IN THE SUPREME COURT FOR ZAMBIA

HOLDEN AT LUSAKA

(Civil Jurisdiction)

BETWEEN:

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| Landmark Limited | 1st Appellant |
| Dickson Sakala | 2nd Appellant |
| and | |
| Allan Samson Phiri | Respondent |

Coram: Gardner, Sakala and Chaila JJS.,
6th April 1995 and 9th June, 1995

K.M. Nakoto of Christopher, Russel Cook and Co., appeared for the appellants.
P. S. Kapongo of Akwazi Chambers, appeared for the respondent.

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J U D G E M E N T

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Gardner J.S. delivered the judgment of the court.

Cases referred to:-

(1) Mohamed and Anor v Chumbu SCZ Judgment No. 3 of 1993.

On the 6th of April, 1995 we allowed this appeal and sent the case back to the acting registrar for damages to be assessed on the basis of the value of the respondent's vehicle at the time of the relevant accident. The question of costs was reserved.

The facts of this case are that the respondent's vehicle was damaged in an accident, and judgment was signed for such damages to be assessed. At the assessment the respondent gave evidence that he had paid eighteen thousand rands for his vehicle one year previous to the accident. No evidence was called by the respondent as to the value of the vehicle at the time of the accident, but he appeared to accept a statement in a letter of the insurance company to the effect that the value of the vehicle before the accident was more than K650,000.00. In his evidence the respondent said that he claimed the value at the time of the assessment in respect of which no expert witness was called but which the respondent estimated to be four million kwacha.

Evidence was called on behalf of the appellants to the effect that the value of the vehicle before the accident had been assessed by the insurance company assessors as being between four hundred and fifty thousand kwacha and five hundred thousand kwacha, but this evidence was referred to in order to support the unsuccessful argument that it would have been cheaper to repair the vehicle. This argument was dealt with by the learned acting registrar who said that he accepted the expert opinion that it would have been uneconomic to repair the vehicle. There was no appeal against that finding. The appellants' written Heads of argument referred to a claim that the cost of repairs should be considered but this was outside the terms of the Memorandum of Appeal., and, in any event, was not referred to by Mr. Maketo in his argument. In his judgment on assessment the learned acting registrar said:- "The purpose of this replacement is to put the plaintiff in the position he was in before the accident. In this regard, I would like to mention that the value being looked at as the replacement value is what it would cost to buy a vehicle of the type of the plaintiff's motor vehicle in it's condition before the accident in 1991, in other words a one year old vehicle. I must say I had expected to hear from the plaintiff evidence to guide this court as to the current cost of a similar vehicle to-day. Indeed one would have expected opinions from experts in the field of this issue. Sadly for us, all I got was an assertion by the plaintiff to the effect that a similar vehicle would to-day cost four million kwacha ..... Taking the original cost into account the current money value I find and hold that an amount of three million kwacha would be a fair and equitable amount as replacement value of the plaintiff's motor vehicle." The learned acting registrar then awarded three million kwacha from which he deducted the sum of five hundred thousand kwacha, being the amount the respondent received on sale of the wrecked motor vehicle. The appellant appeals against that award.

The first ground of appeal was that the acting registrar had misdirected himself ignoring the documentary evidence produced by the appellant showing the pre-accident market value of the motor vehicle, and the second that the learned acting registrar had, in the absence of expert valuation, no basis for awarding the amount that he awarded.

Mr. Maketo on behalf of the appellant pointed out that, in terms of our judgment in Mohamed and Another v Chumou (1), the value of the vehicle at the time of the accident was the value which should have been awarded. He argued that the only figures available to the court below were those produced by the appellant showing that the assessed value of the vehicle by the insurance company assessors was four hundred and fifty thousand kwacha to five hundred thousand kwacha.

He argued that it was the duty of the respondent to produce acceptable evidence of an alternative valuation if he did not accept such valuation, and that the most that the respondent should have been awarded was the six hundred and fifty thousand kwacha mentioned by the insurance company plus the average rate of bank deposit interest from the date of the accident, the 16th August, 1991, to the date of the assessment, the 14th December, 1993, with interest thereafter at six per cent.

Mr. Kapunga on behalf of the respondent put in heads of arguments in which he argued that the value to be taken for assessment should not be the value at the time of the wrong, as that principle only applies to a seller/buyer relationship. On his attention being drawn to this court's judgment in the Mohamed case Mr. Kapunga did not pursue this line of argument.

On the evidence before the court it is clear that the learned acting registrar had before him only the valuation of the insurance assessors, which would naturally be in favour of the appellant, and, as the learned acting registrar himself observed, the respondent had not put in any independent valuation to assist his case. It is also apparent that the learned acting registrar expected the respondent to produce evidence of the current cost of a similar vehicle, and this would, in view of our finding in the case to which we have referred, have been an incorrect measure of the damages which should have been awarded. It follows therefore that the learned acting registrar, when he arrived at a figure for damages, was considering the value at the date of his assessment.

Apart from the insurance assessors's valuation and the insurance company's opinion there was no evidence to support the respondent's view of what should have been the assessed value at the date of the accident, and, for this reason, this court considered that in the interests of justice the respondent should have the opportunity to argue the case afresh before the registrar, with supporting evidence as to the value of the vehicle at the time of the accident, which he should have produced at the first hearing. The court therefore, ordered that, in default of agreement between the parties, the matter should be sent back for reassessment by the registrar.

On the question of the costs of this appeal Mr. Meketo argued that the whole appeal had been unnecessary and had been caused by the respondent's initial claim for the current value of the vehicle, instead of its value at the time of the accident, and the respondent's failure to produce independent

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evidence of such value at the first hearing which would have enabled the acting registrar to assess the correct value at that hearing. In any event Mr. Maketo argued that he did not concede that a re-assessment should be ordered. He maintained that it was the duty of the respondent to prove his claim by producing proper independent evidence of the correct valuation at the first hearing, and argued that, in default of producing sufficient evidence to support his case in the first instance, the respondent's claim should either have been dismissed, or the figures from the insurance company should have been accepted as the basis for the award.

In the ordinary course of event costs of an appeal follow the event, but in this case we note that in the court below neither party suggested to the learned acting registrar that the proper valuation of the vehicle was its value at the time of the accident. It was not the duty of the appellant to argue the respondent's case for him, however, we note that cross-examination of the respondent was directed solely at his competence as a valuer of vehicles to assess the value at the time of the assessment. It was therefore accepted by counsel for the appellant that this would have been the appropriate time for valuation, in default of his argument that the vehicle ought to have been repaired.

In the circumstances it is obvious that both counsel contributed to the wrong valuation by the learned acting registrar and both were responsible for the necessity for this appeal, which has resulted in this court adjudicating upon the proper time at which valuation should be considered, that is, in this case, the date of the accident.

As neither party should take the whole blame for this unnecessary appeal, we order that each party shall bear its own costs of the appeal.

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J. T. Gardner
SUPREME COURT JUDGE

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E. L. Sikota
SUPREME COURT JUDGE

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M. S. Chaila
SUPREME COURT JUDGE