THE REPUBLIC OF UGANDA

THE SUPREME COURT OF UGANDA

AT MENGO

(CORAM: WANBUZI, C.J., ODOKI, J.S.C., ODER, J.S.C.)

CIVIL APPEAL NO. 17 OF 1995

BETWEEN

FRED KAMANDA……APPELLANT

AND

UGANDA COMMERCIAL BANK……RESPONDENT

(Appeal from the judgment of the High Court of Uganda (Kireju J.) dated 6th February, IN Civil Suit No. 434 of 1992)

JUDGMENT OF ODOKI J.S.C.

This is an appeal against the judgment of the High Court whereby the appellants suit against the respondent was dismissed, and the appellant ordered to pay Shs.8,277,403/= outstanding on his loan account with the respondent within 30 days, failure of' which the respondent would sell his motor vehicle pledged to it to realize the money.

The appellant was employed by the respondent as a Banking Officer at Masaka. During his employment he obtained a loan from the respondent which was secured by a mortgage of land at Masindi. While he was Acting Manager of Group B UCB Masaka Branch, the appellant recommended one of the customers, Henry Male, for a loan of Shs. 5,000,000/= which was granted by the respondent. The loan was also secured. Male did not pay the loan and the respondent suspected foul play as Male could not be found. The appellant was summoned to the respondents Chief Prosecutor's Office at Kampala and questioned about the two loans. He was asked to write an undertaking that he would repay his own and Male's loan.

In the undertaking, the appellant pledged his vehicle as security and deposited the registration card of the vehicle with the respondent. Both loans were not paid and the respondent impounded the vehicle.

The appellant brought an action in the High Court claiming special and general damages for conversion and detinue arising out of the wrongful seizure of the vehicle. The respondent admitted impounding the vehicle but pleaded that the seizure was lawful as the appellant had failed to abide by his pledge whereby he had pledged the vehicle as security for repayment of his loan from the respondent. The respondent counter-claimed from the appellant that t be allowed to sell the vehicle and transfer it to the purchaser and also that the appellant pays to the respondent the sums of money stated in the pledge.

At the hearing of the suit the following issues were framed:

1. Whether the defendant lawfully impounded the plaintiff's motor vehicle No.UXI 644;

2. If the seizure or the plaintiff's vehicle was unlawful, what damages;

3. Whether the plaintiff pledged his motor vehicle to the defendant;

4. Whether the plaintiff is indebted to the defendant on account of loans in the names of Fred Kamanda and Henry Male.

5. Whether the plaintiff was negligent in recommending to the defendant to grant a loan to Male and if so whether he is liable to the defendant for the loss.

The learned judge held that the seizure of the appellant's vehicle was lawful and therefore no damages were awardable to the appellant. She held that the appellant had pledged his vehicle to the respondent and that Exh, D1 amounted to voluntary and valid undertaking. As regards the fourth issue, she held that the appellant was indebted to the respondent only in respect of his loans which amounted to shs. 8,277,403/= and not in respect of Male's loan as the respondent had failed to establish negligence against him in recommending the loan.

The appellant has appealed against that decision on six grounds. The 1st ground is that the trial Judge erred in fact when she found that the Document Exhibit D1 was signed voluntarily

by the appellant. This ground was argued together with the second ground which is that the trial Judge erred in law and in fact when she found that the Exhibit D1 constituted an undertaking by the appellant which was affirmed by his subsequent actions.

Mr. Kakuru, learned Counsel for the appellant, submitted that the undertaking was not made voluntarily because the appellant was threatened with imprisonment and loss of his job if he did not sign it. It was contended that undertaking was made under undue influence and therefore voidable. It was argued that the appellant had avoided the undertaking when he refused to hand over the vehicle.

For the respondent, Mr. Angaret submitted that the Judge had considered all the evidence and found that the appellant was not truthful. In coming to that conclusion the learned Judge took into account the fact that the appellant admitted writing the whole document, he did not raise the defence of duress in the plaint, he wrote two friendly letters to a person whom he alleges forced him to sign the undertaking, he was so highly educated and experienced that he would not agree to sign a document committing himself to pay 15 million shillings.

It was contended by Mr. Angaret that even if the undertaking was made under duress, the appellant affirmed it by his subsequent conduct. This conduct consisted of:-

(a) handing over the registration card to Mr. Kiyemba Mutale, whom he alleged had threatened him;

(b) doing nothing to disown the undertaking for a long time till replying the defence;

(c) writing two letters Exh.D.5 and Exh.D.6 which tended to affirm the undertaking.

The undertaking which was annexed to the written statement of defence and produced in evidence as Exh.D.1 was in the following terms:

> “I acknowledge that I have two loans with Masaka “B” in the names of

FREDERICK KAMANDA…….….8,277,403
HENRY MALE……7,323,810

I undertake to pay within a period of one month effective from today. Security for full payment I pledge,

1. Vehicle No.UXI 644 Toyota Hiace Minibus whose Card I will surrender to the Regional Manager, Masaka on 10th May,1991;

2. Land situated at Masaka Speke Drive, the mortgage forms for which I have executed.

Signed
FRED KAMANDA"

The appellant did not mention this undertaking in his plaint nor the defence of duress or undue influence. It was in his reply to the respondents counter claim when he averred that the document mentioned herein was signed by the plaintiff under duress and or undue influence and as such is null and void and has no legal effect. In his Evidence-in-Chief, the appellant testified as to how he came to write the document. He stated that he received a letter from the Chief Manager, Prosecution, dated 9/5/91 requesting him to report to him the same day. He then said,

> "I went there. Mr. Kiyimba Mutale and his Assistant Frank Mugisha both Prosecutors told me that I would be arrested and dismissed if I did not write acknowledging having two loans in Masaka "B" Branch in the names of Fred Kamanda and Henry Male and promising to pay them within a period of one month from the date of that document of 9/5/91. I was also told that the Police was on alert somewhere in the building and I knew there was a Police Unit in the building. I was also told to hand over my Vehicle card to the Management. I handed over the card on 13/5/91,

deliberately retaining my transfer forms relating to the vehicle duly signed by the transferee.

In cross-examination, the appellant claimed he had signed the document under duress to avoid arrest and to save his job. He said,

> "I signed a document with the Chief Manager Prosecution (shown a document). This is the document I signed. It is my handwriting and the date is 9/5/91.
>
> I am not disputing the document I wrote as being dictated to me, I understand the document what was written there. I was forced to write the document under duress. I wanted to avoid arrest and save my job at that time. Masaka B means a branch at UCB. It was involuntary acknowledgement of the debt. I am disputing Male's loan. The document is correct to extent that I have a loan with UCB. I surrendered the card on 13/5/91 to Mutale. I refused to hand over the card to the Chief Manager because he had already proved to me malicious. I did not surrender the card voluntarily. I surrendered the card to save my job. I took a loan in 1988, Shs. 2.8m/= I got additional loan of shs. 2.2 million."

In coming to the conclusion that the undertaking was made voluntarily without any threats whatsoever and that therefore the plea of duress failed, the learned Judge said,

> "The plaintiff in this case claimed to have been threatened with arrest and dismissal if he did not execute the undertaking. The plaintiff did not strike me as a man of truth from the beginning. In his plaint he never mentioned that he had signed Exh. D.1. under duress or at all. The issue of duress came after the defendant had filed the defence and mentioned the said undertaking. The plaintiff also knew that the vehicle had been impounded in respect of alleged embezzlement committed against the bank, Exh. P.11 or due to lack of commitment to pay the loan as per Exh. P.6. However, the plaintiff did not Say anything about this in his pleadings until he testified in Court and he himself produced Exh.P.11. It is also surprising that the Officer Kiyemba Mutale who is alleged to have forced the plaintiff to sign the undertaking is the same person the plaintiff was writing letters Exh. P.5 and Exh- P.6 (copied) about his commitment to redeem the loan. As was correctly pointed out by Counsel for the defendants, the

> plaintiff is an educated man with long experience in banking, it is unlikely that he would have signed a commitment in millions of shillings just because he was threatened with arrest and dismissal from his job. From what I have stated above I have found that the plaintiff executed Exh. D. 1 voluntarily without any threats, the plea of duress was an afterthought calculated to excuse the plaintiff from the serious undertaking."

In my judgment, the learned Judge came to the correct conclusions which were supported by the evidence. The conduct of the appellant both at the time of the making of the undertaking and subsequent to its making left no doubt that he wanted to co-operate with the respondent in settling his indebtedness. His motive could have been to avoid arrest or save his job but that alone did not amount to duress. This is confirmed by his omission to mention the undertaking in his plaint nor to raise the plea of duress therein. On the contrary he affirmed the undertaking by subsequently delivering the registration card to the person whom he alleges threatened him when he was supposed to deliver it to the Manager in Masaka. He wrote two letters to the respondent indicating his commitment to repay the loan. Therefore the learned Judge was justified in holding that the undertaking was made voluntarily but that if it was riot so made, it was affirmed by the appellant's subsequent conduct. The first: and second grounds of appeal must accordingly fail.

I shall now deal with the third and fourth grounds of appeal. The third ground is that the trial Judge erred in law in holding that the impounding of the appellants vehicle by the respondent was lawful. In the fourth ground the complaint is that the trial Judge erred in law in holding that the appellant had legally pledged his motor vehicle to the respondent.

It was submitted for the appellant that the impounding of his vehicle was unlawful because the undertaking did not amount to a pledge. It was the contention of the appellant Chat the undertaking was not a pledge because was no physical possession of the vehicle given to the respondent. Counsel for the appellant further submitted that the learned Judge erred in holding that the delivery of a registration card to the respondent amounted to constructive possession of the vehicle and that only a bill of lading could give constructive possession.

For the respondent, it was argued that there was possession of the vehicle by delivery of the registration card, and therefore there was a pledge. It was the respondents contention that the

seizure of the vehicle was lawful because there was an implied power of sale in the undertaking.

It is, I think, well settled that a pledge is a bailment of personal property as security for some debt or obligation. It is essential to the contract of a pledge that the property pledged should be actually or constructively delivered to the pledgee. See Halsburys Laws of England 3rd Edn. Vol. 29 para 389, page 210. As it is explained in the Law and Practice of Banking by J.M. Holden, 7th Edn., Vol. 2 page 261,

> "A pledge arises when goods (or documents of title thereto) or bearer securities are delivered by one person (called the pledgor) to another person (called the pledgee) to be held as a security for the payment of a debt or for the discharge of some other obligation upon the express or implied undertaking that the subject matter of the pledge is to be restored to the pledgor as soon as the debt or other obligation is discharged. Where a definite time for payment has been fixed the pledgee has an implied power of sale upon default, but if there is no stipulated time or payment the pledgee may demand payment and on default thereof may exercise his power or sale after giving notice to the pledgor or his intention to do so."

In the instant case, the appellant offered his vehicle as security for the outstanding loans but did not hand over the vehicle to the respondent. Therefore there was no physical or actual possession of the vehicle. Instead the appellant agreed to deliver the registration card of the vehicle to the respondent and he subsequently did so. The question is whether the surrender of the registration card amounted to delivery of constructive possession of the vehicle.

In her judgment, the learned trial Judge said,

> "In my view I would not say that there was no pledge just because there was no physical transfer of the property. The transfer of the property in this case was constructive delivery of the chattel. The plaintiff surrendered his log book to the bank as a sign of his commitment to the undertaking. It was agreed that the vehicle be retained by the plaintiff. The defendant was therefore right in impounding the vehicle without notice as the plaintiff that there to comply with his undertaking. I do not agree with counsel for the plaintiff that there was no pledge even if it was found that there was no pledge, the document executed by the p1antiff gave the defendant implied

> powers to seize the property on default by the plaintiff. The plaintiff himself in Exh. P.6 admitted that the defendant would be justified in impounding the vehicle if he defaulted."

Delivery of constructive possession is normally invoked where actual delivery is impractical. It may be made by some symbolic act such as the handing over of the key to the warehouse where goods are stored. But more often, it is made by delivery of a valid document of title which represents the goods such as a bill of lading or an acknowledgement by the warehouse keeper that he holds the goods to the order or at the disposition of the bank. See Pagents Law of Banking 10th Edn. Page 533, and Madras Official Assignee v Mercantile Bank of India (1935) AC. 53.

A document of title is defined in Securities over Personal Chattels by LA Sheridan at P. 151, as follows:-

> "A document of title is a document, which if handed over, endorsed, with the intention of assigning the goods to which it relates, passes the property in the goods to the assignee without physical delivery of the goods, regardless of whose custody the goods are in and whether or not the custodian is informed of the change of ownership. If handed Over by way of pledge, delivery of the documents of title operates to pledge the goods to which they relate and to pass possession of the goods to the pledgee. Many other documents are made in relation to goods such as carriers receipts, dispatch notes, invoices, arrival advices, warehouse receipts and bankers receipts for safe custody. None of these is a document of title."

The document delivered in this case was a registration card of a vehicle. The question is whether it is a document of title. It was held in Joblin v Watkins and Roseveare (Motors) Ltd (1948) 64 T.L.R. 464 that a registration book is not a document of title within the Factors Act or the Road Vehicles (Registration and Licensing) Registrations 1941. The Court observed that although one reason for the registration book was to make known who was the owner or the vehicle to which it referred, its primary purpose was to show who was the person liable to pay the road fund licence tax in respect of the vehicle.

In Uganda, the Traffic and Road Safety Act 1970 appears to give a different status to a registration card. Section 49 of the Act provides,

> "The person in whose name a motor vehicle, trailer or engineering plant is registered shall, unless the contrary be proved, be presumed to be the owner of the vehicle, trailer or engineering plant."

A registration card is therefore evidence of ownership as the person in whose name the vehicle is registered is presumed to be the owner of the vehicle unless proved otherwise. A registration card is prima facie evidence of title, and I would hold that it is a document of title.

I would accordingly uphold the learned Judges finding that the delivery of the registration card to the respondent amounted to constructive possession of the vehicle and that therefore there was a valid pledge executed by the appellant. As the appellant pledged to repay the loans within one month and failed was entitled to seize vehicle pledged. The power of seizure was implied in the pledge and was duly exercised upon default of payment of the loan. The learned Judge therefore came to the correct conclusion that the seizure was lawful. The third and fourth grounds of appeal must therefore fail.

In the fifth ground of appeal, the appellant complains that the trial judge erred in law and fact in holding that the procedure followed by the respondent in recovering the loan from the appellant was immaterial. In her judgment the learned Judge said,

> "Under issue No. 4, Court is not concerned with whether the impounding of the vehicle was lawful, the question to decide is whether the plaintiff was indebted to the bank, therefore Counsel for the defendants submission on the procedure to be followed by the defendant in recovering the loan is immaterial. From the evidence on record and the submissions of other counsel it is clear that the plaintiff was advanced a loan by the defendant bank and has not repaid it back despite the fact that repayment is long overdue."

I can find no fault with the learned judge's holding. What was in issue was not the procedure for realizing the security by mortgage but by the pledge. There was no dispute as to the indebtedness of the appellant to the respondent. It was also common ground that the appellants loan and that of Male had been secured by mortgages of land. However the respondent did not exercise its powers under the mortgages but under the pledge. Therefore

the procedure for recovering loans under the mortgages was irrelevant in this case. The respondent was and is still free to pursue its remedies under those mortgages. This ground of appeal must therefore succeed but with no consequence to the result in the appeal.

In view of what I have held above I find it unnecessary to deal with the final ground of appeal which was that the learned Judge erred in law and in fact by not awarding damages to the appellant.

In the result I would dismiss this appeal with costs.

Delivered at Mengo this 5th day of August., 1996.

B.J.ODOKI,
JUSTICE OF THE SUPREME COURT

JUDGMENT OF WAMBUZI, C.J.

I have had the benefit of reading the draft judgment prepared by Odoki, J.S.C., and I agree that this appeal should fail.

On the evidence and for the reasons given by e learned Odoki, J.S.C., I agree that the first two grounds of appeal that the trial judge erred in holding that the document Exh. D.1 was voluntarily signed by the appellant and that the trial Judge erred in finding that Exh.D.1 constitutes an undertaking Subsequently affirmed by the appellant, must fail.

I must, however, say that I find it rather odd that the appellant agreed in Exh. D.1 to repay the loan in the names of Henry Male together with his own loan within month and also to secure

both loans by pledging a vehicle and land at Masaka. Both loans had been previously secured by mortgages. in the circumstances I doubt whether the trial Court was told the whole story.

As to whether the appellant pledged his motor vehicle, learned Counsel for the appellant, Mr. Kakuru submitted that there was no pledge and relied on the British authority of Joblin vs Watkins and Rosevearet (Motors) Ltd (1946) 4 TLR 464.

The Fact of that case were that on November 4th, 1995 the plaintiff and a certain Mr. smith signed documents whereby the plaintiff purported to buy from Mr. Smith for $275, a second hand Austin 12HP motor car, but Mr. Smith was given the option of repurchasing the car for $300 on or before December 6, 1945. Mr. Smith handed the plaintiff the registration book of the car and a cheque post-dated December 6, 1945 for $300. According to the registration book the last owner of the car was a Mr. Adams. The plaintiff never saw the car and never took delivery of it.

The car had, in fact, been bought from Mr. Adams by the defendants and was their property at the material time. It was, however, Still in the Possession or Mr. Adams, who was repairing it for the defendants. Earlier in 1945, the defendants had employed Mr. Smith as an agent to buy cars in their name, but had ceased to do so in April 1945.

The plaintiff, in due course, presented the post-dated cheque for payment, but it was dishonoured. He was unable to obtain any money, or the car, from Mr. Smith and he, therefore, brought this action against the defendants relying on the factors Act, 1889, Section 2(1) of which provides:-

> "Where a mercantile agent is, with the consent of the owner, in possession of goods or of the documents of title to the goods, any sale, pledge or other disposition of the goods made by him when acting in the ordinary course of business of a mercantile agent shall be as valid as if he were expressly authorised by the owner of the goods to make the same: Provided that the person taking under the disposition acts in good faith and has not at the time or the disposition notice that the person making the disposition has not authority to make the same."

By Section 1(4):-

> “For the purposes of this Act - the expression ‘documents of title’ shall include any bill of lading, dock warrant, ware-house-keepers certificate and warrant or order for the delivery of goods, and any other documents used in the ordinary course of business as proof of the possession or control of goods, or authorizing or purporting to authorise, either by endorsement or by delivery, the possessor of the document to transfer or receive goods thereby represented.”

Regulation 9 (1) of the Road Vehicles (Registration and Licensing regulations, 1941, provides:-

> “On the sale or other change of ownership of a vehicle the then owner of the vehicle shall deliver the registration book to the transferee or other new owner and forthwith notify in writing the change of ownership to the council whose name appears in the registration book as the last registration authority stating the index mark and registration number, the make and class of the vehicle and the name and address of the person to whom the vehicle has seen transferred.”

In his Judgment Croom-Johnson J. said:-

> “This is a hopeless claim. The documents signed by the plaintiff and by Smith on November 4, 1945 were a mere device by Mr. Smith to enable Mr. Smith to obtain temporary financial accommodation for one month. The true nature of the transaction was a loan. t did not amount to a sale or a pledge or other disposition of the car, and Section 2(1) of the Factors Act, cannot therefore apply, but in defence to Mr. Henderson’s argument I propose to say something about the other requirements or that sub-section.
>
> First, I am not sure that Mr. Smith was ever a mercantile agent at all. If he had ac sometime been a mercantile agent, he was not Purporting to sell the car in the ordinary course of business of mercantile agent within the meaning of Section 2(1).
>
> And further, what he handed to the plaintiff was not, in my judgment, a document of title at all, but the ordinary registration book for a motor-vehicle. Though one reason for the book is to make known who is the owner of the vehicle, to which it refers its primary purpose is to show who is the person liable to pay the road fund licence tax in

> respect of the vehicle. I do not think it is anything more than that. Considering the definition of 'document of title' in Section 1(4) I must construe "any other document" as a ejusdem generis with the documents there mentioned. No doubt, when anyone in the trade is going to sell a motor vehicle, a wise purchaser asks, as evidence of bona fides, that the registration book may be handed over too, not to show the title to the motor vehicle, but in order (i) to indicate what right the seller has to be dealing with that motor vehicle (ii) to snow when its licence fell due and what the position is, generally, about it; and (iii) to show that it is a registered vehicle, because to put a vehicle on the road which is not registered is, generally speaking, a criminal offence. That being so I do not think that the registration book was a document of title within the definition in section 1(4). "Document of title must mean a document by which the person who puts it forward is entitled to dispose of the goods; its objective is to dispose of goods."

I think that on the facts in Joblins case, the decision of Croom Johnson J. is in accordance with the law of England.

In Uganda we have some what similar provisions to regulation 9(1)of the British Road Vehicles (Registration and Licensing) Regulations in Section 50 of the Traffic and Road Safety Act, 1970. The registration Book has to be surrendered on change of ownership of a vehicle to which it relates and certain particulars have to be given to a licensing officer. However, the Act provides in Section 49 as follows:-

> "The person in whose name a motor vehicle, trailer or engineering plant is registered shall, unless the contrary be proved, be presumed to be the owner of the motor vehicle, trailer or engineering plant."

We were not told whether or not British Law has a similar provision. The provision was not drawn to the attention of the lower Court nor did the learned Counsel refer to it in this Court.

It seems to me, however, that the plain meaning of this Section is that unless the contrary is shown the name in the registration book is proof of ownership of the vehicle to which it relates. The person named in the registration book would be entitled to dispose of the motor-vehicle to which it relates. I would accordingly be inclined to the view that in Uganda a registration book is a document of title unless the contrary is

proved. In these circumstances I would hold that by handing over of the registration book to the respondent by the appellant the respondent had constructive possession of the vehicle.

I would accordingly also uphold the learned Judges findings that there was a pledge of the vehicle and that as a result the respondent was entitled to seize the vehicle. The 3rd and 4th grounds of appeal would therefore fail.

I would, however, hasten to add that I would not without more support the trial judge's findings that:-

> "even if there was no pledge the document executed by the plaintiff gave the defendant implied power to seize the property on default by the plaintiff. The plaintiff himself in Exh. 6 admitted that the defendant would be justified in impounding the vehicle if he defaulted."

The learned trial judge did not say what legal basis there was for this conclusion.

Be that as it may, Section 1 of the Chattels Transfer Decree, 1975 provides in so far as is relevant as follows:-

> "(1) An attornment or agreement not being a mining lease) whereby a power of distress given or agreed to be given by one person to another by way of security for any present, future or contingent debt or advance…… shall be deemed to be an instrument within the meaning of this Decree so far as regards any chattels which may be seized or taken under the power of distress."

It Seems to me that the document, Exh. D.1 can give such power of seizure and sale if it came within the provisions of the Chattels Transfer Decree. Such however, must be attested by at least one witness and be registered.

It appears the document, Exh. D.1. was neither attested nor registered under the Chattels Transfer Decree which would make it void except against the grantor.

As the appellant was the grantor, the document, Exh. D.1 would be valid against him and the respondent could have been entitled to seize the vehicle on its strength.

I do not consider, it necessary to deal with grounds 5 and 6. As Oder, J.S.C., agrees with the judgment of Odoki, J.S.C., there will be orders in the terms proposed by the learned Odoki, J.S.C.

Delivered at Mengo this 15th day of August, 1996.

S .W.W.WAMBUZI
CHIEF JUSTICE

JUDGMENT OF ODER, J.S.C.

I have had the benefit of reading, in draft, the judgments of Wambuzi, C.J., and Odoki, J.S.C.

My view is that the first and second grounds of appeal should succeed. There was ample evidence to support the findings of the learned trial Judge that the written undertaking by the appellant was made voluntarily and that the document, Exhibit D.1 amounted to an undertaking by him to repay the loan he owed to the respondent.

It is the grounds relating to the pledge and seizure of the appellant's motor vehicle that are not so straight forward. The two grounds are inter-related. The impounding by the respondent of the appellant's vehicle would be lawful only if the pledge was valid, as only a valid pledge would authorise the respondent to lawfully seize the motor vehicle. A valid pledge had to precede a lawful seizure.

A pledge is a type of security founded on physical possession or constructive possession. The simplest example is that of a man who is broke delivering his valuable wrist watch to a pawnbroker. The mere fact of delivery provides the_pawnbroker with all the security he needs, provided, of course, the watch belongs to the man; he can retain it until the loan is

repaid, and sell it if the loan is not paid, and there is no risk of anyone acquiring a prior right to the watch as long as he retains it.

A pledge of goods is not complete unless and until there has been actual or constructive possession. Constructive delivery of possession consists either of a valid document of title which represents the goods such as a bill of lading, a bill of sale or an acknowledgment by the ware-house keeper that he holds the goods to the order or at the disposition of the bank.

In the instant case the appellant did not deliver to the respondent his motor vehicle, but the Registration Book for the motor vehicle. The question to be answered, therefore, is whether the Registration Book was a document of title. if the answer is in the positive then it follows that the appellant had validity pledged his motor vehicle by delivery of constructive possession to the respondent. if it is not then there was no pledge by constructive possession.

In the case of Joblin vs. Watkins and Rosevearet (Motors) Ltd. (1948) 64 TLR, on which the appellant in the instant case relied, it was held that the Registration Book of a Motor vehicle was not a document of title.

I think that that decision, based as it was, on the definition of documents of title as provided under Section 1{4) of the Factors Act, 1889 of England, should be understood in its context, which is that a Registration Book was considered not to be a “document of title” as defined in the Factors Act.

In our jurisdiction the Traffic and Road Safety Act 1970, provides for registration of motor vehicles. In Section 50 it is provided that when a motor vehicle changes ownership the previous Owner must pass on the Registration book to the new owner. The Act does not define a registration book, nor does it specify what particulars it should contain.

Section 49, however, states that, unless the contrary is proved, the person in whose name a motor vehicle is registered shall be presumed to be the owner of the motor vehicle. In View of the provision of this Section can a person who holds a Registration Book be said to be a holder of a document of title to the motor vehicle in respect of which he has been registered owner? In so far as the person so registered as owner cannot transfer title to the vehicle simply by delivering or endorsing the Registration Book to another person, I think that a Registration Book is not a document of title in the same way a bill of lading or a bill of sale

is. This is because the owner of the Registration Book can only transfer title or ownership by completing transfer forms as the appellant said he did in the instant case, but withheld delivery of the forms to the respondent. The Registration Book has to be accompanied by completed transfer forms in order for the transfer of the motor vehicle to be complete.

Subject to that limitation or qualification, I would say that the Registration Book of a motor vehicle is a document of title and that its delivery of possession creates constructive possession of the motor Vehicle. This is because it is presumed to be evidence of ownership of the motor vehicle to which it relates.

In the circumstances, I would say that in the instant case, the appellants motor vehicle was validly pledged to the respondent, and that its seizure was also lawful.

The third and fourth grounds of appeal should, therefore, fail.

In the result, I would dismiss the appeal in its entirety, with costs of the suit and of the appeal to the respondent. would also order that the appellant should deliver to the respondent, within thirty days from the date hereof, completed and signed transfer forms in favour of the respondent.

Dated at Mengo this 15th day of August 1996.

A.H.O. ODER,
JUSTICE OF THE SUPREME COURT.

I CERTIFY THAT THIS IS A
TRUE COPY OF THE ORIGINAL

MASALU MUSENE
REGISTRAR SUPREME COURT.