

FREE STATE HIGH COURT, BLOEMFONTEIN
REPUBLIC OF SOUTH AFRICA

Case No. : 5127/2010

In the matter between:-

DD MATHABATHA

Applicant

and

MINISTER OF SAFETY AND SECURITY

Respondent

HEARD ON:

11 NOVEMBER 2010

DELIVERED ON:

18 NOVEMBER 2010

JUDGMENT

H.M. MUSI, JP

[1] In this application, which was brought by way of urgency in terms of Rule 6(12) of the Uniform Rules, the applicant seeks an order directing the respondent to hand over to him his motor vehicle, an Isuzu bakkie with registration number 4JK1716770. The bakkie was seized by the police in terms of section 20 of the Criminal Procedure Act, 51 of 1977, on the basis that it was concerned in the commission of an offence. The bakkie was being driven by someone in the area of Petrus Steyn/Ficksburg and when the police stopped

it, the driver got out and ran away. It turned out that the bakkie was being used to transport dagga. Criminal charges relating to contravention of the provisions of the Drugs and Drugs Trafficking Act, 140 of 1992, are being investigated, but no one has been charged as yet since the driver of the bakkie at the time has not been found. His female passenger has apparently denied any involvement in the transportation of the dagga and has not been charged.

- [2] In opposing the application the respondent has pleaded *inter alia* that there was no basis for urgency in this matter. Mr. Manye, for the respondent, persisted with this ground in argument. I propose to deal with this ground right away. The factual matrix relating to this issue are set out hereunder.
- [3] The applicant's version is that he lent the bakkie to an acquaintant, Thabiso Modibedi, on 17 May 2010 with the understanding that it would be returned by about 22 May 2010. On 20 May 2010 Modibedi telephoned the applicant and disclosed that he had been caught by the police whilst transporting dagga with the bakkie and that he had run away

leaving his wife behind, who was then arrested by the police. Later Modibedi told him to have the documents proving his ownership of the bakkie ready so that they should be shown to the investigating officer in the matter. The applicant subsequently went to Ficksburg to meet with the investigating officer and he handed over to the latter the relevant documents as well as the spare keys of the bakkie. The applicant was accompanied by Modibedi and his wife. The investigating officer promised to make the necessary arrangements for the release of the bakkie and that he would telephonically advise the applicant when to fetch it. When the investigating officer did not contact him, the applicant approached an attorney and on 27 July 2010 the attorney addressed a letter to the police at Petrus Steyn requesting them to release the bakkie. On the same date another letter demanding return of the bakkie was addressed to the national commissioner of the South African Police in Pretoria. No response was received to the above letters and on 2 September 2010 a letter was addressed to the prosecutor at the magistrates' court, Lindley. In this letter documents evidencing the applicant's ownership of the bakkie, copy of the letter addressed to the police on 27 July

2010 and an affidavit by the applicant (apparently explaining the loan of the bakkie to Modibedi) were attached. The prosecutor was requested to place the matter on the roll of 15 September 2010 so that an application could be made in terms of section 34(6) of the Criminal Procedure Act for return of the bakkie to the applicant. This letter followed upon a visit by the applicant to the same prosecutor. The matter was not enrolled as requested and the applicant's attorney, who had attended court on 15 September 2010, knew this. The instant application was launched on 8 October 2010 and was set down for 14 October 2010. The respondent opposed it and it was postponed to 11 November 2010 to allow for a full exchange of pleadings.

- [4] The above version of the applicant is not disputed save in the following respects:

Firstly, the investigating officer, Warrant Officer Alfonso Kokonyane, disclosed in the answering affidavit that the applicant made a statement to him which was signed on 8 June 2010. In it the applicant says that he lent the bakkie to one Johannes and that the latter has since disappeared. No mention is made of Thabiso Modibedi or his wife. The

investigating officer denies that he had promised to release the bakkie.

Secondly, the respondent points out that whereas the applicant says Modibedi and his wife were with him when he went to see the investigating officer in Ficksburg, he did not disclose to the latter that Modibedi was the man who had transported dagga in his bakkie, nor that the woman found by the police in the bakkie was Modibedi's wife. According to the police it was in fact Dimakatso Johanna Moleko who was accompanying the driver of the bakkie. The respondent averred that the concealment of and contradictions about the identity of the driver of the bakkie and his passenger raises question marks about the applicant's explanation and points to him being complicit in the transportation of the dagga.

- [5] In my view, the fact that the applicant was accompanied by Modibedi when he went to meet the investigating officer and yet failed to disclose that Modibedi was the culprit that the police were looking for points to dishonesty and puts a serious dent on his averment that he had not known the purpose for which his bakkie was to be used, but that is besides the point in the present enquiry relating to urgency.

[6] In support of his argument that urgency has been established, Mr. Pienaar, for the appellant, referred to the judgment in **NELSON MANDELA METROPOLITAN MUNICIPALITY AND OTHERS v GREYVENOUW CC AND OTHERS** 2004 (2) SA 81 (SECLD) where it was held that protracted attempts by a litigant to resolve a dispute before launching an urgent application did not have the effect of negating urgency. See also **STOCK AND ANOTHER v MINISTER OF HOUSING AND OTHERS** 2007 (2) SA 9 (CPD) at 12 I – 13 A.

[7] In my view, the instant case is distinguishable from the above cases. Assuming that the applicant was justified in first, negotiating with the police for the return of his bakkie, this would apply to the period up to 15 September 2010 when the matter was supposed to be enrolled at the magistrates' court, Lindley. There is no explanation whatsoever for the intervening period between 15 September 2010 and 8 October 2010. Besides, there are other intervening periods when nothing was done. For instance, there is no explanation why would the applicant wait for more than a month from seeing the investigating officer on 8 June

2010 up to 27 July 2010 when he ultimately consulted with his attorney. The matter is compounded by the applicant's reasons for urgency, which are set out in paragraph 7 of the founding affidavit. The main reason is that the bakkie is pivotal for the operation of his fruit and vegetable business and he says that its absence is causing him financial loss, resulting *inter alia* in inability to pay the monthly instalments under the credit agreement relating thereto. Yet he had seen fit to lend it out and it took him five months before approaching the court for relief inspite of clear indications that the police were not interested in releasing it.

- [8] I come to the conclusion that the applicant has not made out a case for urgency. That means that the matter is not properly on the roll and in these circumstances I do not think it will be appropriate to make any costs order.

The application is struck off the roll.

H.M. MUSI, JP

On behalf of applicant:

Adv. C.D. Pienaar
Instructed by:
Rosendorff Reitz Barry
BLOEMFONTEIN

On behalf of respondent:

Adv. T.L. Manye
Instructed by:
State Attorney
BLOEMFONTEIN

/sp