

DECISION IN RESPECT OF NATIONAL COURT OF APPEAL NUMBER 177 LODGED BY T BISHOP IN CONNECTION WITH FINDINGS OF COA 466

The NCA appeal was heard at the MSA Boardroom on Monday, 17 October 2023 and 8 November 2023.

PRESENT:

Advocate Paul Carstensen SC	Court President
Attorney Jannie Geysers	Court Member
Advocate George Avvakoumides SC	Court Member
Mr Tim Bishop	Appellant' Father
Mr Tate Bishop	Appellant
Mr Michael North	Legal Representative: Appellant
Ms Allison Vogelsang	MSA Sport Coordinator
Mr Vic Maharaj	MSA Sporting Services Manager

Other Persons: as per attendance register

1. INTRODUCTION

- 1.1 The Court President introduced the court and welcomed everybody, who introduced themselves.
- 1.2 There were no preliminary matters or objections to the process or the constitution of the court.
- 1.3 All parties were ready to proceed with the appeal.

2. APPEALS PROCEDURE

- 2.1 The appeal hearing took place virtually by Zoom Meeting at 17h30 on both 8 November 2023 and 17 October 2023, after hearing the representations judgment was reserved.
- 2.2 Proceedings were recorded. For the purpose of this judgment, reference is only made to the material issues.
- 2.3 The appellant in these proceedings was represented by Michael North. MSA was represented by its Sport Coordinator, Allison Vogelsang, and Vic Maharaj, the MSA Sporting Services Manager.

2.4 The bundle of documents included the decision of the COC, the protest, the protest findings, WhatsApp messages, the Incident Report, the application for leave to appeal to the COA, the appeal to the COA, the application by the appellant for leave to appeal against the findings of COA466, the application for leave to appeal to the NCA, the NCA panel ruling on the leave to appeal application, granting leave, the appeal of the appellant to be heard as NCA 177 and the NCA panel ruling on the leave to appeal application.

3. **BACKGROUND**

3.1 The appeal originally arose from the Court of Appeal 466 which dealt with events which transpired, on 20 May 2023 at the SupaCup Event at Zwartkops Raceway, Pretoria.

3.2 The material facts are not in dispute.

3.3 The COC had found that the appellant had transgressed Article 20 of the MSA National Sporting SSRs for GTC and GTC SupaCup and imposed a 5 grid place drop for the start of race one.

3.4 The COA found that it could not be concluded that a contravention of Article 20.1 had taken place and that the competitor had notified Janet Wood of a change in home circuit. The finding of the COA on this aspect was not challenged and this court agrees with the finding on the facts.

3.5 However, having reached the correct conclusion that the appeal should be upheld, the COA then in our view incorrectly found that the results could not be changed and in effect allowed the penalty imposed on the appellant by the COC to remain in place.

3.6 After hearing the evidence and argument of the appellant on the 17 October 2023, this court decided, notwithstanding the fact that there

was no opposition to the appeal, and certain other competitors of the SupaCup event had been made aware of the proceedings but did not participate therein, that the hearing should be postponed, that all competitors should be given notice of the adjourned hearing, copies of the documentation bundle, the relief sought by the appellant and the possible consequences of the decision of this court. Thus all competitors of the abovementioned race were granted an opportunity to be present at the rescheduled hearing and contribute their submissions based on the following conditions

- 3.7 Such notice was given on 19 October 2023 and competitors were:
- 3.7.1 advised that Mr Bishop is seeking to set aside the results heat 1 of the SupaCup race held at Zwartkops Raceway on 20 May 2023.
 - 3.7.2 asked to give written confirmation to MSA that the competitor/s will attend the hearing by 01 November 2023;
 - 3.7.3 notify MSA if the competitor/s intends to make written submissions which were to be provided to MSA by 01 November 2023.
 - 3.7.4 reminded of their right to legal representation if it is deemed to be necessary;
 - 3.7.5 requested to attend the hearing.
 - 3.7.6 free to call any witnesses whose presence or evidence may assist the court in coming to a finding.
- 3.8 No competitors availed themselves of this opportunity.

4. **FINDINGS**

4.1 This court agrees with the COA that the appeal must be upheld, but consequently the penalty cannot be allowed to stand.

4.2 This aspect of the finding of the COA is clearly wrong:

5. **RULING**

5.1 Consequently, the findings of COA 466 on the merits of the appeal are upheld (this was not challenged by the appellant) and the penalty imposed is set aside.

5.2 The appellant is awarded 5th place in race one and thus receives 10 points.

5.3 However, all other competitors retain their position and points as they achieved when crossing the finish line for race one.

5.4 For clarity it is recorded that there will in effect be two competitors who have achieved 5th place and 10 points, and the results, position and points of all other competitors will remain the same.

5.5 The MSA administration is directed to adjust the results for race one accordingly.

5.6 No finding as to costs is made in connection with the matter.

5.7 The decision in respect of the appeal fee made by the COA remains unchanged.

5.8 The appellant's appeal fees in respect of the leave to appeal and NCA appeal are to be refunded less an administrative fee of R2500.00.

DATED AT SANDTON ON THIS 29th DAY OF January 2024.

I confirm that this is the unanimous decision of the National Court of Appeal.

P L Carstensen

ADV P L CARSTENSEN SC

(msa.29.01.2024)