



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

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

12 AUGUST 2024
DATE OF JUDGMENT


SIGNATURE

CASE NO: 016405/2022

In the matter between:

RUSTENBURG PLATINUM MINES BLESKOP

CODE OF BODY 3160

Applicant

And

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

GENERAL K.J. SITHOLE N.O.

**(IN HIS CAPACITY AS REGISTRAR OF
FIREARMS)**

First Respondent

COLONEL PN SIKHAKHANE
(IN HER CAPACITY AS ACTING SECTION HEAD,
CENTRAL FIREARMS REGISTRY)

Second Respondent

MAJOR GENERAL MAMOTHETI
(IN HER CAPACITY AS HEAD OF THE FIREARMS,
LIQUOR AND SECOND HAND GOODS CONTROL
DEPARTMENT "FLASH")

Third Respondent

THE MINISTER OF POLICE

Fourth Respondent

THE FIREARMS APPEAL BOARD

Fifth Respondent

This judgment is issued by the Judge whose name is reflected herein and is submitted electronically to the parties/their legal representatives by email. The judgment is further uploaded to the electronic file of this matter on CaseLines by the Judge or her Secretary. The date of this judgment is deemed to be 12 August 2024.

JUDGMENT

COLLIS J

INTRODUCTION

1] On 19 August 2023 the Applicant issued a Notice of Motion seeking the following relief:

"1. An order in so far as it is necessary, that the Applicant has no internal appeal available to it alternatively that exceptional circumstances exists that they are entitled to approach the above Honourable Court directly and without exhausting the internal appeal set out in Sections 133 and 91 of the Firearms Control Act 60 of 2000.

2. An order declaring that the Applicant's firearm licence renewals under code of body 3160 dated the 4th of September 2018 be deemed to be refused as per the Schedule of firearms attached as "NOM1" hereto.

3. An order reviewing and setting aside such deemed refusals.

4. An order ordering the issue of licences for such firearms and the physical delivery of such firearm licences within 10 (ten) days from date of an order to this effect by the above Honourable Court to the Rustenburg Police Station.

5. In the alternative, for an order ordering the Respondents to make a

decision on the renewal applications within 10 (ten) days from date hereof and to deliver the licences if so approved within 10 (ten) days from date thereafter to the Rustenburg Police Station.

6. An order in so far as it may be necessary, if any applications are refused by the Respondents, to approach the above Honourable Court on these papers duly supplemented to review and set aside such refusal.

7. Costs only in the event of opposition.”

2] The present application is premised in terms of Section 3 (a) (iii) of the Promotion of Administrative Justice Act in that the administrative official concerned i.e. the National Commissioner of the South African Police Services who is the Registrar of Firearms by virtue of Section 123 of the Firearms Control Act 60 of 2000, has failed to take a decision within a reasonable time to approve or refuse the Applicant’s renewal of its firearm licences.

PRELIMINARY ISSUES REQUIRING DETERMINATION

3] The Respondents have raised a number of preliminary issues namely:

3.1 Whether the first *point in limine* that the Applicant’s application is

premature should be upheld?

3.2. Whether the second *point in limine* of non-joinder of Sibanye-Stillwater Ground should be upheld?

3.3. In addition, this Court was called upon to determine whether to permit the Applicant to file a further affidavit and to rule on the condonation application filed.

3.4. This Court was also called upon to rule on the reserved costs of the proceedings set down on 28 August 2023.

Premature nature of the application.

4] The defence that the application is premature, is premised on the fact that there are no applications in the records of the Respondents of renewal applications submitted by the Applicant as the holder of a firearm licence under code of body 3160.

5] This defence the Applicant contends is contradicted if one considers the contents of annexures “FA7” and “FA8”, annexed to the founding affidavit.

6] In this regard the Applicant argues that a receipt can only be issued once the application has been submitted and once the application has been paid for. Once done, it is then entered into the SAPS 86 register which is a manual

register that records renewal applications. A copy of such register is annexed to the founding affidavit as "FA7".

7] The Applicant herein has also served a Rule 35 (12) notice on the Respondent, which notice remains unanswered to date. It is the Applicants' contention that a reply to this notice will illustrate that the Applicant timeously applied to renew its licences.

8] In raising the *point in limine*, the Respondent had argued, that the Applicant in this matter has invoked the review Application to renew a firearm licence under code of body 3160.¹

9] Section 24 of the Firearms Control Act No 60 of 2000 ('Firearms Control Act') provides that the Holder of a licence issued in terms of this chapter who wishes to renew the license must at least 90 days before the date of expiry of the licence apply to the Registrar for its renewal.

10] On behalf of the Respondent it was argued that this review application was prematurely lodged on the basis that the Respondents' record reflects that there is no application for the renewal of a licence in terms of section 24 which was received from the Applicant as the holder of a firearms licence under code of body 3160.

¹ Answering Affidavit para 6 Caselines 004-3.

11] The Respondents' records reflect that the application of a licence renewal was effected by Sibanye Gold Protection Services Limited in terms of which the latter is not the lawful owner of the firearms owned by the Applicant.

12] Sibanye Gold Services Limited has its own code of body 5330 which is substantially different from the code body of the Applicant in this matter.

13] It is on this basis that counsel for the Respondent had argued that the Applicant's possession of the firearms is currently unlawful on the basis of the 90 days' period contemplated by section 24(1) of the Firearms Control Act has already lapsed without receiving application for renewal of a licence under code of body 3160.

14] For this reason it was contended, that the present application is premature and that the *point in limine* should be upheld and the application dismissed with costs.

15] In its Replying Affidavit, the Applicant sets out that it indeed was allocated a firearm owning code of body 3160 and that any change of this code of body to any other entity is unlawful as it has not been done with its consent.

16] If one however considers annexure 'FA6' annexed to the Founding Affidavit, it reflects a reporting date of 27 September 2021, depicting an

identification number 3160, allocated to Rustenburg Platinum Mines Bleskop. This period however falls outside to the period in question being 2018. Furthermore, annexure 'FA8' also being placed reliance upon, depicts proof of payment indeed issued to Rustenburg Platinum Mines, dated 25 May 2020 in respect of firearm licence renewals, but which period also however falls outside the relevant period in question. In addition, the further proof of payment depicted in annexure 'FA7' reflects the payment date of 4 September 2018, setting out the beneficiary as Rustenburg Platinum Mines but here no reference is made for payment of renewal in relation to code of body 3160.

17] Given the exposition as set out above, the inescapable conclusion to be drawn is that the Applicant has failed to present before this Court objective proof that indeed application for renewal of firearm licence was made by the Applicant, 90 days prior to its expiry in respect of code of body 3160 as is required in terms of section 24 of the Firearms Control Act.

18] Absent such proof, the *point in limine* that the application is premature, must as a result be upheld with costs.

Non-joinder Sibanye-Stillwater Group

19] In addition to the first *point in limine*, the Respondents had also raised the non-joinder of Sibanye-Stillwater Group as a second *point in limine*.

20] In Absa Bank Ltd v Naude NO 2016 (6) SA 540 (SCA) the test for joinder was restated by Schoeman A.J.A to be the following:

"The test whether there has been non-joinder is whether a party has a direct and substantial interest in the subject-matter of the litigation which may prejudice the party that has not been joined. In Gordon v Department of Health, Kwazulu Natal 2008 (6) SA 522 (SCA) it was held that if an order or judgment cannot be sustained without necessarily prejudicing the interests of third parties that had not been joined, then those third parties have a legal interest in the matter and must be joined."

21] The relevant principles governing non-joinder in general were summarised in Rosebank Mall (Pty) Ltd and Another v Cradock Heights (Pty) Ltd 2004 (2) SA 353 (W) as follows:

"[11] It is important to distinguish between necessary joinder (where the failure to join a party amount to a non-joinder), on the one hand, and joinder as a matter of convenience (where the joinder of a party is permissible and would not give rise to a misjoinder), on the other hand. In cases of joinder of necessity the Court, may even appeal, mero motu raise the question of joinder to safeguard the interests of third parties, and decline to hear the matter until such joinder has been effected or

the court satisfied that third parties have consented to be bound by the judgment of the court or have waived the right to be joined.

[12] The submission of the appellants that informal notice to a party not cited in judicial proceedings, coupled with mere non-intervention or even an intimation of non-intervention does not amount to a representation that such third party will submit and be bound by any judgment given, is well-founded (*Amalgamated Engineering Union v Minister of Labour* 1949 (3) SA 637 (A) at 661-3.)

[13] In the absence of joinder of the third parties referred to above, and in the absence of judicial notice to and clear evidence of waiver by such third parties of any right to be joined in the proceedings before the Court a quo, the relevant question is whether any of such third parties fall into the category of parties who should have been joined, as necessary parties, in these proceedings.”

22] In *casu* the application for renewal of a licence was, effected by Sibanye Stillwater Group with its own code of body 5330, which is different to the Applicants code of body 3160. Further in paragraph 7.1.11, of the Answering Affidavit, the Respondents’ alleges that its system was changed on the 10th of May 2021 to reflect Rustenburg Platinum Mines Bleskop as Sibanye-Stillwater Limited.

23] It is on this basis that they contend that the Sibanye Stillwater Group should have been joined as a joinder of necessity on the ground that it has a direct and substantial interest in this matter.

24] In its Replying Affidavit, in answer, the Applicant denies that it did not submit applications for renewal in its own name and it further denied that it applied to change the name of firearm owning code of body 3160.²

25] The Applicant further denies the existence of an entity such as Sibanye-Stillwater Group. It asserts that Sibanye-Stillwater is a listed entity and has a number of legal entities that it controls through a comprehensive management structure.

26] One such entity is Sibanye Gold Protection Services (Pty) Limited with code of body 5330 which has its own separate corporate existence and houses the management and administration of all security services within the Sibanye-Stillwater Group.

27] Rustenburg Platinum Mines Bleskop, although a separate trading entity of Sibanye-Stillwater, falls under the direct control of Sibanye Gold Protection Services.

28] Support for this averment is found in the Founding Affidavit where the

² Replying Affidavit para 7 Caselines 009-5 to 009-7.

deponent Mr. Lutchman states in paragraph 4 as follows:

"I am the executive in charge of all Sibanye-Stillwater security activities. This includes the operations of Rustenburg Platinum Mines situated at Bleskop which operates as a separate security component and entity within the Sibanye-Stillwater Group operations."

29] He goes further on to state in paragraph 7 that:

"The security element of the Applicant, which trades as Rustenburg Platinum Mines Bleskop falls under my direct authority and control, although Sibanye-Stillwater Limited owns Bleskop Platinum Mine."

30] It is on this basis that counsel for the Applicant had argued that it is thus quite clear that Mr. Lutchman was the appropriate person to depose to and bring the application on behalf of Sibanye Gold Protection Services (Pty) Limited because that is where the authority and control over the Applicant vests.

31] Herein, the authority of Mr Luchman was not being challenged. In fact, his authority is beyond reproach as proof of such authority was annexed to the founding papers as annexure 'FA1.'

32] What is being challenged is whether Sibanye Stillwater Group should have

been joined in these proceedings as an interested party? By Mr. Lutchman's own admission, Sibanye Gold Protection Services Limited is the security component of the Sibanye-Stillwater Group.³ On this basis alone, Sibanye-Stillwater Group would have a direct and substantial interest in the outcome of these proceedings and as such it should have been joined in these proceedings.

33] Consequently, I therefore conclude that the second *point in limine* should also be upheld with costs.

34] The *points in limine* so raised in my view is dispositive of the application and as such this Court will not express an opinion on the remainder of the merits of the application.

PREVIOUSLY RESERVED COSTS

35] Both parties also addressed the Court on the previously reserved costs when the application was enrolled on 28 August 2023 and subsequently removed by notice dated 23 August 2023. No clear indication was given to this Court as to the reason why the costs were previously reserved when the application was removed by notice. To my mind these costs should follow the result of this application.

³³ Para 3 Founding Affidavit Caselines 001-15.

ORDER

36] Consequently, the following order is made:

36.1 The first *point in limine* raised by the Respondents is upheld with costs.

36.2 The second *point in limine* raised by the Respondents is upheld with costs. In as far as costs is concerned, I do not think a punitive costs order is warranted in the circumstances.

36.3 The Respondents are further awarded the costs previously reserved on 28 August 2023.

37] Once the *points in limine* is addressed by the Applicant the application can once again then be re-enrolled on a future date for the adjudication on the merits of the application.



C.COLLIS

JUDGE OF THE HIGH COURT

GAUTENG DIVISION

APPEARANCES

Counsel for Applicant:	Adv. M Snyman SC
Instructed By	M J Hood and Associates
Counsel for Respondents:	Adv. N M Seleso
Instructed By:	Office of the State Attorney, Pretoria
Date of Hearing:	14 February 2024
Date of Judgment	12 August 2024