CIV/APN/198/98

IN THE HIGH COURT OF LESOTHO

In the matter between:

THABO NAPENYANE **APPLICANT**

and

THE OFFICER COMMANDING POLICE - KAO **1ST RESPONDENT**
THE ATTORNEY GENERAL (N.O.) **2ND RESPONDENT**

For Applicant : Adv. Molapo

For Respondent : Adv. Miss Mothepu

Judgment

Delivered by the Honourable Mr. Justice T. Monapathi
on the 10th day of April 2001

The Applicant has applied on urgent motion on the 13th May 1998 on a certificate of urgency. The matter had since ceased to be treated as an urgent matter. The application was for the following prayers:

1. That Rule Nisi issue returnable on the date and time to be determined by the above Honourable Court, calling upon the Respondents to show cause, (if any) why:-

   (a) The normal forms and service provided for by the Rules of Court shall not be dispensed with on account of urgency;

   (b) Restraining the Respondents and/or their Subordinate Officers from disposing of, alienating and/or destroying Applicant's vehicle, Toyota Hi-Lux Van registration number CHC637GP, chassis number TPA 900831111055 and engine number TPA900831110555 pending finalisation hereof;

   (c) Directing the Respondents and/or their Subordinates ti release Applicant's Toyota Hi-Lux Van registration number CHC637GP, chassis number TPA 900831111055 and engine number TPA900831110555 to him;

   (d) Directing the Respondents to pay costs of this application;

   (e) Granting the Applicant such further and/or alternative relief.

2. THAT Prayer 1(a) and (b) should operate as an Interim Interdict with immediate effect.

Further and substantially the Applicant sought for the release of the said vehicle.

The accompanying affidavit of the Applicant was used in support of the application.

On the 29th May 1998, the Respondents filed the notice of intention to oppose to application. This was followed by Respondents' answering affidavit by the deponent Thabang David Moabi, a detective trooper with the then Royal Lesotho Mounted Police. He was attached to the Criminal Investigation Department at Ha Lejone. The opposition was accompanied by the supporting affidavit of one Jannie Petersen and of one Tigeli Mokokoane as well. The said Jannie Petersen said he was a citizen of South Africa employed by South African Police Service and was then attached to the Vehicle Unit at Ficksburg. The said Tigeli Mokokoane was a member of the said Lesotho Police Force with a rank of Lieutenant and he was stationed at Leribe in the Criminal Investigation Department. The Applicant in turn filed a replying affidavit.

The Applicant's case had been that he was in peaceful and undisturbed possession of the said vehicle until the 23rd April 1997, when the police officers who were acting within the scope of their official duty despoiled him of the same. They kept the vehicle at Kao Police Station without reasonable and/or just cause.

It was Applicant's further case that he had acquired the said vehicle lawfully and its continued seizure was purposeless because he was not criminally charged or

at all in connection with said vehicle. I agreed with Miss Mothepu for the Crown that it might well be that the trial Court will prove that there were those irregular tamperings with parts of the vehicle and that that annexure "A" was bogus in several ways. One of them could be that the vehicle registry of the office of Vandebijilpark would not even know of MV Lekalakala who was said to be the owner. Secondly that vehicle might not even have been registered at that registry. Thirdly that document called Motor Vehicle Licence and Clearance Certificate might turn out not even to be proof of ownership according to the laws of the Republic of South Africa. Fourthly it could be that there has never been anyone by the name of MV Lekalakala because he does not exist and he is a fiction. Sadly these are not the things that Mr. Jannie Petersen speaks about. Nor is this Court the proper Court to decide that. I would add that the Applicant could safely argue that without the evidence of the owner of the vehicle Mr Petersen's saying is inadmissible hearsay. That the Applicant was in peaceful possession was enough as Miss Mothepu conceded.

I felt that if the police suspicion was reasonable it was still not the end of the matter. Applicant says that the suspension was not reasonable. Respondents' deponent did not tell how the chassis number (which he said was erased) are to be found on the windows and not on the chassis itself. He did not reveal what the alleged chassis number on the windows originally were and lastly what scientific

methods were used or not to reveal what they were. It was submitted that it had been imperative to use scientific methods where tampering of this nature was alleged as well. See **Jakaranda Busdiens (Pty) Ltd v Herbert Mokorosi** CIV/T/107/87 page 8-9.

In his answering affidavit the said Respondents' deponent went further to say that subsequently he invited South African police to run an acid test on the vehicle and this examination revealed that both engine and chassis numbers had been tampered with, as a result, certain numbers emerged. He went further to say that the report revealed that the vehicle was reportedly stolen from one R F Erdefert. I remarked to Miss Mothepu as to the paucity of the circumstances of the alleged theft since the theft was denied. An affidavit of the victim of the theft could have been useful. The Court was not told why it had been difficult to secure it. But still this had to do with proof of theft which proof has never been forthcoming.

It was said by the Applicant that this "Annexure "A" which was a certificate of registration spoke for itself. May be it dis for the purpose of these proceedings but not necessarily for others. It was said it showed the previous owner of the vehicle of an address called 18803 Masoweng Street, Zone 14 Sebokeng, Vanderbijilpark. That was said to have adequately explained the origins of the vehicle. It thought this might even be untruthful but this Court was concerned

with the fact that the Applicant said he was in peaceful and undisturbed possession of the vehicle. This I might even take for granted when nothing serious to the contrary was shown.

I was concerned with the fact that since detention the Applicant had not been charged and as he said the detention of the vehicle was no longer purposeful. As Maqutu J said in **Kekeleetso Mokokoana v Officer Commanding Police Robbery and Car Theft Unit and Anther 1991-1996(1) LLR** 732, justice delayed is justice denied. The police knew that they are duty bound to respect the liberty, life and property of the people. The police and the Courts are entitled to hold property of the suspect for so long "as may be necessary for purpose of any examination, investigation, trial or inquiry." See Section 17(1) Constitution of Lesotho under heading: **"Freedom From Arbitrary Seizure of Property".**

It was correctly submitted that the intention of detaining property which was reasonably suspected to have been stolen was not that it should be kept indefinitely without charging the suspect. Thabang Moabi said that the Applicant would be remanded at anytime without stating that with any particularity. This was wrong and unhelpful. The police are not entitled to seize people's property, put it aside and outside in the Charge Office premises and forget about it while it deteriorates as days pass. See **Mokokoane** case (supra).

The most important question for the Court to decide in this application was whether the Applicant is a *bona fide* possessor and not owner of the subject matter; Secondly whether the seizure and or detention was purposeful.

It is submitted that in this application the Applicant is a *bona fide* possessor and that the seizure and or detention was purposeless. In the words of Miller J.A.

> "Moreover, no prosecuting has been instituted in respect of any offence concerning the car during the lengthy period that has elapsed since the Police took possession of it, there does not appear to be any justification for the continued detention thereof. It must be recognised that the statutory provisions relating to detention of property generally anticipate prosecution for a relevant offence. In short what was visualised by the legislature is a purposeful detention. If a stage is reached when the detention appears no more purposeful there can surely be no point in the continued detention of the property. It appears to me that in this particular case that stage was reached sometime ago and it is just and proper to release the car to Applicant as the person who was in *bona fide* possession at the time of its seizure."

See **Mokokoane's** case (supra) p733: see also : **Makakole v Officer Commanding CID Maseru And Another LAC (1985-89) 207.**

In the case of **Fako Griffiths V The Commissioner of Police & Ors C of A (CIV) No.9 of 1991** (Unreported) Ackermann J.A. dealing with delays in investigations said:

> "The lapse of time (which would be unwarranted even in the most complex commercial fraud cases) is wholly unjustified in the present instance. The appellant is entitled to have the case against him proceeded with immediately or the charge against him withdrawn forthwith.
>
> The delay in that case was considerably longer and the accused had been charged. In this one the applicant has never been charged with the commission of any offence." See **Mokokoane's** case (supra) p.12.

In the case of **Riddock v Attorney General for Transvaal** 1965(1) S.A. 817 at 818 F-G Trollip J remarked as follows:

> "No time is fixed in the Act in which the Attorney General must take a decision, but the whole policy of the Act is that the accused must be brought to trial without undue delay ..... Attorney General must act

with reasonable expedition in deciding what to do, and I have no doubt that if he has delayed unduly in making a decision is a particular case, the Court can and would, at the instance of the aggrieved person intervene and grant appropriate relief....."

It was respectfully correctly submitted that the Applicant had made out a case for the relief sought and as such it was accordingly prayed that this application must succeed. And in the light of concessions made by Miss Mothepu on the 27th March, 2001, I allowed the application. Mr. Molapo said he was not insisting on an order for costs.

T Monapathi
Judge

10th April 2001