

ABDUL AHMAD  
versus  
CONJU-INCORPORATED (PVT) LTD  
and  
JOHANNES MAKONYE  
and  
PETER CHIVESO

HIGH COURT OF ZIMBABWE  
HUNGWE J  
HARARE, 10 October 2007

Mr *Fitches*, for the applicant  
Mr *Chinganga*, for the 3<sup>rd</sup> respondent

HUNGWE J: Applicant seeks an order directing the respondents to return to him a Toyota Cressida motor vehicle registration number ANN 1574 within 48 hours of the service of the order. Applicant engaged the first respondent, car dealership to find a buyer for the motor vehicle in issue second respondent is its director. He would leave the vehicle displayed for sale at the first respondent's premises and take it away on weekends. Around 20 November 2006 he gave the second respondent the asking price of \$5 million for the motor vehicle. He was advised that a buyer had been found for that price. He drove the motor vehicle to first respondent's premises. On 23 November 2006 the car was sold to third respondent. Third respondent has it in his possession although applicant refuses to hand over its registration book. Applicant claims that the motor vehicle was sold without his authority. He also claims that he was never paid the purchase price.

Only third respondent opposed the application. Firstly he contended that the matter is *lis pendens* as the re is a similar case before this court in HC 740/07. Secondly, he states that ownership of the motor vehicle passed to him upon payment of the purchase price demanded by the applicant through his agents the first and second respondents. He is an innocent 3<sup>rd</sup> party purchaser for value. As such applicant has no right over the car. He prayed that the application be dismissed with costs.

The question for determination in this case is whether the applicant is bound by the agreement of sale entered into between his agents and third respondent. Put differently, did the agents have the authority to bind their principal in an agreement of sale of the motor vehicle?

Applicant urges the court to find that as he had not given a price to the agent and since he had not personally approved of the sale, that sale is not binding upon him. He relies for this contention on a private limitation to the agent's authority. He states that he had verbally agreed with the agent that the price of the car was to be fixed by himself when a genuine buyer had been identified by first and second respondent. Since the agent sold the car without reference to him for the price, he is not bound by the sale.

The principles upon which the acts of an agent can bind his principal are now well settled.

Restating these principles, Beadle CJ in *Reed NO v Sager's Motors (Pvt) Ltd 1969 (2) RLR 519 @ 523H-524A* observed thus:

*"If a principal employs a servant or an agent in a certain capacity, and it is generally recognized that servants or agents employed in that capacity have authority to do certain acts, then any of those acts performed by such servant or agent will bind the principal because they are within the scope of his 'apparent' authority. The principal is bound even though he never expressly or impliedly authorized a servant to do these acts nor had he by any special act (other than the act of appointing him in his capacity) held the servant or agent out as having this authority. The agent's authority flows from the fact that persons employed in the particular capacity in which he is employed normally have authority to do what he did."*

This passage was quoted with approval by Sandura JA in *Gwafa v Small Enterprise Development Corporation and Another 1999 (2) ZLR 261 @ 263G -@264A*. In that case the respondent had refused to honour the sale of one of its vehicles concluded by an auctioneer and the appellant on the basis that it had not given its approval after the sale.

The facts of the instant are on all fours with Gwafa's case. The applicant employed the services of a car sales agent to sell his motor vehicle. Car sales agents are

generally empowered to conclude sales in respect of vehicle brought to them for the purpose. The first and second respondents did what generally such agents are employed to do. The question to be decided here is whether a car sales agent has ostensible authority to conclude a sale agreement in respect of a motor vehicle given to him for sale. I am satisfied that he has because it is generally recognized that a car sales agent has the authority to conclude sales of motor vehicles on behalf of owners who would have appointed him for the purpose. In concluding such a sale, the agent acts on behalf of the motor vehicle owner as seller. The sale agreement therefore binds the seller as owner of the motor vehicle.

Applying the above principles therefore, when first and second respondents concluded the agreement of sale with third respondent, they acted on behalf of applicant. It does not matter that applicant may not have received the purchase price as at law his agents accepted it on his behalf so he is deemed to have received the purchase price. If indeed he did not get it, then he has a claim against his agent for the value received.

In the result therefore the applicant's claim must fail. It is dismissed with costs.

*Mawere & Sibanda*, applicant's legal practitioners

*Chinganga & Company*, 3<sup>rd</sup> respondent's legal practitioners