

IN THE COURT OF APPEAL OF SWAZILAND

APPEAL CASE NO.

In the matter between:

ENOCK MACU APPELLANT

VS

ALLEN MANGO 1ST RESPONDENT

COMMISSIONER OF POLICE 2nd RESPONDENT

ATTORNEY GENERAL 3rd RESPONDENT

CORAM BROWDE JA

STEYN JA

ZIETSMAN JA

JUDGMENT

Browde JA:

In this matter the appellant made application in the High Court for an Order directing the respondent to restore to him a BMW motor vehicle which he alleged was his property and which was in the respondent's possession. The application was opposed by the respondent who alleged that the vehicle was his and that it had been stolen from him. He stated on affidavit that the vehicle was "presently kept at Manzini Police Station under the custody of the police as an exhibit."

Presumably because of the dispute of fact the learned judge made an order, but gave no reasons therefore, that the matter be referred for oral evidence and that the vehicle be held by the Sheriff pending the outcome of the proceedings.

2

The appellant seeks to have that Order overruled on appeal and to have the vehicle restored to him. The Order made by Sapire CJ is clearly interlocutory as it decides no issue between the parties. As leave to appeal was not sought by the appellant the decision of the High Court is not appealable.

In any event, it was pointed out to Mr. Maziya who appeared on behalf of the appellant, that in the Notice of Motion the appellant claimed in the alternative that "if the application is opposed the respondent (be) restrained and interdicted from alienating disposing or defacing the aforesaid vehicle in any manner whatsoever." The application was opposed and the court a quo's order was effectively that sought by the appellant. Mr. Maziya accepted that to be the position.

Consequently the appeal was struck-off the role with costs.

J.BROWDE JA

I AGREE

J.H STEYN JA

I AGREE

N.W. ZIETSMAN JA

Delivered in open Court on the ...7th.... day of June 2002.