

**IN THE HIGH COURT OF SOUTH AFRICA
WITWATERSRAND LOCAL DIVISION**

CASE NO: 18718/2007

In the matter between:

MARVANIC DEVELOPMENTS (PTY) LTD

First Applicant

USEFUL TRADING 16 (PTY) LTD t/a VAAL BRICKS

Second Applicant

AND

THE MINISTER OF SAFETY AND SECURITY

First Respondent

SENIOR SUPERINTENDANT HLANGWANE,

HEAD OF LEGAL SERVICES, VAAL RAND

Second Respondent

SUPERINTENDANT SEGOLE, UNIT COMMANDER,

VEHICLE IDENTIFICATION AND

SAFEGUARDING UNIT

Third Respondent

DELETE WHICHEVER IS NOT APPLICABLE

(1) REPORTABLE: YES ~~NO~~.

(2) OF INTEREST TO OTHER JUDGES: YES ~~NO~~.

(3) REVISED.

25/2/08

DATE



SIGNATURE

JUDGMENT

PER SUTHERLAND AJ:

Introduction

1. This is a case about the consequences of tampering with the chassis numbers of vehicles and the duplication of vehicle registration numbers.

2. The relief sought is by way of a review under the provisions of the *Promotion of Administrative Justice Act No 3 of 2000 (PAJA)* of decisions taken by the several respondents under *Regulation 56 of the National Road Traffic Regulations*, promulgated pursuant to the provisions of the *National Road Traffic Act No 29 of 1989*.

3. The provisions of Regulation 56 are set out; the critical portions are underlined:

“ ***Number to be affixed to motor vehicle***

(1) Every motor vehicle shall have a chassis number of not more than 17 alpha-numerical characters which shall be cut, stamped, embossed on or permanently affixed to such motor vehicle and, if applicable, an engine number of not more than 20 alpha-numerical characters which shall be cut, stamped, embossed on or permanently affixed to the engine of such motor vehicle.

(2) The chassis number of every motor car, minibus, bus or goods vehicle registered for the first time on or after 1 January 1996, shall comply with the following standard specifications:

 - (a) SABS/ISO 3779: 'Road vehicles - Vehicle identification number (VIN) - Content and structure';
 - (b) SABS/ISO 4030: 'Road vehicles - Vehicle identification number (VIN) - Location and attachment';
 - (c) SABS/ISO 3780: 'Road vehicles - World Manufacturer identifier (WMI) code'.

(3) The title holder of a motor vehicle-

 - (a) which does not bear a chassis number;
 - (b) which, if it is a self-propelled vehicle, does not bear an engine number;
 - (c) which does not bear both the numbers referred to in paragraphs (a) and (b), if applicable;
 - (d) of which the number referred to in paragraph (a), appears on another motor vehicle;
 - (e) of which the number referred to in paragraph (a) or (b) is altered, defaced or obliterated,

shall tender such motor vehicle to the South African Police Service.

(4) The South African Police Service shall issue a new chassis or engine number or a new chassis and engine number, whatever the case may be, in respect of the motor vehicle referred to in subregulation (3).

(5) The title holder of a motor vehicle referred to in subregulation (3) shall-

(a) cause the number issued by the South African Police Service as referred to in subregulation (4) to be cut, stamped, embossed on or permanently affixed to such motor vehicle; and

(b) obtain clearance from the South African Police Service in respect of the number referred to in paragraph (a).

(6) The number referred to in subregulation (5) shall be the chassis or engine number, or chassis and engine number, whatever the case may be, of the motor vehicle concerned.

(7) The title holder referred to in subregulation (5) shall furnish the registering authority with the clearance referred to in that subregulation and with the registration certificate of the motor vehicle concerned.

(8) The registering authority concerned shall issue a new registration certificate to the title holder upon payment of the appropriate fees for a duplicate document, as determined by the MEC of the province concerned, which reflects the number referred to in subregulation (5). ”

4. The prayers sought are to review and set aside the refusal to issue new chassis numbers in terms of section 56(4), to order such issue, and further to order the issue of a police clearance certificate in respect of two particular vehicles.
5. A prayer to set aside the forfeiture in terms of *Section 31 of the Criminal Procedure Act 51 of 1977*, was abandoned conditionally on the basis of the contention advanced by the respondent that the forfeiture, which is common cause, did not inhibit an application under regulation 56. This contention was later indirectly retracted. The issues arising from this point, insofar necessary are addressed hereafter.
6. The review application was, it is common cause, having regard to the provisions of section 7(1) of PAJA, brought late and condonation in terms of section 9 of PAJA is required. The explanation given is to my satisfaction bona fide. The explanation is itself not satisfactory. It seems to have been the view of the applicants' advisers that once the application was late, provided that it could be shown that there was no equivocation about prosecuting the case, they could take as long as they liked. This is incorrect. The degree of lateness must be

mitigated by haste. Therefore, the case for condonation could only be saved by the strength of its prospects, if any, and the interests of justice. (*Ntame v MEC for Social Development, Eastern Cape 2006 (6) SA 248 (E)*). The merits are addressed hereafter.

The history of litigation

7. There is a history of litigation prior to this application. It is necessary to sketch the developments.
8. On 8 July 2004, the police visited the yard of the second applicant. There they found the two semi-trailers. Their interest was aroused in the two semi-trailers because both bore the identical registration number NPT 464 GP. Upon further inspection they observed that each also bore the same chassis number H90970. The vehicles were seized and removed. The two applicant companies, which are affiliated to one another, were identified as the purported owners of the two vehicles. Criminal charges were laid against the applicants and certain managers and directors. The charges were later withdrawn and it is plain that the police have no intention to press on with criminal proceedings.
9. However, the vehicles were not returned. The refusal to return the vehicles provoked the applicants to launch an urgent application for their recovery. The application was dismissed. The applicants appealed to the Supreme Court of Appeal. The appeal was dismissed on 20 March 2006. The appeal judgment is reported as *Marvanic Development (Pty) Ltd v Minister of Safety and Security and another 2007 (3) SA 159 (SCA)*.

10. The controversy up to that point was about the application of the provisions of section 68(6) of the National Road Traffic Act which provides:

“ No person shall-

- (a) with intent to deceive, falsify, replace, alter, deface, mutilate, add anything to or remove anything from or in any other way tamper with the engine or chassis number of a motor vehicle; or*
- (b) without lawful cause be in possession of a motor vehicle of which the engine or chassis number has been falsified, replaced, altered, defaced, mutilated, or to which anything has been added, or from which anything has been removed, or has been tampered with in any other way.*

11. Lewis JA, for the majority, held at paragraph [10] of the judgment that:

“ ...it is not the possession of the vehicle per se that is unlawful: it is possession of a vehicle with false engine or chassis numbers that is ‘without lawful cause’.

12. Having thus held that the applicants could not acquire possession of the vehicles in that condition, at paragraph [11] Lewis JA remarked:

“ This does not mean that the appellants cannot recover the vehicles at all: it was common cause that they could have applied for what is termed a SAPVIN number for each vehicle from the South African Police Services and that, when issued, they would be entitled to possess lawfully. Regulation 56 of the National Road Traffic Regulations provides the means for a vehicle owner (or otherwise entitled to possess the vehicle) to obtain from the police new engine or chassis numbers where these have been tampered with, and a police clearance certificate will be issued to the registering authorities. The Regulation itself shows precisely what section 68(6) (b) means: until the regulation has been complied with, the possession by any person other than the police without lawful cause. The appellants have apparently not applied to the police for new chassis numbers. The remedy is in their hands.”

13. Encouraged by this passage in the judgement, the applicant's attorney, on their behalf, made such an application to the respondents on 11 August 2006, for exactly that relief. The letter recorded the salient events leading up to the appeal judgement. It asserted that the first applicant was the owner and title holder of a Henred Fruehauf trailer licence JDB 124 T, and attached a copy of a registration certificate. It further asserted that the second applicant was the owner and title holder of a '*second trailer manufactured by SA Truck bodies*', licence DHK 399GP and attached a letter from SA Truck Bodies (Pty) Ltd and registration certificates. Lastly, the letter stated that the applicants '*hereby tender the motor vehicles in terms of Regulation 56 (3)....[and]..hereby request that the SAPS issue a new chassis number in respect of each of the motor vehicles described above*' whereupon the applicants would cause a fresh embossing of the new numbers and obtain a clearance certificate.

14. The details of what data appears on the certificates referred to are addressed later.

15. The Second respondent answered the letter on 14 September 2006. The relevant text is as follows:

" 1. Your letter [from applicants attorney] is acknowledged and the contents noted.

2. Kindly be advised that the SAPS is not prepared to make your clients' unlawful possession of the vehicles in question lawful.

3. In fact, this matter has been to the court of appeal on two occasions and the latter has refused to grant you relief.

4. This means that the police remain with the status quo ie, the reason for impounding the vehicles on the basis that the chassis numbers have been falsified.

5. Further take note that these vehicles have been declared forfeited to the State in terms of section 31 of the Criminal Procedure Act 51/1977 on 2004/08/13 and this remains as is."

16. Dissatisfied with this result, the applicants now seek to review the decision announced in the respondents' letter of 14 September 2006.

The alleged reviewable irregularities

17. The applicants' case is that the refusal is irrational in relation to the information available to the respondents. Further, it is asserted that the respondents should have investigated the matter afresh after the request in terms of Regulation 56 was made, that they failed to do so, and among other factors evidencing that failure, their failures to consider the contents of the request properly or to interview representatives of the applicants to obtain an explanation of the circumstances are foremost.

18. On behalf of the respondents' it is contended that the Third respondent's letter of 14 September was not intended to give reasons. The applicants are criticised for not requesting reasons as contemplated in *section 5(1) of PAJA*. In the answering affidavit several reasons, not alluded to in the letter, are set out to justify the refusal.

19. In my view the letter refusing the request does not purport to give a reason for the refusal; rather it states a view and records what the writer understand the status quo to be. To the extent that it offers clues to the thinking behind the decision, the allusions are generalised. The point is made that the police have concluded that the chassis numbers were falsified and, as the court decisions have already established, possession is unlawful. The request from the applicants is interpreted to be a request to make it lawful to possess the vehicles. This, the police are unwilling to do. In addition, the applicants are reminded that the vehicles are forfeit.

20. The criticism of the absence of a request for further explanations must be evaluated in the context of what the police already knew and the tenor of the applicant's request. In the urgent application, affidavits had been filed by both the applicants and the respondents. The respondents were not uniformed about the details. Indeed, when invited, counsel was not able to point to any material information in the founding papers that was not mentioned in the earlier urgent application. The notion that further investigation through seeking explanations would materially amplify the pool of relevant data upon which to make a decision seems stretched. The request was lengthy and, as alluded to above, summed up the status quo. Had there been additional data relevant to the request, it would have been reasonable to suppose that it would have been set out in the request, which, after all, emanated from the applicants' attorney. In my view the respondents acted appropriately in believing that they had the relevant available information to hand to enable them to make a considered decision on the Regulation 56 request.

21. What did the respondents know?

22. The request in respect of the kennis-crane vehicle had to fail on the simple basis that the second applicant was not eligible to make the request because it was not the titleholder, as defined. The definition provides:

"title holder", in relation to a vehicle, means-

(a) the person who has to give permission for the alienation of that vehicle in terms of a contractual agreement with the owner of such vehicle; or

(b) the person who has the right to alienate that vehicle in terms of the common law, and who is registered as such in accordance with the regulations under section 4;"

23. The registration certificate tendered by the applicants reflects that Nedbank is the title holder and Brick Co CC is the owner. No more was needed to refuse that request.
24. Unknown to the respondents at the time of the decision is the fact that Brick Co CC, according to the applicants, does not exist, at least at present, and curiously, Nedbank has no record of an interest in the vehicle. Neither of these two snippets, had they been told by the applicants to the respondents, could have altered the applicants ineligibility to make the request.
25. The claim that the other vehicle was the property of the first applicant, was according to the respondents, not proven to be indeed the property of the first applicant and thus the request was refused. What was the data upon which to assess the cogency of the claim of ownership?
26. The request attached as 'A' a certificate of registration in support of title holder-ship. That certificate describes a Henred Fruehauf trailer. However the respondents dispute that

the vehicle is in truth such a make. More is said about this point later. Secondly, the certificate identifies a vehicle that bears the VIN number H90970, the very number on the seized vehicle. However, the certificate shows that the vehicle is registered as JDB 124 T, whereas the seized vehicle bore the registration NPT464 GP.

27. This information is not helpful in establishing that the thing seized is the thing contemplated by this certificate. Interestingly, in the founding papers the applicant attached a different document to that attached to the request; ie, a licence and roadworthy certificate for a vehicle NPT 464 GP. This document correlates with a chassis number H90970 but contradicts the registration certificate in respect of the registration number. It was argued that the roadworthy official could not have erred when he inspected the vehicle to issue this certificate, thus it is a reliable indicator of the applicant's ownership. This submission misses the point: ie, is the thing that was *inspected* the same thing that was *seized*? This certificate takes the matter no further.

28. An additional inhibition exists. The respondents say that the chassis number on the seized vehicle was altered, as it was indeed on both. The applicants deny that allegation. However, the earlier urgent application is replete with allusions to the chassis number of both seized vehicles being tampered with. Even the affidavit of Freitas, to the founding affidavit of the urgent application, states in paragraph 24 that the chassis numbers of the two vehicles were changed, albeit without his knowledge, by the fired foreman Laubscher. The denial now is unpersuasive.

29. The applicants lay huge emphasis on their common law ownership of the vehicles. The stress on ownership is misplaced; what is critical is convincing evidence that the things

seized are the things described in the documentation tendered a proof. As illustrated above, the evidence falls short.

30. The stance of the respondents that the vehicles are not Henred-Fruehauf trailers and that both chassis numbers were altered has been known by the applicants from the outset. The respondent's version is that upon which the matter must be judged. (*Plascon-Evans Paints v Van Riebeeck Paints 1984 (3) SA 623 (AD) at 634H*).

31. An attempt to rely on the passing remarks in the appeal judgment that ownership of the vehicles was common cause is also misplaced. Moreover, the admission of the allegation of ownership in the urgent application answering affidavit by Tau, for the respondents, must be weighed in the context of the critical issues at stake in those proceedings. In the hearing it was argued that all that Tau meant to convey was that the applicant's ownership of Henred-Fruehof vehicle was undisputed. Ownership was there immaterial to the application of *Section 68 of the National Road Traffic Act* which simply makes unlawful the possession of a vehicle that is tampered with.

32. In my view the reasons advanced which all relate to absence of proof of ownership or title, as defined, were proper considerations and rationally justified.

The meaning of Regulations 56(3)and (4)

33. Do the provisions of Regulation 56 confer a right on a party who tenders the vehicle with an altered chassis number to procure the issue of a new number? Regulation 56(4)


provides that the police '*shall issue a new ..number... in respect of a vehicle referred to in subregulation (3)*' Is there a discretion?

34. The respondents say that the usual circumstances that they experience are that a title holder voluntarily tenders the vehicle for a new number after it has been recovered from thieves. Presumably, the first matter upon which the police have to satisfy themselves is that the tenderer is the lawful title holder. This is to do no more than to apply the regulation. Once satisfied that the title holder is the tenderer, no further discretion exists. The point at issue is not who is responsible for the tampering; the point is simply who is an eligible title-holder, as defined.
35. If the critical decision is whether or not the applicants are the title holders of the things seized and the respondents say that they are not satisfied that the applicants are the title holders of the things seized, the question becomes one about whether or not they have reasonable grounds for being unconvinced. If their grounds are reasonable, there is no rational reason to issue the new numbers.
36. There is a controversy about the meaning of 'tender' in Regulation 56. The notion is advanced that tender means that the 'tenderer' must be in literal possession or *detentio* of the thing; alternatively, if constructive tender is contemplated then the tenderer must be in control of it. At the time that the applicants 'tendered' the things, the things had already been forfeited to the state. Ergo, so the argument goes, no tender was possible.
37. It is unnecessary for me to decide this question because of the view I have taken on other issues. However, I am inclined to the view that because the provisions of Regulation

56(3), which use the word 'tender', stipulate that a title holder *shall tender* a defaced vehicle, it ought to follow that that the title holder has a duty to tender it and therefore must, at least, have the thing under its control when tendering it. That seems to be in complete contradiction to the idea of a person whose property is forfeited under *section 31 of the Criminal Procedure Act 51 of 1977* being able to make the tender. Indeed the very fact of that forfeiture, whatever its juristic nature, should extinguish title as defined; ie, being the right to decide on the alienation. Unless and until the forfeiture is revoked, no tender is legally possible. Presumably the same facts have to established to justify a decisions to revoke the forfeiture and to issue new numbers; ie reasonable proof of ownership and of title holder status.

Conclusions

38. Accordingly I hold that the application be dismissed, with costs.



ROLAND SUTHERLAND
Acting Judge of the High Court of South Africa
20 February 2008.

For the Applicant: Adv R Shepstone

For the Respondent: Adv K. Pillay