



# MOTORSPORT SOUTH AFRICA NPC

Reg. No 1995/005605/08

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## COURT OF ENQUIRY

of

**MOTORSPORT SOUTH AFRICA**

In re:

**MOTORSPORT SOUTH AFRICA**

**COURT OF ENQUIRY NO 1284**

Hearing date: 17 April 2025

Decision date: 8 May 2025

Held virtually on Zoom and recorded.

**Court composition:**

|                           |                   |
|---------------------------|-------------------|
| Adv. Veruschka September  | : Court President |
| Ms. Karen Weehuizen-Londt | : Court Member    |
| Mr. Farouk Abrahams       | : Court Member    |
| Mr. Damien Johnson        | : Court Member    |

**Attendance:**

|                         |   |
|-------------------------|---|
| Mrs. Carmen Hill        | : Sporting Services Manager – Motorcycles   |
| Ms. Samantha Van Reenen | : Sporting Services Manager – Cars, Karting and Legal   |
| Mr. Rashaad Monteiro    | : MSA Insurance Claims Handler, Medical Coordinator, Sim Racing Coordinator, & Safeguarding Officer |
| Ms. Cleodine Goeieman   | : Junior Sport Coordinator – Motocross, Enduro and Cross Country Mcycles                            |

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



MEMBER OF



A MEMBER FEDERATION



**sport, arts & culture**

Department:  
Sport, Arts and Culture  
REPUBLIC OF SOUTH AFRICA

Directors: A. Roux (Chairman), V. Maharaj (Chief Executive Officer), P. Zeelie (Financial),  
Mrs. D Abrahams, Mrs. D. Ballington, K. Govender, Ms. T. Human, Mrs. S Labuscagne Jonck, D. Ramchander, M. Rowe, A. Scholtz (Executive),  
G. Waberski, Honorary President: R. Schilling

|                           |  |
|---------------------------|--|
| Mr. Frans Mahluala        | : Complainant (Assistant to the Route Director)      |
| Mr. Shain Nienaber Snr.   | : Respondent and Parent of Master Shain Nienaber Jnr |
| Mrs. Lizelle Van Allemann | : Clerk Of Course                                    |
| Mr. Werner Trollip        | : MSA Steward  |
| Mr. Wian Du Plessis       | : Route Director                                     |
| Mrs. Miranda Du Plessis   | : GXCC Club Secretary                                |
| Mr. Peter Maree           | : Witness  |

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## DECISION

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### INTRODUCTION

1. The Court was convened as a formal enquiry in terms of GCR 211 of the Motorsport South Africa NPC ("*MSA*") General Competition Rules ("*GCRs*") based on reports submitted to MSA into the alleged conduct of Mr Shain Nienaber Snr ("*Nienaber Snr*") at the '2025 NR & GXCC Regional & Club Cross Country Motorcycle & Quads – Rnd 2 Event' which was held at Bapsfontein, Gauteng, on 15 March 2025 ("*the Event*").
2. The Court was called upon to fully investigate the alleged altercation incident between Nienaber Snr and Mr Frans Mahluala ("*Mr Mahluala*") to:
  - 2.1 determine if Nienaber Snr, based on his conduct, is guilty of breaching amongst other things GCRs 172 iv) and vi)<sup>1</sup>; and
  - 2.2 determine what action to take in response to its findings concerning the above.

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#### <sup>1</sup> GCR 172. BREACH OF RULES

Any of the following offences in addition to any other offences specifically referred to previously or hereafter, shall be deemed to be a breach of these rules.

- iv) Any proceeding or act prejudicial to the interests of MSA or of motor sport generally shall be deemed to be a breach of the regulations and disciplinary action may be taken against offenders.

By way of clarification, it is confirmed that the following shall be included in the definition of "prejudicial acts" as per the above:

- Intimidation, either on track or off track.
- Verbal and or physical abuse.
- ...
- Acts (including comments or gestures) which would reasonably be considered by the general public to be offensive or inappropriate.

It is stressed that the above list is not exhaustive, and that each case will be treated on an individual basis.

- v) ...
- vi) Misbehaviour or unfair practice.

3. The virtual hearing was held and recorded on Thursday, 17 April 2025. Reasonable notice to attend the hearing had been given to, amongst others, Nienaber Snr, Mr Mahlaula and the witnesses. As an enquiry, the Court adopted an inquisitorial approach. Nobody challenged the composition of the Court.
4. Prior to the hearing, the Court received and considered documents and written submissions from MSA which included *inter alia* written submissions from the aggrieved person, Mr Mahlaula; Mr Werner Trollip (“Mr Trollip”); Mr Peter Maree (“Mr Maree”); Mrs Miranda Du Plessis (“Mrs Du Plessis”); Mr Wian Du Plessis (“Mr Du Plessis”); Mrs Lizelle Van Alleman (“Mrs Alleman”); and Nienaber Snr. At the hearing, the process was explained to all present; each of these individuals were given an opportunity to be heard after confirming that the contents of their respective written submission were correct and accurate; and they each addressed questions asked by the Court. Nobody took issue at any stage on the process adopted.

### THE BACKGROUND FACTS

5. Below is a summary of material facts, as established from the written submission by the parties and the evidence examined during the course of the proceedings. This background is for the sole purpose of providing a synopsis, not a verbatim record, of the salient facts and evidence presented which are relevant to a determination of the allegations against Nienaber Snr. The fact that a particular issue is not recorded in this finding does not mean that the evidence was not considered.

#### The undisputed facts

6. Nienaber Snr is the holder of a valid MSA Licence. He was an Entrant and Competitor at the Event. He was also the Entrant for his minor son, Shain Nienaber Jnr (“Shain”), who competed at the Event. Shain was eight years old at the Event and his father described him as “still a beginner” competitor.
7. Mr Mahlaula was the Assistant to the Route Director of the Event, Mr Du Plessis who, together with his wife, Mrs Du Plessis, own the GXCC Event. Mr Mahlaula, plus at least one fellow worker at the Event known as ‘Philemon’, were allocated to a very muddy point on the junior route track to assist junior competitors when they got stuck in the mud.
8. Nienaber Snr assaulted Mr Mahlaula, on the track, during the Event, while Mr Mahlaula was on duty. The assault occurred in the presence of junior competitors racing on the track.
9. There was one independent eye witness to the assault, Mr Maree. As a videographer for GXCC, Mr Maree provided the Court with a short unchallenged video clip<sup>2</sup> taken by him of what appears to be Mr Mahlaula helping Shain out of mud in very muddy conditions. The number on the bike’s left side number plate of the junior competitor in the video matched Shain’s number.
10. Mr Mahlaula sustained bloody facial injuries from the assault on his person for which he chose to not seek medical treatment. One unchallenged photo of his injuries was provided. He laid no criminal complaint against Nienaber Snr.

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<sup>2</sup> The video clip has no sound.

11. After the incident, Nienaber Snr apologised to Mr Mahlaula in the presence of Mrs Alleman, who had convened the parties to establish what happened after the fact. Mr Mahlaula had accepted the apology.
12. Nienaber Snr offered Mr Mahlaula R500.00 (five hundred rand), through Mrs Du Plessis, to forgive him for what he did. Mr Mahlaula refused to accept the money.
13. Nienaber Snr has been racing for about six or seven years. He confirmed accepting the terms and conditions regulating the Event which was a pre-condition to entry. He did so twice: *first* in his personal capacity as an Entrant and Competitor in his own person; and *secondly* as the legal guardian and parent of for his son, Shain. Of significance, Nienaber Snr accepted to be bound by the following on each entry:

*“GXCC Racing is affiliated to Motorsport South Africa (MSA) and FIM. Each rider must have a competitor’s licence from MSA to compete in our events. All GXCC events are held under rules and regulations of MSA. Riders MUST familiarise themselves with these rules and comply with these rules are all times.*

*The rules applicable to our events are the following:*

1. 2025 GXCC Junior & Senior Motorcycle and Quad Championship SSR’s
2. 2025 MSA Northern Regions Junior & Senior Motorcycle & Quad Championship SSR’s
3. 2025 MSA National Cross Country Motorcycle Championship SSR’s
4. 2025 MSA General Competition rules”

The rules and regulations of MSA together with the rules and regulations listed at points 1-4 above are known as “*the rules of the game*” for the Event.

14. After being assaulted, Mr Mahlaula left the Event to go home. As the guide to lead medical personnel to those in need of urgent medical treatment, Mr Mahlaula’s absence “caused havoc” for the owners of the Event when it took longer than it should have to respond to a medical incident after his departure. His absence was also felt to the detriment of the junior competitors needing help out of the mud at that designated area in addition to the help needed in the clean up after the Event.<sup>3</sup>
15. Mrs Du Plessis stated that no complaints from any of the other competitors were received. The Event was in Mr Mahlaula’s sixth season under the Du Plessis ownership of the GXCC Event.

#### **Other salient facts and evidence**

16. The Court considers the following aspects borne from the facts and evidence presented material to making a recommendation.

#### **The extent, gravity, and context of the assault**

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<sup>3</sup> The evidence of the owners of the Event, in particular Mr Du Plessis.

17. The extent, gravity and context of the assault on Mr Mahlaula goes to the seriousness of the misconduct. The probabilities are borne from the versions of Mr Mahlaula, as corroborated by Mr Maree on the one hand, as weighed against the version of Nienaber Snr, on the other hand.

18. Salient features from key witnesses' versions are summarised below.

18.1 Mr Mahlaula gave evidence to the effect that:

- While he was at the designated muddy point on the junior track, Nienaber Snr approached on his bike and asked who "France" was. He responded to identify himself as France. Nienaber Snr got off his bike, pushed him in the mud and started punching him in his face. His colleague, Philemon, who was present helped him and that is when Nienaber Snr stopped punching him. [Philemon did not give any evidence.]
- He subsequently asked Nienaber Snr why he was attacking him. Nienaber Snr responded to say that he did not help Shain with his bike and had pushed Shain's bike over. Nienaber Snr told him that he had seen a video of him pushing the bike over and that a video cannot lie. Nienaber Snr made no reference to this video during the hearing.
- He reported the incident to Mr Du Plessis and Mrs Du Plessis.
- He returned to the pits where Mrs Du Plessis and Mrs Alleman spoke to him, telling him that Nienaber Snr accused him of throwing Shain's bike on the ground and telling Shain that he is "wasting his father's money".
- He admits to helping Shain get out of the mud. He had told Shain to stick to the middle of the track so that he does not get stuck again but then Shain would go left or right and get stuck again so he would assist Shain again. Because Shain kept getting stuck, Shain wanted to stop racing. He then told Shain that he is almost finished and that he should not waste the money that his father spent on the race.
- He denied throwing Shain's bike on the ground. It was difficult to get the bike out of the mud, so he had to use some force to get the bike out of the mud. At one point he thought that Shain was going to take his bike and then he let go but Shain did not take the bike and it fell over.
  - The Court notes that when Mr Mahlaula gave his version during the hearing, the sequence of events relating to when he and Nienaber Snr exchanged words differed in order, but not substance, from his written statement submitted.
  - Mr Mahlaula impressed to be an honest witness with a recollection that was not accurate in order of events but consistent in substance.

18.2 Mr Maree, the independent eye witness, gave evidence to the effect that:

- He saw Mr Mahlaula help one of the junior riders get unstuck from the mud several times. There was shouting but this was among all the riders and officials as there were so many motorcycles revving trying to get out of the mud. On the last attempt, Mr Mahlaula helped the junior rider out of the mud who was very emotional and crying. The boy got off the bike and must have thought that Mr Mahlaula was holding the bike, but the bike fell down. The bike was not thrown into the mud.
- From where Mr Maree was standing, he perceived Mr Mahlaula to be giving the boy words of encouragement. The boy got back onto the bike after Mr Mahlaula helped him and the rest of the race continued.

- He was about to head back to the pit. While walking to his bike, he heard someone racing into the corner where all the juniors were getting stuck. He turned and thought it was a father coming to help his child out of the mud. However, he got off the bike and started shouting at Mr Mahlaula, the details of which could not be heard. He first thought nothing of the situation and turned back. When he turned around, he saw the father (wearing a VW Masterclass shirt) push Mr Mahlaula to the ground and started punching him with his fists while on the ground. Mr Mahlaula made no attempt at fighting but rather tried to defend himself. Mr Mahlaula covered his face with his arms. However, the father pulled Mr Mahlaula's arms out of the way so that he could fist punch Mr Mahlaula's face. He punched him enough to allow him to make contact with his face after moving his arms out of the way. Mr Mahlaula's colleague had stopped Nienaber Snr's attack on him.
- He tried to stop the fight by shouting from where he was standing but it was too late. The father left Mr Mahlaula on the ground and started threatening him, saying that Mr Maree must come to him so that he can do the same to him. He tried to explain to the father that Mr Mahlaula was helping his son, but the father kept threatening him.
- Mr Mahlaula got up, bleeding from his nose and mouth with a marked cheek. He returned to the pits to report the incident to the race organisers.
- At the timing area, Mr Maree told some GXCC officials about the incident. While telling them about the incident, the father came to where he was and began threatening him again, telling him to come behind the tent to sort him out. He understood this to be a threat of physical contact. He tried to tell the father that what he did was wrong. However, the father kept threatening him. The GXCC officials de-escalated the situation between the father and Mr Maree.
  - Mr Maree impressed to be a credible and honest witness with a lucid recollection of what he witnessed and experienced.

### 18.3 Nienaber Snr gave evidence to the effect that:

- Shain came in one hour fifteen minutes after his first lap crying and very demotivated about "the marshal" that was supposed to help him and who screamed at him, telling him he cannot ride his bike, he must go and learn his bike.
- As the 65cc is a small bike, the wheels are very small so if there is mud that is half a meter deep, Shain will obviously get stuck in the mud. Shain, still a beginner, is still learning the extreme conditions.
- Nienaber Snr tried to calm Shain down and motivate him to go for another lap, but Shain said that he was scared because 'the marshal' will shout at him again, having told him that 'he is wasting his father's time or money' and 'will not help him again'.
- Nienaber Snr went to Mrs Du Plessis and explained what Shain said to him. Her response was that she would sort out 'the marshal' if it is correct. Mrs Du Plessis' evidence confirmed this assurance given. However, Nienaber Snr informed that "his head just went crazy" and he did not believe that it will be sorted out, so he went in search of 'the marshal'.
- Following the junior route, he stopped by Mr Du Plessis to ask him where to find 'Frans' and Mr Du Plessis told Nienaber Snr to please not do 'anything stupid' because he needs him, but Nienaber Snr was aggravated, admitting that it was completely unnecessary for him to act in that manner.
- When he found 'the marshal' – who was Mr Mahlaula – in the presence of other junior competitors on the track, he asked Mr Mahlaula why he told Shain what Shain relayed to him, but Mr Mahlaula denied all that was said. Aggravated, he slapped Mr Mahlaula and told him that he is lying and then left. During the hearing however, Nienaber Snr stated,

in significant difference to his written statement, that he there was an exchange before he pushed Mr Mahlaula to the ground and punched him twice. He also stated at a different time in the hearing that he went to Mr Mahlaula, slapped him, pushed him over and punched him once. He specifically denied that he only stopped by the intervention of Philemon.

- Afterwards, Shain told that same story to 'the MSA lady' himself. When Nienaber Snr went to apologise, Shain was taken to Mr Mahlaula in front of everyone and Shain told Mr Mahlaula that he screamed at him which he denied.
  - He had to have Shain's bike repaired for its suspension springs which were snapped in 3 pieces which he believes is impossible for an eight-year-old boy to do.
  - He offered Mr Mahlaula R500 because he felt bad. The R500 was for the wrong he did to Mr Mahlaula.
  - He excluded himself from his own race and went home.
- Nienaber Snr showed remorse by accepting that he handled the situation completely wrong, and his reserved apologies were forthcoming. His recollection impressed to be not as lucid as that of the other witnesses and not totally aligned to his written statement in certain respects.

#### Whether Nienaber Snr's remorse was genuine and *bona fide*?

19. Nienaber Snr tendered an apology for his behaviour several times during the hearing. His apology, even after hearing all of the evidence against him, remained in the belief that Mr Mahlaula was incorrect and at fault, as indicated by his minor son. He further implied that the supposed broken fork springs may have been caused by Mr Mahlaula pushing over his son's bike.
20. Mrs Du Plessis confirmed that Nienaber Snr had apologised for his behaviour, informing her that he was very furious, admitting that his behaviour was unacceptable and that "he just snapped". Through her, Nienaber Snr offered Mr Mahlaula R500.00 for the wrong that he did to him.

#### Factors for consideration of sanction

21. Mr Trollip, the MSA Steward at the Event, confirmed during the hearing that "[o]ur recommendation for the first-time offence would be a suspended sentence or fine, taking into consideration that [Nienaber Snr] admitted he was at fault and apologized to Frans, and Frans accepted the apology".
22. Nienaber Snr was afforded an opportunity to present any mitigating factors for consideration on sanction. His main point was that his son not be stopped from racing because of his own actions.

## **ANALYSIS**

### **The regulatory framework**

23. 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.
24. The contractual relationship between Nienaber Snr and MSA arises from the official entry forms that he submitted, first as an Entrant<sup>4</sup> and Competitor<sup>5</sup> to the Event in his personal capacity; and secondly in his parental capacity for and on behalf of his minor son, Shain.
25. Nienaber Snr, as an Entrant and a Competitor, is bound by the rules of the game for the Event. In particular, Nienaber Snr is deemed to have made himself acquainted with the GCRs and submitted himself, without reserve, to the consequences resulting from the GCRs and to pay as liquidated damages any fines or costs imposed upon him within the maxima set out in Appendix R. [GCR122 i) and ii)]. In any event, Nienaber Snr admitted to knowing the rules of the game.

### Evaluation of the Evidence

26. The totality of the evidence, including that of Nienaber Snr, concludes on the probabilities that:
  - 26.1 Nienaber Snr assaulted Mr Mahlaula's person with a pre-meditated intention, whilst Mr Mahlaula was on duty, in the presence of other junior competitors during an ongoing race. He let his emotions get the better of him and acted unethically by taking matters into his own hands.
  - 26.2 Mr Mahlaula sustained injuries to his face as a result of being punched.
  - 26.3 Nienaber Snr breached the safety of other junior competitors and placed himself in harms' way by not being fully clothed in race attire while riding his bike onto the junior track during a race.
  - 26.4 Nienaber Snr apologised to Mr Mahlaula for what he did and Mr Mahlaula accepted the apology.
  - 26.5 Nienaber Snr subsequently offered Mr Mahlaula, through Mrs Du Plessis, R500 for the wrong that he did and Mr Mahlaula refused the monies.
  - 26.6 Despite the independent evidence of Mr Maree which corroborated the material substance of Mr Mahlaula's evidence, Nienaber Snr remained of the belief that Mr Mahlaula was incorrect and at fault, as indicated by Shain. He further implied that the supposed broken fork springs may have been caused by Mr Mahlaula pushing over his son's bike.

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<sup>4</sup> **"Entrant"** means any person, persons or body who enters a vehicle in a competition and who is in possession of a licence.. [GCR 22]

<sup>5</sup> **"Competitor"** means any person or body whose entry is accepted for, or who competes in any competition, whether as an entrant, driver, co-driver, navigator, passenger or rider, provided that ..."  
[GCR 19]

**"Driver"** means any person who drives/rides any vehicle/machine in competition and who is in possession of a licence... [GCR 21]



- 26.7 The assault on Mr Mahlaula led him to leave the Event which adversely compromised the response time to medical emergencies, a necessary health and safety safeguard, in addition to negatively impacting the support available to assist the junior competitors out of the mud where Mr Mahlaula has been stationed. That is aside from the general inconvenience caused in the cleanup operation after the Event.
- 26.8 Nienaber Snr verbally threatened Mr Maree several times (despite Mr Maree electing to not lay a formal complaint against him).
27. Nienaber Snr, having been involved in racing for several years, knew or reasonably ought to have known that his conduct was inappropriate, unacceptable, and prejudicial to the interests of motorsport. His intention to harm Mr Mahlaula was pre-mediated.
28. MSA is committed to ensure a safe environment in which *all* individuals are treated with respect and dignity. These commitments are mirrored in the policies of the South African Sports Confederation and Olympic Committee to which MSA is a member. Unjustified misconduct, such as that of Nienaber Snr under enquiry, violates the sporting environment and the integrity and reputation of MSA. Respect is paramount in the motorsport community for *all* participants including those who support the event. Creating an environment of mutual respect, appreciation and fair play is essential as it fosters teamwork and enhances the overall spirit and safeguarding of the sport.

## FINDINGS AND CONSEQUENTIAL ACTION

29. In the result, the Court unanimously finds Nienaber Snr guilty of breaching GCRs 172 iv) and vi). However, the Court did not unanimously agree on a sanction suitable in the circumstances. The Court thus hands down both a majority decision and a dissenting decision in relation to the sanction to be imposed against Nienaber Snr. Nienaber Snr is bound by the sanction decision of the majority Court at paragraph 30 below.
30. **The majority Court** (Ms. Karen Weehuizen-Londt, Mr. Farouk Abrahams and Mr. Damien Johnson) **finds as follows:**
- 30.1 *Reasons, but not limited to:*
- To our knowledge this is Mr. Nienaber Snr's first offense of this type against the listed MSA's GCR's and SSR's.
  - Mr. Nienaber Snr admitted to the premeditated confrontation of an event crew member and subsequent physical abuse and further intimidation of an event photographer.
  - Mr. Nienaber Snr intentionally and unauthorized operated his motorcycle outside of the pit area and in the competitions route / area, putting competitors at risk.
- 30.2 *Sanctions:*
- R15,000.00 fine
  - 6-month competitor licence suspension
- 30.3 *Conditions:*

- Mr. Nienaber Snr may attend MSA events, however, should Mr. Nienaber Snr be guilty of breaking these or any other similar MSA regulations, during his 6-month suspension, he will be banned from attending any further MSA events for at least within this suspension period however, further findings and sanctions from other COE's may further add to this.

**31. The dissenting Court (Adv. Veruschka September) finds as follows:**

- 31.1 The extent, gravity, context, and impact of the breaches are grossly serious in nature. Whilst Nienaber Snr was not hesitant to apologise, the *bona fides* of his apology was reserved. It is consequently wholly disproportionate that Mr Trollip, as the MSA Steward at the Event, recommended a suspended sentence *or* a fine as an appropriate sanction in these circumstances.
- 31.2 Having due regard to, amongst other things, the apology and submissions made by Nienaber Snr as a first offender; his gross violation of the rules of the game; compromising both the operation of the Event and the medical response time and procedures; risking junior competitors through his actions; his threatening conduct towards an innocent bystander and the persuasive MSA National Court of Appeal decision of *Wally and Another v Murray dated 9 December 2024*, the dissenting Court imposes the following sanctions:
- 31.2.1 Nienaber Snr is suspended for a period of 4 months with immediate effect in terms of GCR183 from playing any role in any MSA event, whatsoever, whether as a Competitor or Entrant or to be part of the team of a competitor or an entrant;
- 31.2.2 In addition, a fine of R100,000.00 (one hundred thousand rand) is imposed on Nienaber Snr in terms of GCR 178 and GCR 179;
- 31.2.3 In addition, a contribution of R2,500.00 (two thousand five hundred Rand) is payable towards any costs incurred by MSA in convening this enquiry.
32. Nienaber Snr is consequently ordered to pay all monies due in accordance with paragraph 30 (and its subparagraphs) above in accordance with GCR 222 read with GCR 180.
33. Nienaber Snr is further reminded of his rights in terms of GCR 211 ii).

These findings are dated on 26 May 2025.