



**JUDICIARY
IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY
CIVIL APPEAL NO. 28 OF 2017**

BETWEEN

OKOTA MZANDA PLAINTIFF

-AND-

MIGUEL ANDRE ELIAS DEFENDANT

MR C. ASSAN CLAIMANT

CORAM: THE HONOURABLE JUSTICE KENYATTA NYIRENDA
Plaintiff, present and self-represented
Mr. Chipembere, of Counsel, for the Defendant
Claimant, absent and unrepresented
Mr. O. Chitatu, Court Clerk

RULING

Kenyatta Nyirenda, J.

This is an appeal by the Plaintiff from a decision of the learned Assistant Registrar made on 21st November 2016 awarding the Claimant damages. The appeal is made pursuant to Order 58 of the Rules of the Supreme Court (RSC).

The issues for determination arise out of the following facts. In or around December 2014, the Plaintiff entered into an agreement with the Defendant for the sale of a white Toyota Quantum Minibus registration number BLK 3089

[hereinafter referred to as the “White Toyota Minibus”] to the Defendant. The purchase price was K4,500,000.00 (purchase price). Upon entering into the agreement, the Defendant took possession of the White Toyota Minibus and undertook to pay the purchase price by 5th January 2015.

The Defendant only paid K3,000,000.00, leaving a balance of K1,500,000.00 (the balance). By a Specially Endorsed Writ of summons issued on 6th March 2015, the Plaintiff commenced the action herein claiming against the Defendant payment of the balance, interest on the balance at the weekly rate prevailing in the money market from 5th January 2015 until date of payment and costs of this action.

The parties agreed to have the matter settled through a consent judgment wherein the Defendant committed to settle the balance by end of March, 2015. However, the Defendant did not honour the court order: he only paid K500,000.00 and this led to the issuance of a warrant of execution.

When the Sheriff went to the Defendant’s house to levy execution, he found the White Toyota Minibus but the Defendant was not available. When the Sheriff and his team went the second time to the Defendant’s house in December, 2015, they found a red Toyota Quantum minibus [hereinafter referred to as the “Red Toyota Minibus”] which had exactly the same internal and external features like the White Toyota Minibus, for instance, a cracked dashboard and a loose platform with a towing hook. The Sheriff and his team believed that the Defendant had simply disguised the White Toyota Minibus as the Defendant runs a garage that reconditions car wrecks. Further, by this time the Defendant had branded his four motor vehicles, including the minibus with his trade name.

And after the seizure of the Red Toyota Minibus, the Defendant promised that he would settle the balance of K1,000,000.00. However, he later started claiming that he had hired the Red Toyota Minibus from the Claimant for exclusive use from October, 2015 to January, 2016. It is on this basis that the Claimant claimed damages for loss of use or business for the red minibus due to the seizure by the Sheriffs.

The learned Assistant Registrar found for the Claimant and awarded him the sum of K7,802,000.00 plus costs. It is against this order that the Appellant seeks to appeal.

The appeal has to fail in *limine*. The position at law is that appeals against the Registrar's orders on assessment of damages lie to the Supreme Court of Appeal and not a Judge in Chambers: see **Dziko Nasiyaya v. Attorney General MSCA Civil Appeal No. 7 of 2012, unreported** wherein the Supreme Court of Appeal held that:

“An assessment of damages by the Registrar of the High Court determines the matter with finality at the High Court level. We think that the proper position of the law is that in the case of a matter dealt with the finality of the High Court level, an appeal will only lie to the Supreme Court of Appeal. It is for these reasons that we affirm the position stated in Mpinganjira v. Attorney General and Banda and Another v. Chunga. We are unable to accept the position in Anwar A. Gani v MY Chande.”

In the premises, the appeal has to be dismissed. It is so ordered.

Pronounced in Court this 24th day of January 2018 at Blantyre in the Republic of Malawi.



Kenyatta Nyirenda
JUDGE