



**IN THE HIGH COURT OF SOUTH AFRICA
FREE STATE DIVISION, BLOEMFONTEIN**

Reportable / Not reportable

Case no: A191/2023

In the matter between

MINI DEVELOPMENTS CC

APPLICANT

and

MINISTER OF POLICE

FIRST RESPONDENT

THE SOUTH AFRICAN POLICE SERVICE

SECOND RESPONDENT

Neutral citation: *Mini Developments CC v Minister of Police and Another*

Coram: Daniso J, Greyling-Coetzer AJ et Nemavhidi AJ

Heard: 11 October 2024

Delivered: 6 November 2024

Summary: Administrative decision – Section 31 of the Criminal Procedure Act 51 of 1977 – Issuing of SAP VIN in terms of Regulation 56(3) of National Road Traffic Regulations, 2000.

ORDER

The appeal is dismissed with costs.

JUDGMENT

Nemavhidi AJ (Daniso J et Greyling-Coetzer AJ concurring)

[1] This is an appeal brought by the appellant (Mini Developments) against the judgment by the court *a quo*.

[2] The second respondent seized two UBT Freight Link Trailers (the trailers) belonging to the appellant, on 15 October 2019. The basis for the seizure was that the Vehicle Identification Number (VIN) of the trailers had been tampered with.

[3] On the 26 February 2020, the second respondent notified the appellant of the confiscation and forfeiture of the trailers. They informed the appellant that the South African Police Service (SAPS) had grounds to believe that the trailers were stolen and that it is unknown who the legal owner is. Furthermore, because of the tampering, the appellant did not have any lawful cause to possess the trailers, as contemplated in s 68 of the National Road Traffic Act 93 of 1996 (the Traffic Act). However, there is no criminal action pending as the appellant lawfully purchased the trailers.

[4] In July 2020 the appellant brought an application in the Welkom Magistrate's Court for return of the trailers. Pursuant to the respondents' raising the issue of jurisdiction the application was withdrawn. In October 2022, the appellant launched the application in the court *a quo*, primarily, to obtain a *mandamus* to compel SAPS to issue a SAP VIN number and clearance certificate for the trailers in terms of Regulation 56(3) of the National Road Traffic Regulations, 2000.¹ The regulation places a statutory duty on SAPS to issue, upon the appellant's demand, in his capacity as a title holder of the trailers, a new chassis number and clearance certificate.

¹ As set out in GG 20963 of 17 March 2000.

- [5] In dismissing the appellant's application the court *a quo* found in essence that:
- (i) section 68(6) of the Traffic Act precludes the applicant from possession of the trailers in view of the tampering with their VIN numbers; and
 - (ii) by virtue of the principle of subsidiarity, the applicant may have used a wrong remedy in approaching the court.

The Application of the Law

[6] The declaration of forfeiture was made in terms of s 31 of the Criminal Procedure Act 51 of 1977 (the CPA). The section provides:

'Disposal of article where no criminal proceedings are instituted or where it is not required for criminal proceedings:

(1) (a) If no criminal proceedings are instituted in connection with any article referred to in section 30 (c) or if it appears that such article is not required at the trial for purposes of evidence or for purposes of an order of court, 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.

(b) If no person may lawfully possess such article or if the police official charged with the investigation reasonably does not know of any person who may lawfully possess such article, the article shall be forfeited to the State.

(2) The person who may lawfully possess the article in question shall be notified by registered post at his last-known address that he may take possession of the article and if such person fails to take delivery of the article within thirty days from the date of such notification, the article shall be forfeited to the State.'

[7] It clear that s 31 provides that the person from whom the article was seized is entitled to a decision as to whether the article will be returned to him or her if it is not required for use in a criminal trial. SAPS is required to determine and make a decision as to whether the person from whom the article was seized may lawfully possess it, or if not, whether any person may do so.²

[8] The operation of s 31 is not mechanical as it requires a positive declaration to be made by a functionary within SAPS.³ The conduct of the second respondent is of an administrative nature. The SAPS's decision to declare the trailers forfeited to the State

² *Armbruster and Another v Minister of Finance* [2007] ZACC 17; 2007 (6) SA 550 (CC) paras 45-46.

³ *Minister of Police v Khoeli* [2021] ZASCA 146 para 10-11.

and its refusal to issue the applicant with an SAP VIN number constitutes an administrative action as envisaged and defined in the Promotion of Administrative Justice Act 3 of 2000 (PAJA) in that:

- (i) the decision was taken by SAPS, such being an organ of State; and
- (ii) in taking this decision, SAPS was exercising public power in terms of the CPA.⁴

[9] Section 239 of the Constitution of the Republic defines 'organ of state' to mean:

'(a) any department of state or administration in the national, provincial or local sphere of government; or

(b) any other functionary or institution—

(i) exercising a power or performing a function in terms of the Constitution or a provincial constitution; or

(ii) exercising a public power or performing a public function in terms of any legislation, but does not include a court or a judicial officer;'

[10] The applicant, in its attempt to seek recourse under the common law remedy of a declaratory order, is, in these circumstances, precluded from doing so by the application of the principle of subsidiarity. Where PAJA applies, an applicant for review is bound to rely on the grounds listed in s 6 of PAJA and to seek the appropriate remedy under s 8. Allowing litigants to side-step PAJA where it applies would seriously undermine the Act and its objectives.⁵ The Constitutional Court in *Minister of Health v New Clicks*⁶ reaffirmed the subsidiarity principle and said:

'PAJA is the national legislation that was passed to give effect to the rights contained in section 33. It was clearly intended to be, and in substance is, a codification of these rights. It was required to cover the field and purports to do so. A litigant cannot avoid the provisions of PAJA by going behind it, and seeking to rely on section 33(1) of the Constitution or the common law. That would defeat the purpose of the Constitution in requiring the rights contained in section 33 to be given effect by means of national legislation.'⁷

⁴ See in this regard *Minister of Home Affairs and Another v Public Protector of the Republic of South Africa* [2018] ZASCA 15; 2018 (3) SA 380 SCA paras 30-36.

⁵ *National Energy Regulator of South Africa and Another v PG Group (Pty) Ltd and Others* [2019] ZACC 28; 2020 (1) SA 450 CC para 112.

⁶ *Minister of Health and Another v New Clicks South Africa (Pty) Ltd and Others* [2005] ZACC 14; 2006 (2) SA 311 (CC).

⁷ *Ibid* paras 95-96.

[11] The court *a quo* found that at the time when the trailers were seized by the respondents, the appellants had possessed them without lawful cause. The fact that the appellant purchased trailers from some other entity does not constitute lawful cause within the contemplation of s 68(6) of the Traffic Act. Regulation 56 provides for the application of SAP VIN numbers which regularizes possession of vehicle VIN numbers – of which those in question were tampered with. Ownership alone does not constitute a lawful cause for purposes of s 68(6)(b) of the Traffic Act.⁸

[12] As far as the appeal is concerned, the appellant ought to have applied for a review of the second respondent's decision under PAJA, had the appellant done so the outcome may have been different. As such, the appeal has to fail.

[13] In the result, the following order is made:

The appeal is dismissed with costs.

I agree and it so ordered

I agree

The Honourable Justice
2024 -11- 06
N.S. Daniso

Nemavhidi AJ

Greyling-Coetzer AJ

Appearances

For the Appellant:

Adv W.A Van Aswegen

Instructed by:

Phatsoane Henney INC
Bloemfontein

⁸ *Marvanic Development (Pty) Ltd and Another v Minister of Safety and Security and Another* [2006] ZASCA 18; 2007 (3) SA 159 SCA. See also *Basie Motors BK t/a Boulevard Motors v Minister of Safety and Security* [2006] ZASCA 35; [2006] SCA 35 (RSA).

For the Third to Fifth Respondents:

Adv M.S Mazibuko

Instructed by:

State Attorney
Bloemfontein