

CIV/APN/44/91

IN THE HIGH COURT OF LESOTHO

In the application of:

'MATSELISO MOTEMEKOANE Applicant

and

ATTORNEY-GENERAL1st Respondent
COMMISSIONER OF POLICE.....2nd Respondent

J U D G M E N T

Delivered by the Hon. Mr. Justice B.K. Molai
on the 22nd day of October, 1996.

In an application for an order, inter alia, directing the Respondents to release to the applicant, a certain motor vehicle with registration numbers LMG885T, the former filed notice that they would, on the day of hearing move the court for an order striking out from the record of proceedings, the supporting affidavit of one Lehana Motemekoane as well as annexures "MM1" and "MM2" attached to the replying affidavit. No Notice of intention to oppose the order to strike out was filed. However, on the day of hearing, the applicant did appear and inform the court that she was opposing the notice for an order to strike out.

In as far as it is relevant, the facts disclosed in her founding affidavit, were briefly that the applicant was the lawful owner of the motor vehicle, the subject matter of this dispute. On 8th February, 1991, the Respondents' police officers, acting within the scope of their official duties, seized the vehicle from a certain Sekhobe Motemekoane on the ground that they wanted to speak to the owner thereof. The vehicle had since been in the custody of the police.

According to the applicant, her vehicle was neither a stolen property nor had it been used in the commission of a crime. The Respondents' police officers had, therefore, no justification to seize it, as they did. Hence the institution of these proceedings for an order as aforesaid.

The answering affidavit was deposed to by D/Tper Moshoeshoe who, inter alia, averred that prior to 7th February, 1991 he had credible information that the vehicle, the subject matter of this dispute, had been stolen. He mounted investigations and on 7th February, 1991 found the vehicle at the Maseru Traffic Department in the possession of a certain Lehana Motemekoane, who explained to him that the owner thereof was a person named Peters Motemekoane.

In support of the applicant's replying affidavit,

Lehana Motemekoane deposed to an affidavit in which he, however, averred that he had explained to the Respondents' police officers that the applicant was the owner of the vehicle, the subject matter of this dispute. He denied, therefore, the deponent's averment that he had explained to him that Peters Motemekoane was the owner of the vehicle.

Be that as it may, the deponent went on to aver that upon examining the vehicle, he noticed that its window identity marks had been tampered with. Consequently he had reasonable suspicion that the vehicle had been acquired unlawfully and seized it. He denied, therefore, the applicant's averment that the vehicle, the subject matter of this dispute, was not a stolen property and she was the lawful owner thereof. It is, however, significant to observe that as proof of her averment that she was the lawful owner of the vehicle, the applicant attached, to her replying affidavit, annexures "MM2" and "MM1" being the vehicle's certificate of registration and payment acknowledgement receipt, respectively.

The deponent further denied the applicant's averment that the vehicle had been seized from Sekhobe Motemekoane on 8th February, 1991. In fairness to her, the applicant conceded, in her replying affidavit, that the vehicle had, indeed, been seized

not from Sekhobe but from Lehana Motemekoane as alleged by the deponent.

Following his seizure of the vehicle, the subject matter of this dispute, the deponent went to Maseru Subordinate Court where he obtained an order authorising the respondents police officers to retain it in their custody until produced at a trial or investigations had been concluded. As proof thereof, he attached annexure "MJM1" (the order). The deponent averred, in the answering affidavit, that ever since its seizure and retention in the police custody, he had been looking for Peters Motemekoane or the true owner of the vehicle, the subject matter of this dispute, but all in vain. His investigations were, for that reason, not concluded nor had a trial been held. He denied, therefore, the applicant's averment that the police officers had no justification to seize and retain the vehicle in their custody.

Wherefor, the Respondents prayed that the application be dismissed with costs.

The grounds upon which the notice of motion to strike out was based were that, as the supporting affidavit of Lehana Motemekoane and annexures "MM1" and "mm2" did not form part of the founding affidavit, the Respondents had no opportunity to respond to them.

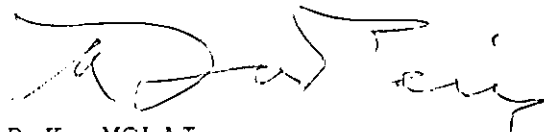
Both the supporting affidavit and the annexures were, therefore, embarrassing.

It is, however, significant to observe that the Respondents themselves averred, in their answering affidavit that Lehana Motemekoane had explained that the vehicle, the subject matter of this dispute, belonged to Peters Motemekoane, a fact denied by the applicant who claimed that she was the owner thereof. All that Lehana Motemekoane averred in his supporting affidavit was that his explanation was to the effect that the vehicle belonged to the applicant and not Peters Motemekoane as the Respondents wished the court to believe. That being so, the supporting affidavit was a reply to the Respondents' own answering affidavit. It was quite relevant to the issue and the Respondents could not, therefore, properly move that it be struck out.

Likewise, in their answering affidavit, the Respondents denied the applicant's averments that the vehicle, the subject matter of this dispute, was not a stolen property nor was it used in the commission of an offence. When in her replying affidavit, the applicant attached annexures "MM1" and "MM2" purporting to be proof of her averments, the Respondents could not properly be heard to say the

annexures were embarrassing and should therefore, be struck out.

In my view, the motion to strike out both Lehana Motemekoane's supporting affidavit and the annexures attached to the applicant's replying affidavit was ill-conceived and ought not to succeed. It is accordingly dismissed with costs.



B.K. MOLAI

JUDGE

22nd October, 1996.

For Applicant : Mr. Nathane

For Respondent: Mr. Putsoane.