

COURT ORDER SOUTH AFRICAN ARMS AND AMMUNITION DEALERS ASSOCIATION AND THE MINISTER OF POLICE 12 MAY 2017

In terms of the Court Order made on 12 May 2017 between the South African Arms and Ammunition Dealers Association and the Minister of Police, the Minister of Police undertook not to destroy any firearms surrendered in terms of the police directive of 3 February 2016 pending the Judgment in the application of the SA Hunters and Game Conservation Association.

Another part of the Court Order specified that the police must process SAP534 licence cancellation forms if a firearm was validly licenced. This was to enable a licenced firearm dealer to buy or take over a firearm.

In terms of the Judgment of the Judge, Judge Tolmay in the South African Hunters and Game Conservation Association matter under case number 2117/2016 handed down on 4 July 2017, she ordered, *inter alia*, the following:

"68.3 All firearms issued in terms of the Firearms Control Act 2000 (Act 60 of 2000) which are or were due to be renewed in terms of Section 24 of the Firearms Control Act 2000 (Act 60 of 2000) shall be deemed to be valid until the Constitutional Court has made its determine on Constitutionality of the aforesaid section..."

My interpretation of this part of the Court Order is that it is an interim Court Order. It is an interim Court Order because it clearly states that until the Constitutional Court has made a determination, all licences are valid. The Judge made the order in this way, in my opinion, because she wanted to provide an umbrella of protection for firearm licence owners whose licence has expired because the law does not make provision for what to do in such circumstances. The Judge in fact noted that possession of the firearm would otherwise be illegal, and that there could be criminal consequences of such illegal possession. She clearly therefore wanted to provide legal protection to firearm owners who had innocently allowed their licence to lapse.

All the indications are that the South African Police Services and/or the Minister of Police want to appeal this decision. I am not going to debate the merits of this course of action here, but I do need to make certain legal observations.

Firstly, Section 18 (2) of the Superior Court's Act clearly provides that an interim order cannot be suspended by way of the making of an application for Leave to Appeal or of an Appeal.

Section 18 (3) goes on further to state that an applicant who wants to suspend an interim Court Order must prove on the balance of probabilities

that they will suffer irreparable harm if the court does not order a suspension of the interim Court Order. So if an Appeal is lodged, the interim Court Order should remain in force, unless the Minister proves irreparable harm.

This raises the very real question of whether a person who possesses a firearm on an expired licence can lawfully dispose of that firearm.

The answer lies in the combination of the SAAADA Court Order and the Order of SA Hunters.

SAAADA compels the police to process 534 cancellation forms if at the date of transaction the licence was valid.

The effect of the interim order in the SA Hunters matter is that all firearm licences are valid pending finalisation of the matter in the Constitutional Court.

Therefore in my view, a firearm dealer can take your firearm and cancel the licence even on an expired licence.

The question of course will be, whether the police will act in accordance with the Court Order or will deliberately disobey it for their own reasons and motives.