MOTORSPORT SOUTH AFRICA

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FINDINGS OF NATIONAL COURT OF APPEAL NO 143 LODGED AGAINST THE FINDINGS OF COURT OF ENQUIRY 990. HELD ON THE 4TH AUGUST 2009 AT 18:00 IN THE MSA BOARDROOM,108 MONZA CLOSE,KYALAMI BUSSINESS PARK.

COURT PRESIDENT: ADVOCATE PIERRE DE WAAL(SC)-COURT PRESIDENT
MR J J GEYSER-COURT MEMBER
WILLIE VENTER-COURT MEMBER

PRESENT: LEON BOTHA
HUGO DE BRUYN
JAAP DE BRUYN
RICHARD SCHILLING
JEANNE VENTER - MSA
ALLISON ATKINSON - MSA
ALLAN WHEELER - MSA

FINDINGS OF NATIONAL COURT OF APPEAL NO 143

1. This appeal has as its originating cause certain decisions taken at MSA Court of Enquiry 990 ("the COE"). The COE was convened to investigate, so it would appear, the "actions" of the appellants at the 2009 Adenco 400 event held on 20/21 March 2009. The appeal is directed at the findings of the COE that the appellants were guilty of contravening GCR 172 iv) and vii). GCR 172 iv) provides that "*Any proceeding or act prejudicial to the interests of MSA or of motorsport generally"* shall constitute a breach of the GCR's. Paragraph vii) of GCR 172 declares "*Reckless or careless driving during the course of any competition or practice therefore"* a breach of the rules. Consequent upon these findings the COE, *inter alia*, suspended the appellants' competition licence "*with immediate effect for a period of three years".* Payment of costs in the amount of R10 000,00 was also awarded against them. The appeal is directed at the finding

Directors: R. Pearce (Chairman), Mrs B. Schoeman (Managing), A. Taylor (Financial), R. Brooks, P. du Toit, J. Lurie, E. Mafuna, A. Makenete, T. Moss, G. Nyabadza, J.F. Pretorius, B. Smith, E. Swanepoel, A. van der Watt, P. Venske - Hon. President: T. Kilburn

2. that the appellants breached the aforesaid GCR's, the suspension of their competition licences and the adverse award in respect of costs.

3. Before this Court the appellants were represented by Mr Botha. He, *in limine*, raised the argument that the COE could not investigate aspects or actions which the stewards of the meeting had already taken a decision on (as contended, occurred in this instance). The argument is based on the provisions of GCR 208 v). Suffice it to state that this Court is of the view that there is no merit to the point *in limine* raised on behalf of the appellants. A Court of Enquiry, in terms of the provisions of GCR 208 v) may consider "all matters which may include disciplinary matters not heard during the event by the stewards or a tribunal. It is not stated that a Court of Enquiry may only consider matters not heard during the event by the stewards. Such an interpretation simply does not accord with the simple and clear language used in the particular GCR. The COE was properly convened and constituted despite the findings of the stewards of the aforesaid meeting (which essentially went in favour of the appellant against the COC). The point *in limine* is therefore dismissed.

4. It is clear from the findings of the COE that the breaches of the rules upon which the penalties and costs were imposed, were based on the fact that the appellants "*were speeding in a built-up/ provincial area on a road open to the public and indeed used by the public on a section of road not forming part of the competition on race day*". It is not entirely clear what the evidence was which the COE had at its disposal and upon which the aforesaid findings were based. It is gleaned from the wording of the findings of the COE that it did not have at its disposal evidence of the actual speed which would have constituted the alleged "*contravention of*

the speed limit". It is expressly stated by the COE that "(t)*he extent of the contravention of the speed limit is not being questioned by this Court and is subject to civil and legal proceedings."* According to the findings of the COE, one of the appellants (presumably Mr Jaap de Bruyn, admitted to the transgression. It is not clear whether this alleged admission was an admission before the COE or whether it was an admission to a witness who gave evidence before the COE. The appellants, in this Court, denied ever having made any admission either to the COC (who seems to have been the only person who gave evidence before the COE) or during the proceedings before the COE.

5. In terms of GCR 208 viii), the appeal before this Court was in essence an enquiry *de novo*. Not a single shred of acceptable evidence was adduced before this Court in support of the alleged contravention of the GCR's by the appellants. The COC, Mr R G Marle, submitted a written statement to this Court setting out a number of allegations against the appellants and explaining why he was unable to attend the proceedings before this Court. Due to the nature of the allegations against the appellants, this Court was not amenable to receiving evidence in this form where the appellants would have no opportunity of testing the veracity of the particular allegations by means cross-examination. In any event, it would appear that the thrust of Mr Marle's statement pertaining to the alleged speeding is in any event based on hearsay. No other evidence constituting proof of the alleged transgression was adduced. Apparently the particular traffic officials allegedly involved in the incident were not prepared to travel to Johannesburg to give evidence.

6. In the absence of any evidence of the alleged or any other transgression by the appellants, the appeal must succeed. In the result the following order is made:

1. The appellants' appeal is upheld and the findings of MSA Court of Enquiry 990 (including findings and/or "*recommendations*" in respect of the penalty imposed on the appellants and the costs awarded against them) is set aside.

2. Administrative costs in the amount of R250,00 is payable by the appellants in terms of article 14 iii) of Appendix R of the GCR's and the balance of the appeal fee is to be returned.