

SOUTH AFRICA / JUDGMENT

Fidelity Security Services (Pty) Ltd Code of Body 16455 and Others v National Commissioner of The South African Police Services, General KJ Sithole and Others (31971/2022) [2022] ZAGPPHC 731 (6 October 2022) [2022] ZAGPPHC 731

COURT

North Gauteng High Court, Pretoria

BEFORE

Millar

CASE / FILE NUMBER

31971/2022

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IN THE HIGH COURT OF SOUTH AFRICA

(GAUTENG DIVISION, PRETORIA)\

CASE NO: 31971/2022

REPORTABLE: YES/NO

OF INTEREST TO OTHER JUDGES: YES/NO

REVISED: NO

6 OCTOBER 2022

In the matter between:

FIDELITY SECURITY SERVICES (PTY) LTD

CODE OF BODY 16455 First

Applicant

SECURECO METSU (PTY) LTD

CODE OF BODY 19708 Second

Applicant

FIDELITY ADT (PTY) LTD CODE OF BODY 15942

FIDELITY CASH SOLUTIONS

CODE OF BODY 16415 Third

Applicant

ANALYTICAL RISK MANAGEMENT (PTY) LTD

t/a 2RM SECURITY

CODE OF BODY 18521 Fourth

Applicant

And

THE NATIONAL COMMISSIONER OF THE

SOUTH AFRICAN POLICE SERVICES

GENERAL KJ SITHOLE

IN HIS CAPACITY AS REGISTRAR OF FIREARMS First Respondent

MAJOR GENERAL MAMOTETHI

(IN HER CAPACITY AS THE HEAD OF FIREARMS,

LIQUOR AND SECOND-HAND GOODS “FLASH”) Second

Respondent

COLONEL PN SIKHAKHANE, IN HER CAPACITY

AS THE ACTING HEAD OF THE HEAD OF

THE CENTRAL FIREARMS REGISTRY Third

Respondent

THE MINISTER OF POLICE Fourth

Respondent

THE FIREARMS APPEAL BOARD Fifth

Respondent

REASONS

FOR ORDER

MILLAR J

1. The applicants are companies that provide security services to inter alia private, commercial, and state clients. Included in the range of services provided are those which require their employees, the security officers to be armed.

2. The employees of the applicants do not individually purchase and licence the firearms that they are required to carry for the services they are employed to render – this is done by the applicants. Self- evidently the applicants between them apply for many licenses, the continued employment of their staff and viability of their businesses being dependent upon the issue of such licenses.
3. The respondents - the third respondent in particular - are the parties responsible for the processing and, either issue or decline, of licenses in terms of the Firearms Control Act[1] (the Act).
4. By June 2022, the delay on the part of the respondents in processing licence applications for inter alia firearms that had been handed in in terms of an amnesty declared[2] in terms of section 139 of the Act had reached what was regarded as an intolerable situation. Some 456 licence applications had not been processed and besides the deleterious business effects of not being able to provide armed security officers to persons and institutions who required them, some of their employees were alleged to have suffered injury and even death in consequence of being unable to defend themselves against armed attack whilst on duty.
5. On 5 July 2022, the applicants brought an urgent application in this court to compel the respondents to discharge their statutory obligation to process the applications that were before them within a reasonable time. In respect of at least those that related to the amnesty and were still outstanding, the delay was at the very least for 11 months!
6. The parties were able to reach an agreement. The terms of the agreement were recorded in a draft order of court which at the request of counsel for the parties, I duly made an order of court.
7. The order provided inter alia that one third of the outstanding applications would be processed within 10 days of the order, a further third within 20 days of the order and the last third within 30 days of the order. Thus, the first third would be processed by 15 July, the second by 25 July and the final third by 5 August 2022.
8. Unfortunately, the respondents did not comply substantively with the terms of the agreement reached on 5 July 2022. By the time the applicants brought a further urgent application to hold the third respondent in contempt of the 5 July 2022 order, in September 2022, only 64 of the 456 licenses had been processed.
9. On 20 September 2022, the parties were again able to reach an agreement on certain aspects of the dispute between them. The parties agreed that:

“2. By agreement between the parties the following order is granted:

2.1 The third respondent is ordered to cause the issuing and delivery of Temporary Authorisations in terms of Section 21[3] of the Firearms Control Act, Act 60 of 2000, in respect of all the firearms listed in the annexure hereto and headed “Approved

Firearms Fidelity Motion”, by no later than Friday 23 September 2022;

2.2 The prayers in paragraphs 3, 4 and 5 of the notice of motion is postponed sine die;

2.3 The Applicants may approach the court to proceed with the relief referred to in paragraph 2.2 above on the same papers, duly supplemented,

should they so wish;

2.4 If the papers are supplemented, the respondents will have the right to supplement or answer thereto within 10 days or such shorter time as allowed by the urgency or the matter on notice to the Respondents;

3. It is noted that by agreement:

3.1 The firearms listed in the annexure headed “Defective Firearms Fidelity Motion”, and attached hereto is alleged by the

Respondents that it is unable to process the license applications to possess the firearms due to the fact that the firearms are defective;

3.2 The firearms listed in the annexure headed “Government Department 10 +1”, and attached hereto is alleged by the Respondents that it is unable to process the license applications to possess the firearms due to the fact that the firearms have been destroyed by the Respondents;”

10. The aspects on which they did not reach an agreement and in respect of which I made orders were set out in paragraphs 1, 4, 5, 6, 7 & 8. I deal with each of these in turn.

The First Order

11. The first order was “1. It is declared that the First, Second and Third Respondents did not comply with the order dated 5 July 2022;”

12. This order is of a declaratory nature and simply recorded the common cause act that the respondents had only processed 64 of 456 license applications within the 30-day period that they had undertaken to process all 456.

The Fourth Order

13. The fourth order was “4. No order is made in respect of the firearms listed in paragraphs 3.1 and 3.2 above and any relief in that respect is postponed sine die, subject to what is stated in paragraphs 2.3 and 2.4 above;”

14. This order was made to exclude from the agreement and the subsequent orders made by me, the processing of licenses in respect of firearms which could not by reason on non-compliance or due to impossibility be properly and lawfully licensed.

The Fifth Order

15. The fifth order was “5. The Third Respondent is ordered by the court despite no agreement having been reached in this respect, to cause the issuing and delivery of Temporary Authorisations in terms of Section 21 of the Firearms Control Act, Act 60 of 2000, of all the firearms listed in the annexure headed “In Preparation for Consideration (Awaiting IBIS report)”, and attached hereto, by no later than Friday 23 September 2022;”
16. This order was made to mitigate the effects of the respondent’s non-compliance with the agreement and order of 5 July 2022.
17. Notwithstanding agreement regarding certain of the licenses which fell within the ambit of that order, I took the view that, subject to what was stated in the fourth order, that pending the lengthy delay in processing licenses, the prejudice to the applicants could only be mitigated by the issue of temporary licenses. I furthermore took the view that since there was an agreement to issue some temporary licenses, compliance with the Regulations[4] and regulations 23 and 24 was not in issue between the parties.
18. This order as section 21[5] of the Act states is temporary and will be of effect only for so long as the respondents do not process the identified applications.

The Sixth Order & Seventh Orders

19. The sixth order and seventh orders were:

“6. The Temporary Authorisations referred to in paragraph 2.1 above shall be subject to the following conditions:

6.1 It must be valid for a period of not less than one year or until such time as the printed licence cards is provided to the Applicants;”

7. The Temporary Authorisations referred to in paragraph 5 above shall be subject to the following conditions:

7.1 It must be valid for a period of not less than one year or until such time as a decision is made in respect of the pending applications and if approved, printed licence cards are provided to the Applicants;

7.2 Should the applications not be approved for whatever reason, the applicants must return the firearms to the appointed Designated Firearms Officer appointed or nominated police officer if no appeal or review is pending in respect of those license applications;

7.3 Should any of the firearms be linked though the IBIS process to any investigation or as a result be suspected to have been involved in or linked to the commission of any crime, the firearms shall within 10 days be returned to the Designated Firearms Officer appointed or nominated police officer to be processed and dealt with in terms of the Firearms Control Act of 2000 Act or the Criminal Procedure Act of 1977, whichever is applicable;”

20. These two orders were made for the purpose of ensuring that the interests of both the applicants and respondents could be adequately addressed. The period of one year's validity is a reasonable period having regard to the inordinate delay in processing the licenses together with the failure of the respondents to comply with the agreement that they would process the 456 licenses within 30 days.
21. Furthermore, the orders made in paragraphs 7.1, 7.2 and 7.3 were made so as to ensure that the effect of the orders to issue the temporary authorizations is just that – the orders are not final in effect and the respondents maintain the oversight of and ultimate decision as to whether a license is granted or not.
22. It does not behove the respondents to rely on their own failure to discharge their obligations^[6] to process licence applications timeously or arrange for ballistic testing of firearms or to honour agreements – in order to frustrate the applicants and avoid the responsibility to carry out their administrative functions in an efficient manner.

The Eighth Order

23. The eighth order was “8. The First to Fourth Respondents shall pay the cost of this application on a party and party scale.”
24. Since it was common cause that the respondents had failed to honour the agreement, they had reached on 5 July 2022 and the entering of a further agreement with the purpose of enabling them to comply, there was no reason why the costs should not follow the result. Had the respondents complied with the agreement, the proceedings on 20 September would have been avoided entirely.
25. For the reasons set out above I made the order that I did, a copy of which (without annexures) is annexed hereto marked “RR1”.

A MILLAR

JUDGE OF THE HIGH COURT

GAUTENG DIVISION, PRETORIA

HEARD ON:

20 SEPTEMBER 2022

REASONS

REQUESTED:

23 SEPTEMBER 2022

REASONS

FURNISHED:

6 OCTOBER 2022

COUNSEL FOR THE APPLICANT: ADV. M SNYMAN SC

INSTRUCTED BY:

MJ HOOD & ASSOCIATES

REFERENCE:

MR. M HOOD

COUNSEL FOR THE RESPONDENTS: ADV. T LORABILE-RANTOA

INSTRUCTED BY:

THE STATE ATTORNEY

PRETORIA

REFERENCE:

MS. K TSEPANYEGA

ON THIS 20TH DAY OF SEPTEMBER 2022 BEFORE THE HONOURABLE MR JUSTICE MILL

CODE OF BODY 16455

1st Applicant

CODE OF BODY 19708

2nd Applicant

FIDELITY ADT (PTY) LTD

CODE OF BODY 15942

3rd Applicant

FIDELITY CASH SOLUTION

CODE OF BODY 16415

4th Applicant

CODE OF BODY 18521

5th Applicant

IN HIS CAPACITY AS REGISTRAR OF FIREARMS 1st Respondent

LIQUOR AND SECOND-HAND GOODS "FLASH") 2nd Respondent

AS THE ACTING HEAD OF THE HEAD OF THE

CENTRAL FIREARMS REGISTRY 3rd Respondent

THE MINISTER OF POLICE 4th Respondent

THE FIREARMS APPEAL BOARD 5th Respondent

DRAFT ORDER

AFTER HAVING HEARD COUNSEL for the parties, having read the papers filed of record, an order is granted in the following terms-:

1. It is declared that the First, Second and Third Respondents did not comply with the order dated 5 July 2022;
2. By agreement between the parties the following order is granted:
 - 2.1. The third respondent is ordered to cause the issuing and delivery of Temporary Authorisations in terms of Section 21 of the Firearms Control Act, Act 60 of 2000, in respect of all the firearms listed in the annexure hereto and headed "Approved Firearms Fidelity Motion" by no later than Friday 23 September 2022;
 - 2.2. The prayers in paragraph 3. 4 and 5 of the notice of motion is postponed sine die;
 - 2.3. The Applicants may approach the court to proceed with the relief referred to in paragraph 2.2 above on the same papers, duly supplemented, should they wish;
 - 2.4. If the papers are supplemented, the respondents will have the right to supplement or answer thereto within 10 days or such shorter time as allowed by the urgency or the matter on notice to the Respondents;
3. It is noted that by agreement:
 - 3.1. The firearms listed in the annexure headed "Defective Firearms Fidelity Motion", and attached hereto is alleged by the Respondents that it is unable to process the license applications to possess the firearms due to the fact that the firearms are defective;
 - 3.2. The firearms listed in the annexure headed "Government Department 10 +1", and attached hereto is alleged by the Respondents that it is unable to process the license applications to possess the firearms due to the fact that the firearms have been destroyed by the Respondents
4. No order is made in respect of the firearms listed in paragraph 3.1 and 3.2 above and any relief in that respect is postponed sine die, subject to what is stated in paragraphs 2.3 and 2.4 above
5. The Third Respondent is ordered by the court despite no agreement having reached in this respect, to cause the issuing and delivery of Temporary

Authorisations in terms of Section 21 of the Firearms Control Act, Act 60 of 2000, of all the firearms listed in the annexure headed "In Preparation for Consideration (Awaiting IBIS report)", and attached hereto, by no later than Friday 23 September 2022;

6. The Temporary Authorisations referred to in paragraph 2.1 above shall be subject to the following conditions:

6.1. It must be valid for a period of not less than one year or until such time as the printed licence cards is provided to the Applicants;

7. The Temporary Authorisations referred to in paragraph 5 above shall be subject to the following conditions:

7.1. It must be valid for a period of not less than one year or until such time as a decision is made in respect of the pending applications and if approved, printed licence cards are provided to the Applicants;

7.2. Should the applications not be approved for whatever reason, the applicants must return the firearms to the appointed Designated Firearms Officer appointed or nominated police officer if no appeal or review is pending in respect of those license applications;

7.3. Should any of the firearms be linked though the IBIS process to any investigation or as a result be suspected to have been involved in or linked to the commission of any crime, the firearms shall within 10 days be returned to the Designated Firearms Officer appointed or nominated police officer to be processed and dealt with in terms of the Firearms Control Act of 2000 Act or the Criminal Procedure Act of 1977, whichever is applicable;

8. The First to Fourth Respondents shall pay th ·s application on a party and party

Adv M Snyman SC

Counsel for Applicants

0825712797

Adv TJ Loabile-Rantao

Counsel for Respondents

0838637461

[1] 60 of 2000

[2] The amnesty was declared in terms of section 139 of the Act for the period 1 August 2020 upto and including 31 January 2021 and was published under GN 845 in GG 43576 of 31 July 2020.

[3] The section provides for the issue of temporary authorizations.

- [4] Firearms Control Regulations, 2004 published in GN R345 of 2004 in GG 26156 of 26 March 2004.
- [5] Spear Security Group (Pty) Ltd & Others v Bothma N.O & Others (an unreported decision of this Court under case number 26438/2010 handed down on 14 June 2010 in which it was held that “[24] To my mind the legislature could have had no other intention but to provide for the lawful possession of a firearm where the issuance of a permanent licence is not required, eg foreigners for hunting or sport activities or where for some or other reason a delay in issuing the permanent licence may occur, for whatever the reason, including compliance with requirements such as the possession of a valid identity document, the acquisition of a competency certificate, etc, and in circumstances, as in casu. where the applicant is in urgent need of a firearm(s), for lawful purposes. The "urgency and need" in any application should be dealt with on its own merits.”
- [6] See Spear *ibid* where it was stated “[34] The applicants, one corroborating the other, furnished overwhelming evidential material proving that the first respondent, for reasons that are not clear, nor properly explained by the respondents, failed to consider and decide to grant or refuse applications for firearm licences, within a reasonable time. Proof of delays of up to two years is part of the papers. The said delays caused many an applicant for the licencing of firearms to resort to other remedies. Mr Rip SC referred me to the judgment in the Fidelity Security Service v Director J.J Bolhma & Others (*supra*) where PRINSLOO J, as far as it concerns the delay in the office of the first respondent regarding the issuing of firearm licences for extended periods of time up to two years, made several disturbing remarks about the cause of the delay. I have read the decision of my brother PRINSLOO J. It is clear from his remarks that he was very much perturbed by the unexplained reasons for the delay in issuing or considering applications of licences in the office of the first respondent. To say the least, I am amazed that applications for firearm licences were delayed in the office of the first respondent for periods of time up to two years. No reasonable explanation for the said delays was advanced by the first respondent in this regard. To my mind these delays are totally unacceptable. I will say more about this situation in the offices of the first respondent herein below.”

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Prepared on 10 October 2026 · Esheria