

IN THE HIGH COURT OF LESOTHO

In the Matter Between:

MASHENA MOKETETSA

Appellant

and

REX

Respondent

Judgment

**Delivered by the Honourable Mrs Acting Justice A.M. Hlajoane on 17th
October, 2002.**

The Appellant in this case appeared before the Magistrate here in Maseru charged with two counts. In count one he had been charged with contravening the provisions of section 343 of the Criminal Procedure and Evidence Act 7 of 1981, in that sometime in December 2000, he had been found in possession of a blue 626 Mazda car Reg. No. HBS 918 FS, engine No. FE996129 and chassis No. NR547165, in regard to which there was a reasonable suspicion that it was a stolen property, and that the Appellant had been unable to give a satisfactory account of such possession.

In count two, the charge was that of contravening the provisions of section 3 (2) (a) of the Internal Security Act 17 of 1966 as amended by Act 4 of 1999, in that upon or about the same time he was found in possession of a Commando serial No. 78KA001606 with 8 rounds, and a short gun serial No. 23043 (PAM) with 8 rounds without holding a firearm certificate in force at the time.

The Appellant when the charges were put to him had pleaded not guilty in both charges. The Crown had closed its case after leading evidence of only one Prosecution witness. The Appellant chose not to go into the witness box thus closing his case without leading any evidence.

The Magistrate had found the Appellant not guilty in count one and guilty as charged in count two. The Magistrate had also given an order regarding the disposal of the exhibits in both counts. The firearms in count two were forfeited to the State but had declined to release the car to the Appellant in count one. The main reason for her refusal being that Appellant had failed to show that he was the rightful or lawful owner of the car.

From the evidence of that single Crown witness, it has been shown that in fact the Appellant had produced a document relating to the car in question which unfortunately did not satisfy the Magistrate as the names reflected therein were not those of the Appellant. The Appeal mainly centred around the refusal by the Magistrate to release the vehicle to the Appellant.

When the Appeal came before me counsel on both sides were agreed that the vehicle should be released to the Appellant. The Appellant had been found not guilty in count one because he had produced the relevant documents for the car as proof of his lawful possession.

That being the case, the Court found itself obliged to uphold the Appeal with an order for the immediate release of the vehicle to the Appellant. The question of ownership had not been the issue in this case under count one but possession of the motor vehicle. The Appellant had produced documents for the vehicle, hence his acquittal.

The order of the Court had been that, the Appeal is upheld and the vehicle to be released to the Appellant.



A. M. HLAJOANE
ACTING JUDGE

For Appellant : Mr Mpaka

For Respondent : Mr Kotele