

IN THE HIGH COURT OF LESOTHO

In the Appeal of :

JUSTICE RAMONYALOE

Appellant

V

R E X

Respondent

J U D G M E N T

Delivered by the Hon. Mr. Justice M.L. Lehohla
on the 18th day of April, 1994

Having listened carefully to what Counsel who have been of very great assistance to the Court have said I feel that the appellant was wrongfully convicted.

I think the mistake there was committed when the others were released who definitely were in possession of this vehicle whose Chassis and Engine numbers clearly have been tampered with.

I have already stated this in interaction with Counsel who is arguing for the appellant. But I don't really find that Mr. Buys, the police witness from South Africa, was that inadequate sort of witness regard being had to the experience in the particular field to which he testified. It seems as evidence suggests he had enough

experience. But as I have stated the appellant was wrongly convicted and at worst he should have been given benefit of doubt because his Blue Card corresponded with the numbers on the engine and on the Chassis. Those could have all been a product of tampering and doctoring. But I have been told that this vehicle was at least third hand when the appellant got to own it. So, surely we cannot presume that he is the one who caused all those tamperings. There is no way one could say he must have known that there had been some tampering especially when the Crown witness Mr. Buys "the expert" tended to support him in this regard.

This brings us to the point as to the disposal of this vehicle based on the fact that the appellant was supposedly a bona fide possessor.

Enough evidence indicates that it could be perpetuating this type of scourge in the country if the article can be released to him.

I have formed an opinion that the case relied on by Mr. Phafane, namely, that one of Ikaneng Makakole should not be abused - although the High Court in that case had formed a clear opinion that the vehicle was stolen or that it had a taint of dishonour about it - sight should not be lost of the fact that the case was a civil one. So if the law enforcement authorities intended doing something about it I don't think that anything could have stopped

them in that regard.


So I draw a distinction between a bona fide possessor in this regard and a bona fide possessor who falls within the precincts of our Criminal Procedure and Evidence.

Our Criminal Procedure and Evidence shows at least three ways in which a vehicle under this sort of circumstances can be disposed of. But here I am of the opinion that it would be perpetrating the scourge of motor vehicle thefts if this vehicle is released to the appellant.

In these circumstances I am acquitting the appellant and setting aside the conviction and sentence.

I am of the opinion that he is not entitled to possess this vehicle any more.

In the circumstances the vehicle is forfeited to the State.



J U D G E
18th April, 1994

For Appellant : Mr. Phafane
For Respondent: Mr. Ramafole