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**SWAZILAND HIGH COURT****MATOLO VUSI***Applicant**Vs***COMMISSIONER OF POLICE***1st Respondent***THE ATTORNEY GENERAL***2nd Respondent**Civ. Trial No. 1788/2002*

Coram

SAPIRE, CJ

For Applicant
For Respondent**JUDGMENT**

(18/06/2002)

This is an application made to secure the release to the applicant of a motor vehicle described as a Ford Bantum registration number FLD 769 GP. From this we recognise that the vehicle is registered in the Gauteng Province. From the allegations in the founding affidavit it appears that the vehicle was brought into Swaziland where it was seized by the police as being suspected of being a stolen vehicle. The applicant is of course not a Swazi citizen and the grounds upon which the application is brought was stated in the founding affidavit as follows:-

.In February last year the applicant purchased the motor vehicle fully described in the notice of motion, at Johannesburg Police Station, 13th Street Soweto, South Africa. It is not said from who the vehicle was purchased but merely that it was purchased at the Police Station. Who the seller is, it does not appear.

The allegation is that the motor vehicle is still registered in the name of M.C. Mathathe and still bears the same registration numbers FLD 769 GP. The applicant attaches to the affidavit a certificate of registration of the motor vehicle marked VM 1. Apart from anything else I am not sure that that certificate which emanates from a foreign registry is admissible as evidence. It has to be authenticated but that is not the point in this case.

The applicant says:-

"I was in the process of transferring it into my name when it was confiscated by the police."

When one bears in mind that the vehicle was purchased in February last year, why the vehicle should still be in the process of transfer in May this year is completely unexplained. In any event the vehicle is clearly not registered at present in the applicant's name.

He says that at the beginning of May 2002 when visiting Swaziland the motor vehicle was given to Vuyisile Matsenjwa to run her errands in town with the motor vehicle. He was later told that the vehicle had been taken by members of the police force based at Manzini for examination. The police requested to see the registration documents which were provided. Later they were informed that the vehicle would have to remain with the police so that a thorough examination of the motor vehicle would be done at Oshoek Boarder Post.

No objection to the examination was made. The applicant thereafter returned to Johannesburg leaving his friend to pursue the issue and inform him once the results were available.

The application was made close to a month after the vehicle was taken and neither the applicant himself or Matsenjwa has heard from the police.

The riposte. is that the vehicle was seized in terms of the provisions of the Theft of Motor Vehicles Act of 1991 and continues to be held for a period of three years. in terms of a retention order made by the magistrate. The circumstances in which the

order was made have not been disclosed. It is disturbing that such an order was apparently made ex parte without the applicant being afforded the opportunity of being heard. Because of the conclusion to which I have come I will not further examine the validity of the order.

Relevant portions of the Act are that there is a presumption of theft of a motor vehicle in Section 4 of the Act which provides that unless the contrary is proved by him a person shall be presumed to have committed an offence under Section 3 that is the Theft of a Motor Vehicle if he is found in possession of a motor vehicle the engine, the chassis number or registration number of which or other definitions have been altered, disfigured or tampered with in any manner.

The particular vehicle in question is said to have its identification marks obliterated or changed and the presumption of theft arises, albeit no mention is made where the theft took place. The courts of Swaziland may not have jurisdiction if the thief is, and the theft took place in South Africa. The offence is presumed if the vehicle is found in Swaziland in someone's possession.

The act also provides for the seizure of this vehicle and for an application for the return of the vehicle seized. In this case Sub-Section 7 of Section 16 is applicable and it reads: -

"No Court shall order the release of a motor vehicle seized under this Section to a person from whom it was seized only because the Director of Public Prosecutions has declined to prosecute that person or that person having been prosecuted has been acquitted of the offence in connection with that motor vehicle unless the release is supported by documentary proof of ownership or lawful possession."

In this case the applicant has produced no documentary proof of ownership or lawful possession. What has been produced is the certificate which is attached to the founding papers. It was issued in Gauteng but clearly as the applicant has stated in his own papers that the certificate reflects somebody other than the applicant as the owner. Applicant's statement that he has bought the vehicle and he is in the process of registering the change of ownership is not documentary evidence of his title.. If it were to be possible to make an order under the Section there would have to be proof at least of a certificate or a document in terms of which the registered owner was

prepared to transfer the ownership to the applicant. As matters stand it is somebody other than the applicant who according to the documentary evidence is the owner of the vehicle. There is no evidence of the applicant's entitlement to be in possession. In terms of the Section I have quoted it is not possible for the Court to make an order as prayed and accordingly the application is dismissed with costs.


SAPIRE, C.