

IN THE HIGH COURT OF MALAWI
LILONGWE DISTRICT REGISTRY
MISC. CIVIL CASE NO. 02 OF 2008

BETWEEN

THE STATE

AND

INSPECTOR GENERAL OF POLICE
Exparte Jodder Reggie Kanjere

CORAM : **CHOMBO, J.**
:
: Mr. Makono for the Applicant
: Mr. Liabunya for the State
: Mr. Njirayafa, Court Interpreter

RULING

The application before me is a prayer by Mr. Kanjere to restrain the Interpol Department from continuing to impound motor vehicle registration No. NU 2412, Toyota Raider. The brief facts of the application are that the applicant bought the said vehicle from a Mr. Charles Mbale who was accompanied by a South African national. By the time he bought the vehicle the vehicle had already been cleared by Interpol and locally registered. The vehicle is used for business and was impounded on September 2007, depriving the business of its use.

The application first came before Kamanga, J. who, apart from ordering an interparte application, ordered that the respondent continue impounding the motor vehicle. The applicant therefore prays for the court to make an Order that the

vehicle in question be released to the applicant and in so doing any deterioration of the said vehicle for non-use will also be mitigated.

The State, did not file any affidavits and skeletal arguments. Counsel for the State submitted however that he would stick to the arguments contained in the affidavits and skeletal arguments on the court file when the case first appeared before Chinangwa, J. During the said hearing the Attorney General raised objections on the basis of law which the applicant agreed with. The objection was on the ground that no injunction can be granted against the State except in judicial review proceedings. The applicant, in compliance with Order 53 of the Rules of the Supreme Court entered a notice of discontinuance. Counsel for the State was thereof of the view that until that is complied with the applicant can not proceed on the original application. In response the applicant demonstrated that an application for leave for judicial review had been filed with the court thereby complying with the requirement of the law. According to the order made by Kamanga, J. the motor vehicle was not to be released to either the applicant or the purported owner in South Africa until the inter-parte application is heard.

The evidence on record indicates that the said vehicle was bought by the applicant in December 2002. Then the seller, a Mr. Mbale and a South African national brought the vehicle to Malawi in January or February 2003. And, before it was finally handed over to the applicant the same was cleared by the same Interpol Department in Malawi. Then there is a funny twist to the events, only in May 2003 did Police in South Africa receive a report of the same vehicle having been stolen. What I can not comprehend is how that the motor vehicle was brought to

Malawi in January or February and that the report of the theft was only made in May 2003; 6 months after the same was purportedly stolen.

The questions that I asked myself were (a) is it possible for an asset as big as a motor vehicle to get stolen and the owner not know that it is stolen? (b) or is it possible that a car would be stolen and the owner would have good reasons for not reporting the same to Police immediately after the theft? (c) did the purported seller thereof have anything to do with the purported theft and only reported the same to police after the vehicle was safely disposed off? (d) if, indeed the vehicle was properly cleared by the same Interpol Department, what would prevent the same Department from providing the applicant with the documents of clearance thereof? Surely the applicant was entitled to access the documents that had been issued by the Interpol Department that cleared the vehicle. The applicant has submitted that he asked for the said documents but he has not been furnished with the same; and no justification has been provided. If indeed the ownership of the said vehicle lies in the purported complainant in South Africa then that owner must clearly explain the otherwise strange circumstances referred to herein earlier. Having said this, I am mindful of the fact that a matter like this can not be determined on affidavit evidence alone. However, the granting of an injunction, as laid down in the celebrated case of American Cyanamid Co –v- Ethcon Limited¹ is based on a balance of convenience, urgency and equity. I find therefore that on the balance of convenience, it is equitable to grant the applicant's prayer that the Inspector General of Police be restrained from continuing with the impounding of the said vehicle. The said

1 [1975] AC 396

vehicle must therefore be released to the use of the applicant until there is competent proper justification as to how the theft of the said vehicle was only reported 6 months after its theft and after it had been cleared by Interpol in Malawi.

Having come to this conclusion, it must be pointed out that the court was not persuaded by the point raised by the applicant that the interests of the citizen should be protected above the interests of the law. The rights of citizens shall only be protected where the law has not been transgressed;

MADE in Chambers this 8th August 2008.

E.J. Chombo

J U D G E