


REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA  
GAUTENG DIVISION, PRETORIA

CASE NO: 68285/13

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED.
 SIGNATURE	
<u>20/6/2014</u> DATE	

20/6/2014

In the matter between:

**WATERS FIREARM TRAINING  
AND ASSESSMENT CENTRE CC t/a FIREARM  
COMPETENCY ASSESSMENT AND TRAINING CENTRE**

1<sup>st</sup> Applicant

**NTATE AVIATION AND SECURITY TRAINING CC**

2<sup>nd</sup> Applicant

**YE-SIZWE SECURITY SERVICES CC**

3<sup>rd</sup> Applicant

**UNLIMITED BUSINESS UPLIFTMENT  
TRADING UNITS (PTY) LIMITED**

4<sup>th</sup> Applicant

and

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

1<sup>st</sup> Respondant

**THE DIVISIONAL COMMISSIONER:**

2<sup>nd</sup> Respondent

**VISIBLE POLICING OF THE  
SOUTH AFRICAN POLICE SERVICES**

**THE SAFETY AND SECURITY SECTOR  
EDUCATION AND TRAINING AUTHORITY  
("SASSETA")**

3<sup>rd</sup> Respondent

**THE QUALITY COUNCIL  
FOR TRADE AND OCCUPATIONS ("QCTO")**

4<sup>th</sup> Respondent

**SOUTH AFRICAN PROFESSIONAL  
FIREARMS TRAINERS COUNCIL ("SAPFTC")**

5<sup>th</sup> Respondent

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**JUDGMENT**

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**BASSON, J**

Introduction

- [1] It is common cause that a person who applies for a firearm licence must be in possession of a training certificate that certifies that the candidate has, *inter alia*, passed the prescribed test on knowledge of the Firearm Control Act<sup>1</sup> ("FCA") and that the applicant has successfully undergone practical training in the safe and efficient use of a firearm. SAPS will only issue a firearm licence upon receipt of such a training certificate which indicates that the applicant for a licence understands the law pertaining to the safe handling and use of a firearm. Training in the safe handling and use of a firearm is done by accredited training providers. The testing on *knowledge* of the FCA as well as the formal

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<sup>1</sup> Act no 60 of 2000. See section 6(2) read with the Firearm Control Regulation 13(1) and (2).

training and practical testing in the safe and effective handling of a firearm must comply with the requirements of the South African Qualifications Act<sup>2</sup> (hereinafter referred to as "SAQA" – repealed by the National Qualifications Framework Act<sup>3</sup> - hereinafter referred to as "NQF") read with the Skills Development Act.<sup>4</sup>

The parties

- [2] The First Applicant is Waters Firearm Training and Assessment Centre CC t/a Firearm Competency Assessment and Training Centre. The Second Applicant is Ntate Aviation and Security Training CC, the Third Applicant is Ye-Sizwe Security Services CC and the Fourth Applicant is Unlimited Business Upliftment Trading Units (Pty) Limited. The Applicants are all training institutions that have been accredited by the Third Respondent to provide the prescribed tests and training for purposes of applications for competency certificates or firearm licenses in terms of section 9(2) of the FCA.
- [3] The First Respondent is the National Commissioner of the South African Police Services. The Second Respondent is the Divisional Commissioner: Visible Policing of the South African Police Services. The Second Respondent is one of the divisions dedicated with the function of issuing firearm licences to both SAP members and the general public. Before the Second Respondent can issue a licence, an applicant for a licence needs to undergo the prescribed

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<sup>2</sup> Act 58 of 1995.

<sup>3</sup> Act 67 of 2008.

<sup>4</sup> See section 14(6) and (7) of the FCA.

training in compliance with the FCA. As already pointed out, the Applicants in this application provide such training.

- [4] The Third Respondent is the Safety and Security Sector Education and Training Authority ("SASSETA") and is a SETA established on 1 July 2005 pursuant to an amalgamation of two former SETAS ("DIDTETA" and "POSLEC"). The Third Respondent is the quality assurance body delegated with the power to quality assure all training in the security cluster. As will be indicated herein below, the overall responsibility for the quality assurance of all occupational training and quality assurance vests in the Fourth Respondent. The Fourth Respondent may, however, delegate some of its powers to do quality assurance to a SETA such as the Third Respondent. (I will return to this issue herein below.)
- [5] The Fourth Respondent is the Quality Council for Trade and Occupations and is a statutory body established in terms of the Skills Development Act ("SDA").<sup>5</sup> The Fourth Respondent is a Quality Council in terms of the NQF.<sup>6</sup>
- [6] The Fourth Respondent is not directly involved in the provision of training or quality control and monitoring in respect of training providers. The principle power of the Fourth Respondent is to ensure quality assurance in respect of occupational standards and qualifications as well as learning in and for the workplace. The Fourth Respondent operates in terms of a delegation model in

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<sup>5</sup> Section 26G(1) of the SDA.

<sup>6</sup> Section 26 of the NQF.

terms of which certain functions are delegated to a SETA. In this regard it is important to point out that in terms of section 26H(4) of the SDA the Fourth Respondent "... *has all such powers as are necessary to enable it to perform its functions in terms of this section.*" Section 32 of the NQF Act provides that a Quality Council (such as the Fourth Respondent) have the power to delegate any of its functions to a committee or any other body capable of performing the (delegated) function. These functions are, however, subject to certain formalities and requirements.<sup>7</sup> (I will return to this power to delegate herein below.) Suffice to point out that central to this dispute is the common cause fact that the Fourth Respondent had delegated certain functions to the Third Respondent but subsequently revoked these functions. These (almost exact) functions were thereafter delegated to the Fifth Respondent in the stead. Whereas previously the First and Second Respondent could authorise and issue a firearm licence on the strength of a training certificate uploaded by training providers (such as the Applicants) accredited by the Third Respondent, SAPS now took a decision to only accept certificates uploaded by training providers accredited by the Fifth Respondent.

- [7] The unit standard with Qualification ID 50480 addresses the legal requirements needed for any private person applying for a competency certificate or firearm

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<sup>7</sup> Section 32 of the NQF reads as follows: "32 *Delegation* The SAQA and the QCs have the power to delegate any of their functions to a committee, any other body capable of performing the function or an employee, but a delegation- (a) must be in writing and available for inspection on request by a member of the public; (b) must specify the terms and conditions of the delegation; (c) must be consistent with this Act and the Act by which the relevant QC is established; (d) must be accompanied by sufficient funds to perform the function; (e) does not exempt the SAQA or the QC, as the case may be, from responsibility for the function; and (f) does not prevent the performance of the function by the SAQA or the QC, as the case may be."

licence. The Fourth Respondent specifically delegated the power to monitor and to quality assure the training in respect of this Qualification to the Third Respondent. As already pointed out, the delegation in respect of this particular Qualification was withdrawn from the Third Respondent and delegated to the Fifth Respondent.

Nature of this application

[8] The Applicants seek a final interdict against the Second Respondent to accept proficiency and training certificates issued by them until such time their accreditation which was granted by the Third Respondent expire. In essence therefore this application concerns the question whether the Second Respondent is entitled to refuse proficiency certificates or training certificates in relation to unit standards forming part of Qualification ID50480 issued by the Applicants.

Delegation of certain functions by the Fourth Respondent to the Third Respondent

[9] I have already referred to the fact that the Fourth Respondent may delegate certain of its functions in terms of section 26l(1) of the SDA in writing and subject to the conditions as it may determine to (*inter alia*) a SETA or any other suitable body. The provisions of section 26l of the SDA are instructive and reads as follows:

“26l Delegation of functions

(1) The QCTO may, in writing and subject to such conditions as it may determine, delegate any of its functions to-

- (a) the executive officer of the QCTO;
- (b) a committee of the QCTO;
- (c) the national artisan moderation body established in terms of section 26A;
- (d) a SETA; or
- (e) any other suitable body.

(2) A delegation under subsection (1)-

- (a) does not divest the QCTO of the function delegated and the QCTO may at any time review, amend or set aside any decision made under the delegation;
- (b) does not prevent the performance of the function by the QCTO itself; and
- (c) *may be revoked by the QCTO at any time.*<sup>8</sup>

[10] I have already referred to the fact that the Fourth Respondent had delegated, with effect 1 October 2012, in writing certain quality assurance functions to the Third Respondent. This was done in terms of the South African Qualifications legislative framework. In essence what was delegated was the function to administer the implementation of firearm training. The written delegation is contained in a document annexed to the Answering Affidavit as "Annexure Q1". The specific functions delegated are set out in paragraph [4] thereof. The specific functions so delegated relate to quality assurance of qualifications and part qualifications registered on the National Qualifications Framework ("NQF"). In terms of the delegated functions the Fourth Respondent conferred on the

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<sup>8</sup> Court's emphasis.

Third Respondent, *inter alia*, the authority to accredit providers for the qualifications or part qualifications listed in the schedule attached to the delegation in terms of the criteria determined by the Fourth Respondent. Also delegated to the Third Respondent was the function to monitor the provision by providers of learning programmes leading to qualifications to ensure that the criteria for accreditation are being complied with; to evaluate learner assessment and the facilitation of moderation of learner assessment by providers and to certify qualified learners in accordance with the policy determined by the Minister in terms of section 26F of the SDA. A number of national qualifications were delegated to the quality assurance function of the Third Respondent. One of these qualifications was Qualification ID50480 "Further Education and Training Certificate: Firearm Training".

- [11] I have already referred to the fact that the delegation may be subject to such conditions as may be determined by the Quality Council. In this regard the Fourth Respondent did indeed delegate some of its functions subject to certain terms and conditions (as set out in clause 4 of Annexure Q 1). One of the salient terms of the delegation is the fact that this delegation commenced on the 1<sup>st</sup> of October 2012 and expired once the qualification listed are reviewed and replaced or until the qualifications reach their registration end date and teach out periods "*or when the qualifications are withdrawn by the QCTC*". It is further expressly stated in the letter accompanying the delegation that:

*"It must be noted that should a quality assuring body find itself unable to perform its delegated functions, the QCTO will be left with no further recourse than to find*



*a replacement for which the quality assurance body will have to assume the financial responsibility. This process is in line with the procedure used where a training provider fails to execute its functions, but remains accountable for ensuring service deliver."*

[12] This delegation further provided for an appeal process in the event the SETA (the Third Respondent) disagreed with the Fourth Respondent's decision to withdraw the quality assurance functions (clause 7 of the delegation).

[13] It is not disputed on the papers that the Third Respondent did not lodge an appeal nor is it in dispute that the Applicants never lodged any appeal proceedings or instituted a review in respect of the decision to withdraw Qualification ID 50480 from the delegation to the Third Respondent.

#### Removal of the delegation to the Third Respondent

[14] It is common cause that when the decision to remove Qualification ID50480 from the scope of the Third Respondent's accreditation was taken, certain quality assurance functions were delegated to the Fifth Respondent. The delegation was in all material respects similar to those listed in Annexure Q1 and specifically included Qualification ID 50480 and the associated unit standards. This delegation became effective on 1 April 2013.

[15] The deponent to the Answering Affidavit on behalf of the Fifth Respondent explained that he, as chairman of the Standards Generating Body was approached by SAQA with a proposal in 2009 to form the South African Professional Firearms Trainers Council (the Fifth Respondent) to take over the

functions of the Third Respondent because of the incapacity of the Third Respondent to properly regulate and verify firearm training. (This allegation is confirmed by the Third respondent.) It was proposed that the Fifth Respondent would be mandated to take over the quality assurance role of Qualification 50580 within the regulatory framework. The reason, as already pointed out, simply was that the Third Respondent did not have the capacity or expertise to administer the quality assurance process. In September 2012, the Fifth Respondent was granted the status of a professional body as contemplated by section 28 of the National Qualifications Framework Act of 2008. Once this has happened, the Fifth Respondent embarked on a series of road shows throughout the Republic commencing in April 2013. Making use of the database of the Third Respondent as well as the database of the South African Police Services of accredited providers and the database of the Range Regulation Forum of the South African Bureau of Standards and National Regulator for Compulsory Standards, the Fifth Respondent contacted the various service providers. According to the Fifth Respondent, the First Applicant was also invited and therefore the Applicants have known about this process since March 2013.

[16] It is also instructive to point out that well over 200 accredited firearm trainers throughout South Africa have since registered with the Fifth Respondent including some of the branches of the First Applicant.

[17] It is important to point out that the Fifth Respondent contended that it is misleading if it is alleged by the First Applicant that they will be de-accredited if

the process is implemented: All accreditations will remain valid. All that the Fifth Respondent will do is to take over the quality control and audit function previously vested in the Third Respondent. This will mean that the Fifth Respondent will receive applications for registration and will register and accredit such applicants.

- [18] It is common cause that the Fourth Respondent communicated its decision to remove Qualification ID50480 and the associated unit standards from the scope of the Third Respondent's accreditation. The Fourth Respondent also informed the Third Respondent that there will be a transition period during which the Third Respondent will be allowed to accept learner achievement uploads from accredited training providers. The period would be for a period of 60 days ending on 31 May 2013. The period for accepting SAPS firearm unit standards submissions was for a period of 90 days ending on 30 June 2013.
- [19] In short, with effect 1 April 2013 Qualification ID50480 (and associated unit standards which includes 117705) was removed from the Third Respondent and delegated to the Fifth Respondent.
- [20] The notification from the Fourth Respondent stated that the removal of delegation emanated from discussions between the Third Respondent and the Professional Firearm Trainers Council (the Fifth Respondent) and culminated in an agreement by the Third Respondent to relinquish its quality assurance functions in respect of Qualification ID50480. The Fifth Respondent was duly

informed of this delegation. Attached to the delegation are the title of the national qualification (ID50480) and a list of the associated unit standards.

[21] This delegation had the effect that the Third Respondent no longer had any quality assurance functions as from 1 April 2013 in respect of Qualification ID50480 as these powers (specifically those listed in paragraphs 4(a); (b); (c); (d); (e) and (f) of Annexure Q 1) are now vested in the Fifth Respondent. The further effect was that the Third Respondent's authority to accept learner achievement uploads from accredited training providers terminated with effect 31 May 2013 and to accept SAPS' firearm unit standards submissions with effect 30 June 2013. In short: Any and all authority that the Third Respondent may have had terminated on 31 May 2013 and 30 June 2013 respectively.

[22] The further effect was that it is now required that a training institution (such as the Applicants) in respect of the relevant unit standards has to be accredited through the Fifth Respondent and, until such time the Applicants register with the Fifth Respondent, the training provided for by the Applicants in relation to unit standards (especially 117705 forming part of Qualification ID 50480) will have no legal effect.

#### Evaluation of the submissions

[23] At the outset it must be emphasised that what is before this Court is a declaratory of the legal position and not a review. Put differently, this Court is not being asked to review whether the Fifth Respondent was correctly accredited as a SETA in terms of the SDA nor is the Court asked to review the

decision of the Fourth Respondent to delegate certain functions to the Third Respondent. In fact, the Third Respondent is not contesting the delegation to the Fifth Respondent.

[24] Lengthy submissions were filed on behalf of the Applicants in support of the contention that the relief sought in the Notice of Motion be granted. I do not intend to summarize these submissions. A great portion of the submissions centre around the various and somewhat contradictory communiques issued by the Fourth Respondent. I do not intend summarizing this history in respect of these circulars as I am of the view that nothing really turns on these circulars. What is at issue here is whether the Second Respondent is entitled to refuse proficiency certificates or training certificates in relation to unit standards forming part of Qualification ID 50480 issued by the Applicants (accredited by the Third Respondent) after expiry of the authority delegated to the Third Respondent by the Fourth Respondent.

[25] I have carefully considered all the submissions on behalf of the Applicants and I am not persuaded that the Applicants have made out a case for the relief sought in the Notice of Motion. In deciding to dismiss the application, it was taken into account that the delegation made to the Applicants had been made subject to certain conditions. One of the salient conditions of the delegation was that the delegation would expire when the qualifications are withdrawn by the Fourth Respondent. It is instructive that the Third Respondent is not contesting the delegation. Surely if the delegation was in issue the Third Respondent would have contested the withdrawal making use of the appeal process

provided for in the delegation. Consequently, in terms of legislation, it is clear that the Fourth Respondent may at any time review, amend or set aside any decision made under the delegation. It follows therefore in my view that the Second Respondent is entitled to have made a determination in terms of which it no longer recognised such training and testing. It follows further that the Second Respondent's refusal of proficiency certificates or training certificates in relation to the aforementioned unit standards and Qualification (unloaded by the Applicant) is justified. Lastly, the Applicants have been afforded the right to apply for accreditation. Why they have not done so is not clear on the papers.

[26] In the event the following order is made:

The application is dismissed with costs, inclusive of reserved costs.

A handwritten signature in black ink, appearing to read 'AC Basson', with a horizontal line drawn underneath it.

**AC BASSON**  
**JUDGE OF THE HIGH COURT**