



MOTORSPORT SOUTH AFRICA NPC

Reg. No 1995/005605/08

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MSA COURT OF APPEAL 465

HEARING WAS HELD VIA ZOOM ON 30 MAY 2023 AT 18H00

Court:	Mr. Ian Richards	-	Court President
	Mr. Johann Fourie	-	Court Member
	Mr. Neville Townsend	-	Court Member
Attendance:	Mr. Frikkie Fourie	-	Appellant and Father of minor competitor Franco Fourie
	Mr. Barry Neal	-	MSA Steward
	Mr. William Koen	-	Club Steward
	Mrs. Deanne Ballington	-	Clerk of Course
	Mr. Ray Eggar	-	Chief Scrutineer
	Mr. Nickie Smit	-	Protestor
	Mr. Sparky Bright	-	National Technical Panel Chairman
	Mr. Vic Maharaj	-	MSA Sporting Services Manager
	Mrs. Carmen Hill	-	MSA Non-Circuit Sport Coordinator

INTRODUCTION: -

These are the findings of a court of appeal, which was held virtually, using the Zoom platform.

The court members were introduced, and no objections were raised against the composition of this court.

All participants were informed that the proceedings were being recorded. These are the findings for court of appeal 465.

THE APPEAL: -

Competitor Franco Fourie (J400) sought relief in his appeal for being excluded from the results of the Junior 85cc class National Cross Country Motorcycle Championship Round 2 held at Jolivet, KwaZulu-Natal on 15 April 2023.

MOTORSPORT SOUTH AFRICA IS THE ONLY RECOGNISED MOTORSPORT FEDERATION IN 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, C. Oates, S. Themba, G. Waberski
Honorary President: R. Schilling

THE INCIDENT: -

Competitor Franco Fourie (#J400) entered the junior 85cc class cross country competition, The Trademore Group National Cross Country Motorcycle Championship - Round 2, held on 15 April 2023 in KwaZulu-Natal.

The race got underway at approximately 07h30, with competitor Franco Fourie completing the event in 2 hours 20 minutes and 22 seconds and finishing in fourth position. The unofficial (unsigned) Junior National results were printed at 10h05. These results (unsigned) were only posted onto the virtual noticeboard at approximately 11h30. Shortly thereafter at 11h35, the Clerk of the Course (CoC), Mrs. Deanne Ballington, received complaints from the parents of competitors Bam and Smit stating that competitor Fourie (J400) was using a 'big bore kit' (105cc).

The CoC informed the parents of their rights to protest however, they declined.

At approximately 12h30 the CoC asked Mr. Fourie (Snr) whether he minded if the scrutineer, Mr. Ray Eggar and an engineer, Mr. Nic Louw, could look at his bike, to which Mr. Fourie (Snr) had no objection. Competitor Fourie had 2 bikes, one being inside the trailer and the other, parked outside next to the trailer. Mr. Fourie indicated both bikes to have been identical in appearance, one being the competition bike, the other a spare bike.

Mrs. Deanne Ballington indicated to Mr. Fourie (Snr) that there was no protest, and they were just checking for any possible infringements. Mr. Nic Louw looked at the bike inside the trailer and indicated to Mr. Ray Eggar (Scrutineer) that he believed the bike had a 'big bore kit' fitted. At no stage was there any suggestion or intention to quarantine the motorcycle nor at the very least, to seal the engine containing the suspected big bore kit.

Mrs. Deanne Ballington (CoC) then issued Mr. Fourie (Snr) with a verbal warning stating that his motorcycle should be compliant for the next event, however, should a protest arise from this, the due processes would have to be followed.

The final (signed) results were only posted onto the noticeboard at 12h49 due to the CoC having to attend to other matters related to the race event, which this court will not deal with save that lengthy delays in getting the final results and the posting of the results etc. were challenging.

At 12h50, a written protest was received from competitor Nicol Smit (J223) protesting competitor Fourie (J400) based on SSR 330 G i). The protest was received, accepted and deemed admissible by the stewards at 12h51. This court is not convinced that grounds, as afforded under GCR 200, were met, yet the stewards were satisfied with the admissibility.

Due to other incidents having to be dealt with by the officials, delays were once again encountered in administration duties. Competitor Fourie (J400) was not made aware of the protest having been lodged with the stewards by competitor Nicol Smit (J223), and no summons was issued to competitor Franco Fourie to appear before the stewards upon receipt of the protest. With competitor Fourie now being aware of the official race results and finding himself in 4th place, they did not need to remain at the venue.

At approximately 14h00 on 15 April 2023, competitor Fourie (J400) decided to leave for home, a journey of some 900 km.

At approximately 14h30, the steward, Mr. Barry Neal, telephonically contacted competitor Fourie (J400) to inform him that a protest had been received and that he needed to appear in person before

the stewards. Mr. Fourie (Snr) indicated to Mr. Barry Neal that they had already left the venue and were already en route home. Mr. Barry Neal then indicated to Mr. Fourie (Snr) that first to third prizes would be awarded as per the national race results but that fourth and fifth positions would be withheld due to the protest received. Mr. Barry Neal further requested Mr. Fourie (Snr) to have the bike (J400) inspected at a workshop to determine if it was compliant and for Mr. Fourie to advise Mr. Barry Neal of the inspection outcome, after which further action will be considered if required. Mr. Barry Neal wrote on the bottom of the received protest form the following wording:

If result is that bikes (sic) is 105cc then competitor J400 to be excluded from results.

Mr. Fourie (Snr) had the bike inspected on Monday, 17 April 2023, at 411 Motorcycles situated at 37 Nelson Mandela Drive, Bloemfontein. The brief report from 411 Motorcycles stated the following:

In the week of 6th of April 2023, Mr. F Fourie brought his bike into 411 Motorcycles for a race prep. Engine and vin number I unfortunately cannot confirm because we did not record the information when motorcycle was booked in but we can confirm that it is a 85cc with low hours.

Attached to the report was an invoice dated 06/04/2023 indicating what was done as race preparation. Among the items listed on the invoice was a piston (Piston Vertex B 46.95mm). Mr. Barry Neal (MSA Steward) indicated to this court that because of the piston being replaced, it raised suspicion and as such, decided to impose the penalty of exclusion from the event of 15 April 2023.

In the stewards' findings of 17 April 2023 at 16h12, Mr. Barry Neal stated the following:

Due to the Protest from Competitor J223 and statements from bike engineer and mechanics at the venue on Saturday that a 'big bore kit' is definitely on this bike J400 and with no confirmation on the letter (yes or no), I therefore believe the results must be changed to exclude J400 Franco Fourie and finalised. (GCR 176 b & SSR 351 G xiv))

THE RULES APPLICABLE: -

The applicable regulations are the MSA National Standing Supplementary Regulations - Cross Country (version 4) and the General Competition Regulations.

The rules applicable to the Junior 85cc class concerning capacity state that;

- *SSR 330 g) Junior National Classes i) 85cc Motorcycles (Senior 85cc and Junior 85cc classes combined): 1) Senior 85cc Motorcycles – The maximum permissible capacity is 85cc 2-stroke or 150cc 4-stroke.*

The rules applicable for exclusion state that;

- *351 g) vii) For finishing the event with a different frame or change number to that fitted to the motorcycle / quad as stated on the entry and self-scrutineering forms – Refer to SSR 328 (j);*
- *351 g) xiv) For racing on a motorcycle / quad that exceeds the cubic capacity of the class – Refer to GCR 176. Please note - Suspension can also be applied for this offence;*

The GCR regulation states:

- *b) Where advantage has been gained: - the driver/rider concerned shall be excluded from the results of the event/race meeting concerned and may be precluded from participation in up*

to three further events/race meetings counting towards a similar championship or series, details of which must be stipulated by the Clerk of the Course.

THE FACTS: -

The court believes that numerous procedural errors were made that are directly related to the motorcycle (J400) and competitor Franco Fourie, and the following is indicated;

1. Although the competitor Franco Fourie (J400) completed and submitted the online self-declaration scrutineering form, therein specifying both the chassis number (VBKGXC235NM077065) as well as the engine number (N47257123), neither of these numbers were checked by the scrutineer to ensure that the correct motorcycle was in fact entered to compete in the cross-country event.
2. At no stage was the motorcycle of competitor Franco Fourie (J400) inspected by the scrutineers either before or after the event.
3. It is evident from the scrutineers' submitted handwritten report by Mr. Ray Eggar that;
after the pre-event scrutiny completed at approximately 07h20, all bikes were in good working condition, Junior and Senior.
4. The inspection of competitor Franco Fourie's (J400) motorcycle as performed by Mr. Nic Louw to determine if the motorcycle had a 'big bore kit', fitted was therefore groundless as Mr. Nic Louw was not an appointed official listed on the events Supplementary Regulations (SR's), and as such, acted in no official capacity and his determining is therefore deemed irrelevant.
5. Mr. Ray Eggar, who performed duties in the official capacity of chief scrutineer, was not an appointed technical consultant (TC) during any event stage.
6. Furthermore, neither Mr. Ray Eggar nor Mr. Nic Louw were in any official position to decide if any technical advantage was gained or not (GCR 176 b) and were, therefore, not in any official technical capacity to offer such an opinion.
7. After completing the race, there were no parc fermé conditions for any of the competitors.
8. The officials did not impound the motorcycle (J400) alternatively, the engine, having suspected a transgression of the engine capacity regulation.
9. No evidence was placed before this court to prove beyond any reasonable doubt that competitor Fourie (J400) used a 'big bore kit' during the competition or that one was even fitted to his bike.
10. Mr. Ray Eggar could not indicate to this court how many competitor motorcycles were checked against their submitted self-declaration forms, nor could Mr. Ray Eggar indicate what percentage of entries were checked either before, during or after the event.
11. SSR 328 i) states;
Scrutineering of approximately 10% of competitors will be carried out by appointed officials before, during and after an event. Scrutineering will ensure that competitors conform to their

submitted information and to the safety requirements detailed in the Self-Declaration Scrutineering form.

PENALTIES AND COSTS: -

The court believes that the officials failed dismally and had become complacent in discharging their official duties at the National competition. The court, therefore, determines the following;

1. That the penalty of exclusion from the national race results be reversed, and that competitor Franco Fourie (J400) be reinstated in the final results.
2. The protest fee is to be returned less an administrative cost of 10% (ten per cent).
3. The appeal fee is to be returned less an administrative cost of 10% (ten per cent).
4. The Clerk of the Course, Mrs. Deanne Ballington, is fined an amount of R5000.00 (five thousand rand).
5. The license of the Clerk of Course, Mrs. Deanne Ballington, is to be suspended until the GCR webinar has been completed and the facet exam/s has been successfully completed.
6. The scrutineer, Mr. Ray Eggar, is fined an amount of R5000.00 (five thousand rand).
7. The license of the scrutineer, Mr. Ray Eggar, is to be suspended until the Scrutineers webinar has been completed and the facet exam/s have been successfully passed.
8. The MSA steward, Mr. Barry Neal, be fined an amount of R5000.00 (five thousand rand).
9. The license of MSA steward, Mr. Barry Neal is to be suspended until the GCR webinar and the relevant exams are passed.
10. The club steward, Mr. William Koen, is fined an amount of R5000.00 (five thousand rand).
11. The license of the club steward, Mr. William Koen is to be suspended until the GCR webinar has been completed and the relevant GCR and facet exam/s have been passed.
12. Prayers 4, 6, 8, and 10 are suspended for 12 (twelve) months, subject to the implicated officials not being found guilty within the stipulated period for not correctly applying any GCR, SSR or SR as an official at any MSA event they are officiating at.

RECOMMENDATIONS: -

The court suggests to Motorsport South Africa (MSA) that the motorsport facet, cross country, should include Parc Fermé conditions in the competition and that such be clearly indicated in the sporting regulations that govern the category. That such Parc Fermé conditions are properly controlled by an official with an astute knowledge of the facet.

Furthermore, officially appointed scrutineers must perform diligent safety and regulation compliance checks to a much higher standard and percentage of competitors.

It is also suggested to Motorsport South Africa (MSA) that a suitably qualified technical consultant (TC) be appointed for all cross-country events to deal with any technical matters arising during an event.

It is further suggested that any officials appointed for national status competition events be well prepared regarding the processes and procedure requirements and have a high standard of knowledge relevant to the specific facet they are appointed to officiate at.

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

The findings are issued by email 6 June 2023.

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