Hon. Mofolanyane

CIV/A/2/83

IN THE HIGH COURT OF LESOTHO

In the Appeal of :

SEFATSA M. MAFISA Appellant

v

ANDREAS MAFISA Respondent

REASONS FOR JUDGMENT

Filed by the Hon. Chief Justice, Mr. Justice T.S. Cotran on the 20th day of May, 1983

This is an appeal from the Judgment (dated probably the 13th December 1982) of Mr. A.N. Matete, a magistrate of the First Class sitting in Maseru, in which he granted the respondent (and original applicant for a writ mandament van spolie) an order against the appellant to return a vehicle a Toyota Van Reg. No. E 0961 then in possession of the appellant on the grounds that the former had been despoiled of his possession. The order was to take effect immediately and this was duly executed.

On the 20th April 1983, I allowed the appeal with costs, both here and the Court below, ordered the respondent(and original applicant) to return the vehicle to the appellant within 48 hours (but without prejudice to the respondent to sue by way of action in the normal way) but restrainined the appellant from disposing of the vehicle before the elapse of 14 days to give a chance to the respondent if he so wishes, to lodge an action or to seek an interim interdict or some other remedy available to him. I said I will give my reasons later and these now follow. If an appeal is contemplated time to begin to run from the date of this Judgment.

The appellant (Sefatsa Mafisa) and respondent(Andreas Mafisa) are brothers of the full blood. I shall call them by

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their first names.

Andreas was the elder brother of Sefatsa and heir to his father John Thapo Mafisa, since deceased. The vehicle subject matter of the spoliation proceedings in the Court below was registered in the name of the father of the parties. The father died on the 27th March 1982. The father, however, was not only the owner, but he was in possession of this vehicle, until at any rate 21st February 1982, a month before his death.

The affidavits, founding supporting opposing and replying in the Court below, raised a number of disputes on the facts. Andreas had averred that his father had surrendered possession of the vehicle to him in February 1982 (about a month before his death) and attached a document purporting to be some sort of a will or authority that it be transferred to his name. Andreas complaint was to the effect that he permitted his younger brother Sefatsa to drive the vehicle during the funeral and the latter refused to return it to him afterwards.

Sefatsa averred that the document produced by Andreas was a forgery, that whilst Andreas did use the vehicle during their father's sojourn in hospital, the vehicle itself was in their mother's possession, and he was allowed by her to use it. So was Andreas. In the appeal Sefatsa produced a document that Andreas had indeed already sued his mother for the vehicle in the Matala Local Court (CC 251/82) presumably on the ground that he, as heir, is entitled to succeed to his father's property.

What seems to be clear on the papers is that the mother of Andreas and Sefatsa had control of the vehicle after her husband's death and both Andreas and Sefatsa as sons in the family had used it. I see nothing on the papers to show conclusively that Sefatsa (or his mother) had taken the law into their own hands or had forcibly or illicitly deprived Andreas of the vehicle to justify a writ mandament van spolie. It was a family dispute. The learned magistrate was in any event

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clearly wrong to grant the order which he did and should have directed Andreas to proceed by way of action, or alternatively should have directed that viva voce evidence be heard on the same application papers.

CHIEF JUSTICE
20th May, 1983

For Appellant : In Person
For Respondent: Mr. Khauoe(with copy of the Judgment)