

CIV/APN/158/94

IN THE HIGH COURT OF LESOTHO

In the application of:

JAMES THOBELA Applicant

and

THE OFFICER COMMANDING POLICE, 1st Respondent
MOHALE'S HOEK
THE ATTORNEY-GENERAL 2nd Respondent

J U D G M E N T

Delivered by the Hon. Mr. Justice B.K. Molai
on the 20th day of September, 1996.

The applicant herein filed, with the Registrar of the High Court, a notice of motion in which he moved the court for an order framed in the following terms:

- "1. Directing the Respondents and their subordinates to release applicant's motor vehicle a Nissan van, registration Number LEB639634 to him;
2. Directing the Respondents and or their subordinates to release to applicant the registration certificate of the said motor vehicle.
3. Directing Respondents to pay costs hereof;
4. Granting applicant such further

and or alternative relief."

The Respondents intimated intention to oppose the application. Affidavits were duly filed by the parties.

The facts disclosed by applicant's affidavits were briefly that he was a businessman of Maphutsaneng in the district of Mphahlele's Hoek. On 9th April, 1994, the Respondents' police officers, acting within the scope of their official duties, seized his motor vehicle with registration numbers LEB 639634, together with its documents, under the pretext that it was a stolen property.

In his averments, the applicant further explained to the police officers that he had bought the vehicle, the subject matter of this dispute, from Lebona (sic) although he had not yet effected change of ownership as its current licence was still valid. He told the police officers that before acquiring it, the vehicle had been stolen from its previous owner. When it was recovered, that vehicle had its engine and chassis numbers erased and/or altered. African police (sic) re-stamped the alterations with their official stamp.

Notwithstanding his explanations, the police officers of the Respondents retained the vehicle and

ordered the applicant to go to the South African police and obtain a letter to the effect that they had, indeed, stamped the alterations with their official stamp. When he got to them, the South African police refused to give the applicant the letter to the effect that they had, indeed, stamped the alterations with their official stamp.

In the contention of the applicant, his vehicle was not a stolen property. Its seizure and retention by the Respondents' police officers had no purpose. Indeed, up to the time he instituted the present proceedings, no criminal charge had been preferred against him in relation to the vehicle, the subject matter of this dispute. Wherefor, the applicant asked for the relief as prayed in the notice of motion.

On behalf of the Respondents, the answering affidavit was deposed to by Sefatsa Mpholo who alleged that he was a member of the Royal Lesotho Mounted Police attached to the Investigation Division of the Police Force and stationed at Mohale's Hoek police station. He conceded that the applicant was a businessman of Maphutsaneng in the district of Mohale's Hoek. On 9th April, 1994 he found the vehicle, the subject matter of this dispute, in the possession of a certain 'Musetse Mokhethi and not the applicant.

When he asked him for the documents covering the vehicle, 'Musetse Mokhethi was unable to produce them. He instead explained that the vehicle did not belong to him but to the applicant. Indeed, the applicant himself later made a statement in which he alleged that he had bought the vehicle from a certain Johannes Seqobela. Nowhere in his statement did the applicant mention that the engine and the chassis numbers of the vehicle, the subject matter of this dispute, had been erased or tampered with. Nor did he make any mention of the South African police.

According to the deponent, upon examining it, he found that the vehicle, the subject matter of this dispute, showed signs of tampering. He, therefore, formed a reasonable suspicion that it was a stolen property and intended instituting, at the conclusion of his investigations, a criminal charge of theft, against the applicant. Consequently, the Respondents prayed that the application be dismissed with costs.

Considering the facts (disclosed by affidavits) as a whole, it is not in dispute that, at the time of its seizure, on 9th April, 1994, the vehicle, the subject matter of this dispute, had its engine and chassis numbers erased. It had, therefore, signs of tampering. That granted, the averment of Sefatsa Mpholo that he suspected, as he did, the vehicle to be

a stolen property cannot, in my finding, be unreasonable.

as regards the applicant's averment that the seizure of the vehicle and the "documents" had no purpose, I was referred, in argument, to the decision in Ikaneng Makakole v. O/C, C.I.D. and Another . C. of A (CIV) No. 18 of 1985, where Miller, J.A. had this to say at p.4:

"Moreover, no prosecution have 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. The result of the prosecution might and usually does determine the fate of the detained property which might be ordered by the court to be forfeited to the state or, in the event of the prosecution ending in acquittal, to be returned to the person from whom it was taken for detention. In short, what was visualized by the legislature was purposeful detention. If a stage is reached when the detention appears no longer to be purposeful, there can surely be no point in continued detention of the property. It appears to me that in this particular car that stage was reached some time ago and that it is just and proper to release the car to the applicant as the person who was in bona fide possession thereof at the time of its seizure."

It is, however, significant to observe that in the case of Ikaneng Makakole v. O/C, C.I.D. and Another, C.of A. (CIV) No.18 of 1985, the vehicle had

been seized and retained by the police officers in November, 1984 whilst court proceedings were instituted by the applicant only in August, 1985 i.e. after a period of nine (9) months had elapsed. In the present case, the police officers of the Respondents seized and retained the vehicle, the subject matter of this dispute, on 9th April, 1994. The court proceedings, for an order releasing the vehicle, were, however, instituted in May, 1994 i.e. hardly a month later. The case of Ikaneng Makakole, supra, is, in my view, distinguishable and, therefore, no authority that a vehicle which had been seized by the respondents' police officer, hardly a month earlier its retention was purposeless and should be released to the applicant.

Turning now to the 2nd prayer in the notice of motion viz. "Directing the Respondents and or their subordinates to release, to the applicant, the registration certificate of the said motor vehicle" it is worth noting that, in his affidavits, the applicant never mentioned that the Respondents' police officers had seized and retained the registration certificate of his motor vehicle. He merely contended himself with the averment that the police officers had seized the vehicle's "documents" which term was rather vague and open to a number of meanings other than registration certificate. In any event the

Respondents denied, in their answering affidavit, that the vehicle's "documents" whatever that meant, were seized and retained by their police officers. It is a matter that cannot, therefore, be resolved on affidavit papers.

The onus of proof that the Respondents' police officers have seized and retained the registration certificate of his motor vehicle vests with the applicant on the well known principle that he who avers bears the onus of proof. On the affidavits placed before me, I am not convinced that he has, on a balance of probabilities, satisfactorily discharged that onus.

In the result, I come to the conclusion that this application ought not to succeed and it is accordingly dismissed with costs.



B.K. MOLAI

JUDGE

20th September, 1996.

For Applicant : Mr. Matoane,

For Respondent: Mr. Mapetla.