



MOTORSPORT SOUTH AFRICA NPC

Reg. No 1995/005605/08

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MSA COURT OF APPEAL 444

HEARING HELD AT THE MSA OFFICE IN CAPE TOWN ON WEDNESDAY 30th OCTOBER 2019

In the appeal of

MARK KOORZEN – APPELLANT & FATHER OF MINOR COMPETITOR REESE KOORZEN

relating to Reese Koorzen's exclusion from the results of heat 1 of the Micro Max event held at Killarney International Raceway on 14 September 2019.

Present:	Steve Harding	-	Court President
	Arlene Brown	-	Court Member
	Stephanie vd Merwe	-	Court Member
	Mark Koorzen	-	Appellant and father of minor competitor Reese Koorzen
	Kevin de Wit	-	Clerk of the Course
In attendance:	Lizelle van Rensburg	-	MSA Scribe

1. At the commencement of the hearing, it was explained that one of the originally appointed members of the court, Mr Frank Creese, was indisposed and that Mrs Arlene Brown had been appointed by MSA in his stead. The appellant indicated that he had no objection to the composition of the court.
2. The appeal is against the findings of the Stewards in respect of heat one of the Micro Max event held at Killarney Kart circuit on 14 September 2019, in terms of which the minor competitor Reese Koorzen was disqualified / excluded from the results of heat one of the said event.
3. A number of grounds were advanced by the appellant but it is appropriate to deal firstly with the issues surrounding the allegation that the Stewards failed to comply with the provisions of GCR 175, which relate to the necessity of a hearing, save in exceptional circumstances, prior to the imposition of any penalty.

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



sport & recreation
Department:
Sport and Recreation South Africa
REPUBLIC OF SOUTH AFRICA

Directors: A. Roux (Chairman), A. Scholtz (Chief Executive Officer), A. Taylor (Financial), F. Alibhai, R. Beekun, FC. Kraamwinkel, G. Hall, A. Harri, Dr G. Mills, E. Murray, M. Rowe, R. Schilling, Ms M. Spurr, S. Themba, S. Van der Merwe

4. The appellant testified that he was called to a meeting with the Stewards at which a video, (which was made available to the court and is dealt with later in this judgement), was discussed and that the Stewards advised that, in their opinion, the video showed the minor competitor overtaking under a yellow flag and requested the appellant to sign a penalty form which had already been prepared and signed by the Stewards. The appellant informed the court that the Stewards would hear no argument in this regard. On enquiry the Clerk of the Course advised that he was not present at this meeting but that he was aware that the penalty form had been prepared by the Stewards and signed before the meeting took place.
5. Whilst GCR 175 deals with the procedure for hearings of this nature, by referring to GCR 202 regarding the procedure to be adopted during such a hearing, it stresses that such hearings are "of necessity informal in nature". The guidance afforded by GCR 202 is limited to a few procedural aspects. It is however important to bear in mind that, by its very nature, and the rules of natural justice, a hearing must confer upon the parties summoned to such a hearing the opportunity to lead evidence and make representations in order to rebut the allegations made against them, and the officials appointed to conduct a hearing must be open to being persuaded that either the allegations are incorrect or that the proposed penalty is inappropriate, or both. It cannot be said that a fair hearing has been held if the officials approach that hearing having already made up their minds, formulated a decision, determined an appropriate penalty and recorded all of that in writing before the party or parties involved have been afforded an appropriate opportunity to be heard.
6. It is the view of this court that whatever the meeting which was afforded the appellant with the Stewards might have been, it fell far short of the requirements imposed by GCR 175. Given this finding and mindful of the findings of National Court of Appeal 170, particularly at paragraph 38, in which it is stated that a Court of Appeal of the status of this court has no power to remedy the omission by the Stewards in failing to afford the appellant a proper hearing, by conducting the hearing as a court of first instance, the court then considered whether there was any merit in referring the matter back to the Stewards to conduct a hearing. After consideration of the arguments and evidence presented by the appellant to this court, the court is of the view that the disqualification / exclusion cannot stand and that the referral of the matter back to the Stewards will either result in this same conclusion or in a series of further unnecessary appeals which would ultimately have the same result.
7. Briefly the reasons for this conclusion are as follows. A careful examination of the video evidence at a reduced speed, reveals that the overtaking manoeuvre by the competitor was definitely commenced and quite possibly completed before the competitor reached the yellow flag. The court disagrees with the appellant's contention that the flag was not adequately displayed or was not visible to the competitor, but accepts that the flag was slightly smaller than the minimum dimensions specified in appendix H (being 80cm by 53cm, instead of the prescribed minimum of 80cm by 60cm). This deviation is not however considered by this court to be material and would not, had this been the only issue advanced, have justified the setting aside of the penalty. Similarly, there is no merit in the contention that the penalty imposed is inappropriate inasmuch as, had the Stewards, after a proper hearing and due consideration of all of the evidence, reached the conclusion that the competitor had ignored the yellow flag the penalty is prescribed and the stewards have no discretion.

8. In the circumstances the appeal is upheld, the disqualification / exclusion is overruled and the appellant and competitor are to be reinstated in the results of heat 1 of the event.
9. This court is concerned by the number of instances which have reached Courts of Appeal and National Courts of Appeal of MSA in recent months, where the Stewards have failed either completely to hold hearings as required in terms of GCR 175, or have failed to conduct such hearings in such a manner that they can be considered to conform with the rules of natural justice. The court is concerned that, in as far as the Stewards are not called to appeal hearings, there is often no one to give evidence in relation to what took place at the hearing other than the appellant. It is therefore imperative that Stewards record in their findings or penalty notifications that a hearing was held, the persons present at the hearing and a brief summary of the contentions advanced, or record the circumstances which made it impossible or unnecessary for a hearing to be held. It is highly recommended by this court that MSA provides Stewards and Clerks of the Course with a mandatory template which all penalty notifications should follow, which appropriately incorporates the information referred to above.
10. In the circumstances and inasmuch as this appeal has succeeded, the court directs that the appeal fee be refunded to the appellant, save for administrative costs. These administrative costs in this instance are restricted to the minimum permissible under appendix R to the GCRs in an amount of R1,000.00.

All parties are reminded of their rights in terms of GCR 212 B.

These findings are published via email on the 01st November 2019.

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