

CIV/APN/171/99
IN THE HIGH COURT OF LESOTHO

In the matter between:-

O/C MAFETENG CHARGE OFFICE - CID	1ST APPLICANT
O/C MAFETENG CHARGE OFFICE	2ND APPLICANT
COMMISSIONER OF POLICE	3RD APPLICANT
ATTORNEY GENERAL	4TH APPLICANT
and	
BATAUNG MOHLOKI	1ST RESPONDENT
HER WORSHIP MRS RAMOLAHLOANE MAHAMO	2ND RESPONDENT

JUDGMENT

Delivered by the Honourable Mrs Justice K. J. Guni on the 7th day of February, 2000

In this matter the applicant seeks the review, correction and setting aside of the Magistrate's court order. The facts as gleaned from the papers filed of records are

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briefly as follows. The accused, who is now the 1st respondent in this application appeared before the Magistrate's court sitting at the District of Mafeteng, on the 29th of March 1999. The accused was being charged with an offence involving a motor vehicle. According to the Investigating Officer, who has deposed to the Founding Affidavit, there is a suspicion, presumably entertained by him, that the said Motor Vehicle is a stolen property. The 1st respondent appeared before court on that date. For the reasons best known to the Investigating Officer and those involved in those criminal proceedings, the hearing was adjourned. The deponent of the Founding Affidavit, at paragraphic avers that "the charge had been brought against the applicant". The reading of the whole paragraph gives the impression that the charge must have been brought against the person who is suspected of having in his possession the stolen motor vehicle, subject of this application. The charge therefore could not have been brought against the applicant - O/C Mafeteng CID and others. The writer may have suffered an attack of malapropism.

The perusal of the Founding Affidavit, shows that the deponent who is also the Investigating Officer of that criminal case pending against 1st respondent was served with the court order, releasing that motor vehicle to the 1st respondent. He did not comply with the said court order [Annexure "G" attached to the founding affidavit] He claims to have been puzzled by the court order. [Paragraph 12 of

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Founding Affidavit.] The terms used in the said court order are very simple, clear and unambiguous. He understood the said court order perfectly. He did not want to comply with that court order. His reasons for none compliance with that court order are:- 1 - That he knew that The Attorney General had not been served with a substantive application for the release

of that Motor Vehicle. [See paragraph 12 Founding Affidavit]. The connotation being made here is that the application for the release of the said motor vehicle was made and granted in the absence of or without hearing the case of the Attorney General.

The seizure, detention and disposal of articles which are the subject matter of criminal proceedings, are Government by Criminal Procedure and Evidence Act No.9 of 1981. The particular section which deals with the matter under consideration is section 56. The relevant portions thereof reads as follows:-

"56. (1) The Judge or Judicial Officer presiding at criminal proceedings shall at the conclusion of such proceedings, but subject to this Act or any other law under which any matter shall or may be forfeited, make an order that any article referred to in section 55:-

(a) be returned to the person from whom it was seized, if such person may lawfully possess such article; or

(b) if such person is not entitled to the article or cannot lawfully possess the article, be returned to any other person entitled thereto, if such person may lawfully possess the article; or

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(c) if no person is entitled to the article or if no person may lawfully possess the article or if the person who is entitled thereto cannot be traced or is unknown, be forfeited to the Crown.

(6) If the circumstances so require or if the criminal proceedings in question cannot for any reason be disposed of the judge or judicial officer concerned may make any order referred to in sub-section (1) (a) (b) or (c) at any stage of the proceedings."

It is not in dispute that the court order which puzzled the Investigating Officer was made in terms of the above mentioned section. The competency of the court which made the said order is not in dispute. Sub-section (6) mentioned above, entitles the Magistrate, at any stage of the criminal proceedings which for any reason cannot be disposed of to release the article (in this case that motor vehicle) if the circumstances so require.

The applicant in this matter, reads into the section the requirement that the Attorney General must first of all before the article is released, be served with a separate and independant application. Definitely, he has got the wrong end of the stick. There is no such a requirement in terms of this section. He has not bothered to show this court the authority, which imposes a duty on the Magistrate, to order service of the separate and independant application, upon the Attorney General before making an order as she did in accordance with section 56 (b) of Criminal

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Procedure and Evidence Act. On the face of Annexure "G" the court order whose review correction and setting aside is being sought, it is shown that the said order was made after both parties involved in that matter, were heard. The accused made the application for the release to him of that motor vehicle. The Public Prosecutor who was handling the prosecution case one Sergeant Nkuebe also made his submissions with regard to that application. The suggestion which is being made is that the Public Prosecutor was representing and/or acting on the instructions of the Director of Public Prosecutions and not

Attorney General. To some degree this is correct; the next question should be which office is responsible for the prosecutions? That of the Attorney General or Director of Public Prosecutions?

The duty and/or the right to institute continue, or discontinue any criminal proceedings against any person before any court in respect of any offence alleged to have been committed by that person, vests in the office of Director of Public Prosecutions. [See Section 5 Criminal Procedure and Evidence Act No. 9 of 1981]. The averments by the deponent of the Founding Affidavit, that the motor vehicle, subject matter of this application, is suspected to be stolen and the charge had been brought against the person suspected of theft of that motor vehicle, clearly indicate that the matter falls squarely within the realm of the Director of Public Prosecutions' office which was properly represented by the Public

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Prosecutor. Apart from the fact, that there is no specific legal requirement to have a separate and independent application made against and served upon the Attorney General, when the article is disposed of in terms of section 56 (6) of Criminal Procedure and Evidence Act, there was no need to seek or order representation to be made by or on behalf of the Attorney General in the matter which interests only the prosecution. On these points this application must fail.

Another question which I must deal with in that of review. Section 119(1) 1993 LESOTHO CONSTITUTION gives the High Court power to review the decisions or proceedings of any subordinate or inferior court. Not every decision and proceedings of subordinate court are reviewable. There must be proper grounds, subjecting such decisions and proceedings to be reviewed. In the application for review there must be an allegation of gross irregularity which occurred in the proceedings to be reviewed. JOHANNESBURG CONSOLIDATED INVESTMENTS CO. V JOHANNESBURG TOWN COUNCIL 1903 T.S 111. There is no allegation that the Magistrate Committed any irregularity when making that court order. The High Court is not entitled to exercise its review powers over the decisions or proceedings of the inferior courts, when no firm and proper grounds to do so exist. There are no such firm grounds entitling this court to review, correct and set aside this Mafeteng Magistrate's Court order. Therefore

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this application must fail. It is therefore dismissed with costs.

K.J. GUNI
JUDGE
7 February 2000

For Applicants: Pitso Pitso
For Respondent: Rampai