

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

25/5/15.

CASE: 57666/2014

In the matter between:

SERVEST (PTY) LTD t/a SERVEST MARINE

and

THE MINISTER OF POLICE

**NATIONAL COMMISSIONER OF THE SOUTH
AFRICAN POLICE SERVICES**

BRIGADIER A GOPAUL

COLONEL M G NEWTON

APPLICANT

WILLING TO OBTAIN JUDG: YES/NO.

25/5/2015

Shay

FIRST RESPONDENT

SECOND RESPONDENT

THIRD RESPONDENT

FOURTH RESPONDENT

JUDGMENT

TLHAPI J

[1] The applicant launched two applications. In the first application of 5 August

2014 the applicant seeks the following orders:

- “1. *Compelling the South African Police Services to comply with the Guidelines for the Control of Firearms and Ammunition at Ports of Entry in South Africa dated the 4th June 2013;*
2. *Ordering the First, Second, Third and Fourth Respondents to withdraw the directive dated 16 May 2014;*
3. *That the respondents, jointly and severally pay the costs of this application on the scale as between attorneys and client;*
4. *Directing.....that the First Respondent and Second Respondent be ordered to consult with the Applicant, and any other interested party concerning any change to any of the approved guide lines dates the 4th of June 2013;”*

In the second application of 17 November 2014 which was brought on urgency and was struck of the roll due to lack of urgency the applicant seeks the following order:

- “ 2. *That an interim interdict be issued against the respondents inter alia containing the following:*

- 2.1 *For an order pending the finalization of the main application:*

To:-

- 2.1.1 *Comply with the provisions of Annexure “A” to the founding affidavit in this application, being the document known as “Guidelines for the Control of firearms and Ammunition and Ports of entry in South Africa; and*

- 2.1.2 *To not unlawfully intervene in Applicant's business activities;*
- 2.1.3 *An order interdicting and restraining Respondents from harassing, intimidating, and threatening applicant and its employees or otherwise acting in an unlawful fashion towards the Applicant and its employees.*
- 2.1.4 *Directing that should respondents wish to effect an arrest, of any of the applicant's employee(s) or agent(s), that they notify applicant's attorneys in writing and provide a copy of the written warrant of arrest for such person along with reasons for such arrest and allowing applicant's attorneys a reasonable time to allow applicant's employee(s), agent(s) to present themselves with their attorneys at an agreed time and place to the respondents for arrest;*
- 2.1.5 *Interdicting and restraining respondents from effecting arrests on a Thursday or a Friday without a written warrant of arrest;*

BACKGROUND

[2] The applicant is a security service provider. Among its many functions it also provides marine security services in the handling in the transportation of firearms for ships entering Durban Harbour or outside Durban Harbour, for the protection of ships piracy activities along the East Coast of Africa and the Mozambique Channel.

The South African Association of Ship Operators and Agents ('SASSOA'), various security service providers and the South African Police Service ('SAPS') engaged in a consultative process which resulted in a set of guidelines for the transportation of firearms being approved by the National Commissioner of the South African Police Services on 4 June 2013, ("*Guidelines for the Control of Firearms and*

Ammunition at Port of Entry of South Africa).

[3] The applicant was informed of a directive taken on 16 May 2014 by the third and fourth respondents which had been unilaterally taken and without any notice or prior consultation with the applicant and other interested parties and the directive was annexed as annexure 'B'. The applicant contended that the directive was unlawful; in contravention of the Promotion of Administrative Justice Act and, in direct conflict with the guidelines and, would have had the effect of prejudicially affecting about 40% of its business. The applicant instructed its attorneys to send a letter of enquiry to the third and fourth respondents on 12 June 2014, which was followed by another letter of 1 July 2014 which requested confirmation that the directive had been withdrawn. No confirmation was received.

[4] The answering affidavit was deposed to by the third respondent who was also author of the directive complained about. He averred that the directive was sent to SASSOA during May 2014. SASSOA then engaged with the SAPS and after considering their representation, the directive was withdrawn on 18 June 2014 before the implementation date of 1 July 2014. On 20 June 2014 SASSOA confirmed receipt of the withdrawal and informed the respondent that it was communicated to all its members. It was contended that it was not necessary to bring the respondents to court because the business of the applicant was not affected by the directive and the launching of the on the 4 August 2014 was an abuse of the process of court.

[5] In reply it was contended that the respondents had not in reply dealt with the issues in the relief that was sought because there was 'an inconsistent application, specifically by the deponent to the answering affidavit, the third respondent, one Colonel Newton and, the fourth respondent', of the guidelines. The inconsistencies

were addressed in paragraph four (4) of the replying affidavit and further that the applicant had been victimised. It was averred that SASSOA was not an agent for the applicant and that it had no authority to act on its behalf and that any notification to it did not constitute a notification to the applicant. There was further no proof that the applicant had been notified of the withdrawal. It was further averred that the fourth respondent on instructions of the third respondent had on 22 August 2014 conducted a raid on Applicant's premises this having occurred two days after the service of the application. This was done on the pretext that one of the employees did not have a valid work permit. One Pascal Anyafulu and the Ivan Sewdarsan were arrested by the fourth respondent and released on bail and their criminal case was not proceeded with.

FIRST APPLICATION

[6] The activities of the applicants and other role players and the respondents, are regulated by the Firearms Control Act 2000 (Act 60 of 2000) and related regulations and various other relevant legislations quoted in the Guidelines, These guidelines were approved by the National Commissioner of the SAPS dated 4 June 2013. The purpose of the documents was to provide guidelines for the 'effective control of the import, export, transit of arms and ammunition' and for the procedures to be observed by all role players in compliance with the law. The guidelines in themselves are not the law.

[7] This application was launched on 5 August 2014, a considerable time after the third respondent withdrew his directive on 18 June 2014 and which withdrawal was communicated to SASSOA. Annexure 'H', letter from the applicant's attorney

dated 12 June 2014 identified the source of the directive complained was SASSOA. In my view, the fact that such withdrawal was not specifically communicated to the applicant because it is not a member of SASSOA does not in itself justify the launch of the application, unless the applicant can show that as a result of the directive its business had been affected by the directive before and after its withdrawal.

[8] The applicant had to show that the conduct of the respondents was in direct conflict with its obligations under relevant legislation or regulations and that the guidelines had not been observed and such transgressions must be identified. The founding affidavit is lacking in such information. The applicant makes out an entirely new case relating to alleged incidents in the replying affidavit when it is not permissible to do so. Such averments should be struck out. An applicant stands or falls by his affidavit because facts should be put in such a manner that the respondent is in a position to affirm or deny the allegations against it from the outset. It does not assist the applicant for example, to state in the replying affidavit that a respondent has not responded to the orders sought in the notice of motion. In **Swissborough Diamond Mines (Pty) Ltd v Government of the Republic of South Africa** 1999(2)SA 279(T) Joffe J stated:

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“It is trite law that in motion proceedings the affidavits serve not only to place evidence before the Court, but also to define the issues between the parties. In doing so the issues between the parties are identified. This is not only for the benefit of the Court but also, and primarily, for the parties. The parties must know the case that must meet and in respect of which they must adduce evidence in the affidavits....

An applicant must accordingly raise the issues upon which it would seek to rely in the founding affidavit. It must do so by defining the relevant issues and by setting out the evidence upon which it relies to discharge the onus of proof resting on it in respect thereof.

324D

The facts set out in the founding affidavit (and equally in the answering affidavit and replying affidavit, must be set out simply, clearly and in chronological sequence and without argumentative matter.

324F-G

Regard being had to the function of affidavits, it is not open to an applicant or a respondent to merely annexe to its affidavit documentation and to ask the court to have regard to it. What is required is the identification of the portions thereof on which reliance is placed and an indication of the case which is sought to be made out on the strength thereof. If this were not so the essence of our established practice would be destroyed" (my underlining)

In the light of the above I am not satisfied that a case had been made out for any of the prayers in this application.

SECOND APPLICATION

[9] The second application was instituted as a matter of urgency for an interim interdict pending the finalization of the main application which was the first

application in the circumstances. This application was struck off the roll due to lack of urgency and this application in order to be effective was not set down for hearing before the first application was finalized. Since the same case number was used I would conclude that the relevance of the second application would be for purpose of consideration of costs only.

[10] In the result the following order is given:

1. The both applications are dismissed with costs.



TLHAPI V.V

(JUDGE OF THE HIGH COURT)

MATTER HEARD ON	:	13 MAY 2015
JUDGMENT RESERVED ON	:	13 MAY 2015
ATTORNEYS FOR THE APPLICANT	:	M J HOOD & ASSOCIATES
ATTORNEYS FOR THE RESPONDENTS	:	THE STATE ATTORNEYS