

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

CASE NUMBER: 033074-22

In the matter between:

PRETORIA ARMS (PTY) LIMITED
(Previously Tactical Arms and Sport Shooting)
REGISTRATION NO. 2014/143415/07
CODE OF BODY 100806

Applicant

and

THE NATIONAL COMMISSIONER OF THE
SOUTH AFRICAN POLICE SERVICES
(IN HIS CAPACITY AS REGISTRAR OF
FIREARMS)

1st Respondent

COLONEL PN SIKHAKHANE
(IN HER CAPACITY AS ACTING SECTION HEAD,
CENTRAL FIREARMS REGISTRY)

2nd Respondent

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

3rd Respondent

THE MINISTER OF POLICE

4th Respondent

THE FIREARMS APPEAL BOARD

5th Respondent

REASONS FOR JUDGMENT

KUBUSHI J

[1] On 1 November 2022, the Applicant, Pretoria Arms & Ammunition (Pty) Ltd, (“Pretoria Arms”), appeared in the Urgent Court for relief that was granted in its favour as *per* the Draft Order marked “XX”, attached to these Reasons for Judgment. As the Draft Order was granted without any reasons, the Respondents have, in terms of Uniform Rule 49, approached Court requesting to be provided with the reasons for that Order. Hereunder are the reasons:

[2] The application that served in the Urgent Court entailed, amongst others, the review and setting aside of the decision taken by the First Respondent, the National Commissioner of the South African Police Service, in his capacity as the Registrar of the Firearms Control Act,¹ (“the Registrar”), in refusing to replace the responsible person for Pretoria Arms.

[3] In terms of section 7 of the Act, when a juristic person wishes to apply for a licence, permit or authorisation in terms of the Act, it must nominate a natural person to apply on its behalf. The person so nominated must be identified on the licence, permit or authorisation as the responsible person. If it becomes necessary, the Act allows, in terms of section 7(4) thereof, for the juristic person, to replace a responsible person for any reason by, in writing, nominating a new responsible person and notifying the Registrar of the nomination within seven (7) days from the date of nomination.

¹ Act No. 60 of 2000.

[4] Pretoria Arms, as a juristic person was entitled, in terms of the Act, to appoint a responsible person. In the circumstances of this matter, Pretoria Arms wanted to replace the responsible person, but, the Registrar refused to register the person appointed by Pretoria Arms to replace the previous responsible person, who had resigned her position.

[5] The Respondents opposed the application on urgency and the merits, and in addition, raised a point *in limine* contending that Pretoria Arms' notice of motion was defective, on the basis that the notice of motion indicated that Pretoria Arms purchased shares from two companies known as Tactical Arms and Sport Shooting (Pty) Ltd ("Tactical Arms") and Hunting and Tactical Clothing (Pty) Ltd ("Tactical Clothing"). Whereas, in terms of sections 32 to 34 of the Act, read with Regulation 30(o) of the Firearms Control Regulations,² the dealership licence was not transferable. The Respondents' further submission was that in their records, the dealership licence was in the name of Tactical Arms, and since such licence was not transferable, Pretoria Arms was supposed to have applied for its own licence.

[6] In regard to the urgency of the application, this Court took the view that the matter was manifestly urgent as Pretoria Arms was not able to trade because of the impugned decision taken by the Registrar. This will be explained in detail later in the judgment.

[7] The genesis of the application was the purchase, on 20 June 2022, of the shares of the two companies mentioned by the Respondents above, namely, Tactical Arms, with registration number 2014/143415/07 and Tactical Clothing, together with the fixed and movable assets thereof, by a company known as Globemax (Pty) Limited, ("Globemax"). To prove the purchase, Pretoria Arms attached, to the founding affidavit, a Deed of Sale of Shares agreement concluded between Globemax and the Trustees for the time being of Gareth de Nysschen Business Trust, which was the registered and beneficial owner of 100% shares in Tactical Arms. Globemax was said to have purchased the 100% issued share capital in Tactical Arms.

² Promulgated under Government Notice R345 in Government Gazette 26156, dated 26 March 2004.

[8] Tactical Arms' name was subsequently changed to Pretoria Arms, the Applicant in these proceedings. The change of name of the Applicant was effected in the records of the Companies and Intellectual Property Commission ("CIPC") on 21 July 2022. As proof of such change, the relevant CIPC excerpt, was attached to the founding affidavit. From the CIPC excerpt it was clear that the company registration number of Pretoria Arms was the same as that of Tactical Arms, that is, company registration number 2014/143415/07. The Applicant in a notification of change of circumstances dated 15 August 2022, informed the Registrar of the change of the company's name from Tactical Arms to Pretoria Arms.

[9] Tactical Arms, had a dealer's licence (under code of body 100806), which allowed it to trade at the premises situated at 1032 Silvergrass Street, Montana, Pretoria, which premises were used as a shooting range, and for the purposes of selling arms and ammunition, that is, a gun shop. Globemax having purchased the shares in Tactical Arms and changed its name to Pretoria Arms, Globemax, and by extension Pretoria Arms, took over the business and was trading under the same code body at the same premises.

[10] Consequent to the Deed of Sale of Shares agreement, the sole director of Globemax, one Alwyn Nicolaas Lesch with Identity Number [...](“Mr Lesch”), became the sole director of Pretoria Arms.

[11] Following on the Deed of Sale of Shares agreement, the person who was the responsible person of Tactical Arms, Ms Mabaso, resigned, and Pretoria Arms appointed Mr Lesch as the person responsible. In June 2022, Pretoria Arms submitted a notice to the Registrar of the change of name of the responsible person, being Mr Lesch. A copy of the notification under SAPS 521(e) was attached to the founding affidavit as proof of such notification.

[12] Mr Lesch, by extension Pretoria Arms, first became aware that there was a problem when on 27 September 2022, Mr Lesch could not transfer a firearm to the stock of Pretoria Arms from his licenced dealership in Lydenburg, Guntech. The error message received, gave the reason that the transaction could not be processed because the email address of the responsible person was not registered. This

happened because the Registrar's records had not been amended to reflect that Tactical Arms' name and that of the responsible person had changed.

[13] This discrepancy was brought to the attention of Captain Croukamp, who in turn answered as follows:

"The SAPS 521(e) specifies that the business is sold and that the new owner who bought the business will now be the responsible person. With reference to Regulation 31(o) of the Firearm Control Regulations 2004, a dealer licence may not be transferred. My office will prepare the notification and send it for consideration and you will then receive formal reply."

[14] Pretoria Arms received a further communication from the Registrar with reference Colonel Sikhakhane/Captain Croukamp, on 30 September 2022. The said communication informed Pretoria Arms that

"Your application/notification is hereby refused due to, inter alia, the following:

1. According to information in the notification, you indicate that you bought over the business from the previous owner who is selling it, with reference to Regulation 31(o), of the Firearm Control Regulations 2004, a dealer licence is not transferable. The new owner of the business is advised to apply for his/ her own licence to trade in firearms and/ or ammunition."

[15] The communication further informed Pretoria Arms that

"RE: NOTIFICATION OF ASSIGNMENT OF NEW RESPONSIBLE PERSON *You are entitled to appeal against the refusal within ninety (90) days from the date of this notice in terms of the stipulation of section 133 of Firearms Control Act, 2000 (Act No 60 of 2000) as amended. Should you decide to appeal against the refusal of your application/ Notification of assignment of a new responsible person, your appeal must be addressed to:*
...

[16] As a consequence of the above communication, on 3 October 2022, Pretoria Arms sent an urgent letter to both Captain Croukamp and Colonel Sikhakhane, informing them, amongst others, of incorrectly referring to Pretoria Arms' notification of assignment of a new responsible person as an application /notification to assign a new responsible person; that their decision to "refuse" Pretoria Arms' notification has and will materially adversely affect Pretoria Arms, in that, they have effectively halted Pretoria Arms' business, as much as, Pretoria Arms cannot trade because the previous responsible person was no longer in the service of Pretoria Arms and Pretoria Arms could not acquire stock, put it onto its dealer's licence nor can it sell stock in trade that falls under the Firearms Control Act. Furthermore, Captain Croukamp and Colonel Sikhakhane were given three days within which to reverse the decision and change their records to reflect the details of the new responsible person, failing which, they will be served with an urgent court application.

[17] This gave the First to Fourth Respondents until close of business on Thursday 6 October 2022 to reverse the impugned decision. No response was received to this demand, and the time period specified in the letter having expired, Pretoria Arms approached Court on an urgent basis for relief.

[18] In addressing the point *in limine* raised by the Respondents, it became common cause that a dealer's licence was not transferable. The crux was whether Tactical Arms and Pretoria Arms were the same entity. It, also, became common cause that if it was found that the two entities are the same entity, it would mean that the *in limine* point would have to be dismissed, since the issue of transfer of the licence will not have to be decided.

[19] Pretoria Arms' argument was that Tactical Arms and Pretoria Arms are the same entity in that there was no transfer of the dealer's licence. The dealer's licence remained in the name of Tactical Arms, the name of which, was changed to Pretoria Arms, with the same registration number 2014/143415/07, and the same dealer code 100806. The legal entity that was the holder of the dealer's licence, had at all times remained the same company and only its shareholders and registered name changed. There was no transfer of the dealer's licence because the company remained the same and the premises from which it operated was the same approved

premises. There was no movement or transfer of the dealer's licence from Pretoria Arms to any other person or legal entity. The entity that holds the licence was the same legal entity with the same registration number, so it was argued.

[20] It was, further, submitted that the Respondents did not understand that a company, as a separate legal entity and as a legal person, exists and was separate from its shareholders and directors. The company remains the same person despite the change in ownership of the shares thereof. Similarly, the change in name did not change the person or legal entity. It was irrelevant, for purposes of this application, as to who the directors of Pretoria Arms were, because a director and shareholders can always be changed, so the argument went.

[21] In response to Pretoria Arms' submissions, the Respondents argued in their papers that Pretoria Arms' notice indicated that Pretoria Arms purchased the shares of two companies known as Tactical Arms and Tactical Clothing.

21.1. Regulation 31(o) of the Firearms Control Regulation 2004, provides that, the dealer license is not transferable. Therefore, Pretoria Arms needed to apply for a new license to trade in firearms and ammunition in terms of sections 32 to 34 of the Act.

21.2. Pretoria Arms should send the proof which indicated that the dealer code belonged to them as according to the records it belonged to someone else. According to records of Central Firearm Registry, the following persons were recorded as owners/directors of Tactical Arms and Sport Shooting: Quinton Gerhard Boyens Identity Number [...] and Paul Kosta Identity Number [...], when the company commenced business in the year 2018. Subsequently, the dealer applied for a renewal of their license to trade on 2021-09-21 and listed Quinton Gerhard Boyens Identity Number [...] as their sole director. To date Quinton Gerhard Boyens Identity Number [...] was still listed as the sole owner of Tactical Arms.

21.3. On 2022-06-22 CFR received a "Notification on assignment of new responsible person" SAPS 521(e) from Tactical Arms and Sport Shooting

with the details of Alwyn Nicolaas Lesch Identity Number [...] as the proposed "new responsible person" of the dealer. The reason reflected in the notification as reason for appointment of the new responsible person were indicated as follows: "business bought over by new owner...company sold to new owner...owner will be the new responsible person...previous responsible person resigned".

21.4. Pretoria Arms was at the time not a registered dealer according to CFR records/ data base.

[22] However, in oral argument before this Court, counsel for the Respondents conceded in answer to a question from the bench that if a juristic person changes its name, as long as it retains its original registration number, it does not become a new entity. Counsel conceded as much that if Pretoria Arms was still operating under the same registration number of Tactical Arms, and still using the same dealer code, the application should be granted.

[23] It is a trite principle of our law that a company is a juristic person with a life of its own. A company as a legal entity can enter into contracts and own assets. The shareholders are the owners of a company, and when all the shares of a company are sold, like it happened in this matter, it means the company itself has been sold. Put differently, it means that a sale of a company occurs when all the company's shareholders sell their shares to someone else, and a new owner, who is now the shareholder, takes ownership of the company together with all its assets and liabilities. And, although the ownership of the company has changed, the ownership of the business has not. The business remains owned by the same legal entity, being the company.

[24] It was this Court's view that the concession on behalf of the Respondents was correctly made. It was apparent from the evidence of Pretoria Arms that Globemax purchased the shares of Tactical Arms and changed the company name to Pretoria Arms. Globemax became the shareholder of Tactical Arms and with the name change to Pretoria Arms, Globemax became the shareholder of Pretoria Arms. It was, also, evident from the CIPC excerpt that Pretoria Arms had retained the same

company registration number as that was used by Tactical Arms, and that the same dealer code that was used by Tactical Arms was still being used by Pretoria Arms.

[25] This Court ruled, as such, that Pretoria Arms and Tactical Arms were the same entity. The name of Tactical Arms was changed to Pretoria Arms, which was allowed in terms of the Companies Act³ and in terms of the Act.⁴

[26] In the face of the Respondents' concession, the point *in limine*, consequently, fell to be dismissed.

[27] A further issue that was raised in the papers was whether the impugned decision was subject to an internal appeal. The issue was initially raised in the correspondence sent to Pretoria Arms by the Registrar under reference Colonel Sikhakhane/Captain Croukamp, dated 30 September 2022.

[28] In its founding papers Pretoria Arms made an allegation that the Act does not provide for a decision to be made on a notification of assignment of a new responsible person and, therefore, the provisions of Regulation 91,⁵ as read with Section 133 of the Act,⁶ do not apply, alternatively: the lifeblood of a firearm dealer is the sale of firearms and ammunition.

³ Section 16(5)(b)(i) of the Companies Act 71 of 2008.

⁴ Section 38 **Notification of Change of Circumstances:** (1) The holder of a dealer's licence must notify the Registrar in writing within 30 days if there is any change with regard to any information which was submitted in respect of the application for the issue of that licence.

⁵ **Appeal procedure**

(1) An appeal by a person referred to in section 133 of the Act, must be noted by the person or his or her legal representative

- (a) within 90 days after the date on which the Registrar made the decision; and
- (b) by submitting an appeal notice to the Appeal Board in the form prescribed in Annexure TAT to these regulations.

⁶ **Right of Appeal**

(1) Any person

- (a) whose application for a competency certificate, licence, permit or authorisation in terms of this Act has been refused;
- (b) whose competency certificate, licence, permit or authorisation has been cancelled;
- (c) whose licence, permit or authorisation has been issued with a condition; or
- (d) who has received a notice of administrative decisions in terms of this Act which may detrimentally affect his/her rights.

may in the prescribed manner, appeal to the Appeal Board.

[29] In response to these allegation, the Respondents merely tendered a bare denial without providing an alternative version. The Respondents, as such, failed to properly engage with the averments to state exactly why the allegations were denied and support such denial with facts. This was compounded by the fact that the issue was not argued either in the Respondents' heads of argument, nor was it argued in oral argument in Court. Consequently, there was no version of the Respondents before Court on this point.

[30] Section 133 of the Act⁷ provides the circumstances under which any person may appeal to the Appeal Board. The refusal of the Registrar to register a company's responsible person was not stated as one of the circumstances where an appeal can be taken. This was so, in this Court's view, because the Registrar was not expected to make a decision when notified about the change of a responsible person.

[31] Section 38 of the Act simply requires that a notification of change of circumstances be submitted to the Registrar within thirty (30) days if there was any change of information in respect of that information which was submitted in the original application. This was what Pretoria Arms did. It notified the Registrar of the changed circumstances at the company, that is, the change and appointment of a new responsible person.

[32] In deciding as it did when it granted the Draft Order, this Court agreed with Pretoria Arms' submission that the SAPS 521(e) was merely a notification as required by the Act. There was no decision that needed to be made on the part of the Registrar, nor was there any application to be made to change the information or to appoint a responsible person. Pretoria Arms merely had to notify the Registrar of

⁷ Section 133 **Right of Appeal**

(2) Any person

- (e) whose application for a competency certificate, licence, permit or authorisation in terms of this Act has been refused;
- (f) whose competency certificate, licence, permit or authorisation has been cancelled;
- (g) whose licence, permit or authorisation has been issued with a condition; or
- (h) who has received a notice of administrative decisions in terms of this Act which may detrimentally affect his/her rights.

may in the prescribed manner, appeal to the Appeal Board.

the changes. Since there was no decision to be made, section 133 of the Act and Regulation 91 were not applicable in the circumstances of this matter.

[33] It was indeed so that a licenced dealer in arms and ammunition must, at all times, have a responsible person nominated in the records of the Central Firearms Registry to be responsible for the day-to-day transactions and activities of a licenced dealership and to be accountable for any transgressions of the Firearms Control Act. As already stated, Pretoria Arms, as a juristic person, was entitled to nominate a responsible person who must be registered on the Central Firearms Registry database.

[34] Pretoria Arms nominated Mr Lesch as its responsible person. It sent the SAPS 521(e) notification to the Registrar as required in terms of section 7(4) of the Act. It was not in dispute that Mr Lesch was a fit and proper person to trade in firearms and could be appointed as a responsible person. The Registrar should, therefore, have registered him.

[35] The Registrar's Records were simply not up-to-date and needed to be updated in regard to the company's name change, that is, replaced the name of Tactic Arms with that of Pretoria Arms. The Registrar, should furthermore, have replaced the name of Ms Mabaso, as the responsible person with that of Mr Lesch.

[36] It was under those circumstances that the Draft Order marked "XX" was granted.

E.M KUBUSHI
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

APPEARANCES:

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