

**IN THE HIGH COURT OF SOUTH AFRICA**  
**(BOPHUTHATSWANAPROVINCIAL DIVISION)**

In the matter between:

**STANLEY RONALD PAUL**

APPLICANT

and

**THE STATE**

RESPONDENT

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– **JUDGMENT** –

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**MOGOENG JP.**

- [1] This is an application for leave to appeal against the skeletal *ex tempore* judgment that I gave when the appeal was heard by Pistor AJ and I. Pistor AJ was not available at the time this application was heard. Consequently, I heard the application all by myself.
- [2] Having reflected on the record, the *ex tempore* judgment as well as the submissions by counsel during the application, I am satisfied that the Applicant has very strong prospects of success on appeal for the reasons that are set out below.
- [3] It is common cause that the stolen vehicles relating to counts

1, 2 and 3 were found within the premises belonging to the Applicant. Since the Applicant was found guilty of contravention of s 36 of the General Law Amendment Act 62 of 1955 ("the Act"), the only important issue that had to be addressed during the trial and on appeal was whether or not the explanation proffered by the Applicant for being in possession of the stolen motor vehicles was satisfactory.

- [4] In dealing with this question it is imperative to bear in mind firstly that the onus to prove the guilt of the Applicant beyond a reasonable doubt was borne by the State. Secondly the explanation given by the Applicant for being in possession of the vehicles in question was that he is a "backyard" motor mechanic. It was in his capacity as such that he received the vehicles in question for repairs. Since he apparently did not operate his business according to normal business practices, he did not write down the particulars of the people who left the vehicles in question at his premises. It is important to bear in mind that this is not a question of a bottle store owner who was found in possession of stacks of Bibles and tablets which generally have nothing to do with that kind of a business operation. This is a mechanic who was found in possession of motor vehicles which are the very nerve-centre of his business. Ordinarily, a person in the position of the Applicant does not need to say much about the presence of vehicles on his premises in order for his explanation to be satisfactory. What else can someone reasonably expect to find in the premises of a motor vehicle mechanic? More importantly, none of the State witnesses ever questioned the reason given by the Applicant for the vehicles being found in his premises, namely, that they were brought there for repairs. There was no suggestion that

those vehicles did not need to be repaired. The basic reason why the Applicant's explanation was found not to be satisfactory was that he did not have the details or particulars of the people who left the vehicles at his premises. With the benefit of hindsight, the Applicant probably realised that he should have taken the particulars of his clients. But surely, failure to do so may not be the proper basis for rejecting his otherwise satisfactory account.

- [5] The vehicle relating to count 4 was found outside the premises of the Applicant. The only thing that linked him to that vehicle was that a cheque book of the owner of that admittedly stolen vehicle was found in one of the many vehicles that were inside the Applicant's premises. That cheque book may have been taken from the vehicle in count 4 by one of the Applicant's employees without the Applicant's knowledge. Be that as it may, even if the Applicant himself had stolen that cheque book from the stolen vehicle which was outside the premises, he did not thereby gain possession of that vehicle. Since he did not possess the vehicle, he did not have to give any explanation about "his possession" of the vehicle. The only thing that he possibly possessed was the cheque book which should not have resulted in his conviction in terms of s 36 of the Act.
- [6] The Applicant has given the obvious and probably the best possible explanation in respect of counts 1, 2 and 3 in the circumstances. No explanation should have been required of him in respect of count 4. There are very strong prospects of success on appeal in respect of all four counts.

[7] In the result, the Applicant is granted leave to appeal against the convictions and the sentences to the Full Bench of this Court.

**M.T.R. MOGOENG**  
**JUDGE PRESIDENT: BOPHUTHATSWANA**  
**DIVISION OF THE HIGH COURT**

**APPEARANCES**

DATE OF HEARING : 22 AUGUST 2003  
DATE OF JUDGMENT : 09 SEPTEMBER 2003

COUNSEL FOR APPLICANTS : ADV. M.G. HITGE  
COUNSEL FOR RESPONDENT : ADV. D. PLAATJIES

ATTORNEYS FOR APPLICANTS : NIENABER & WISSING  
ATTORNEYS  
ATTORNEYS FOR RESPONDENT : THE DIRECTOR OF PUBLIC  
PROSECUTIONS