

IN THE HIGH COURT OF SOUTH AFRICA

(TRANSKEI DIVISION)

CASE NO.: 1647/2007

In the matter between:

ELVIS MITSILE NONAYE

APPLICANT

and

MINISTER OF SAFETY & SECURITY

1ST

RESPONDENT

THE STATION COMMISSIONER,

MTHATHA CENTRAL POLICE STATION

2ND

RESPONDENT

THE MAGISTRATE, MQANDULI

3RD

RESPONDENT

JUDGMENT

MAKAULA AJ:

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[1] The applicant launched an application seeking an order in the following terms:

1. that the search, seizure and continued detention of the applicant's motor vehicle to wit, a White Toyota Hilux with registration letter and number DKT 410 EC (the motor vehicle) be declared unlawful;
2. that the respondents be directed to forthwith release the motor vehicle to the applicant;
3. that the respondents be interdicted and restrained from further unlawfully interfering with the applicant's possession of the motor vehicle; and
4. that the 1st respondent pay the costs of this application on an attorney and client scale and that the 2nd respondent pay such costs, jointly and severally with the 1st respondent, the one paying, the other to be absolved, only in the event of him opposing this application;
5. granting such further and/or alternative relief as this Honourable Court may deem meet.

[2] The respondents then opposed the application and filed an answering

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affidavit. It transpired from the answering affidavit that at the time of seizure, the police were relying on a search warrant which was obtained from the Magistrate, Mqanduli on the 6th of September 2007. This necessitated that the applicant should join the Magistrate, Mqanduli as a party since he was challenging the lawfulness of the search warrant. On 28 February 2008 the Magistrate was joined as a third respondent and was served with the papers and granted leave to file an answering affidavit.

[3] The applicant then filed an amended Notice of Motion with the following prayers:

“1. that the search warrant issued by the third respondent attached to the respondents’ answering affidavit being annexure “V1” be declared invalid and of no force and effect and be set aside as a nullity;

2. that the search, seizure and continued detention of the applicant’s motor vehicle to wit, a Toyota Hilux with registration letters and numbers DTK 410 EC (the motor vehicle) be declared unlawful;

3. that the respondents be directed to forthwith release the motor vehicle to the applicant;

4. that the respondents be interdicted and restrained from further unlawfully interfering with the applicant’s possession of the motor vehicle; and

5. that the 1st respondent pay the costs of this application on an

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attorney and client scale and that the 2nd respondent pay such costs, jointly and severally with the 1st respondent, the one paying, the other to be absolved, only in the event of him opposing this application;

6. granting such further and/or alternative relief as this Honourable Court may deem meet.”

[4] It is worth mentioning that the third respondent did not file a notice to oppose this application nor did he file any affidavit placing before court the information that was placed before him before the search warrant under attack was authorised.

[5] It is trite that Section 25(1) of the Constitution Act No.108 of 1996 prescribes that no one may be deprived of property except in terms of law of general application, and no law may permit arbitrary deprivation of property. The first and second respondents sought to justify their actions by relying on the search warrant obtained from the third respondent.

[6] The applicant sought to impugn the search warrant on two grounds viz.

- a. No reasonable basis was ever placed before the Magistrate upon which a valid search warrant could have been issued, and if an affidavit was filed, he should produce it.
- b. The search and seizure warrant issued is invalid for vagueness.

It was later argued on behalf of the applicant that a motor vehicle is not an item susceptible to be seized in terms of Section 20 of the Criminal Procedure Act 51 of 1977.

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[7] Though this matter was initially opposed, first and second respondents' counsel conceded that in the absence of opposition by the 3rd respondent and him not able to convince me that the said vehicle is an item covered by Section 20, he is unable to oppose the application and had no submission to make.

In the result I make the following order:

1. The search warrant issued by the third respondent is declared invalid and of no force and effect and is set aside as a nullity;
2. The seizure of a Toyota Hilux with registration letters and numbers DTK 410 EC is hereby declared unlawful;
3. The respondents are ordered to release the vehicle to the applicant forthwith;
4. The respondents are interdicted and restrained from further unlawfully interfering with applicant's possession of the vehicle;
5. The first and second respondents are ordered to pay the costs of this application jointly and severally one paying the other to be absolved.

ACTING JUDGE OF THE HIGH COURT

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ATTORNEY FOR THE APPLICANT : Mr Notyesi
of : Mvuzo Notyesi Inc.

ATTORNEY FOR THE 1ST AND 2ND

RESPONDENTS : Mr Gwebindlala

Instructed by : The State Attorney

Heard on 6 May 2008.

Delivered on 9 May 2008.