



MOTORSPORT SOUTH AFRICA NPC

Reg. No 1995/005605/08

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MOTORSPORT SOUTH AFRICA COURT OF ENQUIRY NO 1253

Hearing held at Zwartkops Raceway on 9 March 2022 at 17:30.

Present:	Adv. Francois v d Merwe	Court President
	Ian Richards	Court Member
	Luan Oelofse	Court Member
	Leeroy Poulter	Defendant
	Gianni Giannoccaro	Attended on behalf of Defendant Giacomo Giannoccaro
	Schultz Swanepoel	Clerk of the Course
	Tanya Human	Event Secretary
	Zelda Verster	Event Secretary
	Donevan Cooper	Event Medical CMO
	Dr Derick De Beer	MSA Medical Panel Chairman via Zoom
	Rashaad Monteiro	MSA Insurance and Medical Coordinator via Zoom
	Vic Maharaj	MSA Sporting Manager
Absent:	Pieter Nell	Timekeeper

JUDGEMENT

Introduction:

1. Motorsport South Africa convened a formal enquiry to investigate whether Mr. Leeroy Poulter (“**the first defendant**”) drove Mr. Giacomo Giannoccaro’s (“**the second defendant**”) Extreme Supercar in Race 1 of the G&H Transport Extreme SuperCar at the Passion for Speed event (“**the event**”) held on 29 January 2022 at Zwartkops Raceway whilst not in possession of the requisite permissions and/or MSA licence.

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



sport, arts & culture
Department:
Sport, Arts and Culture
REPUBLIC OF 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, S. Themba, G. Waberski

the common cause facts:

2. The following facts are common cause:

- 2.1. The first defendant is a well-known competitor in South African motorsport having competed in various national and international events.
- 2.2. The first defendant did not have a valid MSA licence at the time of the event and has not held one for several years.
- 2.3. The first defendant was keen to get back into racing and attempted to obtain an MSA licence prior to his participation. The first defendant confirmed that no permission was given to him by MSA to participate in the event and that he did not obtain an MSA licence.
- 2.4. The first defendant had a special medical checkup performed on himself on 28 January 2022. From the Special Medical Examination Form it appears as though it was found by Dr. Derick de Beer that the first defendant was fit to compete in qualifying for the event.
- 2.5. The first defendant took part in qualifying under the name of the second defendant as reflected on the timing sheet of qualifying. The first defendant then completed Race 1 under his own name as reflected on the results of Race 1. No permission was given by the officials of the meeting for this name change.
- 2.6. On 29 January, the day of the event, the second defendant completed a Withdrawal Form in which he stated:

“I Giacomo gave my car to [the defendant] to drive as I’m not feeling well to drive. I was not aware he had no MSA Licence...”

- 2.7. The first defendant did not compete in Race 2.
- 2.8. Mr. Gianni Giannoccaro appeared on behalf of the second defendant. He stated that the second defendant was unaware of the fact that the first defendant did not have a valid MSA licence. He further stated that he assisted the first defendant prior to the event to

obtain an MSA licence via the MSA website but was unable to obtain same. Despite this knowledge, he assisted the first defendant to compete in qualifying and Race 1.

2.9. No evidence was tendered by the second defendant personally.

relevant provisions:

3. The following provisions of the General Competition Rules (“**GCR’s**”) find application in the present matter:

113. ENTRANT

In particular entrants shall:

- ii) be bound by the provisions of the sporting codes applicable to the event, such agreement being signified by the signature of the holder on the licence;
- vi) ensure that a competing vehicle and the drivers are those nominated;
- vii) ensure that only authorised persons are carried in the vehicle;
- ix) understand and accept the full consequences of **GCR 93** notwithstanding that the signatory may be the driver or another party authorised by the entrant;
- xiii) if the entrant is a corporate body, prior to the event, appoint a natural person to represent it at the meeting entered. The person so appointed may be a driver or rider. Such appointment must be in writing and **available at the competition** and may be for a limited period or for a maximum term of one year. In the absence of any such written appointment, the driver/rider shall automatically be deemed to be the entrant’s representative;
- xiv) have the prime responsibility for all acts and omissions of all persons connected with his entry (notably his driver(s), mechanic(s), pit personnel, passengers and service crews) and for ensuring that they comply with the rules and regulations, and be responsible for the payment of any fines levied on such persons.

114. ENTRANT’S REPRESENTATIVE

In the absence of a separate entrant, the nominated driver (or his/her parent/legal guardian), or the first nominated driver (or his/her parent/legal guardian) in the case of more than one driver, shall be deemed to be the representative of the entrant and shall assume the applicable duties and responsibilities.

116. INDIVIDUAL RESPONSIBILITY

All persons who during a competition are connected with an entry are not absolved from their individual responsibility under any relevant regulations because of the responsibilities assumed by the entrant or his/her representative.

121. RESPONSIBILITY OF DRIVERS, CO-DRIVERS AND PASSENGERS Drivers, co-drivers and passengers must be aware of the articles, rules and regulations governing the competition they are entered in.

In particular they:

- i) must hold a licence of the correct grade for the competition entered.

126. REGISTRATION OF COMPETITORS

Any person, in order to qualify as an entrant, driver, co-driver or as a navigator or passenger, must, except as hereinafter provided, be the holder of a licence for which a formal application on the appropriate form shall be made to MSA. Notwithstanding anything in these rules, MSA may in writing waive the necessity for competitors or drivers to hold a licence under these rules in order to be eligible to take part in a particular competition if it is primarily an event of a social character or an event open to persons who have not previously taken part in competitions. MSA may also grant a general waiver in respect of competitors in closed and restricted competitions (refer to GCR's 60(iii) and (iv)) subject to such conditions as it may from time to time announce. Such waiver may be revoked at any time either generally or in respect of any individual competitor.

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.

- ii) Any action having as its object the entry or participation in a competition of:
 - b) a person ... known to be ineligible therefore, or
 - c) a person who is not the holder of a licence appropriate to the event concerned and who is not eligible without a licence by virtue of a waiver granted under GCR 126.
- iii) Any fraudulent act or proceeding in connection with a competition or motor sport generally.
- 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.
- v) ...
- vi) Misbehaviour or unfair practice.

177. SENTENCE OF EXCLUSION/PRECLUSION

A sentence of exclusion and/or preclusion from participation may be pronounced by the Clerk of the Course, Stewards of the Meeting, MSA Court of Appeal or by a body set up by MSA or by the National Court of Appeal. It may preclude the competitor from taking part in one or several competitions at a meeting in a championship, trophy, cup or series. It may have the effect of removing a competitor from the results of one or more events. It may also have the effect, in the case of serious offences, of excluding a competitor from a championship, trophy, cup or series, in which case it will entail the loss of any points gained and the loss of all awards from the events for which the exclusion has been ordered.

183. PRECLUSION FROM PARTICIPATION OR SUSPENSION OF COMPETITOR, BODY OR OFFICIAL

A sentence of suspension may only be pronounced by the Stewards, MSA Court of Appeal, MSA or National Court of Appeal. It is reserved for serious offences. It may be either National or International. While in force it will entail the loss of any right to take part in

any capacity whatsoever in any competition held on the territory of the ASN or FMN where the sentence was pronounced in the case of a National suspension, or on any territory in which the authority of the FIA/CIK/FIM is recognised in the case of an international suspension. In all cases it will result in an immediate withdrawal of the competition licence from the person concerned. A sentence of National suspension pronounced by MSA shall be limited to the territory of same. A sentence of international suspension pronounced by MSA shall immediately be notified to the FIA/CIK/FIM Secretariat, which shall immediately instruct all other ASNs or FMNs to enforce the sentence.

finding of this court

4. The absence of a competition licence on the part of the first defendant is an extremely serious offence. The ramifications and liability that MSA, the organizers and officials could have been subjected to, had the first defendant been involved in an incident where either he, or a fellow competitor, was seriously or fatally injured due to the first defendant's on-track actions are far reaching. The actions of the first defendant was clearly in contravention of the relevant GCR's.
5. Despite the version tendered on behalf of the second defendant that he had no knowledge of the fact that the first defendant had no valid MSA licence, he remains liable as the entrant in terms of GCR 113 read with GCR 114. The conduct of the second defendant in allowing the first defendant to compete without holding the requisite MSA licence accordingly contravened GCR 121 (i), and GCR 172 (ii) c).
6. This Court is aware of and takes cognisance of the findings of the MSA National Court of Appeal, 173 in the matter of Zane Pearce dated 18 May 2021. In the *Pearce*-matter the Appellant had gone online on MSA's website to apply for a day licence for Gareth Pearce his son to participate in the event. He laboured under the impression that, although the system did not confirm the successful application, the licence would be issued, as he had inserted the card details for payment, but this did not go through successfully. He admitted that he acted incorrectly to assume the system had recorded the application but submitted that this was not done with any bad intention.

7. The present matter is distinguishable from the *Pearce*-matter on the facts in that the first defendant knowingly participated despite not holding the requisite MSA licence nor was he granted permission by MSA to participate. We are of the view that the first defendant showed no remorse for his actions which were clearly intentional.
8. It is concerning that Mr. Gianni Giannoccaro assisted the first defendant to compete with knowledge of the fact that the first defendant had no valid MSA licence. In the present enquiry Mr. Gianni Giannoccaro did not appear as a defendant.
9. This Court accordingly makes the following finding:
 - 9.1. The first defendant is excluded from the results of the event.
 - 9.2. The first defendant is precluded from participation in and/or suspended in terms of GCR 183 read with GCR 184 from all MSA motorsport sanctioned events for a period of 3 years dated from date of this judgment.
 - 9.3. The second defendant is suspended from all MSA motorsport sanctioned events, and his licence is similarly withdrawn, for a period of 3 years dated from date of this judgment.
 - 9.4. The second defendant is fined R10 000.00.
 - 9.5. MSA are directed to hold a further Court of Enquiry into the conduct and involvement of Gianni Giannoccaro in assisting the first respondent to compete as set out in this judgment.

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

These findings are distributed via email on 11 April 2022 at 15h15