

IN THE HIGH COURT FOR ZAMBIA **2017/HPC/0121**
IN THE COMMERCIAL DIVISION
HOLDEN AT LUSAKA
(Civil Jurisdiction)



BETWEEN:

MUWINDWA MUTEMWA MUFUNDI *(Married Woman)* **PLAINTIFF**

AND

MEANWOOD GENERAL INSURANCE LIMITED **DEFENDANT**

CORAM: Hon. Lady Justice Dr. W. S. Mwenda at Lusaka this 28th day of May, 2020.

For the Plaintiff: Mr. M. Mutemwa and Mr. W. Siyumbano of Mutemwa Chambers

For the Defendant: Mr. M. Mwansa and Ms. M. Chansa of Mosha and Company

JUDGMENT

Cases referred to:

- 1) *Goldman Insurance Limited v. Professional Insurance Corporation Zambia Limited SCZ Judgment No, 2 of 2012.*
- 2) *Lumus Agricultural Company Limited and Others v. Gwembe Valley Development Company Limited (In Receivership) (1999) Z.R.1.*
- 3) *Anuj Kumar Rathi Krishna v. The People HPA/11/2010 (Unreported).*
- 4) *Khalid Mohamed v. The Attorney General (1982) Z.R. 49 (S.C.).*

vehicle that was being driven by Mr. Lissetiane and three cows which were in a herd of 15 cows. According to PW1, this resulted in the vehicle being extensively damaged, as shown in the photographs which were taken after the accident. Mr. Lissetiane reported the accident to Gilead Police Station in Mokopane, South Africa, and the vehicle was subsequently towed to a nearby garage. Thereafter, they returned to the scene of the accident around 07:00 hours to inspect the cows that had been hit into so that they could establish who the owner of the herd was. PW1 flew back to Zambia a few days later. It was his testimony that he learnt with shock that the Defendant had declined to process the insurance claim relating to the vehicle. There were no questions in cross-examination for this witness.

The second witness was the Plaintiff herself, Muwindwa Mutemwa Mufundi (PW2). Her Witness Statement dated 18th July, 2017 was tendered and duly admitted in evidence. PW2's evidence as captured in the Witness Statement, is that she is the absolute owner of the motor vehicle GMC Sedan, black in colour, registration number ABE 2301 ZM, with a private number of MUW1. A copy of the Certificate of Registration is exhibited on page 1 of the Plaintiff's Bundle of Documents.

According to PW2, in June, 2016, she decided to have her motor vehicle taken to South Africa in order that it undergoes repairs. She took out a comprehensive insurance with the Defendant company and additionally, procured from the Defendant, in readiness for the motor vehicle's trip to South Africa, an insurance policy titled "Extension of Cover to Other Countries". The sum paid as premium for the comprehensive cover was K8,120; the sum insured was K200,000 and the period covered was 1st July, 2015 to 30th June, 2016. A copy of the Certificate of Motor Vehicle Insurance is exhibited at page 19 of the Plaintiff's Bundle of Documents. It was further averred that the sum paid as premium for the extension of cover was K836.36, while the sum insured was K200,000 and the period covered was 13th June, 2016 to 12th June, 2017. A copy of the extension of cover is exhibited at page 4 of the Plaintiff's Bundle of Documents.

It was PW2's evidence that she secured the necessary temporary exportation authorisations for the motor vehicle in question from the International Criminal Police Organisation (Interpol) and the Zambia Revenue Authority. On 12th June, 2016, she engaged Mr. Luis Fernando Lissetiane, a Mozambican national with a valid SADC

Driving Licence to drive the vehicle from Zambia to South Africa in a convoy with her son, Chiwana Mufundi. Mr. Lissetiane and Mr. Mufundi left Zambia for South Africa on 12th June, 2016, driving the vehicle in question and a black Cadillac Escalade, respectively. Unfortunately, whilst driving the car in question, with Mr. Mufundi following behind, Mr. Lissetiane collided with a herd of cattle along N11 Road at 02:20hrs in the morning on 13th June, 2016, resulting in extensive damage to the vehicle. The accident was duly reported to Gilead Police Station in Mokopane and the vehicle was subsequently towed a few hours after the said accident. On the same morning of the accident, PW2's insurance brokers and the Defendant were informed about the accident. Quotations for repairs of the vehicle which were obtained from three different companies indicated that the estimated costs of repairing the vehicle, considering the damage from the accident, would exceed 70% of the vehicle's insured value. In the premises, by virtue of section 1.1.3 of the Defendant's comprehensive motor vehicle insurance policy, PW2 became entitled to be indemnified to the insured sum of K200,000 plus interest thereon, less any applicable deductions.

In cross examination PW2 admitted that she did not repair the motor vehicle in South Africa and the said motor vehicle was still there. PW2 was referred to paragraph 17 of her Witness Statement and page 29 of the Plaintiff's Bundle of Documents, paragraph 1.1.3, which is part of a document entitled 'Motor Comprehensive Insurance Policy Wording'. Paragraph 17 of the Witness Statement provides as follows:

"In the premises, by virtue of Section 1.1.3 of the Defendant's Motor Comprehensive Insurance Policy Wording, I became entitled to be indemnified to the insured sum of K200,000 plus interest thereon, less any applicable deductions. The section referred to is at page 29 of the Plaintiff's Bundle of Documents."

Paragraph 1.1.3 of the document at page 29 of the Plaintiff's Bundle of Documents states as follows:

"The company shall declare a vehicle a constructive total loss when the estimated repair costs exceed 70% of the insured or market value whichever is lesser and in any case, should the insured wish to retain the salvage or wreck, the company shall deduct 30% of the insured value or market value whichever is lesser after the application of the First Amount Payable stated in the schedule."

PW2 was then referred to page 4 of the Plaintiff's Bundle of Documents where there is exhibited a document by Meanwood

General Insurance Company, the Defendant herein. The said document provides in paragraph 2 as follows:

“It is agreed that the cost of any loss or damages to the vehicle shall first be met by the insured in the country it has occurred and on return seek reimbursement from the Corporation.”

According to PW2, no proof of repair was given because the vehicle was not repaired. In further cross-examination PW2 said she understood ‘reimbursement’ to mean being paid back what is due to you. When asked whether one could claim for a refund in respect of a cost which one had not yet incurred, PW2 said that it depended on when one was making a claim. She said that in her case, she was trying to claim according to what she felt should be paid to her at that particular moment.

In re-examination PW2 said that she was entitled to the claim depending on the vehicle that is in question from the insurance company because she had a policy with them and had paid for an insurance cover to take it to South Africa but before the vehicle could be repaired, it was involved in an accident. It was her evidence that the costs that are being claimed emanated from the accident. When asked to clarify whether she was claiming for the cost of repairs or

the value of the insurance, PW2 said that she was claiming for the value of the insured vehicle.

The third witness for the Plaintiff was Luis Fernando Lissetiane (PW3). His Witness Statement dated 12th July, 2017 was tendered and admitted in evidence. It was his testimony that on the 12th June, 2016, he left Zambia for South Africa in a convoy of two vehicles that were driven by himself and Mr. Chiwana Martin Mufundi. He led the way driving a GMC Yukon while Mr. Chiwana Martin Mufundi followed him behind driving a black Cadillac Escalade. While driving along N11 Road at about 02:00 hours on 13th June, 2016, there was a herd of cattle in the middle of the road sleeping. He tried to stop but failed and hit into the animals. This resulted in the vehicle being extensively damaged as shown in the photographs taken after the accident. PW3 reported the accident to Gilead Police Station in Mokopane and the vehicle was subsequently towed to a nearby garage. Thereafter, they returned to the scene of the accident around 07:00 hours to inspect the cows that had been hit into so that they could establish who the owner of the herd was. Unfortunately, the animals were not tagged or marked in any way, consequently, they could not establish who the owner was. Later on, they carried on

their journey to Johannesburg. PW3 agreed that according to paragraph 7 of his Witness Statement he tried to stop but hit into sleeping cattle. When asked why he failed to stop, PW3 said that it was because the cattle were sleeping on the road. It was dark, in the early hours of the morning and the cows were dark in colour. It was his further testimony that he drove the GMC Yukon, the car that was involved in the accident, when he left Zambia. He agreed that the car which was going to South Africa for repairs drove for 18 hours to get there; that it was in good condition. When referred to the Plaintiff's Supplementary Bundle of Documents dated 13th March, 2018, at page 2, PW3 identified the motor vehicle in the picture as a damaged car; that it was the one that was involved in the accident and hit into the sleeping cattle. He agreed that he was driving the vehicle when it hit into sleeping cattle. It was his evidence that there was blood at the scene of the accident but he could not see the blood in the picture. His explanation for that was that it was misty on the day of the accident and the photo was taken at night and it was dark.

PW3 was referred to page 25 of the Plaintiff's Bundle of Documents where there is exhibited a letter from the Defendant to Cornerstone Insurance Services Limited where there were assessors'

findings to the effect that there was no trace of blood or animal hair on the motor vehicle involved in the accident and further, that if the vehicle hit an animal then there should be a third party claim. PW3 insisted that there was blood on the vehicle and that it was dark and misty when the picture was taken. When referred to page 32, clause 2.5 of the Plaintiff's Bundle of Documents, which was about liability if another person drove or used the insured vehicle, PW3 said he was not aware of the said clause or that it was a requirement that the insured party needed to give an order or permission for the third party to drive her car. He agreed that his name should have appeared in the space indicated on the authorisation for purchase of insurance for the purpose of travel for the motor vehicle GMC Sedan, exhibited at page 5 of the Plaintiff's Bundle of Documents. He further agreed that the said document should have been returned to the Defendant with his name endorsed on it. PW3 was not aware that he was supposed to observe the terms, exceptions and conditions of the policy as the party driving the motor vehicle. He said he was not the owner of the vehicle and the owner would know better. He testified that the vehicle was going for service and there was nothing in particular that needed to be repaired.

In re-examination PW3 stated that after the accident he got out of the car and tried to get pictures to use as evidence. However, the quality of the pictures was poor and the weather was bad in the early hours of the morning. He reiterated that he did not know anything about the insurance policy because he never had the insurance.

This marked the end of re-examination and the close of the Plaintiff's case.

The Defendant had one witness called Caesar Silembo (DW1). His Witness Statement of 21st March, 2018 was tendered and duly admitted in evidence. The Defendant did not file any bundle of documents. It was DW1's evidence that he is an insurer by profession. He testified that he was aware that the Plaintiff had filed a Writ of Summons and Statement of Claim in which she claimed against the Defendant the sum of K200,000 less any excess being the purported loss she suffered as a result of a purported accident involving her motor vehicle, a GMC Sedan, registration number MUW1 in South Africa. Further, that the Plaintiff's claim is made pursuant to a purported policy of insurance dated 10th June, 2016 and entered into between the Plaintiff and the Defendant. According to DW1, the Plaintiff failed to satisfy the Defendant that the accident

occurred as claimed and that she met the requirements for compensation under the cover. It was also alleged that the Plaintiff failed to satisfy the Defendant with regard to the inconsistencies between the Plaintiff's claim and reports from the Defendant's independent assessors. As a result, the Plaintiff's claim could not be processed.

Under cross-examination, DW1 testified that the Plaintiff had failed to satisfy the Defendant that the accident had occurred as claimed and that she had evidence to that effect. DW1 was then referred to page 19 of the Plaintiff's Bundle of Documents and identified the document on the said page as a Certificate of Motor Insurance with a comprehensive cover; the effective dates being 1st July, 2015 to 30th June, 2016. The name of the insured was identified as Cross Roads Lodges Limited/Muwindwa M. Mufundi; the vehicle's registration number as MUW1 and the insurance cover as K200,000. DW1 identified the document on page 4 of the Plaintiff's Bundle of Documents as 'Extension of Cover to other Countries'. He admitted that the Plaintiff had obtained insurance cover which extended to COMESA and SADC countries.

With regard to paragraph 3 of the Defence where Defendant said it would put the Plaintiff to strict proof as to whether an accident happened on 13th June, 2016, DW1 said he was not aware that PW1 testified about the number of animals which were involved in the accident or that he had even given the number of animals involved. DW1's attention was drawn to paragraph 4 of the Defence where it is alleged that the insurance cover did not extend to the Plaintiff's agent, Luis Fernando Lissetiane. His attention was also drawn to Note 2 of the Certificate of Motor Insurance exhibited on page 19 of the Plaintiff's Bundle of Documents which stated as follows:

“Authorised Driver – Any person on the insured's order or with the insured's permission, provided that the person driving holds a valid licence to drive a motor vehicle or has held and is not disqualified from holding or obtaining such licence in compliance with the Roads and Road Traffic Act as amended.”

DW1 was then referred to the Plaintiff's Supplementary Bundle of Document filed on 20th July, 2018 and identified the document therein as an Accident Report Form. It was his evidence that on the particulars of the driver was the name of Luis Fernando; the vehicle's registration number was MUW1 and the name of the road was N11. DW1 also identified the driver's licence on page 14 of the Plaintiff's

Bundle of Documents as belonging to L.F. Lissetiane and was valid from 1st October, 2013 to 30th September, 2018. He admitted that Mr. Lissetiane had a valid driver's licence at the time of the accident.

DW1 was referred to page 2 of the Plaintiff's Supplementary Bundle of Documents filed into Court on 13th March, 2018 and then to paragraph 11 of PW2's Witness Statement where she alleged that she engaged Mr. Luis Fernando Lissetiane to drive the vehicle in issue from Zambia to South Africa. The witness said he was not familiar with this paragraph and further, did not know that PW2 was not cross-examined on that point. With respect to paragraph 5 of the Defence where it was averred that there were no characteristics on the vehicle associated with a collision with cattle, such as animal fur and blood stains, DW1 was referred to the picture on page 2 of the Plaintiff's Supplementary Bundle of Documents dated 13th March, 2018 and agreed that there were some red marks on the left side. He was further referred to pages 3 and 4 of the same Bundle of Documents and agreed that there were some splashes on the vehicle. He did not know what the splashes were and was told by Counsel that the same was cow dung and that the evidence was not challenged by the Defendant when the Plaintiff's first and second

witnesses were testifying. DW1 said that he was not aware that the said witnesses were not cross-examined on the pictures on pages 3 and 4. With regard to the allegation in paragraph 5 of the Defence to the effect that the damage to the vehicle was as a result of normal ramping with hills or a road, DW1 admitted that he had no evidence before the Court to support that allegation. Similarly, with regard to the claim in paragraph 6 of the Defence that investigations had revealed that the said vehicle was a non-runner on the date of the purported accident, DW1 conceded that there was no evidence before the Court to support that claim. He also agreed with Counsel's contention that you do not insure vehicles that are non-runners. When referred to paragraph 7 of the Defence where it is alleged that the Plaintiff acted in bad faith, DW1 admitted that there was no evidence to that effect before the Court.

In further cross-examination DW1 was referred to paragraph 7 of his Witness Statement where he had stated that the Plaintiff failed to satisfy the Defendant that she was acting in good faith in the submission of her claim due to inconsistencies between the Plaintiff's claim and reports from the Defendant's independent assessors. He maintained that the same was still his testimony. It was his

testimony that he was not sure if the reports from the Defendant's independent assessors were before Court.

In re-examination DW1 was referred to page 4 of the Plaintiff's Bundle of Documents. It was his evidence that he could not confirm from the extension of cover document whether premiums were paid or not because it was only a document which the Defendant issued and for that document to be valid, it would have to be accompanied by evidence that the client was paying premium in the form of receipts. He said he was not given a copy of any receipt for premium. Making a clarification on what he meant in paragraph 6 of his Witness Statement, DW1 said that what he was saying was that the claim was based on the document which issued the extension of the cover to other countries and which document clearly stated that if the client was involved in an accident, she needed to first meet the cost of any loss or damages to the vehicle in the country where the accident had occurred and upon her return, she would have to produce evidence in the form of receipts and seek reimbursement from the Defendant.

DW1 was referred to page 1 of the Plaintiff's Supplementary Bundle of Document filed on 20th July, 2018 and said that it did not

have any stamp of any police authority and did not bear the signature of the person who prepared the report. Further, that the page did not have a notary public stamp. With respect to the other Supplementary Bundle of Documents filed on 13th march, 2018, it was DW1's evidence that in the photograph at page 2 there was no number plate of the vehicle involved in the accident. Further, that the page did not show the date on which the picture was taken or the time. Similarly, DW1 could not tell which day or what time the photograph on page 3 was taken just by looking at it. It was also his observation that the damaged motor vehicle in the picture had no number plate.

This marked the end of re-examination and the close of the Defendant's case.

At the commencement of the case, both parties filed Skeleton Arguments in support of their cases. The Plaintiff's Counsel filed Skeleton Arguments and List of Authorities on 13th March, 2018, while the Defendant's Counsel filed Skeleton Arguments on 21st March, 2018. In addition, final submissions were filed on behalf of the Plaintiff on 11th February, 2019. There are no submissions on

record on behalf of the Defendant. At this point, I will summarise the skeleton arguments and Plaintiff's submissions.

In the Skeleton Arguments in support it was submitted on behalf of the Plaintiff that the contract of insurance between the Plaintiff and the Defendant was valid in that there was an offer, acceptance as well as consideration. That, in making a proposal, the insurer undertakes to indemnify the assured against the risk proposed to be covered by the policy. In turn, the insured must pay or undertake to pay the premium which constitutes the consideration and the certificate of insurance or cover note forms the full extent of the contract, stipulating the terms and conditions and extent of the cover provided. It was contended that the Plaintiff offered to have her car insured by the Defendant and went ahead and paid a premium of K836.36 as consideration. The Defendant accepted the offer and subsequently issued a certificate of insurance. It was submitted that the said insurance cover was for the period 13th June, 2016 to 12th June, 2017. That, the Plaintiff's car was involved in an accident while being driven by an authorised driver and during the currency of the insurance policy, being 13th June, 2016. According to the Plaintiff,

the accident was promptly reported to the relevant authorities and the Defendant was duly notified a few hours after the fact.

It was further submitted in the Plaintiff's final submissions, that quotations for repairs of the car obtained from three different companies indicated that the damage resulting from the accident would require more than 70% of the insured sum to repair. Therefore, pursuant to section 1.1.3 of the Defendant's Motor Comprehensive Policy Wording, the Plaintiff is entitled to be indemnified to the insured sum of K200,000 plus interest thereon.

Section 1.1.3 provides as follows:

"The company shall declare a vehicle a constructive loss when the estimated repair costs exceed 70% of the insured or market value, whichever is lesser and in any case, should the insured wish to retain the salvage or wreck, the company shall deduct 30% of the insured value or market value whichever is lesser after the application of the First Amount Payable stated in the schedule."

It was contended that in light of the above, the Defendant must compensate the Plaintiff because it agreed to do so when it received a premium from the Plaintiff and issued a certificate of insurance. Moreover, it has no valid basis for declining to fulfil its obligation under the enforceable contract of insurance. In this regard, the case

of *Goldman Insurance Limited v. Professional Insurance Corporation Zambia Limited*¹ was cited, where it was held as follows:

“A valid and enforceable relationship of insurance is premised on a contract where one party, the insurer accepts to insure a risk of a policy holder, by agreeing to compensate the policy if a specified future insured event occurs.”

It was argued that the Plaintiff fulfilled all the requirements under the contract of insurance in question and should therefore, be compensated in accordance with the terms of the said contract.

In the Skeleton Arguments filed on behalf of the Defendant, it was submitted that it is trite that the burden of proof lies on he who alleges, being the Plaintiff in civil matters. It was contended that the Plaintiff failed to satisfy the Defendant that she was acting in good faith in the submission of her claim due to inconsistencies between the Plaintiff's claim and reports from the Defendant's independent assessors. It was further argued that in her Bundle of Pleadings and Documents as well as supporting Witness Statements, the Plaintiff had failed to satisfy the Defendant that the accident occurred as claimed and that she met the requirements for compensation under the cover. That, additionally, the Plaintiff had failed to satisfy the Defendant that she was acting in good faith in the submission of her

claim due to inconsistencies between the Plaintiff's claim and reports from the Defendant's independent assessors. Consequently, the Plaintiff's claim could not be processed, and the Plaintiff's claim has no basis and should be dismissed with costs.

The undisputed facts of this case are that the Plaintiff is the absolute owner of a motor vehicle GMC Sedan registration number MUW1, black in colour. The Plaintiff took out a comprehensive insurance with the Defendant company for the said motor vehicle and additionally, procured from the Defendant, in readiness for a trip to South Africa, an insurance policy titled "Extension of Cover to Other Countries", the same being SADC and COMESA countries. The sum paid as premium for the comprehensive cover was K8,120; the sum insured was K200,000 and the period covered was 1st July, 2015 to 30th June, 2016. A Certificate of Motor Vehicle Insurance to that effect was issued by the Defendant. Premium for the extension of cover as indicated on the policy was K836.36, while the sum insured was K200,000 and the period covered was 13th June, 2016 to 12th June, 2017. The Plaintiff secured temporary exportation authorisations for the motor vehicle from the International Criminal Police and Zambia Revenue Authority.

The Defendant disputes the Plaintiff's claim that she entered into a policy of insurance with the Defendant for extension of cover to other countries, particularly South Africa and further, disputes that the Plaintiff paid K836.36 or any premium whatsoever, to the Defendant in order to indemnify the Plaintiff against, *inter alia*, loss and damage to be occasioned to her vehicle.

In addition, the Defendant disputes that the Plaintiff's agent Luis Fernando Lissetiane was involved in an accident as alleged or that the vehicle collided with cattle. The Defendant contends that the insurance cover did not extend to the Plaintiff's agent and consequently, the Plaintiff is not entitled to the indemnification as claimed. Further, that an investigation carried out on the motor vehicle revealed that there were no characteristics on the vehicle associated with the collision with cattle, such as fur and blood stains and that the damage to the vehicle suggested that it was a result of normal ramping with hills or a road. The Defendant claimed that its investigations revealed that the vehicle was a non-runner on the date of the purported accident and as such, the Plaintiff did not act in good faith in submitting its claim to the Defendant, resulting in the Plaintiff's policy of insurance lapsing.

Arising from the above facts, the issues for determination, I opine, are the following:

1. Whether or not the Plaintiff's motor vehicle GMC Sedan registration number MUW1 was covered by a policy of insurance issued by the Defendant during the trip to South Africa; whether or not premium was paid by the Plaintiff for the same and whether the said policy was valid at the time of the alleged accident;
2. If the said motor vehicle was insured, whether or not the cover extended to the Plaintiff's agent Luis Fernando Lissetiane;
3. Whether the said vehicle was involved in the accident as alleged or was a non-runner at the time of the alleged accident.

The first issue for determination, as can be seen from above, is whether or not the Plaintiff's motor vehicle GMC Sedan registration number MUW1 was covered by a policy of insurance issued by the Defendant during the trip to South Africa; whether or not premium was paid by the Plaintiff for the same and whether the said policy was valid at the time of the alleged accident. As indicated earlier, the Defendant in its Defence raised issue with the Plaintiff's claim that it had entered into a policy of insurance with the Defendant for

extension of cover of the existing policy to SADC and COMESA countries particularly, South Africa.

The evidence before this Court as produced at pages 19 and 4 of the Plaintiff's Bundle of Documents, respectively, shows that the Plaintiff took out a policy of insurance with comprehensive coverage for K200,000 for the period 1st July, 2015 to 30th June, 2016 for a premium of K8,120, as evidenced by the exhibited copy of Certificate of Insurance. The validity of this cover has not been questioned by the Defendant. The Plaintiff also took out an extension of cover to other countries for the insured sum of K200,000 with a validity period of 13th June, 2016 to 12th June, 2017. Premium for the extension of cover was K836.36, as evidenced by the copy of extension of cover exhibited at page 4 of the Plaintiff's Bundle of Documents. Therefore, the evidence adduced by the Plaintiff clearly proves that she did insure her motor vehicle GMC Sedan registration number MUW1 with the Defendant for the trip to South Africa.

With regard to the issue of whether or not the Plaintiff paid the sum of K836.36 as premium for the extension of cover, the Defendant averred in its Defence that it would put the Plaintiff to strict proof at trial over the same and DW1 in re-examination stated that he could

“In terms of and subject to the limitations of and for the purposes of this section, the Company will indemnify any person who is driving or using such motor vehicle excluding commercial vehicles on the insured’s order or with his permission provided:

- a) That such person is not entitled to indemnity under any other policy.*
- b) That such person shall as though he were the insured observe, fulfill and be subject to the terms, exceptions and conditions of this policy in so far as they apply.*
- c) That such person has not been refused any motor vehicle insurance or continuance thereof by any Insurance Company or Underwriter.”*

It has been contended that since the Plaintiff did not fill in the name of the agent and his National Registration Card number on the letter at page 5 of the Plaintiff’s Bundle of Documents which was meant to authorise him to obtain extended motor insurance for the motor vehicle in issue, the requirements of clause 2.5 of the Motor Comprehensive Insurance Policy Wording were not met and therefore, the cover did not extend to him. However, PW2 testified that on 12th June, 2016 she engaged Mr. Luis Fernando Lissetiane, a Mozambican national in possession of a valid SADC Driving Licence, which was exhibited on page 14 of the Plaintiff’s Bundle of Documents, to drive the motor vehicle in issue from Zambia to South Africa. Therefore, the requirement of the said clause in the policy

were met. On this issue, I am of the view that despite the failure by the Plaintiff to fill the name of her agent and his National Registration Card number on the document at page 5 and submitting the same to the Defendant, the extension of cover did extend to Luis Fernando Lissetiane as he had the Plaintiff's permission to drive the said vehicle to South Africa. The Plaintiff testified that she engaged Luis Fernando Lissetiane, a Mozambican national with a valid SADC Driving Licence to drive the motor vehicle from Zambia to South Africa and DW1 admitted under cross-examination that Luis Fernando Lissetiane was indeed a holder of a valid licence at the time he drove the car. Therefore, since Mr. Lissetiane had a valid driving licence and had the permission of the insured, he was an authorised driver as defined by Policy Note 2 on the Certificate of Motor Insurance which states as follows:

"Authorised Driver – Any person on the insured's order or with the insured's permission, provided that the person driving holds a valid licence to drive a motor vehicle or has held and is not disqualified from holding or obtaining such licence in compliance with the Roads and Road Traffic Act as amended."

on the vehicle associated with the collision with cattle, such as fur and blood stains. Further, that the documents that were submitted by the Plaintiff which were executed or produced in the Republic of South Africa were not authenticated as per requirement of the law. It is also the Defendant's contention that the Accident Report Form exhibited in the Plaintiff's Supplementary Bundle of Document dated 20th July, 2018 has no notarial stamp. It was also submitted that the photographs at pages 2 and 3 of the Plaintiff's Supplementary Bundle of Documents dated 13th March, 2018 which were referred to in the Plaintiff's evidence, do not show the number plate of the motor vehicle and neither do they show the day and time of the alleged accident. Consequently, the said documents and pictures do not constitute evidence of the alleged accident or that the motor vehicle in the said pictures is the one allegedly driven by Luis Fernando Lissetiane on 13th June, 2016.

After examining the documents adduced by the Plaintiff in support of her claim that her motor vehicle GMC Sedan registration number MUW1 driven by Luis Fernando Lissetiane hit into three cows on 13th June, 2016 along N11 Road around 02:00hours and sustained extensive damages, I am of the view that there is no

evidence to substantiate her claim that the Plaintiff's motor vehicle described above is the one in the photographs showing a damaged vehicle on pages 2 and 3 of the Supplementary Bundle of Documents. I am of that view because the said pictures do not show the number plate of the damaged vehicle or the day and time when the accident happened. The said pictures could be of any other vehicle and could have been taken on any other day and time other than what is being claimed by the Plaintiff.

Further, a perusal of the Plaintiff's Bundles of Documents shows that a number of documents therein originated from South Africa. These documents include the Accident Report Form and the pictures that were allegedly taken on the accident scene. It is a requirement of the law that any document that is produced or executed outside Zambia must be authenticated before it can be valid for use in Zambia. To this end, the Authentication of Documents Act, Chapter 75 of the Laws of Zambia provides in section 3 as follows:

3. *Any document executed outside Zambia shall be deemed to be sufficiently authenticated for the purpose of use in Zambia if-*
 - (a) *in the case of a document executed in Great Britain or Ireland it be duly authenticated by a notary public under his signature and seal of office;*

(b) *in the case of a document executed in any part of Her Britannic Majesty's dominions outside the United Kingdom it be duly authenticated by the signature and seal of office of the mayor of any town or of a notary public or of the permanent head of any Government Department in any such part of Her Britannic Majesty's dominions;*

(c) *in the case of document executed in any of Her Britannic Majesty's territories or protectorates in Africa it be duly authenticated by the signature and seal of office of any notary, magistrate, permanent head of a Government Department, Resident Commissioner or Assistant Commissioner in or of any such territory or protectorate;*

(d) *in the case of a document executed in any place outside Her Britannic Majesty's dominions (hereinafter referred to as a "foreign place") it be duly authenticated by the signature and seal of office-*

(i) *of a British Consul-General, Consul or Vice-Consul in such foreign place; or*

(ii) *of any Secretary of State, Under-Secretary of State, Governor, Colonial Secretary, or of any other person in such foreign place who shall be shown by the certificate of a Consul or Vice-Consul of such foreign place in Zambia to be duly authorised under the law of such foreign place to authenticate such document.*

Section 2, the interpretation section of the Act, states as follows:

"Authentication", when applied to a document, means the verification of any signature thereon."

Black's Law Dictionary 10th Edition defines 'authenticate' as:

"1. To prove the genuineness of (a thing); to show (something) to be true or real.

2. *To render authoritative or authentic as by attestation or other legal formality.*”

The Oxford Dictionary of English, 2017 Edition, defines ‘authenticate’ as:

“To prove or show (something) to be true, genuine or valid.”

The Zambian courts have explained the effect of not authenticating documents that are by law required to be authenticated. One such case is *Lumus Agricultural Company Limited and Others v. Gwembe Valley Development Company Limited*², where it was held at page 8 that:

“It is quite clear from section 3 that if a document executed outside Zambia is authenticated as provided, then it shall be deemed or presumed to be valid for use in this country and if it is not authenticated then the converse is true that it is deemed not to be valid and cannot be used in the country.” (Emphasis supplied)

In the case of *Anuj Kumar Rathi Krishnan v. The People*³, at pages 39 and 40, the Court stated as follows with regard to section 3 and the need to authenticate a document executed outside Zambia:

“This section demonstrates the need for a document executed outside Zambia to be notarised for it to be valid for use in Zambia...Since the said documents were deposed to outside Zambia, they should have been authenticated in accordance with section 3 of the Authentication

of Documents Act, for the purpose of validating them for use in Zambia. In view of the fact that the documents were not so authenticated, the trial court erred at law in admitting them in evidence.”

From the foregoing definitions of the term ‘authenticate’, it is clear that authentication entails verification of the genuineness of a document by attestation or other legal formality. The cases cited above have confirmed that for a document executed or produced outside Zambia to be valid for use in Zambia, it must be authenticated in the manner indicated in section 3 of the Authentication of Documents Act. Therefore, since the documents highlighted above were not authenticated as required by law before their production by the Plaintiff in evidence, they cannot be used or relied upon as evidence in this case. Following the finding that the said documents are not valid for use in this country, the inevitable conclusion is that there is no evidence before this Court on which the Court can base a finding that the Plaintiff’s motor vehicle GMC Sedan registration number MUW1 was involved in an accident as alleged.

In any event, even if I had found that there was evidence before this Court to support the claim that the Plaintiff’s motor vehicle in issue was involved in the accident as alleged, I would still not have

entered judgment for the Plaintiff because the Plaintiff did not satisfy the mandatory requirement in the extension of cover of first meeting the cost of loss or damage to the motor vehicle in South Africa and seeking reimbursement on return from the Defendant. That was a condition that was supposed to be fulfilled by the Plaintiff before the Defendant could reimburse her for the expenses. PW2 admitted in cross-examination that she did not repair the motor vehicle in South Africa. It was her evidence that she had no proof of repair because the vehicle was not repaired. It is clear from the above, therefore, that the Plaintiff did not meet the requirement for compensation under the extension cover.

With regard to whether or not the vehicle in issue was a non-runner at the time of the accident as alleged by the Defendant, under cross-examination, DW1 admitted that there was no evidence before the Court to support that claim. He also admitted that it is not normal to insure a non-runner motor vehicle. Therefore, since the motor vehicle in question was insured by the Plaintiff and evidence was led to the effect that the said motor vehicle was driven by Luis Fernando Lissetiane on 12th June, 2016 from Zambia enroute to

South Africa, I find that the motor vehicle in issue was a runner contrary to the allegations that it was a non- runner.

It has long been established that the burden of proof lies on he who alleges; refer to the case of *Khalid Mohamed v. The Attorney General*⁴. I find that as the person on whom the burden of proof lay, the Plaintiff has failed to discharge her burden of proving her case on a preponderance of probabilities. I accordingly, dismiss her claims with costs to the Defendant, to be taxed in default of agreement.

Leave to appeal is denied.

Delivered at Lusaka this 28th day of May, 2020.



DR. W. S. MWENDA
JUDGE