

THE NATIONAL PROSECUTING AUTHORITY
(APPLYING WITHOUT NOTICE (EXPARTE))

HIGH COURT OF ZIMBABWE
MANGOTA J
HARARE, 11 and 16 February, 2015

Urgent chamber application

C Mutangadura, for the applicant

MANGOTA J: At the centre of the present urgent chamber application is a Bentley Continental G.T. motor vehicle with registration number ACO 1759. The motor vehicle was imported from the United Kingdom. Its landing price was \$240 000 and duty payable on it was assessed at \$60 000 which its importer(s) paid.

On landing onto Zimbabwe, the vehicle changed hands from the importer (s) Anderson Tagara and Ndabazinengi Shava for, and on behalf of, whom Tagara allegedly acted in the importation of the vehicle.

Ndabazinengi Shava alleged that, in Mid- May 2013 one Uebert Angel of Spirit Embassy church conned him into parting with the vehicle. He stated that Mr Angel assured him that he would, on donating the vehicle, receive a manifold of blessings in the form of similar motor vehicles and cash within eight months of surrendering the vehicle to Mr Angel. He said Mr Angel told him that, if the promised blessings did not materialise, Mr Shava could freely get back his vehicle from him.

It is alleged that after the eight months had lapsed and Mr Shava having received no blessings as had been promised, the latter phoned Mr Angel over the failure of the promises which he had made. Angel, it is claimed, started by ignoring the phone calls and later he blocked Mr Shava's calls. Mr Shava stated that when he made further inquiries about the matter, he discovered that the vehicle had been sold to one Phibeon Busangabanye. He said he called at Mr Busangabanye's place of work where he confirmed that Mr Angel had indeed concluded an agreement of sale of the motor vehicle with Mr Busangabanye.

He said the issue of the sale of the motor vehicle caused him to file a report of fraud with the police against Mr Angel who, it is claimed, is currently staying in the United Kingdom.

Mr Shava's report to the police triggered the latter's investigations of the matter which related to the motor vehicle. The investigations, it is claimed, revealed that Mr Tagara registered the motor vehicle in his name and sold it to one Benjamin Mutamiri whom he said was acting for, and on behalf of Mr Angel. This resulted in the state preferring charges of fraud against Mr Angel and Mr Tagara.

It is the state's case that Mr Tagara and Mr Angel cooked documents with a view to concealing a fraud which they committed. The state said Mr Tagara is scheduled to appear at the Regional Court, Harare, on Tuesday 17 February, 2015. The applicant wants the vehicle which is at the centre of the parties' wrangle produced as an exhibit in court. The vehicle is currently in the possession and control of Mr Busangabanye who allegedly purchased it from Mr Angel. It is in his undisturbed possession and control by virtue of an order of this court which was filed under case number HC 11372/14. The matter which relates to the order was brought to court under the *mandamen van spoliae* relief. Mr Busangabanye approached and moved the court on an urgent basis for that relief when, on 24 December 2014, police made an effort to seize the vehicle from him and have it parked at their Vehicle Theft Squad Parking yard in Southerton. The provisional order was granted to Mr Busangabanye on 25 December, 2014 and, on 28 January 2015, that order was, in default of the respondents, confirmed as a final order of this court. Mr Busangabanye was, accordingly, conferred with the authority to retain control and possession of the motor vehicle.

It is strange that the applicant, with full knowledge of the stated fact, filed the present application on the basis of urgency and as an *ex parte* application. The court went through the applicant's papers and realised that:

- (a) the refusal of the police to take the vehicle from its lawful controller and possessor in the face of the court order was a correct interpretation of the law- and
- (b) Mr Busangabanye had a substantial interest in the possession or otherwise of the motor vehicle.

The court, accordingly, insisted that the application be served on the police and on Mr Busanyabanye. The police being part of the state which is desirous of prosecuting Mr Tagara

could not, and did not, oppose the application. All they wanted was a direction from this court as regards the way forward on the matter which related to the production of the car as an exhibit during the trial of Mr Tagara. Mr Busangabanye opposed the application. His opposition, however, centred more on why he was not cited as a party to the application than it dwelt on the fact that he did not want to have the car produced as an exhibit.

There is no doubt that the car is the subject of a number of proceedings criminal and / or civil-before this and other courts. Its ownership remains in the balance between Mr Shava, Mr Angel and Mr Busangabanye. Criminal proceedings have been, and will be instituted against certain individuals on charges which range from forgery right through to fraud. The car cannot, therefore, be disposed of in any way until the dust which surrounds its ownership, possession and control has settled.

In this regard, the car will remain with Mr Busangabanye to whom the court conferred possession and control of the same. He will, however, be required to produce the car and to avail it to the court which is dealing with the matter which relates to the car as and when the state or any litigant calls upon him to do so. He, on his part, stated through counsel for him during the hearing of this application that he was not averse to the due administration of justice. He accepted the position that he will avail the car to court as and when he is required to do so.

The order which the court made in his favour under case number HC11372/14 remains valid until it is varied or rescinded by the court. It protects his possession and control of the motor vehicle.

The court has considered all the circumstances of this case. It is satisfied that the applicant proved its case to the extent of having the motor vehicle produced as an exhibit only. It proved that case on a balance of probabilities

It is, in the result, ordered as follows:

- (a) that Mr Busangabanye continues to retain possession and control of the motor vehicle in terms of the High Court Order HC11372/14.
- (b) that Mr Busangabanye be and is hereby ordered to avail the motor vehicle, a Bentley Continental G.T. registration number ACO 1759 to the regional court for purposes of proceedings which will commence on 17 February, 2015.
- (c) that Mr Busangabanye be and is hereby ordered not to dispose of the motor

vehicle until all proceedings which relate to the car have been finalised.

(d) that there be no order as to costs.