

477/142/1993

IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY
CIVIL CAUSE NUMBER OF 1589 OF 1993



BETWEEN:

PEW LTD.....PLAINTIFF

AND

H MVULA.....DEFENDANT

CORAM: TAMBALA J
Kaphale, of Counsel for the Plaintiff
Kasambala of Counsel for the Defendant
Fukundo, Official Interpreter

RULING

In this application the plaintiffs seek an order requiring the defendant to surrender to them a motor vehicle registration number No. BH 3458 a Nissan Blue bird. It is essentially an application for a mandatory injunction. Mr Sujit Dutta the plaintiff's financial controller swore an affidavit in support of the application. The defendant's counsel swore an affidavit in opposition.

The defendant was employed by the plaintiffs on 1st August 1991, as a Manager in their Personnel and Administration Department. He was allocated a company car to transport him between his house and the office. He was subsequently permitted by the plaintiff to use the car to a limited extent for social and personal purposes. He was assigned a driver employed by the plaintiff to drive him. There was a condition that only an employee of the plaintiff who was authorised to drive could drive the vehicle.

On 15th October 1993 the plaintiffs terminated the defendant's employment. They duly paid him his terminal benefits. The driver assigned to drive him was withdrawn. He has no valid licence. He has retained the company car arguing that it was part of his terminal benefits and that he is entitled to use it for three months following the termination of his employment.



I bear in mind the principles which guide the court when deciding whether to grant an interlocutory injunction stated in the case of American Cyanamid Co -v- Ethcon Ltd (1975) A C 396. I appreciate that the granting or refusal to grant such injunction is the subject of the courts exercise of its discretion.

This court has jurisdiction to grant a mandatory injunction. The court would not however readily grant that relief. It is an exceptional remedy. It should be granted sparingly and with caution. See the case of Canadian Pacific Ltd -v- Morris and Another (1970) A C 652.

In the present case the defendant was allowed to use the company car when he worked for the plaintiffs as a Manager in the Personnel and Administration Department. A company car is one of the usual fringe benefits which employers grant to the employees. It is usually those employees in the higher ranks who enjoy such perks. In the present case ownership of the car remained in the plaintiffs. The defendant was only entitled to its possession during the time of use. It is the plaintiffs property. The defendant has since ceased to be an employee of the plaintiffs. It would be difficult to support his view that he is still entitled to enjoy a fringe benefit which is usually granted to employees.

The plaintiffs are entitled to ensure that their rights over the car as owners are protected. They cannot safeguard their right of ownership of the car when it is used by the defendant who is no longer their employee. The plaintiff cannot now control the defendant regarding how he uses the car. He may misuse it. He may cause deliberate damage to it and the plaintiffs would be powerless. They would have no means of preventing such misuse or damage.

The defendant has no driving licence. He may drive it and cause damage to it which will not be covered by insurance. This may occasion great loss to the plaintiffs. It would probably be very difficult to recover damages from him.

I am satisfied on the facts of this case that the applicant has shown strong probability of suffering irreparable damage. If on the other hand the defendant shall prove that he has suffered damage as a result of the withdrawal of the car from him he will certainly obtain adequate compensation from the plaintiff. They have undertaken to pay damages to the defendant in the event that it is proved that an injunction was wrongly granted. I am of the view that more harm would be occasioned in refusing an injunction than in granting it. I think that this is one of the exceptional cases in which I would be perfectly entitled to grant a mandatory injunction.

The application is successful. It is ordered that the defendant do forthwith permit the plaintiffs to recover their Nissan Blue Bird registration No. BH 3358.

MADE IN Chambers this 1st day of December, 1993, at Blantyre.

D G Tambala
D G Tambala
JUDGE