

**IN THE HIGH COURT FOR ZAMBIA
AT THE PRINCIPAL REGISTRY
HOLDEN AT LUSAKA**
(Civil Jurisdiction)

2016/HP/0339

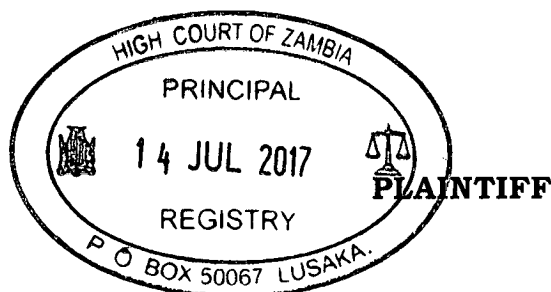
B E T W E E N :

JOSEPH BWALANDA

AND

JUN ZHANG

YONGTONG INVESTMENTS LIMITED



DEFENDANT

CLAIMANT

Before Honourable Mrs. Justice M. Mapani-Kawimbe on the 14th day of July, 2017

For the Plaintiff : *Mr. J. Nzonzo, Messrs ICN Legal Practitioners*
For the Defendant : *No Appearance*
For the Claimant : *Mr. J. B. Theu, Messrs Mwansa, Shilimi & Theu Legal Practitioners*

R U L I N G

Cases Referred To:

1. *US v Milwaukee Refrigerators Transit Company (1905) 142 Ed Reports at 247*
2. *Jones v Lipman (1962) 1WLR 832*

Legislation Referred To:

1. *High Court Act, Chapter 27*

This is an appeal against the Ruling of the Learned Deputy Registrar delivered on 23rd November, 2016. It is made pursuant to

Order 30 Rule 19 of the High Court Rules. A sole ground of appeal is advanced as follows:

- 1. That the Honourable Deputy Registrar erred in law and fact when he granted the Claimant's application for Interpleader Summons without taking into consideration the Plaintiff's Affidavit in Opposition to Interpleader Summons filed on 28th September, 2016.**

The background to this appeal is that the Plaintiff commenced this action on 19th February, 2016 primarily seeking from the Defendant a sum of K186,500.00 in respect of certain works he had done for him. The Plaintiff entered a default judgment against the Defendant on 19th May, 2016. On 31st May, 2016, the Plaintiff caused a Writ of Fisa to be issued against the only property that he knew belonged to the Defendant to satisfy the judgment debt. The property is a Toyota Quantum bearing Registration No. ACX 8084.

The Plaintiff filed an Affidavit in Opposition to the Interpleader Summons and or Notice of Claim on 13th February, 2017. He avers that the Defendant transacted to dispose of the only property that was available for the judgment debt. That after the Sheriff of

Zambia seized the vehicle, the Claimant issued a notice of claim to the Sheriff, but did not file a formal notice into Court. The Sheriff of Zambia consequently issued interpleader Summons, wherein the lower Court found in favour of the Claimant.

The Affidavit discloses that a perusal of the letter to the Sheriff of Zambia revealed the following:

- i. **That the Defendant purportedly sold the seized vehicle to the Claimant on 18th December, 2015, for USD29,000.00. The letter of sale was however prepared by the Claimant as purported buyer and not the Defendant as purported seller.**
- ii. **That the letter of sale was signed by the Defendant's sister on behalf of the Claimant Company.**
- iii. **That the Defendant is a director and shareholder in the Claimant Company. Although a transfer of ownership was registered in favour of the Claimant on 31st March, 2016, the Defendant has continued to retain an interest in the vehicle by virtue of his directorship and shareholding in the Claimant Company.**
- iv. **That the evidence of the purported payment for the motor vehicle in issue is a bank statement for the Plaintiff produced by the Claimant with no detail as to source and reason for payment.**

The Affidavit further discloses that the Plaintiff was not convinced of the genuineness of the sale of the only asset which belonged to the Defendant. Further, that the information the Plaintiff gathered from the Road Transport and Safety Agency (RATSA) discloses that:

- i. **The signature for the Defendant on the letter of sale attached to the Claimant's Advocates' letter to the Sheriff of Zambia was fundamentally different from that purporting to be the Defendant's signature in the RTSA change of ownership declaration form attached to the RTSA letter sent to his previous Advocates;**
- ii. **There is no signature of the Claimant as new owner in the RTSA declaration form;**
- iii. **The letter of sale furnished to RTSA is dated 30th March, 2016 as opposed to that furnished to the Sheriff of Zambia dated 18th December, 2015. Further, there is no signature for the Defendant on the letter of sale furnished to RTSA. On the other hand, the Defendant's signature on the 1st letter of sale was fundamentally different from that on the PACRA list of the directors/shareholders furnished through the letter from the Claimant's Advocates to the Sheriff of Zambia;**
- iv. **The Defendant's passport numbers fundamentally differed in each of the following documents: the PACRA list of shareholders/directors; copy of the Defendant's passport furnished by the Claimant's Advocates to the Sheriff of Zambia and letter of sale/RTSA declaration form availed by the RTSA letter to his former Advocates.**

The Affidavit also discloses that the Defendant is a foreign national, and had left the country. There was no indication that he intended to return to Zambia. The Plaintiff contends that the change of ownership of vehicle is meant to escape liability under this cause.

Learned Counsel for the Plaintiff filed written submissions where he contended that the Defendant's transfer of the motor vehicle to the Claimant was meant to defeat the Plaintiff's enjoyment of his fruits of judgment. He called in aid the case of **US**

v Milwaukee Regridrator Transit Company¹ where Judge

Sanvom had the following to say:

“A corporation will be looked upon as a legal entirety as a general rule. But when the notion of legal entity is used to defeat public convenience, justify a wrong, protect fraud or defend crime, the law will disregard the corporation as an association of persons.”

He also cited the case of **Jones v Lipman² (1962) 1WLR 832**, where Lipman contracted to convey a portion of land to Jones, but later changed his mind. In an attempt to avoid an order for specific performance, Lipman incorporated a company to which he was shareholder and then sold the land to his company. In that case, the Court ordered specific performance against Lipman and his company because the company was incorporated as a device to avoid the order of the Court.

Counsel submitted that this is a proper case in which the Court could disregard the Claimant's veil of incorporation and hold that the Defendant as part owner of the Claimant Company sought to evade the course of justice. He prayed to Court to order the vehicle to be made available for execution so that it could satisfy the Plaintiff's judgment debt of K186,500.00.

Zhang Ping swore an Affidavit in Opposition to the Plaintiff's Summons to Stay of the Deputy Registrar's Ruling on 19th December, 2016 on behalf of the Claimant. The deponent states that the Toyota Quantum vehicle belongs to the Claimant which has nothing to do with the Plaintiff's claim against the Defendant. The deponent avers that there is no case in Court on the ownership of the vehicle and that the Claimant is not a party to the proceedings.

Learned Counsel filed submissions on behalf of the Claimant, where he submitted that the Claimant was the rightful owner of the vehicle, which was sold to it, way before this action. Counsel contended that the Claimant had proof of ownership of the vehicle, through White Book No. 92231905. He also submitted that the Plaintiff's claim could only be decided on the evidence adduced in Court and not the preconceived notions, which extended to the Claimants vehicle. Counsel argued that the facts of this case did not disclose any possibility of collusion between the Defendant and the Claimant on the sale of the vehicle. He prayed to the Court to grant the Claimant possession of the vehicle.

I am grateful to both Counsels for their submissions. I have seriously considered the evidence on record and the written submission of the respective parties. The issue to be determined is whether the vehicle Toyota Quantum ACX 8084 belongs to the Claimant.

The Plaintiff contends that the transfer or purported sale of the vehicle to the Claimant was done after these proceedings were served on the Defendant and meant to deprive the Plaintiff his fruits of judgment. The Plaintiff further contends that the Defendant's sale of the vehicle to the Claimant Company, where he is a director, is not genuine but an attempt to divert the course of justice.

In opposing the appeal, the Claimant contends that it owns the vehicle and has nothing to do with the Plaintiff's claim against the Defendant. It relies on the fact that it has a White Book No. 92231905, which is prima facie evidence of ownership.

According to the Plaintiff's Affidavit dated 13th February, 2017, the Defendant sold the vehicle to the Claimant on 18th December, 2015 and subsequently perfected the sale on 29th February, 2016

by a cash deposit of USD29,000. This was followed by other payments made on 1st March, 2016 of USD5,000 and USD4,000 respectively. The vehicle was first registered in the Claimant's name by RATSA on 31st March, 2016. The vehicle was cleared by the Zambia Revenue Authority on 16th March, 2016, and the Zambia Police on 30th March, 2016.

The letter of sale between the Defendant and the Claimant furnished to RATSA is dated 30th March, 2016 as opposed to the letter written to the Sheriff of Zambia dated 18th February, 2015. In short, there are glaring discrepancies on the dates given by the Defendant and the Claimant on the sale of the vehicle.

From the evidence adduced, I find that the actions of the Defendant and Claimant are contrived. It is curious that two letters of sale should be produced for the same vehicle. In the case of the letter written to the Sheriff of Zambia, one cannot help but assume that it might have been dated as an afterthought. It is also quite possible that the letters bearing different signatures could have been written by different individuals.

The Claimant did not defend the allegations but contended that it had a White Book. The point of this dispute is not that the Claimant has a White Book but rather that the purported sale of the vehicle was done after the Defendant became aware of this action.

This leads me to conclude that the Defendant is attempting to deny the Plaintiff his fruits of judgment. I therefore have extreme difficulties in accepting the genuineness of the sale of the vehicle between the Defendant and Claimant.

Ordinarily, the Court would have to be summoned to lift the corporate veil of a Company. However, in this case, the evidence is such that the Defendant is an active member of the Claimant Company and has deliberately used his position to deprive the Plaintiff the fruits of judgment. It is therefore fitting to look behind the veil of incorporation so as to enable the Plaintiff fulfill his judgment debt.

Accordingly, I allow the appeal and order the Plaintiff to execute judgment on Toyota Quantum ACX 8084.

Costs are awarded to the Plaintiff to be taxed in default of agreement.

Leave to appeal is granted.

Dated this 14th day of July, 2017.


M. Mapani-Kawimbe
HIGH COURT JUDGE