

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

Case No: 2022/8001

In the matter between:

REPORTABLE: YES	
OF INTEREST TO OTHER JUDGES: NO	
JUDGE KUNY	10 MAY 2023
SIGNATURE	DATE

DU PREEZ, A. L.

Applicant

and

THE MINISTER OF POLICE

Respondent

JUDGMENT

KUNY J

1 The applicant instituted proceedings against the respondent on 28 February 2022 seeking the following relief:

1.1 The respondent be directed to accept, process and consider the applicant's four (4) applications for a licence to possess a firearm.

1.2 The respondent to pay the costs of the application, if it is opposed.

2 The applicant appeared in person at the hearing of the matter. The respondent opposed the application and was represented by counsel.

3 The applicant states in his founding affidavit that he was at all relevant times the owner of the following firearms:

3.1 410 caliber shotgun.

3.2 6.35 mm pistol.

3.3 30-06 hunting rifle.

3.4 .243 hunting rifle.

("the firearms")

4 The applicant's licence to possess the firearms had lapsed. On 28 January 2021 he surrendered the firearms at the Sophiatown Police Station and applied for amnesty in terms of section 139 of the Firearms Control Act 60 of 2000 ("the Act"). At the time he did so, he advised the persons to whom he surrendered his firearms that he intended to apply for the renewal of his licence.

5 The applicant states that after having filed his application for amnesty, at the police station, he immediately sought to apply for firearm licences for the surrendered firearms. However, he was unable on the day in question to complete the necessary application because the officials were busy attending to other persons.

- 6 The applicant returned to the police station a few days latter with his completed application forms. He was advised that he had to apply for a competency certificate with his licence application. This required him to file the original competency certificate issued to him when he first obtained his firearm licence. The applicant states that it took him about ten days to trace the relevant person who was based in Caledon, in the Western Cape, who was able to assist him in locating his original competency certificate.
- 7 The applicant returned to the Sophiatown Police Station on 18 February 2021 with all the relevant documentation intending to make application for a firearm licence. He states that the process of completing the formalities at the police station took about five hours. However, he was eventually informed that the SAPS computer system would not accept his application because it had not been lodged within 14 days after he had surrendered his weapons and applied for amnesty. His application documents were handed back to him. The applicant states that he has been back and forth trying to persuade police officers dealing with firearm licence applications to accept his application. However, this has been to no avail. On 12 January 2022 the applicant sent a letter to the commissioner of police pleading his case and giving notice that if his application for a licence to possess his firearms were not accepted he intended to institute legal proceedings. No response was received to this letter.
- 8 The applicant states in his founding affidavit that he has received confirmation that his competency certificate had been renewed. He also received confirmation from Lt. Mokoena, the head of the licencing department at Sophiatown, that his firearms will not be destroyed without prior notice being given to him.
- 9 The respondent in its answering affidavit denies that the applicant's application was rejected by the police computer system. The main argument advanced is that the police had no authority to accept the applicant's application after the prescribed 14 day period had elapsed. The respondent contends that upon failure to apply for a firearm licence within the 14 days of having surrendered his

firearms in terms of the amnesty provision, such firearms were forfeited to the state. They however, have not yet been destroyed and “the process for [their] destruction is pending”.

LEGAL ISSUES

- 10 The question to be answered in this application is whether the failure on the part of the applicant within 14 days after surrendering his firearms, to apply for a licence to possess the said firearms, bars him from lodging such application.
- 11 The following declaration appears at the foot of the amnesty forms submitted by the applicant:

I, the above mentioned and undersigned, declare that -

*I intend/do not Intend to apply for a licence to possess the particular firearm which I have surrendered to the South African Police Service. In the case where I intend to apply for the specific firearm licence, I confirm that I must lodge this application(s) within 14 days of the date hereof, failing which the South African Police Service will destroy the above firearm(s), ammunition and/or firearm parts in accordance with Regulation 93(4) of the Firearms Control Regulations, 2004.

I furthermore acknowledge and agree that, if I did not indicate my intention to apply for a licence to possess such item and lodged such application within 14 days hereof, the item will be forfeited to the State and that I am not entitled to any compensation for the abovementioned item. I further acknowledge that the South African Police Service may, in its sole discretion, decide not to destroy the item, but to deal with it in terms of the National Heritage Resources Act, 1999 (Act No. 25 of 1999) as imposed by the South African Heritage Resources Authority or their nominated agents as informed by Regulation 104 (5) of the Firearms Control Regulations, 2004.

I accept this form as being an official acknowledgment of receipt for the above mentioned items.

- 12 The relevant amnesty declaration in terms of section 139 of the Act is contained in Government Notice GN 845 in GG 43576 of 31 July 2020 (“the amnesty

provision"). Paragraph (c) and the final paragraph of the amnesty provision provides as follows:

- (c) An applicant for amnesty who wishes to apply for a licence to possess the firearm surrendered by him or her as contemplated in section 139(4) of the Firearms Control Act, 2000, must when surrendering the firearm, in writing, notify the relevant Designated Amnesty Officer of his or her intention to apply for a licence to possess the firearm. The application for a licence must be lodged within 14 days from the date on which the firearm was surrendered with the relevant Designated Firearms Officer (the relevant Designated Firearms Officer has the meaning assigned to it in the Firearms Control Regulations, 2004);

I further determine that the South African Police Service must conduct ballistic tests on all firearms surrendered in terms of this amnesty, and if an application for a licence to possess the firearm as contemplated in paragraph (c) of this Notice is not duly lodged, or has not been lodged within the specified period, such firearm must be destroyed in accordance with regulation 93(4) of the Firearms Control Regulations, 2004.

- 13 In terms of the definition in section 138 of the Act 'amnesty' means an indemnity against prosecution for the unlawful possession of a firearm or ammunition.

- 14 Section 139 of the Act provides as follows:

139 Amnesty

- (1) The Minister may, by notice in the Gazette, declare an amnesty if-
 - (a) the amnesty may result in the reduction of the number of illegally possessed firearms in South Africa; and
 - (b) it is in the public interest to do so.
- (2) A notice contemplated in subsection (1)-
 - (a) will only be valid if it is approved by Parliament;
 - (b) must specify the period during which persons may apply for amnesty; and

- (c) must specify the conditions under which amnesty may be granted.
- (3) A person who surrenders a firearm or ammunition in compliance with a notice published in terms of subsection (1), may not be prosecuted in relation to-
 - (a) the firearm, for having been in possession of that firearm without the appropriate licence, permit or authorisation; or
 - (b) the ammunition, for having been in possession of that ammunition without having been in lawful possession of a firearm capable of discharging the ammunition.
- (4)
 - (a) A person who surrenders a firearm in compliance with a notice published in terms of subsection (1) may apply in terms of this Act for a licence in respect of that firearm.
 - (b) If a licence is granted, the firearm and ammunition, if any, surrendered in terms of this Act must be returned to the holder of the licence.
- (5) The Registrar must dispose of any firearm or ammunition surrendered in compliance with a notice in terms of subsection (1) in such manner and after the expiry of such period as may be prescribed.

15 As seen above, in terms of section 139(2)(c) the Minister is entitled to impose conditions under which amnesty may be granted. These conditions are set out in the introductory paragraph and in paragraphs (a) and (b) of the amnesty provision. The respondent does not dispute that the applicant met the conditions and was entitled to an amnesty arising from the unlawful possession of his firearms after his firearm licence had lapsed.

16 In my view, on a proper interpretation, the 14 day period in paragraph (c) of the amnesty provision, strictly speaking, does not relate to a condition for the grant of amnesty specified in section 139(2)(c). It concerns the manner in which the applicant may regain possession of his firearms by applying for a licence to possess such firearms in terms of the Act. That right is preserved in section

139(4)(a). Furthermore, the applicant's ownership of the firearms before they have been destroyed is preserved in section 149(2)(a) of the Act.

- 17 The applicant relied in support of the relief he seeks on the Constitutional Court decision of *Minister of Police and Others v Fidelity Security Services (Pty) Limited* [2022] ZACC 16. The question that arose in that case was whether the owner of a firearm who had permitted his licence to possess such firearm to lapse without timeously seeking its renewal, irretrievably lost the right to ever regain lawful possession of the firearm. The court held that a gun owner was not precluded from applying for a new licence in circumstances where he or she permitted the licence to lapse. The following was held in regard to ownership and possession of firearms:

[39] It is through the limitation of possession that the Act potentially qualifies or limits ownership in the public interest. Once a possession licence has expired without renewal, continued possession is unlawful in terms of the Act. However, this unlawfulness does not necessarily impact a person's ownership or the lawfulness of continued ownership. The owner can be viewed as retaining a qualified form of ownership, which excludes the right to possess the firearm.

- 18 Section 149(2)(a) of the Act was held to be relevant in this regard. It states that any firearm forfeited to the State in terms of the Act remains the property of the owner until its destruction.
- 19 The effect of and manner in which peremptory provisions in statutes should be interpreted has been dealt with in a number of reported cases. In *Signature Real*

Estate (Pty) Ltd v Charles Edwards Properties ¹ the court held the following in relation to section 34A of the Estate Agents Act ²:

[17] The provisions of 34A are clearly peremptory. But even peremptory provisions must yield to two interpretive imperatives. First, the injunction of s 39(2) of the Constitution, which enjoins courts, when interpreting any legislation, to promote the spirit, purport and objects of the Bill of Rights. In this instance, the right implicated is one enshrined in s 22 of the Constitution, namely the right to freely engage in a trade, occupation or profession. Therefore, an application of the section that promotes, rather than impedes, the exercise of that right, is to be preferred. Second, due regard must be had to the purpose of the statute, more specifically, whether adopting a strict or literal interpretation of its provisions is consistent with what the Act seeks to achieve.

¹ Signature Real Estate (Pty) Ltd v Charles Edwards Properties and Others 2020 (6) SA 397 (SCA)

² The section commences: “(1) No estate agent shall be entitled to any remuneration or other payment in respect of or arising from the performance of any act referred to in subparagraph (i), (ii), (iii) or (iv) of paragraph (a) of the definition of “estate agent”, unless at the time of the performance of the act a valid fidelity fund certificate has been issued-”

20 These principles were further dealt with in *Ex Parte Mdyesha* 2018 (4) SA 468 (GP) where the court held as follows:

[6] However, as explained in *Maharaj and Others v Rampersad* 1964 (4) SA 638 (A) at 646C – E, a finding that a legislative provision is peremptory is not the end of the matter. The court must further enquire whether it was fatal that it had not been complied with. The Appellate Division laid down the following test:

‘This enquiry postulates an application of the injunction to the facts and a resultant comparison between what the position is, and what, according to the injunction, it ought to be. It is quite conceivable that a Court might hold that, even though the position as it is not identical with what it ought to be, the injunction has nevertheless been complied with. In deciding whether there has been a compliance with the injunction the object sought to be achieved by the injunction and the question of whether this object has been achieved are of importance.’

[7] As observed by this court in *Ex parte Mothuloe* (Law Society, Transvaal Intervening) 1996 (4) SA 1131 (T) ([1996] 2 All SA 342) at 1137H – 1138F the trend in interpretation is ‘away from the strict legalistic to the substantive’. Once it is established that a legislative provision is peremptory and the question arises whether exact compliance therewith is required, the answer is to be sought in the purpose of the statutory requirement which is to be ascertained from its language, read in the context of the statute as a whole.

21 The facts in this case fall within a narrow compass. The applicant attempted to apply for a firearm licence in respect of the firearms that he surrendered. He could not do so within the 14 day period because he was unable to meet the administrative requirements. It took him time to procure an original copy of his competency certificate. However, by surrendering his firearms in terms of the amnesty provision the applicant did not relinquish his ownership in his firearms. He intended to regularise his right and competence to possess the firearms by applying for a new firearm licence.

22 The stipulated period within application should be made for a firearm licence is

necessary to enable the State, if no application is made, to take the next step in the process after surrender. This is the destruction of the firearm in accordance with regulation 93(4) of the Firearms Control Regulations, 2004. In my view however, the 14 day period in the amnesty provision within which a person is required to apply for a firearm licence after surrendering his firearm, does not preclude such person who has not made application within the prescribed time from applying for a licence in respect of such firearms. This right is preserved in the Act.

- 23 It was pointed out in *Minister of Police v Fidelity Security* that the Act could not have intended that firearm owners whose licences to possess firearms have expired, would forfeit their weapons and be required to buy new firearms only for the same application to be considered for a new licence as envisaged in the Act. It was held that this was neither sensible nor businesslike interpretation to the provisions of the Act.³
- 24 In my view, adopting a strict and literal interpretation of the time period prescribed in paragraph (c) of the amnesty provision is not consistent with the objects that the Act seeks to achieve. The primary object of section 138 is to provide an indemnity against prosecution for the unlawful possession of a firearm or ammunition. Furthermore, as pointed out in *Minister of Police v Fidelity Security Services*,⁴ the amnesty provision is designed to encourage persons who would otherwise break the law, either to surrender their firearms for destruction

³ Minister of Police v Fidelity Security Services (supra) para 11

⁴ Minister of Police v Fidelity Security Services (supra) para 68

or to regularise their possession. But for this provision, gun owners might be reluctant to come forward.⁵

25 I find, viewed in context of the relevant provisions of the Act and the amnesty provision, that the applicant's failure to lodge an application for a firearm licence within 14 days of the surrender of his firearms does not bar him from making such application. He has given a reasonable explanation for his failure to do so. His delay in submitting an application for a firearm licence was not excessive. In the circumstances, the applicant's application must succeed with costs.

26 I accordingly make the following order:

1 The respondent is directed to accept, process and consider the applicant's four (4) applications for a licence to possess a firearm.

2 That respondent is ordered to pay the costs of the application.



KUNY J
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, JOHANNESBURG

⁵ Minister of Police v Fidelity Security Services (supra) para 66

Date of hearing: 21 February 2023

Date of judgment: 10 May 2023

Appearance for the applicant: In person

Appearance for the respondent: Advocate D Kela