



IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

DELETE WHICHEVER IS NOT APPLICABLE

- (1) REPORTABLE: **NO**
(2) OF INTEREST TO OTHER JUDGES: **NO**
(3) REVISED:

Date: **15th March 2019** Signature: _____

CASE NO: 2018/2455

DATE: 15TH MARCH 2019

In the matter between:

**VAN ROOYEN, ADRIAAN WILLEM, N O
MALATSI, MMALETJEKA ESTHER, N O**

First Applicant
Second Applicant

and

**MINISTER OF DEFENCE & MILITARY VETERANS
MUDAU, COLONEL N L
MAPHWANYA, BRIGADIER GENERAL
THE MINISTER OF POLICE
THE NATIONAL COMMISSIONER OF THE SAPS
THE COMMANDING OFFICER OF THE HAWKS**

First Respondent
Second Respondent
Third Respondent
Fourth Respondent
Fifth Respondent
Sixth Respondent

JUDGMENT

ADAMS J:

[1]. This is an opposed application by the first and second applicants, who act herein in their official capacities as the joint liquidators of the insolvent estate of New Generation Arms Management (Pty) Limited ('NGAM'), for a declaratory order that an Order of this Court is enforceable against certain State Officials and named State Departments. The applicants also prays for an Order declaring that they shall immediately be given a reasonable opportunity to inspect certain arms and ammunition, which formed the subject of the Court order, which the applicants are requiring to have enforced.

[2]. The relevant portions of the Order, which was by Vorster AJ on the 26th of April 2012, provides as follows:

1. That the respondents or any person acting on their instruction shall not, subject to paragraph 3 of this order, destroy or otherwise dispose of the arms and ammunition seized by the South African Police Service ("the SAPS") listed in the schedule annexed hereto, marked "X" (hereinafter "the articles", pending the finalisation of the investigation being conducted by the SAPS under enquiry docket CATS 03/02/2012;
2.
3.
4. That the applicant (in the person of Johan Hendrik Erasmus or a representative authorised by him) shall once a month at a mutually convenient time determined by the investigating officer upon no less than 48 hours notice be entitled to inspect the articles at the existing safekeeping facility.

... ..

[3]. The foregoing order, which was by agreement between the parties, was granted in favour of NGAM against the respondents in this application. Order number (4) is the portion of the order which the applicants wish to have enforced so as to assist them in locating any assets belonging to the insolvent company.

[4]. The first to third respondents opposed this application on the basis that none of them are in possession of any of the arms and ammunition which the applicants wish to inspect. In their answering affidavit these three respondents aver that the items are in the possession of the South African Police Service. The articles are kept at different sites of the SAPS. These respondents nevertheless contend that the applicants are not entitled to inspect the weapons. The weapons are in the country illegally, so the first to third respondents contend, and therefore the applicants have no right to inspect them.

[5]. The fourth to sixth respondents also opposed the application mainly on the basis that NGAM was in unlawful possession of the weapons and ammunition tabulated as some of the items on Annexure "X". In any event, so the argument on behalf of these respondents go, when NGAM was liquidated, any and / or all permits they held entitling them to possess weapons would have expired in terms of section 14 (6) of the National Conventional Arms Control Act 41 of 2002. This means that the applicants have no right to possess and / or own the weapons in question and they have no right to claim return of the arms and ammunition, which will probably in due course be forfeited to the State.

[6]. The applicants' response to the respondents' case is that all that they seek is compliance with a Court Order. Mr Naude, Counsel for the applicants, submit that the respondents have failed to give any reason, premised on a sound factual or legal basis, as to why the applicants may not have access to

inspect the various assets seized. The Order granted by Vorster AJ afforded NGAM the right to reasonable access to inspect the items listed. It is furthermore submitted on behalf of the applicants that the question whether NGAM was in lawful or unlawful possession of the items seized is irrelevant.

[7]. I find myself in agreement with the applicants' submissions. The simple fact of the matter is that there is in existence a Court Order, which entitles the applicants to the relief prayed for in this application, and Court orders should be obeyed. It does not assist the respondents that, according to them, the applicants are not entitled to possess or own the weapons in question. In terms of their statutory duties, the applicants are required to assess not only the value of the assets in the insolvent estate but also the debts due to creditors of the company.

[8]. In the circumstances, I am of the view that the applicant is entitled to the relief sought in the notice of motion.

Costs

[9]. The general rule in matters of costs is that the successful party should be given his costs, and this rule should not be departed from except where there are good grounds for doing so, such as misconduct on the part of the successful party or other exceptional circumstances. See: *Myers v Abramson*, 1951(3) SA 438 (C) at 455.

[10]. I can think of no reason why I should deviate from this general rule.

[11]. I therefore intend awarding cost against the first and sixth respondents in favour of the applicant.

Order

Accordingly, I make the following order:-

1. It is declared that the Order of Vorster AJ of the 26th of April 2012 is enforceable against:
 - 2.1. The officer, major or any other person currently or in the future commanding the Special Forces Supply Unit, Weapons System Management, the Department of Research and Development of the above or other designations; or
 - 2.2. Any unit, department or otherwise where the items referred to in the Order of Vorster AJ dated the 26th April 2012 is kept or stored for whatsoever purpose.
2. It is declared that the applicants shall be given a reasonable opportunity to inspect the articles.
3. The first, fourth, fifth and sixth respondents, jointly and severally, the one paying the other to be absolved, shall pay the applicants' cost of this application, which costs shall include the cost consequent upon the employment of two Counsel, one of which is Senior Counsel.



L R ADAMS
Judge of the High Court
Gauteng Division, Pretoria

HEARD ON:	12 th March 2019
JUDGMENT DATE:	15 th March 2019
FOR THE APPLICANT:	Adv G Naude SC, together with Adv J Malherbe
INSTRUCTED BY:	S C Vercueil Attorneys
FOR THE FIRST, SECOND & THIRD RESPONDENTS:	Adv Lesego Mmusi, together with Adv D Gondo
INSTRUCTED BY:	The State Attorney, Pretoria
FOR THE FOURTH, FIFTH & SIXTH RESPONDENTS	Adv Pingla Hemraj SC
INSTRUCTED BY:	The State Attorney, Pretoria