IN THE HIGH COURT OF SOUTH AFRICA

(GAUTENG DIVISION, PRETORIA)

DELETE WHICHEVER IS NOT APPLICABLE
(1) REPORTABLE: ~~YES~~/NO
(2) OF INTEREST TO OTHER JUDGES: ~~YES~~/NO
(3) REVISED: NO
DATE: 27 OCTOBER 2022
SIGNATURE:

CASE NO: 31971/2022

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**

JUDGMENT

MILLAR J

1. The respondents have applied for leave to appeal against certain orders made by me in the urgent court on 20 September 2022. These orders were made pursuant to an application to hold the respondents in contempt of their failure to comply with an earlier order granted on 5 July 2022, the first application, which had been granted by agreement between them.

2. When the second contempt application was brought, the respondents once again entered into an agreement with the applicants. This agreement did not

however address the immediate issue of the contempt or the prejudice to the applicants.

3. It was in these circumstances that I made the further orders that I did. The respondents have placed in issue every finding and disputed every reason given for the granting of the orders and in particular the order to issue temporary license in terms of section 21 of the Firearms Control Act 60 of 2000. The orders pertaining to this were:

> *"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;*
>
> *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;"*

4. I do not intend to traverse the reasons or the challenges to them as they are in my view not relevant to the true issue in this application – are the orders made by me appealable?

5. In this regard, in Government of the Republic of South Africa and Others v Von Abo[1] it was stated:

> *"The complications surrounding appealability in any given instance were recently summarized by Lewis JA in Health Professions Council of South Africa and Another v Emergency Medical Supplies and Training CC t/a EMS2010 (6) SA 469 (SCA) paras 14 – 19. It is fair to say that there is no checklist of requirements. Several considerations need to be weighed up, including whether the relief granted was final in its effect, definitive of the rights of the parties, disposed of a substantial portion of the relief claimed, aspects of convenience, the time at which the issue is considered, delay, expedience, prejudice, the avoidance of piecemeal appeals and the attainment of justice." (footnotes omitted)*

6. Having regard to the terms of the orders in question, it cannot be said that the orders were either final in effect or definitive of the rights of the parties. This is clear on a plain reading of the orders.

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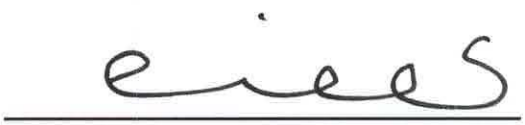
[1] 2011 (5) SA 262 (SCA) at para 17, Phillips v Reserve Bank and Others 2013 (6) SA 450 (SCA)

7. The orders were granted to mitigate the prejudice to the applicants which was in direct consequence of the respondent's failure to process the applications for amnesty timeously or to honour the time commitments made to process the applicants outstanding applications within the time frames that it had agreed to on 5 July 2022.

8. In my view the orders are not appealable and for that reason the application must fail.

9. In the circumstances it is ordered:

   9.1 The application for leave to appeal is dismissed with costs.



A MILLAR
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

HEARD ON:	27 OCTOBER 2022
JUDGMENT DELIVERED:	27 OCTOBER 2022
COUNSEL FOR THE APPLICANTS:	ADV. M SNYMAN SC
INSTRUCTED BY:	MJ HOOD & ASSOCIATES
REFERENCE:	MR. M HOOD
COUNSEL FOR THE RESPONDENTS:	ADV. E ELLIS ADV. T LORABILE-RANTOA
INSTRUCTED BY:	THE STATE ATTORNEY PRETORIA
REFERENCE:	MS. K TSEPANYEGA