

Timcke v The Central Firearms Registry & Others

The written judgment in the matter of professional hunter Robert Timcke v The Central Firearms Registry & Others was recently been delivered by Judge Polson, A J.

Judge Polson has specifically requested that the judgment be reported in the Law Reports in order that it becomes written law and part of South African legal jurisprudence. Reported judgments are the most important way of how judges and practitioners ascertain the practical state of the law. Normally Judges request that judgments be reported where there is an important legal principle to be made or where clarity is required in respect of a specific legal issue.

The full text of the judgement is an easy, but extremely interesting read.

Link To Timcke Judgement In Court Cases (PDF): <http://j.mp/TimckevsCentralFirearmRegistryOthers>

Judge Polson made a substantial number of statements of a legal nature relating to the hunting industry, firearm dealers, hunters, gunsmiths and the game ranching industry. He summarized the positive contributions that these entities had made to the South African economy. His comments specifically centre around the professional hunting industry, because the applicant Timcke in this court case is a professional hunter who had been refused his competency certificate due to a conviction for drinking and driving.

The judgment is notable for a number of reasons in addition to the positive comments that he makes about the hunting industry. Some are of a technical legal nature and others are of a broader more principled nature.

The legal principle that had to be dealt with was whether upon conviction for drinking and driving one is automatically unfit to possess a firearm in terms of Section 103 of the Firearms Control Act. There had previously been commentary on this situation by the High Court, but the decisions have been unreported and therefore were not easy to obtain and this had resulted in an inconsistency of approach by different courts. The central issue was to determine whether a conviction of driving under the influence of alcohol constitutes an abuse of alcohol, which then puts in motion Section 103 of the Firearms Control Act, which then deems a person unfit to possess a firearm upon conviction for certain offences. The abuse of alcohol is one of such offences.

An interesting part of this judgment was the attitude of the judge to the approach of the police. Because a court had not specifically declared the applicant unfit, the police assumed that because he had been convicted of an offence that they felt fell under Section 103 of the Firearms Control Act, they deemed him unfit and because no period had been determined by a court, that he was unfit for a period of 99 years, i.e. indefinitely.

The judge ruled that the police could not in such circumstances declare somebody unfit for 99 years, because there was no provision in the law to this effect and secondly that an enquiry into a person's fitness to possess a firearm should take place in terms of Section 103 to determine whether a person is fit or not. The judge states: "The question is whether a person is now unfit to possess a firearm simply because of his conviction. I think not."

The judge went on to rule further that: “While driving a motor vehicle whilst exceeding the limit of allowed alcohol in the bloodstream is an offence, it does not fit the description of abuse of alcohol.” He concludes: “All the instances enumerated under Section 103 reflect on the fitness of an individual in mind and in discipline of character.”

The judge then goes on in essence to state that a person could become unfit if for example they handle the firearm whilst under the influence of alcohol.

The judge further made certain legal rulings which are also of importance to firearm owners. He dealt with the process for appeals in the following way.

The applicant Timcke had been refused his competency certificate because of his criminal conviction. He had appealed through my offices against his conviction and the Appeal Board as is typically the case did not comply with the time period set out in Regulation 91 to the Firearms Control Act. It did not make a decision on the appeal within 80 days as set out in the Regulations.

As a result of this Timcke approached the High Court for an order declaring in terms of the Promotion of Administrative Justice Act that his appeal against the refusal of his competency certificate should be deemed to be refused. The deeming provision in the Promotion of Administrative Justice Act is in the legislation in order to prevent abuse by administrative officials who simply do not make a decision in order to frustrate an applicant or appellant from appealing the refusal of an administrative process. In other words, should an administrative official simply not make a decision in order to frustrate an applicant, once a reasonable time period has expired, you can then take that administrative official to court and ask that the failure to make a decision be deemed to be a refusal. The Firearms Control Act contains a specific time period of 80 days and anything longer than 80 days is deemed to be a refusal.

Because of the conduct of the Appeal Board in not making a decision within the 80 day time period and because the legal position had been drawn to the Appeal Board’s attention to the effect that the High Court had ruled that a conviction for drinking and driving does not constitute an abuse of alcohol, the judge ruled that the Appeal Board must pay a punitive cost order to the applicant, Mr Timcke as an indication in the court’s displeasure in the failure of the Appeal Board to respond and to apply the law.

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