



JUDICIARY

**IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY
CIVIL CAUSE NUMBER 2300 OF 2006**

BETWEEN:

S. KARIMPLAINTIFF

-AND –

Y. KARIM.....DEFENDANT

CORAM: THE HONOURABLE JUSTICE E. B. TWEA

Mr Chayekha, of Counsel for the plaintiff

Absent, of Counsel for the defendant

Mrs M. Mthunzi – Official Interpreter

R U L I N G

Twea, J

The plaintiff filed an inter parties summons for a mandatory injunction on 28th August 2006. This summons has been adjourned on several occasions. However, in the course of this delay there have been affidavits in opposition and replies filed. These affidavits have enabled the court to appreciate the facts of the case.

Briefly, what the affidavits bring out is that the plaintiff, Mr Salim Karim, is the father – in – law of the defendant, Mrs Yasmin Karim. The defendant is the widow of the plaintiff's late son Iqbar Karim.

The parties join issues that the plaintiff, who runs transportation business, gave his late son, absolutely, a truck horse and a trailer to establish his own business in the transportation sector. Late Iqbar ran his business in conjunction with his wife, the defendant. Their business flourished.

At a certain point late Iqbar secured a contract with Manica. This contract required the use of the truck horse mostly. He therefore decided to dispose of his trailer which was lying idle. This definitely made good sense then. After some time however, the contract run into some problems. For him to survive in the business it was essential that he acquires a trailer.

The late Iqbar approached the plaintiff with a view to borrow one of his trailerS. The plaintiff lent him a trailer. It is not in dispute that this is the trailer in issue. It is not in dispute that late Iqbar transportation business collapsed. He sold his horse and parked the trailer. The trailer was parked at his house at the time he passed on.

The plaintiff was desirous of disposing of the said trailer. The defendant obtained an injunction against him. The plaintiff now seeks a mandatory injunction to repossess his trailer.

The defendant raised two issues: whether the plaintiff lent the trailer to his late son and whether the trailer in issue is the same trailer or a different one.

The position taken by the defendant is most unfortunate. She is not in any way claiming ownership of the said trailer, yet she is bringing in issues of ownership, chassis numbers of the equipment and some encumbrances that may be there. There being no competing claim to the trailer the issues are irrelevant. I fail to appreciate of what advantage this is to the defendant. She went ahead to search for title to property yet she does not claim any title. Further there is no third party competing interest. The fact of the matter is that she appears to be challenging title for the sake of it.

In any case, the plaintiff explained the discrepancies on chasis number. The original trailer was damaged in an accident. He rebuild the current trail from the damaged trailer and another trailer that he salvaged from Katundu Haulage. There was no challenge to this evidence. I find as a fact that the trailer in issue is the one that the late Iqbar was given to use by his father, the plaintiff.

The defendant challenged whether her late husband, Iqbar, was lent the trailer? She does not raise any other issue. The submissions on her behalf too, does not raise any other issue. It is left to the court to speculate whether the defendant implies that the trailer belonged to her husband, or that he bought it from his father. I do not think it is the duty of the court to indulge in such speculation.

The evidence is clear. The trailer that late Iqbar had was sold when his business was doing well because he considered it surplus equipment. When his business suffered a slump he borrowed a trailer from his father, which is, the trailer in issue. There is no other evidence than that of borrowing, and I so find.

Last but not least the defendant claims that the late Iqbar left debts in respect of the business and maintenance of the said trailer. She claims that the plaintiff was wrong to put priority on the sale of the trailer than repayment of these debts.

I think this is based on misunderstanding of the legal position and, emotional feelings that she should be helped out of the deceased estate indebtedness. There is nothing wrong with such emotion. However, business is business. The two men albeit, father and son, were businessmen. They each run separate businesses. It should be wrong for one to hold on to business assets of another on account of family and business debts. There is no evidence to show that the late Iqbar borrowed a trailer that was a non – runner. All the evidence suggests otherwise. Late iqbar got an operating trailer which he was using and was maintaining for the purposes of his business. The fact that he had problem to pay for the maintenance thereof does not mean that his father, as a lender, can not have his property back. It is, obviously, unfortunate that Iqbar passed on. The legal position however, remain that the trailer was the property of his father and not part of his business or his estate.

At the end of the day, I find nothing in favour of the defendant holding on to the trailer. She does not have title to it. The trailer does not even belong to her deceased husband's estate. It was borrowed. She does not even have any equitable right to it. The plaintiff, as the father of the deceased, may have a moral obligation to help the estate of his late son, however, this is not a legal obligation.

I therefore, find that the defendant has no equitable claim to the trailer and I order that the plaintiff is entitled to a mandatory injunction to have the trailer in issue and I so order. Costs to the plaintiff.

Pronounced in Chambers this 7th day of March 2008 at Blantyre.

E. B. Twea
JUDGE