

**IN THE DISTRICT COURT
AT WAITAKERE**

**CIV-2017-090-000366
[2017] NZDC 18134**

AN APPLICATION UNDER THE POLICING ACT 2008
SECTION 8

AND

IN THE MATTER OF AN APPLICATION TO DETERMINE
THE TITLE OF TOYOTA HILUX SURF
VEHICLE REGISTRATION NUMBER
[Number deleted]

BETWEEN ABRAHAM SALDANA
Applicant

AND LELOME PIO
First Respondent
ESHNALLA REZAIE
Second Respondent

Hearing: 16 August 2017

Appearances: Ms Tatila for the Applicant
Mr Pio for the Respondent

Judgment: 16 August 2017

JUDGMENT OF JUDGE J JELAS

[1] Mr Pio and Mr Tanuvasa were both members of their local church in Wellington. In February 2015 Mr Tanuvasa asked Mr Pio for help. Mr Tanuvasa had recently arrived in New Zealand and was struggling to get established with his wife and young child. Mr Pio, a very trusting and generous person, agreed to loan his Toyota Hilux to Mr Tanuvasa. Mr Tanuvasa in turn promised to return the vehicle to Mr Pio once he and his family had become settled.

[2] After Mr Tanuvasa took the Toyota Hilux for his use he would, from time to time, visit Mr Pio or see Mr Pio at their local church.

[3] In June/July 2016 Mr Pio went to Samoa for a month to attend an annual conference. Sometime after he returned he heard rumours that Mr Tanuvasa had left New Zealand. Later, police enquiries ascertained Mr Tanuvasa left New Zealand on 30 September 2016.

[4] Mr Pio, concerned for the whereabouts of his vehicle, went to Mr Tanuvasa's last known address. It was apparent on arrival that Mr Tanuvasa had left the address. Mr Pio inspected mail overflowing from the letterbox. One of the items of mail was a letter from the Land Transport Authority addressed to Mr Tanuvasa. Mr Pio open the letter and discovered, to his surprise, that his Toyota Hilux was now registered in Mr Tanuvasa's name. Mr Pio had not given Mr Tanuvasa authority to transfer the Toyota Hilux to Mr Tanuvasa.

[5] Approximately one week later Mr Pio reported his vehicle stolen to the police. Police records record the vehicle was reported stolen on 22 November 2016.

[6] The Toyota Hilux was located in New Lynn on 28 November 2016 when it was the subject of a complaint to police due to the way it was illegally parked. As a result of the earlier report of it being stolen, the police made further enquiries as to its ownership and subsequently filed the present application under s 40 of the Policing Act.

[7] A record of the registered owner of the vehicle was obtained. Mr Tanuvasa was registered as the owner on 8 June 2016. On 31 October 2016 the vehicle was transferred to the name of Ehsanalla Rezaie. The police had been in contact with Mr Rezaie and spoken to him.

[8] The vehicle was later seized from Mr Rezaie and stored at Auckland Harbour Bridge Police Station until determination of the present application.

[9] The present proceedings have been served on Mr Rezaie but he has taken no steps whatsoever.

[10] Constable Saldana gave evidence that it is possible for a vehicle's ownership to be changed without the knowledge or consent of the owner. Constable Saldana stated that police frequently receive complaints of changed vehicle ownership without the owner's authority.

[11] If Mr Rezaie had purchased the vehicle in good faith then he would be entitled to advance a claim to the vehicle in reliance of s 25 of the Sale of Goods Act 1908. That section codified the common law protecting a purchaser of goods in good faith and without notice of the seller's defect of title to obtain title over the goods.

[12] While Mr Rezaie has given an explanation to the Police as to how he became the registered owner of the vehicle, no steps have been taken by him to advance any such defence. The vehicle has been in storage for approximately eight months and Mr Rezaie was served with these proceedings on the 30th of May 2017.

[13] I am satisfied the vehicle should be returned to Mr Pio. His ownership was fraudulently removed by Mr Tanuvasa who without his authority registered the vehicle in his name. Exactly how the vehicle came into Mr Rezaie's possession I am not prepared to speculate on without having heard evidence from Mr Rezaie.

[14] I am therefore satisfied in the circumstances that Mr Rezaie did not obtain the vehicle in good faith and that in those circumstances the vehicle should be returned to Mr Pio. Accordingly I direct the New Zealand Police to release the Toyota Hilux registration number [number deleted] to Mr Pio.

J Jelas
District Court Judge