

C OF A (CIV) NO.7 OF 1995

IN THE LESOTHO COURT OF APPEAL

In the matter between :

DIRECTOR OF PUBLIC PROSECUTIONS  
THE COMMISSIONER OF POLICE  
THE ATTORNEY GENERAL

1ST APPELLANT  
2ND APPELLANT  
3RD APPELLANT

AND

EASTERBOOK (PTY) LTD

RESPONDENT

HELD AT :  
MASERU

CORAM :  
STEYN JA  
BROWDE JA  
KOTZE' JA

JUDGMENT

STEYN JA:

This matter comes before us on appeal from the High Court. In that Court (Kheola CJ presiding) a rule nisi had been issued on the 16th February 1995 in the following terms :

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" IT IS ORDERED THAT :

1. A Rule Nisi do issue calling upon the Respondents to show cause on the 27th day of FEBRUARY, 1995 at 9.30 a.m. why an Order should not be made in the following terms :
  - 1.1 The 1st Respondent be and is hereby ordered forthwith to restore to the possession of the Applicant or its Attorney the following vehicles :
    - (a) ONE INTERNATIONAL S LINE MECHANICAL HORSE  
REGISTRATION NUMBER YBX 34267;
    - (b) A TRAILER REGISTRATION NUMBER KNE 9655;
    - (c) A FREIGHTLINER MECHANICAL HORSE  
REGISTRATION NUMBER : YBX 24756;
    - (d) A TRAILER REGISTRATION NUMBER 457175;  
  
THREE EMPTY CONTAINERS  
2 SIX METRES  
1 TWELVE METRE.
  - 1.2 1st Respondent be ordered to pay the costs of this Application.
  - 1.3 Further and/or alternative relief as the above Honourable Court deems fit is granted.
2. The provisions of paragraph 1.1 shall operate as an interim Order, with immediate effect pending the finalisation of this Application.
3. The forms and modes of service are dispensed with due to the urgency hereof."

This rule had been issued ex parte and as a matter of

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urgency. On the return day of the rule and on the 28th day of February 1995 the matter was postponed by Maqutu J to the 17th of March 1995 and the rule was extended to the 17th day of March 1995. The learned Judge also ruled as follows :

" I ..... require the police in the meantime to speed up their investigations in order that their position at the trial might be assessed regarding the vehicles. At the end of ten days, if they did not release the vehicles they should give reasons."

This ruling was amplified in written reasons furnished on the 3rd of March 1995. In these reasons the Court went on to direct as follows :

"(a) First Respondent be given ten days to determine what his position at the trial will be about these vehicles.

(b) At the end of the period the First Respondent should cause an affidavit to be made putting to the Court what his

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position will be at the trial and the reasons for it, if he has not released the vehicles.

(c) The matter is postponed to the 17th March, 1995 and the Rule Nisi is extended accordingly.

To facilitate effective decision making I direct that this ruling be served on the Director of Public Prosecutions who is now the *dominus litus* now that criminal proceedings are pending before the courts. I shall therefore expect the First Respondent to act under the directions of the Director of Public Prosecutions.

In future the Court will expect the Director of Public Prosecutions to be made a party to the proceedings where criminal proceedings have already been instituted."

It was pursuant to this ruling that First Appellant was quite correctly joined in the proceedings. He too opposed the confirmation of the rule nisi. Extensive

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opposing and replying affidavits were filed, the matter was argued and on the 7th of April 1995 the rule nisi was confirmed by Magutu J in a carefully reasoned judgment. It is against this judgment that the Appellants appeal to this Court. Initially the grounds of appeal were confined to the following :

"1 The Court a quo erred in finding that the property in question was not reasonably required for purposes of evidence.

2. The Court a quo erred in finding that respondent had established its locus standi in judicio to sue for the release of the property, which finding is based on further erroneous findings of the Court that:-

i) Respondent was an associate of the Durban-based Easterbrook Transport CC and

ii) The deponent to the founding

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affidavit, DINO NAIDOO, was the duly authorised agent of respondent and the Director thereof."

Further grounds of appeal were filed subsequently.

They read as follows:

- "1. The Court a quo erred in finding that there was no possibility of the property in question being a subject-matter of forfeiture to the Crown.
  
2. The Court a quo erred in holding that appellants bore the onus to prove that respondent knew that the property was being used or would be used for the purpose of or in connection with the commission of offences in question.

ALTERNATIVELY

The Court a quo erred in holding that respondent had discharged the onus to

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prove that it did not know that the property was being used or would be used for the purpose of or in connection with the commission of offences in question.

4. The Court a quo erred in holding that the relevant statutory provisions of the C.P. & E. Act 1981 did not authorise continued custody of the property for purposes of trial."

The facts of the matter appear from the affidavits filed in the matter. Mr. Lesole Sekatle is a member of the Royal Lesotho Mounted Police and holds the rank of Captain. He was part of the team of investigating officers of the criminal matter. He gives the following version of the events as to how the vehicles referred to in the *rule nisi* came to be in the possession of the Appellants.

"On or about 13 February, 1995 the police seized the property as follows: A truck known as FREIGHT LINER HORSE registration numbers YBX 24756 with a trailer registered as MMMU 314424,

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and 350 rolls of fabric; a truck known as INTERNATIONAL HORSE of the registration numbers YBX 34267, a trailer of the registration number KNE 9655 and two containers.

## 7.

At the time of seizure of the property as aforesaid the property itself was at or near what is known as the Lesotho Liquor Commission Warehouse somewhere along Kingsway Street in Maseru. Upon seizure of the property a number of people were arrested, later charged before the Subordinate Court of Maseru and some remanded on bail and others remanded in custody. GEORGE HOGG the driver of YBX 24756 was remanded in custody, some of his group which consists of locals were remanded on bail. SENZO MAPHUMULA the driver of YBX 34267 was remanded in custody while SELLO SEBATANE a local was remanded on bail. Further one THOMAS was remanded in custody and the Principal Chief of Thaba Bosiu, Chief Khoabane Theko, was remanded on bail. See a copy of the proceedings in the matter per the Maseru

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Subordinate Court C.R. 139/95 I annex them hereto and mark them "LS 1".

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The police have reasonable suspicion that the accused are involved in the offences charged and they further reasonably suspect that part of the property seized is stolen, that is the fabric rolls. The other part, that is the trucks, the trailers and containers, the police reasonably believe were, at a material time in question, intended to be used for the purpose of the offences charged and therefore the police reasonably believe that all the property in question will afford evidence of the suspected commission of the offences charged.

9.

Police investigations have so far revealed a startling state of affairs involving the defrauding of the country of millions and millions of Maluti in a racket that extends far

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beyond the territorial borders of Lesotho. The police have a duty to see to it that the country is not only saved from the disaster of economic crime but that the culprits are brought to book. It is in the interests of justice that the criminal case in the matter must be allowed to take its due course. Release of the property in question would severely prejudice the crown and jeopardise the interests of justice."

In a supplementary affidavit Captain Sekatle adds the following to the above version. He says:

"The incident of on or about 13th February, 1995 at or near the Lesotho Liquor Commission Warehouse is a tip of the iceberg according to what so far has been revealed by our on-going investigations. There is more to it than meets the eye and the police cannot rule out the possibility, if not the probability, that the owner of the property, that is, the trucks, the trailers and the containers, was aware that this property was being used in the commission of the offenses charged and further that he himself was

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involved in the commission of these offenses. Investigations are continuing in the matter. Suffice it to say that it has been discovered that the offences charged were committed thrice, that is, the breaking in and theft of goods at the warehouse on or about 13th February, 1995 was not the first of its kind. There had been two similar incidents before, involving the same company of the deponent to the founding affidavit. The police have reliable information to this effect and investigations in the matter are continuing. In the circumstances it would be quite premature to rule out the possibility, if not the probability, that the owner of this property is involved. It takes time to carry out these investigations, complex as they are, and wide as they are, for now it even appears that they may have to go as far as the countries of Botswana, Zimbabwe and Zwaziland.

7.

So far the said trucks, trailers and containers are the best evidence available for the Crown to

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prove beyond reasonable doubt that the offences charged were committed and they will thus be used as exhibits in court, and they have been submitted to Court as such. These trucks, trailers containers and rolls of fabric are easily identifiable as they are the only of their type presently in police custody.

## 8.

All in all there were three breakings and theft and goods valued, conservatively at cost price worth more than M400 000 were stolen from the warehouse. These goods were taken to Durban where attempts to trace them have so far proved futile; investigation in the matter are continuing.

## 9.

In the circumstances above, it would be too early for the police to conclude that a list of suspects is now complete. We are dealing here not with one or two persons, but a suspected

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crime syndicate, which is our concerted effort to tear apart by way of exposing it and bringing the suspects to justice.

10.

The charge sheet that has been produced in these proceedings mentions that the value of the property that was stolen is M450.000 but I submit that it is only holding charge-sheet. It was drawn by one of the prosecutors during the early stages of investigations. Then the police had not established the correct or approximate value of the goods that were stolen from the warehouse.

11.

I wish to bring to the attention of this Court that investigations involving a scheme that made it possible for customs duties are connected with the stolen goods I have referred to above. The goods in question were under embargo at the warehouse. The scam involving the importation of goods into Lesotho without paying the prescribed customs duties has led to the loss to Lesotho and

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other members of the South African Customs Union of Revenue amounting to millions of Maluti. Other than merely stealing the goods at the warehouse it was also the intention of the thieves to frustrate investigations into the wider aspect of import duties scam by removing the goods from Lesotho. There is an element of public interest in this case. It is in the public interest therefore, I submit, that no stone must be left unturned in ensuring that the culprits are brought to book. It is within that context and for the reason that it is the best evidence available and further for the reason that the Crown has to prove its case beyond reasonable doubt, that the property in question will be used as exhibits in Court. In the past and despite promises, guarantees and sureties, the police have had lots of difficulties in securing from outside the country exhibits which had been released and taken outside the jurisdiction of the Courts of Lesotho and then subsequently required for purposes of trial. In the majority of cases, if not all, criminal trials were frustrated as a result and this to

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the prejudice of the proper administration of justice in the country."

The first Appellant himself filed an affidavit. He says that he has studied the docket in the matter concerning the seizure of the vehicles and has worked closely with the police during their investigations. He goes on to say the following:

"From my perusal of the docket and information supplied to me by the police during consultations which I have had with them I am able to say that the vehicle driven by Mr. George Hogg, which consisted of a horse and a trailer, was actually found by the police at a government warehouse, which was used by the Customs and Excise department, loading goods stolen from the said warehouse after it had unlawfully broken into. The container on the trailer of the vehicle driven by Mr. Hogg still contains the goods which were stolen from the warehouse. The vehicle was found by the police at the warehouse in the afternoon of the 12 February 1995 after they were led to the premises by a suspect who was found in

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possession of goods which the police suspected were stolen.

10.5 I have established that the vehicle driven by Mr. Senzo Maphumulo was found by the police at about 12 midnight of the 12 February 1995 at the same warehouse where the police had earlier during the day found the vehicle driven by Mr. Hogg. Although the police had locked up and secured the premises after apprehending Mr. Hogg and his associates, the premises had again been broken into. Inside the warehouse the police found persons who had gained entry into the premises by breaking in and they were preparing to load goods on the vehicle driven by Mr. Maphumulo. I submit that when the police pounced and arrested Mr. Maphumulo and his associates the crime of housebreaking with intent to steal was complete. All that remained for the culprits to do was to steal the goods and load them on the vehicle driven by Mr. Maphumulo.

10.6 After the police had arrested Messrs Hogg and Maphumulo among others they have established that

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Mr. Hogg was not coming to Lesotho for the first time to remove goods unlawfully from the warehouse. I am informed by the police, and this information I honestly believe to be true, that property exceeding M5 000 000 was stolen from the warehouse through breaking into the premises. The theft of goods from the warehouse was only discovered by the police after the arrest of Messrs Hogg and Maphumulo.

10.7 When the police came to consult me after they had seized the vehicles I advised the police to keep the vehicles in police custody and not to release them to anyone pending the outcome of the trial of Mr. Hogg and Others on charges of Housebreaking with Intent to Steal and Theft. The vehicles will afford evidence at the trial of Mr. Hogg and Others and will be introduced as real evidence at the trials of the said accused."

First Appellant also points to the fact that in terms of the Criminal Procedure and Evidence Act No.7 of 1981 the police are empowered to seize any article which "is concerned in or on reasonable grounds believing to be

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concerned in the commission or suspected commission of an offence in Lesotho or which may afford evidence of the commission of an offence." He goes on to say "Section 57 of the (said Act) empowers a trial court to declare in certain circumstances after conviction, goods seized by police to be forfeited to the Crown."

In his affidavit First Appellant also makes the following averment :

"I submit that there is no legal provision which empowers the court to release articles to the applicant in circumstances where the prosecution has clearly indicated that the articles will afford evidence at the contemplated trial of Messrs Hogg, Maphumulo and Others."

He concludes by saying the following :

15. "I submit that no evidence has been placed before this court that the owners of the vehicles were not aware that their vehicles were to be used to carry goods that were tainted with illegality. I have personally conveyed through the

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applicant's attorneys that I am willing to hear representations from Mr. Sugi Govender or whoever dealt with either the applicant or Easterbrook Transport CC, how the vehicles came to be involved in the transportation of stolen goods but my invitation has gone begging. My immediate impression is that the owners of the vehicles knew that the vehicles were to be used for an unlawfull objective."

What does the Respondent say concerning its involvement in the matter and how the vehicles owned by it and driven by two of its employees came to be involved in what appears *prima facie* to be the commission of serious offences?

The deponent on its behalf is one Dino Naidoo a director of the Respondent company. Respondent is a duly registered company in the Kingdom of Lesotho "and also has an associate corporation Easterbrook Transport, 416 Archery Road, Elairwood, Durban."

As to the nature of its business he says the following:

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"The Applicant and its associate corporation, EASTERBROOK TRANSPORT CC carry on the business of a transport operator countrywide in South Africa as well as Botswana, Swaziland and Lesotho. The Applicant has an office and workshop in Machache Maseru, Lesotho and is established and domiciled in Lesotho and holds the necessary license to trade in Lesotho. I annex hereto marked "A1" a copy of the certificate of incorporation of the Applicant and marked "A2" a photocopy of the Applicant's licence to trade in Lesotho."

On the 10th of February 1995 he says that he was approached by Mr. Sugie Govender by fax received in his Durban office with a request to hire "two 4' trucks and trailers with containers for a trip a (sic) Lesotho for conveyance of goods from Maseru to Durban." The fax is annexed to his affidavit and reads as follows:

" To: Easterbrook Transport, Att Dino  
Fax:  
From : Sugie Govender  
Date : 10 February 1995  
Pages : 1 page(s)

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including this page.

Attention Dino

Kindly arrange for two x 40' trucks with containers to go to Maseru, Lesotho.

Trucks to meet Molimo Mpeta at the BP Service station. Contact Mr Mpeta at 322550 Maseru.

Collection and delivery instructions will be given directly by Molimo Mpeta.

Prior to delivery kindly contact me, so that I may arrange for transport costs from Mr Mpeta.

With kind regards

S Govender"

The deponent then goes on to say that Mr. Govender telephoned him and particulars of the hire were settled.

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The two trucks with trailers and loaded with empty containers "were duly dispatched that same afternoon to Maseru driven by our drivers George Hogg and Sanzo Maphumulo."

As to his knowledge of the seizure of the vehicles and the arrest of the two employee drivers he says the following:

"I received a telephone call from one Rodney who runs the Maseru Depot at about 17.00 on the 13th February 1995 and was advised that the drivers had been arrested by members of the police Maseru and the vehicles and their containers (hereinafter called "the vehicles") had been seized by the police."

Respondent avers that the continued detention of the vehicles is causing it serious prejudice and that it is losing R6,000 per day because of the fact that it is unable to hire out the trucks and trailers concerned.

In a replying affidavit and concerning any suspicion of involvement in the commission of the crimes allegedly

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committed, Mr. Naidoo says the following :

"I deny that the police have any reasonable evidence that these trucks were being used in the crimes which are being investigated. I was present at all times in Lesotho and I am a member of the Applicant who is the owner of the vehicles. If the police at all suspected that I was involved as a member of the Applicant they would have arrested me and made me a party to the criminal proceedings.

I therefore allege that the police are quite sure that the transport contractor, being the Applicant, is not involved in the crimes and for this reason I was not arrested. I further allege that I gave my full co-operation to the police.

9.

The police even travelled to Durban where I fully gave my assistance and where they took statements from all other parties who may have been involved in this matter. I therefore deny that the police

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have any reasonable belief that I, or any other party that was involved in the transport contract, is involved in any criminal activity. No charges are being investigated against us.

10.

I deny that there is any suspicion of the commission of the offences which are being pressed. I put the Respondent to the proof thereof.

11.

Ad paragraph 9

I deny that the Applicant is involved in any way whatsoever in the criminal actions complained of by the Respondents. The office have shown no interest whatsoever in the Applicant and have not pressed any charges against any members thereof. I deny that the release of the two trucks and the trailers in question will in any way prejudice the Crown in the investigation of the crimes complained of or in the prosecution of the

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accused who have already been charged.

12.

I am advised that these trucks can be of no use to a Trial Court as evidence. I therefore put the Respondents to the proof thereof."

In their argument in support of their grounds of appeal, Appellants have advanced two principal contentions. The first is set out in their heads of argument and reads as follows:

"1. The other truck which evidence shows that it was not yet loaded will in all probability be an element of the necessary proof that the accused, in breaking and entering, had intended to steal the property inside the warehouse. The unloaded truck in that sense, becomes a necessary and a required piece of evidence for the crime of house-breaking with intent to steal. The truck's presence at the

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scene of crime is an important piece of evidence, it is submitted, leading to proof, if not establishing proof, that there was intention to steal the warehoused property.

2. The other truck which evidence shows that it was already loaded was an instrument used to facilitate the taking element of the crime of theft.  
See

Instrumentality - R V ISMAIL 1942  
C.P.D. 469

Contrectatio - R V NHLEKO 1920 T.P.D. 231 at  
234

- R V CARELESE & KAY 1920  
C.P.D. 471 at 474

- R V NERERA 1939 SR 297 at 299

Whether the trucks and their trailers did not appear to be required at the trial for the purposes of an Order of Court under Section 57 of the C.P.&E.

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Act 1981."

The second submission was :

"That the onus is on respondent to prove that it did not know that the property was being used or would be sued for the purpose of or in connection with the Commission of the offences charged. On the facts, the onus had not been discharged.

In the circumstances, it is our submission that the property released did appear to be required at the trial for the purposes of an Order of forfeiture and therefore it was an error and improper exercise of discretion to release the property in those circumstances."

(Some argument was adduced concerning Mr. Naidoo's *locus standi*, but this was not pursued during the hearing and does not in our view require to be addressed by us)

On Respondents behalf it was submitted that there was "no information or evidence that Respondent was associated with the crime charged. Suspicion is not enough".

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Concerning the continued detention of the vehicles for the purpose of their use as exhibits in the criminal case the following submissions were made:

"It is correct that there can be circumstances in which a Court cannot dispense justice without seeing the articles or receptacles themselves. This is clearly not such a case. In this regard the Court a quo correctly referred to the example of a car that runs over a person and kills him. No Public Prosecutor has ever insisted on the production of a car as an exhibit at the Trial.

See: RECORD p. 102

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Nowhere in the Affidavits by the Appellants is it stated what evidential value the production of the vehicles at the Trial would have. It is submitted that it would have no evidential value whatsoever."

The learned Judge in his reasons for his ruling and

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judgment has dealt fully with the contention that the vehicles concerned should remain under the control of the authorities because they would be required as exhibits or "material evidence" in the criminal trial. In this regard he says the following:

"The vehicles themselves are not stolen nor are the subject of any criminal charges. Therefore to borrow the words of Roskill LJ in *Malone v Metropolitan Police Commissioner (supra)* at page 15:

"The police have no power to retain lawfully the property seized from an accused person..., unless the retention was justified on ascertainable grounds."

Having regard to the circumstances of this particular case, I cannot see how these vehicles and containers can be exhibits to prove the Crown case."

On the question of the detention of the vehicles because a forfeiture order may well be made in due course,

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the Court-after citing the decision of this Court in Johnny Waka Maseko v Attorney General and Another C of A (CIV) No.27 of 1988 (unreported)-says the following:

"The instant case is (among other things) about reasonable use of police powers. The only difference is that here seizure of property is involved while in Johnny Wa Ka Maseko case the liberty of the subject was involved. In Johnny Wa Ka Maseko's case the police claimed they were acting on "credible information". In the case before me the police are acting on nothing, they only speculate that evidence might one day surface that could cause the vehicles and the containers to be liable to forfeiture.

Ackermann JA in Johnny Wa Ka Maseko said:

"It is insufficient merely to state the conclusion without supplying some information on which such a conclusion or suspicion is based."

There is nothing in this case to support the conclusion that the vehicles and containers will

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be used as exhibits or that Applicant could be in pari delicto with the people charged with theft thus making the vehicles and containers liable to forfeiture. In the Johnny Wa Ka Maseko case the police had arrested a newspaper editor who was publishing articles that were defamatory against a Minister of the Crown. The police had arrested this editor by virtue of the powers under security legislation and they were alleging the said publications were subversive to the security of the country. The Court of Appeal would not allow this abuse of power. By the same token I am of the view that there is an unreasonable refusal to release Applicant's vehicles and containers which amounts to a grossly unreasonable use of powers conferred by law."

It is against the background of this evidence, argument, ruling and judgment that this appeal has to be adjudicated.

I cannot fault and I fully support the Court a quo's reasoning concerning the attempt to justify the detention of the vehicles because they could be required as exhibits

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in the criminal trial. Certainly the contention advanced in the papers that :

"There is no legal provision which empower the court to release articles to the applicant in circumstances where the prosecution has clearly indicated that the articles will afford evidence at the contemplated trial ..."

is unsustainable. We are seized with a matter in which the responsible authority has exercised a discretion. That discretion must be exercised within the constraints contained in the provisions of the statute that confers such power. In the instant case the relevant provisions justifying the seizure of the vehicles are those contained in section 51 of the Act. There can be no doubt that they were lawfully seized. However in terms of section 53(1) of the Act "if it appears that such article is not required for purposes of evidence or for purposes of an order of Court" the article shall be returned to the person from whom it was seized.

The decision to sustain the seizure of an article and not to return it to the lawful owner cannot be capricious,

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arbitrary or grossly unreasonable. Moreover if the responsible authority wishes to deal with the article in terms of sec. 52(c) the minimum ground on which this can be done is if the article may afford evidence of the commission or suspected commission of an offence. Here too the authority of the Court to review such a decision is unquestionable. See in this regard Ndabeni v Minister of Law and Order 1984(3) 500 (N).

It seems to me to me grossly unreasonable to suggest that the vehicles concerned in the commission of the offence had to be "retained in police custody "(see 52(c)) "for purposes of evidence" (sec 53(1)). In this respect I am in full agreement with the reasoning and decision of Maqutu J.

The next issue to be decided is much more problematic. The questions that arise can be formulated thus :

1. Does it appear that the article concerned could reasonably be required "for purposes of an order of Court ....." (This would inter alia be a reference to a forfeiture declaration in terms of Sections 56 and 57).

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2. Did the relevant authority when exercising its discretion in this context act reasonably or on reasonable grounds? Certainly the interest of those concerned - including the owner - should be borne in mind.

The learned Judge a quo's approach to the evidence seems to me, with respect, to be capable of challenge. I certainly do not share his view that "in the case before me the police are acting on nothing, they only speculate that evidence may one day surface that could cause the vehicles and the containers to be liable to forfeiture." Neither do I think that in the present case the dictum of Ackermann J.A. in Johnny Wa Ka Maseko that "It is insufficient merely to state the conclusion without supplying some information on which such a conclusion or suspicion is based" can be invoked to impugn the exercise of discretion by the First Appellant.

I have cited the evidence of a member of the investigating team hereinabove. It is true that he refers to the possibility or even the probability of Respondent director's involvement in the commission of the offence. However he does put flesh to these bones. The following

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facts are beyond dispute:

1. The vehicles involved belong to the Respondent.
2. They are heavy vehicles supplied with containers and capable of conveying goods in bulk and Respondent conducts its operations in the Kingdom of Lesotho.
3. They were under the control of Respondent's servants at the time the crime was committed.
4. The same vehicles were used on two previous occasions to commit similar offences.

In my opinion it is therefore not mere speculation that Respondent - not necessarily only through Mr. Naidoo the deponent director - could have been a party to the commission of this offence.

It is true that Respondent is in the transport business. However it has furnished no details of the agreement between it and Mr. Govender. Neither has it sought to explain the alleged involvement of its employees.

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It has not sought to deny that its vehicles were also involved on two previous occasions in similar offenses. In these circumstances it does not seem to me that the decision of the First Appellant can be impugned as grossly unreasonable or not to have been taken on reasonable grounds.

It must be borne in mind that when the issue of forfeiture is to be decided by the Court, the onus that it did not know that the vehicles were being used or could not prevent such use would be on the Respondent company. (see in this regard the proviso to Sec. 57 of the Act.)

In these circumstances it is our view that the decision by First Respondent that the vehicles concerned were lawfully seized and could lawfully be detained in the custody of the relevant authorities, pending the outcome of the criminal trial, cannot be set aside on the ground that it was an improper exercise of his discretion.

The appeal succeeds with costs. The order granted in the court a quo is set aside and in its place the following order is made : The rule nisi is discharged with costs.

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*J. H. Steyn*

~~J. H. STEYN~~  
~~JUDGE OF APPEAL~~

I agree

*J. H. Steyn*

~~J. BROWDE~~  
~~JUDGE OF APPEAL~~

I agree

*G. P. C. Kotze*

~~G.P.C. KOTZE~~

Delivered at Maseru this 27<sup>th</sup> day of October, 1995.