

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

Case number: 38035/21

In the matter between:

MARK BRUCE WALKER

APPLICANT

AND

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

1ST RESPONDENT

BRIGADIER MABULE N.O.
HEAD OF CENTRAL FIREARMS REGISTRY
(IN HIS PERSONAL CAPACITY)

2ND RESPONDENT

ADVOCATE LUNGELWA CAROL SHANDI
N.O. CHAIRPERSON OF APPEAL BOARD

3RD RESPONDENT

THE FIREARMS APPEAL BOARD

4TH RESPONDENT

MINISTER OF POLICE

5TH RESPONDENT

JUDGMENT

KHWINANA AJ

INTRODUCTION

[1] This is a review application of the first respondent's decision to refuse amnesty applications to the applicant for the following firearms:

- 1.1 22 hornet Bolt Action Walter Rifle, serial no, [....]
- 1.2 22 Remington Sako L46, serial no, [....] (erroneously reflected by third respondent as 223 Remington)
- 1.3 7.65 Mauser 1914, serial no. [....].
- 1.4 308 Winchester Churchill, serial no, [....]
- 1.5 45-75 Winchester Centrefire, serial no. [....]

[2] Alternatively, the reviewing and setting aside the decision of the second and third respondents' decision to refuse the applicant's appeal against the refusal to issue firearm licenses to the applicant and deliver such licenses to the police station for collecting within 15(fifteen-days) from the date of issue.

[3] In addition, the applicant subsequent to the service of these papers applies for review and setting aside of refusal of:

- 3.1 Rossi M92 Puma, 38 Special/ 357 serial no, [....]
- 3.2 30 30 Winchester Magnum, Model 91, serial no. [....]
- 3.3 Cogswell and Harrison, 375 Holland and Holland, serial no, [....]
- 3.4 Westly Richards. 425 Magnum, serial no, [....]

3.5 40 Snider rifle, serial no, [....].

[4] The applicant seeks an order that the respondents pay costs jointly and severally.

[5] The respondent seeks that the review application be dismissed with costs.

BACKGROUND

[6] The applicant is an adult dentist with a degree in dental medicine with identity number [....]. He is a registered collector, registered as such in terms of section 17 of the Firearms Control Act with the first respondent. He has numerous firearms licensed under his name. He has not been accused nor convicted of any offence that disqualify him to own a firearm. He has a valid competency certificate to collect firearms which expires on the 04th of December 2029. He is compliant in terms of the competency provisions of the Firearms Control Act.

[7] He is a categorised C collector and all the firearms that are subject of this review fall within the C category. His competency category is also that of C collector. He applied for amnesty at Randburg Police Station in May 2020. He says the firearms belonged to his father who due to advancing age and ill-health had not renewed the licences timeously. He says the licenses were refused on the basis that according to the deciding officer "You are not the current holder of surrendered firearm".

[8] The applicant says the decision is unreasonable and reviewable as the appeal board stated that the applicant's case is incomplete without merit which has not been explained. The applicant says the appeal was based on the following reasons firstly that there was unfair administrative action. The board's response is that the appeal process as part of the dispute resolution mechanism sufficiently addressed his concern and that the applicant was afforded the opportunity to ventilate his issues and a further hearing in that process.

[9] The second reason advanced is that the request to argue the appeal orally to wit the board replied the issues were quite clear and could be resolved without that. The applicant argues that the board is scared of the public. The third reason being that SAPS is obligated to accept the applicant's application and process it. The applicant says the application was considered but not assessed on merits. The fourth reason is that being that an instruction was issued by Lt General Mkhwanazi that the matter had been dealt with above as part of the subject of dismissal of this appeal, which the applicant accepts as correct.

[10] The fifth reason being that the decision of the deciding officer was irrelevant in terms of section 139(4), the Sternberg Court Order and the directive of the National Commissioner. The decision by the board being that the matter had already been dealt with and was the subject matter of the dismissal of the appeal. The applicant invites the appeal board to amplify the reason herein. The sixth reason being that the lawyer of the applicant should be contacted in the event of a query on contents for further information before an adverse decision was made. The board opined that the applicant's case was clear and did not require any further information before making the decision. The applicant says the board should provide a precise reason as to why this is relevant.

[11] The eighth reason is that the board has a duty assist the applicant and the board acknowledged its duty but found no reason nor circumstances that would have called for same as it was not aware of unknown requirements imposed on the applicant. The applicant opines that the application required amplification and the board failed to advise the applicant. The ninth reason is that of audi alteram and deciding on basis of unknown internal policy or as a result of documents in the board's possession. The board ruled that the applicant was sufficiently heard on a clear resolution based on an interpretation of the law and facts before them.

[12] The applicant says the Appeal board has failed to set out reasons for the refusal of the appeal, despite that he complied with the requirements of the amnesty and the Firearms Control Act. The applicant says the third and the fourth respondent came to the decision based on different reasons which were not disclosed. He opines that same is irrational and unreasonable, therefore falls to be reviewed and

set aside. The applicant says he will supplement his hounding affidavit upon receipt of the record. He says the application for 22 Remington rifle has been approved. This the applicant submits is a capricious inconsistent decision on the part of the first respondent because the same documents were submitted.

[13] The respondents delivered a notice to oppose the application on the 02nd of September 2021. The applicant caused an email to be transmitted to the respondents' attorneys on the 14th of October 2021. The email stated that the period within which the opposing papers were to be filed had expired and the applicant was allowing the respondents to deliver their answering affidavit within five days failing which an application to compel with an order of punitive costs was going to be brought against the respondent. On the 12th November 2021 an email was again transmitted to the respondents' attorneys that notice to compel and the founding affidavit is annexed and receipt thereof was to be acknowledged.

[14] On the 20th January 2022 the application was heard before the Honourable Justice Van der Schyff wherein the respondent was ordered to file the record within ten days of service of this order, that the respondent must file their answering affidavit by no later than 15 days after the applicant files amended founding affidavit if applicable and the respondent to pay costs at attorney and client scale.

[15] The applicant has filed a supplementary affidavit pursuant to the delivery of the record herein. The applicant states that the appeal was refused on the 17th of May 2021. The decision signed by four members of the board states that "You are not the current holder of the surrendered firearm". The applicant says a letter dated 27th day of May 2021 states that the decision of refusal was based on the fact that the application lacks merit which is by the third, fourth, and fifth respondents. The applicant says thus the request for a punitive costs order as that is untrue.

[16] On the 7th day of April 2021, the applicant says he requested the fourth respondent's file which has not been provided. In the record provided there is no original document submitted by the second respondent. The applicant opines that it was impossible for the third and fourth respondents to make a decision on the basis that the application was defective because they did not have my original submissions

to consider. The applicant says the reasons by the third and fourth respondents are simply false and unsustainable. The applicant says the respondents cannot raise new reasons whereas he was not allowed to address the board. He says he has been advised that punitive costs order is warranted in this matter.

[17] The third respondent has deposed to an answering affidavit wherein she states that she is the major female member of the appeal board appointed by the Minister of Police. The third respondent raises a defence of misjoinder against second respondent who was cited without laying a basis as to why he is a party to these proceedings and what remedy he seeks from him. The respondent says it is not clear which decision or administrative act he wishes to review or set aside on the part of the second respondent. The respondent submits that citation should be viewed as frivolous and vexatious with punitive costs.

[18] The applicant seeks to review and set aside of prayers 2 and 3 to refuse the appeal as there is no basis in law or facts for such refusal. The respondents state that prayer 2 and 3 lack legal merit and are to be found to be frivolous and vexatious. The second misjoinder is that of duplication of citing the Chairperson in her representative capacity of the board and further joining the board separately, the adverse effect being costs payable jointly and severally. The third respondent is cited in her personal capacity without laying any basis as to how she has been singled out of other members of the board despite that a collective decision was taken.

[19] The respondent submits that in terms of Rule 17(4) of the Uniform rules applicant cited the third respondent without joining the board, which constitute misjoinder and the request that application be dismissed with punitive costs order.

[20] The third respondent raises a point in limine of locus standi in that she says the applicant lacked the legal standing to apply for amnesty in terms of section 139 (4) (a) and cannot seek in law that appeal be reviewed and set aside. The respondent submits that granting prayer 1 will result in granting the applicant a right and remedy he did not have in law, that is applying for amnesty of firearms that had a licence holder at the time of application for amnesty was still alive and no evidence of his incapacity to manage his own affairs was submitted. In terms of

section 139(4)(a) "A person who surrenders a firearm in compliance with a notice published in terms of subsection (1) may apply in terms of the Act for a licence in respect of that firearm". The respondent submits that the applicant must have been the person as per the Gazette. The respondent says the applicant is not that person as in there is no averment in the papers that the applicant surrendered the firearms as prescribed.

[21] The applicant does not enjoy the protection under section 139(4)(a) as he is not the license holder that as envisaged. His father was still alive and the allegation is that he developed dementia. There is however no evidence that he was unable to obtain the licenses for firearms as their possession had become illegal in terms of section 28 of the Act. The guidelines were issued on the 08th December 2020 after the applicant had lodged his amnesty application and appealed. The requirement that one was to physically surrender the firearms within the validity period had not been met. The application did not fall within the ambit of deceased estates. The applicant was applying for transfer of ownership of the said firearms whereas the licence was issued to another person.

[22] The respondent contends that the applicant did not have the legal standing to bring this application. The application and the appeal was dismissed on the said grounds of law that the applicant was not the current holder of a licence of the said firearms. The respondent also submitted that additional guidelines allowed acceptance of amnesty applications on the basis that the person surrendering firearms could not prove ownership of such firearm, which was said not to extend to the applicant either.

LEGAL MATRIX

[23] Erasmus Superior Court Practice says, "As a general rule the requirements for locus standi in judicio are as follows:

- (a) the plaintiff/applicant for relief must have an adequate interest in the subject matter of the litigation, which is not a technical concept but is usually described as a direct interest in the relief sought;

(b) the interest must not be too far removed;

(c) the interest must be actual, not abstract or academic;

(d) the interest must be current interest and not hypothetical one

The question whether a litigant is sufficient to clothe it with *locus standi in judicio* must be determined in light of the factual and legal circumstances of the case.”¹

[24] Schippers JA said “The plaintiff must have an adequate interest in the subject matter of the litigation, usually described as a direct interest in the relief sought; the interest must not be too remote; the interest must be actual, not abstract or academic; and it must be a current interest and not a hypothetical one. The duty to allege and prove locus standi rests on the party instituting the proceedings.”² and enforcement of legislation pertaining to the control of firearms.”

[25] The word “interest” in rule 28(1) has been interpreted to mean a direct and substantial interest which a person is required to have in the subject matter before he or she can be said to have locus standi in such a matter or before such a person may be joined or be allowed to be joined in proceedings. Direct and substantial interest is a direct and substantial interest in the order that a court is asked to make in a matter. It is not enough if a person has an interest in a finding or in certain reasons for an order. The interest must be in the order or the outcome of the litigation.

[26] Froneman J said “Gun ownership is not a fundamental right under our Bill of Rights. It is a privilege regulated by law, under the Firearms Control Act 60/2000.”³ The purpose of the Act is to: “(a) enhance the constitutional rights to life and bodily integrity; (b) prevent the proliferation of illegally possessed firearms and, by providing for the removal of those firearms from society and by improving control over legally

¹ D1-187 Vol 2 Van Loggerenberg

² Four Wheel Drive CC v Leshni Rattan NO (1048/17) [2018] ZASCA 124 (26 September 2018)

³ Minister of Safety and Security v South African Hunters and Game Conservation Association [2018] ZACC 14

possessed firearms, to prevent crime involving the use of firearms; (c) enable the state to remove illegally possessed firearms from society, to control the supply, possession, safe storage, transfer and use of firearms and to detect and punish the negligent or criminal use of firearms; (d) establish a comprehensive and effective system of firearm control and management, and (e) ensure the efficient monitoring and enforcement of legislation pertaining to the control of firearms.”

[27] Section 139(4)(a)⁴A person who surrenders a firearm in compliance with a notice published in terms of subsection (1) may apply in terms of the Act for a licence in respect of that firearm.

ANALYSIS

[28] The applicant must have locus standi in order to bring an application for amnesty. The applicant *in casu* has applied for amnesty without surrendering the firearms. This is therefore not in line with the procedure as outlined by the Minister. It is so that one does not have to be the owner of the said firearms. However, *in casu* what is evident is that the firearms herein belonged to the father of the applicant, who is alleged to suffer from dementia and therefore is the unlawful possessor of the firearms as his licence had expired.

[29] There is no medical report submitted in so far as the said condition is concerned. The respondent raises the fact that the father of the applicant was within his right to bring the application considering that it has expired and accordingly was the person with the locus standi to bring the application. The respondent opines that this would amount to giving the applicant rights that he did not have in law. I am inclined to agree as the father of the applicant is within his right to bring the application. There is no evidence that he has been stripped of his rights and powers to bring the application.

[30] It was not the intention of the legislature to dispossess owners of their right to ownership. The applicant’s father is alleged to be having a medical condition that has not been substantiated with medical evidence. If it were to be accepted that that is

⁴Firearms Control Act.

the condition of the owner to wit the respondent has now become privy to. The law is clear as per Rule 57 of the Uniform Rules of Court.⁵ There is no evidence that the applicant has been granted permission to deal with his assets. The respondents should put themselves in a position wherein they will have disowned the applicant's father who if recovers from the condition might sue the respondents for the diminished value of his estate.

[31] *In casu* there is information regarding the owner of the firearms whom is related to the applicant. The taking of these firearms will definitely be transfer of ownership which will affect the estate of the father of the applicant. It will be unheard of. The applicant relies on the caselaw by Van der Schyff however I do not see a similarity in the matter. The application has been accepted, it is not of a deceased estate and the firearm herein is that of the applicant's father. The fact that the application has been submitted does not automatically mean that it has succeeded. The applicant argues that the first respondent was not entitled to refuse to process the application on the basis that the applicant was not the owner. The question that arises is can the respondents simply disown the father of the deceased his firearm on the basis that his son the applicant has brought an application for amnesty in terms of section 139(4)(a) of the Firearms Control Act.

[32] The applicant's attorney has mentioned one of the reasons being that the third and fourth respondents referred to policies unknown to the applicant to wit the respondents applied. It is unheard of that the applicant should approach an institution and not familiarize themselves with the legal principles that is applied. The reasoning that was alluded to by the applicant equates to one saying I did not know. Ignorance of the law is not an excuse.

[32] The applicant says there was a misinterpretation of the law by the respondents thus some are cited in their personal capacity without following the rules. I am unable to find justification for the joinder of the second and the third respondents in their personal capacity and costs order on a punitive scale.

⁵ (1) Any person desirous of making application to the court for an order declaring another person (hereinafter referred to as 'the patient') to be of unsound mind and as such incapable of managing his affairs, and appointing a curator to the person or property of such patient shall in the first instance apply to the court for the appointment of a curator ad litem to such patient.

ORDER

[33] In a result, the application is dismissed with attorney and client costs.

**ENB KHWINANA
ACTING JUDGE OF NORTH GAUTENG
HIGH COURT, PRETORIA**

APPEARANCES:

APPEARANCES

For the Applicants: Advocate Snyman SC

Instructed by: MJ Hood Associates

For the Respondents: Advocate Job Molapo

Instructed State Attorney

Date of Hearing 06 September 2022

Date of Judgment

05 December 2022