



**IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY
GENERAL CIVIL DIVISION
MISCELLANEOUS CIVIL CAUSE NO. 14 OF 2019**

BETWEEN

GASTON MWENELUPEMBECLAIMANT

AND

**CORNELIUS MAJAWA 1ST DEFENDANT
FIRST MICROFINANCE CENTRE LIMITED 2ND DEFENDANT**

CORAM: THE HON. JUSTICE MBVUNDULA
Mwenelupembe, of Counsel representing himself
Kaluwa, Counsel for the Defendants
Kanchiputu, Official Interpreter

ORDER

Mr Mwenelupembe, the claimant, filed in the Civil Division of the Court, an application for an order of mandatory injunction directing the defendants to release forthwith to the applicant a Nissan Bluebird motor vehicle registration number KA 1422. The supporting sworn statement shows that the claimant borrowed from the 2nd defendant, whose Managing Director is the 1st defendant, K1 000 000.00 which was to bear interest. He later pledged as security for the loan his Mercedes motor vehicle registration number KA 3488, a non-runner. He appears to have defaulted in his repayment of the loan and because the motor vehicle he pledged was a non-

runner, the defendants seized the Nissan vehicle, a runner. He challenges the decision to seize the Nissan as well as the manner it was carried out, considering the defendants to have had no right to do so.

On these facts it appeared to me that the matter was commercial in nature which according to the Courts Act, as amended, should have been instituted in the Commercial Division of the Court. I invited the parties to address me on this observation.

Initially Mr Mwenelupembe submitted that he filed the application in the Civil Division because he sought the court's interpretation as to whether the terms of the agreement between him and the 2nd defendant allowed defendants to act in the manner they did. He later on, in reply to the submission by counsel for the defendants, that, in his view, the unlawful seizure of his motor vehicle is not a commercial matter, but an issue which can be appropriately dealt with in the Civil Division.

Mr Kalua for the defendants took the position that it being obvious that the issues herein arise from a commercial transaction, they fall within the ambit of the Commercial Division, if the claimant has any issues arising from the transaction.

The relevant provisions of the Courts Act are sections 2 and 6A. Section 2 defines a "commercial matter" as

"a civil matter of commercial significance arising out of or connected with any relationship of commercial or business nature, whether contractual or not, including –

...

- (b) contractual relationship of a business or organization;
- (c) liabilities arising from commercial or business transactions;
- (d) the restructuring or payment of commercial debts;

Section 6A establishes the Court's specialized Divisions. Herein only two are material, the Civil Division and the Commercial Division.

