

IN THE HIGH COURT OF MALAWI

PRINCIPAL REGISTRY

CIVIL CAUSE NO. 2370 OF 1994

BETWEEN:

A. R. KASSAM AND R. JAKHULA ..... PLAINTIFF  
t/a FADS

- versus -

HARDWARE AND GENERAL DEALERS LIMITED ..... DEFENDANTS

CORAM: TAMBALA, J

Ng'ombe, of Counsel for the Plaintiff  
Hanjahanja, of Counsel for the Defendant  
Selemani, Official Interpreter  
Namangwiyo, Recording Officer



J U D G M E N T

Between 1992 and 1994 Mr A. R. Kassam, the plaintiff carried out some business which dealt in furniture and furnishing material. He operated it in a rented shop within the city of Blantyre. In 1994 he was asked by the Landlord to vacate the shop and as he had no alternative premises to relocate his business he decided to sell all the stock. He approached Mr A. M. Mantora the General Manager of the defendants and offered to sell to the defendants the entire stock of his business. He carried a list of the items which he was selling. Mr Mantora referred him to Mr Singini the deputy General Manager of the defendants.

Mr Kassam negotiated the sale of the goods with Mr Singini. He offered the goods for K934,000.00 which he later reduced to K750,000.00. The defendants were still not prepared to part with that amount of money. They offered to select some goods from the entire stock. They decided to purchase carpets, upholstery materials, tumblers and two types of curtain material. Some of the items selected by the defendants were kept at Mr Kassam's house. Mr Kassam offered the goods for K500,000.00. The defendants were unwilling to pay that much. After a series of meetings it was agreed that the price should be reduced to K250,000.00.

Mrs Msume and Mrs Phanga the defendants' senior buyer and branch manager, respectively, came to Mr Kassam's shop where they measured the materials and collected the goods. Mr Kassam prepared an invoice No. 025 dated 9th April, 1994 for a total sum of K250,000.00. In terms of the agreement which he reached with



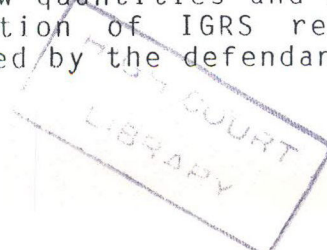
Mr Singini the invoice showed that the purchase price would be paid in five instalments. The first instalment was due immediately, the second was due at the end of April, the third would be paid at the end of May, the fourth at the end of June and the last payment was due end of July. When Mr Kassam presented the invoice to Mrs Msume, she at first refused to sign it. She however signed it when it was brought to her a second time.

The defendants honoured the first, second and third instalments. They refused to pay the fourth instalment. They claimed that Mr Kassam underdelivered. They paid only **K12,120.47** as being the balance of the value of the goods so far supplied. They demanded that Mr Kassam should further supply goods worth **K87,879.53** or issue a credit note for the same amount in favour of the defendants. That was unacceptable to Mr Kassam who, after fruitless discussion with Mr singini, referred the dispute to his lawyers.

The principal issue to be resolved in this case is whether the seller failed to discharge fully his obligation to deliver the goods agreed to be purchased by the defendants. In dealing with this issue it becomes pertinent to consider the nature of the obligation of the seller, the plaintiff, in this case. What is it that he was required to do under the contract between himself and the defendants?

It is the duty of the seller to deliver to the purchaser the goods the subject of the contract of sale. In the instant case the defendants agreed to purchase curtain materials, carpet materials, upholstery and tumblers for a total price of **K250,000.00**. Mr Kassam contends that after the defendants selected these goods they agreed to pay the purchase price regardless of the quantities of each item. He claims that he duly supplied the goods agreed to be purchased by the defendants in terms of the contract. If the plaintiff delivered 2 tumblers, 2 meters of curtain material, 2 meters of carpet material and 2 meters of upholstery material would the defendants be required to pay **K250,000.00**? Perhaps. The law of contract is not concerned with the adequacy of consideration.

The evidence of witnesses for the defendants, especially Mr Mantora and Mr Singini, is that when the plaintiff came to offer them to buy his stock he had a list of items which showed quantities and prices of the items. They contend that it was agreed that Mr Kassam would supply goods for a total value of **K250,000.00** based on the agreed prices of each type of goods. They reject as unreliable the invoice prepared by the plaintiff because it does not show the quantity of goods and the unit price of the goods supplied. No delivery note was produced in court, by the plaintiff, showing the quantities and specific prices of the goods supplied. The defendants rely on documents called IGRS. They are prepared when goods are received by the defendants and they show quantities and unit prices of the goods received. An examination of IGRS reveals that goods worth **K162,120.47** were received by the defendants from the plaintiff.





There is one serious problem with IGRS. They do not bear the signature of the supplier of the goods. It would seem that these documents are prepared by the employees of the defendants for internal use and as a stock control mechanism. They cannot, in my view, be a substitute for a delivery note. The plaintiff cannot be affected by the contents of a document which was not prepared by himself or under his authority and which does not bear his signature. He probably was totally unaware of the existence of such documents. I would reject IGRS as proof of quantities and prices of goods supplied by the plaintiff in this case.

The defendants produced, in court an L. P. O. It is dated 19th May, 1994. The total value of the goods shown on it is **K162,120.47**. It was prepared by Mrs Msume, the senior buyer of the defendants. She testified that she prepared it when it became clear that the plaintiff was reluctant to deliver the goods which were at his house. She further said that she wrote on the L. P. O. the goods which the plaintiff had, at that point in time, delivered. Mr Kampondeni, testifying on behalf of the defendants, stated that in refusing to pay the plaintiff **K250,000.00** he was influenced by the L. P. O. besides the IGRS. An L. P. O. is an order or request for the supply of goods. It is not evidence of the actual supply or delivery of the goods. Following an order for goods there may be an undersupply or oversupply of the goods. In any case, it is clear that the contents of the L. P. O. were simply extracted from the IGRS. I have rejected the IGRS as proof of goods actually delivered. The L. P. O. is equally rejected. Then it is very unusual to receive goods the subject of a contract of sale and to start paying for them before an L. P. O. is issued. I find the L. P. O. and the circumstances in which it was issued suspicious.

The defendants argue that the fact that the goods were counted and measured at the shop of the plaintiff negatives the contention that the agreement was to purchase the goods irrespective of their quantities. The evidence of the plaintiff is that representatives of the defendants measured and counted the goods for their own record purposes. It is probable that the defendants wanted to ensure that the persons who actually collected the goods correctly accounted for them in the defendants' records. If the defendants' employees requested to measure and count the goods before collection, notwithstanding that the agreement was for a sale irrespective of quantities, the plaintiff could not stop them.

The contract of sale between the parties was verbal. This has made it especially difficult to determine the terms of the contract and nature of obligations undertaken by the parties to the contract. However, my decision on these issues will largely depend on the conduct of the parties to the contract.

Mrs Msume signed the invoice when it was brought by the plaintiff a second time. An invoice is an important document in a contract of sale. It was signed after the defendant collected the goods. It does not show quantities of the goods; but it



describes the goods and gives a total price of the goods. It also shows the mode of payment. By accepting to sign it the senior buyer of the defendants was committing the defendants to pay **K250,000.00** by five monthly instalments. Mrs Msume said that she signed it because the plaintiff told her that Mr Singini directed that she should sign it. It is curious that she did not confirm from Mr Singini about what the plaintiff said. It is very probable that Mr Singini gave that instruction as he is the one who negotiated the contract. The defendants cannot now dispute a document on which they appended their signature. They are bound by the contents of this document. The law on that point is clearly settled: See Cheshire and Fifoot, Law of Contract, 9th edition, page 51.

After the invoice was accepted and signed the defendants made three payments before they disputed the quantities of goods delivered. The contract between the parties was not to pay for each consignment of goods actually delivered. The defendants agreed to pay **K250,000.00** for the goods which they selected. There was no room for part payment or part delivery. The defendants were entitled to refuse to make any payment if all the goods they agreed to buy were not delivered by the plaintiff. The contention of the plaintiff is that he delivered all the goods and the defendants accepted his invoice and started paying for the goods. The defendants' argument that the plaintiff did not deliver goods worth **K87,879.53** is unconvincing. They say that they paid because the plaintiff pleaded that he had financial problems and he was pressed for money by his landlord. The plaintiff denies the allegation. I do not believe the defendants' story. I was unable to see why the plaintiff could not be compelled to deliver all the goods before the invoice was accepted and payments made in terms of the invoice. The acceptance of the plaintiff's invoice and the making of payments, consistent with the invoice, supports the plaintiff that he delivered all the goods selected by the defendants.

The evidence of Mr Kampondeni was that when he refused to pay the fourth instalment the defendants' financial controller instructed him to pay. He also said that the financial controller told him that he had been instructed to make the payment by the general manager and deputy general manager. It is clear from the evidence that the most senior persons in the defendants' organisation were willing to pay the whole purchase price. It was only a very junior person who refused to pay and, as I have shown, his decision was based on the contents of wrong documents.

I am satisfied, from the conduct of the defendants themselves, that the agreement between the parties was that the defendants would purchase goods which they would select from the plaintiff's clearing stock and that the total price for the goods would be **K250,000.00**. I find that the quantities of the goods were not specified nor was a unit price, for each type of item selected, agreed upon. I further find that after the defendants selected the goods the plaintiff allowed the defendants'

representatives to collect them. The plaintiff delivered all the goods which the defendants agreed to buy. He discharged fully his obligation under the contract. The defendant's refusal to pay is unjustified and it is influenced by a wrong decision of a very junior employee in the defendants' organisation. The plaintiff's action succeeds.

There is a claim for interest. This claim was specifically pleaded in terms of 0.18 rule 8 of the Rules of Supreme Court. Both parties are business persons. They are fully aware that in the light of the prevailing economy characterised by galloping inflation and high interest rates K87,879.53 in 1994 would not be the same two years later. If the sum claimed was invested in treasury bills or some fixed deposit accounts it would have earned a return greater than the 43% interest which is claimed in this case. The defendants put the plaintiff to great inconvenience and caused him financial hardship by holding this sum of money and refusing to pay it to him. It is only fair that they must pay it back together with the interest claimed. On the facts of this case I order that the defendants pay interest for two years. The defendants shall pay to the plaintiff K163,455.92. I enter judgment for that amount with costs in favour of the plaintiff.

PRONOUNCED in open Court, this 7th day of June, 1996 at Blantyre.

*D G Tambala*  
D G Tambala  
JUDGE

