

**MOTORSPORT SOUTH AFRICA  
NATIONAL COURTS OF APPEAL, 160 & 161**

**APPELLANT (160)  
FRANCO DI MATTEO**

**APPELLANT (161)  
BEN MORGENROOD**

**IN RE  
Appeals arising from the findings of  
MSA Courts of Appeal 414 & 415**

**DATE OF HEARING  
20 May 2015**

**Present (Officials):**

**Advocate André P Bezuidenhout  
Mr Richard Schilling  
Mr Mike Clingman  
Attorney Jannie Geyser  
Mr Wayne Riddell  
  
Mr Adrian Scholtz**

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

**NATIONAL COURTS OF APPEAL 160 AND 161**

1. On 20 May 2014, Motorsport South Africa (“MSA”) enrolled National Court of Appeal 160 and National Court of Appeal 161 (“the appeals”) at the same time. The National Courts of Appeal (“the NCA”), at the commencement of the hearings, in view of the overlap of witnesses and to avoid two separate hearings, directed that the appeals would be dealt with in one hearing. There was no objection by any of the parties to this directive and the appeals, whilst traversing separate issues, were dealt with in one hearing.
  
2. At the outset, it must be emphasised that the manner in which both appeals were prosecuted by the Appellants, leaves much to be desired. Whilst not exhaustive, the following is the cornerstone of the process and procedure adopted during NCA’s:
  - 2.1 the NCA is a sporting tribunal, constituted by the specific provisions of the General Sporting Regulations (“GCR’s”);
  
  - 2.2 the NCA is not a Court of law. That being said, to ensure justice to all parties, the general rules of evidence in legal matters, are largely followed to ensure fair hearings;
  
  - 2.3 hearings of the NCA are held *de novo* and the procedure followed is laid down in the GCR’s as well as developed practice that the appellant in a NCA is *dominus litus*, affording each of the interested parties an opportunity to produce evidence and to participate in the hearings to ensure that justice prevails within the ambit of the GCR’s;
  
  - 2.4 the appellant in a NCA will know its case and appreciate on what issues the burden of proof will rest on the Appellant to put forward his / her case. The calling of witnesses is an essential part of a NCA to ensure that the evidence of witnesses is tested by other interested parties to ensure that the truth prevails. This long-standing acceptable procedural approach cannot be ousted by parties by introducing in Appeal bundles long-winded correspondence and e-mails between parties which have no probative value and which are contested;

- 2.5 the administration of the NCA is conducted by the officials of MSA who have an equally high duty as the Appellants, to participate actively, to ensure that appeal records are not over-wide, clearly marked, succinct and devoid of any confusion, multiple overlap, repetition and inclusion of inadmissible documents.
3. Unnecessary time was wasted in both preparation and hearing of the appeals:
    - 3.1 over time, litigants in the NCA have become more and more ingenious and some of the contentions put forward as to why appeals should succeed, border on the absurd and may very well constitute vexatious appeals. Both Appellants resorted to this tactic;
    - 3.2 litigants will be well-advised and be reminded that as a sporting body, the fair play between competitors within the ambit of the competition rules of motorsport enhances the profile of motorsport as one of the leading sporting activities in South Africa. Appeal arguments which border on the absurd are not becoming of and do not serve the good interest of motorsport in general;
    - 3.3 in NCA 161, the Appellant Mr Ben Morgenrood (“Mr Morgenrood” or “the Appellant”, where applicable) included in his appeal bundle, lengthy opinion affidavits of competitors and other sporting divisions in an attempt to convince this NCA to allow his appeal based on the interpretation of the so-called “*one off*” rule;
    - 3.4 the appeal bundles were compiled by the officials of MSA. Thereafter, each of the Appellants supplemented and, in some instances, double supplemented the appeal bundles. The numbering system was duplicated and confusing. Unnecessary time was wasted in the preparation of the NCA and during the NCA by trying to find correct annexures to which the parties were referring;
    - 3.5 this NCA, in dealing with the cost of these matters, will express its strong disapproval towards the Appellants for the manner in which their appeals were conducted.

## **THE CONTROL OF MOTORSPORT**

4. The control of motorsport in South Africa is held by MSA, a Non Profit Company in terms of the Company's Act 61 of 1973. MSA holds the sporting authority to govern motorsport as it is the delegated authority by the FIA, CIK and 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. Mr Wayne 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 2, 3 and 6 of the MSA Memorandum)*

*(see Article 19 of the MSA Memorandum)*

### **APPEAL 160**

5. This is the written judgment of NCA 160. The Appeal hearing took place on 20 May 2015 between 18h00 and 20h23. Judgment was reserved. The Appeal panel was duly constituted. 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.
6. The Appellant is Franco Di Matteo ("Mr Di Matteo" and "the Appellant", where applicable).
7. The Appeal arises from the findings of MSA Court of Appeal 414 ("the COA") which dealt with an incident that transpired on 27 September 2014 at the Killarney Racetrack in Cape Town ("the race meeting").
8. The incident took place at turn 5 where it is claimed by Mr Morgenrood (who was running second behind Mr Di Matteo at the time), that Mr Di Matteo crossed the

white line and stayed on the inside of the circuit so as to avoid a passing manoeuvre which Mr Morgenrood intended to execute in turn 5. The protest by Mr Morgenrood was dismissed by the Clerk of the Course (“the COC”) but during a hearing of the Stewards on 31 October 2014, Mr Di Matteo was penalised with a 20 second penalty in terms of SSR 50 i) i) which provides for the application of the “*white line rule*”.

9. Mr Di Matteo appealed to COA 414, which Court upheld the decision of the Stewards and confirmed the penalty to Mr Di Matteo. With leave of this Court, Mr Di Matteo appealed to the NCA. Mr Di Matteo was represented by Mr Michael North (“Mr North”) during these proceedings.

### **LEGAL AND FACTUAL ISSUES WHICH ARISE IN THIS APPEAL**

10. The Notice of Appeal (annexure “K”) details the grounds of Appeal of Mr Di Matteo. In essence Mr Di Matteo contends that the “*white line rule*” envisaged in SSR 50 i) i) did not apply for a variety of reasons.
11. In the NCA’s view the following material legal and factual issues crystallized in this Appeal:
  - 11.1 whether there was an agreement with the circuit promoters to apply the “*white line rule*”;
  - 11.2 whether the regulations of the race meeting incorporated the “*white line rule*”;
  - 11.3 whether Mr Di Matteo breached the “*white line rule*” as a matter of fact, if it was applicable;
  - 11.4 whether the presence of a slow moving competitor (“the backmarker”) into turn 5 and whom was shown a blue flag, provided a basis for Mr Di Matteo to enter turn 5 on the inside line, rendering the “*white line rule*” not enforceable during the passing manoeuvre on the backmarker.

### **PROCESS FOLLOWED DURING THE APPEAL**

12. All hearings of appeals in terms of the GCR's are held *de novo*.  
(see GCR 208 viii)
13. Mr Di Matteo, through his legal representatives, produced video evidence.
14. Mr Di Matteo also submitted written submissions prepared by his attorney.
15. All interested parties were given an opportunity to address the NCA.
16. Whilst the evidence of Mr Di Matteo was not presented, both he and Mr Morgenrood made certain statements, most of which are uncontested, during the hearings.
17. MSA did not lead any evidence.

### **THE MATERIAL GCR's and SSR's**

18. 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)
19. All participants involved in motorsport events subscribe to this authority. As such, a contract is concluded based on the "*rules of the game*".
20. There exists a ranking structure in the MSA Rules and Regulations. (General Competition Rules are referred to as "GCR's").
21. 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)

22. 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)

23. The overtaking of competitors during a motorsport event lies at the heart of the sport. Drivers compete vigorously to beat their competitors for a placing at the end of each race event. SSR 50 details the "*rules of the game*" as to how competitors overtake each other and the driving discipline that is expected of them during passing manoeuvres. In order to enhance the possibility of overtaking, a "*white line rule*" has developed to enhance opportunities for overtaking:

**"50. OVERTAKING, RULE OF THE ROAD AND DRIVING DISCIPLINE**

**i) Overtaking (cars)**

- a) *During a race, a car alone on the track may use the full width of the said track. However, as soon as it is caught up in a straight line by a car which is either temporarily or consistently faster, the driver shall give the other vehicle the right of way by pulling to one side in order to allow for passing on the other side.*
- b) *If the driver of the vehicle about to be overtaken does not seem to make full use of his rear- view mirror, the Flag Marshal(s) will give him a warning by waving the blue flag to indicate that another competitor wants to overtake him. Any driver who does not take notice of the blue flag, may be penalised by the Clerk of the Course. Systematic or repeated offences may result in the exclusion of the offender from the race.*
- c) *Corners, as well as the approach and exit zones thereof, may be negotiated by the drivers in any way they wish, within the limits of the track. Overtaking, according to the possibilities of the moment, may be done either on the right or on the left. However, manoeuvres liable to hinder other drivers, such as premature direction changes, deliberate crowding of cars towards the inside or the outside of a curve or any other abnormal change of direction, are strictly prohibited and shall be penalised, according*

to the seriousness and repetition of the offences, by penalties ranging from a fine to exclusion from the race. The repetition of dangerous driving, even involuntarily, may result in exclusion from the race.

- d) *Any obstructive manoeuvre carried out by one or several drivers, either having common interests, or not, is prohibited. The persistent driving abreast of several vehicles, as well as driving in a fan-shaped arrangement, is authorised only if there is not another car trying to overtake. Otherwise the blue flag will be waved.*
- e) *The penalty inflicted for ignoring the blue flag will also be applied to drivers who obstruct part of the track and shall be more severe in the case of systematic obstruction, this ranging from a fine to exclusion from the race. The same penalty shall be applied to drivers who weave from one side of the track to the other in order to prevent other competitors from overtaking.*
- f) *The repetition of serious mistakes or the appearance of a lack of control over the car (such as leaving the track) may entail exclusion of the driver/s concerned.*
- g) *The race track alone shall be used by the drivers during the race.*
- h) *If a car has left the circuit with all four wheels, it shall rejoin the circuit at the nearest point to the exit from it, compatible with safety and without prejudicing a fellow competitor. Leaving the circuit with all four wheels (with the resultant effect of missing a corner on the circuit) will result in the imposition of a time penalty (10 seconds minimum) on the offending competitor, for a first offence.*
- i) *In order to enhance the possibility of overtaking, a category of racing may, with the agreement of the circuit promoters concerned, utilise the following:*
  - *Two corners considered to provide prime overtaking opportunities will be selected at the circuit. A barrier line will be painted on the track starting from around the 300-metre brake marker and ending before the racing line entry to the corner.*
  - *The barrier line will be a broken white line of approximately 75 centimetres in length by 75mm width with a space of approximately 1 metre in between. A recognised brand of road*



marking paint must be used, and must be applied as thinly as possible.

- With effect from the second lap of a race, competitors are not permitted to run inside the barrier line unless they are executing an overtaking manoeuvre.
- Any competitor not in a position to overtake another car must be on the outside of the barrier line before it commences and maintain this position until turning into the corner at the end of the barrier line. Conversely, competitors overtaking may not cross from the inside to the outside of the barrier line.
- Two competitors approaching a controlled corner side by side with the lead car on the inside of the barrier line will be deemed to be in an overtaking situation and therefore the lead car may maintain the position.
- Observers will be positioned at the corners to determine whether any competitor has infringed the regulation. Consideration will be given by the observers to circumstances where, due to a yellow or yellow/red flag displayed at the corner, a competitor may be forced to use the inside line.
- Infringement of this regulation will be referred to the Clerk of the Course and a 20- second penalty will be imposed on the offending competitor and added to the race time of the particular race in which the infringement occurred.”

(our emphasis)

24. Regulation 4.7 of the Point Systems Regulation for 2014 provided that the “*white line rule*” applied in the Championship.

(see Appeal Bundle, Exhibit “L9”, paragraph 4.7)

## **THE MERITS**

25. The video presented by Mr Di Matteo reflected the following:

25.1 on lap 10 of the race, Mr Di Matteo was leading Mr Morgenrood;

25.2 whilst competing down the back straight at Killarney, between turns 4 and 5,

a Marshall can be seen, showing a blue flag at the time when the backmarker, Mr Herbst, passed the Marshall;

- 25.3 the Marshall puts down the blue flag, shortly after the backmarker's car disappears from the video angle;
- 25.4 Mr Di Matteo continued down the back straight at race speed and on the inside line to turn 5, and executed the corner with Mr Morgenrood following behind him;
- 25.5 Mr Morgenrood indicated that he was following approximately ten metres (two car lengths) behind Mr Di Matteo;
- 25.6 according to Mr Di Matteo, Mr Morgenrood was approximately twenty to twenty five metres behind him;
- 25.7 the video shows that at the exit of turn 5, the cars of Mr Di Matteo, Mr Morgenrood and the backmarker were all at a certain moment in time, in the same camera shot at turn 5 (each competitor executing different manoeuvres in or going out of the turn);
- 25.8 Mr Morgenrood, in his explanation, claimed that his vehicle on the day was "*far superior*". This is not borne out by the facts. The best time during the race was indeed achieved by Mr Di Matteo (1.12.472, compared to 1.12.751 by Mr Morgenrood).
26. A further video taken by a competitor was also shown, but contributed nothing on the material aspects.
27. It is Mr Di Matteo's case that a gross miscarriage of justice occurred. Mr Di Matteo carries the onus in this regard.
28. Proof of a fact generally means that the institution receiving the evidence, received probative material with regard to such fact and has accepted such fact as being the truth for purposes of this specific case. The process of consideration is one of evaluation.
- (see *Principles of Evidence, Schwikkard and Van der Merwe at 19 and further*)

29. The Appellant contends that there was no agreement evidenced between the circuit promoters and the category of racing to result in the “*white line rule*” being operative during the race meeting. There is no merit in this contention:

29.1 Regulation 4.7 makes the “*white line rule*” applicable in the Championship;

29.2 a white line was observed at turn 5;

29.3 the Supplementary Regulations applicable to the race meeting, which was issued under permit number MSA14373 by the Western Province Motor Club, expressly made provision under SR 25, for an inclusion of SSR 50;

(see SR25, exhibit “V41” and further and in particular “V49”)

29.4 there was an observer appointed as an official which is common cause.

30. The circuit promoters accordingly, by incorporating SSR 50 and providing for the white line, responded in writing to the National Super Series for 2014 (SA Sports & GT) Regulation and Point System for 2014, which in turn made the “*white line rule*” applicable as previously stated.

31. During the appeal, the Appellant resorted to submissions bordering on the absurd to convince this NCA that the “*white line rule*” was not applicable. Mr Michael North, for the appellant, for example, made submissions that in order to find that the “*white line rule*” applies, one will have to determine who painted the lines which appear at turn 5 onto the track. The absurdity of this submission is patent. There is no reference to such criteria in the GCR’s and with no stretch of logic can the submissions be entertained.

32. Mr Nicolaas Marais (“Mr Marais”), who appeared for Mr Morgenrood (who is an interested party in NCA 160), contended that the blue flag was not shown to the backmarker, but indeed to inform Mr Di Matteo, as Mr Morgenrood intended to execute a passing manoeuvre on Mr Di Matteo going into turn 5. This submission is equally absurd as the previous example. Competitors competing for a place are not shown a blue flag to give up their place. The blue flag was clearly shown for the backmarker and the flag was brought down the moment that the backmarker passed the Marshall. The factual decision to have shown the blue flag was that of

the Marshall on the day and it is the best evidence that the Marshall was of the view that the backmarker must be informed that the race leader (the appellant) and the vehicle in second place (Mr Morgenrood) were approaching the backmarker at race speed and intended to make a passing manoeuvre on the backmarker, very soon. It is important to point out that the backmarker's best lap time (1:19:693) was more than seven seconds slower per lap than that of the Appellant (1:12:472) and that of Mr Morgenrood (1:12:751).

33. As previously indicated before, Mr Morgenrood's vehicle was not far superior to that of the Appellant as he initially claimed. Whether Mr Morgenrood could have made a passing manoeuvre on the Appellant, is therefore irrelevant as the Appellant was entitled to take the inside line to turn 5 in his attempt to pass the backmarker. Mr Di Matteo therefore did not contravene the "*white line rule*".

## **FINDINGS**

34. This NCA finds that:

34.1 the "*white line rule*" did apply during the race meeting;

34.2 the Appellant did not breach the "*white line rule*" as he was entitled to enter turn 5 on the inside line, the backmarker having been shown the blue flag by the Marshall positioned between turns 4 and 5 which constituted a passing manoeuvre in itself on the backmarker;

34.3 the appeal accordingly succeeds on this basis alone and the penalty imposed on the Appellant is set aside;

34.4 MSA is directed to adjust the result accordingly.

## **ADMINISTRATIVE COSTS**

35. Rule 13 of Appendix R provides discretion as to appeal fees. The maximum of 25% of the appeal fee of the Appellant is forfeited for administrative costs, taking into account the conduct of the Appellant in prosecuting the appeal.

**APPEAL 161**

36. This is the written judgment of NCA 161. The Appeal hearing took place on 20 May 2015 between 18h00 and 20h23. Judgment was reserved. The Appeal panel was duly constituted. 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.
37. The Appellant is Mr Morgenrood.
38. The Appeal arises from the findings of MSA Court of Appeal 415 which dealt with MSA's decision to readjust the points scored for the Championship in the National Super Series for 2014 (SA Sports & GT).
39. On 5 November 2014 Mr Wayne Riddell ("Mr Riddell") notified interested parties on behalf of MSA that MSA was looking into which competitor would be awarded the National Super Series for 2014 (SA Sports & GT) Championship.  
*(see Appeal Bundle, exhibit "L9")*
40. On 7 November 2014, the results of the National Super Series for 2014 (SA Sports & GT) category were adjusted and as a result of certain "*one off*" appearances competitors were being excluded from the results. The Championship in the National Super Series for 2014 (SA Sports & GT) was awarded to Mr Di Matteo. Mr Morgenrood lodged a formal protest against this decision. This resulted in COA 415 which, on 22 January 2015, dismissed the appeal of Mr Morgenrood and held that MSA was entitled to adjust the results of the National Super Series for 2014 (SA Sports & GT) Championship. With leave of this Court, the appeal was prosecuted to the NCA.
41. Mr Morgenrood was represented by attorneys during these proceedings.

**LEGAL AND FACTUAL ISSUES WHICH ARISE IN THIS APPEAL**

42. The Notice of Appeal (annexure “U”) details the grounds of Appeal of Mr Morgenrood. In essence Mr Morgenrood contends that Rule 1.4 of the series’ SSR was not correctly applied by MSA and that the National Super Series for 2014 (SA Sports & GT) Championship should not have been adjusted by excluding the drivers.
43. Numerous grounds of appeal are promoted by the Appellant, which largely depend on interpretive issues.
44. In the NCA’s view the following material legal and factual issues crystallized in this appeal:
  - 44.1 whether the interpretation of Rule 1.4 of the series’ SSR’s was correctly applied by MSA with reference to the individual drivers who were excluded from the National Super Series for 2014 (SA Sports & GT) Championship.

**PROCESS FOLLOWED DURING THE APPEAL**

45. All hearings of appeals in terms of the GCR’s are held *de novo*.

(see *GCR 208 viii*)
46. The Appellant produced the evidence of Mr Brian Cook (“Mr Cook”) at the hearing and advanced oral argument in support of the appeal.
47. All interested parties were given an opportunity to address the NCA.
48. Whilst the evidence of Mr Morgenrood was not presented, he and Mr Di Matteo, as well as MSA, made certain statements.
49. MSA did not lead any evidence, but informed the NCA that in its view, MSA incorrectly applied Rule 1.4 of the SSR’s of the National Super Series for 2014 (SA Sports & GT) Championship.

**THE MATERIAL GCR's, SSR's and SR's**

50. 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*)

51. All participants involved in motorsport events subscribe to this authority. As such, a contract is concluded based on the “*rules of the game*”.

52. There exists a ranking structure in the MSA Rules and Regulations. (General Competition Rules are referred to as “GCR's”).

53. The “*rules of the game*” of motorsport are structured in main on the Articles 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*)

54. 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*)

55. GCR's 64 and 65 provide that:

“64. *Words and expressions defined in any of these rules, the SSRs and the SRs for the purpose of the rule, bear the meaning assigned to such words and expressions in that rule.*”

**65. INTERPRETATION OF RULES**

*MSA shall be empowered to decide upon any questions raised within its territory concerning the interpretation of the CSIs (see GCR 12) and these rules, subject to the right of appeal (if any) under GCR 215.”*

(our emphasis)

56. Regulation 1.4 of the National Super Series for 2014 (SA Sports & GT) Championship provides that:

*“1.4 Any driver wishing to make a ‘one off’ appearance in the series shall be required to obtain the prior written approval of the SA Sports and V8 Supercars committee. Such approval may be withheld in circumstances where it is felt that the intended participation will not be in the interests of the series or those of motorsport in general. In the event of a dispute, MSA shall make a final ruling. Drivers making ‘one off’ appearances shall not be eligible to score championship points and shall also be responsible for payment of their own entry fees.”*

(our emphasis)

(see Appeal Bundle, Exhibit “Q11”)

## **THE MERITS**

57. The facts of this appeal are largely common cause and the appeal turns on the interpretation of Rule 1.4 of the SSR’s for the National Super Series for 2014 (SA Sports & GT).
58. Mr Cook testified that he was previously the Chairman of what was known as Samcar. After he stood down, he came back to participate in the organisation of the series in 2012 and retired in 2013. Mr Cook testified that Rule 1.4 of the SSR’s of the National Super Series for 2014 (SA Sports & GT) was adopted to protect the interests of regular competitors and that guest drivers with a high profile would not be allowed to have an impact on the result of the series, as a result of their guest appearances. Mr Cook himself has never given permission during his tenure for competition to compete “one off”.
59. The Appellant, in prosecuting the appeal, resorted to extraordinary efforts to prosecute the appeal:

59.1 he produced lengthy e-mails between individuals;



59.2 he produced affidavits by fellow competitors;

59.3 he produced the results of events going back to 2011 in several categories;

59.4 he produced e-mails between his attorneys and Volkswagen Motorsport South Africa, regarding another category of competition;

59.5 he drew attention to regulations regarding another category of competition.

*(see Appeal Bundle, Exhibit "Y1" to "Y38")*

60. During the hearing, Mr Marais, on several occasions, was invited to address the NCA as to why the interpretation and view of third parties would assist in the outcome of the appeal, more particularly, the interpretive issue regarding Rule 1.4 of the SSR's of the National Super Series for 2014 (SA Sports & GT). He was moreover requested to indicate the legal basis for relying on how Rule 1.4 of the SSR's of the National Super Series for 2014 (SA Sports & GT) is applied in other categories or historical race meetings to assist in the adjudication of the current appeal. Notwithstanding the opportunity being granted on several occasions to Mr Marais to do this, he could not advance any convincing reason to have done so.

61. The view of competitors (Allan Eve and Rui Campos) as to the appeal and their interpretation of the SSR's of the National Super Series for 2014 (SA Sports & GT) is utterly unhelpful and inadmissible. Likewise, the reliance on how the rule is interpreted in other categories or historically applied has no legal basis for consideration.

62. As to the competitors Carl Nel ("Mr Nel"), Darron Gudmanz ("Mr Gudmanz"), Mike Verrier ("Mr Verrier") and Jon Wilson ("Mr Wilson"), the following facts appear to be common cause, and are not contested by either MSA or Mr Di Matteo:

62.1 Mr Nel was a member of Samcar and raced in the association for some years;

62.2 as a registered member of the association, Mr Nel was awarded the driver of the day which is a trophy awarded to members of the association;

- 62.3 there is no evidence that Mr Nel intended to participate on a “*one off*” basis.
- 62.4 there is no evidence that each of them “*wished*” to race “*one off*” only;
- 62.5 none of these drivers obtained prior written approval from the committee which designated them as “*one off*” drivers during their race meetings;
- 62.6 from the individual facts of their participation during the series, none of them can be styled as a “*one off*” competitor within the ambit of Rule 1.4 of the SSR’s of the National Super Series for 2014 (SA Sports & GT);
- 62.7 there are no circumstances advanced by any party from which it can be derived that their intended participation would not have been in the interest of the National Super Series for 2014 (SA Sports & GT) or motorsport in general.
63. Proof of a fact generally means that the institution receiving the evidence, received probative material with regard to such fact and has accepted such fact as being the truth for purposes of this specific case. The process of consideration is one of evaluation.  
(see *Principles of Evidence, Schwikkard and Van der Merwe at 19 and further*)
64. It would have been easy for the Appellant to submit a statement of fact to MSA and to invite MSA or any other party to agree to the facts of the competitors Mr Nel, Mr Gudmanz, Mr Verrier and Mr Wilson. A party who carries the onus to produce evidence must either call the witnesses or place a statement of fact before the NCA which can be agreed with by the other interested parties, or not. This NCA had to weave through voluminous documents in an attempt to formulate common cause facts which could be relied upon without resorting to normal evidential rules. In view thereof that neither MSA nor Mr Di Matteo contested the facts regarding Mr Nel, Mr Gudmanz, Mr Verrier and Mr Wilson, the NCA adjudicates the facts on the common grounds.
65. GCR 64 is clear as to the meanings assigned to words and expressions in a specific rule. Rule 1.4 of the SSR’s of the National Super Series for 2014 (SA Sports & GT) clearly provides for a subjective test to be applied in the determination as to whether a driver has made a “*one off*” appearance, or not. This

is denoted by a word which the parties have not promoted and interpreted in their submissions. The word is “*wishing*”. The literal definition of wish is:

“*Have a desire or aspiration.*”

(see the *Concise Oxford Dictionary*)

66. The driver who wishes to make a “*one off*” appearance is the subjective person who can determine whether he intended to appear “*one off*”, or not. The test is not a difficult one, but a factual one. There is a variety of consideration which MSA will be able to take into account in determining whether a driver has indeed made a “*one off*” appearance or not.

67. The COA 415 incorrectly placed particular emphasis on the last sentence of Rule 1.4 of the SSR’s of the National Super Series for 2014 (SA Sports & GT).

(see *Appeal Bundle, Exhibit “R1”*)

68. Whilst correctly considering the dictionary definitions of the words “*one off*” that Court disregarded the word “*wishing*” where it appears in Rule 1.4 of the SSR’s of the National Super Series for 2014 (SA Sports & GT). From its reasoning, the COA 415 clearly did not consider the word “*wishing*” and therefore excluded the factual basis as to why certain competitors only appeared once during the series.

69. On an interpretive basis only and not for any of the reasons advanced by the Appellant, the appeal accordingly must succeed.

70. This NCA has already criticised the Appellant for resorting to inadmissible ways to prosecute his appeal. This goes outside the ambit of allowable procedures in terms of both procedural and evidential grounds.

## **FINDINGS**

71. This NCA finds that:

71.1 MSA was incorrect in excluding the following competitors from the 2014 series:

- 71.1.1 Mr Nel;
- 71.1.2 Mr Gudmanz;
- 71.1.3 Mr Verrier;
- 71.1.4 Mr Wilson;

71.2 MSA is directed to adjust the National Super Series for 2014 (SA Sports & GT) Championship results in that none of the four competitors should be treated within the ambit of Rule 1.4 of the SSR's of the National Super Series for 2014 (SA Sports & GT) as a “*one off*” competitor and points scored by them should be reinstated and the Championship adjudicated accordingly.

### **ADMINISTRATIVE COSTS**

72. Rule 13 of Appendix R provides discretion as to appeal fees. The maximum of 25% of the appeal fee of the Appellant is forfeited for administrative costs, taking into account the conduct of the Appellant in prosecuting the appeal.

### **DIRECTIVE ON NCA APPEALS**

73. Whilst not exhaustive, the following is the cornerstone of the process and procedure adopted during NCA's:

73.1 the NCA is a sporting tribunal, constituted by the specific provisions of the General Sporting Regulations;

73.2 the NCA is not a Court of law. That being said, to ensure justice to all parties, the general rules of evidence in legal matters, are largely followed to ensure fair hearings;

73.3 hearings of the NCA are held *de novo* and the procedure followed is laid down in the GCR's as well as developed practice that the appellant in a NCA is *dominus litus*, affording each of the interested parties an opportunity to

produce evidence and to participate in the hearings to ensure that justice prevails within the ambit of the GCR's;

73.4 the appellant in a NCA will know its case and appreciate on what issues the burden of proof will rest on the Appellant to put forward his / her case. The calling of witnesses is an essential part of a NCA to ensure that the evidence of witnesses is tested by other interested parties to ensure that the truth prevails. This long-standing acceptable procedural approach cannot be ousted by parties by introducing in Appeal bundles long-winded correspondence and e-mails between parties which have no probative value and which are contested;

73.5 the administration of the NCA is conducted by the officials of MSA who have an equally high duty as the Appellants, to participate actively, to ensure that appeal records are not over-wide, clearly marked, succinct and devoid of any confusion, multiple overlap, repetition and inclusion of inadmissible documents;

73.6 the officials of MSA must take special care in compiling the appeal bundles. In this regard:

73.6.1 the officials of MSA are ultimately responsible for limiting the appeal bundles to contain admissible documents;

73.6.2 it is the onus of parties to produce *viva voce* evidence which can be tested during NCA proceedings;

73.6.3 statements containing contested evidence should not be included in appeal bundles;

73.6.4 appellants will be well advised to set forward a set of facts to MSA prior to the hearing which they are of the view may be uncontested to ensure that all parties know which case they intend to prepare for and to avoid unnecessary delays during hearings;

73.6.5 interested parties are entitled, during the hearing of NCA's, to

make application to have additional documents admitted, which will be dealt with on the merits of each application;

73.7 the principle of *stare decisis* (that future tribunals are bound to the guidelines outlined above), do not apply. This means that each NCA will always be entitled, for its own reasons of practicality or expedience, to follow another approach from the one outlined above.

74. MSA will be well advised to inform competitors of this judgment and the expected process during NCA hearings.

75. MSA is directed to publish these judgments, together.

**Handed down at Johannesburg on this the 27<sup>TH</sup> day of MAY 2015.**

*Electronically Signed*

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**Adv André P Bezuidenhout  
Court President**

*Electronically Signed*

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**Mr Richard Schilling  
Court Member**

*Electronically Signed*

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**Mr Jannie Geyser  
Court Member**

*Electronically Signed*

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**Mr Mike Clingman  
Court Member**