

RAJAN PATEL v ATTORNEY-GENERAL.

Supreme Court.
Ngulube, CJ, Sakala and Chitengi JJS.
6TH March 2002 and 5TH June 2002.
(SCZ Judgment No. 14 of 2002.)

Flynote

Contract - Sale of Goods - Market overt - Open, public, and legally constituted - Effect of.

Headnote

The facts which were common cause were that on 9th July 1999, the appellant was approached by one Humphrey Musonda and Patrick Kangwa. The duo informed him that they had a car for sale. The appellant viewed the car, a Mercedes Benz registration number AAT 5552 and accepted to buy it at 28, 880 US\$. The White Book showed that it was issued and registered by the Zambian government; the owner being Patrick Kangwa. The customs clearance certificate was issued by the Zambia Revenue Authority. The appellant verified the documents with the Motor Vehicle Division Central Police Station at Ndola Central Police Station. After the verification, Humphrey Musonda swore an affidavit on behalf of Patrick Kangwa for change of ownership. It transpired later that the vehicle in issue was hijacked in South Africa on 15th July 1999. The appellant launched proceedings for a declaration that he was the lawful owner of vehicle in issue. The learned trial judge considered the facts and dismissed the claim for the return of the vehicle hence the appeal.

Held:

- (i) Where goods are sold in the market, according to the usage of the market, the buyer carries good title to the goods provided that he buys them in good faith and without notice of any defect or want of title on the part of the seller.

- (iii) A market overt is defined as an open, public and legally constituted place.

Legislation referred to:

Sale of Goods Act 1893 ss. 12 and 22.

Cases referred to:

1. *Bishopsgate Motor Financing Corp. v Transport Brakes Ltd* [1949] 1KB 336-337.

2. *Rowland v Divall* [1923] 2 KB 500.

L. Matibini of L.M Matibini and Company for the appellant.
M. Haimbe Senior State Advocate for the respondent.

Judgment

SAKALA, J.S delivered the judgment of the Court.

The appellant's claim for a declaration that he was the lawful owner of a vehicle registration number AAT5552, Mercedes Benz E. 240 and the claim for the return of the same vehicle were dismissed hence the appeal to this court.

For convenience, the appellant will be referred to as the plaintiff and the respondent as the defendant which they were in the court below. The facts which were common were that, on 9th July 1999, while the plaintiff was at his shop, he was approached by one Humphrey Musonda and Patrick Kangwa. The two informed him that they had a car for sale. He viewed this vehicle. It was a Mercedes Benz car registration number AAT 5552. He accepted to buy it. He immediately took it for road test. After the road test, they all returned to the shop. Mr. Kangwa showed him a White book, a National Registration Card and a Customs Clearance Certificate. The White book showed that it was issued and registered by the Zambian Government; the owner being Patrick Kangwa. The plaintiff checked the engine and chassis numbers. They all corresponded with the White Book. The Customs Clearance Certificate was issued by the Zambia Revenue Authority. Thereafter, the plaintiff negotiated the price which was put at 28,000 US\$. According to the plaintiff, he told Mr. Kangwa that it would take sometime to source that kind of money. Mr. Kangwa indicated that he was returning back to Lusaka and leaving full authority and care of the motor vehicle to Mr. Humphrey Musonda. The following day the plaintiff and Mr. Musonda went to Ndola Central Police Station at the Motor vehicle Division where Mr. Musonda gave the vehicle's documents to the Police for verification. After verification, the two proceeded to the Officer-in-Charge where Mr. Musonda swore an affidavit on behalf of Mr. Patrick Kangwa for change of ownership.

On 12th July 1999, the two went to the Road Traffic Division where they made the change of ownership in the joint names of the plaintiff and his wife. On 13th July 1999, the two went to the office of the plaintiff's lawyer where a contract of sale for the motor vehicle was made. The plaintiff and Mr. Musonda signed the contract. After signing the contract, the plaintiff paid Mr. Musonda a sum of 28,000 US\$. PW2, a Sub Inspector in the Zambia Police Service, confirmed receiving the plaintiff and Mr. Humphrey Musonda at his office on 20th July 1999. He testified that they had come to change the ownership of the Mercedes Benz motor vehicle. According to him, he did not believe that the vehicle was a stolen one. Mr. Humphrey Musonda testified as PW3. He told the Court that on 8th July, 1999, he received a telephone call from Mr. Patrick Kangwa informing him that he had two motor vehicles to sell namely; a Mercedes Benz and Hilux. He requested Mr. Kangwa to bring the Benz as they needed to buy it in Ndola. Mr. Kangwa brought the vehicle the following day. He confirmed going to the plaintiff's office with Mr. Kangwa. He also confirmed the rest of the story as testified by the plaintiff.

On behalf of the Attorney-General, two witnesses testified. One of them, a witness from South Africa, testified that the vehicle in issue was hijacked in South Africa on 15th July

1999. The matter was reported to the South African Police on the same day. The police opened a docket which was circulated on the Interpol and on Police Computers. He testified that he identified this vehicle at the Police Headquarters in Lusaka.

The second witness on behalf of the Attorney-General was a Detective Inspector in the Zambia Police Service who testified that he was also a liaison officer at Interpol section. He explained that sometime in October 1999, they received information that a vehicle had been stolen from South Africa on 15th June 1999, but that the information was entered in the computer in July 1999. They commenced investigations in October, 1999.

The learned trial court considered these facts. The court found that the plaintiff had exhausted the investigations before he finally bought the vehicle in issue. The court also found that the plaintiff had bought the vehicle in good faith. The court observed that the issue was whether the plaintiff had title to the property.

The court considered the authority of *Bishopsgate Motor Financing Corporation v Transport Limited (1)* cited by counsel for the plaintiff. The court noted that the case dealt with the issue of hire purchase where the plaintiff had handed over the possession of a vehicle under hire purchase agreement to the buyers who had made some down payment and agreed to pay the balance in monthly installments. The court observed that in that case, the log book in which his own name and address had to be entered had been given out, while the car remained the property of the plaintiff until the total amount had been paid. The court noted that on the facts of that case including on the issue of selling, Lord Denning applied section 22 of the Sale of Goods Act.

The learned trial judge pointed out, however, that the facts of the present case were different in that the seller had no right of title to sell the car. The court observed that a thief had neither ownership nor title to pass to a buyer. After citing section 12 (1) of the Sale of Goods Act, the court held that a thief in the present case had no right to pass ownership of a title to the purchaser. The court concluded that the vehicle had been stolen. Consequently, the court refused to make the declaration sought and ordered that the vehicle be returned to the rightful owners in South Africa noting that the only remedy to an innocent party as the plaintiff was that as stated in the case of *Rowland v Divall (2)* namely of suing the seller for the price sold. The plaintiff's claim failed. No order as to costs was made.

Counsel for the plaintiff relied on the submissions filed in the court below in which he tried to persuade the court that there was only one claimant in this case, the plaintiff. Counsel also tried to persuade the court that even if the vehicle had been stolen, the law recognized that the plaintiff could acquire good title even if the seller had neither the property nor a right to dispose off that property. He cited the *Bishopsgate Motor Financing Corporation case (1)* to support his submissions.

Mr. Haimbe on behalf of the defendant submitted that the learned trial judge was on all fours with the law; contending that a thief with no title to property cannot pass title. He cited the case of *Rowland v Divall (2)* in support of his submissions.

We have anxiously considered the facts not in dispute. While the plaintiff has all our sympathies, the law is, regrettably, not on his side. Section 22 of the Sale of Goods Act, still applicable in Zambia States:-

“Where goods are sold in market overt, according to the usage of the market, the buyer acquires a good title to the goods, provided he buys them in good faith and without notice of any defect or want of title on the part of the seller.” Market overt is defined as open, public and legally constituted. We cannot accept that the sale of a vehicle by people going to the plaintiff's shop was a sale at the market overt as defined. On the facts of this case the Sale

of Goods Act cannot assist the plaintiff. Indeed, the whole transaction was conducted to the disadvantage of the plaintiff. But as pointed out by the learned trial judge, all is not lost. The plaintiff can still pursue the seller.

For now this appeal is dismissed. We make no order as to costs.

Appeal dismissed.