

**MOTORSPORT SOUTH AFRICA
COURT OF ENQUIRY 1269**

**PROTESTOR:
MAYSURAH WALLY & MOHAMED WALLY
obo MUHAMMAD WALLY**

**IN RE:
Protest of 1 October 2023
African Open, Race 3, Zwartkops International Raceway**

**DATE OF HEARING:
6 November 2023**

OFFICIALS:

Adv André P Bezuidenhout	Court President
Adv Ishmael A M Semanya SC	Court Member
Mr Claudio Piazza Musso	Court Member
Mr Vic Maharaj	MSA: Sporting Services Manager
Mrs Allison Vogelsang	MSA: Sporting Co-Ordinator

INTRODUCTION

1. This is the written judgment of Court of Enquiry 1269 (“**COE 1269**”). The hearing took place on 6 November 2023. The hearing took place through electronic means. The participants joined in from New Zealand, Mauritius, and South Africa.
2. The Protestors are the parents of a fifteen-year-old competitor, Muhammad Wally (“**Competitor Wally**”), collectively referred to as the “**Wally Family**”. Competitor Wally holds an international competition licence issued by the Kuwait International Automobile Club. He was granted invitation and approval by Motorsport South Africa (“**MSA**”) to compete in an MSA Karting event, the African Open Karting Competition, held at Zwartkops Raceway (“**the Event**”) on 1 October 2023. At the end of Race 3 of the Event, Competitor Wally filed a written protest to the Stewards (“**the Protest**”).¹ The Stewards dismissed the Protest.
3. On 27 October 2023, MSA convened this COE 1269 to be held separately, in two parts. Part A of the Enquiry was directed to be held on an urgent basis and by agreement between the Parties, the ambit of the Enquiry was formulated in respect of Part A to be a re-hearing relating to the issue of the Protest.²
4. Erich Heystek (“**Competitor Heystek**”) was represented by his father in these proceedings. Prior to the hearing, notice was given that one Ms Carnita Low (“**Ms Low**”) would have represented Competitor Heystek. At the commencement of the proceedings, the Protestors objected to the representation by Ms Low of Competitor Heystek. It was established that Ms Low was entitled to be admitted as a practicing attorney.³ This COE 1269 directed that Ms Low could not represent Competitor Heystek. Mr Mohamed Wally objected to Ms Low seemingly being the same room as the witness, Mr Leeroy Poulter (“**Mr Poulter**”), who Competitor Heystek intended to call. The COE 1269 directed that Ms Low remove herself from the room where Mr Poulter was and directed that Ms Low served no further role at COE 1269 and that no audience be given to her. Ms Low removed herself from the room where Mr Poulter was and to ensure that she played no further role, the video recording continued to show her in a separate room where she was separated from Mr Poulter.
5. MSA was represented by its Sporting Co-Ordinator, Mrs Allison Vogelsang, and its Sporting Services Manager, Mr Vic Maharaj (“**Mr Maharaj**”).

¹ Court Bundle, page 1.

² Notice convening COE 1269, 27 October 2023.

³ GCR 220.

6. No further objection was raised as to the constitution of this Court, and accordingly COE 1269 was duly constituted.
7. At the closure of the hearing, we were informed that time is of the essence for this judgment as our decision may impact on international competitions which may follow this matter. In view of this request, we have prepared this judgment within the limited time available.

THE INCIDENT AND EVENTS THAT FOLLOWED

8. According to all evidence, Race 3 of the Event was hotly contested.⁴ Competitor Heystek came first, beating Competitor Wally with 0.979 seconds into a second place during Race 3.
9. Following the completion of the Event, the Protest was filed. The incident described in the Protest was formulated as follows ("***the Incident***"):

"Kart # 239 Erick Haystek deliberately pushed kart 299 from behind to go completely wide, almost off the track. The left after pit corner on the last lap. kard # 239 gained advantage due to this wreckless driving that is incompatible with general safety."⁵

10. A Stewards hearing took place and the Stewards recorded that they reviewed video footage and data telemetry and concluded that there is no clear evidence of reckless driving during the incident. Further, that there may have been a change of surface but that at no stage did kart # 299 almost go off the track. The Stewards found that the Incident was a racing incident, with no further action to be taken. In consequence of SSR 35, it was directed that two Licence Penalty System ("***LPS***") points will be deducted from Competitor Wally as provided for in terms of SSR 35.⁶
11. At the commencement of the hearing, the Court enquired from MSA regarding the application of SSR 35 and whether it was an automatic point deduction mechanism which requires no separate investigation into the penalty to be imposed. Mr Maharaj confirmed our view, and the Protestors made no competing submissions in this regard.

⁴ Court Bundle, page 2.

⁵ Court Bundle, page 1.

⁶ Court Bundle, page 55: SSR 35(4)(b)(i).

PROCESS FOLLOWED DURING THE HEARING

12. This hearing was held *de novo*. Clause 3.1 of the agreed terms of the Court of Enquiry also directed the proceedings to be a re-hearing.^{7 8} It is therefore not required of this Court to consider the correctness of the decision of the Stewards at all.
13. A Court Bundle was presented at the hearing, together with additional documents received from the Parties. The additional documents were provisionally accepted and included in the Court Bundle. Most of the documents were ultimately accepted in the hearing as evidence where it was supported by the *viva voce* evidence or where it was utilised during the submissions made by the Parties.
14. The evidence of several witnesses were presented during the hearing, which included:
 - 14.1 Competitor Wally and Mr Robert Cantwell ("**Mr Cantwell**") who were both called by the Wally Family;
 - 14.2 Competitor Heystek and Mr Poulter who were called by the Heystek Family.
15. At the conclusion of the hearing, all parties were given a full opportunity to address COE 1269.
16. The proceedings were recorded electronically and there is no need to summarise all the evidence and events which transpired in this enquiry. They are of record.

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

17. It is apposite at the outset to deal with the control of motorsport and where the officials and the "*rules of the game*" originate from. The "*rules of the game*" are designed to ensure fair competition and that motorsport can take place in controlled circumstances.
18. MSA is 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

⁷ Notice convening COE 1269, 27 October 2023, paragraph 3.1.

⁸ GCR 208 viii.

Board of Directors, a Secretariat, Courts of Appeal, Courts of Enquiry and 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. 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.⁹

19. 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.¹⁰
20. MSA is an international and nationally recognised sporting body by the Government of South Africa. Its sporting platform is substantial. It has approximately six thousand licence holders and it sanctions approximately five hundred sporting events every year in South Africa. The organisation of events under the control of MSA is a quality certification stamp which ensures that all participants can be assured that competition takes place within the boundaries of fair sporting events, with certainty as to good administration and results. For national events, national prizes and championships are awarded and organisers and promoters receive substantial accreditation for having the MSA stamp of approval for their events.
21. All participants involved in MSA sanctioned 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 the 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.)¹¹
22. In addition to the GCR’s there are also Supplementary Regulations (“**SR’s**”) that an organiser and promoter of a competition is obliged to issue, and Standard Supplementary Regulations (“**SSR’s**”) issued by MSA.¹²
23. The GCR’s, SR’s and SSR’s thus constitute the “*rules of the game*” of motorsport.

⁹ Articles 3 to 7 of the MSA Memorandum; Article 35 of the MSA Memorandum.

¹⁰ GCR INTRODUCTION – CONTROL OF MOTORSPORT.

¹¹ GCR 1.

¹² GCR 14; GCR 16.

24. It is expected of every entrant and competitor to acquaint themselves with the GCR's and to conduct themselves within the purview thereof.¹³
25. The MSA 2023 National Karting Sporting Regulations contains thirty-eight categories of detailed regulations to ensure that events are run according to the International Sporting Code, as and where applicable. It is not necessary to incorporate in this finding substantial portions of the SSR's, suffice it to say that there is a Code of Conduct for Drivers,¹⁴ General Safety Provisions,¹⁵ a Penalty Catalogue¹⁶, and the LPS.¹⁷
26. There is specifically incorporated into the SSR's a dedicated campaign known as "*Race 'n Respect Karting*".¹⁸ The *Race 'n Respect Karting* campaign of MSA borrows from Motorsport UK a Code of Conduct for South African karting with the aim of promoting values of fair play, fun, friendship, dignity, and respect for all within the sport. The campaign records that all parties involved in MSA karting are collectively responsible to set a good example and help to achieve a positive environment in MSA karting. The racing code urges co-operation of all stakeholders in the Code of Conduct which includes concepts relevant to volunteer officials and organisers, parents and guardians of minors, competitors, and their teams.¹⁹

LEGAL AND FACTUAL ISSUES TO BE DETERMINED

27. The following aspects crystallised as to the legal and factual issues to be determined:
 - 27.1 whether Competitor Heystek deliberately pushed Competitor Wally from behind;
 - 27.2 whether Competitor Heystek demonstrated reckless driving;
 - 27.3 whether the driving by Competitor Heystek was in breach of general safety;
 - 27.4 the costs to be awarded.

¹³ GCR 113, read with GCR 122.

¹⁴ SSR 32.

¹⁵ SSR 33.

¹⁶ SSR 34.

¹⁷ SSR 35.

¹⁸ Court Bundle, page 58 and further.

¹⁹ Court Bundle, pages 60 and 61.

THE MERITS

What is a Racing Incident?

28. Motorsport involves the racing of motor vehicles (in this instance, the karts). There are a multitude of racing vehicles that compete in South Africa in different formats and over different terrains. Motor vehicle racing has existed since the invention of the motor vehicle and the earliest competition records go back to 1867.
29. Karting has a very specific and important role in motorsport for the obvious reason that it provides a cost-effective entry into motorsport and the youth is generally exposed to karting from young ages. The history of karting dates back more than seventy years, to the 1950's and has become one of the major feeding grounds into motorsport for the youth.
30. Karting is a highly competitive motorsport in which competitors race in close proximity to each other around challenging racetracks, as in this instance, the Zwartkops International Raceway. Karts are not on rails, i.e., they move around under the forces of acceleration, grip and speed, and the combination of propulsion, g-forces, braking and many other components, all play a role during racing. Karting frequently produces world stars that feature in motorsport, for example, Max Verstappen, Michael Shumacher and Fernando Alonso who all came through the ranks of karting before they achieved world champion status in Formula 1.
31. Racing incidents frequently happen when drivers try to overtake each other or to defend a position. There is no singular definition of a racing incident which appears from the GCR's or SSR's. Where two race cars meet on a racetrack and where there are incidents following therefrom that indicate that neither driver is seen to be at fault, such incident can be seen as a racing incident. Stated otherwise, when skilled drivers compete against each other on a race circuit, competing for the fastest line through corners so as to ensure that they outsmart their opponents towards the finish line, racing vehicles end up in close proximity with each other. Sometimes they may even brush each other without any liability being placed on any one of the drivers. Close racing is exciting and is particularly part of kart racing.
32. When racing vehicles end up in an incident, the Stewards, and in our instance this COE 1269, will review the conduct of the drivers. The outcome of an incident will be described as a racing incident when it is determined that neither driver can be held primarily at fault for the incident which happened.
33. The results of Race 3 at the Event clearly indicates that Competitor Wally and Competitor

Heystek were genuinely racing as at the end of twenty laps there was less than a second separating the first and second place.

The Evidence

34. The Wally Family claims that there was a deliberate push from behind by Competitor Heystek when the two karts entered into a left-hand turn on the last lap of Race 3. They claim that Competitor Heystek was reckless, and that his driving was incompatible with general safety, and resulted in him gaining an advantage. Competitor Heystek, in turn, denies this.
35. Competitor Wally testified that he felt a bump and that he was pushed from behind going into the left-hand corner, that he was completely pushed off the line and that the bump started at the entry of the corner. He observed no damage to his kart. He further testified that it was necessary for him to apply corrective steering as a result of the push. He confirmed when questioned by one of the Court Members, that he could have been taking a slower line into the turn as his driving was more defensive.
36. Mr Cantwell, an experienced motorsport service provider, testified that he was specifically engaged by the Wally Family to consider the available data stored on a data logging device fitted to the kart. He gave helpful explanations as to the data logging process and what data was being stored on the device. Mr Cantwell prepared an overlay graph which, in his view, indicated a greater longitudinal rate of acceleration after as "*point of impact / contact*". He explained that the standard rate of acceleration marked by a blue line is substantially different than the red line on the graph. Mr Cantwell explained that the increased angle of the red line was indicative of a "*push*". Mr Cantwell inferred from this that there was a point of impact. The data overlay was achieved by overlaying laps 17 and 20 on the graph.
37. When questioned on whether he could see any deflection on the head / helmet of Competitor Wally at the alleged point of impact, Mr Cantwell indicated that he did not observe any movement of the head.
38. Mr Cantwell was also questioned on the deceleration data of the black line which flattened out (no acceleration increase) prior to the red line indicating the longitudinal rate of acceleration. He reflected on this and conceded that the deceleration could possibly have been the cause of the "*push*". Being questioned by one of the Court Members, he conceded that the explanation for the touch between the two karts could have been as a result of the unexpected deceleration by Competitor Wally after the acceleration phase already started as is reflected from the graph.

39. At the end of the evidence of Mr Poulter, Mr Cantwell re-entered evidence and indicated that the slower speed between the two respective laps, i.e., laps 17 and 20, was “*within 1 km/h*”. When questioned on the data by one of the Court Members, he conceded that the lowest speed in the corner was 58.8 km/h and the fastest, 62 km/h. That resulted in a 3.2 km/h difference between the two compared minimum corner speeds in the relevant corner.
40. Competitor Heystek testified that, in his view, Competitor Wally made a mistake in the braking zone and decelerated more than usual. In his view, Competitor Wally went for a defensive line and lost the back end of the kart. His kart made no contact with that of Competitor Wally. There was no damage on his kart. On a question whether there was any tampering with evidence regarding the Go-Pro video footage, he denied this.
41. Mr Poulter is also a well-known motorsport service provider. He is a regular service provider to the Heystek team, as he referred to them. He testified that based on the data available, there was a substantial speed difference by Competitor Wally through the relevant corner and particularly on the lap when the Incident happened. He described the speed difference as a difference of 4.5 km/h.
42. Mr Poulter explained that there is in place a nose cone design and fitment on the relevant karts, to clamp down on unnecessary bumping in karting. The nose cone design was implemented for policing purposes to address bumping in karting. SSR 34.14 indeed provides for a 5 second penalty for an incorrectly positioned front nose cone, and for severe penalties including race exclusion, for tampering with a nose cone during an event.²⁰ The nose cone design is such that officials, after an event, can inspect the karts and if the nose cones are dislodged from a specific location, a penalty is imposed against the driver of the kart. No dislodgement was reported regarding Competitor Heystek after the Event by the officials.
43. The result publication contains certification that four Nose Cone Infringements were issued at the end of Race 3 to competitors Ensor Smith, Brandon van der Walt, Juandré Nel and Roshan Goodman.²¹ Competitor Heystek did not receive such an infringement and it must therefore be accepted that his nose cone, at the end of Race 3, was compliant.

Deliberation

44. Detailed and valuable oral submissions were made by both the Wally and Heystek families

²⁰ SSR 34.15.

²¹ Court Bundle, page 2.

which we have carefully considered.

45. Upon considering all the evidence presented to us and the written submissions, the following evidence is compelling:

45.1 the three key role-players in this matter, on the undisputed facts, all agree that there was no damage to the karts of Competitor Wally or Competitor Heystek as a result of the Incident. Competitor Wally himself does not claim that there was any damage, Competitor Heystek confirms this, and the officials recorded no Nose Cone Infringement;

45.2 if the bump or the push, however it is described by Competitor Wally, was of such a force to have bumped or pushed the kart of Competitor Wally "*completely wide*", "*almost off the track*", there should have been damage to the nose cone of the kart of Competitor Heystek, and the kart of Competitor Wally. None was observed;

45.3 there is clearly a conflict between the case being put forward by Competitor Wally and the absence of damage to the karts and the nose cone of the kart of Competitor Heystek not being dislodged. Both contentions cannot stand. Either Competitor Heystek drove recklessly, and pushed or bumped Competitor Wally to such an extent that he pushed his kart off the racing line, which indeed lifted the left-rear tire from the surface to go completely wide, almost off the track, or there was no bump or push in view of the absence of damage and the nose cone remaining in place;

45.4 on the common cause facts, no damage was observed and the nose cone of the kart of Competitor Heystek was not dislodged;

45.5 from the evidence of Mr Cantwell, in particular the unexplained deceleration of Competitor Wally's kart after the acceleration started, it is clear that if anyone was at fault in the corner, that it was Competitor Wally. When he backed-off in the acceleration zone after the initial acceleration, the video footage presented by the Wally Family shows that Competitor Heystek re-applied the brake a second time in the acceleration zone. That is indicative of an attempt to avoid contact and not pushing or bumping as the Wally Family contends. The acceleration data is borne out by the data overlay produced by Competitor Wally himself;

45.6 there is also no obvious physical evidence from the video footage that persuaded this Court that indicates a force from behind, for example, that the head and helmet

of Competitor Wally was moved backwards as a result of the force.

46. The Wally Family urged this COE 1269 to hold that the Protest was valid. They advanced several reasons. The reasoning invited us to draw inferences as to why under-steering would have taken place, inferences to be made from engine notes, inferences relying on shadows, inferences from distortion of numbers of the front kart, inferences from the lifting of the left rear wheel, and so forth. None of these submissions ultimately persuaded us. When relying on the process of inferential reasoning to make findings, we are mindful thereof that inferences can only be drawn from established facts. If there are no facts from which the “*inferences*” can be drawn, the method of inference fails and what is left over is mere speculation or conjecture.
47. This COE 1269 was mindful thereof that the video footage and the still photographs derived therefrom, were all angle specific. The video footage was obviously taken at speed, on karts, where there is a high rate of vibration. The video footage alone is not of sufficient quality to make conclusive inferences therefrom, for example, the distortion issue of the number of the kart.
48. Mr Mohamed Wally colourfully interpreted the video footage and the still photographs in his submissions. The video footage and the still photographs cannot be interpreted individually through motivation only, losing sight of the direct evidence of the witnesses and indeed the race report of the officials after the Event.

SSR 33: General Safety Provisions

49. The Protest claimed that the conduct of Competitor Heystek was reckless and incompatible with general safety. The general safety provisions of the SSR’s appear from SSR 33. The SSR does not contain any specific wording which address the concept of “*reckless driving*”.
50. No reliable evidence was presented during the hearing by Competitor Wally that provides a factual or a legal basis that the general safety provisions of SSR 33 were transgressed by Competitor Heystek to indicate that he acted in a reckless manner or incompatible with general safety.

SSR 34.23: Penalty Catalogue – Bump

51. The last aspect that we need to consider is whether there was indeed a bump as SSR 34.23

specifically deals with this as follows:²²

“That the front of kart 2 touches the rear of kart 1. Neither the reason nor the intensity of the contact is relevant. Only the consequences of the impact are relevant to judge an advantage, not the impact itself.”

52. A “*bump*” is defined as:²³

“To knock or strike with a jolt.

...

An impact, knock, jolt, collision.”

53. Before SSR 34.23 can be applied, a “*bump*” must first be established. Based on the evidence presented to this COE 1269, there is no such evidence and even if there was, based on the concession of Mr Cantwell, and the explanation of Competitor Wally, his kart was travelling meaningfully slower than the comparable lap and there was an inexplicable deceleration by his kart after the acceleration already started. We find no evidence that there was indeed a “*bump*”. SSR 34.23 can only find application where there is evidence of a “*bump*”. None has been shown to exist in this COE 1269.

54. The inferences which Competitor Wally invited this COE 1269 to make are not substantiated by the evidence available:

54.1 there was no damage to the two karts in question post the Incident;

54.2 there was no dislodgment of the nose cone of Competitor Heystek’s kart given the force which was alleged by Competitor Wally onto his kart;

54.3 there remains an inexplicable deceleration by Competitor Wally’s kart prior to the “*point of impact*” as identified by Mr Cantwell and it is inescapable to question why Competitor Wally, after commencing with his acceleration, momentarily decelerated;

54.4 Mr Cantwell conceded that the deceleration in the acceleration zone by Competitor Wally could possibly have been the reason for the “*pushing*”;

²² SSR 34.23.

²³ The Times English Dictionary, Arthur Collins publishers.

- 54.5 there was recorded a marked difference in speed of 3.2 km/h between the fastest lap of Competitor Wally and the lap in which the Incident occurred, in the specific corner which supports the evidence of Competitor Heystek as to how Competitor Wally slowed his kart down;
- 54.6 there is no clear evidence in the video footage of a bump or a push. There is no deflection of the helmet or head of Competitor Wally;
- 54.7 in absence of any evidence to indicate a bump or a push as it was alleged in the Protest, no such finding can be made.
55. On the legal and factual issues this COE 1269 finds:
- 55.1 there is no credible evidence that Competitor Heystek deliberately pushed Competitor Wally from behind;
- 55.2 there is no credible evidence that Competitor Heystek raced in a reckless manner;
- 55.3 there is no credible evidence that Competitor Heystek was in breach of general safety within the purview of SSR 33;
- 55.4 there is indeed no credible evidence that a bump occurred within the purview of SSR 34.23;
- 55.5 as to costs to be awarded there is no decision to be made in this matter as the Parties have already agreed as to the process to be followed with regard to the costs of this Enquiry.
56. Competitor Heystek in his case urged us to note that the Protest has morphed from its original format and in consequence to hold that the Protest was not valid. We declined to do so. This Court was unpersuaded that the Protest is invalid as it encompassed the concept of reckless driving incompatible with general safety since its original formulation.

FINDINGS

57. This COE 1269 finds that:
- 57.1 the Incident during the Event, which gave rise to the Protest, was a racing incident;

- 57.2 the Protest submitted at 14h51 on 1 October 2023 to the Stewards, against Competitor Heystek, is dismissed;
- 57.3 a 2 (two) point LPS deduction is to be imposed on Competitor Wally's racing licence in consequence of the unsuccessful Protest, pursuant to the provisions of SSR 35.4.b.i);
- 57.4 there is no need to make a cost order in consequence of the agreement between the Parties recorded in clause 3.5 of MSA's notification of 27 October 2023.

HANDED DOWN AT JOHANNESBURG ON THIS THE 9TH DAY OF NOVEMBER 2023.



Adv André P Bezuidenhout
Court President

Electronically Signed

Adv Ishmael A M Semanya SC
Court Member

Electronically Signed

Mr Claudio Piazza Musso
Court Member