HOLDEN AT LUSAKA

(Civil Jurisdiction)

will only be seen to be done in this case

KALALUKA MUHONGO

Appellant

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THE ATTORNEY-GENERAL HO BY BY RESPONDENT

CORAM: Ngulube, D.C.J., Gardner, J.S. and Bweupe, AJ.S.

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D.M. Luywa, OF Luywa and Company, for the appellants shall apply.

L. Goel, Senior State Advocate, for the respondention the respondent to the respondent to

RULLING within fourteen days:

. J. & Millerent of Claim should be served

RULING

Ngulube, D.C.J. delivered the ruling of the court

The appellant (the plaintiff) in this appeal took out a specially endorsed writ in the High Court in which a specific sum of money-said to be the value of a boat which was damaged-was claimed together with a hiring fee. Consent judgment was entered before the learned trial judge and thereafter the matter proceeded to assessment of damages. During the assessment, the plaintiff again repeated the claim as endorsed on the writ. Having listened to the arguments on both sides, it is quite clear to us that the plaintiff's position now is that a terrible mistake was made right from the very beginning. For that reason, an application has been made by Mr. Luywa to amend the writ and to begin the entire action afresh. Mr. Goel on behalf of the defendant has opposed the application and he has argued, among other ... things, that there ought to be finality to litigation. While we agree with Mr. Goel's submission and while it is obvious that the parties should expect to be bound by their pleadings and by the manner in which they have presented their case, it is also clear that where an obvious mistake has been made and where the justice of the case demands that matters be put right, it is in the wider interests

of justice to allow the plaintiff to correct such obvious mistakes. We have given very careful consideration to all the submissions and we are satisfied that justice will only be seen to be done in this case by making the following order: MANORE APPROXIMAL

We set aside the consent judgment and the assessment of damages which was based upon such consent judgment. We award all the costs of the previous proceedings in the court below and in this appeal to the defendant. We allow an amendment to the write and direct that the plaintiff do file and serve the amended writ within the next fourteen days. Thereafter the following order for directions shall apply. The amended statement of claim should be served within twenty-one days; the defence to the amended statement of claim should be served within twenty-one days; the reply if any within fourteen days; discovery by lists upon notice within fourteen days; inspection ten days thereafter; trial before a single judge at Lusaka within six weeks of the close of pleadings; liberty to apply; and costs of the fresh action in the cause. For clarity, we should indicate that the costs occasioned by the amendments up to and including the delivery of a new defence will be the defendant's and to be borne by the har will plaintiff in any event. I display was untered before the learned trial

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ACTING SUPREME COURT JUDGE