



**JUDICIARY**

**IN THE HIGH COURT OF MALAWI  
PRINCIPAL REGISTRY  
CIVIL CAUSE NUMBER 2728 OF 2003**

**BETWEEN:**

**CAR HIRE LIMITED .....PLAINTIFF**

**- AND -**

**D & S GEL FUEL COMPANY LIMITED .....DEFENDANT**

**CORAM: THE HONOURABLE MR JUSTICE J S MANYUNGWA**

Miss Martha Kaukonde, of Counsel for the plaintiff

Mr Ralph Kasambara, of Counsel for the defendant

Mr Rhodani – Official Interpreter

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**J U D G E M E N T**

**Manyungwa, J.**

The plaintiff, namely Car Hire Limited by its amended statement of claim, claimed against the defendant, namely D & S Gel Fuel Company Limited for the market value of a motor vehicle registration number BL 7334 which got damaged beyond repair while in the custody of the defendant under a hire – rental agreement number Malawi 527280880 signed between the parties. The plaintiff also claimed the sum of MK36, 231,00 hire rentals, loss of business and interest thereon at commercial bank base lending rate and costs of the action. The defendant denied the claim. The plaintiff is a

limited company registered in Malawi under the style of Avis Rent A Car. The defendant is a limited liability company registered in Malawi.

## **PLEADINGS**

The plaintiff by its statement of claim pleaded as follows:

### **STATEMENT OF CLAIM**

1. **THE PLAINTIFF** is a limited liability company registered in Malawi and carries out a business of hiring out vehicles under the style of Avis Rent – A – Car.
2. **THE DEFENDANT** is a limited liability company registered in Malawi and at all material times hired motor vehicles from the plaintiff under various rental agreements.
3. **THE PLAINTIFF** refers to paragraph 2 hereof and states that on 1<sup>st</sup> May 2003 the defendant through their agent or employee a Mr Phiri hired a motor vehicle registration number BM 1642 which they later off – hired on 7<sup>th</sup> May 2003 under rental agreement MW 52780434.
4. **THE PLAINTIFF** further states that the defendant further hired through their said agent or employee the said motor vehicle on 9<sup>th</sup> May 2003 which they later off – hired on 23<sup>rd</sup> May, 2004 under hire rental agreement MW 52728552.

5. THE DEFENDANT paid for the two hire rentals on 6<sup>th</sup> June, 2003 under a Commercial Bank of Malawi cheque number 0735528.
6. THE PLAINTIFF further states that the defendant through their agent or employee, the said Mr Phiri, called the plaintiff's office on 17<sup>th</sup> of June, 2003 to hire another vehicle and they hired a Toyota Corolla 1.6 registration number BL 7334 under hire rental agreement number MW 527280880 which was signed on the defendant's behalf by Mr Phiri.
7. THE PLAINTIFF pleads that while in the custody of the defendant, the Toyota Corolla aforesaid got involved in an accident which rendered it a write – off
8. AS A RESULT of the said accident the plaintiff has suffered loss of business as well as loss of the car.
9. THE DEFENDANT did not also pay for the hire rentals due in the sum of MK36, 231.00 under hire rent MW 527280880 and they are so liable to pay for the same.
10. Despite and indeed inspite of reminders to the defendant to make good the loss of value of the car, loss of business as well as rentals due under the rental agreement, the defendant has refused to honour the same.

11. THE PLAINTIFF herein being a Commercial Institution and the motor vehicle having been used for a commercial purpose, the plaintiff claims interest on the loss of business the sum of MK36, 231.00 and on the market value of the car at Commercial Bank lending rate.

12. AND THE PLAINTIFF claims

- a. The market value of motor vehicle registration number BL 7334 to be assessed.
- b. Loss of business to be assessed.
- c. Interest on (a) above at the Commercial Bank base lending rate from date the said payments fell due of full payment to be assessed.
- d. The sum of MK36, 231. 00 hire rentals
- e. Interest on (d) above at Commercial Bank base lending rate from the date the said payments fell due to the date of full payment to be assessed.
- f. Further or other relief.
- g. Costs.

The defendant in its amended defence pleaded as follows:-

**AMENDED DEFENCE**

1. Save that the defendant is a limited liability company registered in Malawi, the defendant denies paragraph 2 of the Statement of Claim.

2. The defendant denies paragraph 3, 4, 5, 6, and 7 of the Statement of Claim.
3. If which is denied, there were any car hire agreements purporting to be made by the defendant or on its behalf, they were made by someone who had no authority whether express or implied or apparent from the defendant to make such agreement as its agent or on behalf of or to bind the defendant whether as alleged or at all
4. Alternatively, if and in so far as the said Mr Phiri acted as alleged in paragraphs 3, 4 and 6 of the Statement of Claim, which is not admitted, he did not do so as servant or agent of the defendant and did so outside the scope of his employment by the defendant and it is denied that the defendant is liable in respect thereof whether as alleged or at all.
5. The defendant refers to paragraph 5 of the Statement of Claim and states that the said payments were fraudulently made by the said Mr Phiri with no intention befitting the defendant but solely for his personal gain.
6. The alleged loss and damage is denied
7. Save as herein expressly admitted, the defendant denies each and every allegation of fact in the Statement of Claim as if the same were herein set out and traversed seriatim and prays that the action herein be dismissed with costs.

### **THE EVIDENCE**

Both the plaintiff and the defendant called one witness each.

## **THE PLAINTIFF CASE**

PW1 was Mr Vasco Mtunduwatha. In his written statement which he adopted he told the court that his postal address is care of Car Hire Limited P.O. Box 51059, Limbe and that he is the Sales Consultant for Avis Car Hire Limited, Lilongwe Office. The witness stated in his statement that in the month of April, 2003 the defendant approached the plaintiff's Lilongwe office asking for a car to hire through their company accountant Mr M Phiri. The witness further stated that the defendants were not happy with the plaintiff's rates, the plaintiff's sales representative namely Mr Semu contacted the plaintiff's Managing Director, who authorised that the defendant be given discounted rates. The witness further stated that the defendant through the said Mr M Phiri hired a Nissan Sentra Registration number BM 1642 on 1<sup>st</sup> May 2003, which the defendant then off – hired on 7<sup>th</sup> May, 2003 as per reference RA MW 527280434 exhibit VM1 dated 01 – 05 – 2003 being a Rental Agreement. The witness further stated that the defendants again hired the same Nissan Sentra BM 1642 on 9<sup>th</sup> May 2003 and which they off – hired on 23<sup>rd</sup> May, 2003. The witness exhibited exhibit RA MW 527280552 which is a Rental Agreement dated 9th May, 2003. The witness further stated that on 16<sup>th</sup> June, 2003 the defendant paid for the two hire rentals by cheque number 0735528 for MK86, 648.70. It was further stated by the said witness that on 17<sup>th</sup> June, 2003 the defendants through the said Mr Phiri called the plaintiff's office to hire another vehicle, and actually hired a Toyota Corolla under Rental Agreement RA MW 52780880 and he exhibited exhibit VM4, which is a copy of the said rental agreement. The witness further stated that on 28<sup>th</sup> June, 2003 the said Toyota Corolla was involved in an accident, and that consequently the defendant has refused to pay to the plaintiff the hire rental and the replacement value of the vehicle. The witness further stated that as a result

the plaintiff has lost the motor vehicle, and has also suffered loss of business, as the said motor vehicle was a business chattel. Further, the defendant has also not paid for the hire rentals due in the sum of MK36, 231.00. Therefore, the witness said the defendant should compensate the loss suffered by Car Hire Limited.

In cross – examination, the witness told the court that he is based at Kamuzu International Airport, and that the plaintiff’s motor vehicles were hired by Mr Phiri on behalf of the defendant. The witness however admitted that he did not have a Local Purchasing Order or any documentation in his possession to witness the said transaction, but that when the said Mr Phiri was hiring the vehicles he dealt with Mr Semu and the witness. The witness was asked to look at exhibit VM1, and he told the court that the hirer was Mr M Phiri. The witness further admitted that in the statement that Mr Phiri had made to the police, he had admitted that he forged the cheque. The witness further admitted the signature on the statement that Phiri had made to the police was the same as the one appearing on the Rental Hire Agreement. Further the witness admitted that according to the statement that Phiri made at the police station, it was stated that Phiri forged a cheque and gave it to the witness. Further the witness admitted that the motor vehicle in question was involved in an accident whilst being driven by Mr Phiri. The witness told the court that the defendants filled but did not sign for any form, and that up to now they have refused. Further, the witness testified that he was not aware that Stanbic Bank had paid back to the defendant the amount on the forged cheques. The witness was then shown a copy of an email from Standard Bank addressed to the defendants, whose second paragraph read as follows:-

“Management of Stanbic Bank has resolved to pay you the amount of the forged cheque that our bank paid in error.”

In re – examination, the witness said that when he was issuing the Rental Agreement VM 3 he was with Mr Semu. The witness said that Mr Phiri brought an LPO, as his authority to hire, and so that LPO acted as an authority from the defendant company. The witness explained that on the second occasion when the said Mr Phiri approached them for another hire, it did not become necessary to require another LPO since, he assumed that they were dealing with the same company, the defendant. Furthermore the witness explained that he did not encounter any problems at the bank, and when asked what he thought about the bank refunding the money to the defendant company, he simply said that since the defendant paid for the money they were entitled to get it back. The witness further stated that although the name of Mr Phiri appears on both exhibits VM1 and VM2, the same did not appear on exhibit VM3. According to the witness, it was the defendant company which was hiring the motor vehicle in exhibit VM3. The witness further told the court that he was not aware that Mr Phiri had made a statement to the Police, and that it did not concern him that the said Mr Phiri had forged the cheque. Further the witness said he was not supposed to check with the bank whether the cheque had gone through since the defendant company was becoming familiar to them. The witness explained that since the defendant company’s refusal to pay for the hire rentals and the damages, the plaintiff has been adversely affected financially.

At this juncture, the plaintiff’s Counsel Miss Kaukonde, closed the plaintiff’s case. Then the defendant opened its case.



DW1 was Mr Sandy Wyne Jones, of Care of Box 233 Salima or (40530) Lilongwe 4. The witness told the court that he owns a company called D & S Gel Fuel and D & S Enterprises. In his written statement which he adopted, the witness stated that Mr Phiri was employed by D & S as an accountant and was at the time serving a 3 months probation period before the company would decide whether to take him on board or not. The witness stated that after Mr Phiri started work, he noticed that he was driving a hired car and so the witness approached Mr Phiri in front of his son Shayne and his Manager namely Mr Malasa on several occasions asking how he could afford to hire a car and that in reply Mr Phiri told the witness that he had a friend at the hire company who was doing a special deal for him. The witness further explained that even his manager confided in him that Mr Phiri had now begun hiding the said motor vehicle behind a corner, and that since the vehicle had nothing to do with the witness, he just ignored it. The witness further explained that on 30<sup>th</sup> June, 2003 his company received a call from Avis Car Hire advising that Mr Phiri was involved in an accident and this was the first time that the defendant knew that the said Mr Phiri was hiring cars in the defendant company's name. The witness explained that somebody came to their office with insurance forms which were required to be filled by the defendant company, and they refused to fill them. Then the defendant company was asked to settle the account, and this was the first time that the defendant company knew that Mr Phiri had used the company name to hire these vehicles. When the defendant company enquired how possible it was for Mr Phiri to hire the vehicles in the names of the defendant company without an LPO or any form of authorization they were advised that actually there had already been payment for 2 car hires in March, for MK86, 648.70. When the defendant company checked in their books, they actually discovered that Mr Phiri had forged 3 cheques. The

first cheque was payable to Avis for MK86, 648.70, the second cheque for MK110, 000.00 (cash) and another one, a cash cheque for MK70, 000.00. When the defendant company made follow up, they discovered that the said Mr Phiri had now secured a job with MCCI which he begun on 8<sup>th</sup> July, 2003 without the defendant company's knowledge. The matter was then reported to Kanengo Police, and Mr Phiri was arrested and locked up, he gave a statement in which he admitted to have forged a cheque to Avis Car Hire but denied the others. The witness further explained that they also managed to secure a Bank Statement for Mr Phiri which showed that the two cheques he denied were deposited into his account and later withdrawn once cleared. The witness further stated that once he got hold of the original cheques he discovered that the signatures were not his as an authorised signatory, he approached Stanbic Bank who agreed with the witness that the signatures should not have been accepted by the bank, and that moreover the amendments were not counter – signed. The witness stated that the bank then agreed to refund the money withdrawn under the forged cheques, and that the bank duly refunded the money to the defendant including the money that was paid to the plaintiff. The witness then tendered exhibit D1 a caution statement which he said was given to him by a Magistrate at Lilongwe. The statement was made by Mr Phiri at the police station. The witness also tendered exhibit D2, which is a copy of an email from Stanbic Bank addressed to the witness dated 8<sup>th</sup> October, 2003.

In cross – examination the witness told the court that he employed Mr Phiri in May or June 2003 as an accountant on probation of 6 months. The witness said that the only time that Mr Phiri would have access to his vital documents like cheque book was when the witness walked in form Salima in the morning, and that it would be returned to in him in the evening before

knocking off. The witness further told the court that Mr Phiri had no signing powers. The witness said on a number of occasions he saw Mr Phiri driving hired vehicles but when he asked him he simply told the witness not to worry because he had a friend with whom he had a deal, but that he did not find out from the car hire company what the deal was. The witness said that they discovered about the forged cheques when they learnt about the accident. Upon discovery of the forgery, the witness said they went straight to the bank who accepted that it was their fault because the signatories were not even close. When asked about the statement, the witness said he was sure it was signed by Mr Phiri. Further, the witness said the e – mail from Stanbic Bank is unsigned because you can not sign an e – mail. The witness said that it was also possible that Mr Phiri got the LPO and forged it.

In re – examination the witness said he has been in Malawi since 1950 and that he has never hired a car not even from Avis, the plaintiff nor has the defendant company ever hired a car from the plaintiff. Further, the witness said when somebody called him from the plaintiff and informed him about the hired car, and that in fact the defendant company had paid him twice, he was never told about an LPO.

Mr Kasambara then closed the defendant's case

I must, before I delve into my reasoning and assessment express my gratitude to both Counsel for the plaintiff and the defendant for their well researched arguments and submissions. However it may not be possible for me to recite all the submissions in the course of this judgement but where necessary I shall have recourse to them.

## **THE MAIN ISSUES FOR DETERMINATION**

The main issues for determination by this court, are (a) whether there was a hire agreement between the plaintiff and the defendant (b) whether the defendant is bound by the Hire agreement allegedly signed on its behalf by an employee (c) whether the defendant's evidence suffices to disprove the defendant's employee's authority to contract on its behalf.

## **THE LAW**

The law is indeed clear that an employee can act as an agent of the employer (the principal) where he is authorised to do so and can thus create party of the contract between his employer and a third party. See M P Furmston, Chesire and Fitfoot's *Law of Contract*<sup>1</sup>. According to Charlesworth's *Mercantile Law*<sup>2</sup>:-

“An agent is a person who is employed for the purpose of bringing his principal into contractual relations with third parties. The agent does not make contracts on his own behalf”

Thus an agency agreement is one by which the agent is authorised to establish privity of contract between his employer called the principal and a third party. According to Dowrick<sup>3</sup>

“The essential characteristic of an agent is that he is invested with a legal power to alter his principal's legal relations with third parties; the principal is under a collelative liability to have his legal relations altered.”

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<sup>1</sup> M P Furmiston, *Cheshire and Fitfoots Law of Contract*, 9<sup>th</sup> Edition, Butterworths 1976

<sup>2</sup> Charlesworth's *Mercantile Law*, 13<sup>th</sup> Edition, London 1951

<sup>3</sup> Rowrick, 17 M. L. R. 36

Consequently, a contract made with a third party by the agent in the exercise of his authority is enforceable both by and against the principal.

On the other hand, if a person by words or conduct holds out another as having authority to make contracts on his behalf, he will be bound by such contracts as if he had expressly authorised them. For instance if he habitually pays for goods ordered by another, the implications will be that that other is his agent; or as is sometimes expressed, he is estopped by his conduct from denying the fact of agency. Lord Cranworth in the case of *Head Pilley*<sup>1</sup> said;

“No one can become the agent of another person except by the will of that person. His will may be manifested in writing or orally or simply by placing another in a situation in which according to the ordinary rules of law, or perhaps it would be more correct to say, according to the ordinary usages of mankind, that other is understood to represent and act for the person who has so placed him...This proposition, however, is not at variance with the doctrine that where one has so acted as from his conduct to lead another to believe that he has appointed someone to act as his agent, and knows that that other person is about to act on that belief, then unless he interposes, he will in general be estopped from disputing the agency, though in fact no agency existed...Another proposition to be kept constantly in view is that the burden of proof is on the person dealing with anyone as an agent through whom he seeks to charge another as principal. He must show that the agency did exist, and that the agent had the authority he assumed to

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<sup>1</sup> *Head V Pilley* (1869) 4 Ch. Appeals 548

exercise or otherwise that the principal is estopped from exercising it.”

Clearly, a person can not be bound as principal by a contract made without his authority. In *Summers V Solomon*<sup>1</sup>, it was held that where a person holds out another as his agent he is bound by his acts within the scope of his ostensible authority. The facts of that case were that Solomon had a jeweller’s shop in Lewes which was managed by his nephew Abraham Solomon. Summers was a jeweller in London who had been accustomed to supply goods to Solomon’s shop on the order of his nephew and the goods had always been paid for by Solomon. The nephew came to London, ordered jewellery from Summers for the shop and took it away with him saying he was going to Lewes. The nephew absconded with the jewellery and Solomon refused to pay. It was held that there was evidence that the nephew was held out as Solomon’s agent to buy the goods. Lord Campbell C. J, said:-

“The question put to us is whether there is a reasonable evidence on which a jury might find for the plaintiff. The plaintiff had dealt with the defendant through the nephew, and had, I presume seen the nephew left to manage the shop and to do all that should be necessary for procuring a stock of goods. The nephew had ordered goods to be sent to Lewes, which the defendant had received and paid for. That was evidence upon which a jury might well suppose the nephew to be the defendant’s general agent for conducting the business, and the nephew to be the defendant’s general agent for conducting the business; and the nephew within the scope of such general authority

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<sup>1</sup> *Summers V Solomon* (1857) 7 E & B 879

might procure goods in London to be taken by him to Lewes; and the plaintiff had every reason to infer such general authority, and to deliver goods which were required as for an old customer. If the nephew had in London ordered the goods to be sent to Lewes by carrier, the defendant would beyond question have been liable; and why should not the nephew be supposed to be himself the carrier? The defendant clearly acted *bona fide*.’

And Lord Denning in the case of *Hely – Hutchinson V Brayhead Limited*<sup>1</sup> referring to Ostensible authority had this to say:

“Ostensible or apparent authority is the authority of an agent as it appears to others. It often coincides with actual authority. But sometimes ostensible authority exceeds actual authority. For instance, when the board appoint the managing director, they may expressly limit his authority by saying he is not to order goods worth more than £500 without the sanction of the board. In that case his actual authority is subject to the £500 limitation, but his ostensible authority include all the usual authority of a managing director. The company is bound by his ostensible authority in his dealings with those who do not know of the limitation.”

Similarly in the case of *Panorama Developments (Guildford) Limited V Furnishing Fabrics Limited*<sup>2</sup> the plaintiffs ran a car hire business. The defendant's company appointed Mr Blaine as their company secretary. The said Mr Blaine hired cars from the plaintiffs ostensibly for the defendant's business. He told the plaintiffs that the cars were wanted to carry important

<sup>1</sup> *Hely – Hutchinson V Brayhead Limited* [1968] 1 QB 549

<sup>2</sup> *Panorama Developments (Guildford) Limited V Furnishing Fabrics Limited* (1971) 2QB711

customers of the defendants. He wrote on the company's paper ordering the cars signing himself 'company secretary' He gave references for the company which were taken up and proved satisfactory. The plaintiffs sent hiring agreements naming Mr Blaine as the hirer. The agreements were signed by Mr Blaine who was described as company secretary. Mr Blaine used the cars himself and not for the company's purposes. The hire charges were never paid. When the plaintiffs sued for the outstanding charges, the defendant denied liability. Judge Mais gave judgement for the plaintiffs for £570, and on appeal by the defendants, it was held dismissing the defendant's appeal that:

“Mr Blaine as the defendant's company secretary had ostensible authority to enter into contracts for the hire of the cars for which the defendants must pay.”

However in the case of ***Keighly, Maxsted & Company V Durant***<sup>1</sup> Lord James acknowledged the difficulty of holding the principal liable for the agent's actions, where his authority is barely ostensible when he said:-

“To establish that a man's thoughts unexpressed and unrecorded can form the basis of a contract so as to bind other persons and make them liable on a contract they never made with persons they never heard of seems a somewhat difficult task.”

Where however the agent is himself an agent, then no difficulty arises. As was stated by the learned authors of ***Cheshire, Fifoot and Furmstone's Law of Contract***<sup>2</sup>

<sup>1</sup> ***Keighly, Maxted & Company V Durant*** [1901] AC 240

<sup>2</sup> A Furmestone, ***Cheshire and Fifoot's Law of Contract*** Ibid p 498



“It remains to consider a peculiar situation that may arise where a man though purporting to be an agent, is in fact himself the principal. Here there is no doubt that he is personally liable. This seems to be common sense. As Scrulton L J once remarked, ‘I am sure it is justice’. It is probably the law for that reason.”

See also *Jenkins V Hutchinson*<sup>1</sup> and *Gardner V Heading*<sup>2</sup>. As the learned authors of *Cheshire and Fitfoot* stated<sup>3</sup>

“It is obvious that the principal is bound by every contract or disposition of property made by the agent with his authority. The reverse is equally obvious. If a man acts as an agent without any authority whatsoever, or if an agent exceeds his authority, the principal (apart from ratification) is not bound, and is not liable at all. Thus if a managing committee of a club has no authority to buy goods on credit, an order given for one by one of the members does not bind his colleagues.”

And in *Freeman and Lockyer V Buckhust Park Properties (Mangal) Limited*<sup>4</sup> Lord Diplock L J said:

“An ‘apparent or ‘Ostensible’ authority is a legal relationship between the principal and the contractor created by a representation, made by the principal to the contractor, intended to be and in fact acted upon by the contractor that the agent has authority to enter on behalf of

<sup>1</sup> *Jenkins V Hutchinson* [1849] 13QB 744

<sup>2</sup> *Gardiner V Heading* [1928] 2 KB 284

<sup>3</sup> *Cheshire & Fitfoot* (ibid)

<sup>4</sup> [1964] 2QB 480

the principal into a contract of a kind within the scope of the 'apparent' authority so as to render the principal liable to perform any obligation imposed upon him by such contract. The representation when acted upon by entering into a contract with the agent operates as an estoppel, preventing the principal from asserting that he is not bound by the contract. It is irrelevant whether the agent has actual authority to enter into the contract."

In the instant case the plaintiff alleges or claims that the defendant is liable for the actions of Mr Phiri, who was employed by the defendant as its accountant. Now Mr Phiri hired cars purportedly on behalf the defendant, and in my considered view Mr Phiri could only do this if he had ostensible authority to so hire the cars on behalf of the defendant. This is in the light of the fact that the defendant stated in court that Mr Phiri had no actual (express or oral) authority to hire the cars on its behalf. The question therefore is could the plaintiffs have believed that Mr Phiri had ostensible authority to hire the cars on behalf of the defendant. The answer, in my own considered view, should be in the negative. That is so because Mr Phiri was employed as an accountant, who is defined in the Advanced Learners Dictionary as a person who keeps or examines the records of money received, paid and owed by a company or by a person. If therefore an agency existed between Mr Phiri and the defendant, then the same was clearly limited to financial matters. I am in agreement with submission made by Mr Kasambara that it was in this respect unreasonable for the plaintiff, in the absence of an authorization from the defendant, to assume or think that Mr Phiri's ostensible authority as an accountant had been extended in scope to a managerial one which included hiring

of motor vehicles for the defendant. It was held in *Armagas Limited V Mundogas SA The Ocean Frost*<sup>1</sup> that an agent can not normally enlarge the scope of his apparent authority. Clearly it is my finding that there was no hire agreement between the plaintiffs and defendant, if one existed it was between the plaintiff and Mr Phiri.

Further as was stated in *Head V Pilley*<sup>2</sup> that the burden of proof lies on the person dealing with anyone as an agent through whom he seeks to charge another as principal. In the instant, it is my considered opinion, that the plaintiff has neither been able to show any representation made by the defendants, whether by their conduct or otherwise, which led the plaintiff to believe that Mr Phiri had the defendant's authority to be hiring motor vehicles on the defendant's behalf; nor did the plaintiff sign any hiring contract with another officer from the defendant, apart from Mr Phiri to show that Mr Phiri was acting *Bona fide*. As a matter of fact, DW1 Mr Sandy – Wynne Jones testified in court that the only time that an official from the defendant saw any contract of the hiring was only after the accident had occurred. Furthermore, there was evidence that was tendered by DW1 in the form of an e – mail from Stanbic Bank, in which the bank accepted that they paid out the cheques in error, now cheques were payment for the hiring charges to the plaintiff, which cheques the bank agreed were forged. This evidence, in my view, is not important to show that the defendant was refunded his money, but that as the cheques were forged, and clearly payment not authorised, this only reinforces the defendant's submission that the said Mr Phiri did not

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<sup>1</sup> *Armagas Limited V Mudnogas SA The Ocean Frost* [1956] AC 717

<sup>2</sup> *Head V Pilley* [supra]

have authority to hire the vehicles from the plaintiff on behalf of the defendant, for if he had such authority, he would not have forged the cheques to purportedly effect payment to the plaintiff. Consequently it is my considered view, and this I find that the defendant was not and could not be bound by the hire agreement that was purportedly signed by Mr Phiri on its behalf. I further hold that in the circumstances of this case the said Mr Phiri had no authority to contract on behalf of the defendant.

In these circumstances and by reason of the forgoing it is my considered judgement, and hence I do find that Mr Phiri neither had authority nor could the plaintiff have believed that he had such authority. Consequently the plaintiffs action fails and is dismissed with costs.

***Pronounced in Open Court*** at Principal Registry this 16<sup>th</sup> day of January, 2008.

Joseph S Manyungwa

**JUDGE**