

Application for stay of the order releasing the vehicle to the accused after he was acquitted is granted.

Annotations

Statutes

1. Criminal Procedure and Evidence Act 9 of 1981

Books

Cases

1. Mda & Another v Director of Public Prosecutions C of A (CRI) No.10 of 2004

[1] The Maseru Magistrate Court has made an order for the release of a motor vehicle to the person who had been acquitted in a criminal trial. The present application is about the stay of that order in terms of **section 56 (1) (a) of the Criminal Procedure and Evidence Act (CP&E)¹ (the Act)** pending appeal.

[2] The section reads thus:-

56(1) *“The Judge or Judicial Officer presiding at criminal proceedings shall at conclusion of such proceedings, but subject to this Act or any other law under which any matter shall or may be forfeited, make an order that any article referred to in section 55:-*

¹ Criminal Procedure and Evidence Act 9 of 1981

(a) *Be returned to the person from whom it was seized, if such person may lawfully possess such article;”*

The section pre-supposes that acquittal does not necessary justify release of property to accused.

[3] It has been the applicant’s case that the magistrate erred and misdirected himself in releasing the motor vehicle subject matter of the criminal proceedings before him to the accused person.

[4] The application is opposed. The feeling of the respondent being that the release of the vehicle was proper as the release followed an acquittal and the vehicle was duly released to the person, from whom it was seized and the accused had applied for its release.

[5] The applicant moved this application relying on the provisions of the above quoted Rule, **Rule 56 (4) of the Act**. The section is couched thus:-

56(4) *“Any order made under sub-section (1) or (3) may be suspended pending any appeal or review.”*

[6] Applicant further showed that the Court in exercising its discretion would be invited to consider amongst others, prospects of success on appeal, prejudice to be suffered if any.

[7] In addressing the prospects of success on appeal applicant argued that there was no dispute that the vehicle in question was reported stolen in the Republic of South Africa. That upon its discovery in Lesotho some person claiming to be the owner came with its documents but it was discovered there had been tempering.

[8] The crown has not challenged the acquittal per se, but the order for the release of the vehicle as envisaged under **section 56 (4) of the Act.**

[9] The respondent has identified issues for determination as follows:-

- (a) Whether the crown has the *locus standi in judicio* to have brought the appeal against the disposal order.
- (b) Whether the appeal was proper and in accordance with the Rules.
- © Jurisdiction of the High Court to grant stay of proceedings of the magistrate.

[11] As correctly pointed out by the applicant, the question of whether or not the appeal was out of time would not be for this Court to determine. What is before Court is whether the law allows for suspension of the order given. The question of time

would best be argued on appeal as that has not been what this Court was called to determine.

[12] Also for the respondent to have argued that when the order was given the crown was *functus officio*, could not be correct as the crown was the *dominus litis* and as such had to react when it felt that things did not go right. It could not be the complainant in criminal trial who would appeal but the crown. The complainant would only come as a witness.

[13] The respondent referred to the case of **Mda and Another v Director of Public Prosecutions**² to show that **sections 326 and 327 of the Act** entitles the crown to appeal against conviction and sentence and not discretionary order of disposal by the Presiding Judicial Officer.

[14] But my reading of the provisions of **section 326** shows that it relates to when execution of sentence may be suspended. The section deals with something different² from the facts in our case. This case is about an order of Court for disposal of a motor vehicle, is not about sentence. **Section 327** is about summary dismissal of appeal which is not the case before this Court.

² Mda & Another v Director of Public Prosecutions C of A (CRI) No.10 of 2004

[15] Now coming to **Mda's** case referred to by the respondents, that case is distinguishable from the one before Court. The appeal in **Mda's** case was against the decision which had come to the High Court on appeal against the decision that found accused not guilty and acquitted them at the close of crown case. The appeal was noted to the High Court which on appeal reversed that decision to say there was a *prima facie* case established against the accused.

[16] The accused appealed against that order to the Court of Appeal. The decision of the Court of Appeal was that no appeal could be entertained against the decision that there was a case to answer. The reason being that at that stage of the proceedings the decision to refuse a discharge is a matter solely within the discretion of the Presiding Officer and can never be questioned on appeal.

[17] So that the answer to the three issues for determination in this case being:-

(a) Whether the crown has *locus standi in judicio* to have brought an appeal against the disposal order, and

(b) whether the appeal is in terms of the Rules,

© Jurisdiction of the High Court to grant stay of proceedings have been answered in the affirmative for the reasons contained in this judgment.

[18] The application for stay of execution of the disposal order of the vehicle by the magistrate, pending appeal is granted.

A. M. HLAJOANE
JUDGE

For Applicant: Adv. Fuma

For Respondent: Adv. Molapo