



**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

Case number: **14784/2021**

In the matter between: -

OUTDOOR INVESTMENT HOLDINGS (PTY) LTD
(Registration No. 2006/036217/07)

FIRST APPLICANT

INYATHI SPORTING SUPPLIES (PTY) LTD
(Registration No. 2003/011477/07)

SECOND APPLICANT

And

THE MINISTER OF POLICE

FIRST RESPONDANT

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

SECOND RESPONDENT

(1)	REPORTABLE: YES / NO
(2)	OF INTEREST TO OTHER JUDGES: YES/NO
(3)	REVISED.
.....
DATE	SIGNATURE

JUDGMENT

NONCEMBU AJ

Introduction

[1] The preamble to the Firearms Control Act¹ (the Act) provides –

“Whereas every person has the right to life and the right to security of the person, which includes, among other things, the right to be free from all forms of violence from either the public or private sources;

And whereas the adequate protection of such rights is fundamental to the well-being and social and economic development of every person;

And whereas the increased availability and abuse of firearms and ammunition has contributed significantly to the high levels of violent crime in our society;

And whereas the constitution places a duty on the state to respect, protect, promote and fulfil the rights in the Bill of Rights;

...”

¹ Act 60 of 2000.

[2] In line with the above preamble, section 2 outlines what the purpose of the Act is, and states this as, among other things, the establishment of a comprehensive and effective system of firearm control and management; as well as ensuring efficient monitoring and enforcement of legislation pertaining to the control of firearms.²

[3] It is against this backdrop that the current application lies before this court.

[4] The applicants are seeking a declaratory order in the following terms-

“... the first applicant is entitled to store firearms legally in its possession, in terms of Regulation 67 of the Firearms Control Regulations, 2004, at the premises of the second applicant, provided that the removal of the firearms from the premises of the first applicant be recorded in the first applicant’s firearm stock register and that the firearms stored at the premises of the second applicant be recorded in the firearm safe custody register of the second applicant;

No order as to cost, save in the event of opposition”.

[5] The application is opposed by the respondents.

The Parties

[6] The first applicant is Outdoor Investment Holdings (Pty) Ltd (Registration No. 2006/036217/07), *t/a* Safari Outdoor (hereinafter referred to as Safari Outdoor), a company with limited liability as contemplated in the Companies Act³ and with its registered address situated at Block A, First Floor, Lynwood Bridge Office Park, c/o Daventry and Lynwood Road, Lynwood, Pretoria, Gauteng. Safari Outdoor is

² Subsections (d) and (e).

³ Act 71 of 2008.

the largest hunting and nature related retailer in South Africa trading nationwide and on the electronic (e-commerce) retail platform. It supplies, in particular, ammunition, reloading equipment, rifles and handguns to the public. It has 5 branches situated in Johannesburg (Rivonia); Pretoria (Lynwood); Stellenbosch (Koelenhof); East Rand (Boksburg); and West Rand (Krugersdorp). Safari Outdoor has dealers' licenses issued to it in terms of the Firearms Control Act. Each of its branches have dealer's licenses linked to the particular premises from where each business is conducted.

- [7] The second applicant is Inyathi Sporting Supplies (Pty) Ltd (Registration No. 2003/011477/07) (Inyathi), a company with limited liability as contemplated in the Companies Act⁴, and with its registered address situated at Block A, First Floor, Lynwood Bridge Office Park, c/o Daventry and Lynwood Road, Lynwood, Pretoria, Gauteng. Inyathi is a wholesale business and conducts no business directly with members of the public. A significant portion of its business is to provide storage facilities. This occurs when it sells stock to other retailers and the retailers are not able to take delivery immediately.
- [8] Safari Outdoor owns the total issued share capital of Inyathi. This notwithstanding, the business of Safari Outdoor and the business of Inyathi operate separately and independently from each other. Safari Outdoor conducts the business of a retailer and its clients are predominantly members of the public.
- [9] The first respondent is Mr Bheki Cele in his capacity as the Minister of Police, with his principal place of business situated at 231 Pretorius Street, 756-7th Floor, Wachthuis Building, Pretoria, Gauteng.

⁴ Act 71 of 2008.

- [10] The second respondent is Lieutenant General Khehla John Sethole, the National Commissioner for the South African Police Service, with his principal place of business situated at 231 Pretorius Street, 756-7th Floor, Wachthuis Building, Pretoria, Gauteng. In terms of section 123 of the Firearms Control Act he is also the Registrar of Firearms.

The Salient Facts

- [11] Safari Outdoor sells firearms to members of the public. When a member of the public buys a firearm they have to obtain a firearm license in order to possess the said firearm. This has to be preceded by a competency certificate contemplated in section 10 of the Act, which one must obtain before applying for a firearm licence. Safari Outdoor keeps the firearm in question whilst the client obtains the said documents, under certain stated conditions. Because of a backlog at the second respondent's office, it is contended that the process of finalizing a licence application can take anything between six and eighteen months.
- [12] It is thus contended that due to the volume of firearms sold by Safari Outdoors, it is practically impossible to store all the firearms purchased on its premises. Furthermore, it is contended that the retail space at Safari Outdoors is significantly more expensive than the bulk storage facilities at Inyathi.
- [13] During a recent visit by the Designated Firearms Officer (DFO)⁵ at the premises of Safari Outdoors Situated at Lynwood Bridge, it was expressed that the higher ranked officers of the second respondent held the view that Inyathi may not provide storage facilities to Safari Outdoors. It is as a consequence of the said view that the applicants decided to launch the current application.

⁵ A police officer designated by the second respondent in terms of section 124 (2) of the Firearms Control Act.

[14] The applicants premise their application on regulation 67 of the Firearms Control Regulations (the regulations) which provides as follows –

“67. Storage of Firearms and Ammunition

- (1) Where a person provides storage facilities for firearms or ammunition to another person, such storage facilities must conform to the applicable requirements for a safe or strongroom as set in the SABS standard 953-1 or 953-2.
- (2) Storage may only be provided to a person who may lawfully possess the firearm or ammunition.
- (3) A holder of a dealer or gunsmith’s licence may provide storage for firearms and ammunition in the safe or strongroom specified on the dealer or gunsmith’s licence.
- (4) During the storage of a firearm, it must be –
 - (a) Unloaded;
 - (b) Not readily accessible to unauthorized use;
 - (c) Securely attached with a secure locking device to a non-portable structure in such a manner that it cannot readily be removed.”

[15] The applicants place emphasis on sub-regulation 2 above, which provides that storage may only be provided to ‘**a person**’ who may lawfully possess the firearm or ammunition (my emphasis). Their contention in this regard is that the Act gives no definition of ‘a person’, and therefore the definition conferred in terms of the Interpretation Act ⁶ finds application. In line with the definition contemplated in the said Act, a dealer, being a corporate entity, is included when reference is made to ‘a person’. The applicants’ view is that there is no conceivable basis to give a limited interpretation of ‘a person’, and that if the intention was to do so, it could have easily been done so expressly. They contend therefore that a dealer is also included in the definition of ‘a person’ and consequently, Safari Outdoor is entitled to store its firearms at Inyathi’s premises.

⁶ Act 33 of 1957.

[16] The respondents contend that there is no case made for the declarator sought by the applicants in this matter. Their view is that a dealer is excluded in the promulgation of regulation 67(2) in that a dealer's licence is linked to specific premises from where it conducts its business. They further contend that the order sought by the applicants would make it difficult for officials of the second respondent to monitor compliance with the dealer's licence⁷ and consequently defeat the very purpose of the Act of ensuring efficient monitoring and enforcement of legislation pertaining to the control and management of firearms.

Ad Condonation

[17] The respondents are seeking condonation for the late filing of their answering affidavit, which application is opposed by the applicants. The reasons cited for the late filing include challenges experienced due to the internal processes of the respondents, infrastructure challenges as well as challenges posed by the Covid-19 pandemic. These resulted, it is contended, in the filling of the answering affidavit being delayed by 15 days.

[18] It is a well-established principle of law that condonation should not be lightly refused if the delay did not prejudice the other party in respect of either the merits or the conduct of its case, other than the procedural advantage implicit in the applicant's failure to keep to time limits.⁸ Furthermore, lateness is not the only consideration when determining whether or not condonation should be granted. The test is whether or not it is in the interests of justice that condonation be granted in a particular matter.⁹

⁷ See section 39 (5) of the Act which provides for inspections of dealer's firearms and ammunition as well as their licences by police officials.

⁸ *Evander Caterers (Pty) Ltd v Potgieter* 1970 (3) SA 312 (T) at 315-16.

⁹ *Ferris v FirstRand Bank Limited* 2014 (3) SA 39 (CC) at 43G- 44A.

[19] The delay in the current matter was for only 15 days and I am of the view that it has been satisfactorily explained by the respondents. From the explanation tendered it is clear that this was not due to the wanton disregard of the rules of this court on the part of the respondents, but rather, mainly due to circumstances beyond their control. Furthermore, no prejudice has been suffered by the applicants as a result of the said delay, and given the nature of the relief being sought in the matter, I am of the view that the interests of justice require that condonation be granted. The outcome in the matter will also give clarity to other dealers who might find themselves in a similar position as the applicants. Consequently, the application for condonation must succeed. The late filing of the answering affidavit is therefore condoned.

Other Disputes relating to the answering affidavit

[20] Regarding other technical issues raised by the applicants to the answering affidavit, specifically, the fact that the deponent thereto has no authority to depose to the answering affidavit and that he has no personal knowledge of the information contained therein, respectfully, I find that there is no merit to these issues. The deponent has fully explained the position he holds in the second respondent, which gives him the requisite authority as well as the basis upon which he deposed to the answering affidavit. Furthermore, as submitted by the respondents in their heads of argument, correctly so in my view, the first respondent is the executive authority of the second respondent, who also serves in his capacity as the Registrar of Firearms. The second respondent has delegated his duties to the employees within the establishment of the Department of Police in the Registry of Firearms. The deponent in this regard is the Head of Office at the Central Firearms Registry and a representative of the

second respondent (as contended in his answering affidavit).¹⁰ I therefore consider these issues to be non-starters and as such nothing turns on them.

The Issue

[21] The crisp issue for determination by this court is whether or not, on a proper interpretation of regulation 67, the first applicant is entitled to store firearms it lawfully possesses at the premises of the second applicant.

[22] The answer to this question, I interpose, must be apparent from the prevailing provisions of the Firearms Control Act and the Firearms Control Regulations.

The Legislative Framework

[23] The following provisions of the Firearms Control Act are apposite in this regard –

Section 31(1) of the Act prohibits any person from trading in any firearm, muzzle loading firearm or ammunition without a dealer's licence. Section 33 deals with conditions which the Minister may prescribe for imposition on a dealer by the Registrar of Firearms,¹¹ as well as the specifications in respect of the business premises of a dealer;¹² and section 34 deals with the information that must be contained in a dealer's licence, specifically, the premises in respect of which the licence is issued; the conditions contemplated in section 33; and such other information as may be prescribed.¹³ Section 39 deals with the duties of a dealer

¹⁰ See also *Shackleton Credit Management (Pty) Ltd v Microzone Trading 88 CC & Another* 2010 (5) SA 112 (KZP) at para 13 where the following was said: "First-hand knowledge of every fact which goes to make up the applicant's cause of action is not required, and that where the applicant is a corporate entity, the deponent may very well legitimately rely on records in the company's possession for their personal knowledge of at least certain of the relevant facts and the ability to swear positively to such facts."

¹¹ Subsection (a).

¹² Subsection (b).

¹³ Sub-sections (a) – (c).

and provides, among other things, that a dealer must, at the request of a police official, produce for inspection – any firearms or ammunition that the dealer has in stock; his or her dealer's licence; and any register or electronic data kept by the dealer in terms of Part 1 of the Chapter.¹⁴

[24] No doubt, the importance of these provisions is intricately connected to the purpose for which the Act was promulgated. This shall become much clearer in due course.

[25] In interpreting regulation 67, one is enjoined to take into consideration the above provisions of the Act as well as the relevant provisions of the Firearms Control Regulations. This view is also in line with what was succinctly set out in the case of *Natal Joint Municipal Pension Fund v Endumeni Municipality*,¹⁵ where the Supreme Court of Appeal, summing up the position regarding the interpretation of a document, stated the following –

“Interpretation is the process of attributing meaning to the words used in a document, be it legislation, some other statutory instrument, or contract, having regard to the context provided by reading the particular provision or provisions in the light of the document as a whole and the circumstances attendant upon its coming into existence.”

[26] Whilst *prima facie*, a dealer is not excluded in the reference to ‘a person’ contemplated in regulation 67, to give proper meaning to the provision however, and the purpose for which it was intended, one cannot read it in isolation. The regulation must be read and understood in the context of the whole Act and the Regulations.

¹⁴ Subsection (5) (a) – (c).

¹⁵ 2012 (4) SA 593 SCA at para 18.

[27] Chapter 10 of the regulations deals with the safe custody of firearms and ammunition. Of pertinent importance in this chapter is regulation 86 which reads as follows –

“(1) When a firearm is not under the direct personal and physical control of a holder of a licence, authorization or permit to possess the firearm, the firearm and its ammunition must be stored in a safe or strongroom that conforms to the prescripts of SABS Standard 953-1 and 953-2, unless otherwise specifically provided in these regulations.”

I pause here to mention that these prescripts are the exact same ones applicable in respect of a dealer’s licence. By virtue thereof, it follows logically that dealers are not exempted from the applicability of regulation 86.

[28] Sub-regulation (4) reads as follows –

“(a) A person who holds a licence to possess a firearm may store a firearm in respect of which he or she does not hold a licence, if –

- (i) he or she is in possession of written permission given by the person who holds a licence, permit or authorization to possess that firearm **and which permission is endorsed by a relevant Designated Firearms Officer** (my emphasis); and
- (ii) the firearm is stored in a prescribed safe at the place mentioned in the permission contemplated in subparagraph (i).

....”

[29] Clearly, this provision is mandatory. From this alone it is clear that it is inconceivable that a dealer can simply decide to store its firearms at the premises of another dealer without following the prescripts set out in the sub-regulation referred to above. In addition to this, the Act also makes provision for temporary authorization, subject to conditions imposed by the Registrar, for a dealer to trade in premises other than those prescribed in the dealer’s licence.

Once again, the emphasis here being on 'temporary authorization'. I also find it quite telling that in all the references to the various regulations in their papers, the applicants make no reference whatsoever to sub-regulation 86(4).

[30] There are various other regulations which make the applicants' argument quite untenable. One of these is regulation 31 which sets out the conditions in terms of a dealer's licence. The following sub-regulations are instructive in this regard –

“(e) during any period when the licensed premises are open for business or any other purpose, firearms and ammunition which are not displayed must be kept in a strongroom or safe for safe custody of firearms **which has been defined in the relevant licence.** (my emphasis).

...

(i) the persons whose particulars appear on the licence or in the prescribed register as contemplated in sub-regulation 37(4) must ensure that –

(i) during business hours proper control is, at all times, exercised over all the firearms and ammunition;

(ii) the prescribed registers are properly maintained; and

(iii) every reasonable precaution is taken against the loss or theft of the firearms and ammunition.”

[31] One of the supporting documents attached to the applicants' founding affidavit is “MS1”, which is a dealer's licence in respect of one of its branches. Notably in this document are the following details in contemplation of sub-regulation 31 (i) above: the name and ID number of the responsible person. An obvious question which arises in this regard on the applicants' exposition would be, how then is this person expected to comply with the obligations imposed above if the firearms in question are not under his or her control. Or better yet, how are the prescripts

of the Act in respect of inspections to be effected if the firearms in question are not stored in the strongroom or safe described in the specific dealer's licence.

- [32] Another difficulty which in my view compounds the applicants' case even further is the practicality aspect of their argument. The first applicant has five branches, one of which is not even in the Gauteng province. On a proper construction of their version, it would mean that any of those 5 branches can store their firearms at the premises of the second respondent. Clearly that would create a practical nightmare for the second respondent in carrying out its obligations in terms of the Act and the Regulations, and consequently, render the said provisions discretionary, if not a nullity. Evidently that would defeat the entire purpose of the Act.

Requirements for a declaratory order

- [33] Section 21 (1) of the Superior Courts Act¹⁶ provides –

“Persons over whom and matters in relation to which Divisions have jurisdiction.

(1) A division has jurisdiction over all persons residing in 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 the law take cognizance, and has the power –

...

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

¹⁶ Act 10 of 2013.

[34] The exercise of a court's discretion in this regard is said to be a two-stage approach. In *Durban City Council v Association of Building Societies*¹⁷ Watermeyer JA said the following regarding the said process:

"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."

[35] Referring to the above dictum the Supreme Court of Appeal in *Cordiant Trading CC v Daimler Chrysler Financial Services (Pty) Ltd*¹⁸ said the following:

"It seems to me that once the applicant has satisfied the court that he/she is interested in an 'existing, future or contingent right or obligation', the court is obliged by the subsection to exercise its discretion. This does not, however, mean that the court is bound to grant a declarator but that it must consider and decide whether it should refuse or grant the order, following an examination of all relevant factors. In my view, the statement in the above dictum, to the effect that once satisfied that the applicant is an interested person, 'the Court must decide whether the case is a proper one for the exercise of the discretion' should be read in a proper context. Watermeyer JA could not have meant that in spite of the applicant establishing, to the satisfaction of the court, the prerequisite factors for the exercise of the discretion the court could still be required to determine whether it was competent to exercise it. What the learned judge meant is further clarified by the opening words in the dictum which indicate clearly that the enquiry was directed at determining whether to grant a declaratory order or not, something which would constitute the exercise of a discretion as envisaged in the subsection (*cf Reinecke v Incorporated General Insurances Ltd* 1947 (2) SA 84 (A) at 93A-E).

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

¹⁷ AD 27 at para 32.

¹⁸ 2005 (6) SA 205 (SCA) at par 17-18.

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."

[36] Both applicants have a direct interest to the declaratory order sought to clarify whether or not the first applicant may legally store firearms at the premises of the second applicant. Currently they both believe that they can and have, as far as the papers reveal, have been acting accordingly. I am therefore satisfied that they meet the conditions set out for the first leg of the enquiry and that both are 'interested persons' as contemplated in the above subsection.

[37] Regarding whether or not the discretion of this court ought to be exercised in their favour is a matter to be determined in consideration of the totality of the factors prevailing in the matter. I have by and large examined the relevant factors in the current matter, and in particular, the relevant provisions of the Firearms Control Act and the Firearms Control Regulations. On the conspectus of everything considered, it is my firm view that the exercise of the discretion in favour of the applicants in the current matter will not only result in an absurdity, but will promote lawlessness as it would condone non-compliance with the law by the applicants and dealers that might find themselves in a similar position as the applicants.

[38] The provisions in this regard are peremptory and the only circumstances under which a deviation is permissible are clearly set out. Any other interpretation of the provisions would mean that the respondents, specifically, the second respondent's officials are not able to perform their obligations as envisages in the

provisions discussed above. This would have dire consequences as it would be nugatory to the very purpose of the Act. If one considers the preamble to the Act, which makes reference, *inter alia*, to the increased availability and abuse of firearms and ammunition contributing significantly to the high levels of violent crimes in our society; restricting and even hamstringing the second respondent in its obligations in terms of these provisions, which, if granted, the declarator would effectively do, would be tantamount to interfering with the State's Constitutional obligations of ensuring that the people's rights to freedom from all forms of violence are protected. That in turn would be tantamount to the Courts usurping the State's powers and consequently undermining the Rule of Law.

[39] Under these circumstances therefore the application cannot succeed. The applicants have failed to make out a case for the declarator sought.

[40] In the premise, the following order must follow:

The application is dismissed with costs.

V Noncembu

Acting Judge of the North Gauteng High Court

APPEARANCES

DATE OF HEARING : 08 September 2021

DATE OF JUDGMENT : 24 February 2022

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