



# MOTORSPORT SOUTH AFRICA NPC

Reg. No 1995/005605/08

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## MOTORSPORT SOUTH AFRICA COURT OF APPEAL 480

**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 as a result of a five (5) second penalty that was issued to Mr. Muhammad Wally after heat 2 at the NR Regional – SARMC – RKC – Club 1.
2. Ms. Maysurah Wally ('the appellant'), on behalf of her minor son ('the competitor' or 'Mr Wally'), is appealing the abovementioned decision.
3. The appeal panel was convened and arguments were heard from the appellant and Mr. Mitch Coetzee, the Clerk of the Course, on 4 September 2024.
4. The panel wishes to emphasise that the following considerations will only refer to the facts, arguments, and documentary evidence that are considered pertinent for the assessment of the matter at hand. Failure to not expressly mention something, should not be interpreted to mean that it was not considered.

*MOTORSPORT SOUTH AFRICA IS THE ONLY RECOGNISED MOTORSPORT FEDERATION IN 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

## II. BACKGROUND FACTS:

5. Mr. Wally is a karting driver and races in Motorsport South Africa ('MSA') sanctioned karting events. On 24 February 2024, Mr. Wally competed in the NR Regional –SARMC –RKC – Club 1 event ('the event'). The event took place at Zwartkops, Pretoria.
6. During heat 1, it is alleged that Mr. Wally was shown a black and white flag. This flag indicates that a driver is warned for unsportsmanlike conduct and must report to the Clerk of the Course immediately after the race concerned.
7. Mr. Walley attended the office of the Clerk of the Course in between heats 1 and 2. It is alleged that in this meeting Mr. Wally was given a warning for looking completely down.
8. After the completion of heat 2, Mr. Wally was given an infringement notice. The notice stated the following:

*"Notice is hereby given that,*

*The above competitor has been informed of the infringement of the 2024 MSA National Rotax Karting Championship Regulations and the 2024 MSA General Competitions Regulations, more specifically the article relating to:*

*2024 MSA SARMC National Karting Sporting Regulations. V2 38-2 Driving in a manner incompatible with general safety. (Driver was shown black/white in heat 1 for looking completely down. COC. Gave a warning)."*

9. The appellant argues that there are no rules that prevent a competitor from putting their head down in a race for aerodynamic purposes. It was argued that this practice was known as 'aero-tucking' and it was common practice among drivers locally and internationally.
10. The appellant stated that even when performing the aero-tuck, Mr. Wally always kept his vision on the race track. Lastly, during the hearing, it was argued that the reason why the competitor was being summoned to the Clerk of the Courses' office and the subsequent warning was not adequately explained to the competitor.

11. In response to the appellant's arguments, Mr. Mitch Coetzee (Mr. Coetzee) and Ms. Vanessa Wood ('Ms. Wood') appeared before the panel. Mr. Coetzee was the Clerk of the Course ('COC') and Ms. Wood was an MSA Steward for the event.
12. Mr. Coetzee and Ms. Wood argued that the COC is responsible for the general safety of all competitors at an event. As such, the COC is empowered in terms of the MSA regulations to make decisions during the course of an event to protect driver safety. As such, while there were no express provisions against the aero-tuck, the COC has the authority, to warn drivers against any actions they deem to be unsafe.

### **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 was well known in the South African karting environment and had relationships with some officials of MSA.
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, in conjunction with the MSA rules and regulations, apply to this dispute.

## V. ISSUES

18. For the purposes of this appeal, the panel is called on to decide on three (3) issues. These issues are as follows:
  - 18.1. Whether the MSA Rules and Regulations authorise the COC to give warnings and sanctions to drivers for conduct not expressly prohibited;
  - 18.2. If the COC did have the authority, was Mr. Wally properly warned against continuing the practice of aero-tucking at the event; and
  - 18.3. Lastly, whether the sanction of a five (5) second penalty should be upheld.

## VI. MERITS

### a) COC's Powers and Authority in terms of the MSA Regulations

19. The event forms part of the Rotax racing series. The 2024 MSA SARMC National Karting Sporting Regulations ('the 2024 MSA SARMC regulations') sets out the rules governing these events.
20. Section 6 of the 2024 MSA SARMC states that
 

*"All drivers, entrants and officials participating in the SARMC 2024 undertake, on behalf of themselves, their employees and agents, to observe all these regulations."*
21. Additionally, section 6 sets out which governing documents the events must be run in accordance with. For this appeal, it is important to note that this section expressly states that the General Competition Regulations (GCRs) of MSA and the 2024 MSA SARMC regulations are applicable.
22. The GCRs set out the duties and authority of the COC. Section 156 states that the COC for the meeting has the supreme authority for the conduct of the meeting or competition. The section then states, in 156(vii) and 156(viii),:

*"...the COC shall in particular:*

*[vii] take his own decisions within the limits and scope of his authority as set forth in the GCRs, SSRs and SRs for the event.*

*[viii] in dealing with dangerous or unsafe driving and with baulking at a race meeting, it is the responsibility of the Clerk of the Course to deal with these matters in terms of the powers vested in him..."*

23. Section 151 of the GCRs, while specifically dealing with the role of the Stewards, also emphasises the authority of the COC. More specifically, 151(ii) notes that the COC is '*primarily responsible for ensuring the safety of spectators, officials and competitors.*' Section 151 (iii) states that the COC '*effectively acts as the Chief Executive Officer for any meeting*'.
24. While none of these provisions expressly state that the COC has the authority to prohibit an action, a thorough reading of the entire GCRs, in conjunction with the above provisions, highlights that the COC has the authority to make decisions for the safety of all participants at the event. This would include prohibiting certain actions, even if they are a common practice.
25. This interpretation is further aided by section 141(iv) of the GCRs. This section requires a briefing to take place prior to the event, and expressly states that at this meeting, clarity must be given as to '*final instructions or any matter not specifically covered in any regulation*'. As such, even though the regulations might not expressly prohibit an action, it is possible for the COC (i.e. the person described as the CEO of the event) to prohibit certain actions.
26. In light of the above, the panel finds that the COC does have the authority to make decisions that are for the safety of all participants, which will include competitors. This authority would extend to prohibiting certain actions that the COC would deem to be unsafe.

b) *Was Mr. Wally properly warned that the Aero-Tuck was prohibited.*

27. Article 3 of the 2024 MSA SARMC regulations states:

**"ANYTHING WHICH IS NOT EXPRESSLY ALLOWED IS FORBIDDEN"<sup>1</sup>**

28. Despite the above provision, the appellant argued that the practice of 'aero-tucking' is a common practice in South Africa and globally. This fact was not contested by the respondent. As such, while it may not have been expressly prohibited, it seems to be tacitly accepted as a

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<sup>1</sup> Please note that the words are cited exactly as per the regulations. The panel did not bold or capitalise the phrase for emphasis.

standard practice in karting. Therefore, Mr. Wally would need to have been informed of the COC's decision prohibiting the aero-tuck.

29. As noted above, section 141 of the GCRs requires a driver briefing prior to the event. The purpose of this briefing is for all entrants and drivers to seek clarification concerning the SRs, final instructions or any matter not specifically covered in the regulation.
30. Neither party disputed the occurrence of this briefing. However, the COC admitted that no communication was given to the competitors at this briefing that the aero-tuck was prohibited. Nevertheless, as was held above, the COC can prohibit the actions during an event if there is a safety concern. The COC stated that during heat 1, he believed the aero-tucking to constitute a safety concern, as such drivers were given a black and white flag, which required them to attend the steward's office after the race. One of these competitors was Mr. Wally. The COC alleges that during this meeting, Mr. Wally was adequately warned that the aero-tuck would be prohibited for heat 2. Mr. Wally disputed that the warning was properly communicated to him.
31. In light of the above, the panel had to consider whether the warning given to Mr Wally was sufficient to make him aware that aero-tucking was prohibited for heat 2.
32. It is noteworthy that the official who issued the warning to Mr. Wally was not present at the hearing. As such, the panel did not hear any evidence from the official themselves as to what warning was actually given to Mr. Wally. Further to the above, it is only the infringement notice that states what warning was given to Mr. Wally. However, this notice was only given after heat 2 and not at the same time as the warning.
33. Additionally, there was no evidence that the official who issued the notice was the same official that issued the warning to Mr. Wally.
34. It should be pointed out that Mr. Coetzee advised the panel that the warning was properly given to Mr. Wally between the two heats. However, Mr. Coetzee further advised the panel that he was not in the room when the warning was given.
35. In light of the fact that Mr. Wally contested the contents of the warning, and further that there was no evidence from the official who administered the warning, the panel cannot find, on a balance of probabilities, that there was sufficient evidence proving Mr. Wally was properly warned against the aero-tuck.

## **VII. COSTS**

36. Section 196 provides that in appeals such as the present matter, the panel has the discretion to make an order regarding costs, including the forfeiture, in full or in part, of the protest fee and/or appeal fee.
37. Section 205 of the GCRs expressly state that in the case of a successful protest, the protest fee less ten percent (10%) will be returned to the protestor. While section 205 does not apply to the present appeal, it is worth mentioning as no similar minimum is prescribed in the case of appeals.
38. In accordance with section 196 and in exercising its discretion. The panel finds no reason to withhold a percentage of the appeal fee. In light of the above, the five-thousand-rand (R5 000) appeal fee shall be returned to the appellant.

## **VIII. FINDINGS**

39. The panel makes the following findings:
  - 39.1. The appeal is upheld.
  - 39.2. The COC does have the authority to prohibit actions during the event as long as they constitute a safety concern for a participant, official, spectator, or any person involved in the event;
  - 39.3. No evidence was heard from the official that gave the warning to Mr. Wally and as such no evidence was provided to the panel to satisfy it that Mr. Wally was properly warned against the aero-tuck for heat 2. In light of this, the 5-second penalty must be rescinded.
  - 39.4. Due to the appeal being successful, the appeal fee of five thousand rand (R5000) is to be returned to the appellant.

The date of this judgement is the 6 November 2024.

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