



**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 / <u>NO</u>
(2)	OF INTEREST TO OTHER JUDGES: YES/ <u>NO</u>
(3)	REVISED.
31..March.2022	
DATE	
 SIGNATURE	

LEAVE TO APPEAL JUDGMENT

NONCEMBU AJ

Introduction

- [1] The applicants are seeking leave of this court to appeal to the Supreme Court of Appeal, against the whole judgment delivered by this court on 24 February 2022. In the notice of motion, the applicants had sought a declaratory order that –

“... 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”

- [2] The basis of their application was centered around the interpretation of regulation 67 of the Firearms Control Regulations, 2004 (the regulations), which they contended applied to dealers and therefore entitled the first applicant to store firearms it lawfully possessed in the premises of the second applicant. The relevant provisions of regulation 67 provide 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.”

[3] This court ruled against the applicants in the matter and dismissed the application with costs. It is against this backdrop that the applicants are seeking leave to appeal the said judgment.

The grounds of appeal

[4] The applicants rely on the provisions of section 17 (1) (a)(i) and (ii) of the Superior Courts Act¹ in support of their application for leave to appeal. They content that the appeal has a reasonable prospect of success² and or there are compelling reasons why the appeal should be heard³. On the latter, they contend that the question of whether one dealer may provide storage facilities to another dealer is of paramount importance to the applicants and to other dealers in South Africa.

[5] In the main, the grounds of appeal raised are that, the court erred in, *inter alia*, not finding that, on a proper interpretation of Regulation 67(2) and 67(3), the second applicant is legally entitled to provide storage to the first applicant. Further, it is

¹ Act 10 of 2013.

² Section 17(1)(a)(i).

³ Section 17(1)(a)(ii).

contended that regulation 86(4) which provides that a person can only store a firearm on behalf of another with the written permission or authorization of the latter, which permission or authorization must be endorsed by the relevant Designated Firearms Officer (DFO), is only applicable to natural persons and not to dealers which are juristic persons.

- [6] This court gave a fully reasoned judgment wherein it considered all the relevant provisions of the regulations as well as those of the Firearms Control Act (the Act) when it dismissed the said application. Of material importance in this regard, the court considered that in interpreting the provisions of regulation 67, it had to do so in the context of the whole regulations and the entire Act, and the circumstances under which they came into existence. To that end it considered the preamble to the Act, which sets out the constitutional framework which provides the foundational principles to the promulgation of the Act, as well as section 2 which outlines the purpose of the Act as the establishment of a comprehensive and effective system of firearm control and management, monitoring and enforcement of legislation pertaining to the control of firearms.
- [7] Applying the principles of interpretation as enunciated in *Natal Joint Municipal Fund v Endumeni Municipality*⁴ - "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" - as well as other authorities, the court found that whilst *prima facie* a dealer was not excluded in the reference to 'a person' in regulation 67(2), to give a proper meaning to the said provision one must read and consider it in the context of the entire Act and regulations.

⁴ 2012(4) SA 593 SCA.

- [8] Having considered all of the above, the court found that the first applicant was not entitled to store its firearms at the premises of the second applicant. It further held that an otherwise interpretation would have dire consequences for the second respondent and its officials, who are tasked with the function of the control and management of firearms as well as the monitoring of compliance and enforcement of legislation pertaining thereto. It thus held that such an interpretation would defeat the very purpose of the Act.
- [9] Thus, the grounds of appeal raised were fully considered and canvassed in the judgment by this court. I am therefore not persuaded that there is a reasonable prospect of success on appeal in the circumstances. However, taking into account that the matter deals with interpretation of legislation, having a bearing on the applicants and other dealers in firearms, it is my view that there are other compelling reasons why the appeal should be heard.
- [10] Prior to the lodgment of the main application under discussion, the first applicant had been storing its firearms at the premises of the second applicant, until they were informed that some of the members/officials of the second respondent were of the view that this was not in accordance with the law. This shows that there was uncertainty on the proper interpretation of the said provisions even on the part of the second respondent's officials. It is therefore my view that a decision by the Supreme Court of Appeal in this regard will put the matter to rest once and for all. The issue of firearms control and management is of paramount importance, not only to the industry (firearms dealers), but for the country as a whole. It is for these reasons that I am of the view that there are compelling reasons why the appeal in question must be heard. For these reasons therefore, the leave to appeal application must succeed.

Ruling

- [11] In the premise, the following order is made

(a) Leave to appeal to the Supreme Court of Appeal is granted.

(b) Costs of this application to be costs in the appeal.



V Noncembu

Acting Judge of the North Gauteng High Court

APPEARANCES

DATE OF HEARING : 23 March 2022

DATE OF JUDGMENT : 31 March 2022

Counsel for the 1st and 2nd Applicants : Adv APJ Els

Instructed by : JW Botes Attorneys

Tel: 012 809 3766

Counsel for the 1st and 2nd Respondents : Adv M V Magagane

Instructed by : Office of The State Attorney,

Pretoria

Tel: 012 309 1630