

MOTORSPORT SOUTH AFRICA

COURT OF APPEAL NO 487

Court composition:	Adv. Francois v d Merwe	Court President
	Mr. Jaryd Thomas	Court Member
	Ms. Nthabiseng Motsie	Court Member
In Attendance:	Mr. Charl Visser	Appellant
	Mr. Hendrico Barlow	Team Manager (RBR Racing)
	Mr. Eric Schultz	Clerk of Course
	Mr. Andrew Eva	Assistant Clerk of Course
	Mr. Ian Richards	MSA Steward
	Mr. Gert Botes	Club Steward
	Ms. Samantha Van Reenen	MSA Sporting Services Manager – Cars, Karting and Legal
	Mrs. Allison Vogelsang	MSA Circuit Sport Coordinator

JUDGEMENT

INTRODUCTION

1. The appellant, Mr. Charl Visser ("**Mr. Visser**"), competed for the RBR Racing Team in the South African Endurance Series Nine-Hour event at Kyalami on 30 November 2024. He drove the final two-hour stint and crossed the finish line in first place.
2. After the race, the Clerk of the Course ("**COC**") imposed a 21-second time penalty on the appellant under Circuit Racing SSR 46(iii) for the removal of safety apparel during racing conditions, namely the temporary removal of his left glove. This occurred under safety car conditions in the closing minutes of the race.
3. The effect of the penalty was to demote the appellant and his team from first to second place in the event. It is alleged that the penalty was imposed without a hearing as envisaged under GCR 175.
4. In the formulated appeal, the appellant contends that he removed his glove briefly to wipe sweat from his eye that was impairing his vision, did so under reduced speed conditions behind the safety car, and immediately replaced the glove. He maintains that his conduct was aimed at ensuring safety and created no advantage or risk.
5. The appellant lodged a protest to the Stewards on 2 December 2024 at 15:46. The Stewards rejected the protest as late and inadmissible in terms of GCR 200 and GCR 203(iii), holding that their duties had concluded.
6. The appellant then applied to Motorsport South Africa ("**MSA**") for leave to appeal against the penalty and the Stewards' refusal to entertain his protest. MSA refused leave.

7. The appellant then applied for reconsideration under GCR 212(A)(v). On 28 February 2025, the National Court of Appeal (NCA) granted leave to appeal, finding that *“Leave to appeal to a court of appeal against the Stewards’ finding that the protest was inadmissible in terms of GCR 203 iii) is granted to the applicant.”*
8. In granting leave to appeal, the NCA stated, *inter alia*, the following:
 - 8.1. *“In particular, no stance is adopted for or against the reasons for the admitted late filing of the protest, the alleged failure of the CoC to have afforded the applicant a hearing as contemplated in GCR 175 before imposing a penalty or the alleged inappropriate penalty relative to the admitted transgression of SSR 46 iii).*
 - 8.2. *Where the Stewards give a finding on the admissibility of the protest (obviously in the event of having found that it is inadmissible), the protester has a right of appeal on that issue only. He/she need not apply for leave to appeal. The GCR provides that he/she “may appeal”. Only if he/she is successful with the appeal regarding the admissibility, may the grounds of the protest (the merits) be dealt with.*
 - 8.3. *It is deemed unnecessary to direct at this stage or express a view whether in such an instance the merits are to be dealt with by the court hearing the appeal or whether it must be referred back to the Stewards for them to consider such merits. **The former option appeals to one’s sense of practicality and expediency.** The latter option seems to accord with the last sentence under GCR 201 iv). In order not to fetter what may be a discretion of a court of appeal, this court adopts no firm stance on the issue and intentionally refrains from doing so.”*

9. The appellant has now delivered a formulated appeal in terms of GCR 212(A)(iii), seeking that the 21-second penalty imposed by the Clerk of the Course be set aside, and that he and his team be reinstated as the winners of the 9-Hour event.

THE EVIDENCE PRESENTED

Mr. Visser:

10. Mr. Visser testified that the irritation in his eye began approximately 30 minutes before the end of the race but became severe during the closing stages.
11. With around 10 minutes remaining, and while the race was under safety car conditions, he briefly removed his left glove to clear his eye and then immediately replaced it.
12. He explained that he understood from the driver's briefing that the pit lane would be closed during the final 15 minutes of the race. Based on this belief, he did not consider entering the pits an option.
13. Upon further questioning by the Court, he accepted that the irritation had been "*manageable*" earlier, and that he could theoretically have pitted before the safety car was deployed, but stated that the problem worsened towards the end.
14. Mr. Visser said he believed that removing the glove momentarily, while under the reduced speeds of the safety car, was the only safe solution available.
15. He confirmed that following the race, he was informed of the penalty, saw the penalty form (signed by his entrant, Mr Barlow, at approximately 22h30), and understood the basis of the sanction.

Mr. Barlow:

16. Mr. Barlow was called with Mr Nuns to the Clerk of the Course's (COC) office. They were informed of the glove incident (seen on TV) and initially told exclusion was possible.
17. After discussion, the penalty was agreed as the equivalent of a drive-through, calculated at 21 seconds.
18. Mr. Barlow stated they could not file a protest immediately because:
 - 18.1. The team was engaged in prize giving and post-race formalities;
 - 18.2. Visser had just completed a long stint and required recovery; and
 - 18.3. By the time they regrouped, the stewards had left.
19. The protest was therefore only submitted on Monday, 2 December 2024, with reasons provided for the delay.

Officials' Evidence (Mr. Schultz, Richards and Eva):

20. The pit exit closes only with 5 minutes left, not 15. At the time of the removal of the glove (7 minutes 25 remaining), the pit lane was still open for a further 2 minutes 25.
21. The penalty was signed at 22h30 and posted on the notice board at 22h45. The stewards remained available until 23h15, during which the team could have lodged a protest or requested an extension.
22. The team was reminded of their protest rights at the time. No request for extension was made.

23. Under the 2024 endurance racing rules, all dealings are conducted with the entrant or team manager, not with the driver. That is the standard procedure. It is simply impractical to call drivers for hearings during a race.

GCR 175 AND THE PROTEST

24. GCR 175 states that:

“Except where circumstances make it impossible to do so, before imposing any penalty, the Clerk of the Course and/or Stewards of the Meeting ... shall summon the parties concerned to appear before them...”

25. It was not impossible to call Mr. Visser to the hearing where the penalty was discussed with the team manager and imposed. The explanation that drivers are not called during a race was irrelevant, as the race had already concluded. By excluding Mr Visser, the officials denied him the opportunity to be heard on the very conduct for which he was penalised. His right to a fair hearing required that he be present and allowed to explain why he removed his gloves.
26. Although the protest was not lodged in strict compliance with the GCRs, the failure to afford Mr. Visser a hearing under GCR 175 vitiated the proceedings. To exclude his protest on that basis would be unjust. This Court will therefore consider the merits directly, as a referral back to the Stewards would only cause further delay.

EVALUATION OF THE EVIDENCE:

27. Mr Visser was not prevented from entering the pit lane to deal with the problem. The pit exit remained open until five minutes before the end of the race, and at the time of the incident, there was still sufficient time to do so. His failure to pit was the result of a misunderstanding on his part regarding the pit lane closure rule, not an objective impossibility.

28. The rules are unequivocal: drivers must remain dressed correctly in the prescribed safety apparel at all times during racing conditions. This obligation applies equally under green flag conditions and when circulating behind a safety car. To allow drivers to disregard these provisions based on their own assessment of safety would undermine the integrity of the regulations and create unacceptable risk.
29. The discomfort complained of was not an unforeseen emergency; it had been ongoing for approximately 20 minutes at that time. If it was serious enough to warrant removing a glove, the correct course was to enter the pit lane. His decision to remain on track while breaching the rule cannot be condoned.
30. The Court finds no fault with the penalty imposed. Mr Visser's breach was clear, and had he entered the pit lane to remove his glove, he would have lost at least the equivalent of a drive-through penalty. The Stewards acted reasonably in fixing a 21-second penalty as the equivalent of a drive-through, and the sanction was both proportionate and appropriate.

FINDINGS OF THIS COURT:

The Court accordingly makes the following finding:

1. The appeal is dismissed.
2. The costs of the appeal are forfeited to MSA.
3. The parties are reminded of their rights in terms of GCR 212 B.

The date of this judgement is 25 August 2025.