

IN THE HIGH COURT OF SWAZILAND

HELD AT MBABANE

CASE NO. 3285/07

In the matter between:

THABISO SHABALALA

APPLICANT

VS

THE COMMISSIONER OF POLICE 1ST RESPONDENT

**SABELO MNTSHALI
RESPONDENT**

2ND

**CORAM
FOR APPLICANT**

**MAMBA J
MR. MABILA**

**FOR 1ST RESPONDENT
FOR 2ND RESPONDENT
SIMELANE**

**NO APPEARANCE
MR.**

JUDGEMENT

24th January, 2008

[1] The applicant, Thabiso Shabalala, an adult Swazi male of Bhunya area in the district of Manzini bought a motor vehicle registered as SD 428 YN from Sifiso Dlamini for a sum of E25 000, which he paid in full. This occurred in Mbabane on the 5th July, 2007.

[2] The motor vehicle is a Toyota combi (mini bus) and the applicant bought it in order to use it as a public service

vehicle on the Mbabane/Fontein public road.

[3] The applicant had no public service transport permit to operate on the said route and was allowed by Ms. Tholakele Khumalo who had the requisite permit to use her permit to operate the transport business on the said route. I note here in parenthesis that this agreement is, in law, illegal. A permit or license is a personal entitlement and the rights flowing therefrom accrue to the holder thereof. These rights may not be transferred to a third party by the licensee without the knowledge and authorization of the licensing authority.

[4] In terms of the relevant licensing regulations, the license holder may only use the license on a vehicle of which he is the registered owner. Not to fall foul of these regulations, the applicant caused the motor vehicle to be registered in the name of Tholakele Khumalo-the license holder, so that it could appear that it was the licensee who was operating the transport business.

[5] When the applicant purchased the motor vehicle it was registered in the name of John Mandla Bhembé of Matsapha. The applicant states in his papers that it was Sifiso Dlamini who caused the transfer or change of ownership of the motor vehicle from John Mandla Bhembé to Tholakele Khumalo.

[6] Subsequent to its registration the motor vehicle was confiscated and detained by members of the Royal Swaziland Police “on the allegation that same was an exhibit in a criminal trail” and it is to date in the hands of the commissioner of police, the first respondent herein.

[7] Sifiso Dlamini purchased the motor vehicle from John Bhembe who was represented by one Mike Mamba.

[8] The police informed the applicant that the second respondent, Sipho Mntshali was claiming that he was the owner of the motor vehicle and this is the reason it was being confiscated from the applicant; as an exhibit.

[9] The applicant avers that he is a *bona fide* purchaser and therefore the owner of the motor vehicle and as such he is entitled to have its possession and custody restored to him. This is the basis of the application wherein he wants the motor vehicle to be restored to his possession.

[10] The allegations made by the applicant are confirmed by both Sipho Dlamini and Tholakele Khumalo.

[11] In response the attorney general and the first respondent have filed what they have termed and interpleader notice. In essence they contend that they are in

possession of the motor vehicle which is the subject of this application and that this motor vehicle is being claimed by the applicant and the second respondent. The Attorney General and the first respondent state further that they shall abide the decision of this court on the issue.

[12] It is not without significance that both the Attorney General and the Commissioner of Police do not say that the motor vehicle in question was confiscated by the police and is being detained by them as an exhibit in a criminal trial, or that it is being suspected of having being stolen.

[13] The declared reason for impounding and detaining the motor vehicle by the police was that it was to be used as an exhibit in a criminal trial. This has not been denied by the Commissioner of Police and that being the case this court, at least for purposes of this application, regard that as true; that is to say, the police said that they were confiscating and detaining the motor vehicle because it was to be used as an exhibit in a criminal case.

[14] In court, however, the first respondent avers that he has no interest in the motor vehicle and the motor vehicle was actually confiscated from the applicant because the second respondent also claimed ownership thereof or has a vested interest in the said motor vehicle.

[15] For his part the second respondent says that his first name is Sabelo and not Sipho. He states that he purchased the motor vehicle from Sikhumbuzo Ncongwane for a sum of E35000.00 on the 8th May, 2007. He paid a deposit of E20500.00 and thereafter took possession of it. He was then fraudulently dispossessed thereof by Mr Ncongwane who said he had found a prospective purchaser who was willing to pay the full amount of E35000.00 in cash. Ncongwane promised to refund the second respondent his deposit of E20500.00 once this prospective purchaser had paid for the motor vehicle. Mr Ncongwane did not advise the second respondent further. Later the second respondent received information that the motor vehicle was now being used as a public transport vehicle along the Mbabane/Fontein road. He then reported a case of theft of the motor vehicle to the Mbabane police. This is what led to the confiscation of the motor vehicle by the police.

[17] Once the motor vehicle had been detained by the police, all the above facts were brought to their knowledge but still they would not release the motor vehicle to either the applicant or the second respondent.

[18] It is also significant that the police were requested by Sikhumbuzo Ncongwane to detain or hold the motor vehicle

until he, Mr Ncongwane, had refunded the sum of E20500.00 to the second respondent.

[19] The motor vehicle which is the subject of this application was used as a pawn in a web comprising many contracts and many individuals, including Sikhumbuzo Ncongwane, John Mandla Bhembe and SIRON MOTORS (in Moneni) who are not parties to this application.

[20] From the above, it is clear to me that the second respondent has rather ingeniously enlisted the services of the police to help him get back the motor vehicle or his E20500.00 from Sikhumbuzo Ncongwane. The police have rather generously agreed to his bidding and confiscated the motor vehicle from the applicant.

[21] There is, as stated above, no suspicion that it is stolen or that it is to be used as evidence in a criminal trial. No one has been charged of any offence in connection therewith.

[22] The transaction between the second respondent and Ncongwane is a civil and private deal between them. The second respondent has lost a sum of E20500.00 as a result of this transaction. Whilst this may be a case of fraud or theft by false pretences, it clearly is a civil case. It is a debt based on goods sold, paid for but not delivered. No criminal case of

theft or fraud has been preferred by the crown against anyone as a result of these various transactions involving the motor vehicle in question.

[23] The National Police are not debt collectors for private individuals. They had no mandate in this case to use state power and resources to try and cajole or pressure the applicant or Skhumbuzo Ncongwane to pay the money due to the second respondent by confiscating the motor vehicle from the possession of the applicant.

[24] In the result the Commissioner of Police is hereby ordered to release motor vehicle SD 428 YN to the possession and custody of the applicant forthwith.

[25] The second respondent is at liberty to pursue his rights consequent upon the transaction or agreement he had with Skhumbuzo Ncongwane pertaining to the motor vehicle in question in appropriate proceedings before a competent authority or forum.

[26] The applicant has not sought an order for costs of this application and there is accordingly no order for costs that is made.

MAMBA J