

IN THE HIGH COURT OF SWAZILAND

HELD AT MBABANE

CASE NO. 1215/93

In the Interpleader of:

THE ATTORNEY-GENERAL	1st Applicant
COMMISSIONER OF POLICE	2nd Applicant
STATION COMMANDER - LOBAMBA POLICE	
STATION	3rd Applicant

and

XAVIER MUSA MTHETHWA	1st Claimant
CARGO MOTORS CORPORATION	2nd Claimant

In re:

XAVIER MUSA MTHETHWA	Applicant
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and

STATION COMMANDER - LOBAMBA POLICE	
STATION	1st Respondent
COMMISSIONER OF POLICE	2nd Respondent
ATTORNEY-GENERAL	3rd Respondent

CORAM	:	HULL, C.J.
FOR 1st CLAIMANT	:	MR. FINE
FOR 2nd CLAIMANT	:	MRS. CURRIE
FOR RESPONDENT	:	MR. MASUKU

JUDGMENT

(8/11/93)

By an application filed on 19th August, 1993, the first claimant sought to recover from the police a Honda Ballade motor vehicle registered under the number RXT 949 T. The basis of his claim, as set out in his founding affidavit, was that he had bought the vehicle in South Africa and then registered it in his name.

The second claimant, which is a company in South Africa trading in motor vehicles, also claims ownership of the vehicle and seeks its return.

The police and the Attorney-General have interpleaded. On 22nd October, I ordered the matter to proceed to a hearing between the two claimants on their respective particulars of claim, as if the second claimant were the plaintiff and the first claimant the defendant.

The second claimant called as its witness Mr. William Francke, who is a principal in the company.

His evidence in chief was that the second claimant had bought the vehicle from Mercurius Motors (Pty) Ltd. Then in July of 1993 it had sold it to a Mr. Zikalala. The transaction was to be a cash sale. The buyer was to pay the purchase price into the second claimant's bank account.

On 16th July, the second claimant was informed by its bank that the money had in fact been duly paid into its account. On the strength of that, it delivered the vehicle to Mr. Zikalala who took it away.

However, after that, the bank called the second claimant to inform it that the buyer's cheque had been dishonoured. As far as this is concerned, Mr. Francke testified that when the bank first informed his company that the money had been paid, the company had not known whether the payment had been affected by cash transfer or cheque at that stage. It was only afterwards, when the bank called back, that it had become aware that the payment had been by cheque.

In cross-examination Mr. Francke said that in delivering the vehicle to Mr. Zikalala, the company was thereby intending to transfer ownership to him.

Mr. Fine was not in a position to call evidence on behalf of the first claimant, who had been taken into custody between the first and second days on which this case was heard before me. For reasons that I have already given, I declined a further postponement.

Mr. Fine submitted that the second claimant had not proven a vindictory claim to the vehicle. He based his submission on Mr. Francke's acknowledgement that the company had, on delivering it to Mr. Zikalala, intended that ownership should thereupon pass to him. He cited Eriksen Motors Welkom Ltd v. Protea Motors Warrenton and Another 1973 SA 685 in support of his contention.

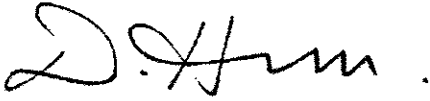
On the facts of this case, however, I do not think that this submission succeeds. The reason why the company delivered the vehicle to Mr. Zikalala was that it believed, as a matter of fact, that he had deposited the purchase price in its bank account. That was Mr. Francke's evidence. He was not challenged as to this belief and I accept his testimony. As a matter of fact, the money had not been paid.

On the evidence, this was always intended to be a cash sale. Mr. Francke has testified to that. I see no reason not to believe him. There is no suggestion that Mr. Zikalala was a trader himself, with whom the company had had previous dealings. He was an ordinary buyer. The company required the price to be deposited in its bank account before it delivered the vehicle. This was never intended to be a credit sale. In the event, it made delivery on a misapprehension as to the facts.

There is no evidence that the first claimant subsequently acquired legal title to the vehicle, to the extent that that may be relevant. Registration, per se, does not establish ownership.

In the circumstances, the second claimant is in my judgment entitled to the orders that it seeks.

Accordingly, there will be orders in terms of paragraphs (a) and (b) of the second claimant's particulars of claim.

A handwritten signature in dark ink, appearing to read 'D. Hull', followed by a period.

D. HULL

CHIEF JUSTICE