IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY

CIVIL CAUSE NO. 1033 OF 2008

BETWEEN
ANDREW MACHINJIRI ..... PLAINTIFF
AND
LEASING AND FINANCE COMPANY LIMITED ..... DEFENDANT

LEYLAND DAF COMPANY LIMITED ..... 3RD PARTY

ARNOLD CHIPENDO ..... 4TH PARTY

CORAM: HON. JUSTICE R. MBVUNDULA
Chipeta, Counsel for the Plaintiff
Banda, Counsel, for the Defendant
Soko, Counsel for the 3rd Party
4th Party absent and unrepresented
Gondwe, Official Interpreter

JUDGMENT

Facts and evidence

The plaintiff, at all material times, operated a passenger bus service styled Mapanga Bus Service. Of relevance to this case is the fact that the plaintiff bought a bus which was at the premises of the 3rd Party (hereinafter "Leyland DAF") for repairs. The bus was, at the time of purchase, held under an "Agreement of Lease" between the defendant (hereinafter "LFC") and the 4th Party (hereinafter "Mr Chipendo"). LFC

sold the bus to the plaintiff in exercise of its power of sale under the lease facility, Mr Chipendo having apparently defaulted in his obligations under the lease.

It is not in dispute that the plaintiff paid the full purchase price for the bus to LFC after which LFC wrote to the Road Traffic Commissioner advising that office to record a change of ownership of the bus into the name of the plaintiff and to delete LFC's interest in the bus. According to the plaintiff's statement of claim in paragraph 8:

> "8. In breach of the above change of ownership, [LFC and Leyland DAF] have for no apparent reason refused or neglected to deliver the said bus to the Plaintiffs in consequence of which the Plaintiffs have suffered loss and damage." (sic)

In his witness statement the plaintiff stated that following the payment he made, LFC acknowledged receipt of a cheque he issued to them for the purchase and advised that LFC would release the bus as soon as the cheque had been cleared. However, when he approached Leyland DAF for the release of the bus, on the first occasion they refused to do so on the ground that they had no knowledge of the transaction. On a later occasion, after change of ownership at the Road Traffic Commission, they again refused, this time on the ground that they had had no communication from LFC but they did not state what kind of communication they wanted. Subsequently, according to the plaintiff, they said they could not release the bus because of outstanding storage charges.

The plaintiff stated that Leyland DAF eventually handed over the bus to him in a dilapidated state and he would have to spend considerable sums of money to put it in a usable state.

The plaintiff further stated that he intended to use the bus for commercial purposes but as a result of the breach of contract of the sale of the bus he suffered loss of income in the form of daily passenger charges with interest and costs.

By its amended defence LFC admitted the contract of sale with the plaintiff and acknowledged payment from him, but denied that it failed to deliver the bus to the plaintiff, averring that the plaintiff willfully and deliberately failed and/or neglected

to collect the bus from Leyland DAF. In the alternative LFC pleaded that the plaintiff's failure to take possession of the bus was not caused by breach of contract alleged or any breach of contract on the part of LFC but by Leyland DAF's refusal to release the bus contrary to instructions by LFC, by which refusal, it was pleaded, Leyland DAF effectively converted to its own use the said bus and denied the titles of LFC and/or the plaintiff and occasioned the breach of contract alleged by the plaintiff. LFC specifically stated the position, in the amended defence, that at all times prior to the sale to the plaintiff title to the bus vested in LFC and was transferred to the plaintiff immediately after its sale.

In consequence it was prayed on behalf of LFC that:

a) The plaintiff was not entitled to maintain the present action against LFC;
b) The claims for damages for breach of contract, loss of business, loss of use, interest and costs be dismissed.

Mr Mbachazwa Lungu who was LFC's General Manager at the material time filed a witness statement and also appeared for cross examination. He confirmed the lease facility and the subsequent sale of the bus to the plaintiff in the circumstances narrated earlier on. He stated that the bus found itself at Leyland DAF premises apparently because Mr Chipendo experienced serious problems with its engine. Reading between the lines it would appear that it was Leyland DAF who had supplied the bus as according to Mr Lungu's statement Leyland DAF accepted the contention that the bus had serious problems and took it in order to repair it and make it roadworthy. Mr Lungu further stated that Leyland DAF were aware of the agreement between Mr Chipendo and LFC concerning the financing of the bus and the obligations of Mr Chipendo regarding monthly installments payable, as he recalled that Leyland DAF had in fact paid one of the instalments on behalf of Mr Chipendo.

Mr Lungu informed the court that Mr Chipendo subsequently formed the view that the bus had so many mechanical faults that it needed replacing, and when Leyland DAF failed to resolve the mechanical problems Mr Chipendo sued Leyland DAF and LFC was made aware of the proceedings, and before those proceedings were concluded Mr Chipendo had discussions with the plaintiff which resulted in the

plaintiff approaching LFC with a proposal to buy the bus. Mr Lungu put in evidence a letter from the plaintiff to LFC to show that the plaintiff was aware of the interest of both LFC and Mr Chipendo in the bus. In his letter offering to buy the bus, addressed to the General Manager of LFC, the plaintiff stated, "I would like to buy your bus which is lying at Leyland DAF yard." Upon considering that Mr Chipendo was not remitting the monthly instalments in accordance with the lease agreement, and on confirming that Mr Chipendo wished to sell the bus in order to curtail losses then being occasioned by the non-use of the same, LFC agreed to sell the bus to the plaintiff. Upon completion of the transaction LFC advised Leyland DAF to release the bus to the plaintiff as the new owner but Leyland DAF refused to release the bus to the plaintiff or to LFC despite, according to Mr Lungu, Leyland DAF fully knowing that LFC was, prior to the sale of the bus to the plaintiff, the legal owner of the bus.

It was the further contention of Mr Lungu that the plaintiff was also aware that LFC was making all efforts to have the bus released to him and that it was Leyland DAF which was wrongfully refusing to release it in spite of clear instructions and demands from LFC. Mr Lungu further contended that Leyland DAF was made aware of the damage and loss which would be occasioned to the plaintiff by its refusal to release the bus to the plaintiff but they continued to hold on to the bus. Mr Lungu confirmed that Leyland DAF did eventually release the bus to the plaintiff but after having detained it for a long period.

The further evidence of Mr Lungu during cross examination was that Leyland DAF had no issues with LFC as the legal owner of the bus but with Mr Chipendo. He further stated that a meeting had been convened between LFC, Leyland DAF and Mr Chipendo where it was explained that the bus legally belonged to LFC and that if there was any issue with Mr Chipendo those were supposed to be settled between Leyland DAF and Mr Chipendo. Mr Lungu also stated that LFC did not sue Leyland DAF because LFC had no contract with them but that it was Mr Chipendo with whom they had a contract. For that reason LFC was not expected to settle the bills in respect of the repairs to the bus. He further stated that Leyland DAF did not in fact send any bills to LFC.

LFC issued a Third Party Notice against Leyland DAF stating that LFC "claims against Leyland DAF to be indemnified against the plaintiff's claim and costs of this action on the grounds that the alleged breach of contract and the alleged loss of business were both caused by Leyland DAF's wrongful actions in wrongfully detaining the bus against instructions from LFC and the demand of the plaintiff that possession of the bus be given to the plaintiff."

Leyland DAF contends, in its defence, that the bus having been delivered to its premises by Mr Chipendo for repairs Leyland DAF was in the premises not obliged to release the same to any other party than Mr Chipendo or such other party as might be directed by him. It was pleaded further or in the alternative

a) that subject to the payment of repair and storage charges occasioned by Mr Chipendo in connection with the said vehicle Leyland DAF had at all material times been ready and willing to release the bus to Mr Chipendo being the person who took the bus to Leyland DAF for repairs but Mr Chipendo had wrongfully refused to take possession of the same;
b) that the said bus being the subject matter was *in lis pendis* between Leyland DAF and Mr Chipendo under Civil Cause No 3693 of 2001, in the High Court of Malawi, Principal Registry, Leyland DAF was in the premises precluded from releasing the bus before determination or withdrawal or discontinuation of the said action. [The matters pleaded under this sub-paragraph were not pursued at the trial.]

In view of the foregoing Leyland DAF denied that it wrongfully retained possession of the bus as alleged in the 3rd Party Notice and required strict proof thereof.

Mr Shivkumar Patil testified for Leyland DAF. He was at the time a Director for the company.

He narrated that Mr Chipendo had initially taken the bus to them for the repair of its clutch plate and after the repairs had been done he refused to take delivery of the same claiming that other parts also required to be repaired. Even after the latter parts had been repaired he still refused to collect the bus. When he was advised to take the bus on a road test with a full load, he again refused, according to Mr Patil. It was clear from the evidence of Mr Patil that he was of the undoubted view that Mr Chipendo was acting unreasonably.

Mr Patil went on to state that due to Mr Chipendo's refusal to take delivery of the bus, storage charges were accumulating in respect thereof.

Regarding the requirement to pass possession of the bus to the plaintiff Mr Patil confirmed that that the company was instructed, verbally, by LFC to do so as, in his understanding, the plaintiff had bought if from Mr Chipendo. He said that Leyland DAF communicated its position, in writing, to Mr Chipendo's legal practitioners, that it was always ready to deliver the bus but subject to Mr Chipendo paying the storage charges but that notwithstanding Mr Chipendo and LFC, according to him, still refused to take delivery of the bus (apparently subject to the demand for storage charges) until after an ADR agreement had been reached, when the plaintiff took delivery. Mr Patil asserted that at all material times it was totally justifiable for Leyland DAF to exercise its right of lien on the bus until the storage charges in respect thereof had been fully settled and that the delay in the delivery of the bus was solely caused by Mr Chipendo's conduct. Further, so he stated, the plaintiff and LFC did not take steps in good time to resolve the issue of storage charges.

During cross-examination Mr Patil expressed the view that the charges were supposed to be paid by Mr Chipendo as the owner of the bus and the one who took it for repairs. He also said that the requirement to pay storage charges did not result from an agreement but from a business practice in the industry, but he was not aware if clients would be informed in advance of the alleged industry practice. He was in fact not aware if Mr Chipendo had been informed of the existence of such an industry practice. That such an industry practice existed was not raised by Mr Patil in his evidence in chief. It appeared to me that he just took advantage of the question that was put him in cross-examination to advance its existence, yet he demonstrated ignorance about as simple a matter as whether clients in the industry would be informed of the existence of the alleged practice. It is my finding that there was insufficient evidence that such an industry practice existed and therefore do not accept that it did exist.

Mr Patil further contended that whoever took such a vehicle to them must first clear the storage charges because they come under the authority of the seller as storage charges are levied on the vehicle. He asserted that the storage charges are imposed because the garage has alien on the vehicle.

It was the further account of Mr Patil during cross-examination that the claim for storage charges made to the plaintiff came about once they were convinced that he had bought the vehicle. This was on the second time when he visited them in order to take delivery of the vehicle. He said the invoices for storage charges were issued to Mr Chipendo and none had been issued to the plaintiff or LFC, but he still expected the plaintiff and LFC to settle the invoices because, so he said, the ownership had changed.

Finally Mr Patil confirmed his view as expressed in his witness statement that the delay in delivering the bus was solely caused by Mr Chipendo.

The 4th Party, Mr Chipendo, did not enter a defence nor did he in any way participate in the proceedings notwithstanding that he was served.

Issues

1. In whom title to the bus lay at particular times and who was the seller.
2. Whether LFC and or Leyland DAF were under a legal obligation to deliver the bus to the plaintiff after the sale;
3. Whether there was a breach of contract on the part of LFC.
4. Whether Leyland DAF can rely on the right of lien for their refusal to release the bus.
5. Whether the refusal by Leyland DAF to release the bus following instructions by LFC after the sale occasioned a breach of the contract of sale.
6. Whether the refusal by Leyland DAF to release the bus following instructions by LFC after the sale amounted to conversion.
7. Whether Leyland DAF is liable to indemnify LFC;
8. What the position of the 4th Party is in the circumstances.

Resolution

1. Title in the bus and the true seller

In an agreement for the leasing of a chattel title or ownership in the chattel remains vested in the lessor until transferred to the lessee or any other person. The mere entry into the agreement does not pass title or ownership to the lessee. The plaintiff would seem to have appreciated this position in his letter to LFC offering to buy what he referred to as "your bus" which was at Leyland DAF yard, the subject matter of this action. In this regard it appears not in dispute, as between the plaintiff and LFC, that Mr Chipendo held no title to the bus at the time of its sale to the plaintiff. The title holder immediately prior to the sale, namely, LFC never in fact passed title or ownership to Mr Chipendo but to the plaintiff, hence, subject to fulfilment of his contractual obligations, the plaintiff acquired title to the bus immediately after the sale to him. The understanding of Mr Patil, therefore, that the plaintiff bought the bus from Mr Chipendo was erroneous.

2. *Whether LFC and or Leyland DAF were under a legal obligation to deliver the bus to the plaintiff after the sale, and whether there was a breach of contract of sale on the part of LFC.*

The Sale of Goods Act (Cap. 48:01 of the Laws of Malawi) is relevant to the issues herein. In terms of section 2 of the Act the sale between LFC and the plaintiff was a sale of "specific goods" defined as "goods identified and agreed upon at the time a contract of sale is made". Concerning delivery of goods subject of a sale the Act provides in section 29 as follows:

> **29. Payment and delivery concurrent conditions**
>
> Unless otherwise agreed, delivery of the goods and payment of the price shall be concurrent conditions, that is to say, the seller must be ready and willing to give possession of the goods to the buyer in exchange for the price, and the buyer must be ready and willing to pay the price in exchange for possession of the goods.

The Act further provides as follows in section 30 (1) on the issue of delivery:

> (1) Whether it is for the buyer to take possession of the goods or for the seller to send them to the buyer *shall be a question depending in each case on the contract, express or implied, between the parties*; and apart from any such contract, express or implied, the place of delivery shall be the seller's place of business, if he have one, and if not, his residence:

Provided that if the contract is for the sale of specific goods which, to the knowledge of the parties when the contract is made, are in some other place, then that place shall be the place of delivery. (emphasis supplied)

In *Atiyah's Sale of Goods* 12th Edition at page 119 the following commentary appears in relation to the wording of section 30 (1):

> The section, therefore, does two things. First, it creates a presumption that in a sale of specific goods the place of delivery is the place where the goods are known to be at the time of the contract. Secondly, it lays down that in all other cases, in the absence of any special agreement, the place of delivery is the seller's place of business and, failing that, his residence. Thus in the absence of a contrary intention, it is the duty of the buyer to collect the goods, and not for the seller to send them.

Section 30 (2) is also relevant. It provides:

> (3) Where the goods at the time of sale are in the possession of a third person, there shall be no delivery by seller to buyer unless and until such third person acknowledges to the buyer that he holds the goods on his behalf:
>
> Provided that nothing in this section shall affect the operation of the issue or transfer of any document of title to goods.

Section 2 of the Act defines "delivery" as "the voluntary transfer of possession from one person to another". *Atiyah* explains the meaning of the term (at page 119) as follows:

> It should be noted that the legal meaning of 'delivery' is very different from the popular meaning. In law, delivery means the 'voluntary transfer of possession', which is a different thing from the dispatch of the goods. There is, indeed no general rule requiring the seller to dispatch the goods...

Chitty on Contract 27th edition, Volume II at paragraph 41-186, page 1199 states that it follows from the foregoing legal definition that it is basically the duty of the buyer to collect the goods rather than for the seller to send them.

Under section 30 subsection (1), therefore, LFC did all that was in its power and control and as it was legally obliged to do so as cause and effect delivery of the bus by effecting change of ownership thereof and advising Leyland DAF to release the

bus to the plaintiff, as no duty lay on LFC to dispatch the bus to the plaintiff but for the plaintiff to collect it from where it lay. As a matter of fact, by his own conduct of going to Leyland DAF's premises in order to collect the bus the plaintiff acknowledged the absence of an obligation on the part of LFC to send the bus to him but for him to collect it. Delivery of the bus, in the legal sense, was hampered by Leyland DAF's refusal to release the bus as directed by LFC and as demanded by the plaintiff.

In final submissions, counsel for the plaintiff made reference to section 30 (5) of the Sale of Goods Act which provides that the expenses of and incidental to putting goods in a deliverable state must be borne by the seller, unless otherwise agreed. Counsel then submitted that on the facts of the present case, the plaintiff duly performed his duty of paying the purchase price but the defendant failed to deliver the bus to the plaintiff. This submission, with respect, lacks merit because the issue whether or not LFC was supposed to do anything to put the bus in a deliverable state never arose, right from pleadings through to the evidence. Besides putting goods into a deliverable state is a totally different duty from the duty to deliver the goods.

3. *Whether there was a breach of contract on the part of LFC*

Regarding the alleged breach of contract the plaintiff pleaded in paragraph 8 of the statement of claim as follows:

> 8. In breach of the above change of ownership, [LFC and Leyland DAF] have for no apparent reason refused or neglected to deliver the said bus to the Plaintiffs in consequence of which the Plaintiffs have suffered loss and damage. (sic)

In other words, as I understand the pleading and the evidence of the plaintiff, the plaintiff's case is that by the alleged failure by LFC to deliver the bus LFC committed a breach of the contract of sale.

Treitel, *The Law of Contract*, 7th Edition at page 637, states that a breach of contract is committed when a party without lawful excuse fails or refuses to perform his obligations under a contact or performs defectively, or incapacitates himself from performing. Having found that LFC was under no obligation to take or dispatch the

bus to the plaintiff and that it was for the plaintiff to collect the bus from Leyland DAF premises, it is my finding the LFC did not commit the alleged breach of the contract.

4. *Whether Leyland DAF can rely on a right of lien for its refusal to release the bus.*

It will be recalled that Mr Patil who testified for Leyland DAF told the court that Leyland DAF was always ready to deliver the bus subject, however, to the payment of storage charges pertaining to the bus, he being of the opinion that at all material times it was totally justifiable for Leyland DAF to exercise its right of lien on the bus until the storage charges in respect thereof had been fully settled and that the delay in the delivery of the bus was solely caused by Mr Chipendo's conduct. Further, that the plaintiff and LFC did not take steps in good time to resolve the issue of storage charges, which as he asserted resulted from an industry practice, though he not aware if clients would be informed in advance of the alleged industry practice or whether in fact Mr Chipendo had been informed of the existence of such an industry practice.

It should be noted that Leyland DAF pleaded, in its defence, that it withheld the bus on account of not just storage charges, but also some repair charges. However in both his witness statement and oral testimony Mr Patil, Leyland DAF's only witness, made no reference to repair charges as one of the reasons the bus was withheld. He only referred to storage charges, in paragraph 11 of his witness statement, by stating that due to the refusal by Mr Chipendo to collect the bus from Leyland DAF premises storage charges started accumulating in respect thereof. And under paragraphs 13 and 16 are exhibited copies of invoices (marked "SP 7" and "SP 9" respectively) show that the same were in respect only of vehicle storage charges. In the premises it was only on account of storage charges that the vehicle was not being released.

Bullen & Leake & Jacob's Precedents of Pleading and Practice 13th edition at page 1284 state the following position:

> Where the defence of lien is raised, it should in all cases be specifically pleaded and particulars of circumstances giving rise to the lien should be given. In most cases, it will be appropriate to counterclaim for the debt in respect of which the lien is claimed.

The material pleading herein reads:

1. The 3rd Party contends that Motor Vehicle Registration Number BL 7090 having been delivered to it for repairs by Mr. Arnold Chipendo (hereinafter referred to as "the 4th Party") the 3rd Party is in the premises not obliged to release possession of the same to any other party than the 4th Party or such other party as may be directed by the 4th party.

   Further, or in the alternative, the 3rd Party states and will at the trial contend as follows:-

   a) that subject to the payment of the repair charges and storage charges occasioned by the 3rd Party in connection with the said Vehicle it has at all material times been ready and willing to release the bus to the 4th Party being the person who brought it to the 3rd Party for repairs but the 4th party has wrongfully refused to take possession of the same;

Herein Leyland DAF did not comply with the requirement to specifically plead the lien and to give particulars. As a matter of fact the word "lien" does not appear anywhere in the pleadings. It showed up for the first time in the last paragraph of Mr Patil's witness statement. The claim for the right of lien should therefore fail on account of the failure to specifically plead the same, if nothing else. Proceeding further, however, even if there had been compliance as to the pleadings, the claim by Leyland DAF for a right to a lien must still fail on the ground that a lien does not cover charges for warehousing or storage, even during the period of the lien. See *Chitty on Contracts* 27th Edition, Volume II, par. 32-064, page 146. Lord Diplock in *China Pacific S.A. v Food Corporation of India* [1982] A.C. 939 citing a previous House of Lords judgment in *Somes v Directors of British Empire Shipping Co.* (1860) 8 H.L. Cas. 338 stated as follows in this regard (at page 962):

> ... where a person is entitled to a possessory lien over goods incurs expenses in maintaining possession of them in the exercise of his right of lien and preserving in the meantime their value as security for the owner's indebtedness to him, he cannot recover such expenses from the owner. That case is, in my view, authority for the proposition that, where a lienee remains in possession of goods in the exercise of his right of lien only (i.e. one who has refused a demand by the lienor for redelivery of the goods with which, in the absence of a

> lien, the lienee would be under a legal obligation to comply), he cannot recover from the lienor loss or expenses incurred by him exclusively for his own benefit in maintaining his security as lienee and from which the lienor derives no benefit as owner of the goods.

In the premises Leyland DAF's detention of the bus on account of the storage charges was in breach of the plaintiff's right to its delivery to him, for which the plaintiff is entitled to damages.

5. *Whether the refusal by Leyland DAF to release the bus following instructions by LFC occasioned a breach of the contract of sale.*

Having held that LFC was not in breach of the contact of sale it must follow that Leyland DAF occasioned no such breach and the matter must rest here.

6. *Whether the refusal by Leyland DAF to release the bus following instructions by LFC after the sale amounted to conversion.*

I adopt the definition of "conversion" in the case of *Mlombwa t/a Umodzi Transport v Cotam Transport* [1999] MLR 206 at 217 (*per* Chimasula Phiri J) in the following terms, *inter alia*:

> At law, conversion is an act of deliberate dealing with a chattel in a manner inconsistent with another's right whereby the other is deprived of the use and possession. To be liable the defendant need not intend to question or deny the plaintiff's rights; it is enough that his conduct is inconsistent with those rights. It is not possible to categorise exhaustively all modes of conversion, for while some acts are necessarily an absolute abrogation of the plaintiff's rights and deprive him of the whole value in the goods, there may be others where the courts retain a degree of discretion in deciding whether those acts amount to a sufficient deprivation. Nevertheless the principal ways in which a conversion may take place include the following: ... when it is wrongfully retained; ... and when it is so dealt with that the manner of dealing constitutes a denial of title in the person entitled ... The general rule is that the right to bring an action for conversion or wrongful detention of goods belongs to the person who can prove that he had, at the time of the conversion or detention, either actual possession or the immediate right to possess. ... It is not necessary that the defendant should know of the right which his act violates and a wish or desire to interfere with another's right is not an essential of conversion Vide: *Lancashire and Yorkshire Railway v MacNicoll* [1918] 88 LJ KBD 601. At Common Law one's duty to one's neighbour who is the owner, or entitled to possession, of any goods is to refrain from

> doing any voluntary act in relation to his goods which is a usurpation of his proprietary or possessory rights in them. Subject to some exceptions, it matters not that the doer of the act of usurpation did not know, and could not by exercise of any reasonable care have known of his neighbour's interest in the goods. This duty is absolute; he acts at his peril. Vide: *Lord Justice Diplock in Marfani and Co Ltd v Midland Bank Ltd* [1968] 1 WLR 956 971. The damages to which a plaintiff who has been deprived of his goods is entitled are prima facie the value of the goods, together with any special loss which is the natural and direct result of the wrong Vide: *Re: Simms* [1934] 1 Ch 1.

See also *KO Mwangupiri v Manica (MW) Ltd and another* [2009] MLR 271; *Chiwaya v Sedom* [1991] MLR 47.

The facts in the case of *Tear v Freebody* [1858] 4 CB (NS) 228 closely resemble those of the present. In that case the defendant wrongfully took possession of certain goods belonging to the plaintiff with the intention of acquiring a lien and it was held that he was guilty of conversion.

I have already held that LFC and the plaintiff held legal title to the bus immediately prior to and immediately after the sale of the bus, respectively. I have also held that Leyland DAF's claim to a right of lien is not supported by law, hence its retention of the bus on that ground cannot stand. Leyland DAF therefore wrongfully retained possession of the bus and denied LFC and the plaintiff as title holders during the respective periods of their immediate rights to its use and possession, the very elements of the tort of conversion. I accordingly find the claim for conversion against Leyland DAF to have been established.

Summary and conclusion

The following is a summary of my findings and conclusions.

1. The plaintiff acquired title to the bus immediately after the contract of sale was concluded between him and LFC. From that moment he was entitled to delivery of the vehicle. Delivery at law means that he was entitled to collect the vehicle from where it was known to be at the time of the sale, i.e. from Leyland DAF premises. LFC was under no obligation to dispatch the bus to the plaintiff.

2. LFC fulfilled all its obligations under the contract of sale by changing ownership of the vehicle once the plaintiff's cheque was cleared and when it informed Leyland DAF of the transfer of title from LFC to the plaintiff. LFC was therefore not in breach of the contract of sale.
3. The plaintiff was immediately entitled to have use and possession of the bus when LFC fulfilled its contractual obligations aforesaid. Leyland DAF had no lien over the bus notwithstanding the storage charges in respect thereof. Its refusal to release the s to the plaintiff was therefore without lawful excuse and amounted to conversion.
4. Leyland DAF's conduct did not however occasion a breach of the contact of sale as no such breach occurred.
5. From the foregoing I find
   a) the plaintiff's claim against LFC for breach of contract to be without merit and dismiss it;
   b) Leyland DAF liable to the plaintiff for conversion, loss and damages for which shall be assessed by the Registrar.
6. This litigation was largely if not wholly occasioned by Leyland DAF's refusal to yield possession of the bus to the plaintiff. In the premises I order that Leyland DAF shall bear LFC's and the plaintiff's costs.
7. I have considered whether the 4th Party, Mr Chipendo, who did not enter an appearance should be bound by the judgment, and if so, to what extent, and have come to the conclusion that having not in any way influenced the retention of the bus by Leyland DAF it would not serve the interests of justice, nor would it serve any meaningful purpose, to enter judgment against him.

Pronounced in open court at Blantyre this 9th day of June 2021.

R. Mbvundula

JUDGE