

IN THE HIGH COURT OF SOUTH AFRICA



GAUTENG DIVISION, PRETORIA

Case No:23782/2022

<u>DELETE WHICHEVER IS NOT APPLICABLE</u>	
(1)	REPORTABLE: YES / NO
(2)	OF INTEREST TO OTHER JUDGES: YES / NO
(3)	REVISED.
..... 20/3/25 DATE	 [REDACTED] SIGNATURE

In the matter between:

THE SOUTH AFRICAN ARMS AND AMMUNITION

DEALER'S ASSOCIATION

ON BEHALF OF ITS MEMBERS

1ST APPLICANT

BERNHARD AGENCIES (PTY) LIMITED

2ND APPLICANT

HAROLD J DRINN (PTY) LIMITED

3RD APPLICANT

and

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

GENERAL KJ SITHOLE N.O

(IN HIS CAPACITY AS REGISTRAR FIREARMS)

1ST RESPONDENT

MAJOR GENERAL MAMOTHEI

2ND RESPONDENT

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

COLONEL PN SIKHAKHANE

**(IN HER CAPACITY AS SECTION HEAD,
CENTRAL FIREARMS REGISTRY)**

3RD RESPONDENT

THE MINISTER OF POLICE

4TH RESPONDENT

JUDGMENT

FRANCIS-SUBBIAH, J:

[1] The Respondents have launched an application in terms of Rule 30 A (2) of the Uniform Rules of Court, seeking an order that Applicants' main application issued on 28 April 2022 be struck out, on the basis that the application is defective.

Background facts

[2] The First Applicant is an industry body that represents the majority of firearm dealers in the Republic of South Africa. The Second and Third Applicants are licensed firearm dealers. All three Applicants have an interest in the proper administration of the Firearms Control Act 60 of 2000 which directly affects the way their business is deemed compliant with this Act. The Respondents are members of the South African Police Services and the Minister of Police.

[3] On 28 April 2022 the Applicants issued an application in terms of rule 6 claiming relief against the Respondents requiring the Respondents to act in a certain manner as set out in prayers 3, 4 and 12, prohibiting respondents from acting in a certain manner as set out in prayer 5 and various declaratory orders in prayers 1, 2, 6, 7, 8, 9,10 and 11.

[4] Part of the relief claimed is as follows:

- a) Prayer 1 is for a declaratory order that permanent import and export permits as contemplated by Sections 74, 75 and 76 of the Firearms Control Act should be issued not later than 21 (twenty-one) working days after the submission of same to a designated firearm officer or alternatively, directly to the Central Firearms Registry.
- b) Prayer 2 requests an order that applications may be submitted directly to the Registrar.
- c) Prayer 3 asks for an order that only relevant information needs to be provided to the Registrar.
- d) Prayer 4 asks for an order compelling the Respondents to provide the Applicants with a comprehensive list of information needed to complete certain forms.
- e) Prayer 5 is for an order stating the Respondents may not impose any other conditions on such forms, in the form of an interdictory relief.
- f) Prayer 12 is for an order that certain forms may be submitted directly to the Central Firearms Registry. There is no administrative action contemplated in this prayer.
- g) Prayer 13 is for an order ordering the Respondents to receive and process forms within twenty-one days.
- h) Prayer 14 asks for an order ordering the Respondents to retain fingerprints, as specified in the Firearms Control Act.

[5] In addition prayer 18 required the respondents to file the record of proceedings as contemplated by rule 53 in the Uniform Rules of Court. This contemplates a review application. However, the Applicants sought to delete prayer 18 by the proposed

amendments. The Respondents have objected to these amendments and the Applicants have not set it down for a court hearing.

[6] The Respondents submit that a record is fundamental in reviewing administrative actions in terms of the Promotion of Administrative Justice Act 3 of 2000 (PAJA). They contend that the Applicants have failed to comply with the provisions of the rules promulgated in terms of section 7 of PAJA, read with Rules 6 and 53 of the Uniform Rules of Court. On the contrary the Applicant states that the main application is not an application launched under PAJA, as set out at paragraph 27 of the answering affidavit.

[7] It is common cause between the parties that no record exists. Rule 2 of the PAJA Rules provides that an application to the High Court where there is no record, or an incomplete record has been furnished, the application shall be brought in terms of Rule 6 or Rule 53 of the High Court Rules. Therefore, any absence of record of proceedings would be launched in terms of Rule 53 of the Uniform Court Rules.

[8] The Applicants refer to a review application for declaratory orders at paragraph 28 of their answering affidavit. The Constitutional Court in **Turnball-Jackson v Hibiscus Court Municipality** 2014 (6) SA 592 (CC) at para 37 stated the following in respect of the fundamental importance of the Rule 53 record:

"Undeniably, a rule 53 record is an invaluable tool in the review process. It may help shed light on what happened and why; give the lie to unfounded ex post facto (after-the-fact) justification of the decision under review; in the substantiation of as yet not

fully substantiated grounds of review; in giving support to the decision-maker's stance; and in the performance of the reviewing court's function."

[9] What is being reviewed and set aside is crystalized and contemplated in terms of Rule 53(2) as follows:

"It must be set out in the Notice of Motion setting out the decision or proceedings sought to be reviewed and shall be supported by a affidavit setting out the grounds and the facts and circumstances upon which the Applicant relies to have the decision or proceedings set aside or corrected."

It remains unclear from the Notice of Motion what decision was taken and what is sought to be reviewed.

[10] The applicants on the 22nd of July 2022 set down the matter for hearing, with their current notice of motion on the unopposed motions roll on 15 August 2022. By agreement between the parties the matter was removed from the roll with costs reserved.

[11] In the interim the Respondents served this notice in terms of Rule 30A of the uniform court rules that the applicants have failed to comply with the provisions of Rules in terms of section 7 of PAJA read with Rules 6 and 53 of the Uniform Rules of Court, and unless Applicants comply with the aforesaid Rules within ten (10) days after the delivery of the notice, Respondents will apply to have the application struck in accordance with the provisions of Rule 30A of the Uniforms Rules of Court.

[12] Instead of complying with the provisions of the Rules, the Applicants served a notice of intention to amend their Notice of Motion. The Respondents objected in terms of Rule 28 (3) on 14 September 2022. Applicants failed to set down the Rule 28 application for hearing. The Applicants submit that they did not persist with the intention to amend, as a means to not have the matter drawn out. Therefore, the second notice of intention to amend would remove all references to Rule 53. Rule 28 (3) provides that “An objection to a proposed amendment shall clearly and concisely state the grounds upon which the objection is founded”.

[13] Since Applicants did not lodge an application for leave to amend in terms of Rule 28(4) of the Uniform Rules of Court within the prescribed time period, it led the Respondents to lodge their application in terms of Rule 30A (2).

[14] However, on 12 October 2022, Applicants served their second notice of intention to amend, which Respondents again objected to and served on 26 October 2022, their notice of objection in terms of Rule 28(3).

[15] Applicants again did not lodge an application for leave to amend within the time period stipulated in Rule 28(4) of the Uniform Rules of Court, wherefore Respondents served their application in terms of Rule 30A(2) of the Uniform Rules of Court on 10 November 2022.

[16] The provisions of Rule 30A are:

“(1) Where a party fails to comply with these Rules or with a request made or notice given pursuant thereto, or with an order or direction made by a court or in a judicial case management process referred to in rule 37A, any other party may notify the

defaulting party that he or she intends, after the lapse of 10 days from the date of delivery of such notification, to apply for an order-

(a) that such rule, notice, request, order or direction be complied with; or

(b) that the claim or defence be struck out.

(2) Where a party fails to comply within the period of 10 days contemplated in subrule (1), application may on notice be made to the court and the court may make such order thereon as it deems fit."

[17] As much as there is a discretion in terms of rule 30A as to what an appropriate order should be when there has been non-compliance with the rules. In ***Helen Suzman Foundation v Judicial Service Commission, 2018 (4) SA 1 (CC)*** at para [79], Madlanga J held that:

"there is no question of an exercise of discretion, the court must determine- as an objective question of fact or law- whether there has been non-compliance."

[18] The Applicants complain that the Respondents' conduct is to prevent the Applicants from rectifying its Notice of Motion as it has no record of proceedings at all. Further, they complain that the conduct of the Respondents is to simply delay the filing of its answering affidavit.

[19] The Respondents persist that the Applicants' application is a review application for declaratory orders. The Applicants contend that their Notice of Motion in the main application does not require review and setting aside of any action whether in terms of PAJA, the rule of law or any other legal basis. The founding affidavit at para 13 states that "the purpose of this application is to obtain clarity on what information

should be submitted for certain types of processes stipulated in the Firearms Control Act, how such processes should be submitted and what the functions and duties of relevant officials are when completing such processing." How the Applicants dealt with the request to the Respondents remain unclear.

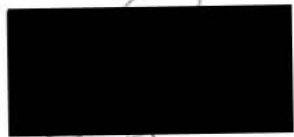
[20] The Respondents submit that they still do not know what case they must meet, what is the cause of action and before filing an answering affidavit these issues must be clearly raised. The Applicant launched a hopeless case and therefore Rule 30A is appropriate in the circumstances and be granted.

[21] The Applicants argue that the Notice of Motion can be amended at any time in terms of Rule 6, but such amendment has not been initiated or set down. Neither have the first and second intentions to amend been set down for a court hearing. The most of the Applicant's application relates to administrative action which are reviewable in terms of the provisions of PAJA or alternatively the rule of law. In addition, the Applicant did not launch the application in terms of Rule 53, that is in accordance with the Rules of Court.

[22] In particular, prayer 18 proposes that the Notice of Motion is a review application and what is being reviewed in terms of Rule 53 (2) must be clearly set out. The Applicant fails to do this, and there are no amendments at this stage effected to address the veracity of the Respondents' objections. There is no compliance with the rule on the question of fact, read with the provisions of Rule 30 A (2) as contemplated

in the ***Helen Suzman Foundation*** case. It therefore invokes the provisions of Rule 30A for a striking of the application.

[23] For the above reasons the Respondent's application for Rule 30A striking of the Applicant's main application succeeds with costs including the fees of the of employment of Counsel on Scale C.



R FRANCIS-SUBBIAH
JUDGE OF THE HIGH COURT
PRETORIA

DATE OF HEARING: 13 MARCH 2025

DATE OF JUDGMENT: 20 MARCH 2025

APPEARANCES:

COUNSEL FOR THE APPLICANT:

ADV. M SNYMAN SC

INSTRUCTED BY:

MJ HOOD & ASSOCIATES

COUNSEL FOR THE RESPONDENTS:

ADV I ELLIS SC
ADV MH MHAMBI

INSTRUCTED BY:

STATE ATTORNEY

Delivered: This judgment is handed down electronically by circulation to the Parties/their legal representatives by email and by uploading to Caselines. The date and time of hand-down is deemed to be 14H00 on 20 March 2025.