



**IN THE HIGH COURT OF SOUTH AFRICA
FREE STATE DIVISION, BLOEMFONTEIN**

Not reportable

Case no: 1866/2025

In the matter between

LEGALLY ARMED SOUTH AFRICA (PTY) LTD

APPLICANT

and

MINISTER OF POLICE

FIRST RESPONDENT

**THE MEMBER OF THE EXECUTIVE COUCIL
FOR POLICE, ROADS AND TRANSPORT:**

FREE STATE PROVINCE

SECOND RESPONDENT

DIVISIONAL COMMISSIONER:

VISIBLE POLICING AND OPERATIONS

THIRD RESPONDENT

NATIONAL COMMISSIONER OF POLICE

FOURTH RESPONDENT

Neutral citation: *Legally Armed South Africa v Minister of Police and Others* (1866/2025)
[2026] ZAFSHC 276 (4 May 2026)

Coram: NAIDOO J

Heard: 4 September 2025

Delivered: This judgment was handed down electronically by circulation to the parties'

representatives by email and released to SAFLII. The date and time for hand-down is deemed to be 11h00 on 4 May 2026.

Summary: Firearms Control Act 60 of 2000 – failure by police to comply with provisions of the Act in respect of firearms, belonging to deceased estates, reported lost or stolen – hampering finalization of deceased estates – order compelling police to comply.

ORDER

1 The applicant is directed to prepare a schedule of all matters, current and historical, over which this court has jurisdiction, that require a police case docket to be opened in the Free State Province. Such schedule is to contain all relevant details required by the Firearms Control Act 60 of 2000 (the Act), in order that the relevant police station may open a case docket, register the firearms on the Enhanced Firearm Registration System and investigate the matter. The applicant shall thereafter file the reporting bundles at the relevant police stations, in accordance with the requirements of the Act;

2 The respondents are ordered to:

2.1 forthwith take all necessary steps to process and attend to all reports filed by the applicant in relation to lost and stolen firearms in the Free State Province, such steps to include the registering of police case dockets for lost or stolen firearms from deceased estates, in terms of sections 147, 120 and 121 of the Act, read with Regulations 86 and 103 to the Act;

2.2 furnish, to the applicant, the Crime Administration System (CAS) numbers for all lost or stolen firearms reported by the applicant to the South African Police Service (SAPS), within thirty (30) calendar days from the date of this court order, such period to be calculated in accordance with Regulation 103(6) to the Act;

2.3 historical reports shall be those reports relating to lost or stolen firearms in the Free State Province, which the applicant previously attempted to report to the SAPS. CAS numbers in respect of such historical reports shall be furnished by SAPS to the applicant within a period of not more than one hundred and eighty (180) days from the date of this court order. The said period of 180 days shall be calculated in accordance with Regulation 103(6) to the Act;

2.4 furnish to the applicant, in respect of historical reports relating to lost or stolen firearms in the Free State Province, proof that such firearms have been circulated on the Enhanced Firearm Register System (EFRS) within 180 days from the date of this court order, such period to be calculated in accordance with Regulation 103(5) to the Act;

2.5 in respect of reports by the applicant regarding lost or stolen firearms in the Free State Province, lodged with SAPS from the date of this court order, the respondents are ordered to furnish to the applicant:

- i. within 30 days of the date of lodgement of the reports, proof that the lost or stolen firearms have been circulated on the EFRS. The period of 30 days shall be calculated in accordance with Regulation 103(5) to the Act;
- ii. acknowledgement of receipt of each report, within 30 days of lodgement of the report, such period to be calculated in accordance with Regulation 103(6) to the Act;

3 The respondents are directed to furnish to the applicant a receipt in respect of any firearm and/or ammunition surrendered to the SAPS in terms of Regulation 94(5) to the Act.

4 Costs of the application.

JUDGMENT

Naidoo J

[1] The applicant, Legally Armed SA (Pty) Ltd (the applicant), seeks, in essence, an order to compel the respondents to take all necessary steps forthwith, to process and attend to the applicant's reporting of lost or stolen firearms originating from deceased estates, in terms of the Firearms Control Act 60 of 2000 (the Act). The respondents opposed the application. The applicant's business is essentially to assist its clients with all matters involving the handling, licensing, transporting, transfer of ownership and disposal of firearms in accordance with the provisions of the Act. Its clients are executors and fiduciaries of insolvent and deceased estates, their agents and beneficiaries. The applicant asserts that it ensures that its clients are compliant with the regard to firearm legislation, identifies and mitigates the risks of non-compliance with the Act.

[2] The relief sought by the applicant is in summary, an order against the respondents, directing them to:

- a) take all reasonable steps forthwith to attend to the applicant's reports relating to lost or stolen firearms from deceased estates, and to register police case dockets in respect of those firearms, in terms of the Act;
- b) furnish to the applicant police case numbers (CAS numbers) in respect of all lost

or stolen firearms reported by the applicant, within 30 calendar days from the date of this order, calculated as provided for in Regulation 103(6);

c) process and attend to historical reports, which the applicant previously attempted to file with the South African Police Service (SAPS), and to provide the applicant with CAS numbers in respect of those matters within a reasonable time, but not exceeding 180 days from the date of this court order, calculated in terms of Regulation 103 (6);

d) furnish the applicant with proof, in respect of the historical lost or stolen firearms, that such firearms have been circulated on the Enhanced Firearm Register System (EFRS), within one hundred and eighty (180) days from the date of this order.

e) deal with the applicant's reports of stolen or lost firearms, from the date of the court order and in the future, in the following manner:

i. furnish the applicant with proof that the lost or stolen firearms have been circulated on the EFRS within thirty (30) days from the date of the report. The thirty-day period is to be calculated from the date of the court order;

ii. furnish the applicant with acknowledgement of receipt in terms of Regulation 103(6) of the Act within thirty (30) days, which period is to be calculated from the date of the court order;

iii. furnish the applicant with a receipt for any firearm and/or ammunition surrendered to SAPS in terms of Regulation 94(5) of the Act.

f) When a member of the public voluntarily surrenders a firearm, or a firearm is found, as well as seized as a result of police action, the Designated Firearm Officer must:

i. Ensure that the firearm and magazine is unloaded, and take possession of the firearm and ammunition and attach a SAPS 13(a) tag with relevant SAPS 13 number to the firearm;

ii. Conduct an enquiry on the EFRS on function 10.5 to determine whether the firearm was reported lost or stolen. If the firearm was circulated as lost or stolen, complete a SAPS 521(f);

iii. Complete a SAPS 522(a) SAPS 522(b) and indemnity form. Register the information in the SAPS 86(a). Obtain a copy of the identification document and the legal authorization to possess the firearm;

iv. If a firearm, identified for destruction, does not have the manufacturer's serial number or additional identification mark, the designated Firearm Officer must send that firearm for etching and Integrated Ballistic Identification System (IBIS) test firing at the Forensic Science Laboratory (FSL). If no serial number could be found, approach the Central Firearms Register via the provincial office to obtain a Firearm Identification number. The Designated Firearm Officer must forward a copy of the respective SAPS 522(b) form to the Central Firearm Registry with a request to issue a Firearm Identification Number;

v. Indicate whether each firearm was surrendered or was an exhibit.

g) Costs of the application.

[3] I have mentioned what the business of the applicant is. It sets out extensively the relevant provisions of the Act and the Regulations thereto, which oblige the executor and/or fiduciaries of deceased estates to comply with the Act when dealing with firearms forming part of a deceased estate. If the firearm is lost or stolen, such loss or theft must be reported to the police, who are obliged to open a case docket in respect of the loss or theft. The police are also obliged to register the firearm as lost or stolen on the Enhanced Firearms Register System (EFRS), and investigate the matter further, if required to do so. The executor or fiduciaries of a deceased estate may only finalise the administration of the deceased estate after this process is completed.

[4] The applicant alleges that it has entered into service level agreements with various individuals and corporate entities, who have granted it special power of attorney to assist them in ensuring that all firearms belonging to deceased estates under their control are attended to in accordance with the Act and, specifically, to report the lost and stolen firearms to the police. This application has been necessitated because the first second and third respondents have, for years, refused or neglected to open case dockets and to list the firearms as lost or stolen on the EFRS. This has hampered the finalization of these deceased estates and, the applicant argues, has resulted in a large number of firearms not being accounted for, which could potentially result in an increase of crime where such firearms are used. The non-compliance by the police has resulted in a real and substantial risk of executors and/or fiduciaries being unable to comply with Act and attracting personal liability and prosecution. A further consequence is the prejudice being suffered by the applicant in that it is unable to fulfil the mandate given to it by the various

executors and fiduciaries, causing it to run the risk of its losing all its business and being unable to generate a steady flow of income to support its sustainability.

[5] The applicant sets out a detailed exposition of the provisions of the Act and regulations thereto, which stipulate the duties of executors and/or fiduciaries of deceased estates, as well as that of someone in the position of the applicant, and procedures to be followed by them in compliance with the Act. The applicant also mentioned the position where the executors and/or fiduciaries surrender firearms belonging to a deceased estate, to the police. In that instance, the police are obliged to furnish such a person with a receipt for the firearm. I do not deem it necessary to repeat those provisions of the Act, but will refer to them as and when necessary. The duties of the respondent, in terms of the Act were also set out in detail. I mention that the allegations with regard to the provisions of the Act and regulations are not disputed by the respondents. The applicant also gave a detailed description of the contractual agreements between it and entities with whom it had entered into service level agreements. I also do not deem it necessary to deal with these agreements, except where necessary.

[6] In attempting to fulfil its contractual obligations arising from its agreements with its respective clients, the applicant alleges that it had limited success in assisting its clients as members of SAPS continually refused to cooperate in having firearms reported and case dockets registered on the Crime Administration System (CAS), and consequently failed to provide it with a CAS number. The applicant listed some of the challenges it alleges that it faced with members of SAPS, which include that SAPS:

- a) refer the applicant from station to station and refuse to accept the required bundles of reporting documents;
- b) informed the applicant that only the owner (who is usually deceased), or the person who discovered the loss or only executors and/or fiduciaries can report the loss of the firearm;
- c) refuse to provide crucial information to complete the application;
- d) refuse to accept information from heirs or next of kin and do not give their cooperation in this regard.

[7] The applicant further alleges that these challenges have persisted since 2015, causing it to write a letter to various departments of SAPS in November 2015, highlighting

their concerns and challenges. This did not improve the situation. Some years later, on 13 May 2020, the national head office of SAPS issued a directive to all provincial commissioners of SAPS, directing that all reporting bundles in respect of lost or stolen estate firearms must be dealt with. The directive sets out detailed instructions in respect of the steps to be taken by SAPS to facilitate this process. The applicant alleges that in spite of this directive, SAPS have continued to conduct themselves as they previously did, leaving the applicant with the same challenges that it had faced over the years.

[8] The applicant further alleges that it held several meetings with the third respondent in an attempt to resolve these challenges. Minutes of two such meetings were attached to the founding affidavit, from which it appears that such meetings were attended by very high-ranking officers of SAPS. I will refer to these later. The applicant indicated that a detailed plan was formulated, and promises were made by SAPS to attend to the issue that lost or stolen firearms were not being registered as such. However, nothing came of it, as the applicant continued to experience the same challenges with police officials from various police stations. The applicant compiled a schedule of the bundles of reporting documents which were not attended to by SAPS in all the provinces of South Africa. These matters reflect that a total number of two hundred and seventy six (276) firearms, emanating from two hundred and five (205) deceased estates, remain unreported and have not been circulated on the EFRS, despite efforts on its part to report these firearms and have police case dockets opened in respect of those firearms. I assume that some of these firearms have now been reported, as the applicant alleges that since 2010, approximately 223 firearms emanating from 174 estates remain unaccounted for, as police case dockets have not yet been opened in respect of those firearms.

[9] The applicant alleges that it has established a clear right to obtain the relief it seeks. Members of SAPS are bound and compelled by the Act to attend to and register lost or stolen firearms, but they have failed to comply with the requirements of the law. This, despite national directives to do so and numerous undertakings by SAPS to attend to these matters. The applicant and its clients have suffered and will continue to suffer extreme prejudice, as the applicant cannot fulfil the mandate given to it by its clients and further, executors and fiduciaries are unable to comply with the prescripts of the Act in respect of the duties placed on them in connection with dealing with lost or stolen firearms. The non-compliance by SAPS with their statutory duties is confirmed by the deponents

to a number of confirmatory affidavits, who detail the responses they received from members of the SAPS, and were turned away when they tried to report lost or stolen firearms. I mention that these are functionaries employed by the applicant's clients (from whom it holds mandates), who attempted to comply with their statutory obligations. The applicant alleges that it is entitled to the relief it seeks.

[10] The respondent in opposing this application raised a point *in limine*, arguing that the second respondent, the MEC for Police Roads and Transport in the Free State was misjoined, as he has no operational functions, no control over and bears no responsibility towards the Provincial Commissioner of Police, who reports directly to the fourth respondent, the National Commissioner of Police, who is responsible for the prevention and investigation of all crimes or alleged crimes in the country. The respondents acknowledge that the National Commissioner of Police is responsible for the prevention and investigation of all crimes committed in the country. This implies that he has overarching powers over the second respondent and the Provincial Commissioner of Police. The respondents further allege that the second respondent has no direct and substantial interest in the order that this court will make, and should not have been cited in these proceedings. The respondents argue that the application should be dismissed against the second respondent with costs.

[11] I mention that the respondents filed their answering affidavit seventeen days out of time and applied for condonation for such late filing. While the applicant did not oppose the application, it alleged that the respondents did not provide a full and satisfactory explanation for the delay, they did not disclose a genuine bona fide dispute of fact and did not enroll the application for condonation. Its lack of opposition was to expedite the hearing of this matter. I have taken account of the respondents' explanation for the delay, which, by and large it was due to protocols and procedures in the office of the State Attorney regarding the engagement of counsel that appears to have caused the delay. The applicant's have not pleaded any prejudice that they would suffer and I can find none. In the interests of justice and in order to finalise this matter, condonation for the late filing of the answering affidavit is granted.

[12] The respondents preface their defence in the answering affidavit, with an exposition of the relevant provisions of the Act, which deal, inter alia, with the possession, handling, storage, and reporting procedure in case of loss, of firearms. The respondents criticize the relief sought in the notice of motion as being couched in general terms and

failing to specify any acts or omissions on the part of the police, indicating that they have failed to perform their duties. They allege further that the applicant is applying, impermissibly so, for the police to do what is expected of them in terms of the peremptory provisions of the Constitution (of South Africa) and/or the South African Police Act 68 of 1995. The applicant simply applies for the police to be ordered to process applications for lost or stolen firearms, which are not specified in this application. The police, they argue, may only be ordered to do what they have failed to do in terms of the duties placed upon them by the Constitution or the South African Police Act.

[13] The respondents acknowledge that the Act requires the police to deal with lost or stolen firearms as provided for in the Act. When a firearm is reported to a police station as lost or stolen, the police have no choice but to act in accordance with the obligations imposed upon them by the Act. Only if the police fail to act in accordance with those obligations, does a legal dispute arise between the parties, which require adjudication by the courts. The respondents assert that when a crime is reported at a police station, a case docket will only be opened if the police are satisfied that a crime has been committed. Thereafter the completed docket is handed to the community service centre commander for registration on the Crime Administration System. The respondents allege that applicant's allegations against the police are based on the alleged inaction of the police to open case dockets, but require such dockets to be opened based on hearsay evidence

[14] A further contention of the respondents is that the EFRS is an internal investigative tool to assist police in tracking a firearm that has been reported lost or stolen, much like a list of missing persons published by the police or the process of internally circulating details of stolen motor vehicles. There is no constitutional or statutory requirement for the police to employ such measures. They argue further that as criminals invent new methods of committing crime, the police have to adopt new methods to effectively combat it. Therefore, the police cannot use an investigative tool if it is no longer effective. On this basis, there are three reasons why the applicant is not entitled to proof that the firearms have been circulated on the EFRS. Firstly, it is a police investigative tool and has no bearing on the constitutional obligation of the police towards a complainant in combating crime. Secondly, there is no statutory requirement that the police circulate the stolen or lost firearms on EFRS. Thirdly, investigative tools are forever reviewed and changed to keep up with current trends relating to the investigation of crimes.

[15] The respondents argue that the EFRS may be changed or adapted if a new system is found to be effective. A court order that the police circulate lost or stolen firearms on EFRS would restrict the police to using an archaic investigative tool. They argue, further, that the duty of the police, when a complainant reports a crime, is to open a case docket and investigate, where necessary. The police should not be compelled to investigate crime in a manner dictated by parties such as the applicant, as the police require flexibility in their investigation of crime. A further complaint by the respondents is the redacted documents furnished as attachments to the founding affidavit, alleging that this causes confusion and prevents the respondents from meaningfully responding to this application. The relief that the applicant seeks, they argue, aims to do exactly what the respondents say should not be done. The relief sought is incompetent, academic in nature and does not resolve any existing dispute between the parties. The respondents allege that the applicant has provided no evidence of the police failing to attend to or process lost or stolen firearms.

[16] While several issues emerged in this matter, I am of the view that the following require adjudication, namely whether:

- a. the respondents failed to comply with the statutory obligations placed upon them by law, in respect of the manner in which lost or stolen firearms are required to be dealt with;
- b. the applicant has made out a case for the relief it seeks.

[17] I deal, firstly with the issue of the misjoinder of the second respondent. The respondents allege that the second respondent has no operational functions or control over the Provincial Commissioner of Police, who reports directly to the National Commissioner of Police. On the respondents' version, the second respondent is a Member of the Executive Council (MEC) in the Free State. In terms of s 125(2)(e) of the Constitution of South Africa, the Premier of the province exercises executive authority together with other MEC's to coordinate functions of the provincial administration and its departments. They do not indicate what exactly the functions of the second respondent are in his capacity as MEC for Police. While they allege that one of the functions of the Provincial Commissioner of Police includes that of establishing police stations and argue that he reports directly to the National Commissioner, the respondents have not meaningfully elaborated on their denial that the second respondent has a direct and substantial interest in the order/s that this court will make. It is well established in our law

that one of the requirements for joinder of a party to legal proceedings, is that such a party must have a direct and substantial interest in the subject matter of the litigation, which may be affected prejudicially by the judgment or order of the court.¹ In the absence of such denial and proof thereof, I am of the view that the joinder of the second respondent to these proceedings is not irregular or incorrect. Even if I am wrong in this respect, the fourth respondent clearly has the ultimate authority in crime prevention and investigation of crimes in the country. Therefore, the joinder of the second respondent does not materially affect the validity these proceedings or, for that matter, exert a negative impact on the functions of the second respondent. The point *in limine* of misjoinder must fail.

[18] Having said the above, I note that the applicant couches its founding affidavit in broad terms regarding the challenges it faces, the prejudice it suffers and the relief it seeks. It attached to the founding affidavit a schedule of matters in the form of annexure K, which I will deal with later, which reflects matters in all the provinces of South Africa. I point out that this Court would normally have jurisdiction only in respect of matters arising in the Free State Province and in respect of persons residing or carrying on business in this province. Any order that this Court will make would be in respect of all matters which fall within the court's jurisdiction in the Free State Province. No evidence or argument has been tendered to show that the order of this Court will be binding on the respondents or their representatives in other provinces. The applicant argues that this application involves the rule of law and the failure by the respondents to uphold the law, by their failure and/or refusal to register and investigate complaints regarding lost or stolen firearms. In so conducting themselves, the police have violated their constitutional obligations² and the statutory duties imposed upon them by the Firearms Control Act, s 2 of which sets out the purpose of the Act and gives further insight into those duties.³ Our

¹ *City of Johannesburg Metropolitan Municipality v Blue Moonlight Properties 39 (Pty) Ltd and Another* [2011] ZACC 33; 2012 (2) SA 104 (CC) para 44; *Judicial Service Commission and Another v Cape Bar Council and Another* [2012] ZASCA 115; 2013 (1) SA 170 (SCA).

² Section 205 of the Constitution of South Africa 108 of 1996, specifically s 205(3) which provides: *The objects of the police service are to prevent, combat and investigate crime, to maintain public order, to protect and secure the inhabitants of the Republic and their property, and to uphold and enforce the law.*

³ The purpose of this Act is to-

- (a) enhance the constitutional rights to life and bodily integrity;
- (b) prevent the proliferation of illegally possessed firearms and, by providing for the removal of those firearms from society and by improving control over legally possessed firearms, to prevent crime involving the use of firearms;
- (c) enable the State to remove illegally possessed firearms from society, to control the supply, possession, safe storage, transfer and use of firearms and to detect and punish the negligent or criminal use of firearms;
- (d) establish a comprehensive and effective system of firearm control and management; and
- (e) ensure the efficient monitoring and enforcement of legislation pertaining to the control of firearms.

courts have on many occasions pronounced upon the functions of and conduct expected of public servants, as the Supreme Court of Appeal (SCA) did in *Kalil N.O. and Others v Mangaung Metropolitan Municipality and Others*⁴ where the court remarked that:

'The function of public servants and government officials at national, provincial and municipal levels is to serve the public, and the community at large has the right to insist upon them acting lawfully and within the bounds of their authority. Thus where, as here, the legality of their actions is at stake, it is crucial for public servants to neither be coy nor to play fast and loose with the truth. On the contrary, it is their duty to take the court into their confidence and fully explain the facts so that an informed decision can be taken in the interests of the public and good governance. As this court stressed in *Gauteng Gambling Board and Another v MEC for Economic Development, Gauteng*, our present constitutional order imposes a duty upon state officials not to frustrate the enforcement by courts of constitutional rights.'⁵

Although this matter concerned a review, I am of the view that it applies equally to this application.

[19] The respondents have not grappled with the allegations made by the applicant that there are hundreds of matters countrywide, where the police have simply failed or refused to accept reporting bundles concerning lost or stolen firearms belonging to deceased estates. The result is that there are hundreds of firearms not reported or circulated as lost or stolen, and are therefore unaccounted for, increasing the risk of such firearms having fallen into the wrong hands, so that serious crimes may be or have been committed, using such firearms. The respondents assert that they do not want firearms to fall into the wrong hands and do what is expected of them in investigating and preventing the commission of crimes. As I indicated, the applicant sets out extensively, in its founding affidavit, the statutory matrix as well as the content of the directive issued by SAPS' national office. The respondents state that the police may only be ordered to do what they are expected to do in terms of the Constitution as well as in terms of statutory provisions, and which they have failed to do. In complaining that the orders which the applicant seeks are of a general nature and not supported by evidence in the founding affidavit, the respondents acknowledge and repeat their statutory duties in terms of the Act, conceding that when a firearm has been reported lost or stolen, the police have no choice but to act in accordance with the duties imposed on them by the Act. All they can

⁴ *Kalil N.O. and others v Mangaung Metropolitan Municipality and Others* [2014] ZASCA 90; 2014 (5) SA 123 (SCA).

⁵ *Ibid* para 30.

muster in defence is that they need not be reminded of these duties.

[20] The respondents have not denied that they have failed or refused to accept the applicant's reporting bundles or engaged with the applicant's allegations which I detailed earlier. Their responses are somewhat shallow and opportunistic. Examples are annexures 'G' and 'K', attached to the founding affidavit, which were redacted copies, where the identity number of the deceased and her daughter, as well as the serial number of the firearm was redacted. Annexure 'G' is a copy of a completed reporting bundle which the applicant attempted to file with the police, with no success. The nominee of the executor deposed to affidavits indicating that the deceased was the registered owner of a firearm which was not handed to the offices of the executor when the estate was reported, and that they are unaware of the whereabouts of the firearm, which was in the possession of the deceased. The daughter of the deceased deposed to an affidavit stating that her mother lived with her at various addresses since 2003, and that the deceased was never in possession of a firearm. She confirmed that in spite of thoroughly searching through her mother's possessions, she did not find a firearm of any description and that there was no firearm in her house.

[21] To a reader of these documents, it is clear that the deceased is the registered owner of the firearm, and presumably was in possession of the firearm (at least up to 2003). The daughter of the deceased was not informed of such a firearm, nor did she ever see such a firearm. After she was informed that a firearm was registered in her mother's name, she conducted a thorough search for it amongst her mother's possessions, which were in her house but did not find it. From this, it is equally clear that the firearm is missing, whether due to theft or loss. Such a firearm falls to be dealt with in terms of the Act. The respondents, in answer, acknowledge annexure 'G', but allege that the statement (by the deceased's daughter) is of no use to the police because the deponent does not mention that the firearm was lost or stolen. On the contrary, she said that it had never been in her home, so there was nothing for the police to investigate. If the deceased's daughter had reported the firearm lost or stolen, based on the allegations she made, the police would not have opened a case docket. By their own admission therefore, the respondents concede that the police did not comply with the provisions of the Act, in respect of the firearms mentioned in annexure 'G'. They have not refuted the applicant's allegation that there are hundreds of matters similar to that mentioned in annexure 'G'.

[22] The respondents also claim that they could not investigate the matter, as the identity number of the deceased, and the serial number of the firearm was redacted. The applicant indicated that, for the purpose of this application, the documents were redacted, but that the unredacted version would be made available to the respondents, on request. In my view, it seems logical that the unredacted version would have been submitted to the police, who refused to accept it. The unredacted version was not requested by the respondents, indicating that they made no serious attempt to meaningfully deal with the applicant's allegations. The unredacted version would have enabled them to search the records of the police to, firstly, confirm that the deceased was indeed the registered owner of the firearm, and, secondly, to ascertain if the firearm was registered on the EFRS. It therefore makes no sense to claim that they cannot investigate the matter because the documents were redacted, or that the documents do not comply with the provisions of the Act.

[23] Annexure 'K' is a copy of a schedule kept by the applicant of the reporting bundles that the police in the various provinces of South Africa refused to accept or failed to attend. The schedule contains information for the applicant's purposes, and to enable it to locate the relevant files in its possession. This document did not require the serial numbers of the firearms to be reflected on the schedule, and the purpose of attaching it as an annexure was to support its contention that there are hundreds of reporting bundles which the police have refused to deal with. The respondents opportunistically, in my view, allege that this document does not reveal serial numbers, which is required in terms of the Act to enable the police to open case dockets, register the firearms on the EFRS and to investigate the matter. It appears that the respondents deliberately misread the document in order to support their allegation that the applicant did not comply with the Act, therefore the police were not obliged to accept the reporting bundles, and, consequently, that the applicant was not entitled to the relief it claims. Perhaps they feared that if they requested the applicant to supply the serial numbers of the firearms, it would have been difficult, if not impossible, to put up even a semblance of a defence. The answering affidavit contains many more such examples. I also mention that the respondents make absolutely no allegation that the EFRS has been changed or that it is no longer valid, but instead make the bald assertion that directives and methods of investigation change from time to time. If the court ordered that the firearms be circulated on the EFRS, it may compel the police to use an outdated investigative tool. This argument is without merit and cannot be

sustained.

[24] The respondents failed to satisfy the test set out by the SCA to determine a genuine and bona fide dispute of fact. In the much-quoted case of *Wightman*,⁶ the SCA held at para 13 that:

'A real, genuine and bona fide dispute of fact can exist only where the court is satisfied that the party who purports to raise the dispute has in his affidavit seriously and unambiguously addressed the fact said to be disputed. There will of course be instances where a bare denial meets the requirement because there is no other way open to the disputing party and nothing more can therefore be expected of him. But even that may not be sufficient if the fact averred lies purely within the knowledge of the averring party and no basis is laid for disputing the veracity or accuracy of the averment. When the facts averred are such that the disputing party must necessarily possess knowledge of them and be able to provide an answer (or countervailing evidence) if they be not true or accurate but, instead of doing so, rests his case on a bare or ambiguous denial the court will generally have difficulty in finding that the test is satisfied. I say 'generally' because factual averments seldom stand apart from a broader matrix of circumstances all of which needs to be borne in mind when arriving at a decision. A litigant may not necessarily recognise or understand the nuances of a bare or general denial as against a real attempt to grapple with all relevant factual allegations made by the other party. But when he signs the answering affidavit, he commits himself to its contents, inadequate as they may be, and will only in exceptional circumstances be permitted to disavow them. There is thus a serious duty imposed upon a legal adviser who settles an answering affidavit to ascertain and engage with facts which his client disputes and to reflect such disputes fully and accurately in the answering affidavit. If that does not happen it should come as no surprise that the court takes a robust view of the matter.'

In my view, the respondents have not grappled meaningfully with the allegations made by the applicant and have thus failed to raise any genuine or bona fide dispute of fact.

[25] The respondents furthermore, did not offer any explanation for the failure by the police to comply with the National Directive of 13 May 2020 issued by the respondents' national head office. As indicated, the directives contain detailed instruction to the police on how to deal with firearms reported to be lost or stolen. This directive has not been withdrawn, and no such allegation has been made by the respondents. It therefore, remains in force and is valid. These directives were preceded by years of interactions

⁶ *Wightman t/a JW Construction v Headfour (Pty) Ltd and Another* [2008] ZASCA 6; [2008] 2 All SA 512 (SCA).

between the applicant and SAPS. The extensive correspondence addressed by the applicant to SAPS as well as the meetings it held with high-ranking officials of SAPS speak of the challenges that the applicant experienced over an extended period of time and the concerted efforts it had made to resolve such challenges. Resolutions taken at the various meetings were not implemented by the police. The result of all this is that the public is not being properly and effectively served by the police in respect of lost or stolen firearms. A serious consequence of that is the proliferation of firearms which cannot be accounted for and the risk that these firearms are being used in the commission of serious crimes.

[26] The applicant seeks a *mandamus* against the respondents compelling them to perform their public and/or statutory duties. On their own version, the respondents may be compelled to do what they ought to have done but which they failed to do. As in the case of a final interdict, an applicant seeking a *mandamus* must show a clear right, an injury actually committed or reasonably apprehended and the absence of a similar or alternative remedy. From what I have set out above, I am satisfied that the applicant has met these requirements. I must, however deal with the relief the applicant seeks. I am in agreement with the respondents that the relief sought ought to be couched in more specific terms in order for the court's directives to be complied with. I am, furthermore, of the view that the applicant has not established that it has *locus standi* to obtain the relief as set out in para 2(f) above, where it seeks an order on behalf of members of the public who voluntarily surrender firearms to the police, or where firearms are found, recovered or seized as a result of police action. The applicant has not made out a case for such relief, and has not shown how its interests or rights have been affected in such circumstances, nor has it demonstrated that the police have not complied with the Act and the Constitution when dealing with firearms in such circumstances. Such relief cannot, in my view, be granted. With regard to costs, there is no reason to deviate from the established practice that costs follow the result. However, I am not in agreement that costs should be granted on scale C. While I am of the view that the respondents have not proffered a substantial defence, no case has been made out for costs on a punitive scale.

[27] In the circumstances I make the following orders:

1 The applicant is directed to prepare a schedule of all matters, current and historical, over which this court has jurisdiction, that require a police case docket to be opened in the Free State Province. Such schedule is to contain all relevant details required by the Firearms Control Act 60 of 2000 (the Act), in order that the relevant police station may open a case docket, register the firearms on the Enhanced Firearm Registration System and investigate the matter. The applicant shall thereafter file the reporting bundles at the relevant police stations, in accordance with the requirements of the Act;

2 The respondents are ordered to:

2.1 forthwith take all necessary steps to process and attend to all reports filed by the applicant in relation to lost and stolen firearms in the Free State Province, such steps to include the registering of police case dockets for lost or stolen firearms from deceased estates, in terms of sections 147, 120 and 121 of the Act, read with Regulations 86 and 103 to the Act;

2.2 furnish, to the applicant, the Crime Administration System (CAS) numbers for all lost or stolen firearms reported by the applicant to the South African Police Service (SAPS), within thirty (30) calendar days from the date of this court order, such period to be calculated in accordance with Regulation 103(6) to the Act;

2.3 historical reports shall be those reports relating to lost or stolen firearms in the Free State Province, which the applicant previously attempted to report to the SAPS. CAS numbers in respect of such historical reports shall be furnished by SAPS to the applicant within a period of not more than one hundred and eighty (180) days from the date of this court order. The said period of 180 days shall be calculated in accordance with Regulation 103(6) to the Act;

2.4 furnish to the applicant, in respect of historical reports relating to lost or stolen firearms in the Free State Province, proof that such firearms have been circulated on the Enhanced Firearm Register System (EFRS) within 180 days from the date of this court order, such period to be calculated in accordance with Regulation 103(5) to the Act;

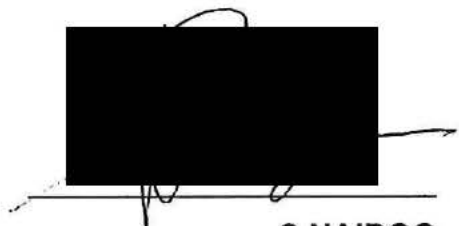
2.5 in respect of reports by the applicant regarding lost or stolen firearms in the Free State Province, lodged with SAPS from the date of this court order, the respondents are ordered to furnish to the applicant:

i. within 30 days of the date of lodgement of the reports, proof that the lost or stolen firearms have been circulated on the EFRS. The period of 30 days shall be calculated in accordance with Regulation 103(5) to the Act;

ii. acknowledgement of receipt of each report, within 30 days of lodgement of the report, such period to be calculated in accordance with Regulation 103(6) to the Act;

3 The respondents are directed to furnish to the applicant a receipt in respect of any firearm and/or ammunition surrendered to the SAPS in terms of Regulation 94(5) to the Act.

4 Costs of the application.


S NAIDOO
JUDGE OF THE HIGH COURT

Appearances

For the Applicant:

N Snellenburg SC

Instructed by:

Stander and Associates

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Westdene

Bloemfontein

(Ref: HJS/GS0545)

For the Respondent:

R Ramaweale SC

Instructed by:

State Attorney

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(Ref: Mr G Chauke)