

**IN THE HIGH COURT OF MALAWI
LILONGWE DISTRICT REGISTRY
MISC. CIVIL APPLICATION NO. 75 OF 2006**

BETWEEN

EMPHRAM MBEWEAPPLICANT

AND

MABVOTO M'BOBORESPONDENT

CORAM: HON. JUSTICE CHINANGWA

M. Nkhono, Counsel for the Applicant
G. Nankhuni, Counsel for the Respondent
B. Chulu, Court Interpreter

RULING

This is an application by respondent to vary the order of mandatory injunction made under 29 RSC. The mandatory injunction was granted in favour of applicant on 6th December, 2006.

In the earlier order the subject matter was a motor vehicle Reg. No. BN5643 Toyota Corolla which applicant had sold to respondent. The selling price was K500,000. The respondent paid K470,000. There was a balance of K30,000.00 Later disagreement issued on the payment of the balance. The

respondent demanded refund of K470,000. The applicant could not raise it unless the motor vehicle in the possession of respondent was released to him to resale it. The respondent refused to release it.

In this court respondent maintained that he was not interested in the motor vehicle but his K470,000. That he was keeping the motor vehicle as security for the money. This court realized the difficulty applicant faced to raise K470,000.00 in the absence of the motor vehicle. Thus an order of mandatory injunction was granted on merit on the following conditions:

“(a) Respondent to return the motor vehicle and bluebook to applicant with immediate effect. Failure to comply would be deemed as contempt of court.

(b) Applicant to resale the motor vehicle and refund respondent what is legitimately due to him.

The prayer for mandatory injunction is granted”.

The order was served upon respondent through his employer the Malawi Police Service. He has disobeyed the court order. He still has possession of the motor vehicle and using it.

Counsel Nankhuni in his sworn affidavit in support of the application to vary the order has raised a number of issues. Among them that applicant has no known permanent place of abode. He is a defendant in civil cause No. 656 of 2006 in which Elvis Sukali is the plaintiff. That he has been arrested several times in respect of improper business deals in motor vehicles.

Counsel Nkhono for applicant has refuted the allegations. He has argued that applicant has a known permanent place in Area 49 Gulliver. Counsel Nkhono has submitted to this court that he wants to move this court to commit to prison the respondent for contempt of court. In that respondent has disobeyed a court order to release the motor vehicle to applicant. My immediate response is that I give respondent a second chance in order to protect the reputation of the Malawi Police Service, but also his employment.

The starting point for this court is to disagree with counsel Nankhuni that both parties have an interest in the motor vehicle. The respondent has more interest in the K470,000 to be refunded to him than in the motor vehicle. It is observed that applicant would only be able to refund respondent upon the motor vehicle being resold.

I would like to observe that it is improper for respondent to attack the business conduct of applicant. These were matters which he should have submitted in the first hearing. I attach no weight.

I would like to maintain the position that respondent must release possession of the motor vehicle to applicant. Failure to do so would amount to contempt of court and consequent committal to prison. Therefore the mandatory injunction cannot be varied to suit the respondent. The application is dismissed.

Pronounced in Chambers on 4th January, 2007 at Lilongwe.

R.R. CHINANGWA
JUDGE