



IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY
CIVIL CAUSE NO.72 OF 1986

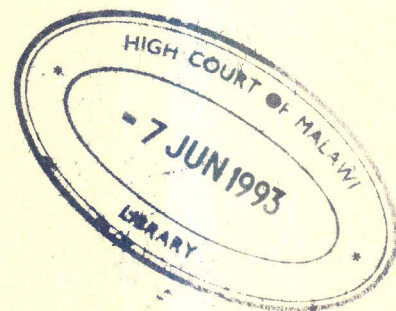
BETWEEN:

LYTON BANDA PLAINTIFF

AND

SHABANI KOKO DEFENDANT

CORAM: TAMBALA, J.
Maluza, Counsel for the Plaintiff
Zulu, Counsel for the Defendant
Manda, Court Reporter
Chilongo/Tembo, Official Interpreter



JUDGMENT

This is the plaintiff's action for damages in respect of value of his motor vehicle, a Ford Cortina pick-up registration No. CA 3409. He also claims for the return of a windscreen or its value. He finally seeks costs of the action.

The plaintiff's evidence was that in 1980 he owned a motor vehicle a Ford Cortina pick-up. In October 1980 it was involved in an accident. It overturned while it was being driven by a son of the plaintiff. It would seem that it hit a road bank and overturned. According to the plaintiff's evidence and that of his son, PW2, the damages which it sustained were a shattered front windscreen, a dent on the left front door and some damage to the rear right brakes. It was driven from the scene of the accident on the day of accident to the plaintiff's house. After resting at the plaintiff's house for one month it was taken to the house of the defendant in Chilinde II where the defendant was operating a garage.

The evidence for the plaintiff was that it was agreed between the plaintiff and the defendant that the latter would effect repairs on the vehicle. It was agreed between the parties that the plaintiff would at a later date bring a windscreen which the defendant would fit on the vehicle. The plaintiff raised money by buying firewood from Dzalanyama range and selling it in the City of Lilongwe. He raised K350.00 with which he bought a windscreen. He brought it to the defendant's garage where he promised to fit it on the vehicle.

The plaintiff, in 1981, left Lilongwe and went to Nkhota-Kota where he was engaged in buying and selling fish. Meanwhile the plaintiff's son, PW2, used to go to the defendant's garage to check on the progress of the work of repairing the vehicle. During one occasion he went to the defendant's garage and he

found that all the four wheels, windscreen, engine and gearbox were removed from the plaintiff's vehicle. The witness asked the defendant about the missing parts. He replied that he had removed them and kept them in his house. He asked him when he would repair the vehicle. He replied that he would repair it at any time. He later went to the defendant and he was amazed to find that even the hood was missing.

In 1983 the plaintiff returned from Nkhota-Kota. His son told him about what happened to the vehicle. He went to meet the defendant at the garage. He asked him what happened to the vehicle. The defendant could not give a satisfactory answer. He eventually promised to give the plaintiff a smaller vehicle in place of the Ford Cortina pick-up. He has up to now failed to repair or return the Ford Cortina pick-up. He has not returned to the plaintiff the windscreen. He has not given the plaintiff the smaller vehicle.

The defendant admits that the plaintiff brought his pick-up to his garage for repairs. He said that the damages which the vehicle sustained were a shattered windscreen, all glasses broken, damaged left mudguard, depressed cab. The engine was also spilling oil. He said that the vehicle was actually towed to his garage. He said that the plaintiff promised to purchase and bring the spare parts. He eventually brought only one windscreen. The plaintiff then left for Nkhota-Kota to do some fish business to raise money to purchase the rest of the spare parts. He said that the plaintiff stayed in Nkhota-Kota for about three years. Meanwhile the plaintiff's wife came to the defendant and complained that she had no money. She demanded the windscreen and said that she wanted to sell it. He assisted her in finding a purchaser who bought it in the presence of her uncle. He said that upon the plaintiff's return from Nkhota-Kota he promised to give him a smaller vehicle in place of the pick-up because of the complaints the plaintiff was making.

This is a civil matter. I bear in mind that the duty of the plaintiff is to prove his claim on a balance of probabilities.

I observe that the plaintiff contradicted himself. He said that the defendant drove the vehicle to his garage. He later said that it was his son who drove it to the defendant's garage. At first he said that only the windscreen was damaged. When he was cross-examined he said the left front door was also damaged. The plaintiff and his son also contradicted each other. The plaintiff said that it was the son who was driving the vehicle when it was involved in the accident. The son said that it was a driver who was driving it during the time of the accident. The plaintiff is a fairly old man. The accident occurred in 1980. He was giving evidence about ten years later. I was satisfied that some of the contradictions were the result of difficulty in recalling events which occurred many years ago. He otherwise struck me as an honest and truthful gentleman.

HIGH COURT
LIBRARY

Regarding the person who was driving the vehicle during the time of the accident I had the distinct impression that it was the plaintiff's son who was driving it at the time that it met the accident. I think that this witness lied when he said that a driver was driving it because he himself had no driving licence at the material time.

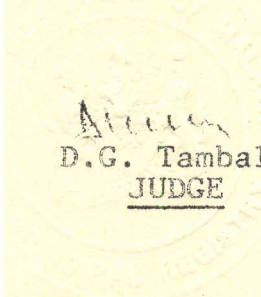
After carefully considering the total evidence before me I am satisfied that in October 1980 the plaintiff's pick-up registration No. CA 3409 was involved in an accident. I find that during the accident its windscreen was shattered, the left front door was damaged and the right rear brakes were also damaged. I am satisfied that these were the only damages which the vehicle sustained. I find that the pick-up was brought to the defendant's garage and the defendant agreed to repair it. I find that the plaintiff bought a windscreen and brought it to the defendant so that it could be fitted on the pick-up. From the evidence of the plaintiff's son I find that when this witness later visited the defendant's garage he found that all the wheels, windscreen, gear box and engine were removed from the vehicle. He later found that even the hood was removed. I am satisfied that it was the defendant who removed these things. I find that the defendant is unable to repair the vehicle or to return it to the plaintiff in the same condition as it was brought to the garage.

The defendant claims that the windscreen was sold by the wife of the plaintiff when in the absence of her husband, she ran short of money. Many vital parts of the vehicle seem to be missing, but the defendant has only singled out the windscreen as an item which was sold by the plaintiff's wife. The plaintiff did not call the wife to refute the story. It is probable that the defendant is telling the truth here.

The pick-up was taken to the defendant's garage in October, 1980. The writ was issued in August 1986. It would also seem to me that the cause of action in the matter arose at a date later than October, 1980. It probably arose in 1983 upon the plaintiff's return from Nkhota-Kota. This action is not, therefore, statute barred.

In the event I enter judgment in favour of the plaintiff in the sum of K3,578.00 being the value of his Cortina pick-up. He shall also get the costs of this action.

PRONOUNCED in open Court this 8th day of December, 1992 at Blantyre.


D.G. Tambala
JUDGE

