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**IN THE HIGH COURT OF SOUTH AFRICA
EASTERN CAPE DIVISION, MAKHANDA**

Case no. 2685/2025

In the matter between:

ERIC THEMBALETHU JOKA

Applicant

and

**STATION COMMANDER,
VEHICLE IDENTIFICATION UNIT, KOMANI**

First respondent

MINISTER OF POLICE

Second respondent

JUDGMENT

LAING J

[1] This is an urgent application for a rule nisi, calling upon the respondents to show cause why they should not return a 2018 Mercedes-Benz minibus. The applicant seeks the immediate implementation of an interim interdict to that effect, pending the return date.

[2] In his founding affidavit, the applicant alleged that he was the owner and driver of the motor vehicle, which he used to transport school children between Lady Frere and Komani. On 23 May 2025, police officers confiscated the vehicle, impounding it at the Komani Vehicle Crime Investigation Unit (VCIU). The officers informed the applicant that the vehicle had been stolen. The applicant said that he did not object; he had legally purchased the vehicle and knew that the police would confirm this after completing their investigation.

[3] Subsequently, the applicant made several fruitless enquiries about the status of the matter during the next 12 days. Eventually, on 5 June 2025, an officer told him that the police had concluded their investigation; the vehicle had not been stolen, and no case had been opened against him. The officer could not, however, release the vehicle to the applicant because he had no authority to do so. At this, the applicant pleaded with the officer, pointing out that he depended on the vehicle for his income. This was to no avail.

[4] Consequently, the applicant instructed his attorneys to demand the release of the vehicle by 9 June 2025. The respondents failed to do so, prompting the applicant to institute urgent proceedings on 18 June 2025.

[5] In the respondents' answering affidavit, W/O Fabio Pitt alleged that he had received a tip-off about a stolen vehicle that had been seen in Lady Frere. The description matched the applicant's vehicle, which W/O Pitt found while it was undergoing repairs. The applicant told the officer that he was the owner. W/O Pitt checked the registration number (C[...]) on the police database and discovered that it belonged to another vehicle. The applicant explained that he had changed the registration plates because he had not paid the purchase price in full and did not wish the seller to find and repossess the vehicle. He had placed the correct registration plates inside a storage compartment underneath a passenger seat. At this, W/O Pitt checked the police database again and found that the second registration number (C[...])² was associated with a police investigation.

[6] The officer said to the applicant that he was under a duty to confiscate the vehicle in terms of section 20, read with section 22, of the Criminal Procedure Act 51

of 1977 ('CPA'). The applicant cooperated and drove the vehicle to Komani, accompanied by the police. At the VCIU, the police confirmed that a vehicle with the same registration number (C[...]²), as well as the same vehicle identification number (VIN), had been reported as stolen. W/O Pitt attached a copy of a police case docket to his affidavit.

[7] Importantly, the investigating officer in that regard, Sgt Michael Pietersen, confirmed that the vehicle was registered as the property of Mona Tree Finance and that a case of theft had been opened against the applicant. Sgt Pietersen had, moreover, applied successfully for a warrant of arrest and had listed the vehicle on the police database as having been stolen.

[8] In his replying affidavit, the applicant averred that he had concluded a so-called lease-to-sale agreement with Mona Tree Finance. This was never terminated. The applicant was adamant that he was entitled to possession of the vehicle, as demonstrated by a certificate of registration attached to his papers. He had been in lawful possession of the vehicle at the time of its confiscation.

[9] Dealing, firstly, with the question of urgency, it cannot be said that this was self-created. It was, overall, undisputed that the applicant made several unsuccessful attempts to secure the release of the vehicle. He cannot be criticized for having done so before initiating these proceedings. It was common cause (or at least undisputed) that the applicant depended on the vehicle as a major source of income, and that families relied on him for the transportation of school children. The court is satisfied that there was sufficient urgency for the applicant to have departed from the usual timeframes and related provisions contained in the rules.

[10] Turning, secondly, to the merits of the matter, the applicant contended that he was entitled to a spoliation order, alternatively an interim interdict. In *Yeko v Qana*,¹ the erstwhile Appellate Division confirmed that there are two chief requirements for a spoliation order: (a) the applicant must have been in possession of the property; and

¹ 1973 (4) SA 735 (A).

(b) the respondent must have deprived him or her thereof forcibly or wrongfully and against his or her consent.²

[11] In *Ngqukumba v Minister of Safety and Security and Others*,³ the Constitutional Court, per Madlanga J, emphasised that it did not matter that a government entity purported to act ‘under colour of a law’; the real issue was whether it was properly acting within the law.⁴ The possession of a tampered-with vehicle would be unlawful only if it were established that there was no lawful cause for such possession. Such a conclusion could only be reached, however, after an enquiry into the facts surrounding possession. The merits of possession, said the court, were irrelevant to spoliation proceedings; the despoiler must restore possession before all else. The restoration of possession could even be made to a person who was eventually shown to be a thief.⁵

[12] In this division, the court in *Kwatsha v Minister of Police*⁶ dealt with a situation where the police had confiscated the applicant’s goats on the suspicion that they had been stolen. The court held that the applicant’s failure to produce a stock card could not, on its own, establish a reasonable ground for the belief that the stock was stolen. When the case was heard, no-one had been arrested; there was also no evidence to the effect that the case was being investigated. The court was satisfied that the applicant was entitled to the restoration of possession.⁷

[13] Returning to the present matter, it was common cause that the applicant had been in possession of the vehicle. He contended that the confiscation was unlawful because the police officers had failed to inform him of the authority upon which they acted, no criminal investigations had been in progress against him, and his rights had been violated in general. The difficulty that faces the applicant, however, is his failure to have convincingly refuted W/O Pitt’s allegation, based on a tip-off and the records kept on the police database, that the first registration number belonged to a different vehicle altogether and that the second registration number linked the

² At 739.

³ 2014 (5) SA 112 (CC).

⁴ At paragraph [13].

⁵ At paragraphs [15] and [21].

⁶ 2023 JDR 4096 (ECM).

⁷ At paragraphs [30] and [33].

applicant's vehicle to a police investigation. He also failed to deal with Sgt Pietersen's allegation that a criminal case had been opened against him and that he was the subject of a warrant of arrest. To all of this, the applicant merely put up a bald denial and repeated the allegation that he had been in lawful possession.

[14] The respondents relied on section 20, read with section 22, of the CPA to justify the officers' actions. To that effect, the provisions in question stipulate that the state may seize anything which is, inter alia, concerned in or on reasonable grounds believed to be concerned in the commission or suspected commission of an offence. In the present matter, the information available to W/O Pitt at the time clearly provided the basis for reasonable grounds to believe that the vehicle was concerned in the suspected commission of theft. The facts are not the same as those in either *Nggukumba* or *Kwatsha*. It cannot be said that the applicant in the present matter successfully demonstrated that he was wrongfully deprived of possession. He is not, in the circumstances, entitled to a spoliation order.

[15] The court must also consider the alternative basis relied upon by the applicant for the relief claimed. To obtain an interim interdict, the applicant was required to have demonstrated that, inter alia, he had a prima facie right to possession of the vehicle. To that effect, he asserted that he was the owner. This was moderated to some extent in reply, where he seemed not to assert ownership so much as to reiterate that he was entitled to continued lawful possession.

[16] The weakness in the applicant's case is that there is simply no evidence to support his assertions. The certificate of registration, dated 1 April 2021, reflected Mona Tree Finance as the title holder and the applicant as the owner. However, the certificate contained in the police docket, dated 20 August 2024, reflected Mona Tree Finance as both the title holder and the owner. The applicant failed to deal with the discrepancy in reply. Crucially, the applicant could not rebut, persuasively, W/O Pitt's allegation that he had told the officer that he had concealed the correct registration plates to avoid repossession by the seller when the purchase price had not been paid in full. He failed to detail the terms of the lease-to-sale agreement and why this had transferred ownership in the vehicle or why, at the very least, he was entitled to continued possession in terms thereof. No proof of payment was attached. The

applicant made no attempt, moreover, to refute Sgt Pietersen's allegation that Mona Tree Finance had pressed a charge of theft against him regarding the vehicle and that a warrant of arrest had been issued. There is no indication whatsoever that his possession of the vehicle was with the consent of the registered title holder and owner.

[17] There is, in the end, no evidence to support the applicant's claims. He has failed to demonstrate that he has a prima facie right to possession of the vehicle. Consequently, there is no need to investigate whether the applicant has satisfied the remaining requirements for interim relief.

[18] In the circumstances, the applicant cannot succeed. The respondents are entitled to their costs, including those reserved at previous hearings.

[19] The following order is made:

(a) the application is dismissed; and

(b) the applicant is ordered to pay the respondents' costs (scale B), including those reserved on 1 and 8 July 2025, on a party-and-party scale.

JGA LAING
JUDGE OF THE HIGH COURT

APPEARANCES

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Date heard:

10 July 2025.

Date delivered:

15 July 2025.