

**MOTORSPORT SOUTH AFRICA  
NATIONAL COURT OF APPEAL 178**

**APPELLANT:  
JRT RACING**

**RESPONDENT:  
DR HANNES SCHEEPERS**

**IN RE:  
Appeal arising from the findings of  
MSA Court of Enquiry 1268**

**DATE OF HEARINGS:**

**20 February 2024**

**OFFICIALS:**

<b>Adv André P Bezuidenhout</b>	<b>Court President</b>
<b>Mr Jannie Geysler</b>	<b>Court Member</b>
<b>Mr Steve Harding</b>	<b>Court Member</b>
<b>Mr Vic Maharaj</b>	<b>MSA: Sporting Services Manager</b>
<b>Mrs Allison Vogelsang</b>	<b>MSA: Sporting Co-Ordinator</b>

**LEGAL REPRESENTATIVES:**

<b>Adv Francois van der Merwe</b>	<b>For the Appellant</b>
<b>Mr Michael North</b>	<b>For the Respondent</b>

## **INTRODUCTION**

1. This is the written judgment of National Court of Appeal 178 (“**NCA**”), which was heard on 20 February 2024.
2. The Appeal hearing was conducted in a virtual format utilising the Zoom platform. All individuals were introduced at the commencement of the hearing, as well as their respective representatives. There were no objections to the constitution of the NCA.
3. The Appellant is *dominus litus* in the matter and there is, technically speaking, no Respondent. Dr Hannes Scheepers (“**Dr Scheepers**”), the driver of car 27B, is an interested party as the vehicle which he intended to race on 2 September 2023, is the subject matter of this Appeal. Reference is made to Dr Scheepers as the “*Respondent*” for the purpose of convenience only and Dr Scheepers and Respondent are used interchangeably and in context.
4. The Appeal bundle was supplemented with several documents but ultimately there were no contentious issues raised as to the supplementation of the documents.
5. The hearing is of record, and it is unnecessary to summarise each and every aspect thereof.
6. The Appellant was represented by Adv Francois van der Merwe (“**Adv Van der Merwe**”) and Mr Michael North (“**Mr North**”) represented the Respondent. Both legal representatives have considerable experience in the practice and procedure of the regulatory framework of Motorsport South Africa (“**MSA**”), for the resolution of disputes. We are grateful for the able contributions made by both legal representatives during the hearing.
7. Prior to the hearing, two aspects were ventilated:
  - 7.1 the Appellant raised an initial objection to the Respondent’s submissions which the Appellant contended may have constituted a cross-appeal. There was no merit in this objection as Dr Scheepers was clearly an interested party and was entitled to raise issues in this hearing and to be represented by his legal representative, Mr North;
  - 7.2 the parties agreed that the issues to be adjudicated by the NCA would be limited to the grounds of Appeal advanced by the Appellant in the notice of Appeal and that there was no need for additional evidence to be presented.

## **BACKGROUND**

8. The Appeal was ventilated against the following background:
  - 8.1 the Appellant was the entrant of a car with the number *58B* in a championship known as the VW Challenge Championship, while the Respondent, Dr Scheepers, was a competitor in that championship and the driver of car number *27B*;
  - 8.2 both the car entered by the Appellant and the car driven by the Respondent participated in the VW Challenge Regional Extreme Festival held on 2 September 2023 at the Aldo Scribante Raceway ("***the Event***");
  - 8.3 after a technical inspection convened by the VW Challenge Technical Committee and executed by the duly appointed Technical Consultant at the Event, the vehicle of the Respondent was found to be in technical non-compliance with the Northern Regions Regional Standing Supplementary Regulations for the VW Challenge Championship ("***the VW Championship Regulations***"). The crisp issue as to the technical non-compliance was whether the floor tray of the vehicle showed signs of seam-welding, which is prohibited on the floor-tray in terms of the VW Championship Regulations;
  - 8.4 the Technical Consultant recorded his findings of non-compliance on a penalty form. This penalty form recorded neither a finding as to whether the technical non-compliance afforded or did not afford an advantage to the Respondent, nor did it make any recommendation as to the penalty to be applied;
  - 8.5 this penalty form was conveyed to the Clerk of the Course for his attention and appropriate action and pursuant to receipt thereof, the Clerk of the Course convened a hearing, as he was obliged to do in terms of the provisions of GCR 175;
  - 8.6 following the conclusion of the hearing, the Clerk of the Course issued a finding in terms of which the Respondent was excluded from the results of the event in consequence of the technical non-compliance;
  - 8.7 the Respondent subsequently lodged a protest disputing that he was in breach of the VW Championship Regulations and that the technical procedure and penalty imposed were unfair. This protest was heard by the panel of stewards of the Event who dismissed the protest on technical grounds, which are not relevant to the matters before this NCA.

9. Following this series of events, Court of Enquiry 1268 (“**COE 1268**”) was convened by MSA to:<sup>1</sup>

9.1 investigate the technical compliance, or otherwise, of the Respondents race car;

9.2 investigate the procedural correctness, or otherwise, of the way the matter was dealt with by all concerned parties;

9.3 investigate the suitability, or otherwise, of the relevant VW Championship Regulations;

9.4 determine what action to take in response to its findings with regards to the items enumerated above.

10. After a thorough enquiry at which all the issues were thoroughly ventilated, COE 1268 reached the conclusion that the Clerk of the Course’s decision that the vehicle of the Respondent was not technically compliant was upheld.

11. COE 1268 however found that:<sup>2</sup>

*“On a balance of probabilities, it must therefore be concluded that in the absence of any conclusive evidence to the contrary, that no competitive advantage was gained”.*

12. Having reached that conclusion, the COE 1268 set aside the exclusion of the Respondent and substituted a fine of R5 000.00 for the technical non-compliance.<sup>3</sup>

13. It is against this decision that the Appellant filed this Appeal<sup>4</sup> to the NCA, after having procured the requisite leave to Appeal against the findings of COE 1268.

#### **THE CONTROL OF MOTORSPORT, THE GCR’S AND THE SSR’S**

14. It is apposite at the outset to deal with the control of motorsport, where the officials and the “*rules of the game*” originate from and the importance of the role of Technical Consultants in

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<sup>1</sup> Appeal Bundle, page 22.

<sup>2</sup> Appeal Bundle, page 26, paragraph 22.

<sup>3</sup> Appeal Bundle, page 30, paragraph 40.

<sup>4</sup> Appeal Bundle, page 1 and further.

motorsport.

15. 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 Board of Directors, a Secretariat, 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. The National Court of Appeal of MSA is the ultimate final Court of Judgment of MSA.<sup>5</sup>
16. 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.<sup>6</sup>
17. MSA is an international and nationally recognised sporting body by the Government of South Africa. Its sporting platform is substantial. It has approximately five thousand licence holders and it sanctions approximately four 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.
18. 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.)<sup>7</sup>

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<sup>5</sup> Articles 3 to 7 of the MSA Memorandum and Article 35 of the MSA Memorandum.

<sup>6</sup> GCR INTRODUCTION – CONTROL OF MOTORSPORT.

<sup>7</sup> GCR 1

19. 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, as well as Standard Supplementary Regulations ("**SSR's**") issued by MSA.<sup>8</sup>
20. The GCR's, SR's and SSR's thus constitute the "*rules of the game*" of motorsport.
21. Part VII of the GCR's and in particular GCR 143, 144, 151, 152, 156, 159, 162 and 167 detail the importance of officials and the key roles that they play in motorsport events.<sup>9</sup>
22. It is expected of every entrant and competitor to acquaint themselves with the GCR's and to conduct themselves within the purview thereof.<sup>10</sup>
23. The duties of Technical Consultants are well defined in GCR 167. Their roles are described as follows:<sup>11</sup>

*"Technical Consultants assume primary responsibility for all technical aspects of the category to which they are appointed. They advise the Clerk of the Course and the scrutineers regarding technical matters and may assist where necessary."*

and further

***"Where disputes arise concerning technical matters, the final decision rests with the appointed technical consultant/s. Their advice on technical matters may therefore not be disregarded or ignored by a Clerk of the Course, but they do not usurp his/her functions. Technical consultants may make recommendations regarding the imposition of penalties, where appropriate, but the actual imposition of penalties remains the duty of the Clerk of the Course."***

24. GCR 176 provides for penalties for technical infringements as follows:<sup>12</sup>
  - "i) Where a vehicle/machine is found not to comply with the applicable technical regulations and specifications the following penalties will apply:*
    - a) Where, at the sole discretion of the appointed Technical Consultant (or similar technical representative or body) no advantage has been gained – the competitor shall be fined an amount not less than R750. In the*

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<sup>8</sup> GCR 14 & GCR 16

<sup>9</sup> GCR's 143 to 171

<sup>10</sup> GCR 113 read with GCR 122

<sup>11</sup> GCR 167

<sup>12</sup> GCR 176

**event of a dispute, any contravention of the technical regulations will be deemed to afford an advantage, until the contrary is proven.**

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.***

*If the championship or series concerned has less than three rounds to run, the penalty may also be applied retrospectively (i.e. exclusion from previous events) to achieve the desired number of events.*

- *the entrant, if other than the driver/rider, may be fined an amount of up to R50 000.*

ii) *None of the above shall preclude MSA from taking further action against an offending competitor and/or entrant, should such action be deemed warranted.*

iii) *MSA reserves the right to publish the details of any non-compliance with the technical regulations and resultant penalties.”*

25. The bold emphasis in GCR 176 appears as printed and emphasises important aspects of penalties for technical infringements.

26. GCR 157 specifically deals with penalties which can be imposed by the Clerk of the Course and places a specific focus on the consequences of technical infringements. The typeset in bold emphasises the mandatory nature thereof:<sup>13</sup>

***“The Clerk of the Course may not, however, impose a fine in lieu of exclusion in the case of the contravention relating to technical rules or specifications, unless the contravention is of a minor nature that the appointed Technical Consultant agrees would afford absolutely no advantage to the competitor.”***

(underlining: our emphasis)

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<sup>13</sup> GCR 157

## **GROUND OF APPEAL**

27. The Appellant advances two grounds of Appeal.
28. The first of these grounds can be summarised as that, having found that the vehicle of the Respondent was not technically compliant and that there was no consensus or evidence as to whether an advantage was gained or not, COE 1268 was compelled to apply the provisions of GCR 176 (i)(a) & (b) which provides that at the sole discretion of the Technical Consultant, where no advantage has been gained, a fine can be imposed and where a dispute arises, the technical breach will be deemed to afford an advantage, until the contrary is proven.
29. The Appellant contends that the burden of proof lay on a competitor who is in breach of the VW Championship Regulations to demonstrate that no competitive advantage was gained. According to Adv Van der Merwe, the Respondent has not discharged this onus.
30. The Appellant contends that COE 1268 erred by finding that, on a balance of probabilities, no competitive advantage was gained, when they found that “*despite intensive interrogation by the COE, no consensus or evidence could be provided*” by an extensive group of expert technical motorsport specialists “*among them as to whether there was an advantage gained ... or not.*” In short, the Appellant contends that the incorrect legal criteria were applied by COE 1268 in this regard.
31. The second ground of Appeal is based on paragraph 4 of GCR 220 which reads as follows:
- “Where a technical matter is concerned, the court shall consider the report of the scrutineers and recommendations of the MSA Technical Consultant (where applicable). Said reports and/or recommendation shall be taken into account, and acted upon, by the court unless the court is reasonably of the view that they are simply incorrect and/or unfair and/or made with malicious intent.”*
32. The Appellant contends that in the absence of a finding that the Technical Consultant was incorrect, unfair and / or malicious, COE 1268 was obliged to act on the recommendations of the Technical Consultant and exclude Dr Scheepers.

## **THE RESPONDENT’S CONTENTIONS**



33. Mr North contended that:
- 33.1 the Technical Consultant had not made any finding as to whether any advantage was gained or not;
- 33.2 with regard to GCR 176, that COE 1268 somehow became substituted for the Technical Consultant within the meaning of the words “*or similar technical representative or body*” referred to in GCR 176 (i)(a), and in that capacity was then empowered to make the determination as to whether advantage was or was not gained;
- 33.3 GCR 220 specifically provides that where a technical matter is concerned, the court shall consider the report of the scrutineers and recommendations of the Technical Consultant and that the reports shall be taken into account and be acted upon unless the court is reasonably of the view that the reports are simply incorrect, unfair or made with malicious intent.
34. Mr North argued that the finding of COE 1268 should be upheld.

#### **NATIONAL AND INTERNATIONAL APPROACH TO TECHNICAL CONTRAVENTIONS BY COMPETITORS**

35. Motorsport is by its very nature a competition which involves not only the skill and aptitude of the driver of a race car but also the level of competitiveness and preparation of the race car itself. While competitors will and may of course prepare their cars to the fullest extent permissible by the regulations it is incumbent on controlling bodies to ensure for the sake of fairness that the boundaries of the regulations are not exceeded.
36. GCR 226 which is headed “*INTERPRETATION OF REGULATIONS AND SPECIFICATIONS*” emphasises in bold that “***In interpreting motorsport regulations and specifications ‘what is not specifically permitted is disallowed’ is the normal concept in keeping with the French regulations on which motor sporting regulations are based***”.
37. Similarly, article 1.3.3 of the International Sporting Code of the FIA, from which MSA derives its power to make regulations for the control of motorsport in South Africa, provides that “*If an automobile is found not to comply with the applicable technical regulations, it shall be no defence to claim that no performance advantage was obtained.*”

38. While the absence of a performance advantage may not constitute a defence it does have a material bearing on the sanction which may be applied as provided by the provisions of GCR 176 (i)(a) & (b).
39. The obligation imposed on competitors to ensure that their vehicles comply with the relevant technical regulations is an absolute and objective one. A breach of that obligation does not depend upon a fault being established. This principle underlies fair competition in motorsport and is consistent with the constant jurisprudence of the International Court of Appeal of the FIA, which is its highest jurisprudence.<sup>14</sup>

### **FACTUAL MATTERS AND APPLICATION OF THE REGULATIONS**

40. While Mr North correctly contended that the penalty form issued by the Technical Consultant makes no reference to the question of advantage, it is clear from the findings of the Clerk of the Course, that a recommendation by the Technical Consultant, was made in relation to the sanction, to be applied for the technical non-compliance. The Clerk of the Course having recorded in his findings:<sup>15</sup>

*“As per the TC recommendation #27 Hannes Scheepers is excluded for the event as the vehicle presented in Parc fermé does not comply to article 13.24.”*

41. No evidence was presented by the Respondent to contest that a recommendation was made to the Clerk of the Course, but for relying on the note of the Technical Consultant from which Mr North wanted this NCA to draw an inference. This NCA is not persuaded to draw such an inference from the document alone, particularly in view thereof that the Clerk of the Course recorded that there was a recommendation made to him.
42. The advice of the Technical Consultant on technical matters, may not be disregarded or ignored by the Clerk of the Course as is specifically provided for in GCR 167.
43. GCR 176 i) a) and b) expressly provides that in the absence of a determination by the Technical Consultant that no advantage has been gained “*any contravention of the technical regulations will be deemed to afford an advantage, until the contrary is proven*”.

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<sup>14</sup> ICA-2014-03 Campos Racing, ICA 3/2010, RACB Prospeed ASBL, dated 30 November 2010, no. 20. A copy of the ICA Judgment, accompanies this Judgement, for ease of reference by competitors.

<sup>15</sup> Appeal Bundle, page 36.

44. Turning to the submission by Mr North that COE 1268 stepped into the position of the Technical Consultant as a “*similar technical representative or body*” as provided for in GCR 176, this NCA is not persuaded thereby. On a correct reading of unnumbered paragraph 4 of GCR 220, COE 1268 was bound by the recommendations of the Technical Consultant, as made to the Clerk of the Course and as recorded in his findings. COE 1268 was obliged to take these recommendations into account in the absence of a finding that they were “*simply incorrect*”, a conclusion which was clearly not made by COE 1268. There is no suggestion that these were either unfair or made with malicious intent. No evidence was presented to this NCA in a *de novo* hearing to support such finding in terms of GCR 220.
45. COE 1268, having concluded on a balance of probabilities that there was “*no conclusive evidence to the contrary*”, that is to say that there was no evidence that a competitive advantage was gained, reached the conclusion that no competitive advantage was gained.
46. In doing so, COE 1268 erred by failing to consider the deeming provision contained in GCR 176 i) a) which clearly provides that:
- “In the event of a dispute any contravention of the technical regulations will be deemed to afford an advantage, until the contrary is proven.”*
47. Absent an express finding by the Technical Consultant that “*no advantage has been gained*”, COE 1268 had no discretion to impose a fine in *lieu* of exclusion.
48. That being the case, this NCA finds that the Appeal must be upheld.

## **FINDINGS**

49. This NCA finds that:
- 49.1 the Appeal must be upheld, and the findings of COE 1268 be set aside in so far as they relate to the results of the Event;
- 49.2 Dr Scheepers, the driver of car 27B at the Event, is to be excluded from the results of the race meeting in question;
- 49.3 consequently, the R5 000.00 fine imposed by COE 1268 on the Respondent is to be refunded to him by MSA;

49.4 the Appeal fee is to be refunded to the Appellant, less 15%, which is to be retained by MSA and be allocated to administrative costs.<sup>16</sup>

50. In view of the importance of this judgment, MSA is directed to ensure that the judgment is brought to the knowledge of its registered licence holders.

**HANDED DOWN AT JOHANNESBURG ON THIS THE 7<sup>th</sup> DAY OF MARCH 2024.**



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**Adv André P Bezuidenhout**

**Court President**

**Mr Jannie Geyser**

**Court Member**

**Mr Steve Harding**

**Court Member**

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<sup>16</sup> Note 3 to Article 12 of Appendix R to the GCRs.