction after an unsuccessful appeal of a three-month ban, would take place after the points have reset.
53. As Mr. Wally's points will only reset, in May, after his ban has been served, the 6-point deduction will apply thereafter.

## **VII. FINDINGS**

54. The panel makes the following findings:
  - 54.1. The appeal is dismissed;
  - 54.2. That Mr. Wally was subject to and required to abide by the provisions of section 35 of the MSA SARMC regulations (the LPS system);
  - 54.3. The three (3) months ban of Mr. Wally is upheld. Mr. Wally is deemed to have been suspended for the period of February, March, and April 2024. However, noting that this period has passed and in accordance with section 218 of the GCRs, if Mr. Wally participated in any events during this period, his results will be excluded and any championship points scored should be rescinded.
  - 54.4. Mr. Wally should not be suspended for a further three months from the date this appeal is published as this would be in conflict with the common law principle of double jeopardy.

- 54.5. Upon serving his three-month ban, and the resetting of his 12 points, there will be a 6-point deduction for the unsuccessful appeal; and
- 54.6. Despite the delay in communicating the three-months ban not invalidating the decision, MSA is advised to consider informing competitors as soon as is reasonably possible.

The date of this judgement is the 6 November 2024.

All parties are reminded of their rights as per GCR 212 B.