

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.

.....**05 July 2023**
SIGNATURE **DATE**

CASE NO:

2022/045283

DOH: 8 MARCH 2023

In the matter of:

RAM TRANSPORT SOUTH AFRICA (PTY) LTD
trading as RAM HAND TO HAND COURIERS
(Registration No. 1997/009992/07)

First Applicant

THE SOUTH AFRICAN ARMS AND AMMUNITION
DEALER'S ASSOCIATION NPO
(Registration No.188-323NOP)

Second Applicant

And

THE NATIONAL COMMISSIONER OF THE
SOUTH AFRICAN POLICE SERVICE
(IN HIS CAPACITY AS REGISTRAR OF FIREARMS)

First Respondent

COLONEL P.N SIKHAKHANE
(IN HER CAPACITY AS ACTING SECTION HEAD,
CENTRAL FIREARMS REGISTRY)

Second Respondent

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

**THIS JUDGEMENT HAS BEEN HANDED DOWN REMOTELY AND SHALL BE
CIRCULATED TO THE PARTIES BY WAY OF E- MAIL / UPLOADING ON
CASELINES. ITS DATE OF HAND DOWN SHALL BE DEEMED TO BE 05 JULY 2023**

Bam J

A. Introduction

1. The applicants launched an urgent motion which was to be heard on 6 December 2022. In their notice of motion, they sought the following orders:
 1. Dispensing with the normal rules contained in Rule 6...
 2. An order interdicting and restraining any member of the South African Police Service acting...from effecting an arrest of any employee of a transporter or a firearm...
 3. An order that the provisions of Regulation 68 apply to the transportation of firearms by licensed transporters and by firearm dealers who have a licence to trade in arms and ammunition.
 4. For an order declaring that the persons whose names have been submitted to the Central Firearms Registry in accordance with Regulation 70 (c) of the Firearms Control Act 60 of 2000 do not need to be in possession of and have granted a competency certificate by the Respondents.
 5. For an order that subject to the provisions of Regulation 68 and 70 of the Firearms Control Act, firearm dealers and firearm transporters, may transport firearms and ammunition with other non-controlled items in the same vehicle.

6. For an order that the Respondents can only impose conditions in terms of the Regulations of the Firearms Control Act.
2. The interdict was granted on 9 December 2022, per Neukircher J, who postponed prayers 3, 4, 5, and 6 and reserved costs. In this application, the applicants seek the last mentioned prayers for the declaratory orders. The respondents are opposing the relief on various bases.

B. Merits

3. The applicants' case is set out in the founding affidavit. It begins with the purpose of the application, which, according to the deponent, Mr Sean Wayne Ahmed, Head of Security for the first applicant, is to:

 '...**obtain clarity on the relevant legislation** that is applicable to the transport of firearms by licensed transporters and licensed firearm dealers, and to prevent unlawful arrests of persons who are deemed to be non-compliant with applicable provisions of the Firearms Control Act.' (The emphasis is my own)
4. The applicants thereafter delve into narrating the various provisions of the Firearms Control Act. These are sections 85 and 86, including regulations 68, 69, and 70 of the Firearms Control Act Regulations. After setting out the provisions of the Act and regulations, the applicants detail what they refer to as the detrimental and severe consequences of the actions of the respondents, which they say continue to impair the lawful transportation of firearms between firearm dealers and individuals spread throughout the Republic of South Africa. The applicants also include a narrative

about how firearms are imported into South African and then distributed throughout the Republic.

5. The applicants further point out that some threat of arrest had been made against it and its employees, which the applicants regards as serious. They further attach copies of various e-mail communications between the first applicant and members of the SAPS and discuss at length the proceedings of various meetings held with members of SAPS. The applicants conclude with a statement that if there were to be requirements for competency certificate for couriers, RAM, which has in excess of 2000 employees would simply not be able to obtain such competency certificates overnight to transport arms, and that the approval of a competency certificate takes about eight months and that if the conditions sought to be imposed are indeed imposed then there will be no lawful movement of firearms in South Africa, a result that will severely impede trade in firearms.

C. The Law

6. The statutory provision dealing with declaratory order is located in provision 21 (c) of the Superior Courts Act¹ and it reads:

'A Division [of the High Court] has jurisdiction over all persons residing or being in, and in relation to all causes arising and all offences triable within, its area of jurisdiction and all other matters of which it may according to law take cognisance, and has the power to - ...

¹ Act 10 of 2013.

(c) in its discretion, and at the instance of any interested person, to enquire into and determine any existing, future or contingent right or obligation, notwithstanding that such person cannot claim any relief consequential upon the determination.'

7. The predecessor to section 21 (c) is section 19 (c) of the Supreme Court Act, 59 of 1959, which was worded in exactly the same fashion as the current provision. Interpreting provision 19 (c) in *Cordiant Trading CC v Daimler Chrysler Financial Services (Pty) Ltd*, it was said:

'The question whether or not an order should be made under this section has to be examined in two stages. First the Court must be satisfied that the applicant is a person interested in an "existing, future or contingent right or obligation", and then, if satisfied on that point, the Court must decide whether the case is a proper one for the exercise of the discretion conferred on it...[18] Put differently, the two-stage approach under the subsection consists of the following. During the first leg of the enquiry the court must be satisfied that the applicant has an interest in an 'existing, future or contingent right or obligation'. At this stage the focus is only upon establishing that the necessary conditions precedent for the exercise of the court's discretion exist. If the court is satisfied that the existence of such conditions has been proved, it has to exercise the discretion by deciding either to refuse or grant the order sought. The consideration of whether or not to grant the order constitutes the second leg of the enquiry.'²

8. In *Shoba v Officer Commanding, Temporary Police Camp, Wagendrift Dam, Maphanga v Officer Commanding, SA Police Murder & Robbery Unit, Pietermaritzburg*, the applicant, appellant at the Supreme Court of Appeal, had applied, for what appeared to be an Anton Pillar order. It was turned down by the Pietermaritzburg High Court. In the process of endorsing the High Court's reasoning, the SCA first noted:

² (237/2004) [2005] ZASCA 50; [2006] 1 All SA 103 (SCA) (30 May 2005), paragraph 16.

' "Accordingly it seems to me that what this Court is now being asked to enquire into is not really the determination of an existing, future or contingent right, but a question of whether there were good prospects of success, to put it roughly, available to the applicant if he had moved for urgent relief in camera... It follows that I do not consider that this is a case in which the Court is being asked to enquire into a matter which falls under section 19(l)(a) (iii) of the Supreme Court Act even though the question at issue in this application is obviously an important one and even though it would be most desirable to have a ruling by the Courts on the question of whether the statutes which are referred to in Jafta's case may prove to be a bar to relief in camera in the type of situation contemplated in this application. I unfortunately do not consider that I have the power, especially sitting as a Judge of first instance, to grasp the nettle and resolve the question which the applicant implicitly poses in this application." ' ³

9. In *Ferreira v Levin NO and Others; Vryenhoek and Others v Powell NO and Others*, Kriegler J, dissenting, put the point aptly in this extract:

'The essential flaw in the applicants' cases is one of timing or, as the Americans and, occasionally, the Canadians call it, "ripeness". That term has a particular connotation in the constitutional jurisprudence of those countries which need not be analysed now. Suffice it to say that the doctrine of ripeness serves the useful purpose of highlighting that the business of a court is generally retrospective; it deals with situations or problems that have already ripened or crystallised, and not with prospective or hypothetical ones.

Although, as Professor Sharpe points out and our Constitution acknowledges, the criteria for hearing constitutional case are more generous than for ordinary suits, even cases for relief on constitutional grounds are not decided in the air. And the present cases seem to me, as I have tried to show in the parody above, to be pre-eminent examples of speculative cases. The time of this Court is too valuable to be frittered away on hypothetical fears of corporate skeletons being discovered.¹⁴

10. More recently in *N S v J N*, it was said:

'After all, courts of appeal often have to deal with congested rolls. And, as Innes CJ observed in *Geldenhuys & Neethling v Beuthin*, they exist for the settlement of concrete

³ (500/93,525/93) [1995] ZASCA 49; 1995 (4) SA 1 (AD); [1995] 2 All SA 300 (A) (12 May 1995).

⁴ (CCT5/95) [1995] ZACC 13; 1996 (1) SA 984 (CC); 1996 (1) BCLR 1 (6 December 1995), paragraph 199.

controversies and actual infringements of rights, not to pronounce upon abstract questions, or to **advise** upon differing contentions, however important. . .⁵ (emphasis supplied)

11. The applicants in their founding affidavit are clear that they seek clarity from this court. In simple terms, the applicants are looking for legal advice. But courts, as made clear by the cases quoted in this judgement exist to decide concrete controversies and actual infringements of rights and not to pronounce on abstract questions or to advise upon differing contentions, however important. It is clear that the questions the applicants are grappling with are of importance to them and their businesses. If one carefully analyses the applicants' affidavit in its entirety, the applicants are clear; they seek a legal opinion from this court. The applications on those bases cannot succeed on this basis alone. Besides, I consider that in providing such an opinion, as the respondents argue, this court will be committing an unnecessary trespass into the terrain of the executive. See in this regard the court's ratio in *Bato Star Fishing (Pty) Ltd v Minister of Environmental Affairs and Tourism and Others*⁶.

D. Order

12. The application is dismissed with costs.

⁵ (506/2021) [2022] ZASCA 122 (19 September 2022), paragraph 13.

⁶(CCT 27/03) [2004] ZACC 15; 2004 (4) SA 490 (CC); 2004 (7) BCLR 687 (CC) (12 March 2004), paragraph 46.

BAM N.N

JUDGE OF THE HIGH COURT,

PRETORIA

Date of Hearing: 8 March 2023

Date of Judgement: 05 July 2023

Appearances:

Applicants: Adv M Snyman SC

Instructed by: MJ Hood and Associates Inc

Woodmead

Respondents: Adv N Matidza

Instructed by: The State Attorney

Pretoria