IN THE HIGH COURT FOR ZAMBIA
AT THE PRINCIPAL REGISTRY
HOLDEN AT LUSAKA
(Civil Jurisdiction)
BETWEEN:

2013/HP/1880

EGBERT KAVWAMGA YAMBAYAMBA — PLAINTIFF

AND

BARCLAYS BANK (Z) LIMITED — DEFENDANT

Before the Honourable Mr. Justice C.F.R. Mchenga

For the Plaintiff: R. Haatongo, Shepande & Company
For the Defendant: R. Y. Mwanza, Robert & Partners

J U D G M E N T

Cases referred to:

1. Halliday v Creation Consumer Finance Limited [2013] EWCA CIV 333
2. Douglas v Hello [2008] 1 A.C. 255,
3. Bux v Slough Metals Limited [1973] 1 W.L.R. 1358
4. London Passenger Transport Board v Upson [1946] A.C.
5. Anns and Others v London Borough of Merton [1977] 2 AII ER 492
6. Donoghue v Stevenson [1932] AC 562
7. Phillip Mhango v Dorothy Ngulube and Others [1983] Z.R. 61
8. John Kundu v Konkola Copper Mines PLC, Appeal No 98 of 1995

9. Continental Restaurant and Casino Limited v Arida Mercy Chulu [2000] Z.R. 128
10. Reuben Nkomanga v Dar Farms International Limited, SCZ Judgment No. 25 of 2006
11. John Kunda v Konkola Copper Mines PLC Appeal No. 48/2005
12. Admark Limited v Zambia Revenue Authority [2006] Z.R. 43

Legislation referred to:

1. The Banking and Financial Services Act, Chapter 387 of the Laws of Zambia

Works referred to:

1. Banking and Financial Services Act, (Provision of Credit Data and Utilization of the Credit Reference Services) Directive 2008
2. Credit Data (Privacy) Code
3. McGregor on Damages, 16th Edition, (London, Sweet & Maxwell, 1997)
4. Banking Litigation, David Warne and Nicholas Elliot QC, 2nd Edition, (London, Sweet & Maxwell, 2005)

The plaintiff, by writ of summons filed on 17th December 2013, seeks the following reliefs:

i. Special damages in the sum of ZMK50,000.00 being money the Plaintiff would have otherwise obtained from Standard Chartered Bank (Z) PLC had the Defendant not listed the Plaintiff as a defaulter on the Credit Reference Bureau.
ii. Damages for mental anguish and embarrassment amounting to ZMK350,000.00
iii. Interest
iv. Any other relief the Honourable Court may deem fit
v. Costs.

In his statement of claim, the plaintiff pleaded that on 15th August 2006, the defendant entered into an agreement with his employer, the University of Zambia, to provide loans to the university's employees. The loans were to be repaid through payroll deductions by the university. In September 2007, he obtained a loan of K50,000,000.00 under the scheme. It was payable over a period of 48 months in monthly instalments of K1,649,889.00. The payments were supposed to commence in November 2007, but the defendant did not make any deductions until February 2008. When he made a follow up, he discovered that deductions did not commence on time because the defendant had not given instructions to his employer.

On 3rd June 2008, he received notice from the defendant that he had defaulted on the loan for 8 months and that he should immediately pay arrears of K13,199,112.00. He complained about it and in January 2011, the defendant's Head of Collections and Recoveries admitted that they delay in effecting the deductions was due to their fault. They also offered to extend the loan period for 6 months beyond the agreed 48 months.

By June 2012, he had paid off the loan but when he applied for a loan from Standard Chartered Bank in November 2013, he was informed that it could not be processed because the defendant had reported him to the Credit Reference Bureau (CRB) as having defaulted on a loan. By reason

of that negligent report, he has suffered damage and he seeks the reliefs outlined in the writ.

In their defence, the defendant admits lending the plaintiff K50,000,000.00. They also admit that there was a delay in effecting deductions. They admit that the loan agreement was extended by 6 months and that the plaintiff completed paying back in June 2008. They however plead that the plaintiff defaulted on his payments in April and May 2012. Further, they deny reporting the plaintiff to the CRB.

At the hearing, the plaintiff testified that the defendant had him listed on the CRB for allegedly defaulting on a loan he obtained from them in September 2007. On 3rd June 2008, he received a demand letter from the defendant's Head of Recoveries claiming that he had not serviced the loan from September 2007 to June 2008, a period of eight months. The letter is exhibited on page 15 of the Plaintiff's Bundle of Documents. He was also informed that he had accumulated ZMK13,199, 112.00 in arrears which he was required to settle immediately.

On 14th July 2008, he responded to the letter; his response is exhibited on page 16 of the Plaintiff's Bundle of Documents. He did not receive any response to that letter. On 27th December 2010, he wrote the defendant complaining of harassment after he received a phone call from a Mr. Mbao demanding that he settles the arrears. Since the loan was supposed to be paid through his employer's payroll, he was disappointed that the

defendant was pursuing him instead of the institution they had signed the loan agreement with.

Later on, the defendant responded to his letter and apologised for their conduct. In addition, on 10th February 2011, he had a meeting with the defendant's officers including their new Head of Recoveries, Mr. Mwaka Moonga. Mr. Moonga expressed his disappointment and embarrassment on how he had been treated.

On 11th February 2011, he received a letter from Mr. Moonga accepting that the defendant was at fault and that the penalties he had been asked to pay would be borne by the defendant. Sometime in May 2011, he wrote the defendant demanding for compensation for damage to his character and emotional distress.

It was also the plaintiff's evidence that on 16th October 2013, he applied for a loan from Standard Chartered Bank. On 11th November 2013, that bank informed him that they could not proceed with the facility because his name was listed on the CRB as a defaulter by the defendant. It surprised him because he had repaid the loan. On 29th November 2013, he received an email from Standard Chartered Bank informing him that they could only process the loan if he presented a letter from the defendant indicating that the loan had been cleared. The denial of the loan cost him a business opportunity and thus his claim of ZMK50,000,000.00 as special damages.

He also seeks ZMK350,000,000.00 as damages for embarrassment and mental anguish.

When he was cross-examined, the plaintiff said the report on page 38 of the Plaintiff's Bundle of Documents shows that it was the defendant who referred him to the CRB. It shows nil on the total delinquencies meaning that he was not owing anything. He admitted that the document did not link the defendant to any delinquencies. He also admitted that the documents at pages 36 and 37 of the Plaintiff's Bundle of Documents are reports that he was delinquent and that on their face, they do not indicate that it was the defendant who reported him.

The plaintiff also admitted that he initially borrowed from Bayport and only approached the defendant after he finished paying that loan. He maintained that Standard Chartered Bank denied him a loan because of the defendant's report. He also maintained that the email proves that it was the defendant who reported him even if they are not mentioned in it. It was also his evidence that the document at page 39 the Plaintiff's Bundle of Documents shows that the loan was paid off in June and July 2012.

He admitted that he did not follow the proposal on the loan application set out the email at page 42 of the same bundle of documents; he did not furnish Standard Chartered Bank with the letter they requested for or ask for it from the defendant. He admitted that he could not confirm that had it not been for the report, he would have been given the loan

because a bank has the right to deny one a loan even if he has complied with all the requirements. He maintained that when he was denied the loan, he lost money because he could not invest in a business opportunity that required ZMK50,000,000.00.

He said he arrived at the K350,000,000.00 claim for mental anguish and embarrassment after consultation and guidance from counsel. On his payment of the loan to the defendant, he took it that payments started in the same month the demand letter was received and that the issue that remained outstanding with the defendant related to interest. Payment of the loan was through the payroll system and he paid it off in April 2012 and not June 2012. His demand for an apology was not based on the delayed deductions but on the demand letter. The mental anguish was caused by being listed on the CRB and the conditions in the demand letter aggravated the situation.

He was shocked by the demand because the memorandum of understanding was between the University of Zambia and the defendant. They should have followed the university and not him. Since mental anguish was not a mental problem, he did not have a medical report to that effect. He suffered embarrassment on being listed on the CRB because he was now known as a person who was not credible.

On being re-examined, the plaintiff said he did not owe any other institution money before he applied for the Standard Chartered Bank loan. At the request of Standard Chartered Bank, he went to the CRB on 19th November 2013, and obtained the report which showed that he had defaulted on 12th July 2012.

He maintained that his listing on the CRB was at the instance of the defendant because the report on page 39 of his bundle of documents only came after a request from Standard Chartered Bank. He also maintained that his loan application at Standard Chartered Bank could not be processed because of the listing.

The plaintiff did not call any other witness and closed his case.

The defendant called one witness, Mr. Abel Mukulalwendo, a Collections Officer in the defendant's Collections and Recoveries Department. His evidence was that the department superintends over non-performing loans. He said in a scheme loan, the bank enters into an agreement with an employer to provide credit to its staff. He referred to the scheme loan agreement and said that the customer who requests for a loan is bound by the terms of the agreement.

In this case, the plaintiff was bound by the agreement because the University of Zambia only facilitated the borrowing process for their staff. The deductions were from the plaintiff and the University of Zambia only helped defendant to collect their money. He admitted that

there were delays in sending the invoice to the University of Zambia to deduct the instalments. This caused the loan to accrue interest because payment did not commence at the correct time.

When the plaintiff complained, the defendant wrote off the interest that accrued during the period when payments had not commenced. They wrote a letter of apologising for the delay in commencing deductions and the apology was accepted by the plaintiff. At that point, the matter was settled and resolved.

He also testified that pursuant to Bank of Zambia policy, all commercial banks submit information on the performance of all loans monthly. The information is also submitted to the CRB. It was his evidence that the plaintiff's documents do not show anywhere that defendant listed him as being delinquent. As regards the document at page 36 of the Plaintiff's Bundle of Documents, he said it shows that from June 2012 to May 2013, the monthly instalments were not paid. The document at page 37 of the Plaintiff's Bundle of Documents does not show that the defendant listed the plaintiff as delinquent. He added that from December 2011, to May 2012, the defendant did not submit any data to the CRB.

The plaintiff had a loan facility with other institutions and they could have submitted his name to the CRB. The information on page 39 of the Plaintiff's Bundle of Documents shows that the defendant wrote off the account after it picked up the payments. When the plaintiff complained

to them, they went to the bureau to amend the error and by 27th November 2013, the plaintiff was not owing or listed as a delinquent.

Being listed at the bureau does not stop other lenders from giving credit to a customer but gives them an opportunity to take into account the intending borrowers other obligations. It shows the applicant's loans with other institutions and how they are performing. Where there is a delinquency, the lender or customer is required to explain the point at which they default occurred. An enquiry does not suggest that the loan is not performing.

In relation to the email on page 42 of the Plaintiff's Bundle of Documents, he said on the face of it, one cannot tell who conducted the enquiry. Standard Chartered Bank did not disclose who inquired. After they wrote off the interest, they were required to update the details in the system. When information is sent to the bureau, it is in strict confidence and only two individuals have access to it. The bureau does not give information to the account holder. It only holds information for customers with accounts in Zambia.

It is not true that third parties knew about the information they submitted to the CRB. Every financial institution has its own way of assessing loan applications and the customer must meet minimum credit criteria. A CRB listing is one of the many reasons why a loan maybe

declined, but depending on the explanation, a loan maybe given even if one is delinquent.

When he was cross-examined, he said the ZMK17,573.00 being referred to in the document at page 36 of the Plaintiffs Bundle of Documents, was owed to the defendant and he the plaintiff finished paying it in April. The interest arose due to delayed invoicing but it was written off after the plaintiff complained. Policy allows banks 21 days to regularise any incorrect information and thus by 19th November 2013, the defendant regularised the issue. The plaintiff applied for the loan at the time when they were trying to correct the issue and the defendant resolved it within the month of October.

He said where there is an acceptable explanation, even a person who has been reported delinquent can obtain a loan. They did not write Standard Chartered Bank on the issue because the plaintiff did not request them to do so. When the plaintiff wrote them, they went to the bureau to clear out the issue. His letter did not request them to write Standard Chartered Bank and that is why they went to the bureau to clear the issue. He admitted that a customer should not suffer because of the bank's negligence.

When he was re-examined, he said that loan on which there has been a default can be identified through the account number. One can tell which bank disbursed it. Without the account number they cannot link a

delinquency report to any bank. They only became aware of the delinquency report when the plaintiff applied for a loan from Standard Chartered Bank. As regards to the letter referred to in paragraph 15 of the Statement of Claim, he said that was the period when the plaintiff attempted to obtain credit and when the defendant got wind of it, they took steps to correct the information.

He said that financial institutions have 14 days to investigate and where there is an error, to correct information at the bureau. In this case, they were able to correct the error within 14 days. As long as it does not come to their attention that someone has been listed on the bureau, they cannot know whether there is an error or that there is need to correct it. He maintained that prior to the plaintiff's report, the bank did not know of the error. The defendants closed their case with this witness.

In his submissions on behalf of the plaintiff, counsel referred to the **Banking and Financial Services Act, (Provision of Credit Data and Utilization of the Credit Reference Services) Directive 2008** and submitted that though banks are required to provide credit data on all loans to the CRB, the **Banking and Financial Services Act, Credit Data (Privacy) Code,** under clauses 2.1 and 2.3, a customer is given 30 days notice to pay the amount within 60 days before the negative data is submitted to the bureau. In this case, the plaintiff was not given notice

of the alleged default, had they done so, he would have clarified the issue.

Further, not only did the defendant not follow the laid-out procedure when they reported the plaintiff, they misrepresented his position by alleging that he had defaulted on his loan repayments for 16 months from June 2012 to October 2013.

Counsel also referred to **Halliday v Creation Consumer Finance Limited (1)** and **Douglas v Hello (2),** and submitted that plaintiff is entitled to damages because the defendant breached their duty of care and skill to him when they filed to comply with they laid down procedure and made a misrepresentation when they reported him to the CRB.

He then referred to **Bux v Slough Metals Limited (3), London Passenger Transport Board v Upson (4) Anns and Others v London Borough of Merton (5)** and **Donoghue v Stevenson (6)** and and submitted that breach of a statutory can give rise to a claim for damages if the plaintiff can show consequential injury or loss. Though defendant was acting in exercise of a statutory duty when they contacted the bureau, they can still be held liable for negligence because they did not have the right to supply false information in exercise of that duty.

Counsel pointed out that plaintiff did not default because under clause 4 of the Loan Scheme Agreement, the obligation to deduct and remit

payment was on the university. Though the defendant claims that he defaulted in April and May 2012, his payslips show that the university made deductions. Due inquiry would have established that he had not defaulted but the university delayed to remitting the money. The incorrect information on the alleged default has resulted in the plaintiff suffering loss and is thus entitled to the claims set out in the writ.

Counsel prayed that the plaintiff's claims succeed and the defendant be condemned to pay costs.

Submitting in response to the plaintiff's claim for special damages for K50,000,000.00 for loss as a result of failure to receive the loan, the defendant's counsel referred to **Phillip Mhango v Dorothy Ngulube and Others (7)** and **John Kundu v Konkola Copper Mines PLC (8)** and submitted that for the claim to succeed, the plaintiff must prove that he suffered would have been contemplated from the breach and that they are not remote. In this case, the plaintiff was advised by Standard Chartered Bank to obtain a letter from the defendant clarifying the listed delinquency but he did not do so. Since being listed does not amount to being blacklisted, the plaintiff's failure to obtain the loan cannot wholly be attributed to the listing.

As regards the plaintiff's claim for K350,000,000 for mental anguish and embarrassment, he pointed out that the plaintiff conceded in cross

examination that the amount was "self-quantified" and was not supported by evidence of how the amount had been arrived at. Counsel referred to **Continental Restaurant and Casino Limited v Arida Mercy Chulu (9)** and **Reuben Nkomanga v Dar Farms International Limited (10)** and submitted that the plaintiff should have led evidence that would have enabled the court to determine the loss he suffered with a degree of certainty.

Responding to the plaintiff's submission that the defendant acted unlawfully, counsel pointed out that the plaintiff did not plead in his statement of claim that the defendant's conduct was unlawful. No evidence was led of the plaintiff's duties under the code nor was the code produced in evidence. He ended by submitting that negligence and breach of a statutory or common law duty, were not pleaded but just brought up in submissions.

Finally, counsel referred to **John Kunda v Konkola Copper Mines PLC (11)** and submitted that the plaintiff having failed to prove his claims, the case should fail.

The submissions by counsel have been taken into account in arriving at my decision. From the evidence before me, I find that it is not in dispute that in September 2007, the plaintiff obtained a loan of K50,000,000.00 from the defendant through a loan scheme the defendant was running with the University of Zambia. The loan was scheduled to be

liquated over a period of 48 months through monthly instalments of K1,649,889.00.

On 3rd June 2008, the defendant wrote a letter to the plaintiff informing him that he had defaulted on the loan and demanding that the unpaid instalments be paid within 14 days, failure to which legal proceedings would be instituted against him. The plaintiff's response to that demand prompted the defendant to investigate and it was discovered that there had been a delay in the defendant instructing the plaintiff's employer to commence monthly remittances on the loan. The defendant then extended the repayment period by 6 months.

It is also not in dispute that the plaintiff finally paid off the loan in 2012. Further, it is essentially not disputed that in October 2013, the plaintiff applied for a loan with Standard Chartered Bank and it was discovered that he was listed on the CRB as having defaulted on a loan. I find all these undisputed facts as having been proved.

What is in disputed is whether the defendant was responsible for the plaintiff's listing on the CRB as a defaulter and whether the plaintiff defaulted on the May and June instalments of the loan.

In **Banking Litigation,** in paragraph 2-209, the editors opine as follows:

> **"A bank who is asked for a reference about one of its customers probably owes a duty of care to the customer to take reasonable care in its preparation. The reasons for imposing such duty are more compelling than the reasons for imposing a duty of care on an inquiring customer, because the relationship is contractual."**

This position, on there being a duty of care to the customer, by the bank, to provide accurate data on the client's position, is echoed by clauses 2.30 and 2.31 of the **Credit Data (Privacy) Code.** The clauses provide as follows:

> **2.30: A credit provider shall only provide credit data to a DCA after checking the data for accuracy. If the amount in default is subsequently repaid in full or in part, or if any scheme of arrangement is entering into with the person, or if the credit provider discovers any inaccuracy in the data which have been provided to and which the credit provider reasonably believes are being retained by the DCA, the credit provider shall notify the DCA as soon as reasonably practicable of such fact.**
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> **2.31: If credit provider fails to check the accuracy of the data before providing such data to a DCA, or if it fails to notify the DCA of any inaccuracy of the data that it has provided to the DCA after discovering such inaccuracy, this will give rise to a presumption of contravention of DPP2(1).**

In this case, the defendant denies being responsible for the plaintiff's listing on the CRB. In cross-examination, it was suggested to the plaintiff that in fact, the CRB reports at pages 36, 37, 38, 39 and 41 of the Plaintiff's Bundle of Documents, do not indicate who made them. Though the plaintiff claimed that they show that it was the defendant, scrutiny of the documents do not show that it was the case. I find that the documents do not indicate who made the reports.

However, even though the documents do not indicate the bank or financial institution which reported the plaintiff, the evidence of the defendant's witness points at the defendant. His evidence was that following the plaintiff's complaint that he had wrongly been listed as a defaulter, they went to the CRB and corrected the errors. As a result of the

corrections, as of 27th November 2013, the plaintiff was no longer listed as a defaulter.

In my view, had the listing nothing to do with the defendant, they would not have gone to correct the errors. Consequently, it is my finding, even if they deny it, the defendant was responsible for the reports on the CRB that listed the plaintiff as a defaulter.

The next issue I will deal with is whether the defendant complied with the procedure for reporting a defaulter on the CRB. It was submitted on behalf of the plaintiff that he was reported to the CRB in breach of clause 2.3 of the **Credit Data (Privacy) Code,** because he was not informed prior to the report being made. The defendants position that the code cannot be relied on because it was neither pleaded or produced in court.

In **Admark Limited v Zambia Revenue Authority (12),** at page 49, Lewanika DCJ, delivering the Judgment of the court, observed as follows:

> **"The question as to whether or not points of law may be pleaded is to be found in Order 18 Rule 11 of the Supreme Court Practice which provides as follows:**
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> > ***Order 18/11 "A party may by his pleading raise any point of law (the emphasis is ours)".***
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> **The effect of this rule is that if a party intends to raise a point of law on the facts as pleaded, it is convenient course to do so in the pleading. This course of action is desirable as it would ensure that the issues in dispute are defined at the earliest opportunity and might even have the effect of avoiding a trial. However, this requirement is not mandatory and in the case of *Independent Automatic Sales Limited v Knowles and Forster (6)*, it was held that a party may at the trial raise a point of law open to him even though it was not pleaded in his defence."**

It is my view that even though the Code was not pleaded or referred to in evidence, the plaintiff can rely on it because it was issued by the Bank of Zambia in exercise of its regulatory powers **section 125 of the Banking and Financial Services Act.** Under that provision, the bank is obligated to regulate the provision of credit data to credit reference agencies.

Although there is no evidence before me on when the plaintiff was actually reported to the CRB for the default which is the subject of these proceedings, I find that it must have been after June 2012. This is because the report relates to defaults in May and June 2012 and it is inconceivable that such that default would have been reported prior to June 2012.

Clause 2.3 of the **Credit Data (Privacy) Code** reads as follows:

> **"Where a credit provider has provided credit to a person and the account is subsequently in default, the credit provider shall, as a recommended practice, give to such person within 30 days from the date of the default a written remainder stating that unless the amount in default is fully repaid before the expiry of 60 days from the date of the default, the person shall be liable to have his account data retained by the CRA until the expiry of 7 years from the date of final settlement of the amount in default or 7 years from the date of the person's discharge from bankruptcy"** ***(emphasis is mine)***

There is also **The Banking and Financial Services Act (Provision of Credit Data and Utilization of Credit Reference Services) Directive** issued on 10th December 2008. It reads:

> **All financial service providers shall -**
>
> **(i) At all times use the services of a credit reference agency before granting credit to any customer, and**

(ii) Submit credit data to a credit reference agency in respect of all credit granted to a customer after the coming into force of this directive.

The Bank of Zambia considers that the omission or failure by any credit provider to adhere to or comply with this directive constitutes an unsafe and unsound practice and may attract Supervisory Action in terms of Section 77 of the Banking and Financial Services Act.

Contrary to the submission by counsel for the plaintiff, that clause 2.3 of the Code requires notification to a defaulter before he is reported to the CRB, the requirement for notification is only a recommended practice. Further, the **Banking and Financial Services Act (Provision of Credit Data and Utilization of Credit Reference Services) Directive of 2008,** has made the reporting of all credit data, positive and negative, mandatory from 2008. It is my finding that the defendant cannot be faulted for reporting to the CRB without consulting the plaintiff. The issue, as I see it, is whether the data reported was accurate.

The defendant's position, as pleaded in their defence, is that the plaintiff defaulted on his April and May 2012, instalments. According to their witness, it is not until July 2012 that these instalments were paid. On the other hand, the plaintiff's position is that he paid all the instalments. Reference was made to the plaintiff's statements of account for the loan which are at pages 18, 19, 33 and 35 of the Plaintiff's Bundle of Documents. They run for the period September 2007, to November 2012. They indicate a number of K1,649,889.00 instalments the plaintiff made during the period. The last payment was made on 22nd June 2012 and the narration indicates that it was the April 2012

instalment. No further payment in instalments was made on that account after that day. This evidence (the accounts statement), which presumably came from the defendant and was not objected to, is in conflict with the testimony of the defendant's witness. I accept, the plaintiff's evidence and find that he has proved that he completed repaying the loan in June 2012.

But the issue that still remains to be resolved is was he in default as of June 2012 when he paid the last instalment? The actual loan agreement between the plaintiff and the defendant, which was supposed to show the due date of each instalment was not produced in evidence. It would have enabled me easily determine when then the instalments were due and whether there was ant default at the time the plaintiff was reported.

Notwithstanding, there is on The Loan Scheme Agreement, which is at pages 1 to 14 of the Plaintiffs Bundle of Documents. In clause 1.1.2. "Repayment Date" has been defined as being the date on which an employee's salary is paid. In my view, the repayment date of each instalment is the date on which the plaintiff was paid his salary. It follows, that the plaintiff could only be in default if on the day the salary was paid, for some reason, the due instalment could not be paid. The defendant's position that the instalments were delayed is not tenable in the absence of evidence of when each instalment was due.

I find that the plaintiff, has, on a balance of probability, proved that he did not default on the loan when he was reported to the CRB. I also find that the information provided to the CRB by the defendant was not accurate. The defendant had a duty to provide the CRB with accurate information on the status of his loan but they provided inaccurate information; they breached clauses 2.30 and 2.31 of the **Credit Data (Privacy) Code.**

I will now consider whether the plaintiff is entitled to damages for loss of business opportunity and mental anguish and embarrassment.

It was the plaintiffs evidence that when it was discovered that he was listed on the CRB, Standard Chartered Bank asked him to clarify the listing with the defendant. They also advised him to bring a letter from the defendant confirming that he had cleared the loan. He admitted in cross examination that he did not approach the defendant for the letter. Though he maintained that he was denied the loan as a result of the listing, I find that it was not the case.

It was the plaintiff's own evidence that following the discovery of the listing, Standard Chartered Bank informed him that for the loan to be processed, he should take to them a letter from the defendant confirming that the loan had been cleared, he did not. To me, this confirms that being listed did not amount to blacklisting.

Since being listed on the CRB is not being blacklisted and the plaintiff failed to submit the letter requested by the Standard Chartered Bank, I find that the plaintiff's failure to obtain the K50,000,000.00 cannot be wholly attributed to the listing. This being the case, the claim for loss of business opportunity fails.

Coming to the claim for damages for mental anguish and embarrassment, the only evidence before me was that given by the plaintiff. He testified that he suffered mental anguish and embarrassment following his listing. The defendant's position, which is anchored on **Continental Restaurant and Casino Limited v Arida Mercy Chulu (9),** is that plaintiff is not entitled to such damages as no proper evidence of a medical nature was adduced.

The relevant portion of that Judgment, at page 129, reads as follows:

> **"The important point to stress, however, is that in cases of this nature the basis of awarding damages is to vindicate the injury suffered by the plaintiff. The money was to be awarded in the instant case not because there was a cockroach in the soup, but on account of the harm or injury done to the health, mental or physical of the plaintiff. Thus in the Donogue case (1) the plaintiff was hospitalised. Mild condition is generally not enough a basis for awarding damages.**
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> **The plaintiff has, therefore, a duty to bring credible evidence of illness. The award in the instant case comes to us with a sense of shock as being wrong in principle and on the higher side. We want to take advantage of this case to point out that in future, nothing will be awarded if no proper evidence of a medical nature is adduced."**

In my view, the case addresses the main issue raised by the plaintiff's claim for mental anguish that he is said to have suffered as a result

of the listing. The claim has not been supported by any medical evidence and I find that it has not been proved.

As regards the claim for damages for embarrassment, the plaintiff testified that following his listing on the CRB, he became known as a person who was not credible. From the evidence before me, I find that the only "persons" who knew about the listing was the CRB and the Standard Chartered Bank. Other than the plaintiff's view that he was now considered not to be a credible person, there was no evidence that there is anyone who thought that it was the case.

Even if he was listed, the Standard Chartered Bank was ready to lend him the money if he brought a letter from the defendant. In the case of the CRB, as soon as they were approached by the defendant, they amended their records to reflect that he was not delinquent. It is my view that these two organisations would not have dealt with him in that way if they were of the view that he was not a credible person. Consequently, I find that the plaintiff has not proved that he is entitled to damages for mental anguish and embarrassment because he has not proved that his standing was lowered following the listing. The two claims fail.

As I conclude, even if the plaintiff has not proved that he suffered loss of business or mental anguish and embarrassment as a result of the listing, he has proved that he was wrongly listed as a defaulter on the CRB. According to the authors of **Mcgregor on Damages, 16th Edition, at paragraph 420**:

> "TECHNICALLY the law requires not damage but an *injuria* or wrong upon which to a base a judgment for the plaintiff, and therefore an *injuria*, although without loss or damage, would entitle the plaintiff to judgement. Since a judgment awarding money was practically the only judgment which the common law could bestow, a judgment for a nominal sum of money or for "nominal damages" was given.

It is my finding that even if the plaintiff has not proved loss as a result of the inaccurate listing as a defaulter, this is an appropriate case in which to award nominal damages because the duty of care owed by the defendant to him was breached when the defendant provided inaccurate information on him to a third party. I award the plaintiff K5,000.00 as nominal damages.

The parties will bear their own costs.

Delivered in open court at Lusaka this 5th day of December 2017

C. F. R. MCHENGA
JUDGE