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**REPUBLIC OF SOUTH AFRICA
IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)**

CASE NO: 25568/2024

In the matter between:

BONKE MAKALALA

Applicant

And

**UNIT COMMANDER, BELLVILLE VEHICLE CRIME
INVESTIGATION UNIT**

First Respondent

MINISTER OF POLICE

Second Respondent

Heard: 20 December 2024

Delivered: Electronically on 13 January 2025

JUDGMENT

LEKHULENI J

Introduction

[1] This is an urgent application in which the applicant seeks an order directing the first and second respondents (*“the respondents”*) to release and return the following vehicles to the applicant:

Toyota Quantum with Registration Number 0[...]1.

Toyota Quantum with Registration Number 0[...]2; and

Toyota Quantum with Registration Number 0[...]3 (*“the impounded vehicles”*).

[2] The applicant also seeks an order that in the event the respondents fail to release and return the vehicles, the applicant is given leave to approach this court on the same papers, duly supplemented, if necessary, to seek compliance with the order.

The Applicant's Case

[3] The applicant has been actively involved in the transport industry since 2008. He is currently incarcerated at Brandvlei Maximum Correctional Services Facility, Worcester, for various serious crimes, including Murder, Attempted Murder, and various counts of Possession of an unlicensed firearm and Ammunition. He is the lawful owner of the impounded vehicles, which are currently in the custody of the police.

[4] The applicant states that he was informed by his drivers (who filed confirmatory affidavits) that on 17 October 2024, three of his Toyota Quantums were seized and impounded by members of the South African Police Services (*“SAPS”*). The vehicles were subsequently transported to the vehicle impound centre situated in Stikland. According to the applicant, no reasons for the impoundment of these vehicles have been provided to him to date.

[5] The applicant states that on 17 October 2024, one of his Toyota Quantum bearing registration number 0[...]3, which was being driven by his taxi driver, Mr

Wade Lombard, was stopped by members of SAPS while travelling from Fish Hoek to Masiphumelele. The officers requested the driver to pull over. An unknown member of SAPS approached the vehicle, reached inside and removed the keys from the ignition. Mr Lombard was then advised that the vehicle would be impounded and retained at Stikland. As a result, his passengers were forced to exit the vehicle as it was being seized with immediate effect. No explanation for the seizure of the vehicle was provided.

[6] Similarly, Mr Mqingi, another taxi driver for the applicant, was also pulled over that same afternoon at approximately 15h00 by law enforcement officials while driving the applicant's vehicle bearing registration number 0[...]1. An unknown male official approached the vehicle and removed the keys from the ignition. Mr Mqingi was informed that his vehicle was being impounded as his "boss", referring to the applicant, was appearing in court the following day. The passengers were similarly requested to exit the vehicle, and Mr Mqingi was informed that the vehicle would be taken to Stikland. Again, no explanation was given for the impoundment of the said vehicle.

[7] The applicant's third vehicle, which was seized by members of law enforcement on 17 October 2024, was a Toyota Quantum with registration number 0[...]4, which was driven by Pitso Tlali. Mr Tlali was driving that morning from Masiphumelele to Fish Hoek when he was stopped by an unknown traffic official, who requested him to pull over. The law enforcement official requested Mr Tlali and his passengers to exit the vehicle, whereafter, an inspection was conducted on the vehicle. Upon the inspection being concluded, Mr Tlali was requested by the official to furnish his driver's license.

[8] According to the applicant, Mr Tlali pulled out a colleague's driver's license and handed it to the law enforcement official. As soon as the error was brought to Mr Tlali's attention, Mr Tlali immediately handed over his international driver's license, which was issued in Lesotho. Mr Tlali was subsequently arrested and detained at Fish Hoek Police Station for allegedly committing fraud when he presented a driver's license that did not belong to him. He was thereafter released on bail and warned to appear in Simonstown court on 20 January 2025. The vehicle driven by Mr Tlali was

thereafter impounded, and Mr Tlali was informed that it would be kept at Stikland along with the other vehicles.

[9] Following the impoundment of the vehicles, the applicant sought the assistance of his legal representative, who subsequently addressed a formal letter to the senior officials of the SAPS. In this correspondence, the representative urged SAPS to prioritise the investigation of the applicant's vehicle and to conclude the inquiry within seven days of receipt of the letter. Failure to do so would compel the applicant to seek appropriate legal relief from the court. In response to this correspondence, Captain Burger, the Unit Commander, Oudtshoorn Vehicle Crime Investigation Unit, stated that the vehicles were being inspected and investigated as it was suspected that these vehicles were used in the commission of a crime or suspected commission of a crime.

[10] In addition, Captain Burger formally requested that the legal representatives of the applicant instruct the applicant to present all vehicles registered in his name, including those registered under the applicant's company, to the Vehicle Crime Investigation Unit located in Belleville Stikland. This submission was scheduled for 29 October 2024 and 31 October 2024, during the hours of 09h00 to 15h00, for the purposes of inspection and investigation. Captain Burger further stated that the vehicles would not be detained unnecessarily and that they would be dealt with accordingly if irregularities were found in the vehicles presented.

[11] In response to Captain Burger's correspondence, the legal representative of the applicant issued a letter on 29 October 2024. Within this communication, it was asserted that the allegations against the applicant, as detailed in Captain Burger's correspondence, presupposed the existence of reported criminal cases concerning the utilisation of the applicant's vehicle. Therefore, the applicant's legal representative requested the case numbers of these dockets. In addition, the applicant's legal representative contended that there was no legal basis for the applicant to present the entire fleet of his vehicles for inspection as that would be extremely prejudicial to the applicant. The applicant's legal representative inquired about the outcome of the police inspection and investigation of the impounded

vehicles. He stated that the prolonged retention of these vehicles at Stikland was resulting in excessive income loss for the applicant.

[12] Subsequent thereto, there were several exchanges of correspondence between the parties. Notwithstanding, the impounded vehicles were not returned to the applicant. Eventually, on 27 November 2024, the applicant brought this application for an order directing the respondents to release and return his vehicles to him. The applicant stated that the failure of the police to release his vehicles has had a detrimental impact on his income as he cannot generate an income as he did before. Additionally, the applicant stated that the drivers of these vehicles are similarly in a financially detrimental position as they cannot earn an income. The applicant prayed for an order that the vehicles be released from the police and be returned to him.

The Respondents' Case

[13] The Respondents asserted that the seizure of the three Toyota Quantums has its genesis in an investigation into the attacks on long-distance buses in the Eastern and Western Cape. The investigation into these attacks became a police project known as the Project Tsitsikamma. The respondents stated that this project consists of three phases: serious and violent crimes, extortions and offences relating to vehicles. During Project Tsitsikamma, the applicant was identified as a suspect and arrested on 10 December 2023 on various charges related to Project Tsitsikamma under Nyanga CAS 600/08/2018, Nyanga CAS 329/12/2019, Nyanga CAS 178/10/2020, Mfuleni CAS 104/02/2020, Ocean View CAS 95/07/2023 and Boschkop CAS 77/12/2023.

[14] The respondents further stated that the seizure of these vehicles, which are the subject matter of this application, was in terms of section 20 of the Criminal Procedure Act 51 of 1977 (*"the CPA"*) as amended. The respondents further asserted that these vehicles were seized on suspicion that they have been involved in the offences of money laundering in contravention of Section 4(b)(i) and (ii) of the Prevention of Organized Crime Act 121 of 1998 by the applicant, forgery and uttering with regards to engine numbers, fraud and tampering with a vehicle in contravention

of section 68(6)(a) of the National Road Traffic Act 93 of 1996 (*“the NRTA”*) as amended.

[15] The respondents stated further that the investigation regarding one of the suspected offences is at an extremely sensitive stage, and divulging further information about such an offence may lead those implicated in it to flee from justice. The suspicion about money laundering is based on the suspicion that these vehicles are part of the proceeds of the criminal activities for which the applicant was arrested.

[16] The respondents asserted that the operating permit for the Toyota Quantum with registration number 0[...]¹ is suspected to have been fraudulently obtained. The basis for this suspicion is because the applicant was in prison at the time of issuing the permit on 1 September 2024. According to the respondents, a permit can only be issued on application by the applicant in person. The respondents contended that the chassis numbers of the three Toyota Quantums with registration numbers 0[...]³, 0[...]¹ and 0[...]² impounded by the police were suspected of having been tampered with, which gave rise to suspicion of forgery and uttering. These three Toyota Quantum were taken to the SAP 13 Store of SAPS at Belleville VSS to investigate their roadworthiness and for forensic investigation of these vehicles' engines, chassis and bodies.

[17] The Toyota Quantum bearing Registration Number: 0[...]³ was inspected and investigated by Captain Shale Mofokeng, a Senior Forensic and Metallurgical Analyst at the Forensic Science Laboratory of SAPS. Captain Mofokeng completed a statement in terms of section 212 of the CPA and concluded that the vehicle's true identity had been tampered with based on his findings during his investigation. Captain Mofokeng also conducted a similar investigation on the Toyota Quantum with registration 0[...]⁴ and came to a similar conclusion that the vehicle's true identity had been tampered with, based on his findings during his examination.

[18] Warrant Phillipine Seshoeni, a Forensic Mechanical and Metallurgical Analyst at the Forensic Science Laboratory of SAPS, conducted a similar investigation on the Toyota quantum with registration 0[...]¹ and concluded that the chassis tag of the

vehicle has been tampered with and that the floor panel containing the chassis tag and firewall of the vehicle has been paired with the roof of another vehicle.

[19] On the other hand, Warrant Officer Siegfried Van Greunen, who is stationed at the Vehicle Crime Investigating Unit in Belleville with the necessary training and experience in vehicle theft investigation, after conducting an investigation on the engines of the three Toyota Quantums, found that the engines of the Toyota Quantums with registration 0[...]3 and 0[...]4 had been tampered with.

[20] The respondents further stated that Captain Burger, an investigating officer at the Vehicle Crime Investigating Unit, conducted a further investigation on the bodies of the three Toyota Quantums and concluded that the floor panels containing the chassis tags of these vehicles had been paired with the outer shells of other vehicles, which also effectively changes the identity of these vehicles. According to Captain Burger, these structural changes to the vehicles compromised their integrity, which made them dangerous to use as the shell will come loose from the floor panels, resulting in serious injury or death. The respondents prayed for the dismissal of the applicant's application with costs.

Principal Submissions by the parties

[21] Ms Janssen, the applicant's Counsel, submitted that the respondents seized the vehicles on 17 October 2024 and only investigated the vehicle properly on 30 October 2024. Counsel asserted that the police seized the vehicles, and after the fact, conducted investigations, and now they allege that there was tampering on the chassis of the vehicles. Ms Janssen argued that the respondents admitted that the vehicles belong to the applicant and that the respondents are in possession of the said vehicles. According to Ms Janssen, the onus is on the respondent to show justification for their continued possession of the applicant's three vehicles.

[22] Ms Janssen further contended that there is no allegation that the vehicles or the parts of the applicant's vehicles were stolen. Counsel argued that the respondents did not establish a prima facie case entitling them to retain the vehicles. Ms Janssen submitted that the respondents have not shown why they are entitled to

keep or retain the applicant's vehicles. According to Ms Janssen, the respondents have other remedies than to impound the applicant's vehicles. Counsel implored the court to grant an order for the release of the applicants' vehicles as prayed for in the notice of motion.

[23] On the other hand, Mr Van Wyk, the respondent's Counsel, contended that the three vehicles were initially impounded on suspicion of money laundering and suspicion of tampering. The suspicion about tampering with the vehicles could only be confirmed by experts in the field on 30 October 2024, as evidenced in their statements in terms of section 212 of the CPA. Mr Van Wyk submitted that upon examination of the vehicles by the relevant experts, conclusive proof of tampering of the chassis and the vehicle identities were confirmed. Counsel argued further that tampering in terms of section 68 of the NRTA is unlawful. Counsel further submitted that once the features mentioned in section 68 are found in the impounded vehicle, such vehicle cannot be returned to the applicants.

[24] Furthermore, Counsel argued that the investigation concerning the three vehicles is ongoing and is at a critical stage. The investigations regarding these vehicles are forgery and uttering, which relates to the chassis and engine numbers of the vehicle. The investigation also relates to the roadworthiness of the vehicles and how the initial roadworthy certificates were obtained. It was the Counsel's submission that these investigations are at a sensitive stage, and the respondents cannot divulge full information as it could alert suspects who will soon be arrested pursuant to the investigations. This would thwart the investigation. Counsel implored the court to dismiss the applicant's application.

Issues in dispute

[25] The primary issue to be determined in this case is whether the three vehicles owned by the applicant, which are currently in the possession of the respondents, should be returned to the applicant.

Relevant Legal Principles and Discussion

[26] It is common cause that the applicant is the owner of the three vehicles. It is also common cause that the respondents are currently in possession of these vehicles. The applicant seeks an order for the vehicles to be returned to him so that he can use them to generate income to support his family and his children. The applicant brought this application based on *rei vindicatio*. In the case of *rei vindicatio*, the applicant bears the onus to prove ownership, that the item claimed is in existence and identifiable, and that the respondent is in possession.¹ Once these requirements have been met, the onus shifts to the respondents to show justification for their continued possession of the item concerned.

[27] The respondents contend that their continued possession of the applicant's vehicles is justified. In addition, the respondent asserted that they are investigating the circumstances under which the roadworthy certificates of these vehicles were issued. The respondents contended that their investigation into these vehicles is underway and at a sensitive stage. Importantly, the respondents relied on section 68(6)(b) of the NRTA in their continued retention of the applicant's vehicle. They asserted that there is evidence of tempering in the three vehicles.

[28] For the sake of completeness, section 68(6)(b) of the National Road Traffic Act 93 of 1996 provides that:

“(6) No person shall –

(a) with intent to deceive, falsify, replace, alter, deface, mutilate, add anything to or remove anything from or in any other way tamper with the engine or chassis number of a motor vehicle; or

(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.”

¹ *ASP Elite Protection Services CC v Minister of Police and Others* (6489/2020) [2020] ZAWCHC 142 (2 November 2020) at para 54.

[29] The purpose of section 68 is to prevent people, including owners of vehicles, from being in possession of and driving vehicles that have been tampered with in the ways detailed in the section.² The section makes possession that might otherwise be lawful unlawful.³ Section 68(6)(b) does not permit the possession and consequently return by the police of vehicles that have been tampered with, even to their owners.⁴

[30] In *Basie Motors BK t/a Boulevard Motors v Minister of Safety and Security*,⁵ the court stated that possession of a vehicle with an engine or chassis number that has been tampered with is forbidden. The NRTA does not confer authority on anyone to allow it. Section 89(3) of the same Act provides that a contravention of section 68(6) amounts to a criminal offence, rendering the accused liable on conviction to a fine or to imprisonment for a period not exceeding three years.

[31] As discussed above, the applicant presented evidence from their experts explaining that the true identity of the three vehicles of the applicant had been tampered with, which gave rise to suspicion of forgery and uttering. Further investigation by the experts of SAPS revealed that the floor panel containing the chassis tag of the Toyota Quantum with registration Number 0[...]3 had been paired with the outer shell of another vehicle. An examination of the Toyota Quantum bearing registration number 0[...]4 revealed that its front section containing the stamped chassis number had been paired with the back dome of another vehicle. Furthermore, the floor panel containing the chassis tag has been paired with the outer shell of another vehicle. The true identity of this vehicle was also tampered with.

[32] An examination of the third Quantum bearing registration number 0[...]1 revealed that the chassis tag had been tampered with. The floor panel containing the chassis tag and firewall of the vehicle had been paired with a foreign roof of another vehicle. Significantly, the expert noted that there was no repaired accident damage to the vehicle. In other words, the vehicle was not involved in an accident. Upon

² *Marvanic Development (Pty) Ltd and Another v Minister of Safety and Security and Another* 2007 (3) SA 159 (SCA) at para 7.

³ *Marvanic Development (Pty) Ltd and Another v Minister of Safety and Security and Another* (supra) at para 8.

⁴ *Pekule v Minister of Safety and Security* 2011 (2) SACR 358 at para 29.

⁵ (SCA Case No. 135/2005; [2006] ZASCA 35(28 March 2006) at para 8).

further investigation of the Toyota Quantum engines with registration numbers 0[...]3 and 0[...]4, SAPS experts discovered that the engines had been tampered with.

[33] It is apparent that the three Quantums belonging to the applicant, which were seized and impounded by the police, have been tampered with. I must stress that tampering, as envisaged in section 68(6) of the NRTA, is unlawful. I am mindful of the applicant's replying affidavit that the Toyota Quantum bearing registration 0[...]3 was involved in an accident and that the other two vehicles were also involved in accidents and were repaired by reputable panel beaters. However, according to the police expert, the vehicle bearing 0[...]1 was never involved in an accident. Notwithstanding, the chassis tag of this vehicle has been tampered with. The respondent is not an expert in vehicle repairs, and I am of the view that the views expressed by an expert from the police must prevail.

[34] As correctly pointed out by Mr Van Wyk, once the features mentioned in section 68(6) of the NRTA are found in an impounded vehicle, such a vehicle cannot be returned to the applicants. The police have seized these three vehicles and are retaining them pursuant to section 68(6) of the NRTA. I believe that the police have a valid justification for retaining these vehicles, as they have been subjected to various forms of tampering. Tampering with a vehicle is prohibited in section 68(6)(b) of the NRTA. A vehicle seized by the police cannot be returned to the persons from whom they have been seized if any of the features referred to in section 68(6) of the NRTA are present; doing so would defeat the provisions of the Act.

[35] In summation, pursuant to the investigations conducted by the police, there are features of tampering in the three vehicles impounded by the police. In these circumstances, the police cannot lawfully release the vehicles to the applicant. An order directing the return of the vehicles to the applicant would defeat the provisions of the National Road Traffic Act.

[36] Notwithstanding, this does not mean that the applicant is not without a remedy. Regulation 56 of the National Road Traffic Regulations 2000 provides the means for a vehicle owner (or person otherwise entitled to possess the vehicle) to obtain from the police new engine or chassis numbers where these have been

tampered with, and a police clearance will be issued to the registering authorities. The regulation itself shows precisely what section 68(6)(b) means: until the regulation has been complied with, possession by any person other than the police is without lawful cause.⁶

[37] Given all these considerations, the applicant's application must fail.

Order

[38] In the result, the following order is granted:

38.1 The applicant's application is hereby dismissed.

38.2 Each party is ordered to pay its costs.

LEKHULENI JD
JUDGE OF THE HIGH COURT

APPEARANCES

For the Applicant: Adv Janssen
Instructed by: Lundi Maki Attorneys

For the Respondents: Adv Van Wyk
Instructed by: The State Attorney

⁶ *Marvanic Development (Pty) Ltd and Another v Minister of Safety and Security and Another (supra)* at para 11.