



# MOTORSPORT SOUTH AFRICA NPC

Reg. No 1995/005605/08

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## MSA COURT OF APPEAL 405

**APPEAL LODGED BY CAROLYN SWAN CAR #2 AGAINST FINDINGS OF THE STEWARDS AT THE CAPE TOYOTA DEALER RALLY EVENT HELD AT ON THE 13<sup>TH</sup> & 14<sup>TH</sup> SEPTEMBER 2013. HEARING HELD IN THE MSA BOARDROOM ON THE 7<sup>TH</sup> OCTOBER 2013 AT 18h15.**

Present:	Vito Bonafede	–	Court President
	Wayne Riddell	–	Court Member
	Dick Shuttle	–	Court Member
	Thomas Lown	–	Clerk of Course
	Darryl Dickinson	–	Marshal SS5
	Carolyn Swan	–	Appellant (Navigator Car #2)
	Johnny Gemmel	–	Appellant (Driver Car #2)
	Glynn Hall	–	Toyota Motorsport
	Robin Houghton	–	Navigator Car #24
	Mark Cronje	–	Driver Car #24
	Hugh Du Plessis	–	Calog SA
	Gareth Vernon	–	Rally Time Monitoring
	Karin Britton	–	MSA Scribe

Prior to the commencement of the hearing, the court members convened to investigate what appeared to be a lack of procedural documentation. During this meeting it became evident from the outset that the bundle of documents supplied to the court was lacking some important pieces of documentation. These are listed below:

1. No notices from the CoC imposing any penalties on the weekend in question – More so, the jump start penalty allegedly imposed on car #24
2. No set of official signed off rally results
3. No signed copy of the notice of appeal or the associated times to it
4. No signed receipt of the correct fee lodged for the appeal (It is however noted that an appeal fee of R5000 was paid to MSA on the 20<sup>th</sup> of September for this appeal)

The MSA appointed sport co-ordinator was asked if she was in possession of these documents, to which she replied in the negative.

Based on the above, the Court President felt it pertinent to hear this appeal in two parts.

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sport & recreation  
Department:  
Sport and Recreation South Africa  
REPUBLIC OF SOUTH AFRICA



Directors: S. E. Miller (Chairman), A. Scholtz (CEO – Operations), A. Taylor (Financial), K. G. Doig, J. du Toit, M. du Toit, P. du Toit, D. Lobb, N. McCann, C. Pienaar, B. Sipuka, D. Somerset, L. Steyn – Hon. Presidents : T. Kilburn, Mrs. B. Schoeman

At the commencement of proceedings, the President introduced the court members and there were no objections to the composition of the court.

The President then proposed to those present that the court felt that it needed to hear this appeal in two parts. Namely the first part to conclude the apparent lack of procedural documents present and that the appeal was in fact correctly lodged, or not, including the procedural documentation associated to the appeal. This would then be followed by part two of the appeal, the basis for the actual appeal which pertains to the alleged jump start by car #24 at the start of SS5 of the Toyota Cape Dealer Rally.

The court then asked the Clerk of the Course, Mr Thomas Lown, to help the court draw a timeline of the events that unfolded from the start of SS5 up to and including the end of the rally where the alleged protests and appeal then took place.

The CoC, while giving evidence, conceded that at no point had he ever actually issued a penalty to car #24 for a jump start infringement as prescribed by the regulations.

Then, when asked if he had produced a final set of rally results, he claimed he had already furnished these to MSA. He was told that the results he furnished were un-signed and in fact the court noted that the results furnished to MSA were only provisional as they had only reflected the results up to and including SS7.

The CoC then reached into a file and produced a signed copy of the final race results which he furnished the court.

The court members noted that these were signed and dated for Saturday 14 September at 17H35. Added to this, the court also noted that the results supplied by the CoC were an original and not a copy. In the attempt to create an accurate time line, the signed results set the first solid time in the timeline. This now lead the court to ask what time Car#24 had lodged a protest on the results of the event and why.

Mr Houghton, the navigator for car #24, stated that they believed they had won the rally but were told by officials to line up in 2<sup>nd</sup> place for the podium ceremony. The time of this protest against the rally results was at 16h00.

The court then asked Mr Houghton if he had seen a set of signed results stating they were 2<sup>nd</sup>. He conceded to not seeing having seen any such document. Therefore the protest was lodged while there were no actual results posted showing that car #24 had received a penalty. This protest was therefore lodged approximately 90 min before the official results (signed and time stamped) were posted on the notice board.

This then prompted the court to ask Mr Gemmel of car #2 if he believed that he had been placed in the correct position for the podium. He confirmed that he believed that he was the winner of the rally due to a jump start penalty imposed on car #24. When asked if he had seen any official results published listing him as the winner of the rally, he conceded that he too had in fact not seen anything of the sort.

In an attempt to complete an accurate timeline, the court then asked Carolyn Swan of car #2 what time they had lodged the appeal and if they had a copy of the appeal lodged as it was not available to the court at this point. Mr Glynn Hall of Toyota interjected stating that the proof of the appeal and the exact timing can be found on the phone of the MSA steward Mr Willie Du Plessis.

The court president was rather puzzled and asked how this could be and why it was on the MSA steward's phone, to which Mr Hall responded that he had lodged his appeal via SMS to the MSA steward as he, the MSA Steward, was on his way to the airport.

When asking where the second steward and race secretary were, the court was informed that they were still at Rally Headquarters. When Mr Hall was asked why he had not given a written appeal to the officials at rally headquarters as prescribed by the regulations, he had no answer.

The court had no need to ask as to the whereabouts of the documented appeal fee on the day as it had already noted that the payment was made by Carolyn Swan on the 20<sup>th</sup> of September, which was 6 days after the SMS was sent to the Steward.

This then brought an end to part one of the hearings as the court had now established the whereabouts of the missing documentation and a clear timeline of the initiation of the relevant pieces of missing documentation.

The Court President then informed those present that the court wished to take a quick recess to discuss its findings at this point.

Upon re-convening a few minutes later the Court President announced the following verbal finding to those present:-

That the appeal was inadmissible (no signed documentation of the intention to appeal and no appeal fee paid within the time frame required by the regulations) and failed due to a number of inconsistencies in the official documentation, and that the official written findings would be published within the next few days.

For matter of record, post the court hearing the court contacted Mr Hannes Visser, the person responsible for the television crew for the event to establish the timing of the filming of the podium ceremony. Mr Visser confirmed that the podium ceremony had been delayed by around half an hour to around about 16h10, due to confusion as to which crew should take the top step. This is consistent with the testimony received from Mr Houghton of car #24.

**These are the written findings referred to above:**

Therefore, in understanding all the information in getting all the feedback from the parties regarding the appeal that has been submitted by Toyota through Carolyn Swan, the court unanimously finds that the appeal is invalid and the invalidity is for the following reasons:-

- 1) There was no penalty officially issued to car #24 by the CoC, in contravention of GCRs 157 and 175.
- 2) There was no official notification of the results which included that penalty.
- 3) There was no protest actually lodged against any official documentation as the only official documentation in the court's possession is the official results as posted at 17h35 on the day in question. These are the first record of official posted results and these results could have been protested.
- 4) No documented protests against these results were ever lodged in the prescribed time as per GCR 200.
- 5) The payment for the appeal was not made within the prescribed one hour against the decision of the stewards but in fact only paid via cheque to MSA on the 20<sup>th</sup> of September, in contravention of GCR 214 A (i).
- 6) For this reason, the appeal against the alleged protest fails in the absence of an initial protest, as well as the lack of the prescribed written notice of intention to appeal with the prescribed fee paid in time as per GCR 214 A (i).

As for the abject failure of the officials on the day, the court further found as follows:-

- 7) The Clerk of the Course failed to issue any formal penalties, in contravention of GCRs 156, 157 and 175.
- 8) The Clerk of the Course failed to publish the official race results timeously, in contravention of GCR 156.
- 9) The MSA steward failed to refuse to accept an appeal via SMS, in contravention of GCR 152, as well as conducting an erroneous hearing of a protest lodged at 16h00 without any results to be protested against actually having been published.

The court therefore rules as follows:-

- A. The appeal is ruled inadmissible for the reasons stated above and therefore fails.
- B. The Clerk of the Course, Mr Thomas Lown, failed in his duties and was guilty of a range of GCR violations and is therefore downgraded to a Grade B licenced Clerk of the Course. This grading to remain in place for a period of at least 12 months from the date of these findings.
- C. Mr Lown is further fined the sum of R5000-00 to defray costs incurred by MSA in having to fly both the CoC and start marshal for SS5 to the hearing of this failed appeal, which most certainly could have been averted had he performed his duties as prescribed .
- D. The MSA steward, Mr Willie du Plessis, is reprimanded for allowing the hearing of a protest submitted in questionable circumstances.
- E. The official results of the event are those signed and issued by the Clerk of the Course at 17H35 on 14<sup>th</sup> September 2013.
- F. Competitor Houghton is reminded to acquaint himself with the regulations, especially the rules around protests and the associated time limits.

In view of the failure of the appeal, the appeal fee submitted stands to be forfeited.

All parties are reminded of their rights of appeal to the MSA National Court of Appeal, but are further reminded of the provisions of GCR 216.

It would be remiss of this court not to mention that it has become very evident that, although a friendly, professional and courteous atmosphere and environment is encouraged at events, a degree of familiarity may very well have crept into the relations between officials and competitors to the point where it may well have bred an element of contempt for the prescribed rules and processes. The court frowns on this type of relationship between competitors and officials and cautions all people involved with an event to respect the natural boundaries that should exist between competitors and officials.

These findings issued by email.