

IN THE HIGH COURT OF LESOTHO

In the matter between:

LETSIE MALUMANE

APPLICANT

and

OFFICER COMMANDING MASERU POLICE

1ST RESPONDENT

ATTORNEY GENERAL

2ND RESPONDENT

R U L I N G

Delivered by the Honourable Acting Mrs Justice J.K. Guni
on the 19th day of June, 1995

The applicant in this matter is seeking a release to him by the Officer Commanding Maseru Police, of the motor vehicle registration number A3984, forthwith.

In his affidavit applicant avers that he is the owner of the said motor vehicle. Although the applicant does not indicate the date on which his motor vehicle was seized by the police, there seem to be no dispute that the motor vehicle is in the custody of the police, Since December 1992.

Mr. Vitalis Motlatsi, who filed answering affidavit on behalf of 1st Respondent, avers that applicant's motor vehicle

is going to be used in a pending criminal case against this applicant and two others. Respondent does not disclose under what law he is holding on that motor vehicle. The presumption properly made may be that the motor vehicle of this applicant is being held in terms of section 51 of CP & E Act No.9 of 1981. The motor vehicle seized by police in terms of section 51 CP & E Act may also be disposed of by the police officials in accordance with sections 52, 53 and 54 of the said Act.

In this case - the pending criminal case against the applicant and two others - according to the Investigating officer Mr. Vitalis Motlatsi, investigations have long been completed. As to when the trial will take place, it is the matter for those entrusted with the responsibility to prosecute. The Investigating Officer may during his investigations collect as much material as he thinks will be needed to establish the case against the alleged perpetrator. The ultimate decision of what will be used as evidence at the trial must rest with the law officer who is to carry out the prosecution. Having completed the investigations the Investigating Officer has little if anything at all, to do, with the making of the decision of what evidence will be used. His responsibility ended when he concluded his investigation in that case. He may appear as a witness at the trial not playing any other part.

By July 1993 Police had already completed their investigations. The law officer who is to carry out the prosecution in this case must have been holding on the docket since that time when the police concluded their investigations.

It should be the office of the officer charged with the responsibility to carry out those prosecutions, who makes an affidavit spelling out the reasons for this undue delay in the bringing of the criminal case to court. There is no affidavit from the law officer who is handling or is supposed to handle the prosecution in the criminal case. "Criminal proceedings are the bed-rock on which law and order and stability of the society from which other human rights rests". This was said by Mr. Justice W.C.M. Maqutu in Nthabiseng Mamabula Molapo vs Officer Commanding Maseru CID and Attorney General CIV\APN\280\92. It appears from these cases that for very quite a long time there has been great reluctance to carry out prosecutions once suspects are released on bail. In the matter of this application, the applicant has been awaiting trial for approximately three (3) years or more.

Section 55 CP & E Act No.9 of 1981 stipulates the procedure to be followed by the police officials after seizing articles that are going to be used as evidence in the trial. The relevant portions of section 55 reads as follows: " (1) If criminal proceedings are instituted in connection with any article referred to in section 52 (c) and article is required at the trial for the purposes of evidence or for purposes of an order of court, the police official concerned shall subject to the provisions of subsection (2) deliver such article to the ----- Registrar of the High Court."

The Investigating Officer does not in his affidavit show in anyway that the motor vehicle that is to be used in evidence is

no longer in the police hands but in the hands of the Registrar of the High Court where that murder trial should take place.

The holding of the property of the applicant by the police must be for a purpose. Mr. Vitalis Motlatsi has spelled out that purpose in his affidavit. Is it enough to make such a bare allegation with regard to that intended purpose? Some sort of action, some sort of movement must be made toward achieving that intended goal. i.e to make arrangements to produce the article in court at the trial. There should be steps taken to show that there is going to be a trial.

Now after 3 years, is there still any reason to believe that there will ever be a trial in which the applicant's motor vehicle will be used as evidence particularly bearing in mind that no reason has ever been disclosed for this delay.

It is in the common cause that the motor vehicle is exposed to the dangers that may result in its loss. Why have those responsible to carry out the prosecution not been persuaded to do so timeously before the motor vehicle is lost if it can be lost anytime? Does that attitude indicate that they care to produce or use it as evidence at the trial? I am afraid the answer to both questions must be in the negative.

Is there justification for the further detention of the motor vehicle by the police? The use of the motor vehicle seems

to be little or none in respect of the allegedly pending trial. The certainty exists only as regards the loss that the applicant will incur as the motor vehicle is left to deteriorate and perhaps be damaged by the elements. The resultant loss from theft is also great possibility. It can be argued that if the loss is caused by government then government will pay. There is no need to encourage unnecessary liabilities to be accumulated under this unreasonable circumstances.

The application must succeed with costs.

K. J. GUNI
ACTING JUDGE

For Applicant : Mr. Klass
For Respondent : Mr. T. Molapo