

**MOTORSPORT SOUTH AFRICA
NATIONAL COURT OF APPEAL, 165**

**APPELLANTS
ROY WYMAN and WAYLAND WYMAN**

**IN RE
Appeal arising from the findings of
MSA Court of Enquiry 1166**

**DATE OF HEARING
26 July 2016**

Present (Officials):

**Advocate André P Bezuidenhout
Attorney Jannie Geysers
Mike Clingman
Wayne Riddell**

**Court President
Court Member
Court Member
Sporting Services
Manager: MSA**

NATIONAL COURT OF APPEAL 165

1. On 26 July 2016, Motorsport South Africa (“MSA”) enrolled National Court of Appeal 165 (“the appeal”). There was no objection to the constitution of the appeal panel.
2. This is the written judgment of the National Court of Appeal (“NCA”) 165. The Appeal hearing took place on 26 July 2016 between 18h00 and 18h45. Judgment was reserved. Proceedings were mechanically recorded. For the purposes of this Judgment reference is only made to the material issues as the remainder of the proceedings are of record.
3. The Appellants in this matter are Mr Roy Wyman (“Roy Wyman”) and Mr Wayland Wyman (“Wayland”) (“the Appellants”). The Appellants were represented in these proceedings by Mr Hector North (“Mr North”). The attendance of interested parties, were recorded.
4. The Appeal arises from the findings of MSA Court of Enquiry 1166 (“the COE”) which dealt with events that transpired on Saturday, 13 February 2016 at the Zwartkops International Raceway (“the event”). Wayland, Tiago Rebello (“Rebello”) and Nqaba Ntombelo (“Ntombelo”) were involved in what was described by the Clerk of Course as an act of bullying in retaliation. The Clerk of the Course handed down certain penalties to Wayland, Rebello and Ntombelo.
5. The COE on 15 March 2016 enquired into the event and imposed additional penalties on Wayland, Rebello and Ntombelo. In addition, Roy Wyman, the father of Wayland was also sanctioned and precluded from being involved in motorsport for the remainder of 2016.
6. All payment of fees, were complied with. Both Wayland and Roy Wyman appealed to this Court through leave to appeal. Leave to appeal was granted on the following limited basis:

“1. Leave to Appeal to the National Court of Appeal is granted to Roy Wyman on the following basis only:

- 1(a) *whether it was competent for Court of Enquiry 1166 (“the COE”) to hand down a penalty to the Appellant (Roy Wyman);*
- 1(b) *in the event that the National Court of Appeal holds that it was competent for the COE to hand down such a penalty, whether the penalty imposed on the Appellant (Roy Wyman), was the appropriate penalty given the circumstances of the incident, the personal circumstances of the Appellant (Roy Wyman) and other factors to be taken into account in imposing a suitable penalty.*
2. *Leave to Appeal to the National Court of Appeal is granted to Wayland Wyman on the following basis only:*
- 2(a) *whether the penalty imposed on the Appellant (Wayland Wyman), was the appropriate penalty given the circumstances of the incident, the personal circumstances of the Appellant and other factors to be taken into account in imposing a suitable penalty.”*
7. The appeal bundle comprised exhibits “A” to “F”. At the day of the hearing, exhibits “G” and “H” were added and the original notice of COE 1166 dated 25 February 2016 was also made available.
8. The NCA is indebted to MSA and to Mr North for the preparation of the appeal bundle and Mr North’s able contribution in the matter.

THE CONTROL OF MOTORSPORT, THE GCR’S AND THE SSR’S

9. The control of motorsport in South Africa is held by MSA, a Non Profit Company in terms of the Companies Act 61 of 1973 and Act 71 of 2008. MSA holds the sporting authority to govern motorsport as it is the delegated authority by the *Federation Internationale de l’Automobile* (“FIA”), *Commission Internationale de Karting* (“CIK”) and *Federation Internationale de Motocyclisme* (“FIM”). MSA is structured with a Board of Directors, a Secretariat, a National Court of Appeal Specialist Panels, Sporting Commissions and Regional Committees. The Secretariat of MSA does not serve as bodies governing discipline of motorsport. It

only attends to secretarial issues. Wayne Riddell (“Mr Riddell”) represented MSA in this capacity. The exercise of the sporting powers by MSA is in terms of the sporting codes of the FIA, CIK and FIM. As such, MSA has the right to control and administer South African National Championship competitions for all motorsport events. The National Court of Appeal of MSA is the ultimate final Court of Judgment of MSA.

(see *Articles 3 to 7 of the MSA Memorandum*)

(see *Article 35 of the MSA Memorandum*)

10. The participation of motorsport competitors in events managed by MSA is based on the law of contract. MSA has the sporting authority and is the ultimate authority to take all decisions concerning organizing, direction and management of motorsport in South Africa.

(see *GCR INTRODUCTION – CONTROL OF MOTORSPORT*)

11. All participants involved in motorsport events subscribe to this authority. As such, a contract is concluded based on the “*rules of the game*”. There exists a ranking structure in the MSA Rules and Regulations. (General Competition Rules are referred to as “GCR’s”). The “*rules of the game*” of motorsport are structured in main on the Memorandum of MSA and the GCR’s. Any competitor who enters a motorsport event subscribes to these “*rules of the game*”. (Reference in this judgment to “*rules and regulations*” intends to refer to the broad meaning of the “*rules of the game*”. Specific references to GCR’s are individually defined.)

(see *GCR 1*)

12. It is expected of every entrant and competitor to acquaint themselves with the GCR’s constituting the “*rules of the game*” and to conduct themselves within the purview thereof.

(see *GCR 113 read with GCR 122*)

LEGAL AND FACTUAL ISSUES WHICH ARISE IN THIS APPEAL

13. There are two issues which should be dealt with in this appeal:

13.1 whether the penalty imposed on Roy Wyman was competent;

13.2 whether the penalty imposed on Wayland was appropriate given all the relevant circumstances.

FINDINGS

14. As to the penalty imposed against Roy Wyman, this NCA finds that:

14.1 COE 1166 was convened in terms of GCR 211. GCR 211 entitles MSA to convene a Court of Enquiry to investigate a breach of any of the GCR's, SSR's or SR's;

14.2 COE 1166 was specific in its ambit: "*Please be advised that a Court of Enquiry will be convened in terms of GCR 211 to investigate the alleged breach of GCR 172 by competitor Wayland Wyman and Tiago Rebello*";

14.3 Roy Wyman was not the subject matter of the COE. He was not notified that any of his conduct would be the subject matter of an enquiry. When he attended the enquiry, he did so as the natural parent or guardian of Wayland. Whilst GCR 19 makes Roy Wyman a "*competitor*" in his capacity as the natural parent of Wayland, his conduct was not the subject matter of the enquiry. A person attending an enquiry must be forewarned that his / her conduct will be enquired into and that he / she has the right to participate, embodied in the GCR's, SSR's and SR's;

14.4 the Clerk of Course, at no point in time, deemed it necessary to impose a penalty on Roy Wyman;

14.5 the penalty imposed against Roy Wyman must be set aside on this procedural basis. It must be made clear that this finding should not be interpreted as to whether Roy Wyman acted in a specific manner or not.

15. As to the penalty imposed against Wayland, this NCA finds that:

15.1 the penalties imposed on Rebello, Ntombelo and Wayland differ substantially:

- 15.1.1 Ntombelo was suspended for three months from competition, the suspension itself being suspended for a further three months on condition that Ntombelo is not again found guilty of a similar offence;
 - 15.1.2 Rebello was handed down a one year suspension from competition, the suspension itself being suspended for a further two years on condition that Rebello is not again found guilty of a similar offence;
 - 15.1.3 Wayland was precluded from competition for the balance of the 2016 racing season;
 - 15.2 Wayland is a first offender. There appears to us no basis to differentiate substantially as to the penalties imposed between the three role-players. All three of them were approximately thirteen years old at the time of them breaching the GCR's. There appears to be a marked disparity between the three penalties imposed;
 - 15.3 this NCA was informed that the spirit between competitors in this division of karting improved substantially as a result of the consequence of the incident receiving substantial attention at MSA. The COE and the engagements of MSA and involved role-players are said to have had a positive effect on the competitors in them engaging with each other in a sporting manner since the incident;
 - 15.4 there appears to be no reason to preclude Wayland from motorsport competition for the remainder of 2016. As a first offender, we find that a sentence of being suspended from competition for a period of one year should be imposed, the suspension itself being suspended for a further period of two years on condition that Wayland is not again convicted of a breach of GCR 172 iv) committed during the period of suspension.
16. Both appeals accordingly substantially succeeded and the fine of R10 000.00 which was imposed collectively against Roy Wyman and Wayland, is set aside.

ADMINISTRATIVE COSTS

17. The Appellants are jointly ordered to pay the costs of MSA in an amount of R1 000.00 for constituting the NCA.

HANDED DOWN AT JOHANNESBURG ON THIS THE 2nd DAY OF AUGUST 2016.

Electronically Signed

**Adv André P Bezuidenhout
Court President**

Electronically Signed

**Mr Jannie Geyser
Court Member**

Electronically Signed

**Mr Mike Clingman
Court Member**