



# MOTORSPORT SOUTH AFRICA NPC

Reg. No 1995/005605/08

[www.motorsport.co.za](http://www.motorsport.co.za)

2nd Floor, Meersig 1, Cnr. Upper Lake Lane & Constantia Boulevard, Constantia Kloof, Roodepoort  
e-mail: [msa@motorsport.co.za](mailto:msa@motorsport.co.za) Telephone (011) 675 2220

## MSA COURT OF ENQUIRY 1259

**HEARING HELD IN THE MSA BOARDROOM ON THE 6<sup>th</sup> DECEMBER 2022.**

<b>Court Composition:</b>	Steve Harding	Court President (via Zoom)
	Farouk Abrahams	Court Member
	Adv Nomkhosi Nharmuravate	Court Member
<b>In Attendance:</b>	Tony Lundin	Defendant
	Gavin Lundin	Defendant / Competitor
	Gert Botes	Clerk of the Course
	Tracylynn Venter	Event Secretary
	Ian Richards	Witness
	Wentzel Nortman	Witness
	Stewart Mclarty	Witness
	Vic Maharaj	MSA Sporting Services Manager
	Allison Vogelsang	MSA Circuit Sport Coordinator

### THE HEARING:

1. Court of Enquiry 1259 was convened by Motorsport South Africa in terms of the provisions of GCR 211, to investigate whether the Defendant, Mr Tony Lundin drove the race car of the 2<sup>nd</sup> defendant, Mr Gavin Lundin, in race 1 and race 2 of the Midvaal Historic class at the MSA Historic tour event held on 5 November 2022 at Redstar Raceway whilst not in possession of the requisite permissions and entry. Further the court will investigate if Mr Tony Lundin is guilty of breaching, inter alia, certain portions of GCR 113, GCR 172 and GCR 238.
2. At the commencement of the hearing the court president enquired as to whether there was any objection to the constitution of the court and no objection was offered. It is recorded that the Court President participated in this hearing in a hybrid format utilising the Zoom platform. All other parties were present personally in the boardroom of MSA.
3. The facts in this matter are largely common cause and not disputed. Evidence put forward by the defendant and accepted by the court includes the following:-

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



Department:  
Sport, Arts and Culture  
REPUBLIC OF SOUTH AFRICA

Directors: A. Roux (Chairman), A. Scholtz (Chief Executive Officer), R. Beekun (Financial),  
Mrs. D Abrahams, Mrs. D. Ballington, K. Govender, M. Hashe, FC. Kraamwinkel, Dr G. Mills, C. Oates, S. Themba, G. Waberski  
Honorary President: R. Schilling

- a. Mr Gavin Lundin submitted an electronic entry to participate in the HRSA Regional Championship event at the race meeting in question, as a driver.
  - b. Sometime later after the submission and at the request of his father Mr Tony Lundin, Mr Gavin Lundin wish to secure an entry for his father to compete in a 2<sup>nd</sup> event, namely the Midvaal Historics, at the same race meeting with Mr Tony Lundin driving the car of Mr Gavin Lundin.
  - c. He sought to do this by amending the entry which he had already submitted in order to include an entry which would permit Mr Tony Lundin to drive the same race car in a different racing category at the same race meeting.
  - d. He was uncertain as to how he could achieve this dual entry and therefore made contact with the race secretariat for the event in order to amend the entry. His enquiry was responded to by one Christa, and he acted on the advice given to him by the said Christa.
  - e. After undertaking the steps requested by Christa, principally the payment of an additional entry fee, he was of the sincere belief that the requisite administrative steps had been taken and that the entry had been properly made to permit him and his father to race the same race car at the meeting in question albeit in different races.
  - f. On arrival for the race meeting, Mr Gavin Lundin signed for the race day envelope issued by the promoters of the event. There was no separate sign-on register for drivers. Mr Tony Lundin did not sign in on the day.
  - g. Mr Gavin Lundin, having noticed that the entry list for the event reflected him as the driver of the car in the Midvaal Historics event requested that this be amended to reflect the name of his father Mr Tony Lundin.
  - h. Mr Tony Lundin drove the car in the Midvaal Historics event, which was a club championship event, for which he held the appropriate licence issued by MSA.
  - i. The participation of Mr Tony Lundin was undertaken entirely openly and with no intention on the part of either party to deceive in any way, the race promoters, officials or MSA.
  - j. With the benefit of hindsight Mr Tony Lundin conceded that he should have taken greater care to ensure before racing that he was properly entered for the event.
4. The court noted some substantial difficulties with the administrative processes undertaken by Redstar Raceway in the administration of its race meetings. The online entry form provided does not include any provision for the inclusion of the details of the entrant as required in terms of the provisions of GCR 92 i). This deficiency was explained on the basis of an assumption that the entrant and driver were the same. While this may well be the case in many instances there will obviously also be circumstances where this is not the case. The inclusion of an entrant gives rise to certain obligations not only in terms of motor sport regulations but also in law, and its omission could have potentially serious consequences.
  5. The same sub- regulation also provides that *“no driver, rider or passenger shall compete unless he has first signed the appropriate declaration(s) and/or undertaking(s) as required in terms of GCR 93.”* While Mr Gavin Lundin signed the original entry form, (as driver only, no provision having been made for the details of the entrant or his signature), there was no signature by Mr Tony Lundin as driver of the car in the 2<sup>nd</sup> category of racing.
  6. The evidence heard by this court established that no sign-on register was provided and the participants in the race meeting only signed for their race day envelopes. GCR 113 xv) provides

expressly that entrants shall *“ensure that they sign on at documentation with his driver(s), / rider(s), in order to formalise the legal standing at the event in question.”*.

7. The deficiencies noted in paragraph 4, 5 and 6 are unacceptable and must be rectified.
8. After due consideration and noting the absence of any detail of the entrant, this court is of the view that no sanction can be applied to Mr Gavin Lundin in regard to the participation of Mr Tony Lundin in the Midvaal Historics races, without having established that he was properly entered for the event.
9. Based on the facts in this matter the court is satisfied that Mr Tony Lundin participated in the race meeting in breach of GCR 113 iii), vi) and xv). In the light of the factual finding that there was no intent to deceive or defraud (see 3 i above) no finding is made in terms of GCR 172 iii). Insofar as the matter is in our view a result of administrative shortcomings rather than a change of driver per se, GCR 238 is not applicable.
10. The question that then arises as to what is an appropriate sanction for the negligent conduct of Mr Tony Lundin which he has both acknowledged and apologised for.
11. While this incident can be distinguished from other incidents which have served before MSA Courts of Enquiry in the last 12 months, and arises from an administrative error following on negligence, it is important to note the potential legal and insurance consequences which flow from instances such as these. For this reason, it is necessary that the sanction should send a clear message that carelessness in the administrative processes is not acceptable and cannot be tolerated. In determining the sanction we have however taken into account that Mr Tony Lundin did hold an appropriate MSA licence for the category in which he participated.

#### **FINDINGS:**

12. This court is of the view that Mr Tony Lundin should be suspended from holding a competition licence for a period of 6 months from today's date, which penalty is in turn suspended for a period of one year from today's date on condition that Mr Tony Lundin does not contravene any provisions of the GCR 113 during that period. Mr Tony Lundin is further ordered to pay a fine of R2,000.00.
13. In addition Mr Tony Lundin is further directed in terms of GCR 196 to make payment of a contribution towards costs of the sum of R2,000.00.
14. Given our findings of shortcomings in the entry and administrative processes applied at Redstar Raceway, we direct that Redstar Raceway, amend their online entry form and process to fully comply with the relevant regulations and submit the same to Motorsport South Africa for approval, before the opening of entries for the first race meeting at that venue in 2023. Redstar Raceway is further directed to ensure that a proper sign-on form and process is implemented, in terms of which every entrant and driver/rider, will sign on a separate sheet for each race category, prepared by the race administration in advance and pre-completed with the relevant competition number, the name of the entrant and driver/rider, with space for signature. Redstar Raceway shall further ensure that no competitor is allowed to start, without having signed on on the day.

15. The parties are reminded of their rights as per GCR 212 B

16. The findings are issued by email 13 December 2022 at 13h00

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