IN THE SUPREME COURT FOR ZAMBIA **Appeal No. 124/2001**

HOLDEN AT LUSAKA

(Civil Jurisdiction)

B E T W E E N:

GLOBAL TRAVEL AND TOURS LIMITED	**1st Appellant**
JIM GONDWE	**2nd Appellant**
and	
VICTOR ZIMANA	**Respondent**

CORAM: Lewanika DCJ, Mambilima and Chitengi, JJS
On 6th August, 2002 and 31st October, 2003

For the Appellants : Mr. M.N. Ndhlovu of
Messrs Chifumu Banda & Associates

For the Respondent : Mr C. Hakasenke of
Hakasenke & Company

JUDGMENT

Chitengi, JS delivered the Judgment of the Court.

Authority referred to: -

1. Marcus Kampamba Achiume 1983 ZR1

In this appeal we shall refer to the Respondent as the Plaintiff and the Appellants as the Defendants, the designations they had in the Court below.

The facts of this case can be briefly stated. The two Appellants were at the material time agents of a Japanese company dealing in export of motor vehicles to Africa called Japan Africa Marketing Company Limited which was the first Defendant in the action in the court below but not

party to this appeal and which hereinafter we shall refer to as the Company. On 3rd May, 1996 the Plaintiff ordered from the company a Mitsubishi Rosa minibus at the cost of **US$14,000**. The Company actually shipped the minibus to Zambia via Durban South Africa. The company through the second Defendant informed the Plaintiff of the minibus' chassis number as BE434F-01242. Later the third Defendant informed the Plaintiff that the minibus had been involved in an accident. But later, the Plaintiff discovered that the second and third Defendants had in fact painted the mini bus in their colours, written their names on it, registered it in their names and converted it to their own use as a passenger minibus on the Lusaka – Johannesburg routes. However, the minibus still bears the same chassis number **BE 434F-01242**.

The Plaintiff commenced an action in the High Court claiming:

(1) Refund of the US$14,000 which he paid to the company for the purchase of the minibus,

(2) K378,535,226.00 damages for loss of business,

(3) Damages for loss of use.

The second and third Defendants denied liability saying the motor vehicle was theirs and that they bought it.

On these facts the learned trial Judge found that the Plaintiff paid the company US$14,000 for the minibus; that the company dispatched the minibus to the Plaintiff through its agents, the second and third Defendants; that the Plaintiff did not receive the minibus because the second and third Defendants converted the minibus to their own use.

After making these findings of fact the learned trial Judge found the company, the second and third Defendants individually and severally liable to the Plaintiff and ordered them to refund to the Plaintiff the

US$14,000 he paid for the minibus. In addition the learned trial Judge awarded the Plaintiff K250,000,000.00 for loss of business. However, learned trial Judge dismissed the Plaintiff's claim for loss of use.

The second and third Defendants now appeal to this court against the judgment of the learned trial Judge.

Mr. Ndhlovu for the Defendants filed heads of argument with three grounds of appeal and informed us that he would only rely on the heads of argument and would say no more.

In the view we take of this appeal we shall only deal with grounds one and two. These two grounds can conveniently be dealt with together. The import of these two grounds of appeal is that the learned trial Judge erred when she found that the company sent the minibus to the Plaintiff. Mr. Ndhlovu submitted that the learned trial Judge failed to consider the evidence of the second Defendant that the minibus was sent to the second Defendant as a replacement for an earlier minibus the second Defendant had ordered but had no seats.

Mr. Hakasenke for the Appellant filed heads of argument and also did not address us. He informed us that he would rely on the heads of argument.

In his written submissions and arguments Mr. Hakasenke submitted that both grounds one(1) and two(2) attack findings of fact. This court cannot reverse a trial court's findings of fact unless it is satisfied that the findings in question were either perverse or made in the absence of any relevant evidence or upon a misapprehension of the facts or that they were findings which on a proper view of the evidence, no trial court acting correctly can reasonably make. As authority for these

propositions, Mr. Hakasenke cited the case of ***Attorney General Vs Marcus Kampamba Chiume***[1].

It was Mr. Hakasenke's submission that the evidence on record is clear. The evidence shows that the Plaintiff paid for the minibus and that it was dispatched to him. The chassis and engine number were given. The Appellants could not have bought the minibus with the same chassis and engine numbers as the one which the evidence shows was paid for by the Plaintiff and dispatched to him. There is no evidence to support the second Defendant's allegation in his Affidavit that the minibus was a replacement sent for the Appellants. Finally Mr. Hakasenke argued that there was no basis for interfering with the findings of fact.

For reasons we shall give later we shall not deal with ground three.

We have considered the evidence that was before the learned trial Judge, the submissions of counsel and we have looked at the Judgment of the learned trial Judge.

We agree with Mr. Hakasenke that in this case, in line with the principle we made in ***Achiume*** and other cases, we cannot interfere with the learned trial Judge's findings of fact. All the findings of fact the learned trial Judge made are well supported by the evidence and we can say no more.

On the evidence it is clear to us that the second and third Defendants converted the Plaintiff's minibus to their own use. The second and third Defendants would not have bought the motor vehicle from the company when the evidence is clear that the company received

US$14,000 from the Plaintiff and dispatching the minibus to the Plaintiff through the second and third Defendants.

The submissions by Mr. Ndhlovu that the Defendants bought the minibus and that the minibus was a replacement are not supported by any evidence.

For the reasons we have given we cannot fault the learned trial Judge when she found that the Defendants were individually and severally liable to the Plaintiff and ordered the Defendants to refund the US$14,000 to the Plaintiff and to pay damages for loss of business.

As regards the claim for US$14,000, we note that the learned trial Judge ordered interest to run from 1st April, 1997, presumably the date the Plaintiff paid the money. We have repeatedly said that the interest should start running from the date of the Writ. In this case the Writ was filed on 9th July, 1999. Interest will, therefore, start running from 9th July, 1999.

We now deal with the damages for loss of business. On the evidence on file we find no basis upon which the learned trial Judge arrived at the sum of K250,000,000. In the result, we order that damages for loss of business be assessed by the Deputy Registrar.

The result of our Judgment is that this appeal is dismissed. The Plaintiff will have his costs in this court and the court below to be taxed in default of agreement.

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D.M. LEWANIKA
DEPUTY CHIEF JUSTICE

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I.C. MAMBILIMA
SUPREME COURT JUDGE

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PETER CHITENGI
SUPREME COURT JUDGE