CIV/A/12/83

IN THE HIGH COURT OF LESOTHO

In the Appeal of :

A.L. VAN TONDER — Appellant

and

DISTRICT COMMANDING,
CAPTAIN S.M. SEHLOHO — Respondent

REASONS FOR JUDGMENT

Filed by the Hon. Mr. Justice B.K. Molai
on the 3rd day of February, 1984.

This appeal was yesterday dismissed with costs and the following were my reasons for the decision.

On 21st June, 1983, the appellant (applicant in the Court a quo) filed, before the Maseru Magistrate Court, an Ex-Parte application in which he sought an order in the following terms:

"(a) That a Corona vehicle van with Engine No. 12R0041606 bearing Reg. No. OZ2364 be released to the applicant forthwith.

(b) That the Respondent should pay the costs of this application only in the event that he opposes the application."

In his supporting affidavit, the appellant had deposed that he was the owner of the vehicle and attached copies of ownership papers. In April, 1982, the vehicle suddenly disappeared from his garage in Zastron - in the Republic of South Africa. He immediately reported the loss to the South African Police in Zastron. He later saw his missing vehicle in the custody of the Lesotho Police, in Maseru, from whom he learned that it was seized after it had been found being used to convey dagga. He averred that his vehicle had been stolen, he neither knew that it had been taken to Lesotho nor had he anything to do with the dagga it was allegedly used to convey.

2/ Wherefore .....

Wherefore appellant prayed for an order as aforementioned.

The application was opposed and in his opposing affidavit, the respondent confirmed that the vehicle was seized by the Lesotho Police after they had found it being used to convey bags of dagga. It was going to be produced as an exhibit in a criminal case pending the completion of the investigations. The vehicle was, therefore, lawfully in the custody of the police.

The respondent attached the declarations by W/O Hendrick Johannes van Deventor and Martha Magdalen Catharina Prisloo, respectively the Station Commander and the Revenue Clerk in control of all registers regarding the change of ownership of vehicles in the South African district of Zastron in which declarations they deposed that appellant's vehicle - Registration No. OZ2364, Engine No. 12R0041606 and Chassis No. RT69501099 was, in the past, involved in a road accident as a result of which it was a write-off. Following that accident the appellant caused the vehicle to be removed from the road on 15th December, 1981 per cancellation certificate No. 63830. He had since never re-registed it. At no time had the appellant ever reported to the police in Zastron that this vehicle had gone missing.

Respondent, therefore, denied appellant's averment that the vehicle had suddenly disappeared from his garage and he had reported his loss to the South African Police in Zastron. No replying affidavit was filed.

The court a quo considered the evidence and dismissed the application with costs on the ground that the police must be given a chance to complete their investigations. It was against this decision that the appeal was lodged to the High Court on a long list of argumentative reasons, the gist of which was that the decision was against the evidence and the law.

It was common cause that the vehicle was or had been the property of the appellant. The court a quo did not,

3/ however. .....

however, believe appellant's averment that the vehicle had suddenly disappeared from his garage and he reported the loss to the police in Zastron. If the vehicle did disappear from his garage and the appellant in fact reported his loss to the police in Zastron, the salient question was why should they deny it. Both the police and the Revenue Clerk in Zastron were clearly not interested parties in the case. I saw no good reason why they should give false evidence against the appellant. The probabilities were that the appellant's averment was not the whole truth and the truth lay in the version given by the police and the Revenue Clerk.

It was not disputed that when it was seized by the Lesotho Police, the vehicle was used to convey dagga. That being so, Section 51 of the Criminal Procedure and Evidence Act, 1981 empowered the police to seize it. The section reads :

> "51. On the arrest of any person on a charge of an offence specified in Part 1 of the First Schedule, the person making the arrest may seize any vehicle or receptacle in possession or custody of the arrested person at the time of the arrest and used in conveyance of or containing any article or substance in connection with which the offence is alleged to be or to have been committed."

Furthermore, at the time the application was brought before the magistrate, no criminal case had as yet been instituted. In that event the disposal of the seized vehicle was a matter for the police in terms of the provisions of sections 52 and 53 of the Criminal Procedure and Evidence Act, supra. Only after a criminal case had been instituted and a verdict returned would a trial magistrate normally be empowered to deal with an application of this nature brought by the applicant/appellant on the grounds that the vehicle was his property and he did not know that it was or would

4/ be used to convey .....

be used to convey dagga - see section 26(2) of the Dangerous Medicines Act No. 21 of 1973 and the proviso to section 57 (1) of the Criminal Procedure and Evidence Act, supra.

I took the view that this application was prematurely brought before the magistrate and there was, therefore, nothing unreasonable in the magistrate refusing to grant the order sought by the appellant.

As stated earlier the appeal was dismissed with costs.

B.K. MOLAI,
JUDGE

3rd February, 1984.

For Appellant : Mr. Masoabi
For Respondent : Miss Tsiu.