

THE HIGH COURT OF SWAZILAND

LUCKY GAMEDZE

Plaintiff

And

SWAZILAND GOVERNMENT

Defendant

Civil case No. 1232/2000

Coram

S.B. MAPHALALA – J

For the Plaintiff

MR. D. MADAU

For the Defendant

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.

The Plaintiff alleges in his Particulars of Claim as follows:

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"...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".

10.

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.