

IN THE HIGH COURT FOR ZAMBIA
AT THE DISTRICT REGISTRY
HOLDEN AT KITWE
(CIVIL JURISDICTION)

2017/HK/325

BETWEEN:

STANDFORD NGAMBI

AND

STEPHANE MULUMBA

PLAINTIFF

DEFENDANT

Before; Hon. Madam Justice C. B. Maka-Phiri

For the Plaintiff : In person

For the Defendant : In person

R U L I N G

Legislation referred to:

- 1. The High Court Rules, Cap 27 of the Laws of Zambia.**

Other works referred to:

- 1. Black's Law Dictionary 10th Edition**

This is the plaintiff's application for an order to sale motor vehicle registration No. 7095 AC/05 made pursuant to the provisions of Order 3 Rule 2 of the High Court Rules.

The application is supported by an affidavit dated 18th May, 2017 and deposed to by the plaintiff. According to the said affidavit the plaintiff lent a sum of K45,000 to the defendant on 26th September,

2016. The defendant pledged his damaged Mercedes Benz Car Registration No. 2095 AC/05 as surety for the money that he borrowed. The agreement documents signed by the parties on the transaction are shown as exhibits "SN1" and "SN2".

The plaintiff deposed further that it was a term of the agreement that the defendant will collect his damaged vehicle upon payment of the sum of K45,000. The defendant however disappeared for six months until the 16th March, 2017 when he reappeared and agreed to settle the debt on or before 15th April 2017 failure to which the damaged vehicle shall be forfeited to the plaintiff and ownership changed in the plaintiff's name through Interpol Kitwe. The plaintiff deposed further that unless he is granted a court order, he continues to suffer irreparable damage because the defendant is elusive and currently staying in South Africa. It was the plaintiff's prayer that he be granted the order sought.

At the hearing of the application, the defendant was not before court. The plaintiff informed the court that the defendant lives in South Africa. I proceeded to hear the application ex-parte. In his short submission, the plaintiff submitted that he was seeking an order of preservation of the vehicle in question. He relied on the documents on record. He emphasized that he wanted the ownership of the vehicle to be changed in his name after which he will sale it to recover the money that he is owed.

I have considered the evidence and the plaintiff's brief oral submissions. This application is made pursuant to Order 3 Rule 2 of the High Court Rules. The order enacts as follows:

"2. Subject to any particular rules, the court or a Judge may in all causes and matters, make any interlocutory order which it or he considers necessary for doing justice....."

The order as can be noted gives discretionary powers to this court to make interlocutory orders necessary to do justice. An interlocutory order according to Black's Law Dictionary is an interim or temporary order, not constituting a final resolution of the whole controversy. The order is issued during the course of litigation and does not determine the substantive rights of the parties in a matter.

The plaintiff's application in the case in casu is seeking to enforce the plaintiff's substantive rights as contained in the writ of summons. For avoidance of doubt, the plaintiff's claim as endorsed on the writ is as follows:

- (i) *Payment of K45,000 which the defendant got at his own instance and left a damaged motor vehicle namely a Mercedes Benz car as surety with a foreign Registration No. 7095 AC/05 which was involved in a road traffic accident.*
- (ii) *Declaration that the said damaged motor vehicle be given to the plaintiff to be disposed off to recover the debt as per agreement. Further that ownership of the said vehicle be*

*changed into the plaintiff which is registered in a foreign
Registration No. 7095 AC/05.*

- (iii) Damages for specific performance.*
- (iv) Costs and interest.*
- (v) Any other relief the court may deem fit and just.*

My considered view is that the order to sale a motor vehicle that the plaintiff is seeking is not an interlocutory order but a final order as it determines the controversy in this case. It is therefore my considered view that this application is outside the scope of Order 3 Rule 2 of the High Court Rules and as such this court has no powers to make the order to sale a motor vehicle under the law cited. It should further be noted that an order to sale in a proper case is made subsequent to the claim for payment of money being upheld.

With the foregoing, I come to the inevitable conclusion that this application is misconceived at law and it is hereby dismissed. I make no order as to costs.

Leave to appeal is hereby granted.

Delivered at Kitwe in chambers this 15th day of June, 2017.



**CHILOMBO MAKAPHIRI (MRS.)
HIGH COURT JUDGE**