



# MOTORSPORT SOUTH AFRICA NPC

Reg. No 1995/005605/08

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098/157690

## MSA COURT OF APPEAL NO. 385

### APPEAL LODGED BY BROTHER BROADLINK KTM AGAINST FINDINGS OF THE PROTEST HEARING HELD ON 26 MAY 2011 HEARING HELD IN THE MSA BOARDROOM ON THE 3<sup>RD</sup> JUNE 2011 AT 10H00

|                |   |                  |   |                 |
|----------------|---|------------------|---|-----------------|
| <b>Present</b> | : | Alan Kernick     | - | Court President |
|                |   | Matthew Phelps   | - | Court Member    |
|                |   | Nelina Brand     | - | Court Member    |
|                |   | Franziska Brandl | - | KTM             |
|                |   | Fred van Niekerk | - | Yamaha          |
|                |   | P van Niekerk    | - | KTM             |
|                |   | Allan Wheeler    | - | MSA             |
|                |   | Cindy Correia    | - | Scribe          |

The president introduced himself and the Court Members.

The Court was convened to consider an Appeal lodged by Brother Broadlink KTM.

The basis of the Appeal sets out to challenge the findings of a protest related to certain alleged irregularities at the Humansdorp National Enduro Championship held on the 14<sup>th</sup> May 2010. The findings appealed against are:

1. "The Stewards find that notwithstanding the protest, permission was given to competitor Gutzeit and all other competitors to use the splash and dash.
2. "That there was no outside assistance".
3. "That the service crew of Yamaha was not on the route".

The Court has addressed each individual aspect as set out below.

### THE HEARING

At the outset, the Court wishes to acknowledge the professional manner that both the applicant Brother Broadlink KTM and Yamaha conducted themselves, and for the candid nature of the evidence presented. Both parties provided at times evidence which arguably could have prejudiced their specific cases, but presented evidence irrespective of this.

1. The Court heard evidence from KTM that they acknowledged that the Splash and Dash had been permitted by the organisers and Officials. The argument presented however was that the permission granted was in effect not conveyed to all competitors, and certainly not to KTM. KTM argued that permission had been



refused at riders briefing, and that no provision existed in the regulations for the event allowing the outside refuel. It was argued that they had only become aware of the splash and dash when they found a young boy erecting signage at a designated point on the route. The signage indicating the splash and dash was being erected on the instruction of a marshal who was stationed at that point.

The Court went back to the original protest submitted at the event. In the protest, the grounds mentioned are very specifically aimed at Rider No 1 „Jade Gutzeit. In fact the protest specifically mentions three aspects protested against. That the competitors service crew were on the racing route. That the competitor in questions service crew rendered assistance and lastly that the competitors service crew left fuel at a point for the rider to use. The obvious gist of the protest is clearly against the actions of the competitor who in the protest is alleged to have breached the rules.

The Court considered amongst other things statements made by the Clerk of the Course, the Stewards of the meeting and the Organisers. All of these written submissions clearly indicate that they had approved the inclusion of a splash and dash for the event. In fact in the submissions it is clear that such approval was given post a decision not to allow the splash and dash and supersedes any decision not to permit the outside refuel. The submissions further suggest that the organisers under the watchful eyes of the officials were instructed to enter the pits and inform riders/competitors and others that a splash and dash had been permitted.

The Court concluded that to any competitor who received that news of the inclusion of a splash and dash from the officials with the explanation of its late inclusion into the race, would have acted correctly if he or she was to have made use of the information. In as far as this aspect goes, it is not contested at all that Competitor Gutzeit was one of these competitors who received this information, but rather contended by KTM that they did not receive the information. The question for the Court was then whether the actions of Competitor Gutzeit who having received authority to use a splash and dash should be considered in contravention of any rule, and secondly whether Competitors Gutzeit’s good fortune having been informed of the decision should be negated by the evidence from KTM that they were not informed of the decision.

Having considered the questions the Court concludes that Competitor Gutzeit acted in good faith and in accordance with the instructions provided by the Organiser and Officials. In fact the Court finds that the actions of the organiser in not only identifying but marking an area as the splash and dash zone are adequate proof that the organisers fully intended including this in the event.

2. With regard to the second aspect relating to outside assistance. KTM presented evidence that during the first loop of the event, they observed Competitor Gutzeit receiving outside assistance. It was further contended that by the time photos were taken the level of assistance was not clearly evident. The Court acknowledged this and can comment that the photos presented as part of the Appeal do little to show any outside assistance. Notwithstanding this, the Court heard evidence from Yamaha that a service crew member had held the handlebar of the motorcycle whilst in the splash and dash area at some point to stabilise the bike.

The Court considered this aspect. If as was suggested outside assistance was provided, then a clear contravention existed. The Court however was not satisfied that the bald allegation of outside assistance was applicable. In this regard the Court asked whether there was some definition included in the rules for a splash and dash. The clear answer was that no definition could be found. What the Court however found in terms of Article 24, reference is made to outside assistance being given at official working areas. The Court concluded that the splash and dash area, clearly demarcated by a sign erected at the behest of the officials is an official working area as set out.

The Court is further guided in this regard by the provisions of Article 24 which state later “Service Crews may not establish “spares depots” or leave spares, tyres, fuel, lubricants etc. at any point other than in the working areas whether on the route or accessible from the route”. By implication then only working areas

can be utilised and there is no evidence to suggest the splash and dash area was anything but an official area.

In this regard then the Court finds that assistance provided in a designated official area is legal and permitted. Accordingly assistance in this area would contravene no regulation.

3. "That the crew of Yamaha were on the route".KTM presented evidence that the Yamaha crew were on the route. This evidence was expanded on by referring to a diagram indicating where the alleged offense occurred. In this regard, the area in question appears to be in or around the splash and dash site. The diagram reflects a municipal road. The diagram further reflects a bridge and what seem to be two points where the route enters and exits.it appears the route ran to a point, turned, went through the bridge and then again turned off into the veld. KTM acknowledged that the municipal road was in fact a road. It was further acknowledged that the road was not closed off to traffic which could utilise the road.

Article 20 of the Enduro Regulations starts out by saying racing on a public road is not permitted. In fact the Article further states events can run either along a public road or may cross a public road. In this regard, the only permission granted by the Kouga Municipality sets out permission for the crossing of roads. There is no reference to or permission for the closure of any road. The Court must then conclude that the road referred to in the diagram was at all material times open to the public. In this regard the use of the road which it seems ran next to the route of the event would have been permissible. Accordingly access to the splash and dash area would have been possible by travelling on a normal public road and turning into the area. This submission is further agreed to in the written submissions from the race officials and accordingly the Court concludes that the Yamaha Crew were not on the route as suggested but more likely alongside the route on the public road.

## **FINDINGS**

Although not the subject of the Appeal, the Court having carefully considered the elements laid bare by the Appeal find that the actions of the Officials contributed in no small part to the confusion and subsequent actions of the KTM Team. In this regard the Court requests MSA to investigate the matter.

On a separate point, the Court finds that the use of terminology not described in the regulations, can lead to difficulties in interpretation. The term splash and dash being a case in point. The Court strongly advises that the Off Road Bike and Quad Commission look at its Enduro rules with a view to addressing areas of ambiguity.

On the issue of the Appeal, the Court having considered the various aspects of the Appeal finds that the applicant Brother Broadlink KTM is unsuccessful in its Appeal.

The Court finds further that the Appeal fee be retained.

## **All parties are advised of their rights to appeal to a MSA National Court of Appeal**

These findings published at 13H50 on 7 June 2011.