

M/S J. F. Mwangulu.
09-05-1994

IN THE HIGH COURT OF MALAWI

PRINCIPAL REGISTRY

CIVIL CAUSE NO. 706 OF 1993

HIGH COURT
LIBRARY

BETWEEN:

LEOPARD DEVELOPMENTS LIMITED.....PLAINTIFF

- and -

KASSAM JOOMA t/a TRANSKASS TRANSPORTDEFENDANT

- and -

VALBAR LIMITED.....CLAIMANT

CORAM: MTEGHA, J.

Chiligo, of Counsel, for the Plaintiff
Osman, of Counsel, for the Claimant
Mthukane, Official Interpreter

R U L I N G

This is an Interpleader Summons by the Sheriff under O.17 of the Rules of the Supreme Court for the Execution Creditor and the Claimant to state the nature and particulars of their respective claims to the goods in question.

By a Writ of Fieri Facias issued in this action, the Sheriff seized an Isuzu Omnibus, Registration Number KA 1996, from the Defendant.

By these Summons, the Claimant is claiming that it is the lawful owner of the bus, and as such, the bus should not have been seized by the Sheriff. The Claimant's affidavit in support of the claim states that the Claimant is the lawful owner of the omnibus which it let on hire to the Defendant under an Agreement for Lease dated 2nd December 1992, for a period of 2 years from 2nd December 1992 to 2nd December 1994, on the Conditions stipulated in the Agreement. In terms of the said Agreement for Lease, the Defendant agreed and undertook to pay K50,000.00 as first rental on the signing of the Agreement and a second rental of K39,951.00 on 2nd January 1993 and thereafter subsequent monthly rentals of K39,000.00 each payable on the 2nd day of each successive month. It was further agreed that the Defendant would be liable to pay interest to the Claimant in default of payment of the said rentals at 30% from the date of default. As at 2nd February 1994, the balance of arrears outstanding was K453,281.42 and interest accrued was K78,101.85. According to the Agreement, the Claimant is entitled to possession of the bus.

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I would have had no hesitation to order that the Sheriff return the bus to the Claimant, had it not been for Mr Chiligo who, on behalf of the Judgment Creditor, has raised some issues. He submits that the Court should look at this Agreement carefully. He says the Agreement for Lease appears to him to be a Hire Purchase Agreement. If it is a Hire Purchase Agreement, the bus will have to go to the Claimant; if it is not a Hire Purchase Agreement, then it is a Creditor Sale Agreement, in which case the Sheriff was entitled to seize it, as it is the property of the Defendant.

Perhaps the best way to look at this problem is to see what are the requirements for a Hire Purchase Agreement. Section 2-(1) of the Hire Purchase Act (Cap 48:05) defines a hire purchase agreement as:

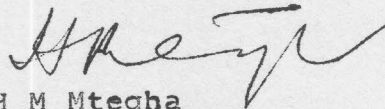
- "(a) any contract whereby the goods are sold subject to the condition that notwithstanding delivery of the goods, the ownership in such goods shall not pass except in terms of the contract and the purchase price is to be paid in two or more instalments;
- (b) any contract which provides for the hiring of goods whereby the hirer has the right -
 - (i) to purchase such goods after two or more instalments have been paid in respect thereof or
 - (ii) after two or more instalments have been paid in respect thereof to continue or renew from time to time such hiring at nominal rental or to continue or renew from time to time the right to be in possession of the goods, without any further payment or against payment of a nominal amount periodically or otherwise; whether or not the agreement may at any time be terminated by either or one of the parties;....."

It has been argued by Mr Chiligo that under the Schedule, the percentage of cash required to be deposited is 20%; but in the instant case, the Defendant deposited only K50,000.00 - far less from the required amount - if the purchase price of the bus was K728,351.00. Therefore, it was not a hire purchase agreement. Further, he argued that at the end of the period of the hire, the Defendant would have had the right to purchase the bus; the Agreement was, therefore, not a hire purchase. Alternatively, it was a credit sale, in that the Defendant was paying by instalments and, therefore, the property in the goods was vested in the

Defendant, and if he failed to pay, the Claimant would have the recourse to claim for the balance, but the Claimant would not repossess the omnibus.

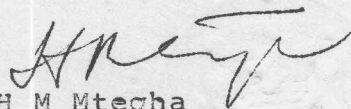
This is an ingenious argument; however, it is proper for the Court to examine the terms of the Agreement for Lease between the parties. It is clear that it is not a hire purchase agreement; it is also clear that it is not a credit sale. It is, as the Agreement itself says, a Lease Hire Agreement. The property in it remains in the Claimant during the duration of the Agreement. The omnibus belongs to the Claimant - it never parted with ownership. It should, therefore, be returned to the Claimant after the Claimant pays Sheriff's fees connected with the seizure. I do so order.

MADE in Chambers this 9th day of May 1994, at Blantyre.



H M Mtegha
JUDGE

COURT: Costs of this application for the Claimant. To be agreed or taxed.



H M Mtegha
JUDGE
9/5/94