



THE SUPREME COURT OF APPEAL OF SOUTH AFRICA
JUDGMENT

Reportable

Case no: 344/2022

In the matter between:

OUTDOOR INVESTMENT HOLDINGS (PTY) LTD

FIRST APPELLANT

INYATHI SPORTING SUPPLIES (PTY) LTD

SECOND APPELLANT

and

THE MINISTER OF POLICE

FIRST RESPONDENT

**THE NATIONAL COMMISSIONER FOR THE
SOUTH AFRICAN POLICE SERVICE**

SECOND RESPONDENT

Neutral citation: *Outdoor Investment Holdings (Pty) Ltd & Another v The Minister of Police & Another* (Case No 344/2022) [2023] ZASCA 72 (24 May 2023)

Coram: SALDULKER and CARELSE JJA and NHLANGULELA, KATHREE-SETILOANE and UNTERHALTER AJJA

Heard: 3 March 2023

Delivered: 24 May 2023

Summary: Firearms Control Act 60 of 2000 (the FCA) – whether regulation 67 of the Firearm Control Regulations entitles one firearms’ dealer to store firearms at its licensed premises on behalf of another firearms’ dealer – properly construed neither regulation 67 nor the FCA permits one dealer to provide storage for firearms to another dealer.

ORDER

On appeal from: Gauteng Division of the High Court, Pretoria (Noncembu AJ, sitting as court of first instance):

The appeal is dismissed with costs including those of two counsel.

JUDGMENT

Kathree-Setiloane AJA (Saldulker and Carelse JJA and Nhlangulela and Unterhalter AJJA) concurring:

[1] This appeal concerns the question of whether one firearms' dealer licensed to trade in firearms and ammunition under the Firearms Control Act (FCA)¹ read with the Firearm Control Regulations (the regulations)² may store firearms on behalf of another licensed firearms' dealer.

Background

[2] The first appellant is Outdoor Investment Holdings (Pty) Ltd t/a Safari Outdoor (Safari Outdoor), and the second appellant is Inyathi Sporting Supplies (Pty) Ltd (Inyathi).³ Each of them has been issued with dealer's licences in terms of the FCA to trade in firearms and ammunition.⁴ Safari Outdoor conducts the business of a retailer in firearms and ammunition. It has five branches situated in Johannesburg (Rivonia), Pretoria (Lynnwood), Stellenbosch (Koelenhof), the East Rand (Boksburg) and the West Rand (Krugersdorp).

¹ Firearms Control Act 60 of 2000.

² As published in GG 26156 GNR 345 of 26 March 2004.

³ Safari Outdoor and Inyathi are referred to collectively as 'the appellants' in the judgment.

⁴ Although Safari Outdoor owns the total issued share capital of Inyathi, they operate their respective businesses separately and independently of each other.

[3] Inyathi is a wholesaler in firearms and ammunition. A significant portion of the business of Inyathi is to provide storage facilities for firearms it sells to other retailers who are unable to take immediate delivery.

[4] When Safari Outdoor sells a firearm to a purchaser, the purchaser is required to apply for a licence to possess the firearm in terms of the FCA.⁵ The purchaser cannot take delivery of the firearm until he or she has been issued with a licence to possess the firearm. Safari Outdoor is, therefore, required to store the firearm until this happens. In terms of the sale agreement which Safari Outdoor and the purchaser typically enter into, if the purchaser does not apply for a licence to possess the firearm as required under the FCA, he or she will be liable to pay a standard storage fee per month until the application is made. However, once the purchaser has applied for a licence to possess the firearm, Safari Outdoor will store the firearm free of charge for a period of 12 months.

[5] Safari proffered 3 reasons, in its founding affidavit, for storing firearms it sold at Inyathi's storage facilities. These were that: (a) due to a backlog in the office of the National Commissioner of Police (National Commissioner),⁶ at the time, it took anything between six to eighteen months to finalise a licence to possess a firearm; (b) as a result of the volume of firearms it sold to members of the public, it became 'practically impossible' to store all of them at its premises; and (c) storing these firearms at its premises (retail space) was significantly more expensive than storing them in Inyathi's bulk storage facilities.

[6] When Safari Outdoor receives its stock of firearms, each firearm is duly recorded in its firearm stock register in terms of s 39(3) of the FCA read with regulation 37 of the regulations. I reference these provisions later in the judgment.

⁵ Before a person can apply for a licence to possess a firearm, that person must be in possession of a competency certificate as contemplated in s 10 of the FCA.

⁶ The National Commissioner is the Registrar of Firearms in terms of s 123 of the FCA.

[7] A designated firearm officer (DFO), who is a representative of the Registrar of Firearms, regularly visits the respective business premises of Safari Outdoor and Inyathi. During one such visit at its Lynnwood Bridge branch, Safari Outdoor was, in essence, informed that it is impermissible for Inyathi to store firearms on behalf of Safari Outdoor.

In the high court

[8] The appellants, consequently, brought an application in the Gauteng Division of the High Court, Pretoria (the high court) seeking a declaratory order in the following terms: 'It is declared that [Safari Outdoor] is entitled to store firearms legally in its possession, in terms of Regulation 67 of the [Regulations, at the premises of [Inyathi]], provided that the removal of the firearms from the premises of [Safari Outdoor] were recorded in [Safari Outdoor's] Firearm Stock Register and that the firearms stored at the premises of [Inyathi] be recorded in the Firearm Safe Custody Register of [Inyathi].'

[9] The Police Commissioner (Registrar of Firearms) opposed the application on the basis that Inyathi is not legally entitled to provide storage for firearms on behalf of Safari Outdoor. The high court dismissed the application on the basis that the appellants had failed to make out a case for the declaratory relief sought. The appeal is before us with the leave of the high court.

The appeal

[10] The question for determination is whether Inyathi may provide storage for firearms on behalf of Safari Outdoor. The appellant's case is that, based on the ordinary grammatical meaning of the words in regulation 67(3) of the regulations, a dealer may provide storage for firearms to another dealer, in the safe or strong room specified in the former's licence. Regulation 67 provides:

'(1) Where a person provides storage facilities for firearms or ammunition to another person, such storage facilities must conform to the applicable requirements for a safe or strong room as set out in SABS Standard 953-1 or 953-2.

(2) Storage may only be provided to a person who may lawfully possess the firearm or ammunition.

(3) a holder of a dealer or gunsmith's licence may provide storage for firearms and ammunition in the safe or strong room specified on the dealer's or gunsmith's licence.

(4) during the storage of a firearm, it must be –

(a) uploaded;

(b) not readily accessible to unauthorised use;

(c) securely attached with a secure locking device to a non- portable structure in such a manner that it cannot readily be removed.'

[11] Regulation 67 must be interpreted in the context of the FCA and the regulations. The rules of interpretation, as pronounced by this Court in *Natal Joint Municipal Pension Fund v Endumeni Municipality*⁷ for legislation and other documents, apply to the interpretation of the provisions of the FCA and the regulations.

[12] Part 1, chapter 7 of the FCA provides the framework for licences issued to, *inter alia*, dealers to trade in firearms and ammunition. Section 31 provides that no person may trade in any firearm, muzzle loading firearm or ammunition without a dealer's licence. Section 32(1) provides that a dealer's licence must be issued to a person who is a fit and proper person to trade in firearms and ammunition. Section 32(2) provides that any natural person who engages in trading on behalf of a dealer must hold a competency certificate to trade in firearms and ammunition.

[13] Section 33 of the FCA authorises the Minister of Safety and Security to prescribe: (a) conditions in respect of the issue of a dealer's licence which the Registrar of Firearms may impose on a dealer;⁸ and (b) specifications in respect of the business premises of a dealer.⁹ Section 34 of the FCA, in turn, provides that the dealer's licence must: (a) specify the premises in respect of which the licence is issued; (b) specify the conditions contemplated in s 33; and (c) contain such other information as may be prescribed.¹⁰

⁷ *Natal Joint Municipal Pension Fund v Endumeni Municipality* [2012] ZASCA 13; 2012 (4) SA 593 (SCA) at para 12.

⁸ Section 33(a) of the FCA.

⁹ Section 33(b) of the FCA.

¹⁰ Sections 34(a), (b) and (c) of the FCA.

[14] Section 39 stipulates the duties of a dealer. It provides:

- '(1) A dealer may trade in firearms or ammunition only on premises specified in the dealer's licence;
- (2) A dealer may not permit any person to trade in firearms or ammunition on his or her behalf unless the person is in possession of the appropriate competency certificate.
- (3) A dealer must keep such registers as may be prescribed and containing such information as may be prescribed at the premises specified in the dealer's licence.
- (4) A dealer must keep his or her dealer's licence on the premises specified in the licence.
- (5) A dealer must, at the request of any police official, produce for inspection-
 - (a) any firearms or ammunition that the dealer may have in stock;
 - (b) his or her dealer's licence; and
 - (c) any register or electronic data kept by the dealer in terms of Part 1 of this Chapter.
- ...
- (9) A dealer must comply with any condition imposed under section 33 and specifications prescribed under that section.'

[15] Chapter 9 of the FCA provides for the storage, transport and carrying of firearms and ammunition. Section 83, which is found in that chapter, provides that firearms and ammunition must be stored and transported in the prescribed manner. Section 145(1)(a) of the FCA provides that the Minister of Safety and Security, may by notice in the Gazette, make regulations regarding, *inter alia*, anything that may or must be prescribed in terms of the FCA.

[16] I now deal with the interpretation to be ascribed to regulation 67. The word 'person' in regulation 67 is neither defined in the regulations nor in the FCA. The word 'person' in regulation 67(1) is, however, a reference to a holder of a dealer's or gunsmith's licence, who provides storage facilities for firearms and ammunition. This much is clear from regulation 67(3), which provides that a 'holder of a dealer's or gunsmith's licence may provide storage for firearms and ammunition in the safe or strong room specified in the dealer's or gunsmith's licence'. In terms of regulation 67(3) 'such storage facilities must conform to the applicable requirements for a safe or strong room as set out in the SAB Standard 953-1 or 953-2'.

[17] The term ‘another person’ as used in regulation 67(1) is a reference to ‘a person who may lawfully possess the firearm or ammunition’ as contemplated in regulation 67(2) of the regulations. This sub-regulation provides that ‘[s]torage may only be provided to a person who may lawfully possess the firearm and ammunition’. The appellants argue that because a dealer’s licence authorises a dealer to possess firearms for the purposes of trading in them, the phrase ‘a person who may lawfully possess a firearm and ammunition’ in regulation 67(2) must be construed as including a holder of a dealer’s or gunsmith’s licence. They contend that on this construction, regulation 67 permits a holder of a dealer’s licence to provide storage facilities to another holder of a dealer’s licence.

[18] Regulation 86 deals with the safe custody of firearms and ammunition by, on the one hand, dealers and gunsmiths and, on the other, an individual holder of a firearm licence, authorisation or permit to possess a firearm. Regulations 86(1) and (2) provide:

‘(1) When a firearm or muzzle loading firearm is not under the direct personal and physical control of a holder of a licence, authorisation or permit to possess the firearm or muzzle loading firearm, the firearm or muzzle loading firearm and its ammunition must be stored in a safe place or storeroom that conforms to the prescripts of SABS Standard 953-1 and 953-2, unless otherwise specifically provided in these regulations.

(2) Subject to regulation 36(2) a dealer or gunsmith must store firearms or muzzle loading firearms and ammunition in a safe or strong room that conforms to the prescriptions of SABS Standard 953-1 and 953-2, at the place of business specified on the applicable licence, authorisation and permit, as the case may be.’

[19] To interpret the words ‘a person who may lawfully possess the firearms and ammunition’ in regulation 67(2) so as to include dealers, would be to contradict regulation 86(2), which expressly provides that a dealer or gunsmith must store, *inter alia*, firearms in a safe or strong room that conforms to the prescriptions of SABS Standard 953-1 and 953-2 at the place of business specified in the licence. This duty is peremptory and applies across the board to all dealers.

[20] In terms of regulation 86(2), there is a nexus between storage of the firearms and ammunition and the place of business specified on the dealer's licence. This connection to the place of business specified in the dealer's licence, is consistent with the provisions of s 39(1) of the FCA, which provides that '[a] dealer may trade in firearms or ammunition only on premises specified in the dealer's licence'. It is arguable that on the ordinary grammatical meaning of the word 'trade', it is limited to the activity of buying and selling firearms and ammunition. However, on a contextual interpretation that has regard to the provisions of the FCA, the business premises specified in the dealer's licence is intrinsically connected to both the trade in, and storage of, firearms and ammunition by a dealer. Textual indicators in the FCA that confirm this connection are found in:

- (a) section 33(b), which provides that the Minister may prescribe 'specifications in respect of the business premises of a dealer';
- (b) section 34, which provides that the dealer must specify the premises in respect of which the licence is issued;
- (c) section 39(4), which provides that a dealer must keep such registers as prescribed and containing such information as prescribed at the premises specified in the licence;
- (d) section 39(5), which provides that the dealer must keep his or her dealer's licence at the premises specified in the licence;
- (e) section 39(9), which makes it mandatory for a dealer to comply with any, condition (in the licence) imposed under s 33 and, specification prescribed under the section.

[21] In relation to the storage of firearms and ammunitions, s 83 of the FCA provides that they must be stored and transported as prescribed. Prescribed means prescribed by regulations in terms of s 145 of FCA. Regulation 86(2) then connects the storage of firearms and ammunition to the place of business specified in the dealer's licence. As indicated, this sub-regulation obliges a dealer to store firearms and ammunition in a prescribed safe or strong room at the place of business specified in the licence. Thus, having regard to the peremptory nature of regulation 86(2), the phrase 'may only be provided to a person who may lawfully possess the firearm or ammunition' in regulation 67(2) must be construed as a reference to an individual holder of a licence, authorisation or permit to possess a firearm or ammunition.

[22] Regulations 86(1), 86(4)(a)-(f)¹¹ and 86(11)(b)¹² of the regulations deal with the safe custody of, and access to, firearms in relation to an individual holder of a licence, authorisation or permit to possess a firearm or ammunition. These sub-regulations use the term 'person who may lawfully possess a firearm, muzzle loading firearm or ammunition' interchangeably with 'holder of a licence, authorisation or permit to possess'

¹¹ Regulations 86(4)(a)-(f) provide:

(a) A person who holds a licence to possess a firearm or is a holder of a competency certificate in respect of a muzzle loading firearm, may store a firearm or muzzle loading firearm in respect of which he or she does not hold a licence or competency certificate, if -

- (i) he or she is in possession of a written authorisation given by the person who holds a licence, permit or authorisation to possess that firearm or competency certificate in respect of a muzzle loading firearm and which authorisation is endorsed by a relevant Designated Firearms Officer; and
- (ii) the firearm or muzzle loading firearm is stored in a prescribed safe at the place mentioned in the authorisation contemplated in sub-paragraph (i).

(b) Only the person who holds a licence, permit, or authorisation to possess the firearm or a competency certificate in respect of a muzzle loading firearm or permission contemplated in subparagraph (a)(i) may transport that firearm or muzzle loading firearm to and from the place where that firearm or muzzle loading firearm is to be stored in terms of paragraph (a) as authorised by the Registrar or Designated Firearms Officer.

¹² Regulation 86(11)(b) of the Regulations provides:

(b) Any person who may lawfully possess a firearm, muzzle loading firearm or ammunition shall store these in a prescribed safe or strong room, to which he or she shall have at all time exclusive access or his or her presence and cooperation shall be a necessary prerequisite for access to the relevant firearm, muzzle loading firearm and ammunition unless-

- (i) the storage is undertaken by the holder of a dealer's or gunsmith's licence in which case the dealer or the dealer's personnel with valid competency certificates, or the gunsmith may have access to the safe or strong-room; or
- (ii) the firearm or muzzle loading firearm is temporarily stored in a safe or strong room that conforms to the prescripts of SABS Standard 953-1 and 953-2 or a lock-away safe, device, apparatus or instrument for the safe custody of a firearm that conforms to the prescripts of sub-regulation (12), that is under the control of a holder of a licence, authorisation, permit or competency certificate for a muzzle loading firearm issued in terms of this Act, the person storing the firearm or muzzle loading firearm must in writing notify the Designated Firearms Officer in whose area the firearm or muzzle loading firearm is temporarily stored.'

or 'person who holds a licence to possess a firearm'. However, properly construed, each of these terms refer to an individual holder of a licence to possess firearms or ammunition, as opposed to a holder of a dealer's licence, which authorises it to trade in firearms and ammunition.

[23] Notably, the FCA references a firearm's dealer specifically as 'a dealer' or a 'holder of a dealer's licence'. As do the regulations. This is a further textual indicator that the phrase 'may only be provided to a person who may lawfully possess the firearm or ammunition' in regulation 67 of the regulations, is a reference to an individual holder of a licence, authorisation or permit to possess a firearm or ammunition, and not another dealer.

[24] By the same token, the words 'on behalf of the holder of a licence, authorisation or permit' in regulation 37 of the regulations must also be construed as a reference to an individual holder of a licence, authorisation or permit to possess a firearm or ammunition. Regulation 37 obliges a dealer to keep a Firearms Safe Custody Register of the firearms that the dealer receives on behalf of a holder of a licence, authorisation or permit for the purposes of the safe custody or transfer of the firearms. In terms of regulation 67, a dealer may provide storage to this category of licence holder as prescribed in the regulations.

[25] The regulations are subordinate legislation. They are the consequence of a statutory power conferred, by virtue of s 145 of the FCA, on the Minister of Safety and Security to make regulations on matters relating to, *inter alia*, anything that may or must be prescribed in terms of the FCA. Although the regulations are binding with the force of law, they cannot impose requirements that are additional to, or inconsistent with, the FCA. They also cannot circumscribe the ambit of the FCA or override its provisions. They remain subordinate to the FCA.

[26] Consequently, to interpret regulation 67 as permitting a dealer (as agent) to store firearms for another dealer, at its place of business specified in that dealer's licence, will be inconsistent with the injunction in s 39(1) of the FCA that a dealer may trade in firearms

and ammunition only on premises specified in the dealer's licence. Significantly, counsel for the appellant accepted at the hearing of the appeal that storage of firearms form part of the trade in firearms as contemplated in s 39(1) of the FCA.

[27] In sum, neither the FCA nor the regulations permits a dealer to provide storage for firearms to another dealer. This interpretation of the FCA and the regulations is consistent with the overall purpose of the FCA, which is to establish a comprehensive and effective system of firearm control and management.¹³ Accordingly, it is impermissible for Inyathi to provide storage for firearms on behalf of Safari Outdoor as its agent.

[28] In the result, the following order is made:

The appeal is dismissed with costs including those of two counsel.

F KATHREE-SETILOANE
ACTING JUDGE OF APPEAL

¹³ Section 4 of the FCA provides:

'The purpose of this Act is to –

- (a) enhance the constitutional rights to life and bodily integrity;
- (b) prevent the proliferation of illegally possessed firearms and, by providing for the removal of those firearms from society and by improving control over legally possessed firearms, to prevent crime involving the use of firearms;
- (c) enable the State to remove illegally possessed firearms from society, to control the supply, possession, safe storage, transfer, and use of firearms and to detect and punish the negligent or criminal use of firearms;
- (d) establish a comprehensive and effective system of firearm control and management; and
- (e) ensure the efficiency, monitoring and enforcement of legislation pertaining to the control of firearms.'

Appearances

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