

ULUFA'ALU -v- TOBATAIBURI LTD, HUNUEHU AND HUNUEHU

High Court of Solomon Islands

(Muria ACJ)

Civil Case No. 21 of 1991

Hearing: 3 March 1992

Judgment: 12 March 1992

A. H. Nori for Appellant

T. T. Kama for the Respondents

MURIA ACJ: This appeal concerns the interpretation of section 5 of the Bills of Sale Act (Cap. 71) which provides:-

"Every trader's bill of sale shall be void unless the same sets forth a description of the trade goods comprised in or made subject thereto. A description shall be sufficient for the purposes of this section if it is a particular description of specified trade goods mentioned or enumerated in the trader's bill of sale or general description of trade goods comprised in or made subject to the trader's bill of sale by reference to the nature, type, quality, purpose or mode of user or other distinguishing features sufficient to render such trade goods reasonably capable of identification, or partly such a particular description and partly such a general description."

The appellant has appealed against the decision of the learned Registrar who refused to order the Sheriff to withdraw from possession and ordered the vehicle Reg. No. A1121 be sold and the proceeds to be applied to discharge the Judgement Debt. The appellant claims that in so doing the learned Registrar erred in his interpretation of section 5 of the Act.

The facts of this case briefly are that the respondents obtained a judgment in the sum of \$73,850.53 together with costs and interest against the appellant. Following non-payment by the appellant of the sum ordered, the respondents issued a Writ of Fieri Facias under which the bus Reg. No. A1121 was seized by the Sheriff. The ANZ Bank (and the appellant) opposed a sale of the bus because they hold a bill of sale over it, to secure the appellant's loan of \$25,000.00 in consideration of which the appellant grant assign, transfer, set over, and assure to the grantee (Bank) the property described in the Schedule in the bill of sale. The description of the property in the Schedule shows:

MAKE	:	MITSUBISHI 12 SEATER BUS
CHASIS NO	:	CH2 P15 WWLA 00398
ENGINE NO	:	4D56C X 7533
REGISTRATION NO	:	A2009

That bill of sale together with the Schedule was registered on 23 May 1990 in the Office of the Registrar General and entered in the Register of Bills of Sale Book No. 90, Folio 61/90.

The learned Registrar found in the present case that the grantee was bound by the particular description of the property as contained in the Schedule to the bill of sale. However in so far as the vehicle Reg. No. A1121, the learned Registrar found that the Bank could not claim it to be the security for the loan. The Registrar heard no evidence as to whether the registration number A2009 was meant to be A1121 and whether the chasis and the engine numbers were meant to apply to A2009 or A1121. Consequently the learned Registrar held that the bill of sale was void as against the Judgement Creditors (the respondents).

In his submission, counsel for the appellant argues that section 5 of the Act is meant to protect the grantee and as such the absence or rather the mistake in the registration number of the vehicle cannot excuse the grantor to deny the Bank of its right over the asset. Counsel further argues that, despite the absence or mistake in the registration number the descriptions given in the Schedule are reasonably capable of identifying that the property so described is A1121.

In response, counsel for the respondents submitted that despite the description in the Schedule to the bill of sale, there was no evidence that the 12 seater bus was A1121. Counsel further submitted that in terms of section 5 of the Act, the description of the property to be accepted must be that stated in the Schedule when the bill of sale was registered.

In so far as the argument that section 5 of the Act is designed to protect the grantee, I feel disposed to disagree with counsel on that. The bill of sale entered into between the grantor and grantee "*shall be void unless the same sets forth a description of the trade goods comprised in or made subject thereto.*" That can hardly be viewed as giving any protection to the grantee. Further section 7 provides that the personal chattels of the grantor assigned under the bill of sale "*shall not be liable to be seized or taken possession of by the grantee*" except for the causes specified under paragraphs (a) to (e) of that section. Under section 6(1) the bill of sale must be executed in the presence of and attested by at least one witness. It must also set out the true

consideration for which it is granted and it must be registered in the manner set out under the Act. Subsection (2) then provides:

"(2) Every Bill of Sale shall, so far as regards any personal chattels to be effected thereby, be void unless and until it be registered under this Act."

The above provisions clearly show the general tenor of the Act which is to provide for certainty in the identification of the trade goods concerned. There must be sufficiency in the description of the trade goods mentioned in the bill of sale or made subject thereto so that the trade goods can be identified. The Act, thus, is designed to prevent frauds on creditors as well as to protect the grantors from the oppressive powers of the lenders, hence, the requirements of sections 5, 6 and 7 of the Act.

Counsel also contended on behalf of the appellant that the registration number of the vehicle was mistakenly given in the first place as A2009 when it should be A1121. Counsel seemed to suggest that despite such a mistake, the description of the item is sufficient for the purposes of section 5 since the chassis number, the engine number and the nature of property are the same. However, the difficulty faced by the appellant in this case obviously stems from the fact that the registration numbers of the alleged same vehicle are different from each other. There was no evidence before the learned Registrar as to why the registration number was A2009 if it was meant to be A1121 as it has now been alleged. Much moreso, the certified copy of the registered bill of sale does not show any change of Registration Number from A2009 to A1121. It is also to be noted that despite the bill of sale having being registered on 23 May 1990, no mention has ever been made of the alleged mistake in the registration number of the vehicle by either the grantor or grantee to the Registrar-General's Office at all. The alleged mistake had only been raised following the seizure of the vehicle by the Sheriff of the High Court. In such circumstances it is hardly surprising that the learned Registrar came to the conclusions he did.

The requirement of "*sufficient*" description in section 5 must relate to the trade goods mentioned or enumerated in the trader's bill of sale and which are specifically described or if the trade goods are capable of being identified by their general description, then such trade goods may be sufficiently described by a general description. However such general description must also relate to the trade goods comprised in or made subject to the trader's bill of sale: See *Davidson -v- Carlton Bank* [1893] 1 QB 82. Thus under section 5 the trade goods which can either be particularly described or generally described must be those trade goods

".....mentioned or enumerated in the trader's bill of sale orcomprised in or made subject to the trader's bill of sale"

Section 5 has no application, it seems to me, to trade goods which are not either particularly or generally described in the bill of sale.

Assuming for the present purpose that A1121 is a totally different vehicle altogether from A2009, then it can hardly be said to be the trade good, the description of which is set forth in the bill of sale since it is not the trade good "mentioned" or "enumerated in" the bill of sale. In such a case the bill of sale, in my view, would have no effect in respect of the goods not described in the bill of sale. If assuming on the other hand that the description of the vehicle's make, chasis and engine numbers are those of A1121 but mistakenly given, as those of A2009, then what is the legal effect of such a mistake where the register of the bill of sale has not been rectified in view of the mistake? Clearly the difference in the vehicle's registration number would leave those who inspect the register in doubt as to whether the registered bill of sale referred to A1121 or not. A somewhat similar situation arose in *Commercial Credit Company of Canada, Ltd -v- Fulton Bros.* [1923] AC 798. In that case the bill of sale described a motor vehicle to which it relates as "model 10, 3½ ton special equipped Steward, Serial No. 10,215." A copy of the bill of sale describes the vehicle by the same serial number, the same model number and by the name "Steward" and describes the weight as 3½ tons. There was also a mistake as to the price. The mistake in the weight and price of the vehicle resulted in the bill of sale being void. Lord Sumner said at page 805:-

"The discrepancy is one which clearly militates against the truth of the copy, and even if the test of untruth be the materiality of the discrepancy their Lordships do not see how a term which the parties have thought fit to insert in the original in one form can be deemed to be so far immaterial, that its expression in the copy in another form and with another legal effect can be dismissed as immaterial. What the parties think fit to stipulate with one another in their contract they themselves make a material part of their contract. Something more produces just as untrue a copy as something less, for it is not the same as the true contract, but is different."

At page 807, the learned law Lord further stated:

"Who can say that if the true copy had been inspected in order to find out the true position of the Automotive Supply Company, the intending purchaser would not have been misled? The Act promises him, if he chooses to make use of it, a true copy, not a puzzle. He is to inspect it, not to recover the original by a process of conjectural emendation. The vehicle might not be the same at all, and whether the terms of the copy were substantially the same in effect as well as in language as the original would be a question, if ever the original was produced, to be resolved by lawyers and not by plain men of business."

The House of Lords in that case held the bill of sale to be inadmissible as not embodying the particulars which the statute requires and the registration of the bill of sale was null and void as against the respondents.

In the present case the bill of sale was registered and the property to which it relates is described in the Schedule. There is no evidence that the vehicle described in the Schedule to the bill of sale as A2009 is the same as A1121. They might not be the same at all. If any one is to search the register he would find the true copy of the registered bill of sale with the Schedule containing the description of the goods and that would leave him in doubt, to say the least, whether the registered transaction between the grantor and grantee referred to A1121 or not.

The discrepancy, if any, in this case is material and one which in my judgment must militate against the truth of the identity of A1121. In any case the grantor and grantee have by their contract given the particular description of the goods and they must be bound by it. As Lord Sumner said in *Commercial Credit Company of Canada*, (above) "*the parties make for themselves a material part of their contract what they thought fit to stipulate with one another in their contract*" and in the present case to add something more would produce just as untrue the identity of A1121 as something less, for it would no longer be the same contract, but would be different.

I have considered all matters eloquently put before me by Mr Nori on behalf of the appellant but the circumstances of this case clearly must lead me to conclude that the bill of sale is ineffective in respect of A1121.

The orders of the learned Registrar must stand.

This appeal must therefore be dismissed.

(G.J.B. Muria)
ACTING CHIEF JUSTICE