

17-01-1994

IN THE HIGH COURT OF MALAWI

PRINCIPAL REGISTRY

CIVIL CAUSE NUMBER 222 OF 1993



BETWEEN:

B J HADEBE.....PLAINTIFF

-and-

B NATHVANI & R JAKHURA t/a SPORTY CAR SALES.....1ST DEFENDANT

K A M PHIRI.....2ND DEFENDANT

ATTORNEY GENERAL.....3RD DEFENDANT

GLOBE WHOLESALERS.....4TH DEFENDANT

CORAM:

MBALAME J

Chizeze of Counsel for the Applicant
Kasambala of Counsel for the Respondent
Kadyakale Senior Law Clerk

RULING

By this summons the plaintiff herein, B J Hadebe seeks an injunction against the 2nd defendant restraining and forbidding him from selling or attempting to sell a motor vehicle registration No. BC 786, Mercedes Benz until the substantive cause herein has been determined by the court. There is in support of the application an affidavit sworn by Mr Zangaphee Chizeze of Chatsika and Company, Counsel for the plaintiff, the substance of which is that two vehicles, namely No. 41229, an BMW and the said BC 786 are the subject of the substantive proceedings pending before this court. It is his deposition that it has come to his notice that the 2nd defendant is making arrangements to sell the motor vehicle BC 786 to a third party with a view to defeating the plaintiff's claim should he emerge a successful party. There is on the other hand an affidavit in opposition by Mr Raphael Kasambala, Counsel for the 2nd defendant. He contends that according to him the motor vehicle BC 786 is not the subject of the substantive pending suit. He further contends that there being four defendants the plaintiff has three other persons to look to should he emerge the victor in the suit.

To appreciate the application it is, in my view, important to look at the facts of the case as they appear in the plaintiff's pleadings in the substantive case. In a nut shell it is the plaintiff's case that he on 8th December 1992 sent one Vusi Dhlamini to Malawi to scout for business. In order to ensure that he was mobile to and fro and in Malawi he made available to him a BMW registration No. ND 41229. It is alleged



that while in Malawi, the said Vusi Dhlamini conspired with the 2nd defendant to convert the said car to their own use. They had it cleared by both the Fiscal Department of the Malawi Police and the Department of Customs and Excise. The second defendant then transferred ownership of the car to himself and re registered it to BT 5999. There is no mention of the Mercedes Benz, BC 786 in the statement of claim. It is on these facts that the plaintiff seeks an injunction restraining and forbidding the second defendant from selling motor vehicle registration No. BC786, Mercedes Benz. Mr Chizeze who appears for the plaintiff has sworn an affidavit to support the application in which, among other things he states that the second vehicle, Mercedes Benz BC 786 and the BMW ND 412229 are the subject of the substantive proceedings now pending before this court as to title and ownership thereof.

In his affidavit opposing the application Mr Kasambala who appears for the first defendant has argued that the Mercedes Benz BC 786 is not the subject matter of the substantive proceedings now pending before this court and that it would therefore not be proper to grant an injunction in respect thereof. It is his contention that any issue involving BC 786 cannot be decided by affidavits.

The purpose of an injunction is to preserve the status quo of the parties to an action until their rights have been determined. In the instant case the plaintiff would have to prove to me that he has a good claim to the rights that he seeks to protect and that there is a matter to be decided on the balance of convenience.

In the instant case I do not think I need go that far, as Mr Kasambala has rightly submitted the vehicle in question, BC 786 is not mentioned in the plaintiff's writ (specially endorsed) which only mentions ND 412229 M5. The plaintiff, in my judgement has not shown any right or interest he might want to protect in BC 786 and I think it would be an abuse of the process of the law and inconsistent with the rights on vehicle if this court were to grant the application. I therefore dismiss the application with costs.

Made in Chambers this 17th Day of January at Blantyre.



R P MBALAME
JUDGE