

**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*

**APPLICATION TO THE CHIEF JUSTICE / ACTING CHIEF JUSTICE  
OF THE COURT IN TERMS OF RULE 10(4) TO BE ADMITTED AS  
*AMICUS CURIAE***

**PLEASE TAKE NOTICE THAT** the applicant, **Sakeliga NPC** ("**Sakeliga**") hereby applies to the Chief Justice / Acting Chief Justice of this Honourable Court, in terms of Rule 10 (4), to be admitted as *amicus curiae* on such terms and conditions and with such rights and privileges as the Chief Justice / Acting Chief Justice may determine, for an order in the following terms:

1. THAT the late filing of Sakeliga's application be condoned;
2. THAT Sakeliga be admitted as *amicus curiae* in the appeal and application under the above case numbers (the "**main application**");
3. THAT Sakeliga be permitted to file written heads of argument for purposes of the main application by such time as the Chief Justice / Acting Chief Justice directs;

4. THAT Sakeliga be afforded the right to appear through counsel at the hearing of the main application and to make oral submissions to the Court.

**PLEASE TAKE FURTHER NOTICE THAT** the affidavit of **PIETER JACOBUS LE ROUX** attached hereto is used in support of the application.

SIGNED AND DATED AT PRETORIA ON 20 OCTOBER 2021

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**KRIEK WASSENAAR & VENTER INC**  
**ATTORNEYS FOR SAKELIGA NPC**  
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**TO: THE REGISTRAR  
THE CONSTITUTIONAL COURT OF SOUTH AFRICA  
via email: [generaloffice@concourt.org.za](mailto:generaloffice@concourt.org.za)**

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

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**AND TO: MJ HOOD AND ASSOCIATES ATTORNEYS  
ATTORNEYS FOR THE RESPONDENT  
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**Service by e-mail: [martin@mjhood.co.za](mailto:martin@mjhood.co.za)  
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**AFFIDAVIT IN SUPPORT OF APPLICATION  
TO THE CHIEF JUSTICE / ACTING CHIEF JUSTICE OF THE  
COURT IN TERMS OF RULE 10 (4) TO BE ADMITTED AS *AMICUS  
CURIAE***

I, the undersigned,

**PIETER JACOBUS LE ROUX**

do hereby make oath and state as follows:

1. I am an adult male and the Chief Executive Officer of the applicant, with business address at Building A, 5th Floor, Loftus Park, 402 Kirkness Street, Arcadia, Pretoria, Gauteng Province.
2. I confirm that I have the necessary authority to bring this application and to represent the applicant herein. I attach hereto a delegation and resolution confirming the required authority, which I have marked **X1**.
3. The facts set out in this affidavit fall within my personal knowledge. Where this affidavit contains statements that amount to legal

submissions, such statements are made based upon the advice of Sakeliga's legal representatives.

4. In order to prevent any confusion, I shall refer to the applicant in this application for leave to be admitted as *amicus curiae* as "**Sakeliga**", and to the parties in the appeal and main application (the "**main application**") before the Court as the "applicants" and the "respondent" respectively.

#### **THE APPLICANT IN THE *AMICUS* APPLICATION**

5. The applicant is SAKELIGA NPC, a non-profit company duly registered and incorporated in terms of the statutes of the Republic of South Africa under registration number 2012/043725/08, with its principal place of business situated at Building A, 5th Floor, Loftus Park, 402 Kirkness Street, Arcadia, Pretoria, Gauteng Province.
6. The applicant is a business interest organisation with a supporter and donor base of more than 17 000 businesspeople, companies and business organisations and a network of more than 40 000 subscribers in South Africa.

7. The Sakeliga lobbies to promote a free market and economic prosperity to create a favourable business environment in the interest of its supporters and the interest of the common good. In order to give effect to its main object, it also provides support to its supporters and the public at large, which support includes legal support.
8. Further, to achieve the applicant's objectives and to perform its functions and mandate, entails as an ancillary object to act in the interest of its supporters and members of the public to protect their business interests and other constitutional rights, which duty includes the ability to participate in public interest litigation.
9. The aforesaid is also evident from an extract of Sakeliga's memorandum of incorporation which extract I attach hereto and mark annexure **X2**. I deem it apposite to draw this Court's attention to clause 4 of the memorandum of incorporation, which sets out in more detail the objects, ancillary objects, and powers of the applicant.
10. Sakeliga furthermore has the necessary standing to approach this Court in terms of section 38 of the Constitution of the Republic of South Africa, 1996 (the "Constitution"). Sakeliga is acting in the public interest (section 38 (d)), and on behalf of its supporters and members



who own firearms and/or uses security services such as those provided by the respondent (section 38 (c) and section 38 (e)).

11. Sakeliga has in the past been admitted as an *amicus curiae* before the Court, and has experience in assisting the Court.

## **CONDONATION**

12. Sakeliga humbly requests condonation for the late filing of the application.
13. Sakeliga had no prior knowledge of the Court's directive to the parties dated 4 August 2021, which would trigger the time period for an application such as this.
14. Sakeliga only became aware of the appeal and the fact that directions have been issued for the 18 November 2021 hearing, after the Registrar of the Court on 7 October 2021, published the fourth term court roll on the Court's Twitter account.
15. On 8 October 2021, Sakeliga instructed its attorneys, Kriek Wassenaar & Venter Inc, to obtain copies of the Court's hearing directive and submissions of the parties.

16. As is the practice of the Registrar, the relevant record of proceedings is ordinarily published under the matter's case reference on the Court's website. Unfortunately, even though the case reference and link were available, no case records were published on the Court's website.
17. On 13 October 2021, Sakeliga's attorneys contacted the Registrar of the Court for copies of the case record. The Registrar provided the record shortly after the request. Please see the attached e-mail correspondence marked [X3](#). I have been advised that the records have since been published on the Court's website.
18. On receipt of the records, Sakeliga was able to consider the submissions of the parties and consult with its legal representatives. On the afternoon of 15 October 2021, Sakeliga instructed its attorneys to formulate its submissions, approach the parties with a request to join the matter as *amicus curiae* in compliance with rule 10(1), and prepare this application.
19. On becoming aware of the submissions made by the parties, Sakeliga acted swiftly and without delay.

20. Sakeliga is *bona fide* in the filing of this application and humbly apologises for any inconvenience that may be caused as a result of this application being filed outside of time.

### **SAKELIGA'S INTEREST**

21. The present application, to which Sakeliga seeks to be admitted as *amicus curiae*, is of significant public importance as it places at the forefront the application of the Firearms Control Act 60 of 2000 ("the act") and the extent to which the owner of a firearm may attempt to protect his/her property after the lapsing of a license.
22. The matter is of public importance as it will affect not only the rights of the respondent but also the rights of other firearm owners in the country.
23. Sakeliga exists to act in the interest of its members and the wider community where its members conduct business to ensure a constitutional order, a free market, property rights, economic prosperity, and a favourable and safe business environment.

24. Sakeliga recognises the value that security companies, such as the respondent, offers to the economy, businesses and communities. Sakeliga also recognises the interest which its members have in cost-effective and competitive security services being offered by companies, such as the respondent. Many business owners are also required to protect themselves and their businesses.
25. As *amicus curiae*, Sakeliga shall provide valuable perspectives on the constitutional aspects of the case, which focuses *inter alia* the applicants claim that they are entitled to refuse applications to register new firearm licences over firearms already owned by the respondent.
26. Sakeliga believes that its submissions will be unique and to the benefit of the Honourable Court.

## **SAKELIGA'S POSITION AS *AMICUS CURIAE* ON THE ISSUES OF LAW RAISED BY THE PARTIES**

27. It is Sakeliga's position that the foundation of the South African firearms licensing system, is based on the licensing of a person who

may lawfully possess a firearm and not the licencing of the firearm itself.

28. Under the current dispensation firearms are regulated property that require a license in order for that person to lawfully possess said property.
29. The Firearms Control Act, 60 of 2000 ("the act") does not regulate ownership. Consequently, sections 13 – 20 of the act deals with granting the various classes of licences to natural persons or entities (through duly appointed individuals). As an example, one can have regard to section 13 of the act, which regulates the licencing of firearms for self-defence. Section 13 (2) provides that the Registrar may issue a licence to any natural person. Section 13 (3) for instance also limits the number of licences that a person may hold for self-defence. The same licensing emphasis is repeated throughout the act (with the necessary amendments for possession by legal entities).
30. The applicants effectively argue that once a firearm licence has expired without being renewed, the firearm (the object) has become incapable of future licencing. The applicants furthermore argue that the principle of legality necessitates that it has an obligation to 1)

refuse to accept any further licence applications regarding the firearm, and 2) to destroy the firearm irrespective of any other considerations. The applicants also argue that any other interpretation will violate the act.

31. It is Sakeliga's position that the applicants have confused the regulation of lawful possession and the licencing of persons with the lawfulness of the associated property. In this regard, Sakeliga intends to submit the following arguments:

31.1. The act does not declare a firearm (except for a prohibited firearm) to automatically become an unlawful object which can no longer be licenced on the lapsing of the owner's licence. The firearm (the object) on lapsing of the owner's licence, does not become so tainted with illegality that nobody can ever again lawfully possess it;

31.2. The act also does not prohibit or limit a person's ability to apply for a new licence over the firearm in question, unless that person has also been declared unfit to possess a firearm in terms of sections 102 or 103 of the act;

- 31.3. The lapsing of a license to possess a firearm does not automatically invalidate a person's ownership of the firearm;
- 31.4. The criminalisation of unlawful possession of a firearm does not imply that the owner's ownership of the object has been terminated;
- 31.5. The owner of a firearm might have a myriad of legitimate reasons which would support a new application for the licensing of the owner's firearm;
- 31.6. The maxim of *lex non cogit ad impossibilia*, for instance, applies in our law. Under the current legislation, such affected licence holders will not have any recourse in law as the applicants will not even receive his/her application and accordingly such affected licence holder will be unable to protect his/her rights by not being able to bring the fact of the impossibility to the attention of the decision-makers in any manner;
- 31.7. A constitutional dispensation would not place such an absolute limitation on a person who, as one point of

consideration, was truly incapable of timeous renewal. Logic dictates that at the very least, a procedure should exist to bring the impossibility to the attention of the decision-makers;

31.8. The construction of the act resolves such issues by making it possible for such persons to lodge a new application for licencing;

31.9. To shut the door completely without even providing an opportunity of making a case for the impossibility of timeous renewal will be a gross violation of the right provided for in section 33 of the Constitution of the Republic of South Africa, 1996 ("the Constitution");

31.10. When dealing with firearms, and in particular, those required for self-defence, important Constitutional issues arise. These include consideration of the rights as set out in sections 10, 11, 12 and 25 of the Constitution;

31.11. Furthermore, not every gun owner will have the means to replace his or her firearm if same is destroyed by the



applicants - even if some compensation might be payable. Even with the potential of compensation, a person is still confronted with the costs and effort of having to recover such compensation;

31.12. Also, the time and costs involved in procuring a new firearm place a more restrictive, costly and unreasonable burden on firearm owners, especially compared with the costs of a new application for a firearm already owned;

31.13. In terms of section 7(2) of the Constitution, the State, which includes the applicants, is obliged to respect, protect, promote, and fulfil the rights contained in the Bill of Rights. The summary destruction of the property of law-abiding citizens does not accord with this principle, especially when they might have a good explanation or if it was wholly impossible for the person to renew. When citizens are making an earnest attempt to be law-abiding, the State has a positive obligation in terms of section 7(2) to respect and promote measures that assist them in promoting and protecting their property and lawful interests;

- 31.14. In terms of section 205 (3) of the Constitution, the objects 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. It is therefore also submitted that the applicants have a duty to secure the firearms of owners, whilst they are afforded the opportunity to apply for a new licences over their property;
- 31.15. It will also be submitted that the applicants' interpretation of the act leads to an unsustainable situation whereby, for instance, persons whose licences have been cancelled through active intervention (section 28 (2) of the act), are placed in a better position than a person whose licence merely lapsed. Section 28 (4) allows a former licence holder to lawfully dispose of a firearm through a dealer (or any other manner determined by the Registrar). This in principle indicates that such firearms remain lawful objects which can be transferred - even in the event of a cancellation of the owner's licence;

- 31.16. The applicants' interpretation of the act effectively places law-abiding citizens at a disadvantage to individuals whose licences have been revoked;
- 31.17. If a firearm is capable of transfer to a third party after the revocation of the licence, why should the owner of a firearm who has not been subjected to an active cancellation be effectively required to purchase a new firearm, but be unable in law to obtain lawful possession of his/her existing property;
- 31.18. Should the applicants succeed, there would exist an active deterrent for future lawful firearm owners whose licences have expired and who have a sentimental or financial attachment to their firearms, from informing the Police Service of this fact and attempting to bring their conduct back in line with the law;
- 31.19. There are less restrictive means available to the government to protect public safety than to destroy firearms. For instance, by taking custody of the firearms until the owners may once more take lawful possession. Section 36

(1)(e) of the Constitution requires less restrictive means to be utilised before a right, in *casu* contained *inter alia* in sections 25 and 33, is limited;

31.20. The mere destruction of firearms does not serve any of the purposes of the act as contained in section 2 thereof;

31.21. The applicants' case is entirely formalistic and does not take into account the substantive values-based approach of the Constitution and the jurisprudence of the superior courts. The respondent is acting in good faith, attempting to restore legality to a situation, and the applicant, bound by constitutional values, is refusing to depart from the formalistic prescriptions of its interpretation of the act. The applicant is not affording the respondent the benefit of the doubt or the benefit of allowing them to safeguard their constitutionally protected interests;

31.22. In *casu*, the respondent is a juristic person that provides security services to the public. In all respects, the respondent will most likely be entitled to procure new licenses for new firearms as part of its business. The

question is, however, why this should even be necessary? The legal formalism of the applicants will only increase the administrative burden on the applicants, whilst increasing the costs of conducting security services without any public benefit being attained. The applicants' interpretation effectively seeks to double the applicants own, already unmanageable, workload. Under the dispensation proposed by the applicants, they will be required to deal with not only the administrative burden of a mass of new applications for new firearms, but also the costs and administration of the destruction of the already owned and previously licenced firearms of the applicant;

32. It is Sakeliga's view that the law, in a constitutional dispensation, should avoid absurdities that result in cumbersome unsound economic and administrative practices that do not promote the objects of the law and hamper both the public and public administration.

**REQUEST FOR CONSENT TO BE ADMITTED AS *AMICUS CURIAE* IN  
TERMS OF RULE 10(1):**

33. For purposes of admission of Sakeliga as *amicus curiae* in the main application, Sakeliga's attorneys sought in writing the consent of the main parties. I attach a copy of the joint letter dated 18 October 2021 addressed to the attorneys acting for the applicants and the respondent as annexure [X4](#) and [X5](#).

34. Sakeliga has, as of the date of this affidavit, yet to receive a response from the parties.

**REQUEST TO ADDRESS ARGUMENT**

35. The application is of great public importance. The nature and complexity of the case are such that the Court can only benefit from additional submissions by interested parties. Due to the potential impact that this case will have on specialist security companies like the respondent and the owners of firearms in general, it is submitted that Sakeliga should be afforded an opportunity to submit oral argument at the hearing of the matter.

36. By virtue of the unique approach and arguments that Sakeliga intends to advance in this matter, I submit that the interests of justice support the position that counsel for Sakeliga be allowed to advance argument in this matter.

37. The arguments on behalf of Sakeliga are nuanced and require oral argument in order to be properly advanced. In addition, Sakeliga is of the view that the Court may well wish to debate certain aspects with the *amicus*, and allowing Sakeliga to present oral argument at the hearing shall facilitate such debate.

## **CONCLUSION**

38. I respectfully submit that Sakeliga has made out a proper case for the relief that it seeks in the notice of motion prefixed hereto, and Sakeliga accordingly requests that such an order be granted.

**WHEREFORE** I respectfully request the honourable Chief Justice / Acting Chief Justice of this Court to grant the application on the terms as set out in the notice of motion prefixed hereto.

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**PIETER JACOBUS LE ROUX**

THUS SWORN AND SIGNED AT \_\_\_\_\_ ON THIS  
\_\_\_\_\_ DAY OF \_\_\_\_\_ 2021, BEFORE ME AS COMMISSIONER  
OF OATHS, THE DEPONENT HAVING ACKNOWLEDGED THAT HE  
UNDERSTANDS THE CONTENTS OF THIS AFFIDAVIT, HAS NO  
OBJECTION IN TAKING THE OATH AND REGARDS THE OATH AS  
BINDING ON HIS CONSCIENCE AFTER COMPLYING WITH THE  
REQUIREMENTS OF GOVERNMENT NOTICE R1258, DATED 21 JULY  
1972, AS AMENDED.

**BEFORE ME:**

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**COMMISSIONER OF OATHS**

**NAME:**

**CAPACITY:**

**ADDRESS:**