

C.T.S.

IN THE HIGH COURT OF MALAWI  
PRINCIPAL REGISTRY  
CIVIL CAUSE NUMBER 574 OF 1988

Pls. 216



BETWEEN:

SEDOM.....PLAINTIFF

AND

J E CHINTHULI.....1ST DEFENDANT  
P J CHINTHULI.....2ND DEFENDANT

CORAM: THE HON. MR JUSTICE MBALAME

Tembenu, of Counsel for the Plaintiff  
Chizeze of Counsel for the Defendant  
Official Interpreter, Mthukane

RULING

This is an interpleader summons by the Sheriff in which he seeks the defendant, execution creditor and the claimant in this case to state the nature and particulars of their respective claims to goods and chattles seized by him under a warrant of execution issued in this action.

By a writ of summons dated 23rd September, 1988 the plaintiff claimed from the defendant the sum of K5,239.41 being money due and payable to it in respect of loan agreement entered between one Regina Bulendi and the plaintiff. The defendant filed a defence to the claim and the matter went to full trial. the hearing of the case was concluded on 22nd July, 1992. Meanwhile the defendant is said to have made a deed of gift intervivos to his son, the claimant. This gift composed of several household items some of which form part of the goods seized by the sheriff and now the subject of this application. It was made on 15th September, 1992 and is in the following terms:

"15/09/92

CHANGE OF HOUSE CHATTLES ETC OWNERSHIP, MBAME, BOX 42

This is to certify that the house chattles namely

- (a) One sofa set (three Piece)
- (b) Two table chairs
- (c) One cupboard, Fridge, two coffee tables
- (d) One old radio grame

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(e) One clock

Are this day 15th September, 1992 (Been) given to my 1st born son Peter Chinthuli in recognition of his good spirit in looking after us parents and his brothers and sisters financially and morally. He is free to pick them away anytime either before this marriage or after his marriage or at any convenient time. Given under our hand this 15/9/92.

1.	J E Chinthuli	signed	15/09/92
2.	P J Chinthuli	signed	15/09/92
3.	Mrs G Chinthuli	signed	15/09/92"

The claimant who is represented by Mr Chizeze of Chatsika and Company has filed an affidavit to support his claim. In that affidavit he claims that he is a son of the defendant and that he resides at Mpingwe but has another house at Mpemba and that the Sheriff of Malawi, through Trust Auctionners, Assistant Sheriffs seized various items from the said Mpemba house on the erroneous assumption that the said goods and chattles belonged to his father, the defendant herein. According to the Assistant Sheriff's report it would appear that the house in Mpemba from which the goods were seized is the defendant's house. Whether this is the very house the applicant refers to as his house is not clear.

As I have said earlier on in this ruling the summons was taken out by the Sheriff of Malawi to determine the claim made to him by the claimant. After hearing what the Sheriff had to say I discharged him and proceeded to hear the claimant and the judgement creditor. Mr Chizeze who appears for the applicant relies on the affidavit deposed to by the claimant and the deed of gift annexed thereto. He urges this court to accept these documents as being genuine. On the other hand Mr Tembenu who appears for the judgement creditor described the deed of gift as a fake intended to defeat the warrant of execution. He has submitted that it was written, if at all, after the case was heard and the parties were waiting for judgement.

I have carefully considered all the facts and arguments by counsel before me. I have particularly considered the deed of gift and its timing. It has given some anxious moments. It is said that the households items listed therein are being given to the claimant because, among other things, he has been looking after the defendant and his wife, his brothers and sisters financially and morally. This suggests that the claimant is better off or at least was better off prior to the gift than the defendant and the rest. The items being given away by the

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defendant are of substantial value. It is therefore strange that the defendant as beneficiary of the applicant should all over a sudden turned into a benefactor of the applicant. Worse still why was it so important to recognise the claimant's "good spirit" at this particular point in time? Although the deed is dated the 15th of September, 1992 and although it says the claimant could collect goods at anytime, the defendant was still in custody of the goods and still using them at the time the Assistant Sheriff visited him, long after the judgement was delivered. On the evidence before me I do not think it can be said that the deed of gift in question was made in good faith. It was made to defeat the operation of the warrant of execution. It is bogus one and a total sham and displays a character of deception on the part of the defendant and the applicant. In these premises I dismiss the action and condemn the applicant to pay the costs of this action.

I should mention that I read the judgement in the main case by my brother Tambala J. In that judgement he observed that the defendant did obtain loans from SEDOM, the plaintiff, through deceitful means and probably by using his position as a board member of that organisation. Much as I agree with the judge's findings on the facts as were before him I would like to state that such findings have had no influence on this ruling. The ruling is based on the facts and the observations herein before me.

MADE in Court this 20th day of July, 1993 at Blantyre.

R P Mbalame  
JUDGE