

## **GIRAFFE BUS SERVICES LIMITED AND ABEL LWITIKIKO MWANDEMWA**

THE SUPREME COURT  
NGULUBE C.J., CHIRWA AND LATE MUZYAMBA JJS  
9<sup>TH</sup> NOVEMBER, 2000 AND 13<sup>TH</sup> FEBRUARY, 2001  
(SCZ Judgment No. 4/2001)

### **Flynote:**

Tenancy - Forgery - Evidence

### **Headnote:**

The Respondent a former employee of the appellant had subsequently been allowed by the appellant to obtain a direct tenancy of the house he lived in from the Lusaka City Council. There was no dispute that at first the respondent occupied the house as an incidence of his employment, the employer being then the direct tenant of the house leased from the Council. The respondent continued to occupy the house and to pay the rent long after he had stopped working for the appellant. At some stage, the council changed the records so that the respondent became the direct tenant. In this regard, there was a letter allegedly written by the appellant's managing director, Mr. P. Fuma authorising the council to make those changes which the respondent said he had been given by the author. The appellants position was that this was a forgery; that the signature purporting to be that of Mr P. Fuma was forged. Mr P. Fuma said so in his evidence and was supported by a hand writing expert from the police service who also gave evidence for the appellant. The trial judge considered viva voce evidence and documents. He rejected forgery claim and entered judgment for respondent hence the appeal.

### **Held:**

(i) The court is not required to blindly accept what the handwriting expert has said.

Appeal dismissed.

For the Appellant: Dr. J.M. Mulwila, of Messers Ituna Partners

For the Respondent: No appearance.

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### **Judgment**

Following upon the untimely death of the late Mr. Justice Muzyamba who had sat with us and was to have written the judgment of the court in this case, the Judgment may now be treated as a judgment by the majority. This was an appeal from the decision of the High Court on retrial of the action as directed by this court in a previous appeal.

The issue before the trial court was whether the respondent, a former employee of the appellant, had subsequently been allowed by the appellant to obtain a direct tenancy of the house he lived in from the Lusaka City Council. There was no dispute that at first the respondent occupied the house as an incidence of his employment, the employer being then the direct tenant of the house leased from the Council. The respondent continued to occupy the house and to pay the rent long after he had stopped working for the appellant. At some stage, the Council changed the records so that the respondent became the direct tenant. In this regard there was a letter allegedly written by the appellant's Managing Director Mr. Pfuma

authorizing the Council to make those changes which the respondent said he had been given by the author. The appellant's position was that this was a forgery; that the signature purporting to be that of Mr. Pfuma said so in his evidence and he was supported by a handwriting expert from the police service who also gave evidence for the appellant.

The learned trial judge considered the viva voce evidence and the documents. He rejected the claim that the signature on the letter was a forgery and entered judgment for the respondent.

Dr. Mulwila complained that the learned trial Judge should not have rejected the evidence of the handwriting expert. He should have accepted it and found that there was a forgery. He argued that it was wrong for the judge, having examined the various signatures and the expert's report, to conclude that Mr. Pfuma had signed on the disputed letter. In particular, it was wrong to say that because he had two signatures, he might as well have three. It was submitted that the Judge should have looked at the characteristics and considered whether the signature did not have characteristics resembling the handwriting of the respondent. It was argued that the learned trial Judge had no basis for departing from the opinion of the expert. We were invited to examine the signatures and to draw the conclusion advocated by the expert.

When the learned trial Judge set out to examine the handwriting charts and to draw his own conclusion contrary to that of the expert, he had adopted a correct approach. The question of the correct approach by a Court was discussed by this court in **SITHOLE - v- STATE LOTTERIES BOARD** (1975) ZR 106. The court is not required to blindly accept what the handwriting expert has said. As we said in that case - quoting from the head note - the function of a handwriting expert is to point out similarities or differences in two or more specimens of handwriting and the Court is not entitled to accept his opinion that these similarities or differences exist but once it has seen for itself the factors to which the expert draws attention, it may accept his opinion in regard to the significance of these factors. It is for the court to decide after seeing the points highlighted by the expert whether to accept his opinion or not. Even our own looking for ourselves and making up our own minds is a proper course to adopt and this is precisely what we did in **NWUME -v- THE PEOPLE** (1980) ZR 189. The learned trial Judge was in this case on very firm ground and the grounds of complaint based on the signature on the letter cannot be entertained.

The other major ground argued related to the evaluation of the relative credibility of the witnesses on either side. This is a task for which the trial court is more eminently qualified than an appellant court which does not enjoy the benefit of seeing and hearing the witnesses live at first hand. Dr. Mulwila sought to point out some inconsistencies in the respondent's case and to submit that there was no balanced evaluation of the two sides' cases, contrary to our injunction to this effect in **ATTORNEY-GENERAL -v- ACHIUME** (1983) ZR 1. Once the argument based on forgery had failed, it was natural for the trial court to believe the respondent's side of the story. Indeed, here was a man who was paying his own rent and living in this house for years after he had left employment and before any attempt was made by the appellant to reclaim the house. These factors were more consistent with his story than that of the appellant.

In truth, the learned trial Judge cannot be faulted. We affirm him and reject this appeal. However, since we were informed that Counsel for the respondent chose to absent himself in preference for appearing before a junior court, there will be no order for costs; each side will bear its own.

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