

IN THE HIGH COURT OF MALAWI

PRINCIPAL REGISTRY

Civil Cause No. 2986 of 2001

BETWEEN:

M. BANDA.....PLAINTIFF

VS

KULUPAJIRA.....DEFENDANT

CORAM: Twea, J

Dr. Mtambo, of Counsel for the Plaintiff
Mwaungulu, of Counsel for the 1st Defendant
Mulemba, of Counsel for the 2nd Defendant
Fatch, Official Interpreter

JUDGMENT

The plaintiff in this action brought this summons ex-parte for attachment of property on 8th October, 2002. The summons were supported by an affidavit sworn by Dr. Mtambo of Counsel for and on behalf of the plaintiff.

It was deponed, among other things, that the plaintiff was the owner of a motor vehicle: Mercedes Benz engine number 119662030067 and chassis number 2020226F116633. This vehicle was imported into this country by one Felix Chakalamba, who had obtained it from the plaintiff, for the purposes of spraying it with medicine that would enable the plaintiff to win his bets at horse races. The said Felix Chakalamba also obtained K98,000.00 from the plaintiff and his colleagues in South Africa for the same purposes.

The plaintiff followed the said Chakalamba to this country to recover the car and the money to no avail. The matter was referred to Malawi Police. The said Chakalamba was charged, tried and eventually convicted of obtaining money and property by false pretences. He was sentenced to serve a term of 3 years

imprisonment. This sentence was stayed pending promises by the said Chakalamba to refund all the money and return the vehicle. This was never done. The plaintiff eventually obtained judgment in the Supreme Court of Appeal for the restitution of the R98,000 and the vehicle or K3,898,125 in value.

It transpired that the vehicle was not in the custody of the said Felix Chakalamba but with a third party, now the first defendant to whom the said Chakalamba sold it, in June, 2000, under a memorandum of agreement exhibited as TJM1, that was prepared by Messrs Chagwamnjira and Company.

The plaintiff obtained an order for attachment of the vehicle ex-parte on 8th October, 2002. There after however, he proceeded to sale the vehicle to one Patrick Chikowi, on 25th November, 2002, a month later. The memorandum of sale was, surprisingly, witnessed by the said Felix Chakalamba and one Ted Jumbe, whom the plaintiff had deposed to be fraudsters and crooks. The first defendant then applied and joined, Patrick Chikowi as second defendant in an action that the plaintiff took against him for conversion.

The present application is by the first defendant to continue the attachment order to preserve the vehicle while title is determined.

The summons in this case was brought ex-parte to preserve property subject to a dispute notwithstanding that the Order of the Supreme Court of Appeal vested legal title in the plaintiff. The plaintiff, as soon as he got the Order and the vehicle, sold it without having the inter-parte hearing on the application. He then purported to discontinue the action after he had disposed of the vehicle which he sought to preserve. Not only that, he disposed off the vehicle with the aid of the very same people that he claimed and prosecuted of obtaining it from him by false pretences. It is clear to my mind that the plaintiff never acted in good faith when he obtained the Order.

There are and have been several actions concerning this vehicle and they all revolve around the same characters and very dubious conduct. The plaintiff has sought to challenge the action as having been brought without his authority and/or that the defendant could be adequately compensated in damages. I have carefully considered the issues brought. The first thing that came to my mind was that the plaintiff breached the preservation or attachment order, and now he is purporting to defeat the defendant claim by discontinuing the action.

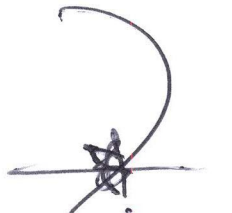
This action brings to the fore the lack of investigative capacity of our legal houses. Clearly, the affidavits show that this same vehicle was registered locally before any duty was paid, it changed registration numbers several times as it changed hands . This was facilitated by the same group of people. If the legal houses are aware of these apparent anomaly one wonders why they did not investigate the issues before coming to Court. Such default allows few individuals to manipulate lawyers and abuse the Court System.

In my view the starting point is the Order of the Supreme Court of Appeal that vested the legal title into the plaintiff, and the plaintiff Order to preserve the property. It is equitable to preserve the property in issue so that the parties can determine their rights and it becomes clear who should compensate who without manipulations and near crookedness.

I order that this preservation - attachment - order be continued until the issues are determined. It would be advisable if all the cases touching and concerning this vehicle were consolidated to avoid further manipulation of the facts as can be clearly seen from the affidavits and the exhibits here in.

Costs to the defendants.

Pronounced in Chambers this 30th day of December, 2003 at Blantyre.



E.B. Twea
JUDGE