C. OF A. (CIV) NO.33 OF 1996

IN THE LESOTHO COURT OF APPEAL

In the matter between:

ATTORNEY GENERAL	1ST APPELLANT
O/C TEYATEYANENG POLICE	2ND APPELLANT

AND

TSOLOANE MAKOALA

HELD AT MASERU

CORAM:

BROWDE JA
KOTZE' JA
V.D. HEEVER AJA

J U D G M E N T

KOTZE, JA

The respondent in this appeal applied for, and obtained, in the High Court an order against the Officer Commanding the Teyateyaneng Police (the appellant) to restore to the respondent forthwith certain three motor vehicles lawfully registered, in his name which vehicles were removed from respondent's peaceful and undisturbed possession by members of the force under the appellant's command on 25th August, 1995. The appellant now appeals to this Court against the said order.

The appellant did not deny and indeed admitted that respondent was in peaceful possession of the vehicles in question

at the relevant time and furthermore admitted that his possession was disturbed by the removal of the vehicles. The contention raised by the appellant was that the police had the right so to do "in terms of Section 14(2) of the Road Traffic Act No.8 of 1981." Section 14(2) confers power on a police officer to seize any motor vehicle the registration of which was obtained through the use or production of a false document.

The appellant's opposing affidavit in the court a quo raises no suggestion at all that false documents were used or produced to secure registration of any of the vehicles seized on 25th August, 1995. The appellant seeks to justify the police conduct by means of the undermentioned allegation:-

> "We informed applicant of our suspicion and demanded from him the registration papers in respect thereof. Applicant refused to produce the papers whereupon we seized the said vehicles."

Mere or even reasonable suspicion does not suffice. The actual use or production of false documentation is a pre-requisite of the power of seizure conferred by section 14(2). The police acted in a totally arbitrary and high-handed manner. The appeal is dismissed with costs.

G.P.C. KOTZE
JUDGE OF APPEAL

I agree

J. BROWDE
JUDGE OF APPEAL

I agree

L. VAN DEN HEEVER
ACTING JUDGE OF APPEAL

Delivered at Maseru on ..... day of June, 1996.