

CIV/APN/302/95

IN THE HIGH COURT OF LESOTHO

In the matter between:

TSO'LOANE MAKOALA

APPLICANT

and

O/C TEYATEYANENG POLICE
ATTORNEY GENERAL

1ST RESPONDENT
2ND RESPONDENT

JUDGMENT

Delivered by the Honourable Acting Justice Mrs. K.J. Guni
On the 13th day of November, 1995

This application was brought ex-parte and as urgent application.

The application for spoliation is by its very nature authority. There seems to be no need to require the certificate of urgency. This certificate is required where the matter by its very nature is not urgent. It is in those circumstances that the certificate of urgency and obligations indicating urgency of the matter must be found to be present in the application.

In applications which are brought as urgent and ex-parte, the parties must argue full all aspects of such applications. Should there be legal points to be raised, notice should be given

in terms of the rules, to the other party that such points in limine will be taken. Rule...H.C. Rules 1980. Applicant in this matter sought a final restoration of possession order for three motor vehicles which were seized and removed from his home by members of the Police Force under the command of one police officer, namely Sergeant Moonyane of Teyateyaneng Police.

Applicant averred that he was in peaceful undisturbed possession of the said motor vehicles when on Friday 25th August, 1995 the said members of the police force unlawfully deprived him of his possession by seizing and removing the said motor vehicles from his home.

In spoliation proceedings, because of their usual urgency, the party seeking relief usually proceeds by way of application. *Reck v Mills* 1990 1 SA 751 A. It is an essential element for an applicant to allege and prove that he was in peaceful and undisturbed possession of the property in question. *Kgosana v Otto* 1991 2 SA 113 (W).

First respondent has filed opposing papers together with opposing affidavit deposed to by Sergeant MPHO PETER MOONYANE. In this opposing affidavit it is not denied that this applicant was in peaceful and undisturbed possession of the said motor vehicles. It is further not denied that such peaceful and undisturbed possession of this applicant was terminated by the action of seizure and removal of the said motor vehicles by the members of the police force aforesaid.

The police according to the affidavit of MPHO PETER MOONYANE, acted lawfully in pursuant to Section, or relying on the provisions of Section 14 (2) ROAD TRAFFIC ACT 8/81. This Section provides as follows: 14 (2) a police officer may seize any motor vehicle or trailer the registration of which was at any time obtained through the use or production of a false document or the furnishing of false information and if is made vis a vis the vehicle within 3 months of such seizure, the vehicle shall be forfeited to the state". This sub-section (2) must be read with Section 14 (1). Sub-section 2 provides forfeiture of the motor vehicles already dealt with in terms of sub-section (1) 14 (1). The motor vehicles seized by the police officer in terms of sub-section 14 (1) of RT A 8/81 must be already registered. There is no dispute that the motor vehicles in question were already registered. Was their registration at any time obtained through the use or production of a false document or the furnishing of false information. There is no evidence to show this Court under what circumstances the registration was effected. Again that question of propriety of the registration of the motor vehicle does not fall for determination in this proceedings.

The motor vehicle shall be forfeited to the state only "if no claim is made vis a vis the vehicle within 3 months of such seizure. These motor vehicles were seized on 25th August 1995. The applicant alone and at times in the company of his legal practitioner, went to the police to seek or claim his motor vehicles. Those motor vehicles are not properly seized in terms

of Section 14 (2) because there has been no conviction of anyone for procuring registration or licencing of those motor vehicles, by means of producing false documents or providing false information.

Applicant alleged at paragraph 5 of his founding affidavit that the police when they arrived at his home, they showed him no search warrant nor any kind of authority which empowered them to seize the motor vehicles concerned. In reply to this allegation MPHO PETER MOONYANE in his opposing affidavit averred that they (Police) formed a reasonable suspicion that the three vehicles concerned had not been properly registered. In terms of Section 14 (1) when there is suspicion of the nature Mr. Moonyane referred to, the person so suspected should be charged and put before the Court, which, if it finds the person guilty of procuring registration by fraud, must convict him and impose the penalty provided under that Section 14 (1). Before the person suspected of obtaining the registration of the motor vehicles by use of false documents, is found guilty of an offence under Section 14 (1) the motor vehicles concerned cannot be dealt with in terms of Section 14 (2). This applicant, if he is suspected of such unlawful behaviour, he must be charged first and after the conviction is procured then 3 months of seizure of the motor vehicles, must lapse before the same motor vehicle can be forfeited to the state in terms of Section 14 (2).

Mr. Mapetla argued that in an application of "Mandament Van Spolie" where the party accused of despoiling, merely set in

motion the lawful machinery he cannot be said to have taken the law into his own hands. *SILLO v NAUDE* 1929 AD Page 21. This case is distinguishable from our present case. The respondent did not take the animals belonging to the applicant and kept them in his possession. That is to say, he the respondent was not in possession of those animals as they were held in the pound, under Pound Ordinance. The applicant in that case was to pay the pound for the release of his animals. The applicant in one present case has no way of repossessing his motor vehicles unless respondent releases them. The seizure of the applicant's motor vehicles by respondent does not have legal support especially that the Road Traffic Act 8/81, in particular Section 14 (2) does not support such a seizure.

This application must succeed with costs.

K.J. GUNI
ACTING JUDGE

For the Applicant: Mr. Seotsanyane

For the Respondents: Mr. Mapetla