

CIV/APN/33/96IN THE HIGH COURT OF LESOTHO

In the matter between:

PETER JANSEN

Applicant

and

ATTORNEY GENERAL

1st Respondent

OFFICER COMMANDING POLICE - QUTHING

2nd Respondent

J U D G M E N T

Delivered by the Honourable Chief Justice Mr. Justice
J.L. Kheola on the 21st day of October, 1996

This is an application for an order in the following terms:

1. Directing the Respondents and/ or their subordinates to release Applicant's motor vehicle Toyota HI LUX, Registration Number XS-1-177, Engine Number 2Y9005791, Cassis Number 00002372.
2. Directing the Respondents to pay costs hereof.
3. Granting Applicant further and/

or alternative relief.

On the 24th September, 1995 the motor vehicle which forms the subject matter of this application was chased by the Quthing police. It was reasonably suspected that it was conveying dagga. Its driver abandoned it and ran away. He has never been arrested. The vehicle was seized by the police and found to be conveying ten bags of dagga. It was driven to the Quthing police station where it is still kept.

The applicant is a citizen of the Republic of South Africa. He alleges that he is the owner of the vehicle in question. It was stolen in the Cape Province during or about August, 1995. He was subsequently informed by the South African police that his vehicle was in Lesotho at Quthing police station. He came to Lesotho but was unable to have his vehicle released to him. He alleges that he bought the vehicle from one Gladys P. Sigwela of Cala in the Cape Province. The latter has filed a supporting affidavit in which she confirms that the vehicle in question originally belonged to her; that she sold it to the applicant and that the registration certificate of the vehicle is still in her names because they have not yet signed the official change of ownership papers.

A copy of the aforesaid registration certificate is annexed to the founding affidavit.

An answering affidavit has been filed by one Detective Trooper Maketekete Lehata on behalf of the respondents. He is the investigating officer in the dagga case in which the vehicle in question was involved. He alleges that on the 24th September, 1995 he chased the vehicle the subject matter hereof on reasonable suspicion that it was unlawfully conveying dagga. The driver abandoned the vehicle and ran away. The applicant subsequently came to Quthing police station and claimed the vehicle as his property. He produced a registration certificate which was not in his names but in the names of Gladys P. Sigwala. In addition to that the chassis number appearing in that registration certificate did not tally with the chassis number physically on the vehicle. The number in the registration certificate is 00002372. On the vehicle it is number YN0002372. Trp. Lehata came to the conclusion that the registration certificate was fraudulent and refused to release the vehicle.

It is common cause that the vehicle was seized by the police because it was unlawfully used in conveying dagga. It is again common cause that the driver of the vehicle abandoned it when he noticed that he was about to be arrested and charged with a very serious

offence of dealing in dagga in terms of the Dangerous Medicines Act 1973. That driver was never identified by the police who were chasing the vehicle. Trp. Lehata makes a bold statement that he has information that the applicant was involved in the conveyance of dagga which led to the seizure of the vehicle. He has not substantiated this statement in any way by filing an affidavit by someone who knows that the driver who abandoned the vehicle and fled was the applicant. His allegation is baseless and ought to be rejected.

The applicant alleges that the vehicle in question is his property. It was stolen in August, 1995 and apparently used by the thief to convey dagga. It is well known that thieves and robbers often steal motor vehicles so as to use them in the commission of their offences. It is likely that the driver of the vehicle the subject matter of this case was a thief who had stolen it from the applicant for the purpose of conveying dagga with it. The driver might have been the applicant himself but that is pure speculation. The police know very well that they have no case against the applicant because he was not identified as the driver of that vehicle.

It seems to me that the applicant cannot claim to

be the owner of the vehicle in question because change of ownership of a motor vehicle is effected from one person to another in a particular or special manner prescribed in a statute. One cannot claim to be the owner of a motor vehicle unless and until the change of ownership papers have been completed by the seller/owner and the buyer. In the present case the vehicle is still registered in the name of the seller as the true owner. Trp. Lehata was justified to refuse to release the vehicle to the applicant who was obviously not the owner of the vehicle according to the papers the applicant produced before him. The applicant could have claimed the vehicle as a possessor because the alleged seller had given him the vehicle. He could enforce that right of possession against any third party. In any case the simplest solution would have been the seller to claim the vehicle as the owner and later to have given it back to the applicant.

Another hurdle is the fact that the chassis number on the vehicle does not tally with the chassis number in the copy of the registration certificate annexed to the papers of the application. In his replying affidavit the applicant alleges that the YN which is on the chassis is not part of the chassis number but represents a series not a particular motor

vehicle. I do not understand what the applicant is talking about. The engine number of the same vehicle begins with 2Y. That is recorded in the registration certificate. Why is the YN regarding the chassis number not recorded? The only people who can explain the omission of the YN preceding the chassis number are the registering authority of Cala. They should also explain why they recorded four "0s" when in fact there are only three "0s" preceding number 2372 as the chassis number. The figure "0000" is different from "000".

The allegation by Trp. Lehata that the registration certificate is fraudulent is not without a reasonable suspicion. The onus is on the applicant to prove that the registration certificate before court is in respect of the motor vehicle in the possession of the second respondent. If there has been any tampering with the chassis number while the vehicle was allegedly in the hands of a thief, it is the applicant who has to prove that. He must prove why three figures "YN0" are missing from the alleged fraudulent certificate.

In the result the application is dismissed with costs.

J.L. Kheola
J.L. KHEOLA
CHIEF JUSTICE

21st October, 1996.

For Applicant - Mr. Phafane
For Respondents - Miss Sasing