

MJ Hood & Associates

A T T O R N E Y S

18 May 2020

Our Ref: M Hood / rm /S0669

Your Ref: 3/3/8(200)

**MAJOR GENERAL MAMOTHETI
HEAD OF FLASH
PER EMAIL: MamothetiJ@saps.gov.za
PER EMAIL: PretoriusG@saps.gov.za**

Dear Madam

**RE: DIRECTIVE DATED 13 MAY 2020
RELATING TO REGULATIONS ISSUED IN TERMS OF SECTION
27(2) OF THE DISASTER MANAGEMENT ACT, 2002: ALERT
LEVEL 4: FIREARMS, LIQUOR AND SECOND-HAND GOODS**

**OUR CLIENT: THE SOUTH AFRICAN ARMS AND AMMUNITION
DEALER'S ASSOCIATION**

PREAMBLE

1. We preface the contents of this communication by quoting the Honourable Judge Fabricius in the recently given Khosa judgement case number 21512/20 North Gauteng against, *inter alia*, the Minister of Defence and Minister of Police who commented in his judgment, *inter alia*, as follows at paragraph 7:

"The populace must be able to trust the government to abide by the rule of law and to make rational Regulations to promote their stated purpose. These should intrude upon the rights of people (and business) either not at all or if they do, or justifiability must, the least restrictive measures, must be sought, applied and communicated to the public. In return the Government can justifiably expect the citizens to

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cooperate for the common goal take responsibility to ensure that their own safety and that of others."

2. He then goes on to state at paragraph 8 as follows:

"I must point out, as I will again hereunder that the founding values of our Constitution include a democratic government based on the principles of accountability, responsiveness and openness. The public administration, which includes all organs of State, must be accountable and transparency must be fostered providing the public with timely, accessible, accountable and accurate information."

3. Judge Fabricius goes on state at paragraph 19 as follows:

"is that I and counsel were at idem that at present there is a large measure of distrust between the South African populace and the government. This distrust relates primarily to the functions of the respondents and how they treat the persons throughout South Africa in the context of the Regulation made under the Disaster Management Act."

4. We refer to your divisional directive dated 13 May 2020 signed by Divisional Commissioner Visible Policing MD Sempe, which our client received on 15 May 2020.
5. We urge you to read this communication carefully and as a matter of urgency.
6. Before we deal with the content of the directive itself it is appropriate to detail with what has happened between you as head of FLASH and the firearm community in general and specifically the writer's client the South African Arms and Ammunition Dealer's Association, since you were promoted into the position as head of FLASH.
7. You were present at the two day Firearm Summit that took place in March 2015 under the auspices of the Portfolio Committee on Police in Parliament. You were also present at the police portfolio committee meeting on 3 June 2015 in Parliament where you made a presentation to the committee. You heard all of the complaints from civil society about your area of responsibility.
8. You listened whilst the Deputy Minister of Police, as well as members of civil society and representatives from the firearm community criticised your department for substantial and ongoing failures to properly implement the Firearms Control Act and your failure to

interact fairly with the public, both at the Firearm Summit and at the Portfolio Committee meeting.

9. As far as back as 2007 the then Public Protector noted administrative justice and its application as well as its understanding and implementation were sorely lacking within the firearm environment.
10. As a result of the Firearm Summit you were instrumental in setting up a stakeholder strategy wherein you were personally advised of all of the problems that the public and other stakeholders such as our client experienced within the firearms environment.
11. Meetings took place, *inter alia*, on 8 September 2015, the 07 October 2015 and 19 October 2015 with yourself and the current National Commissioner. The last meeting our client had with you was in March 2018 which compelled our client to proceed under case number 41415/18, because you did not respond to our clients issues.
12. Your Major General Mamotheti was integrally involved in this process and must bear ultimate responsibility for this process grinding to a halt and achieving no concrete outcomes.
13. This in turn resulted in a substantial amount of litigation against your department.
14. You yourself i.e. Major General Mamotheti have been involved in and have been sued by, *inter alia*, our client's on a number of occasions for a failure to be administratively fair to our client.
15. To remind you, we refer to what is termed the main case of our client, the South African Arms and Ammunition Dealer's Association, case number 41415/18.
16. This case is part heard but Madam Justice Basson has already issued an order (where Brigadier Mabule was present at court) a copy of which is attached as Annexure "**A**".
17. Not only does this order compel your department to consult with our clients, but it also requires that you develop so-called electronic connectivity in conjunction with our client. Your department has failed to comply with this court order and has not consulted our client at all let alone to comply with the court order. This is one specific example of your failure to comply with court orders and failure to treat our clients in an administratively fair manner.
18. Two other specific examples involved Colonel Sikhakhane of the Central Firearms Registry who indirectly reports to you.

19. Colonel Sikhakhane has on two occasions had court orders granted against FLASH overturning her conduct, case numbers 72624/2019 and 38807/2019 relating to barrel changes due to a failure to comply with administrative requirements of the Constitution and of the Promotion of Administrative Justice Act. On both occasions unilateral changes were made to procedures that administratively prejudiced our client.
20. The writer has addressed you on numerous occasions, even attaching a copy of the Promotion of Administrative Justice Act (yet another copy is attached as Annexure "B") and has entreated you to read, understand and inculcate the provisions of the Promotion of Administrative Justice Act not only in your staff but yourself. You have dismally failed to do so, to extent that our client now believes that your conduct (as will be set out below) is not merely negligent or incompetent but is deliberate.
21. You do not acknowledge correspondence.
22. The writer refers to his communication from our client addressed to you as Annexure "C" hereto that has not even been acknowledged let alone dealt with. Your response was to issue a directive dated 7 May 2020 without acknowledging our correspondence or engaging with our client about its concerns.
23. We also remind your Major General Mamotheti that under case number 38807/2019 pending against your department relating to the issue of directives where, our client's argument is that you are not entitled to issue directives on how to implement the Firearms Control Act but they must be done by way of regulation. That matter is pending but your Major General Mamotheti is well aware of the substance of that case; that you cannot issue executive decrees without them being encapsulated in regulations, approved by the Minister of Police.

Directive dated 13 May 2020

24. In your communication of 13 May 2020 you state as follows:

"Even though Firearms and Ammunition Dealers are not included in Table 1 of the Regulations, the following three (3) Firearms and Ammunition Dealers will be allowed to operate during AL4 due to a High Court Order (Case Number 21619/2020) issued by the High Court of South Africa, Gauteng Division of Pretoria, dated 8 May 2020."

25. In issuing that directive, you have effectively told all provincial commissioners and SAPS members serving under and reporting to such provincial commissioners that any other firearm dealer is not entitled to trade. This is simply wrong.
26. This is a gross misrepresentation of what the level 4 regulations stipulate to the point again where our client has concluded that your conduct is neither negligent nor incompetent, but intentional.
27. We draw to your attention the following.
28. Alert level 4 allows any service provider who does not need a CIPC certificate, to support any essential service and it also allows permitted services that are not essential.
29. Should any firearm dealer supply the agricultural, hunting, forestry or security industry (these are merely examples) their conduct will be lawful.
30. SAPS: Divisional Policing (FLASH) in the directive of 13 May 2020 have effectively instructed all members of the South African Police Services that trading other than by the three entities specified in your directive is unlawful. This is so patently incorrect, that once again we stress our client can only conclude that your conduct is intentional and not simply incompetent. The court order referred to in your directive interprets the April 29 DMA Regulations as applicable to firearm dealers. It does not confer a monopoly on the entities referred to therein.
31. We also refer you to the regulations relating to e-Commerce published under Government Gazette 43321 dated 14 May 2020.
32. A copy of this is attached as Annexure "D".
33. These e-Commerce regulations, and we refer you to the definition of e-Commerce which is, *inter alia*,

"the buying and selling of goods using telephones and digital platforms, including the internet and mobile phone based applications, and for this purpose includes goods to be delivered by a courier or delivery service."
34. This means that our clients are entitled to engage in e-Commerce above and beyond the limitations that we have referred to above at level 4 as per table A of the regulations.

You make "laws" arbitrarily

35. At this point, we also wish to correct your directive (and you were addressed about this in our letter dated 6 May 2020) where you have indicated that licencing is limited to renewals, competency certificate renewals and amnesty applications.
36. There is no such limitation in the regulations which refers to "licencing". It follows that FLASH is compelled to accept and process all firearm applications including new applications.
37. This is another example of a unilateral and unlawful interpretation of a regulation by you on behalf of FLASH that has been applied to the direct detriment not only of clients but the general firearm owning public.
38. Again we need to stress that the writer's clients and the broader firearm community are stakeholders and we have consistently been recognised as such by not only the High Court but by the Portfolio Committee on policing. Notwithstanding this, you simply do not engage with our client.
39. We hold instructions to demand that you withdraw the directive with immediate effect, and by no later than 16h00 Tuesday 19 May 2020.
40. Should you not do so, we are going to send this communication to all provincial commissioners, provincial designated firearm officers and designated firearm officers, to protect our clients from unconstitutional and administratively unlawful instructions.
41. Should you not withdraw your directive immediately as stated in paragraph 39, we will proceed on behalf of our clients to obtain an urgent court order against you, personally and against the Registrar and Minister of Police.
42. We must stress that our failure to deal with all issues arising out of what is contained in this communication should not be construed as an admission in any fashion not should it be construed as a waiver of any of our clients rights, which are reserved.

Yours faithfully



M J HOOD & ASSOCIATES