

THE HIGH COURT OF SWAZILAND

LUCKY GAMEDZE

Plaintiff

And

SWAZILAND GOVERNMENT

Defendant

Coram

Civil case No. 1232/2000

For the Plaintiff

For the Defendant

S.B. MAPHALALA - J

MR. D. MADAU MISS

S. MASEKO

RULING

(On points *in limine*)

(04/02/2004)

Plaintiff filed an action for the return of motor vehicle bearing registration number NND 2515 engine number 9016205 and chassis number 9006315. Alternatively payment of the sum of E65, 000-00 being the value of the motor vehicle when it was attached by the Defendant. Interest calculated at the rate of 9% per annum a *tempore morae*. Costs of suit.

- "...4. During the month of July 1994, members of the Royal Swaziland Police acting during and within their scope of employment as servants of the Swaziland Government, seized and attached the aforesaid motor vehicle for investigation purposes.
5. Subsequently Plaintiff made an application for the return of the motor vehicle and the Mbabane magistrate ordered that it be so released to Plaintiff. A copy of the court order is attached hereto marked "B".
6. On or about November 1997 and at Lugaganeni, Manzini, members of the Royal Swaziland Police acting during and within their scope as servants of the Swaziland Government seized and attached the aforesaid.
7. Plaintiff lodged an application for the return of the motor vehicle and court ordered that it be so returned on 1st December 1997. A copy of the court order is attached hereto marked "C".
8. During the month of June 1999, Plaintiff approached the police at Manzini and Lobamba with the court order so that it be released but they could not produce it but stating that they have released same to the another person.
9. At the time the motor vehicle was seized and attached by Defendant it was valued at E65, 000-00, a sum which Defendant fails, neglects, refuses to pay despite lawful demand and in terms of the Limitation of Action Against the Government Act 21/1972".

The Defendant has filed its intention to defend and thereafter the requisites plea. The defence advanced by the Defendant is that investigations carried on this motor vehicle revealed that the said motor vehicle was stolen from one Victor Mthembu of 1935 Montsu Extension 5, Tembisa, Kempton Park, South Africa on the 30th March 1997. The motor vehicle was lawfully detained pursuant to the provisions of Act No. 16 of 1991 (Theft of Motor Vehicle) upon a reasonable suspicion of being stolen and to further police investigations. Thereafter, the Defendant avers that the motor vehicle in question was released to its lawful owner by a competent court of law on the 9th January 1998.

When the matter came before court the Defendant pursued a point of law *in limine* raised in a notice dated the 18th February 2003. The point of objection is the subject matter of this judgment. It is as follows:

"This action cannot succeed in law because the motor vehicle is the subject matter of this action was released by a court of competent jurisdiction on the 9th January 1998. This decision has not been set aside either in review or on appeal and as such Plaintiff is taken to 'have acquiesced to this order and it still stands".

It was contended in support of the above mentioned objection *in limine* that the matter is now outside the Defendant's powers and thus it cannot be held liable in respect of the motor vehicle.

The sequence of events as regards the said motor vehicle are as follows: According to the Plaintiff during the month of July 1994, members of the Royal Swaziland Police acting during and within their scope of employment as servants of the Swaziland Government seized and attached the motor vehicle for investigation purposes. Subsequently, Plaintiff made an application for the return of the motor vehicle whereupon Mbabane Magistrate ordered that it be released to Plaintiff. A copy of the court order is attached marked "B".

On or about November 1997, and at Lugaganeni, Manzini, members of the Royal Swaziland Police seized and attached the motor vehicle.

Plaintiff lodged an application for the return of the motor vehicle where the court granted that it be so returned on 1st December 1997. A copy of the court order is attached to the Plaintiffs papers marked "C".

During the month of June 1999, Plaintiff approached the police at Manzini and Lobamba with the court order so that it be released but the police could not produce it as they had released same to another person.

It would appear to me that the point of law raised by the Defendant is good in law in that the motor vehicle which is the subject-matter of this case cannot be returned to

the Plaintiff as the said motor vehicle was released by a court of competent jurisdiction to another person. This decision has not been set aside.

It would appear to me further that the Plaintiffs remedies would lie in suing the third party in whose possession the motor vehicle was released in an action for *rei vindicatio* or use a delictual or enrichment action against whosoever would be liable. There are no allegations in the present case that the police were negligent in allowing that the motor vehicle be released by the court.

I find that the point of law *in limine* succeeds. Therefore the action is dismissed and the costs to follow the event.