REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

CASE NO: 2022-010177

(1) REPORTABLE: YES/NO
(2) OF INTEREST TO OTHER JUDGES: YES/NO
(3) REVISED YES/NO

……..
SIGNATURE **DATE: 24 October 2022**

In the matter between:

FIDELITY SECURITY SERVICES (PTY) LTD

(CODE OF BODY 16455) First applicant

FIDELITY ADT (PTY) LTD

(CODE OF BODY 15942) Second applicant

FIDELITY CASH SOLUTIONS

(CODE OF BODY 16415) Third applicant

and

THE NATIONAL COMMISSIONER OF THE SOUTH

AFRICAN POLICE SERVICES (IN HIS CAPACITY AS

REGISTRAR OF FIREARMS) First respondent

MAJOR GENERAL MAMOTHETI	
(IN HER CAPACITY AS HEAD OF THE FIREARMS,	
LIQUOR AND SECONDHAND GOODS CONTROL	
DEPARTMENT ["FLASH"])	Second respondent
COLONEL PN SIKHAKHANE N.O.	
(IN HER CAPACITY AS ACTING SECTION HEAD,	
CENTRAL FIREARMS REGISTRY)	Third respondent
THE MINISTER OF POLICE	Fourth respondent
THE FIREARMS APPEAL BOARD	Fifth respondent

JUDGMENT

SWANEPOEL, AJ

Introduction

[1] In their notice of motion dated 1 August 2022 the applicants sought a wide scope of relief against the first, second, third and fourth respondents, relating to the alleged failure by the "Registrar" to *"*[c]*onsider, process and decide upon the applications for the temporary authorizations to possess the firearms applied for on 7 July 2022, within 7 working days as contemplated in the Act and Regulations issued thereunder"*.

[2] The applicants are private profit companies and registered security service providers with the Private Security Industry Regulatory Authority ("PSIRA").

[3] The first respondent is the National Commissioner of the South African Police Service cited as the "*titular head*" of the central firearms registry in terms of s 123 of the Firearms Control Act 60 of 2000 ("the Act"). The second respondent is Major General Mamothethi, cited as the person in charge of the firearms, liquor and second-hand goods department under which the central firearms registry falls. The third respondent is Colonel Sikhakhane N.O., the acting section head and official in charge of the central firearms

registry that manages its operations on a day-to-day basis. The fourth respondent is the Minister of Police responsible for the South African Police Service; the fifth respondent is the Firearms Appeal Board constituted in terms of s 128 of the Act, cited by virtue of the fact that the applicants have not exhausted any internal remedies due to the fact that (so it is alleged in the founding affidavit) no internal remedy exists alternatively because exceptional circumstances exist that excuse the applicants from exhausting any internal remedy. No relief was sought against the fifth respondent in the event of it not opposing the application.

[4] The application was initially launched as an urgent application. Counsel for the parties confirmed that on 25 August 2022 the matter was struck from the roll and the applicants were ordered to pay the first to fourth respondents' (the opposing respondents') costs. No judgment or order in respect of the 25 August 2022 proceedings was uploaded onto the Caselines platform.

[5] By notice dated 31 August 2022 the applicants set the matter down for hearing in the opposed motion court, on Monday, 10 October 2022.

[6] By notice dated 3 October 2022 the applicants purported to remove the matter from the roll. It was not indicated in the "Notice of Removal from Opposed Trial Roll" whether any of the respondents agreed a removal.

[7] The matter was allocated for hearing in open court on 11 October 2022 at 10h00, at which date and time proceedings could not commence due to a lack of electricity provision in the court building. By agreement between the parties the matter stood down and commenced on the MS Teams virtual platform at approximately 12h00 on 11 October 2022. After the hearing judgment was reserved.

[8] At the commencement of proceedings counsel for the applicants conceded (correctly in my view) that the applicants' notice of removal dated 3 October 2022 had no effect in the absence of the respondents' agreement thereto that the matter be removed from the roll and that, consequently, the matter was still enrolled for hearing. Counsel for the applicants confirmed that the substantive relief sought by the applicants in prayers 2 to 7 of their notice of motion have become moot because the firearm license applications

to which the substantive relief relates (in part) were processed and licenses were issued. In the circumstances the applicants persisted only with its prayer for costs of the application.

[9] Counsel for the first to fourth respondents argued (on the bases mentioned later in this judgment) that the application should be dismissed with costs.

[10] In a supplementary affidavit deposed to on behalf of the applicants by Johannes Cornelius Wentzel (who was also the deponent to the applicants' founding affidavit) that was served electronically on the respondents' attorney of record on 6 October 2022, but only uploaded onto the Caselines platform on 10 October 2022 [the filing of which affidavit I pause to note is accepted by this court because it is in the interests of justice to do so] some information was provided regarding events that transpired after the matter was struck from the roll on 25 August 2022. Despite the statement therein that the applicants were on 6 October 2022 not afforded all the relief that they sought the applicants persisted only with their prayer for costs of the application.

[11] Counsel for the applicants' argument proceeded on the line that the applicants ought to be awarded their costs of the application in circumstances where the respondents only complied with the essence of the relief sought after the application had been instituted and based on the submission that the application was necessary, that it was properly instituted, and that the applicants were entitled to the relief sought, which have subsequently become moot. As I understood Mr Snyman SC's argument on behalf of the applicants, the submission was made that the relief sought in prayers 2 to 6 of the applicants' notice of motion became moot, in circumstances where the license applications for the 800 firearms referred to in prayer 7 of the notice of motion were processed and finalized by the relevant officials only after 25 August 2022. This factual position is confirmed if regard is had to the parties' joint practice note dated 6 October 2022.

[12] Counsel for the applicants stated that an order for costs is sought only against the fourth respondent. In this respect it is noted that the prayer for costs in the applicants'

notice of motion is non-specific in that it was not indicated against which respondent such order was sought.

[13] Counsel for the respondents argued that the relief sought in relation to temporary authorizations constituted an abuse of process because those applications ought not to have been lodged simultaneously with applications for firearm licenses, in respect of the same firearms, and that the applicants' conduct in this respect were simulated to create urgency where none existed. I pause to note that the urgency referred to does not relate to the initial urgent basis upon which the application was brought but related to the alleged urgent need for temporary authorizations. Ms Ellis SC, for the opposing respondents, further argued that the application was brought prematurely in circumstances where the relevant authorised officials (at the time when the court application was instituted) were still processing the firearm license applications within the allowable time. She further argued that the processing and approval of the firearm licenses were done by the relevant officials in the normal course and finalized within the allowable time. Therefore, so it was argued, the application should not have been instituted and ought to be dismissed with costs.

The relief sought in the notice of motion

[14] The relief sought in prayer 2 is formulated in the following terms:

> *"That the Applicants do not have an internal administrative remedy, alternatively that exceptional circumstances exist and that Applicants do not need to exhaust their internal remedy insofar as it is required."*

[15] The applicants sought a declaration (or confirmation) to the effect that no internal administrative remedy existed and, in the alternative, confirmation that any available internal remedy need not be exhausted because there existed exceptional circumstances. The prayer itself lacks specificity insofar as it concerns the context in which the relief is sought. One must, first, read the applicants' founding affidavit to understand that the "internal administrative remedy" referred to in prayer 2 of the applicants' notice of motion relates to the alleged failure by the respondents to either process and/or finalize and/or

approve the applicants' applications for "temporary authorizations" in respect of firearms (as contemplated in the definition of the term "firearm" in s 1 of the Act).

[16] In prayer 3 of the notice of motion declaratory relief was sought to the effect that the applications for temporary authorizations "*are all deemed to be refused due to the effluxion of time in terms of the Promotion of Administrative Justice Act*". Two hundred of these temporary authorization applications were made on behalf of the first applicant and one hundred related to the second applicant whilst a further one hundred applications were made on behalf of the third applicant. In addition, in prayer 4 of the notice of motion the review and setting aside of the deemed refusal contemplated in prayer 3 was sought.

[17] In prayers 5 and 6 of the notice of motion relief was sought to the effect that first, second and third respondents be ordered to approve "*the permit authorizations*" (a reference to the applications for temporary authorizations) and that permits be issued for the firearms and be delivered to the applicants at their principal place of business within five days. In prayer 6 an order was sought *"[T]hat such temporary authorizations be valid for a period of not less than one year"*.

[18] The applicants sought an order in prayer 7 of their notice of motion that first to third respondents be ordered to process license applications for eight hundred firearms (six hundred in relation to first applicant; one hundred in relation to second applicant and another one hundred in relation to third applicant) that were submitted to the Designated Firearms Officer of the Roodepoort police station *"within 90 (ninety) days from 7 July 2022, the date of submission of the applications, in accordance with the directive issued by the Registrar on 23 May 2012 and to deliver the license cards within 10 (ten) days of approval thereof"*.

The applicant's case

[19] From a reading of the applicants' founding affidavit it is evident that the firearm license applications were made on 13 June 2022 and 7 July 2022 respectively. The applications for temporary authorizations were made on 7 July 2022.

[20] The applicants have stated in their founding affidavit that they realized that they would need further firearms, even before the Court granted an order on 5 July 2022 under Case No 31971/22, and that a further eight hundred firearms were bought. The applicants have not stated exactly when these firearms (in respect of which the relief sought in the notice of motion seemingly find application) were purchased.

[21] In the founding affidavit it is stated that the applicants could *"therefore only apply for the Licenses on 7 July 2022, two days after the order under Case No 31971/22 was granted"*. This is contrary to the statement in paragraph 18.5 of the applicants' founding affidavit, where it was stated that the licenses were *"applied for on 13 June 2022 and 7 July 2022 and listed in annexures 'NOM4', 'NOM5', and 'NOM6' …"* (the obvious difference being that in paragraph 40 reference is made only to license applications submitted on 7 July and not also on 13 June).

[22] In support of the relief sought in relation to temporary authorizations the applicants relied on Regulation 23(2) of the Regulations issued under the Act.

[23] The applicants contended that a period of more than seven days had passed since the applications were submitted on 7 July 2022, which entitled them to apply for the relevant relief in relation to temporary authorizations.

[24] In respect of firearm license applications it was stated on behalf of the applicants in their founding affidavit that neither the Act nor any Regulations issued thereunder regulate the time period within which applications for competency certificates, applications to possess firearms or the renewal thereof must or may take and that as a result *"the processing of and decision upon such any such* [sic] *application must be within a reasonable time"*.

[25] Insofar as it concerns the period within which license applications must be processed the applicants relied on an internal directive issued by the South African Police Service dated 23 May 2012 (a copy of which is attached to the applicants' founding affidavit as "FA16"). Therein reference is made to the finalisation of firearms applications within 90 days and some explanation is proffered in relation to the steps to be followed during such period as part of the process of finalization of an application for a license.

[26] On the applicants' version eight hundred applications form the subject matter of this application. As stated, the eight hundred "*new license applications*" were submitted on 13 June 2022 and 7 July 2022 respectively and the four hundred applications for temporary authorizations were submitted on 7 July 2022.

[27] In respect of the four hundred firearm license applications submitted on 13 June 2022, the applicants indicated that those were only processed on 25 June 2022 and that consequently the latter date is to be used for calculation of any time periods. The remaining four hundred firearm license applications were, according to the applicants, submitted on 5 June 2022 and only processed on 7 July 2022 (together with, as mentioned above, four hundred temporary authorization applications). Therefore, 7 July 2022 is to be used for calculation of any time periods in relation to those applications.

The applications for temporary authorizations

[28] It is fit to consider, as a point of departure, that at the time of the issuing of this application (which occurred on 2 August 2022) neither the eight hundred applications for firearm licenses nor the four hundred applications for temporary authorizations were refused as contemplated in the provisions of s 133(1)(a) of the Act.

[29] The highwater mark of the applicants' application in respect of the temporary authorization applications is the contention that the Registrar failed to process, consider, and decide upon the applications within seven days. This (together with the asserted urgent need) formed the crucial basis upon which the relief was initially sought (on an urgent basis and thereafter) and for the declaratory relief in terms of prayers 2 and 3 (to the effect that no internal administrative remedy exists alternatively that exceptional circumstances exist and that the applicants do not need to exhaust their internal remedies; that it be deemed that those applications were refused due to the effluxion of time) and also for the consequential review and mandatory interdict relief sought in terms of prayers 4 and 5.

[30] The applicants placed reliance on the decision by Bam, AJ (as he then was) in *Spear Security Group (Pty) Ltd v Bothma* 2010 JDR 0767 (GNP) in support of their contention that applications for firearm licenses and temporary authorizations could be

made simultaneously in respect of the same firearms. This consideration is at least relevant to the extent that, in respect of four hundred of the eight hundred firearm license applications, simultaneous temporary authorization applications were submitted on 7 July 2022.

[31] In *Spear* the Court held at p 12 para [22] that:

> *"To my mind section 21 provides for a temporary license in circumstances where licenses are needed by any individual or juristic person for a short or relatively short period of time."*
>
> At p 13 para [24] the Court held:
>
> *"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 license is not required eg. foreigners for hunting or sport activities or where for some or other reason a delay in issuing the permanent license 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."*

[32] Although the facts in *Spear* were not similar to the facts of the present matter (particularly in that the reasons in support of the urgent need for temporary authorizations differed), I find myself in agreement with that Court's finding that the legislator *"could have had no other intention but to provide for the lawful possession of a firearm where the issuance of a permanent license is not required …"* insofar as it concerns the correct interpretation of s 21 of the Act.

[33] If regard is had to s 21 of the Act read with the Firearms Control Regulations, 2004 (as amended) published under Government Notice R345 in Government Gazette 26156 of 26 March 2004, in particular Regulation 23 read with Regulation 13, there appears to be no express provision made for simultaneous applications by one or more applicants in

respect of the same firearm(s) for firearm licenses and temporary authorizations. By the same token no provision is made that expressly excludes the possibility of such simultaneous applications.

[34] If regard is had to the applicants' founding affidavit (paragraphs 52 and 55 and its subparagraphs) the reasons proffered in support of the applicants' entitlement to make application for temporary authorizations are founded on the contention that *"[T]his is a temporary authorization to possess a firearm, currently most frequently issued pending the issue of a firearm license because the process to obtain a temporary authorization is an expedited process provided for in terms of the Act where there is an urgent and/or short-term need for a firearm"* (founding affidavit paragraph 52).

[35] However, based on the findings that I reach herein, I deem it unnecessary to decide whether, in terms of the Act and the Regulations, simultaneous applications for licenses and temporary authorizations could validly be made, in respect of the same firearms. The Registrar undoubtedly has a wide discretion in terms of section 21 of the Act. It follows by necessary implication that it would always be necessary to place all relevant facts before the Registrar to enable him or her to exercise such discretion.

[36] Although the applicants have explained their "*urgent need for firearms*" in the founding affidavit (in paragraphs 23 to 46 thereof) it must be remembered that those explanations were made in the context of the initial nature of the application, namely that of an intended urgent application, for relief as contemplated under the rubric of Uniform Rule 6(12)(a). I am alive to the fact that the applicants caused email correspondence to be addressed to South African Police Service officials on 7 July 2022 (founding affidavit, annexures "FA40" and "FA41") wherein the urgent need for firearm licenses and temporary authorizations were addressed. Those emails were sent by the applicants' attorneys of record and reference is made to first applicant's recent purchase of *"an additional 400 Glock pistols"* and the first applicant's *"intention to dispose of approximately 200 unserviceable firearms to comply with the aims and objectives of"* the Act *"to limit the proliferation of firearms"*. Importantly, it was not stated when exactly the additional firearms were purchased or when the intended disposal of other firearms would

take place. In my view this constitutes information relevant to (at least) the applications for temporary authorizations.

[37] I am of the view that the respondents acted reasonably insofar as it was indicated in the answering affidavit deposed to by Mr Mkhetheni Justice Mbatha (the Subsection Commander of Business Licensing at the Central Firearms Registry) that he deemed it in the best interests of the applicants to proceed to consider the new firearm license applications. In support of this decision, it was stated on behalf of the respondents that:

- The respondents viewed it as an abuse of process for the applicants to have submitted 400 section 20 firearm license applications and 400 section 21 temporary authorization permit applications.

- The applicants have failed to satisfy the requirements of the need and urgency for the section 21 permits, in respect of the same firearms for which the applicants submitted firearm license applications.

- On the face of it, the applicants' conduct in this respect appears to be an ill-founded attempt to solve a lack of proper planning by the applicants, which is nothing more than self-created urgency.

- On the applicants' own version, the urgent need for 400 temporary authorization permits only arose after being awarded the Eskom tenders, some four months after the award of the Seriti tender and more than a month after award of a Prasa tender.

[38] Mr Mbatha stated that he deemed it in the best interests of the applicants that the consideration of the firearm license applications be proceeded with and that the section 21 temporary authorization permit applications be refused. For the reasons that follow it is not necessary to adjudicate on the respondents' contention that the applicants' suggested interpretation of Regulation 23(2) is incorrect insofar as it was submitted that those type of applications must also be processed and finalized within seven days. In this respect it is reasonable to accept that the respondents' contentions must be understood in light of the asserted absence of a comprehensive explanation for simultaneous applications for temporary authorizations and licenses. In my view the lack of specificity

in relation to these simultaneous applications (as alluded to elsewhere in this judgment) has the effect that Mr Mbatha's decision and the reasoning offered by him cannot be faulted.

[39] Regulation 23(2)(a) provides:

> *"23 Application for a temporary authorization to possess a firearm*
>
> *…*
>
> *(2)(a) Subject to the provisions of subparagraphs (b) and (c) an application for a temporary authorization must be lodged at least seven days before the intended date on which the possession of the firearm will take place*.

(Subparagraphs (b) and (c) relate to non-citizens and the Registrar's ability to exempt an applicant from complying with the period stipulated in subparagraphs (a) and (b) and are therefore not relevant.)

[40] It is envisaged in Regulation 23(2)(a) that a period of at least seven days is set *"before the intended date on which the possession of the firearm will take place"*, and therefore that, save for good cause being shown and exemption being granted by the Registrar, all applications for temporary authorizations to possess a firearm must be made subject to the provision contained in Regulation 23(2)(a). The Regulation clearly contemplates that applications for temporary authorizations ought not to be made less than seven days before the date on which the intended possession of the firearm will take place.

[41] The Regulation does not also (in positive terms) provide that the seven-day period must conversely be accepted as the period afforded to the Registrar within which to finalize an application. Although it may at least be arguable that to find as much would require a reading in, to the provision, and that meaning would have to be attributed to the provision that it may in fact not possess, I find that it is not necessary to make a definitive finding on this as part of the adjudication of this matter.

[42] The threshold for implying words into a statutory provision is very high. It is a dual test, restated by Corbett JA (later CJ) in *Rennie NO v Gordon NO* 1988 (1) SA 1 (A) at 22D-H to be thus: *"Over the years our courts have consistently adopted the view that words cannot be read into a statute by implication unless the implication is a necessary one in the sense that without it effect cannot be given to the statute as it stands …".* In my view the implication called for by the applicants is arguably a necessary one. I therefore accept (without finally deciding) for purposes of this application that a seven-day period is afforded to the Registrar within which to process and finalize temporary authorization applications in terms of Regulation 23.

[43] The designated officials who received and were responsible for capturing and processing of the firearm license applications as well as the temporary authorizations, were not expressly informed of the reason(s) why temporary authorization permits were sought in relation to existing applications for firearm licenses (in relation to the same firearms). It does not appear from the applicants' affidavits of record that, at the time when it was decided to submit the four hundred applications for temporary authorization permits, the applicants had a reasonable apprehension that the corresponding four hundred firearm license applications would not be captured, processed, and finalized within the asserted 90-day period. The applicants' asserted apprehension (and the basis on which it was founded) is dealt with below. Therefore, in my view, the reason(s) for submission of the temporary authorization applications (in addition to the existing license applications) remain questionable despite the applicants' assertions of necessity.

[44] This application was issued less than four weeks after the latest date on which the applicants applied for eight hundred new firearm license applications (which, on their version, occurred on 13 June 2022 and 7 July 2022 respectively) and similarly less than four weeks after the four hundred temporary authorization applications were submitted (on 7 July 2022). In the circumstances it is reasonable to accept that the purported urgent basis on which the applicants initially sought relief against the respondents would not have been attainable absent the additional four hundred applications for temporary authorizations.

[45] The applicants have not, as part of their submission of the temporary authorization applications, informed the respondents' officials in writing that those applications related to the same firearms in respect of which firearm license applications had already been submitted (or had simultaneously been submitted) and that the processing of the temporary authorization applications require preference over the processing, consideration and finalization of the corresponding firearm license applications. In the circumstances the simultaneous applications for temporary authorizations should not have been submitted in the manner in which it was done.

[46] Even if I am wrong in this finding, there is a lack of specificity in the applicants' founding affidavit in support of the relief sought in relation to the temporary authorizations. Nowhere in the applicants' founding affidavit has it been stated what the date is on which the intended possession of the firearms will take place, as contemplated in Regulation 23(2)(a); neither has the applicants stated, with reference to the contracts allegedly concluded with Eskom and Prasa and Seriti, which date(s) would be regarded as the date(s) on which it will become absolutely essential to obtain possession of the relevant firearms. It was stated in the applicants' founding affidavit that the "*group's entities*" have recently "*been awarded further or extended contracts with, inter alia, Eskom and Prasa, which necessitates this application*". However, if regard is had to the affidavit deposed to by the applicants' executive in charge of Specialised Services for the Fidelity Group, Mr Morne Du Toit (annexure "FA47" to the founding affidavit) it appears that reference is made by him to a tender by Fidelity for a further Prasa contract which will if awarded "*require a further 800 additional (sic) firearms*". On the face of it this appears to be in contradiction to what is stated in the founding affidavit (paragraph 30) where it is mentioned Prasa and Eskom (further) contracts have already been awarded. I am however deciding the matter on the applicants' version insofar as it concerns the asserted conclusion of further security contracts which require the possession and use of additional firearms and thus the necessity for licenses to be issued pursuant to those applications.

[47] The applicants have not as part of their founding affidavit attached a copy of their applications for temporary authorizations that were submitted to the Designated Firearms Officer or the Registrar. A copy of the first applicant's motivation (containing an unsigned

affidavit of the deponent Mr Wentzel) was attached to the replying affidavit ("RA6"). One would expect that this evidence would have formed part of the founding papers in circumstances where most of the relief sought pertained to those applications. It is difficult to comprehend how it was expected that substantial relief (which included declaratory and review relief) could be granted absent complete copies of the applications for temporary authorizations. Despite the requirements contained in the Act read with the Regulations the applicants have merely stated the asserted urgent need for firearms without stating the date(s) of intended possession thereof. No reason was offered for the failure to have attached the applications for temporary authorizations to the founding papers save for the contention that the respondents were in possession thereof. That contention fails to have regard to the fact that this Court would have required copies of those applications to enable it to adjudicate the majority off the relief as prayed for had same not become moot.

[48] The applicants have not (in this application or in the applications for temporary authorizations) addressed the consideration whether it would be reasonable (bearing in mind the facts on which reliance was placed, which I accept for purposes of this judgment were as described by the applicants) to expect of the Registrar to process and finalize the four hundred applications within a mere seven days. However, this consideration becomes moot because the applicants have failed to state exactly when the intended possession of the firearms would be required as contemplated in Regulation 23(2).

[49] Regrettably, the content and structure of the applicants' founding affidavit is not a model of clarity. It would have been achievable for the applicants to have stated their case with the requisite specificity in a few pages, instead of in 180 paragraphs spread over 61 pages of the founding affidavit (to be read together with some 66 annexures attached to the founding and replying affidavits, which include unnecessarily a copy of a reported judgment of this court). The reader of the applicants' founding affidavit is required to perform an extensive exercise to be able to understand the exact manner in which the applicants went about in lodging the initial eight hundred firearm license applications and thereafter the four hundred temporary authorization applications. In addition, there is a lack of specificity in relation to the urgent need for the temporary authorization

applications to be processed and finalized despite the existing corresponding license applications. I am not referring to reason(s) why the application should be adjudicated as an urgent application as contemplated in Uniform Rule 6(12)(a), but rather the reasons in support of the applicants' contention that they were indeed within their rights to seek the relief that they did in prayers 2 to 6 of their notice of motion, which relate only to the temporary authorization applications.

[50] *Spear* cannot reasonably be interpreted as authority to the effect that applications for firearm licenses and temporary authorizations, in relation to the same firearms, can validly be made simultaneously by the same applicant(s). The Court in *Spear* interpreted the provisions of s 21 of the Act to be of application in circumstances where "*the issuance of a permanent license is not required*", which may, depending on the applicable facts, include circumstances *"where for some or other reason a delay in issuing a permanent license may occur, for whatever the reason …"*. Even if I am wrong in this finding, it remains so that the applicants have not, at the time when this application was instituted, satisfied the requirement of sufficiently explaining the need for simultaneous applications for four hundred temporary authorizations in relation to already existing applications for firearm licenses, in respect of the same firearms. As stated, I deem it unnecessary to decide whether such simultaneous applications can validly be made.

The license applications

[51] Although it is not necessary to make a finding whether the 90-day period is indeed the applicable period within which the license applications ought to have been finalized it cannot be gainsaid that, at the time when this application was issued, that period had not yet expired.

[52] The highwater mark of the applicants' contentions in their founding affidavit was that investigation and attendance by a candidate-attorney of the applicants' attorney of record (*"to check on the progress of both the applications for the Authorizations (400) and those of the License Applications (800)"*) were performed. This occurred on 29 July 2022 when the candidate-attorney reported that she attended at the office of the Designated

Firearms Officer and *"ascertained that none of the applications had even been processed by the DFO"*.

[53] It is stated in the founding affidavit that *"(A)s a matter of fact, the applications lie untouched on the table of the DFO and on enquiry she* (the candidate-attorney) *was informed that the applications are not to be processed soon"*. Pursuant thereto, so it is stated in the applicants' founding affidavit, a letter was addressed to the second respondent advising her that an urgent application would be brought and requesting engagement on the issues.

[54] The deponent to the applicants' founding affidavit concluded by stating that: *"(B)ased on this information and my experience after having been involved in the industry and awaiting firearms* [sic] *for the Applicants for two years, there is simply no chance that the Registrar will be able to finalise the applications for the licenses by the end of September 2022. As a result, the Applicants seek an order that the First to Third Respondents be ordered to comply with the directive and process the applications in accordance therewith"*. This asserted conclusion by the deponent is insufficient to serve as *raison dêtre* for the submission that the license applications would not be finalized timeously. It is manifestly based on speculation and not on relevant facts.

[55] The *modus operandi* employed by the applicants is questionable. To send a candidate-attorney to the office of the Designated Firearms Officer to check on the process (and/or progress) of the firearm license applications as well as the temporary authorization applications, is uncalled for. In addition, the factual assumptions made on behalf of the applicants (as stated by the deponent to the founding affidavit) pursuant to the candidate-attorney's attendance remained mere speculation and could not found the asserted necessity for the institution of the present application (at least not insofar as it concerns the relief sought in relation to the license applications).

[56] The affidavit deposed to by the candidate-attorney, regarding her attendance and what she has purportedly ascertained, is of little evidentiary value. In considering her affidavit and the value to be attached to her evidence regard must be had to the applicable factual context, which includes the applicants' submission of eight hundred firearm license

applications and simultaneous applications for four hundred temporary authorizations in circumstances where the express need for the latter has not been sufficiently addressed as part of those applications. What makes matters worse for the applicants in this regard is the fact that the candidate-attorney's attendance at the office of the Designated Firearms Officer occurred on 29 July 2022, some 22 calendar days after the license applications were submitted and well within the asserted 90-day period. Notably, the candidate-attorney has stated in her affidavit (annexure "FA24") that she *"saw the lever arch files for Fidelity still in the office"* and further that *"I can therefore confirm that the applications had not yet left Roodepoort SAPS as at Friday, 29 July 2022"*. She did not depose to a confirmatory affidavit whereby she confirmed the correctness of the contents of the applicants' founding affidavit which included the allegation that the applications remained *"untouched"* on the table of the Designated Firearms Officer, and that on enquiry she (the candidate-attorney) was informed that the applications are not to be processed soon.

The alleged failure to take a decision(s)

[57] A mere assertion by a litigant that it has cause for concern (namely that required administrative approval pursuant to an enabling statutory provision would not be finalized timeously, in the present instance, on the applicants' own version some 68 days prior to the expiry of the asserted 90-day time period) is wholly insufficient to found an application based on the provisions of the Promotion of Administrative Justice Act 3 of 2000 ("PAJA"). It is provided as follows in s 6(2)(g) of PAJA:

> *"6 Judicial review of administrative action*
>
> *(2) A court or tribunal has the power to judicially review an administrative action if-*
>
> *…*
>
> *(g) the action concerned consist of a failure to take a decision."*

[58] Manifestly, in the present instance, there has been no proven failure to take a decision in respect of the relief sought by the applicants in relation to either the temporary

authorizations or the firearm license applications, at the time when the application was instituted. In *Offit Enterprises (Pty) Ltd and another v Coega Development Corporation and others* 2010 (4) SA 242 (SCA), Wallis AJA (as he then was) held, in the context of an asserted failure to take an administrative action and whether same may constitute administrative action that s 6(2)(g) of PAJA:

> *"[I]s directed at dilatoriness in taking decisions that the administrator is supposed to take and aims at protecting the citizen against the bureaucratic stonewalling. As such its focus is the person who applies for an identity document, government grant, license, permit or passport and does not receive it within an appropriate period of time, and whose attempts to chivvy officialdom along are met with: 'comeback next week'"*.

[59] Insofar as it concerns the applications for temporary authorizations and firearm licenses it cannot be said that any of the respondents, including the Designated Firearms Officer and/or Registrar, failed to take a decision as contemplated in s 6(2)(g) of the PAJA. In this respect I am mindful of the fact that at the time of institution of this application no decision in respect of the temporary authorization applications were taken. That must be understood in light of the respondents' explanation which included that the license applications would be processed, which was reasonable having regard to the lack of specificity in relation to the temporary authorization applications and in relation to the need for simultaneous applications.

[60] In the circumstances the following findings militate against the applicants' contentions that the application was necessary and that it was properly instituted and that the applicants were entitled to all the relief as prayed for:

(a) the applicants have failed to set aside the temporary authorization applications for immediate consideration (over and above the existing corresponding license applications);

(b) the relevant date(s) contemplated in Regulation 23(2) had to be specified by the applicants as part of the applications for temporary authorizations to enable the Registrar to exercise a discretion in considering those applications;

(c) the applicants ought to have addressed the question whether it was reasonable to expect that the four hundred temporary authorization applications would be finalized within a seven-day period in circumstances where those applications lacked relevant specificity including dates of acquisition of additional firearms and intended disposal dates in relation to other firearms;

(d) the 90-day period had not run its course, rendering the application (in relation to the relief sought in respect of the license applications) premature despite the assertions made in the founding affidavit;

(e) the founding papers ought to have included copies of all the temporary authorization applications to which most of the relief sought in this application related.

[61] In the circumstances the application was instituted prematurely and constitutes an abuse of process.

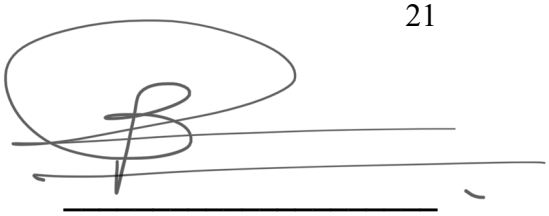
Costs

[62] In considering whether the application should be dismissed I am alive to the fact that the applicants did not persist with the relief sought in prayers 1 to 7 of their notice of motion, and that they only sought a costs order against the fourth respondent. In circumstances where it is unnecessary to fully consider the merits of an application because the substantive relief became moot, I decline to do so. It is for the same reason not necessary to order that the application be struck from the roll. The findings that the application was prematurely instituted and that it constitutes an abuse of process suffice to enable me to exercise a judicial discretion in awarding costs. There is no reason why the respondents ought not to be entitled to their costs. I am of the view that a party-and-party costs order is appropriate.

Order

[63] Accordingly, an order is made in the following terms:

[a] The applicants are ordered to pay the first to fourth respondents' costs, jointly and severally, the one to pay the other to be absolved.



PA SWANEPOEL

ACTING JUDGE OF THE HIGH COURT

GAUTENG DIVISION, PRETORIA

Date of hearing : 11 October 2022

Date of judgment : 24 October 2022

Appearances:

Counsel for applicants: M Snyman SC

Attorneys for applicants: MJ Hood & Associates Inc

Counsel for respondents: I Ellis SC

Attorney for respondents: State Attorney, Pretoria