

JASA Media Release

Justice Alliance of South Africa

1 Ruskin Road, Bergvliet, Cape Town 7945
Tel: 021-713-3259 Fax: 0866 727474 jasalaw@mweb.co.za
www.jasa.za.net www.justicealliance.org.za



Embargo: None
30 October 08

Enquiries: John Smyth QC
083 653 8804

Minister of Safety and Security, Registrar of Firearms and the Cape Town State Attorney flagrantly default on their obligations under High Court rules JASA's attorneys serve Rule 30(A) Notice

The State Attorney acting for the Minister and Registrar has flagrantly continued to defy the High Court Rules which require that their defence should have been filed within 3 weeks of 14th August.

Because of the unusual nature of the matter JASA agreed to an extension to 30th September. After that, although JASA did not agree, the documents were promised by 27th October. In spite of the strongest protestations, no explanation has been given for yet further delay. The State Attorney is 38 working days out of time under the Rules. In a letter dated 28 October the State Attorney simply says that the opposing affidavits will be delivered "as soon as possible" without providing any explanation for further delay.

It seems the State Attorney and its clients take the view there is one set of rules for them and another for everyone else. Or is it, as JASA suspects, that their clients have no defence to offer? If that is the case, surely in our Constitutional democracy, they should say so rather than further prejudicing the public by depriving them of their constitutional rights.

Accordingly JASA has instructed its attorneys to take the big stick and use the Rule 30(A) procedure (which was added to the Rules in 1998 under the new South Africa) which will ensure the matter can be brought before a judge in November who will be asked to give JASA judgement by default - unless the State Attorney and his clients comply with the rules by 13 November.

Background:

JASA filed papers in the Cape High Court seeking declarations that the refusal to pay compensation to persons who surrender firearms as required by the Firearms Control Act, 2000 offends against the Constitution.

Executive Board

Tim Makamu (Chairman), Stephen van Rhyn (Vice-Chairman), Tendai Musikavanhu,
Nigel Desmond, Roger Gifford, John Smyth

For over 4 years since the relevant legislation came into force the Minister and National Police Commissioner (Registrar of Firearms) have refused to comply with section 137 of the Act. JASA alleges in its affidavit that the State has acted 'unreasonably and arbitrarily, and without procedural fairness, in that most applications are rejected out of hand, ignored or simply filed away', contrary to section 33 of the Constitution which requires just administrative action for all persons.

Both individuals and dealers have suffered financial hardship; in one of several supporting affidavits filed in court it is alleged by one dealer that she suffered a loss of over R.2m as a result of refusal by all three Respondents to assist her after she had surrendered her stock of firearms. In another affidavit a lady of over 70 years of age tells of how she was treated with disdain and discourtesy, and repeatedly told she was not entitled to compensation, when she surrendered one firearm at her local police station. JASA alleges a further breach of the Constitution in that section 25 forbids deprivation of property without compensation.

JASA lays the blame for this appalling state of affairs squarely on the shoulders of the Minister (at the time Minister Nqakula) and SAPS Commissioner (Jackie Selebi) who, on 8 June 2005 and 12 October 2005 respectively, stated in Parliament, in defiance of the Act, that no compensation would be payable to those surrendering firearms.

Parliament clearly intended that s.137 of the Act should encourage the surrender of firearms, a aim which JASA wholly supports in our crime-ridden society. The Minister and SAPS take a different view. Ultimately the Constitutional Court judges must decide.

Affidavits and the Notice of Motion filed in the suit may be found on our websites. The Rule 30(A) Notice served on October 29 has also been posted.

The State Attorney may be contacted on 021- 441-9200

JASA
Upholding Justice In the Public Square

Executive Board

Tim Makamu (Chairman), Stephen van Rhyn (Vice-Chairman), Tendai Musikavanhu,
Nigel Desmond, Roger Gifford, John Smyth