



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

- (1) ~~REPORTABLE: NO~~
(2) ~~OF INTEREST TO OTHERS JUDGES: NO~~
(3) ~~REVISED~~

.....
SIGNATURE

15/6/2022
.....
DATE

Case No: 42824/2021

In the matter between:

UMLINDI SECURITY SERVICES (PTY) LTD

Applicant

And

Same respondents as below

Case No: 44969/2021

In the matter between:

**THORBURN SECURITY SOLUTIONS
PSIRA REGISTRATION NO. 1684326
FAR NO. 20377**

Applicant

And

Same respondents as below

Case No. 43855/2021

In the matter between:

**UNITRADE 1047 (PTY) LIMITED
TRADING AS ISIDINGO SECURITY SERVICES
CODE OF BODY 15216**

Applicant

And

**THE NATIONAL COMMISSIONER OF THE
SOUTH AFRICAN POLICE SERVICES
GENERAL KJ SITHOLE N.O
(IN HIS CAPACITY AS REGISTRAR OF
FIREARMS)**

First Respondent

**MAJOR GENERAL MAMOTHETI
(IN HER CAPACITY AS HEAD OF THE FIREARMS,
LIQUOR AND SECOND-HAND GOODS CONTROL
DEPARTMENT "FLASH")**

Second Respondent

**BRIGADIER MABULE N.O
HEAD OF CENTRAL FIREARMS REGISTRY
THE MINISTER OF POLICE
THE FIREARMS APPEAL BOARD**

Third Respondent

Fourth Respondent

Fifth Respondent

JUDGMENT

MADIBA AJ

[1] The applicant instituted an urgent review application against the Respondents.

The relief sought is on the following basis *inter alia*:

- 1.1 Dispensing with normal rules contained in Rule 6 and Practice Directive of the above Honourable Court to proceed on urgent basis.
- 1.2 That exceptional circumstances do exist exonerating the applicant not to exhaust its internal administrative remedies alternatively to declare that no such internal administrative remedy exists to be exhausted by the applicant.
- 1.3 Seeking an order that its Section 21 temporary authorisation for firearm listed in Schedule "A" be deemed to have been refused due to the lapse of time.
- 1.4 Reviewing and setting aside the refusal of Section 21 temporary authorisation.
- 1.5 Ordering the first, second and third respondents to issue temporary authorisation for firearm contained in Schedule "A" for one year from date of order.

- 1.6 Ordering the respondents to approve, issue and deliver the permits to the applicants within 15 days from the date of order.
- 1.7 Alternatively ordering that the applicant's firearm applications in terms of Section 20 of the Firearm Control Act under Section "B" be deemed to be refused.
- 1.8 An order reviewing and setting aside such deemed refusal.
- 1.9 That the first, second, and third respondents jointly and severally to issue such firearm licences within thirty days of the date of the order.
- 1.10 In the alternative, the first, second, and third respondents be ordered to make a decision on the application of the firearm licences within five days from the date of the order.
- 1.11 Ordering that such firearm licences be delivered to the applicant within 15 days from the date of the order.
- 1.12 That in the event of some or all the applications being refused by the first, second and third respondent an order that the applicant approach the above Honourable Court on the same papers duly supplemented, to review such decision and to set down such review application on urgent basis.
- 1.13 That the respondents pay the costs of the application.
- 1.14 Further and/or alternative relief.

- [2] The respondents resisted the application by disputing urgency thereof and that the application was instituted prematurely. It was contended by the respondents that the application has become moot and the costs order sought against the respondents is not justifiable under the circumstances. The applicant's urgent application was struck off the roll for lack of urgency with costs on 14 October 2021.

Factual Background

- [3] The applicant is a security service provider registered as such with the Private Security Industry Regulatory Authority and with the Registrar. As security service providers to various institutions, some institutions need armed guards with firearms.
- [4] It is required in terms of the *Firearms Control Act* 60 of 2000 that firearms issued for business purposes must be renewed every five years. This entails that security service providers are to replace, renew and apply for licences for tools of their trade like firearms. The *Firearms Act* requires that an application for renewal of firearms must be submitted at least ninety days before lapsing of such licences.
- [5] The applicant submitted 100 authorisations and 100 new firearm licences applications in terms of Section 21 and 20 of the *Firearms Control Act* twenty working days before instituting its urgent review application. It is not disputed that it takes about a period of ninety working days alternatively one hundred and twenty days to deal with firearm licence applications.

- [6] The respondents duly informed the applicant on 4 October 2021 that the 100 new licences applications were under consideration and the temporary applications submitted by the applicant are being processed. The Central Firearm Registry approved 100 firearm licences of the applicant during 14 and 15 October 2021.
- [7] Section 21 temporary authorisations for the 100 firearm licences issued were provided to the applicant during 11 and 17 November 2021. The temporary authorisation were to be valid until the applicant receives the licence cards for the 100 firearm licences approved. The applicant received the printed licence cards for all 100 firearms applied for thus rendering the temporary authorisation no longer necessary and were accordingly refused by the Central Firearm Registry.
- [8] On 11 November 2021, the applicant collected sixty temporary authorisations in respect of sixty firearm licences application submitted at Bellville Police Station. Despite the applicant having collected one hundred and sixty temporary authorisations and after the striking off of the applicant's urgent review application, the applicant enrolled the application on an opposed motion roll on 14 February 2022.

Rule 6(5) (e) of the Uniform Rules of Court

- [9] The third respondent seeks a relief for an order permitting and allowing the respondents to file their supplementary affidavit in view of the events and developments that emanated prior to, during and after the urgent application was struck off the roll. He asks for costs on attorney and client's scale. The third respondent contends that he and other respondents were not aware of such

events and developments at the time of the hearing. Consequently, the relief sought by the applicant has become moot and academic.

[10] The purpose of the third respondent's application in terms of Rule 6(5) (e) is to place on record the facts that renders the relief sought by the applicant moot. The applicant applied for the enrolment of its application on an opposed roll during 25 October 2021. It came to the attention of the respondents that the applications of hundred firearm listed in Schedule "B" by the applicant were issued on 14 and 15 October 2021 at the time (14 October 2022) applicant's urgent application was struck off.

[11] Since the 100 firearm applications by the applicant were approved, there was no need for the 100 temporary authorisation applications for the same firearm application to be approved, and were accordingly refused by the Central Firearm Registry. The third respondent issued 160 temporary authorisation due to the delay in printing the licence cards during the 13 to 15 October 2021 prior and after the urgent review application was struck off.

[12] According to the third respondent, the relief sought by the applicant became moot and academic on 17 November 2021 with a full knowledge of the applicant. It is alleged that the applicant failed to comply with the Consolidated Directive on 16 November 2021 and omitted to disclose to the court that there were no longer any dispute to be determined by the court. Despite the non-compliance, he enrolled the application on an opposed roll for 17 February 2022. As such the respondents moved for an order striking off the applicant's application with a punitive costs order.

- [13] It is accepted that the standard of considering an application for condonation is the interest of justice. Whether it is in the interest of justice to grant condonation depends on the facts and circumstances of each case. See **Brummer v Govfil Brothers Investment Pty Ltd and Others 2000 (2) SA 837 CC** paragraph [3] and [23].
- [14] I, under the circumstances of this matter, find that it will be in the interest of justice to holistically deal with the entire application and condone non-compliance of the Directives. I therefore direct that the application should proceed as the respondents would suffer no prejudice.
- [15] The general rule is that the parties should abide by the requirements that three affidavits are permitted to be filed unless the court in exercising its discretion, permit further sets of affidavits. The court will only exercise its discretion if a full explanation is furnished as to why it is necessary to file supplementary affidavits. The court will consider if it is fair and just to do so and that the other party will suffer no prejudice. I find that it is in the interest of justice that the supplementary affidavit be allowed as the applicant will not suffer any prejudice. In any event the applicant does not dispute that the application has become moot and academic. The supplementary affidavit is accordingly admitted.
- [16] The only issue for determination under the circumstances is the issue as to who has to bear costs in this matter. The applicant's contention is that an adverse costs order should be granted against the respondents. It is alleged that the respondent only reacted to attend to the applicant's application after applicant was forced to institute the application presently before the court. The applicant argues that its notice of set down dated 15 November 2021 was served on the

respondents on 16 November 2021 before the delivery of the temporary authorisation on 17 November 2021.

[17] According to the applicant, it is the respondents' case that relief sought became moot on 17 November 2021 due to the approval of the licence application and subsequent approval thereof. Since the application was launched before the approval of the licence applications on 17 November 2021, the issue of mootness cannot be raised. The applicant submitted that the respondents complied with their obligations after service of the review application and by the time the notice was delivered, respondents only partially complied with their obligation. It will therefore be fair and just if the order for costs is granted against the respondent so argued the applicant.

[18] The respondents averred that the application for the review by the applicant was launched prematurely and was therefore not urgent. The respondents submitted that applicant's Section 20 applications (firearm licence applications) were approved 49 days well before the period prescribed for consideration of applicant's new firearm licences applications which is 90 working days alternatively 120 working days. The respondents alleged that the applicant was as early as 4 October 2021 informed that the Central Firearm Registry will consider 100 new firearm licence applications and not the temporary applications as they were being processed at the Midrand Police Station.

[19] It is common cause that the applicant's review application was struck off the roll for lack of urgency on 14 October 2021. It is on this date (14 October 2021) that the Central Firearm Registry approved 60 of applicant's new firearm licences and the remaining 40 were approved on 15 October 2021. Since applicant's

100 firearms new licences were approved the 100 temporary authorisations were refused. It is contended that since there was a delay printing and distributing firearm licence cards, the third respondent deemed it necessary to issue 160 temporary authorisation for the firearm licences issued to the applicants during 13 – 15 October 2021. Accordingly, the applicant was issued with 100 printed licence cards and rendering the temporary authorisations invalid and irrelevant. The respondents' submitted that the relief sought by the applicant became moot and academic and therefore had no practical effect or result. Consequently, the respondents pray for the dismissal of the applicant's application with a punitive costs order.

Mootness of a matter

[20] It is generally accepted that a court hearing a matter would not accept an invitation to adjudicate on issues which are of such a nature that the decision sought will have no practical effect or result. See **National Coalition for Gay and Lesbian Equality and Others v Minister of Home Affairs 2000 (2) SA 1 CC** paragraph 21.

[21] In **JT Publishing (Pty) Ltd and Another v Minister of Safety and Security and Others 1997 (3) SA 514 CC** paragraph 17, the court stated that:

"There can hardly be a clearer instance of issues that are wholly academic, of issues exciting no interest but an historical one, than those on which our ruling is wanted have now become."

- [22] The courts have been vested with a discretion to hear a matter even when it was moot. In **Independent Electoral Commission v Langeberg Municipality 2001 (3) SA 925 CC** paragraph [11], the court held that:

“... a prerequisite for the exercise of the discretion is that any order this court may make will have some practical effect either on the parties or on others”

- [23] The respondent argued that the matter was moot and academic as it was not urgent and was instituted prematurely. Careful reading of the papers before the court reveal that the respondents complied with the issuing and approving of the applications for new firearm licences within the prescripts of Section 21 of the Firearm Act of 60 of 2000. That is to say the respondents were expected to deal with the firearm applications within a period of 90 working days alternatively 120 working days. The approval of the applicant was approved with 49 days working days after submissions of the said application on 5 August 2021. In other words, the applicant's new licence applications, right to temporary possess the firearms pending the printing of the licence cards and receipts of the printed licence cards for all 100 firearms were processed within the required timeframe.

- [24] The expiry date for respondents' compliance with applicant's application was 13 December 2022. The applicant instead received the printed licence cards for all 100 firearms of the applicant on 24 November 2021. At the time, the applicant's urgent review application was struck off the roll on 14 October 2021, the respondents considered and approved the firearm licences (i.e on 14 – 15

October 2021). The temporary authorisation were delivered to the applicant on 11 and 17 November 2021.

[25] When the applicant served the notice of set down on 16 November 2021, the respondents had already considered it and approved the applicant's firearm licences during 14 – 15 October 2021. It is indeed so that on 11 and 17 November 2021 the applicant was provided with temporary licences issued to the applicant on 14 and 15 October 2021. The respondents had until 13 December 2021 alternatively 27 January 2022 to be compliant with the prescripts of the Firearm Act.

[26] I am of the view that by 17 November 2021, the applicant's application became moot and academic. Consequently, the relief sought by the applicant had no practical effect or result as it has become moot. In light of the above, the point of mootness of the application raised by the respondents stands to be sustained.

[27] Both the applicant and respondents seek a costs order against each other on a punitive scale albeit for different reasons as aforementioned. It is argued by the applicant that the respondent only complied with their obligations to issue and approve the Section 20 and 21 of the Firearms Act after the service of the review application and later on, partially adhered to their obligation as required. As a result of the respondents' non-compliance with their obligations, the applicant incurred unnecessary legal costs. The respondents are therefore liable for applicant's costs on a punitive scale. In a nutshell, the respondents contend that the applicant's application was launched prematurely and has become moot and academic.

- [28] The issue whether to award costs is primarily based on two basic rules namely:
- a) That the award of costs is a matter of judicial discretion by the court; and
 - b) That the successful party should as a general rule be awarded costs.
- See **Ferreira v Levin N.O and Others 1996 (2) SA 621 CC** at 624 and **Fripp v Gibbon and Company 1913 AD** at 354 – 357.
- [29] The purpose of an award of costs to a successful litigant is to indemnify him for the expense which he has been unnecessarily put through. Costs on attorney and client (punitive scale) will only be awarded in appropriate and exceptional circumstances. A punitive cost order may be awarded in the event among others, that a litigant has been dishonest, reckless, vexatious, frivolous and fraudulent. Such an order may also be granted where the exceptional circumstances and consideration justify that a punitive cost order be awarded.
- See **Nel v Waterberg Landbouwers Ko – Operatiewe Ereeniging 1945 AD 597.**
- [30] The facts of each and every case has to be considered by the court when exercising its discretion and has to be fair and just to all the parties. In this matter, the contents of the respondents' supplementary affidavit relating to the mootness of the applicant's application remains unchallenged by the applicant.
- [31] The court may dismiss a matter where the relief sought will have no practical effect or result. I therefore find that the respondents should not have been put through the process of the dealing with this application as it was only for academic purpose with no practical effect or result.

[32] After careful consideration of the facts and circumstances of this application, it cannot be said that there is a flagrant misconduct of any sort or recklessness on the part of the applicant that warrant an award of costs on a punitive scale.

Order

[33] I therefore make the following order:

33.1 The applicant's application is dismissed with costs.



S.S MADIBA
ACTING JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

APPEARANCES

COUNSEL FOR APPLICANT : ADV. H.J BASSON
INSTRUCTED BY : MJ HOODS AND ASSOCIATES

COUNSEL FOR RESPONDENTS: ADV I ELLIS (SC)
INSTRUCTED BY : THE STATE ATTORNEY

DATE OF HEARING : 18 FEBRUARY 2022
DATE JUDGMENT RESERVED : 18 FEBRUARY 2022
DATE OF JUDGMENT : ____ JUNE 2022