HIGH COURT OF SOUTH AFRICA

(GAUTENG DIVISION, PRETORIA)

CASE NO: 101473/2024

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED.
DATE: 17 DECEMBER 2025

SIGNATURE

In the matter between:

CITY OF TSHWANE METROPOLITAN MUNICIPALITY: EMERGENCY SERVICES DEPARTMENT First Applicant

GAUTENG DEPARTMENT OF CO-OPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS, GAUTENG Second Applicant

NATIONAL DEPARTMENT OF CO-OPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS Third Applicant

and

FIDELITY SECUREFIRE (PTY) LTD First Respondent

SINOVILLE FIREFIGHTING ASSOCIATION Second Respondent

Summary: *Fire Brigade Services Act 99 of 1987 (the Act) – Rendering of firefighting services by private companies to their clients – not prohibited by the Act. Similarly, voluntary firefighting by voluntary associations also not prohibited. Caveat – none of these services may interfere with services rendered by fire brigades in terms of the Act or contravene the prohibitions contained in the Act.*

ORDER

The application is dismissed with costs, including the costs of two counsel, where so employed.

J U D G M E N T

The matter was heard in open court and the judgment was prepared and authored by the judge whose name is reflected herein and was handed down electronically by circulation to the parties' legal representatives by email and by uploading it to the electronic file of this matter on Caselines. The date of handing-down is deemed to be 17 December 2025.

DAVIS, J

Introduction

[1] This matter concerns the legality of the rendering of firefighting services by private companies to their clients. It also concerns the rendering of such services by voluntary associations.

The parties

[2] The applicant is the City of Tshwane Metropolitan Municipality (the CTMM). It alleges that the rendering of firefighting services within its area of jurisdiction by anyone other than a fire brigade as contemplated by the Fire Brigade Services Act[1] (the Act), is illegal and prohibited.

[3] The first respondent, Fidelity Securefire (Pty) Ltd (Fidelity) is a private company who renders firefighting services to its clients, in terms of commercial agreements with the individual clients.

[4] The second respondent, Sinoville Firefighting Association (the Association), is a voluntary firefighting association, rendering firefighting and ancillary emergency services to members of the public, free of charge, in a limited area situated in Tshwane.

The applicable legislation

[5] In terms of Schedule 4, part B of the Constitution, firefighting services is the responsibility of local government but with national and provincial oversight.[2]

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[1] 99 of 1987.

[2] Schedule 4 of the Constitution refers to sections 155(6)(a) and (7) thereof, which provide for monitoring and the "authority to see to the effective performance of municipalities".

[6] The Act is the primary piece of legislation which, according to its preamble, provides for the establishment, maintenance, employment, co-ordination and standardization of fire brigade services.

[7] While firefighting services itself is not defined in the Act, a "service", is defined in section 1(xii) of the Act, to mean *" a fire brigade intended to be employed for –*

(a) preventing the outbreak and spread of a fire;

(b) fighting or extinguishing a fire;

(c) the protection of life or property against a fire or other danger;

(d) subject to the provisions of the Health Act 63 of 1977, the rendering of an ambulance service as an integral part of the fire brigade service; or

(e) *the performance of any other function connected with any of the matters referred to in paragraphs (a) to (e)*".

[8] Section 3 of the Act prescribes that a local authority may "*... establish and maintain*" a fire brigade service. In terms of section 3(3), this service shall operate within the local authority's area of jurisdiction (except in the case of certain exceptions not relevant to the present matter).

[9] Section 4(1) of the Act provides that "*... a service which does not fall under the control of a local authority may, in the prescribed manner, apply to the Minister, to be recognized as a designated service*". Once so recognized, such a designated service will then render firefighting services to the public in an area demarcated by the Minister as contemplated in section 4(4).

[10] All services rendered in terms of the Act shall be under the control of a "controlling authority", who shall appoint a chief fire officer for each area.

[11] The members of a service and the chief fire officer have extensive firefighting-related powers. In terms of section 8 of the Act, they may close streets, enter or break into any premises, damage, destroy or break down property and forcibly remove persons who are in danger or obstruct them in the performance of their duties.

[12] In terms of section 10 of the Act a controlling authority may charge fees for the rendering of firefighting services, the use of equipment and for *"... any material consumed"*.

[13] In terms of section 21 of the Act, any person who "*intentionally resists or obstructs a member of a service, including a chief fire officer in the exercise of his powers referred to in section 8 ...*" shall be guilty of an offence. The punishment contemplated in the Act is a fine of up to R10 000.00 or imprisonment for a period not exceeding 12 months.

[14] The Department of Cooperative Governance and Traditional Affairs has identified the Act as a piece of legislation that needs to be reviewed in order to "*... be replaced with comprehensive national fire services legislation which will be consistent and aligned with primary legislation governing local government*". This review process has been underway for some time but the contemplated legislation has not yet materialised. It was for this reason that the CTMM's attorneys have initially claimed that they represented provincial and national departments as co-applicants, but that purported representation and the joinder of those parties have since fallen by the wayside. This happened in terms of a separate judgment produced on 8 August 2025 in respect of interlocutory litigation launched by the respondents in this regard.

Relief claimed by the CTMM

[15] In the initial Notice of Motion, the CTMM claimed an interdict directing the respondents to *"... forthwith cease all operations, functions and/or activities directly or ancillary to those defined as "services" in terms of"* the Act. Upon failure to comply with such an interdict, the CTMM claimed an order that the South African Police Service should assist the execution of the order and *"... ensure that all such operations ... cease"*.

[16] In an amended Notice of Motion, delivered two weeks prior to the hearing of the application, the relief sought was slightly tempered. Therein, the CTMM firstly sought a declaratory order to the effect that it be declared that the respondents "*are required to apply to the Minister ... to register and be recognized as a fire brigade service for a designated service within a designated area within the applicant's area of jurisdiction*".

[17] Furthermore, in the amended Notice of Motion, the CTMM claims an interdict whereby the respondents are prohibited from rendering firefighting services "*... pending the finalization of the legislative process governing and regulating private fire brigade services*". The assistance of the SAPS is still sought, upon non-compliance with such temporary interdict.

The first respondent's position

[18] Fidelity's position is that it does not render firefighting services to the general public. It only renders such services to its own clients with whom it has contractual agreements to do so.

[19] As such, Fidelity has no intention of becoming a "designated service", nor has it any intention of becoming a fire brigade within any specific area within the CTMM's area of jurisdiction, demarcated or otherwise. It also renders private

firefighting services to its private clients in areas within the jurisdiction of other local authorities elsewhere in the Republic.

[20] Fidelity's case is further that it never interferes with the operations of the CTMM's fire brigade and when on the scene of a fire, the members of the two services work together and assist each other.

[21] Fidelity acknowledges the CTMM's fire brigade's powers and authority set out in section 8 of the Act and does not seek to appropriate such powers and authority for itself. It also acknowledges that it can only charge its own clients fees for the service that it renders and, when it does so, it is done in terms of its contractual agrements with those clients, not by way of invoices and assessments in the fashion that the CTMM does.

[22] Acting as aforesaid, Fidelity argues that it is not obliged to apply for recognition and registration as contemplated in section 4 of the Act.

[23] Lastly, Fidelity expressed a desire of entering into an agreement with the CTMM to enhance co-operation between the parties and to establish standard operating procedures. It further argues that the temporary interdict claimed by the CTMM in its amended Notice of Motion in fact confirms that there is currently no legislation binding or regulating private firefighting services.

The second respondent's position

[24] The second respondent is not only a voluntary association, but also a non-profit organization. As such, it does not have clients, but renders voluntary firefighting services in the Sinoville area to the public.

[25] In instances where the association has expended equipment and material in order to combat fires, it says that it invoices guilty parties, arsonists or persons

from whose premises the fires have started. In concedes though, that it cannot enforce these invoices and has no legislative authority to levy fees.

[26] The association similarly would welcome co-operation with the CTMM. It states that it has even in the past received letters of thanks and commendation when it has assisted the CTMM in combating fires. It regards the current litigation as an unnecessary powerplay.

Evaluation

[27] As a starting point, it was accepted during the argument of the matter, that there is no legislation specifically regulating private firefighting services.

[28] CTMM has further acknowledged in its papers that it does allow private firefighting services to operate within its area of jurisdiction, as long as they limit the rendering of their services to their own premises. The private firefighting services at BMW's Rosslyn manufacturing plant and at the Wonderboom Airport were cited as examples.

[29] There is also no express prohibition against the rendering of private firefighting services contained in the Act. The combating of fires by private individuals in cases of emergency or to protect veldfires from spreading are also not offences in terms of the Act. That is incidentally, what the Association say they are doing, albeit by way of an organized voluntary association.

[30] There can also be no doubt that, in an emergency and, in the absence of the CTMM's fire brigade, a person may use a fire hydrant in order to douse a fire in order to save lives or even property. None of this should detract however, from the fact that, once on the scene, the CTMM's fire brigade shall be entitled to exercise its powers and discharge the obligations provided for in section 8 of the Act and that it is the only party with such powers.

[31] The basis upon which the CTMM argues it is entitled to the relief sought is that the court should interpret the word "may" where it appears in section 4(1) of the Act to mean "must".[3]

[32] The principal difficulty with this contention is that it offends against the clear meaning of the word used by the Legislature.

[33] The second difficulty is that the contention of the CTMM has the result of changing a permissible term in the Act to a peremptory requirement.

[34] The third difficulty with the contention, is that it creates an offence where previously there was none.

[35] A further difficulty with the contention is that, if a private fire-fighting service is obliged to register as a "designated service", it will be designated a demarcated area within which it will be required to operate as a fire brigade. That is exactly what Fidelity says it does not want to do. Apart from the objection to geographical demarcation, Fidelity's business model is to render services to contracted individuals, not to members of the general public who have not paid premiums to it. The interpretation proposed by the CTMM would undermine this whole business model.

[36] It is now well established that, in our Constitutional dispensation, the principles of legislative interpretation are the following: "*The much-cited passages from Natal Joint Municipal Pension Fund v Endumeni Municipality*[4] *(Endumeni) offer guidance as to how to approach the interpretation of words used in a document. It is the language used, understood in the context in which*

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[3] This much is expressly clear from paras 7.7, 7.9 and 8.11 of the Heads of Argument delivered on behalf of the CTMM.

[4] 2012 (4) SA 593 (SCA) at par [18].

it is used, and having regard to the purpose of the provision that constitutes the unitary exercise of interpretation".[5]

[37] In *Chisuse and Others v Director-General, Department of Home Affairs and Another*[6] the Constitutional Court has confirmed that the "*purposive or contextual interpretation of legislation must, however, still remain faithful to the literal wording of the statute*". It is only when no reasonable interpretation may be given to a statute, that its provisions can be declared unconstitutional.

[38] Although there is no issue of unconstitutionality at play in the provision under consideration, in order to adjudicate the validity of the CTMM's contentions, one must determine whether there is any contextual or purposive need to be served which requires the fundamental shift necessary to interpret "may" as "must".

[39] The purpose of the Act was clearly to ensure that local authorities provide fire brigades with firefighting capabilities to serve the public in the authorities' areas of jurisdiction. In instances where the authorities do not do so, the premier of a province, or even the Minister, may step in and direct that provision of such services must be established. In addition, if a party was desirous of rendering the service which a local authority would otherwise have been obliged to do, it may apply to the Minister to be recognised as a designated service. Once recognized, it would then render such service within a demarcated area.

[40] The purpose of the Act therefore provides the context within which the words used in section 4(1) must be evaluated. As such, it is clear that the Act and the specific section was not legislated to regulate the kind of services rendered by

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[5] *Capitec Bank Holdings Ltd and Ano v Coral Lagoon Investments 194 (Pty) Ltd and Others* 2022 (1) SA 100 (SCA) at par [25].
[6] 2020 (6) SA 14 (CC) at par [52].

Fidelity and to interpret the Act, or a section thereof to cater for private firefighting services, would be to strain its words beyond the purpose for which they were used.

[41] Apart from the CTMM's interpretation of the Act, there is nothing which otherwise renders Fidelity's business model unlawful. The interpretation proposed by the CTMM would impose an obligation, duty or restriction on Fidelity. It is a trite principle of interpretation that "*in the case of ambiguity, statutory provisions which impose burdens should be construed strictly, giving preference to the least onerous interpretation*".[7]

[42] I am of the view that there is no ambiguity in the formulation of section 4(1) of the Act, but, even if there were, the less onerous interpretation would be the permissive, matter than peremptory one.

[43] Such a lesser onerous interpretation and the absence of criminalising otherwise lawful conduct, would also accrue to the benefit of the Association. To put it bluntly, in the absence of legislation making it a crime to do so, private citizens may organize themselves in associations by which they, on a voluntary and non-profit basis, seek to combat fires and attend to emergencies in their areas of residence and business. The proviso is always, however, that they may not contravene section 21 of the Act or interfere with the fire brigade's powers granted in section 8 of the Act. Apart from scant reference to generalities, the CTMM has not made out a case that the Association has done so.

Conclusion

[44] I find no cogent basis on which section 4(1) of the Act can be interpreted in the fashion that the CTMM wants it to be interpreted. Accordingly the court

[7] De Vill, Constitutional and Statutory Interpretation, at 197 and the cases listed in footnote 195, starting with *R v Milne & Erleigh* (7) 1951 (1) SA 971 (A) 823.

declines to grant a declaratory order as prayed for. The consequence of this finding, is that the CTMM is also not entitled to the interdicts claimed against the respondents.

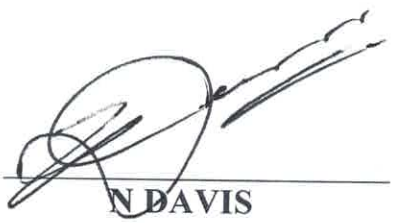
Costs

[45] The customary rule is that costs follow the event. I find no reason to depart from that rule.

Order

[46] In the premises, an order is made in the following terms:

> The application is dismissed with costs, such costs to include the costs of two counsel, where so employed.



N DAVIS
Judge of the High Court
Gauteng Division, Pretoria

Date of Hearing: 26 November 2025

Judgment delivered: 17 December 2025

APPEARANCES:

For the Applicant:	Adv T Ncongwane SC
Attorney for the Applicant:	Motsoneng Bill Attorneys c/o Diale Mogoshoa Attorneys, Pretoria

For the First Respondent:	Adv A J Daniels SC together with Adv P P Ferreira
Attorney for the First Respondent:	Dowling Grobler Attorneys, Pretoria
For the Second Respondent:	Adv J G C Hamman
Attorney for the Second Respondent:	Hurter Spies Inc, Pretoria