

**IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE HIGH COURT, CAPE TOWN)**

CASE NO: 11206/08

In the matter between:

JUSTICE ALLIANCE OF SOUTH AFRICA	First Applicant
FALSE BAY GUN CLUB	Second Applicant

and

NATIONAL MINISTER OF SAFETY AND SECURITY	First Respondent
NATIONAL COMMISSIONER OF THE SOUTH AFRICAN POLICE SERVICE (REGISTRAR OF FIREARMS)	Second Respondent
APPEAL BOARD OF FIREARMS	Third Respondent
NATIONAL MINISTER OF FINANCE	Fourth Respondent

APPLICATION FOR LEAVE TO APPEAL

PLEASE TAKE NOTICE that the Applicant hereby applies for leave to appeal to the Supreme Court of Appeal, against the whole of the judgment, including costs, of his

Lordship Mr Justice Saldanha (*“the Court”*) handed down on 5 November 2010 in the above matter (*“the judgment”*).

The grounds on which the application for leave to appeal is founded are as follows:

1. The Court erred and misdirected itself by interpreting the Firearms Control Act 60 of 2000 (*“the Act”*), and in particular chapter 19 thereof, in a manner that corresponds neither with the clear and simple textual meaning of the Act, nor with its purpose.

1.1. Chapter 19 of the Act is entitled *“Compensation”*, yet the interpretation given to it by the Court would result in compensation almost never occurring.

1.2. On the Court’s reading, the complicated systems created by section 137 of the Act would apply to a few dozen or so firearms which the police would retain for training purposes. If, however, that were the intention of the legislature, then section 137 would actually save the State money. Consequently, there would be no need to include the Fourth Respondent, nor consider the financial restraints on the State, nor create complex guidelines with appeal bodies. The interpretation provided by the Court fails to take into consideration the fact that section 137 of the Act was clearly drafted to deal with very large numbers of applications for compensation.

1.3. In fact, if the purpose of section 137 were only to cover firearms which the State sought to own, there would be no need for the section at all. Its function could be more than adequately filled by the ordinary laws of sale.

1.4. Section 136(6) of the Act strongly suggests that it must apply only to firearms whose provenance is unknown. The alternative reading, which was adopted by the Court, would oblige the Second Respondent to advertise the destruction of firearms that were surrendered specifically for destruction by their owners – a pointless exercise, which would be made more absurd by the fact that many tens of thousands of guns would have to be so advertised. This would simply waste the time and resources of the Respondents.

2. The Court also erred and misdirected itself by finding that the Second Respondent, in whom sections 136 and 137 vest a series of discretions, is entitled to exercise these discretions without any guidelines whatsoever.

2.1. This is despite the fact that the decisions of the Second Respondent may lead to the destruction of thousands or millions of rands worth of people's property.

2.2. Such destruction would constitute a direct infringement of those people's right to property in terms of section 25 of the Constitution of the Republic of South Africa, 1996 ("the Constitution").

2.3. The Court further failed to consider the import of section 149(3)(a) of the Act, which clearly provides that it is the Second Respondent who must decide whether firearms are to be destroyed or retained by the State.

2.4. It is an established constitutional principle that, where an administrator is granted a wide discretion which impacts upon constitutional rights, guidelines must accompany that discretion so as to ensure that the discretion is exercised lawfully.

3. The Court correctly concludes that deprivation of property without compensation may be lawful provided, *inter alia*, that the deprivation is not procedurally unfair. The Court failed, however, to apply that proviso to the facts of this case where:

3.1. The Applicants demonstrated that an unfair procedure exists, wherein persons surrendering firearms are led to believe compensation may/will be payable and are asked to fill in a form to that end, only later to find out that their property is to be destroyed; and

3.2. There is clear unfairness inherent in the interpretation of the Court inasmuch as it expects firearm owners to scour the Government Gazettes to see if their firearms are listed amongst thousands of others.

4. The Court erred and misdirected itself by finding that the limits on the amounts to be paid as compensation, in terms of the Guidelines issued by the First Respondent, are reasonable, when:

CAPE TOWN

AND TO: **THE STATE ATTORNEY**
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