

Reportable:	YES / NO
Circulate to Judges:	YES / NO
Circulate to Magistrates:	YES / NO
Circulate to Regional Magistrates:	YES / NO

IN THE HIGH COURT OF SOUTH AFRICA (Northern Cape Division)

Case Nr: 657/2007
Heard: 08/08/2008
Delivered: 15/08/2008

In the matter between:

S A TRUCK BODIES (PTY) t/a TRIAL STAR **APPLICANT**

and

THE MINISTER OF SAFETY AND SECURITY **1ST RESPONDENT**

SENIOR SUPERINTENDENT CHRISTO PETRUS HORAK **2ND RESPONDENT**

JUDGMENT

Moloi A J:

1. In this matter the applicant sought an order reviewing and setting aside a forfeiture order of certain articles by the South African Police Service made in terms of sec. 31(1) (b) of the Criminal Procedure Act, No. 51 of 1977 and an order for the return of the said articles seized to the applicant. The seizure and subsequent forfeiture of the articles took place on the strength of the provisions of section 68(6) of the National Road Traffic Act No. 93 of 1996. Section 31(1)(b) of the Criminal Procedure Act, No.51 of 1977 provides as follows:

"If no person may lawfully possess such article or if the police official charged with the investigation does not know of any person who may lawfully possess such article the article shall be forfeited to the state."

Section 68 (6)(b) of the National Road Traffic Act No. 93 of 1999 provides as follows:

"No person shall-

(a)...

(b) without lawful cause be in possession of a motor vehicle of Which the engine or chassis number has been falsified, replaced, altered, defaced, mutilated, or to which anything has been added, or from which anything has been removed, or has been tampered with in any other way."

2. The application is a sequel to the seizure and subsequent forfeiture to the state by the South African Police Services of two Henred Fruehauf interlink trailers (hereinafter referred to as 'vehicles' as defined in the National Road Traffic Act) with chassis numbers AAH 088742-PUFJ-261X and AAH088767-PURF- 2122 having registration letters and numbers BZC 948 FS and BZV 949 FS, respectively. The said vehicles were seized at the Nakop border post between South Africa and Namibia in a roadblock conducted by the Vehicle Inspection Section (VIS) of the South African Police Services, Upington, on 13 August 2004. At the time of the seizure the vehicles were in the possession of one Paulus Ndemulaompya of Windhoek, Namibia and followed upon the inspection of the two vehicles. The inspection revealed that the VIN (Vehicle Identifying Numbers) plates attached to the vehicles' chassis had been tampered with in contravention of section 68(6) of the National Road Traffic Act No. 93 of 1996. Upon seizure, the said Paulus Ndemulaompya of Woodway

Carriers, Windhoek, Namibia produced to the police a certificate of clearance for export purposes in terms of SADC resolution issued by Sgt. Williams of the Southern African Regional Police Chiefs Cooperative Organisation in Bloemfontein certifying that the two vehicles were not reported as stolen in South Africa.

- 3.** Upon the seizure of the two vehicles the police issued the said Paulus Ndemulaomupya with a notice calling upon him or any person having a legal claim to the articles (vehicles) seized to show lawful cause why the VIN marks on the said vehicles have been tampered with within thirty days of the seizure and that failure to do so would result in the forfeiture thereof to the state. This notice set in motion a protracted flow of correspondence and discussions between the South African Police Services and the applicant resulting ultimately in the forfeiture order of the said vehicles on 9 February 2007 as no resolution of the impasse could be found.
- 4.** The papers filed of record show conclusively that there was, in fact, tampering with the VIN plates attached to the two vehicles. The applicant ascribed the tampering to the repairs that were done to the vehicles at some stage for one or other reason. The VIN plates were then removed and affixed back to the chassis albeit differently in that only four rivets were used instead of the original six and that the holes on the plates and the chassis did not correspond. It also emerged from the papers filed that the applicant sold the two vehicles to one PJ Snyman during 2004 and that the seizure of the said vehicles by the police followed shortly thereafter. According to the applicant, after the seizure of the vehicles by the police, it replaced them by providing Snyman with other vehicles (the particulars of which are not

provided) and consequently the ownership of the vehicles in question reverted to it.

5. The applicant's case is premised on the ownership of the said vehicles as stated above. The applicant stated that it did not intend to use the said vehicles on a public road as that would constitute a criminal offence under the National Road Traffic Act. Its objective was to dismantle the said vehicles on private property and to use the parts thereof for other purposes.
6. It was further argued that as no proof had been produced that the said vehicles had been stolen since the date of the seizure and equally no criminal proceedings had been instituted, the vehicles ought to be returned to the applicant in terms of the provisions of section 31(1)(a) of the Criminal Procedure Act. The said section provides as follows:

"If no criminal proceedings are instituted in connection with any article... the article shall be returned to the person from whom it was seized, if such person may lawfully possess such article or if such person may not lawfully possess such article, to the person who may lawfully possess it."

7. It was contended that since the applicant had become owner of the vehicles after giving Snyman replacement vehicles in substitution after the seizure, it had become an instance which may "lawfully possess" them and that it should be ordered that it be placed in possession thereof.
8. The respondents contended that the applicant had no locus standi to claim the relief sought and, in fact, disputed the claim of ownership of the said vehicles by the applicant. The

Respondents argued that the transaction claimed by applicant to have restored ownership of the said vehicles to it is vague in that no dates are mentioned on which it would have taken place nor are the details of the replacement vehicles given. It was further argued that the deponent on behalf of the applicant contradicted himself by not making a claim of ownership of the said vehicles in an earlier affidavit filed. Moreover, it was argued, at seizure of the vehicles, they had been in the possession of somebody else, namely Paulus Ndemulaomupya, whose involvement with the vehicles was not explained. Neither was it explained how delivery of the said vehicles to the applicant by Snyman had taken place as the vehicles were then in the custody of the South African Police Services.

- 9.** As regards the question of possession of the vehicles for purposes of dismantling them on private property, it was contended on behalf of the respondents that what the law prohibited was mere possession of the disqualified articles irrespective of whether they were so possessed on private property or in a public place. The argument that the applicant would not use the vehicles on a public road was, therefore, irrelevant and immaterial.
- 10.** It is common cause that the VIN plates on the two vehicles had been tampered with and that this was prohibited in terms of section 68(6) of the National Road Traffic Act No. 93 of 1996. This fact was also confirmed by the applicant in its submission that, as a consequence of the tampering, it did not intend using the vehicles on a public road as this would constitute an offence but it intended to dismantle them and use the parts thereof for something else.

- 11.** If the applicant succeeded in proving ownership of the said vehicles it would still not have proved the "lawful cause" that would justify it being placed in possession of the said vehicles for as long as there has been tampering with the VIN plates attached to the chassis of the said vehicles. In **Marvanic Development (Pty) Ltd and Another v Minister of Safety and Security and Another**, 2007 (3) SA 159 SCA at 162 G-H **Lewis J A** stated:

"I emphasise that it is not possession of the vehicle per se that it is unlawful: it is the possession of a vehicle with false engine or chassis numbers that is 'without lawful cause'."

Earlier on p162 B-C she stated as follows regarding the provision of sections 68 (1) (b) placing a prohibition on possession of a disqualified vehicle:

"The section makes possession that might otherwise be lawful unlawful. At the time when the vehicles were seized, their possession was thus 'without lawful cause' even if the appellants were also the owners. The fact that the vehicles were seized does not mean that their return would make possession lawful."

See also the yet unreported case of **Basie Motors Bk t/a Boulevard Motors v Minister of Safety and Security**, Case No. 135/05 SCA.

- 12.** There are, in addition, several unanswered questions relating to the applicant's claim of ownership to the said vehicles. The purported ownership would form the basis of the applicant's *locus standi* in this matter. The significant aspects that

remained unexplained are the following: The vehicles were seized in the possession of Paulus Ndemulaompya of Woodway Carriers in Windhoek, Namibia and they were destined for export to Namibia according to the papers given to the police by Paulus Ndemulaompya himself. The applicant's address is given as 43 George Lubbe Street, Hamilton, Bloemfontein and is said to be doing business also elsewhere in the Republic of South Africa. Nothing is said about Namibia. On what basis the vehicles were exported to Namibia, to whom, and for what purpose was not explained. In which capacity did Paulus Ndemulaompya have possession of the said vehicles when they were seized by the police? What is or was the relationship between him and the applicant? Is or was there any relationship between the applicant and Woodway Carriers in Namibia and, if so, what relationship? What, if any, was the relationship between Paul Ndemulaompya and Snyman or Snyman with Woodway Carriers?

- 13.** As a consequence, I find that the applicant has failed to establish its *locus standi* and it has failed to prove a lawful cause to entitle it to possession of the said vehicles.

The application is consequently dismissed with costs.

**K J MOLOI
ACTING JUDGE OF THE HIGH COURT
NORTHERN CAPE DIVISION**

For the Applicant:	Adv. S. Reynders
Instructed by:	Duncan & Rothman Attorneys
For the Respondents:	Adv. W. Coetzee
Instructed by:	State Attorney