

IN THE HIGH COURT OF SWAZILAND

CIVIL CASE NO; 2210/98

IN THE MATTER BETWEEN;

ANNAH SHONGWE

APPLICANT

Vs

COMMISSIONER OF POLICE

1st RESPONDENT

ATTORNEY GENERAL

2nd RESPONDENT

CORAM

: MATSEBULA J

FOR THE APPLICANT FOR THE RESPONDENT

JUDGEMENT

13/02/99

On 18th September Applicant moved a notice of motion for the following relief:-

- (a) Directing 1st and 2nd Respondents to restore forthwith possession of a certain motor vehicle whose registration and particulars are as follows:

Registration No.: SD119RH Make: Toyota LDV Colour: Cream white

- (b) Directing 2nd Respondent to pay Applicant's costs on the attorney and client scale. The notice of motion did not state who was going to depose to an affidavit in support of the application but an affidavit by the Applicant has been filed.

1

The Respondent has failed to state in what capacity the 2nd Respondent is cited. Both the omissions mentioned above are very material as the omissions fail to comply with the Rules of Court (see Rule 6.5) and Form 2 of the First Schedule.)

In paragraph 6 the deponent states she was despoiled of the aforementioned motor vehicle by officers of the 1st Respondent in the course of their employment and course of duties with the 2nd Respondent. It is not clear whether the proceedings are of spoliation proceedings or not nor is it clear how 2nd Respondent in the course of his duties with the officers of the 2nd Respondent being the Attorney General is being held vicariously liable.

In paragraph 7 2nd Respondent is said to be vicariously liable for the aforesaid act of the 1st Respondent and its officers. How this allegation can possibly place the Attorney General in a vicarious liability position is difficult to fathom. In these matters the Attorney General is always cited in his capacity as a legal representative of the Government Ministries or the employees of the Government as the case may be. The Application does not even annex official documents of the motor vehicle that she claims is hers.

On the 29th September 1998 the Attorney General on behalf of the Respondents filed a notice of intention to oppose and on 19th October 1998 filed affidavits resisting Applicant's application. Detective Constable Selbourn Dlamini deposed to an affidavit and stated that he was investigating the matter involving the motor vehicle SD119RH. He in conjunction with the Republic of South Africa police had impounded the motor vehicle on suspicion that it was a stolen motor vehicle. They duly applied for a detention order and obtained it at the Magistrate's Court annexure "A". In the course of their investigation they contacted the Treasury Department where motor vehicles are registered and obtained a confirmatory affidavit of one Samuel Ginindza an accountant at the Treasury Department.

According to records filed at the Treasury Department the motor vehicle SD119RH is a VW minibus and not a Toyota with engine no.DG070500, 1985

2

model 1985, chassis no.25F0012796 and the owner is one Lucille Joan D, Chapman and not the Applicant. The said motor vehicle according the affidavit is still on the road.

According to Mr. Msibi appearing for the 1st and 2nd Respondents, 1st Respondent's officers impounded the motor vehicle in terms of Section 16(4) of the THEFT OF MOTOR VEHICLE ACT which creates a presumption against any person found in possession of a motor vehicle suspected to have been stolen.

In the light of the particulars of the registration of SD119RH at the motor registry, Applicant has clearly failed to rebutt the presumption aforesaid.

Accordingly her application does not succeed and it is dismissed with costs.

J. M. MATSEBULA

JUDGE

3