

IN THE HIGH COURT OF LESOTHO

HELD AT MASERU

CIV/A/14/2011
CC:138/2009 (MASERU)

In the matter between:-

MASOABI NTS'EKHE

APPELLANT

AND

**'MAMOKHOTHU BULANE
O/C AIRFIELD POLICE STATION
THE COMMISSIONER OF POLICE
THE ATTORNEY GENERAL**

**1ST RESPONDENT
2ND RESPONDENT
3RD RESPONDENT
4TH RESPONDENT**

JUDGMENT

**Coram : Hon. Mahase J.
Date of hearing : 22nd August 2012
Date of Judgment : 26th February, 2015**

Summary

Civil procedure – Appeal from the Magistrates' Court – Whether the motor vehicle, subject-matter herein was lawfully sold by a third party and whether the appellant had the right to have that vehicle registered in his names in the absence of, among others, a deed of sale and a lawful change of ownership.

ANNOTATIONS

CITED CASES:

- **Mbangamthi v. Sesing Mbangamth L.A.C (2005 – 2006) page 295 at 309 paragraph 9**
- **Vice Chancellor of the National University of Lesotho and Another v. Putsoa (L.A.C) (2000 – 2004) page 458**

- **The Director of Public Prosecutions and Another v. Kalane Mofubetsoane C. of A. (CIV) No. 4 of 2007**
- **Plascon-Evans Paints LTD v. Riebeeck Paints (PTY) LTD 1984 (3) S.A. 623 (A)**

STATUTES:

- **Road Traffic and Transport (Amendment) No. 2 of 1980. Legal Notice No. 19 of 1980**

BOOKS NONE

- [1] This is an appeal which arises from the judgment of the Magistrate's Court of Maseru dated the 27th September 2010. The appellant is challenging an order of the court a quo in which the subject-matter, a motor vehicle of the following descriptions was ultimately released to the first respondent. This is a Nizzan Hardbody, of registration numbers C6280; engine number KA 2002373; chassis number ADNJ 040000B059862.
- [2] This vehicle is registered in the names of the appellant, one Masoabi Nts'ekhe but the first respondent says that the said vehicle is hers as it forms part of her estate with that of her late husband One Bulane Bulane.
- [3] The fact that this motor vehicle was owned by the late Bulane Bulane s a matter of common cause. The dispute or centres around the alleged sale of this car to the appellant by one 'Neko Letsie after the death of its original owner.
- [4] The circumstances surrounding the issue as to how 'Neko Letsie came to be in possession of this motor vehicle and those leading to him selling it to the

appellant have been clearly spelt out by the appellant in his founding affidavit dated the 5th February 2009, at paragraph 5 up to 5.4.

- [5] The said Masoabi Nts'ekhe is supported by the alleged seller of this motor vehicle, one 'Neko Letsie – Refer to pages 8 to 9 of the paginated record. In a nutshell, 'Neko Letsie confirms the facts as spelt out by the appellant/applicant in the court a quo. As proof of the registration of the said vehicle into his names, the appellant has attached an uncertified copy of the registration certificate, marked annexure "MN1".
- [6] In this annexure, the description of this motor vehicle is as appears in the notice of motion and the founding affidavit, except that the names Masoabi Nts'ekhe do not appear therein. The names of the owner in this certificate of registration are of one Nts'ekhe MM. I do not know if these are the same as those of the appellant Masoabi Nts'ekhe. This issue however not canvassed in the proceedings in the court a quo.
- [7] In the view of this Court, these are two different names and the court should have interrogated parties upon same in the light of the history and other surrounding circumstances of this case. There is also no explanation as to why an original certificate was not attached to this uncertified copy of what is presumably a copy of the said certificate.
- [8] This Court will not make any finding on the above issues, important as they are because they were never canvassed nor pleaded in the court a quo; but these are important issues which should not have been left unattended and or lightly ignored.

- [9] In this application, the appellant claimed in the court a quo a released of this motor vehicle was taken away from him officers of the third respondent, to with the second respondent after the first respondent had complaint to them that the first respondent was also claiming ownership of same. Appellant say, he had been dispossessed of the same around the 26th January 2008 and tht the said vehicle remains with the second respondent to date.
- [10] The first respondent denies that the said 'Neko Letsie was ever a lawful owner of the motor vehicle in question nor has he ever required it from her late husband nor from her by any lawful means. As a result, Neko Letsie could not ever lawfully transfer the ownership of it to any person.
- [11] In brief, the first respondent says that the said 'Neko and her late husband and or their families were friend and that after her husband's death, he sometimes allowed Mr. N. Letsie to use her said vehicle. She never had any knowledge that in fact, the appellant was making arrangements to sell her said motor vehicle. Refer to her opposing affidavit at pages 15 up to 17 which contents are incorporated herein.
- [12] The Court a quo, ultimately granted judgment/order in favour of the first respondent but to date this car remains in the custody of the officers of the second respondent probably pending the finalization of this appeal.
- [13] Two grounds of appeal have been advanced in support of this appeal and on behalf of the appellant. They are that:

- The court a quo or the learned Magistrate erred and or misdirected herself in questioning and or determining the transfer of this motor vehicle by Mr. 'Neko Letsie to the appellant. The reason advanced in support of this argument being that it is because this issue was not placed before court for it to make a determination on it. This, the appellant argues was procedurally incorrect and irregular, and so the court a quo had no jurisdiction to challenge this transfer. (my underlining)
- The court a quo erred and or misdirected itself in disregarding the certificate of registration, annexure "MN1" attached to the founding affidavit.

[14] It has further therefore been argued that the court a quo should have found that the appellant had proofed his case on a balance of probabilities, moreso because the first respondent was unable to bring any contradictory evidence showing that indeed, this motor vehicle is or was for her late husband.

[15] In other words, it is argued that in the absence of production in court by the first respondent of any documentary evidence connecting or linking her or his late husband with the motor vehicle in question, then judgment should have been granted in favour of the appellant and not in favour of the first respondent.

[16] On the contrary, it was argued on behalf of the first respondent that Mr. 'Neko Letsie also had no right in law to have firstly sold and subsequently transfer that motor vehicle to appellant and r in his names for the simple reasons that:

- There was no deed of sale of this subject-matter between appellant and her late husband nor between appellant and the first respondent.
- There was no evidence of a change of ownership between Letsie and the 1st respondent (and I must add, nor was there such evidence of such a change of ownership between Letsie and the first respondent's late husband).

[17] Put differently, there is no compliance with the provisions of the relevant laws of this country relating to sale and transfer/change of ownership of a motor vehicle between a seller and a buyer, such that it is correct to say that Letsie has fraudulently sold and later transferred this motor vehicle to the appellant. Refer to provisions of **Legal Notice No. 19 of 1980 (The Road Traffic and Transport) Amendment) (No.2) Regulations 1980.**

[18] Nowhere has the appellant challenged the above argument advanced on behalf of the first respondent. He has also not made any effort to adduce evidence which clearly indicates or displays the history with regard to this motor vehicle and as to how, when and from whom Mr. Letsie has acquired it before he could lawfully sell and change its ownership into his names.

[19] There is further no explanation with regard to the authenticity of this certificate of registration; which as has been indicated above, is an uncertified copy. No original such certificate has been annexed to the affidavit of the appellant.

[20] The said 'Neko Letsie, in support of the appellant's founding affidavit, says that he is the owner and seller of the motor vehicle in question but he has not attached any documentary proof of his ownership of this vehicle. He does not even say when and from whom he initially bought it. None of the alleged seller and buyer of this motor vehicle have complied with the Road Traffic and Transport Regulations referred to above in their alleged sale and transfer of this motor vehicle between themselves. This is aside of the copy of the deed of sale between 1st respondent or her husband and Letsie has not been attached to the founding affidavit. In fact from a proper reading of the founding as well as the supporting affidavit, the only inference which this court can draw is that a lot of chicanery and unlawful fraudulent means have been employed by the appellant and Letsie to unlawfully disposes the first respondent of the motor vehicle which is part of his late husband's estate/property. This is buttressed by the fact that neither the appellant nor the said Letsie have refuted evidence that this vehicle was owned by the late Bulane Bulane.

[21] The contents of the first respondent especialy at sub-paragraph 5.2 of same opposing affidavit as to how this vehicle came to be hers and not that of Letsie have not been denied; as such and on the principle laid down in the celebrated case of **Plascon-Evans Paints LTD v Van Riebeeck Paints (PTY) LTD 1984 (3) 623 (A)** these are admitted.

[22] The grounds and or submissions upon which the appellant has challenged the judgment of the Court a quo in the instant case are mind boggling to say the least. It is untenable for any person in the position of the appellant to have expected a court of law to grant judgment in his favour in a situation

where one has clearly flouted all the known procedures which precede the sale and subsequent transfer of a motor vehicle from one person to another, without that court first making a finding on the lawfulness and or authenticity of the procedures and documentation used as proof of same. The Learned Magistrate was entirely justified to have made a determination on the said issues and that court has jurisdiction to do so. Had it disregarded same, in the light of what the first respondent has said in her opposing affidavit and also in the presence of this glaring none compliance with the Road Traffic Regulations referred to above, that would have been a dereliction of ones duty which turn would have opened flood gates of unscrupulous, fraudulent such transactions, thereby bringing the administration of justice into disrepute.

[23] In any case, and having read the opposing affidavit of the first respondent, the appellant was at large to have adduced evidence of the relevant traffic department officers to assist him to support his case as officers from that office would have brought along their relevant file to show that indeed the said “MN1” had been lawfully issued after all proper procedural steps had been followed before the alleged transfer to him or change or ownership by Letsie, of this motor vehicle was effected in his names.

[24] This Court is also not so sure that it does occur that no fees whatsoever could not be paid when one has a motor vehicle registered in his/her names. In that annexure “MN1”, it is indicated that no fees were paid. Well I do not make any finding on this but this is just an observation. As indicated earlier on, the names Nts’ekhe MM could not mean that they are for the present

appellant. This has also not been argued but this is one of the anomalies which cannot be overlooked.

[25] The above observations and the most significant and important issue about the absence of any proof of ownership of this vehicle by the said 'Neko Letsie, render it unlawful for him to have "sold" and later "transferred" this motor vehicle to Masoabi Nts'ekhe (not Nts'ekhe MM) as is alleged by the 1st respondent. The appellant has indeed dismally failed to proof that he has obtained and or bought that motor vehicle from Letsie lawfully, just as much as Letsie has himself failed to substantiate his claim of ownership of the motor vehicle in question.

[26] There is no proof confirming that Letsie had himself lawfully purchases this motor vehicle from either Bulane Bulane nor from his (Bulane's) wife (Mamokhothu Bulane) now first respondent in this appeal. Had due processes been followed in this whole transaction from when Letsie allegedly bought this motor vehicle from any of the Bulane's; then this Court would have expected Letsie to have furnished such proof of a lawful change of ownership of this motor vehicle from the Bulane's to himself, and from himself to the said Masoabi Nts'ekhe. Very unfortunately there is no such proof of such procedures having been complied with.

[27] In the absence of same, and regard being had to the first respondent's allegations as to how Letsie got to be in possession of this motor vehicle in the first place and which allegations are unchallenged; the only inference which this Court draws, is that the said Letsie had from the very beginning not acquired this motor vehicle lawfully and as such he could not in law have it transferred to any third party. The said alleged sale and subsequent

transfer this motor vehicle to the appellant is clearly unlawful, fraudulent and therefore null and void ab initio.

[28] The allegations of Letsie in support of the appellant do not assist or advance the case of the appellant in anyway because nowhere in that affidavit does Letsie indicate now he has lawfully acquired possession of the first respondent's said motor vehicle before he had it sold and transferred to the appellant.

[29] The said Letsie has failed to show how he had initially acquired possession of this motor vehicle such that he became its lawful owner. It is only if and after the said motor vehicle has been lawfully acquired and transferred to him that he can in law become a lawful owner, such that he came after compliance with all legal procedural requirements then lawfully sell, transfer and effect change of ownership to another party.

[30] Failure on his part and on the part of the appellant to comply with all legal procedural requirements from the very initial stages when he bought it from the Bulanes render any transaction and transfer of same to any other person unlawful. It is for the foregoing reasons that this appeal is dismissed with costs to the first respondent.

M. Mahase

Judge

For Appellant - Adv. Setlojoane

For 1st Respondent - Adv. L.A. Molati

No appearance for the rest of the other respondents