



# MOTORSPORT SOUTH AFRICA NPC

Reg. No 1995/005605/08

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## MSA COURT OF APPEAL 456

HEARING HELD VIA ZOOM ON THE 2<sup>ND</sup> OF FEBRUARY 2021 AT 17:30

<b>Court composition:</b>	Tony Taylor	Court President
	Adv. Francois v d Merwe	Court Member
	Ian Richards	Court Member
<b>In Attendance:</b>	Marco Sutter	Appellant
	Richard Vaughan	Clerk of the Course
	Craig Martin	Technical Consultant
	Johan Fourie	MSA Steward
	Marlene Swanepoel	Club Steward
	Adv. Thembelani Mayosi	Observer
	Vic Maharaj	MSA Sporting Manager
	Allison Vogelsang	MSA Circuit Sport Coordinator
	Karin Britton	MSA Observer

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## JUDGEMENT

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### Introduction:

1. The court members and attendees were introduced, and no objections were raised against the composition of the court. All participants were advised that the proceedings were being recorded.
2. Mr Sutter, the applicant, lodged a protest with the Stewards following a decision of the Clerk of the Course to exclude competitor number 24 (Keon Ramaphakela) from heats 1 and 2 of the Kid ROK Class held at the ROK National Karting event held at Zwartkops on 12<sup>th</sup> December 2020 as a result of a TC report that the sprocket on the kart concerned did not comply with the regulations.

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



Directors: A. Roux (Chairman), A. Scholtz (Chief Executive Officer), R. Beekun (Financial), Mrs. D Abrahams, A. Harri, M. Hashe, FC. Kraamwinkel, Dr G. Mills, C. Oates, R. Schilling, Ms M. Spurr, S. Themba

## The Hearing

3. The appeal is primarily based on the following contentions:
  - 3.1. The Technical Consultant (“TC”) had failed to comply with GCR 254 (ii) in that he had not impounded the sprocket at the time of inspection;
  - 3.2. There was no evidence that competitor Ramaphakela had made use of an incorrect sprocket in heat 1;
  - 3.3. The Stewards were unable to make a finding as a consequence of the sprocket being unavailable due to non-compliance with GCR 254(ii).
4. The Appellant addressed the Court and presented the basis of his appeal which is fully contained in the Formulated Appeal and is therefore not repeated herein.
5. The TC, Mr Craig Martin, addressed the court and explained that he only checked certain aspects on karts after a specific heat and the sprockets were not checked after Heat 1. The sprockets were however checked after Heat 2 and at that point in time the sprocket on Ramaphakela’s kart, kart number 24, had been found to be a sprocket stamped “83”. This indicated that the sprocket had eighty three teeth and thus breached Category Specific Regulations – Kid ROK (162186) version 3 – 02.12.2020 as amended by a notice on the electronic WhatsApp notice board dated 10/12/2020 at 20:05 where it stated “The only rear sprocket allowed during the event will be T86 – Kid ROK”. That is, the rear sprocket must have eighty-six teeth.
6. Mr Martin, in answering a question from the court, confirmed that in his experience the number stamped on the sprocket had never deviated from a physical count of the teeth and that any attempt to change the number on the sprocket would be clearly visible.
7. Mr Martin further informed the Court that he had, in fact, impounded the sprocket at the time of the inspection and that it remained in his possession until such time as he had handed it over to the Stewards. The sprocket was in a sealed plastic bag with a paper seal signed by himself and, from his recollection, Mr Sutter.
8. The Clerk of the Course, Mr Vaughan, also testified during the proceedings. At the hearing which was held on the day of the event, attended by Mr Sutter, he penalised the competitor by excluding him from both heats 1 (one) and 2 (two). He further testified (a) that the sprocket was available to him at the hearing and (b) that both he and Mr Martin had assisted Mr Sutter to obtain a legal sprocket from another competitor so that his competitor could continue racing. He further informed Mr Martin that the sprocket removed from Kart 24

could be returned to the competitor but when he was informed that Mr Sutter had protested his decision, he immediately contacted Mr Martin who confirmed that he had, as yet, not returned the sprocket to the competitor.

9. The Stewards, Mr Fourie and Mrs Swanepoel, confirmed to the Court that a protest hearing had taken place, that the sprocket was available in the hearing and that they had upheld the Clerk of the Course's decision. They further testified that Mr Sutter at no time during the protest hearing requested that the teeth on the sprocket be counted in his presence.
10. The Court then asked Mr Maharaj to present the sprocket which allegedly had been removed from Kart 24. The sprocket was wrapped in plastic and was sealed by two paper seals, each with two signatures. Mr Martin confirmed that his signature appeared on each seal whilst Mr Sutter denied that the other signature was his. On inspection and by comparison, given the Court's lack of expertise in the subject, it was not possible to confirm without any doubt that the signature was that of Mr Sutter. The sprocket had "83" stamped on it which corresponded, on a count performed by Mr Maharaj, with the number of teeth on the same sprocket.
11. Mr Sutter, was afforded the opportunity after each of the witnesses testified, to cross question or ask for clarification of their testimony, pointed out that he was very new to motorsport, was not aware of the sprocket size requirements and was unsure of the procedures to be followed. He was adamant that the sprocket presented was not from Kart 24 and that the signature on the seal was not his.

**The finding:**

12. The Court was satisfied that:
  - 12.1. the procedures employed in impounding the sprocket satisfied the relevant regulations and that the sprocket presented to the Clerk of the Course, the Stewards and the Court was the sprocket removed from the kart driven by competitor Ramaphakela on the day in question;
  - 12.2. That the sprocket in question had eighty-three teeth and was thus not in compliance with the relevant regulation - Category Specific Regulations – Kid ROK (162186) version 3 – 02.12.2020 as amended by a notice on the electronic WhatsApp notice board dated 10/12/2020 at 20:05. It is noted that Clause 3.6.1 (b) of the Category Specific Regulations – Kid ROK (162186) version 3 – 02.12.2020 states that karts should, at events held at Zwartkops, run a T84 rear sprocket, that is, there should be eighty four teeth on the rear sprocket. The post on the WhatsApp group, recognised as the official electronic notice

board at 20:05 on the 10<sup>th</sup> December 2020 amends this to read T86 which is interpreted to mean that the sprocket should have eighty-six teeth.

- 12.3. The Clerk of the Course in excluding the competitor from both heats acted correctly and in conformance with **GCR 183** which states:

*“... Where races or heats are run at the same meeting for a particular category of sport, an exclusion applied for non-compliance with the specifications in one race or heat shall apply equally to the other race or heat in the same category, except in exceptional circumstances where it is obvious that the non-compliance was only in respect of one race or heat. ...”*

13. The Court upholds the decision of the Stewards to exclude Competitor 24, Keon Ramaphakela, from the results of heats one and two of the Kid ROK Class held at the ROK National Karting event held at Zwartkops on 12<sup>th</sup> December 2020.
14. In arriving at this decision the Court took into account the possibility that the notice on the electronic WhatsApp notice board at 20:05 on the 10<sup>th</sup> December 2020 may be defective in that it does not comply with the seven day notice required in clause 5.3 of the 2020 ROK National Sporting Regulations (162082) version 4 02.12.2020. However, the sprocket, as utilised by the competitor, does not comply with the regulation as published prior to the issue of the abovementioned directive stating that in terms of clause 3.6.1 (b) of the Category Specific Regulations – Kid ROK (162186) version 3 – 02.12.2020 karts should, at events held at Zwartkops, run a T84 rear sprocket.

### **Conclusion:**

15. In Mr Sutter’s testimony he stated that the protest hearing was “extremely autocratic” and confrontational. All officials are accordingly reminded of the requirements of GCR152 (xxii) which states:

*“The Stewards should ensure that the hearing of protests is in private with only interested parties being present, including the Clerk of the Course. It is not the function of Stewards to act as prosecutors, or defendants. They should ask questions on points of clarification but should generally leave the various parties involved to state their cases in amplification of the written protest previously lodged.”*

16. Organisers and Controllers must ensure that, at all times, they comply with their own regulations, and more specifically, to issue amendments within the time frames stipulated.

17. Although the Court was of the opinion that the Appeal verged on being vexatious and/or frivolous, it was agreed that the appropriate sanction would be a caution given the Appellant's inexperience in motorsport. Mr Sutter is therefore cautioned to ensure that when he protests or appeals a decision that there are adequate grounds to do so.
18. Given that the Appeal failed in all respects, the appeal fee is declared forfeit and a further administrative charge of R5000 is levied against the appellant.
19. All parties are reminded of their rights in terms of GCR 212 B.
20. These findings are issued by e-mail.

**162432/098**