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IN THE HIGH COURT OF SOUTH AFRICA

(NORTH GAUTENG HIGH COURT)

PRETORIA

CASE NO: 31885/11

DATE: 2011-11-18

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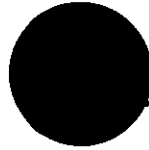
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In the matter between

MOTORSPORT SOUTH AFRICA

and

WORLD OF MOTORSPORT ZA & 2 OTHERS



Applicant

JUDGMENT

20 ERASMUS J: In this matter I heard argument on Tuesday, and indicated to the parties that I shall hand down judgement today. I have not prepared a written judgement and this judgement will be regarded as an ex tempore judgement. I want to indicate at the outset that I am not going to deal with all the points raised, either on the papers nor in argument and shall confine the findings as to what I perceive to be the primary points. The applicant seek an order against

the respondents for the relief as set out in the notice of motion which was amended during argument, after a previous application for an amendment sought, was opposed. For the reasons and conclusions I come to in this matter, it is however not necessary to deal with all the different attempts to amend, the nature thereof and the objections thereto.

In my view the matter turns primarily on the question whether the applicant herein made out a case for an interdict, more particularly whether it crossed the threshold of providing proof of a clear right.

The applicant claims that, it is a national federation as defined in section
10 1 of the National Sport and Recreation Act 110 of 1998.

That act defines a national federation as follows; "it means a national governing body of a code of sport or recreation activity in the Republic recognised by the International Controlling Body as "the only authority for the administration and control of the relative code of sport or recreation activity in the republic".

Therefore it is on this premise that the applicant brings its case.

In order for this court to establish that it is a national federation as defined, the applicant has to prove the following;

- (a) That it is a national governing body of a code of sport or recreational activity;
- 20 (b) It must be recognised by the relevant International Controlling Body;
- (c) That recognition must be, that it is the only authority for the administration and control of the relevant code of sport or recreational activity in the republic of South Africa.

Having said this, it does not follow that even from that definition and once the applicant has provided proof of the compliance with the definition that

it grants the applicant the exclusive right that he claims, I shall deal with that in a moment.

In the papers it was alleged that the applicant is recognised and authorised as a national governing body in that it was recognised and so authorised by the Domestic Department of Sport and Recreation, the South African Sports Confederation and Olympic Committee otherwise known as SASCOC, and the relevant International Motor sport Controlling Bodies.

It is common cause that in the definition the requirement of recognition and the authority of the first two mentioned domestic bodies is not relevant.

10 What is relevant is the recognition by the relevant International Controlling Body. In its founding papers that the applicant sought to provide proof of this in the following manner, and I quote from the founding affidavit;

"MSA is the only authorised national governing body for the administration, control, promotion and organisation of motor sport in South Africa, and it recognised and authorised by: 10.3 The relevant International Motor Sport Controlling Bodies as provided for in terms of section 1 of the Act, including Semicolon.

10.3.1 CIK: Commissioner International De Karting as per annexure FA 3 hereto.

20 *10.3.2 FIA: Federation International de l' Automobile as per annexure "FA 4" hereto.*

10.3.3 FIM: Federation International de Motorcyclisme as per annexure FA 5 thereto".

These annexures, that were referred to are printouts from documents without any supporting affidavits to explain its contents as from the documents

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JUDGMENT

itself it is not apparent that this complies with what the applicant sought it to be. What it must show, in order for the applicant to reach the threshold as I have indicated before, is that the relevant international controlling body would recognise them as the only authority for certain purposes, it is not apparent from these affidavits.

Might I add that, even the other documents in support of the department and from SASCOC also does not pass the evidential threshold, but it being irrelevant I shall not deal with that. Furthermore the requirement of the act is that, it must be the relevant international controlling body. Paragraph 10.3 as
10 quoted above says, it includes these ones. The applicant indicate that the inference to be drawn from this is that, and I quote;

"Consequently, the MSA, to the exclusion of all other bodies, holds the sporting authority to govern motorsport as confirmed or delegated by the FIA, CIK and FIM and all other international and national sporting bodies, associations and federations which means that it holds the exclusive right to take all decisions concerning the organisation, direction and management of motor sport in South Africa".

In a replying affidavit, that is the subject of another dispute, which I deem not necessary to decide, the applicant had correctly pointed out that, the National
20 Sport and Recreation Act is the legal basis upon which they were authorised to administer, control and promote this in South Africa. No such case was made out on the papers.

The applicant in an application must set out in its founding affidavit sufficient facts to disclose a cause of action. The evidence presented must be admissible evidence. All the necessary allegations upon which the applicant

relies must appear in the founding affidavit. The applicant will generally not be allowed to supplement their affidavit by adducing supporting allegation in replying affidavits.

In this matter the dispute arose in 2006 and it was ongoing, the applicant clearly should have been in a position to set out its case in its founding papers in a proper manner and get the necessary affidavits to support same, this was not done.

But even if I had admitted the replying affidavits, which was the subject of a dispute, it would not have helped the applicant to overcome this technical
10 hurdle. The applicants further argue that, within this definition of a national federation on which their case stands or falls the mere international recognition element thereof will clothe them with exclusive rights within the Republic of South Africa.

Although it is not necessary to decide this point as I have found previously that they failed to overcome the hurdle of proving a clear right by admissible evidence. It is not necessary to decide this point for that reason. But my view is that, such an interpretation would be untenable, that you can have an organisation, and by the mere virtue of them being recognised by an international body it gives them exclusive rights.

20 It could never have been the intention of the legislator that this section to be interpreted as such. This interpretation could be irrational, as it excludes domestic participants from activities on the basis of a competitors recognition abroad. There is a presumption that in the interpretation of statutes that one would not interpret the statute to the extend that it will have an unconstitutional result. If it is irrational it would be unconstitutional. Therefore even if the

applicant had overcome the first hurdle, they would still have been faced with the interpretation issue.

I am aware that disputes like this leads to unfortunate and unnecessary tension within the sporting world and in the country in particular. And I am with the applicant that, the purpose of the act was to promote and develop sport, but also one must read into the other sections of the act, it wants to create harmony hence it has a dispute resolution clause, where disputes can be resolved outside of the forum of the court.

Even though I have come to the conclusion that the applicant failed to
10 proof its case, I would advise the parties herein to seek the assistance and the guidance of the Sports Confederation on this case it is SASCOC and the Department of Sport and Recreation to assist in resolving this issue between them.

I am aware that attempts were made by the respondents to engage the relevant minister on this aspect. But it can not be in any ones interest, least participants of these sporting activities that these type of disputes are taken into the future.

For the reason that I have stated on the law and the facts of this matter, the application brought by the applicants is dismissed. Costs will follow the
20 result that, the applicant must pay the respondents costs including the costs of two counsel.