

AUSTRALIAN MOTOR SPORT APPEALS COURT

IN THE MATTER OF AN APPEAL by
DAVID SERA in relation to a decision of the
Australian Karting Appeal Court on 28 May
2008 in respect of charges against Mr Sera
at the National Karting Championships at
Eastern Creek on 8 April 2007

On 26 September 2008 this Court determined an application by David Sera to appeal out of time in respect of a decision of the Australian Karting Appeals Court (**AKAC**) dated 28 May 2008. The Court exercised its discretion pursuant to Rule 10 of Appendix G of the CAMS Manual of Motor Sport and granted the appellant leave to proceed with the appeal out of time. The Court further determined that the appeal should proceed by way of a rehearing based upon the information then before it. The Court also made directions in relation to the filing of evidence and required the parties provide an outline of argument.

The matter came on for hearing before the Court on Wednesday 22 October 2008.

Mr Paul Horvath, solicitor appeared for the appellant and Mr Steven King appeared for the Australian Karting Association.

In submissions filed with the Court, Mr Horvath submitted that in accordance with the rules of the Australian Karting Association the appeal to the Australian Karting Appeals Court should have been decided in favour of the Appellant. Mr Horvath referred to Rule 8.38(e), (f) and (g). The Rule provides as follows:

“8.38 Notices

- (e) The date for hearing of the Appeal shall be notified to all parties concerned within 60 days of receipt by the appropriate AKAC Registrar of the Notice of the Appeal or within 60 days of any directions hearing whichever is the latter.
- (f) Failure by the appropriate AKAC Registrar to notify all parties to the Appeal with the required time limit shall result in the Appeal being decided in favour of the Appellant and the appeal fee shall be returned to the Appellant.

- (g) Any date set for hearing of the Appeal shall be within 90 days of the date of receipt by the appropriate AKAC Registrar of the Notice of Appeal or within 90 days of the date of any directions hearing, whichever is the later, except that the date of the hearing of the Appeal may be altered by consent of all the parties to the Appeal.”

In its judgement of 25 September 2008, this Court set out a chronology of events from the time of lodgement of the notice of appeal by David Sera to the Australian Karting Appeal Court and the hearing on 28 May 2008. That chronology follows:

Unsigned/undated	29/6/2007	Notice of Appeal filed
	29/10/2007	Appellant to Registrar re Appeal Rules 8.38(e) and (g)
	7/11/2007	Registrar advises Appeal will “go ahead”
	13/11/2007	Appellant to Registrar re absence overseas
	28/11/2007	Registrar to Appellant re backlog and appointment of Ian Simpson AKAC Chairman (solicitor for AKA)
	8/1/2008	Sera to Registrar re 8.38(e) and (g)
	22/1/2008	Registrar to Appellant re Rules and Simpson’s appointment
	25/1/2008	Appellant to Registrar – not consent to Simpson
	15/2/2008	Registrar advises hearing on 5/3/2008. Date unsuitable
	8/5/2008	Registrar to Appellant hearing fixed 28 May 2008
	21/5/2008	Appellant advises he will be unavailable on 28 May 2008 because of work commitments interstate
	28/5/2008	AKAC dismisses Appeal

During this hearing both parties accepted the accuracy of this chronology.

In the notice of appeal filed with this Court dated 15 July 2008, the Appellant sets out the following grounds for appeal:

- 1 The decision was against the weight of evidence.
- 2 The decision was contrary to law.

3 There was denial of natural justice.

4 The decision was ultra vires.

5 The penalty applied was excessive.

The Court determined with the consent of the parties that the issue of the application of Rule 8.38(e), (f) and (g) should be determined at the outset.

Mr Horvath submitted that the Rule must apply to the circumstances of this case as the date for hearing of this appeal by the Australian Karting Appeals Court was not notified to the parties within 60 days of receipt by the AKAC Registrar of the notice of appeal and there was no directions hearing. He submitted that accordingly, the appeal must be decided in favour of the Appellant and that the AKAC had no jurisdiction to hear the matter. Further he submitted that the consequence of the operation of Rule 8.38(f) would require that the determination of the New South Wales Appeals Tribunal and the Findings of the Stewards of the meeting should be set aside, no conviction or penalty be recorded and that David Sera be declared the winner of the race.

Mr King submitted on behalf of the Australian Karting Association that the reason why the Australian Karting Appeals Court was not convened until May 2008 was because the Chairman of that Court could not be contacted by the Australian Karting Association and it was not until January 2008 that the Australian Karting Association took the steps of appointing a new chairman. He advised that the National Karting Council was aware of the delays and the need to appoint a chairman to the Court but did not until January 2008 see it as a priority.

Mr King also submitted that if Rule 8.38 was to apply having regard to the proceedings before the stewards and before the New South Wales Appeals Tribunal, it could only apply in relation to the penalty imposed.

Mr Horvath in reply submitted that if the Rule was to apply it should apply to the appeal as a whole and that the poor administration of the Australian Karting Association was no excuse for the delays. He pointed out that Mr Sera as the winner of the race would have been declared the national champion. By virtue of the inaction by the Australian Karting Association Mr Sera had been denied the right to carry that title for the full 12 months that he was the champion.

Having considered the submissions from the parties and the chronology of events that followed the filing of the appeal with the Registrar of the Australian Karting Appeals Court,

