

**DECISION IN RESPECT OF NATIONAL COURT OF APPEAL NO. 158  
LODGED BY WAYNE MASTERS (FATHER OF COMPETITOR KEAGAN  
MASTERS) IN RESPECT OF AN AGE DISPENSATION**

The NCA appeal was heard in the MSA Boardroom on Tuesday the 20<sup>th</sup> of May 2014 at 17h30 to 18h30

**PRESENT:**

Advocate P Carstensen	Acting Court President
Advocate G. T. Avvakoumides	Court Member
Mr M Clingman	Court Member
Attorney G Geysler	Court Member
Mr Wayne Masters	Father of Keagan Masters
Ms Alison Atkinson	MSA Scribe
Mr Wayne Riddell	MSA Sporting Services Manager
Advocate A. Mundell SC	On behalf of Masters
Attorney H North	On behalf of Masters
Attorney M North	On behalf of Masters
Mr A Scholtz	MSA CEO Operations

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**1. INTRODUCTION**

- 1.1 The Acting Court President introduced the court and welcomed everybody.
- 1.2 There were no preliminary matters or objections to the constitution of the court.

**2. APPEALS PROCEDURE**

- 2.1 This appeal emanates from MSA Court of Appeal 410.
- 2.2 The application for leave having been granted on the 10<sup>th</sup> of April 2010.

2.3 Appeals have been lodged against the decision of the MSA Court of Appeal by both Wayne Masters, on behalf of his son Keagan Masters, and by the MSA Sporting Services Manager.

### **3. BACKGROUND**

3.1 The MSA received an application for an age dispensation from National Junior Karting Member Keagan Masters on 13<sup>th</sup> November 2013.

3.2 The MSA, represented by the Karting Commission, declined the age dispensation application on 17<sup>th</sup> February 2014.

3.3 The MSA Court of Appeal 410 held on 18<sup>th</sup> March 2014 directed that the dispensation should be granted for Regional Championship classes, including DD2 and Max Challenge, but not granted for X30 and Super Rok in the National Championships.

### **4. GROUNDS OF APPEAL**

4.1 Although the CoA 410 found that Keagan Masters had “ample racing experience and talent”, nevertheless the court did not grant dispensation for the National Championship, but gave no reasons for that decision.

4.2 GCR 127 provides that: *“MSA IN ITS SOLE DISCRETION*

*RESERVES THE RIGHT TO: (i) Issue a licence to an applicant who may not have the stipulated minimum qualifications but who can satisfy MSA as to his ability and/or experience, full particulars of which MUST be submitted in writing in support of his application”.*

4.3 There is no dispute from any party in regards the finding of the Court of Appeal that Keagan Masters does have both ability and experience. Neither was there any contrary evidence placed before the National Court of Appeal, rather:

4.3.1 in the appeal of the MSA Sporting Service Manager, it was stated that *“MSA does not dispute the applicant’s talent or level of ability as far as kart racing is concerned”;*

4.3.2 this was reiterated and confirmed at the hearing.

4.4 The appeal was launched by MSA (and the grant of dispensation opposed) on the basis that:

4.4.1 Firstly *“MSA’s Board of Directors took a decision in early 2008 to disallow dispensations on the grounds of age and this policy has been consistently applied since”.*

4.4.2 Secondly, it was stated in the appeal that the appeal simply revolves around the principle of whether under age

competitors should be allowed to compete, the potential complications this causes and the necessarily subjective nature of decisions in this regard.

4.4.3 Thirdly, the findings of CoA 410 *“fly in the face of this policy and create a dangerous precedent for the future”*.

4.5 At the hearing the MSA presented the minutes of aforementioned Board decision on which the MSA’s appeal hinged.

4.6 The Board’s decision, however, does not read as stated in the MSA’s appeal. The minute, rather, reads as follows: *“The Chairman reiterated that dispensations do **NOT** exist in motorsport and could not be allowed. **AGREED**”*.

4.7 It was common cause during the hearing of the National Court of Appeal that that statement was factually incorrect. In fact, at the time that that decision was made in 2008, dispensations did exist.

4.8 In any event, the aforesaid statement in the minutes is a recordal of fact and not a “resolution”.

4.9 Furthermore, insofar as the resolution states that dispensations “could not be allowed”, it is clear:

4.9.1 firstly that that statement does not refer only to dispensations

in regard to age; and

4.9.2 secondly, is incorrect on a point of law. The GCR's clearly allow dispensations, and dispensations indeed can be granted (or allowed) but only if the applicant for a dispensation can satisfy MSA as to his ability and/or experience.

4.10 In this instance, it is quite clear that the applicant satisfied the MSA and the CoA 410, as to both his ability and experience.

4.11 There is no basis whatsoever to suggest an interpretation of GCR 127 which makes it applicable only to dispensations other than age, and neither is this limitation recorded in the minutes of the Board of Directors.

4.12 It is also pointed out that GCR 127 as quoted above was only promulgated with effect from the 2013 year and consequently, GCR 127 did not exist at the time that the Board Resolution was granted. Indeed, the aforesaid minutes seem to envisage a change to the GCR's

4.13 Clearly, the recordal in the minutes does not preclude the ruling which is sought by Keagan Masters and in any event, GCRs (subsequently promulgated) must override any such "decision",

which “decision” as stated above is, in any event, factually and legally incorrect.

4.14 As an aside, the Court notes the concerns and consequences highlighted by MSA, however, the Court’s view is that these concerns are adequately addressed by GCR 127 insofar as if the MSA is not satisfied as to an applicant’s ability or experience under the rule, it may refuse the dispensation.

4.15 Each application is required in terms of the GCRs to contain full particulars and to be submitted in writing. Consequently, each application must be considered individually and on its own merits.

4.16 The evidence placed before the MSA, the Court of Appeal and this Court on behalf of Keagan Masters, more than adequately meets the requirement set out in GCR 127. Reference was made to Keagan Masters’ experience, age, ability, weight, size, results and international experience, none of which were disputed and all of which justified the grant of the dispensation requested.

## **5. FINDING**

5.1 Consequently:

5.1.1 the appeal of Keagan Masters is upheld;

5.1.2 the appeal of MSA is dismissed;

5.1.3 it is directed that Keagan Masters be granted an age dispensation in respect of both Regional and National Karting Championships, including DD2, Max Challenge, X 30 and Super Rok classes;

5.1.4 any appeal fee paid by Keagan Masters is to be repaid.

**6. NOTE:**

6.1 The National Court of Appeal expresses its view that:

6.1.1 the provisions of GCR 127 require the MSA to individually consider the merits of each application for a dispensation made by the applicant and in terms of the requirements of GCR 127;

6.1.2 applications must be fully supported by adequate particularity regarding the ability and experience of the application;

6.1.3 in respect of an application for age dispensation, the MSA should take into account such evidence which one would expect to accompany such application, such as evidence from a COC, evidence from co-competitors, evidence from

the applicant's club chairman, evidence of the applicant's age, weight, size, ability, experience, results, maturity and qualifications. This list is, however, neither inclusive nor exclusive.

FINDING GIVEN AT SANDTON ON THIS 30<sup>TH</sup> DAY OF MAY 2014

**P L CARSTENSEN  
G. GEYSER  
M CLINGMAN  
G. T. AVVAKOUMIDES**