

HIGH COURT OF SWAZILAND

CIVIL CASE NO. 1811/03

In the matter between:

SENZO NXUMALO APPLICANT

and

THE COMMISSIONER OF POLICE

1st RESPONDENT

THE ATTORNEY GENERAL

2ND RESPONDENT

CORAM

K.P. NKAMBULE - J

FOR APPLICANT

S.V. MDLADLA

FOR RESPONDENT

ATTORNEY GENERAL

RULING

24/9/03

In this application the applicant seeks an order in the following terms:

1. That the rules pertaining to service and time limits be dispensed with and that this matter enrolled as one of urgency.

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2. That the respondent be ordered forthwith to return to applicant the vehicle fully described hereunder:

MAKE: ISUZU KB SERIES

ENGINE NO: 4 JB 3666022

CHASIS NO: ADMTFR 55 DFM 833970

COLOUR : BLUE

REGISTRATION NO: PJM 298 GP

3. That a rule nisi do hereby issue returnable on a date to be stated by the court why prayer 2 should not be made final.

4. Costs of the application in the event it is opposed.

5. Further and/or alternative relief.

The applicant has filed a founding affidavit in support of the application. The respondent has filed an answering affidavit in which they are opposing the application.

According to the founding affidavit the applicant proceeded to South Africa where he purchased the above-mentioned motor vehicle. The motor vehicle was cleared by the South African Police in terms of

the law - per Annexure 'A' of the application. Also annexed with the application is the registration documents of the motor vehicle obtained by the applicant where he bought the motor vehicle.

On 7th July 2003 whilst respondent was at home police came and confiscated the motor vehicle. It has been in the hands of the police ever since.

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The respondent submits that the applicant is not the registered owner of the motor vehicle. The registration document reflects one SHILALUKE ST with identity 6303275381087 as the registered owner.

Respondent further contends that the applicant has failed to produce any declaration or certificate stamped by a Custom officer as per the Theft of Motor Vehicle Act 16/1991. The respondent states that the motor vehicle was seized in accordance with Act 16/ 1991.

Respondent avers that the motor vehicle is held on the strength of a lawful detention order. He states that the detention order was obtained on 7th July, 2003 and is valid for three months.

In replication applicant's attorney has filed a replication on points of law. Annexed with the affidavit there is Annexure 'A', a declaration by the owner of the motor vehicle which states as follows:

"I gave a car m/v Isuzu KB 280 DT Blue in colour. Registration PJM 288 GP. It is in his possession in Swaziland with its papers to Mr. Senzo Nxumalo".

This declaration was made on 31st July 2003 by the owner of the car Mr. SIKHETHO THOMAS SHILALUKE OF BRAKPAN. REPUBLIC OF SOUTH AFRICA. It was commissioned at Brakpan Police Station.

From the foregoing documents it is clear that the motor vehicle described in the Notice of Motion was indeed in the lawful possession of the applicant when taken from him.

However, it is disputed whether this motor vehicle is the one which was detained by the police. The identity of the motor vehicle confiscated by

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the police does not answer the description of this motor vehicle as reflected on the Notice of Motion. This therefore, creates a dispute as to the identity of the motor vehicle in question.

This dispute cannot be resolved on application. The court therefore, orders that viva voce evidence be led. At this stage the court will not make any pronouncement as to costs.

K.P. NKAMBULE

JUDGE

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