

IN THE HIGH COURT OF MALAWI, BLANTYRE

PRINCIPAL REGISTRY

CIVIL CAUSE NO.92 OF 1987



BETWEEN:

VARIOUS PERSONS PLAINTIFFS

AND

R.S. MWANDIDYA DEFENDANT

AND

M.S. BALALA TEMBO CLAIMANT

Coram: MBALAME, J.

Nakanga, Counsel for the Plaintiffs
Chizumila, Counsel for the Claimant
Longwe, Counsel for the Sheriff
Kadyakale, Law Clerk

R U L I N G

This is an application on the part of the Sheriff of Malawi that the plaintiff and the claimants state the nature and particulars of their respective claims to goods and chattels seized by him under writ of fieri facies issued in this action. He is in these proceedings represented by Mr. Longwe, State Advocate, and the application is made under Order 17 rule 3 of the Rules of the Supreme Court.

On 22nd December, 1982, judgment was entered against the defendant in the sum of K9,375.18 plus costs in favour of the plaintiff in Civil Cause No.887 of 1980. Later there was a warrant of execution issued and the Sheriff seized some household properties which, after an interpleader summons, turned out to be his wife's property. It would appear that there have been other judgments entered against him since then and this is why the plaintiffs in this case are: "various persons". On 20th June, 1986 the Sheriff of Malawi seized a vehicle, Toyota Hiace Mini Bus Registration No. BE 2602 in respect of the various judgments which was in the possession of and being operated by the defendant. The first claimant then gave notice of his claim to the vehicle claiming that it was under a Bill of Sale to him dated 20th June, 1986 and registered as No.4246. This notice of

claim was filed through Messrs. A.R. Osman & Co. On 12th February, 1987 there was another notice of claim by M.S. Balala Tembo, again represented by Messrs. A.R. Osman & Co. He claimed ownership of the vehicle having bought the same under Bill of Sale dated 20th June, 1986 and registered as No.4246 from A.H. Alimahomed trading as Autocraft. Attached to that notice is an affidavit sworn by one Bright M. Msaka who witnessed the execution of the bill of sale. There is also a letter dated 4th February, 1987 purportedly from one M.S. Balala Tembo. This I will not take into consideration in coming to my decision as there is no affidavit covering it nor was any witness called by counsel to testify under oath in respect thereof. Perhaps I should also mention that a copy of the blue book and a copy of an insurance policy in respect of the vehicle were also brought before me by counsel for the claimants. These again I shall disregard as counsel has not sworn an affidavit nor has he called any witnesses to testify under oath in respect of these. Under paragraph 6 of Order 17, rule 3, of the Rules of the Supreme Court, any person who makes a claim under rule 2 and who is served with a summons under that rule must within 14 days serve on the execution creditor and the Sheriff an affidavit specifying any money and describing any goods and chattels claimed and setting out the grounds upon which such claim is based. The word used in that paragraph is "shall". In the instant case none of the claimants has complied with this requirement. Their counsel filed the notices of claim and did nothing thereafter. He has argued that before this Court that the affidavits are not necessary for him to introduce evidence in respect of the claim. With respect in my judgment they are necessary. There can be no shortcuts to pleadings when the procedure is laid out in black and white.

The claims cannot be entertained and I dismiss them with costs.

MADE in Chambers this 13th day of April, 1987 at
Blantyre.


R.P. Mbalame
JUDGE