



THE SUPREME COURT OF APPEAL
REPUBLIC OF SOUTH AFRICA

JUDGMENT

CASE NO: 286/06

Not Reportable

In the matter between

MINISTER OF SAFETY AND SECURITY

Appellant

and

KHAYALETHU NDINISO

Respondent

Coram: **STREICHER, NUGENT, LEWIS, COMBRINCK JJA, MUSI AJA**

Heard: 15 MARCH 2007

Delivered: 27 MARCH 2007

Summary: Appeal against order for return of vehicle seized in terms of s 20 of Criminal Procedure Act 51 of 1977: report from an unidentified source that model of vehicle different from that registered is not sufficient to ground a reasonable belief that a police officer would obtain a search warrant from a magistrate or judge: appeal dismissed.

Neutral citation: This case may be cited as Minister of Safety and Security v Ndiniso [2007] SCA 29 RSA

[1] The respondent, Mr Khayaletu Ndiniso, purchased a used Toyota Hilux vehicle from a motor dealer for R34 000. He registered the vehicle first in the name of his father, and on the latter's death in 2002, in the name of his mother. In June 2004 Ndiniso lent the vehicle to Mr Selby Halam who drove it to Tsolo in the Transkei. There the vehicle was seized by the police on the basis that they suspected that it was stolen.

[2] In January 2005 Ndiniso brought an application against the appellant (the State) for return of the vehicle. Charges against him (presumably for being in possession of a stolen article) were withdrawn in March 2005. Petse J (in the High Court, Transkei) granted the order sought, finding that the vehicle had not been lawfully seized in terms of s 20 of the Criminal Procedure Act 51 of 1977. The State appeals against that decision to this court with its leave.

[3] The basis for the seizure is set out in the answering affidavit of the police officer who seized the vehicle in Tsolo, Mr S S Somana. He said that he saw the vehicle being driven by Halam, whom Somana thought was too young to 'own a vehicle' and so he suspected that there was something amiss. He radioed to the local police station and asked that the vehicle registration be checked. He received a 'report' from an unidentified person that the model of the vehicle that he enquired about was different from the model appearing on the record of registration. He suspected, then, that the vehicle had been stolen and might afford evidence of the commission of an offence. Accordingly he 'seized' the vehicle, believing that if he were to apply for a warrant for search and seizure it would be granted to him, but that any delay caused by obtaining a warrant would defeat the object of the search. The vehicle was kept at the police station while the 'vehicle unit' conducted investigations. It was not returned to Ndiniso, despite the withdrawal of charges, hence the application.

[4] Section 20(b) of the Act provides that the State may seize an article 'which may afford evidence of the commission or suspected commission of an offence, whether within the Republic or elsewhere'. Section 21 requires a search warrant for the seizure of articles: a magistrate or judge is empowered under the section to issue such a warrant where it appears from 'information on oath that there are reasonable grounds for believing that any such article is in the possession or under the control of or upon any person . . . within his area of jurisdiction. . . ' (s 21(1)(a)).

[5] Section 20 must, however, be read with s 22 which deals with seizure without a search warrant. Articles may be seized from a person without a warrant only if the person concerned consents to the seizure, or, under s 22(b)(i) and (ii), where the police officer believes, on 'reasonable grounds' that a search warrant will be issued to him in terms of s 21 and that the delay in obtaining a warrant would defeat the object of the search.

[6] The State argues that Somana believed that the vehicle driven by Halam was stolen and that it could afford evidence of the commission of an offence. That belief, it contended, was reasonably held because Somana had received a report from the police station that the vehicle model did not match that on the registration document.

[7] A police officer may seize an article, without a warrant, only where he believes on reasonable grounds that he would be able to satisfy a magistrate or judge that the vehicle may afford evidence of the commission or suspected commission of an offence. The only ground for such reasonable belief advanced by the State is that a report had been received by Somana about the disparity between the model of the vehicle itself and that reflected on the registration papers. The court below considered that this was insufficient

evidence to determine whether Somana's belief that he would obtain a search warrant was based on reasonable grounds.

[8] The real difficulty with the State's case is that no evidence is proffered by it as to the nature or the status of the 'report' made to Somana: there is no information provided by the State as to who made the report; what the capacity and status of the person was; where the information had been obtained or why it should be regarded as reliable. There is a mere assertion that a report indicated that there was a difference between the model of the vehicle seen by Somana and its description on the registration papers. Would that satisfy the magistrate or judge apprised of an application for a search and seizure warrant under s 21? I think not. No facts were advanced to justify a finding that Somana's belief was based on reasonable grounds.

[9] In the circumstances I consider that the vehicle was unlawfully seized: there was no compliance with the provisions of ss 20 and 22 of the Act. Ndiniso is thus entitled to the return of the vehicle.

[10] The appeal is dismissed with costs including those occasioned by the employment of two counsel.

C H Lewis
Judge of Appeal

Concur:
Streicher JA
Nugent JA
Combrinck JA
Musi AJA