

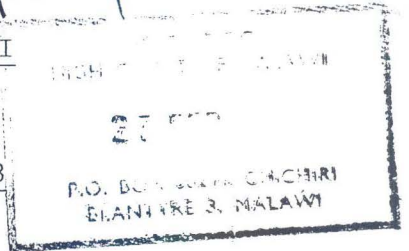
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IN THE HIGH COURT OF MALAWI

PRINCIPAL REGISTRY

CIVIL CAUSE NO.137 OF 1993



BETWEEN:

T.H. FATCH (MALE) PLAINTIFF

- and -

MRS RUTH MTHAWANJI (ADMINISTRATRIX) ... 1ST DEFENDANT

- and -

THE ESTATE OF R.S. MTHAWANJI 2ND DEFENDANT

CORAM: MKANDAWIRE, J.

T. Chirwa, Counsel for the Plaintiff
Mvula, Counsel for the Defendant
Nakhumwa, Official Interpreter
Tsoka (Mrs), Recording Officer

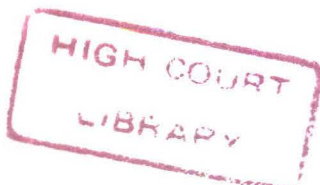


JUDGMENT

The plaintiff is claiming the sum of K18,000.00 being damages for alleged breach of contract by the first defendant.

In December, 1992, the plaintiff was introduced to the first defendant by Mr. Gondwe. Both the plaintiff and Mr. Gondwe were working with the Plant and Vehicle Hire Organisation in Blantyre. At that time the plaintiff was looking for a car to buy and the first defendant had some cars remaining in her late husband's estate. Mr. Gondwe who had already bought a car from the first defendant brought the plaintiff. The first defendant had a Peugeot 505 registration No.BG 4784 and the plaintiff was interested in this car. The car was being sold at a price of K12,000.00. The plaintiff did not have the cash and as a civil servant he was going to purchase it on government loan. The first defendant had no objection to this suggestion. The loan application forms were duly completed by both parties and the vehicle was taken for valuation. The car was not in good condition. The body work was badly corroded all over and the examiner made a list of 15 items which had to be done to the car. This list was tendered as Exhibit P3. Since the vehicle was being sold in that condition, the plaintiff wrote a letter certifying that it be valued in that condition. He was prepared to carry out the repairs because the price was low.

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The loan application forms were sent to Lilongwe for processing on 23rd December, 1992. On 29th December, 1992 the cheque in the sum of K12,000.00 was ready and the plaintiff received it on 31st. On that very day the cheque was sent to the first defendant only to be told that the car had already been sold. The first defendant tried to return the cheque but the plaintiff refused to accept it. It was tendered in evidence as Exhibit D1. It was the plaintiff's evidence that the loan has not been reversed and he is still suffering deductions from his salary.

In early 1993 he started looking for a similar car. He found one at Duwe Motors at a price of K30,000.00. He failed to buy this car because his loan had not been reversed. He is now claiming K18,000.00 being the difference between the two vehicles. It was also his evidence that as his job involves a lot of travelling he was making K1,000.00 per month with his car which broke down in December, 1992. He has now lost this revenue because of the first defendant's breach.

The second witness for the plaintiff was Mr. Willy Pwetekani of Duwe Motors. He deals in second hand cars and he has been in the business for some 5 years. In early 1993 the plaintiff went to his place looking for a car. There were several cars, but the plaintiff was interested in a Peugeot 505 at a price of K30,000.00. It was a 1986 model. The plaintiff said he was going to look for money to buy the car, but he failed to do so. Mr. Pwetekani told the Court that a similar car would cost around K35,000.00 now. He said this type of car is difficult to find on the market.


The only witness for the defendants was Mrs Ruth Mthawanji. In December, 1992, Mr. Gondwe introduced the plaintiff to her. The plaintiff was interested in a Peugeot 505 BG 4784. She did not mind the government loan so long as the plaintiff came up with the cheque very soon. She did not promise that she would not sell the car before the cheque if someone brought cash. The understanding was that if the plaintiff brought the cheque he would get the car, but until then, she was free to sell it to anyone who brought cash. Later, Mr. Gondwe brought Mr. Ndovi who had the cash and the car was sold to him. She then asked Mr. Gondwe to inform the plaintiff that the car was no longer available. It was her evidence that she wanted to sell the car very quickly because she needed the money and the car was in a bad state and she did not want its condition to get worse.

In cross-examination she said she had completed the loan application forms at the plaintiff's insistence. She told him that she needed the money fast.

This case involves the basic principles of the law of contract. The question I have to determine is whether there was a binding contract between the parties. If I find that there was one, then I must go further and find whether there was a breach. If on the other hand I find that there was no contract, then the question of breach will not apply. The first defendant wanted cash for the car and she wanted the money fast. It was her evidence that she needed the money and so she wanted to sell the car very quickly. The plaintiff did not have ready cash so he negotiated with her and offered to buy the car on government loan. She expressed reservations knowing that sometimes government loans take long. She told him that she would not mind his buying the car on loan so long as the cheque came very soon. There can be no enforceable contract unless there is an offer and acceptance. There is no doubt that the plaintiff had made an offer to buy the car on government loan but can it be said that the first defendant unconditionally accepted the proposal. It is established that a conditional acceptance is no acceptance at all - see Halbury's Laws of England Fourth Edition Volume 9 paragraph 256. It might seem that by completing the loan forms, the first defendant signified her acceptance but she qualified her acceptance. She did not promise that she would not sell the car if someone brought cash. I believed her evidence. She said she only completed the forms on the insistence of the plaintiff. It was important that the first defendant should complete the forms because unless that was done the application would not be processed. She therefore completed the forms without binding herself to sell the car to the plaintiff. It was her evidence that the understanding was that the plaintiff would only get the car if he brought the cheque. As a matter of fact the whole thing was conditional upon the loan application being approved. If for some reason, it was rejected, the first defendant would not hold the plaintiff in breach. My finding therefore is that there was no binding contract between the parties.

Having found that there was no binding contract, it is not necessary for me to consider whether there was breach. The action is therefore dismissed with costs.

PRONOUNCED in open Court this 26th day of August, 1994 at Blantyre.



M.P. MKandawire
JUDGE