

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

Case number: 46684/2018

In the matter between

**THE NATIONAL COMMISSIONER OF POLICE**

First Applicant

**THE MINISTER OF POLICE**

Second Applicant

and

**GUN OWNERS OF SOUTH AFRICA ("GOSA")**

Respondent

---

**APPLICATION FOR LEAVE TO APPEAL**

---

**BE PLEASED TO TAKE NOTICE** that on a date to be fixed by the Registrar, application will be made on behalf of the first and second respondent (applicants for leave to appeal) to the Supreme Court of Appeal, alternatively a Full Bench of this Court, against the whole of the judgment and orders made by the Honourable Mr Justice Prinsloo on 27 July 2018.

**BE PLEASED TO TAKE FURTHER NOTICE** that the grounds (both fact and law) upon which this application will be made are that there is a reasonable prospect that a court of appeal will uphold an appeal having regard to the following:

1. The Court erred in granting an interim interdict which results in an impermissible breach of the separation of powers;
2. The Court impermissibly interdicted the respondents from applying, implementing and enforcing various provisions of a valid statute, the **Firearms Control Act 60 of 2000** (“the Act”), the validity of which is not challenged.
3. The order of the Court impermissibly prevents the respondents from carrying out their constitutional and statutory duties.
4. The order of the Court results in intolerable and irrational anomalies:
  - 4.1. Where the owner of a firearm with an expired licence wishes to bring himself or herself within the law by surrendering the firearm to the SAPS, the SAPS may not accept the firearm;
  - 4.2. The SAPS may arrest the owner of a firearm with an expired licence and cause him or her to be prosecuted and imprisoned, but may not permit him or her to end his or her unlawful conduct, by accepting the surrender of the firearm;
  - 4.3. The interim order will contribute to the building of even greater pressure and bottlenecks on firearm administration.
5. The Court erred in granting an interim interdict in circumstances where there is no reasonable prospect that the applicant will obtain the principal final relief which it seeks, as

- 5.1. GOSA seeks orders which will override the Act, without seeking to have the relevant provisions declared unconstitutional and invalid.
- 5.2. that relief is based on an incorrect interpretation of the Act, namely that it authorises the Registrar to revive and extend a licence which has expired through the effluxion of time.
- 5.3. that relief requires the Court to make a blanket anticipatory substitution order in respect of all firearm owners who have not renewed their licenses, including firearm owners who have not applied for an extension.
- 5.4. that relief would effectively amount to a determination that there is “good cause” for extending the prescribed time period in every one of the many thousands of cases of expiry of a licence, whether existing or future, regardless of the facts in each case, when the power to make such decisions is vested exclusively in the Registrar of Firearms.
- 5.5. that relief requires the Court to make a substitution order in circumstances where GOSA does not seek to review any decision of the Registrar;
- 5.6. that relief requires the Court to make a substitution order in circumstances where the Registrar has not been asked to exercise his/her statutory power.

6. The Court erred in granting an interim interdict in circumstances where such interdict is not necessary to preserve the status quo pending the determination of the alternative relief which the applicant seeks in respect of the production of a plan.
7. The Court impermissibly relied upon an annexure to the regulations issued in terms of the Act, in order to interpret the Act.
8. The Court ought to have found that no court is empowered to grant relief creating a firearm licensing regime that is at odds with a constitutionally valid statute.
9. The Court erred in not finding that the relief sought is inconsistent with the judgment of the Constitutional Court in ***Minister of Safety and Security v South African Hunters and Game Conservation Association*** [2018] ZACC 14, decided on 7 June 2018.
10. The Court erred in relying upon inadmissible hearsay, in circumstances where the applicant did not apply for the Court to admit the evidence despite its hearsay nature.
11. The Court erred in relying upon assertions not founded upon admissible evidence of fact.
12. The Court erred and impermissibly descended into the arena by proposing and making amendments to the final relief to be sought by the applicant

which were substantive and not cosmetic, in order to cure defects in the relief sought.


13. The effects of the interim interdict are final and irreparable and cannot be reversed at a later stage, since:

13.1. Firearms will remain in the hands of persons, some or many of whom are no longer competent or capable of handling guns safely, securely or responsibly; and who may harm themselves or endanger others;

13.2. Some or many of the firearms in question may be stolen or lost while illegally in the hands of owners who have not renewed their licenses and end up in the hands of criminals who may injure or kill others.

14. As the separation of powers is implicated and forbids the granting of the order, the interests of justice require that the order is appealable.

**DATED AT PRETORIA THIS THE 07<sup>TH</sup> DAY OF AUGUST 2018.**

  
\_\_\_\_\_  
OFFICE OF THE STATE ATTORNEY  
Attorneys for the Applicants  
Thabo Sehume Street

