CIV/APN/349/98

IN THE HIGH COURT OF LESOTHO

In the matter between:

NTHEBERE PHOLOSA	APPLICANT
and	
OFFICER COMMANDING BUTHA BUTHE	1ST RESPONDENT
PUBLIC PROSECUTOR	2ND RESPONDENT
THE ATTORNEY GENERAL	3RD RESPONDENT

JUDGMENT

For the Applicant : Mr. Teele

For the Respondents : Mr. Mapetla

Delivered by the Honourable Mr Justice T. Monapathi on the 12th day of May 2000

Applicant's vehicle had been detained since June 1998. Consequently this application was filed on the 2nd September 1998 and later served on the First

Respondent on the 10th September 1998. No charge had been preferred against this Applicant hence his claiming that the vehicle would deteriorate and that its detention was no longer purposeful.

The Applicant may have possessed the vehicle in question unlawfully and the documentation thereof could be dubious as it is most of the times, thus inclining police, for good reason, to strongly suspect that an applicant's possession was unlawful. Even in extreme cases of that kind I have concluded that there was no onus on applicant to prove that his possession was lawful. It is because even if it was not so it would not be the answer to an indefinite detention of a suspect's vehicle without a charge being preferred. Indeed even if the Crown was able to persuade the Court that the possession was unlawful (which attempts are often done half-heartedly) the question would still revolve around the Respondent's inability to prosecute (as at present) and thus rendering the intention to have the vehicle as an exhibit unconvincing.

Once no charge was being preferred against Applicant in this case since June 1998, a case was made as a result that the effect of the detention was to make the vehicle deteriorate and that the detention was obviously not being purposeful and therefore not good.

The Court ordered that the vehicle be released to the Applicant and costs of the application be paid to the Applicant.

Things connected with theft of vehicles appear to require regulation by a special Act of Parliament.

T MONAPATHI
JUDGE

12th May 2000