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Our reference: Mr Kotze

15 March 2021

Your reference: Mr Govender 1587/16/z61

The State Attorney,

Pretoria,

By e mail.

Dear Sir,

UPLIFTMENT OF 2009- INTERIM ORDER IN RESPECT OF GREEN LICENCES.

SA HUNTERS AND PHASA VS MINISTER OF SAFETY AND SECURITY.

NORTH GUATENG CASE NUMBER 33657/2009.

1. INTRODUCTION.

I act on behalf of the Professional Hunters Association of South Africa ("PHASA") and reply to your letter dated 2 February 2021, when you provided PHASA the opportunity to respond to the draft order to uplift

REGSPRAKTISYN / LEGAL PRACTITIONER: Juan Kotze B.Juris (UP) LLB (SA)

YOUR LEGAL BACK-UP

the 2009 *interim order* that you have provided to SA Hunters and Conservation Association (“SA Hunters”) on 21 January 2021.

2. OMISION FROM NEGOTIATIONS.

We have to record that although PHASA was admitted as a second applicant in the 2009- application, my client was not included in the initial notice to SA Hunters dated 8 September 2020 and the subsequent negotiations between your office (on behalf of the Minister of Police) and SA Hunters and Conservation Association to uplift the the interim order. My client’s rights in regard are reserved

3. DOCUMENTS RECEIVED.

Although your office claimed that the documents setting out the negotiations are privileged (which we deny), we have been able to obtain the following documents:

- 3.1. State Attorney’s letter to SA Hunters dated 8 September 2020;
- 3.2. SA Hunters’ attorney’s, Messrs Couzyn Hertzog and Horak’s letter to State Attorney dated 30 September 2021 (with a letter from State Attorney to George Nel dated January 25, 2010 as an attachment);
- 3.3. Couzyn Hertzog and Horak’s letter to State attorney dated 3 November 2021;
- 3.4. Couzyn Hertzog and Horak’s letter to State attorney dated 21 December 2020;

- 3.5. State Attorneys letter to Couzyn Hertzog and Horak dated 21 January 2021 with an attached draft agreement to be made an order of court.

4. EXCLUSION FROM INITIAL NEGOTIATIONS.

- 4.1. In your letter dated 2 February 2021 to this office, you state the following: ***"We and they (referring to SA Hunters) overlooked the fact that your client, PHASA, as second applicant should also have been involved in these discussions. We apologise for this oversight'.***
- 4.2. In the letter from Couzyn Hertzog and Horak to your office dated 30 September 2020 the following is stated;
*"4.1. Our client is in favour of an approach in terms of which **all interested parties (that includes the parties that have intervened in the main application)** to approach the court with a joint position to discharge the interim order. Our client has attempted to obtain the court file to establish which parties intervened in the main application but was thus far unable to get hold of the court file."*
- 4.3. SA Hunter's lawyers also attached to this letter a letter dated January 25, 2010 from your office to SA Hunters' erstwhile attorney which states: ***"Copy to the Second Applicant: SOUTH AFRICAN PROFESSIONAL HUNTERS ASSOCIATION."***

- 4.4. The judgment delivered by Judge Prinsloo and the court order also disclose the interest of PHASA in the matter.

5. MALA FIDES.

- 5.1. From the above. It is clear that your office was at all stages aware of PHASA's interest in the matter, and even after your attention was drawn on 30 September 2020 to the fact that there are other interested parties who have intervened in the matter, you still did not include my client in the negotiations.
- 5.2. We can therefore unfortunately not accept that it was merely an "oversight" to exclude my client from the negotiation process.
- 5.3. In order to show your bona fidesm you are challenged to provide us with a copy of the amended draft agreement that was send to you by SA Hunters with their letter dated 21 December 2020 (see par 6 thereof).

6. FAIT ACCOMPLI.

- 6.1. My client is faced with a situation where, although they are a party to a dispute, they were deliberately excluded from negotiations, and only at the conclusion of the negotiations received a draft agreement with an ultimatum that if it is not accepted by 15 March 2021, the Court will be approached with an application to have the *interim order* uplifted.

- 6.2. This process (especially when a privilege is claimed in respect of the prior negotiations) can not be seen as a *bona fide* -process to solve a problem which is of national interest.

7. SUMMARY OF DRAFT AGREEMENT

The draft agreement with which my client is confronted can be summarised as follows:

- 7.1. The urgent *interim order* granted on 29 June 2009 will be discharged;
- 7.2. The discharge of the *interim -order* is suspended for 6 months (“the suspension period”) that will run from the date when the agreement is made an order of court;
- 7.3. Holders of green licences, who have not converted to new White licences, may apply simultaneously for competency and licences in terms of the Act;
- 7.4. If a holder of a green licence applies for a new licence during the suspension period, the underlying licence remains valid pending the decision of the new application;
- 7.5. Green licence holders may remain in lawful possession of firearms for which new applications for licences are submitted;
- 7.6. Those green licences for which no applications have in terms of the New Act been made during the suspension period, will expire when the discharge of interim interdict takes effect;
- 7.7. Firearms with green licences, who are not seeking fresh licences under the Act, and unwanted, surplus or other other firearms associated with green licences, which may not be licenced under

the Act, must be lawfully disposed of, or surrendered to the State, by no longer than 60 days following the expiry of the suspension period;

- 7.8. Either party, or both parties, may on good cause shown, approach the Court to seek an extension of the dates referred to in this order.

8. PRECEDING NEGOTIATIONS.

From the correspondence that we have received, it appears that SA Hunters initially proposed an eighteen month (later twelve month) suspension period and elements of a structural interdict. These proposals were not acceptable to the Minister of Police and with the parameters set, it leaves my client no possibility to substantially contribute to any negotiations.

9. MINISTER OF POLICE'S REAL INTENTION WITH UPLIFTMENT OF INTERIM ORDER.

- 9.1. I must place on record that on 14 January 2020, when the agreement that had been reached between National Hunters and Shooters Association (NATSHOOT) and the Minister of Police in respect of the Amnesty- case was made an order of court, Mr Govender (who acts on behalf of the State Attorney) mentioned to writer hereof that the State Attorney had received instructions from the Minister of Police to uplift the 2009 *-interim order*. **The true intentions of the Minister of Police, must**

therefore be seen in the context of what transpired at the end of 2019.

- 9.2. The Minister's true intentions were revealed during the public launch of the amnesty on 28 November 2019, when he addressed the Pretoria Press Club and said: "**Firearms are the enemy of our society**" and "**After the six month period we will do everything by all means to get those guns, if it means we go house to house, that is what we will do.**"
- 9.3. This remark was similar to what the Minister of Police has said earlier in public, when he remarked that "**it will be best if only the police have firearms.**"
- 9.4. The stated motivation for the upliftment of the *interim order* in your letter dated 8 September 2020, that "**It is necessary that all firearm owners be brought within the ambit of the current legal dispensation, in order to promote public safety and the effective combatting of crime**" are clearly not the true intentions of the intended application to uplift the 2009 interim order.
- 9.5. From the above, it is clear that the initiatives to uplift the 2009-order is not to ensure good governance of firearms, but to have the order that provides that owners of firearms that had not been relicenced in terms of the new Act, be regarded as being in illegal possession thereof.

9.6. We also point out that in the letter of SA Hunters' attorneys dated 3 November 2020, the following questions were *inter alia* asked:

- How many green licences are there overall?;
- How many in deceased or insolvent estates?;
- How many belong to individuals, businesses or dealers?;
- How many individuals need to obtain dedicated status first?

9.7. These questions, which are extremely relevant, were never answered and it is indicative that there is no real attempt on the Minister's side to create either a practical or reasonable solution to a serious problem.

10. PRESENT BACKLOG.

10.4. The Minister of Police has admitted, and the Parliamentary Portfolio Committee on Police has remarked on the large backlog in the processing of new firearm licence applications, applications for the renewal of firearm licences and the processing of "new" applications in terms of the amnesties.

10.5. We point out that the Police has in the recent months unilaterally changed the firearm licencing processing time from 90 days, to 90 working days, and then to 120 working days. They have also openly admitted that they can't cope with their present workload.

10.6. The question arises how, if the Police can not manage their present workload, they will be able to to process an approximate

300 000 to 500 000 green licences that need to be converted to new licences?

10.7. We point out that the Police were clearly not able to deal with the workload during the past amnesty period and refused to accept relicencing applications during the period from mid January 2021 until 15 February 2021. No additional resources could be activated to address that critical situation.

10.8. In view of the above, the undertaking that the Minister will make additional resources available to deal with the additional burden to convert the green licences, is not acceptable to my client.

11. CONCLUSION.

11.4. Our conclusion is that according to the correspondence exchanged in this matter, the Minister of Police is not seeking a genuine way to solve the firearm related problems, but is merely focussed to uplift the 2009 -interim order. This approach will clearly lead to even greater chaos and frustrations in the licencing and re -licencing of firearms.

11.5. We believe that (even if additional resources are made available) at least a 24 month period will be necessary to accomodate the transitional period.

11.6. We suggest that the period be divided according to applicants' birthdays into four quarters of six months each in order to

prevent the usual bottlenecks experienced at the expiry of each period.

12. SCOPE OF CONVERSION.

12.1. It appears that the proposed conversion, as set out in the draft agreement, will only be applicable to firearm owners who have not “migrated” to the new system. The point of departure is therefore that the *Pahlane -interpretation*, which has been Police policy since February 2016, is correct. **The correctness and constitutionality of this interpretation is widely disputed.**

12.2. We point out that there are hundreds of thousands of firearm owners who initially had green licences, thereafter converted to green licences, which lapsed during the 11 month period that the *Tolmay -judgment* existed (4 July 2017 until 7 June 2018). The judgment provided that sections 24 and 28 of the Firearms Control Act were unconstitutional and the order stated **that anyone who will fail to renew a firearm licence, will not be in illegal possession of such a firearm.**

12.3. When the order was set aside by the Constitutional Court, no mechanism was created to allow the **Tolmay - disadvantaged** firearm owners to renew their firearm licences. It must be noted that during this period, the Police also advised firearm owners that they don't need to apply for the renewal of their firearm licences. This resulted in approximately 300 000 to 400 000

firearm licences expiring with only participation in the amnesty as a possible (but totally unreasonable) solution for the problem.

12.4. It should be clear by now that the declaration of an amnesty, in terms of which firearms with expired licences must be surrendered, is not an acceptable way of solving the problem.

The phasing out of green licences over a six month period without reasonable procedures being in place to ensure reasonable administrative processes (as required by section 33 of the Constitution) will lead to hundreds of thousands of firearms being regarded as being in illegal possession.

12.5. A further amnesty will also not be an acceptable solution to the then problem and it will lead to civil disobedience, which all law abiding citizens believe must be avoided at all cost.

12.6. Although the Police claim that firearm owners with only green licences have had many years opportunity to convert their green licences to new order licences, the truth is that many DFO's are not aware of such a process. You are challenged to disclose the process to be followed for a present conversion of green licences.

12.7. It is clear that the Police lacks the ability to communicate with firearm owners. Even Gunfree South Africa shares this view. Accredited Firearm Owners' Associations should be involved in

whatever process is devised to facilitate effective communication with their members or members of the public.

13. SUGGESTION.

13.1. We suggest that the parties to the upliftment of the green licence-issue (including my client) be allowed to find **a real and reasonable solution** to the conversion of green licences and that **the approach should not be to have it phased out at all cost as soon as possible**, (which seems to be the present approach);

13.2. We believe it is counter productive to threaten with an immediate application to court to have the *interim order* uplifted if the (in our opinion) ill conceived draft order is not accepted by 15 March 2021. In this regard we point out that there can in our opinion be no legal basis for the idea that a firearm owner can dispose of his firearm within 60 days **after expiry of the suspension period** (see par 7.7 above) because he will after expiry of the suspension period be in illegal possession of the firearm;

13.3. We also point out that there are no criteria set in the draft order for the parties to approach the court “on good cause” to seek an extension of the suspension period (see par 7.8 above). It is clear that the order should contain elements of a structural interdict or definite benchmarks;

13.4. We suggest that a firearm summit (as was promised by the Minister of Police during March 2020) be held in good faith in order to discuss (and hopefully resolve) the various problems associated with firearm ownership;

13.5 Please inform us if you are prepared to consider my client's input to create a reasonable dispensation to phase out the old green licences.

14. RESERVATION OF RIGHTS.

Please note that all my client's rights are reserved.

15. ACKNOWLEDGEMENT OF RECEIPT.

Please acknowledge receipt hereof.

Yours faithfully.

JUAN KOTZE

(not signed because electronically transmitted)