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IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NO: 146697-2024

(1) REPORTABLE: YES/NO

(2) OF INTEREST TO OTHER JUDGES: YES/NO

(3) REVISED.

DATE 22/01/2025

SIGNATURE

In the matter between:

**THE SOUTH AFRICAN ARMS AND AMMUNITION
DEALERS' ASSOCIATION NPO**

First Applicant

**NICHOLAS YALE (PTY) LIMITED
CODE OF BODY: 1257**

Second Applicant

**BERNHARD AGENCIES (PTY) LIMITED
CODE OF BODY: 100719**

Third Applicant

and

**BRIGADIER SIKHAKHANE
HEAD: CENTRAL FIREARMS REGISTRY**

First Respondent

**THE NATIONAL COMMISSIONER OF THE
SOUTH AFRICAN POLICE SERVICES (IN HIS CAPACITY
AS REGISTRAR OF FIREARMS)**

Second Respondent

THE MINISTER OF POLICE

Third Respondent

OR TAMBO INTERNATIONAL AIRPORT

JUDGMENT

[1] The applicants approach the court on the basis of urgency for an order in the following terms:

- "2. For an order declaring as invalid the decision of the first respondent to reverse or withdraw her permission to allow second applicant to transfer onto its dealers stock and sell Sarsilmaz pistols imported into the Republic of South Africa under permanent import number P[...].*
- 3. For an order declaring as invalid the decisions of the first respondent to reverse or withdraw her permission to allow third applicant to transfer onto its dealer stock and sell Glock pistols imported into the Republic of South Africa under permanent import numbers P[...], P[...], P[...], P[...], P[...], P[...], P[...] and P[...].*
- 4. For an order declaring as invalid the decision of the first respondent to reverse or withdraw her permission to allow Bosphurus Pty Ltd to import, transfer onto its dealer stock and sell Canik pistols imported into the Republic of South Africa under permanent import number P[...].*
- 5. For an order declaring that any other shipment of firearms where permission has been granted to import such firearms into the Republic of South Africa, that such firearms where they have a unitary barrel and chamber and where the serial number is engraved on any part of the barrel and chamber, including but not limited to the chamber itself, as well as on the parts prescribed in section 23 as read with regulation 28(2) of the Firearms Control Act 60 of 2000, may be transferred from an import permit onto dealer stock and sold.*
- 6. For an order declaring that, where a barrel has a serial number engraved over the chamber area, where the chamber is an integral part*

of the barrel (i.e. is made up of one indivisible billet of metal), that such unitary barrel with a serial number properly engraved over the chamber area, complies with the provisions of section 23 of the Firearms Control Act 60 of 2000.

7. *For an order declaring that, where permission has been granted to import any other shipment of firearms into the Republic of South Africa under a permanent permit, that where such firearms have a 'unitary barrel' and where the serial number is properly engraved on any part of the barrel (including but not limited to the area surrounding the chamber), and that where the serial number is also properly engraved on the other parts prescribed in section 23 of the Firearms Control Act 60 of 2000 (the frame or receiver), that such properly marked firearms comply with section 23 of the Firearms Control Act 60 of 2000 and may thus be transferred from an import permit onto dealer stock and then sold.*
8. *For an order that prayers 5, 6 and 7 are not to be construed as a final conclusive definition of a firearm, pistol or barrel.*
9. *That the first respondent, alternatively all respondents pay the costs of this application on the attorney and client scale."*

[2] The first applicant represents the interests of dealers and importers in the arms and ammunition industry in ensuring the equitable interpretation and application of the Firearms Control Act and its regulations to its members.

[3] The second applicant is one of the largest and oldest importers of firearms into the Republic of South Africa, having been formed in approximately 1960.

[4] The third applicant is an authorised agent for Glock pistols and products, which is one of the largest handgun importers in the Republic of South Africa due to the popularity of the Glock pistol, which is widely used for military, law enforcement, security and civilian uses.

[5] The first respondent is the official in charge of the Central Firearms Registry.

- [6] The fourth respondent is the official permanently placed at OR Tambo Airport and who controls the release of the import of firearms by the applicants.
- [7] During the hearing the applicants advised that they no longer persist with the relief in prayer 4 of the Notice of Motion.
- [8] The applicants contend that the first respondent has refused to engage with the industry on the interpretation issue to be decided in this matter.
- [9] The imported firearms referred to in this application (all being pistols) have barrels that cannot be separated from the chamber because they are made from a singular unitary piece of metal. The serial number appears on the chamber portion of such unitary barrel. The first respondent contends that the chamber is a component of the firearm that is separate from the barrel, and that section 23(2) of the Firearm Controls Act requires the barrel to bear the serial number.
- [10] The core of the issue before me is whether a chambered barrel consisting of a chamber and barrel made from a singular unitary piece of steel (i.e. where the chamber is an integral part of the barrel) requires the separate engraving of a serial number on the barrel in order to comply with sec 23(2) and Regulation 28 of the Firearms Control Act.
- [11] The facts giving rise to this application from the vantage point of the second applicant are the following:
- 11.1 On 21 November 2024 a shipment of Sarsilmaz pistols arrived at OR Tambo International Airport. These pistols have the serial number on the frame, slide and on the barrel inscribed on the chamber. The barrel is a unitary item, including the barrel and the chamber made from one piece or billet of steel.
- 11.2 There were some challenges with the format of the import permit, but the second applicant was permitted to uplift the firearms, take them to their premises (1 099 in total with a value in excess of R6 million)

and they were kept there on the import permit until the import permit had been rectified by the Central Firearms Registry. After the import permit had been rectified, the second applicant began transferring those firearms onto its dealer's licence.

11.3 The second applicant received a Section 23 notification dated 21 November 2024 pertaining to the aforesaid imports containing the following:

- “3. The above prescript was however not complied in full by the importer, the serial number reflects only on the frame and not on the barrel. Despite subsections (1) and (2) – of section 23 (my insert) – the Registrar may on good cause shown by the applicant and subject to such conditions as the Registrar may impose, issue a licence in respect of a firearm which does not comply with the provisions of these subsections.*
- 4. The Registrar resolved to grant the dealer/importer permission to retrieve the consignment currently detained at ORTIA Guardforce on permit numbers P[...] on the following condition:*
 - 4.1 That the serial numbers be engraved on the barrels of all firearms by a registered gunsmith within seven days (7 days) of this notice; and*
 - 4.2 The dealer present the firearms for inspection to the designated firearm officer delegated by the Registrar after completion of the engraving.*
- 5. Non-compliance of the above prescripts might lead to the Registrar invoking conditions of section 41 of the Firearms Control Act 60 of 2000.”*

[12] Section 41 of the Act provides for the suspension of a dealer's licence.

[13] The second applicant contends that gunsmith reports were provided to the respondents, who then accepted that the inscription was proper in the place where it is and that therefore the firearms could be sold. It bears noting that this alleged permission is disputed.

- [14] On the morning of 6 December 2024 Captain Molefe, who had previously conducted the inspection of the firearms, came to the premises of the second applicant and advised that he had been instructed the day before by the first respondent that the markings were not sufficient and that the decision to allow the Sarsilmaz pistols to go onto the dealer's licence and to be sold was accordingly reversed.
- [15] At the time Captain Molefe conveyed this to the second applicant, one of the salespersons of the second applicant, Jacob Zandman overheard the discussion. At that time, he was busy packaging Sarsilmaz pistols for delivery based on the previous indication that the markings were in order. There were two customers who had already ordered and paid for some of those firearms.
- [16] Mr Garrett Evans deposed to an affidavit on behalf of the third applicant. The third applicant imports Glock pistols into South Africa. He confirms that the barrel of a Glock pistol is made up of one indivisible piece of steel containing the chamber and the barrel. This is confirmed by a gunsmith's report annexed to the papers as **Annexure GE2**.
- [17] On 19 November 2024 a shipment of Glock pistols was imported, and the third applicant was issued with a Section 23 notice containing the same directions that were given to the second applicant in its Section 23 notice. The third applicant contends that this has never happened before. It was seen as a change in policy and in the interpretation of the Firearms Control Act which was neither communicated to nor understood by the third applicant.
- [18] Nicolas Barnard, the owner of the third applicant in an email of 26 November 2024, summarised the contents of a meeting held with Captain P Molefe and Captain L Molefe. He summarises as follows:

"As per your verbal confirmation and that of your colleague, Captain L Molefe, you are satisfied that the Glock pistols have the necessary serial

numbers on the frame, slide and barrel from the factory and comply with section 23 of the Firearms Control Act and its regulations 28 and we can sell the firearms on this import permit: P[...]. All serial numbers are visible without having to disassemble the Glock pistol.

We will continue with our normal course of business and put these firearms to market.

Hopefully we can prevent having to sign a section 23 notice going forward and all the future Glock pistols for Barnard Agencies can be released at OR Tambo.

If you could kindly acknowledge receipt of this email and give us feedback on what the Brigadier has to say going forward.”

[19] The two captains Molefe have denied having given consent as contained in this email. According to them, the upshot of their meeting with Mr Barnard was that they would take their instructions from Brigadier Sikhakhane and that the third applicant should await the outcome of her feedback.

[20] In opposing affidavits, the two captains Molefe both deny having given permission to the applicants to sell “non-compliant firearms”. They contend that on 26 November 2024 they attended at the third applicant’s dealership. They inspected the Glock pistols and discovered that the firearms had serial numbers engraved on the frame and the chamber. It is alleged that there was “no serial number on the barrels”. The director tried to convince them that the Glock pistol’s chamber in the barrel were one component. They contended that they had to obtain instructions from the first respondent whether the engraving of the serial number on the chamber met the section 23(2) requirement. They indicated to the dealership that they must await their feedback. After having consulted with the first respondent, the first respondent contended that the serial numbers were not compliant with section 23(2) and that the dealers must engrave the serial numbers on the barrels, as directed in terms of the section 23 notice.

[21] In her answering affidavit the first respondent confirms that she regards the endorsement of a serial number on the chamber as inadequate, as section 23(2) requires the serial number to be engraved on the barrel,

[22] The question to be decided in this matter is simple: whether the placing of a serial number over the chamber part of a chambered barrel, consisting of barrel and chamber made from a single piece of steel, is compliant with section 23(2) of the Firearms Control Act.

THE LEGAL FRAMEWORK

[23] Section 23 of the Firearms Control Act, 60 of 2000 contains the following subsections:

“(1) No firearm licence may be issued unless the firearm bears the manufacturer’s serial number or any other mark by which the firearm can be identified.

(2) The identification number must be stamped and the mark affixed in the prescribed manner on the barrel and the frame, or the barrel and the receiver, of the firearm.”

[24] Regulation 28 of the Firearm Control Regulations provides the following regarding the placing of identification marks on firearms.

“(1) Any permanently imported firearm which does not have a manufacturer’s serial number or which has a manufacturer’s serial number that duplicates with a similar make, model, type and calibre firearm that appears on the Central Firearms Register, must for the purposes of licensing in the Republic of South Africa, have the additional identification mark determined by Registrar under section 23(4) of the Act, stamped on the barrel and the frame, or the barrel and the receiver of the firearm in accordance with the provisions of this regulation, subject to the provisions of section 23(3) of the Act. An identification mark can be engraved, stencilled or etched on the barrel and the frame or the barrel and the receiver of the firearm on the

circumstances determined by the Registrar and with prior approval from the Registrar.

(2) An identification number contemplated in section 23(2) of the Act must be stamped, engraved, stencilled or etched to a depth of at least 0.2 mm.”

[25] The first respondent contends that the chamber of a firearm is a separate component. Section 23(2) does not require the chamber to bear the serial number, but the barrel. The first respondent contends that the relief sought by the applicants amounts to a declarator that the chamber is a “barrel”.

INTERPRETATION EXERCISE

[26] The principles of statutory interpretation are trite since the ubiquitous and seminal judgment in **Endumeni**. Interpretation is a unitary process comprising an assessment of the text, the context of the words in question, and the purpose of the Act. The meaning of “barrel” in sec 23(2) is to be determined .

[27] The Firearms Control Act and the Firearms Control Regulations do not define what a barrel is. However, there is an indication in the regulations as to what the Minister, who issues regulations in terms of the Act, understood in this regard. The Firearm Control Regulations were published in 2004.

[28] Regulation 41 provides that the Registrar may impose conditions in respect of a manufacturer’s licence. While these refer to South African manufacturers, the reference to a barrel is of assistance in considering the question to be decided.

[29] In terms of Regulation 41(f) a manufacturer’s serial number must be stamped on every firearm manufactured under the provisions of the Act. The manufacturer’s serial number must, on request of the manufacturer, be allocated by the Registrar (Regulation 41(g)). The manufacturer’s serial number must be stamped on the firearm in accordance with the provisions of

section 23(2) of the Act, read with Regulation 28(2) before the manufacturing has been completed (Regulation 41(h)).

[30] Importantly, a manufacturer may supply a *“barrel that is unchambered, partially chambered or pre-chambered for a specific calibre to a holder of a dealer’s licence”* (Regulation 41(s)).

[31] What is apparent is that the Minister envisages a barrel without a chamber, a barrel partially chambered or a barrel pre-chambered. Only in the first instance will the chamber be a separate component, ie. capable of being separated from the barrel. In respect of a partially chambered or pre-chambered barrel, such barrel still needs to comply with section 23(2) and Regulation 28(2). However, there is no indication that where the barrel is partially chambered or pre-chambered, and where such barrel consists of a single unitary component in which the chamber is integral to the barrel itself, that the chamber be seen as separate from the barrel.

[32] In respect of the Glock, I have been referred to photographic depictions of the components. From the photographic evidence, it is apparent that, when assembled, the Glock has a slide which covers the barrel and the chamber, save for that portion of the chamber which contains the serial number.

[33] Captain Van Wyk inspected the firearms and stated the following in her affidavit:

“6. I do confirm in all the cases, the firearms did not have serial numbers on barrels yet import permits reflected that the firearms have serial numbers on the frame and barrel. The serial numbers were on the chamber.

7. I do confirm that one does not need to disassemble the firearm to check the serial number on the barrel ...”

She accordingly understood that the importer regards the serial number placed on the chambered part of a unitary barrel and chamber to be the serial number on the barrel.

- [34] Serial numbers are required for identification of the firearm with reference to records of the manufacturer. It is a requirement of efficient inspection of firearms that the serial numbers be visible without disassembling the firearm. In the case of the Glock, as in respect of the other firearms relevant to these proceedings, the serial number pertaining to the barrel appears on that component of the chamber which forms part of the barrel as a single unitary barrel forged from a single piece of metal.
- [35] If the first respondent's requirement of a separate engraving of a serial number on the barrel is required, it is, particularly with reference to the Glock, not apparent where that serial number could be placed so that it could be visible without disassembling the firearm. Practically, that component of the barrel that covers the chamber is the only portion visible if the firearm is assembled.
- [36] I am satisfied that the purposes of the Act are complied with in circumstances where the serial number is placed on that portion of the barrel that covers the chamber where the chamber and barrel are one integral component made from a single piece of metal. The text and the context referred to supra support the conclusion.
- [37] The purpose of the Act in requiring serial numbers is to identify the specific firearm. This serial number is required to be visible on inspection without dismantling the firearm. Inspection of the barrel serial number is possible if the serial number of a chambered barrel is on that part of the barrel covering the chamber. The interpretation is therefore consistent with the purpose of the Act.
- [38] To find otherwise would have absurd consequences in that the serial number would not be visible without dismantling the firearm.
- [39] In finding as I do, I do not suggest that a chamber is per definition part of a barrel. That it may not be so is evident from Regulation 41(s). However, where the barrel covers the chamber, whether it be partially chambered or

pre-chambered, and it is a unitary component forged from one piece of metal, the serial number can be placed on that part of the unitary barrel which is visible to an inspector without disassembling the firearm. The serial number in such circumstances is still on the barrel. To require a serial number on the unchambered part of a unitary barrel in such circumstances would be in conflict with sec 23(2) as it would amount to a second serial number on the barrel. The position adopted by the first respondent can therefore not pass muster.

- [40] Applied to the facts of this matter, I am satisfied that the serial numbers in question, where they appear on that part of the barrel covering the chamber, is compliant with section 23(2) and with Regulation 28(2) of the Firearm Control Act and Regulations.
- [41] The respondents have disputed the contention of the applicants that they have reversed decisions which favour the applicants as set out in prayers 2 and 3 of the notice of motion. The dispute on whether permission was granted or not is however not a material issue as the question to be decided is a legal interpretation of section 23(2) of the Firearms Control Act.
- [42] It is not necessary in any event to resolve the question whether permission had been granted or not. Assuming in favour of the respondents that such permission had not been granted, it is still common cause that the first respondent has refused to release the firearms for sale without compliance with the section 23 notice, requiring additional engraving and inspection of serial numbers.
- [43] The urgency of this matter as far as the applicants is concerned lies in the fact that the present consignments worth approximately R6 million are not the only consignments affected by the decision of the first respondent. During January 2025 a further consignment worth approximately R12 million is expected and will be adversely affected by the interpretation advanced by the first respondent.

- [44] There are circumstances on which commercial urgency justifies urgent relief. I am satisfied on the facts of this matter that the matter should be heard as an urgent application in terms of Rule 6(12).
- [45] The granting of declaratory relief pertaining to the present and future rights of the applicants, as envisaged in section 21(1)(c) of the Superior Courts Act is a discretionary remedy. There are two requirements. The first relates to locus standi - ie an interest in the relief sought. And the second is the exercise of a discretion whether to grant the relief or not.
- [46] The applicants have established their interest in the relief being sought.
- [47] The respondents' counsel contended that the interpretation contended for by the applicants amounts to legislation by means of court proceedings. It is contended that the risk of this being the consequence of the declarator is a strong indicator why the court should exercise its discretion not to grant the declarator.
- [48] The issue that I am dealing with is a matter of pure legal interpretation and that the declarator will not infringe the separation of powers principle. Further, it is not a complex matter of interpretation not suitable for hearing in urgent court proceedings. The simple question is whether a unitary barrel consisting of barrel and chamber (whether partial or not) forged from a single piece of metal, is a "barrel" for purposes of section 23(2). I have indicated supra as to why this issue is to be decided in the affirmative. I am satisfied that the interpretation is a matter of simple legal interpretation and not a complex matter as contended for by the respondents. If the latter contention were to be correct, then the urgent court would not be the appropriate forum for determining the issue at hand. However, I am satisfied that the issue can be resolved as a matter of interpretation on the simple basis on which I have decided it. It is therefore a matter that falls within the powers of an urgent court judge. I therefore exercise my discretion to issue a declarator appropriate to the issue at hand.

[49] I am not persuaded to assist the applicants in respect of the relief that they seek in prayers 2 and 3 of the notice of motion. Based on the principles of **Plascon-Evans**, I cannot come to a finding in favour of the applicants that permission had been granted to the applicants, as they contend, and that such permission was revoked.

[50] However, the core dispute remains in place and focusses around the relief sought in paragraphs 6 and 7. I am satisfied that the applicants has made out a proper case for the declarators sought in those paragraphs.

ORDER

[51] I grant an order in the following terms:

51.1 The application is heard on the basis of urgency in terms of Rule 6(12).

51.2 An order is issued declaring that, where the barrel of a firearm has a serial number engraved over the chamber area, where the chamber is an integral part of the barrel in that it is made up of one indivisible billet of metal, that such unitary barrel with a serial number properly engraved over the chamber area complies with the provisions of section 23 of the Firearms Control Act, 60 of 2000

[52] Regarding the future rights of the applicants, an order is issued declaring that, where permission has been granted to import any other shipment of firearms into the Republic of South Africa under a permanent import permit, that where such firearms have a “unitary barrel” and where the serial number is duly engraved on any part of the barrel (including but not limited to the area surrounding the chamber) and that where the serial number is also duly engraved on the other parts prescribed in section 23 of the Firearms Control Act, 60 of 2000 (i.e. the frame or receiver), that such duly marked firearms comply with section 23 of the Firearms Control Act, 60 of 2000 and may thus be transferred from an import permit onto dealer stock and then sold.

[53] The aforesaid declarators are not to be construed as a final conclusive definition of a firearm, pistol or barrel.

[54] The application succeeds with costs, such costs to be paid by the first, second and third respondents on Scale C, including the costs of senior counsel.

LABUSCHAGNE J
JUDGE OF THE HIGH COURT

Counsel for Applicant: Adv M Snyman SC
Counsel for Respondent: Adv Kumbi Toma