REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

CASE NO: 2025-104362

(1) REPORTABLE: YES/~~NO~~
(2) OF INTEREST TO OTHER JUDGES: YES/~~NO~~
(3) REVISED: ~~YES~~/NO

15/09/2026

DATE

SIGNATURE

In the matter between:

NATIONAL HUNTING AND SPORT SHOOTING ASSOCIATION NPC	First Applicant
THE SOUTH AFRICAN ARMS AND AMMUNITION DEALERS ASSOCIATION NPO	Second Applicant
and	
MINISTER OF POLICE	First Respondent
THE NATIONAL COMMISSIONER OF THE SOUTH	

AFRICAN POLICE SERVICES	Second Respondent
THE HEAD OF FLASH, MAJOR GENERAL MAMOTHETI	Third Respondent
THE HEAD OF THE CENTRAL FIREARMS REGISTRY, BRIGADIER SIKHAKHANE	Fourth Respondent

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JUDGMENT

MBONGWE, J:

INTRODUCTION

[1] This application raises novel questions concerning the proper interpretation of the Firearms Control Act 60 of 2000 ("the FCA"), the constitutional limits of executive and administrative power, and the legal consequences flowing from the distinction between ownership and possession of firearms.

[2] The applicants challenge directives, administrative practices, operational instructions and electronic-system restrictions employed by the respondents which allegedly prohibit licensed firearms dealers from receiving firearms into dealer stock or safe custody where the licence of the owner has expired, lapsed or not been renewed, or where the owner is deceased and the firearm forms part of a deceased estate.

[3] The matter is of substantial practical significance. The issues affect firearm owners, executors, heirs, attorneys, firearm dealers, sport shooters, hunters, collectors, the firearms industry, and the administration of the FCA throughout the Republic.

[4] Although the respondents delivered answering affidavits, they neither appeared at the hearing nor filed heads of argument.

[5] Despite that failure, the Court remains obliged independently to determine whether the relief sought is justified on the facts and in law.

STANDING

[6] The first applicant is an association representing firearm owners engaged in hunting and sport shooting.

[7] The second applicant represents licensed firearm dealers and persons engaged in the lawful trade in firearms and ammunition.

[8] Both applicants contend that the impugned measures adversely affect their members throughout South Africa.

[9] Section 38 of the Constitution recognises litigation by persons acting in their own interests, on behalf of others, in the public interest and in the interests of members of an association.

[10] The applicants have demonstrated a direct and substantial interest in the legal questions raised.

[11] The issues are neither abstract nor hypothetical.

[12] They concern recurring administrative practices affecting a significant number of persons within the firearm-regulatory environment.

[13] I am satisfied that the applicants enjoy standing.

THE NATURE OF THE DISPUTE

[14] At first glance, this appears to be a dispute concerning firearms licensing.

[15] Properly understood, however, it is a dispute concerning the legal consequences of ownership surviving the termination of a licence.

[16] The respondents' position appears to be that once a licence has expired or ceased to exist, a firearm may not be transferred into dealer stock and may not proceed through ordinary channels of disposal and relicensing.

[17] The applicants contend that this position is unsupported by the FCA, contrary to the Regulations, inconsistent with authority, and unlawful.

[18] The dispute therefore requires examination of the FCA itself before consideration of the impugned directives.

THE STATUTORY FRAMEWORK

[19] The FCA establishes a comprehensive regulatory regime governing firearms.

[20] The Act is directed principally at controlling possession.

[21] Possession is regulated through licences, permits and authorisations.

[22] The Act also regulates manufacturers, gunsmiths, dealers, official institutions and other participants in the firearms environment.

[23] The purpose of the statutory scheme includes accountability, traceability, safe custody and the prevention of unlawful possession.

[24] Significantly, however, the Act does not provide that ownership automatically terminates when a licence expires.

[25] Nor does it provide that ownership automatically vests in the State when a licence lapses.

[26] Those omissions assume importance in the present matter.

OWNERSHIP AND POSSESSION

[27] South African private law has always drawn a distinction between ownership and possession.

[28] Ownership is the most comprehensive real right known to our law.

[29] Possession is a factual and legal relationship with a thing.

[30] The concepts frequently coincide.

[31] They are nevertheless distinct.

[32] An owner may lose possession while retaining ownership.

[33] A possessor may possess without ownership.

[34] It follows that loss of possession does not necessarily entail loss of ownership.

[35] Any interpretation of the FCA must therefore begin from the premise that ownership and possession are separate legal concepts unless the Legislature clearly provides otherwise.

THE SIGNIFICANCE OF FIDELITY

[36] The Constitutional Court's decision in *Minister of Police and Others v Fidelity Security Services (Pty) Ltd*[1] represents the jurisprudential foundation of this matter.

[37] Fidelity rejected the proposition that ownership of a firearm automatically ceases upon expiry of a licence.

[38] The Court recognised that the FCA principally regulates possession rather than ownership.

[39] A licence may terminate.

[40] Possession may subsequently become unlawful.

[41] Ownership nevertheless survives.

[42] In my view, that conclusion is decisive.

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[1] *Minister of Police and Others v Fidelity Security Services (Pty) Ltd (CCT 195/21) [2022] ZACC 16; 2022 (2) SACR 519 (CC); 2023 (3) BCLR 270 (CC).*

[43] Once ownership survives licence expiry, several legal consequences necessarily follow.

[44] The firearm remains property.

[45] It remains capable of sale.

[46] It remains capable of donation.

[47] It remains capable of inheritance.

[48] It remains capable of lawful disposal.

[49] Most importantly for present purposes, it remains capable of lawful transfer through mechanisms recognised by law.

[50] The respondents' position appears inconsistent with those consequences.

THE POSITION OF A LIVING OWNER

[51] The first category concerns a living owner whose licence has expired or has not been renewed.

[52] It is important not to confuse two distinct questions.

[53] The first is whether that person may continue personally possessing the firearm.

[54] The second is whether that person remains owner.

[55] Fidelity resolves the latter question.

[56] The owner remains owner.

[57] Ownership survives.

[58] The owner may no longer enjoy lawful possession.

[59] But ownership remains a substantive legal right.

[60] Once ownership survives, there must exist lawful mechanisms whereby the owner may realise, transfer or dispose of the asset.

[61] A legal system cannot meaningfully recognise ownership while simultaneously eliminating every practical means through which ownership may be exercised.

DECEASED OWNERS AND DECEASED ESTATES

[62] The deceased-estate scenario raises even greater difficulties for the respondents' interpretation.

[63] Upon death, ownership of assets does not vanish.

[64] Assets vest in the deceased estate.

[65] Administration of those assets occurs through an executor appointed according to law.

[66] Firearms remain estate assets.

[67] They are not placed beyond administration merely because their possession is regulated.

[68] The executor is obliged to preserve, realise and distribute estate assets.

[69] If firearms cannot be transferred to licensed dealers, substantial practical difficulties arise.

[70] Firearms cannot readily be sold.

[71] Their value cannot easily be realised.

[72] Administrative deadlock results.

[73] The respondents' interpretation therefore interferes with established principles governing the administration of deceased estates.

[74] Nothing in the FCA suggests that Parliament intended such consequences.

[75] Had Parliament intended to suspend ordinary principles of estate administration, one would expect clear language.

[76] No such language exists.

SECTION 28(4)

[77] Section 28 assumes particular importance.

[78] Upon termination of a licence, section 28(4) contemplates disposal of the firearm through a dealer or in another manner determined by the Registrar.

[79] Parliament therefore expressly recognised dealers as a mechanism through which firearms may lawfully be dealt with after termination of a licence.

[80] That is significant.

[81] The respondents' interpretation effectively removes from operation one of the principal statutory mechanisms identified by Parliament itself.

[82] Such an interpretation cannot readily be reconciled with section 28.

[83] Nor can administrative directives override an express legislative pathway.

REGULATION 37(3)

[84] Regulation 37(3) is central to the present dispute.

[85] Dealers are required to maintain prescribed records concerning firearms in stock and firearms held in safe custody.

[86] The legislative purpose is evident.

[87] Parliament contemplated that firearms would be received, recorded, stored and controlled by licensed dealers.

[88] The existence of a safe-custody register is especially revealing.

[89] It presupposes circumstances in which ownership remains vested in one person while lawful custody is exercised by another.

[90] The Regulation therefore embodies legislative recognition of the distinction between ownership and possession.

[91] It also provides the administrative mechanism through which firearms may remain traceable and secure pending transfer, disposal, inheritance or relicensing.

[92] The applicants are correct that Regulation 37(3) sits uneasily, if not irreconcilably, with a directive that prevents the very conduct which the regulation appears designed to accommodate.

[93] An administrative directive cannot nullify a regulatory mechanism established pursuant to statutory authority.

SECTION 39 AND THE STATUTORY ROLE OF DEALERS

[94] Dealers occupy a unique position under the FCA.

[95] They are not ordinary members of the public.

[96] They are specially licensed participants within the statutory framework.

[97] The FCA regulates dealer premises, stock, record-keeping and inspections precisely because dealer possession of firearms is contemplated and authorised.

[98] Dealer possession serves the objects of firearm control.

[99] It promotes traceability.

[100] It promotes accountability.

[101] It promotes safe storage.

[102] It promotes effective regulation.

[103] The respondents' interpretation is difficult to reconcile with the existence and purpose of the dealer-regulatory framework.

THE DIRECTIVE

[104] The challenged directive and related practices appear to proceed from a proposition that firearms whose licences have expired cannot lawfully enter dealer stock.

[105] That proposition is unsupported by the FCA.

[106] It is unsupported by section 28.

[107] It is unsupported by section 39.

[108] It is unsupported by Regulation 37(3).

[109] It is unsupported by Fidelity.

[110] Its legal source appears to be administrative preference rather than legislative command.

LEGALITY

[111] The principle of legality forms part of the rule of law.

[112] Public power must originate from lawful authority.

[113] In *Fedsure Life Assurance Ltd v Greater Johannesburg Transitional Metropolitan Council*,[2] the Constitutional Court held that every exercise of public power must have a lawful source.

[114] In *Pharmaceutical Manufacturers Association of SA*,[3] the Constitutional Court reaffirmed that all public power is constrained by legality.

[115] In *Affordable Medicines Trust*, [4]the Court stressed that administrators cannot exercise powers beyond those conferred by legislation.

[116] Those principles apply directly here.

[117] Parliament enacts legislation.

[118] Administrators implement legislation.

[119] Directives may facilitate administration.

[120] They may not alter the statute.

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[2] *Fedsure Life Assurance Ltd v Greater Johannesburg Transitional Metropolitan Council (CCT7/98) [1998] ZACC 17; 1999 (1) SA 374 (CC); 1998 (12) BCLR 1458 (CC).*

[3] *Pharmaceutical Manufacturers Association of SA and Another: In re Ex Parte President of the Republic of South Africa and Others (CCT31/99) [2000] ZACC 1; 2000 (2) SA 674 (CC); 2000 (3) BCLR 241 (CC).*

[4] *Affordable Medicines Trust and Others v Minister of Health and Another (CCT27/04) [2005] ZACC 3; 2006 (3) SA 247 (CC); 2005 (6) BCLR 529 (CC)*

[121] They may not create substantive legal prohibitions absent statutory authority.

[122] They may not rewrite Regulations.

[123] They may not transform electronic-system limitations into sources of law.

[124] The respondents have identified no statutory basis for the prohibition under challenge.

[125] None exists.

[126] The impugned measures are accordingly ultra vires.

RATIONALITY

[127] Rationality constitutes an incident of legality.

[128] There must be a rational connection between means and legislative purpose.

[129] The FCA seeks regulatory control of firearms.

[130] A firearm recorded in dealer stock is traceable.

[131] It is subject to inspection.

[132] It is held in regulated premises.

[133] It remains within a monitored system.

[134] The Court struggles to perceive how prohibiting dealer possession advances those objectives.

[135] To the contrary, the prohibition appears to produce administrative paralysis.

[136] The firearm remains owned.

[137] Disposal is impeded.

[138] Estate administration is frustrated.

[139] Relicensing is obstructed.

[140] Such outcomes bear no rational relationship to the statutory objectives.

PROPERTY CONSIDERATIONS

[141] Although not decisive, constitutional property values support this interpretation.

[142] Ownership remains a protected legal interest.

[143] A directive that renders ownership practically incapable of exercise approaches a substantial interference with proprietary rights.

[144] Courts should not infer legislative intention producing such consequences absent clear language.

CONCLUSION

[145] Fidelity establishes that ownership and possession remain distinct concepts under the FCA.

[146] Ownership survives licence expiry.

[147] Ownership survives death.

[148] Firearms remain assets capable of lawful administration and disposal.

[149] Section 28(4), section 39 and Regulation 37(3) collectively establish a statutory framework recognising dealer custody and dealer stock as lawful mechanisms within the regulatory system.

[150] The impugned directives and administrative restrictions substantially undermine that framework.

[151] They impose a prohibition that Parliament did not enact.

[152] They are inconsistent with the FCA and Regulations.

[153] They offend the principle of legality.

[154] They are irrational.

[155] The applicants have therefore established their entitlement to declaratory relief.

ORDER

[156] The following order is made:

1. It is declared that the expiry, lapsing or non-renewal of a firearm licence does not, without more, extinguish ownership of the firearm concerned.

2. It is declared that where a firearm owner dies, the firearm remains an asset of the deceased estate pending lawful administration.

3. It is declared that a duly licensed firearms dealer may lawfully receive possession of a firearm from:

   3.1 a living owner whose licence has expired, lapsed or not been renewed; and

   3.2 a deceased estate acting through its duly appointed executor, for purposes authorised by the Firearms Control Act 60 of 2000.

4. It is declared that any directive, circular, instruction, policy, administrative practice, electronic-system limitation or operational measure which prohibits a duly licensed firearms dealer from receiving, recording, storing, safekeeping or entering such firearm into dealer stock solely because the licence held by the previous owner has expired, lapsed, not been renewed or ceased by reason of death, is inconsistent with the Firearms Control Act 60 of 2000, including section 28(4), section 39 and Regulation 37(3), and is unconstitutional, unlawful and invalid.

5. The respondents shall, within 90 days of this order:

   a) withdraw or amend all directives and instructions inconsistent with this judgment;
   b) amend all relevant electronic and administrative systems necessary to give effect to this judgment; and
   c) communicate the effect of this judgment to all Designated Firearms Officers, Provincial FLASH offices and the Central Firearms Registry.

6. The respondents shall process all applications, transfers and transactions contemplated by the Act consistently with this judgment.

7. The respondents shall pay the applicants' costs, jointly and severally, including the costs consequent upon the employment of two counsel where so employed.

MPN MBONGWE
JUDGE OF THE HIGH COURT
GAUTENG DIVISION
PRETORIA

APPEARANCES

For the Applicant:	**ADV M SNYMAN SC**
Instructed by:	MJ Hood & Associates
For the Respondent:	**NO APPEARANCE**
Instructed by:	The State Attorney
Date of Hearing:	**07 September 2026**
Date of Judgment:	**15 September 2026**

THIS JUDGMENT WAS ELECTRONICALLY TRANSMITTED TO THE PARTIES' LEGAL REPRESENTATIVES AND UPLOADED ONTO CASELINES ON 15 SEPTEMBER 2026.