



MEDIA STATEMENT

SCA upholds international principle of regular gun licence renewals

National Commissioner of Police & Another v Gun Owners of South Africa (561/2019) [2020] ZASCA 88 (23 July 2020)

Supreme Court of Appeal, 23 July 2020: Gun Free South Africa welcomes the hard hitting judgment of the Supreme Court of Appeal which overturns an urgent interim interdict issued by Judge Bill Prinsloo in the Pretoria High Court in July 2018, which stopped the SAPS from enforcing various provisions of the Firearms Control Act (FCA). The interdict was a serious blow to gun control in South Africa because it disabled the scheme of renewal and termination of firearm licences, by prohibiting the SAPS from demanding or accepting the surrender of firearms by licence-holders, whose licences had expired because they had failed to renew their licence within the prescribed timeframe.

The judgment upholds the validity of firearms licence renewal as a cornerstone of the Firearms Control Act (FCA), affirming that the Act prohibits the possession of a firearm unless the holder has a licence, permit or authorisation to do so, thereby criminalising the unlawful possession of a firearm. Under section 24 and section 28 of the FCA, all gun owners are required to renew their firearm licences on a regular basis.

The SCA judgment further affirms that ‘the core premise of the gun control regime [in South Africa] is that gun ownership is not a fundamental right under the Bill of Rights, but a privilege regulated by the law under the Act.’

Gun Free South Africa, represented by Norton Rose Fulbright, acted as amicus curiae (friend of the court) in the case, which was heard by the SCA on 22 May 2020. The SCA acknowledged the value of the GFSa submission in which GFSa argued that the *‘interim interdict constituted an inappropriate exercise of judicial power as it did not take into account the application of international law; and that the high court had exercised its remedial power in a manner that interfered with South Africa’s international obligations’*.

The Court was particularly harsh on Judge Prinsloo’s acceptance of the so-called facts put up by GOSA, noting that it had not put up *“a shred of evidence”* to support its case. The SCA dismissed Judge Prinsloo’s finding of prejudice to gunowners noting that many of them, some 1.7 million gunowners, had in fact renewed their firearm licences. The Court found that the interim interdict granted was *“constitutionally inappropriate, it violates the principle of separation of powers, it guarantees the unlawful possession of firearms, and therefore it must be set aside.”*

On the question of costs, the SCA was particularly damning noting that: *“GOSA brought an application which was without merit, based on assertions and inadmissible evidence, and then insisted on being heard on an urgent basis. It flouted the most basic rules of litigation. The litigation was conducted in a ‘manifestly inappropriate’ manner.”*

Adèle Kirsten, GFSa Director, commented that ‘the significance of this judgment is that it obliterates the main relief pursued by GOSA, which sought a return to the apartheid era’s permissive Arms and Ammunition Act that facilitated firearm ownership, without real checks and balances. This flies in the face of accepted

international norms on gun control'. The SCA ruled that *"GOSA simply did not make out a case for an interim interdict. The main relief had no reasonable prospect of success: it was doomed to failure from the outset."*

Gun Free South Africa calls on the SAPS to forthwith enforce the renewal provisions of the FCA and it calls on gunowners to comply with the law and to make use of firearm amnesties when they are declared.

NOTE TO EDITOR:

On Friday 22nd May 2020, the Supreme Court of Appeal considered an appeal lodged by the Minister of Police against an urgent interim interdict issued by the North Gauteng High Court in July 2018 in favour of GOSA, following the ruling by the Constitutional Court on 7 June 2018 in which it upheld the constitutionality of sections 24 and 28 of the Firearms Control Act (2000). The ConCourt matter dealt with an appeal by the Minister of Police following an application in 2016 in the North Gauteng Court by the SA Hunters and Game Conservation Association to have sections 24 and 28 of the Firearms Control Act (2000) declared unconstitutional.

- Section 24 deals with gun licence renewals, it requires that anyone wanting to renew a gun licence must apply at least 90 days before the licence expires.
- Section 28 deals with the termination of gun licences: under subsection 1a, a licence terminates when the renewal period has expired unless the licence has been renewed; subsection 2b gives the Registrar (who is the national police commissioner) the right to cancel a licence if the licence holder has contravened or failed to comply with the Act (e.g. by failing to renew his gun licence in time); and subsections 4 and 5 state that when a gun licence is cancelled the gun must be disposed of through a dealer within 60 days, otherwise it must be forfeited to the state.

In 2016 the South African Hunters and Game Conservation Association challenged these sections, arguing they are vague and irrational, breached the right of equality and deprived gun owners of their property, as a gun owner who fails to renew his licence in time, and is thus in possession of an unlicensed weapon, must forfeit his gun to the state.

The Constitutional Court ruled that gun ownership is not a fundamental right under our Bill of Rights, rather it is a privilege regulated by the Firearms Control Act. Under the Act:

- No person may possess a gun without a valid licence;
- A firearm licence is valid for a limited period; and
- Unless a gun owner has renewed his gun licence before expiry, he has committed a criminal offence and is subject to penalties, including a fine or imprisonment.

Ends