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**REPUBLIC OF SOUTH AFRICA
IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

Case Number: 2025-033306

(1) REPORTABLE: NO

(2) OF INTEREST TO OTHER JUDGES: NO

(3) REVISED: NO

DATE 11 Apr. 25

SIGNATURE

In the matter between:

ABRAM FEMANE MABOKO

Applicant

and

THE MINISTER OF POLICE

First Respondent

THE NATIONAL COMMISSIONER SOUTH

AFRICAN POLICE SERVICES

Second Respondent

THE STATION COMMANDER SAPS

MIDRAND POLICE STATION

Third Respondent

Delivered: This judgment was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to the parties/their legal representatives by e-mail and by uploading it to the electronic file of this matter on Caselines. The date and for hand-down is deemed to be 11 April 2025.

Summary: Urgent application seeking the return of a motor vehicle seized in terms of the provisions of the Criminal Procedure Act, 51 of 1977. The common law remedy of *spoliatus ante omnia restituendus est* (*mandament van spolie*) is not available in an instance where the movable property was dispossessed for a lawful means. In such an instance, the authorised functionary does not resort to self-help but simply exercises available statutory power. The South African Police Services (SAPS) is not staking ownership or possessory rights over the seized property. Usually, *mandament van spolie* serves as a preliminary order for restoration until the entitlement to possession of the property is determined. Held: (1) The application is heard as one of urgency in terms of Rule 6(12) of the Uniform Rules of Court. Held: (2) The application is dismissed. Held: (3) The applicant is to pay the costs of the application on a party and party scale, taxable or to be settled on scale A.

JUDGMENT

MOSHOANA, J

Introduction

- [1] In terms of section 205(3) of the Constitution, the objects of the police service are to prevent, combat and investigate crime, to maintain public order, to protect and secure the inhabitants of the Republic of South Africa and their property, and to uphold and enforce the law. Section 20(a) of the Criminal Procedure Act (CPA)¹, authorises the State to seize anything which is concerned in or is on reasonable grounds believed to be concerned in the commission or suspected commission of an offence, whether within the Republic or elsewhere. Further, section 20(b) authorises seizure of anything which may afford evidence of the commission or suspected commission of an offence, whether within the Republic or elsewhere. Section 31(1)(a) of the CPA expressly provides that if no criminal proceedings are instituted in connection

¹ Act 51 of 1977 as amended.

with any article retained in the police custody, or if it appears that such article is not required at the trial for the 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 that person may lawfully possess such article, or, if such person may not lawfully possess such article, to the person who may lawfully possess it.

- [2] The above statutory provisions, sets the necessary tone for the present urgent application before Court. It is common cause that members of the South African Police Services have, on 24 January 2025, seized a motor vehicle owned by the applicant before Court. The present application is concerned with the return of the said seized motor vehicle. The applicant contends that since he is the owner of the seized motor vehicle he is entitled to its restoration to his undisturbed lawful possession. The present application is opposed by all the cited respondents.

Pertinent factual matrix

- [3] To a large degree, facts pertinent to the present application are common cause and are not seriously disputed. The salient facts are that Mr Abram Femane Maboko (Mr Maboko), is the lawful owner of a motor vehicle to wit, Toyota Corolla Prestige bearing registration letters and numbers, J[...] (Toyota). It is common cause that on 19 November 2024, a crime of robbery was committed at Midrand. It is alleged that the Toyota was involved or used during the commission of the robbery offence.
- [4] The members of the SAPS are currently busy with the investigations of the committed robbery. In the course of the investigations, the SAPS circulated the Toyota to all the police stations for the purpose of seizing it, since it was allegedly involved in the investigated crime of robbery. As part of the investigations, on 10 December 2024, the police made contact with Mr Maboko and informed him that the Toyota was involved in the commission of a robbery crime. In retort, he informed the police that the Toyota was used as an ehailing taxi. He, on his pleaded version, furnished the police with the name of the driver of the Toyota for the purposes of the ehailing taxi services.

- [5] On 8 January 2025, the police visited the home of Mr Maboko and informed him that the driver is required for investigations purposes. He, on his pleaded version, provided the police with the full details of the driver. On the version of the deponent on behalf of the respondents, the motive of wanting to see Mr Maboko was to investigate and confirm the identity and or the whereabouts of the Toyota regarding the robbery that took place. According to the deponent, the investigations were conducted in order to ensure that the involved suspects are apprehended and that the Toyota is impounded, as it was linked to the alleged crime. It is disputed by the deponent that Mr Maboko provided the police with the identity number and the residential address of the driver. Those details were provided to the police by Clientelle insurance on 27 January 2025, after Mr Maboko failed to honour the arrangement to bring the driver in order to meet with the police on Sunday 12 January 2025. Since all attempts to secure the seizure of the Toyota failed, on 13 January 2025, the Toyota was circulated.
- [6] It is common cause that Mr Maboko was informed that the Toyota will be circulated and significantly, for what purpose. As a result of the circulation, on 24 January 2025, the Toyota was spotted at the Brooklyn Mall, there and then driven or under the control of the son of Mr Maboko. Before the Toyota could be seized, Mr Maboko was, on the prompt of his son, who reported that the police were wanting to seize the Toyota, also at the Brooklyn Mall. On his own version, he was told that the Toyota was heading to the Johannesburg pound as opposed to the Pretoria one. There is no evidence that Mr Maboko offered any resistance to this impounding. I interpose to state that such conduct is not perturbing since Mr Maboko knew all along, since circulation, that the Toyota is alleged to have been involved in the reported robbery and it may be seized.
- [7] The deponent of the respondents confirmed that the matter was as at the hearing of the present application still under investigations. The police docket has been taken to the Control Prosecutor of the Alexander Magistrate Court on 18 February 2025 for a prosecution decision. He also testified that the Toyota is kept under police custody as an instrument allegedly used in the offence. This version is not seriously disputed by Mr Maboko. Instead, he raised tangential

issues that the Control Prosecutor did not impound the Toyota and his alleged non joinder is nonsensical.

- [8] After the vehicle was seized, Mr Maboko enlisted the services of Clientelle legal services. For a number of days in February 2025, Mr Maboko interacted with the employees of Clientelle. Ultimately, Clientelle refused to afford him legal cover since he fell into arrears with his premiums. Around February or March 2025, Mr Maboko launched the present application, which was to be heard on 25 March 2025. On 25 March 2025, for reasons that are not apparent anywhere, the application was removed from the roll with an order for the respondents to pay the wasted costs. On 26 March 2025, Mr Maboko and his attorneys of record caused the matter to be enrolled on the urgent motion roll of 8 April 2025.

Evaluation

- [9] Mr Maboko contends that his is a spoliation claim. He contends that on 24 January 2025, he was in peaceful and undisturbed possession of the Toyota. He further contends that since the police failed to exhibit a warrant, they did not have a lawful cause to seize the Toyota. He was, thus, unlawfully deprived of possession of the Toyota. Sadly, for Mr Maboko, this is not a spoliation claim. The police did not impound the Toyota because they stake ownership over it. Typically, in a spoliation proper, the spoliator usually stakes ownership rights over the property so dispossessed. In *Rikhotso v Northcliff Ceramics (Pty) Ltd and others (Rikhotso)*², the learned Nugent J expressed the following felicitous statement of the law regarding spoliation. He said:

“The remedy afforded by the *mandament van spolie* expressed in the maxim *spoliatus ante omnia restituendus est*, is generally granted where one party to a dispute concerning possession of property seizes the property pursuant to what he believes to be his own entitlement thereto. In such a case a court will summarily order return of the property irrespective of either party’s entitlement to possession and will

² 1997 (1) SA 526 (W).

not entertain argument relating to their respective rights until this has been done. The principle underlying the remedy is that entitlement to possession must be resolved by the courts, and not by a resort to self-help.

By its nature then a spoliation order will usually operate as no more than a preliminary order for restoration of the status quo until the entitlement to possession of the property is determined. The assumption underlying the order is that the property exists and may be awarded in due course to the party who establishes an entitlement thereto.”

[10] I might add, the remedy is suitable in situations where two parties are staking a legal right to possess a thing for use or enjoyment purposes. In the present matter, the respondents are not staking any right over the possession, usage and enjoyment of the Toyota. The respondents are not presenting a possessory right which requires resolution by a Court of law. The respondents are not involved in self-help by taking the law into their own hands. As outlined at the dawn of this judgment, the respondents are statutorily empowered to seize the Toyota. Mr Maboko does not dispute the allegation that the Toyota is linked to the crime of robbery. He clearly cannot dispute that, since the vehicle is with his consent and permission used by someone else as an ehailing taxi. I pause to remark in passing that the conduct of Mr Maboko as alleged by the deponent with regard to the police investigations and his cooperation therewith leaves much to be desired. For an example, he informed the police that the Toyota was with the ehailing driver, only to be encountered at the Brooklyn Mall in the control of his son, who on his pleaded version, took control of the Toyota with his consent. Mr Maboko chose motion proceedings, as such the versions of the respondents cannot be regarded as being far-fetched and ought to be accepted.

[11] As far back as December 2024, Maboko knew that an allegation is made that the Toyota was involved as an instrument of crime. He knew that the Toyota was circulated for the purposes of being impounded. On the day of the seizure, he was told in no uncertain terms that the Toyota is taken to Johannesburg

impound. Section 30(c) of the CPA explicitly states that a seized article shall be given a distinctive identification mark (generally known as SAP69) and return it in police custody. Mr Maboko does not dispute the averment that the Toyota is in the police custody for reasons that it is alleged to be an instrument of crime. Therefore, there is a lawful basis for the respondents to have taken possession and or seized the Toyota. This Court, does not hesitate to emphatically state that such a possession taking was not predicated on any ownership or possessory rights tussle. It was, for the purposes of carrying out the constitutional obligations (investigations of crime) as outlined above.

[12] To the extent that Mr Maboko alleges that since no warrant was exhibited for the seizure, the veritable question becomes that of the legality or otherwise of the seizure exercise. In effect, Mr Maboko by so alleging, contends that the respondents exercised a statutory power unlawfully. In terms of the principle of legality, a functionary may not exercise the powers that it does not have. Should that be the case, the aggrieved must engage the judicial review powers of a Court of law. Instituting a spoliation claim, in an instance where the exercise of statutory power was involved, is an inappropriate cause of action. The statutory requirements for a seizure warrant are expressed in sections 21 and 22 of the CPA. Section 22 particularly expresses the circumstances in which article may be seized without a search warrant.

[13] Even if this Court were to assume that on 24 January 2025, the police required a warrant before the Toyota could be seized, such would simply imply that the police exercised their powers in section 20 in an unlawful manner. The available remedy for Mr Maboko is a judicial review. On the conspectus of the evidence before this Court, it cannot be gainsaid that (a) on 19 November 2024, a crime of robbery was reported; (b) it is believed that the Toyota was involved or is suspected to be involved in the commission of the reported robbery; and (c) the Toyota may afford evidence of the commission of the reported robbery. In view of the above evidence, the law as expressed in section 20 of the CPA, authorises the State to seize the Toyota. Just to buttress the point, section 25 of the Constitution does permit deprivation of ownership

rights through application of the law of general application. The CPA is such law.

- [14] Regard being had to the provisions of sections 31 and 32, the Toyota may be returned to Mr Maboko if no criminal proceedings are instituted or if instituted, the Toyota is not required at the trial for the purposes of evidence or order of Court. Mr Maboko alleges that whilst in the police custody, the Toyota is exposed to the risk of damage. This averment is unnecessary in a claim for spoliation. Counsel for the applicant, rightly, conceded to this proposition. However, should the Toyota be damaged, Mr Maboko has a remedy in law. Further, Mr Maboko avers that he used the Toyota for business purposes and he loses income of approximately R10 000.00 a month in the absence of it. Again, this averment is of no moment in a spoliation claim. Similarly, counsel for the applicant dexterously conceded to this proposition. However, Mr Maboko is equally not bereft of a remedy in law. In both these instances, Mr Maboko can institute an action for patrimonial losses.

Conclusions

- [15] In summary, the application deserved to be heard as one of urgency. There is no case for spoliation claim made by Mr Maboko. If ever he contends, as he did, that a seizure without a warrant is an unlawful exercise of powers bestowed in section 20 of the CPA, his remedy lies in a judicial review as opposed to a spoliation claim. In a spoliation claim proper, an exercise of statutory powers like the one in section 20, is not involved, since there is no possessory rights at stake. The actions of the respondents are *prima facie* lawful with regard to the seizure of the Toyota. The respondents are not staking any ownership or possessory rights. The return of the Toyota, in the present circumstances, is governed by the provisions of sections 30, 31 and 32 of the CPA. On application of the doctrine of separation of powers, this Court has no jurisdictional powers to usurp the powers approbated by the law to another functionary. Any claims of patrimonial nature have no relevance to a spoliation claim. Accordingly, Mr Maboko has not been spoliated within the contemplation of the common law maxim. For all the above stated reasons, the present application is bound to fail with an appropriate order as to costs. There is no

reason why the usual practice of costs following the results should not apply in this instance.

[16] On account of all the above reasons, I make the following order:

Order

- 1. The application is heard as one of urgency in terms of Rule 6(12) of the Uniform Rules of Court.**
- 2. The application is dismissed.**
- 3. The applicant must pay the costs of this application on a party and party scale to be taxed or settled at scale A.**

**GN MOSHOANA
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA**

APPEARANCES:

For the Applicant:	Ms B Mathate
Instructed by:	K. P. Seabi and Associates, Pretoria
For the Respondents:	Mr D.A Maswanganyi
Instructed by:	State Attorneys, Pretoria
Date of the hearing:	08 April 2025
Date of judgment:	11 April 2025