

IN THE HIGH COURT OF MALAWI

PRINCIPAL REGISTRY

CIVIL CAUSE NO. 763 OF 2000

BETWEEN:

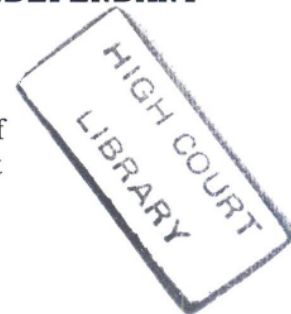
TIME H. FATCH t/a Catibe Enterprises PLAINTIFF

- and -

PRODUCE MART INTERNATIONAL LTDDEFENDANT

CORAM: POTANI, J.

T. Chirwa, Counsel for the Plaintiff
Absent, Counsel for the Defendant
Mdala, Official Interpreter



JUDGMENT

The plaintiff's action against the defendant relates to dishonoured cheques drawn by the defendant in favour of the plaintiff in the total sum of K152,000.00. The defendant filed and served a defence and counterclaim. However, come the date of hearing, there was no appearance on the part of the defendant. The plaintiff furnished ample proof of service of the notice of hearing on the defendant.

The plaintiff's evidence was very brief. Sometime in 1999, he delivered to the defendant 100 rolls of tobacco wrapping paper valued at K245,000.00. Some payment was made for the supplied goods leaving a balance of K152,000.00 in respect of which the defendant issued two post-dated in the sums of K70,000.00 and K82,000.00. Upon presenting the cheques for payment on the due dates, they were dishonoured hence this action.

In its defence, the defendant admits having drawn the cheques in favour of the plaintiff but avers that the cheques were issued on condition that the plaintiff would only present them for payment after verifying with the defendant that money was available in its account. According to the defendant this was the understanding of the parties because the goods were supplied for purposes of resale and there was an agreement that payment to the plaintiff would only be made after reselling the goods and that the cheques were issued just to make the plaintiff secured. As it turned out, the defendant failed to secure a market for 66 rolls which remain unsold to date. In the counterclaim,

the defendant claims the sum of K115,044.00 being the value of property seized by the plaintiff in a bid to recover the value of the dishonoured cheques. In the alternative the defendant claims a return of the seized items. Further the defendant claims damages for loss of use of the items.

The gist and thrust of the defendant's defence is that payment to the plaintiff was conditional on the supplied goods being resold and part of the goods valued at K152,000.00 having not been resold, the plaintiff can not be entitled to payment. With the greatest respect, the defendant's defence is unsustainable. This is not an action for the price of goods supplied. It is an action for dishonoured cheques. It is important to appreciate this position. The law is clear that a right of action accrues once a cheque presented for payment has been dishonoured and notice of dishonour has been given to the drawer. If the plaintiff's action was for the price of goods sold and delivered, may be the defence herein would have succeeded. I, consequently, enter judgment for the plaintiff in the sum of K152,000.00 as claimed.

Then there is the defendant's counter claim. I would hasten to state that since the defendant never attended the hearing, there is no evidence from it to substantiate its counterclaim. However, it would be recalled that in his evidence, the plaintiff testified after the cheques were dishonoured, he got possession of the defendant's 1 CPU Mecer Premium - X and 2 grey and black cables. These items are still with the plaintiff. It is ordered that they be surrendered to the defendant.

Costs of this action are to be borne by the defendant.

PRONOUNCED this day of March 1, 2004 at Blantyre.


H. S. B Potani
JUDGE

