

CIV/T/214/94

IN THE HIGH COURT OF LESOTHO

In the matter between:

TLALI LEFETA

PLAINTIFF

and

ATTORNEY GENERAL

DEFENDANT

RULING

Delivered by the Honourable Mr. G.N. Mofolo,
Acting Judge, on the 21st day of July 1995

In this matter it appears that the police seized motor vehicle registration No. E 1994 subject-matter of this enquiry on an allegation of the vehicle being stolen.

Having been charged the plaintiff was acquitted on all charges that were brought against him and the court ordered that the vehicle aforesaid be released to the plaintiff. Apparently despite the aforesaid order the police have refused to release the vehicle in terms of the court's order.

As a result of the said police refusal to release plaintiff's vehicle plaintiff has issued summons against the defendant claiming:

(a) Damages in the sum of M60,000-00.

- (b) Interest thereon at the rate of 18.25% a tempora morae.
- (c) Costs of suit and
- (d) Further and/or alternative relief.

When, on 14 July, 1995 the matter was about to proceed both counsel for the plaintiff and defendant intimated that they wished to have a special case, sometimes called a stated case, adjudicated.

The point of law to be adjudicated or decided was said to be:

Whether the fact that the Magistrate's Court released the vehicle to the plaintiff this meant that the vehicle was plaintiff's in law.

By agreement a Blue Card (Registration Book) issued to the plaintiff in terms of Road Traffic Act, (Section 8) 1981 was handed in and marked Exhibit "A".

I must on the onset express my disapproval of the way some of these applications are made to court notwithstanding the fact that the law allows points of law to be taken at any stage of the proceedings.

Section 32 of the High Court Rules admits of special cases being taken and in content it is substantially the same as the format proposed in Amler's Precedents of Pleadings 4th Ed.

by Harms p.293. I do not subscribe to the lax and casual manner in which some of these applications are brought to court for decision notwithstanding there being precedent for their formulation.

Be this as it may, whenever there is an order of court, it is expected that such order will be observed by those who are affected by it; failure to observe orders of court is frowned upon by the courts for the simple reason that such an attitude is fraught with undesirable consequences as it may lead to others taking the law into their hands. In particular the police are themselves law-enforcers and it is unheard of to be told that police do not abide a court order as has been claimed in this case.

If, after the release of a vehicle the police feel they have some other unfinished business concerning the vehicle, they must proceed post haste to charge; if they don't charge, they can have an order to stay pending their investigation or appeal against the order of the court for its reversal. They can't refuse to release simply because they are police for such an attitude is, in my view, contemptuous of the court's order.

I have in other cases expressed my view in matters relating to vehicles seized by the police to the effect that:

- (a) when police have seized a vehicle intended to be used as an exhibit in a pending trial such vehicle must be delivered to the Clerk of Court or Registrar of the High Court as the case may be.

- (b) once the vehicle has been delivered to the Clerk of Court it is outside police control and awaits to be disposed of by the Presiding Officer at the end of the trial.

- (c) that although the vehicle may be in police custody after delivery to the Clerk of Court, that such police custody is technical in that the real custodian is the Clerk of Court or Registrar of the High Court as the case may be.

- see Sections 55 and 56, especially of the Criminal Procedure and Evidence Act, 1981.

Criminal proceedings were definitely instituted against the plaintiff and when he was acquitted the motor vehicle subject-matter of the trial was at the material time a court exhibit having nothing whatsoever to do with the police; I don't see how the police barring a legal action could have availed themselves of the liberty to refuse releasing the motor vehicle on their own steam and decline to release a vehicle that was in law not in their custody.

I agree that the fact that plaintiff won his case and has title to the vehicle does not mean that this is a judgment which prevails against all comers.

For the present at any rate and until the contrary is proved, I hold that the plaintiff is entitled to possession of the vehicle.

In several cases it was held that notice alone may be sufficient to constitute a person a party to a suit and a person who has been served with notice that his title will be called in question and who, notwithstanding such notice, neglects to intervene, may be bound by the judgment. see Paarl Pretoria GM Co. Ltd. v. Donovan and Lanqlaagte Royal GM Co. 3 SAR 56; Paarl Pretoria GM Co. V. Donovan Wolff No.3 SAR 93.

I understand the ratio of these cases as meaning that if defendant or anybody challenged plaintiff's title he should have served plaintiff with such notice and plaintiff despise service and notice thereof neglecting to intervene he would thereby be bound by the judgment.

Mr. Molapo for the defendant has said that there is evidence that the vehicle belongs to one G.N. Grozier. Whenever vehicles are stolen, they are subject-matter of extensive publication by

the police and I am wondering whether or not this Grozier was a witness in which the plaintiff was charged of the theft of this vehicle and whether if Grozier was not such a witness why it has taken the police so long to charge though, ostensibly, it is clear why they have not preferred a charge and have waited for the plaintiff to institute a claim for damages.

Although I am not deciding the issue, it is my view that where a litigant knowing that his right is subject-matter of an order adverse to his interest, remains silent for a reasonably long period of time, such a litigant would by ordinary rules of estoppel be estopped from claiming a right to such property.

I am much worried by the fact that when an order was made for the release of this vehicle there is no evidence that there was an adverse claim. Even if there was such a claim that it took such a long time to surface or rather was activated by plaintiff's claim bothers me. My view is that the order of court should first have been abided by and thereafter the law could have taken its course.

To allow the status quo to prevail would be not only to rubber-stamp but to give credence to an illegality. This vehicle must therefore be released to the plaintiff as it should have been in terms of the court order.

Accordingly the point of law raised is decided in favour of the plaintiff to the extent that the vehicle will remain his until the contrary has been proved and provided that:-

- (a) the defendant at his expense will have the vehicle evaluated,
- (b) plaintiff will not dispose of the vehicle pending the result of the action,
- (c) the vehicle having been released to the plaintiff, the plaintiff will make available the vehicle and produce the same before this court if and when such an occasion arises.

This ruling is without prejudice to a claim which plaintiff has instituted against the defendant and which action will now proceed in the normal way.

Costs will be costs in the trial.

G.M. MOROLO

Acting Judge

19th July, 1995.

For Plaintiff: Mr. Mafantiri
For Defendant: Mr. Molapo