

IN THE HIGH COURT OF MALAWI AT BLANTYRE

CIVIL CAUSE NO. 401 OF 1979



BETWEEN:

D.F. KALIATI.....PLAINTIFF

- and -

N.T. MUKHOLI.....DEFENDANT

Coram: J.J. Skinner, Chief Justice

For the Plaintiff: Mutuwawira of Counsel
For the Defendant: Mbalame, Chief Legal Aid Advocate
Official Interpreter: Kaundama
Court Reporter: Caffyn

J U D G M E N T

This is an action brought by the plaintiff for the sum of K1,600, being the balance of the price of a motor vehicle, Registration No. BD 3601, sold and delivered by the plaintiff to the defendant in the month of October 1978.

The defendant, by his defence, admits buying the motor vehicle and he agrees that at the time of the sale there was a balance of K1,600 owing to the plaintiff. He says that he has not paid this money because there was a breach of contract by the plaintiff. What that breach of contract is alleged to be has been pleaded. It is that the plaintiff did not deliver the vehicle to the defendant in good order. It is further pleaded that the plaintiff had the vehicle repaired at Mobile Motors Ltd. at his own expense and the vehicle was not re-delivered until April 1979. It is also pleaded that up until April 1979, the plaintiff had not supplied the spare wheel which it had been agreed should be supplied with the vehicle, and the defendant was therefore unable to use the vehicle for the purposes of his business. The defendant pleads that he could only pay the outstanding amount by money made from the use of the vehicle. He counterclaims for the value of the spare wheel, and he also counterclaims for the loss of business resulting from his being unable to use the vehicle.

Both the plaintiff and the defendant gave evidence. No other witnesses were called. The plaintiff said that he was a businessman and he sold the motor vehicle to the defendant for K6,600. There



were no conditions attached to that sale. The defendant saw the vehicle, checked the engine, and drove the vehicle. The sum of K5,000 was paid immediately and the balance was to be paid in four equal monthly instalments. The plaintiff said he gave the defendant a spare wheel, spanners, and a jack. He did not, however, give the defendant the blue book but this was handed into his solicitor's office in 1979. This is borne out by a letter which was produced to the court, purporting that the blue book was left in the solicitor's office some time before April 1979. The plaintiff said he was not paid the balance due on the purchase price, and that after three months the defendant complained that the vehicle was not all right. The plaintiff then took it to Mobile Motors Ltd., it was repaired, and he spent the sum of K1,482.94t. in respect of the repairs. It was a major job.

The defendant's evidence was that he is a person who, by way of trade, transports produce and sells it to Admarc. He described entering into an agreement with the plaintiff in October 1978 to buy the vehicle at a price of K6,600. He paid K5,000, on the spot, and the arrangement was that the balance of the purchase price should be paid after six months. He said there was an agreement which was reduced to writing, and it was signed by both parties. That agreement was produced in court and it showed that the balance of the purchase price was to be paid in four equal monthly instalments. The defendant said he had been mistaken when he told the court that this balance was to be paid after six months. He did not pay the instalments because the vehicle was not in his possession at that time. He said that when he collected the vehicle from the plaintiff and commenced to drive it home there was a knock in the engine and the vehicle stopped. He thereupon returned it to the plaintiff and claimed his money back. He did not get it but the plaintiff agreed to have the vehicle repaired. The vehicle was repaired by Mobile Motors Ltd., the cost of repairs being borne by the plaintiff, and the defendant obtained delivery of it in March or April 1979. The engine was then in good running order, but he was unable to use the vehicle because it was not taxed. He said he was unable to tax it because he did not have the blue book, and it was not until October 1980 that he got the blue book from the Legal Aid Department, together with a certificate of transfer of ownership. He did not receive the spare wheel. The vehicle was registered in October 1980. The defendant gave no indication of the cost of a spare wheel and I have no evidence on that. He said that because he had been unable to use the vehicle he had lost K100 per month from his business, and that was from the 22nd October 1978.

In cross-examination he stated he was satisfied with the condition of the vehicle but he did not know whether it was a good vehicle or not. He said there were no conditions agreed on, apart from those contained in Exhibit D.1. However, he modified this to some extent in re-examination. He also said he had not had an opportunity to drive the vehicle and had not been allowed to do so by the plaintiff. The plaintiff had told him the vehicle was good: he wanted a vehicle that was good and he thought it was good. He needed the vehicle to help him in his business and he had made his thoughts known to the plaintiff. I think it is significant that the conditions regarding the state of the vehicle came out only in re-examination.

Now a contract for the sale of goods is governed by the Sale of Goods Act, Cap. 48:01 of the Laws of Malawi. I am satisfied that, in law, there are no implied warranties or conditions as to the quality or fitness for any particular purpose of goods supplied under a contract of sale, save such as are provided for - for the purpose of this case anyway - by section 16 of the Sale of Goods Act. Section 16(a) provides that where the buyer, expressly or by implication, makes known to the seller the particular purpose for which the goods are required, so as to show that the buyer relies on the seller's skill or judgment, and the goods are of a description which it is in the course of the seller's business to supply (whether he be the manufacturer or not), there shall be an implied condition that the goods shall be reasonably fit for such purpose.

Taking the case at its most favourable to the defendant I would find that he did make it known to the plaintiff the purpose for which the goods were required. But in order for the provisions of section 16(a) to apply, it must be shown that the seller was a dealer in motor vehicles, and I am satisfied on the evidence from both sides that he was not a dealer in motor vehicles. It seems to me therefore that the provisions of section 16(a) do not apply. Consequently, unless there was an express warranty as to the condition of the motor vehicle, the defendant must fail in that part of his counterclaim. The nearest the evidence came to an express warranty was the account given by the defendant in re-examination when he said that the plaintiff had told him the vehicle was good. I was of opinion that this was an afterthought, and I do not believe it, and in any event I do not think it was in such terms as to constitute an express warranty as to the quality of the vehicle.

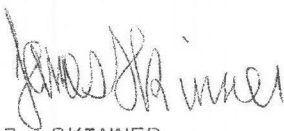
The next matter to which I shall turn is that contained in paragraph 7 of the defence, namely that the plaintiff had agreed to supply a spare wheel but did not do so, and because of this the defendant was unable to use the vehicle for the purposes of his business. Now I am satisfied as a matter of law that there was a duty on the part of the defendant to mitigate his loss in this respect. I am satisfied that he would be entitled to the replacement value of the spare wheel which he did not get, and I am sure that it was a condition of the sale that a motor vehicle with a spare wheel was to be supplied. But he was not entitled to sit back and not use the vehicle because the spare wheel was not supplied. His duty was to purchase a spare wheel. I disallow the counterclaim in so far as it relates to the loss of business arising out of the failure to supply the spare wheel. Although I have had no evidence as to the cost of purchasing a spare wheel I would assess this at K75.00, and think that such would be the approximate value of a secondhand spare wheel. Accordingly, I allow the defendant the sum of K75.00 in respect of that part of his counterclaim.

The next point to which I turn is the question of the failure to hand over the blue book and the certificate of transfer of ownership to the defendant. There is nothing in the defence or the counterclaim which alleges that there was such a failure, and no application was made to me to amend the defence. Consequently, it would not be correct for me to allow the counterclaim on this ground. If I had had to consider

the ground I would have found that the blue book was given to the defendant's solicitors some time before April 1979, and that a certificate of transfer of ownership was supplied in April 1979 to the solicitors.

In the result, therefore, there will be judgment for the plaintiff on the claim for K1,600, and judgment for the defendant on the counter-claim for K75.00.

Pronounced in Open Court this 15th day of December 1980, at Blantyre.


J. J. SKINNER
CHIEF JUSTICE