



# MOTORSPORT SOUTH AFRICA NPC

Reg. No 1995/005605/08

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## COURT OF ENQUIRY 1134 TO INVESTIGATE AN ALLEGED BREACH OF GCR 172 (IV) BY COMPETITOR RICK CARMODY. ENQUIRY HELD IN THE MSA BOARDROOM ON THE 11<sup>th</sup> AUGUST 2014 AT 18h00.

<b>Present:</b>	Paddy Venske	-	Court President
	Hector North	-	Court Member
	Eldrid Diedericks	-	Court Member
	Schultz Swanepoel		Clerk of the Course
	Terry Stidworthy	-	MSA Steward
	Ken Cromarty	-	Club Steward
	Divan Bierman	-	Complainant
	Armand Bierman	-	Complainant's Father
	Andre van Staden	-	Witness
	Heinrich Rheeder	-	Witness
	Jacques Bierman	-	Witness
	Simon Buisinne	-	Witness
	Mary-Ellen Carmody	-	Witness
	Rick Carmody	-	Defendant
	Huretha Carmody	-	Witness
	Wayne Riddell	-	MSA Sporting Services Manager
	Allison Atkinson	-	MSA Scribe

### INTRODUCTION

These are the findings of Court of Enquiry 1134. The hearing took place on the 11<sup>th</sup> August 2014. These are the written findings of the Court of Enquiry, which was properly constituted. The proceedings were recorded and accordingly for the purpose of these findings reference is confined mainly to the material issues.

The Court of Enquiry was called as a consequence of the Stewards' report dated 26<sup>th</sup> July 2014. A protest was lodged by Divan Bierman ('Divan') in which protest Divan complained of conduct by competitor Rick Carmody ('Rick'), which conduct was alleged *inter alia* to be intimidation and abuse.

The Stewards heard the protest and recorded this hearing in writing. The written document is headed "Protest Hearing No. 1". It is clear from the document headed "Protest Hearing No. 1" that the Stewards did not make a finding in respect of the protest delivered by Divan but instead referred the matter to Motorsport South Africa with a request that Motorsport South Africa invoke GCR 172(iv) and that Motorsport South Africa hold a Court of Enquiry.

### THE HEARING

Evidence was heard from all parties. Rick readily conceded that he regretted his conduct, apologised for his conduct and stated that he would accept any sanction levied against him as a result of his conduct. Notwithstanding his concessions, Rick disputed a number of the allegations made against him by Divan and the other persons present at the hearing but who are clearly connected to Divan's entry.

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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, L. Steyn – Hon. Presidents : T. Kilburn, Mrs. B. Schoeman

It was clear from the evidence of Divan, Armand Bierman, Heinrich Rheeder and Jacques Bierman that their conduct individually and collectively contravened GCR 172(iv).

The Clerk of the Course, Mr Schultz Swanepoel, gave evidence from which it is evident that there was conduct by Divan and the persons connected to his entry that both Schultz Swanepoel and Rick were subjected to that amounted to a breach of GCR 172(iv).

Mr Schultz Swanepoel's evidence was that he was unable to impose any penalties as a consequence of the behaviour of both riders and those present in the office at the time and that it was he who requested the Stewards to intervene.

Mr Schultz Swanepoel was unable to provide any explanation for his being unable to exercise the authority afforded to him in terms of GCR 156 other than to state that the number of people who had congregated in his office and around the entrance to his office made it impossible by their conduct for him to do so. Mr Schultz Swanepoel was also unable to provide any explanation as to why the Clerk of the Course report that he signed on the 29<sup>th</sup> July 2014 made no reference to these events or his failure to hold individual hearings as prescribed in GCR 175.

Both Stewards, namely Mr Terry Stidworthy and Mr Ken Cromarty, gave evidence from which it is clear that both Stewards had a reasonable and real fear that the animosity between Divan and his connections and Rick would escalate into something vastly more serious than a motorsport dispute.

GCR 172 provides details of misconduct and, in particular, GCR 172(iv) provides that any act which is prejudicial to the interest of MSA or motorsport generally shall be deemed a breach and disciplinary action may be taken against offenders. Prejudicial acts are specifically included through reference including intimidation either on track or off track, verbal and/or physical abuse, acts including comments and/or gestures which would reasonably be considered by the general public to be offensive or inappropriate.

#### **FINDINGS**

It is clear from the evidence that Rick and Divan, as a consequence of the conduct of those connected to his entry, have contravened the provisions of GCR 172(iv). Divan and Rick are each fined an amount of R5 000.00 in terms of Appendix R. An amount of R2 000.00 is suspended for a period of three years on condition that Divan and Rick do not again during the period of suspension contravene GCR 172.

In addition to the fines, Divan and Rick are prohibited from entering any competition in terms of GCR 19 read with GCR 113 for a period of 6 months. This penalty is wholly suspended for a period of 12 months on condition that neither Divan nor Rick again during the period of suspension contravenes GCR 172.

It was clear from the evidence that the source of the friction between Divan and Rick was Rick's entry into a racing series known as the 2014 Northern Regions Brunch Run Series. In this regard the Court finds that MSA should forthwith amend the Regulations and Specifications for the 2014 Northern Regions Brunch Run Series and in particular Regulation 1 to exclude entries from riders who are not new and/or social riders.

Mr Schultz Swanepoel's attention is directed to the provisions of GCR 156 and he is reminded that the Clerk of the Course has the supreme authority for the conduct of the meeting or competition and that he is not entitled to abdicate this authority to the Stewards. It is the view of this Court of Enquiry that Mr Schultz Swanepoel should have exercised the authority given to him in terms of GCR 157(i)(a).

These findings distributed via email on the 15<sup>th</sup> August 2014 at 12:35

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