



MOTORSPORT SOUTH AFRICA NPC

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MSA COURT OF ENQUIRY 1261

HEARING WAS HELD VIA ZOOM ON 30 MARCH 2023 AT 17H00

Court:	ADV. Johan Both SC	-	Court President
	Mr. Steve Harding	-	Court Member
	Mr. Mark Cronje	-	Court Member
Attendance:	Mr. Mitch Coetzee	-	Defendant - Clerk of the Course
	Ms. Michelle Nicol	-	Defendant - Chief Marshal
	Mr. Gary Moore	-	Defendant – Marshal and Recovery vehicle driver
	Mr. Ed Murray	-	Defendant – SARMC Series Promoter
	Mr. Allan Spies	-	Defendant - KZN Kart Club Chairman – Organiser
	Dr. Asokan Naidoo	-	Witness
	Mr. Robert Briggs	-	Witness
	Mr. Henry Bam	-	Witness
	Mr. Tim Bishop	-	Observer
	Mr. Michael North	-	Observer
	Mr. Hector North	-	Observer
	Mr. Richard van Heerde	-	Observer
	Mr. Garth Waberski	-	Observer – MSA KMG Chairman
	Mr. Clinton Moss	-	Observer – MSA KMG
	Mr. Gary Lennon	-	Observer – MSA KMG
	Mr. Leon Hill	-	Observer – MSA KMG
	Ms. Michelle Segalla	-	Observer – MSA KMG
	Mr. Sparky Bright	-	Observer – MSA Safety Panel Chairman
	Dr. Derick de Beer	-	Observer – MSA Medical Panel President
	Mr. Adrian Scholtz	-	Observer – MSA Chief Executive Officer
	Mr. Vic Maharaj	-	Observer – MSA Sporting Services Manager
	Ms. Allison Vogelsang	-	MSA Circuit Sport Coordinator

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



sport, arts & culture

Department:
Sport, Arts and Culture
REPUBLIC OF SOUTH AFRICA

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Honorary President: R. Schilling

FINDINGS:-**INTRODUCTION**

1. Motorsport South Africa (MSA) convened a formal enquiry in terms of the provisions of GCR 211, into an incident involving the kart of Junior Max competitor Matthew Chiwara and a recovery vehicle during round one of the MSA Rotax Max National Championship event held on the 4th of March 2023 at the Idube Kart circuit in KwaZulu-Natal. The enquiry was requested to investigate all aspects of the incident and whether any or all of the above-named defendants were guilty of breaching any of MSA's regulations. Matthew Chiwara is a 12 year old junior competitor and we will refer to him as Matthew in these findings. (In these findings the general competition regulations of MSA will be referred to as GCR's as is the common practice.)

2. At the commencement of the hearing the court president inquired whether there was any objection to the composition of the court as constituted. No such objection was made. In consequence of a very high level of interest in these proceedings Motorsport South Africa extended invitations to a large number of persons to attend the hearing as observers. The court made clear at the outset that it intended to confine itself to the matters directly related to the incident which gave rise to the enquiry, and that the leading of evidence and cross examination would be confined to those persons attending the hearing as defendants or witnesses and that observers would be provided with the opportunity to address the hearing at the conclusion thereof. The enquiry was conducted virtually, by way of a Zoom platform.

THE EVIDENCE

3. The following facts were conclusively established by reference to inter alia, video of the incident, the timesheets of the heat in question, a satellite image of the circuit and are regarded as common cause.
 - a. A collision occurred between kart number 440 driven by Matthew Chiwara and a recovery vehicle being driven by Mr. Gary Moore, after the final lap of Heat 3 for Rotax Junior Max competitors.
 - b. The recovery vehicle entered and proceeded onto the circuit contraflow, that is to say, in the opposite direction to the direction of the racetrack.

- c. The chequered flag denoting the conclusion of the heat had already been displayed, and Matthew was followed over the finish line by three other karts according to the timesheets.
 - d. Matthew failed to enter the pit lane, which is situated immediately before Turn 5, at the conclusion of the heat.
 - e. The collision took place between Turns 5 and 6 at the Idube Raceway.
 - f. The distance between Turn 5 and the point of collision is short and the time interval taken by Matthew who was proceeding at full racing speed would have been a matter of a few seconds at most.
 - g. There is a blind rise between Turn 5 and Turn 6 in consequence of which neither party was likely to have seen the other before the incident with sufficient time to take avoiding action.
 - h. The collision caused Matthew to be entrapped in his kart and he sustained serious injuries necessitating hospitalisation.
4. Given the conclusions reached in 3 c and 3 d above, there are three possible reasons for Matthew's failure to enter the pit lane at the conclusion of the heat. These are
- a. that the chequered flag was not displayed to him to indicate the end of the race,
 - b. he did not see the chequered flag displayed to him indicating the end of the race, or
 - c. he failed to understand, that having taken the chequered flag at the end of the race, he was obliged to enter the pit lane, notwithstanding that he personally, had not completed the full race distance.

In making the above observations it is not the intention of the court to ascribe any blame for the incident which occurred to Matthew. We will return to this issue later in these findings.

5. The court heard evidence from the Clerk of the Course, Mr. Mitch Coetzee, who explained that as the race had concluded, his attention was not on the race track, but on various other administrative duties which fall on the shoulders of the clerk of the course, when he was alerted by a commotion causing him to turn round and observe the horrific collision which took place between Matthew and the recovery vehicle.
6. Mr. Coetzee testified that this was the first Motorsport South Africa sanctioned national championship event at which he officiated as the Clerk of the Course. However, he testified that he had previously held the post of Clerk of the Course at Rotax Max Challenge National

Championship events, albeit under a different national sanctioning body (not internationally recognized). He also testified that while he had not been the Clerk of the Course at this particular race circuit previously, he did have experience of the circuit having officiated previously as an assistant clerk of the course. Mr. Coetzee is Johannesburg based and is not one of the regular officials at Idube.

7. The issue of the grade of clerk of the course licence held by Mr. Coetzee was pertinently raised by Matthew's father Mr. Chiwara. The supplementary regulations for the event indicated that Mr. Coetzee was the holder of a Grade B licence, which would not entitle him to take full charge of a national event, which requires a Grade A licence (refer GCR 158 E). The court heard that Mr. Ed Murray had motivated the upgrading of Mr. Coetzee's licence from a grade B to a grade A and it was confirmed by Mr. Maharaj, the sporting services manager of MSA that the request had been acceded to and that Mr. Coetzee's license had been upgraded to a grade A prior to the event in question. The court accepts that Mr. Coetzee was accordingly appropriately licensed to take charge of the event in question.
8. Mr. Coetzee testified that he had an assistant clerk of the course on the day but that this assistant was mainly involved in administrative matters and was not involved in the actual running of the races.
9. Mr. Coetzee testified that the races were conducted and run primarily by the chief marshal, Michelle Nicol, who he also referred to as race control, using the terms chief marshal and race control interchangeably, during his testimony. We will refer to Ms. Nicol as the chief marshal in these findings.
10. He testified that at the scene of the incident, once he was satisfied that Matthew was receiving suitable and appropriate attention, he endeavoured to ascertain the cause of the incident and inquired of Ms. Nichol the reason for the collision to which he received the reply, "I have to put my hand up on this one." He did not make any further inquiries in this regard.
11. It was during this exchange with the chief marshal that he became involved in a discussion with someone, who he subsequently ascertained was Matthew's father Mr. Chiwara. This court accepts the evidence of Mr. Coetzee that he did not attempt to place the blame for the

incident on Matthew but was in fact attempting to establish the reason for the incident which included the reason why Matthew had not entered the pit lane at the conclusion of the race.

12. Mr Coetzee testified that he established afterwards that the chequered flag, indicating the end of the race, had been displayed to Matthew.
13. Mr. Coetzee impressed the members of this court as an honest and credible witness and his explanation for the misunderstanding with Mr. Chiwara, is accepted. To place this in context Mr. Chiwara placed before the court a written statement alleging that Mr. Coetzee had indicated that the incident was Matthew's fault, in as much as he had failed to enter the pit lane. Mr Chiwara was not in a position to testify and explained in his written statement that he and Matthew's mother were still emotional and in a state of shock. As a result, the court could not ask them any questions to clarify the contents of their written statement.
14. The court then heard from Ms. Nicol, who testified that she is a licensed marshal with approximately 12 years' experience. She was the chief marshal on the day. She gave her version of the incident which was broadly consistent with the evidence given by Mr. Coetzee.
15. She was adamant that she had not authorized the entry of Mr. Moore in the recovery vehicle onto the track and testified that she was still in the process of ascertaining the number of the last kart to take the flag with a view to clearing the race circuit when the incident took place. By clearing the circuit, she meant a process in terms of which the track was cleared sequentially turn by turn by ascertaining by means of radio whether there were still karts on the track, although she conceded that this process was, sometimes, shortened by requesting the marshals to come back to her, if their sector was not clear. This process of clearing the circuit had not taken place when the incident occurred.
16. She was specifically requested to comment on the allegation by Mr. Coetzee referred to above. Her version of the exchange with Mr. Coetzee was that Mr. Coetzee questioned her as to who was responsible for the incident, to which she responded "I am the chief marshal". In response to a question from the court as to what she meant by this she answered that as chief marshal she was responsible for the actions of the marshals who reported to her. While the exact wording used by Mr. Coetzee and herself differs regarding this exchange, the broad meaning of her response, as explained by Ms. Nicol, is consistent with the understanding of Mr. Coetzee of her response. We do not believe that anything turns on this issue.

17. While Ms. Nicol was a cautious and hesitant witness, we do not see any reason to disbelieve her testimony. An aspect that does deserve mention is the fact that she testified in the direct presence of another witness, Richard van Heerde, who identified himself – after the conclusion of her evidence – as “representing” Ms. Nicol. We consider it of utmost importance that witnesses should present their version of events without any “guidance” or “assistance” from third parties. In the future, appropriate steps should be taken in virtual hearings to ensure that this is not repeated.
18. The court also heard the evidence of Mr. Gary Moore, the driver of the recovery vehicle which collided with Matthew’s kart. Mr. Moore testified that whilst the race was still in progress, Ms. Nicol, as chief marshal, had requested him to collect papers from her after the conclusion of the race. Upon conclusion of the race, he entered the circuit to collect the papers from Ms. Nicol.
19. The court examined carefully the issue of whether Mr. Moore had been expressly instructed to enter the circuit by the chief marshal, in the light of her vehement denial that she had done so. While Mr. Moore maintained that he was authorized to enter the circuit by the chief marshal, his evidence when faced with the question of whether he was informed that the track was clear was inconsistent. He first said that he did not hear her say that the track was clear, he later referred to a half-scrambled message in this regard, and after reference to his papers said that she had said that the track was clear.
20. In response to a question by the court, Mr. Moore stated that he entered the circuit because the chequered flag had been given. His response was not that he entered the circuit because Ms. Nicol had cleared the track and had informed him that the track had been cleared. It appears to the court that Mr. Moore decided (unilaterally) that the race was over and that he was therefore entitled to enter the circuit. Ms. Nicol’s request that he collect papers from her “after the race” could not, in the court’s view, justifiably have been understood by Mr Moore to mean that she had instructed him to enter the circuit before the track had been officially cleared.
21. Mr. Moore did not at any point claim that he had been instructed to proceed counterflow and his explanation in this regard, was that it was the shortest distance to the position of the chief marshal in turn 8 and for him to return to his position in turn 4.

22. The court is of the view that, where a conflict exists between the versions of Ms. Nicol and Mr. Moore, the version of Ms. Nicol is to be preferred. It therefore accepts that Mr. Moore was neither expressly authorised to enter the circuit nor was he requested to proceed counterflow. The court finds that Mr Moore entered the circuit of his own accord in the belief that, as the chequered flag had been given, all competitors had entered the pits. This belief was, obviously, erroneous and unjustifiable and gave rise to tragic consequences.
23. The court also heard evidence from Mr. Ed Murray on behalf of the series promoter, Mr. Allen Spies on behalf of the organising club, and from Mr. Robert Briggs and Mr. Richard van Heerde who provided additional information to guide the court.
24. There is nothing in the regulations of Motorsport South Africa in relation to karting, which prohibits counterflow on the circuit. Similarly, there is no provision in the International Sporting Code of the world governing body the Federation International de l'Automobile, although the international karting regulations do prohibit competitors from driving in the opposite direction. It is however recognized that this is a fundamentally dangerous practice which is normally punished under the provisions of article 2 (e) of chapter IV of appendix L to the FIA International Sporting Code which prohibits inter alia driving "...in a manner deemed potentially dangerous ... at any time." This court is of the view MSA should give consideration to the amendment of its regulations to regulate this practice in regard to this issue and we deal with this under our recommendations below

CULPABILITY

25. It is our considered view that the principal cause of the incident which gave rise to this court of enquiry was the unauthorized entry into the circuit by Mr. Moore, and his driving a recovery vehicle in the opposite direction to the normal flow of the circuit.
26. As recorded in paragraph 4 of these findings there are a number of possible reasons why a competitor may fail to enter the pit lane at the conclusion of a race. In this instance it would seem that the most likely reason was that Matthew believed that he needed to continue despite the chequered flag, because he had not yet completed the full race distance. This is borne out by paragraph 7.3 of his father's statement which reads:- "*When the leading karts*

exited the track after the final lap Matthew continued on the track so as to finish the final lap as he was one lap behind the other competitors.” In reaching this conclusion we are not ascribing any portion of the blame for the incident on Matthew, as this is a possibility which should reasonably be foreseen by experienced officials when dealing with inexperienced and junior competitors. It will be addressed in our recommendations.

27. During his testimony Mr. Coetzee repeatedly referred to Ms. Nicol as the chief marshal and as race control. This constitutes in our view a misunderstanding of the concept of race control and of the responsibilities of the clerk of the course. Race control can never be a function assigned solely to a chief marshal, and the clerk of the course, (or a deputy or assistant clerk of the course, suitably qualified) should at all times, when the track is live, (that is to say when competitors are on track from the time the first competitor exits the pit lane to proceed to the start of the race until the last competitor has left the circuit after the race), be in overall charge of race control. This does not necessarily mean that the officials comprising race control need to be physically together in a single venue but they do need to be actively monitoring the race and in radio contact with one another. Mr Coetzee conceded that after the race was completed and the chequered flag was shown his “full attention was no longer on the race track.”
28. Mr. Coetzee did have an assistant clerk of the course, however this assistant dealt, on Mr. Coetzee's evidence, with administrative matters and was not involved in the supervision and management of the races. We do not believe therefore that Mr. Coetzee was in full control of the safety of the meeting as envisaged by GCR 151 ii), nor was he exercising his supreme authority for the conduct of the meeting as envisaged by GCR 156 or taking full charge of the event as envisaged by GCR 158 E. Despite this conclusion we are of the view that the incident would not have been avoided had he been in full charge of race control at the time. His failure/s therefore did not cause or contribute to the occurrence of the incident.
29. We do not consider that Ms. Nicol, the series promoter, the organizing club or MSA were in any way culpable in relation to the incident.

RECOMMENDATIONS

30. It is appropriate for this court to make recommendations to avoid similar occurrences in the future. In this regard the court expresses its gratitude to the various parties who provided suggestions and recommendations either during the course of the hearing or in written submissions to MSA.
31. The first such recommendation is that MSA introduce an absolute prohibition on any service vehicle proceeding at any time in a direction opposite to the direction of the circuit during any race meeting or practice session except under the direct supervision and express authority of the Clerk of the Course, and only after he has satisfied himself that it is completely safe to do so.
32. The second recommendation is that MSA amend GCR 156 to make clear that the clerk of the course or a deputy or assistant clerk, to whom the duty has been expressly delegated, must remain in full charge of every race or practice session from the time the first kart circuit leaves the pit lane to enter the circuit until the last kart has returned to pit lane thereafter.
33. The third recommendation is that the safety panel of MSA consider making suitable chest protection and neck brace devices mandatory for karting as recommended by Dr. Naidoo in his written submission.
34. The 4th recommendation is that a marshal be stationed to signal the competitors into the pits, with a red flag after the conclusion of the race, as appears to be the practice with the Bambino class, and the karting management group of MSA should take action in this regard.
35. The 5th recommendation is that the karting management group investigate and recommend to MSA a suitable system of licensing and grading competitors, so as to ensure an appropriate minimum level of understanding of the rules and regulations to enable them to participate safely.
36. We recognize that there is a considerable burden on karting national championship clerks of the course, in particular, and that unlike in the case of main circuit racing where different clerks are regularly appointed for various categories of racing, there are often multiple

competing demands on the attention of a national clerk of the course for karting. We therefore recommend that the karting management group give consideration to the appointment for all national championship kart meetings of a second A grade clerk of the course, to act as deputy.

SANCTIONS

37. Our final duty as a court is to determine what sanctions are appropriate in this instance.
38. In regard to, Mr. Coetzee, while we have not found him directly responsible for the incident in question, we have found that he relied inappropriately on other officials and did not provide adequate oversight at all times when the track was live. We believe that for this reason he should be required to be supervised by a more senior karting clerk of the course, for the next 3 national championship meetings at which he officiates as clerk of the course. We also believe that in ordering him to pay a fine of R5,000, he will be adequately sanctioned.
39. In the case of Mr. Moore we recommend that MSA should place an endorsement on his licence as an official prohibiting him from ever again driving any service vehicle on any race track.

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

The findings are issued by email 24 April 2023.

Ref: 163016/098