

**IN THE HIGH COURT OF SOUTH AFRICA
(NORTH GAUTENG HIGH COURT, PRETORIA)**

Case number: 13963/11

In the Application of:

**THE SOUTH AFRICAN HUNTERS AND
GAME CONSERVATION ASSOCIATION**

Intervening Party

For leave to intervene in the application brought by:

THE SAGA TRUST

First Applicant

In re:

ISMAIL OMAR

Second Applicant

MARIUS RICHARD FURST

Third Applicant

PETER STEWART

Fourth Applicant

ZIAAD JADHA

Fifth Applicant

J M GREEN

Sixth Applicant

MARC ALLEN

Seventh Applicant

and

NATIONAL MINISTER OF SAFETY AND SECURITY

First Respondent

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

Second Respondent

SECRETARY OF POLICE

Third Respondent

NOTICE OF MOTION

TAKE NOTICE that Intervening Party intend to make application to the above Honourable Court on 26 July 2011 or such later date as the matter may be heard, for orders in the following terms:

Part A:

- a) That the Intervening Party is granted leave to intervene; alternatively
- b) Allowing the intervening party to be joined as an Applicant in the application of SAGA and others versus the Minister of Safety and Security in case number 13963/11;
- c) That the intervening party will pay its own costs of this application for leave to intervene, save in the event that it is opposed;

Part B:

THEREAFTER, if granted leave to intervene, the Intervening Party intend to apply to the above Honourable Court for the following orders:

- d) Postponing the application by SAGA under case number 13963/11 *sine die*;
- e) Granting leave to SAGA to enrol case number 13963/11 with a notice to all parties should the discussions between the Minister of Safety and Security and members of the Firearm Fraternity, that commenced with as a consequence of the interim order granted by the honourable Mr Justice B Prinsloo under case number 33656/09 on 26 June 2009 not be concluded satisfactorily within three months of the date of this order;

- f) That all costs orders under case number 13963/11 be reserved and that any of the parties to case number 13963/11 be given leave to enroll the application to argue any cost order;
- g) That, should the negotiations between Minister of Safety and Security and members of the Firearm Fraternity not be concluded satisfactorily, leave be granted to the intervening party to supplement its founding affidavit in the event of the First to Seventh Applicants in case number 13963/11 resolving to enrol the application.

TAKE NOTICE that the accompanying affidavit of DANIEL VENTER will be used in support of this application.

TAKE NOTICE FURTHER that Applicant has appointed the address of its attorney **Mr George Nell, c/o VFV Mseleku of Block A, Corporate Place, 39 Selati Street, Ashlea Gardens, Pretoria** at which it will accept notice and service of all process in these proceedings.

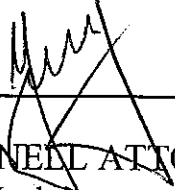
TAKE NOTICE FURTHER that if you intend opposing this application you are required to:

- (a) notify Applicant's attorney in writing within ten (10) days after receipt hereof;

- (b) within fifteen (15) days after you have so given notice of your intention to oppose the application, to file your answering affidavits, if any; and
- (c) you are required to appoint in such notification an address referred to in rule 6(5)(b) at which you will accept notice and service of all documents in these proceedings.

If no such notice of intention to oppose be given, the application will be made on the 26TH day of JULY 2011 at 10h00 or as soon thereafter as the application may be heard.

SIGNED at Pretoria on this 21st day of JUNE 2011



GEORGE NEIL ATTORNEY
Co VFV Mseleku
Applicants' Attorneys of
Block A, 39 Selati Street,
Ashlea Gardens, Pretoria.
Ref: G Ferreira

TO : THE REGISTRAR OF THE HIGH COURT
PRETORIA

AND TO : MJ HOOD AND ASSOCIATES
FIRST TO SIXTH APPLICANTS'
ATTORNEYS
DOCEX 11, RIVONIA
Ref: Mr Hood/S0172

c/o DOCEX
GEN POST OFFICE BUILDING
271 VERMEULEN STREET
CHURCH SQUARE, PRETORIA

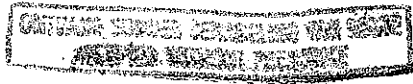
Received copy hereof on _____ June 2011

AND TO:

THE STATE ATTORNEY
ATTORNEYS FOR RESPONDENTS
8TH FLOOR, BOTHONGO HEIGHTS
167 ANDRIES STREET
PRETORIA
Ref: Mr. SP Mathebula / 1393 / 2011 / Z51

Received copy hereof on _____ June 2011

[Handwritten signature] 13h50



STAATSPROKUREUR PRIVAATSAK/PRIVATE BAG X91
2011 -06- 2 1
PRETORIA 0001 STATE ATTORNEY

**IN THE HIGH COURT OF SOUTH AFRICA
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The **SAHGA**

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NATIONAL MINISTER OF SAFETY AND SECURITY

First Respondent

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AFRICAN POLICE SERVICE

Second Respondent

SECRETARY OF POLICE

Third Respondent

INTERVENING PARTY'S AFFIDAVIT

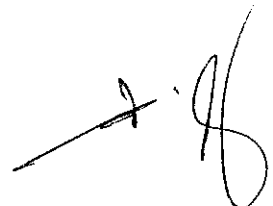
I, the undersigned,

DANIEL CHRISTIAAN ADRIAAN VENTER

hereby declare under oath as follows:

1.

- 1.1. I am an adult person full legal capacity, residing at 346A Lawley Street, Waterkloof, Pretoria, Gauteng, with business address Plot 3, 7 Mountain Drive, Derdepoort, Pretoria, Gauteng.
- 1.2. I am the Chief Executive Officer of the South African Hunters and Game Conservation Association. I am duly authorised to depose to this affidavit on behalf of the South African Hunters and Game Conservation Association in terms of a resolution, passed at a duly constituted meeting of the Executive Committee of the South African Hunters and Game Conservation Association and which was held in Pretoria on the 12th day of May 2011. A Certified extract from the minutes of the meeting confirming this authorisation is attached and marked Annexure "DV1".
- 1.3. I confirm that all facts deposed to in this affidavit fall within my personal knowledge, unless it is stated otherwise or unless the contrary is clear from the context, and are both true and correct.



2.

The intervening party is the South African Hunters and Game Conservation Association, a voluntary association, a juristic person by virtue of the stipulations of its constitution entitled to sue in its own name and liable to be sued in its own name of address Plot 3, 7 Mountain Drive, Derdepoort, Pretoria, Gauteng.

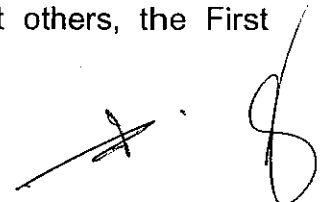
3.

This is an application by the intervening party, to intervene in the application which the First Applicant and six other applicants filed against the Respondents.

4.

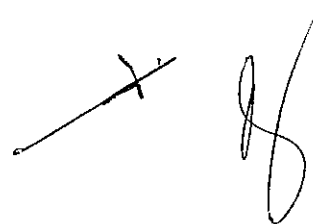
In support of the application to intervene as an intervening party (Part A of the relief sought in the Notice of Motion), I submit that the following factors are relevant:

- 4.1. As is clear from the relief sought, the applicants prays that the Honourable Court shall grant certain relief, but more in particular that that relief shall be interim relief pending the finalisation of the application brought under case number 33656/09;
- 4.2. The application brought under case number 33656/09 is an application that was brought by the Intervening Party against, amongst others, the First

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Respondent for certain relief. Simultaneously with this application, the Intervening Party also brought an urgent application, during June 2009 for certain interim relief pending the finalisation of the main application.

- 4.3. The relief sought by the applicants in this application deals with the interpretation of the court order granting the interim relief pending the finalisation of the main application, and the interim relief was granted on 26 June 2009 by Mr Justice Prinsloo.
- 4.4. As such, the Intervening Party has a direct and substantial interest in the subject matter of, and relief claimed in this application;
- 4.5. I confirm that I have read through the founding, answering and replying affidavits in this application and I am of the opinion that the Applicant should have joined the Intervening Party and in view of the fact that it neglected to do so, that the First Respondent was, as of right, entitled to demand joinder of the intervening party and that a plea of joinder should have been pleaded ;
- 4.6. I consequently pray that the Honourable Court shall order that the intervening party shall intervene and shall participate further, as an intervening party, in this application.

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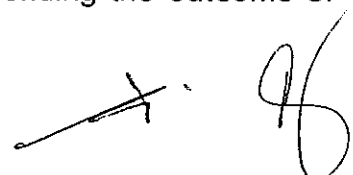
5.

Part B of the relief sought relates to the subject matter of the application brought by the Applicants against the Respondents, viz, that the First Respondent be interdicted from implementing the stipulations of Schedule 1 to the Firearms Control Act 60 of 2000.

6.

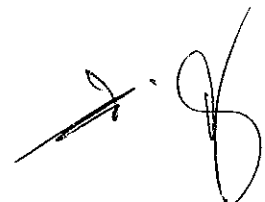
I have thoroughly read through the Founding, Answering and Replying Affidavits. In the light of the relief sought by the Intervening Party, I do not answer to any of the affidavits to the extent of responding to all factual allegations contained in all paragraphs of the above-mentioned affidavits. I wish to respond, however, to certain specific aspects highlighted in the papers thus far:

- 6.1. On 26 June 2009, the Pretoria High Court granted an interim order to the applicant which would have been operative pending finalisation of the main application, which was also instituted during June 2009;
- 6.2. Following the granting of the interim order, the Third Respondent approached the Intervening Party with the request that the Intervening Party and the First Respondent should enter into discussions, in a constructive manner rather than to litigate in an adversarial climate, in an attempt to address the issues which formed the subject matter of the main and urgent applications of June 2009. We agreed to hold the litigation in abeyance pending the outcome of



these discussions. The result of this was that, on 29 March 2010, the main application was, by agreement, postponed *sine die* with costs reserved;

- 6.3. Should the discussions with the Third Respondent resolve the issues that form the subject matter of the main application, we will move to discharge the interim order at the appropriate time and we will settle the final order;
- 6.4. If these issues are not resolved satisfactory then the Intervening Party will simply proceed with the main application;
- 6.5. It is apposite to point out at this stage, that, after the discussion process had commenced, both the Intervening Party and the Third Respondent consciously resolved to involve a number of other role players which are all actors in the firearm fraternity. The net result of this was that a broader discussion forum came into being and the discussion process moved along with due consideration of all significant role players (including the First Applicant) in the South African firearm fraternity;
- 6.6. In the meantime, the Intervening Party has taken notice of the fact that the First Respondent continued to implement the stipulations of Schedule 1 of the Firearms Control Act 60 of 2000;
- 6.7. The continued implementation of Schedule 1 indeed created serious problems for the members of the Intervening Party. The Intervening Party would have preferred that the First Respondent would refrain from implementing Schedule 1 of the Firearms Control Act for the reasons set out further on in this affidavit;

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- 6.8. In one specific way, the members of the Intervening Party are potentially prejudiced by the implementation of Schedule 1 of the Firearms Control Act. In terms of Item 11 of Schedule 1, failure to apply for the relicensing of 1969 issued firearm licences is a criminal offence and punishable with a fine and imprisonment. I am aware of a number of instances where the First Respondent proceeded with criminal prosecution in terms of Item 11 of Schedule 1;
- 6.9. In all of the above instances, the Intervening Party approached the Third Respondent with a request that prosecutions be stopped and in all instances the charges against the individuals were withdrawn. I am acutely aware of the fact that the implementation of Schedule 1 is a matter of national interest and it is, for obvious reasons, highly unsatisfactory to manage the adverse consequences of the implementation of Schedule 1 on an *ad hoc* basis;
- 6.10. The Intervening Party took a conscious decision to rather manage the adverse consequences of the implementation of Schedule 1 in the way as is described above since the two discussion teams developed a relationship of mutual trust and the members of the two teams are both committed to resolve the issues that led to the applications being brought during July 2009;
- 6.11. The Intervening Party is, however, acutely aware of the fact that the discussion process cannot drag on indefinitely and that the process should bear tangible fruits in the near future. Until a conclusion can be drawn that no results will be forthcoming from the discussion process, the Intervening Party

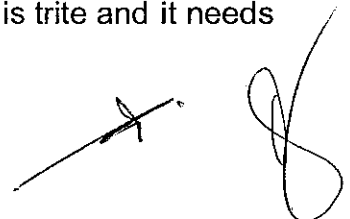


wishes to ensure that the process of discussion has every opportunity to succeed.

7.

I deem it important to deal with the judgement of Prinsloo J, which was delivered on 26 June 2009, since this judgement is obviously pivotal to the existing dispute between Applicants and the Respondents:

- 7.1. The judgement delivered by Prinsloo J, declares that all firearm licences that were issued under the 1969 Act would, from the date of such an order, be declared to be deemed valid pending the outcome of a main application, which had, at that time already been instituted by the intervening party, and which challenged the constitutionality of Schedule 1 of the Firearms Control Act 60 of 2000;
- 7.2. It is true that the *ipsissima verba* of the order which Prinsloo J delivered on 26 June 2009 do not stop the First Respondent from implementing Schedule 1 of the Firearms Control Act. In this regard, the First Respondent, so I am advised, is correct in asserting that the order in itself merely by looking at the wording thereof, does not prohibit the implementation of Schedule 1;
- 7.3. I am also advised that one should bear in mind that the order that was given on 26 June 2009, was an interim *pendente lite* order and it is trite and it needs



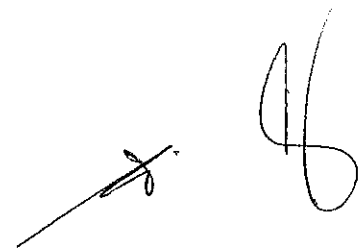
not be argued at all that, before the relief would have been granted, the Intervening Party, had to convince the court that it made out a *prima facie* case with regard to the main application;

7.4. In this regard, Prinsloo J stated as follows:

“In my view the Applicant has established a strong *prima facie* case in respect of the main application. I make this remark after due consideration of diligent efforts and reasoned arguments advanced by Mr Ellis on behalf of the Respondent. In the time at my disposal, and not in an effort to make light of the submissions of Mr Ellis, I do not propose dwelling on the detail of those submissions.”

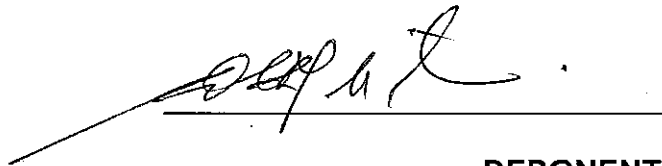
7.5. It is consequently clear that the Intervening Party satisfy the requirement that a *prima facie* case with regard to the main application has been made out;

7.6. I submit that any reasonable and responsible organ of state which is faced with such a strong conclusion regarding the constitutional invalidity of its empowering legislation should be very hesitant to implement such legislative stipulations. Such an organ of state should, on the contrary, do everything within its power to clarify the constitutional legality of its empowering legislation in order to ensure that the administrative conduct shall be legal and constitutional. In this regard, I am advised, that the Applicants are more than reasonable in the approach that the First Respondent should be stopped from implementing Schedule 1 of the Firearms Control Act.

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8.

Despite the conclusion in the previous paragraph, I pray that the honourable court shall grant the relief prayed for in Part B of the Notice of Motion, that is not to grant the order as prayed for by the Applicant, but rather to postpone the matter *sine die* with a view to afford the discussion process between the First Respondent, other members of the fire on fraternity, and the Intervening Party full opportunity to arrive at a final result. In this regard, the honourable Court will note that the Intervening Party prays that all orders as to costs be reserved at this stage and that the applicants be given leave to re-enrol the matter within three months should the discussion process between the Intervening Party and the first respondent not be successful. The honourable court will furthermore note that in such an event, the intervening party begs leave to supplement its papers in order to file a full response to the papers filed thus far in the application.

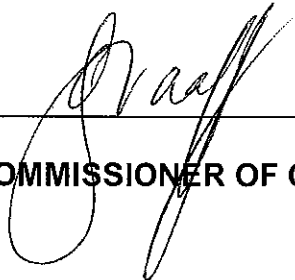


DEPONENT

I certify that the Deponent acknowledged that he/she knows and understands the contents of this affidavit, that he/she has no objection to the making of the prescribed oath and that he/she considers this oath to be binding on his/her conscience. I also certify that this affidavit was signed in my presence at PRETORIA on this 17th day of JUNE 2011 and that the Regulations contained in Government



Notice R1258 of 21 July 1972, as amended by Government Notice R1648 of 19 August 1977, have been complied with.



COMMISSIONER OF OATHS

NATALIE GRAAFF
COMMISSIONER OF OATHS
PRACTISING ATTORNEY
Republic of South Africa
1027 Schoeman Street, Hatfield, Pretoria



a) **SAGA-Trust**

Die VPJ rapporteer dat SAGA-Trust en andere besig is met regsaksie teen die Minister van Polisie om her-lisensiëring te staak en hulle gebruik SAJWV se saak as die grondslag van hulle aansoek. SAGA-Trust het in hulle beëdigde verklaring verwys na beweerde konsultasie met die SAJWV klaarblyklik met die doel om daarmee hulle saak te versterk. Die regsverteenwoordiger van SAGA-Trust versoek ook in 'n skrywe dat SAJWV reageer op die beëdigde verklaring van respondente namens die Minister van Polisie waarin beweer word dat daar samesprekings en gesprekke tussen SAJWV en die Polisie is met die oog op moontlike skikking van die SAJWV hofaansoek. Die regsverteenwoordiger van SAGA-Trust versoek spesifiek dat die SAJWV sodanige samesprekings moet ontken.

UK besluit:

Die UK besluit om nie by die aksie van SAGA-Trust betrokke te raak nie.

Die UK besluit verder dat die Pres, HUB en VPJ (in sy hoedanigheid as RV) soos in die verlede sal voortgaan om die regsaksie te bestuur en namens die SAJWV teenoor SAGA-Trust te respondeer soos nodig mag wees.

