



MOTORSPORT SOUTH AFRICA NPC

Reg. No 1995/005605/08

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MSA COURT OF ENQUIRY 1260

HEARING HELD IN THE MSA BOARDROOM ON THE 6th DECEMBER 2022.

Court Composition:	Steve Harding	Court President (Via Zoom)
	Farouk Abrahams	Court Member
	Adv Nomkhosi Nharmuravate	Court Member
In Attendance:	Peter Swartz	Defendant
	Mbali Maphumulo	Mother of Competitor Anesu Maphumulo
	Eric Schultz	Clerk of Course (Via Zoom)
	Eldrid Diedericks	Assistant Clerk of Course (Via Zoom)
	Ian Richards	MSA Steward
	Calvin Lamola	Complainant and Witness
	Katherine Tait	Witness (Via Zoom)
	Jackie Schreiber	MSA Karting Delegate
	Garth Waberski	Karting Management Group - Chairman
	Vic Maharaj	MSA Sporting Services Manager
	Allison Vogelsang	MSA Circuit Sport Coordinator

THE HEARING:

1. Court of Enquiry 1260 was convened by Motorsport South Africa in terms of the provisions of GCR 211, to investigate whether the Defendant, Mr Peter Swartz is guilty of breaching inter alia, GCRs 172 iv), vi) and article 15 m) of the 2022 MSA National Karting Standing Supplementary Regulations and/or any part of the MSA Code of Conduct or any part of the MSA Safeguarding Policy at Round 4 of the MSA National Karting Championship held at Zwartkops Kart Circuit on 10 September 2022.
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, and certain other parties as indicated above participated in this hearing in a hybrid format utilising the Zoom platform. All other parties were present personally in the boardroom of MSA.

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

3. The incident in question related to the OKJ class which is open to drivers from the beginning of the year in which they celebrate their 11th birthday until the end of the year in which they turn 15. That is to say, that the age range is potentially for competitors slightly older than 10 to almost 16. This is a vast range of ages and there is a substantial difference between the level of emotional maturity and experience between those at the lower end of this age scale and those at the higher end.
4. The competitor around which the issues which give rise to this court of enquiry is Anesu Maphamulo. The court established that Anesu is 11 years old and is therefore at the younger end of the age scale permitted to compete in this class.
5. Based on the results booklet for this class at the event which form part of the court bundle, Anesu was the slowest competitor in heats 1, 2 and 3 for the class the difference between his fastest time and that of the fastest competitor was in the order of 2 ½ seconds, that is to say approximately 5% slower than the rest of the field. This level of difference between the slowest and fastest competitor is not unusual or unexpected. However, in heat 4 on the day it appeared that Anesu had some form of mechanical problem with his kart which made him substantially slower than the rest of the field by a substantial margin.
6. The court heard evidence from Mrs Katherine Tait, the mother of another competitor in the race, Christopher Tait, that during the 4th heat she witnessed the defendant Mr Peter Swartz clearly hysterical and screaming “get the f---ing Bambino off the track”. Mrs Tait further testified that she did not witness the confrontation between the defendant and Mr Lamola detailed below. After the incident she endeavoured to console a visibly distraught Anesu. This evidence was not disputed.
7. The court heard from Mr Calvin Lamola that after the 4th heat of the day the defendant Mr Peter Swartz shouted aggressively at Mr Lamola and competitor Anesu Maphumulo, about the lack of pace of Anesu and the lack of professionalism of his team Squadra Corse in allowing him to participate. Mr Swartz suggested that his remarks were directed at Mr Lamola only and not at Anesu. Whether or not this was the case the court accepts that the remarks were heard by Anesu and caused him obvious distress resulting in his breaking down in uncontrollable sobbing.
8. The court heard from the clerk of the course Mr Eric Schultz, that this particular race was being run under the supervision of his deputy Mr Eldrid Diedericks as he was otherwise occupied with other matters relating to the race meeting at the time. Mr Swartz approached him and asked why a Bambino class driver was out on the circuit. Mr Schultz then went upstairs to the viewing area and enquired of his deputy whether there was a Bambino class kart on the circuit, to which he replied that there was no such kart. They observed for a lap or 2 before concluding that Mr Swartz was referring to a slow-moving kart, which they then flagged off the circuit. This was confirmed by the testimony of Mr Diedericks. Mr Schultz subsequently became aware of the off-track incident involving Mr Swartz which resulted in the distress to Anesu, and requested an incident report so that appropriate action could be taken.
9. Apart from disputing that his remarks were directed at Anesu the defendant did not seriously dispute any of the evidence given by Mrs Tait, and Messrs Lamola, Schultz and Diedericks.

10. Mr Swartz attempted to deflect from the incident giving rise to this court of enquiry by raising issues relating to, whether the race officials acted correctly in displaying blue flags to Competitor 33, Anesu, and not issuing a white flag, failing to penalise competitor 33 for ignoring blue flags, and for failing to remove competitor 33 from the circuit earlier than they did. None of these issues directly bear on the heart of the matter to be decided by this court of enquiry other than possibly to explain, but not excuse, the behaviour of the defendant.
11. The court heard from Mr Maharaj that MSA had recently at the direction and request of SASCOC implemented a Safeguarding Policy, with the aim of safeguarding the interests of all involved in South African motorsport, but particularly those of children, amongst others. This policy applies to all parties involved in whatever way in South African motorsport. The stated aim of the policy is to promote an environment within local motorsport in which all individuals are treated with respect and dignity. It recognises that all competitors have a right to engage and experience a sporting environment that is respectful, equitable and free from all forms of nonaccidental violence to athletes. The sort of conduct attributed to Mr Swartz constitutes, bullying, psychological abuse. This is the case whether directed directly towards Anesu or incidentally overheard by him in circumstances where Mr Swartz' public outburst at Mr Lamola was likely to be overheard, but nonetheless continued in disregard of this possibility.
12. The rules, regulations and procedures which govern motorsport have been put in place to provide ample opportunity and channels for appropriate complaint and intervention and there is absolutely no place for the sort of direct intervention complained of in this instance, between entrants, competitors and team members. This is even more so in those facets of our sport such as karting and motocross where large numbers of children participate. It runs entirely counter to the culture which Motorsport South Africa is endeavouring to encourage in all its competitions.
13. The court finds that the conduct of the defendant is a clear contravention of the provisions of GCR 172 iv) and the MSA Safeguarding Policy. The court further finds that the MSA Code of Conduct only has application to representatives of MSA and that the defendant in the present instance is not such a person. We also find that article 15 m) of the MSA National Karting Standing Supplementary Regulations has no application in this instance as it deals only with certain actions against officials.
14. Mr Maharaj, who ably conducted the case on behalf of MSA, suggested that in his personal view an appropriate sanction for the behaviour of the defendant would be the suspension of the defendant's entrant's licence for a period of one year.
15. In reaching a decision in regard to an appropriate sanction this court takes into account that Mr Swartz is a first offender and accept the evidence of Mrs Tait that prior to this incident she has always found Mr Swartz to be a mild mannered and polite person. On the other hand it is equally important that the sanction should send a message that breaches of the safeguarding policy will not be tolerated.

FINDINGS:

16. This court is of the view that Mr Peter Swartz should be suspended from holding an entrant's licence for a period of 12 months from today's date, the second 6 months of such penalty is in turn suspended for a period of three years from today's date on condition that Mr Swartz does

not contravene any GCR 172 iv) during that period. Mr Swartz is further ordered to pay a fine of R5,000.00.

17. In addition, Mr Swartz is further directed in terms of GCR 196 to make payment of a contribution towards costs of the sum of R2,000.00.
18. The parties are reminded of their rights as per GCR 212 B
19. The findings are issued by email 13 December 2022 at 13h00.

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