

**IN THE HIGH COURT OF MALAWI  
LILONGWE DISTRICT REGISTRY**

**CIVIL CASE NO. 155 OF 1993**

**BETWEEN**

**ALFRED L. RAMAN ..... APPELLANT**

**AND**

**HASSAM A.R. ELIAS ..... DEFENDANT**

**CORAM : HON. JUSTICE MZIKAMANDA**

: Unrepresented, Counsel for the Applicant  
: ....., Counsel for the Respondent  
: Ms. Z. Mthunzi – Court Reporter  
: Mr. Kafotokoza – Court Interpreter

**JUDGMENT**

This is one of the oldest actions I have come across. By a specially endorsed writ the plaintiff commenced the present action against the defendants claiming the sum of K100,000.00 and costs of the proceedings. There was a defense duly filed. The matter had been handled by various registrars including this one as he then was. It now comes to this Court for final determination on the merits.

The hearing of the matter was 19<sup>th</sup> January, 2009 with the plaintiff representing himself as his lawyer, Mr. Mamtora, had died in London. The defendant did not attend despite that he was duly served. There was no Court bundle for the defendant although there was one for the plaintiff.

According to the statement of claim on or about 23<sup>rd</sup> July 1984 the Plaintiff and the defendant agreed and entered into partnership agreement concerning a Fuso BF 8844 truck. The plaintiff and the Defendant agreed in the said partnership Agreement that they would share proceeds of the said business equally, to wit, each would get 50% share thereof.

To the date of commencing the action the Defendant had managed to pay the plaintiff only a nominal amount of about K20,000.00, leaving most of the plaintiff's share unpaid. The plaintiff had on numerous occasions reminded the defendant to pay the plaintiff's share but the defendant had deliberately chosen to remain silent. The plaintiff was prepared to accept the sum of K100,000.00 as his share of the business from the contractual date.

The amended defense shows that on or about 23<sup>rd</sup> July 1984 the defendant sought to buy a Mitsubishi. (Fuso) Truck from Stansfield Motors Limited, a dealer, distributor and seller of Mitsubishi vehicles and spares. At the time the plaintiff was an employee of Stansfield Motors responsible for facilitating credit and cash sales of Mitsubishi vehicles. The Defendant did not have enough money to meet the total purchase price of the said Mitsubishi (Fuso) truck and asked for credit

sale arrangements for the purchase of the truck. The plaintiff told the defendant that a credit facility for the purchase of a Mitsubishi was available and would be available to the plaintiff if the defendant entered into a private arrangement with the plaintiff of partnership where the plaintiff's contribution would be his effort to sell the Fuso on credit. The defendant thus was blackmailed into a fraudulent partnership. The plaintiff therefore advised his position without the knowledge of his employer to sell the said vehicle with conditions inconsistent with those of his employers, Stansfield Motors Limited and or without the knowledge or authority of his employers. The plaintiff in his dishonest campaign dictated a document purporting that the defendant had entered into an irrevocable partnership in respect of Mitsubishi Fuso Track Number BF 8844. The defendant stated that the purported partnership was a condition attached to the sale and that the plaintiff acted fraudulently. The defendant denied that it was ever agreed that they would share proceeds from use or any business or at all that the plaintiff would get 50% share. The defendant denies to have ever paid the plaintiff any money in connection with the partnership and never paid the K20,000.00 alleged. The defendant denies that the plaintiff is entitled to K100,000.00. The defendant also stated that the plaintiff's claim was statute barred since the purported partnership agreement was signed on 23<sup>rd</sup> July, 1984.

At the hearing the plaintiff testified that at the material time he was the Branch Manager for Stansfield Motors Limited, Lilongwe. He had been so from March 1970 to 1987 and he knew the defendant's father who was a mechanic. The defendant approached him to buy a Fuso Truck and offered him 50% share since he did not have sufficient funds. The two agreed and a Partnership Agreement

was prepared and duly signed, witnessed by the Company's Secretary for Stansfield Motors Ltd. It is Ex P1. He also made out a cheque of K3,535.00 made payable to the defendant on 23<sup>rd</sup> July, 1993 Exhibit P2. He also later made payments to the defendant for K1,894.00 in eight sets (Exhibits P3 (a) (b) (c) (d) (e) (f) (g) (h)).

Having made these contributions he made many inquiries about his share of the partnership proceeds. In 1990 as evidence of the Partnership the defendant referred to him two queries from some parties who were indebted to the Defendant to the tune of K10,000.00 Exhibit P4 (a) and (b). Seeing that nothing further was being paid to him from the partnership he took legal action in 1993. The matter delayed for long as lawyers for both sides failed to get a date for hearing. In July or September 2008 his Lawyer passed away and he decided to take up the matter himself. The file had in fact been transferred to the National Archives and had to be retrieved from there. He revived the file. He denied blackmailing the defendant into Partnership Agreement. There was a witness who was the Company's Secretary who should not have signed if the Partnership Agreement was fraudulent. He only retired from his employment from years after the defendant's transaction, and that should show that he was not fraudulent and he never blackmailed the defendant. He was able to get some payment in the Partnership six years after the Agreement. The defendant never complained to the plaintiff's employers that the plaintiff was fraudulent. To arrive at K100,000.00 he estimated that his share a year would at the minimum be K10,000.00. The defendant had the track for over 10 years.

All the evidence of the plaintiff went unchallenged. The defendant conceded in his amended defense that he indeed entered into a Partnership Agreement with the plaintiff regarding the purchase of Fuso truck BF 8844. Indeed Ex P1 is a Partnership Agreement signed by the plaintiff and the defendant in the presence of Miss Agnus Machila the Company's Secretary. That agreement has a stamp on it and is dated 23<sup>rd</sup> July 1984. It is in the following words.

*"I HASSAM ABDUL RAHIM ELIAS of P.O. Box 30146, Lilongwe in the Republic of Malawi, do hereby agree and enter into Partnership on equal basis (50%) share with MR. ALFRED LAWRENCE RAMAN of P.O. Box 384 LILONGWE in the Republic of Malawi. This Partnership is in respect of one Fuso Truck BF 8844 Chasis No. 50099 engine No. 107201.*

*I further agree that this Partnership is irrevocable and can only be terminated by mutual consent.*

Signed by MR. HASSAM ABDUL RAHIM ELIAS

Signature

WITNESS : -----

Signature

NAME : MISS AGNUS MACHILA

OCCUPATION: SECRETARY

SIGNED BY MR. ALFRED LAWRENCE RAMAN

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*Signature*

WITNESS : -----

*Signature*

NAME : MISS AGNUS MACHILA

OCCUPATION: SECRETARY

DATED : THIS 23<sup>RD</sup> DAY OF JULY 1984"

This Partnership is in original ink handwriting. I have also seen the various cheque leaves returned from the National Bank of Malawi as paid, issued by the plaintiff to the defendant, first for K3,385.00 on 27<sup>th</sup> July 1984 and eight other payments between 23<sup>rd</sup> July 1984 and 21<sup>st</sup> December, 1984 all payable to the defendant and paid by the plaintiff. I am satisfied that all these payments amount to a contribution by the plaintiff to the Partnership he had with defendant. I therefore reject that the plaintiff's only contribution to the Partnership was his efforts to get the Fuso track on credit. The defendant himself in his defense clearly stated that he did not have enough money to buy the Fuso and he needed help. The plaintiff contributed to the partnership financially.

I have seen Exhibit P4A and P4B which are bank deposit slips of money from Y-R. Motors of K5,000.0 each. The plaintiff said that this was part of his payment of shares from the Partnership. He further stated that he got a total of K20,000.00 as part of his share in the Partnership by 14<sup>th</sup> June 1990. I am satisfied that in 1990 he got a share of the Partnership Agreement given. I also find that this was a small share of the total share the plaintiff was entitled to in the partnership. The claim by the defendant that the partnership was fraudulent is without substance and can not be supported in the light of the evidence before me. He never complained anywhere that the Partnership was fraudulent. In my view the Partnership Agreement was properly and voluntarily signed by both parties and duly witnessed. The claim that the Partnership was fraudulent is a mere afterthought and intended by the defendant to deprive the plaintiff of his share of the Partnership. He can not use the fact that the plaintiff worked for Stansfield Motors Limited where he bought the Fuso from to suggest that the Partnership was fraudulent.

In another attempt not to pay towards the Partnership, the defendant alleged that the claim was statute barred. The last payment to the plaintiff from the Partnership was 14<sup>th</sup> June 1990. The present action was commenced on 2<sup>nd</sup> June 1993 within less than three years of the last payment. The action therefore was never statute barred. Yet the defendant had all along since the conclusion of the Partnership Agreement given the plaintiff the impression that he was going to pay him his share.

This was a business Partnership. I am satisfied that the K100,000.00 estimate of the plaintiff was justified because the defendant never gave him an account of the Partnership business. I am also convinced and I am satisfied that K100,000.00 over a period of 10 years is much less than a fair share the plaintiff should get from the Partnership. I however accept the claim for K100,000.00 claimed by the plaintiff and I award him that sum. This was a trading sum. I think it is only fair that I award the plaintiff an interest on the K100,000.00. I award him 10% interest per annum on the sum of K100,000.00 awarded to the date of this judgment. I also award him costs of these proceedings.

**PRONOUNCED** IN Open Court this 16<sup>th</sup> day of April, 2009 at Lilongwe.

R.R. Mzikamanda

**J U D G E**