



THE SUPREME COURT OF APPEAL OF SOUTH AFRICA
MEDIA SUMMARY OF JUDGMENT DELIVERED

Fidelity Security Services (Pty) Ltd v Minister of Police and Others (1349/2019)
[2021] ZASCA 51 (22 April 2021)

From: The Registrar, Supreme Court of Appeal

Date: 22 April 2021

Status: Immediate

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The Supreme Court of Appeal (the SCA) today partially upheld an appeal by Fidelity Security Services (Pty)Ltd (Fidelity) against the judgment of the Gauteng Division of the High Court, Pretoria (high court) in terms of which the high court dismissed an application instituted by Fidelity with costs on a punitive scale.

The judgment of the high court was granted against the following backdrop. Fidelity is one of the largest security services providers in the country. It is licensed under the Firearms Control Act 60 of 2000 (the Act) to possess some 8500 firearms for use in the course of its business operations.

In terms of s 27 of the Act, the validity of a license to possess a firearm is limited to a stipulated number of years. Section 24 and s 28 of the Act provide for the renewal of firearm licenses and their termination respectively. In particular, s 24 provides that a holder of a license issued under the Act who wishes to renew such licence must at least 90 days before the date of expiry thereof apply to the Registrar of Firearms for its renewal. Section 28, in turn, provides that a license

issued in terms of the Act terminates, inter alia, upon the expiry of the relevant period contemplated in s 27 unless renewed in terms of s 24.

Fidelity failed to renew the licenses of some 750 of its firearms as prescribed by s 24. Consequently, the licenses in respect of those firearms terminated by the operation of the law.

Fidelity then attempted to 'renew ' its licenses after they had already expired. But the police refused to accept Fidelity's applications for 'renewals 'advising that it was not permissible for anyone whose licenses have already terminated to 'renew 'them in terms of s 24. Thus, in the alternative, Fidelity sought to submit fresh applications for new licenses to possess the firearms already in its possession whose licenses had expired through inadvertence on its part. Still, the police refused to accept the new applications.

As a result of the impasse that had arisen, Fidelity instituted legal proceedings against the respondents seeking an order: (a) directing the police to accept its new applications; (2) restraining the police from confiscating the firearms whose licenses had already expired and whose continued possession by Fidelity was, as a result, unlawful; and (3) directing the respondents to issue to it temporary licenses in terms of s 21 in respect of the firearms whose licenses had expired.

The high court dismissed Fidelity's application in its entirety, having concluded that Fidelity's application was ill-conceived. Before the SCA Fidelity abandoned all save one of the prayers it had sought in the high court. It persisted only with the relief seeking an order to compel the respondents to accept its new applications. The respondents opposed even this limited relief contending that Fidelity was not entitled to the order sought because it had failed to renew its licenses at least 90 days before the expiry dates of the licenses concerned.

The SCA rejected this argument. It held that there was nothing in the Act precluding Fidelity from applying for new licenses in respect of the firearms whose licenses had expired. The SCA emphasised that what Fidelity could not do was to apply for renewals of licenses in terms of s 24 of the Act when those licenses had already terminated in terms of s 28. Nevertheless, the SCA held that Fidelity was not entitled to the extensive relief that it had sought initially in the high court. Thus, the SCA held that the high court was correct in dismissing Fidelity's application in relation to those prayers. In view of the limited success that Fidelity had achieved

on appeal it was ordered to pay the costs of the appeal up to 5 March 2021 when it abandoned the additional relief. And that Fidelity was entitled only to the costs associated with the hearing of the appeal on 11 March 2021.

Consequently the order of the high court was varied to the limited extent that Fidelity was declared entitled to apply afresh for new licenses to possess the licenses whose licenses had terminated in terms of s 28 of the Act.
