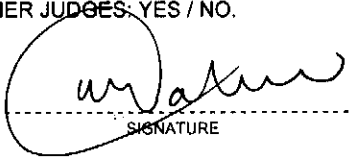


IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA



Case Number: 78495/2015

DELETE WHICHEVER IS NOT APPLICABLE	
(1)	REPORTABLE: YES / NO.
(2)	OF INTEREST TO OTHER JUDGES: YES / NO.
(3)	REVISED.
24/09/2017	
DATE	SIGNATURE

In the matter between:

CLASSIC ARMS (PTY) LTD

Applicant

and

**BRIGADIER LJ MABULE
HEAD CENTRAL FIREARMS REGISTER**

First Respondent

COLONEL DANISILE NDUKULA

Second Respondent

THE NATIONAL COMMISSIONER SAPS

Third Respondent

MINISTER OF POLICE

Fourth Respondent

SHONISANI RABAMBI

Fifth Respondent

JUDGMENT

MALULEKE, AJ:

1. In this matter the Applicant seeks an order to compel the Respondents to comply with an earlier order of this court.
2. The facts as set out briefly as follows:
 - 2.1 The Applicant was granted an order on 20 October 2015 in terms of which the Respondents were ordered:-
 - 2.1.1 forthwith to uplift all and any instructions not to process import or export permit applications and firearm licence applications emanating from the applicant;
 - 2.1.2 jointly and severally to process all applications for import and export permits within five (5) days within the date of issue of an order to this effect by the above court, if lodged the first Respondent twenty one (21) days or lodged prior to the hearing of the Application;
 - 2.1.3 to process applications for import and export permits within twenty one (21) days as contemplated by Regulation 62 of Act 60 of 2000;and
 - 2.1.4 to process license applications and submit it to purchasers of firearms from the Applicant and not proper applications emanating from the Applicant. A copy of the said court order is attached to the founding affidavit as annexure A.
 - 2.2 The Applicant launched these proceedings seeking an order to compel the Respondents to comply with that court order by issuing an export permit to New Zealand in respect of four (4) firearms.
 - 2.3 It is the Applicant's case that the Respondents failed to comply with the order referred to above. The Applicant alleges that it submitted an application under permanent export number: TE6881999. However, there appears to be confusion emanating from the First Respondent's juxtapositioning of this permanent export number with permanent export number: TE6885047 arising

out of the respondent's reply in the main application. The Applicant clarified this confusion in its answering affidavit putting this to bed.

2.4 It is further alleged that the Applicant had agreed to withdraw an application for the four (4) firearms set out in the Notice of Motion. This is however denied by the Applicant to be the case. Sometime during 2015 the Applicant's import permit was the subject of a police's criminal investigation. It seems to me that nothing came of that investigation and I shall therefore deal no further with it in this matter. Suffice to say that the Applicant is of the view that the alleged investigation was sinister and caused it serious delays in getting the application for the permits sought attended to.

2.5 The Applicant alleges to have sent numerous communications to the Respondents regarding this matter to which there has been no reply, or at least meaningful reply. Of relevance to this matter upon which the determination of this case turns, is the letter attached to the Applicant's Founding Affidavit as Annexure "LM4" which stated the following:

"This letter serves to confirm that the four (4) firearms mentioned below are not fully automatic as it is implicated/indicated on the import permit they are semi-automatic.

1. 9MMP Cobra#BW0013
2. 9MMP Commando #SV6369
3. 9MMP R76,#NDSJ337
4. 9MMP BXP #RSA001707

Due to unstipulated time that it might take for our client to get another permit, if this letter does not meet your requirements or not of satisfaction. We authorise you to leave the above mentioned weapons of the permit. We will apply for them separately when we get a correct import permit."

2.6 The Applicant contends that it has done everything in its powers to move the process of getting the import permit along without recourse to litigation and that it is quite clear that the First and Second Respondents in particular have no

intention of complying with the court order; and have acted in a contemptuous and disdainful manner towards this court.

- 2.7 The Respondents opposed this application on the basis that firstly as at the date of preparing its opposing affidavit, its attorneys served a Notice in terms of Rule 35(12) of the Uniform Rules of Court which the Applicant had not complied with or offered any reply thereto. Before dealing with the Applicant's contentions, the Respondents raised a number of points *in limine*.
- 2.8 Firstly, in seeking the order compelling the Respondents to issue an export permit as applied for under permit number: PE6885047, the Applicant has not set out the date on which this application was submitted, neither has it set out the date on which the application was submitted nor to whom the application was submitted leaving both the Respondents and this court in the dark regarding whether the 21 days provided for in the court order has expired or not, so they argued. The Respondents submitted that the Applicant has therefore not set out sufficient facts justifying the order sought and argued for the application to be dismissed.
- 2.9 The second point *in limine* raised is that the permit number relied upon by the Applicant does not exist in the records of the Respondents. The court was referred to a document marked as "LM1" to the Respondent's affidavit, which according to the Respondents represented the search results indicating that the export permit does not exist. In the premises, the argument went, the Respondent seeks an order in respect of export permit number: PE6885047 which is impossible to grant and on that basis alone, the application should fail.
- 2.10 The third point *in limine* is that the Applicant seeks an order in respect of the following firearms so to be exported to New Zealand:
- 2.10.1 9MM Parabellum BXP Hand Machine Carbine, Serial Number: RSA001707;
 - 2.10.2 9MM R76 Hand Machine Carbine, Serial Number: NDSJ337;
 - 2.10.3 Commando Semi-Automatic Carbine, Serial Number: SV6369; and

2.10.4 9MM Cobra Hand Machine Carbine, Serial Number: BW0013.

- 2.11 These firearms were part of the firearms listed under export permit application number: TE6881999. The said firearms were identified as semi-automatic in the export permit application form and the import permit identified them as fully automatic. There was therefore a discrepancy between the export permit application and the import permit. The court was referred to annexures "LM2" and "LM3" which were copies of the export permit application form and the import permit, respectively.
- 2.12 On the 10th July 2015, the Applicant informed the Respondents to remove the said four (4) firearms from the export permit and that the Applicant will make a separate application once it receives the correct import permit which appears from annexure "LM4" already referred to herein above. This fact, the Respondents argued is confirmed by the Applicant on page 13 and paragraph 46 of the Founding Affidavit in the main application. Their argument goes further to say that the Applicant has to date not submitted a new export permit application in respect of the four (4) firearms. The Respondents argued that the Applicant hastily seek this court to put the proverbial cart before the horse in ordering the Respondents to issue an export permit in circumstances where the Applicant has not provided the Respondents with an export permit application with the correct information. They argued that the Applicant has failed to comply with the *sine qua nons* nor the prerequisite establishing the jurisdictional facts of considering such an application by this court and/or repository of power for approval of export permit applications. The application is accordingly ill-conceived, meritless and premature and should accordingly be dismissed.
- 2.13 As for the rest of the Applicant's allegations contained in its Founding Affidavit, the Respondents say that they simply muddy the waters and did not add value whatsoever to the case that the Applicant tries to make out and accordingly the entire application should be dismissed with costs.

3. The issue that I have to decide therefore is namely: whether the Respondents have complied with court order dated 20 October 2015. In order to do so I have to interpret the actual meaning of the letter attached to the Applicant's Founding Affidavit and which is referred to in this papers as "LM4".
4. It was alleged that the Respondents have not complied with the court order and that the Respondents argument that the Applicant had agreed to withdraw an application for the export of the four (4) firearms set out in the Notice of Motion is clearly misleading. It was contended for the Applicant that annexure "LM4" does not support the Respondents interpretation placed before this court. It was argued that the First Respondent did not issue an export permit for the four (4) firearms not because the Applicant had indicated that they should be removed from the export permit, but because of an internal process adopted by the First Respondent. It was argued further that the First Respondent is therefore in breach of the court order for a number of reasons including *inter alia* the fact that export permit number: PE6881999 has not been fully processed and that the First Respondents has placed an internal administrative procedure to take precedence over an order of court. The Applicant argues that no administrative procedure can overrule and order of court and accordingly submit that it is clear that it is entitled to the relief as set out in the Notice of Motion.
5. During arguments the Respondent denied this allegation and insisted that on 10 July 2015 the Applicant authorised the Respondents by virtue of "LM4" to remove the said four (4) firearms from the export permit and that the Applicant will make a separate application once it receives the correct import permit. Essentially the Respondents' argument is that it is clear from "LM4" that the Applicant authorised the removal of these four (4) firearms from application PE6881999 and undertook to submit a new application once they received the correct import permit. The Applicant vehemently denied this as its Replying Affidavit at paragraph 39 where it concludes that it did not inform the Respondents to remove the said firearms from the export permit and that it will make a separate application. That this is a deliberate misinterpretation of what "LM4" says. The Respondents' position is that it is clear from "LM4" that the

four (4) firearms are no longer part of permit application number: PE6881999 and that the Applicant wants the court to attach a different meaning to this documents which they submit cannot be done. The argument goes further to say the Applicant has attempted to circumvent fulfilling its undertaking to apply for an export permit in respect of the four (4) firearms and now seeks to rely on an internal letter written by the First Respondent which does not support the interpretation they seek to attach to the said letter. The said letter stated the following:

"The court order directed that this application should be processed within 5 days of the order which was 21 October 2015."

- 5.2 The Application at issue is an exportation type of application. The authority that deals with these applications in the South African Police Service Scrutiny Committee (SAPSSCO) that has been constituted in terms of the Firearms Control Act 60 of 2000 and an NCACC Act 41 of 2002. This committee sits once a month.
- 5.3 The committee is mandated to deal with applications below a threshold of 10 firearms and 20 000 ammunition. This application in questions is a type that is above the threshold. On 2015-11-12 the SAPSSCO sat and considered the application and has referred it to the NCACC that also sits once a month. The NCACC is chaired by a Minister in cabinet and may sits during the course of November 2015.
- 5.4 However, four (4) firearms in the application were set aside as they are the subject of the investigation Pretoria Central CAS 1465/08/2015.
- 5.5 Upon consideration by the NCACC the SAPSSCA will then be in a position to finalise the application. It is clear from the letter that the four (4) firearms were never considered in the application as they were the subject of an investigation. The Respondent went further to say that this however does distract from the fact that the Applicant had authorised the Respondents to remove the four (4) firearms from the export permit and they had also undertaken to submit a new

application in respect of the four (4) firearms. They argue that this letter to which I have just referred to read with "LM4" are a clear indication that the four (4) firearms were no longer part of export application number: PE6881999 and that the Applicant has do date not submitted an application for an export permit in respect of the four (4) firearms. They argued that it is disingenuous for the Applicant to suggest that the Respondents are misleading the court in circumstances where the Applicant has authorised the Respondents to remove the four (4) firearms from the export application. The fact that there was an investigation in respect of the four (4) firearms and the fact that the Applicant had authorised the removal from application number: PE6881999 are not mutually exclusive as contended for by the Applicant in the premises "LM4" read with the Founding Affidavit in the October 2015 application clearly authorise the Respondents to remove the four (4) firearms from the export permit. The Applicant has not provided the interpretation which they say should be attached to "LM4". They submit that they cannot provide any interpretation as none exists, their argument went. The application is without merit as the Respondents have complied with the court order. The Respondents argued further that the high watermark of the Applicant's case is that Respondents' have not complied fully with the court order because the four (4) firearms were not processed and they state that for reasons already mentioned, this argument cannot hold water to the extent that as of 10 July 2015 this four (4) firearms were no longer part of application PE6881999. They state that they have complied with the court order in the following terms: In that the following application PE6868887 was approved on 3 November 2015, PE6881999 was approved on 3 November 2015, PE6942823 was approved on 3 November 2015, PE6949358 was approved on 16 November 2015, PE6948832 was approved on 3 November 2015, PI6955402 was approved on 28 October 2015 and PE6888513 was approved on 3 November 2015. They argued that it is cleared from the foregoing that they have complied with the court order.

6. I have already pointed out that this case turns on the meaning of LM4. Before I deal with that I wish to resolve the issue of the Rule 35(12) application. It is common cause that the First Respondent denied to be in possession of the docket. No explanation was offered for this. One would have expected some

explanation that says it is lost or destroyed, however none was offered. I agree that it is not feasible to enrol this application separately and am inclined to grant the costs so requested.

7. I now deal with the points *in limine* raised. In my view they do not take the Respondents' case any further. Equally I am not going to deal with many other issues presented to this Court in argument as they are in my view irrelevant. I am satisfied that the New Zealand authorities were wrong to describe the firearms as fully automatic when they are semi-automatic. The crucial point of LM4 is that the Applicant authorised the Respondents to remove firearms listed therein only if the letter or at least its contents did not meet with the Respondents or not satisfied therewith. This did not express straight forward authority to remove them from the Applicant's application. One could even say that it was an alternative due to the uncertainty in respect of the time that it would take for it to obtain another import export permit. To attach a different meaning to LM4 is disingenuous. It is correct that this letter placed the ball squarely in the court of the SAPS, namely if our letter is not acceptable for reasons that it does not meet your requirements nor to your satisfaction then leave these weapons out of the application. It is not unreasonable for the Applicant to expect that the Respondents ought to have indicated that the requirements were met or that it was satisfied so that it knows what to do. The Respondent simply never replied to LM4. I therefore reject their opposition and interpretation of that the Respondents attach to LM4. Their opposition is meritless and ill-founded. The 4 (four) firearms were accordingly never withdrawn nor removed from the Applicant's application. It is my view therefore that the relevant court order was never fully complied with.

8. In the circumstance, **I make the following order that:**

1. the Respondents are ordered to pay the cost of the Rule 35(12) application on a party and party scale;

2. the Respondents must comply with the court order dated 20 October 2015 within 10 (ten) days of the date of service of this court order on them;
3. the First to Fourth Respondents are to pay the costs of this application, such costs to include costs occasioned by the employment of Counsel on the scale as between attorney and client.



MJ MALULEKE

JUDGE OF THE HIGH COURT
OF THE REPUBLIC OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

Date of hearing:

Date of delivery:

Counsel for the Applicant:

Instructed by: MJ HOOD & ASSOCIATES

Counsel for the Respondents:

Instructed by: THE STATE ATTORNEY, PRETORIA