

JASA Media Release

Justice Alliance of South Africa

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JASA TO APPEAL JUDGE SALDANHA'S JUDGMENT DENYING COMPENSATION TO PERSONS WHO VOLUNTARILY SURRENDER FIREARMS

At a consultation with our 3 counsel yesterday it was decided to apply immediately for leave to appeal against the Judge's decision handed down on November 5. In his decision the judge struck down part of the guidelines issued by the Minister late last year in response to Deputy Judge President's scathing judgment on August 31 2009 declaring the behaviour of the predecessor of the present Minister of Police unconstitutional.

However Judge Saldanha interpreted section 136 of the Firearms Control Act, 2000 as meaning that guns destroyed by the State do not attract a right to compensation. JASA believes this decision makes a mockery of Chapter 19 of the Act entitled "Compensation" and brings enormous injustice to those who handed in millions of rands worth of guns, were asked to fill in an application form, and were thereby led to believe compensation would be payable. It makes section 137 of the Act relevant only to a few guns retained by the Police for training purposes, whereas it is quite clear that the sub-section envisages tens of thousands of guns, compensation for which may substantially effect the State's coffers.

Judge Saldanha made no order as to costs. His judgment is posted on the JASA website: www.jasa.za.net.

The Notice of Appeal will be posted on the JASA website as soon as Counsel has drafted it.

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.

For over 5 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 alleged in its affidavit that the State acts '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 lays the blame for this 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.

We believe Parliament 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 matter came to court on August 31 2009. After 9 years of delay since the Firearms Control Act 2000 was passed, the deputy Judge President took barely 15 minutes to hand down a draconian order against the Minister of Police condemning the action of his predecessor as "unlawful and inconsistent with the Constitution." Deputy Judge President Traverso peremptorily dismissed an application for a postponement by the State, and directed the Minister to provide guidelines as required by the Act within 90 days, and then report back personally to the court by affidavit. The State were ordered to pay JASA's costs (advocates and attorney) of the whole action including the costs of 2 counsel. Peter Hodes SC and Anton Katz represented JASA and False Bay Gun Club. The State was represented by Kosie Olivier,SC.

The Court ORDER read as follows:

- 1. It is declared that the failure to establish guidelines as contemplated by section 137(5) of the Firearms Control Act No 60 of 2000 ("the Firearms Control Act") is unlawful and inconsistent with the Constitution;*
- 2. The Minister of Police is ordered to establish guidelines as contemplated by section 137(5) of the Firearms Control Act within 90 days of this order and to inform this Court by way of an affidavit by the Minister within 120 days of this order that he has done so; and*
- 3. The Minister of Police is to pay the Applicants' costs of suit, which costs are to include the costs attendant upon the employment of two counsel.*

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