

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

2011/HK/223

BETWEEN:

SOUTHERN CROSS MOTORS LIMITED - PLAINTIFF
AND
NONC SYSTEMS TECHNOLOGY LIMITED - DEFENDANT

Before the Hon. Mr. Justice I.C.T. Chali in Chambers on the **21st** day of **October**,
2011

For the Plaintiff: Mr. E.C. Banda – State Counsel with Ms. K. Kaunda – Messrs MNB
Legal Practitioners

For the Defendant: Mr. T. Chabu – Messrs Ellis and Company

RULING

Case referred to:

1. *Standard Bank Limited v. Brocks (1972) Z.R. 306*

Legislation referred to:

1. *High Court Rules, Chapter 27 of the Laws of Zambia*
2. *Rules of the Supreme Court (White Book) 1999 Edition*

The Plaintiff had sued the Defendant for, inter alia, the recovery of the purchase price of a motor vehicle it had sold to the Defendant following the alleged failure by the Defendant to abide by the terms of the sale agreement particularly as to the time within which the purchase price was to be paid; in the alternative, the Plaintiff sought an order for the repossession of the subject motor vehicle and for an order that the part payment made by the Defendant for the vehicle be treated as rental for the use of the same.

Pending trial of the action, the Plaintiff applied for an order of interim preservation of property under Order 27 Rule 1 of the High Court Chapter 27 of the Laws of Zambia and Order 29 of the Rules of the Supreme Court (White Book) 1999 Edition.

The relevant part of Order 27 Rule 1 of the High Court Rules provides:

“1. In any suit in which it shall be shown, to the satisfaction of the Court or a Judge, that any property which is in dispute in the suit is in danger of being wasted, damaged or alienated by any party to the suit, it shall be lawful for the Court or a Judge to issue an injunction to such party, commanding him to refrain from doing the particular act complained of, and, in all cases in which it may appear to the Court or a Judge to be necessary for the preservation or the better management or custody of any property which is in dispute in the suit, it shall be lawful for the Court or a Judge to appoint a receiver or manager of such property, and, if need be, to remove the person in whose possession or custody the property may be from the possession or custody thereof, and to commit the same to the custody of such receiver or manager....”

On the other hand there appears to me to be a simplified provision under Order 29 Rule 2 of the White Book which reads:

“(1). On the application of any party to a cause or matter the Court may make an order for the detention, custody or preservation of any property which is the subject matter of the cause or matter, or as to which any question may arise therein”

In my view, the intention in the above cited legal provisions is to preserve the subject matter of the cause or matter, or property in dispute in the suit so that the applicant, if successful at the trial, is not deprived of the true or full value thereof. From the pleadings and affidavit evidence on the record there is no doubt, that the **“subject matter”** or **“property which is in dispute”** in this case is motor vehicle Mitsubishi Sportero 200 Registration Number ALB 2631. The Plaintiff seeks protection over that property in two ways. Firstly, the Plaintiff seeks to recover its purchase price.

In the alternative, the Plaintiff would like to repossess the vehicle itself. According to the affidavit in support of the application, the Plaintiff's fear is that;

“the motor vehicle by its very nature is being dissipated and is (diminishing) in value thus under continued danger of being damaged and or wasted.”

Mr. Chabu, Counsel for the Defendant, argued in his submissions on the Plaintiff's application that the motor vehicle is not the subject matter in this case and relied on the case of **Standard Bank Limited v. Brocks (1972) Z.R. 306**. That case is clearly distinguishable from the present one. In that case, the Plaintiff had taken out an action to recover a sum of money he had lent to the Defendant. He then applied under Order 27 Rule 1 of the High Court Rules for an injunction to restrain the Defendant from drawing the money he was owed by the Ministry of Finance in terminal benefits and also to restrain that Ministry from paying it until judgment. DOYLE, C.J. refused to grant the application and said:

“The property in respect of which the injunction is applied for is not property in dispute. It clearly belongs to the Defendant and the Plaintiff has no rights to it. No doubt the Plaintiff hopes to be paid for it if successful in his suit, but that does not make it “property in dispute in the suit”.

The scenario in the present case is different. As I have already indicated, the motor vehicle on which the application has been made is at the very centre of the suit. The reliefs the Plaintiff seeks relate directly to that subject matter. It is clearly the **“property which is in dispute in the suit”** (Order 27 Rule 1 of the High Court Rules) or **“the property which is the subject matter of the cause or matter or as to which any question may arise therein”**. (Order 29 White Book).

I am further satisfied that the Plaintiff has sufficiently shown the danger of it being at least wasted or damaged.

In the circumstances, I find it only reasonable to grant the Plaintiff's application, and this I do. I accordingly order that motor vehicle Mitsubishi Sportero Registration Number ALB 2631 be preserved, and an injunction is hereby issued commanding

the Defendant by its officers, employees or agents hence forth to refrain from dealing in whatever way with the said vehicle inconsistent with its current state.

I further order that the said motor vehicle be bound over to the Plaintiff for custodial purposes only until final determination of this case or until further order of the Court.

The costs of the application shall be costs in the cause.

Delivered at Kitwe in Chambers this **21st day of October, 2011**

I.C.T. Chali
JUDGE