

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

CASE NO: 097482/2024

(1) REPORTABLE: NO

(2) OF INTEREST TO OTHERS JUDGES: NO

(3) REVISED

In the matter between:

**THE SOUTH AFRICAN PROFESSIONAL FIREARMS APPLICANT
TRAINERS COUNCIL NPC**

and

**THE QUALITY COUNCIL FOR TRADES FIRST RESPONDENT
AND OCCUPATIONS**

**THE SAFETY AND SECURITY SECTORAL SECOND RESPONDENT
EDUCATION TRAINING AUTHORITY**

THE SOUTH AFRICAN QUALIFICTIONS AUTHORITY THIRD RESPONDENT

**VIJAYEN NAIDOO CHIEF EXECUTIVE OFFICER OF FOURTH
RESPONDENT**

**THE QUALITY COUNCIL FOR TRADES AND OCCUPATIONS
THAMSANQA MADONTSWA FIFTH RESPONDENT
CEO OF THE SAFETY AND SECURITY SECTORAL EDUCATION TRAINING
AUTHORITY**

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

JUDGMENT

MOTHA, J:

(1) This is an ex-tempore judgment. Having abandoned some of its prayers including the contempt of court prayer, the applicant brings an urgent application for an interim order interdicting the first and second respondents from developing and implementing an occupational skills programme for firearm training, pending the finalization of Part B, under case number 066460/2024.

(2) The respondents submitted that this matter is not urgent and there is nothing unlawful about the development of a skills programme. Secondly, they submitted that the applicant has not established a case for an interim interdict in its founding affidavit. To avoid going awry, a brief look at the statutory framework is called for.

Brief statutory framework

(3) The National Qualifications Framework Act 67 of 2008 (NQF Act) came into effect on 1 June 2009, and replaced the South African Qualifications Authority Act 58 of 1995 (SAQA Act). The NQF Act established a ten-level NQF, divided into three distinct frameworks:

- for General and Further Education and Training;
- for Higher Education, and
- for Trades and Occupations.¹

(4) Each of the sub-frameworks is overseen by its quality council. In terms of Section 26 of the NQF Act, read with

¹ Answering affidavit para 112

sections 26G and 26H (2) of the Skills Development Act (SDA), the quality council for Trades and Occupations sub-framework is the Quality Council for Trades and Occupations (QCTO), the first respondent. The QCTO was established by section 26G of the SDA and its functions are set out in section 26H of the SDA. For our purposes, it is important to mention that Section 26I of the SDA makes provision for the QCTO to delegate any of its functions to:

- the executive officer of the QCTO;
- a committee of the QCTO;
- the national artisan moderation body established in terms of 26A;
- a SETA;
- any other suitable body.

(5) The delegation of power does not divest QCTO of the delegated function. It may review, amend or set aside any decision under delegation.

(6) In terms of section 9 (1) (a) of the SDA, the Minister has the power to establish Sector Education and Training Authorities (SETAs), which, in terms of section 9A (1) of the SDA, she may amalgamate into two or more SETAs. That is how the second respondent, the Safety and Security Sectorial Education Training Authority (SASSETA), was established. The Minister amalgamated the Diplomacy Intelligence, Defence and Trade and Industry SETA and the Police, Private Security, Legal and Correctional Services SETA to form SETA 19, SASSETA.

(7) In 2013, QCTO delegated the quality assurance function for qualification 50480 to the applicant, The South African Professional Firearm Trainers Council (PFTC). It is

noteworthy that most qualifications on the QCTO are quality assured by SETAs, under delegated powers from the QCTO.

- (8) To avoid prolixity, I will not discuss the role delegated to PFTC, save to say that it does not prevent the respondents from developing a skills development programme.

(9) *The Law on urgency*

It is well known that urgent applications implicate Rule 6(12)(b) of the Uniform Rules of Court, which reads:

“In every affidavit filed in support of any application under paragraph (a) which refers to urgent applications of this subrule, the applicant must set forth explicitly the circumstances which is averred render the matter urgent and the reasons why the applicant claims that applicant could not be afforded substantial redress at a hearing in due course.”

- (10) The applicant’s grounds for urgency are listed as follows:

“Firstly, the conduct of first and second respondents is in contempt of an existing court order. I am advised that contempt is always a matter of urgency. (the applicant has since abandoned this ground).

Secondly, it is clear that the first respondent is considering a realigned qualification there is no need to develop the skills programme.

- (11) The skills programme may, and in all probability, will lead to the issue of fraudulent training certificates endangering public safety.

- (12) Public safety is always urgent. If training is not properly

quality assured, then fraudulent certificates will be issued by unscrupulous firearm trainers putting the safety of the public at risk.

(13) The South African police services in the form of national commissioner has recognised the applicant as the quality assurer as part of its new digital system that is the subject of three 100 million rent tender and in this regard I refer to the letter of award addressed to the successful tender is an extra

(14) the South African Service are busy designing and implementing a system that has taken since 2019 and through the issue of a court order to design and commence with implementation and which has a value of 300 million.

(15) in terms of the letter for from the national commissioner this process started in April 2024.

(16) Should the second respondent establish a skills program for fire armed training it will not be recognized by or be part of South African police services system which will result in a wastage of public money.

(17) I'm advised that a wastage of public money is a ground for agency."

(18) On 11 July 2024, the applicant obtained an order which simply read: "1. The status quo as it existed prior to 30 June 2024 in respect of qualification 50480 is extended pending the decision of the fourth respondent [the Minister] to extend, replace or realign the qualification with a new qualification, whichever the case may be."

(19) It bears mentioning that the qualification 50480 and the development of skills programme are not the same. The applicant has failed to set out reasons why the interim interdict of the development of the skills programme is urgent. Since the development of the skills programme is in an inchoate and nascent stage, the applicant can obtain substantial redress at a hearing in due course. The applicant has known about this development of the skills programme since 1 August 2024.

(20) Furthermore, and perhaps that is the reason why it abandoned the contempt of court application (after putting the respondent through the expense of answering this issue), the skills development does not replace nor affect the qualification 50480.

(21) I pause to highlight the distinction between a skills programme and a qualification:

(22) In terms of OQSF Policy, the skills programme is:

“5.9.1... a QCTO-accredited learning program that is occupationally based and which, when completed, will constitute credits towards a qualification or part qualification registered on the NQF.”

(23) On the other hand, in terms of the OQSF Policy, a qualification is:

“5.7.1 ... a qualification associated with a trade, occupation or profession resulting from work-based learning and consisting of knowledge you need standards, practical unit standards and work experience unit standards.

(24) Counsel for the applicant submitted that the matter is urgent because the skills programme would be completed by November 2024. This submission is without merit. One needs to have regard to the process as outlined. It has four stages, namely: application, development, evaluation and approval and registration. For instance, in phase three (Evaluation and Approval), which had not been reached at the hearing of this matter, the programme gets evaluated, moderated and presented to the internal qualifications committee for approval. Then it gets published in the government gazette for 21 days to allow for public comments. The QCTO will recommend the programme to SAQA for registration. Before registration, SAQA embarks on its processes to stress test the programme.

(25) With all that said, the applicant has failed to establish urgency. To that end, I can do no better than to refer to paragraph 72 of the answering affidavit:

“This misses the point- the skills programme, irrespective of when it is finalized, is a separate, valid process that does not affect the status of qualification 50480...”

(26) That is the end of urgency for the applicant since their interests are not being affected by the development of a skills programme.

(27) The applicant does not set forth why it would not find substantial redress at a trial in due course. Courts have had occasions to look at this subrule. In the matter of *East Rock Trading 7 Pty Ltd versus Eagle Valley Granite*², the court

² (11/33767)[2011] ZAGP JHC 196 (23 September 2011)

said:

“The import thereof is that the procedure set out in rule 6(12) is not there for taking. An applicant has to set forth explicitly the circumstances which he avers render the matter urgent. More importantly, the applicant must state the reasons why he claims that he cannot be afforded substantial redress at a hearing in due course. The question of whether a matter is sufficiently urgent to be enrolled and heard as an urgent application is underpinned by the issue of absence of substantial redress in an application in due course...”³

(28) As stated in paragraph 73 of the answering affidavit: “There is nothing unlawful about the development of the skills programme. It is in accordance with the statutory mandates and the policies and procedures of SASSETA and the QCTO. Further, the 11 July 2024 order does not interdict SASSETA nor QCTO from taking any step in the development of the skills programme.”

(29) The applicant has not established urgency, in the result, the matter is struck off the roll with costs on scale B.

Order

1. The matter is struck off the roll with costs on scale B.

M.P. MOTHA
JUDGE OF THE HIGH COURT, PRETORIA

Date of hearing: 2 October 2024

Date of judgment: 2 October 2024

³ Supra para 6

APPEARANCES:

For the Applicant:

Adv M Snyman SC instructed by MJ Hood
and Associates

For the 1st, 2nd, 4th & 5th Respondents:

Adv R. Tshetlo and Z Ngakane instructed by
Cheadle Thompson & Hayson Inc.
Attorneys.