



IN THE HIGH COURT OF MALAWI
LILONGWE DISTRICT REGISTRY
CIVIL CAUSE NO. 1413 OF 2013

BETWEEN:

CHRISTOPHER RITCHEPLAINTIFF

AND

ULEMU CAR RENTALS.....1ST DEFENDANT

MARIO RUI de CARVALHO REAL.....2ND DEFENDANT

AND FIONA REAL t/a MARIO MOTOR CENTRE

CORUM: R.M CHINAGWA JUDGE

Mataka Counsel for the Claimant

Chinula Counsel for the Respondent

Nyirenda Court Clerk

JUDGEMENT

1. Introduction

The Plaintiff seeks the following reliefs from the court;

- a. A declaration that the defendants have breached the partnership agreement entered with the plaintiff in 2008.
- b. A declaration that the defendants conduct is unfair and has caused damage and loss to the plaintiff.
- c. A declaration that the defendant’s conduct entitles the plaintiff to withdraw from the partnership.
- d. An order dissolving the partnership over the 1st defendant (Ulemu Car Rentals).

- e. An order requiring proper account to be done of all the profits and assets acquired by the 1st defendant and requiring the parties to share the same equally.
- f. An order for interest to be made and charge over the money which the 1st defendant lent to the 2nd defendant as working capital or otherwise.
- g. An order for cost covering loss of use of the two motor vehicles namely BL 2755 Nissan Path Finder and BP 908 Toyota Starlet which were hired by the 2nd defendant, from 2009 up to date of judgment.
- h. An order of costs

The defendants opposed the claims. The matter proceeded with hearing of a total of three witnesses from both parties, the evidence of whom is summarised below.

2. The Evidence

a) Claimants Evidence

The claimant was the only witness before the court to prove his case. In his sworn statement, he stated that he is the managing accountant working with the 2nd defendant, a business owned by Mario Rui de Carvalho Real and Fiona Real. The claimant and Mr. Real decided to establish and registered a partnership business in the name Ulemu Car Rentals in 2008, with three partners namely the claimant, Mrs. Fiona Real and Mr. Mario de Carvalho Real. The partners agreed to share 50% of the proceeds. The business started off with no car, but after several business deals the business bought two vehicles a Nissan pathfinder BL 2755 and a Toyota Starlet BP 908. As the business progressed. In 2nd January 2009 a new firm Mario's Motor Centre (MMC) was established with Mr. Real being a partner. Mr. Real and the claimant agreed that Ulemu Car Rentals will give a loan to MMC; that the two motor vehicles under Ulemu Car Rentals will be commercially hired by MMC; that MMC will provide fuel; that the 2nd defendant firm will pay for maintenance of the vehicles for the period used and the value of which will have to be deducted from the 1st defendants' assets when winding up. This arrangement was adhered to by the 2nd defendant. It is argued that the two vehicles did not serve the claimant for 5 years; that the 2nd defendant did not buy BP908 Toyota Starlet with his own money but the claimant personally advanced the first defendant the sum of MK123,000.00 and 1st defendant reimbursed this amount. The claimant added that he was to be a partner and signatory in Mario Motor Centre. The claimant was only made a signatory and not a partner. Moneys were drawn from the 1st defendant's Bank

Account with the First Merchant Bank for the benefit of the 2nd defendants whereas the claimant only got MK768,200.00 out of its proceeds. The claimant was informed on enquiry of the partnership that he was an employee and is not entitled to enjoy the business profits.

In cross examination he stated that he is claiming a dissolution of Ulemu Car Rentals as the company was registered together with the Reals and that he be given his share as a partner. He added that there was no written partnership but a verbal. He contributed to Ulemu Car Rentals with labour though the registration of names certificate does not show how much each contributed to the partnership. Regarding assets of Ulemu Car Rentals he stated that it had two assets Nissan Pathfinder and Starlet. When Ulemu Car Rentals was dissolved the cars were parked at claimants house, one was later sold and they were in bad condition.

b) Respondents Evidence

The respondents had two witnesses brought before the court. The first respondent witness was Mario Rui de Carvalho Real, Managing Director of Mario's Motor Centre. He stated that before opening Mario's Motor Centre, he was working under Nune's Group of Companies as an Operations Manager. He and his wife saved money from their salaries which they used as capital for their intended companies. In 2008, Mr Real took over Nunes Panel Beating which became Mario Motor Centre. Mr Real and his wife were partners as they contributed equally in the capital of the business and the profits were shared equally. The claimant was not a partner in the said business. In June, 2008 Mr Real had an idea of a car rental known as Ulemu Car Rentals. He approached the claimant and offered the claimant a partnership if the business was successful. Ulemu Car Rentals was registered and the partners were Mr Real, Mrs. Real and the claimant. The proceeds were to be shared at 40, 40, and 20 percent respectively. The claimant did not have any capital and was unable to contribute any money towards the capital of the business. The claimant was still taken on board as he helped with the Management of the Ulemu Car Rental and was made a conditional signatory of the bank account of Ulemu Car Rentals. As the business subsisted the business only retained 15% as profits. Mr Real and his wife used their income to buy a Nissan Pathfinder BL 2755 and Starlet BP908 which were registered in the name of Ulemu Car Rentals. Ulemu Car Rentals started its operations in July, 2008 without a single car and therefore it was not possible that within a month it could realize enough money to buy another car. From January, 2009, the business general at Ulemu Car Rental was for the Plaintiff's sole benefit and the nature

of running the vehicle was his sole responsibilities. The two cars of Ulemu Car Rental were offered to the claimant and have been in custody of the claimant.

Regarding Mario Car Center, the first defence witness continued to state that, it commenced its operation in January 2009 without a loan from Ulemu Car Hire and the claimant was employed as its management accountant. As such the claimant was entitled to fuel allocation of 120 liters per month as part of his employment package. He used his car a Pathfinder which was given to the claimant in 2009 when he was informed to take over Ulemu Car Rentals. The fuel that was allocated to him was based on his position as Management Accountant at Mario's Motor Centre and not for hiring of the said vehicle. After the claimant was dismissed from Mario Motor Centre in 2014, he commenced a suit claiming fuel allocation for two weeks as proof that he was an employee not a partner.

It has been argued that no partnership was offered to the claimant; the claimant was an employee of the 2nd defendant; that Mr and Mrs. Real have never borrowed money from Ulemu Car Rental; that the 1st Defendant had only two assets namely Nissan Pathfinder BL 2755 and Toyota Starlet BL 908.

The second witness was Gladson Ritchie, a son of the claimant and an employee of Mario Motor Centre as Accounts Assistant while my father, the Plaintiff, was the Management Accountant and Administrator of Mario Motor Centre. He stated that Ulemu Car Rentals and Mario Motor Centre were formed in 2008. That the 1st Defendant had three partners namely his father the claimant, Mario Real and Fiona Real. He argued that never at any point in time did Mario Motor Centre borrow money from the claimant; that Mario Motor Centre did not rent any vehicles from the claimant; that the claimant was employed by Mario Motor Centre as Management Accountant and by virtue of his employment, he was entitled to fuel allocation of 120 liters per month; that from 2009, the claimant was given vehicles of Ulemu Car Rental and consequently he was using it even when coming to work; that ever since he took the vehicles, the plaintiff has been hiring them out and using the proceeds alone as he witnessed the same being a son of the claimant; that the claimant took all the assets of 1st Defendant.

3. Issues for determination.

This court has to determine whether:

- a) a partnership agreement existed between claimant and the 2nd defendants.
- b) the partnership between the claimant and defendant can be dissolved.
- c) the claimant has suffered damages and loss due to the defendants conduct.
- d) financial accounts of all the profits and assets acquired by the 1st defendant should be produced and profits to be shared equally.
- e) 1st defendant lent money to the 2nd defendant as working capital.
- f) costs covering loss of use of the two motor vehicles namely BL 2755 Nissan Path Finder and BP 908 Toyota Starlet hired by the 2nd defendant, from 2009 up to date of judgment are payable.
- g) An order of costs

These will be considered below.

4. Analysis of Law and Evidence

a) Whether a Partnership existed?

In **Black v Grossat and another** [1997] 2 MLR 284 (HC) it was held that a partnership does not consist merely of a contract, it is a personal relationship which arises from the contract, founded on mutual confidence and trust. In addition, it was held that in order for a partnership to exist each partner must bring something into the business, the business must be carried on for the joint benefit of all parties, the object must be to make a profit and the contract must be legal'.

Having analysed the evidence this court notes that there was no written partnership agreement between the claimant and 1st defendants. Much as an agreement in itself would not speak of the existence of a partnership, the court has to establish the existence of a relationship, the parties contribution to the business; the parties should benefit from the business and the business intention should be to make profits. It is this courts view that a partnership existed in Ulemu Car Rentals between the claimant and 2nd defendants has been substantiated. To begin with regarding contributions to the business, the defendants argue that the plaintiff brought nothing into the business as they financed it wholly from their savings. It is noted that labour is a contribution to a partnership as stated in the **Black case** cited above. The claimant explained that he worked on the registration of the partnership as he travelled back and forth from Blantyre; most of the receipts presented in court show that the claimant was at work approving the transactions. In addition, regarding the existence of the partnership, this court notes that from the totality of the evidence

there was a profit-sharing arrangement apart from the evidence given in chief by both parties that they agreed on given percentage. Though the amounts agreed on do not match from the parties submission, the same does prove that there was a discussion and agreement to some profit-sharing arrangement. This is evidenced by the defendant not disputing the fact that they shared 50 % of profits as shown on Exhibit CER 1b. Further this court notes that the partnership did engage in business as a going concern as shown through the receipts of payment provided by the claimant for services offered by the 1st defendant. Lastly but not least it hasn't been shown that the claimant was an employee or providing a service to Ulemu Car Rentals in any other capacity as has been clearly shown in the case of his engagement with Mario Car Center and for what purpose the claimant had his name registered under Business Names Register if he were not a partner. This confirms in the totality of the evidence the existence of the partnership.

b) Whether the partnership can be dissolved

This court has been requested to declare the partnership dissolved. Having found that a partnership existed, this court has to determine its dissolution. Section 34 9 (c) of the Partnership Act states that *subject to any agreement between the partners, a partnership is dissolved if entered into for an undefined time, by any partner giving notice to the other or others of his intention to dissolve the partnership. In the last-mentioned case the partnership is dissolved as from the date mentioned in the notice as the date of dissolution, or, if no date is so mentioned, as from the date of the communication of the notice.*

The facts show that the parties are no longer trading as partners as Ulemu Car Rentals was short-lived. The defendants stated in examination in chief that "*after commencing operations at Mario Center on 1st January 2009 we informed the plaintiff that Fiona and I were no longer interested in the business of Ulemu Car Rentals.*" Though the notice was not in writing, the actions and verbal communication to the claimant did suffice as notice of dissolution of the partnership. As gathered from the evidence, the claimant then became an employee of the respondents. This court thus dissolves the partnership from 1st January 2009 as it was no longer operating then. A receiver should be appointed following the dissolution of the partnership for purposes of winding up and sharing assets and profits to the partners: **Ngosi v Munthali** (1 of 1996) [2000] MWHC 4 (16th February 2000).

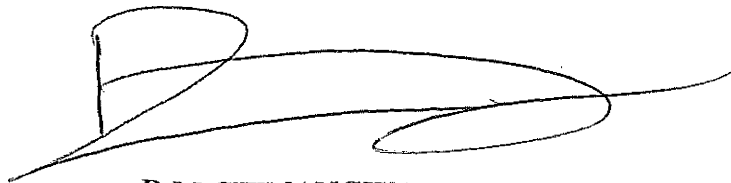
c) Has the claimant suffered damages and loss due to the defendants conduct?

The claimant argues that Mario Car Center which came to be in January 2009 was financed by Ulemu Car Rentals, which was a partnership between the claimant and the 2nd defendants as found above. As such the claimant suffered loss. This court finds that the claim has not been substantiated. First the 2nd defendants dispute having borrowed or used Ulemu Car Rentals money to finance MCC. The claimant produced bank statements to show the same. This court notes that the claimant should have brought as a witness an auditor who would have audited the financial statements of the 1st defendant and traced the money clearly. The claimant did not do a good job at that. A lot of bank statements were presented to the court but they were unexplained to the extent that the applicant could be said to have proved his case. The same also goes to the claim for an order for interest to be made and charge over the money which the 1st defendant lent to the 2nd defendant as working capital or otherwise and the claim for the cost covering loss of use of the two motor vehicles namely BL 2755 Nissan Path Finder and BP 908 Toyota Starlet which were hired by the 2nd defendant, from 2009 up to date of judgment. The claimant needed an audit report to prove these assertions. His oral evidence and unexplained bank statements did not suffice to prove his case on a balance of probabilities as the 2nd defendants denied ever using the 1st defendants assets and money to establish MCC. It is on this ground that the claims fail.

5. Finding

The claimants claims succeed in part. Each party is to bear its own costs.

Pronounced this 24th day of June 2021 at LILONGWE



R.M CHINANGWA

JUDGE