

IN THE HIGH COURT OF SWAZILAND

CASE NO. 991/95

In the matter between

CARLOS MAPHANDZENI                                         Plaintiff

and

THE COMMISSIONER OF POLICE                               1st Defendant

THE ATTORNEY-GENERAL                                     2nd Defendant

CORAM :                                                             DUNN J.

FOR HE PLAINTIFF :                                             MR. J. MAGAGULA

FOR THE DEFENDANTS:                                         MISS. DUMA

JUDGMENT

5TH NOVEMBER 1996

The plaintiff was arrested in Siteki by members of the Royal Swaziland Police in the evening of the 2nd September 1994. He was detained at the Siteki Police Station until about 1.00p.m. on the 4th September. The plaintiff claims that his arrest and detention were unlawful and that he has suffered damages in the sum of E20,000 as a result.

The evidence before me is as follows. The plaintiff parked his Madza 323 motor vehicle outside a restaurant in Siteki in the evening of 2nd September 1994. The vehicle had been purchased by the plaintiff in the Republic of South Africa towards the end of August 1994 and had been brought into Swaziland with its South African registration plates. Members of the Royal Swaziland Police came

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across the vehicle outside the restaurant and noticed a difference between the number on the registration plate (BBF 023 T) and that appearing on the licence disc (BJG 698 T). The plaintiff was questioned about the discrepancy and he gave the police particulars of the person from whom he had purchased the vehicle. The plaintiff also produced a special permit which he stated had been issued to him in South Africa at the time of the purchase of the vehicle. The registration number on the permit was ZVT 966 T. The permit had expired on the 26th August 1994.

According to 3189 constable Dlamini, an enquiry file was opened and the plaintiff was informed that investigations were to be carried out in respect of the motor vehicle. It was Dlamini's evidence that the plaintiff would have been detained, with a possible remand before a magistrate, until the outcome of the investigations. As it turned out, however, the plaintiff was well known to several police officers and there were assurances that he could be easily contacted if released from custody. The plaintiff was released from custody at about 1.00 p.m. Sunday 4th September. The investigations revealed that the vehicle was not stolen. It was handed back to the plaintiff on Tuesday 6th September.

The defendants deny liability on the grounds that the arrest of the plaintiff was justified in terms of Section 16 of the Theft of Motor Vehicles Act no. 16/1991. The section provides in part-

(1) Any police officer may without warrant search and arrest any person found in possession of a motor

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vehicle If he has reasonable grounds to suspect that that person has stolen that motor vehicle or has received that motor vehicle knowing it to be stolen or has assisted in the stealing of that motor vehicle and shall seize from that person the motor vehicle and any document in relation to that motor vehicle.

(2) Any police officer who seizes a motor vehicle or arrests any person under this section shall as soon as possible take that motor vehicle or that person and any registration book or document seized from that vehicle or person to the nearest police station to be dealt with according to law.

(3) A person arrested or a motor vehicle seized under this Act shall within a reasonable time not exceeding seventy-two hours be brought before a court by any officer of a rank of sergeant or above for the purpose of obtaining a warrant for the further detention of that motor vehicle.

The onus of proving that the arrest of the plaintiff was lawful, rests on the defendants. In the circumstances of this case, the defendants must show that there were reasonable grounds for the arrest of the plaintiff under section 16(1) of Act 16/1991. It is common cause that there were differences in the registration numbers appearing on the number plates, licence disc and the expired permit produced by the plaintiff in respect the same vehicle. The plaintiff did not produce any registration certificate which would have clarified the position as to the

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vehicle's correct registration number. This court can take judicial notice, based on numerous cases over the years, of the fact that some stolen vehicles that are recovered by the police are so recovered as a result of the initial discovery of discrepancies between the numbers on the registration plate and those reflected on the licence disc. This is brought about by the relative ease with which different number plates can be fitted to a vehicle whilst the same cannot be done with licence discs. The police were faced with a situation which clearly called for an explanation from the plaintiff. The absence of a registration certificate and the production of the expired temporary permit by the plaintiff further compounded the situation, strengthening the suspicion that the vehicle was stolen or was being dealt with under the circumstances set out under section 16(1) of the Act 16/1991.

Whilst no specific charge was laid against the plaintiff, pending the outcome of the investigation, it is quite clear from constable Dlamini's evidence that the plaintiff was apprised of why his liberty was being restrained. See BRAND v. MINISTER OF JUSTICE and ANOTHER 1959(4) S.A. 712. He was informed that contact was to be made with the South African Police and the person from whom the plaintiff stated the vehicle had been purchased. The unchallenged evidence of the police officer is that the matter came to an end as soon as the South African Police indicated that the vehicle had not been reported stolen, The plaintiff had by that time been released from custody. The period within which the plaintiff was detained fell well within the period specified under section 16(2) and must be viewed in the light of the fact

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that the arrest was affected over a week-end when contact with the South African Police could not, according to constable Dlamini, be easily made.

The defendants have in my view succeeded in discharging the onus of establishing that the arrest of

the plaintiff was justified. The action is dismissed with costs.

B. DUNN

Judge