

MS J. F. Mwaungulu.

IN THE HIGH COURT OF MALAWI

PRINCIPAL REGISTRY

CIVIL CAUSE NO. 717 OF 1993



BETWEEN:

DAILES CHAUWA.....APPLICANT

- and -

AUTOMOTIVE PRODUCTS LIMITED.....RESPONDENT

CORAM: CHATSIKA, J.

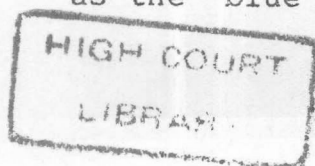
Chirwa, of Counsel, for the Applicant
Msaka, of Counsel for the Respondent
Mthukane, Official Interpreter

R U L I N G

On the 3rd of June 1993 the Applicant made an application to this Court for an order that a truck, Registration No. KK 181, which was allegedly unlawfully seized by the Respondent, be returned to him. In the same application the Applicant sought an injunction to restrain the Respondent, its servants or agents or otherwise howsoever from interfering with his title to the said truck. The application was supported by an affidavit sworn by the Applicant. The application was preceeded by a Writ of Summons in which the Applicant, as Plaintiff, is claiming damages from the Respondent arising from the alleged unlawful seizure of his vehicle.

In the affidavit, the Applicant stated that on the 10th of April 1993 he bought the truck in question, a Mercedes Benz, Registration No. KK 181 from Mpungulira Trading Limited at a price of K111,500 and that he paid a deposit of K20,000. Attached to the affidavit was a photocopy of a receipt for K15,250 as part-payment dated 10th April 1993 and also an invoice dated 10th April 1993 showing that the Applicant had bought the said truck at K111,500 and that he had paid a deposit of K20,000 towards the purchase price. The difference between the deposit stated on the invoice and the amount shown on the receipt had not been explained. It was written on the receipt that the balance of the purchase price would be paid by six monthly instalments.

Also attached to the Applicant's affidavit was a photocopy of the vehicle's registration book, commonly known as the "blue book". The information in the blue book was



that Mpungulira Trading Limited were the original title holders of the truck, Registration No. KK 181 and that on the 28th of May 1993 title in the truck was transferred to the Applicant, Dailes Chauwa.

The Applicant's affidavit further stated that on the 24th of May 1993 and without any claim of right, the Respondent unlawfully seized the said truck at Ntcheu where the vehicle was on a business trip. He ended up in his affidavit by stating that the Respondent's action had resulted in a loss of K1,000 per day to his business.

On the strength of the Respondent's affidavit and its attachments, the Court on the 3rd of June 1993 made an interim order that the truck, Registration No. KK 181, a Mercedes Benz which was being held by the Respondent, be released to the Applicant. The Court further granted an injunction restraining the Respondent, by itself, its servants or agents from seizing the Applicant's vehicle for a period of five days from the 3rd of June 1993 on condition that the Applicant would make an inter-parties application within the said five days for a continuing injunction until the action which was commenced by a Writ of Summons in connection with the alleged unlawful seizure of the truck was concluded.

On the 7th of June 1993, in compliance with the terms of the Court Order made on the 3rd June 1993, the Applicant, by way of Summons filed on that date, made an inter-parties application to make the injunction a continuing one until the action which had been commenced was concluded. The application was set down for hearing on the 15th of June 1993.

On the 15th of June 1993, Counsel for the Respondent filed three affidavits in opposition, some of which had several attachments.

The first affidavit in opposition was sworn by Mr Henning Von Ribbeck, the Managing Director of the Respondent Company. He stated that the vehicle, KK 181, was bought from his Company by Leasing and Finance Company Limited, who lease-hired it to Mpungulira Trading Ltd. He stated that earlier in 1993, the Leasing and Finance Company Ltd engaged his Company to assist in repossessing the vehicle on the grounds that Mpungulira Trading Ltd. had defaulted in their repayments to the Leasing and Finance Company as agreed in the lease agreement. He further stated that on the 25th of May 1993, he received a letter from Fachi, Chirwa & Company a firm of lawyers, who were demanding the vehicle on behalf of Mpungulira Trading Ltd., and not on behalf of the Applicant. He replied to the letter and advised that his Company, in seizing the vehicle, was acting on behalf of Leasing and Finance Company Ltd. and that any claims relating to the seizure should be directed

to them. Mr Von Ribbeck attached as exhibits the letter from Fachi, Chirwa & Co. as well as his reply thereto, both dated the 25th May 1993.

The second affidavit in opposition was sworn by Mr M B Kajawa, an employee of the Respondent's Company. He stated that upon information which he gathered, he went to Ntcheu on the 24th of May 1993 and found the motor vehicle, Registration No. KK 181, parked at a Resthouse. He stated that at the material time the vehicle was in the charge of a driver, who stated that he was an employee of Mpungulira Trading Ltd. and that at no time was the name of the Applicant mentioned as being the owner of the vehicle. He seized the vehicle and caused it to be brought to the Respondent's premises in Blantyre.

The third and most revealing affidavit was that of Mr Humphrey Ndhlovu, the Manager of Leasing and Finance Company Ltd. Mr Ndhlovu stated in his affidavit that the Company owned the vehicle KK 181 and that it lease-hired the same to Mpungulira Trading Ltd. under its lease-hire scheme. Under the scheme the Leasing and Finance Company Ltd. were the owners of the vehicle and the vehicle's registration book was duly endorsed stating that the lessee could not assign, transfer or pledge it without the written consent of the lessor. He further stated that the registration book which has been exhibited by the Applicant, which was issued three days after the vehicle in question had been seized, was not the original registration book.

After carefully studying the affidavits of Mr Von Ribbeck, Mr Kajawa and Mr Ndhlovu with their respective attachments and compared them with the affidavit of Mr Chauwa with its attachments, I am satisfied about the existence of the following facts.

That in March 1992 Leasing and Finance Company Ltd. lease-hired KK 181 to Mpungulira Trading Ltd. under their lease-hire scheme. The registration book of the vehicle was endorsed with the interest of the lessor in the vehicle. I am satisfied that by May 1993, Mpungulira Trading Ltd. had defaulted in their payments. In terms of the lease agreement, Leasing and Finance Company Ltd. instructed Automotive Products Ltd to seize the vehicle. Word of the intended seizure of the vehicle reached Mpungulira Trading Ltd. In order to avoid the seizure, Mpungulira sent the vehicle to Ntcheu where it was doing business. Mr Kajawa of Automotive Products Ltd. had some intelligence of the whereabouts of the vehicle. He went to Ntcheu and seized the vehicle and finally caused it to be brought to Blantyre.

In order to defeat the seizure, Mpungulira Trading Ltd. hatched a plan. They went to the Road Traffic Commissioner on the 27th May 1993, three days after the vehicle had been seized, and somehow managed to obtain a

duplicate registration book. Obviously, this registration book, unlike the original one, was not endorsed with the interest of Leasing and Finance Company Ltd. Mpungulira Trading Ltd then prepared an invoice dated the 10th April 1993, showing that the vehicle had been sold to one, Dailes Chauwa, for K111,500 and that the said Dailes Chauwa had made a down-payment of K20,000 and a balance of K91,500 would be paid in six monthly instalments. There is also a receipt of payment of money by Dailes Chauwa attached to Dailes Chauwa's affidavit and marked "DC1". This receipt shows a payment of K15,250 as deposit. This does not tally with the information on the invoice marked "DC2", which states that the deposit paid was K20,000. This inconsistency, as already remarked, has not been explained.

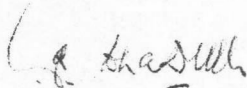
Equipped with these false documents, Dailes Chauwa applied to this Court for the release to him of KK 181 which was being held by Automotive Products Ltd. on behalf of Leasing and Finance Company Ltd.

I am satisfied that Dailes Chauwa, if indeed such a person exists, did not purchase the vehicle KK 181 from Mpungulira Trading Ltd. I am further satisfied that the invoice dated 10th April 1993, the receipt dated 10th April 1993, the registration book obtained on 27th May 1993 and the apparent transfer of title from Mpungulira Trading Ltd. to Dailes Chauwa made on 28th May 1993, were all part of a big and evil fraud aimed at defeating the lawful seizure of the vehicle KK 181. It is most unfortunate that the Applicant who has committed such a wicked fraud has decided to use the Court to consolidate his fraud.

Accordingly, the application to have the vehicle released to the said Dailes Chauwa is dismissed. It has been established that the vehicle is the property of Leasing and Finance Company Ltd. Leasing and Finance Company Ltd. will deal with the vehicle as they deem fit. Needless to say, the interim injunction which the Applicant fraudulently obtained on the 3rd of June 1993 is hereby discharged.

The Applicant is condemned in the costs of this application.

MADE in Chambers this 18th day of June 1993, at Blantyre.


L A Chatsika
JUDGE