

**IN THE HIGH COURT OF ZAMBIA
AT THE PRINCIPAL REGISTRY
HOLDEN AT LUSAKA**

2014/HP/0705

BETWEEN:

QUADRANT MOTORS

AND

JOEL MBULO



PLAINTIFF

DEFENDANT

**BEFORE HON MRS JUSTICE S. KAUNDA NEWA THIS 7th DAY OF
SEPTEMBER, 2017**

For the Plaintiff : Mr C. Nhari, Nhari Advocates

For the Defendant : no appearance

J U D G M E N T

CASES REFERRED TO:

1. *Davies V Oswell 1837 7 C&P 804*
2. *Hiort V L.N.W RY 1879 4 Ex D 188 CA*
3. *Salomon V Salomon 1897 AC 22*
4. *Re Simms 1934 CH 1 CA*
5. *Mercantile Business Finance Limited V Sibec Development Limited 1992 1 WLR 1253*

OTHER WORKS REFERRED TO:

1. *Mc Gregor on Damages by Harvey Mc Gregor 18th Edition, 2009*
2. *Halsbury's Laws of England Volume 28, 4th edition*

The Plaintiff commenced this action on 8th May, 2014, by way of writ of summons claiming;

1. *An order for the delivery up of the motor vehicle Toyota Liteace registration number ABJ 9864, chasis number KM51-0062099, and engine number 5K-1281867*

2. *Damages for trespass and or conversion*
3. *Further or in the alternative an order for the payment of any consequential damages*
4. *Interest*
5. *Costs*

The statement of claim filed states that on or about 7th April, 2014, agents, servants or employees of Quadrant Travel and Tours Limited drove to the Defendant's premises in the Plaintiff's Toyota Liteace registration number ABJ 9864, to deliver mail and a cheque to Mawenti Enterprises Limited, a company in which the Defendant is a member, agent, servant or employee.

The statement of claim alleges that the Defendant forcibly, and without the consent of the Plaintiff, dispossessed the Plaintiff's employees of the vehicle, and thereafter started treating it as his own. It is stated that despite several reminders and efforts by the Plaintiff to retrieve the vehicle, the Defendant has ignored, and neglected to deliver up the same.

The Defendant on 12th November, 2015 filed a defence, in which he admits having taken possession of the vehicle, but denies that the same was done by force, and that he is treating the vehicle as his own. That he detained the said vehicle because the Plaintiff refused to refund him the money that he had partially paid as rent for the Plaintiff's shop No1 of Plot 1 Oxford Avenue in Kitwe, after they could not agree on the commencement date of the lease.

It is also stated in the defence that efforts to get the refund from the Plaintiff had failed, and that he continues to have possession of the bus on the condition that the Plaintiff pays him what he is owed.

At the hearing the Plaintiff called two witnesses, while the Defendant did not appear. PW1 was Elliot Sempulo. He is a manager at Quadrant Travel and Tours. This witness testified that on 7th April, 2014, he was delivering a cheque for K13, 720.00, to the Defendant at his company premises known as Mawenti Enterprises in Kitwe, and had gone there in the vehicle Toyota Liteace registration number ABJ 9864, belonging to the Plaintiff, but which they were using, and was being driven by their driver John Nsofwa.

He stated that when he reached the Defendant's company premises, and the accountant there Mr Morgan handed over the cheque to the Defendant, the Defendant had stated that he would not accept the cheque, as it was less one month's rent, and he told PW1 to go back with the cheque.

That PW1 went back to the vehicle, and when it was driven up to the gate so that they could exit the premises, the guard there told him to go back to Mr Morgan. PW1 testified that he went back to Mr Morgan who directed him to the Defendant, and when he went there, the Defendant stated that he would detain PW1 and the vehicle, until he got the full amount of the money. It was stated that the Defendant then called Kenny Sichone and instructed him to interrogate PW1, and Kenny was joined by two men who threatened PW1.

PW1 testified that he called Mr Rodrigo his boss, and informed him that he had been detained, and asked Mr Rodrigo to speak with the Defendant on the phone. However the Defendant declined to do so,

and gave the phone to Kenny Sichone to speak with him. That after the phone call ended, the Defendant released PW1 but detained the vehicle, and instructed Kenny Sichone to get the keys for the vehicle.

It was further PW1's testimony that Kenny on getting the keys for the vehicle, recorded the mileage on the vehicle, and so did PW1. That on Mr Rodrigo's advice, PW1 had reported the matter to the police, and a call out was issued to the Defendant. PW1 explained that he could not serve the call out on the Defendant as the environment was not conducive, and he instead took it their lawyer, Mr Twamusi, of Kitwe Chambers. That Mr Twamusi had phoned the Defendant in PW1's presence, informing him of the call out, and Mr Morgan went and collected the call out.

Further in his testimony, PW1 stated that the next day he went to the police and the Defendant was there, but the police on hearing both sides informed them that the dispute was civil in nature, and they left. PW1's evidence was that he then phoned Mr Rodrigo and informed him of the developments, and thereafter Mr Rodrigo went there, and together they went back to the police. He stated that Mr Rodrigo then took over the matter. PW1 stated that the vehicle was only retrieved on 9th June, 2014, after a court order was obtained by their lawyers. He testified that the vehicle was detained from 7th April, 2014 until 9th June, 2014.

It was stated that during the period that the vehicle was detained, they would hire public transport, and later the Plaintiff sent a vehicle for them to use. He identified the document at page 1 of the Plaintiff's bundle of documents as the white book for the vehicle, and the documents at pages 2-6 of the same bundle of documents, as

evidencing the fact that Mawenti Enterprises had applied to rent a shop.

The documents at pages 11 to 14 of the Plaintiff's bundle of documents were identified as the receipts for the transport that was hired during the period that the vehicle was detained by the Defendant.

The second witness was Havendra Dushan Rodgrigo Kurukulasuriya. He testified that sometime in February, 2014, the Defendant had approached him to rent one of the shops belonging to Quadrant Travel and Tours. PW2 stated that a lease agreement was drawn up, and then around 7th April, 2014, he was told that the vehicle belonging to the Plaintiff that they were using was detained by the Defendant.

That after efforts to retrieve the vehicle using the police failed, and after a week, PW2 was instructed to travel to Kitwe to follow up on the matter. He told the court that he travelled there on or about 15th April, 2014, and he went to the police headquarters in Kitwe. It was stated that there he met the Defendant after police summoned him. PW2 testified that he had shown the Defendant the white book for the vehicle, which shows that it belongs to the Plaintiff, and not Quadrant Travel and Tours.

PW2 also told the court that the Defendant had decided not to take up the shop he had wanted to rent, and they had refunded him the rentals paid, less one month's rent, as he was supposed to occupy the shop on 1st March, 2014. That as he had delayed to do so, they had deducted one month's rent, and the remaining amount was sent to him through a cheque, but as he detained the vehicle, they had stopped the payment.

PW2 stated that they agreed that the vehicle be released, and the Defendant be paid K13, 000.00, and he could pursue the one month's rent either through letters or the court. However the Defendant went back on the agreement, demanding to be paid all the money before he could release the vehicle. PW2 also testified that costs were incurred on account of the vehicle being detained, as they did not have a motor vehicle in Kitwe for the daily operations of the company, such as to deliver invoices to customers, and deliveries to the mines.

He identified the documents at pages 11 to 14 of the Plaintiff's bundle of documents as the receipts for the transport charges incurred, stating that page 11 has receipts for deliveries made to customers requiring a vehicle larger than a salon vehicle. That page 14 is a breakdown of the transport charges on three occasions that they had needed a larger vehicle.

I have considered the evidence. It is not in dispute that the Defendant detained the vehicle belonging to the Plaintiff, and which was being used by Quadrant Travel and Tours, as he wanted to be refunded the month's rent that had been deducted from the amount that he had paid to rent a shop, but did not take up. The question is whether the Plaintiff is entitled to the reliefs sought?

In the submissions filed, the Plaintiff stated that the Defendant did convert the Plaintiff's vehicle to his own use, and the case of **MERCANTILE BUSINESS FINANCE LIMITED V SIBEC DEVELOPMENT LIMITED 1992 1 WLR 1253** was relied on. That in that case the court held that to establish the tort of conversion, one needs to prove an overt act of withholding possession from the true owner. That such act may consist of a refusal to deliver up the chattel

on demand, but it may be demonstrated by other conduct, for example, by asserting a lien.

That in this case the Plaintiff had nothing to do with the dispute over the refund, as the same was between Quadrant Travel and Tours Limited and the Defendant. That Quadrant Travel and Tours Limited is a limited company, with distinct legal personality from the Plaintiff, which is the legal owner of the vehicle. The case of **SALOMON V SALOMON 1897 AC 22** was relied on as authority for this submission. Therefore the Plaintiff had proved its case on a balance of probabilities.

From the defence filed by the Defendant, he does not dispute having detained the vehicle, but his defence was that this was done with a view to ensure that he was refunded the one month's rent that he was claiming from Quadrant Travel and Tours Limited. The Defendant pleaded that he was exercising a lien over the vehicle to ensure that he was paid. *Halsbury's Laws of England Volume 28, 4th edition* at paragraph 501 on page 221, defines a lien as **"a legal right to keep possession of property until a claim has been met"**.

It is clear that the Defendant exercised the lien in relation to money that Quadrant Travel and Tours Limited owed him. It has been seen that the vehicle that he detained belongs to the Plaintiff, a limited company. At law, the Plaintiff and Quadrant Travel and Tours Limited are each persons with separate legal existence. They have capacity to sue and be sued, and to own property in their own names.

That being the position, the Defendant's claim against Quadrant Travel and Tours Limited could not be enforced against the Plaintiff, and he could therefore not hold onto the Plaintiff's vehicle as a lien to

secure payment from Quadrant Travel and Tours Limited. The Defendant by detaining the Plaintiff's vehicle to secure payment from Quadrant Travel and Tours Limited committed the tort of conversion, as he had no right to exercise a lien over the Plaintiff's vehicle in order to secure payment from Quadrant Travel and Tours Limited. The Plaintiff has therefore proved this claim on a balance of probabilities that the Defendant did convert its vehicle. The next question that arises, is what is the measure of damages for such conversion?

Mc Gregor on Damages by Harvey Mc Gregor 18th Edition, 2009 at paragraph 33-006 on page 1196 states that the normal measure of damages for conversion is the market value of the goods converted. From the evidence on record, it has been seen that the vehicle was in fact returned after a court order was obtained on 9th June, 2014. Paragraph 33-034 at page 1238 of *Mc Gregor on Damages* states that where the Defendant offers, and the claimant accepts redelivery of the goods at any time before the action has proceeded to judgment, this does not go to bar the action, but goes only in reduction or mitigation of damages.

Thus the claimant may proceed for damages resulting from his being out of possession of the goods, and although he may succeed in recovering only nominal damages. Further paragraph 33-066 on page 1231 of the said *Mc Gregor on Damages* states that loss beyond that represented by the market value of the goods may be incurred by a claimant, through being deprived of their use. That whether such consequential sums can be recovered turns on the principles of remoteness of damage. In the case of **Re SIMMS 1934 CH 1 CA** it was held that "**special damages may in certain cases be allowed, but**

it must be, as in all other cases of damages, the direct result of the tort”.

Applying the decision in that case, the question in this matter is whether there was damage that the Plaintiff suffered as a result of the tort of conversion having been committed by the Defendant? Both PW1 and PW2 testified that as a result of the Defendant having detained the vehicle registration number ABJ 9864 belonging to the Plaintiff, Quadrant Travel and Tours Limited that was using the said vehicle had to start hiring vehicles to carry out its business, among them delivery of invoices to clients, and deliveries to the mines.

In the case of ***DAVIES V OSWELL 1837 7 C&P 804*** it was held that ***“the expenditure in hiring a substitute is recoverable”***. In this case it is not the Plaintiff but Quadrant Travel and Tours Limited that hired the transport indicated at pages 11 to 14 of the Plaintiff’s bundle of documents, as it was the one that was using the vehicle at the time that it was detained. It was argued that the Plaintiff and Quadrant Travel and Tours Limited are both incorporated companies, and therefore have distinct legal personality from each other, and the said Quadrant Travel and Tours Limited is not a party to this action.

Therefore the consequential loss suffered as a result of the conversion was not suffered by the Plaintiff, but Quadrant Travel and Tours Limited, and cannot be claimed by the Plaintiff, and that claim will fail on that basis. However paragraph 33-074 at page 1238 of *Mc Gregor on Damages* already cited refers to the case of ***HIORT V L.N.W RY 1879 4 Ex D 188 CA*** where nominal damages were awarded after the converted goods were returned on the basis that ***“because a***

conversion cannot be purged, and if a defendant is guilty of conversion, he must pay some damages”.

In line with the said principle, I award the Plaintiff nominal damages in the amount of K5, 000.00 against the Defendant, which amount shall carry interest at the average short term deposit rate from the date of the issue of the writ until judgment, and thereafter at a rate of six percent per annum until payment. The Plaintiff is also awarded costs, to be taxed in default of agreement. Leave to appeal is granted.

DATED THE 7th DAY OF SEPTEMBER, 2017

Kaunda

**S. KAUNDA NEWA
HIGH COURT JUDGE**