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

CASE NO: 26396/22

(1) REPORTABLE: YES/NO

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

(3) REVISED. NO

DATE: **28/07/2025**

SIGNATURE **N V KHUMALO J**

In the matter between:

BRENDAN GILLESPIE

APPLICANT

and

THE CHAIRPERSON: FIREARMS APPEAL BOARD

1ST RESPONDENT

THE REGISTRAR OF FIREARMS

2ND RESPONDENT

This judgment was handed down electronically by circulation to the parties' representatives by email. The date and time of hand-down is deemed to be 28 July 2025

JUDGMENT

Khumalo N V J

Introduction

[1] In this Application, the Applicant Mr Brendan Gillespie, is seeking an order in the following terms:

1. Reviewing and setting aside the decision of the 1st Respondent taken on 30 December 2021, refusing the Applicant's appeal against the Registrar of Firearms' (National Commissioner of Polices) refusal to grant the Applicant a licence.
2. Reviewing and setting aside the decision of the 2nd Respondent on 15 September 2021, refusing an application by the Applicant to possess a firearm.
3. Applicant's application for a temporary permit under s 21 of the Firearms Control Act in respect of Bereta SL3 with serial number: S[...] is hereby granted.
4. The 2nd Respondent is ordered to furnish the Applicant with a license card in respect of the firearm in prayer 3 above within fifteen (15) court days of the granting of this order.

Parties

[2] The Applicant, is a United Kingdom citizen who carries a UK passport with a critical skill visa which allows him to work and reside in the country, issued on 23 March 2018. Although he is married to a South African citizen and has been residing in the country since 20 July 2011, he has never applied for a South African citizenship.

[3] The 1st Respondent is the Chairman of the Firearms Appeal Board (referred to as “the Appeal Board”) and the 2nd Respondent is the Registrar of Firearms (who is the National Commissioner of Registrar of Firearms (“the Registrar”). Both the Registrar and the Appeal Board hold office under the Firearms Control Act 2000 (Act No. 60 of 2000) (referred to hereafter only as “the Act”) and cited *nomine officio*. The Registrar is empowered by the Act to regulate and issue licences for the possession and use of firearms and the Appeal Board to deal with appeals against decisions of the Registrar.

[4] The Applicant brings his application for review under the Promotions of Access to Justice Act 3 of 2000 (PAJA) and or the common law. Under PAJA on the basis that the impugned decisions refusing his application for a firearm licence were materially influenced by an error of fact and law s 6 (2) (d). Also, in that, irrelevant considerations were taken into account or relevant considerations were not considered s 6 (2) (e) (iii). Lastly, as per heads of argument in that the Appeal Board’s refusal amounts to arbitrary action and procedurally unfair in that it failed to provide adequate reasons for its decision s 6 (2) (f).

Background facts

[5] On 29 December 2020, the Applicant, applied to the Registrar for a temporary authorisation for a possession of a firearm for sporting purposes under s 16 of the Act. The Registrar refused the Application. The Applicant was notified of the refusal on 15 September 2021. The reason for the refusal was stated to be:

(1) *“lack of motivation/ not convinced of stated need.”*

Comprehensive decision: “it is clear from your motivation that you need this firearm for permanent use with a temporary authorisation. You failed to provide a temporary nature for which this firearm is required.”

[6] The Applicant appealed to the Appeal Board on 14 October 2021 and his appeal was refused in January 2022. The reasons for the refusal were specified in the Notice as follows:

"The mere fact that you were issued with a temporary authorisation more than once served as an indication that the authorisation was no longer for a temporary purpose.

You seem to be issued with a firearm licence or rather own a firearm under the disguise of a temporary authorisation of which that was not the purpose intended by the legislature through this section. The provisions of the Act cannot be circumvented by issuing of temporary authorisations."

You have in anyway not indicated to the Board whether you have a pending permanent residence application upon acquisition you would then apply for a licence in terms of the provisions of this Act."

[7] The Applicant alleges in his Founding Affidavit that he indicated in his application that "he is essentially applying to obtain a temporary possession permit for a 12 Gauge over/under sporting shotgun for dedicated clay target sport shooting purposes." He has a temporary competency to use, handle and possess a shotgun and does not possess any other firearms or licenses to possess firearms. He is a full member and a dedicated sport shooter with SA Wing Shooters Associations since 2017. The Association endorsed the particular firearm to be fit for clay target sport shooting. The shotgun is suitable for his sporting purposes. He complies with the safe keeping requirements of the Act in that he owns a gun safe installed at his home in the prescribed manner. He has no criminal record and has never been declared unfit to possess a firearm in terms of the Firearms Control Act.¹

[8] He further alleges that the proposed period of six months in his application for a permit is of a temporary nature and done with a clear understanding that once the temporary permit expires he will have to apply for a new permit. He has, in strict compliance with s 16 and s 21 respectively, stated sufficient grounds for the conferring of the s 21 temporary authorisation. He indicated that his Application to the Registrar or a copy thereof is annexed to his Affidavit as Annexure "A3."

¹ Par 17 of the Founding Affidavit

[9] He submitted that he therefore had complied with the provisions of the Act in applying for a sporting temporary authorisation for a firearm, as well as appealing against the refusal for the renewal of his permit/licence.

[10] The Applicant submit that the Registrar's refusal stands to be overturned, it being patently incorrect and or irrational and or unlawful and therefore reviewable in terms of PAJA or common law as indicated.

[11] Annexure A3 is an SAPS 523 Form Applicant completed which is headed an Acknowledgement of Receipt of an SAPS Firearm Documentation. The only information stated therein is the address of the Applicant, the type of firearm, that it is a s 21 Application for a Beretta SL 3 on a Shotgun, the serial number, the Applicant's name, Passport Number and the name of the Designated Firearms Officer. The Application with the alleged information is not attached. The Respondents are however not disputing the information that is alleged by the Applicant to be in the application.

On the Appeal Board's decision

[12] The Applicant argues that the refusal of his appeal by the Appeal Board has an adverse effect on his rights and a direct external legal effect as it impacts directly and immediately on his right to possess a firearm. This is in addition to his reliance on 6 (2) (d), that the decision was materially influenced by an error of law or fact and 6 (2) (e) (iii) that relevant considerations were not considered. Furthermore, he alleges that the process was procedurally unfair as material considerations were not taken into account. Lastly on s 6 (2) (e) (vi) that the refusal amounts to arbitrary action in that the Appeal Board failed to provide adequate reasons for its decision.

[13] In as far as the common law is concerned, he argues that neither the Appeal Board nor the Registrar properly brought their mind to bear on consideration of what they were asked to consider. He regards it striking that the decision of the Appeal Board is significantly and materially discrepant from the basis upon which the Registrar refused his licence.

[14] In his appeal the Applicant has stated the following as 'justification for a temporary application'²:

"1. I am a United Kingdom citizen... with a critical skill visa issued by the Republic of South Africa allowing me to work and reside in South Africa.

2. I am not a permanent resident of South Africa therefore I cannot apply for a self- defence firearms licence under the terms of s 15 of the Firearms Control Act 2000 ("the Act").

3. Therefore, in terms of the Act I must apply for a s 21 Temporary Firearms Licence as I have a right under the Act to request a Firearms Licence, in this case for self- defence.

4. There is no other alternative under the Act apart from s 21 for me to apply for a Firearms Licence being an individual having a valid visa but not having permanent residents' status.

5. Having taken legal advise, I have been advised: this is the correct procedure to follow using s 21 of the Act, and further (ii) there is no alternative to a s 21 Application available to me.

6. I have been in South Arica for approximately 10 years and have been previously issued with two s 21 licenses dated 11 April 2018 and 6 January 2017 both for short guns used for sports shootings (copies attached). The guns I have previously owned have been correctly and legally transferred to new owners as CFR will be able to check on the Central Registry.

² See caseline on 001-35 Annexure A5

7. Consequently, my own personal history of gun ownership in South Africa has been completely in accordance with the Act in all respects.

8. Given that s 21 licences previously been issued to myself in the same circumstances (being issued to a non South African permanent resident) and under which I have complied in all respects with the Act, then I am merely requesting a s 21 licence, pending my permanent residence application to continue with the legal gun use in South Africa which I have previously demonstrated.

9. I reside in the Republic of South Africa at 2[...] C[...], M[...] Road, Sunninghill, Johannesburg.

10. I am married to Caroline Gillespie a South African citizen with ID No: and we share a home together at the above residential address and wish to continue to reside in South Africa for some considerable time, abiding by all the laws, gun ownership and others of the country.

11. I solely wish to be able to protect my wife from harm in the form of unlawful criminal attacks directed against me at our home or in public. If the CFR consider that this Application is not appropriate, please advise which other Section of the Act is appropriate and what should be used or what other route I must take to be compliant with the Act. (my emphasis).

[15] He submits that his permanent residence was not a consideration that the Registrar took into account nor was it part of the reasons he appealed against. Neither was the question of his permanent residence application nor his intention to apply for permanent residence a factor that was communicated to him as a new requirement, so he could add that to his application in an appeal. He argued that the requirement simply adds additional factors to the matter that were not a factor before the Licensing Board. The Appeal Board seems to have used a new ground to refuse

the appeal without asking him to provide documents to deal with same before making the decision, which is procedurally and materially improper.

[16] The Appeal Board could not decide the appeal on a different basis to which he had appealed the decision of the Registrar. This is directly contrary to the legal position required by the Common law and PAJA legislation. The Appeal did not consider the only reason for the Registrar to have refused the license application. The ground that they refused the appeal was simply materially incorrect in any event.

[17] He furthermore argued that the Appeal Board's decision to refuse him the permit because "he intended to own a firearm under the guises (pretext) for which it was not intended" and that "the provisions of the act cannot be circumvented by issuing temporary authorisation" are simply an unsubstantiated opinion, that has absolutely no factual/evidential or reasonable basis. It is based on speculative imaginings bad both in law and procedure and in breach of the Act. In relation to the fact that he had previously obtained a temporary permit and thus he should be refused another temporary permit, he argues that, once again that is simply based speculatively on the unsupported opinion of the decision maker, without a shred of evidence to support that conclusion therefore bad in law and factually incorrect.

[18] He on that basis argues that the Appeals Boards failed to consider this matter in a proper manner with reference to factual evidence instead of speculation. It had considered the appeal on a different basis entirely influenced by an error of law or fact and failed to consider relevant considerations.

[19] He in that regard refers to an order of the above honourable court to indicate that reasons or motivation not a requirement under s 16, for a licence for dedicated sports status. He argues that the Registrar's refusal was bad in law and the grounds upon which he lodged the appeal were accordingly proper in law.

[20] Indeed the Applicant's Application was his third application for the temporary authorisation in terms of s 21.

Respondents' Response

[21] The Respondents, in their Answering Affidavit deposed to by the Chairman of the Appeal Board, dispute that there is any merit in the appeal and submit that same stands to be dismissed.

[22] According to the Respondent, the Applicant's complaint that the Respondents refused him the temporary permit which he was granted twice before, particularly that the Act does not set out time limits for the s 21 authorisation, interpreting the provisions of the Firearms Control Act wrongly, is factually incorrect and bad in law. As even though the application is brought in terms of s 21, it should be read together with the following sections which are also relevant, that is s 15 and s 16 and the Regulations, referring to Regulations 23 and 24 of the Firearms Control Act and Regulations 2004.

[23] The Respondents points out that s 21 advocates for the issuing of an authorisation on a temporary basis to non-citizens, and not for a continuous issuing of a temporary authorisation even after the period for which the temporary authorisation was issued has lapsed or has expired by operation of the law. The section makes no provision for a renewal or issuing of several temporary authorisation to one individual. They therefore argue that the continued application for a temporary authorisation notwithstanding having been issued previously is therefore not in accordance with the spirit and what was intended by the legislation. Further that should the Applicant be permitted to keep on applying for a temporary authorisation after the lapse or expiry of the period it has been granted, it would defeat the whole purpose of s 21.

[24] As per the spirit of the Act the Registrar could issue the temporary authorisation to non-citizen for such a period and on such conditions as the Registrar may determine which is what the Registrar had done. The Applicant was issued with a temporary authorisation for a period of a year. However, should the Registrar's finding be that the Applicant 's intention is to apply for a firearm licence through s 21 of the Act, he or she will decide to decline the application for a temporary authorisation. According to the Respondents from the Applicant's application, it is clear that he applied for the temporary authorisation under s 21 solely because he

did not qualify for a firearm licence under s 13, however seeking to enjoy the s 13 benefit despite not being qualified to do so.

[25] In terms of the Act no licence can be issued to a person who is not in possession of the relevant competency certificate³. Therefore, the Applicant's continued possession of a firearm without a competency certificate and without being a permanent citizen is in contravention of the Act, in particular Chapter 5⁴ of the Act as well as s 15 and 16. The Applicant's conduct is just an abuse of the purpose of s 21 and to circumvent s 15 and 16 of the Act of which he does not qualify.

[26] They dispute the Applicant's allegation that his right is being violated arguing that a firearm licence or ownership is not a fundamental right under the bill of rights, but a privilege regulated by law.

[27] They further point out that the Applicant did not have to approach the court for a declaratory order in prayer 3 especially that seeks to contradict s 21 by requiring a licence that does not expire, as the Act is very clear on what is required in terms of that section. The temporary authorisation may only be issued for such a period as may be determined by the Registrar. The Applicant by applying for the temporary certificate for the third time, seeks to own or possess the temporary authorisation permit permanently, which is not what was intended by the legislature.

[28] The fact that authorisation was, notwithstanding, issued in the past, does not mean that it must be issued again and illogical for the Applicant to expect the Respondent to allow him to continue to commit a wrongful act simply because it was condoned in the past. The Respondents entitled to refuse an Application or an appeal where a case has not been made out for the authorisation of the temporary certificate to be issued. Each case to be treated on its own merits. The Respondents therefore argued that the Respondents' decision to refuse a temporary authorisation

³ Section 6 (2)

⁴ Chapter 5, Section 9 (2) (b) reads – Where a person has not previously obtained a competency certificate, a competency certificate may only be issued to such a person if she or he is a South African citizen or a holder of a permanent South African residence permit.

is in accordance with the spirit and purpose of s 21 of the Act. Therefore, Applicant's submission totally flawed, and his interpretation of the Act cannot be correct.

[29] The Applicant fails to appreciate that the refusal of the temporary authorisation is not only based on his failure to indicate if he has a pending residence application or not, but it is also based on his repeated application for a temporary authorisation despite having been issued one previously. By so doing it means he wanted to be issued or own a firearm licence under the guise of a temporary authorisation or alternatively the temporary authorisation was no longer of a temporary purpose.

[30] In addition the Respondents point out that the Applicant's appeal to the Appeal Board was fatally defective as the Registrar's decision he sought to appeal against was a refusal of a temporary authorisation for the purpose of sporting activities in terms of s 16 read with s 21. Whilst the appeal was for a firearm licence for the purpose of self-defence which is in terms of s 13. The Appeal Board was therefore called upon to adjudicate the appeal based on incorrect grounds which were not considered by the Registrar. Also, even though the grounds upon which the appeal was brought were correct, the Applicant did not qualify for a firearm licence in terms of s 13⁵, that is for self-defence as he is a non-citizen.

[31] The Respondents therefore submit that the Applicant's application for appeal is fatally defective and should not be considered as an appeal of the decision made by the Registrar. Applicant put before the Appeal Board an application for a firearm licence in terms of s 13 read with s 21 of the Act. The Appeal Board did not decide the Appeal on a different basis but based on the information that was presented

⁵ Section 13. **Licence to possess firearm for self-defence**

- (1) *A firearm in respect of which a licence may be issued in terms of this section is any—*
 - (a) *shotgun which is not fully or semi-automatic; or*
 - (b) *handgun which is not fully automatic.*
- (2) *The Registrar may issue a licence under this section to any natural person who—*
 - (a) *needs a firearm for self-defence; and*
 - (b) *cannot reasonably satisfy that need by means other than the possession of a firearm.*
- (3) *No person may hold more than one licence issued in terms of this section.*
- (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.*

before it. As a result the Appeal Board's refusal of the Applicants application was fair and reasonable.

[32] The Respondents argue that whilst the previous authorisation must have been issued after the Applications were found to be in order and in compliance with the Act at the time, by applying for a temporary authorisation continuously or repeatedly, the Applicant was defeating the whole purpose and intention of s 21. The process followed by the Respondents was therefore procedurally fair.

[33] The Respondents consequently argue that the decision to refuse the temporary authorisation is in line with the spirit and purpose of s 21 and that the Applicant's submission and its interpretation of s 21 is totally flawed and incorrect. The order attached to its Founding Affidavit is also without any reference to the citation of the authority.

Outlook on issue to be decided

[34] The question of whether the refusal of Applicant's application by the Registrar was justified must be viewed from the context in which the application was made, the requirements to be complied with as per the applicable statutory framework and the powers bestowed on or discretion to be exercised by the decision maker. The enquiry is therefore whether or not there was statutory conformity when the decision was made, the purpose sought to be achieved by the exercise of public power within the authority of the functionary.(if in compliance with PAJA and or the common law)

Legal Framework

[35] The ownership and use of firearms in South Africa is regulated by the Act setting out the requirements for licensing, competency testing, safe storage, restrictions on usage and the number and types of firearms that can be owned. The Act therefore provides for an overarching control of firearms and enforces accountability to owners to curb any illegal and reckless use to avoid any mishap such gun use can cause. This is done however within the context and in recognition of the right to life and the right to security of a person that includes the right to be

free from all forms of violence from either public or private sources and of fundamentality of adequate protection of such rights to the well-being, social and economic development of every person.⁶

[36] The section that is foremost relevant is s 3 of the Act - it compels a person to hold a licence to possess a firearm and reads as follows:

“[n]o person may possess a firearm unless he or she holds a licence, permit or authorisation issued in terms of this Act for that firearm”.

[37] Section 6 deals in general terms, with the Registrar’s overseeing powers to grant the competency certificates, licences, permits and authorisations. This includes the power to grant a possession licence. In accordance with s 6 a licence to possess a firearm may not be issued to a person who is not a holder of a competency certificate. The section reads:

“(1) The Registrar may issue any competency certificate, licence, permit or authorisation contemplated in this Act—

(a) on the receipt of an application contemplated in the prescribed form, including a full set of fingerprints of the applicant; and

(b) if the applicant complies with the applicable requirements of Act.

(2) Subject to section 7, no licence may be issued to a person who is not in possession of the relevant competency certificate.

(3) Every application for a competency certificate, licence, permit or authorisation must be accompanied by such information as may be prescribed.”

[38] Additionally in terms of Chapter 5, s 9 (2) (b) of the Act, a competency certificate can only be issued to a South African citizen or a holder of a permanent South African residence permit. The section reads:

⁶ The Act’s preamble

(2) Where a person has not previously obtained a competency certificate, a competency certificate may only be issued to such a person if he or she-

(a) ...

(b) is a South African citizen or she or he is a holder of a permanent South African residence permit;

[39] Evidently, only a South African citizen or a holder of a South African resident permit can be a holder of a licence to possess a firearm. Section 21 makes provision for the issuing by the Registrar of a temporary authorisation for possession of firearms on application by any person including non- citizens, subject to conditions prescribed and imposed and period determined by the Registrar. Failure to comply with conditions may result in the withdrawal of the authorisation. The key word being temporary, the use thereof is to be as permitted by the Registrar and endorsed on the authorisation. The relevant provisions that is s 21 (1), (2) and (5) read:

Temporary authorization to possess firearm

(1) The Registrar may issue a temporary authorisation to possess a firearm to any person, including a non-citizen—

(a) for such period as the Registrar may determine; and

(b) subject to such conditions as may be prescribed and imposed by the Registrar.

[2] (a) The Registrar may at any time withdraw an authorisation if any condition contemplated in subsection (1) (b) is not complied with.

[S 21(2) substituted by s 16 of Act 28 of 2006 with effect from date to be proclaimed.]

(3) The Office of the Central Firearms Register must keep a record containing such information as may be prescribed in respect of all authorisations issued in terms of this section.

(4) The Registrar must submit an annual report to the Minister containing such information as may be prescribed in respect of all authorisations issued in terms of this section.

(5) *A firearm in respect of which an authorisation has been issued in terms of this section may be used only—*

- (a) if the Registrar by endorsement on the authorisation, permits such use; and*
- (b) in accordance with such conditions as may be prescribed and imposed by the Registrar.*

[40] Section 16 provides for the issuing of a license to possess specific firearms for dedicated hunting and dedicated sports shooting purpose. The section reads:

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;*
- (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.*

(4) *Every accredited hunting association and sports-shooting organization must—*

- (a) keep a register which contains such information as may be prescribed; and*

(b) submit an annual report to the Registrar which contains such information as may be prescribed.

[41] Furthermore, the general conditions applicable for temporary authorisation to possess a firearm under s 21 are also expressly outlined in Chapter 4 Regulations 23⁷, 24⁸, 25 of the Firearms Control Regulations, 2004 as pointed out by the Respondents and s 27.

[42] In terms of Regulation 23 (3) (d), a non-citizen who applies for a temporary authorisation to possess a firearm as contemplated in s 21 of the Act must, in addition to the relevant information required by Regulation 13, submit, inter alia, a full written motivation undersigned by the applicant in support of the application. In accordance with Regulation 24 (2) the temporary authorisation will only be valid for the firearm, period and specific use specified in the temporary authorisation. In terms of Regulation 24 (5), the Registrar may determine and specify in the temporary

⁷ Regulation 23 (3) A non-citizen who applies for a temporary authorisation to possess a firearm as contemplated in section 21 of the Act must, in addition to the relevant information required by regulation 13, submit-

(a) a certified copy of an official identity document of the applicant or a certified copy of a valid temporary residence permit as the case may be, or that section of a valid passport issued to the applicant on which his or her identity particulars and the official issuing particulars of the passport are reflected;

(b) an official certificate from the country of citizenship of the applicant confirming that the applicant has no criminal record: Provided that the country issues such certificate.

(c) two written testimonials by South African citizens confirming that the applicant is a fit and proper person to possess a firearm;

(d) a full written motivation undersigned by the applicant in support of the application; and

(e) a full set of fingerprints of the applicant certified by a duly constituted official authority

⁸ Regulation 24 provides that:

Conditions applicable to a temporary authorisation to possess a firearm-

(1) The holder of a temporary authorisation to possess a firearm issued in terms of section 21 of the Act must keep the temporary authorisation wherever the firearm is located and must at the request of a police official produce the temporary authorisation and the firearm to a police official for inspection.

(2) The temporary authorisation will only be valid for the firearm and period and specific use specified in the temporary authorisation.

(3) The holder of the temporary authorization may not possess more than 200 cartridges per calibre of firearm stipulated in the temporary authorisation unless, for the purpose of sports-shooting, the Registrar has on good cause shown, specified a larger quantity in the temporary authorisation.

(4) The Registrar may require that a person to whom a temporary authorisation will be issued, must provide documentary proof of having successfully undergone the prescribed training and testing contemplated in section 9 (q) and (r) of the Act prior to the issuing of the temporary authorisation or in the case of a hunter or sports person who is a non-citizen, an affidavit stating his or her training and experience in the handling of firearms.

authorisation a specific place where the firearm may be used. There is therefore no scope for the statutory deviation.

[43] In addition, the Registrar may in terms of Regulation 24 (4) further require prior to the issue of a temporary authorization, documentary proof of Applicant's successful undergoing of the prescribed training and testing contemplated in section 9 (q) and (r) which is the knowledge of the Act and prescribed training and practical tests regarding the safe and efficient handling of the firearms. In the case of a non-citizen hunter or sports person, an affidavit stating his or her training and experience in the handling of firearms period of validity of the temporary authorization.

[44] Regulation 25⁹, (1) provides for the keeping of the records by the Office of the Central Firearms Register (OCFR) with regard to the temporary authorization to possess a firearm, that consists of the details of the Applicant, the person who completed the application, the firearm, ammunition concerned, the premises and safe storage where the firearm and ammunition are to be kept .

[45] The conditions in respect of use of firearms possessed in terms of s 21 of the Act, are also stipulated in Regulation 27¹⁰ restricting such use by providing that it should only be used, where it is safe to be used and for a lawful purpose. Further that it is to be used in accordance with the stated purpose of use as reflected in the application that was submitted in respect of the permit, and which must be endorsed on the permit.

⁹ Regulation 25 provides: The Office of the Central Firearms Register must with regard to a temporary authorization to possess a firearm keep a record of the—

- (a) name of the police station where the application was submitted;
- (b) details of the person who completed the application;
- (c) reason if the application was refused;
- (d) details of the applicant and the firearms concerned;
- (e) details of the premises and the safe storage facilities where the firearms or ammunition, or both will be kept in safe custody; and

¹⁰Conditions in respect of use of firearms possessed in terms of s 21 of the Act,

27. *A firearm in respect of which an authorization in terms of section 21 of the Act has been issued may only be used-*

- (a) *where it is safe to be used and for a lawful purpose; and*
- (b) ***in accordance with the stated purpose of use as reflected in the application that was submitted in respect of the permit and which must be endorsed on the permit.***

Analysis

[46] The Applicant's Application before the Registrar was for a s 21 temporary authorisation for possession of a firearm. As a non-citizen he could not apply for a licence to possess a firearm however qualified to apply for the temporary authorisation which he had indicated to be for a dedicated clay target sport shooting purposes under s 16. The temporary authorisation was therefore to be granted if the application was found to be compliant with the Act, subject to such conditions as the Registrar may prescribe.

[47] The Applicant had continuously applied for the one-year temporary authorisation for the same use or purpose since 2017. It is common cause that this is the Applicant's third application for a temporary authorisation which was said to be under the same circumstances. On the occasion of the temporary authorisation being granted for the third time, the Applicant would have held such authorisation since 2017 continuously for consecutive 1-year periods. The Registrar's response was that, he was not convinced by the Applicant's stated need. In other words that the authorisation was required temporary or regarded to be still temporary and for the use mentioned. The temporary nature of the authorisation as intended by the Act was indeed distorted by the continuous applications, taking into consideration that Applicant has already been granted the temporary authorisation twice before, for a period of 1 year in each instant. The maximum period for which it can be granted is one year. This goes against the spirit of the Act and it is not what was intended by s 21. As a result, the Registrar's outlook and conclusion that notwithstanding the Applicant stating the purpose for possession of the firearm to be temporary, that being for sport purposes, it was needed for permanent use with a temporary authorisation, was accordingly justifiable considering the facts.

[48] The Applicant cannot refute the Registrar's conclusion as he has also confirmed that he intended on the expiry of the period of the third temporary authorisation, to again apply for the fourth temporary authorisation. He argues that he is entitled to do so in terms of the Act. It is an illogical interpretation, which does not seem to differentiate from a perpetual authorisation and one that is meant to apply momentarily or briefly. The Applicant seem set not to follow the norm. He in

that same vein is now openly seeking in this review a declaratory order for an indefinite temporary authorisation. Another situation which is not provided for in the applicable statute.

[49] In terms of Regulation 24 the Registrar is required, inter alia, to authorise, determine and record accurately the period and specific use for which the s 21 permit is authorised. The Registrar and the Court would therefore be acting contrary to the provisions of the Act, inter alia Regulation 24, if being aware of the non-compliance, that the real intended use or purpose for which the temporary authorisation for the firearm is sought and period are indeterminable, to nevertheless grant the permit. Moreover, a firearm in respect of which a temporary authorization in terms of s 21 of the Act has been issued, may only be used in accordance with the stated purpose of use as reflected in the application that was submitted in respect of the permit and which must be endorsed on the authorization. The refusal of the authorisation was therefore an appropriate and a rational decision given the circumstances.

[50] The absence of a motivation in the application was indeed unsatisfactory as pointed out by the Registrar, especially since the continued temporary authorisation applied for was ostensibly not in line with the alleged need. The Applicant as a non-citizen who applies for a temporary authorisation to possess a firearm as contemplated in section 21 of the Act, is compelled, in addition to the relevant information required by regulation 13, to submit a full written motivation in support of the application.¹¹ The Registrar's reason for refusal was in keeping with the just and proper exercise of his statutory powers.

[51] The allegation that the Registrar ignored the fact that the Applicant was previously granted the permit under the same circumstances is also without merit. The Registrar's response as mentioned previously is evidence that he did consider that Applicant was twice previously granted the temporary authorisation for the same alleged intended use, hence he was dissatisfied with Applicant's application that his

¹¹ Regulation 23 at Supra

possession of the firearm could still be regarded as temporary and for the purpose as envisaged by the Act.

[52] The Applicant seems to have indeed misinterpreted the provision of s 21 in relation to the purpose of the temporary authorisation to mean that he can apply for temporary authorisation for possession of firearms continuously, notwithstanding that it may result in a permanent license to possess a firearm, for which he does not qualify. It is contrary to the applicable prescripts that indicate that the temporary authorisation would be valid for the period and specific use specified in the temporary authorization.

[53] The Applicant in addition disputes that motivation in support of the temporary authorisation application is required. However, motivation is clearly a precondition as per provisions of Regulation 23 (3).¹² The Applicant's application was to be considered subject to compliance with the statutory requirements that includes Regulation 23 (3) (d). The Regulation stipulates that a non-citizen who applies for a temporary authorisation to possess a firearm as contemplated in s 21 of the Act must, in addition to the relevant information submit a full written motivation undersigned by the applicant in support of the application. The Registrar correctly queried and found the Applicant's application to lack the required motivation. The Application was inadequate and factually disingenuous.

On the Appeal Board's decision

¹² Regulation 23 (3) a non-citizen who applies for a temporary authorisation to possess a firearm as contemplated in section 21 of the Act must, in addition to the relevant information required by regulation 13, submit —

- (a) a certified copy of an official identity document of the applicant or a certified copy of a valid temporary residence permit as the case may be, or that section of a valid passport issued to the applicant on which his or her identity particulars and the official issuing particulars of the passport are reflected;
- (b) an official certificate from the country of citizenship of the applicant confirming that the applicant has no criminal record: Provided that the country issues such certificate;
- (c) two written testimonials by South African citizens confirming that the applicant is a fit and proper person to possess a firearm;
- (d) a full written motivation undersigned by the applicant in support of the application; and**
- (e) a full set of fingerprints of the applicant certified by a duly constituted official authority

[54] On appealing the Registrar's decision, the Applicant filed his motivation for the temporary authorisation, setting out the genuine intended use of the firearm to be for self-defence. He stated that he has a right under the Act to apply for a licence for self-defence and that his application for the temporary authorisation for possession of a firearm for self-defence is pending his permanent residence application. This was an obvious deviation to what was stated in his application to the Registrar. Such a declaration confirms that the Registrar was correct in his conclusion that Applicant's application was for a permanent purpose although stated to be for a temporary permit. This was a deliberate misuse of s 21's temporary authorisation for possession of a firearm.

[55] The Applicant explained explicitly in motivation for his appeal that the reason for his application for a temporary authorisation permit was because as a non-citizen he did not qualify to apply for a licence for self-defence.¹³ Due to his wish to protect the concern he had about unlawful criminal attacks, he in the meantime applied for the s 21 temporary permit for self-defence, pending his permanent residence application. The Applicant was well aware that he was using s 21 authorisation to obtain a s 13 licence, contravening the Act, thus deliberately mentioned a pending permanent residence application. He also misrepresented the purpose for seeking the authorisation for his firearm's intended use in his application contravening Regulation 27 as well. In quoting the contents of his motivation for his appeal, he left out in paragraph 11 the following sentence, which reads:

"I solely wish to be able to protect my wife from harm in the form of unlawful criminal attacks directed against me at our home or in public. (my emphasis).

[56] The Applicant, furthermore, appealed to the Appeal Board indicating that, he was in fact seeking an authorisation for possession of a firearm for self-defence for protection purposes. Notwithstanding his application to the Registrar being for a temporary authorisation to possess a firearm for sport shooting purposes in terms of s 16. He therefore in his application did not only disguise the nature of the

¹³ Annexure A5 of the Founding Affidavit on paragraph 2, 3, 4, 5 and 11

authorisation alleging it to be temporary in terms of s 21 but also its purpose misusing s 16. The Appeal Board's decision on this basis cannot be faulted.

[57] Regulation 27 clearly sets out the conditions applicable in respect of the use of a firearm possessed in terms of s 21 which restricts the use thereof to where it is safe to be used and only for a lawful purpose, in accordance with the stated purpose of use as reflected in the application that was submitted in respect of the permit, which use must be endorsed on the permit.¹⁴ The Registrar was therefore correct that the Applicant was in actual act applying for the temporary authorisation for permanent purpose use, for which he did not qualify. A incorrect purpose of use would have been reflected on the authorisation. His appeal was therefore wrong fallible refutable

[58] The Applicant's criticism that the basis upon which his application was refused by the Registrar is discrepant from the decision of the Appeal Board is also misguided. It is the Applicant's appeal to the Board that was discrepant and indeed fatal to the relief sought from the Board as argued by the Respondents. He deviated from the contents of the original application to the Registrar, basing his appeal on different grounds and permit, therefore adding new facts that were not mentioned in his application to the Registrar. Conversely the Appeal Board was very prudent in its reasoning, taking into consideration the factual aspects covered in the altered motivation, for finality sake.¹⁵

[59] In terms of Regulation 24 (2) a temporary authorisation will only be valid for the firearm, period and specific use specified in the temporary authorisation. Both the Appeal Board and the Registrar properly brought their minds to bear on the facts they were required to consider in a s 21 application by a non resident, that is, "the nature of the permit sought, its specific use and period thereof." The decision in both instances was taken appropriately, having had regard to all the relevant facts which showed that the s 21 temporary authorisation was not the one intended but was being misused. The Applicant actually confirmed on appeal what he had alleged to

¹⁴ See footnote 10, supra

¹⁵

be an unsubstantiated conclusion by the Registrar, that the true purpose or the specific use of the firearm was disguised, not being the one stated in the application. The Applicant was aware that as a non-citizen he does not qualify for the firearm use he intended obtaining through a temporary authorisation. His appeal was therefore ill advised.

Permanent resident application

[60] The issue of a permanent residence application was indeed neither a consideration or a factor that was taken into account by the Registrar, as the Applicant did not mention it in his application, nor was it part of the reasons the Applicant appealed against. Neither was it alleged to have been a factor to the Registrar to be communicated to be a new requirement to be considered. The Applicant just added on his own volition on appeal, indicated that the temporary authorisation for the firearm he was applying for was for self-defence. He as a non-citizen did not qualify for such a licence or use, unless he had permanent residence. He therefore to bolster his appeal added that his application was pending the permanent residence application. The Appeal Board appropriately considered it being relevant since he was a non-resident now mentioning a licence under s 13 for self- defence, which he did not qualify for unless he has permanent residence. He deviated from his application, which obligated him to have furnished further clarification on his status. The Appeal Board's uphold the Registrar's decision was reasonable given the facts before it.

[61] Furthermore, the Applicant is ill-advised in his argument that the Board wrongly based its decision that Applicant should be refused another temporary permit simply on an opinion that Applicant had previously obtained a temporary permit, alleging that to be factually incorrect and bad in law. It is not an opinion but a fact that the Applicant has confirmed that this was the Applicant's third consecutive application. He in one instance mentions an intention to again apply at the expiry of this third one distorting the temporary aspect and context in which the permit is granted. As pointed out by the Respondents, the use intended by the Applicant was of a permanent nature. This became apparent in his motivation on appeal to the Board. His interpretation of the applicable statute that it permits him to repeatedly

apply for the temporary authorisation after expiration of each period obviously incorrect. It defeats the whole purpose of s 21 and against the spirit of s 21 to grant authorisation temporarily, meaning for the time being, momentarily or provisionally.¹⁶

[62] In *Minister of Police and Others v Fidelity Security Services (Pty) Limited*,¹⁷ the interpretation of statutes as outlined in various authorities were enunciated to 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 businesslike 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 businesslike 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.*¹⁸

¹⁶ Thesaurus meaning of temporarily

¹⁷ [2022] ZACC 16 at para

¹⁸ In respect of points (a) to (c), reference made to: *Road Traffic Management Corporation v Waymark Infotech (Pty) Ltd* [2019] ZACC 12; 2019 (5) SA 29 (CC); 2019 (6) BCLR 749 (CC) (Waymark) at paras 30-2 and *Cool Ideas 1186 CC v Hubbard* [2014] ZACC 16; 2014 (4) SA 474 (CC); 2014 (8) BCLR 869 (CC) at para 28. See also Endumeni above n 15 at para 18, a passage frequently cited with approval in this Court: see, e.g, *Airports Company South Africa v Big Five Duty Free (Pty) Ltd* [2018] ZACC 33; 2019 (5) SA 1 (CC); 2019 (2) BCLR 165 (CC) at para 29 MAJIEDT J and ROGERS AJ 17

[63] The Applicant is obviously choosing an interpretation that frustrates the apparent purpose of the statute, with results which are not businesslike or sensible but self-serving and insincere when by an ordinary interpretation of the provisions of s 21 and the ancillary sections, these insensible consequences can be avoided. It extends or prolongs the period of temporary authorisation to permanent, contrary to the objectives of s 21. The continuous or extended temporary authorisation and possession of a firearm for self-defence without a competency certificate as sought by the Applicant could never have been intended by the Act. The Applicant's attempt to interpret it to a meaning that amounts to abuse of process was correctly countered.

[64] The Applicant was furthermore obligated in his application to be candid about his possession of his firearm, its intended use or purpose and period of temporary authorisation for a proper consideration of his application. The granting of his application without him being candid and coherent in his application, would result in a mockery of the system and miscarriage of justice. It is a crime to falsify such information in anyway. The capturing of the information or data by the Registrar as required by the Act would have been inaccurate, frustrating the following up and enforcement on compliance. As it turned out that Applicant's application was indeed intended for possession of a firearm licence in terms of s 13 under the disguise of a temporary authorisation, circumventing the need to comply with the crucial requirements for such possession. The Registrar was obliged to consider and or prevent the violation or abuse of the process.

[65] Furthermore, the Applicant's allegations that his fundamental right to own a firearm licence is violated by the refusal has no merit. He failed to meet the requirements as prescribed by the Act and does not qualify. Ownership of a firearm is nevertheless not a fundamental right under the Bill of rights in our Constitution.¹⁹ It is a privilege regulated by law, under the Firearms Control Act and Regulations. The purpose of the Act is to: "(a) enhance the constitutional rights to life and bodily integrity; (b) prevent the proliferation of illegally possessed firearms and, by providing

¹⁹ Constitution of the Republic of South Africa, 1996

for the removal of those firearms from society and improving control over legally possessed firearms, prevent crime involving the use of firearms.”²⁰

[66] The right to own a firearm is therefore not guaranteed. The Act requires compliance with all the necessary requirements set out under its provisions prior to issuing a license to possess a firearm. Applicant has a right to lawfully apply for possession of a firearm upon exercise of which he had a right to be treated fairly by the administrative functionary in the consideration of his application, following due process.²¹ The right is as a result granted under limited circumstances under provisions of the Act.

[67] The procedure followed was indeed lawful, fair and proper, aimed at protecting the integrity of the process and Act applicable, with all the relevant factual and legal considerations properly considered by each of the functionaries in both processes. Their conclusions accord with or followed a proper consideration of the relevant facts and the applicable law, that has resulted in a rational decision. The procedure followed complies with the legal position required in terms of the common law and PAJA.

[68] In *Potgieter v Howie NO and Others*²² the following was stated:

“A rationality review is based on an absence of rationality between the information before the decision maker and which he relied on to form the basis of its decision. It does not refer to the rational connection between reasons given and the decisions but rather the information upon which the decision is based.”

[68] In *Chairman of the State Tender Board v Digital Voice Processing (Pty) Ltd; Chairman of the State Tender Board v Sneller Digital (Pty) Ltd & Others*,²³ the court

²⁰ Minister of Safety and Security v South African Hunters and Game Conservation Association [2018] ZACC 14

²¹ Section 33 (1) of the Constitution of the Republic of South Africa, 108 of 1996, gives anyone a right to administrative action that is procedurally fair

²² [2013] ZAGPPHC 313; 2014 (3) SA 336 (GP), para 20

²³ [2011] ZASCA 202; 2012 (2) SA 16 (SCA) para 40.

also emphasised that in order to be rational, a decision must be based on accurate findings of fact and a correct application of the law. Whilst in *Pharmaceutical Manufacturers*²⁴ this Court stated that:

“Rationality in this sense is a minimum threshold requirement applicable to the exercise of all public power by members of the executive and other functionaries. Action that fails to pass this threshold is inconsistent with the requirements of our Constitution, and therefore unlawful.” The setting of this standard does not mean that the courts can or should substitute their opinions as to what is appropriate, for the opinions of those in whom the power has been vested. As long as the purpose sought to be achieved by the exercise of public power is within the authority of the functionary, and as long as the functionary’s decision, viewed objectively, is rational, a court cannot interfere with the decision simply because it disagrees with it, or considers that the power was exercised inappropriately”

[69] Our courts have further confirmed that the exercise of public power entails rational decisions related to the purpose for which the power was given. In *Pharmaceutical* ²⁵ the court held that:

“It is a requirement of the rule of law that the exercise of public power by the executive and other functionaries should not be arbitrary. Decisions must be rationally related to the purpose for which the power was given, otherwise they are arbitrary and inconsistent in effect with this requirement. It follows that in order to pass constitutional scrutiny the exercise of public power by the executive and other functionaries must, at least comply with this requirement. If it does not, it falls short of the standards demanded by our Constitution for such action.

[86] The question whether a decision is rationally related to the purpose for which the power was given calls for an objective enquiry.

²⁴ *Pharmaceutical Manufacturers Association of SA and Others; In Re: Ex Parte Application of President of the RSA and Others* 2000] ZACC 1 (25 February 2000) above n 61 at para 90

²⁵ At par 85 & 86

Otherwise a decision that, viewed objectively, is in fact irrational, might pass muster simply because the person who took it and mistakenly in good faith believed it to be rational. Such a conclusion would place form above substance and undermine an important constitutional principle.

[70] In addition it is important to point out that, it is not for this court at the time of review to re-determine the policy applied and or processes followed by the decision maker as it was confirmed in *In Bato Star Fishing (Pty) Ltd v Minister of Environmental Affairs and Tourism and Others*, the court also cautioned on imposing on the terrain of administrative agencies stating the following:

“In treating the decisions of administrative agencies with the appropriate respect, a court is recognising the proper role of the executive within the Constitution. In doing so a court should be careful not to attribute to itself superior wisdom in relation to matters entrusted to other branches of government. A court should thus give due weight to findings of fact and policy decisions made by those with special expertise and experience in the field. The extent to which a court should give weight to these considerations will depend upon the character of the decision itself, as well as on the identity of the decision-maker. A decision that requires an equilibrium to be struck between a range of competing interests or considerations and which is to be taken by a person or institution with specific expertise in that area must be shown respect by the courts. Often a power will identify a goal to be achieved, but will not dictate which route should be followed to achieve that goal. In such circumstances a court should pay due respect to the route selected by the decision-maker. This does not mean however that where the decision is one which will not reasonably result in the achievement of the goal, or which is not reasonably supported on the facts or not reasonable in the light of the reasons given for it, a court may not review that decision. A court should not

*rubber-stamp an unreasonable decision simply because of the complexity of the decision or the identity of the decision-maker.*²⁶

[71] Finally in the *Pharmaceuticals Manufacturers* case²⁷ supra, it was pointed out that rationality as a minimum requirement for the exercise of public power,

“does not mean that the courts can or should substitute their opinions as to what is appropriate, for the opinions of those in whom the power has been vested. As long as the purpose sought to be achieved by the exercise of public power is within the authority of the functionary, and as long as the functionary’s decision, viewed objectively, is rational, a court cannot interfere with the decision simply because it disagrees with it or considers that the power was exercised inappropriately.”

[72] In *casu*, the Applicant has failed to show that the Respondents were irrational in refusing his Application for a temporary authorisation cum s 13 licence to possess a firearm or that the decisions were indeed materially influenced by an error of fact or law as he alleged. In my view the Registrar exercised his powers within the realm of the applicable law and functions entrusted to him by the Act, having taken the relevant factors and law into consideration.

[73] In pondering on the error of fact, that is misunderstanding or ignorance of an established and relevant fact,’ in *Pepcor Retirement Fund and Another v Financial Services Board and Another* (198/2002) [2003] ZASCA 56; [2003] 3 All SA 21 (SCA); 2003 (6) SA 38 (SCA) (30 May 2003) where the Registrar was misled on a fact material to his decision which affected the proper performance of the functions entrusted to him, it was pointed out that the Registrar was allowed to bring a (self) review against his decision. At [39] reference was made to the English law in Halsbury’s *Laws of England* 4th ed (2001 reissue) vol 1 (1) para 76 p 164 stating the following:

²⁶ (CCT 27/03) [2004] ZACC 15; 2004 (4) SA 490 (CC); 2004 (7) BCLR 687 (CC) (12 March 2004)

²⁷ at paras 84-5

‘Errors of fact. In exercising their functions, public bodies evaluate evidence and reach conclusions of fact. The court will not ordinarily interfere with the evaluation of evidence or conclusions of fact reached by a public body properly directing itself in law. The exercise of statutory powers on the basis of a mistaken view of the relevant facts will, however, be quashed where there was no evidence available to the decision maker on which, properly directing himself as to the law, he could reasonably have formed that view. *The court may also intervene where a body has reached a decision which is based on a material misunderstanding or error of fact.*’ (Emphasis supplied.)

[74] A further comment in *Pepcor* on the error of fact was as follows:

[48] Recognition of material mistake of fact as a potential ground of review obviously has its dangers. It should not be permitted to be misused in such a way as to blur, far less eliminate, the fundamental distinction in our law between two distinct forms of relief: appeal and review. For example, where both the power to determine what facts are relevant to the making of a decision, and the power to determine whether or not they exist, has been entrusted to a particular functionary (be it a person or a body of persons), it would not be possible to review and set aside its decision merely because the reviewing court considers that the functionary was mistaken either in its assessment of what facts were relevant, or in concluding that the facts exist. If it were, there would be no point in preserving the time-honoured and socially necessary separate and distinct forms of relief which the remedies of appeal and review provide. Of course, these limitations upon a reviewing court’s power do not extend to what have come to be known as jurisdictional facts and, in my view, it will continue to be both necessary and desirable to maintain that particular category of fact. I am therefore, with respect, unable to share the opinion of Professors Wade and Forsyth (quoted in para [39] above) that one can safely ‘consign much of the old law about jurisdictional fact, etc, to well-

deserved oblivion' if by that statement is meant that the distinction between appeal and review will be eliminated. In the present appeal none of the considerations to which I have referred in this paragraph of the judgment arise. The Registrar was entitled to act on the assumption that the correct facts had been placed before him.

[75] Neither could the Applicant prove the issue also argued vigorously that the Appeal Board's refusal amounts to an arbitrary action and procedurally unfair. Contrariwise, the procedure followed by both the Registrar and the Appeal Board was, given the circumstances, lawful and fair. The reasons provided by the Appeal Board for its decision are adequate having properly considered Applicant's appeal on all the facts that he raised before the Board. There is no case made for the court's interference with the decisions.

[76] The Applicant has also failed to make a case for the declaratory order granting him an uninterrupted temporary authorisation permit for possession of the stated firearm and without specifying the use intended as that would be in serious contravention of the Act as already illustrated.

[77] Under the circumstances the following order is made:

1. The Application is dismissed with costs

N V Khumalo
Judge of the High Court
Gauteng Division, Pretoria

For the Applicant: LA Marks

Instructed by: Larry Marks Attorneys
Ref: Mr L Marks Labus-0619

larry@lam.co.za

For the Respondents: MG Senyatsi
State Attorney, Pretoria
advsenyatsi@gmail.com

Instructed by: State Attorney, Pretoria
Ref:1997/2022/Z17/NK
WMotsepe@justice.gov.za
Enquiries:WM Motsepe