IN THE CONSTITUTIONAL COURT

OF THE REPUBLIC OF SOUTH AFRICA

CCT Case no: 195/21

SCA Case no: 1349/19

GP Case no: 45537/16

In the application of

SAKELIGA NPC **Applicant**

In re:

THE MINISTER OF POLICE *First Applicant*

THE MINISTER OF JUSTICE *Second Applicant*

THE ACTING NATIONAL COMMISSIONER:
SOUTH AFRICAN POLICE SERVICES *Third Applicant*

and

FIDELITY SECURITY SERVICES (PTY) LTD *Respondent*

FILING NOTICE

DOCUMENTS TO BE FILED:

1. Sakeliga's written submissions in relation to its application to be admitted as *amicus curiae* and the merits which its wishes to argue;
2. Sakeliga's List of Authorities;
3. Sakeliga's Practice Note.

SIGNED AND DATED AT PRETORIA ON 9 November 2021

KRIEK WASSENAAR & VENTER INC
ATTORNEYS FOR SAKELIGA NPC
Ref: P Wassenaar /R Eloff/ QB0904
Tel: 012 756 7566 / Fax: 086 596 8516
E-mail: peter@kriekprok.co.za
rohann@kriekprok.co.za
Care of:
NEL DU TOIT INCORPORATED
14 TOKTOKKIE AVENUE
WELTEVREDENPARK
ROODEPOORT
Tel: 065 828 1891

TO: **THE REGISTRAR**
THE CONSTITUTIONAL COURT OF SOUTH AFRICA
via email: generaloffice@concourt.org.za

AND TO: **THE STATE ATTORNEY**
APPLICANTS ATTORNEYS
SALU BUILDING
316 THABO SEHUME STREET
PRETORIA
TEL: 012 309 1500
REF: N MBATA/4096/2016/Z23

Service by e-mail: **Nmbata@justice.gov.za**

AND TO: **MJ HOOD AND ASSOCIATES ATTORNEYS**
ATTORNEYS FOR THE RESPONDENT
MOLON LABE HOUSE, UNIT 10
WOODVIEW OFFICE PARK
1 HUMBER STREET
WOODMEAD
TEL: 011 234 7520 / 011 234 7521
REF: M HOOD/mn/F0148

Service by e-mail: **martin@mjhood.co.za**
mariette@mjhood.co.za

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WRITTEN SUBMISSIONS BY SAKELIGA NPC IN RELATION TO ITS APPLICATION TO BE ADMITTED AS *AMICUS CURIAE* AND THE MERITS WHICH IT WISHES TO ARGUE

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INTRODUCTION:

1 The Applicant for admission as *amicus curiae* will be referred to as "Sakeliga" and the existing parties will be referenced as they are already cited in the papers before this Honourable Court herein.

2 Directions dated 3 November 2021 were received wherein the Honourable Acting Chief Justice directed Sakeliga to file written

submissions on whether it should be admitted as *amicus curiae* and the merits that it wishes to argue by no later than 9 November 2021.

3 The decision on whether to admit Sakeliga as an *amicus* was deferred and it was furthermore indicated that further directions may be issued.

4 These written submissions will in Part A deal with the application for admission as an *amicus* and in Part B deal with the merits and contentions that Sakeliga wishes to advance. There is a level of overlap between these two sections because the argument to be advanced indicates the uniqueness and helpfulness of the aspects canvassed by Sakeliga. As far as possible, repetition will be avoided in these written submissions.

PART A: APPLICATION TO BE ADMITTED AS *AMICUS CURIAE*

Application for admission as *amicus curiae*

5 Sakeliga directed correspondence to the legal representatives of the Applicants and Respondent dated 18 October 2021 wherein it set out its position and requested to be admitted as an *amicus curiae.* This correspondence is annexed to the application as **Annexure "X4".**

6 After no response to the said correspondence received by the due date in the letter and in order to delay its application, Sakeliga issued the required application.

7 In the application condonation for the late filing is sought as well as relief to the effect that Sakeliga should be admitted as *amicus curiae* and be permitted to file written argument and be afforded the right to appear through counsel at the hearing and make oral submissions.

8 In paragraphs 5 to 11 of its Founding Affidavit, Sakeliga states that it is a business interest organisation with a supporter and donor basis of more than 17,000 businesspeople, companies and business organisations and a network of more than 40,000 subscribers in the Republic of South Africa.

9 It lobbies to promote a free market and economic prosperity to create a favourable business environment. It is stated that Sakeliga has the necessary legal standing to approach this Honourable Court in terms of Section 38 of the *Constitution of the Republic of South Africa*, 1996 (hereafter referred to as “the Constitution”) and in particular Section 38(c) and (e) thereof. Sakeliga has previously been admitted as an *amicus curiae* before this Court and has experience in assisting in this regard.

10 Sakeliga deals with its interest in the present matter in paragraphs 21 to 26 of its Founding Affidavit. The matter is one of significant public importance. Important questions in relation to *inter alia* property rights and just administrative action need to be answered.

11 Not only the interest of the current Respondent is affected, but the interest of numerous firearm owners with lapsed firearm licences or licences that will possibly lapse in future.

12 Sakeliga propagates a safe business environment and recognises that security companies such as the Respondent play an important role in providing this. Many business owners are also required to protect themselves and their businesses by the use of firearms.

13 Sakeliga endeavours to place a unique perspective with constitutional emphasis before this Honourable Court, which should assist the Court in coming to a just conclusion. It is respectfully contended that Sakeliga's application complies with the requirements in Rule 10 (save for the aspect of the application being initiated late, to be addressed *infra*).

Condonation:

14 Sakeliga had no prior knowledge of the Court's directives to the parties dated 4 August 2021 which would trigger time periods for an

application of this nature. It only became aware of this appeal and the facts that direction has been issued after the Registrar of the Court on 7 October 2021 published the fourth term Court roll on the Court's Twitter account. On 8 October 2021, Sakeliga's attorneys were instructed to obtain copies of the Court's hearing directive and submissions of the parties. Unfortunately, the relevant records of proceedings ordinarily published under the matter's case reference on the Court's website were not available.

15 On 13 October 2021, Sakeliga's attorneys contacted the Registrar for copies of the case record and the record was provided soon thereafter.

16 On receipt of the record, Sakeliga was able to consider the submissions of the parties and consult its legal representatives and it thereafter, on the afternoon of 15 October 2021, instructed its attorneys to formulate submissions and approach the parties by way of correspondence. The submissions were formulated and the correspondence seeking to be admitted was dispatched on 18 October 2021. Thereafter this application was swiftly issued. It is respectfully contended that in these circumstances Sakeliga did not drag its feet.

17 Sakeliga accordingly respectfully prays that condonation be granted.

Test to be applied:

18 The test for admission as an *amicus curiae* is by now well settled. In ***Fose v Minister of Safety & Security* 1997 (3) SA 786 (CC) at paragraph 9** this Court held that the main considerations are whether the submissions to be advanced are relevant and raise new contentions which may be useful to the Court. The Supreme Court of Appeal held in ***Minister of Justice and Constitutional Development & Others v Southern Africa Litigation Centre & Others* 2016 (3) SA 317 (SCA) at paragraphs 29 and 30** that new contentions will be those that may materially affect the outcome of the matter at hand.

19 Sakeliga respectfully contends that its submissions are relevant and will be helpful and will materially assist the Honourable Court in reaching the correct outcome. In this regard, Sakeliga refers to the merits and contentions to be addressed in Part B of these written submissions.

20 Sakeliga accordingly respectfully prays that it be admitted as *amicus curiae.*

PART B: MERITS AND CONTENTIONS TO BE ADVANCED

Introduction:

21 In these written submissions any reference to the "High Court judgment" or "Supreme Court of Appeal judgment" is a reference to the judgment by the two respective courts that previously were seized with this matter.

22 The judgment of this Honourable Court in ***Minister of Safety & Security v South African Hunters and Game Conservation Association* 2018 (10) BCLR 1268 (CC)** will be referred to as "*SA Hunters".* The *Firearms Control Act*, 60 of 2000, will herein be referred to as *"the Act".*

23 The central question before this Court is whether it will be permissible for a person whose firearm licence lapsed by effluxion of time to submit a new application in respect of the same firearm previously licenced.

24 In ***National Commissioner of Police & Another v Gun Owners South Africa* 2020 (6) SA 69 (SCA) at paragraph 39** the SCA held that a lapsed firearm licence is incapable of <u>renewal</u>.

25 In paragraph 19 of ***SA Hunters*** this Court indicated that the holder of a licence that has expired must get rid of the firearm. At paragraph 20, the Court held that there should be no legal obstacle to handing the firearm over to the police after termination. It was also indicated that the fear of prosecution under such circumstances is overstated.

26 Importantly, in paragraph 21 in ***SA Hunters*** the Court previously made no findings on whether such firearms handed over to the police must be destroyed or not and indicated that if there possibly was destruction, it might affect the protection of property enshrined in Section 25 of the Constitution, but that aspect was not part of the inquiry which the Court deal within that matter. This short summary is merely inserted to sketch the background and question before this Honourable Court.

27 Sakeliga respectfully contends that the discussion hereunder will assist the Honourable Court in reaching the correct conclusion on the aspects to be decided. The submissions differ from those of the parties and indicate where the focus should lie, in Sakeliga's respectful view.

Constitutional provisions:

28 The Constitution should be the starting point in these proceedings.

29 In ***Ngqukumba v Minister of Safety & Security & Others*** **2014 (5) SA 112 (CC) at paragraph 20** this Court held that the police play an important role in, *inter alia,* protecting and securing the inhabitants of South Africa and their property. In the same paragraph the Court continued:

> *"However, they, like everyone else, are subject to the Constitution, in particular – for present purposes – the rule of law. A failure to hold them to the Constitution strictly may have negative consequences: it may encourage them to be a law unto themselves. After all, police excesses are not unknown …"*

30 In terms of Section 7(2) of the Constitution, the State must respect, protect, promote, and fulfil the rights in the Bill of Rights.

31 Various important constitutional rights come into play, especially where natural persons, businessmen and businesswomen have to carry firearms to protect themselves and/or their enterprises. This is also applicable if they engage security services to assist them in this regard.

32 These rights include the right to human dignity (Section 10), the right to life (Section 11), the right to freedom and security of person which

includes the right to bodily and psychological integrity and the right not to be deprived of property (Section 25).

33 As the Respondent correctly points out, the owner of a firearm and the person to who it is (previously) licenced are not necessarily the same. A situation can arise where a person that previously held a licence and the licence then lapsed, will surrender the firearm to the police in order to bring his unlawful possession to an end. The actual owner might not even be aware of this.

34 The situation can then arise where that firearm is destroyed under circumstances where an owner has no knowledge of this possibility. This will surely constitute arbitrary deprivation of property, irrespective of whether some form of compensation might possibly be available.

35 The authors **Currie & De Waal** state the following about arbitrary deprivation in the ***Bill of Rights Handbook***, **5th Edition on page 543**:

> *"… This takes the form of a protection against deprivations of property that are not in accordance with due process, understood not only in a relatively narrow procedural sense of the term, but also in a wider substantive sense. Procedural due process means that deprivation of property must follow*

fair procedures, while substantive due process means that a deprivation of property must not be arbitrary in substance."

36 This Court held in ***Agri SA v Minister of Minerals and Energy* 2013 (4) SA 1 (CC) at paragraph 51** in the context of previous holders of mineral rights who were deprived of same by the *Mineral and Petroleum Resources Development Act*, that one of the factors that contributed to the said deprivation not being arbitrary was that previous holders had an exclusive entitlement to apply for the right to prospect or mine in respect of the rights previously held by them for a period. *In casu* the arbitrary blow to an owner of a firearm can also be softened by allowing a new application to be submitted whilst the firearm remains with the police (unless a temporary licence is possibly also issued).

37 In terms of Section 33(1) of the Constitution, everyone has the right to administrative action that is lawful, reasonable and procedurally fair. *In casu* it appears that the stance of the police Applicants is that they *in toto* refuse to accept any applications to licence a firearm if the previous licence has terminated by effluxion of time. The door is thus totally shut on such affected individuals without them even having the opportunity to possibly explain their non-compliance.

38 It appears from paragraph 13 and 14 of the Supreme Court of Appeal's judgment that it was the case of the Respondent that the system of the police does not even allow an application in respect of which a licence has lapsed, to be captured.

39 In ***Van Niekerk v Pretoria City Council 1997 (3) SA 839 (T) at 850A to C*** Cameron J (as he then was) held in relation to Section 23 of the *interim* Constitution (the precursor to Section 32 of the final Constitution) that:

> *"… In my view, s23 entails that public authorities are no longer permitted to 'play possum' with members of the public where the rights of the latter are at stake. Discovery procedures and common-law claims of privilege do not entitle them to roll over and play dead when a right is at issue and a claim for information is consequently made. The purpose of the constitution (as manifested in s23) is to subordinate the organs of State, including municipal authorities, to a new regimen of openness and fair dealing with the public. …"*

40 It is submitted that although this was held by Cameron J in respect to access to information, the principles should equally apply with reference to the right of just administrative action. Sakeliga submits that the police Applicants have a positive duty to assist the public in

protecting their rights, and *in casu* considering their potentially valid claims in respect of their property.

41 When one considers any possible limitation on rights such as ownership, consideration must be had to Section 36 of the Constitution. It is firstly important to note that such a limitation can only apply if incorporated in a law of general application. The Act does not prohibit new applications in respect of firearms where previous licences have lapsed. Less restrictive means, such as surrendering a firearm to the police Applicants and submitting a new application, must in terms of Section 36(1)(e) of the Constitution, be considered. The drastic and final effect of destruction of property must also be considered.

42 In terms of Section 205(3) of the Constitution the object of the Police Service are, *inter alia,* to protect and secure the inhabitants of the Republic and their property. In terms of Section 237 all constitutional obligations must be performed diligently and without delay.

Licence issued to person or entity:

43 Section 13 (licences for self-defence) will be used as an example of this argument. The licences referenced in Section 13 to 17 deals with licences issued to persons whilst Section 20 is applicable to firearms

for business purposes. The same argument applies with the necessary amendment in relation to legal *persona.*

44 Section 13 dealing with licences for self-defence, and in particular Section 13(2), states that the Registrar may issue a licence under this section to any natural person. Section 13(3) dictates that no person may hold more than one licence issued in terms of this Section.

45 The Respondent pointed out that possession is licenced. It is important to also note that it is the person (or entity) that is licenced and that licence then enables the person to lawfully possess a certain firearm.

46 The firearm is merely the object of the person's licence. That object can, in principle, over time be passed over to numerous holders who will all be required to have licences (or other forms of lawful entitlement) of their own. Ownership of the object does not always align with the licence holder.

47 Importantly, this indicates that if a licence to hold a certain firearm lapses, the firearm itself (the object) is not then tainted with illegality. The lawfulness of the person's possession merely comes to an end.

48 Section 28(2) of the Act dictates that the Registrar may cancel a licence if the holder of the licence no longer qualifies to hold a licence

or has contravened or failed to comply with any provisions of the Act or conditions specified in the licence.

49 Section 28(4)(a) reads that:

> *"If a notice contemplated in subsection (2) is issued, the <u>former holder</u> of the licence must dispose of the firearm in question through a dealer or in such a manner as the Registrar may determine." [Own emphasis]*

50 In terms of Section 28(4)(b), such disposal must occur within 60 (sixty) days.

51 This is indicative thereof that a person whose licence has been cancelled through active intervention of the Registrar (because of not meeting the requirements or contravention of the Act or licence conditions) may lawfully dispose of a firearm through a dealer or in another manner determined, <u>even whilst that person no longer has any licence in respect of that firearm</u>.

52 The dealer acquiring that firearm will once again then lawfully hold same on its dealer stock and will be able to market the firearm.

53 The question that arises is why a person whose licence has already been revoked through active intervention is allowed to hand it on to another holder (who may lawfully hold it again) whilst the individual

whose licence merely lapsed by effluxion of time is not afforded any opportunity to have possession of the firearm legalised again.

Absurdity:

54 The argument that those individuals whose licences have been revoked through active intervention are in a better position than individuals whose licences have merely lapsed, adds to the absurdity of the police Applicants' interpretation.

55 As matters currently stand, and on the Applicant's arguments, one would be totally barred from applying for a new licence in respect of a firearm in instances where the previous licence has lapsed, whilst one can immediately purchase a new firearm and submit an application for this new firearm. This is economically and otherwise unsensible.

56 Fidelity has indicated that it purchases firearms as and when required by its operations. It will accordingly, in all likelihood, be forced to purchase new firearms when the need arises if it cannot salvage its firearms relevant to the current proceedings in one way or another. Various other firearm possessors are in a similar position.

57 In ***Law Society of South Africa & Others v Minister of Transport & Another*** **2011 (1) SA 400 (CC) at paragraph 32** this Court held

that, when making laws, a legislator is constrained to act rationally. It may not act capriciously or arbitrarily. There must be a rational nexus between the legislative scheme and the pursuit of a legitimate Government purpose.

58 The barring of persons who have a valid claim to a surrendered firearm from affirming their rights towards that property, results in the absurdity of the owner or holder having to purchase a new firearm (at great expense to himself/herself). At the same time the police Applicants also have to manage, register and process new firearm applications (whilst at the same time also needlessly disposing of the surrendered firearm and the administrative processes involved therewith). It is Sakeliga's position that the Applicants' interpretation results in an absurd and wasteful loss of not only personal property, but also valuable (and scarce) state resources.

59 The destruction of property under circumstances where a valid claim to such property might exist but has not been decided, is unconstitutional and unreasonable. Such an absurd interpretation of the Act is inconsistent with its purpose recorded in section 2 thereof. Section 2 (e) specifically requires that the Applicants "*ensure the efficient monitoring and enforcement of legislation regarding the control of firearms.*"

60 When interpreting the Bill of Rights, the Court may consider foreign law in terms of Section 39(1)(c) of the Constitution. In terms of Section 39(2), when interpreting any legislation, every Court must promote the spirit, purport, and objects of the Bill of Rights.

61 American courts have in numerous decisions adjusted unambiguous statutory commands to avoid absurd results.

> <u>See:</u> *Clinton v. City of New York, 524 U.S. 417, 729 (1998);*
>
> *and*
>
> *Pub. Citizens v. US Dept. of Justice, 491 U.S. 440, 454 to 455 (1989)*

62 It is submitted that the Act should be interpreted in such a way as to avoid the absurdities which the Applicants seek to entrench.

63 Sakeliga's first submission on this point is that the position of the owner (or holder in some cases) of a surrendered firearm cannot be worse than that of a person whose licence has been revoked.

64 Secondly, the Act should not be interpreted in such a way as to result in a total loss for both the public as well as the state, especially where,

for instance, the owner of property can, on a proper interpretation of the Act, enforce its valid claim to the firearm with a new application.

Principle of legality:

65 The Supreme Court of Appeal judgment correctly held that there is no prohibition in the Act against an application for a licence in respect of a firearm under circumstances where the previous licence has lapsed. It is accordingly also not a crime to accept such an application, or provide any assistance in this regard. In terms of Section 35(3)(l) of the Constitution, no accused person may be convicted of an act or omission that was not an offence at the time that same was committed. This principle now constitutionally enshrines what was also the common law position – *nullum crimen sine lege*.

66 If a firearm in respect of which the licence has lapsed is handed over to the police and a new application is submitted, and that firearm remains in police possession until a new licence is issued (or temporary licence is issued) and it is only thereafter handed to the individual or entity who may then lawfully possess the object, no law at all is contravened.

67 The person lodging a new application in pursuit of his/her valid claim towards a firearm surrendered to the police is also not contravening the Act or any other law by doing so. In fact, the person is exercising his/her right to apply for a firearms licence over property to which he/she has an entitlement.

68 The argument by the Applicants based on the principle of legality is accordingly, with respect, entirely misplaced.

Impossibility:

69 Circumstances might arise where a holder of a firearm licence truly finds it impossible to timeously pursue an application for renewal which can lead to the lapsing of the licence.

70 The maxim of *lex non cogit ad impossibilia* applies in our law. The Minister of Police acknowledged as much in its Heads in the ***SA Hunters***-matter, wherein it referred the Court to the judgment of ***Montsisi v Minister van Polisie* 1984 (1) SA 619 (A)**.

71 Sakeliga agrees that this maxim finds application in our law and that it is relevant to the issues before this Honourable Court. Currently, on the basis of the Applicants' interpretation of the Act, the door has been slammed shut on persons who might have a valid claim to their

surrendered firearm, but who as a result of an impossibility was unable to renew the licence.

72 By accepting new applications and considering same, the rights of persons with a valid claim will also be protected.

73 This is the approach that should be adopted rather than one which Cameron J referred to as *"playing possum"*.

Structure of the Act:

74 The Supreme Court of Appeal judgment has correctly pointed out that nothing in the Act prohibits a new application for being received and processed.

75 In Sakeliga's view, Section 136(2) of the Act in fact supports the protection of the rights of persons who have a valid claim towards a surrendered firearm.

76 Section 136 dictates that the Registrar may in respect of firearms seized, surrendered or forfeited to the state, issue a notice in the *Gazette* stating that it is the intention of the state to destroy the said firearm or ammunition. Subsection (2) then gives the opportunity to a person who has a valid claim to the relevant firearm to, within 21 (twenty-one) days after publication of the notice, make

representations to the Registrar as to why the firearm or ammunition should not be destroyed.

77 The most likely persons that can ever claim an entitlement to a firearm would be the owner and/or a person who has applied for a new licence in respect of that firearm. This process at least affords an opportunity to be heard and to make representations on the aspect and to ensure that the firearm is not destroyed in the arbitrary fashion preferred by the Applicants.

78 This section also supports the argument that not all firearms handed over to the Applicants must inevitably be destroyed.

79 Sakeliga submits that, in order for the Applicants to destroy or dispose of a firearm in their possession, especially if there is a valid claim against such property, the Applicants must at the least show that they are lawfully empowered to do so in terms of an Act of general application. Sakeliga submits that no such general power has been given to the Applicants and that they are required to comply with Section 136(2).

80 Nothing in the Act suggests that firearms surrendered because of specifically a lapsed licence, should be excluded from opportunity to

make representations as to a valid claim in terms of section 136(2) of the Act.

81 It is submitted that the Applicants' position to merely refuse receipt of a new application for a firearms licence not only unreasonably limits the rights of firearm owners to protect their property, but is in fact *ultra vires* the Act itself.

82 However, the Applicants are empowered (and required) by the Act to receive licence applications in respect of firearms and to process them. The Act does not give them the discretion to refuse receipt of any application. The Act also does not prescribe in whose possession the firearm must be when a person applies. It can at time of application be in the possession of the police Applicants. Sakeliga submits that the Applicants have a constitutional duty to assist persons who have valid claims to protect their rights.

CONCLUSION:

83 It is to be respectfully contended that nothing prohibits the person or entity who previously held a licence in respect of a firearm that has since lapsed, from handing same firearm over to the police and submitting a new application for a licence in respect of that firearm. The person can possibly also pursue a temporary licence in terms of

Section 21 of the Act. The firearm can be returned to the lawful possessor once the relevant licence/temporary licence is issued and he/she will then once again be in lawful possession.

84 It is submitted that this pragmatic approach is consistent with constitutional values and formulation of the Act itself. Sakeliga thus respectfully contends that it is the answer to the matter before this Honourable Court.

85 Sakeliga accordingly respectfully prays that the late launching of this application be condoned, and that it be admitted as *amicus curiae* in the proceedings.

86 Sakeliga also respectfully prays that the Court considers its written argument filed and affords it the opportunity to make oral representations at the hearing, through counsel.

SIGNED AT PRETORIA ON 9 NOVEMBER 2021



_____

J.G.C. HAMMAN

COUNSEL FOR APPLICANT

FOR ADMISSION AS *AMICUS CURIAE*



KRIEK WASSENAAR & VENTER INC
ATTORNEYS FOR SAKELIGA NPC
Ref: P Wassenaar /R Eloff/ QB0904
Tel: 012 756 7566 / Fax: 086 596 8516
E-mail: peter@kriekprok.co.za
rohann@kriekprok.co.za
Care of:
NEL DU TOIT INCORPORATED
14 TOKTOKKIE AVENUE
WELTEVREDENPARK
ROODEPOORT
Tel: 065 828 1891

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SAKELIGA NPC – LIST OF AUTHORITIES

CASES:

Fose v. Minister of Safety & Security, p 7
1997 (3) SA 786 (CC) at paragraph 9

Minister of Justice and Constitutional p 7
Development & Others v. Southern Africa
Litigation Centre & Others,
2016 (3) SA 317 (SCA) at paragraphs 29 and 30

Minister of Safety & Security v. South African p 8,9
Hunters and Game Conservation Association,
2018 (10) BCLR 1268 (CC)

National Commissioner of Police & Another p 8
v. Gun Owners South Africa,
2020 (6) SA 69 (SCA) at paragraph 39

Ngqukumba v. Minister of Safety & Security p 10
& Others**, 2014 (5) SA 112 (CC)**
at paragraph 20

Agri SA v. Minister of Minerals and Energy, p 12
2013 (4) SA 1 (CC) at paragraph 51

Van Niekerk v. Pretoria City Council, p 13
1997 (3) SA 839 (T) at 850A to C

Law Society of South Africa & Others v. p 17
Minister of Transport & Another,
2011 (1) SA 400 (CC) at paragraph 32

Clinton v. City of New York, p 19
524 U.S. 417, 729 (1998)

Pub. Citizens v. US Dept. of Justice, **491 U.S. 440, 454 to 455 (1989)** p 19

Montsisi v Minister van Polisie **1984 (1) SA 619 (A)** p 21

LEGISLATION:

Constitution of the Republic of South Africa, **1996** p 4,9,10,11,12,14,19 + 20

Firearms Control Act**, 60 of 2000** p 8,14,15,16,18,23,24 25

AUTHORS:

Currie & De Waal *Bill of Rights Handbook*, **5th Edition on page 543** p 11

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SAKELIGA'S PRACTICE NOTE: AMICUS CURIAE APPLICATION

1. NATURE OF PROCEEDINGS:

Application seeking leave to appeal in respect of major component of judgement and order of the Supreme Court of Appeal. Sakeliga NPC ("Sakeliga") has initiated an application to be admitted as *amicus curiae*.

2. ISSUES TO BE ARGUED:

Sakeliga seeks to be admitted as *amicus* at this stage. Sakeliga will argue that one can apply for a new licence to possess a firearm in circumstances where a previous licence has lapsed. This approach is the constitutionally sound approach.

3. READ THE RECORD:

Sakeliga's application to be admitted as an amicus should be read, along with its written submissions. The existing parties should direct what other components of the record should be read.

4. ESTIMATED DURATION:

45 minutes - 1 hour

5. SUMMARY OF ARGUMENT:

5.1. Important Constitutional considerations are at the heart of this matter. These include those is section 10, 11, 12, 12, 33 and 205 of the *Constitution of the Republic of South Africa*, 1996.

5.2. One cannot outright refuse to receive new applications. There might even be very good reasons for not having timeously renewed before. The police applicants prefer to not even consider this. The process of merely destroying firearms without having any other option (according to the applicants) leads to arbitrary deprivation and expropriation.

5.3. The legislation should be interpreted to avoid absurd consequences. A person can easily buy new firearm and licence it. He/she however cannot licence one previously licenced after the licence expired. Those who have lost their

licences through active intervention are left in a better position. They can lawfully transfer firearms without a licence.

5.4. It is important to note that in our system the person is licenced. The firearm is the object of the licence. The firearm is not tainted in illegality after lapsing, the holder's possession merely becomes unlawful. The act contains strong indications that such new applications ought to be accepted.

SIGNED AND DATED AT PRETORIA ON 9 NOVEMBER 2021



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ADV JGC HAMMAN

Counsel for Sakeliga NPC



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KRIEK WASSENAAR & VENTER INC
ATTORNEYS FOR SAKELIGA NPC
Ref: P Wassenaar /R Eloff/ QB0904
Tel: 012 756 7566 / Fax: 086 596 8516
E-mail: peter@kriekprok.co.za
rohann@kriekprok.co.za
Care of:

NEL DU TOIT INCORPORATED
14 TOKTOKKIE AVENUE
WELTEVREDENPARK
ROODEPOORT
Tel: 065 828 1891

TO: **THE REGISTRAR**
THE CONSTITUTIONAL COURT OF SOUTH AFRICA
via email: generaloffice@concourt.org.za