

IN THE HIGH COURT OF LESOTHO

In the Application of:

TJOKA MPEKAApplicant

and

OFFICER-IN-CHARGE, PEKA POLICE
STATION 1st Respondent
ATTORNEY-GENERAL 2nd Respondent

JUDGEMENT

Delivered by the Hon. Mr. Justice B.K. Molai
on the 12th day of February, 1997

On 9th July, 1996, the applicant herein obtained, against the Respondents, a Rule Nisi calling upon the latter to show cause why:

- "(a) The normal periods of notice shall not be dispensed with due to the urgency of the matter.
- (b) The First Respondent and/or officers subordinate to him shall not release or cause to be released (sic) applicant, applicant's motor-vehicle with registration number C.4219 and the stock loaded thereon.
- (c) First Respondent and/or officers subordinate (sic) to him shall not be restrained forthwith from interfering with the freedom of

the applicant herein save by due process of the law.

- (d) First Respondent and/or officers subordinate to him shall not be directed, in the alternative to bring applicant and/or his employees before a court (sic) competent jurisdiction in relation to the said vehicle and goods to be dealt with in accordance with the law.
- (e) Respondents herein shall not be directed to pay the costs hereof.
- (f) Applicant shall not be granted such further and/or alternative relief at (sic) this Honourable court may deem fit."

The Respondents intimated intention to oppose confirmation of the Rule Nisi. Affidavits were duly filed by the parties.

In as far as it is relevant, it was common cause from the affidavits that on or about 24th June, 1996, the applicant, who was a trader, purchased, from the Republic of South Africa, goods which were brought into Lesotho through the Peka bridge or port of entry. On arrival at the bridge or port of entry, the applicant produced his invoice to the Customs and Excise officials who were manning the port of entry. The officials duly checked the goods against the invoice and allowed the applicant's truck, together with the goods thereon loaded, to pass through the port of entry, after he had paid the sales tax.

On the way home, the applicant's truck which was driven by a driver, a certain Mashala Leina, came to a traffic roadblock. Shortly thereafter, the applicant, who had been following in another vehicle, also came to the roadblock. He was in the company of one of the officials of Customs and Excise manning the Peka bridge port of entry. The police officers manning the traffic roadblock demanded, from the applicant, documents covering the goods loaded on his truck. The applicant did comply by handing over an invoice and a declaration form which was duly completed.

On inspecting the declaration form, and the invoice, which are attached to the answering affidavit as annexures "LA2" and "LA3", respectively, the police officers noticed that the invoice number recorded on annexure "LA2" was different from the one shown on annexure "LA3. They then ordered the applicant's truck to be off-loaded so that the goods thereon might be checked. The applicant, however, resisted the order. An argument then ensued between him and the police officers.

During the course of the argument, the applicant instructed the driver of his truck to get into the vehicle and drive it off. As it was being driven away, the police officers chased after, and shot at,

the truck. The applicant followed the police officers in his other vehicle. When they eventually caught up with it, the police officers seized and took the applicant's truck, together with its cargo, to Teyateyaneng police station.

The driver, Mashala Leina, deposed to a supporting affidavit in which he confirmed, in as far as they concerned him, the applicant's averments. He averred that he too was taken to Teyateyaneng police station from where he was subsequently released by the Peka police officers.

In their affidavits, the applicant and the driver, Mashala Leina, averred that both the truck, the subject matter of this dispute, and the goods thereon loaded had since been kept in the custody of the police at Teyateyaneng police station. There was, however, no justification for the police to seize and retain the truck and the goods thereon loaded in the manner they did. Indeed, according to the applicant no charge of any sort had been brought against him in connection with the truck and the goods seized and retained in the police custody at Teyateyaneng police station. Hence the institution of the present proceedings for the relief sought in the notice of motion.

In their answering affidavit the respondents denied that, in the circumstances of this case, the police officers had no justification to seize and retain the applicants's truck and the goods thereon loaded. It was, however, not in dispute that the invoice number shown on annexure "LA3" differed from the invoice number reflected on annexure "LA2". This coupled with the fact that when he was ordered to unload the truck so that the goods thereon loaded might be checked properly the applicant defied the order and, indeed, instructed the driver of his truck to drive it away was, in my view, sufficient to raise, in the mind of the police officers, reasonable suspicion that the applicant's truck was conveying goods that had not been lawfully imported into Lesotho. That being the case, the applicant cannot be heard to say the police officers had no justification to seize and retain, as they did, his truck, together with the goods thereon loaded.

In their answering affidavit, the respondents further averred that the applicant had been criminally charged in connection with failure to declare the goods that were loaded on his truck and imported into Lesotho. As proof thereof, the respondents attached a criminal charge sheet (annexure "LA1").

It is to be observed, however, that according to

annexure "LA1" the driver, Mashala Leina, and not the applicant was criminally charged with the offence of contravening section 82 of the Customs and Excise act number 10 of 1982. Whether it was the applicant or the driver, Mashala Leina, who was criminally charged, is, in my view, immaterial. What is important is that the goods loaded on the truck will in all probabilities be used as exhibits in the pending criminal trial. If the exhibits, viz. the goods loaded on the truck, were to be disposed of or released, at this juncture, the pending criminal trial would, for obvious reasons, be prejudiced.

It has been argued, on behalf of the applicant, that the offence of failure to declare goods that have been imported into Lesotho is a statutory offence governed by the Customs and Excise Act number 10 of 1982 of which section 82 provides:

"82 Any person who fails to declare any dutiable goods or goods the importation or exportation of which is prohibited or restricted under any law upon his person or in his possession, or makes any statement for customs or (sic) excise purposes as to any dutiable goods or prohibited or restricted goods upon his person are in his possession from which any dutiable goods or prohibited or restricted goods are omitted, shall if any such goods are discovered to be or to have been upon his person or in his possession at the time of failure, or of the statement, be guilty of an offence and liable

on conviction to a fine not exceeding five thousand maluti or treble the value of the goods in question, whichever is the greater or to imprisonment for a period not exceeding two years, or to both such a fine and such imprisonment, and the goods in question and other goods contained in the same package as well as the package itself shall be liable to forfeiture."

In terms of section 39 (1) of the Customs and Excise Act, 1982 the importer is allowed 7 days within which to declare the goods imported into Lesotho. Indeed, the Director of Customs and Excise (or his subordinates) is empowered to extend the period within which the goods may be declared at the port of entry. Assuming the applicant had, indeed, failed to make the declaration, it is significant to observe that his goods were seized and retained at Teyateyaneng police station before the seven (7) days or the period of extension had expired. The seizure and/or retention of the goods were, for that reason, contrary to the provisions of section 39 (1) of the Customs and Excise Act, 1982.

I am unable to agree with the argument for the following reasons: The question whether or not the seizure of the applicant's goods was contrary to the provisions of section 39 (1) of the Customs and Excise Act 1982 and, therefore, unlawful is a matter to be properly determined at the pending criminal trial

against his driver, Mashala Leina. If it were to determine that issue now, the court would, no doubt, be improperly prejudging the pending criminal trial against Mashala Leina.


Regard being had to the facts disclosed by the affidavits, I must say I find no basis for prayers 1 (c) and (d) in the notice of motion.

If he were to succeed in the prayer for the order to restrain the first respondent or officers subordinate to him from interfering with his freedom save by due process of the law, the applicant must show, in his affidavit that the first respondent or officers subordinate to him are unlawfully interfering or are about to interfere unlawfully with his freedom. There is, however, not an iota of evidence in the applicant's affidavit to indicate that the first respondent or officers subordinate to him are unlawfully interfering or are about to interfere unlawfully with the applicant's freedom.

As regards the alternative prayer, viz. that the first respondent or officers subordinate to him should be directed to bring the applicant or his employees before a court of competent jurisdiction in relation to the said truck and the goods thereon loaded to be dealt with in accordance with the law it is

significant to observe that Mashala Leina who is the applicant's employee has, per annexure "LA1", already been brought before a court of competent jurisdiction. It is, therefore, unnecessary to direct the first respondent or officers subordinate to him to do what has already been done.

From the forgoing, it is obvious that the view that I take is that this application ought not to succeed. It is dismissed with costs and the rule nisi accordingly confirmed.



B.K. MOLAI
JUDGE

12th February, 1997.

For Applicant: Mr. Nathane
For Respondent: Mr. Masoabi