



THE SUPREME COURT OF APPEAL
REPUBLIC OF SOUTH AFRICA

MEDIA SUMMARY – JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

From: The Registrar, Supreme Court of Appeal
Date: 31 May 2011
Status: Immediate

Please note that the media summary is intended for the benefit of the media and does not form part of the judgment of the Supreme Court of Appeal.

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PAKULE AND TAFENI V MINISTER OF SAFETY AND SECURITY

The Supreme Court of Appeal (SCA) today dismissed appeals by Mr Masixole Pakule and Mr Archie Tafeni, both taxi operators, against orders of the Eastern Cape High Court, Mthatha dismissing their applications to have the search, seizure and continued detention of their vehicles declared unlawful, and for their return.

In both matters the vehicles were lawfully seized in terms of sections 20 and 22 of the Criminal Procedure Act 51 of 1977, which provide for the seizure of certain articles by the State and for circumstances in which an article may be seized without a search warrant respectively. The question which the SCA was called upon to resolve was the inconsistency in the approach of the decisions of the high court to the applications for return of an article alleged to have been unlawfully seized. On the one hand, it had been held that where the seizure of an article was not based on reasonable grounds in the first instance, the article—usually a vehicle—must be returned to the owner or possessor despite evidence discovered

after the seizure that there were grounds reasonably to believe that the article had been involved in the commission of an offence, and despite the fact that no one may possess a vehicle which has been tampered with in various ways. On the other hand, it had been held that where the initial belief, though at first not based on reasonable grounds, was subsequently well-grounded, the seizure was lawful and the police may retain the vehicle.

The SCA held that, on the assumption that there were no grounds for a reasonable belief that the vehicles in the cases before it were concerned in the commission of an offence (that is, that there was no compliance with section 20), it saw no reason why, when the vehicle is in the possession of the police, and they ascertain that there are indeed such grounds for a reasonable belief that the vehicle is concerned in the commission of an offence-such as the tampering with engine and chassis numbers-they should not seize the vehicle lawfully. If that were not so, and they returned the vehicles to the alleged owners, the SCA held, they would be acting in contravention of section 68(6)(b) of the National Road Traffic Act 93 of 1996, which does not permit the possession and consequently return of motor vehicles whose engine or chassis numbers have been tampered with in any way. It further held that an order by a court that a vehicle be returned would defeat the provisions of the National Road Traffic Act. It also held that a return to the person from whom the vehicle was seized would be an exercise in futility, bearing in mind that at the moment of return the vehicle might lawfully be seized again.