

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

- 1. REPORTABLE: **NO**/YES
- 2. OF INTEREST TO OTHER JUDGES: **NO**/YES
- 3. REVISED.

.....**18 October 2023**
SIGNATURE **DATE**

CASE NO:

2022/045283

DOH: 22 September 2023

In the matter of:

RAM TRANSPORT SOUTH AFRICA (PTY) LTD

First Applicant

trading as RAM HAND to HAND Couriers

(Registration No. 1997/009992/07)

THE SOUTH AFRICAN ARMS AND AMMUNITION

Second Applicant

DEALER'S ASSOCIATION NPO

(Registration No.188-328 NOP)

And

**THE NATIONAL COMMISSIONER OF THE
SOUTH AFRICAN POLICE SERVICE**

First Respondent

(IN HIS CAPACITY AS REGISTRAR OF FIREARMS)

COLONEL SIKHAKHANE

Second Respondent

**(IN HER CAPACITY AS ACTING SECTION HEAD,
CENTRAL FIREARMS REGISTRY**

MAJOR GENERAL MAMOTHETI

Third Respondent

(IN HER CAPACITY AS HEAD OF FIREARMS,

**LIQUOR AND SECOND HAND GOODS
CONTROL DEPARTMENT “FLASH”)**

THE MINISTER OF POLICE

Fourth Respondent

JUDGEMENT - LEAVE TO APPEAL

**THIS JUDGEMENT HAS BEEN HANDED DOWN REMOTELY AND SHALL BE
CIRCULATED TO THE PARTIES BY WAY OF EMAIL/ UPLOADED ON CASELINES.
ITS DATE OF HAND DOWN SHALL BE DEEMED TO BE 18 OCTOBER 2023**

Bam J

1. Applicants apply for leave to appeal the decision of this court of 5 July 2023. Their grounds of appeal are set out in their Notice of Application for Leave to Appeal. Applicants contend that this court erred in not finding that they had raised a justiciable dispute and in not upholding their application. The same ground is replicated throughout the applicants' application, albeit framed differently. Applicants also contend that it was not open to this court to raise, *mero motu*, the issue of its jurisdiction. Finally, applicants submit that the court erred holding that the applicants pay the costs without dealing with the question of the reserved costs arising from the interim order issued on 5 December 2022. For the sake of completion, I mention that this court concluded, based on what is set out in the applicants' papers, that applicants were seeking legal advice and accordingly turned down their application.
2. The respondents oppose the application.

Relevant legal principles

3. In terms of Section 17 (1) the Superior Courts Act, Act 10 of 2013, Leave to Appeal may only be given where the judge or judges concerned are of the opinion that—
 - (a) (i) the appeal would have a reasonable prospect of success; or
 - (ii) there is some other compelling reason why the appeal should be heard, including conflicting judgments on the matter under consideration;'

4. The Supreme Court of Appeal in *Ramakatsa and Others v African National Congress and Another* explained the test:

'...This Court in *Caratco*, concerning the provisions of s 17(1)(a)(ii) of the SC Act pointed out that if the court is unpersuaded that there are prospects of success, it must still enquire into whether there is a compelling reason to entertain the appeal. Compelling reason would of course include an important question of law or a discreet issue of public importance that will have an effect on future disputes. However, this Court correctly added that 'but here too the merits remain vitally important and are often decisive....If a reasonable prospect of success is established, leave to appeal should be granted. Similarly, if there are some other compelling reasons why the appeal should be heard, leave to appeal should be granted. The test of reasonable prospects of success postulates a dispassionate decision based on the facts and the law that a court of appeal could reasonably arrive at a conclusion different to that of the trial court. In other words, the appellants in this matter need to convince this Court on proper grounds that they have prospects of success on appeal. '¹

Grounds of Appeal

- 1. The court erred in finding that Section 21 (1) (c) is applicable to the case;**

¹ (724/2019) [2021] ZASCA 31 (31 March 2021), paragraph 10

2. The court erred in raising the issue of its jurisdiction when the respondents had not raised it.

5. Applicants submit that the court had no basis to refer to Section 21 (1) (c) as the section finds no application to their case. Applicants contend that they had presented a justiciable dispute which the court failed to determine.

6. The dispute the applicants are referring to is essentially the question whether certain regulations of the Firearms Control Act apply to the applicants when they transport firearms throughout the Republic and whether they are obliged to comply with those regulations. They add that their members or their employees were threatened with arrest by the respondents. There was neither a decision made by the respondents which the applicants sought to attack and certainly no case was made challenging a decision taken by the respondents. The case brought by the applicants, as the judgement says, fell within the parameters of Section 21 (1) (c). On the question of the court having raised the issue of jurisdiction, *mero motu*, this is incorrect. Nowhere does the court enquire into or make any finding based on jurisdiction.

3. The Court erred in finding that the application was premature in circumstances where there were already disputes between the parties in respect of:

- (i) the applicability of the Regulations to the Firearms Control Act;**

(ii) The requirements of the respondents that an individual transporting firearms be in possession of a competency certificate without which the person will be arrested;

(iii) The applicants sought a declarator that regulation 68 of the Regulations applies and not regulation 86;

(iv) The respondents' requirement that a vehicle transporting firearms be fitted with a safe to comply with regulation 86 be set aside;

(v) Had prayed that an order that a person holding a firearms transporter's permit be allowed to transport firearms or ammunitions be issued, which in fact was not disputed by respondents.

4. The court should have found that the aforementioned disputes emanated from a letter from the second respondent, indicating that the regulations are applicable as claimed, whereupon the applicants sought an order that the regulations are not applicable. That is not seeking advice or a declaration of rights as foreseen in section 21 (1) (c) of the Superior Courts Act.

7. The case made by the applicants and the orders they sought are set out in the applicants' founding papers and quoted in the judgement. This court refused the invitation to provide clarity or opinion as sought by the applicants and provided reasons for its refusal. There is no need to repeat what is set out in the judgement. At no stage did the applicants bring or make a case to set aside a decision made by the respondents.

- 5. The Court erred in not referring to the common cause disputes as set out in the parties' joint practice note.**
- 6. The Court failed to adjudicate on the dispute as set out in the Joint Practice Note.**
8. The Joint Practice Note contains nothing different from the applicants' founding papers, It communicates the same invitation to the court to proffer an opinion as to whose interpretation is right between the parties' individual interpretations of the regulations to the Firearms Control Act. Applicants claim their interpretation is correct while the respondents' is incorrect. There was no justiciable dispute for the court to adjudicate.

7. The Court erred in its interpretation and applicability of Section 21 (1) (c) and should have found that:

- (i) The issue of jurisdiction is not raised by the parties on the grounds of section 21 (1) (c) at all;**
- (ii) That the court may not raise the issue of jurisdiction mero motu, and if it could, it should have afforded the parties the opportunity to address the court on the applicability of the legislation and principles.**
- (iii) That there is a real justifiable dispute raised between the parties which may lead to the arrest of the employees of the applicants or some of its members.**
- (iv) That even if an order is sought declaring the rights as foreseen in section 21 (1) (c), which is denied, that the court should have exercised its discretion to adjudicate on the disputes as it is in the interests of justice to do so where**

the employees and members of the applicants are under threat of arrest if the 'directive and interpretation' proposed are not adhered to.

(v) That the applicants made out a case for the relief they sought in prayers, 3, 4, 5, 6.

9. This is merely a repetition of the 1st and 2nd grounds of appeal. The applicants do not make a case of the court having exercised its discretion injudiciously. They simply say that the court should have found that there were justiciable disputes. I have already dealt with this issue. The invitation to the court was to provide clarity on which of the two interpretations of the Firearms Control Regulations was correct. This cannot be a live controversy.

8. The Court erred in finding that the applicants seek 'clarity' when the parties had raised a justiciable dispute seeking declaratory orders in respect of those disputes.

10. This is a repetition of the first ground.

8. The court erred in referring to the authorities relevant to Section 21 (1) (c) as the issue is not applicable to the fact of this matter.

9. The court erred in finding that the applicants seek clarity.

10. The court should have found that there are 'concrete controversies and actual infringements of rights' where the respondents threaten to arrest the employees or members of the applicants for not complying with its directives, interpretation or application of the regulations, which are in conflict with regulations and in respect of which applicants seek declaratory orders.

11. This is a repetition of the very first ground.

11. The court erred in referring to *Bato Star Fishing v Minister of Environmental Affairs* where it found that the orders sought were a trespass on the terrain of the executive where in fact the matter was not a review and the authority is not applicable. The court should have found that there is a real justiciable dispute.

12. The differing interpretations between the parties did not translate into a live controversy for the court to adjudicate.

12. The court should have first enquired into the reasoning of the respondents. There is no overstepping into the sphere of the decision maker if the court is not dealing with a policy decision, but merely investigating or pronouncing on the validity of the decision and not dealing with the expertise and not dealign with the expertise of the functionary.

13. The applicants presented no case attacking the validity of a decision made by the respondents.

13. The court erred in granting the costs order as a result, without determining the reserved costs of the interim order dated 5 December 2022.

14. An oversight occurred in this regard in that the court omitted to deal with the reserved costs of the hearing of 5 December 2022, this is an oversight on the part of the court.

14. The court should have found that the applicants do not seek a declaration of rights as foreseen in Section 21 (1) (c) but an adjudication on the dispute between the parties.

15. This point has been addressed throughout this judgment.

15. The court should have granted the application with costs

16. The judgement addresses this point. There is no need to repeat it.

Conclusion

17. I have considered the points raised by the applicants. Even though I disagreed, there remains the reasonable prospect that another court may come to a different finding on the same facts.

Order

18. Leave to appeal is granted to the Full Court of this Division.

BAM N.N

JUDGE OF THE HIGH COURT, PRETORIA

Date of Hearing: 22 September 2023

Date of Judgement: 18 October 2023

Appearances:

Applicants:

Adv M Snyman SC

Instructed by:

M J Hood and Associates

Woodmead, Jihannesburg

Respondents:

Adv N Matidza

Instructed by:

State Attorneys

Pretoria