

**MOTORSPORT SOUTH AFRICA
NATIONAL COURT OF APPEAL, 1078**

APPELLANTS

**Conrad Rautenbach First Appellant
Team Castrol Toyota /
Johnny Gemmell Second Appellant**

IN RE

**Appeal arising from the findings of
MSA Court of Enquiry 1078**

**DATE OF HEARING: PART 2
22 November 2011**

Present (Officials):

**Advocate
Advocate**

**André P Bezuidenhout
Paul Carstensen
Mike Clingman
Allan Wheeler**

**Court President
Court Member
Court Member
MSA Manager Sporting Services: Non-Circuit**

INTRODUCTION

1. This is the second part of the judgment of National Court of Appeal 1078.
2. The history of this matter was summarised in the first part of this judgment, handed down on 13 October 2011. There is no need to repeat same herein. Since 13 October 2011 further procedural directives were issued, the detail of which is on record.
3. At the commencement of the hearing on 22 November 2011 this Court accepted, as part of the Appeal bundle, a document marked “C1” to “C45”. The document was styled “*Submission of Stewards*”. This Court determined during the hearing that this document was prepared by Mr Steve Harding (“Mr Harding”), the Chairman of the Stewards at the rally.
4. Part 2 of the hearing was originally identified by this Court to entail the issue as to whether there was indeed shortcutting and deviation from the prescribed route by competitors and the consequences thereof. Conrad Rautenbach (“Mr Rautenbach”) contends that there was no reason why the Court of Enquiry had to set aside the penalties imposed by the Clerk of the Course and / or the Stewards and in addition, that the shortcutting and deviation should result in a finding that the rally should be rendered null and void and that no classification for results should be made.

(see Appeal Bundle, annexure A)

5. Adv M Hellens SC (“Adv Hellens”), who represented Mr Rautenbach in part 2 of the hearing, at the outset, informed us that he intended to present evidence and submissions to this Court that, in addition to the shortcutting allegations and the consequences thereof, (paragraph 4.2 of the Notice of Appeal of Mr Rautenbach), there was evidence that reconnaissance was also undertaken by other competitors and that he intended to revisit that issue. This Court afforded Mr Rautenbach the opportunity to address the issue of reconnaissance by other competitors only insofar as it may support the fourth ground of appeal that Court of Enquiry 1072 erred in failing to cancel or render null and void, all the controls and stages of the rally.

(see Appeal Bundle, annexures A1 and A2)

LEGAL AND FACTUAL ISSUES WHICH ARISE IN PART 2 OF THE HEARING

6. In the National Court of Appeal’s view, the following material legal and factual issues (“the material issues”) crystallized in part 2 of the hearing:

- 6.1 whether there was shortcutting and deviation from the prescribed route by competitors;
- 6.2 whether competitors other than Mr Rautenbach and Mr Gemmell reconnoitred stage 1 of the rally;
- 6.3 whether the route notes (“the pace notes”) and DVD supplied by Leon Botha (“Mr Botha”) encouraged shortcutting;
- 6.4 what the status of the pace notes were, with reference to the GCR’s, SSR’s and SR’s;
- 6.5 whether judges of fact were appointed to observe any infringements of, in particular, shortcutting;
- 6.6 whether, upon a positive finding by this Court as to the issues identified in 6.1 and / or 6.2 above, the consequences thereof should result therein that the general event organisation and organisational deficiencies were such as to render the rally null and void for all controls and stages of the event and consequentially, that no competitor should score any points therefrom.

BULLETIN #1

7. The material GCR’s, SSR’s and SR’s were dealt with by this Court in part 1 of the judgment. It is not necessary to restate any of these regulations.
(see NCA 1078 judgment – part 1, paragraph 25 to 42)
8. This Court received a copy of Bulletin #1 issued by the Pretoria Motor Club, under the hand of the Clerk of the Course, Mr Du Plessis.
9. Bulletin #1 notified competitors that judges of fact would be appointed and deployed along the route. It stated the following:

“Judges of Fact will be appointed and deployed along the route to observe and report on any misdemeanours. A list of these officials will be displayed on the notice board at Rally HQ.”

(see Official Bulletin #1, Toyota Gauteng Dealer Rally 10 and 11 June 2011, General Notes 9)

10. In addition, under the general notes category of Bulletin #1, competitors were cautioned as to the taking of shortcuts on private land and the consequences for the future running of the event. It was reiterated in Bulletin #1 that judges of fact would be at hand to report infringements. It stated the following:

“Please do not cut corners or take shortcuts on the stages as these stages are on private land and the landowners will stop the event if this happens. Judges of Fact will be on hand to report any infringements.”

(see Official Bulletin #1, Toyota Gauteng Dealer Rally 10 and 11 June 2011, General Notes 1)

EVIDENCE RECEIVED

11. In the Rautenbach appeal, the evidence of Sarel van der Merwe (“Mr Van der Merwe”) was received.
12. In view of the importance of the appeal, all competitors who competed in the rally were invited, through a procedural directive, to participate in and to be represented at the hearing. Competitors and interested parties accepted the invitation and the evidence of the following witnesses was received:
- 12.1 Schalk Willem van Heerden (“Mr Van Heerden”), the route director of the rally;
 - 12.2 Mr Harding;
 - 12.3 Richard Leeke (“Mr Leeke”), the President of the rally commission;
 - 12.4 Robin Houghton (“Mr Houghton”), competitor and navigator of Mark Cronje, car number 24;
 - 12.5 Jeremy du Plessis (“Mr Du Plessis”), the Clerk of the Course;

12.6 Winstone Jordaan (“Mr Jordaan”), a mathematician who assisted in the preparation of an expert report contained in the Appeal Bundle.

(see Appeal Bundle, annexure C5 and further)

13. This Court issued a procedural directive in an attempt to receive further evidence of Mr Botha who was listed as a “*Senior Official*” in the regulations of the rally. Mr Botha did not attend this part of the hearing and his additional evidence was not received.

(see Appeal Bundle, annexure D4)

THE FACTS

14. Substantial video footage was submitted to this Court by Mr Rautenbach. The video footage was admitted as exhibit 1. It comprises:

14.1 in car video footage of several competitors (“the in car footage”);

14.2 video footage taken by a production company which covers the South African National Rally Series (“the public footage”).

15. Mr Rautenbach did not testify in part 2 of the hearing. Mr Rautenbach was asked by his Counsel to simply identify competitors and specific aspects of the video footage for identification purposes only. He was not submitted to cross-examination on these issues. No person present raised any objection against this process of identification as it was expedient to ensure correct identification of portions of the video footage when Mr Van der Merwe testified.

16. It is not necessary, for current purposes, to summarise all the evidence of all the witnesses. The evidence is on record. Large portions of the facts were uncontested by any of the attendees at the hearing and are dealt with by this Court below.

17. A large portion of the evidence focussed on pace note instruction 55 of stages 2 and 4 of the rally. The two stages were an identical repeat and appear at two different portions of the Road Book.

(see Road Book, pace note instruction 55, page 19 and page 38)

18. For ease of reference, these two pages of the Road Book are attached to this judgment, marked annexures “**X1**” and “**X2**” respectively.

19. The pace note, prepared by Mr Van Heerden, indicates a ninety degree turn to the right under the instruction column "*Direction*". A (faintly marked) slipway to the left also appears on the pace note. In addition, clearly marked on the right hand side of the route, were two parallel vertical lines. These lines were described under the "*Information*" column as "*DNC – Onto Grassy Track Pole on right*". The abbreviation "*DNC*" is common cause. It means "*Do Not Cut*".

20. It is convenient to deal with the video footage and the evidence of Mr Van der Merwe, as far as possible, jointly:
 - 20.1 Mr Van der Merwe is one of South Africa's most recognised motorsport legends. He is a multiple South African champion in both circuit racing and rallying. His evidence was presented on the basis of his expertise, being a competitor over many years;

 - 20.2 he testified that, in some instances, the video footage indicates that some of the competitors gained a 40% time advantage at this particular intersection;

 - 20.3 as to stage 2, the first four competitors navigated the route at route marking 55 correctly. The pole was on their right hand side when they executed the ninety degree turn. These competitors were Mr Rautenbach, Mr Gemmell, Hergen Fekken and JP Damseaux. The reference time used by Mr Van der Merwe for the competitors who executed the intersection correctly, was 10.2 seconds;

 - 20.4 he testified that he calculated the time benefit of the competitors who short-cutted the intersection by making use of two arrow markings which were fixed and clearly visible on the video footage;

 - 20.5 as to the following competitors, advantages (in some instances very substantial), were obtained by them by cutting the corner in different degrees of angle and severity making reference to the fixed points:
 - 20.5.1 competitor Wilken – 8.2 seconds;

 - 20.5.2 competitor Lategan – 7.8 seconds;

 - 20.5.3 competitor Du Plessis – 8.4 seconds;

20.5.4 competitor Poulter – 6.7 seconds;

20.5.5 competitor Habig – 10 seconds;

20.5.6 competitor Moosa – 6.4 seconds;

20.5.7 competitor Williams – 6.1 seconds;

20.6 on the repeat run of stage 2, which was marked stage 4, only Mr Rautenbach executed the intersection correctly by having the pole on his right hand side when he executed the turn;

20.7 the audio comment of several of the competitors could be heard during the in car footage. Some of them expressed their surprise in different levels of severity during the running of stage 4. For example, Mr Gemmell, during stage 4, indicated to his navigator “*we went around them*” (which this Court understood was to the earlier route followed for stage 2) (stage 2);

20.8 the public footage comprises approximately 52 minutes of recording. Specific portions of the public footage were viewed by this Court. It comprised approximately 18 portions of footage indicating a wide variety of incidents which can conveniently be summarised as follows:

20.8.1 incidents were shown which were inconclusive as to whether the competitor lost control and exited the route into a mielie field and back onto the route;

(video reading 19, competitor Poulter)

20.8.2 clear shortcutting by deviating from the route by several metres;

(video reading 17.15, competitor Wilken)

20.8.3 cutting a corner on the wrong side of arrows which mark the corner;

(video reading 25.20 and 25.35, competitor Kuhn)

20.8.4 navigating a corner at maximum speed making use of the route and the verge but not exiting the route to establish short cutting;

(video reading 40.15, competitor Poulter)

20.8.5 inconclusive evidence from which no finding can be made;

(video reading 46.10, competitor Moosa)

20.9 in his evidence regarding the video footage Mr Van der Merwe testified that the shortcutting evidence in the matter is of the worst examples which once can find in rallies. Large portions of the rally took place amongst mielie fields. In some instances competitors deviated forty to fifty metres off the route with no real consequences as they simply joined the route at a later point in time. He testified that what he saw was nothing new and that the type of terrain lent itself to shortcutting. According to Mr Van der Merwe there was no organised control to ensure that competitors followed the Road Book. According to him, landowners are aggravated by the conduct of the competitors displayed as portions of their crops are simply destroyed. The cutting through mielie fields can result in an unfair advantage as the terrain does not provide an obstacle for the competitor to return to the route. Rallies through forests and other terrains which have dangerous boundaries force competitors not to exit the designated route in fear of damage and injury. He stated that the evidence of shortcutting and disregard of the Road Book did not set a good example for motorsport competitors, organisers and for MSA. As to the unfair advantage obtained by shortcutting, he indicated that competitor Wilken secured an 8 second benefit in the one corner alone by shortcutting. He stated that shortcutting happens frequently until a competitor is caught. On a question by one of the Court Members, he indicated that running wide through a corner cannot be treated as intentionally trying to gain an advantage as it slows the competitor down. The cutting of a corner is intentional as the competitor gains an unfair advantage to shorten the route. In his view, the extent of the shortcutting evidenced from the video footage, was such that it had an adverse outcome on the rally. He emphasised that there were no judges of fact and as such, competitors will "*cheat*". He stated that if nothing is done, "*the cheating goes on*";

20.10 exhibit 2, being a typed list with reference to the first names of competitors was admitted by the Court. It identifies the specific public footage with reference to specific competitors.

21. The DVD containing the pace notes and manufactured by Mr Botha was admitted as exhibit 3. According to the regulations of the rally, the pace notes and the DVD were available to competitors on Friday, 3 June 2011.

22. As previously emphasised, this Court did not have the benefit of hearing the additional evidence of Mr Botha regarding material issues on the pace notes.
23. A specific portion of the pace notes was ventilated in this Court. At 17.32 of the DVD, a person was travelling in a motor vehicle towards the exact intersection identified in annexures “X1” and “X2”. It appears common cause that the person speaking on the DVD was Mr Botha. Upon approaching the intersection Mr Botha can be heard stating (words to the effect) “*there is still a pipe there...cut through...*”. The vehicle in which Mr Botha was travelling disregarded the Road Book and the route instruction. He executed the intersection with the pole on the left hand side as the vehicle was travelling, therefore shortening the route.
24. Mr Van Heerden is a seasoned route director, having been involved in organising events since 1995. He has competed in motorsport since 1983. He never met with Mr Botha to review the pace notes or to review the DVD prior to the rally. There were no judges of fact according to him. According to him, the pole at pace note 55 was clear when he laid out the route. It was “*almost in the road*”. When he prepared the pace note, he drew the parallel lines at pace note 55 to indicate the presence of the pole. He specifically drew the attention of the competitors thereto in the information column with a note “*DNC (Do Not Cut) Onto Grassy Track, Pole on right*”. From his point of view, he trusted that Mr Botha will follow the Road Book. In cross-examination Adv Hellens challenged Mr Van Heerden that SSR 193.14.1 specifically provides for reconnaissance by preparing pace notes which may include DVD footage. Mr Van Heerden conceded that Mr Botha was appointed by the organising committee as a “*Senior Official*” and that his involvement in the rally was not on an unofficial basis. He conceded that upon a proper construction of SSR 193.14.1, Mr Botha received the endorsement of the organising committee and of MSA to manufacture the DVD. Mr Van Heerden conceded that there should have been judges of fact appointed, notwithstanding that the rally was taking place over many kilometres. Mr Van Heerden maintained that it was impossible to place judges of fact everywhere.
25. Mr Harding testified that the pace notes had their origin from a request of competitors in previous years to receive pace notes. At the end of the first day of the rally, protests were filed and allegations were made of extensive shortcutting. The Stewards called for video footage to assist them in dealing with the protest. This was not available immediately. Approximately 60 hours of raw footage was later made available. Penalties were imposed and after further protests were filed regarding the widespread shortcutting a decision was

taken by the Stewards to deal with the protests in a specific manner. His report was filed to MSA. MSA then decided to convene a Court of Enquiry. He was surprised as to some of the findings of the Court of Enquiry, more particularly regarding the evidence regarding shortcutting as video evidence was available which substantiated the allegations of shortcutting. A judge of fact was appointed by the organising committee but he could not say whether the judge of fact indeed executed his duty. In his view the organising standards of the rally could only be described as fair which was unacceptable for a national rally. In his view the shortcutting was so significant that the sanctions which the Stewards imposed were insufficient. The evidence available to the Stewards indicated that many competitors were guilty of shortcutting but that there may have been many more whose conduct was undetected. In his view it was virtually impossible to separate the guilty from the competitors who did not shortcut. In his view a broad score imposing of the same penalty to all the competitors for shortcutting would have been ineffective as it would not have penalised the offenders. On a very specific question put to him by Adv Hellens as to whether the integrity of the rally could be resurrected in view of the widespread evidence of shortcutting, he answered and agreed that he believed that the results of the stages (taking into account the shortcutting) could not be resurrected to the status and integrity of a rally where participants competed over the same course.

26. Mr Leeke testified that the pace notes and DVD were supplied by Mr Botha at the request of competitors. Mr Botha was given the status of a "*Senior Official*" in order to ensure his passage onto rally stages. When asked to comment on the conduct of Mr Botha in disregarding the Road Book, he answered frankly that this should not happen and was unacceptable. He pointed out that in the four years that the services of Mr Botha had been used by the rally commission, it was only the second time that such a mistake was made by him in the pace notes.

27. Mr Houghton testified. His examination in chief created the clear impression that he had a positive recollection as to the events of the day. He indeed stated with reference to video footage that the pole had changed position since the DVD recording of Mr Botha and that competitors were faced with a choice of either going to the left or the right of the pole as it was obstructing the route. He attempted to indicate that the road to the left of the pole was indeed the slipway identified on "**X1**" and "**X2**". There was no merit in this attempt of Mr Houghton to convince this Court that the route indicated in the Road Book indeed entered onto the "*grassy area*". In cross-examination by Adv Hellens the evidence of Mr Houghton was nullified. He conceded that he had no independent recollection of the events in question relevant to the intersection. He self-destructed his earlier version as to his

recollection when he indicated that he received the opinion of numerous competitors after the event and in effect simply came up with possibilities as to what could or could not have happened as a motivating factor why competitors shortcutted. At one point in time during cross-examination he even stated that “*I was not there*”. No regard can be had to the evidence of Mr Houghton in whatsoever regard.

28. Mr Du Plessis testified that he was the Clerk of the Course during the rally. A judge of fact was intended to be placed at the specific intersection but unfortunately such person had to attend hospital. The majority of the sixty to seventy individuals which assisted during the rally were dedicated to crowd control. He conceded that the course required the appointment of judges of fact.
29. Mr Jordaan testified that the satellite data recovered from competitors, albeit interesting, should not be used as the basis for any legal decision to establish the route which competitors travelled during the rally.

THE MERITS

30. Competitors in sport are entitled to a result for their efforts. Sport is a important part of our society and competitors in motorsport invest millions of rands annually for entertainment and their own gratification.
31. Competitors, event organisers and all interested parties in motorsport have an obligation to ensure that competition takes place in a healthy and competitive climate where the result of an event can be recognised with integrity and that the winner and minor placing competitors have excelled from the general body of competitors to earn their laurels.
32. The GCR's, SSR's, SR's and Bulletins are all designed to ensure that the “*rules of the game*” are fair to all participants and to establish certainty as to the rules. The Court of Enquiry remarked that millions of rands are spent on rallying and that the sport generates high public interest from various motor manufacturers, teams and competitors who are all anxious to derive every advantage possible in order to prevail over one another.
33. There is an obligation on all participants in motorsport to contribute from their own specific platforms to ensure that the integrity of the sport is maintained. MSA, through its different structures, event organisers and officials are largely providing an infrastructure for no

remuneration in order that competitors can compete in the public eye to pursue their passion of motorsport.

34. Upon review of the public footage, the tension as to potential breaches of the regulations was clear. The commentators to the public footage, at different points in time, repeatedly drew attention to shortcutting and reconnaissance of stage 1 by certain competitors.
35. At the heart of the Rautenbach appeal is the issue whether MSA, through its structures, should recognise a result (or even force a result) for an event which was fraught with controversy as a result of the multiplicity of breaches of the regulations. The mere fact that MSA appointed a Court of Enquiry to deal with the protests, counter protests and appeals, is self-evident as to the substantial discord which existed as a result of the events which transpired.
36. Against this notion lies a different contention. Not all competitors in motorsport are competing for the podium. The numerous classes of competitors indicate that there are enthusiasts with little or no chance of competing against the front runners, supported by manufacturers and with budgets extending to six digits and more per year. These competitors do not necessarily compete to "*derive every advantage possible in order to prevail over one another*" (the words of the Court of Enquiry). These competitors against whom there is no evidence of wrongdoing should be entitled to a result. Within their own means, they attended the event and expended substantial funds. They are entitled to a result as much as the front runners and championship contenders as long as they did not themselves breach the regulations.
37. It is against the backdrop of these important concepts that this Court adjudicates on the six issues which arose in this hearing (it is convenient to deal with the issue whether competitors other than Mr Rautenbach and Mr Gemmell reconnoitred stage 1 of the rally first):
 - 37.1 the best evidence which Mr Rautenbach could produce was the video footage showing two individuals, who are, it is common cause, competitors, for a fleeting moment in discussion. The one person lifts his arm and points in a direction. This conduct, Adv Hellens submits is a clear indication that other competitors also reconnoitred the route of stage 1. One of the Court members asked whether the hand signal could not have been a signal pointing towards a spectator. The video footage was not placed in context with any reference to any specific conduct of

reconnaissance. It was merely a person raising his arm and pointing something out. It is not direct evidence. At best, it would be circumstantial evidence from which one could be asked to make an inference. To make an inference that the person in the fleeting moment was involved in reconnaissance would be speculation or conjecture. There are no facts from which one can derive a reasonable inference that the person was indeed conducting reconnaissance or was pointing towards the stage or the route. Their position at the time with reference to where the stage was, was not determined. In the absence of positive, proved facts, the method of inference fails in this instance and this Court finds that it would be speculative to accept that the hand signal constituted reconnaissance;

37.2 the evidence is overwhelming that there was wide ranging shortcutting and deviation from the prescribed route by competitors. Mr Rautenbach, in his appeal, focused on the intersection identified in annexure “X1” and “X2”. The public footage indicates, in addition to the in car footage, that at several intersections shortcutting was prevalent. As Adv Hellens eloquently submitted, each of the competitors was competing in their own rally according to their own route. This submission is based on the extensive evidence of the shortcutting. The report of the Stewards (annexures F4 and F5) detail the instances where Mr Botha deviated from the Road Book in his pace notes. Objectively, therefore, apart from the focused area of the intersection adumbrated during the appeal during stages 2 and 4, there exists objective evidence that competitors were induced to shortcutting at different intersections. A remarkable difference in time which it took for competitors to execute the specific intersection was determined by Mr Van der Merwe. His evidence was not challenged at all in this regard by any of the parties present at the hearing. There is an obligation on event organisers and officials to ensure that there is sufficient manpower to monitor the compliance of competitors. Whilst there is a high obligation on competitors to ensure that they compete within the ambit of the “*rules of the game*”, it is unrealistic to expect of competitors to be self-policing thus exonerating officials from their responsibilities to ensure healthy competition within the ambit of the regulations. The level of competition in rallying is indeed fierce. Increments of seconds may make the difference between winning or losing, not only a stage, but also an event and a championship. The event organisers clearly foresaw the need to introduce a judge of fact. In addition, they warned competitors against shortcutting and its consequences. A review of the in car footage clearly demonstrated that the early competitors who respected the intersection on stage 2, mostly disregarded the official route by the time stage 4 was ran. By that point in

time, there were clear marks of shortcutting and the one competitor after the other followed the newly laid tracks which shortened the route substantially. Adv Hellens submitted that it was impossible to separate the wrongdoers from those that complied with the rules. He argued that there is indeed no moral landscape or light to guide a decision within the ambit of the extensive shortcutting. The evidence establishes that there was widespread shortcutting and deviation from the prescribed route by a variety of competitors, some who were identified and others not. This Court in its deliberations considered to render null and void, only stages 2 and 4 where Mr Rautenbach presented the bulk of his evidence. The report of the Stewards to MSA, indicating multiple disregards of the Road Book by Mr Botha in the pace notes, constitute independent evidence that the shortcutting was prevalent and widespread during the rally;

- 37.3 the pace notes produced by Mr Botha clearly encouraged shortcutting. During the hearing, one such example received substantial focus. The report of the Stewards dealt substantially with this issue. No person present at the hearing contested that the report of the Stewards in this regard, which indeed draws reference to multiple examples where Mr Botha encouraged competitors to breach the regulations;
(see *Appeal Bundle, annexures F4 and F5*)
- 37.4 the status of the pace notes was recognised by the event organisers. Mr Botha was appointed as a “*Senior Official*” (this Court does not deal with the issue whether he was indeed an official within the ambit of the GCR’s). In the published regulations, clear recognition was given to the status of the pace notes and the DVD and it formed part of the official program. To claim that the pace notes were “*unofficial*” would be artificial in the extreme. SSR 193.14.1 makes specific provision for approved reconnaissance through the issue of pace notes and DVD footage. There is a heavy responsibility on the person preparing the pace notes and DVD footage to ensure that the Road Book is followed and that competitors are not encouraged to breach the regulations. To encourage competitors to breach the regulations is a serious disregard of the duties of an official (this Court reiterates that there is no finding that Mr Botha was indeed an official within the ambit of the GCR’s) or interested party in motorsport endowed with responsibility of pace note preparation;
- 37.5 whilst a judge of fact may have been appointed to observe infringements, in truth and in fact, no such a judge was deployed nor executed his duties to observe infringements, in particular, shortcutting;

37.6 was the general event organisation and organisational deficiencies and the consequential conduct of the competitors who applied widespread shortcutting of such a nature that the event should be rendered null and void? It is the obligation of the structures of MSA to ensure that a result for motorsport events are achieved. That being said, this is not a blind ideal which should be pursued irrelevant of the events which transpired. If the non-compliance by competitors reaches such a level that the integrity of a result itself and the fibre of a fair sporting competition is undermined, there cannot be a fair result pronounced in ignorance of the events. In the present instance there was wide ranging non-compliance by a wide variety of stakeholders in the event. The event organisers were penalised by the Court of Enquiry for their failure to conduct the event organisation to a standard which a national rally demands. The absence of judges of fact at known problematic intersections which could have been exploited by over-zealous competitors through shortcutting were identified before the event took place. Notwithstanding, the event organisers took no steps to ensure the deployment of judges of fact. Competitors too are to be blamed for their blatant disregard of the bulletin prohibiting shortcutting. The competitors are equally to be blamed with the event organisers. The consequence of the disregard of the Road Book resulted in a competition which was not fair. The pace notes and the conduct of Mr Botha substantially contributed and may have been the origin of the chaos which followed in the event. It is not the task of MSA or this Court to reconstruct a result with integrity where the overwhelming evidence indicates that the contravention of the regulations was so wide that a fair and reasonable result cannot be achieved.

THE FINDINGS

38. This National Court of Appeal finds that:

38.1 there was widespread shortcutting and deviation from the prescribed route;

38.2 there is no reliable evidence that competitors other than Mr Rautenbach and Mr Gemmell reconnoitred stage 1 of the rally;

38.3 the pace notes supplied by Mr Botha encouraged shortcutting;

38.4 the pace notes supplied by Mr Botha were official reconnaissance notes within the ambit of SSR 193.14.1;

38.5 a judge of fact was appointed to observe the infringements at the event but that he was not deployed;

38.6 the general event organisation, organisational deficiencies and the widespread shortcutting by the competitors, result therein that the rally is rendered null and void for all control and stages and consequently, no competitor should score any points from the event.

39. The Appeal of Mr Rautenbach as to part 2 of the hearing therefore succeeds. All previous orders of tribunals dealing with the events of the rally are hereby set aside.

40. MSA is instructed to implement this judgment and to inform all competitors that the rally has been rendered null and void for all control and stages and consequently, no competitor should score any points from the event.

COSTS

41. The Appeal of Mr Gemmell failed. His appeal fees are forfeited. In addition, in terms of GCR 196, Mr Gemmell is ordered to contribute an amount of R5 000.00 of costs to MSA.

42. The Appeal of Mr Rautenbach is partly-successful. MSA is ordered to repay to Mr Rautenbach 50% of the appeal fees. In addition, in terms of GCR 196, Mr Rautenbach is ordered to contribute an amount of R5 000.00 of costs to MSA.

RECOMMENDATION

43. There is a substantial demand for manpower at motorsport events. During this hearing an issue was raised whether it is at all possible to deploy a suitable number of judges of fact within the current supply of manpower at motorsport events.

44. There is a strong international trend to oblige competitors to install tracking devices and / or in car video footage to ease the workload on officials.

45. It is recommended that MSA considers implementing suitable systems to track the movement of rally cars during national events and in car video footage to ensure that evidence is readily available as to the conduct of competitors.

Handed down at Johannesburg on this the 24TH day of November 2011.

Electronically Signed
Adv André P Bezuidenhout
Court President

Electronically Signed
Adv Paul Carstensen
Court Member

Electronically Signed
Mr Mike Clingman
Court Member