



**IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)**

CASE NO: 6489/2020

In the matter between:

ASP ELITE PROTECTION SERVICES CC

Applicant

and

THE MINISTER OF POLICE

1st Respondent

THE PROVINCIAL COMMISSIONER,

SOUTH AFRICAN POLICE SERVICES

2nd Respondent

COLONEL KINNEAR

3rd Respondent

CAPTAIN JEPHFTA

4th Respondent

Date of hearing: 06 October 2020

Date of Judgment: 02 November 2020 (delivered by email to the parties' legal representatives).

JUDGMENT

INTRODUCTION

[1] In this application, the applicant, as owner of four firearms and various items of ammunition, seek the return thereof from the South African Police Services ("SAPS"). The

application is based on the common law remedy of *rei vindicatio*, a remedy available to an owner to claim back property in possession of another. In addition, the applicant also relies on certain statutory provisions, namely s 31(1) of the Criminal Procedure Act, 1977 (Act 51 of 1977) (“the CPA”) and s 114(2) of the Firearms Control Act, 2000 (“the FCA”), both provisions obliging the return of ceased items “[i]f no criminal proceedings are instituted” or “when it is clear that it will not be of value as evidence” respectively.

[2] The applicant is a company registered as a security service provider with the Private Security Industry Regulatory Authority, (“PSIRA”) which is established in terms of s 2 of the Private Security Industry Regulatory Authority Act (Act no 56 of 2001) (“The PSIRA Act”).

[3] The first respondent, the Minister of Police (“the Minister”) is cited in his representative capacity as being the Minister responsible for SAPS, the second respondent is the Provincial Commissioner of SAPS and the third and fourth respondents are senior members of the Western Cape Anti-Gang Unit, a department or division of SAPS. I shall refer to the respondents collectively as “SAPS” or “the respondents”, as the context requires.

[4] The items which the applicant seeks to have returned to it are:

- 4.1.1 a Glock 17, 9 mm pistol with serial number BFRW 153;
- 4.1.2 a Glock 17, 9mm pistol with serial number BFRW 156;
- 4.1.3 a Glock 17, 9mm pistol with serial number BFRW 157;

- 4.1.4 a shotgun with serial number ARM 17/2248; and;
- 4.1.5 ammunition, consisting of 40 rounds for the shotgun and 100 rounds for the Glock pistols.

I shall collectively refer to the four firearms as “the firearms” and to the ammunition as “the ammunition”. The firearms and ammunition may also in places be collectively referred to as “the firearms” where the context permits.

[5] The respondents oppose the relief sought on the basis, amongst other, that there have been continuous transgressions relating to the possession and handling of the firearms concerned in terms of the FCA and its regulations, that SAPS is conducting a high profile investigation involving the firearms, that the firearms have been sent for ballistic testing and that the applicant has not approached this court with clean hands. SAPS also claims that the firearms and ammunition are required for purposes of evidence at the trial of the managing member of the applicant as well as Mr Davids who was found in possession of the firearms on his arrest and other persons as will become clear in this judgment.

BACKGROUND

[6] During the early hours of 4 May 2020, the fourth respondent (“Jeftha”) and other members of SAPS arrested Mr Grant Shane Davids (“Davids”), an employee of the applicant. The members of SAPS who stopped David’s vehicle, had noticed that he was wearing black combat clothing and a black balaclava. They could clearly see that there was a shotgun in the front of the vehicle.

[7] When Davids got out of the vehicle, they noticed that he had a firearm in a holster on his right side. It turned out that it was a Glock pistol with serial number 156, for which Davids had a permit signed for by Mr Avron Shane Poggenpoel (“Poggenpoel”), the managing member of the applicant. Poggenpoel is the responsible person in terms of s 7 of the FCA, permitted in law to provide possession for use by employees of the applicant, subject to certain provisos – more about this later.

[8] Davids was asked if he had any other firearms in his possession or in the vehicle. He answered in the affirmative and he directed Jeftha to a medic bag in the vehicle from which he took out a Glock with serial number M2314 which he alleged to be his personal firearm. He was unable to produce a licence for this firearm and instead showed Jeftha a statement made to the police wherein he stated that he had lost his wallet with the licence therein.

[9] Jeftha advised Davids that they needed to search the vehicle and they proceeded to the nearby Woodstock Police station for this purpose.

[10] Prior to searching the vehicle, Davids was again asked if he had any further firearms in his possession, whether on his person or in the vehicle. He only then disclosed that the Glock with serial number 153 was also in the vehicle. He also took out of the car three plastic ammunition boxes containing 136 live 9mm rounds. He could not produce a permit for the Glock with serial number 153.

[11] Davids was again asked, for the third time, whether he had any other firearms, to which he replied in the negative. However, the Glock with serial number 157 was found in a pouch attached to his pants. No valid permit could be provided for this firearm.

[12] A police officer accompanied Davids to his place of residence, which was also searched. A large number of live ammunitions, two police caps and six keys to safes or a safe were found.

[13] According to police records, Davids was issued with licenses for a Baretta handgun, the 9mm pistol with serial number 23154, as well as a Winchester rifle. According to Jeftha, the validity of these licenses is yet to be confirmed.

[14] After Davids was released on a successful bail application on 12 May 2020, Poggenpoel instructed his attorney to request the return of the firearms from SAPS. His attorney contacted the third respondent (“Kinnear”), who was the investigating officer at the time. Kinnear had several queries which he relayed to the applicant’s attorney, namely how many firearms were licensed to the applicant, where its remaining firearms were, and where the business address of the applicant was.

[15] The applicant’s attorney responded in writing to Kinnear on 15 May 2020, wherein he confirmed the applicant’s business address at Unit 51, M5 Freeway Park, Ndabeni, and stated that the business address was inspected by the Dedicated Firearms

Officer, Warrant Officer Rossouw of the Maitland SAPS and approved as suitable and compliant before his client moved thereto.

[16] The applicant confirmed in its founding affidavit that in the letter to Kinnear, the attorney erroneously stated that Davids was issued with two firearms, whereas he was issued with the four firearms which were seized. This was because of a miscommunication between Poggenpoel and his attorney.

[17] In the letter to Kinnear, it was also stated that the managing member of the applicant who is the appointed “responsible person” in terms of s 7 of the FCA, nominated Davids *“to act and accept the delegation in terms thereof.”*

[18] It was also stated in the letter that the firearms were delegated and issued to employees of the applicant, namely Ettiene Strydom (“Strydom”) and Thomas Miller (“Miller”). It was denied that the firearms and ammunition were *“given or presented to anyone / 3rd parties not under the employee (sic) of our client, and who did not comply with section 7 of the [FCA]”*

[19] The letter ends of with an appeal for the firearms to be returned to the applicant, failing which the applicant would be constrained to urgently approach the High Court for appropriate relief.

[20] Kinnear did not respond to the applicant's letter, and the attorney for the applicant contacted the chief prosecutor of the District Court, Cape Town, Mr Johan Swart ("Swart"), where David's bail hearing was heard. After exchange of emails and calls with Swart, without success in obtaining the return of the firearms, the applicant launched this application.

THE APPLICANT'S CASE

[21] The applicant, as owner of the firearms, brought this application based on *rei vindicatio*. It also relies on s 31(1)(a) of the CPA, in terms of which a seized article shall be returned to the person who may lawfully possess such article if no criminal proceedings are instituted in connection with the article or if it appears that the article is not required for purposes of evidence or for purposes of an order of court. Furthermore, the applicant relies on s 114(2) of the FCA in terms of which the person who has control over a firearm or ammunition must immediately return it or otherwise dispose of it in terms of the FCA when it is clear that it will not be of value as evidence.

[22] In further support of its claim to have the firearms returned to it, the applicant contends that SAPS can only legitimately deprive it of possession of the firearms if it is done by way of a law of general application and it is the least invasive means to achieve the objective sought to be achieved by the particular legislative provision. The applicant argues that in addition to the obvious rights contained in section 25 of the Constitution of the Republic of South Africa, 1996 ("the Constitution"), there is also section 36 of the Constitution which requires there to be good/rational reasons that are legal for SAPS to do

what they have been doing and intend to continue doing, i.e. depriving the applicant of possession of the firearms.

THE RESPONDENTS' CASE

[23] The respondents dispute the applicant's right to the return of the firearms and contend that the operations of the applicant, in which the possession and use of the firearms are integral, are illegal. In particular, the respondents allege that the applicant's handling, possession and use of the firearms are in contravention of the provisions of the FCA and the regulations promulgated thereunder. As an example, the respondents allege that a firearm was handed for extended periods to a certain Nafiz Modack ("Modack"), whom the respondents allege to be a convicted criminal and suspected to be (and being investigated as) a leader of the criminal underworld.

[24] The respondents aver that they require possession of the firearms to conduct a number of further investigations, including ballistic testing, which are required as evidence for the prosecution of the applicant, its managing member, Poggenpoel, Davids, Modack and other persons. These charges will include multiple transgressions of the FCA and the regulations promulgated thereunder, provisions of the PSIRA Act and offences relating to organized crime. The respondents further contend that in the light of the undisputed evidence, the applicant and Poggenpoel are likely to be convicted of offences which will result in them being declared unfit to possess firearms and the firearms and ammunition being disposed of in terms of ss 103 and 104 of the FCA.

[25] Furthermore, the respondents contend that they rely on all three grounds set out in s 31(1) of the CPA, namely that the firearms will be required at the trial for purposes of evidence, that they are required for purposes of an order of court and that the applicant and Poggenpoel may not lawfully possess the firearms.

THE RELEVANT PROVISIONS OF THE FCA, THE REGULATIONS PROMULGATED THEREUNDER AND THE PSIRA ACT

[26] In terms of s 3 of the FCA;

*“(1) No person may possess a firearm unless he or she holds for that firearm –
(a) A licence, permit or authorisation issued in terms of this Act; ...”*

[27] Section 6 of the FCA provides:

(1) The Registrar may issue any competency certificate, licence and authorisation contemplated in this Act –

(a) On receipt of an application completed in the prescribed form, including a full set of fingerprints; and

(b) If the applicant complies with all the applicable requirements of this Act.

(2) Subject to section 7, no licence may be issued to a person who is not in possession of the relevant competency certificate.”

It should be noted that the Registrar, for purposes of the FCA is the National Commissioner of SAPS, appointed in terms of section 207(1) of the Constitution.

[28] Section 7 of the FCA provides:

- (1) 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.*
- (2) The person so nominated must be identified on the licence, permit or authorisation as the responsible person.*
- (3) A responsible person who holds any licence, permit or authorisation issued in terms of this Act pursuant to an application contemplated is subsection (1) on behalf of the juristic person must for purposes of this Act be regarded as the holder of the licence in question.*
- (4) If it becomes necessary to replace a responsible person for any reason, the juristic person must in writing –*
 - (a) nominate a new responsible person who must be in possession of the relevant competency certificate; and*
 - (b) notify the Registrar of the nomination within seven days from the date of the nomination.”*

[29] It is common cause that the nominated person of the applicant is Poggenpoel. The applicant alleged that it nominated Davids as the responsible person in accordance with s 7(4), but there is no indication that the Registrar has been informed of this. Poggenpoel attached a document to his founding affidavit (as “ASP 5”), wherein he purported to have appointed Davids as the responsible person but does not allege that the Registrar has been notified of this. Of interest to note, is that the purported delegation is dated 2 January 2020, before Davids was employed by the applicant as from 1 March 2020.

[30] In terms of s 20(5)(b) of the FCA;

“A security service provider [such as the applicant] which holds a licence to possess a firearm for business use may only provide the firearm to a security officer in its service who holds a competency certificate”

[31] The regulations promulgated under the FCA are relevant. Regulation 21(2) pertains to a security service provider, such as the applicant. It provides:

“If the holder of the licence to possess a firearm for business purposes is a security service provider ..., that security service provider ...may, in addition to the requirements of section 20(5)(b) of the Act and the conditions in sub-regulation 1(a) and (b), only provide a firearm to a person if –

- (a) that person is a security officer employed by the security service provider ...for the rendering of a security service;*
- (b) that security officer is in possession of a competency certificate to possess a firearm;*
- (c) the receipt, possession and carrying of the firearm by the security officer is in accordance with the Act;*
- (d) in the case of a security service provider, such provider and the security officer are both registered as security service providers in terms of PSIRA and their respective registrations are not suspended;*

...

- (g) the security officer is on duty or standby duty, or is about to perform duty or standby duty;*

...

- (k) the possession of the firearm by the security officer is necessary for rendering a security service, taking into account the nature of the security service, the contract between the security service provider and its client, the circumstances under which the security*

service is rendered, the type of firearm and any other relevant fact;”

[32] Section 20(6)(a) of the FCA requires a holder of a licence to keep a register, and Regulation 22(1) spells out requirements in respect of the register. Where a firearm is provided for use by another person, details must be recorded in the register, amongst other of the make, type, calibre of the firearm, serial number, as well as the personal details of the person to whom the firearm is provided. The date and time of both the provision and return of the firearm must be recorded. The signature of the person to whom the firearm was provided is required both at the handing over of the firearm to him and upon its return.

[33] In terms of s 24 of the PSIRA Act, PSIRA must keep a register in which it must enter the name and particulars of each security service provider. Regulations are promulgated in terms of s 35 of the PSIRA Act.

[34] In terms of the PSIRA Regulations (regulation 8), a security service provider must inform PSIRA within 10 days of any change in regard to any information submitted in writing to PSIRA. The regulations require a security service provider to inform PSIRA of every security officer engaged or terminated by it within 10 days after such change occurs.

[35] It should be noted that Modack, according to the PSIRA records as confirmed by the Posthumus who is employed by PSIRA, was registered as a security service provider, but his registration as such was withdrawn on 4 December 2019. A notice of withdrawal of his registration was issued to him on 9 December 2019.

THE HANDLING OF THE FIREARMS BY THE APPLICANT

[36] As already mentioned, Poggenpoel, as the responsible person in terms of s 7 of the FCA, purported to appoint Davids to act on his behalf in terms of s 7. To the extent that this “appointment” is to replace him as the responsible person, there is no indication that the Registrar has been notified of this as required by s 7(4)(b) of the FCA. The FCA does not allow for the responsible person to delegate his responsibilities to another person and Davids therefore has no authority to act as the responsible person for the applicant. It follows that Davids could only be in lawful possession of the firearms if he has been placed in possession thereof by the responsible person, Poggenpoel, who acts as the holder of the licences on behalf of the applicant.

[37] What is more disturbing is that the records of PSIRA show that Davids was employed by the applicant only from 1 March 2020, whereas ASP 5 was signed before this date, namely on 2 January 2020.

[38] At the time of his arrest, permits for only two of the four firearms belonging to the applicant had been issued by Poggenpoel to Davids, namely for the shotgun and for the Glock with serial number 156. This was recorded in the permit book which was found in the possession of Davids.

[39] One of the permit books found in David’s possession was used exclusively to issue permits to Modack by Davids for the possession of the Glock 17 with serial number BFRW 157. According to these records, permits were issued to Modack on eight occasions,

each occasion for a period of about one week. Such permits were issued from 26 January 2020 until 18 March 2020. One of the permits is undated.

[40] The respondents contend that each of these permits constitutes proof of the unlawful handing over of the possession of the firearm to Modack. The issuing of these permits is in contravention of the provisions of the FCA and the regulations promulgated thereunder for various reasons. In the first instance, Davids is not the responsible person authorised to issue permits and consequently to hand over possession of the firearms to a third party. Secondly, Modack is not a security officer employed by the applicant, is not in possession of a competency certificate, and is not registered as a security service provider with PSIRA.

[41] Another permit book found in David's possession revealed that permits were issued by both Davids and Poggenpoel to other employees of the applicant, including to Miller and Strydom. These two persons, according to PSIRA records, however, have only been employed by the applicant from 1 March 2020, whereas firearms have been handed to them according to the firearm register of the applicant, from December 2019 until February/March 2020. In these instances, therefore, the handing of firearms of the applicant to these individuals is unlawful under the FCA and its regulations.

[42] Captain Kelvin George Sampson ("Sampson") of the SAPS also deposed to a supplementary affidavit on behalf of the respondents detailing his investigation into transgressions of provisions of the FCA, its regulations and the PSIRA Act committed by the applicant, Poggenpoel and other employees of the applicant. Sampson investigated the affairs

of the applicant as requested by the investigating officer, Kinnear. During May 2020, he visited the premises of the applicant as was recorded in its application for licences for its firearms. He found their premises deserted by the applicant, and on further investigation, he was directed to the premises at Unit 52, M5 Freeway Park, Ndabeni. He visited these premises with Warrant Officer Rossouw on 15 July 2020, where they met Booyse who was the only person there.

[43] The above premises was without any signage, and with no furniture inside. Booyse had access to the firearm safes of the applicant, wherein firearms as well as the register were kept. The register was handed to Sampson who inspected them. Sampson informs of two further permits (in addition to those dealt with above) which were issued to Modack. The one was issued for the period 12 to 19 January 2020 for the Glock with serial number 157 by a Mr Booyse (“Booyse”), an employee of the applicant, and the other for the period 19 to 26 January, which was issued by Davids for the same firearm.

[44] Furthermore, according to Sampson, he was provided with written authorisation registers or firearm permit registers by Booyse. One of these were used only in connection with firearms issued to Modack. Another permit register shows that firearms were issued to various persons during times that they were not employees of the applicant. These persons are Davids, Miller, Strydom, a Mr Carelse, Mr Beja and Mr Du Toit.

[45] According to Sampson, his investigation revealed that until March 2019, the applicant rendered security services without the use of firearms. The applicant was granted firearm licenses on 2 September 2019, but there are no records of the licenses being used

until 27 October 2019. It appears that none of the persons listed in the application for firearm licenses by the applicant was issued with permits after the licenses were obtained. Instead, only newly appointed security officers of the applicant were issued with permits. In fact, Modack and a Mr Carelse, who were both issued with permits, were not even in the employ of the applicant.

[46] Sampson further states that it is clear from the incomplete firearm permit registers which he inspected that firearms were generally handed over to security officers without the permits being properly completed with reference to a clearly stated security service or with reference to the period and place for which possession of the firearms was granted.

[47] Sampson also concludes that it is clear that the firearms of the applicant were not under the control of the responsible person, being Poggenpoel but that either Davids or Mr Booyse have taken over control of the firearms and in doing so failed or refused to comply with the record keeping requirements of the FCA, the regulations thereunder, PSIRA and its regulations.

EVALUATION

[48] The applicant relies on *rei vindicatio*, s 31(1)(a) of the CPA and s 114(2) of the FCA for the return of its firearms.

[49] For the applicant to successfully invoke *rei vindicatio*, it must prove (a) ownership and (b) that the respondents were in possession of the firearms when the proceedings were instituted. In defending the vindicatory claim, the respondents bear the onus to justify continued possession of the firearms (see **Governing Body of the Juma Musjid Primary School and others v Essay NO and others (Centre for Child Law and another as Amici Curiae)** 2011 (8) BCLR 761 (CC) at footnote 14, p 770).

[50] Section 31(1)(a) of the CPA is relevant to this matter. It provides that where no criminal proceedings have been instituted and where the seized articles would not be required at the trial, the articles should be returned to the person from whom they were seized, provided that such party may lawfully possess them. The onus is on the applicant to show, on a balance of probabilities, that there are no pending proceedings being instituted, and that the articles will not be needed for trial (see **Minister of Police and Another v Stanfield and Others** 2020 (1) SACR 339 SCA at para 12).

[51] There is a second enquiry that s 31(1)(a) calls for. That is, if the applicant discharged its onus in respect of the first enquiry, whether the respondents can prove on a balance of probabilities that the applicant may not lawfully possess the seized items.

[52] Section 31(1) of the CPA provides:

“(1)(a) If no criminal proceedings are instituted in connection with any article referred to in section 30(c) or if it appears that such article is not required at the trial for purposes of evidence or for purposes of an order of court, the article shall be returned to the person from

whom it was seized, if such person may lawfully possess such article, or, if such person may not lawfully possess such article, to the person who may lawfully possess it.”

[53] In **Dookie v Minister of Law and Order and Others** 1991 (2) SACR 153

(D), it was held, per Page J (at 156 c – d);

“The first issue to be decided is whether the matter is one in which ‘no criminal proceedings are instituted’ as required by the section. Counsel for the applicant accepted (correctly, in my view) that the onus of proving that this requirement was satisfied rests upon the applicant. He also agreed (once again, correctly, in my view) that the requirement would not be satisfied merely by proof that no proceedings were pending at the time of the institution of the application for the return of the article; but that it was necessary for the applicant to establish that there was no reasonable likelihood of criminal proceedings being instituted in connection with the article in the foreseeable future.”

This dictum was applied by the SCA in **Stanfield** (supra) at p343, para 12.

[54] The applicant in this matter, however, elected to bring this application based on *rei vindicatio*. The election to do so instead of under s 31(1)(a) is important as far as the discharge of onus is concerned. In the case of *rei vindicatio*, the applicant bears the onus to prove ownership, that the item claimed is in existence and identifiable, and that the respondent is in possession. Once these requirements have been met, the onus shifts to the respondent to show justification of its continued possession of the item concerned.

[55] The question of ownership of the firearms concerned is not disputed, neither is its existence nor its possession by SAPS. The question that remains therefore, is whether the respondents have shown justification in its continued possession of the firearms.

[56] The evidence presented by the respondents is a clear indication that there have been multiple and continuous transgressions of the provisions of the FCA and the regulations promulgated thereunder. Similarly, the applicant has also transgressed the provisions of the PSIRA Act and the regulation thereunder.

[57] Mr Van Loggerenberg who appeared for the applicant argued that no charges has been brought against the applicant and in fact Davids, who was found in possession of the firearms, had not been charged in connection with the firearms at the time when this application was launched. He further argues that the SAPS conceded in its initial answering affidavit by stating “*[it] is confirmed that [the applicant] have been issued with firearm licenses in respect of the firearms which were seized.*” This one sentence, it is argued, answers both the elements of the applicant’s claim premised on a *rei vindicatio* and is a fatal admission to the opposition that the continued possession is not wrongful in the circumstances.

[58] The above argument by Mr Van Loggerenberg, however, ignores the second leg of the *rei vindicatio* test, namely whether the respondents have shown justification for the continued possession of the firearms. This, in my view, the respondents have done.

[59] The respondents have shown multiple transgressions of the FCA and the regulations promulgated thereunder. Since licenses were issued to the applicant, the licensed firearms were issued on multiple occasions to persons who were not registered security officers and who were not even employees of the applicant. Also, Poggenpoel, who is and remains the responsible person in terms of s 7 of the FCA, purported to have delegated his functions to Davids and Booyse, even before they were employees of the applicant. The Registrar was never informed of any replacement of the responsible person, which is required in terms of s 7(4) of the FCA, which has the consequence that Poggenpoel remains the responsible person. As a result, both Booyse and Davids were never lawfully authorised to issue firearms to any employees of the applicant, let alone non-employees (the latter, which under any circumstance, is illegal).

[60] Despite the applicant's reliance on *rei vindicatio* section 31(1)(a) of the CPA remains relevant. Both for purposes of this section, as well as for purposes of the *rei vindicatio*, the respondents have shown that criminal proceedings will be instituted against the applicant as well as Poggenpoel as the responsible person under the FCA and also against Davids, Booyse and other persons for multiple transgressions of provisions of the FCA. It is not necessary to detail possible charges, but suffice to say that the charges may include the unlawful possession of firearms, given the provision in s 3 of the FCA that no person may possess a firearm unless he or she holds a licence, permit or authorisation for that firearm.

[61] In my view, it is not necessary for me to accept as fact that a case has been made out for the prosecution of the applicant and others in order for this court to turn down the application for the return of the firearms to the applicant. All that is required is that SAPS

should have shown that there is a *prima facie* case against the applicant. There is no doubt in my mind that such a case has been made out, and that the firearms will be required as evidence in a trial that may follow.

[62] The respondents have gone further to argue that the evidence show that a return of the firearms will result in the continued unlawful activities by the applicant. In fact, Mr Roux, who appeared for the respondents proffered cogent argument that the applicant has committed fraud in its application for the firearm licenses, as none of the persons named in its application for the use of the firearms were issued with permits for the use of the firearms after the licenses were granted, instead, only new employees, or even non-employees were issued with such permits. I do not find it necessary to go into more detail on this argument, given my finding of transgressions of the FCA expounded above.

[63] A further matter which militates against the return of the firearms to the applicant, is the evidence that SAPS is conducting a high profile investigation concerning a link between the procurement of firearms licenses in terms of the FCA to facilitate the illegal interests and activities of organized crime. This clearly requires SAPS to retain the firearms for further investigation to enable it to lead evidence at the trial of the persons mentioned above. The fact that the firearms have been sent for ballistic tests stands uncontested. These are all good / rational reasons for the firearms to be retained by SAPS.

[64] It goes without saying that s 114(2) of the FCA is of no assistance to the applicant as the firearms are clearly of value as evidence.

[65] In the result, the application is dismissed with costs.

HOCKEY AJ

Appearances:

For Applicant: Adv. A Van Loggerenberg

Instructed by: AZS Attorneys Inc.

For Respondents: Adv. W Roux

Instructed by: State Attorney