

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

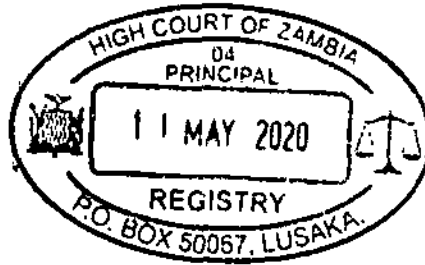
2018/HP/0790

BETWEEN:

RIFORD SAKALA

AND

ARNOLD NAWA MALAMO
ARMA INVESTMENT LIMITED



PLAINTIFF

1st DEFENDANT
2nd DEFENDANT

BEFORE HON^{BLE} MRS JUSTICE S. KAUNDA NEWA THIS 11th DAY OF MAY,
2020

For the Plaintiff : Mr M.C. Kanga and Ms Towela Ngoma, Makebi Zulu
Advocates

For the Defendant : Mr Mwiinga Cheelo, Mak Partners

J U D G M E N T

CASES REFERRED TO:

1. *Royal British Bank v Turquand* 1856 6 E & B 327
2. *Ashbury Railway Carriage and Irin Man Co. v Richie* 1975 LR HL 653
3. *Khalid Mohamed v The Attorney-General* 1982 ZR 49
4. *Shawaz Fawaz and Prosper Chelelwa v The People* 1995 S.J
5. *Bank of Zambia v Chibote Meat Corporation Limited, SCZ Judgment No. 14 of 1999*
6. *B.P Zambia Plc v Interland Motors Limited* [2001] ZMSC 7
7. *Musengule v Attorney General* 2009 ZR 359

The plaintiff commenced this action on 20th April, 2018, by way of writ of summons accompanied by a statement of claim in which he claims;

1. *The sum of ZMW 349,000.00 being the principal amount owing to the Plaintiff by the Defendant by an agreement dated 8th April, 2016.*
2. *Damages for breach of contract.*
3. *Damages for loss of use of funds.*
4. *Interest on the amounts due.*
5. *Costs; and*
6. *Any other relief the Court deems fit.*

The claim as revealed by the statement of claim, is that in 2016 on dates unknown, the plaintiff through a Ms. Majory Njomwa, disbursed to the 1st defendant, a freight transport agent, and director in the 2nd defendant, the amount of ZMW 349,000.00, to purchase on his behalf, stocks of liquor from the Republic of South Africa. It is stated that the 1st defendant, however, misappropriated the said amount of money, and put it to his own use.

The plaintiff states that by an agreement dated 8th April, 2016 between the plaintiff and 1st defendant, the defendant acknowledged owing the plaintiff the sum of ZMW 349,000.00. It is also averred that the 1st defendant undertook to settle the amount acknowledged as owing in two (2) instalments in the following manner;

- a. ZMW 120,000.00 to be paid on 15th April, 2016
- b. ZMW 229,000.00 to be paid on 8th May, 2016

The plaintiff states that as security for repayment of the amount owing, the 1st defendant surrendered four (4) blue books for the following motor vehicles;

- a. Toyota Coaster Registration No. AJC 7333, Chasis No. HZB40-0004860 (owned by Arma Investment Limited)

- b. Toyota Regius Registration No. AJC 3578, Chasis No. RCH41-0048048 (owned by Luciano Tours and Travel)
- c. Toyota Regius Registration No. AJC 9083, Chasis No. RCH41-0028510 (owned by Arma Investment Limited); and
- d. Isuzu Rodeo Registration No. AJD1800, Chasis No. MPATFS77H4H519953 (owned by Arma Investment Limited)

It is also stated that the 1st defendant surrendered possession of the first three (3) motor vehicles, and retained possession of the fourth motor vehicle. The plaintiff states that the 1st defendant in the agreement undertook to forfeit ownership of the motor vehicles, should he default on the terms of the said agreement. The statement of claim further states that despite several demands, the 1st defendant has refused, failed and/or neglected to settle the amount due to the plaintiff, thereby breaching the agreement.

The particulars of the breach are stated as being;

- i. Failure to pay the instalments of the amount owing on the date agreed by contract.
- ii. Failure to forfeit and surrender ownership of the motor vehicle placed as security on default of agreement, as stipulated under the said agreement.
- iii. Failure to pay the amount of ZMW 349,000.00 being the amount owing as agreed by contract.

Further, that the particulars of special damage are that;

- i. The plaintiff as a businessman has been greatly inconvenienced and deprived the use of the sum ZMW 349,000.00 in his liquor business.

That by reason of the foregoing, the plaintiff has suffered loss and damage.

The 1st defendant filed a defence on 11th May, 2018, in which he denies being a Freight Transport Agent, but admits that he is a director and shareholder of the 2nd defendant. He states that he only had business dealings with the now deceased Majory Njomwa, who was in the business of importing goods into the country, and the 1st defendant would clear them in his capacity as a clearing agent.

The 1st defendant also states that after he cleared the goods, Ms Njomwa would receive them, and the two had maintained a cordial business relationship. The 1st defendant further avers that sometimes he would utilize the opportunity of special delivery to clear Ms Njomwa's goods, and then pay the Zambia Revenue Authority (ZRA) later, when there was a delay in sending the money for clearance by Ms Njomwa.

He also states that this was the only capacity in which he dealt with her. The 1st defendant contends that there was no loss that was ever occasioned to Ms Njomwa, as she got all her goods which she later sold. It is stated that the 1st defendant got a surprise on 7th April, 2016, when Ms Njomwa had him detained at Livingstone police station, without explanation, or being charged with any crime. He avers that during the detention, Ms Njomwa introduced him to the plaintiff, who she said was her husband.

Further, that whilst in detention, the plaintiff coerced the 1st defendant into creating and signing a document, in which the 1st defendant agreed to owing the plaintiff the purported sum of K349,00.00, despite the fact that he had just met the plaintiff, and he could not explain how he had arrived at the said sum of money. It is also stated that the 1st defendant

was coerced into signing the purported agreement, under extreme conditions of duress, while in police custody, and out of fear of being detained longer in police custody.

The 1st defendant avers that he does not owe, and has never owed the plaintiff any sum of money. The defence goes on to state that the 1st defendant's job as a clearing agent, only involves clearing imported goods, and not ordering or purchasing goods for people from outside the country. It is also stated that the 1st defendant is not licensed to trade as a alcohol dealer, and therefore, there is no way that he would have agreed to purchase alcohol for the plaintiff.

The defence is further that in order for the 1st defendant to secure his freedom, he agreed to sign the agreement, and he was subsequently told to surrender the blue books for the vehicles named in the statement of claim. He states that he pleaded with the plaintiff, telling him that the vehicles were not personal vehicles, but actually belong to the 2nd defendant. It is also the 1st defendant's defence that he was also coerced into agreeing to surrender the vehicles as surety for the purported debt.

He avers that he was taken out of custody and accompanied by the plaintiff, Ms. Njomwa and the policemen, and he was taken to the location of the vehicle's blue books, and forced to surrender them to the plaintiff. The 1st defendant states that proof of the coercion is evident in the fact that he would not have ordinarily used four (4) motor vehicles as surety, because the same belong to the 2nd defendant. He further avers that he could not have attached the same to a personal issue, that had nothing to do with the 2nd defendant, who is in the business of travel and tours.

The 1st defendant contends that as director of the 2nd defendant, he would never willingly make such a decision to the detriment of the company, and that he has no power to forfeit assets of the company. The defence denies the assertion that the 1st defendant surrendered possession of the three (3) motor vehicles, retaining only one, stating that while the 1st defendant was in Lusaka for business, the plaintiff with his agents went to the 2nd defendant's premises and seized three(3) of the four (4) motor vehicles.

However, they were unable to take possession of the Isuzu Rodeo Registration No. AJD 1800, because the engine was not functioning properly at the time, and needed repairs. The 1st defendant therefore denies having voluntarily surrendered possession of the three (3) motor vehicles. He admits to having agreed to surrender ownership of the vehicles, should he default on the terms of the agreement, only to the extent that the purported agreement was obtained under duress.

The 1st defendant denies the particulars of breach alleged by the plaintiff, stating that the plaintiff and his lawyers did not respond to a written request to resolve the matter amicably, but opted to commence proceedings. It is stated that at no time did the 1st defendant refuse to resolve the dispute, and as such, the plaintiff has suffered mental anguish, since these events first transpired on that fateful day in police custody.

The 1st defendant states that it is impossible for the plaintiff to be owed anything, as he did not have any dealings with him, and his link was Ms. Njomwa to whom the 1st defendant owed nothing.

The 2nd defendant filed its defence and counterclaim on 7th June, 2019, in which it admits that the 1st defendant is a director and shareholder in

the 2nd defendant company. It denies being party to any of the transactions in 2016, and repeats the 1st defendant's defence that he dealt with the late Majory Njomwa, who with the plaintiff, had the 1st defendant detained on the allegation that he owed them ZMW349, 000.00.

The 2nd defendant also alleges the 1st defendant was coerced into signing an agreement that he owed the plaintiff ZMW349, 000.00, and the plaintiff consequently seized three (3) of the vehicles from the 2nd defendant's premises. Therefore, at no time did the 2nd defendant, by itself, or through the 1st defendant surrender possession of its vehicles, as claimed. It is the 2nd defendant's contention that the plaintiff has failed, refused and or neglected to respond to all the efforts made by the 2nd defendant to have the vehicles returned to it, and it has, as a result, suffered great loss.

The 2nd defendant counterclaims that the plaintiff has no legal claim to its' motor vehicles, or any other property, arising from any dealings with the plaintiff. Further, that the plaintiff without just cause, illegally trespassed on the premises of the 2nd defendant, and took possession of the said motor vehicles. The 2nd defendant therefore counter claims;

- i. An order for the plaintiff to release the white books and surrender the said motor vehicles illegally seized, and that the same should be in the condition they were in at the time of seizure.
- ii. Damages for the trespassing upon the 2nd defendant's premises and taking possession of the said vehicles without cause.
- iii. Damages for loss of business and profits from May, 2016 to date.

- iv. Interest.
- v. Costs.
- vi. Any other relief the Court may deem fit.

At the trial, the plaintiff testified and called four (4) witnesses, while the defendants called one (1) witness in support of their case. PW1 was the plaintiff, Riford Sakala. He told the court that he is in the business of truck and liquor, and that in February, 2016, he gave the amount of K349,000.00 to his friend Majory Njoma to buy liquor for the shop. It was his evidence that it was whilst he was in Ndola, that he gave the said Majory the money.

He added that Majory would purchase the liquor through the 1st defendant who is a director in the 2nd defendant company. The plaintiff further testified that on a certain day, Majory had phoned him, and told him that she was with the 1st defendant, and that she had given him the money to buy the liquor from South Africa. He stated that before Majory cut the line, she gave him the phone for the 1st defendant, so that the plaintiff could talk to him.

That is how he had phoned the 1st defendant, who introduced himself by name, and said that he was the director of the 2nd defendant, and he confirmed having received the money. It was stated that the 1st defendant told the plaintiff that he should wait for the goods. Further in his testimony, the plaintiff testified that he began to wait for the liquor to come, but it did not. He testified that when he was with Majory, she would call the 1st defendant, who said that they should wait for three (3) days, as the goods were on their way.

The plaintiff also stated that towards the end of March, 2016, as the goods had not come, he said that the 1st defendant should give him back

the money. However, the said money was not returned, and the 1st defendant stopped picking up his phone calls. Then on 7th April, 2016, the plaintiff told Majory about the 1st defendant's failure to pick up his calls, and he suggested that they should follow him to Livingstone, so that he could get his money back. They did so on the same date, and arrived in Livingstone in the afternoon.

The plaintiff testified that as it was not him that gave the 1st defendant the money, they decided to involve the police. When they went to the police station, they met officer Chikuba, the most senior officer at Livingstone police station, and the plaintiff explained to officer Chikuba what had happened. He had further told officer Chikuba that he needed help, so that he could not do anything wrong. The plaintiff went on to testify that the police told him that they would look for the 1st defendant, as he was well known in Livingstone, and officer Chikuba told the officers to look for the 1st defendant.

It was the plaintiff's testimony that he received a phone call from the police between 22:00 – 23:00 hours, who informed him that they had located the 1st defendant, and that he should go to the police station at 08:00 hours, the following day, where they were keeping him. He stated that on 8th April, 2016, he went to the police station, and officer Chikuba and other police officers took them to a place where they were a number of people, and the plaintiff was asked to identify the 1st defendant.

However, the plaintiff told the police officers that only Majory could identify him, and she was asked to do so, and she identified him. Still in his testimony, the plaintiff told the court that the 1st defendant was asked whom he knew between Majory and the plaintiff, and he stated that he knew Majory. And as to how he knew her, the 1st defendant stated that

they did business together, and he owed her money. It was stated that the 1st defendant also stated that he knew that they had gone there over the K349,000.00, which was given to the 2nd defendant.

Further in his evidence, the plaintiff testified that the 1st defendant appeared not to know him, and Majory explained to the 1st defendant that he was Riford Sakala. That thereafter, the 1st defendant had greeted the plaintiff, and laughed saying that the K349,000.00 came from the plaintiff, and that the 1st defendant used to talk with him on the phone. The plaintiff also testified that upon him agreeing that the 1st defendant could speak with him, they were given the boardroom, where he sat with the 1st defendant and Majory.

He stated that the 1st defendant explained that he had joked on the phone that they had met as directors, and he was asking that they sit, because he did not use the money to buy the liquor, but he had used it in the 2nd defendant company. The 1st defendant had further explained that he had a contract with the mines in Solwezi, and he was expecting money from them, but he had not been given the same.

The plaintiff also stated that the 1st defendant had also explained that he and his wife were the directors of the 2nd defendant company, and he had explained a lot of other things. However, the plaintiff had told the 1st defendant that all he wanted was his money, as it was not a debt, but business. He testified that the 1st defendant stated that because the money was difficult to find, the 1st defendant and officers of the 2nd defendant had resolved to sell four (4) vehicles, whose proceeds would go to the plaintiff, who would be given the same in Lusaka.

When the plaintiff asked the 1st defendant how he would believe him, the 1st defendant said that he would reduce the agreement into writing. The

1st defendant had also told the plaintiff that as the money had been used by the 2nd defendant, the 1st defendant would use his name, as one of the blue books for the vehicles was not in the name of the 2nd defendant, but he was a director of the 2nd defendant. The plaintiff's evidence was that he agreed to the proposal.

That is how the 1st defendant wrote down how the payment would be done, being in two instalments, with the first being on 15th April, 2016, in the amount of K120,000.00, and the second on 8th May, 2016, in the amount of K229,000.00. The plaintiff added that the 1st defendant stated that if he failed to pay as agreed, the four (4) vehicles would be surrendered. The plaintiff identified page 1 of his bundle of documents as the agreement that they had signed, in which the vehicles surrendered were listed.

He explained that the Toyota Regius vehicle had registration number AJC 3578 as per the blue book, but it was written as AJC 3575. The plaintiff further testified that Majory witnessed the said agreement, which he signed. The plaintiff told the court that thereafter, they left the boardroom and showed officer Chikuba the agreement. He stated that they left the police station and they proceeded to the 1st defendant's office, after he said that the plaintiff should also know his home, in the event of any other difficulty.

The plaintiff testified that at the office, the 1st defendant showed him the mini bus, registration No. AJC 7333, which was also indicated on the agreement, and the 1st defendant told him that he would show him the other vehicles later. His evidence was that the 1st defendant took him round the premises, and when he opened his office written as director, the plaintiff concluded that the 1st defendant was sincere. He continued

with his testimony, stating that the 1st defendant called his secretary who took the blue books for the vehicles.

The plaintiff observed that the 2nd defendant's names were written on the blue books, and the 1st defendant had clarified that his name appeared on the blue book for the Isuzu, registration No. AJD 1800, below the company name, which was not for the 2nd defendant company. It was the plaintiff's evidence that the 1st defendant got the certificate of incorporation for the 2nd defendant, as well as four (4) headed paper for the company, stating that he had discussed with all the directors. The 1st defendant then wrote the agreement, freely with being coerced.

He identified the white books for the four (4) motor vehicles, as those at pages 2 to 5 of his bundle of documents, as well as page 6 of the same bundle of documents as the 2nd defendant's headed paper, and page 7 as the certificate of incorporation for the 2nd defendant. The plaintiff stated that those were the documents that the 1st defendant gave him in his office. He also stated that from there, they went to the 1st defendant's home, where they found an old man, whom the 1st defendant introduced as his father-in-law.

The plaintiff told the court that the 1st defendant took them to the two (2) Regius vehicles, and thereafter, they headed back to Lusaka. Still in his testimony, the plaintiff testified that they did not see the 1st defendant on 15th April, 2016, as per agreement. When the plaintiff called the 1st defendant after three (3) days, the response he was given was that the 1st defendant would go to him the next day. The plaintiff further told the court that when the date for the payment of the second instalment arrived, the money was not paid.

On being called, the 1st defendant stated that he would give the plaintiff the whole amount, and the plaintiff told him to deliver the motor vehicles pledged as security. The 1st defendant told him that he would do so the following day, and thereafter, the 1st defendant stopped answering his phone. The plaintiff's evidence was that in November 2016, he went to Levy Business Mall with Mr Lungu, and whilst they were at the car park at the back, they saw the 1st defendant in the vehicle AJD 1800.

The plaintiff stated that he had explained the situation to Mr Lungu, and they got out of the car, and when the 1st defendant saw them approaching him, he got out of the car, and knelt in front of the plaintiff. It was stated that the 1st defendant started pleading with the plaintiff, explaining that he had not told the truth about the K349,000.00, and that he now wanted to tell the truth. The 1st defendant even made a phone call to a person named Bwalya, who went there, and the 1st defendant explained to him about the K349,000.00, and asked for his help, and for him to witness him tell the truth.

Thereafter, Mr Bwalya began to plead on the 1st defendant's behalf, and the 1st defendant told the plaintiff that he wanted him to hand over the vehicles, as per agreement. The plaintiff testified that he told the 1st defendant to leave the motor vehicle that he was driving, and that he would proceed with him to Livingstone to get the remaining motor vehicles. However, the 1st defendant asked that he uses the said motor vehicle to go to the Copperbelt for a funeral, and that on his return, he would hand it over to the plaintiff.

The 1st defendant had also told the plaintiff that he would call the company, and they would give him the vehicles, as they were aware. It was also the plaintiff's testimony that the 1st defendant called his younger

brother in Livingstone, but the plaintiff refused, telling the 1st defendant that he did not want to be involved with the 1st defendant's relative or an employee of the 2nd defendant. That is how the 1st defendant gave the plaintiff the name Tabby, whom Majory confirmed was a friend of the 1st defendant.

The plaintiff was given Tabby's mobile number, and they communicated. When the plaintiff and a driver went to Livingstone, Tabby took him to the car park where the three (3) motor vehicles were parked. It was stated that the plaintiff paid the fees at the carpark, and thereafter collected the motor vehicles, which were brought to Lusaka. From there, the plaintiff started waiting for the 1st defendant to return with the vehicle from Kitwe, but he did not do so. When the plaintiff called the 1st defendant, he said he would meet him the following day, with witnesses from the 2nd defendant, to sign the letters of sale.

The plaintiff's testimony was that the years 2016 and 2017 went by, and the 1st defendant did not show up. The 1st defendant eventually turned up alone, with a story that he was the selling the house, which he took the plaintiff to, saying that the issue should end, and he gets back the motor vehicles.

However, the plaintiff refused the offer, stating that he already had a house, and the 1st defendant told him that he would look for buyers for the said house. The plaintiff went on to testify that Majory became ill in 2017, and he informed the 1st defendant, who stated that he would go to them, but he did not do so. The plaintiff stated that he called the 1st defendant on 4th January, 2018, and informed him that Majory had died, but the 1st defendant did not go for the funeral.

Thereafter, the plaintiff told the 1st defendant that they should change the white books for the motor vehicles, as the 1st defendant had held on to his money, which was intended for his business. The plaintiff testified that the 1st defendant showed up once, stating that he would execute the letters of sale, but thereafter, he did not see him. It was stated that the plaintiff travelled to Livingstone with the white books, and he went to the Police Station, where he explained what happened, and he showed the police the documents that the 1st defendant signed, and the four (4) white books.

The plaintiff also went to the 2nd defendant, but found it closed. He proceeded to the 1st defendant's house, where he found security officers, and he gave the police officers, the 1st defendant's number so that they could look for him. His testimony was that the police officers told him to call the 1st defendant, who answered his phone, saying the he was close by, and would arrive in the next thirty (30) to forty (40) minutes, but he never did, and he switched off his phone.

Continuing with his testimony, the plaintiff stated that the police officers helped him look for the 1st defendant, and on the third day, the 1st defendant picked up his call, and told him that he was in Lusaka, and that the plaintiff should follow him there, where they would conclude the matter. The plaintiff explained that the police officers advised him to come to Lusaka, and take the 1st defendant back to Livingstone, where they could conclude the matter. Once in Lusaka, the plaintiff went to Kabwata police station with all his documents, and explained the situation.

He was accompanied by police officers when he met the 1st defendant at a supermarket along the ring road, and they got the 1st defendant, and

took him back to Livingstone. The plaintiff testified that at the police station in Livingstone, he had told the 1st defendant that he just wanted his money, but the 1st defendant stated that they had no agreement. That is how the plaintiff sued.

In cross examination, the plaintiff denied that Majory was his wife, stating that she was just his business partner. He stated that he did not recall telling the police officers in Livingstone that she was his wife. The plaintiff testified that during Majory's funeral, he produced money for the business at the shop at COMESA, but stated that he did not recall her relatives denying the same. It was also the plaintiff's evidence in cross examination that Majory's relatives admitted that Majory was his business partner, and they gave him the vehicles that were at her house.

However, her relatives had denied that Majory was his wife. The plaintiff agreed that the said vehicles were in the company name, Happy Time, and that two (2) of the motor vehicles were in the name of the 2nd defendant, and not in Majory's name. The plaintiff stated that at the time of his testimony, he had not concluded Majory's issue with her family, but that he was given two (2) shops. He reiterated that he gave Majory K349,000.00 in February, 2016, on a date he could not recall, to buy assorted beer from South Africa.

When referred to the ZRA document dated 31st May, 2016, at page 6 of the 1st and 2nd defendant's bundle of documents, the plaintiff stated that he was not aware that Majory had ordered beers, as shown on the document. The plaintiff when also referred to the agreement at page 1 of his bundle of documents, denied that at the time the said document was drawn, the 1st defendant was in police cells, stating that they had asked if they could have a discussion in the boardroom.

He agreed that the 1st defendant would only go back into the hands of the police if they failed to resolve the matter. It was his evidence that he did not recall if the 1st defendant was barefoot at the time. He also stated that he got the K349, 000.00 that he gave to Majory from his company, in cash, as he had a truck business. He also stated that the company Happy in Time, has an account, but he did not recall if he got the said money from an account.

The plaintiff further testified in cross examination that Majory did not sign for the money, but that the evidence that was there, was that the 1st defendant admitted via phone call, that he got the money. He stated that he was sure that he was speaking with the 1st defendant, as it was not the first time that he was speaking with him. The plaintiff maintained that the 1st defendant gave him the motor vehicles through Tabby, as the 1st defendant was not present at the time. He agreed that Tabby was not a director or shareholder of the 2nd defendant company, and that when he went to the 1st defendant's home and office, they were not accompanied by police officers.

Further in cross examination, the plaintiff agreed that he did not give the K349,000.00 directly to the 1st defendant. When referred to the 2nd defendant's letter head at page 6 of his bundle of documents, the plaintiff stated that the 1st defendant gave him the said letter head, adding that he had four(4) originals.

On the certificate of incorporation for the 2nd defendant at page 7 of the said bundle of documents, the plaintiff testified that the 1st defendant equally gave it to him, when he was at his office, and that Majory was present at the time. His evidence was that the 1st defendant's secretary

had taken the said documents, but that they did not go around the 2nd defendant's premises with the secretary.

Further, that apart from the police officer, Majory and himself were present when the 1st defendant gave him the certificate of incorporation. The plaintiff agreed that motor vehicles are a huge investment, and that there was evidence that the 1st defendant signed to release the vehicles at page 1 of the plaintiff's bundle of documents. The evidence was that when the 1st defendant failed to pay the money, and the next step was for the plaintiff to go and get the vehicles.

He however stated that the 1st defendant did not sign to release the vehicles, and that he was aware that the 1st defendant is a clearing agent. The plaintiff told the court that he did not know about the lagers indicated on the ZRA document at page 6 of the 1st and 2nd defendant's bundle of documents.

PW2 was Ringford Lungu. His testimony was that in November, 2016, he was in the car park at Levy Junction Mall with the plaintiff. That whilst there, the plaintiff had told him that he had found a person that owed him money, and who was not picking up his calls. PW2 explained that they got out of the car, and approached the said person, and the plaintiff began to speak with the said person, who got out of the vehicle he was in. PW2 confirmed the plaintiff's evidence that the man knelt down, adding that the plaintiff told the man not to kneel down.

PW2 also confirmed that the man called a person who went there, and PW2 realised that this person is Bwalya, whom he knew from the streets. PW2 also confirmed that the man who had knelt down called his brother, stating that the plaintiff and PW2 would go and collect the vehicles from him, as the man was going to the Copperbelt for a funeral driving an

Isuzu motor vehicle. In conclusion, PW2 also confirmed that the man had told the plaintiff that he would hand over the Isuzu vehicle on his return from the Copperbelt.

In cross examination, PW2 stated that he had worked as a police officer, and that he had never worked for a company. He agreed that he used to work for his father in Kabwata, and he stated that he had known the plaintiff for seven (7) years. His evidence was that Majory who died was the plaintiff's wife, and that they used to stay in the same house. PW2 further agreed that he attended Majory's funeral, and that he used to go to Comesa where Majory conducted her business.

PW2 surmised that maybe the plaintiff and Majory were just cohabiting, and the plaintiff had not paid the bride price. It was also his evidence that he did not know how much money the person owed the plaintiff. He could not recall the registration number or the colour of the Isuzu vehicle that the person was driving, stating that three (3) years had passed, which was a long time ago. PW2 stated that the plaintiff was not a very close friend of his, but they conducted business together. In conclusion, he testified that he did not attend the meeting after the funeral.

In re-examination, PW2 testified that he did not know if the plaintiff and Majory were married, although the plaintiff had a house in Kamwala South and Majory's clothes were at that house, and they were living together.

The third witness was Paul Malata whose evidence was that he worked at Asado Distributors. With regard to this matter, his testimony was that he went to Livingstone with the plaintiff, and a person that he did not know, to get motor vehicles. PW3 stated that when they arrived in Livingstone at 13:00 hours, they were picked up by a person he came to know as

Tabby. He testified that they were taken to a place called Mosi-o-Tunya where Tabby and the plaintiff disembarked from the vehicle.

From there, Tabby drove them to a car park that had a lot of motor vehicles, and they were to pick up a Coaster and two Toyota Regius motor vehicles. He chose to drive the Coaster bus, while the plaintiff and the other person drove the two Regius vehicles. He explained that the vehicle in the middle had no tyres and a battery, and the plaintiff and Tabby went out, and returned shortly thereafter with tyres and a battery, and they put the tyres. They started off for Lusaka after lunch. He was not cross examined.

Chikuba Mulutiwas PW4. This witness testified that he was a police officer under the Criminal Investigations Department. He recalled that on 7th April, 2016, whilst he was on duty at the Livingstone Division, where he was stationed at the time, he received a complaint from the plaintiff. His testimony was that the plaintiff had explained that he gave the 1st defendant K349,000.00 to purchase beer from South Africa for him, but the beer was not bought, and the money not accounted for.

PW4 also stated that he instructed officers to look for the 1st defendant who was taken to the police station that very night, and the plaintiff was invited to go to the police station at 08:00 hours the next day, so that both sides of the story could be heard. His testimony was that the plaintiff went to the police station the next day, with Majory, and he positively identified the 1st defendant among three (3) other accused persons.

Still in his testimony, PW4 told the court that when asked, the 1st defendant stated that he only knew Majory. That at that point, Majory reminded the 1st defendant that the plaintiff was the man he had been

communicating with constantly on phone, although they had never met, and that he was the owner of the K349,000.00. He stated that the 1st defendant then requested to greet the plaintiff, and he confessed to having received the money through Majory.

PW4 also testified that the 1st defendant having confessed, he had asked the plaintiff whether he wanted to proceed with the matter criminally, but the plaintiff told him that he was only interested in his money. He added that the 1st defendant then requested, that they sit to discuss on how he could pay back the money. At that point, PW4 had advised them that as both were only interested in the money being paid back, it was a civil matter, and the police would not be involved.

PW4 testified that he allowed the two to agree on how the money would be repaid, and he requested that they leave his office, as the police were not interested in mediating the matter. It was stated that after a while, they returned, and stated that they had come to an agreement, and the matter was then closed.

When cross examined, PW4 testified that he was still an Assistant Superintendent at the time the 1st defendant was apprehended. He agreed that the 1st defendant slept in the cells when he was apprehended at 23:00 hours, and that he was released close to lunch hour, the following day. His testimony was that he did not per se see the agreement, but it was shown to him. However, he did not read it, as the police had nothing to do with it. PW4 agreed that the 1st defendant was in police custody, and he came from the cells when he went to PW4's office. That from there, the 1st defendant went outside with the plaintiff to agree.

It was also PW4's evidence that at the time they agreed, the 1st defendant he was a free man, and he was not under PW4's charge, and the records would reflect so. PW4 however agreed that he had no records to that effect, as it had been a while since the incident occurred in 2016. When further cross examined, he stated that the plaintiff had narrated that he had given the 1st defendant the money in February 2016, to buy him beer in South Africa.

When referred to the ZRA document at page 6 of the 1st and 2nd defendant's bundle of documents, PW4 testified that the document was dated 18th February, 2016, and states that assorted lagers were ordered by Majory. He agreed that Majory received money from the plaintiff, but that he could not confirm if Majory ordered the beers, as he was not shown the document at the time. His testimony was also that the document could relate to other monies.

PW4 also agreed that the plaintiff had told him that the money was given to Majory, and not the 1st defendant. He also stated that the plaintiff could not identify the 1st defendant and vice versa, as they did not know each other.

Blessing Mufuza was PW5. She testified that she used to work with Majory at COMESA market where they both owned shops and sold beer. PW5 also stated that in January 2018, when Majory died, they rendered help via the COMESA committee that they had. Her evidence was that at the conclusion of the funeral, the committee was called by Majory's family, and when she went there, she found the 1st defendant, and she greeted him, as she knew him. The 1st defendant had told her that he had been invited to that meeting by the plaintiff.

Continuing with her testimony, PW5 told the court that there were two (2) motor vehicles, and Majory's family wanted to know who owned them. That is how the 1st defendant had explained that he was the director of the 2nd defendant, and that the company owed the plaintiff money. Further, that as director of the company, he had released the vehicles, and had given them to the plaintiff.

In cross examination, PW5 stated that the plaintiff is her uncle, but she denied that she testifying to assist him. She testified that she was before court to say what she had heard. PW5 agreed that the plaintiff was present during the discussion, and he heard what the 1st defendant had said. Her evidence was also that the plaintiff and Majory were friends in business, but she did not know if they used to live together, but that the plaintiff could say so.

PW5 testified that she had known Majory for a long time, although she could not count the years. She was not aware that the plaintiff gave Majory money in 2016 to buy beer from South Africa. That marked the close of the plaintiff's case.

The only witness called by the defendants was that 1st defendant. He testified that he operates under the 2nd defendant, and that for clearing, he operates under Arma Logistics Limited. His evidence was that the plaintiff did not give him K349,000.00 or any money at any point. The 1st defendant further testified that Majory did not give him any money, and he did not discuss any business with her. He stated that he was forced to sign the agreement by the plaintiff and the police, and that on 7th April, 2016 at 23:00 hours, he was picked up by the police from his home.

To this end, he testified that there was banging at his gate, and they stated that if the 1st defendant did not open it, the police would break it.

That is how, his wife, children and himself went out and opened the gate, and they found a lot of police officers. The 1st defendant stated upon identifying himself, he was handcuffed and put in the police Landcruiser, and he taken to Livingstone Central police station. There, he was put in cells.

He testified that the next morning he was taken to the Deputy Criminal Investigations Officer (DCIO), where he was told to sit down. He explained that Majory then went in with a male person he did not know, and a police officer had asked him if he knew the male person, and he had responded that he did not. Continuing with his defence, the 1st defendant stated that the police officer told him that the person was Sakala, and Majory said that Sakala was her business partner.

The 1st defendant also testified that Majory had told him that he had been reported to the police over the issue of money. He stated that he was then told to keep quiet, and follow instructions, and the plaintiff told him that he wanted his K349,000.00. The 1st defendant had explained that they had not paid ZRA fees for the two (2) entries that he had done for them, but the plaintiff told him that he knew nothing about ZRA, and he just wanted his money.

Further in his evidence, the 1st defendant testified that he was not allowed to say anything, and the plaintiff produced a written agreement containing registration numbers for four (4) motor vehicles, in the presence of the police, and he told the 1st defendant to copy it. He stated that he hesitated, but was told that he would be handled and taken back to the cells. Therefore, he copied down what was on the paper, and the DCIO stated that they should go to the 1st defendant's office to confirm if the vehicles were there.

He testified that he was taken to his office, whilst handcuffed in a police vehicle, accompanied by three (3) police officers, Majory and the plaintiff. The 1st defendant stated that there were three (3) motor vehicles at his office, and one (1) at his house, an Isuzu that had a mechanical fault. He went on to state that he was then released by the police officers. The 1st defendant's evidence with regard to how things had transpired was that the atmosphere was hostile, as he was not given an opportunity to explain what transpired.

Further, the police had told him to keep quiet, and that he was not a free man when he signed the agreement, and he was barefoot at the time. He was asked to stand up when told to write the agreement. The 1st defendant also stated that he signed the agreement under hostile conditions, and he needed his freedom at the time, as he was in police custody from the time of his apprehension, and was only released at 12:00 hours the following day.

The 1st defendant also testified that immediately he was released from custody, he had called Majory, who stated that it was the plaintiff's doing. He told her that there were two outstanding payments at ZRA on the deliveries when he spoke with the plaintiff on phone, but the plaintiff stated that he knew nothing about ZRA. Continuing with his testimony, the 1st defendant stated that when Majory fell sick, the plaintiff said that she would explain, and the 1st defendant even visited her in hospital, at the University Teaching Hospital (UTH).

The 1st defendant denied handing over the motor vehicles to the plaintiff or asking Tabby to do so, and his position was that the plaintiff and Tabby knew each other. It was his evidence that on 24th May, 2016, he was going to the Copperbelt for a funeral, and whilst in Food Lover's

supermarket in Lusaka, the plaintiff had appeared, and told him that he had found him, and would not leave him. However, the 1st defendant had explained that he was with his wife, mother and others, and the plaintiff should allow him to go. He stated that they went to the car park where they found four (4) people who surrounded him, among them Lungu, PW2.

It was stated that PW2 told the 1st defendant to hand over the vehicle, but he told him that the plaintiff and Majory owed ZRA money. The 1st defendant denied having knelt down and pleaded with the plaintiff at Levy Junction Mall, stating that the mall has cameras.

In cross examination, the 1st defendant stated that he did not discuss business with Majory. He also testified that outside the K349,000.00, he did business with Majory, when he used cleared her goods at the Livingstone port office. When referred to the ZRA document at page 1 of the defendant's bundle of documents, dated 31st May, 2016, he stated that Majory was the consignee, and the declarant was Patmos Logistics Limited. He stated that on the ZRA document at page 5 of the said bundle of documents, the declarant was also Patmos Logistics Limited, and the consignee was Majory.

His evidence in cross examination was further that at page 6 of the same bundle of documents, Majory was the consignee, while the declarant was C and M Freight Zambia Limited. At page 8 of the said bundle of documents, C and M Freight was the declarant. The 1st defendant agreed that the documents show that the 2nd defendant did not clear the goods indicated on the documents. He told the court that he had been in the clearing business since 2008, and that it was the first time that he was apprehended by the police.

When referred to the defence at page 3 of the 1st and 2nd defendant's bundle of pleadings in paragraph 6, he agreed that it states that he was coerced into creating and signing a document. His testimony was that in his evidence, he had told the court that he was told to copy a document, and that copying and creating mean the same thing to him. The 1st defendant clarified that he was forced to put the document in his handwriting, and that the document from which he copied was given back to the plaintiff. Further, that he signed the copy he wrote on, and not the original document.

He stated that he is aware that when a person is arrested, they are told to take off their belt and shoes, and he testified that he told the plaintiff and Majory that they had an outstanding bill at ZRA, and that the same has still not been paid. His testimony was that the same bill is reflected at page 5 of the defendant's bundle of documents, which is an assessment notice, and once paid, a receipt is given. The 1st defendant further told the court that the other assessment notice appears at page 8 of the defendant's bundle of documents.

Still in cross examination, the 1st defendant testified that the documents show that Majory bought goods on two (2) different dates, and that she owes ZRA money, after he cleared them using two (2) different companies. That he cleared goods for Majory after she brought them into the country, and the documents so reflect. When further cross examined, he stated that himself and Mirriam, his wife, are the directors in the 2nd defendant, and that they are the only ones with authority to give the motor vehicles. However, they did not give the motor vehicles to the plaintiff.

His position was that the plaintiff got the motor vehicles in May 2016, and he agreed that he had not reported the matter to the police to date. He told the court that the police placed him in police custody on 7th April, 2016, and that the 2nd defendant had five (5) employees, apart from himself and his wife. That there was a secretary and five (5) drivers because the company is a tour and car hire. Further, that he was taken to his office on 8th April, 2016 after 10:00 hours, and it was open, and the secretary was at the office. He explained that he was handcuffed at the time.

In re-examination, he reiterated that only his wife and himself could release the motor vehicles, but they did not do so. He also stated that he authored the document under duress. With reference to the ZRA documents at pages 1, 6 and 8 of the defendant's bundle of documents, the 1st defendant stated that he cleared the goods through Patmos and C and M Investments.

I have considered the evidence and the submissions. It is common cause that the plaintiff reported the 1st defendant to Livingstone police for failure to deliver beers, that he is alleged to have agreed to buy for the plaintiff, after the plaintiff gave Majory Njomwa now deceased, the amount of ZMW349, 000, to give the 1st defendant to purchase the same.

It is further not in dispute that on the same day that the plaintiff reported the 1st defendant to the police, the 1st defendant was apprehended by the police around 23:00 hours, and he was detained in police custody. It is common cause that the plaintiff and the late Majory Njomwa went to Livingstone police the next morning where the plaintiff and the 1st defendant executed a written agreement, which is dated 8th

April, 2016, wherein the 1st defendant acknowledged his indebtedness to the plaintiff in the amount of K349,000.00.

It is also not in dispute that the 1st defendant in that agreement agreed to liquidate the said sum of K349, 000.00 in two instalments of K120, 000.00 by 15th April, 2016, and K229,000.00 by 8th May, 2016. That he was also surrendering the white books for the vehicles AJC 7333, AJD 1800, AJC 9089 and AJC 3575 to be held as surety, and they would be collected after the amount owing was paid. That in default of payment, the sureties would be forfeited to the plaintiff.

There is no contention that the agreement was witnessed by the late Majory Njomwa, and that after the agreement was executed, the plaintiff took possession of motor vehicle registration certificates, three (3), in the name of the 2nd defendant, as the absolute owner, and one (1) in the name of Luciano Tours and Travel as owner, and with the 1st defendant as absolute owner. The question is whether the plaintiff is entitled to the reliefs sought or it is the 2nd defendant that is entitled to the reliefs in counter claim?

The plaintiff claims the sum of K349.000.00 by virtue of the agreement dated 8th April, 2016 which is at page 1 of the plaintiff's bundle of documents. As submitted by both parties in the case of *Musengule v Attorney General* ⁽⁷⁾ the court held that;

“the legal position is that the party that alleges a fact must prove it, and generally, except for fraud, must prove it on a balance of probabilities”

Further, the case of *Khalid Mohamed v The Attorney-General* ⁽³⁾ held that;

“A plaintiff cannot automatically succeed whenever a defence has failed; he must prove his case”.

The evidence which is not in dispute, is that the plaintiff gave the late Majory Njomwa the amount of K349, 000.00, and she told him that she gave the same to the 1st defendant to buy beers in South Africa, sometime in February, 2016, on a date that the plaintiff does not recall. The plaintiff testified that late Majory had even given him the phone for the 1st defendant who had conversed with, and the 1st defendant had confirmed having received the money from the late Majory.

However, the beers never arrived, prompting the plaintiff and the late Majory to follow the 1st defendant in Livingstone where they reported the matter to the police at Livingstone Central Police. The evidence also reveals that on the same day, the 1st defendant was apprehended by the police around 23:00 hours, and the plaintiff testified that he was called and asked to go to the police station the next day.

There, he found the 1st defendant who said that he did not know him, but the late Majory had reminded the 1st defendant that the plaintiff is the person that he had spoken with on the phone over the K349, 000.00. Thereafter, the 1st defendant had asked to discuss with the plaintiff, and they were given a boardroom where they went and discussed the matter.

That meeting culminated in the agreement at page 1 of the plaintiff's bundle of documents being executed. It has been seen that in that agreement, the 1st defendant acknowledged being indebted to the plaintiff in the amount of K349, 000.00, and he surrendered four(4) white books for vehicles as surety for non-payment, and the said agreement was witnessed by the late Majory.

PW4 testified that whilst at the police station, the 1st defendant confessed to his indebtedness to the plaintiff, and their discussion resulted in the agreement being reached. PW2 also testified that when they met the 1st defendant at Levy Business Mall, he had pleaded with the plaintiff, and he had even called Tabby, and told him that the plaintiff would go and collect the vehicles, as he was heading to the Copperbelt for a funeral.

PW5 on the other hand testified that at the meeting that was held after Majory's funeral, when the issue of the two vehicles for the 2nd defendant that were at Majory's house was discussed, the 1st defendant had stated that he owed the plaintiff money, and he had released vehicles to him. PW3 confirmed that PW1, himself and another man he did not recall, went to Livingstone and collected 3 motor vehicles after they met a person named Tabby.

The defendant in his defence and his testimony alleged that he was coerced into signing the agreement. In this regard, he contended that the environment was hostile, as he was not allowed to explain himself, and that he was told to copy down what was on a paper, and was told that if he did not comply, he would be taken back to the cells. Further, that he was accompanied to his office by police officers to check if the said vehicles were at the office.

There are no witnesses that were called by the defendant to support his defence. It will be noted that PW4 testified that when the 1st defendant asked to discuss the issue with the plaintiff, PW4 had explained to them that it was a private matter and the police would not be involved. That is how the plaintiff and the 1st defendant were given the boardroom where they discussed, and came up with the agreement at page 1 of the

plaintiff's bundle of documents. PW4 was not in any way discredited on this testimony in cross examination, and it therefore remains credible.

From this evidence, it is clear that there was no police officer that told the 1st defendant that if he did not sign the document or indeed copy it down as he alleges, he would be taken into police custody. If there was any threat, the same should have come from the plaintiff or Majory who were the only two people that were in the board room with the 1st defendant, but that is not the contention by the defendant. The defence that the 1st defendant was coerced into signing the agreement, therefore lacks merit, and has not cast doubt on the plaintiff's allegations.

The fact that the police thereafter accompanied the 1st defendant to his office to check whether the vehicles were in fact there, and they later proceeded to the 1st defendant's home to establish where he lived, is of no consequence as the 1st defendant had already signed the agreement, which it has been seen, was done without him being coerced.

It will be noted that in the defence, the 1st defendant did not plead that the plaintiff through the late Majory Njomwa owed ZRA money as a result of the beers bought from the K349, 000.00, as per the documents in the defendant's bundle of documents. His position was that he had no dealings with the plaintiff.

Even assuming that the 1st defendant had pleaded that the plaintiff through Majory Njomwa did in fact owe ZRA money as a result of beers bought from the K349, 000.00, the documents in the defendant's bundle of documents show that Patmols Logistics Limited and C and M Freight Zambia Limited cleared the goods on Majory's behalf. At page 1 of the defendant's bundle of documents, Patmols cleared liquors and creams for Majory on 2nd January, 2016.

Then at page 6, C and M Freight Zambia Limited on 18th February, 2016 cleared assorted lagers for Majory. The 1st defendant in his testimony told the court that for clearing, he uses the company Arma Logistics Limited. While the documents show that Majory imported the goods, and not that the plaintiff did, this evidence gives credence to the plaintiff's testimony that he gave the late Majory the money to buy the beers.

The defendants have raised issue with the plaintiff's credibility, submitting that the plaintiff and Majory were married, and this would therefore make the plaintiff's evidence unreliable. In support of this submission, reliance is placed on the case of **Shawaz Fawaz and Prosper Chelelwa v The People** (4). It was held in that case that;

“Cross-examination cannot always shake the evidence of untruthful witnesses in every respect; it is sufficient to show the unreliability of a witness if he is shown to have told an untruth about an important part of his evidence”.

The evidence on record shows that the plaintiff denied having been married to the late Majory, although he said that after her death, he was present at the family meeting where he was even given two shops. The plaintiff did not go into detail to explain the exact nature of his relationship with the late Majory Njomwa, but he told the court in cross examination that Majory's relatives denied that he was married to her. PW2 who has been doing business with the plaintiff testified that the plaintiff and the late Majory were cohabiting in Kamwala South, at the plaintiff's house. In his eyes, the two were married.

It is trite that there are formalities that had been complied with for persons to be considered as married, whether under statute or under customary law. Evidence of such compliance was not led before this

court, and therefore, it cannot be concluded that the plaintiff was untruthful as he was married to the late Majory, but he denied it. The testimony of the witnesses PW2, PW4 and PW5 established that the 1st defendant admitted owing the plaintiff the K349, 000.00, and this evidence was not discredited in any way.

The 1st defendant's contention that the plaintiff through Majory owed ZRA, even though not pleaded, does not raise doubt on the assertion by the plaintiff, that he admitted owing the plaintiff the amount of K349, 000.00 which the late Majory Njomwa gave him to buy beers on the plaintiff's behalf. This is because 1st defendant did not dispute the plaintiff's assertion that he had spoken with the 1st defendant on phone, and the 1st defendant acknowledged receipt of the said funds.

Therefore, the plaintiff has on a balance of probabilities proved that the 1st defendant admitted owing him the amount of K349, 000.00.

Coming to the issue of the plaintiff having taken possession of the three (3) vehicles, the evidence given by the plaintiff which was confirmed by PW2 was that after the plaintiff and PW2 met the 1st defendant at Levy Business Mall, the 1st defendant had pleaded with the plaintiff. Thereafter, the 1st defendant had called Tabby and told him that the plaintiff would go and collect the vehicles.

The evidence on record is that at the time, the 1st defendant and his family were on their way to the Copperbelt to attend a funeral, and the plaintiff, and PW3 went to Livingstone and collected the vehicles, with another person PW3 he said that he did not know. The 1st defendant again did not discredit the evidence that he told Tabby that the plaintiff would go to collect the vehicles. It is on record, that apart from one (1)

vehicle which is absolutely owned by the 1st defendant, the others are owned by the 2nd defendant.

It is trite that a company that is incorporated has legal personality at law, and is distinct from its members. Therefore, the 1st defendant and the 2nd defendant, an incorporated company, are separate persons at law. It is however common cause that an incorporated company acts through its directors who are its agent.

The 1st defendant testified that himself and his wife, being directors of the 2nd defendant, did not authorise that the plaintiff be given the motor vehicles. He denied having authorised Tabby to give the plaintiff the motor vehicles, stating that the plaintiff and Tabby knew each other. Tabby's connection with the 2nd defendant was not explained, or how he had access to the keys for the motor vehicles belonging to the 2nd defendant. There is no evidence on record to show that the plaintiff is familiar with the operations of the 2nd defendant, and was therefore able to access the vehicles without the 1st defendant's authority.

The plaintiff was not cross examined on whether he knew Tabby, and the allegation that he did so, was only said as an afterthought by the 1st defendant in his testimony. The white books apart from one, are in the name of the 2nd defendant who was not a party to the agreement of 8th April, 2016, and I have already noted that it is trite law that an incorporated company has separate legal existence from its members.

The plaintiff has relied on a number of authorities that speak to that finding, and also that a company acts through its directors, and it is bound by their decisions. These are the cases of ***B.P Zambia Plc v Interland Motors Limited*** ⁽⁶⁾, ***Ashbury Railway Carriage and Irin Man Co. v Richie*** ⁽²⁾, ***Royal British Bank v Turquand*** ⁽¹⁾, as well as the

case of ***Bank of Zambia v Chibote Meat Corporation Limited*** ⁽⁵⁾ which held that third parties are not concerned with the internal affairs of a company. Therefore, the plaintiff should not be affected by the failure of the 2nd defendant to make a resolution for the release of the vehicles to the plaintiff.

In this matter, the evidence shows that the 1st defendant is a director of the 2nd defendant, and he represented himself as such, and he attached the property of the company to the agreement that was between himself and the plaintiff. By representing himself as such, he represented that he had the power and authority to do so, being one of the directors. Therefore, the company is bound by the agreement.

Further, the evidence given by the plaintiff which went unchallenged was that the 1st defendant had told him that he had used the money in the company. It would therefore be reasonable to assume that the 2nd defendant through its directors authorised the use of the plaintiff's funds, and the claim that the 2nd defendant was not party to the agreement cannot stand. The claims in the counterclaim for an order that the plaintiff illegally seized the vehicles and they should be returned to the 2nd defendant fails.

The claim that the plaintiff trespassed on the property equally fails, as does the claim for damages for loss of business and for loss of profits from May, 2016 to date. The plaintiff having succeeded on his claim, judgment is entered in his favour for the amount of K349, 000.00 against both plaintiffs. The amount shall carry interest at the average short term deposit rate from the date of issue of the writ until judgment, and thereafter, at the Bank of Zambia lending rate until payment.

The defendants shall pay the amount within thirty (30) days from today, and in default thereof, the plaintiff shall be at liberty to sell the said vehicles through the Sheriff of Zambia. If the proceeds of the sale shall not recover the judgment sum, the plaintiff will be at liberty to levy execution to recover the balance. If the amount of K349, 000.00 together with the interest thereon shall be paid within the thirty (30) days, the vehicles shall be released to the 2nd defendant,

The plaintiff is awarded costs, to be taxed in default of agreement. Leave to appeal is granted.

DATED AT LUSAKA THIS 11th DAY OF MAY, 2020

S. Kaunda

**S. KAUNDA NEWA
HIGH COURT JUDGE**