

**MOTORSPORT SOUTH AFRICA
NATIONAL COURT OF APPEAL 184**

APPELLANTS:

**MAYSURAH WALLY
MOHAMED WALLY (SNR)
&
ED MURRAY**

IN RE:

**Appeals arising from the findings of
MSA Court of Enquiry 1273**

DATES OF HEARINGS:

**12 November 2024
20 November 2024**

OFFICIALS:

Adv André P Bezuidenhout	Court President
Adv Paul Carstensen SC	Court Member
Adv Ishmael Semenya SC	Court Member
Mr Jannie Geyser	Court Member
Ms Samantha van Reenen	MSA: Sporting Services Manager
Ms Allison Vogelsang	MSA: Sporting Co-Ordinator

LEGAL REPRESENTATIVES:

Adv Yakoob Alli on instruction of SLH Inc	For the Appellants: Maysurah Wally & Mohamed Wally (Snr)
Mr Hector North and Mr Michael North of Hector North Inc	For the Appellant: Ed Murray

INTRODUCTION

1. This is the written judgment of the National Court of Appeal 184 (“**NCA**”). The appeal hearings took place on 12 November 2024 and on 20 November 2024, respectively.
2. At the Laureus World Sports Awards in 2000, arguably, South Africa’s finest global citizen, Nelson Mandela was quoted to say:

“Sport has the power to change the world. It has the power to inspire. It has the power to unite people in a way that little else does. It speaks to youth in a language they understand. Sport can create hope where once there was only despair. It is more powerful than governments in breaking down racial barriers. It laughs in the face of all types of discrimination.”

(own emphasis)

3. The wise words of Mr Mandela remain unachieved as the events of 24 February 2024 unfolded during Round 1 of the Northern Regions Regional SARMC Rotax Karting Championship, held at Zwartkops Raceway (“**the event**”), will demonstrate. This composite Appeal brings into stark focus conflict between parents of a minor competitor, motorsport officials, and an event promoter of the National Karting Series in South Africa.
4. In the days following the event, several persons filed complaints against the parents of a talented young South African motorsport competitor, for their alleged abuse of the event officials.¹ The parents, in turn, made severe allegations against the officials that they planned a plot² to create a grave injustice³, against their child. This composite Appeal accordingly traverse complaints against the parents and defences that the officials plotted harm against the minor competitor.
5. At the outset, it must be recognised that officials in motorsport play a critical role to the very existence of our sport. Without officials, there will be no regulated motorsport events. The officials in motorsport to perform their duties without significant monetary remuneration and they do so for the love of the sport. Officials must be provided with a respectful, appreciative and supportive environment in which to undertake their roles and they need to be appropriately recognised and rewarded for performing their roles. Officials are indeed the

¹ It is common cause that Mr Murray was not an official on the day within the ambit of GCR 143. Mr North Snr at first contended that GCR 143 may be interpreted to include Mr Murray as an official. Mr North Snr did not vigorously persist with this contention. This issue is moot as Mr Murray was clearly, on the available evidence, a person representing the Promoter within the ambit of GCR 140 and GCR 141 and, as such, worthy of the protection of GCR 172.iv) and GCR 172.vi).

² Appeal Record, page 33, line 6 and further.

³ Appeal Record, page 37, line 19 and further.

cornerstone of motorsport, and they play a pivotal role in the success and the running of motorsport events. They ensure that motorsport is competed in fairly, and in accordance with the rules. Officiating can be fun, life-changing, contribute to leadership, personal development and is a practical strategy for the sport and recreation industry to encourage people in a non-playing role to stay involved in the sport.

6. Karting, where most minor competitors first experience motorsport, is a great school of life for young people and the best way to learn about driving and racing. Karting is recognised as one of the best routes to follow for future car champions. Although the kart is basically a machine of simple design the high standard of competition makes it a very high-level sport where ultra-competitive amateur racers and professional teams confront each other.

7. This NCA is called upon to deal with two appeals:

7.1 Maysurah Wally ("**Mrs Wally**") and Mohamed Wally (Snr) ("**Mr Wally Snr**") appeal against the findings of COE 1273 handed down on 30 May 2024 ("**the Wally Appeal**"). In COE 1273, Mrs Wally was found to have breached GCR 172.iv), .vi) and .x)⁴ and was suspended for a period of 6 (six) months from acting as the entrant on behalf of Muhammad Wally (Jnr) ("**Mr Wally Jnr**"), or to represent him in any capacity during the period of suspension.⁵ Mrs Wally was further ordered to pay a fine in an amount of R30 000.00 (thirty thousand rand) to Motorsport South Africa ("**MSA**"). The Wally Appeal contends that the orders of COE 1273 should be set aside;

7.2 Mr Ed Murray ("**Mr Murray**") also appeals against the findings of COE 1273 ("**the Murray Appeal**"). Mr Murray contends that Mr Wally Snr should also be sanctioned having contravened GCR 172 for his conduct on 24 February 2024 and further, that a sanction should be imposed on Mr Wally Jnr;

collectively referred to as "**the Appeals**".

8. All the Appellants were represented in the hearings by their legal advisors of choice: Mr Wally Snr and Mrs Wally being represented by Adv Yakoob Alli on the instructions of SLH Inc, and Mr Murray, in turn, was represented by Mr Hector North ("**Mr North Snr**") and Mr Michael North ("**Mr North Jnr**") of Hector North Inc. This NCA appreciates the able contributions made by the respective representatives on behalf of the Appellants in these proceedings.

⁴ General Competition Rules are referred to as "**GCRs**".

⁵ Appeal Bundle, page 91.

9. MSA was represented in this NCA by Ms Samantha van Reenen as the Sporting Services Manager and Ms Allison Vogelsang (“**Ms Vogelsang**”) acted as the Sporting Co-Ordinator. Ms Vogelsang was responsible for the preparation of the Appeal bundles and also served as the Registrar of the hearings. We thank Ms Vogelsang for her able assistance.

INCIDENTS OF 24 FEBRUARY 2024, COE 1273 AND THE EVENTS WHICH FOLLOWED

10. The Appeals arise from the findings of COE 1273 which dealt with incidents that allegedly took place at the event. MSA instructed COE 1273 to enquire into the aggressive and intimidatory conduct of Mrs Wally and Mr Wally Snr against Mr Murray, Mr Mitch Coetzee (“**Mr Coetzee**”) and Mrs Vanessa Wood (“**Mrs Wood**”).⁶ Mrs Marlene Swanepoel, the Assistant Clerk of Course (“**CoC**”) at the event, was also a witness to some of the incidents and testified at COE 1273, as was Mr Hennie de Beer (“**Mr De Beer**”).⁷
11. COE 1273 was directed by MSA, following three written complaints filed by Mr Murray, Mr Coetzee and Mrs Wood with MSA in which they complained about the conduct of Mrs Wally and Mr Wally Snr which allegedly took place during the event:⁸
- 11.1 the first complaint submitted by Mr Murray contended that Mr Wally Snr uttered a series of slurs against him in a shouting and threatening manner early in the day of the event;⁹
- 11.2 the second complaint submitted by Mr Coetzee contended that Mr Wally Jnr had assumed a dangerous “*aero tuck*” position in respect of which he had confronted the officials following a report which was handed over to the Stewards of the Meeting (“**the Stewards**”) for further investigation;¹⁰
- 11.3 the third complaint submitted by Mrs Wood recorded direct threats and intimidation towards her made by Mr Wally Snr.¹¹ This followed a further incident in which Mr Wally Jnr was involved in with another competitor (unrelated to the Appeals) and

⁶ Appeal Bundle, page 74.

⁷ Appeal Bundle, page 80, paragraph 12.

⁸ Appeal Bundle, page 130: Written Request for an Enquiry by Mr Murray.

Appeal Bundle, page 134: Formal Complaint and Request for Investigation of Intimidation and Threatening Behaviour by Mr Coetzee.

Appeal Bundle, page 138: Formal Report / Complaint into Intimidation of an Official by Mrs Wood.

⁹ Appeal Bundle, page 76, paragraphs 9.1 to 9.4.

¹⁰ Appeal Bundle, page 77, paragraph 10.1.

¹¹ Appeal Bundle, page 78, paragraph 11.1 and 11.2.

whilst Mr Coetzee was preparing documents at the end of the race day, Mr Wally Snr tried to intimidate him;¹²

- 11.4 after the Stewards investigated the second on-track incident, Mr Wally Jnr was penalised and the Wally Family initially refused to sign the penalty form.¹³ This penalty became the subject matter of a separate appeal proceeding which the Wally Family initiated before another tribunal of MSA. There is no need for this NCA to therefore ventilate the issue herein.¹⁴
12. The Wally Family did not attend the proceedings of COE 1273 and contended that the matter was *lis pendens*. MSA disputed this assertion, and the hearing proceeded in their absence, the *lis pendens* issue was subsequently dismissed by COE 1273.
13. Ultimately, Mrs Wally was sanctioned at COE 1273, and it was held that no jurisdiction was established between Mr Wally Snr and MSA.¹⁵
14. Applications for leave to appeal were filed by the Wally Family and Mr Murray, respectively, against the decisions of COE 1273 whereafter a panel of this NCA granted leave to appeal to the Appellants to this NCA.
15. On 26 July 2024, the Wally Family and Mr Murray filed their Notices of Appeal¹⁶ in compliance with the General Competition Rules (“**GCRs**”).

PROCESS FOLLOWED DURING THE APPEAL

16. All hearings of appeals in terms of the GCRs are held *de novo*.¹⁷ Through a hearing *de novo* a new trial is held on the substance of the issues contended for by the Appellants. The devolutive effect of the Appeals brings about a re-trial of the merits of the matter which practically means that in the process of these Appeals only those issues are adjudicated which are expressly and implicitly criticised by the Appellants.

¹² Appeal Bundle, pages 77 and 78, paragraph 11.

¹³ Appeal Bundle, page 79, paragraph 11.3.

¹⁴ After the five-second penalty was imposed on Mr Wally Jnr after heat 2 of the event, an appeal was filed against that decision of the Stewards. On 6 November 2024, Court of Appeal 480 (“**COA 480**”) issued its Judgment of which we take judicial notice. COA 480 upheld the appeal of the Wally Family. This issue was not fully traversed during the hearing of this NCA. A copy of the findings of COA 480 is attached to this Judgment, as annexure “**A**”. COA 480 held that a CoC does have the authority to prohibit actions of competitors during an event, as long as they constitute a safety concern for a participant, official, spectator, or any person involved in the event, thus finding that a practice known as “*aero tuck*” could constitute a safety concern which would entitle the CoC to take steps in terms of the GCRs.

¹⁵ Appeal Bundle, page 90, paragraph 27.

¹⁶ Appeal Bundle, page 2 and further, and page 20 and further.

¹⁷ GCR 208 viii).

17. No objection was made as to the constitution of this NCA, and this NCA was accordingly duly constituted.
18. Two Appeal bundles were prepared which contained all the necessary documents submitted by the respective Appellants and collated by MSA.
19. All interested parties were given opportunities to present evidence in the prosecution of their Appeals and to address the NCA. Mr Wally Snr testified in the prosecution of the Wally Appeal. In the Murray Appeal, Mr Murray testified, and the evidence of Mr Coetzee, Mrs Wood and Mrs Swanepoel was heard. The proceedings were recorded and there is no need to summarise all the evidence and events which transpired in this appeal. They are of record.
20. Mr North Snr raised an issue *in limine* that the Wally Appeal should be dismissed as none of the five grounds of appeal therein relate to any of the findings of COE 1273.¹⁸ He attempted to persuade this NCA that on the issue of *lis pendens* that the matter was never argued or decided in COE 1273 and that the Wally Appeal could be dismissed on the basis of procedural irregularity.¹⁹
21. This NCA was unpersuaded that the Wally Appeal was irregular and directed that the Appeals should proceed.²⁰
22. To curtail the proceedings, it was directed by agreement that the written complaints of Mr Murray, Mr Coetzee and Mrs Wood will stand as their evidence in chief and that cross examination would immediately commence when the witnesses were called.²¹
23. The Appeals are adjudicated in one Judgment and consideration of the merits.

THE CONTROL OF MOTORSPORT, THE GCRs, THE SSRs and THE SRs

24. It is apposite at the outset to deal with the control of motorsport and where the “*rules of the game*” originate from.
25. MSA is a Non-Profit Company in terms of the Companies Act 61 of 1973 and Act 71 of 2008.

¹⁸ Appeal Record, page 14, line 1 and further.

¹⁹ Appeal Record, page 14, line 1 and further.

²⁰ Appeal Record, page 27, line 7 and further.

²¹ Appeal Record, page 10, line 13 and further.

MSA holds the sporting authority to govern motorsport as it is the delegated authority by the *Federation Internationale de l'Automobile ("FIA")*, *Commission Internationale de Karting ("CIK")* and *Federation Internationale de Motocyclisme ("FIM")*. MSA is structured with a Board of Directors, a Secretariat, a National Court of Appeal, Specialist Panels, Sporting Commissions and Regional Committees. The Secretariat of MSA does not serve as bodies governing discipline of motorsport. It only attends to secretarial issues. The exercise of the sporting powers by MSA is in terms of the sporting codes of the FIA, CIK and FIM. As such, MSA has the right to control and administer South African National Championship competitions for all motorsport events. The National Court of Appeal of MSA is the ultimate final Court of Judgment of MSA.²²

26. In the introduction to the GCRs, Part 1, it is boldly emphasised to all interested parties in motorsport, that **MSA refrains from manifesting racial, political, gender or religious discrimination in the course of its activities and requires the same of its member bodies, officials and competitors.**²³
27. MSA is a member of SASCOC and accepts the Code of Conduct, Objects and Jurisdiction as prescribed in the Constitution of SASCOC.²⁴ The Founding Statement of the Constitution of SASCOC records a commitment of all its members to be unified in support based upon human rights, the principles of equity, diversity and non-racialism:²⁵

"The South African Sports Confederation, Olympic and Paralympic Committee and all its members commit themselves to a unified system of sport based upon human rights, the principles of equity, diversity, non-racialism and non-sexism for all sportspersons. We dedicate ourselves to ensuring development of sport to achieve equitable representation at all levels, and that sport shall never again be used to sow divisions and promote discrimination amongst us. Accordingly, we commit ourselves to participating and supporting all actions that promote peace, cultural inclusivity and education."

(own emphasis)

28. MSA subscribes to the primary mandate of SASCOC which records that the overall development of sport is based on a good governance framework in furtherance of the role of sport in society as a driver for social cohesion and a source of national pride:

²² Articles 3 to 7 of the MSA Memorandum; Article 35 of the MSA Memorandum.

²³ GCR Introduction – CONTROL OF MOTORSPORT.

²⁴ GCR Introduction – CONTROL OF MOTORSPORT.

²⁵ SASCOC Constitution, Chapter 1, Preamble.

“We affirm that the primary mandate for the South African Sports Confederation, Olympic and Paralympic Committee is high performance sport, the overall development of sport, including recreational sport, and the establishment and maintenance of integrity and a good governance framework for sport. The above accordingly necessitates the implementation of a co-ordinated sports framework, policies and procedures to achieve sustained high performance excellence and furtherance of the role of sport in society as a driver for social cohesion and source of national pride.”

(own emphasis)

29. The participation of motorsport competitors in events managed by MSA is based on the law of contract. MSA has the sporting authority recognised by SASCOC and is the ultimate authority that makes all decisions concerning the organising, direction and management of motorsport licence holders in South Africa.²⁶
30. MSA is therefore an internationally and nationally recognised sporting body by the Government of South Africa. Its sporting platform is substantial. It has approximately five thousand licence holders and it sanctions approximately four hundred sporting events every year in South Africa. The organisation of events under the control of MSA is a quality certification stamp which ensures that all participants can be assured that competition takes place within the boundaries of fair sporting events, with certainty as to good administration and results. All stakeholders in motorsport are bound to the GCRs and the commitment towards non-discrimination. For national events, national prizes and championships are awarded and organisers and promoters receive substantial accreditation for having the MSA stamp of approval for their events.
31. For all race events, a contract is concluded based on the “*rules of the game*” between the different role-players in motorsport events. There exists a ranking structure in the MSA Rules and Regulations. The “*rules of the game*” of motorsport are structured in the main on the Memorandum of MSA and the GCRs. In addition to the GCRs there are also Supplementary Regulations (“**SRs**”) that an organiser and promoter of a competition is obliged to issue, and Standard Supplementary Regulations (“**SSRs**”) issued by MSA.²⁷ The GCRs, SRs and SSRs thus constitute the “*rules of the game*” of motorsport.
32. Any competitor who thus enters a motorsport event is bound by the “*rules of the game*”. Reference in this judgment to “*rules and regulations*” intends to refer to the broad meaning

²⁶ GCR Introduction – CONTROL OF MOTORSPORT.

²⁷ GCR 14 and GCR 16.

of the “rules of the game”. Specific references to GCRs are individually defined.²⁸

33. There exists a regime of overview in motorsport. Decisions of the CoC are subject to overview by the Stewards and ultimately, the decisions of the Stewards of the Meeting, serve under the overview of Courts of Appeal and this NCA. MSA has the authority to convene Courts of Enquiry as it did with COE 1273 in the current instance. It is through this hierarchy that competitors can rely thereon that disputes can be resolved in an orderly manner through the different structures of the GCRs.²⁹
34. The entrant in a MSA event, in the case of a minor child, is specifically regulated in terms of GCR 22 which provides that a parent is automatically deemed to be the entrant of his / her minor child.³⁰
35. GCR 122 obliges every person taking part in a motorsport event to acquaint themselves with and to submit to the GCRs and in particular, to acquaint themselves with the rules.³¹
36. Part VII of the GCRs and in particular GCR 143, 144, 151, 152, 156, 159, 162, 167 to 171 detail the importance of officials and the key roles that they play in motorsport events.³²
37. GCR 172 contains very specific provisions prohibiting intimidation, verbal and / or physical abuse, misbehaviour and unfair practice which are prejudicial to the interest of motorsport in general. In addition, GCR 172 contains heavy sanctions, even for first time offenders, for the abuse of officials:

“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.*

²⁸ GCR 1.

²⁹ GCR, Parts IX & X – Protests, GCR 197 to GCR 220.

³⁰ GCR 22.

³¹ GCR 122.

³² GCRs 143 to 171.

- Verbal and or physical abuse.
- The distribution/publication via e-mail, cell phone text message or internet website and social media of comments which may be deemed abusive and/or slanderous and/or demeaning and/or inappropriate.
- Acts (including comments and or gestures) which would reasonably be considered by the general public to be offensive or inappropriate.

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.***

38. MSA has in place a Karting Code of Conduct aptly named, "Race 'n Respect" ("Code of Conduct".³³ The Code of Conduct:

38.1 launched its campaign and recorded its motivation to do so as follows:

"WHAT IS THE CAMPAIGN?"

This campaign borrows from that established by Motorsport UK and MSA thanks this body for its willingness to share its work.

This campaign establishes a Code of Conduct for South African karting with the aim of promoting values of fair play, fun, friendship, dignity and respect for all within the sport. All parties involved in the sport are expected to uphold these values and compliance with this Code of Conduct is therefore a requirement of entering into, and being associated with, MSA-sanctioned karting, in whatever capacity and at whatever level. Instances of non-compliance will be dealt with by race officials and/or MSA itself as deemed appropriate and necessary.

This Code of Conduct in no way replaces the usual MSA judicial process

³³ www.motorsport.co.za/wp-content/uploads/2023/03/Karting-Code-of-Conduct.pdf

and it set apart from same.”

- 38.2 committed all parties involved in MSA karting to be collectively responsible to set a good example and create a positive environment for MSA karting:

“POSITIVE ENFORCEMENT

All parties involved in MSA karting are collectively responsible to set a good example and help to achieve a positive environment in MSA karting. Positive enforcement plays an important role here and the following are examples of the type of behaviour that should be encouraged and applauded:

- *Applauding good, clean racing as well as success*
- *Appreciating good behaviour wherever it is displayed*
- *Respecting the track regulations at times of distress and for not rushing to restricted areas*
- *Positively reinforcing the code and supporting any penalties resulting from disrespectful behaviour*
- *Recognising when someone walks away from a volatile situation without response or retaliation*
- *Officials recognising possible volatile situations and helping to calm them”*

- 38.3 specifically deals with public criticism of event organisers, officials decisions and the officials themselves:

“CONDUCT WITHOUT RESPECT

The following are examples of ‘conduct without respect’:

Public criticism of the event, the event organiser, official decisions or the officials themselves

Such behaviour, for example via social media, is detrimental to not only the individual or the decision being criticised, but the Club/Championship and Karting in general.”

- 38.4 encourages the reporting of contraventions to the CoC who has wide powers to either deal with the complaint personally or to refer it to the Stewards for further investigation where appropriate:

“CONTRAVENTIONS

Contraventions of the Code of Conduct during karting events should be reported, in writing, in the first instance to the Clerk of Course, who may deal with the complaint personally or refer it to the Stewards for further investigation where appropriate. Penalties may be applied in accordance with MSA’s regulations but may, in appropriate instances, be mitigated by the simple act of apologising.”

38.5 provides a platform for complaints outside of karting events for investigation and action:

“COMPLAINTS OUTSIDE OF KARTING EVENTS

Complaints in respect of ‘conduct without respect’ arising outside of karting events should be submitted in writing to MSA Head Office – msa@motorsport.co.za – for investigation and action.”

38.6 records expectations as to what is expected of involved persons in terms thereof:

“EXPECTATIONS

- *‘Fist pump’ with your fellow competitors at the end of the race*
- *Adults – walk away from situations that may escalate. Think of the impact of negative behaviour on your young competitors and those in the surrounding area.*
- *The code is all-encompassing for teams, organisers, competitors, officials – Everyone!”*

38.7 records the commitment of officials, parents and guardians, competitors and team commitments outline the following to which these interested parties are expected to subscribe:

THE CO-OPERATION OF ALL IN UPHOLDING THIS
CODE OF CONDUCT IS HUGELY APPRECIATED!

38.8 coined the Karting Racing Code as follows:

VOLUNTEER OFFICIALS' & ORGANISERS COMMITMENTS

I WILL:

- Recognise that there are different groups within the racing family and treat them appropriately
- Create a welcoming, friendly and safe environment for everyone
- Treat every competitor fairly and encourage others to do so
- Recognise that as a representative of the sport, I have a duty to be polite and treat racers, volunteers and supporters with respect

PARENT'S & GUARDIAN'S COMMITMENTS

I WILL:

- Encourage my young driver to have fun and enjoy racing
- Not put pressure on my young driver to take part
- Not impose my own ambitions on my young driver
- Not expect my young driver to win and recognise that the benefits of junior racing lie in the skill acquisition and not about winning events and championships
- Not criticise my young driver when they make mistakes
- Never encourage my young driver to break or bend the rules
- Respect other competitors and their families and applaud their success
- Respect the decisions of the officials at all times

COMPETITORS' COMMITMENTS

I WILL:

- Race for enjoyment
- Try my best at all times
- Race fairly
- Be polite and treat everyone with respect
- Not show off if I win
- Not get upset if I don't win



TEAMS' COMMITMENTS

WE:

- Accept that racing is primarily about enjoyment
- Will not put pressure on young racers to achieve results
- Will recognise that junior racing is about skill acquisition, not about winning events and championships
- Will never speak or behave inappropriately.
- Will encourage all racers to respect the rules and the authority of the officials
- Will never encourage a racer to break or bend the rules, nor to drive in a manner that could cause injury to themselves or others
- Recognise this is not Formula 1

39. It is against these “*rules of the game*” that the Appeals should be adjudicated.

LEGAL AND FACTUAL ISSUES WHICH ARISE IN THE APPEALS

40. The Appellants are *dominus litis* in their Appeals.

The Wally Appeal

41. The following aspects crystallised as to the legal and factual issues to be determined:

- 41.1 *lis pendens* – the Wally Family conceded at the hearing that this ground of appeal is no longer persisted with;³⁴
- 41.2 whether the evidence of Mr Coetzee was unreliable;³⁵
- 41.3 whether that COE 1273 erred in finding that there was a breach of GCR 172.iv), 172.vi) and 172.x);³⁶
- 41.4 the costs to be awarded.

The Murray Appeal

42. The following aspects crystallised as to the legal and factual issues to be determined:

³⁴ Wally Appeal: Written Closing Submissions, footnote 5.
³⁵ Wally Appeal: Written Closing Submissions, page 12, paragraph 5.
³⁶ Wally Appeal: Written Closing Submissions, page 14, paragraph 6.

- 42.1 whether that COE 1273 incorrectly held that it had no jurisdiction over Mr Wally Snr and that he should be sanctioned;³⁷
- 42.2 whether Mr Wally Jnr could be sanctioned by this NCA;³⁸
- 42.3 the costs to be awarded.

THE MERITS

Mr Murray

43. According to Mr Murray:

- 43.1 on 24 February 2024 and whilst he was seated at a viewing point in front of his spares sales counter, Mr Wally Snr approached him and verbally attacked him and his wife Jolanda Murray. There were several staff, spectators and competitors present. Mr Murray tried to move away as quickly as possible but was followed by Mr Wally Snr;
- 43.2 in what is described as a verbal tirade, Mr Wally Snr stated that he was going to take down a number of stakeholders in karting which included EMR Karting (the Murray Family's karting business), MSA itself, Rotax SA (a karting supplier), RKC (a karting club), and the officials. Mr Wally Snr explained that he had enough evidence, e-mails ("*the forty-three e-mails*") and affidavits that there has, for years, been a conspiracy against his son (Mr Wally Jnr). He proceeded to say that he would be informing the FIA, and that people will see what the FIA would do and that he will also report the incident to Bombardier, which is the parent company of Rotax SA. He further informed that he had already spent R2 million on lawyers in the Chiwara case and that Mr Coetzee and MSA are all going down. He further stated that this would cost them hundreds of millions. Mr Murray concluded that the attack was without any provocation as he had no contact with the Wally Family since the hearing in 2023. He alleged that Mr Wally Snr stated that Allah would strike him down and that putting a hit on someone is cheap in South Africa. He was concerned for the safety and comfort of those involved in motorsport in view of

³⁷ Murray Appeal: Written Closing Submissions, page 22, paragraphs 3.1 to 3.9.

³⁸ Murray Appeal: Written Closing Submissions, page 25, paragraph 3.10 to 3.14

these threats.

44. Mr Murray:

44.1 was intensely cross-examined as to the chronology of his complaint to MSA and, in particular, that his complaint as to Allah striking down Mr Murray and the threat of a hit on someone in South Africa, was placed under a heading of "*Very Brief History*". He explained that he prepared the complaint to MSA in approximately twenty minutes, that it was not a carefully worded affidavit, that he was unassisted, and that it was not word perfect. He conceded that as to the threat of putting a hit on his life, that it was not summarised in the events of the day, but rather under the history. He persisted that he felt seriously threatened by Mr Wally Snr's threat that Allah would strike him down. During cross-examination, Mr Murray expanded on what he originally said in his complaint to MSA and included that he was told by Mr Wally Snr that "*Allah does not sleep*" and "*other things*". Whilst this NCA accepts the evidence of Mr Murray as later dealt with in this Judgement, we do not accept his evidence, on a balance of probability, regarding the threat of a hit and the words that "*Allah does not sleep*" and "*other things*" or would strike Mr Murray down. We do so as Mr Murray's original complaint dealt with this under the heading of a "*Very brief history*" and give the benefit of the doubt regarding these two statements to Mr Wally Snr as to whether these words were said or not on the day in question;

44.2 was criticised for not taking any steps to protect himself from a criminal complaint point of view or with a protection order. He gave cogent explanations as to why this was not done. In view of this NCA's findings as to whether he was threatened with his life and with the threat of Allah striking him down, it is unnecessary for this NCA to deal with this issue further.

45. According to Mr Murray, Mr Wally Snr does not spare anybody in his conduct. He explained that karting is meant to be a sporting event and is meant to be fun, that it is for children from the age of five to the ages of sixteen and seventeen. By and large, it is a children's sport or game and according to him it has been turned into what he calls, "*a horror show, quite frankly*". He testified during cross-examination that he has been involved in kart racing for nearly fifty-five years, that he was used to parents being excited and anxious and that he was now the grandparent of children racing. He explained that over the years he got used to the excitement and the unreasonableness of parents, but that in his view, Mr Wally Snr has reached a point where he has become so unreasonable, based on the so-called trove of e-mails that he received from WOMZA, "*that he can just do what he likes*".

46. It was put to Mr Murray that the Wally Family has only ever followed the legal route in the eight years since they have been involved in karting. He responded that in his view the Wally Family abuses the legal process both within the structures of MSA and outside the structures of MSA and gave examples for his reasoning.
47. Mr Murray was further extensively cross-examined as to his relationship with Ed Murray Racing CC of which Close Corporation his wife is a member. He explained that he filed his complaint on behalf of competitors, customers, his wife and her business, as everything of the sport comes under threat when "*this sort of thing is going on*".

Mrs Wood

48. According to Mrs Wood:

48.1 Mr Wally Jnr received a black and white flag in heat 1 of the event for what was deemed to be unsafe or dangerous conduct by the CoC by lowering his head in a manner that he could no longer see ahead of himself. For this conduct he was given a warning. In heat 2 of the event, Mr Wally Jnr continued with this practice, and he again received a black and white flag. A hearing was conducted with Mr Wally Jnr and the Stewards imposed a five-second penalty on him. In heat 3 of the event, there was an accident involving multiple karts and the CoC summoned the involved parties which was referred to the CoC for investigation. Mr Wally Jnr was one of the involved parties and a penalty was issued against him. Initially, Mr Wally Jnr and his parents refused to sign the penalties. It was explained to them that if the penalties were not signed for, the right to appeal them would be forfeited. They then returned to sign the penalties. Mrs Wally notified the Stewards of their intention to file an appeal;

48.2 whilst she was standing on the balcony outside the officials' office, Mr Wally Snr came up the stairs and aggressively and loudly stated that he had affidavits to show that she and Mr Murray plotted against his son and that he will sue Mrs Wood. She responded to Mr Wally Snr that she was not interested and asked whether she could take his statement as "*a direct threat towards her*". To this Mr Wally Snr allegedly responded, "*yes you will see*". Mrs Wood, in turn, responded that the threat was duly noted. The events played themselves out in front of several onlookers. After the second hearing, whilst documentation was being finalised, Mr Wally Snr was allegedly very animated and aggressive towards Mrs Wood and accused her of being biased towards his son and harassing him. She asked Mr Wally Snr to stop what he was doing and to leave. She then asked Mrs Swanepoel

to call the security at the event whereupon the Wally Family started to walk out. Mr Wally Snr then allegedly turned around and addressed Mr Coetzee and said that he spent over R2 million on the Chiwara case and when Mr Coetzee asked what was meant, Mr Wally Snr boasted "*you will see, this is not finished*";

- 48.3 as an official with a MSA licence, she accepts criticism that comes with the job which sometimes becomes pointed and personal, but that an official should "*soldier on*". She explained that she understood that parents will always protect their children but was concerned that threats and violence will jeopardise the wellbeing and safety of officials and competitors. She requested a formal investigation into the matter and explained that the conduct was not isolated and "*that it was continuous and relentless*". In her view, the conduct of the Wally Family was brash and a blatant attempt at intimidation.
49. When cross-examined regarding whether Mrs Wally was the entrant for Mr Wally Jnr, she explained that in the club records and the club system, Mrs Wally was noted as the entrant and if as a matter of fact she was not present at the event in the morning, Mrs Wally did not notify the officials regarding her absence as she should have done in terms of the GCRs.
50. Mrs Wood explained that she experienced the conduct of Mr Wally Snr as a direct threat to her because of his aggressive nature and his whole body posture. Mr Wally Snr was apparently leaning over the table, into her face, and he was expressing himself as she explains "*into a very loud tirade at me*".
51. When it was put to her that Mr Wally Snr said that he had e-mails implicating her and that he was going to sue her, she was asked to explain why she viewed that as threatening. Mrs Wood explained that whilst she did not know what e-mails he had, that she had a clear conscience, that Mr Wally Snr was aggressive and threatened her with legal action and intimidated her in front of several persons in a "*loud, very loud manner*". She further explained that she experienced this as very derogatory and "*actually quite slanderous*" because those sorts of statements mislead other people to think that she was biased.
52. It was put to Mrs Wood that Mr Wally Snr had a right of access to Court and that anyone who feels aggrieved could exercise such right and that if Mrs Wood had nothing to fear "...", she would not be intimidated. Mrs Wood responded that threatening to sue her was in her view a threat to her property, slanderous and that she took it as a threat. She explained that she felt physically threatened because Mr Wally Snr was in her face and that he is a very intimidating, large man. Mrs Wood stated that she was not a "*spring-chicken*" anymore and for him coming into her face, shoving his face into hers and his body posture was very

threatening.

Mr Coetzee

53. Mr Coetzee stated in his complaint to MSA that:

53.1 he reported the “aero tuck” by Mr Wally Jnr to the Assistant CoC. A white and black flag was shown to Mr Wally Jnr. Mrs Swanepoel gave a verbal warning to Mr Wally Jnr. Mr Wally Jnr repeated his behaviour in heat 2 and he was again shown a black and white flag. Following the verbal warning in heat 1, the Stewards dealt with the matter against Mr Wally Jnr. A further incident happened, involving multiple karts in heat 3 and the involved competitors were summoned to the Stewards. Mr Wally Jnr was asked for the memory card of his camera to which he explained that he did not have the footage to present. The hearing continued and at the end of the hearing, Mrs Wally thanked Mr Coetzee for being “fair”;

53.2 after the event, and after completion of the hearing, Mr Wally Snr came upstairs and approached Mrs Wood in a threatening manner. She requested him to remain calm. Mr Wally Snr continued with his verbal tirade and Mrs Wood informed him that if he were continue that she would call security. Mr Coetzee was not part of the incident, in his view. Mr Wally Snr “seemed to relent” after he was informed that there was a call to security whereupon he turned and addressed Mr Coetzee as “Mitch, my friend (sarcastically), you will see”. When Mr Coetzee asked for an explanation as to what this would mean, Mr Wally Snr replied that a Court case was coming his way. Mr Coetzee asked for an explanation whereupon Mr Wally Snr responded that he had spent over R2 million on the Chiwara case. Mr Coetzee inferred that to be a reference to the Idube accident where he served as the CoC on the day. Mr Coetzee styled the conduct of Mr Wally Snr as “aggressive and agitated” and when Mr Coetzee asked whether Mr Wally Snr was trying to intimidate and threaten him, he explained that he had over forty e-mails and that “you will see...this is not finished”;

53.3 he was unsure as to what gave rise to Mr Wally Snr turning to him as they had no contact during the day other than at the drivers’ briefing. During the drivers’ briefing, there was a track event on the long circuit, and he asked Mr Wally Snr to raise his hand to indicate if he could hear him. A certain Mr Bjorn Roos was also asked whether he could hear Mr Coetzee which was confirmed. Mr Coetzee then continued with the drivers’ briefing;

- 53.4 it was not the first time that Mr Wally threatened him with lawsuits. He provided certain examples from an incident in 2022. He also explained events which transpired during an earlier drivers' briefing. According to Mr Coetzee, Mr Wally Snr's behaviour is not random and that he tries to use intimidation and threats and makes it clear that money is no object to him.
54. Mr Coetzee clarified in his additional evidence in chief that the Court of Appeal did not adjudicate the "aero tuck" rule was ineffective, but that it should have been raised at the drivers' briefing. He explained the "aero tuck" position resorted to by competitors and why it was considered to be a safety issue. Mr Coetzee denied that he committed perjury. He explained that he realised that after being corrected that the issue was not raised at the drivers' briefing, he conceded that he did not give the explanation and attributed it thereto that he was dealing with multiple events which were ongoing. He stated that he was not privy to the questions being asked beforehand and that he answered the question which was asked honestly – hence he accepted the correction.
55. When he was asked to respond as to whether Mr Wally Snr had any case against him, he stated that he was unaware of any e-mails and suggested that Mr Ali ask Mr Wally Snr whether there were any e-mails against him. It was put to him that if he had nothing to fear then, i.e., when the alleged threat was made, then he would not have anything to fear "*now either*". To this, Mr Coetzee responded that a threat of a law suit, is a threat. He was asked to clarify whether he understood it as a threat of litigation in motorsport, or something else. Mr Coetzee explained that he understood it as a threat to litigate against him personally, i.e., in his personal capacity.

Mrs Swanepoel

56. Mrs Swanepoel testified and confirmed that her evidence in COE 1273 was true and correct. She explained that in her engagement with Mr Wally Snr, that he enquired from her why the black and white flag was used and where the rule was that determined that it could be used. She acknowledged that she referred him to the rules because he knew the rules. On a question from the panel members, she explained that Mr Wally Snr has been involved in karting for a long time, that he knows the rules inside-out and that she did so because she did provide an initial explanation. She explained that several competitors visited the officials for explanations and that it was explained that there was another manoeuvre available to the competitors which avoided "*looking totally down for a couple of seconds*". After the explanation was given, it was only Mr Wally Snr who persisted to engage on the issue as she explained it, he "*kept going*".

57. In further cross-examination, she explained that she informed Mr Wally Snr that he needed to know what he wanted to protest to if he were going to do it and that it was not her function to tell him what he would be protesting to, as he needed to know the rules.

Mr De Beer

58. Mr De Beer confirmed that Mr Wally Snr spoke in a loud and aggressive way and that he accused the officials of being biased and racist. He also threatened the officials with legal action and was particularly aggressive towards Mrs Wood.

59. It was put to Mr De Beer during cross-examination that his Stewards report³⁹ under general comments recorded that there was good racing on the day with an overall good day. He indicated that the report specifically provided for a further report from the MSA Stewards to follow.

60. Mr De Beer is the only official (other than Mrs Wood), who alleged that Mr Wally Snr accused the officials of being biased as well. Mr De Beer supports the evidence of Mrs Wood in this regard.

Mr Wally Snr

61. Mr Wally Snr testified that:

61.1 a week before the event he received forty-three e-mails from WOMZA (World of Motorsport ZA, a motorsport federation in South Africa which provides an alternative structure to MSA for competitors registered with that organisation) that proved that Mr Murray was plotting against Mr Wally Jnr. He explained that the forty-three e-mails explicitly shows a plot against his son, and that this would be dealt with by the High Court. He later acknowledged that WOMZA is a competing entity to MSA. He claimed that in context, the same officials were involved in MSA and as such, there was a conspiracy;

61.2 at the drivers briefing on the morning of the event, he was embarrassed by Mr Coetzee who allegedly treated him like a small school child. Mr Coetzee allegedly tried to provoke and insult him and was being childish. According to Mr Wally Snr, Mr Coetzee on a few occasions asked Mr Wally whether he could hear him and

³⁹ Appeal Record, page 137.

ultimately requested him to lift his hand. Mr Coetzee was allegedly trying to infuriate Mr Wally Snr and wanted to treat him like a small school child;

- 61.3 as to the allegations of Mr Murray, Mr Wally Snr denied that he abused and threatened Mr Murray. He admitted that he approached Mr Murray and questioned him on the forty-three e-mails. He informed Mr Murray that his son has been attacked since he was eleven years old, and that Mr Wally Snr was now in possession of forty-three e-mails to prove this. He did not show Mr Murray the forty-three e-mails as these were on his phone. He denied that he said that Allah would strike Mr Murray down and that it does not cost much to organise a hit against a person in South Africa. Mr Wally Snr explained that he is a reputable businessman who deals with companies throughout the world on massive projects. He stated that he never threatened anybody but admitted that he informed Mr Murray that he was going to take the matter to Court. According to him, Mr Wally Jnr was traumatised for years and that he had proof thereof contained in the forty-three e-mails;
- 61.4 as to the allegations of Mr Coetzee, Mr Wally Snr stated that he informed Mr Coetzee that a grave injustice was done against Mr Wally Jnr and that it was going to go to Court. He admitted that he engaged with Mr Coetzee because of the “*aero tuck*” penalty;
- 61.5 as to the allegations of Mrs Wood, Mr Wally Snr denied that he was abusive to her when he was walking up the stairs. He admits that he informed her of the forty-three e-mails and offered to show her an e-mail which related to her. Mrs Wood did not want to see the e-mail.
62. The legal representatives of Mr Murray submitted that he performed poorly under cross examination, that he was aggressive, evasive and untruthful. This NCA observed that Mr Wally Snr displayed unnecessarily argumentative behaviour during his testimony. When he was asked to explain what he meant with “*infuriated*” at the drivers’ briefing, he challenged and demanded the cross-examiner to first explain the context in which the word “*infuriated*” was used by him. He proceeded to lecture the cross-examiner to not take the word only, to listen carefully and to reevaluate his questions. He also unnecessarily referred to the cross-examiner as “*my dear*”. He continued to lecture the cross-examiner to stop wasting the NCA’s time, and to write down notes properly. These comments were unnecessary. When confronted with a statement that a race event was taking place and that it was challenging to hear during the drivers’ briefing, hence the request by Mr Coetzee that Mr Wally Snr lifts his hand, he responded that he was not in school and that he was not going to lift his hand.

63. When it was put to Mr Wally Snr that he threatened the officials with legal action, he responded that he informed them thereof, not as a threat, but as a right. He claimed that it was his Constitutional right to do so. He ultimately denied that he was abusive towards the officials and that all the officials were lying. He also concluded that if the NCA was to see the forty-three emails "*you will understand what kind of people you are dealing with*".
64. The forty-three e-mails were not produced in this NCA and had not been made available to this NCA. No meaningful explanation was provided to this NCA to explain why the forty-three e-mails which featured so prominently during the engagements between Mr Wally Snr and the officials, were omitted from this record and not dealt with. Their absence demanded a cogent explanation, which was never offered.
65. Mr Wally Snr was specifically challenged as to why he decided to raise the forty-three e-mails. It was put to him that the threat of litigation was to try and intimidate the officials, which he denied. It was further put to him that if he were so offended by the behaviour of the officials and / or the forty-three e-mails, he could have called for a meeting at MSA but to the contrary, he chose a very public place to deal with the matter. He responded that what happened on the day has never happened in the history of karting and that his son was victimised with a black and white flag. Mr Wally Snr claimed that the sequence of the events on the day was pre-determined.
66. When ultimately pressed to explain why he did not raise the issue of the conspiracy which happened at WOMZA (which has nothing to do with MSA) with the officials, Mr Wally Snr could not provide any cogent explanation but stated that "*all knows how much they hate Muslim people, that they behaved like this*". He ultimately conceded that he should have contacted MSA and "*called up the whole thing*".

Submissions in the Wally Appeal

67. The appellants in the Wally Appeal contend that COE 1273 erred in its finding:
- 67.1 that there was a severe breach of GCR 172;⁴⁰
- 67.2 that the maximum penalty should have been imposed on Mrs Wally in terms of GCR 172.x);⁴¹

⁴⁰ Wally Appeal: Written Closing Submissions, page 5, paragraph 7 and further.

⁴¹ Wally Appeal: Written Closing Submissions, page 6, paragraph 9.

- 67.3 that Mr Murray was not an official or a promotor and that same should impact on the findings;⁴²
- 67.4 that the threat to take legal action is not an unlawful one which could not constitute a severe breach of GCR 172;⁴³
- 67.5 that threatening financial ruin through legal means is not, in general terms, unlawful;⁴⁴
- 67.6 that the right of access to Courts is a fundamental right in terms of Section 34 of the Constitution of the Republic of South Africa Act 108 of 1996 (“*the Constitution*”);⁴⁵
- 67.7 that the words “*communicated to the officials*” were lawful and could not comprise a severe breach of GCR 172 that it would invite the harshest sanction possible in terms of the rule;⁴⁶
- 67.8 that a threat of legal action cannot be said to be prejudicial to MSA or the sport in general as the FIA and GCRs give express effect to raise protests and appeals;⁴⁷
- 67.9 that on a principle of parity, the penalty imposed on Mrs Wally was excessive;⁴⁸
- 67.10 that confusion reigned during the event as to the implementation of the “*aero tuck*” rule and that the confusion mitigates against the maximum sentence imposed on Mrs Wally.⁴⁹
68. As to the Murray Appeal, Mr Wally Snr and Mrs Wally contend that:
- 68.1 whilst admitting that Mr Wally Snr threatened legal action against Mr Murray, that this NCA should not accept his version of the events;⁵⁰

⁴² Wally Appeal: Written Closing Submissions, page 6, paragraph 10.2.

⁴³ Wally Appeal: Written Closing Submissions, page 8, paragraph 18.

⁴⁴ Wally Appeal: Written Closing Submissions, page 8, paragraph 19.

⁴⁵ Wally Appeal: Written Closing Submissions, page 9, paragraph 22.

⁴⁶ Wally Appeal: Written Closing Submissions, page 9, paragraph 24.

⁴⁷ Wally Appeal: Written Closing Submissions, page 10, paragraph 25.

⁴⁸ Wally Appeal: Written Closing Submissions, page 10, paragraph 26.

⁴⁹ Wally Appeal: Written Closing Submissions, page 10, paragraphs 27 to 30.

⁵⁰ Wally Appeal: Written Closing Submissions, page 12, paragraph 32.

- 68.2 Mr Murray was a single witness, and no explanation was provided as to why his wife was not called to testify;⁵¹
- 68.3 based on the evidence, there was no severe breach of GCR 172;⁵²
- 68.4 there was no nexus between MSA and Mr Wally Snr so as to warrant a finding against him in terms of GCR 172;⁵³
- 68.5 GCR 63 cannot serve to extend the jurisdiction of MSA over Mr Wally;⁵⁴
- 68.6 Mr Wally Jnr cannot be sanctioned as he did not received any notification of COE 1273, was not required to appear, nor did he answer any case;⁵⁵
- 68.7 Mr Wally Jnr did not have adequate notice to attend this NCA.⁵⁶
69. It is submitted on behalf of the Wally Family that their Appeal should accordingly be upheld and that the Appeal of Mr Murray should be dismissed.

Submissions in the Murray Appeal

70. As to the Wally Appeal, Mr Murray contends that:
- 70.1 Mrs Wally did not give any evidence in support of her Appeal and in view of the uncontested evidence accepted by COE 1273, the Appeal should fail;⁵⁷
- 70.2 Mr Wally Snr's conduct at the event was a clear and unequivocal breach of GCR 172.x).⁵⁸
71. As to the Murray Appeal, it is contended that:
- 71.1 COE 1273 erred in not making an order or finding against Mr Wally Snr for lack of jurisdiction;⁵⁹

⁵¹ Wally Appeal: Written Closing Submissions, page 14, paragraph 41.

⁵² Wally Appeal: Written Closing Submissions, page 15, paragraph 44.

⁵³ Wally Appeal: Written Closing Submissions, page 16, paragraphs 48 to 53.

⁵⁴ Wally Appeal: Written Closing Submissions, page 16, paragraphs 54.

⁵⁵ Wally Appeal: Written Closing Submissions, page 18, paragraph 60.1.

⁵⁶ Wally Appeal: Written Closing Submissions, page 21, paragraph 60.2.

⁵⁷ Murray Appeal: Written Submissions, paragraph 21 and paragraphs 35 and 36.

⁵⁸ Murray Appeal: Written Submissions, paragraph 32.

⁵⁹ Murray Appeal: Written Submissions, paragraph 37.

- 71.2 Mr Wally Snr, as the parent of Mr Wally Jnr, is automatically deemed to be an entrant,⁶⁰ admitted that he was the father of Mr Wally Jnr,⁶¹ and GCRs 19 and 22 include the natural parent to be deemed as the competitor and entrant;⁶²
- 71.3 Mr Murray's own evidence was clear, credible and concise and not impeached through cross-examination;⁶³
- 71.4 the entire regulatory framework in karting in South Africa is designed to enforce discipline through holding the competitors indirectly responsible for their associates' behaviour,⁶⁴ that it was plainly wrong to fictionally divest Mr Wally Jnr from the conduct of his parents,⁶⁵ that he should accordingly be sanctioned,⁶⁶ and be suspended from competition for twenty-four months which should be totally suspended on certain conditions;⁶⁷
- 71.5 the sanction imposed for Mr Wally Snr is the maximum permissible fine of R750 000.00 for his breach of GCR 172.⁶⁸

Reasoning on the Contraventions

72. It is against the above evidence and submissions that the Appeals need to be adjudicated within the ambit of the GCRs.
73. GCR 172 prohibits acts which are prejudicial to the interests of MSA or motorsport in general which includes intimidation off the track, verbal and / or physical abuse and misbehaviour.⁶⁹ Abuse of officials is specifically addressed in GCR 172.x) by competitors and their family members. The seriousness with which the GCRs treat abuse of officials is evidenced thereby that a penalty of suspension for a first offender for six months or six events may be imposed.
74. Mr Wally Snr is the natural parent of Mr Wally Jnr and is therefore deemed to be the competitor for the purposes of the GCRs in terms of GCR 19. Mr Wally Snr was moreover, during the event, actively involved and served as part of the entrant and team of Mr Wally

⁶⁰ Murray Appeal: Written Submissions, paragraph 40.

⁶¹ Murray Appeal: Written Submissions, paragraph 50.1.

⁶² Murray Appeal: Written Submissions, paragraphs 50.3 and 50.4.

⁶³ Murray Appeal: Written Submissions, paragraphs 42, 43 and 44.

⁶⁴ Murray Appeal: Written Submissions, paragraphs 53 and 54.

⁶⁵ Murray Appeal: Written Submissions, paragraph 54.

⁶⁶ Murray Appeal: Written Submissions, paragraph 55.

⁶⁷ Murray Appeal: Written Submissions, paragraph 58.

⁶⁸ Murray Appeal: Written Submissions, paragraph 57.

⁶⁹ GCR 172.

Jnr. He attended to the drivers' briefing and he participated in multiple engagements with the officials as the record shows. Mrs Wally was held to be the entrant on behalf of Mr Wally Jnr who had the prime responsibility for all acts and omissions of all persons connected with that entry for ensuring that they comply with the rules and regulations, in terms of GCR 113. That included Mr Wally Snr. COE 1273 therefore erred in their finding that there was no jurisdiction over Mr Wally Snr.

75. Mr Wally Jnr was never required by MSA to appear at COE 1273, nor was he informed that he had to answer to any case. GCR 175 provides for the absolute necessity for a hearing to take place prior to the imposition of any penalty. A notice as contemplated in GCR 175 shall state the capacity in which the person is required to attend, i.e., defendant, witnesses, etc. No such a notice was issued to Mr Wally Jnr and no sanction can be imposed against him for the reasons contended by Mr North Snr and GCR 63 does not take the matter any further.
76. Mrs Wally did not testify in the prosecution of her own appeal and exclusively relied on legal submissions. Mrs Wally similarly did not participate in COE 1273 and this NCA had no benefit as to her evidence whatsoever. Mrs Wally will accordingly be liable for the conduct of Mr Wally Snr which this NCA adjudicates below.
77. Mr Murray was the promoter's representative during the event. GCR 172 provides not only for the protection of officials from abuse but for the intimidation, verbal and / or physical abuse and misbehaviour which are provided for to be prejudicial to the interests of MSA and of motorsport generally. We are unpersuaded by the contention that Mr Murray's complaint was therefore technically without merit as he was not an official at the event. He was a person clearly representing the promoter and as such is a person worthy of the protection provided for in terms of GCR 172.
78. Part 1 of the GCRs in bold print emphasises MSA's commitment to refrain from manifesting racial and religious discrimination. It records its requirement that all officials and competitors refrain from such conduct. The GCRs, in turn, publicly accepts the Code of Conduct, and the jurisdiction of the Constitution of SASCOG to be committed to a unified system of sport, based on the principles of equity, diversity and non-racialism. All persons involved in motorsport, including competitors, entrants and parents of minor children are therefore committed to **never again be used to sow division and to promote discrimination amongst us.**
79. The Karting Code of Conduct aptly coined under the name "*Race 'n Respect*", establishes a further code in South African karting to promote fair play, fun, friendship and dignity within the sport. The Code of Conduct formulates "*Positive Enforcement*" and commits all parties

involved in MSA karting to be collectively responsible to set a good example and help to achieve a positive environment in MSA karting. Officials are expected to recognise possible volatile situations and help to calm them.

80. The Code of Conduct further addresses "*Conduct Without Respect*" so as to avoid public criticism of the event and official decisions, or the officials themselves.
81. Importantly, the Code of Conduct provides a platform for **complaints outside of karting events** for investigation and action. Such complaints were provided for to be submitted in writing to MSA's Head Office **for investigation and action**.
82. The Code of Conduct also formulated "*Expectations*" and expects of adults to walk away from situations that may escalate and to **think of the impact of negative behaviour on your young competitor and those in the surrounding area**.
83. The conduct of Mr Wally Snr at the event constituted intimidation and verbal abuse. He misbehaved and abused the officials. Mr Wally Snr was armed with the forty-three e-mails which he never produced to this NCA. He also did not share them with the highest ranking official on the day, Mr Coetzee. Mr Wally Snr, on his own admission wielded the alleged possession of forty-three e-mails as a tool of intimidation and verbal abuse.
84. Mr Wally Snr's attitude towards the officials was clearly demonstrated by him being "*infuriated*" by Mr Coetzee simply asking him whether he could be heard and to lift his hand to indicate same at the drivers' briefing where it was noisy with racing taking place on the main track. Mr Wally Snr's attitude towards Mr Coetzee who allegedly treated him like a small school child, indicated his pre-meditated frame of mind during the event and which ultimately culminated in the serious events that transpired.
85. During this NCA's hearing, Mr Wally Snr acknowledged that he should have raised the issue of the forty-three e-mails with MSA. He failed to take this NCA into his confidence and to present the forty-three e-mails. In this NCA, Mr Wally Snr persisted with his serious allegations against the officials stating that if this NCA was to see the forty-three e-mails "*you will understand what kind of people you are dealing with*".
86. Without any provocation whatsoever, Mr Wally Snr embarked on confronting Mr Murray with the forty-three e-mails. He repeated the threats as to litigation to each of the other officials involved, Mrs Wood, Mr Coetzee and Mrs Swanepoel, which was also overheard by Mr De Beer.

87. It was submitted on behalf of Mr Wally Snr that the right of access to Courts is a fundamental right in terms of the laws of South Africa and that the threat of legal action is lawful and cannot constitute a severe breach of GCR 172. It was further contended that threatening financial ruin through legal means is not, in general terms, unlawful.
88. The defences raised by Mr Wally Snr as to his actions towards Mr Murray, do not have merit:
- 88.1 the verbal tirade against Mr Murray that Mr Wally Snr was going to take down a number of stakeholders in karting which included EMR Karting, MSA itself, Rotax SA the karting supplier, RKC another karting supplier, and the officials, was not seriously contested by Mr Wally Snr;
- 88.2 Mr Wally Snr informed Mr Murray that he will be informing the FIA, and that people will see what the FIA will do. There is no evidence of a report to the FIA whatsoever. This NCA can only conclude from this that this threat made by Mr Wally Snr was without merit and made only to intimidate Mr Murray;
- 88.3 Mr Wally Snr threatened to report the incident to Bombardier, one of the major commercial concerns of the world and the parent company of Rotax SA. There is no evidence of a report to Bombardier whatsoever. This NCA can only conclude from this that this threat made by Mr Wally Snr was without merit and made only to intimidate Mr Murray;
- 88.4 Mr Wally Snr's statement that he had already spent R2 million on lawyers in the Chiwara case, was not demonstrated to be of any relevance whatsoever as to the Wally Appeal. This NCA can only conclude from this that this statement made by Mr Wally Snr could only have been made to intimidate Mr Murray to show that Mr Wally Snr had the financial wherewithal to spend substantial sums of money on lawyers and that MSA is going down as he threatened. He added that this would cost them hundreds of millions;
- 88.5 in the words of Nugent J,⁷⁰ there was "*something more necessary*" for the threat of financial ruin through legal means, to constitute unconscionable and illegitimate duress. In this Appeal, the "*something more*" was present as Mr Wally Snr claimed that he had evidence that shows a plot by persons against Mr Wally Jnr which was contained in the forty-three e-mails. These e-mails were never produced to the

⁷⁰ *Medscheme Holdings (Pty) Ltd and Another v Bhamjee* [2005] 4 All SA 16 (SCA), para 18.

officials on the day of the event, nor was it reported to MSA within the clear structure and platform that exists. Most importantly, it was glaringly absent from being placed before this NCA;

- 88.6 Mr Wally Snr weaponised the right to approach Courts of law or to litigate which is generally available to members of the public. In these instances, he embarked on threats of personal litigation against the officials, wielding allegations of the forty-three e-mails which would be utilised and coloured that with his financial muscle to have substantial resources available to litigate against officials in Courts. The only inference to be drawn from this is that Mr Wally Snr embarked on a threat of financial ruin to intimidate Mr Murray and the officials by referring to the amount that he had already spent in an unrelated motorsport matter and by referring to e-mails that allegedly contained evidence against the officials, which e-mails he failed to produce;
- 88.7 the threat to take legal action which was contended for by Mr Ali to be a lawful one within the ambit of the Constitution, and to have access to Courts, has not been shown to be a *bona fide* reliance on the right to take legal action, but rather an instrument of design to intimidate the officials that they will be held personally liable in expensive litigation, which he made clear he can afford and based on the forty-three e-mails which Mr Wally Snr failed to produce;
- 88.8 Mr Wally Snr's threats as to legal proceedings regarding the forty-three e-mails to be instituted by him were therefore not directed to protect his right of access to Courts in terms of the laws of South Africa, or to take steps in terms of the sporting laws of MSA, but rather to intimidate. Peculiarly, as the evidence and facts in this Appeal show, the Wally Family did proceed to protest the findings of the Stewards regarding the "*aero tuck*" penalty, and they were ultimately successful in a MSA constituted Court of Appeal as appears from annexure "A" hereto. This NCA therefore concludes that the multiple threats of litigation regarding the forty-three e-mails, were made to intimidate Mr Murray and the officials during the event.
89. This NCA finds that the evidence of Mr Murray was credible in all material regards, notwithstanding that he was a single witness. He impressed this NCA with his testimony. No adverse inference can be made against his evidence because his wife was not called as a witness. The balance of Mr Murray's evidence is preferred to that of Mr Wally Snr where they are single witnesses regarding the incidents.
90. Mr Murray felt intimidated by the conduct of Mr Wally Snr and the composite effect of Mr

Wally Snr's actions, constitutes intimidation, verbal abuse and misbehaviour within the ambit of GCR 172.

91. The defences raised by Mr Wally Snr as to his actions towards Mrs Wood, do not have merit:

91.1 Mr Wally Snr's conduct towards Mrs Wood when he aggressively and loudly stated that he had affidavits to show that there was a plot against Mr Wally Jnr and that he will sue Mrs Wood, was understood by her to be a direct threat towards herself. She asked Mr Wally Snr whether she should take his statement as a threat to which he responded "yes". At the second hearing, Mrs Wood asked Mr Wally Snr to stop what he was doing and to leave and ultimately, she requested Mrs Swanepoel to call security. At that point in time, Mr Wally Snr repeated his intimidation that he had already spent R2 million on lawyers in the Chiwara case. This NCA has already held that no relevance for this statement was established in this Appeal and that this NCA can only conclude from this that the statement made by Mr Wally Snr could only have been made to intimidate to show that Mr Wally Snr has the financial wherewithal to spend substantial sums of money on lawyers;

91.2 Mr Wally Snr threatened and intimidated Mrs Wood regarding the forty-three e-mails in front of several persons as her evidence shows. For the reasons outlined above, Mr Wally Snr's defences as to his Constitutional right to access Courts and litigation are similarly rejected with reference to Mrs Wood;

91.3 moreover, Mr Wally Snr demonstrated aggressive conduct with his body posture, leaning over the table, into Mrs Wood's face in a loud tirade stating that she was biased. She felt physically threatened because Mr Wally Snr was in her face and according to her, he is a very intimidating, large man.

92. This NCA finds that the evidence of Mrs Wood was credible in all material regards. Mrs Wood felt physically threatened by the conduct of Mr Wally Snr. Mr Wally Snr's actions in this regard, constitutes intimidation, verbal and / or physical abuse, misbehaviour and the abuse of officials within the ambit of GCR 172.

93. The defences raised by Mr Wally Snr as to his actions towards Mr Coetzee, do not have merit:

93.1 Mr Wally Snr threatened Mr Coetzee that a Court case was coming his way. He repeated that his expenditure regarding the R2 million in the Chiwara case. This NCA has already held that no relevance for this statement was established in this

Appeal and that this NCA can only conclude from this that the statement made by Mr Wally Snr could only have been made to intimidate to show that Mr Wally Snr has the financial wherewithal to spend substantial sums of money on lawyers;

- 93.2 Mr Wally Snr threatened and intimidated Mr Coetzee regarding the forty-three e-mails. For the reasons outlined above, Mr Wally Snr's defences as to his Constitutional right to access Courts and litigation are similarly rejected with reference to Mr Coetzee. He understood the threat as a threat by Mr Wally Snr to litigate against him personally;
- 93.3 according to Mr Coetzee, he asked Mr Wally Snr whether he was trying to intimidate and threaten him to which Mr Wally Snr responded, "*you will see*".
94. This NCA finds that the evidence of Mr Coetzee was credible in all material regards. Mr Coetzee felt threatened by the conduct of Mr Wally Snr. Mr Wally Snr's actions in this regard, constitutes intimidation, verbal abuse, misbehaviour and the abuse of officials within the ambit of GCR 172.
95. Mr Wally Snr had a full opportunity during this NCA to explain why he alleged that there was a plot or a conspiracy to show that the officials "*hate Muslim people*" and that there was a racist motivation for the incidents which happened at the event. He failed to produce any evidence whatsoever in this regard. He also failed to produce the forty-three e-mails which he concluded on that if this NCA would see the e-mails, that we would understand what kind of people we were dealing with. There is accordingly no evidence whatsoever produced as to any racial or religious discrimination which influenced the officials.
96. The composite evidence of Mr Murray, Mrs Wood, Mr Coetzee, supported by the evidence of Mrs Swanepoel and Mr De Beer, established that:
- 96.1 the officials, i.e., Mrs Wood and Mr Coetzee, were intimidated by Mr Wally Snr. They were verbally abused in the manner in which they explained to this NCA. This conduct was prejudicial to the interest of MSA or of motorsport generally and falls within the ambit of GCR 172.iv);
- 96.2 Mr Wally Snr's conduct also constitutes misbehaviour within the ambit of GCR 172.vi);
- 96.3 Mr Wally Snr's conduct also constitutes an abuse of officials by a competitor and their family members (Mr Wally Snr), within the ambit of GCR 172.x);

96.4 as to Mr Wally Snr's conduct towards Mr Murray, it was prejudicial to the interest of MSA or of motorsport generally and falls within the ambit of GCR 172.iv).

97. As to the merits of the appeal of Mrs Wally, she was held to be in contravention of GCR 172 through the operation of GCR 19, GCR 91, GCR 96, GCR 113 and GCR 122, by COE 1273⁷¹ as being the entrant / competitor for Mr Wally Jnr:

97.1 this NCA is not persuaded that COE 1273 incorrectly held that Mrs Wally was in contravention of GCR 172;

97.2 as to a suitable penalty for Mrs Wally, she was only held vicariously liable for the conduct of Mr Wally Snr which this NCA likewise finds.

FINDINGS

The Wally Appeal

98. This NCA finds that:

98.1 the defence of *lis pendens* was no longer persisted with in this Appeal;

98.2 the evidence of Mr Coetzee was reliable in all material regards as it was corroborated by the evidence of Mrs Wood, Mrs Swanepoel and Mr De Beer;

98.3 the evidence of Mr Wally Snr was not reliable and where it was contradicted by the evidence of Mr Coetzee, Mrs Wood, Mrs Swanepoel and Mr De Beer, their versions of the incidents on the day, are accepted;

98.4 the evidence of Mr Murray was reliable in the material regards reasoned above and Mr Wally Snr's conduct towards Mr Murray was in breach of GCR 172.iv) and GCR 172.vi), in that he intimidated Mr Murray and misbehaved;

98.5 Mrs Wally was correctly held to be in contravention of GCR 172.iv), GCR 172.vi) and GCR 172.x) by COE 1273, albeit that the sanction imposed on her was too

⁷¹ Appeal Record, page 84, paragraph 19 and further.

heavy and should be substituted with an appropriate sanction;

98.6 the appeal of Mrs Wally is dismissed, and the costs awarded by COE 1273 stands.

The Murray Appeal

99. This NCA finds that:

99.1 COE 1273 incorrectly held that it had no jurisdiction over Mr Wally Snr and the appeal of Mr Murray is upheld;

99.2 the appeal regarding Mr Wally Jnr is dismissed;

99.3 the costs awarded by COE 1273 stands;

99.4 insofar as the Murray Appeal is partially successful, no additional order as to costs is made.

APPROPRIATE SANCTIONS

100. This NCA has considered all the available evidence so as to impose appropriate sanctions on Mr Wally Snr and Mrs Wally. There is a major difference in the moral turpitude of Mr Wally Snr and Mrs Wally and this NCA therefore finds that there are compelling reasons to differentiate between appropriate sanctions to be imposed on Mr Wally Snr and Mrs Wally:

100.1 Mr Wally Snr was the main perpetrator of the incidents which transpired on 24 February 2024;

100.2 the incidents took place over an extended period of time during which Mr Wally Snr had a full opportunity to bring his conduct in line with the GCRs and the Code of Conduct;

100.3 notwithstanding the requests of several officials for Mr Wally Snr to calm down, he did not relent. He continued with what was described as a tirade in which he aggressively, loudly and through his sheer physical presence, intimidated the officials through continuous threats of personal litigation against them;

100.4 there is no evidence to implicate Mrs Wally as a participant in the conduct of Mr

Wally Snr.

101. Any sanction imposed on Mr Wally Snr and Mrs Wally should consider the seriousness of the contravention, the interests of the motorsport community, the personal circumstances of the wrongdoers, and the impact of a sanction on would-be offenders. The interests of the officials must in particular be considered as they suffered the brunt of Mr Wally Snr's conduct.
102. In addition to these principles, a sanction should also be blended with a measure of mercy. Mercy, in these circumstances, is not a maudlin sympathy for the offenders, but the taking into account all of the personal circumstances of a mitigating nature so as to temper the seriousness of the contravention. It was submitted that there was confusion during the event regarding the "aero tuck" rule. This NCA has taken into account as to Mr Wally Snr, that this issue could have played a role in his escalating conduct which he displayed during the event. This NCA has taken this aspect into account as part of the measure of mercy to be applied in the sanction.
103. This NCA has concluded that the only appropriate sanction for Mr Wally Snr, considering the above principles and evidence, would be an immediate suspension of his involvement in motorsport in consequence of his breach in terms of GCR 172. A suspension alone in terms of GCR 172 is not sufficient in view of the gravity of the contraventions and the other principles outlined in this Judgment.
104. Mr North Snr has called for the maximum fine of R750 000.00 to be imposed on Mr Wally Snr in view of the seriousness of the matter.
105. This NCA finds that based on the principles outlined above and the measure of mercy, that the maximum penalty should be tempered, particularly in view thereof that Mr Wally Snr is a first offender.
106. Moreover, and considering that there is no evidence that Mrs Wally played any personal role in the conduct of Mr Wally Snr, this NCA is of the view that the penalty imposed on Mrs Wally by COE 1273, was too heavy and should be reduced. Mrs Wally's suspension from acting as the entrant or to represent Mr Wally Jnr in events for a period of six months, together with a fine in the amount of R30 000.00 was compositely too heavy.
107. Mrs Wally, on all available evidence, is a first offender and it is in the interest of the motorsport career of Mr Wally Jnr that a parent remains involved in his motorsport career as an entrant over the next six months.

108. As the events of 24 February 2024 unfolded, the karting event on the day did not unite people under the banner of sport or contributed to inspire. Mr Wally Snr, through his conduct, brought about divide through unsubstantiated allegations of a plot based on discrimination of religion. These allegations are of a very serious nature against several officials who were entrusted to officiate the racing event of the day. No tangible evidence whatsoever was produced by Mr Wally Snr to support the allegations of racism or a plot, neither on the day in question or in this NCA. Mr Wally Snr's conduct was prejudicial to the interest of MSA and that of motorsport generally. In consequence of the seriousness of the contravention, the multiplicity of the incidents during the event, and taking into account all the mitigating factors, Mr Wally Snr should immediately be suspended from motorsport for a period and, in addition, a fine should be imposed on him.

109. This NCA accordingly imposes the following sanctions:

109.1 Mr Wally Snr is found to have breached GCR 172.iv), GCR 172.vi) and GCR 172.x) and is suspended, for a period of 6 (six) months with immediate effect in terms of GCR 183 from playing any role in any MSA event, whatsoever, whether as a competitor or entrant, or to be part of the team of a competitor or an entrant;


109.2 in addition, a fine of R250 000.00 (two hundred and fifty thousand rand) is imposed on Mr Wally Snr in terms of GCR 178 and GCR 179;

109.3 as to Mrs Wally, she is found to have breached GCR 172.iv), GCR 172.vi) and GCR 172.x) and is suspended from playing any role in any MSA event, whatsoever, whether as a competitor or entrant, or to be part of the team of a competitor or an entrant for a period of 6 (months) in terms of GCR 183. The suspension is suspended **for a period of 2 (two) years** on condition that Mrs Wally is not again, during the period of suspension, found to be in contravention of GCR 172.iv), GCR 172.vi) and GCR 172.x);

109.4 the appeal fee in the Wally Appeal is forfeited to MSA in terms of GCR 196.

110. In view of the importance of this judgment, MSA is directed to ensure that the judgment is brought to the knowledge of its registered licence holders and all officials of MSA.

HANDED DOWN AT JOHANNESBURG ON THIS THE 09TH DAY OF DECEMBER 2024.



Adv André P Bezuidenhout
Court President

Electronically Signed

Adv Paul Carstensen SC
Court Member



Adv Ishmael AM Semanya SC
Court Member

Electronically Signed

Mr Jannie Geyser
Court Member