

12 Aug 1992

HIGH COURT
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IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY

CIVIL CAUSE NO. 1013 OF 1990

BETWEEN:

W D CHIRALIRE.....PLAINTIFF

- and -

KHUMAWAYS AGENCIES LIMITED.....DEFENDANT

AND

CIVIL CAUSE NO. 589 OF 1991

BETWEEN:

JASTEN SELEMANI.....PLAINTIFF

- and -

KHUMAWAYS AGENCIES LIMITED.....DEFENDANT

CORAM: TAMBALA, J.

Chiphwanya (Miss)/Makhalira, of Counsel,
for the Plaintiffs
Mvula, of Counsel, for the Defendant
Chigaru, Official Interpreter

HIGH COURT OF MALAWI
18 JAN 1994
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R U L I N G

In both Civil Cause No. 1013 of 1990 and No. 589 of 1991 the plaintiffs obtained judgment against the defendant, Khuma Ways Agencies Limited. In Civil Cause No. 1013 of 1990 the judgment debt together with costs comes to K9,529.80. In Civil Cause No. 589 of 1991 the judgment debt plus costs comes to K4,990.80. The judgment debtor did not pay and warrants of execution were issued. In execution of the Warrants, the Sheriff of Malawi seized a Mercedes Benz saloon, Registration No. BH 8466 and a Rover saloon, Registration No. BF 2919.

In both cases, a notice of claim for the goods seized by the Sheriff was filed by Mr G Kaunda. He claimed to be the owner of both vehicles. The Sheriff of Malawi, therefore, took out an interpleader summons seeking an order of this Court regarding ownership of the two vehicles.

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Mr Makhallira and Miss Chiphwanya, representing the plaintiffs in the two cases, disputed the claim. Mr Makhallira pointed out that the claim was filed by Mr G Kaunda. He said that the registration book for the Rover is in the name of G Kaunda. He observed that the registration book for the Mercedes Benz is also in the name of Mr G Kaunda. He then pointed out that the affidavit in support of the claim was sworn by Mrs Gotani Kaunda. She claimed to be the owner of the two vehicles.

Mr Makhallira argued that the fact that the two vehicles are claimed by two persons is an indication that Mr Kaunda is simply trying to frustrate attempts by the Sheriff to levy execution of the two warrants. He said that Mr Kaunda, who is a director and shareholder of Khuma Ways Agencies Ltd, is trying to conceal the truth which is that the two vehicles belong to Khuma Ways Agencies Ltd. I am persuaded by Mr Makhallira's argument. I am satisfied that the two vehicles do not belong to Mrs Gotani Kaunda. She has just been used by Mr Kaunda to pretend that she owns the two motor vehicles. It is probable that she does not even own a bicycle. I am further satisfied that Mr Kaunda was compelled to represent falsely that the two vehicles belong to Mrs G Kaunda because he knew that they were the property of Khuma Ways Agencies Ltd.

I heard submissions made by Mr Mvula in support of the claim. His submissions lack the support of facts. I was also unimpressed by his arguments relating to corporate personality being distinct and different from that of the directors and shareholders of the company.

In the result, the claim filed on 13th December 1991, in both cases, is dismissed. The judgment creditors are granted costs of the interpleader proceedings.

MADE in Chambers, this 12th day of August 1992, at Blantyre.


D G Tambala
JUDGE