

IN THE HIGH COURT OF LESOTHO

In the matter between

TEMBA PATRIC NOMBELA

Applicant

v

OFFICE IN COMMAND OF C.I.D.  
COMMISSIONER OF POLICE  
THE ATTORNEY GENERAL

1st Respondent  
2nd Respondent  
3rd Respondent

J U D G M E N T

Delivered by the Hon. Acting Mr. Justice D. Levy  
on the 30th day of May, 1986

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Applicant complains that on 7th May 1986 his vehicle A 8219 Datsun E20 was seized and detained by the police. He says that this seizure was unlawful and he asks for an order that the vehicle be returned to him.

Applicant's wife adds that at the same time the police demanded from her and received registration certificates of the following vehicles

- (i) A 8219 (Datsun E 20)
- (ii) G 0792 (Hi-ace 1984 model)
- (iii) A 7316 (Hi-Ace 1984 Model)
- (iv) A 0554 (Datsun E 20 1979 model)

and the keys for A 9771 and A 8219 which were then driven away by the police

- (1) A 8219

The Respondents have produced a Registration Certificate allegedly issued in the Transvaal by the Licencing Authorities which shows that a Datsun E 20 Registration Number BKM558T was registered there in the name of John

/Mkhize ...

Mkhize. It was this certificate which was used for the registration of A 8219 in Lesotho. An affidavit of a certain Kevin Duigan has been filed by the Respondents and according to the deponent, Duigan, BKM558T is the registration number of an Opel Kadett registered in the name of Jan Andries P. Jacobs and its registration certificate is attached. Duigan says that the first certificate of registration is false for the following reasons

- (a) It is for a Datsun E 20 and not an Opel Kadett
- (b) The certificate itself is typed and is not a computer print-out.
- (c) The computer prints only a year and a month for the expiry date.
- (d) The receipt is typed and not machined by a cash register.

A comparison of the two certificates shows Duigan's views on the differences to be correct. As a Senior Administrative Assistant in the licensing department of the Johannesburg City Council he is qualified to speak on the authenticity of the certificate on which the vehicle was registered in Lesotho and he says that it is false, and furnishes good reasons for saying so. In that event there has been a contravention of Section 14(1) of the Road Traffic Act 1981 entitling the police to seize the vehicle concerned in terms of Section 14(2) of the Act.

In terms of Section 14(3), if the Applicant obtained ownership of the vehicle from a person who obtained registration of the vehicle in contravention of Section 14(1), then he is not to be recognised as a lawful claimant for the purpose of recovery of the vehicle from the State. It would appear that the only owners of vehicles whose claims may be recognised after such a fraudulent registration

/of the .

of the vehicles in question would be owners who were such prior to such registration This would presumably exclude Applicant who does not say when or under what circumstances he became the owner of this vehicle.

After some argument in this matter and after repeated statements by Counsel for Applicant that his client would welcome a charge being brought against him so that he could clear his name and recover his vehicles, I called for oral evidence to be heard forthwith of the police officers concerned to determine whether or not any charges were now pending and why the Applicant had not yet been charged if he was to be charged at all It seemed to me that in an ongoing matter such as a police investigation an allegation by the police on the 14th May 1986 that the matter was being investigated would not necessarily remain true a fortnight later. It seemed to me in the interests of justice that I should know the current state of the police investigations and their intentions as to a prosecution.

Applicant's Counsel opposed the hearing of such evidence and objected to the procedure to the point that he refused to cross-examine any witnesses that were called

The evidence of two police witnesses was heard according to whom charges are being pressed against applicant in respect of this vehicle and the other vehicles to which I shall refer shortly, but that although he had been sought as far afield as Butha-Buthe the police have so far been unable to find him or to arrest him and so to bring charges against him.

I am satisfied on this evidence that the police are entitled under Section 52 of the Criminal Procedure and

/Evidence ...

Evidence Act to retain the vehicle and its registration certificate in police custody until after the conclusion of Applicant's trial if he is ever brought to justice. Further that the police were entitled to seize the vehicle under Section 14 of the Road Traffic Act and that Applicant who was not shown to have been a lawful owner prior to its fraudulent registration in Lesotho is not entitled to the vehicle or its registration certificate.

Application No. 152 of 1986 is dismissed with costs.

(ii) CIV/APN/153/86 (iii) CIV/APN/154/86 (iv) CIV/APN/156/86  
(v) CIV/APN/157/86

These four applications are by the same Applicant as in CIV/APN/152/86 for the recovery from the police on identical ground of a Toyota Hi-ace with temporary permits and of vehicles A 9771, a 1984 Combi Hi-ace, A 7316, a 1984 Combi Hi-ace and G 0792, a 1984 Combi Hi-ace and their registration certificates.

In the first three cases, for identical reasons as in CIV/APN/152/86 Duigan again has proved that the relevant vehicle registration certificate is false. In cases numbers 153/86 and 154/86 he adds to his reasons the further reason that the false registration certificates also show a status 9 for the vehicles whereas there is no such status

For the reasons furnished in CIV/APN/152/86 I am satisfied that the Applicant in cases numbers 153/86, 154/86 and 156/86 is not presently entitled to the return of these vehicles or their registration certificates and the applications are dismissed with costs.

In case no. CIV/APN/157/86 the vehicle concerned is a combi Hi-ace registration number G 0792.

/In this ...

In this case Respondents say that the engine and chassis numbers of the vehicles have been obliterated and tampered with, and that this vehicle was originally registered in the Transkei. Such obliteration is itself a criminal offence under Section 9 (3) of the Road Traffic Act. Additionally, it is evidence that the vehicle itself may well be a stolen vehicle. For the reasons set out in Case Number CIV/APN/152/86 I consider that the police are entitled to detain the vehicle until the prosecution of Applicant is concluded.

The application is refused with costs.

D. LEVY

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ACTING JUDGE

30th May, 1986

For the Applicant

M. Gwentshe

For the Respondents

T. N. Ntsonyana