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REPUBLIC OF SOUTH AFRICA



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

Case Number: A291/2021

In the matter between:

JOHN ERNEST ROBERTSON

Appellant

and

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

First Respondent

THE MINISTER OF POLICE

Second Respondent

THE CHAIRMAN OF THE APPEAL BOARD

Third Respondent

THE FIREARMS APPEAL BOARD

Fourth Respondent

JUDGMENT

Myburgh AJ

Introduction

[1] This is an appeal against the whole of a judgment handed down by a single judge of this Court, Lenyai AJ. The matter came before us with leave of that Court.

[2] What is in issue is the issuing and renewal of licenses to possess firearms in terms of the Firearms Control Act¹ (“the Act”).

Relevant Statutory Provisions

[3] The Act replaced the Arms and Ammunition Act² (“the old Act”). It differs fundamentally from the old Act. The differences between the old and new regimes are so wide ranging that it is not possible to summarise them. Extensive regulations have also been promulgated under the Act. The most important of these are the general regulations which were issued in terms of Government Notice 345 issued on 26 March 2004 (“the Regulations”). We deal with those provisions of the Act and the Regulations which are relevant to this matter in the paragraphs which follow.

[4] Section 3 of the Act stipulates that no person may be in possession of a firearm unless he or she holds a license, permit or authorisation issued in terms of the Act in respect of that firearm. That section falls to be read together with sections 11 and 23 of the Act, which I deal with hereunder.

[5] Section 6 of the Act deals generally with the issuing of competency certificates, licenses and authorisations. A competency certificate is a novel type of certification created by the Act. The old Act did not have any corresponding provisions. Section 6(2) stipulates that, “[s]ubject to section 7, no licence may be

¹ Act 60 of 2000.

² Act 75 of 1969.

issued to a person who is not in possession of the relevant competency certificate.”³

The possession of a relevant competency certificate is accordingly a pre-requisite for the granting of any license in terms of the Act. These include a license to possess a firearm, a license to carry on business as a dealer in firearms and a license to carry on business as a gunsmith.

[6] The issuing of competency certificates is governed by section 9 of the Act. The provisions which are relevant to this matter read as follows:

“9. Application for competency certificate.

- (1) An application for a competency certificate to possess a firearm, to possess a muzzle loading firearm, to possess a firearm as a private collector in such specific category as may be prescribed, to trade in firearms, to manufacture firearms or to carry on business as a gunsmith must be delivered to the Designated Firearms Officer responsible for the area in which the applicant ordinarily resides or in which the applicant’s business is or will be situated, as the case may be.
- (2) Where a person has not previously obtained a competency certificate, a competency certificate may only be issued to such person if he or she—
 - (a) is 21 years or older on the day the application is received by the Designated Firearms Officer;
 - (b) is a South African citizen or a holder of a permanent South African residence permit;
 - (c) is a fit and proper person to possess a firearm, to trade in firearms, to manufacture firearms or to conduct business as a gunsmith, as the case may be;
 - (d) is of stable mental condition and is not inclined to violence;
 - (e) is not dependent on any substance which has an intoxicating or narcotic effect;

³ The provisions of sub section 7 are not relevant *in casu*.

(f) has not been convicted of any offence under or in terms of this Act or the previous Act and sentenced to a period of imprisonment without the option of a fine;

(g) has not been convicted, whether in or outside South Africa, of an offence involving the unlawful use or handling of a firearm by him or her or another participant to the offence, whether committed in or outside South Africa;

(h) has not been convicted, whether in or outside South Africa, of an offence involving—

(i) violence or sexual abuse, whether committed in or outside South Africa, and sentenced to a period of imprisonment without the option of a fine; or

(ii) physical or sexual abuse which occurred within a domestic relationship as defined in section 1 of the Domestic Violence Act, 1998 (Act No. 116 of 1998), whether committed in or outside South Africa;

(i) has not been convicted of fraud in relation to, or supplying false information for the purposes of, obtaining a competency certificate, licence, permit or authorisation in terms of this Act or the previous Act;

(j) has not been convicted, whether in or outside South Africa, of an offence involving the abuse of alcohol or drugs, whether committed in or outside South Africa, and sentenced to a period of imprisonment without the option of a fine;

(k) has not been convicted, whether in or outside South Africa, of an offence involving dealing in drugs, whether committed in or outside South Africa, and sentenced to a period of imprisonment without the option of a fine;

(l) has not been convicted of an offence in terms of the Domestic Violence Act, 1998 (Act No. 116 of 1998), and sentenced to a period of imprisonment without the option of a fine;

(m) has not been convicted of an offence involving the negligent handling of a firearm;

(n) has not been convicted of an offence in terms of the Explosives Act, 1956 (Act No. 26 of 1956), and sentenced to a period of imprisonment without the option of a fine;

(o) has not been convicted, whether in or outside South Africa, of an offence involving sabotage, terrorism, public violence, arson, intimidation, rape, kidnapping or child stealing, whether committed in or outside South Africa;

(p) has not become or been declared unfit to possess a firearm in terms of this Act or the previous Act;

(q) has successfully completed the prescribed test on knowledge of this Act;

(r) has successfully completed the prescribed training and practical tests regarding the safe and efficient handling of a firearm;”

[7] Section 10 of the Act also deals with competency certificates. The relevant provisions read as follows:

“10. Competency certificate.—

(1) A competency certificate must specify—

(a) whether it relates to competency to—

(i) possess a firearm;

(iA) possess a muzzle loading firearm;

(iB) possess a firearm as a private collector in such specific category as may be prescribed;

(ii) trade in firearms;

(iii) manufacture firearms; or

(iv) conduct business as a gunsmith; and

(b) all the relevant tests successfully completed by the holder.”

[8] Sections 9 and 10 of the Act must be read together with Regulation 14, which contains further detailed provisions in respect of the assessment of applicants for competency certificates. As none of them are directly relevant to the matter, I will not say anything further in this regard, save to mention that competency certificates, to the extent that they relate to the possession of firearms, are issued by category of

firearm - for example a rifle or a shotgun. A competency certificate, to the extent that it relates to the competency to possess a firearm, may thus be equated to a license to drive a particular class of vehicle on a public road or to operate a particular class of vessel.

[9] Section 11 of the Act stipulates that the Registrar must issue a separate license in respect of each firearm licensed in terms of the Act. This section must be read together with section 23, which requires every firearm licensed under the Act to bear a manufacturer's serial number or other distinctive mark. Thus, a license to possess a firearm issued in terms of the Act is a license to possess a particular firearm, which is identified by a serial number or other distinctive mark - referred to by the Constitutional Court in *Minister of Police and others v Fidelity Security Services (Pty) Ltd*⁴ as a "possession licence".

[10] Section 13 of the Act regulates the issuing of licenses "for the purpose of" self-defence. I say "*for the purpose of*" because the "*purpose*" relates to the motivation given by the applicant and also the section in terms of which the discretion to issue a license is exercised rather than the purpose for which the firearm may be used. The latter is governed by section 13(4), which reads as follows: "*A firearm in respect of which a licence has been issued in terms of this section may be used where it is safe to use the firearm and for a lawful purpose*". The purposes for which firearms may lawfully be used is governed by other laws,⁵ not the Act itself.

[11] Section 15 of the Act deals with the issuing of licenses for the purpose of "*occasional hunting and sports-shooting*". The relevant provisions read as follows:

"15. Licence to possess firearm for occasional hunting and sports-shooting.

(1) A firearm in respect of which a licence may be issued in terms of this section is any—

(a) handgun which is not fully automatic;

⁴ 2023 (3) BCLR 270 (CC).

⁵ These include the common law and laws which regulate the hunting of wild animals.

- (b) rifle or shotgun which is not fully or semi-automatic; or
- (c) barrel, frame or receiver of a handgun, rifle or shotgun contemplated in paragraph (a) or (b), and which is not a restricted firearm.

(2) The Registrar may issue a licence in terms of this section to any natural person who is an occasional hunter or occasional sports person.

(3) (a) Subject to paragraphs (b), (c) and (d), no person may hold more than four licences issued in terms of this section.

(b) If a person holds a licence issued in terms of section 13, he or she may only hold three licences issued in terms of this section.

(c) A person may not hold more than one licence in respect of a handgun contemplated in subsection (1) (a).

(d) If a person contemplated in paragraph (a) holds any additional licences contemplated in section 12 in respect of a firearm contemplated in this section and section 13, the number of licences which that person may hold must be reduced by the number of such additional licences held.

(4) A firearm in respect of which a licence has been issued in terms of this section may be used where it is safe to use the firearm and for a lawful purpose.”

[12] In terms of section 1 of the Act “*occasional hunter*” means “*any person who, from time to time, participates in hunting activities but who is not a member of an accredited hunting association*”; and “*occasional sports person*” means “*any person who, from time to time, participates in sports-shooting but who is not a member of an accredited sports-shooting organisation*”.

[13] Section 16 of the Act deals with the issuing of licenses for the purpose of “*dedicated hunting and sports-shooting*”. The relevant provisions read as follows:

“16. Licence to possess firearm for dedicated hunting and dedicated sports-shooting.

- (1) A firearm in respect of which a licence may be issued in terms of this section is any—
- (a) handgun which is not fully automatic;
 - (b) rifle or shotgun which is not fully automatic;
 - (c) semi-automatic shotgun manufactured to fire no more than five shots in succession without having to be reloaded; or
 - (d) barrel, frame or receiver of a handgun, rifle or shotgun contemplated in paragraph (a), (b) or (c).
- (2) The Registrar may issue a licence in terms of this section to any natural person who is a dedicated hunter or dedicated sports person if the application is accompanied by a sworn statement or solemn declaration from the chairperson of an accredited hunting association or sports-shooting organisation, or someone delegated in writing by him or her, stating that the applicant is a registered member of that association.
- (3) A firearm in respect of which a licence has been issued in terms of this section may be used where it is safe to use the firearm and for a lawful purpose.”

[14] In terms of section 1 of the Act “*dedicated hunter*” means, “*a person who actively participates in hunting activities and who is a member of an accredited hunting association*” and “*dedicated sports person*” means “*a person who actively participates in sports-shooting and who is a member of an accredited sports-shooting organisation*”.

[15] Inasmuch as the wording of sections 15(4) and 16(3) of the Act is identical to that of section 13(4) of the Act, what I have said in relation to “purpose” in respect of licenses issued in terms of section 13 applies equally in respect of licenses issued in terms of sections 15 and 16 of the Act - i.e. the holder of a licence may use the firearm to which it relates to for any lawful purpose. These include sports shooting (i.e. shooting targets or clay pigeons), hunting and self-defence. The section in terms of which the license was issued is irrelevant in this regard.

[16] Section 16 of the Act must be read together with Regulation 4, which deals with the accreditation of hunting associations and sports - shooting organisations

and the registration, by such bodies of persons as “dedicated” hunters or sports-shooters, as the case may be. The Regulation requires persons who wish to be afforded “dedicated” status to undergo the appropriate training and pass certain tests, which have to conform to certain prescribed standards – this, albeit that the section itself does not contain any corresponding provisions.

[17] The periods of validity of licenses are regulated by Section 27. Licenses issued in terms of sections 15 and 16 are valid for ten years. A license lapses *ipso facto* upon the expiry of the stipulated period, subject only to the provisions of section 24(4) of the Act.

[18] Section 24 of the Act deals with the renewal of licenses. The relevant provisions read as follows:

“24. Renewal of firearm licences. —

(1) The holder of a licence issued in terms of this Chapter who wishes to renew the licence must at least 90 days before the date of expiry of the licence apply to the Registrar for its renewal.

(2) The application must be—

(a) accompanied by such information as may be prescribed; and

(b) delivered to the Designated Firearms Officer responsible for the area in which the applicant ordinarily resides or in which the applicant’s business is, as the case may be.

(3) No application for the renewal of a licence may be granted unless the applicant shows that he or she has continued to comply with the requirements for the licence in terms of this Act.

(4) If an application for the renewal of a licence has been lodged within the period provided for in subsection (1), the licence remains valid until the application is decided.”

[19] The general requirements in respect of applications in terms of the Act are regulated by the provisions of Regulation 13. The relevant provisions read as follows:

“13. General provisions regarding applications required in terms of the Act.

- (1) A person requiring a competency certificate, licence, permit, authorisation, as well as a duplicate thereof or renewal to be issued for a purpose contemplated in the Act, must apply to the Registrar for such competency certificate, licence, permit, authorisation, duplicate or renewal.
- (2) An applicant referred to in subregulation (1), must submit the duly completed relevant application form, prescribed in Annexure “A” and the required information together with any required supporting documents.
- (3) The application form must be completed in black ink by the applicant personally or, in the case of a juristic person, by the responsible person contemplated in section 7 of the Act.
- (4) (a) An application must, unless otherwise specifically stated, be submitted by the applicant in person to the relevant Designated Firearms Officer.

(b) When an applicant submits an application in accordance with subparagraph (a), the applicant must provide a certified copy of the page in his or her officially issued identity document or passport on which his or her photo and particulars are reflected.
- (6) Whenever payment of any prescribed fee has been made at a police station under regulation 96, documentary proof of the payment, must be attached to the relevant application.
- (9) (a) A full set of fingerprints of an applicant as required in section 6(1)(a) of the Act, must be taken by the relevant Designated Firearms Officer or designated personnel at a police station on the officially prescribed form used by the South African Police Service for such purpose.
- (10) An acknowledgment of receipt of an application must only be issued to the applicant if the application is, to the satisfaction of the Registrar, duly

completed and accompanied by all the required information and documentation, and after the identity of the applicant on the required set of her or his fingerprints, has been verified by the relevant Designated Firearms Officer.

(12) The Registrar may only issue a licence, permit, authorisation or renewal to a person who complies with the requirements as prescribed in these regulations regarding the safe custody of firearms or ammunition.

(17) The Registrar may require from an applicant to furnish any such further information as may be necessary for the Registrar to exercise discretion to fulfil his or her functions under the Act.”

[20] Annexure A to the Regulations comprises a number of forms that are required to be completed for various purposes in terms of the Act. The applicable form in respect of an application to possess a firearm is SAPS271. In respect of renewals of licenses issued in terms of the Act, the relevant form is SAPS518(a). Both of those forms require the applicant to indicate the intended purpose. This is done by means of boxes which have labels, each of which corresponds to a particular section of the Act. A separate form has to be completed in respect of each firearm and the applicant is required to tick the applicable box. Box 1.4 is labelled “*occasional hunting and sports-shooting*” and box 1.5 is labelled “*dedicated hunting and sports shooting*”. Those boxes correspond to sections 15 and 16 of the Act respectively.

[21] It is clear from the language of section 24 of the Act, read with Regulation 13 and form SAPS518(a), that there is no automatic right of renewal. That is to say that a license will not fall to be renewed simply against payment of the prescribed fee - as is the case, for example in respect of motor vehicles. On the contrary, applications for renewal are substantive applications which have to be adequately motivated and supported and the applicant has to satisfy the authorities charged with the administration of the Act that he or she satisfies the requirements of the Act, read with the applicable Regulations in respect of the license which is sought to be

renewed. The requirements in respect of applications for renewal consequently differ little, if at all, in substance from those which apply in respect of new licenses.⁶

[22] Section 133 of the Act creates a right of appeal to the fourth respondent. The relevant provisions read as follows:

“133. Right of appeal. —

(1) Any person—

(a) whose application for a competency certificate, licence, permit or authorisation in terms of this Act has been refused;

. . .

(d) who has received a notice of an administrative decision in terms of this Act which may detrimentally affect his or her rights,
may, in the prescribed manner, appeal to the Appeal Board.

(2) The Appeal Board may confirm, vary or reverse any decision against which an appeal has been lodged in terms of this section.

(3) The Appeal Board may admit evidence of facts not before the Registrar when he or she made the decision which is the subject of the appeal only if—

(a) there is a reasonable explanation for the failure timeously to inform the Registrar of the facts; and

(b) the Registrar has had sufficient opportunity to verify the facts and to present any evidence to the Appeal Board in this regard.”

⁶ In *Minister of Police and Others v Fidelity Security Services (Pty) Limited* [2022] ZACC 16, the Court expressed the view (obiter) that the process for applying for the renewal of a currently valid licence would be “less exacting” than the process for applying for a new license(at para 44); however, with the exception of the associated fees, it is not clear from the judgment which requirements the court had in mind. The proposition is also difficult to reconcile with the provisions of section 24(3).

[23] It is clear from the language of Section 133(3) that the appeal is a wide one – i.e. the appeal Board is not confined to the record of the proceedings which resulted in the decision which forms the subject matter of the appeal.

[24] The schedule to the Act bears the heading “*Transitional arrangements*”. It deals with what I will call the migration of licenses from the old Act to the Act. In terms of item 1 read with item 11, licenses issued under the Old Act remained valid for a period of five years following the commencement of the Act, and the holders of such licenses were afforded an opportunity to apply for corresponding licenses under the Act. Item 11 is headed “*Renewal of license*”, and item 11(d) stipulates that, “[i]f an application for the renewal of a licence, permit, certificate or authorisation has been lodged within the period provided for in this section, the licence, permit, certificate or authorisation remains valid until the application is decided.” The relevance will become apparent.

The Facts

[25] Mr Robertson is a farmer and a hunter. He held eight licenses under the old Act. One was in respect of a 9mm Luger pistol. The remainder were in respect of rifles and shotguns (“long guns”). The rifles comprised a Brno .22LR, a Sako .223 Rem, a Sako .308 Win and a Lee Enfield .303. The shotguns comprised a 410 Ga Richardson, a Gecado 12 Ga and a Beretta 12 Ga. For the sake of convenience, I will refer to the rifles simply as “the .22”, “the .223”, “the .308”, and “the .303”, and to the shotguns as “the Richardson”, “the Gecado”, and “the Beretta”.

[26] In December 2005, Mr Robertson applied for licenses under the Act in terms of the transitional arrangements. At the time of lodging his applications he was a member of an accredited hunting association; however, he was not registered as a dedicated hunter with that organisation. Thus, although he satisfied the requirements of section 16 read on its own, he did not satisfy the requirements for “dedicated” status in terms the Regulations. At the same time, Mr Robertson could not, in terms of section 15, have been issued licenses in respect of more than four firearms. As one of his applications concerned a self-defence pistol, he would only have been

eligible for three licenses in respect of his long guns. He was accordingly faced with a conundrum.

[27] Mr Robertson discussed the issue with the Designated Firearms Officer (“DFO”)⁷ at his local police station in Great Brak River, who advised him that the appropriate thing to do would be to tick the boxes corresponding to section 15 and to supplement the applications once he had passed the test and obtained a certificate evidencing his registration as a dedicated hunter. Save in respect of the .303, Mr Robertson followed that advice. In the case of the .303 he checked the box corresponding to section 16. Why he did that is unclear, however, given the conclusions I have come to, it is also not important. The only residual relevance is that his application in respect of the .303 clearly ought properly to have been considered in terms of section 16 rather than section 15 of the Act.

[28] In February 2006, Mr Robertson duly passed the relevant tests and obtained a certificate from his association recording his registration as a dedicated hunter. According to his evidence, which was not gainsaid by the respondents, he delivered a copy of that certificate to the DFO as he had been advised to do. Whether the certificate ever found its way to the Registrar’s office is unclear; however, nothing turns on this.

[29] In April 2008 Mr Robertson was granted a license in respect of his Luger pistol (i.e. the self-defence firearm) and three of his long guns, viz the .223, the .308 and the .303. His applications in respect of the .22 and the three shotguns were however refused. In each case, the reason given for the refusal was that he had already been issued the maximum number of licenses permitted by section 15(3) of the Act.

[30] Mr Robertson then lodged an appeal with the fourth respondent. The reason given in his application was that the applications had erroneously been considered in terms of section 15 of the Act, whereas they ought properly to have been considered in terms of section 16 of the Act. He also furnished proof of his “dedicated” status.

⁷ The office of DFO was created by section 124(2)(h).

[31] In October 2008, the then chairperson of the fourth respondent addressed a letter to Mr Robertson asking why he had applied on the basis that he required the firearms for occasional hunting if he had, all along, been a dedicated hunter. Mr Robertson responded by way of a letter in which he explained what had transpired – i.e. as set out above. The appeal was upheld, and the further licenses were issued. For some reason, all of the long gun licenses were endorsed with references to section 15 rather than section 16 of the Act. I will return to this issue at an appropriate juncture.

[32] In April 2018, Mr Robertson applied for the renewal of all of the long gun licenses. In each instance, he ticked the “dedicated” box – i.e. the box which corresponded with section 16 of the Act. Those applications were supported by the documentation required by the Regulations. The DFO also confirmed that Mr Robertson had a compliant safe.

[33] Mr Robertson was subsequently informed that some of his applications had been granted and that others had been refused. The licenses that were issued were once again endorsed with references to section 15 of the Act. Those that were refused related to the .223, the .308 and the .303. In each case, the reason given was that section 15(3) of the Act did not permit the issuing of those licenses. The basis upon which some of the applications were approved and others rejected was not addressed in the papers, and it is difficult to resist the inference that whoever dealt with them simply approved the first four, being the maximum permitted by section 15(3), and refused the rest. The handgun licence, which had been renewed during October 2014, was obviously overlooked as, in truth, only three of the long gun licenses could validly have been issued in terms of section 15 at that time. However, nothing was made of this on the papers, and nothing turns on it. The only relevance is that it is indicative of a degree of disorganisation in the offices of those charged with the administration of the Act.

[34] In October 2018, Mr Robertson then lodged a second appeal with the fourth respondent. The grounds of appeal were the same as on the previous occasion – i.e. that the applications had been considered in terms of section 15 of the Act whereas they ought properly to have been considered in terms of section 16.

[35] Mr Robertson subsequently received a text message informing him that his appeal had been refused. This was confirmed in a letter dated 3 April 2019.

Litigation

[36] The application to which this appeal relates was launched on 8 July 2019. The main relief sought in terms of the notice of motion was for the following:

- [1] an order reviewing and setting aside the third and fourth respondents' refusal of the renewal applications in issue;
- [2] an order that such licenses be issued in terms of section 16 of the Act and;
- [3] "an order reviewing and setting aside the original decision of the First Respondent to issue any firearms to the Applicant in terms of Section 16 of the Firearms Control Act and for an order ordering the first respondent to issue Section 16 licenses for all firearms for the Applicant other than the Applicant's self-defence Luger...".

The first reference to Section 16 in paragraph 3 above appears to have been the result of an error as it was clear from the papers, read as a whole, that what Mr Robertson was seeking was to have the licenses issued to him in terms of Section 16 rather than Section 15.

[37] The notice of motion also included prayers for alternative and ancillary relief. The application was supported by an affidavit deposed to by Mr Robertson. The juristic basis of the application was not entirely clear from the founding papers. By this I mean to say that it was not clear whether it was based on the Promotion of Administrative Justice Act ("PAJA")⁸ or simply on the principle of legality. However,

⁸ Act 3 of 2000.

nothing was made of this distinction on the papers or in argument, and I do not think that anything turns on it.

[38] A notice of opposition was delivered in respect of all of the respondents on 19 August 2019.

[39] The fourth respondent only delivered the record (“the ROD”) on 29 January 2020 - that is to say, approximately six months out of time. It appears that the delay was occasioned by administrative problems within the office of the State attorney. For some reason, the ROD did not form part of the record in this matter. This is unfortunate, as the omission makes it difficult to understand some of the issues raised in the supplementary affidavit and the response thereto.

[40] The matter initially appeared on the court roll on 3 February 2020 – that is to say, three days after the delivery of the ROD. The respondents had not, at that time, delivered an answering affidavit. They accordingly requested a postponement in order to allow them to do so. That request was conceded to on the basis that the respondents would pay the wasted costs on the attorney and client scale.

[41] Mr Robertson delivered a supplementary affidavit on 10 March 2020. As I have indicated, that affidavit is, in certain respects, difficult if not impossible to follow as it contains references to documents which have not been included in the record of this matter. Suffice however to say that Mr Robertson persisted in his challenge, essentially on the same basis – i.e. that the decision makers had failed to properly apply their minds. He also asserted that it was evident from a letter contained in the ROD that the fourth respondent had not had his file before it when considering his appeal. I will return to this issue.

[42] The respondents delivered their answering affidavit on or about 6 May 2020. It was deposed to by a Ms Shandu, who was at that time the chairperson of the fourth respondent. In her affidavit, Ms Shandu explained that the basis of the respondents’ opposition was that Mr Robertson had never been issued licenses in terms of section 16. That being the case, or so the argument went, the applications, and also the appeal had been correctly refused. Ms. Shandu further contended that certain

aspects of the relief sought were not legally permissible, as they contravened the doctrine of separation of powers.

[43] Ms Shandu's affidavit was supported by a confirmatory affidavit deposed to by an employee of the State Attorney, a Mr Ramethape. It was in the standard form in that the deponent simply confirmed the correctness of the contents of Ms Shandu's affidavit in so far as it related to the deponent. That affidavit did not serve to take the matter any further.

[44] The papers also included what purported to be a confirmatory affidavit deposed to by Mr Hlongwane, who described himself as a senior legal administration officer in the employ of SAPS. However, that "affidavit" was not signed, let alone commissioned. Its contents accordingly could not be taken into account. In any event, it was of no assistance as it is not clear what exactly Mr Hlongwane intended to confirm.

[45] Mr Robertson delivered his replying affidavit on or about 21 July 2020. In it, he took issue with Ms Shandu's authority to speak for the other respondents. Furthermore, he asserted that many of the facts referred to in Ms Shandu's affidavit comprised inadmissible hearsay. He also asserted that Ms Shandu was wrong, both in fact and in law. In short, his case remained that his applications and, also, his appeal had been wrongly refused. He also asserted that the respondents had failed to comply with the provisions of PAJA as he had not been afforded an opportunity "*to explain my circumstances and rectify certain misperceptions*". Precisely what those misperceptions were was not explained; however, it seems, from a reading of the affidavit as a whole, that what Mr Robertson intended to allude to was the fact that his applications and appeal were considered with reference to the provisions of section 15 of the Act, whereas they ought properly to have been assessed with reference to the provisions of section 16.

[46] On 20 October 2020, the matter came before De Vos J. It appears from the papers that counsel who appeared for the respondents on that occasion indicated that the respondents were of the view that some of the licenses that had been issued to Mr Robertson in 2009 ought not to have been issued and that the presiding judge

expressed the view that the respondents would need to institute review proceedings to have those licenses declared invalid if they wished to pursue that line of argument. Respondents' counsel accepted that and indicated that the respondents required time in order to deliver a counter application. The matter was then postponed, and the respondents were mulcted in costs on a punitive scale. The order also contained a provision which required the respondents to deliver their counter application by 16 November 2020, failing which the applicant would once again be entitled to enrol the matter for hearing.

[47] The respondents delivered their counter application on or about 16 November 2020. That application was supported by an affidavit deposed to by Ms Shandu. The notice of motion also referred to a confirmatory affidavit deposed to by a certain Brigadier Mabule; however, it seems that no such affidavit was actually delivered. It does not form part of the record, and it is also not referred to in Mr Robertson's answering affidavit.

[48] The main relief sought in terms of the counter application was the review and setting aside of the fourth respondent's decision in respect of Mr Robertson's 2009 appeal and an order declaring the licenses which were issued to him in respect of the three shotguns, as a consequence thereof, void *ab initio*. The basis of the application was that the fourth respondent was alleged to have acted in error. By way of amplification, Ms Shandu asserted that the fourth respondent had considered Mr Robertson's appeal in isolation – i.e. that it had not been aware that he already held the maximum number of licenses permitted in terms of section 15(3) of the Act. Curiously, no mention was made of the license in respect of the .22, which had also been issued pursuant to the fourth respondent's decision in respect of the 2009 appeal. As to the delay in bringing the counter application, Ms Shandu asserted that the respondents had not been aware of the alleged error until they received the main application.

[49] Mr Robertson delivered his answering affidavit in respect of the counter application on or about 25 January 2021. In it, he raised a number of issues. In the first instance, he again took issue with Ms Shandu's authority to speak on behalf of the current first respondent and asserted that she was, in law, precluded from doing

so. He also once again asserted that the application was founded on assertions of fact which constituted inadmissible hearsay. He furthermore denied that any mistake had been made in relation to his first appeal. In that context, he asserted that the licenses which formed the subject matter of that appeal had in fact been authorised in terms of section 16 of the Act. He also pointed out that the licenses in issue had already lapsed and asserted that the application was, for that reason, unnecessary and hence misdirected.

[50] The respondents delivered their replying affidavit in the counter application on or about 11 March 2021. That affidavit was also deposed to by Ms Shandu. In it she admitted that she did not have personal knowledge of the facts relating to the 2009 appeal or the issuing of licenses pursuant thereto. The remainder of the affidavit comprised argument. Suffice to say that the respondents' position on the issues remained unchanged.

[51] The matter was set down for hearing in the week of 26 April 2021. It came before Lenyai AJ, who heard argument and reserved judgment. Lenyai AJ delivered her judgment on 29 July 2021. She dismissed the main application and granted the counter application. She also ordered Mr Robertson to pay the costs of both the main application and the counter application on the scale as between attorney and client, such costs in relation to the counter application to include the costs attendant upon the employment of two counsel. Why the learned acting Judge considered it appropriate to make different cost orders in respect of the main application and the counter application is unclear, but also not important. The function of this Court is to consider the issues afresh; not to critique the judgment which is the subject of the appeal.

[52] As indicated above, Mr Robertson sought and was granted leave to appeal against the whole of that judgment and the orders made in terms thereof.

Conduct of Litigation

[53] I believe it to be appropriate at this juncture to make a few general remarks about the manner in which this litigation has been conducted. I do so in the paragraphs which follow.

[54] Starting with Mr Robertson's case, I have to say that his papers left a lot to be desired. As I have already indicated, the legal basis of the application was not properly set out in the founding papers. The facts were also not always dealt with in strict chronological order. However, what I found particularly unacceptable was that the papers contained numerous references to other cases, and, also, a speech which was apparently made by the State President on a formal occasion – something which I do not consider to be appropriate in affidavits. Indeed, Mr Robertson did not confine himself to simply referring to these items; he also saw it fit to quote portions and to annex copies of certain judgments and papers which had apparently been filed in other matters. This is not how one should litigate. On the contrary, what is required is that the case be set out succinctly. If Mr Robertson's case was (as it is) that the implementation of the Act has been beset with problems, then he only had to say as much. Our courts have been burdened with a plethora of cases in relation to these issues, and it is common knowledge that those charged with the administration of the Act have struggled to cope with the load which it has placed on them. He might perhaps, at most, have referred to those judgments which he considered to be particularly relevant given the issues in this case, however to annexe copies of judgments to affidavits only serves to burden the papers unnecessarily. As we were not asked to make any special order of costs on this account, I will say no more in this regard. Practitioners should however be warned that burdening the papers in this way may well result in certain costs being disallowed.

[55] The respondents' papers also left a good deal to be desired. I expand on this in the paragraphs which follow.

[56] Each of Ms Shandu's affidavits contained an allegation to the effect that the facts referred to all fell within her personal knowledge save where the context indicated otherwise; however, what exactly did and did not fall within her personal knowledge was not always made clear. For instance, she stated that the fourth

respondent had overlooked certain relevant facts when deciding the 2009 appeal, however she did not claim to have been a member of the appeal board at that time - and she conceded in reply that she had not been. Thus, what she was really doing was making an averment as to what she thought must have been in the minds of the members of the fourth respondent in 2009. That amounted to speculation, and the averment ought not to have been cast as one of fact. If it was to be made at all, then it ought to have been couched as a submission based on inference. Ms Shandu also could not speak directly to anything which took place in the offices of the first or second respondents. In particular, she could not explain why any of the 2009 licenses had been endorsed with references to section 15 rather than section 16. Her evidence on that issue was accordingly also speculative.

[57] Ms Shandu also sometimes responded to averments of fact by means of submissions rather than by making an admission or a direct averment of fact. I refer, in particular, to Mr Robertson's averment to the effect that his file had not been before the fourth respondent when his most recent appeal was considered – an inference which he said flowed ineluctably from a letter contained in the ROD. Ms Shandu's response was to "submit" that the file had indeed been before the board on that occasion. This is not an acceptable way of responding to an allegation of fact. On the contrary, if Ms Shandu had intended to assert that Mr Robertson's file had indeed been before the fourth respondent on that occasion, then she ought to have said so directly. She ought also to have explained why she could say that with confidence. The fourth respondent has a heavy case load, and it is highly unlikely that any member of the board would remember offhand exactly what papers were placed before it in respect of any given appeal - especially one that was not, at the time, considered to be special in any way. On the contrary, it would be necessary to have regard to the record of the proceedings. Ms Shandu also did not see fit to address the inference which Mr Robertson alleged flowed from the letter referred to above – as she ought to have done if she wished to take issue on the facts.

Counter Application

[58] The first question to be decided when considering an application for a review is whether it was brought timeously. The rule is that it must be brought within a

reasonable period. What constitutes a reasonable time depends on the facts of the matter. If the court concludes that the application was not brought timeously, then that is generally the end of the matter, regardless of the merits. This much is so well established as to be trite. *In casu*, we have to deal with licenses which were issued pursuant to a decision taken in 2009 - thus a delay of eleven years. Such a lengthy delay is *prima facie* unreasonable. The respondents attribute the delay to an alleged lack of awareness of the facts until their receipt of the main application. This is unconvincing. After all, the respondents had at all times, been in possession of the relevant records. The suggestion that the respondents had not been aware of the facts prior to receiving the main application was also not supported by any admissible evidence. I am accordingly inclined to the view that the period of delay was excessive and that the counter application ought to have been dismissed on that basis alone. However, even if the matter is approached on the basis that the delay was not excessive, the respondents face other difficulties. I deal with them in the paragraphs which follow.

[59] Starting with the law, while it is so that an administrative body may take itself on review if it forms the belief that it has taken an unlawful decision, it does not follow that it should always do so - for it is in the nature of things that some decisions have enduring consequences, while the consequences of other decisions only endure for a limited period. To this I would add that the business of courts is to pronounce on live disputes, not to deliver opinions in relation to matters which have become academic. Thus, an application to review a decision is not appropriate in circumstances where the decision has ceased to have any effect.

[60] *In casu*, Mr Robertson contended that all of the licenses which had been issued to him pursuant to the 2009 appeal had expired by the time the application was launched and that the lawfulness of that decision had therefore become academic. The respondents expressed the same view in their answering papers in the main application. Ms Shandu's words were, "[t]he respondents no longer need to review their January 2009 decision to uphold the Applicant's appeal as the license (sic) have already lapsed after ten (10) years". The respondent's *volte face* on this issue appears to have been prompted by the comments made by De Vos J when the matter came before him during October 2020.

[61] In my view, the point was well taken. Licenses issued in terms of the Act take the form of plastic cards similar to driver's licenses. Every license bears a photograph of the holder, the date of issue and the particulars of the firearm to which it relates. All of the licenses in issue would, by virtue of the provisions set out in section 27 of the Act, have expired during 2019 – subject only to the provisions of section 24(4) of the Act, which ceased to be of application upon the issue of the new licenses. The licenses at which the counter application was directed had accordingly lapsed and ceased to be of any effect when that application was launched. I would accordingly have been inclined to dismiss the counter application on this basis alone.

[62] There are also other bases on which I believe the counter application fell to be dismissed. I deal with them in the paragraphs which follow.

[63] Turning to the facts, the assertion that the fourth respondent had, in considering the 2009 appeal, failed to take account of the fact that Mr Robertson already held the licenses which had been issued to him in 2008 was not supported by any admissible evidence. As I have already pointed out, Ms Shandu was in no position to say what went through the minds of the members of the fourth respondent in 2009. That thesis is also not supported by the objective facts. On the contrary, the then chairperson specifically wrote to Mr Robertson asking why he had ticked the boxes which corresponded to section 15 when he had, all along, been registered as a dedicated hunter, and Mr Robertson explained what had occurred and that he was in fact relying on the provisions of section 16, not section 15. In the circumstances, there can be no doubt whatsoever that the fourth respondent was aware of the facts and that it intended to authorise, and in fact authorised, the issue of the additional licenses in terms of section 16, not section 15 – which would have been unlawful.

[64] The fact that the licenses themselves came to be endorsed with references to section 15 cannot detract from this conclusion. On the contrary, it can readily be explained on the basis of a simple clerical error. Indeed, Ms Shandu herself explained that the system is not set up to automatically prevent more than the stipulated maximum number of licenses per section being issued. If it had been, then an alarm bell would have sounded - in which event the additional licenses would,

given the facts, have been endorsed with references to section 16 rather than section 15. That said, how the licenses came to be endorsed with references to section 15 is really neither here nor there. The issue before us concerns the lawfulness of the fourth respondent's 2009 decision to authorise the issuing of the licenses in question,⁹ not how the licenses came to be endorsed with references to section 15 of the Act.

[65] For these reasons, I am of the view that the counter application ought to have been dismissed.

Main Application

[66] That Mr Robertson checked the boxes which corresponded to section 16 when he applied for the renewal of his licenses in 2018, is not in dispute. It is also not in dispute that the applications in issue, and, also, Mr Robertson's appeal were refused simply on the basis that he already held the maximum number of licenses permitted in terms of section 15(3) of the Act. The respondent's position is also that Mr Robertson's licenses could not have been renewed in terms of section 16 of the Act simply because he was not holding licenses which had been issued in terms of that section.

[67] As I have already indicated, the proposition that all of the long gun licenses which were issued to Mr Robertson in the 2008/2009 period were in fact authorised in terms of section 15 of the Act rather than section 16 is not supported by a consideration of the objective facts. On the contrary, the applications which were approved by the fourth respondent during January 2009 were clearly approved in terms of section 16.

[68] The crux of the issue is whether the respondents erred in not considering those applications which were the subject of the 2019 appeal proceedings in terms of section 16 rather than section 15 of the Act. Mr Robertson asserts that his appeal would have succeeded but for this error. That assertion is supported by the attitude

⁹ i.e. those which pertain to the .22 and the three shotguns.

adopted by the fourth respondent in 2009 and by the documents contained in the ROD in respect of the appeal from which this matter arises. Ms Shandu also stated in one of her affidavits that Mr Robertson would probably be granted the licenses if he were to apply afresh in terms of section 16 of the Act – i.e. it is not suggested that he lacks any of the necessary qualifications. This issue is accordingly a crisp and narrow one. I will return to it.

[69] Apart from asserting that that it would not have been permissible in law for the licenses to have been issued to Mr Robertson in terms of section 16 of the Act, Ms Shandu's affidavit creates the impression that the fourth respondent's board members actually gave consideration to that issue when the 2019 appeal served before them. The documents contained in the ROD are however not supportive of that assertion. In particular, the summary of proceedings does not contain any reference to section 16. That fact is also supportive of the proposition that the fourth respondent did not actually have Mr Robertson's file before it at the time of making the decision to dismiss the appeal; the only alternative being that the fourth respondent's members did not take the trouble to actually consider the grounds of appeal – which specially referred to section 16. The fact that the fourth respondent did not seek any clarification from Mr Robertson or afford him an opportunity to explain why he considered himself to be entitled to more than the maximum number of licenses permitted by section 15 of the Act (i.e. as had occurred in relation to his first appeal) is also destructive of the proposition that the fourth respondent's members actually applied their minds to the issue. As I have mentioned, Mr Robertson also points to a letter which, according to him, shows that the fourth respondent did not in fact have his file before it and hence did not actually have sight of his applications, which allegation was not properly answered to by Ms Shandu. These things being so, I am driven to conclude that the respondents did not in fact give any thought to whether Mr Robertson qualified in terms of Section 16 of the Act and that the averments made in the answering papers on this issue are simply an attempt to justify their conduct *ex post facto*. On that basis the main application should, but for one further consideration, have succeeded.

[70] As to the remaining issue, and as I have already pointed out, the respondents say that the renewal applications simply could not have been approved in terms of

section 16 of the Act because those applications did not relate to licenses which had been issued in terms of that section – i.e. that a renewal in terms of section 16 was, in the circumstances, not possible as a matter of law. Mr Robertson takes issue with the correctness of that proposition. His case is that it makes no difference whether the original licenses were issued in terms of section 15 or section 16 of the Act. If Ms Shandu is right, then it follows that the main application was correctly refused. The opposite is also true. The answer to the question lies in the proper interpretation of the Act.

[71] The process of construing a statute is not a mechanistic one. On the contrary, it is a subtle one, and one which entails the proper application of legal principles. In *Fidelity*¹⁰, the Constitutional Court put it as follows:

“The interpretation of the Act must be guided by the following principles:

(a) Words in a statute must be given their ordinary grammatical meaning unless to do so would result in an absurdity.

(b) This general principle is subject to three interrelated riders: a statute must be interpreted purposively; the relevant provision must be properly contextualised; and the statute must be construed consistently with the Constitution, meaning in such a way as to preserve its constitutional validity.

(c) Various propositions flow from this general principle and its riders. Among others, in the case of ambiguity, a meaning that frustrates the apparent purpose of the statute or leads to results which are not business-like or sensible results should not be preferred where an interpretation which avoids these unfortunate consequences is reasonably possible. The qualification “reasonably possible” is a reminder that Judges must guard against the temptation to substitute what they regard as reasonable, sensible or business-like for the words actually used.

(d) If reasonably possible, a statute should be interpreted so as to avoid a *lacuna* (gap) in the legislative scheme.” [footnotes omitted]

¹⁰ Above n 4 at para 34.

[72] The respondents' case on this issue relies on the contention that "renew" can only ever bear the meaning of making new that which is already in existence. They also contend that because Mr Robertson held what I will refer to as "section 15 licenses", those licenses were incapable of being renewed in terms of section 16 of the Act. That proposition, in turn rests, on the proposition that there is a difference between the rights conferred by licenses issued in terms of those two sections – i.e. as there is between licenses issued in respect of certain classes of motor vehicles and vessels. Indeed, counsel who appeared for the respondents contended that was indeed the case.

[73] The latter contention is fundamentally flawed. The fitness or competency of a person to be in possession and to use a given category of firearm is governed by those provisions of the Act and the Regulations which pertain to the issuing of competency certificates, and possession of an appropriate or "relevant" competency certificate is prerequisite in respect of an application for a license to possess a particular firearm. The license *per se* has no bearing on the holder's fitness or competency – it is simply a license to possess a specific firearm.

[74] Sections 15 and 16 of the Act are moreover identical both as to the categories in respect of which licenses may be issued in terms of them and in respect of the uses to which such firearms may be put. The only material difference between the two sections is that persons who enjoy "dedicated" status are not subject to any limitation as to the number of licenses which they may hold. The rights and consequences in respect of every individual license are however exactly the same regardless of the section in terms of which it was issued. The endorsement of a license with a reference to either section is accordingly superfluous and of no practical consequence. It is, by the same token, also not appropriate to speak of a "section 15 license" or a "section 16 license". The sections regulate the power of the administrator to issue licenses; they have nothing to do with the licenses *per se*. On the contrary, each license is simply a license to possess the particular firearm to which it relates.

[75] The suggestion that "renew" can only ever bear one meaning and that "renewal" bears a corresponding limited meaning is also not correct. According to

various online resources which I consulted, those word have several meanings.¹¹ Examples given include the renewal of a subscription to a magazine and the renewal of a lease. It is so well established as to be trite that a renewal of that kind results in a new contract - usually but not invariably on the same terms and conditions that applied to the previous one. A renewal differs from an extension effected by way of an amendment of the term governing the period of the contract. Another definition given is to replace something old with something new.¹² That said, and as pointed out above, statutes do not fall to be interpreted simply with regard to dictionary definitions. On the contrary, the interpretation of a statute is a nuanced exercise and one which requires that proper consideration be given to context – for context is frequently decisive.

[76] The words “renew” and “renewal” are used somewhat loosely in the Act. Thus, whereas schedule 1 provides for the “renewal” of licenses which had been issued under the Old Act, the truth is that the schedule served to create a transitional regime in terms of which licenses that had been issued under the Old Act remained valid for a specified period and holders of such licenses were afforded an opportunity to apply for new licenses under the Act. Licenses which had been issued under the Old Act could be replaced by licenses issued in terms of the Act, but they could never have been renewed in the proper sense. That was simply impossible as the Old Act had been repealed. It is also so that the approval of a renewal application made in terms of section 24 of the Act results in the issue of a new license which replaces the old one.

[77] As I have already indicated, the respondent’s position is that a person in Mr Robertson’s position must apply for new licenses *de novo*. Although the respondents did not specifically make this assertion, the implication is that such persons would have to surrender their existing licenses (thereby rendering their possession of the firearm/s in question unlawful), as it is not possible for anyone to hold more than one license in respect of a single firearm. This interpretation is anything but businesslike.

¹¹ Oxford learners Dictionaries <https://www.oxfordlearnersdictionaries.com;https://www.top.legal/en/knowledge/contract-renewal-vs-contract-extension>

¹² Cambridge English dictionary “renew”.

It would serve to burden the authorities charged with the administration of the Act even further. It would also serve to place owners in a very invidious position – for they would not be able to say with any confidence that the new applications would in fact be approved. In this context it is to be borne in mind that some firearms are extremely valuable. This much is common knowledge. The lawmaker clearly could not have intended such an absurd result.

[78] While it is so that the Act does not expressly provide for “conversions” this is, for reasons already canvassed, unnecessary. To the extent that this may be considered to be a *lacuna* in the Act (although I do not think it does), it is for this court to interpret the Act so as to avoid such *lacuna*.¹³

[79] A renewal application falls to be assessed with regard to the motivation given and the facts known to the decision maker at the time when the application is assessed. At the risk of unduly labouring the point, an applicant’s entitlement to the benefit conferred by section 16 depends simply on him or her having “dedicated” status at that time. If he or she has that status, then the administrator may exercise the power given in terms of section 16 of the Act. The opposite is also true – i.e. if an applicant who holds more than the maximum number of licenses permitted by section 15 of the Act no longer enjoys “dedicated” status when seeking to renew those licenses then licenses may be issued under Sections 13 and 15 (depending on the motivation) and the applicant will be bound by the limitation imposed by section 15(3). All things being equal, an applicant in that position would be entitled to obtain a maximum of four new licenses. That he or she previously enjoyed “dedicated” status and was, as consequence, entitled to hold more than four licenses or that the licenses were originally issued in terms of Section 16 is irrelevant in this context. These things being so, my view is that the respondents must fail on this issue.

[80] As to the separation of powers, the issue does not arise *in casu*. On the contrary, the respondents’ reason for the refusal of the licenses in issue (both in the first instance and on appeal) was an extremely narrow one. It is not as though it was ever suggested that there were other reasons that stood in the way of Mr Roberston

¹³ Above n 4 at para 34.

being granted such licenses. If that had been the case, then this court would have been confined to setting aside the impugned decisions and ordering the first respondent to reconsider the applications. Those are, however, not the facts. On the contrary, this Court is entitled to set the decision of the fourth respondent aside and to substitute its own order in place thereof.

[81] In the circumstances, I would grant the application and dismiss the counterapplication, both with costs, liability for payment of costs to be joint and several as against the respondents; counsel's costs to be taxable according to scale C.

G S Myburgh
Acting Judge of the High Court Pretoria

Kubushi, J (Mali J dissenting):

[82] Having read the minority judgment, I, with respect, disagree with the conclusion it reaches and the reasoning underpinning it.

[83] The crux in this appeal, for me, is simply whether a licence issued in terms of a particular section of the Firearms Control Act ("the Act")¹⁴ can be renewed in terms of a different section of that Act. Essentially, the question is whether a licence issued in terms of section 15 of the Act can be renewed in terms of section 16 of the Act, so that a section 15 licence is renewed as a section 16 licence, for this is what the appellant seeks to achieve in this matter.

[84] The relief sought by the appellant in the review application was for an order, amongst others,

¹⁴ Act 60 of 2000.

- (a) reviewing and setting aside the decision of the third and fourth respondents to refuse the renewal application for the applicant's [the appellant] firearms licences for a Sako .233 Bolt Action Rifle serial no. 1[...], Sako .308 Bolt Action Rifle series no. 3[...] and Lee Enfield Bolt Action Rifle serial no. G[...].
- (b) that such licences be issued in terms of section 16 of the Firearms Control Act.
- (c) reviewing and setting aside the original decision of the first respondent to issue any firearms to the applicant [appellant] in terms of section 16 of the Act and for an order ordering the first respondent to issue section 16 licences for all the firearms for the applicant [appellant] other than the applicant's [appellant] self-defence Luger, serial number W[...].

[85] When dismissing the review application, the court below made a finding, amongst others, that

"[15] The applicant's prayer to have the respondent's alleged decision to have his above mentioned firearm licences reviewed and set aside and issued in terms of Section 16 of the Firearms Control Act is premature and not yet ripe. This is because he never made an application for firearm licences in terms of section 16 of the Firearms Control Act and thus the application falls to be dismissed with costs."

[86] I am in alignment with this finding of the court below, for I hold a view that the licences, in this instance, which were issued in terms of section 15 of the Act could not be renewed in terms of section 16 of the Act. There is no section or regulation that allows for such renewal.

[87] Previously, firearm licences were issued in terms of the Arms and Ammunition Act ("the Old Act").¹⁵ Transitional Arrangements were made for holders of firearm licences issued in terms of the Old Act to transition their firearm licences to the Act in order to become compliant therewith. To transition firearm licences issued under the

¹⁵ Act 75 of 1969.

Old Act to the Act, holders of licences were in terms of item 11 of the Transitional Arrangements, given an opportunity to apply for renewal of corresponding licences under the Act, which meant that a holder of an occasional hunting licence, like the appellant who was a holder of seven occasional hunting licences, could apply for the renewal of his occasional hunting licences to corresponding licences, that is, occasional hunting licences in terms of the Act. In accordance with the Act, an occasional hunting licence could only be issued in terms of section 15 thereof.

[88] At that time of transition, in 2005, the appellant was a holder of seven occasional hunting licences and one self-defence licence. He applied for the renewal of the seven occasional hunting licences in terms of section 15 of the Act and the self-defence licence in terms of section 13 of the Act.

[89] Having applied for the renewal of the said licences, the Designated Firearms Officer, correctly so in my view, issued only four licences, three of the licences were issued in terms of section 15 of the Act (the occasional hunting licences) whilst one (the self-defence licence) was issued in terms of section 13 of the Act. This was so because firstly only four licences could be issued in terms of section 15 of the Act. Secondly, section 15(3)(b) of the Act provides that if a person holds a licence issued in terms of section 13 of the Act,¹⁶ he or she may only hold three licences issued in terms of section 15 of the Act. The appellant had been issued a licence in terms of section 13 of the Act, thus qualified for only three licences in terms of section 15 of the Act.

[90] After the first appeal, in 2018, the appellant was issued four more occasional hunting licences which made them seven in all. This, in terms of section 15 of the Act, is not allowed because only four licences could be issued in terms of this section. In my opinion, the only licences that were lawfully issued in terms of section 15 of the Act were three, because the fourth licence was issued in terms of section 13 of the Act. The other four licences would have ordinarily lapsed *ipso facto* upon not being lawfully renewed and issued. However, since a decision was made for their issue, the said licences remained extant. It is trite that an administrative decision

¹⁶ Section 13 of the Act provides for the possession of a firearm for self-defence.

remains valid until set aside by a court of competent jurisdiction.¹⁷ Thus, this principle gave life to the four licences until on their expiry after ten years because they were never legally revoked.

[91] The appellant, however, avers that in 2006 he attempted to renew eight of his licences, with seven to be issued in terms of section 16 of the Act in his capacity as a dedicated hunter and one to be issued in terms of section 13 of the Act. He was however erroneously granted three licences in terms of section 15 and one in terms of section 13. He avers further that after his successful internal administrative appeal in 2009, at which he had indicated that he should have been granted licences under section 16 of the Act, he was issued with three further licences in terms of section 15 of the Act. All in all he was the holder of seven licences issued in terms of section 15 of the Act which was not legally allowed by the provisions of that section.

[92] Being in possession of the seven occasional hunting licences and whilst being aware that it was not legally allowable to possess them, the appellant took no steps to try to rectify the illegality. He kept them until the arrival of the time for their renewal which was ten years later. My view is that once the licences were issued in terms of section 15 of the Act, and there being no steps taken to rectify them, the appellant continued to hold such licences in terms of section 15 of the Act until their expiry.

[93] When the second renewal was applied for in 2018, it is common cause that the seven licences that the appellant held were all occasional hunting licences issued in terms of section 15 of the Act. In my view the Designated Firearms Officer acted correctly by issuing only four licences. That is what section 15(3)(a) of the Act authorises – subject to paragraphs (b), (c) and (d), no person may hold more than four licences issued in terms of this section. The Appeal Board was also correct to dismiss the appeal.

[94] The appellant alleges that when he so applied in 2018, he wanted to renew his seven licences and to rectify the administrative errors and irregularities in his licences, that is, that the licences were issued in terms of section 15 of the Act

¹⁷ *MEC for Health, Eastern Cape and Another v Kirkland Investments (Pty) Ltd* [2014] ZACC 6.

instead of section 16 of the Act. This allegation, in my opinion, was correctly answered by the court below when it held that the prayer by the appellant to have his seven firearms licences issued in terms of section 16 of the Act was premature and not yet ripe, because the appellant never made an application for firearm licences in terms of section 16 of the Act.

[95] The reasoning of the minority judgment in a way concedes that the Act does not provide for the renewal of a licence issued under a particular section of the Act to be renewed and issued under a different section of the Act. Hence, that judgment affords an interpretation to sections 15 and 16 of the Act which culminates in what is referred to as a *lacuna* for ‘conversions’. With respect, I do not agree with that interpretation. It is trite that words cannot be read into a statute by implication unless the implication is necessary in the sense that, without them, effect cannot be given to the statute as it stands and to the ostensible legislative intent.¹⁸

[96] The Constitutional Court in *Fidelity Security Services (Pty) Ltd v Minister of Police and Others*,¹⁹ when dealing with the interpretation of the provisions of the Act stated that a statute should be interpreted, as far as reasonably possible, to avoid creating a *lacuna* in the legislative scheme. In my view if it was the intention of the legislature to provide for ‘conversions’ of licences it would have specifically provided for same in the Act, but it did not which shows that it was never its intention to do so. By reading a *lacuna* in the Act is to read into the Act what was never intended by the legislature. One of the purposive interpretations of the Act itself is to prevent the proliferation of illegally possessed firearms and by providing for the removal of such firearms from society and improve control of legally possessed firearms. Therefore, the interpretation accorded to sections 15 and 16 of the Act in the minority judgment fails to align with the purposive interpretation of the Act and the *Endumeni* principles as to the proper interpretation of legislation.²⁰

¹⁸ See *Electoral Commission v Minister of Cooperative Governance and Traditional Affairs* 2022 (5) BCLR 571 (CC) at para 187 and the authorities referred to in fn 72 of that case.

¹⁹ [2021] ZASCA 51 at para 55.

²⁰ *Natal Joint Municipal Pension Fund v Endumeni Municipality (“Endumeni”)* 2012 (4) SA 593 (SCA) at para 18.

[97] Fundamentally, the reading of section 24(1) of the Act which deals with the renewal of licences, indicates that a licence that is to be renewed must be an existing licence. It is common course that the appellant was a holder of seven occasional hunting licences. Those were the existing licences at the time of migrating from the Old Act to the Act. This was also the position in 2018 when the appellant applied to renew his seven licences. The appellant was never a holder of dedicated hunting licences, he never applied for them, as such, such licences were never in existence and could, therefore, not be renewed. The interpretation provided in the minority judgment to the word ‘renewal’ or ‘renew’ that it means that *licenses which had been issued under the Old Act could be replaced by licenses issued in terms of the Act, but they could never have been renewed in the proper sense and that the approval of a renewal application made in terms of section 24 of the Act results in the issue of a new license which replaces the old one*, is nonsensical. The interpretation does not align with the intention of the legislature in that the Act and Regulations provide for two separate processes. Sections 13 to 20 of the Act provides for the application of licences with the Regulations providing for Form SAPS271 which must be completed when applying for a new licence. Section 24 of the Act, on the other hand, provides for the renewal of licences with the Regulations providing for Form SAPS518(a) to be completed when applying for the renewal of a licence.

[98] The Court in *Fidelity Security Services (Pty) Ltd v Minister of Police and Others*,²¹ when dealing with the crisp question of whether a gun owner which allows its licence to possess a firearm to lapse without timeously seeking a renewal of the licence can make a new application to possess the firearm, or has the owner irretrievably lost its right to ever regain lawful possession of the firearm, had this to say about the difference between the application of a new licence and a renewal of an existing licence –

“[44] . . . Applying for a licence, and applying to renew an existing licence, are different processes, governed by different provisions of the Act. The Act largely leaves the procedures for administrative applications to the

²¹ [2021] ZASCA 51 at para 44.

Regulations promulgated by the Minister in terms of section 145(1). It would not be unreasonable to expect that the process for applying for the renewal of a currently valid licence would be less exacting than the process for applying for a licence when no valid licence exists, otherwise there would be no purpose in treating them separately in the Act. This is indeed what one sees in the Regulations and prescribed forms: an application for a licence is more detailed and more expensive than an application for a renewal.”

[99] The appellant alleges in his founding affidavit to the review application that he submitted seven renewal applications during the transition phase. He furthermore alleges that “*I have always intended to apply in terms of Section 16 of the Firearms Control Act for my licences to be issued in terms thereof and to be renewed in terms thereof*”. Yet not once did he ever apply in terms of section 16 of the Act to be issued with licences for dedicated hunting. During the transitional period, 2005, the appellant applied for the renewal of the seven licences in terms of section 15 of the Act which was followed in 2018 by another renewal applications of the seven licences, this time in terms of section 16 of the Act. This cannot be considered as applications for the issuance of firearm licences in terms of section 16 of the Act.

[100] I am also doubtful as to whether the submission of the competency certificate as a dedicated hunter, after the application form and required supporting documentation were already submitted, could be taken into account when the application is considered.

[101] It is not in dispute that the appellant held seven occasional hunting licences which were issued in terms of section 15 of the Act. It appears that he wanted to convert them to dedicated hunting licences issued in terms of section 16 of the Act. At the time of lodgement of the applications for renewal in 2005, he did not possess a competency certificate for dedicated hunting. It seems like he was advised by the Designated Firearms Officer at the office of lodgement that if he provided the competency certificate for dedicated hunting his occasional hunting licences will be converted to dedicated hunting licences. He apparently obtained the said competency certificate in February 2006 and provided same to the Designated Firearms Officer. This was after the applications for renewal had already been

lodged, as such, the competency certificate was lodged much later and did not accompany the applications at the time it was lodged.

[102] Section 24 which deals with the renewal of firearm licences state that

“(1) The holder of a licence issued in terms of this Chapter who wishes to renew the licence must at least 90 days before the date of expiry of the licence apply to the Registrar for its renewal.

(2) The application **must** be— (a) accompanied by such information as may be prescribed; and (b) delivered to the Designated Firearms Officer responsible for the area in which the applicant ordinarily resides or in which the applicant’s business is, as the case may be.²²

(3) No application for the renewal of a licence may be granted unless the applicant shows that he or she has continued to comply with the requirements for the licence in terms of this Act.” (Own emphasis)

[103] Section 24(2) of the Act, uses the word ‘must’ and denotes that it is peremptory. The subsection calls for the submission of the application together with such information as may be prescribed to be delivered to the Designated Firearms Officer responsible for the area in which the applicant ordinarily resides or in which the applicant’s business is situated. On the proper interpretation of the subsection, it means that the application cannot be delivered to the Designated Firearms Officer without the accompanying prescribed information. Neither subsection 24(2) of the Act nor the Act itself as well as the Regulations,²³ allows for the filing of required prescribed information at a later date. In my opinion, the information prescribed **MUST** be provided at the time of lodgement of the application. A competency certificate is one of the information (document) that must accompany the application at the time of lodgement with the Designated Firearms Officer. It follows therefore that it is peremptory that same accompany the application at the time of lodgement.

²² See Regulation 13(2).

²³ Regulation 13(2).

[104] Furthermore, section 24(3) of the Act calls upon the applicant to show that he or she has continued to comply with the requirements for the licence in terms of this Act. The requirements of the licence that the applicant would have to show that he was compliant with are of the licence of which the applicant was a holder immediately prior to applying for its renewal. The competency certificate for dedicated hunting would not satisfy the requirements for the licences sought to be renewed (the occasional hunting licences) in terms of the Act. Conversely, the requirements of an occasional hunting licence would not satisfy the requirements sought for a dedicated hunting licence.

[105] It is my view that for the appellant to have to be issued licences for dedicated hunting, as he seeks, he should have specifically applied for them. That would have meant that he should have lodged fresh applications to be issued licences for dedicated hunting. If the competency certificate for dedicated hunting is still valid that is the avenue that the appellant should follow.

[106] The minority judgment seems to convey a message that the application of section 16 licences *de novo* would render the appellant's seven firearms illegal and that he will have no recourse. That judgment also conveys that such an application will serve to further burden the authorities charged with the administration of the Act. These reasons of the minority judgment are stated without providing any and/or background facts as to what will cause the administrative burden. As to the illegality of the firearms the answer lies in *Fidelity Security Services (Pty) Ltd v Minister of Police and Others*,²⁴ where it was stated that even though it is illegal for a gun owner to possess a firearm without a licence, the gun owner does not lose ownership of the firearm thereof by the mere fact that he does not have possession licence.

Counter Application

[107] For me the counter application was not necessary because all the seven occasional hunting licences have expired by effluxion of time. Out of the seven occasional hunting licences issued, only three were validly issued in 2008. Even

²⁴ [2021] ZASCA 51.

though four of the licences were not validly issued, their validity was extended because they were not revoked and would only expire by effluxion of time. Section 27 of the Act which regulates the periods of validity of licenses provides that licenses issued in terms of sections 15 of the Act are valid for ten years. The section further provides that a license lapses *ipso facto* upon the expiry of the stipulated period, subject only to the provisions of section 24(4) of the Act.²⁵ As such, at the time the counter application was launched, which was some eleven years later, the four licences had *ipso facto* lapsed and there was no need for the respondents to apply for their reviewal and to have them set aside. This the appellant concedes.

[108] The three licences that were validly issued in terms of section 15 would remain valid until the applications for their renewal were decided. In accordance with section 24(4) of the Act "If an application for the renewal of a licence has been lodged within the period provided for in subsection (1), the licence remains valid until the application is decided."

[109] Based on my reasoning above, there being no application to renew the licences in terms of section 15 of the Act, the said licences expired by effluxion of time. Remember that the appellant's evidence is that he applied to renew the licences in terms of section 16 of the Act. I have already reached a conclusion that the licences issued in terms of section 15 of the Act could not be renewed in terms of section 16 thereof. As such, their renewal applications were never lodged, and the licences have expired. There was, therefore, no need for the respondents to have applied for their revocation.

[110] *Order*

(a) The appeal is dismissed with costs on scale C.

²⁵ In terms of section 24 (4) of the Act "If an application for the renewal of a licence has been lodged within the period provided for in subsection (1) the licence remains valid until the application is decided."

E M Kubushi
Judge of the High Court
Pretoria

I concur with the dissenting judgment

N Mali
Judge of the High Court
Pretoria

Appearances:

For the appellant:

M J Snyman SC

Instructed by:

M J Hood & Associates

For the first to fourth respondents:

M N Kgare

Instructed by:

The State Attorney

Date of Hearing: 26 July 2024

Date of Judgment: 10 April 2025