

Y.B. AND F. TRANSPORT LIMITED AND SUPERSONIC MOTORS LIMITED

SUPREME COURT

NGULUBE, C.J.,

3RD NOVEMBER 1999 AND 9TH FEBRUARY, 2000

(S.C.Z. JUDGMENT NO. 3 OF 2000)

APPEAL NO. 106 OF 1999

Flynote

Commercial Law - lien - factors to be considered - breach of agreement - remedy - Sale of Goods Act.

Headnote

The appellants bought two minibuses at the price of K25.5 million each from the respondents. The appellants paid K25.5 million for one bus but were unable to pay the rest due to the closure of Commerce Bank. The respondents repossessed the second minibus and resold it for K20 million incurring a loss of K5.5 million. The appellants later took the remaining minibus to the respondents garage for repairs. The respondents impounded this minibus as security for payment of interest on the first minibus. The appellants sued the respondents claiming the return of the impounded minibus or its value, together with damages for loss of its use. They succeeded on the basic claim but were condemned in costs, one of the matters appealed against. On appeal it was argued that the seizure of the second minibus was wrongful since there were two separate transactions. **10** **15**

Held:

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- (1) The second minibus was not the subject of any unpaid price and the respondents could not conceivably have gone on to exercise a right of resale since they had none over this second minibus. There was no legitimate basis for the seizure and impounding of the second minibus in some kind of self help remedy. **25**
- (2) The appellants are to be paid the value of the minibus AAN 6996 which as at April 1996 was K25.5 million plus interest thereon from the date of seizure of the minibus until the date of the judgment in the court below.
- (3) Each party is to pay their own costs for the action in the court below. **30**

Appeal allowed.

Statutes referred to:-

- (1) Sale of Goods Act 1893.

For the Appellant Mundia F. Sikatana, Veritas Chambers
For the Respondent No appearance

Judgment