



CONSTITUTIONAL COURT OF SOUTH AFRICA

Anele Ngqukumba v Minister of Safety and Security and Others

CCT 87/13

Date of hearing: 14 November 2013

Date of judgment: 15 May 2014

MEDIA SUMMARY

The following explanatory note is provided to assist the media in reporting this case and is not binding on the Constitutional Court or any member of the Court.

Today the Constitutional Court delivered a judgment upholding an appeal against a judgment of the Supreme Court of Appeal.

Mr Ngqukumba was in possession of a motor vehicle which he used as a taxi. In February 2010 members of the South African Police Service (SAPS) suspected that the vehicle had been stolen. The vehicle was searched and seized without either a warrant or Mr Ngqukumba's consent. Upon inspection, the engine and chassis numbers of the vehicle were found to have been tampered with, indicating that the vehicle was likely to have been stolen. SAPS refused to restore possession of the vehicle to Mr Ngqukumba on the grounds that the National Road Traffic Act (Act) prohibits and criminalises possession of a tampered vehicle.

Mr Ngqukumba sought an order in the Eastern Cape High Court, Mthatha (High Court) declaring the search and seizure unlawful, as well as an order for the return of his vehicle through the common-law remedy of *mandament van spolie* (spoliation remedy). This is a remedy for the restoration of possession of property to a person unlawfully deprived of possession. The High Court declared the search and seizure of the vehicle unlawful. However, it found that the return of the vehicle to Mr Ngqukumba would conflict with the Act, which proscribes and criminalises possession of a tampered vehicle. Instead the High Court ordered SAPS to retain the vehicle until the irregularities had been cleared and the vehicle re-registered. The Supreme Court of Appeal dismissed Mr Ngqukumba's subsequent appeal.

In this Court, relying on the *mandament van spolie*, Mr Ngqukumba sought the return of his motor vehicle. He argued that the spoliation remedy requires that possession must first be restored to a person who is unlawfully dispossessed, irrespective of whether or not possession is lawful at the time. SAPS disagreed, arguing that the *mandament van spolie* cannot override legislation enacted to deal with individuals possessing vehicles with irregular features. Furthermore, SAPS maintained that a court cannot authorise criminal conduct or compel the police to perform an illegal act.

In a unanimous judgment, written by Madlanga J, the Constitutional Court ordered the return of the vehicle to Mr Ngqukumba. The Court reasoned that the essence of the *mandament van spolie* is the restoration of unlawfully deprived possession to the possessor. Its main purpose is to preserve public order and to prevent self-help. This, the Court found, applies equally whether the despoiler is an individual or a government entity. The *mandament van spolie* is consonant with the rule of law, a founding value of the Constitution. The Court emphasised that the Act prohibits and criminalises possession of a tampered vehicle only if the possession is without lawful cause. Thus the return of a tampered vehicle to the person deprived of its possession would not necessarily be unlawful. Where, as in the instance of a tampered vehicle, it is not unlawful in all circumstances to possess an article, the lawfulness of possession should not be enquired into. To do otherwise would defeat the essence of relief in terms of the *mandament van spolie*. The Court noted that although SAPS plays an important role in combating and preventing crime, it too must act in terms of the law.