

IN THE HIGH COURT OF SOUTH AFRICA
(EASTERN CAPE, PORT ELIZABETH)

Cases No: 2190/2009

In the matter between:

NATIONAL DIRECTOR OF PUBLIC PROSECUTION Applicant

and

BONSILE MICHAEL MNIKI Respondent

In re:

A red Opel Kadette DNG 846 EC

—

JUDGMENT

NEPGEN, J

[1] The applicant seeks leave to appeal against the judgment and costs order made in this matter. As I understand the original Notice of Application for Leave to Appeal, such leave was initially sought on the basis that there was a reasonable prospect that a court of appeal would find that I erred in failing to hold that the motor vehicle in question was an instrumentality of the offence of which the respondent, on his own version, was guilty. However, sometime thereafter the applicant gave notice of his intention to seek leave to appeal on the further ground that I erred in accepting the respondent's version of the circumstances under which he came to be in possession of the carcasses in question. The introduction of this additional ground of appeal was not opposed on behalf of the respondent. I accordingly granted an amendment to the Notice of Application for Leave to Appeal, resulting in the addition of this

further ground.

[2] As pointed out in my judgment in this matter, the undisputed facts are capable of giving rise to the inference that the respondent had been engaged in illegal hunting of wild game. After dealing with the respondent's version, I concluded that, there having been no request that the matter be referred for the hearing of oral evidence, the matter should be decided on the respondent's version. According to the notes I made at the time, this was accepted on behalf of the applicant. However, as is apparent from my judgment (para [9]), it was also argued that it did not really matter whether the respondent had illegally hunted the buck. Mr Van Der Linde, who appeared on behalf of the applicant in this application, submitted that because of this it would seem that there was some confusion and that the applicant should not be bound by a concession which might have been made inadvertently.

[3] It was argued before me that if a robust approach is adopted another court could come to the conclusion that the respondent had in fact hunted the buck. This would undoubtedly be so if there was no explanation as to why the dogs were in the vehicle. There is such an explanation, but Mr Van Der Linde contended that it is vague in a number of respects and therefore unsatisfactory. Whether I agree or not is irrelevant at this stage, as the question that must be answered is whether there are reasonable prospects that another court may come to such a decision. After having considered the matter carefully, I have come to the conclusion that such prospects do exist. Accordingly the applicant should be granted leave to appeal on the additional ground raised at the hearing.

[4] Had the application proceeded on the basis of what was set out in the original Notice of Application for Leave to Appeal, I would have concluded that there were not reasonable prospects that another court would hold that the vehicle was an instrumentality of the offence which the respondent, on his version, had committed. However, as the whole question of the vehicle being an instrumentality of the offence of hunting may arise if the respondent's version is not accepted, I consider it inappropriate to limit the grounds upon which the applicant may appeal against my judgment.

[5] It was common cause that leave to appeal should be granted to the Full Bench of this Division. The parties were also in agreement that the costs of this application should be costs in the appeal.

[6] I accordingly make the following order:

- a. The applicant is granted leave to appeal to the Full Bench of this Division against the whole of my judgment in the above matter.
- b. The costs of this application are to be costs in the appeal.

J J NEPGEN

JUDGE OF THE HIGH COURT

