Maimela vs Minister of Safety and Security

COMMISSIONER, SOUTH AFRICAN POLICE SERVICE, AND OTHERS v MAIMELA AND ANOTHER 2003 (5) SA 480 <T)

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Citation	2003(5)SA480(T)
Case No	A1808/2002
Court	Transvaal Provincial Division
Judge	Du Plessis J, Southwood J and Webster J
Heard	May 28, 2003
Judgment	June 17, 2003
Counsel	P C Van der Byl SC (with him E I Moosa) for the appellants.
	J L Kaplan for the respondent.
Annotations	Link to Case Annotations

Flynote: Sleutelwoorde

Firearms - Licensing of - Application for licence in terms of s 3(1) of Arms and Ammunition Act 75 of 1969 - Refusal of - Reasons for refusal - Should be intelligible and informative to reasonable reader thereof - If reasons refer to extraneous source, that source to be identifiable to reasonable reader - Reason for refusal stated to be that 'premises/residence does not conform to required standard' not adequate - May have been sufficiently intelligible and informative if reason had been that 'applicant's dwelling structurally unsuitable to affix safe in accordance with reg 28(3)(a| of regulations promulgated in terms of Act.

Administrative law - Decision of functionary - Reasons for - Reasons for decision given in answering affidavit in application for order directing functionary to give reasons for decision - No principle of law that functionary not bound by reasons given in such answering affidavit.

Administrative law - Decision of functionary - Reasons for - Adequacy of - Adequacy of dependent on variety of factors, such as factual context of administrative action, nature and complexity of administrative action, nature of proceedings leading up to it and nature of functionary taking action - Reasons need not always be 'full written reasons' - Brief *pro forma* reasons might suffice - Whether brief or lengthy, reasons to be intelligible and informative to reasonable reader thereof and convey why functionary thinks that administrative action justified - If reasons refer to extraneous source, that source to be identifiable to reasonable reader.

Administrative law - Decision of functionary - Reasons for - Application for order directing functionary to furnish 'full and proper written reasons' for administrative decision - Court cannot order administrative decision-maker, who has furnished reasons, to give further or better reasons - Court can only make order for reasons to be furnished if it concludes that decision-maker did not give reasons at all or that purported 'reasons' not in law constituting reasons - Court cannot prescribe to decision-maker what his/her reasons should be - If person whose rights or interests are affected by administrative action contends that reasons not justifying action, appropriate remedy is to have action reviewed, and not to attempt to force decision-maker to provide better reasons or supply particulars to reasons.

Administrative law - Decision of functionary - Reasons for - Furnishing of - Whether request for reasons necessary - Section 33 of Constitution of Republic of South Africa Act 108 of 1996 not explicit thereon - Person affected by administrative action might not be interested in reasons -Practical interpretation of s 33(c) of Constitution requiring reasons to be furnished to affected persons who assert right to be furnished with reasons - Section *33(c)* not obliging decision-makers to furnish, without request, reasons for every administrative action taken in South Africa- Reasons, when requested, to be furnished within reasonable time.

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Administrative law - Decision of functionary - Reasons for - Furnishing of - Request for -Reasons can be requested by means of serving application to Court on relevant decision-maker - Such procedure carrying risk of adverse costs order if reasons furnished within reasonable time after service of application.

Headnote: Kopnota

There is no principle of law whereby administrative decision-makers are not bound by the reasons they have given in answering, affidavits filed in applications for orders directing them to furnish reasons for administrative action taken by them. (At 484C/D - F.)

The adequacy of reasons furnished for administrative action will depend on a variety of factors, such as the factual context of the administrative action, the nature and complexity of the action, the nature of the proceedings leading up to the action and the nature of the functionary taking the action. Depending on the circumstances, the reasons need not always be 'full written reasons'; the 'briefest *pro forma* reasons may suffice'. Whether brief or lengthy, reasons must, if they are read in their factual context, be intelligible and informative. They must be informative in the sense that they convey why the decision-maker thinks (or collectively think) that the administrative action is justified. Reasons must, however, not be intelligible and informative with the benefit of hindsight. They must, from the outset, be intelligible and informative to the reasonable reader thereof who has knowledge of the context of the administrative action. If the reasons refer to an extraneous source, that extraneous source must be identifiable to the reasonable reader. (At 485J - 486C and 486F/G-G/H.)

The Court accordingly found that, where the first respondent had, in refusing an application in terms of s 3(1) of the Arms and Ammunition Act 75 of 1969, for a licence to possess a firearm, given as the reason for the refusal of the application that the 'premises/residence does not conform to required standard', that reason did not pass muster as it did not identify the extraneous source - the 'required standard'. Although it was undesirable for the Court to be prescriptive as to what would be sufficient, the reason might have

been sufficiently intelligible and informative if it had stated that the 'applicant's dwelling [was] structurally unsuitable to affix a safe in accordance with reg 28(3)fa/ of the regulations promulgated under the Arms and Ammunition Act. (At 486D - D/E and 486G/H - H/I.)

Where, in an application for an order directing an administrative functionary to furnish 'full and proper written reasons' for the administrative action taken, an order cannot be made directing the administrative decision-maker, who has furnished reasons, to give further or better reasons. A Court can make an order for reasons to be furnished only if it concludes that the decision-maker did not give reasons at all or that what are purported to be 'reasons' do not in law constitute reasons. A Court cannot prescribe to an administrative decision-maker what his/her/its reasons should be. Should the person whose rights or interests are affected by an administrative action contend that the reasons do not justify the action, the appropriate remedy is to have the action reviewed, not to attempt to force the decision-maker to provide better reasons or to supply particulars to the reasons. (At 487B -D/E.)

Section 33 of the Constitution of the Republic of South Africa Act 108 of 1996 (as it read until November 2000) was not explicit as to whether an administrative decision-maker was obliged to furnish reasons [for an administrative decision] in the absence of a request therefor (see s 5 of the Promotion of Administrative Justice Act 3 of 2000, which now regulates this matter). When interpreting s *33(c)* of the Constitution, it must be borne in mind that the right to be furnished with reasons is very wide: it applies to every person whose rights or interests are affected by any administrative action. In many instances the persons affected may not be interested in the reasons. The practical interpretation of s *33(c)* is that reasons must be furnished to affected persons who assert the right to be furnished with reasons. The purpose of s *33(c)* is not to oblige administrative decision-makers to furnish, without a request, reasons for every single administrative action taken in South Africa. An administrative decision-maker is in terms of s *33(c)* of the Constitution obliged to furnish reasons for administrative action within a reasonable time after receipt of a request for reasons by or on behalf of a person whose rights or interests are affected by the administrative action. (At 487F/G - I/J.)

A person entitled to reasons can request reasons by means of serving an application to Court for an order directing the decision-maker to furnish reasons. Such a procedure, however, carries the risk of an adverse costs order if the reasons are furnished within a reasonable time after service of the application. (At 487J - 488A/B.)

Cases Considered

Annotations

Reported Cases

Nkondo and Others v Minister of Law and Order and Another, Gumede and Others v Minister of Law and Order and Another, Minister of Law and Order v Gumede and Others 1986 (2) SA 756 (A): considered

Rean International Supply Company (Pty) Ltd and Others v Mpumalanga Gambling Board 1999 (8) BCLR 918 (T): dictum at 927A - B applied.

Statutes Considered

Statutes

The Arms and Ammunition Act 75 of 1969, s 3(1): see *Juta's Statutes of South Africa 2002* vol 1 at 2-22.

The Constitution of the Republic of South Africa Act 108 of 1996, s 33: see *Juta's Statutes of South Africa 2002* vol 5 at 1 -148.

The Promotion of Administrative Justice Act 3 of 2000, s 5: see *Juta's Statutes of South Africa 2002* vol 5 at 1-251.

Case Information

Appeal from a decision qf a single Judge in the Transvaal Provincial Division. The facts appear from the judgment of Du Plessis J.

P C Van der By! SC (with him *EI Moosa)* for the appellants.

J L Kaplan for the respondent.

Cur adv vult.

Postea (June 17).

Judgment

Du Plessis J: In terms of s 3(1) of the Arms and Ammunition Act 75 of 1969 (the Act) the first and second respondents respectively applied for licences to possess firearms. The first appellant (to whom I shall refer as 'the Commissioner) refused both the applications. In terms of s 3(2) of the Act both the respondents lodged appeals against the refusal of their applications. The second appellant, the appeal board established in terms of s 14A of the Act, dismissed both the appeals (I shall refer to the second appellant as 'the appeal board').In a joint application the two respondents applied to the Court a *quo* for an order that the Commissioner 'be directed to provide full and proper written reasons for the refusal to grant licences to possess a firearm to the first and second' respondents. In similar terms they also applied for an order directing the appeal board to 'provide full and proper written reasons' for not upholding their appeals (I shall refer to this application as 'the Court application' in order to distinguish it from the initial applications to possess firearms to which I shall refer as 'the licence applications'). The Court a *quo* granted the orders sought and ordered the appellants to pay the costs of the application. This is an appeal against that judgment and the orders. (There is a further prayer in the notice of motion but the respondents did not persist therewith in the Court a *quo.)*

The first respondent lodged his licence application on 26 January 2000. In April 2000 he was advised by letter that the Commissioner had refused the application, the reason given being ‘premises/residence does not comply to required standard’.

The first respondent lodged an appeal to the appeal board. In July 2000, the appeal board advised him that his appeal had been unsuccessful. The appeal board gave no reasons for the decision.

On 11 September 2000, the respondent’s attorney wrote to the relevant SAPS officer and requested a copy of the ‘required standard’ referred to in the letter refusing the licence application 'as the writer is unaware that there has been any building standard specified in the licensing guidelines...' The attorney further requested “comprehensive reasons as to... ‘why you refused this applicant's licence with reference to his particular circumstances.’”

No further reasons were given before the Court application was launched, but in the answering affidavit Director Bothma, on behalf of the Commissioner, first sets out the considerations that are generally taken into account when a licence application is considered. He then gives the following reasons for the refusal: the police inspected the first respondent's home and found it to be a 'shack' as opposed to a house. In terms of the regulations promulgated under the Act, a firearm must be stored in a safe 'affixed flush to a floor, wall or other immovable structure ... of the house … or other dwelling place of an applicant...'

(Regulation 28(3)faJ.) The nature of the respondent's shack is such that a safe cannot be secured to the floor or wall thereof nor to any immovable structure thereon.

The first respondent did not, prior to the Court application, request the appeal board for reasons.

The second respondent applied for a licence in February 2000. His motivation was that he needed the firearm for his own protection and for that of his family and property. In May 2000, he was informed by letter that the Commissioner had refused the application, the reason given being 'lack of motivation/not convinced of need'. The second respondent lodged an appeal. In October 2000, the appeal board notified him that the appeal was unsuccessful but, as in the case of the first respondent, the appeal board gave no reasons. The second respondent asked neither the Commissioner nor the appeal board for reasons before the Court application was launched.

In the answering affidavit, Bothma quotes the second respondent's motivation as it appears in his licence application and in the appeal. Bothma then states: '(I)f regard is had to the considerations set out above, this is not a proper motivation....' Read in context, it is apparent from the answering affidavit that the licence application was refused as the second respondent did not satisfy the Commissioner that he needs a firearm if regard is had to considerations such as the security situation in his area and the number of crimes committed with firearms in this country.

In its answering affidavit, the appeal board states that it dismissed the appeals because it agreed with the reasons of the Commissioner for refusing the respective licence applications.

The reasons for the various decisions are set out in the answering affidavits in a clear, intelligible and informative manner (see the discussion later in this judgment). It was put to Mr *Kaplan* for the respondents that, as reasons had been furnished when the Court heard the application, that Court should not have granted the orders. Mr *Kaplan* submitted that in the answering affidavits the Commissioner and the appeal board sought to justify their respective decisions. That, counsel submitted, does not constitute reasons to which the relevant appellants will be bound in the event of an application to review their decisions. It follows, the argument concluded, that the Court a *quo* was justified in giving the orders. The argument cannot be sustained. I know of no principle of law whereby the two appellants are not bound by the reasons given in the answering affidavits. Moreover, the appellants state explicitly in a duplicating affidavit that what has been said in the answering affidavits constitutes their reasons and that the only remaining issue is one of costs. Therefore, on the facts of this case, the Commissioner and the appeal board are bound by the reasons they gave in the answering affidavits. In my view, the Court a *quo* should not have given any order other than an order for costs.

It is to the appropriate costs order that I now, turn. In order to decide the question of costs in the Court a *quo,* it is necessary to determine whether, until reasons were furnished in the answering affidavits, the respondents were entitled to the orders they sought.

Section 33 of the Constitution of the Republic of South Africa Act 108 of 1996 enshrines the right to just administrative action. Until 30 November 2000 1(1) s 33(3) provided:

'(3) National legislation must be enacted to give effect to these rights, and must

(a) provide for the review of administrative action by a court or, where appropriate, an independent and impartial tribunal;

(b) impose a duty on the state to give effect to the rights in ss (1) and (2); and

(c) promote an efficient administration.'

The national legislation envisaged in s 33(3) is the Promotion of Administrative Justice Act 3 of 2000 (PAJA) that came into operation on 30 November 2000, after the respondents licence applications and their appeals had been refused. Until 30 November 2000, item *23(2)(b)* of Schedule 6 to the Constitution was applicable. It provided:

"(2) Until the legislation envisaged in s 32(2) and 33(3) of the new Constitution is enacted -

(a) ...

(b) s 33(1) and (2) must be regarded to read as follows: "Every person has the right to

(a) ...

(b) ...

(c) be furnished with reasons in writing for administrative action which affects any of their rights or interests unless the reasons for that action have been made public; and

(d) ...'"

The refusal of the respondents licence applications was clearly administrative action which affected, at least, their interests. They were thus entitled to be furnished with written reasons for the refusal of the initial applications and the appeals.

In the founding affidavit the respondents aver that

'(t)he reasons proffered ... are vague and conclusionary and simply put, do not constitute reasons at all. (We)... do not know why our applications to possess a firearm have in fact been refused.'

The case they sought to make out is that what they were given did not constitute reasons at all. I proceed now to deal therewith.

When the Court application was launched in June 2001, PAJA had come into operation. The appellants and the respondents counsel were content to argue the appeal on the basis that PAJA does not apply to this case. Therefore, we need not consider whether a person affected by an administrative action can in terms of PAJA seek a court order to direct the decision-maker to furnish reasons (See s 5(3) of PAJA). I shall assume in favour of the respondents that their rights to reasons were governed throughout by item 23 of Schedule 6 to the Constitution.

The obligation to give reasons fulfils a variety of functions. I mention a few. Reasons serve to 'improve the quality of administrative decision-making and justice and to ensure accountability in state administration' (Devenish *Administrative Law and Justice in South Africa* at 131). They inform the person affected by the administrative act why the decision-maker thinks that the administrative act is justified. Apart from being an integral part of fair administrative action, reasons enable the person affected to determine whether he or she should abide the decision or take steps to have it corrected or set aside *(Nkondo and Others v Minister of Law and Order and Another; Gumede and Others v Minister of Law and Order and Another; Minister of Law and Order v Gumede and Others* 1986 (2) SA 756 (A) at 772I - J). As to the purpose and function of reasons, see Baxter *Administrative Law* at 226 - 30, 368 and 740 - 9; Hoexter, Lyster and Currie *The New Constitution and Administrative Law* vol 2 'Administrative Law' at 243 - 54.

The adequacy of reasons will depend on a variety of factors, such as the factual context of the administrative action, the nature and complexity of the action, the nature of the proceedings leading up to the action and the nature of the functionary taking the action. Depending on the circumstances, the

reasons need not always be 'full written reasons'; the 'briefest *pro forma* reasons may suffice'. (See *Hoexter (op cit)* at 246; *Rean International Supply Company (Pty) Ltd and Others v Mpumalanga Gambling Board* 1999 (8) BCLR 918 (T) at 927A - B.) Whether brief or lengthy, reasons must, if they are read in their factual context, be intelligible and informative. They must be informative in the sense that they convey why the decision-maker thinks (or collectively think) that the administrative action is justified.

I now proceed to consider the reason that the Commissioner gave to the first respondent. (Because the second respondent did not request reasons prior to the Court application, it is, for reasons that will appear later, unnecessary to decide whether the 'reason' that the Commissioner gave to him constituted a reason.) The reason given to the first respondent was ‘premises/residence does not conform to required standard’. The reason adequately conveys that the Commissioner refused the licence because a dwelling does not conform to a required standard. It is cryptic in that it does not convey which dwelling is referred to nor where the required standard is to be found. Regulation *2&(3)(a)* of the regulations promulgated under the Act provides that a safe for the safe-keeping of a firearm

'shall to the satisfaction of the Commissioner... be affixed flush to a floor, wall or other immovable structure or part thereof of the house ... or other dwelling place of an applicant concerned'.

With the benefit of hindsight, provided by the Commissioner in the answering affidavit, we know that this is the 'required building standard' referred to in the reason. Having had the attention directed to the regulation, we also now know that the 'premises/residence' is a reference to the first respondent's dwelling. Reasons must not be intelligible and informative with the benefit of hindsight however. They must from the outset be intelligible and informative to the reasonable reader thereof who has knowledge of the context of the administrative action. If reasons refer to an extraneous source, that extraneous source must be identifiable to the reasonable reader. The reason given to the first respondent does not, in this respect, pass muster. It is undesirable for this Court to be prescriptive, but an example may assist the Commissioner: Had the reason been 'applicant's dwelling structurally unsuitable to affix a safe in accordance with reg 28(3)', it may have been sufficiently intelligible and informative.

During argument we debated with counsel the possibility that the first respondent or his advisors understood the cryptic reason because, if he or they subjectively understood the reason, there was no need for the Court application. After consideration of the evidence before us, I am satisfied that there is no sound basis for rejecting the first respondent's pertinent evidence that he did not understand the reason.

I conclude that the reason that the Commissioner gave to the first respondent did not constitute a reason in compliance with the provisions of s 33 of the Constitution as the latter was deemed to have read until PAJA came into effect. In the result, the first respondent was, until the Commissioner's answering affidavit was filed, entitled to an order directing the Commissioner to furnish reasons for the refusal of the licence application.

The first respondent was not entitled to an order in the terms he sought it, however. It will be recalled that the order sought was one to furnish 'full and proper written reasons'. To the extent that the wording of the prayer conveys that the Court can direct an administrative decision-maker, who has furnished reasons, to give further or better reasons, an order could not have been made in those terms. A Court can make an order for reasons to be furnished only if it concludes that the decision-maker did not give reasons at all or that what are purported to be 'reasons' do not in law constitute reasons. A Court cannot prescribe to an administrative decision-maker what his/her/its reasons should be. Should the person whose rights or interests are affected by an administrative action contend that the reasons do not justify the action, the appropriate remedy is to have the action reviewed, not to attempt to force the decision-maker to provide better reasons or to supply particulars to the reasons. (See the remarks in *Rean International Supply Company (Pty) Ltd and Others v Mpumalanga Gambling Board (supra* at 9261). The constitutional entitlement to access to information may found a right to some particularity but we need not consider that now.

The first respondent did not, before the Court application was launched, request the appeal board to furnish reasons for its decision. The second respondent requested neither the Commissioner nor the appeal board for reasons. Mr *Maleka,* for the appellants, submitted that the appellants were not required to furnish reasons in the absence of a request thereto. Accordingly, so the argument went, the Court *a quo* should, in the absence of a prior request for reasons, have ordered the respondents to pay the costs of the application.

Section 33 of the Constitution (as it read until 30 November 2000) was not explicit as to whether an administrative decision-maker was obliged to furnish reasons in the absence of a request (see s 5 of PAJA however). When interpreting s 33(cJ, it must be borne in mind that the right to be furnished with reasons is very wide: it applies to every person whose rights or interests are affected by any administrative action. In many instances the persons affected may not be interested in the reasons. The practical interpretation of s *33(c)* is that reasons must be furnished to affected persons who assert the right to be furnished with reasons. The purpose of s *33(c)* is not to oblige administrative decision-makers to furnish, without a request, reasons for every single administrative action taken in this country. (See Klaaren (in Chaskalson and Others *Constitutional Law of South Africa* (Revision Service 5, 1999) at 25-19).) An administrative decision-maker is in terms of s *33(c)* of the Constitution obliged to furnish reasons for administrative action within a reasonable time after receipt of a request for reasons by or on behalf of a person whose rights or interests are affected by the administrative action. While the Commissioner's apparent practice to furnish reasons automatically is to be encouraged, that is not what the Constitution requires.

A person entitled to reasons can, as the respondents did in this case, request reasons by means of serving a Court application on the relevant decision-maker. Such a procedure carries the risk of an adverse costs order if the reasons are furnished within a reasonable time after service of the application.

What a reasonable time is will depend on the facts of each case. It was not argued for the respondents that the reasons furnished in the answering affidavits were not furnished within a reasonable time. There is no basis for holding that the reasons in this case were not furnished within a reasonable time.

Had the first respondent's application to direct the Commissioner to give reasons been the only issue in the Court application, no order as to costs might have been appropriate. On the one hand the first respondent made a prior request for reasons entitling him to costs up to the time of the filing of the answering affidavit. On the other hand, he persisted in seeking an order after the reasons had been given, thus incurring unnecessary costs. But the first respondent's application against the Commissioner was not the only issue. In respect of the other issues, the first respondent made no prior request to the appeal board and the second respondent made no prior request at all. The reasons were given within a reasonable time after the service of the Court application and the application was thus an unnecessary waste of costs. The two respondents made a joint application wherein they were represented by the same attorneys and counsel. On balance the application was an unnecessary waste of costs and the Court a *quo* should have ordered the respondents to pay the costs.

The appellants were represented by two counsel in the Court *a quo* and in the appeal. Neither the bulk nor the complexity of the matter warranted the employment of two counsel and the appellants are not entitled to the costs thereof.

In the result the following order is made:

1. The appeal is allowed with costs.

2. The order of the Court a *quo* is set aside and the following order is made in its stead:

The application is dismissed with costs.'

Appellants' Attorneys: *State Attorney.* Respondents' Attorneys: *M J Hood & Associates.*

M & G Media (Pty) Ltd and Others, McNally v 1997 (4) SA 267 (W)

M & J Investments (Pty) Ltd, Ex parte 1948 (3) SA 284 (W)

M & K Trust Finansiele Maatskappy (Edms) Bpk, Sebokeng, Bestuursraad van v 1973 (3) SA 376 (A)

M & K Trust Finansiele Maatskappy v Bestuursraad van Sebokeng 1972 (4) SA 406 (T)

M & V Tractor Implement Agencies BK v Hoogkwartier Landgoed (Edms) Bpk (Kelrn Landgoed (Edms) Bpk Tussenbeitredend) 2000 (2) SA 571 (NC)

M & V Tractor Implement Agencies BK v Olierivier Landgoed (Edms) Bpk (Kelrn Landgoed (Edms) Bpk Tussenbeitredend) 2000 (2) SA 571 (NC)

M & V Tractor Implement Agencies BK v Vennootskap D S U Cilliers Seuns en Andere (Kelrn Landgoed (Edms) Bpk Tussenbeitredend) 2000 (2) SA 571 (NC)

M A Vleisagentskap CC and Another v Shaw NO 2003 (6) SA 714 (C)

M and M Timbers CC, Gerber, J, Finance (Pty) Ltd v 1987 (3) SA 135 (W)

M B Technologies (Pty) Ltd, Altech Data (Pty) Ltd v 1998 (3) SA 748 (W)

M C Finance (Pty) Ltd v Segalo 1994 (1) SA 233 (O)