

CRI/APN/303/2001
CR 301/2001 (Leribe)

IN THE HIGH COURT OF LESOTHO

In the matter between:

MAKHEFU RAMAEMA

APPLICANT

and

THE MAGISTRATE (MR MAFATLANE)
DIRECTOR OF PUBLIC PROSECUTIONS

1ST RESPONDENT
2ND RESPONDENT

JUDGMENT

Mr E. M. Teele : For the Applicant

Miss L. Maqutu : For the Crown

Delivered by the Honourable Mr. Justice T. Monapathi
on the 8th day of June 2001

This was an application for bail in terms of section 15(1) of Motor Vehicle Theft Act No.13 of 2000 (the Act) before the learned magistrate. Applicant was alleged to have stolen the vehicle subject of the charge.

Indeed the Court *a quo* did not spell out how it arrived at the value of the

vehicle or factors that it took into account. This was an irregularity. The learned magistrate relied on the word of the public prosecutor. This error would be expected where there had been no independent witness such as a mechanic, car dealer, assessor or valuer to inform of the value or estimated value of the vehicle.

In this type of inquiry even any good factor provided by the Complainant or Applicant (Accused) would serve as a guide for arriving at a value for the purpose of the material section of the Act. For example the price at the time the vehicle was bought including depreciation is one factor. The magistrate will arrive at his own decision in any event.

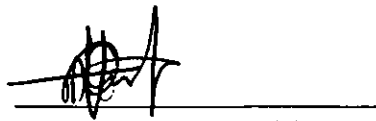
There are many types of value eg. market value or book value etc. About fifty meanings of value. See M C MICHAELS APPRAISAL MANUAL 4 ed as quoted by Jonker in **Property Valuation in South Africa in South Africa** Juta as referred to in paragraph 7 of Applicant's affidavit.

What is required by or for the magistrate is that the Court must consider some good or credible factor in arriving at a decision. The decision will still have to be that of the magistrate who will need to comply with section 15(1) of the Act 2000 that is fix half of the value of the vehicle. The magistrate's decision has to be a reasonable one. I repeat that despite the witness (expert or otherwise's evidence) the magistrate must make his own decision.

The Court did not have to consider the effect of section 15(3) of the Theft Act 2000 about other requirements other than Accused's own recognisance. I felt that that would be decided by the magistrate by the last mentioned section read with section 104 of the Criminal Procedure and Evidence Act 1980. This includes

the question on whether the permissibility of provision of recognisances or sureties (other than Accused's own recognisance) was excluded by the Act. But the discretion remains that of the presiding officer in all respects.

I came to a decision that the magistrate's decision was reviewable, that it ought to be set aside. I made the order that a re-application for bail be made before the magistrate within 14 days from 11th June 2001.

A handwritten signature in black ink, appearing to be 'T Monapathi', written over a horizontal line.

T Monapathi
Judge