



THE SUPREME COURT OF APPEAL
OF SOUTH AFRICA

MEDIA SUMMARY – JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

From: The Registrar, Supreme Court of Appeal
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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.

**ANELE NGQUKUMBA v MINISTER OF SAFETY & SECURITY &
OTHERS**

The Supreme Court of Appeal (SCA) today dismissed an appeal against the Eastern Cape High Court, Mthatha's judgment refusing to grant an order for restoration of a motor vehicle, despite the fact that its seizure was found to be unlawful, on the grounds that possession of a motor vehicle with engine and chassis numbers that have been tampered with without lawful cause as contemplated in s 68(6)(b) of the National Road Traffic Act 93 of 1996 (the Act) would be a criminal offence in terms of s 89(3) of the Act.

The case arose in the district of Mthatha, Eastern Cape Province, when the appellant's motor vehicle was searched and seized by members of the South African Police Service on suspicion that it was stolen property. Following their search, the police discovered that the vehicle's engine and chassis numbers had been tampered with, rendering possession of the vehicle unlawful in terms of s 68(6)(b) of the Act. The high court (Pakade ADJP) declared the seizure unlawful and set it aside. Nevertheless, it did not order restoration to the appellant. Instead it authorised the

police to retain the vehicle in their possession subject to the appellant complying with the provisions of the Act.

The appellant appealed against this order on the grounds that in terms of the *mandament van spolie*, a possessory remedy whose limited and focal objective is to restore the *status quo ante*, that is to restore possession to the person despoiled, it matters not that the spoliator might enjoy a stronger right and that the person dispossessed might have no right to possession of the property despoiled. Whilst in the present case the appellant was able to satisfy the requirements of the *mandament*, the SCA nevertheless declined to restore possession of the vehicle to him. In so doing the court determined that a recent analogous judgment of this court, which came to the opposite conclusion, was wrongly decided. Instead it followed other judgments of the SCA which held that restoration of possession in such circumstances would be sanctioning an illegality by authorising the police and the appellant himself to commit an act rendered unlawful by s 68(6)(b) read with s 89(3) of the Act which no court in this country must do. Hence the appeal against the order of the high court was dismissed with costs.