

THE HIGH COURT OF SWAZILAND

CIV. CASE NO. 392/2001

In the matter between

SIPHO BONGANI MAPHALALA

APPLICANT

And

THE COMMISSIONER OF POLICE

1st RESPONDENT

THE ATTORNEY GENERAL

2nd RESPONDENT

Coram

S.B. MAPHALALA - J

For the Applicant

MR. M. MAMBA

For the Respondents

MR. M. MOTSA

JUDGMENT

(01/02/2002)

Before me is a notice of application for an order directing the respondents jointly and severally to release a certain mini bus motor vehicle with registration number BJP 865 FS to the custody and/or possession of the applicant and costs of the application.

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The application is founded on the affidavit of the applicant who related the sequence of events from the time the said motor vehicle came to his possession up to the time the said motor vehicle was confiscated from him at Lavumisa by the Lavumisa police.

The respondents opposes this application and the answering affidavit of 3696 Detective Constable Sifiso Gama is filed of thereof. The applicant then filed a replying affidavit.

The applicant's case briefly put is that in or about the beginning of December 2001, he bought the said motor vehicle from the then owner a certain Mr. Kholanyane of Westonaria, in the Republic of South Africa. When he took possession of the motor vehicle its yearly licence had expired and because he had indicated to Mr. Kholanyane that he wanted to take the motor vehicle to Swaziland during the Christmas vacation, he then affixed a licence and registration number for NP 77794 on the motor vehicle. This was done with his knowledge and consent and solely for the purpose of enabling him to drive the motor vehicle into Swaziland for that period only, inspite of the fact that it was not licensed and should not be driven on a public road in that condition.

He then drove the motor vehicle into Swaziland bearing the false registration number and licence. He states in his paragraph 8 of his founding affidavit that he unconditionally apologise for this. On or about the 29th December 2000, the said motor vehicle was confiscated from him by the Lavumisa police and to date it is still in their custody. He avers that he has shown the Lavumisa police the relevant documentation for the motor vehicle (annexure "A"). The chassis number which is similar to the engine number was allocated to the motor vehicle after it had been stolen and delivered before he was the owner thereof.

The gravamen of the opposition advanced by the respondents is that the motor vehicle was impounded in terms of the provisions of the Theft of Motor Vehicles Act No. 16 of 1991 for a number of reasons inter alia that the vehicle was affixed to with a registration number and licence disc that does not legally belong to

it, the motor vehicle's engine number is 4Y9056360 as opposed to the TPA 921113104562 given by the applicant. The motor vehicle's chassis number has been removed from the car hence there is no chassis number on the chassis plate. All the door locks of the motor vehicle had been removed when applicant was asked about what had happened to

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them he could not give a satisfactory answer. The investigations conducted by the South African Police Service Car Unit confirmed in their interim report that this vehicle has no TPA engine and chassis numbers other than those stated by the police. The applicant has failed to produce any documentary proof of ownership or lawful possession to this motor vehicle. Further, there is a serious dispute as to which engine number between that on the licence disk and that on the motor vehicle correspond with the registration number given.

The matter then came for submissions on the 14th December 2001, where I reserved my judgement. Following is the judgement of the court in this matter. In my view, on the basis of the facts before me when the motor vehicle was seized from the applicant's possession there was sufficient and reasonable grounds to suspect it to have been stolen. First the motor vehicle's chassis number had been removed. Secondly, the motor vehicle was found affixed with false licence disk and registration number. This point is conceded by the applicant in his founding papers and I venture to say that it does not put him in a favourable light before this court, as he has not approached the court with clean hands. In this connection the case of Mulligan vs Mulligan 1925 WLD 164 cited by Nathan CJ in the case of Photo Agencies (Pty) Ltd vs The Commissioner of Swaziland Royal Police and the Government of Swaziland 1970 - 76 S.L.R 398 at 404 is apposite. At page 164 the following appears:

"Before a person seeks to establish his rights in a court of law he must approach the court with clean hands; where he himself, through his own conduct makes it impossible for the processes of the court (whether criminal or civil) to be given effect to, he cannot ask the court to set its machinery in motion to protect his civil rights and interests.. .were the court to entertain a suit at the instance of such a litigant it would be stultifying its own processes and it would, moreover, be conniving at and condoning the conduct of a person who through his flight from justice, sets law and order in defiance".

The motor vehicle had been brought to the country in contravention of the laws in force relating to the importation of motor vehicle, viz Section 7 of the Theft of Motor Vehicle Act (supra) provided by Subsection 4 (a) that in the case of a motor vehicle purchased outside Swaziland, the importer is to produce a declaration or certificate at the point of entry into Swaziland and this to be stamped by the customs officer. The

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applicant concedes in his papers that he allowed a false licence and registration number to be affixed to this vehicle in order for him to drive it into Swaziland.

It emerges from the papers that the police are still conducting investigations in this matter as the South African Police Service Car Unit are still to file their final report as to the original identity of the motor vehicle. The motor vehicle is presently in the possession of the police in terms of Section 16 of the Theft of the Motor Vehicle Act as per annexure "A62" of the respondent's answering affidavit. In the result, for the above reasons I dismiss this application with costs.

S.B MAPHALA

JUDGE