

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

2017/HP/A0010

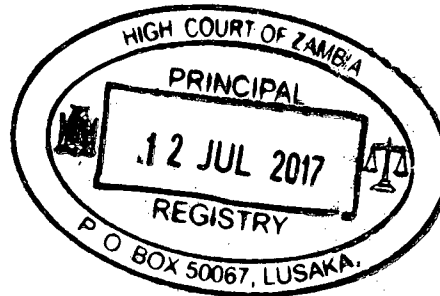
**BETWEEN :**

SISHEKANU LISIMBA

**AND**

DAVIES NYIRENDA

DAVIE BANDA

**APPELLANT****1<sup>ST</sup> RESPONDENT****2<sup>ND</sup> RESPONDENT**

**Before Honourable Mrs. Justice M. Mapani-Kawimbe on the 12<sup>th</sup> day of July, 2017**

*For the Appellant* : *In Person*  
*For the Respondents* : *No Appearance*

---

## **J U D G M E N T**

---

**Cases Referred To:**

1. *Wilson Masauso Zulu v Avondale Housing Project Limited* (1982) Z.R. 172
2. *Khalid Mohamed v The Attorney General* (1982) Z.R. 66

**Legislation Referred To:**

This is an appeal against the Judgment of the Subordinate Court delivered on 14<sup>th</sup> April, 2016. The Appellant advances the following grounds:

1. *The learned Magistrate erred in law and fact when it only concentrated so much on the issue of broken glasses which was just highlighted to the Court on charges instead of the key major issue of my claim of money used to repair where the Defendant's vehicle damages.*
2. *The Learned Magistrate erred in law and fact when it indicated the issue of exaggeration of the claim despite the exhibit of receipt from KLN but the Court concentrated on the issue of K500.00 which has unproven.*
3. *The learned Magistrate erred in law and fact when the Court came to award the sum of K800.00 despite the exhibit of money K3,800.00 used to repair the damaged body by Defendant's vehicle by the receipt marked SL1 from KLN Brokers.*
4. *The learned Magistrate erred in law and fact when the Court also indicated that the Plaintiff refused to allow the Defendant to repair my vehicle which was not the case.*
5. *The learned Magistrate erred in law and fact when the Court further also considered that I was not the one repairing this damaged body panel of ABV 2782 but it was KLN Brokers, but considered exaggeration which I do not understand despite the exhibit marked SL1 from KLN Brokers.*

The background of this appeal is that the Appellant (Plaintiff) took out a Default Writ claiming K3,800.00 as compensation from the Defendant (Respondent) for the repair of his Toyota Hiace Bus. The Appellant's bus was damaged by the Defendant's vehicle which rammed into it. The Appellant's testimony in the lower Court revealed that the road traffic accident occurred on 26<sup>th</sup> March, 2011, when the Defendant's bus rammed into the Appellant's stationary bus, at the junction of Chifundo Road, Lusaka. The Defendant's bus damaged the side door where the driver's seat is located. The Plaintiff

reported the matter to Castle Police Post, following which, the 2<sup>nd</sup> Defendant was charged with the offence of careless driving. The Plaintiff's vehicle was repaired by KLN Automotive at a cost of K3,800.00.

In his defence, the 1<sup>st</sup> Defendant confirmed that his driver, Davies Banda, the 2<sup>nd</sup> Defendant caused the accident. He testified that the bus sustained a dent. He offered to repair the Plaintiff's bus but he refused.

After reviewing the evidence, the learned Magistrate held that the damage to the Plaintiff's bus was a depression on the right side of the body. He refused to award the Plaintiff K3,800.00 as compensation and reduced the award to K800.

I have seriously considered the grounds of appeal filed herein. Although five grounds have been advanced by the Appellant, they do not in my considered view, raise different issues. Thoroughly read, the grounds of appeal principally attack the award of K800 given to the Appellant by the lower Court. I shall therefore deal with all grounds of appeal at the same time.

In the case of **Masauso Zulu v Avondale Housing Project**<sup>1</sup>, it was stated that where a Plaintiff makes any allegation, it is generally for him to prove those allegations. A Plaintiff who has failed to prove his case cannot be entitled to judgment whatever may be said of the opponent's case. Further in **Khalid Mohamed v The Attorney General**<sup>2</sup>, it was held that a Plaintiff must prove his case and if he fails to do so the mere failure of the opponent's defence does not entitle him to judgment.

I have read the contents of the Traffic Accident Report issued by the Zambia Police on 28<sup>th</sup> January, 2016. It states that the damage on the Appellant's vehicle was a "depressed right body." From this, I am able to discern that the Appellant's vehicle suffered damage in the form of a depression.

I find it logical that the type of repair work required to restore the Appellant's vehicle was as stated in the invoice issued by KLN Automotive Brokers, namely panel beating and spray painting. Having so determined, I find that the Court below misdirected itself when it held that the Appellant exaggerated the cost of repair works. The Appellant had in his support the Traffic Accident Report showing the

damage to his vehicle and the invoice from KLN Automotive Brokers showing the type of repair work that was required. The invoice from KLN Automotive Brokers was not contested by the Respondent by way of another invoice or quotation. I therefore find no basis for the lower Court's decision, which disregarded the evidence that the Plaintiff adduced. This appeal is allowed.

I accordingly enter judgment for the Appellant in the sum of K3,000.00 bearing in mind that he was already awarded K800 by the lower Court. I also award him damages to be assessed and costs for this appeal.

Leave to appeal is granted.

Dated this 12<sup>th</sup> day of July, 2017.

*M. Mapani-Kawimbe*  
M. Mapani-Kawimbe  
**HIGH COURT JUDGE**