

IN THE HIGH COURT FOR ZAMBIA
AT THE PRINCIPAL REGISTRY
HOLDEN AT LUSAKA
(Civil Jurisdiction)

2016/HP/0701

BETWEEN:

MARIA ROZALIA OGONOWSKA WISNIEWSKA PLAINTIFF
AND

PACIFIC PARTS ZAMBIA LIMITED DEFENDANT



**BEFORE THE HONOURABLE LADY JUSTICE M. CHANDA THIS 23RD
DAY OF AUGUST, 2018**

APPEARANCES:

For the Plaintiff : Mr K Kaunda appearing with Mr Bwalya of Ellis
and Company

For the Defendant : Mr W. Mwenya of Lukona Chambers

JUDGMENT

LEGISLATION REFERRED TO:

SECTION 154 (1) OF ROAD TRAFFIC ACT NO.11 OF 2002

AUTHORITIES REFERRED TO:

1. THE BLACK'S LAW DICTIONARY (2004) 8TH EDITION USA: THOMSON WEST
2. W. E PEEL & J. GOUDKAMP, WINFIELD & JOLOWICZ ON TORT, 19TH EDITION, SWEET & MAXWELL, (2014), UK
3. BLYTH V BIRMINGHAM WATERWORKS CO 156 E.R. 1047
4. DONAL NOLAN, THE CAMBRIDGE LAW JOURNAL ISSN: 0008-1973 EISSN, VOLUME 72, ISSUE 3 (2013) 651
5. NEIL LEWIS V ASTLEY BAKER (2014) JMISC CIV1
6. ARCHBOLD CRIMINAL PLEADING, EVIDENCE & PRACTICE, (2010)

7. KEMP & KEMP, THE QUANTUM OF DAMAGES VOLUME 1, SWEET AND MAXWELL, (1997), LONDON
8. BELL V MIDLAND RY (1861) 10 C.B (N.S) 287 308
9. SIMON KAPWEPWE V ZAMBIA PUBLISHING COMPANY LIMITED (1978) ZR 15 (S.C)

On 11th April, 2016, the plaintiff **Maria Rozalia Ogonowska Wisniewska** issued a writ of summons against **Pacific Parts Zambia Limited**, the defendant herein. The plaintiff alleged that on 1st June, 2015 she was driving a Toyota Fortuner Registration Number 58 AT 101 along Kafue road when she was involved in a road accident caused by Geoffrey Kangwa Mwenya, the defendant's employee. The plaintiff's writ of summons was endorsed with a claim for the following:

1. Damages for personal injuries the plaintiff sustained on or about 1st June, 2015 on Kafue Road when the defendant's Komatsu Forklift which was negligently driven or operated by its employee or agent hit into the plaintiff's Toyota Fortuner. The particulars of damage/personal injury were:
 - (i) Cut on the hand;
 - (ii) Left knee injury;
 - (iii) Bruises on the hand and nose; and
 - (iv) Permanent facial damage
2. The sum of US\$50,212.50 being the estimated value of the Toyota Fortuner which was damaged when the Komatsu fork lift hit into it.
3. Special damages of US\$15,000 being the cost of air tickets and other travelling expenses to London and Poland for medical examination, treatment and surgery.

4. Loss of business for the plaintiff's medical practice.
5. Damages for permanent facial damage, mental shock, pain and suffering.
6. Punitive and exemplary damages.
7. Interest on the said sums and damages at the current commercial bank lending rate.
8. Costs.

The defendant filed its defence on 27th April, 2016 wherein it contended that the plaintiff was not entitled to the reliefs sought because the said accident was not caused by its employee as alleged.

When the matter came up for hearing on 11th July, 2017, both parties were before court and they each called two witnesses.

The plaintiff gave evidence on her own behalf as the first witness (**PW1**). She narrated that on 1st June, 2015 she was driving in the inner lane of Kafue road when her vehicle suddenly jumped and swerved to the right. PW1 explained that in trying to avoid hitting the nearby pedestrians, she steered her vehicle to the left and hit into a stationary canter. The plaintiff further testified that she was in shock and bled profusely from the impact. She recalled that PW2 informed her that the forklift had punctured her front and back wheels and caused the accident. PW1 said her vehicle was towed to the police station and she later gave the police her statement on what had transpired. She further testified that the driver of the fork lift admitted to having been at fault and paid an admission of guilt fee.

The plaintiff went on to state that an x-ray was conducted at the Italian orthopedic hospital which revealed that some pieces of glass were imbedded in her face. It was the plaintiff's evidence that as a result of the accident, she underwent medical treatment for her facial injuries in London and was treated for insomnia at a neurology in Poland. PW1 added that she was still undergoing physiotherapy. The witness asserted that she had incurred about US\$15,000 for each trip she had undertaken for treatment and that she had made a total of six trips at the time of trial.

With regards to her vehicle, the plaintiff told the court that according to the assessment conducted by Southern Cross Motors, the vehicle was damaged beyond repair and that its estimated value was US\$50,212.50. She prayed for the court to award her the value of the Fortuner and the medical bills she incurred during her treatment.

In cross-examination the plaintiff confirmed that she did not see who caused the accident because she was in shock. She affirmed that it was PW2 who gave her the information of what had transpired. She told the court that the blue paint on her vehicle could have been from the bus she almost hit into.

The plaintiff's second witness (**PW2**) was **Harrison Banda**, an eye-witness to the accident. His account of what transpired was that on 1st June, 2015 as he crossed Kafue road and stood on the island in

the middle of the road, he saw a forklift and a blue Toyota hiace bus coming from the side lane on the right of Kafue road. PW2 said the driver of the forklift was checking for oncoming traffic as he slowly joined the road. The witness explained that when the forklift passed the filter lane, its forks were protruding into Kafue main road. He recalled that the Fortuner was being driven in the lane for vehicles from town and its front and rear tyres hit into the forks. He also recalled that the Fortuner jolted and almost hit into the blue bus next to the forklift. PW2 testified that as a result of the impact, the plaintiff's vehicle ended up hitting into a light truck which was on the side road from makeni. He went on to narrate that the Fortuner hit the truck at an angle because it tilted a bit when it was lifted by the forklift. He informed the court that the accident was caused by the driver of the forklift when the forks protruded into the road as he was checking for oncoming vehicles. He stated that the forks were lowered to a point where they could not be seen by an oncoming vehicle. He said had the forks been raised, they could have been clearly seen by the oncoming traffic. It was PW2's evidence that the blue paint on the Fortuner was as a result of the vehicle making contact with the blue bus which it almost hit into.

PW2 informed the court that there were three men on the forklift; the driver and two passengers. He said that the passengers disembarked immediately the accident occurred and joined the crowd that was rushing to the accident scene. PW2 also said that the forklift crossed the road and when the driver was queried on

why he was driving away from the accident scene, his response was that he wanted to park the forklift on the other side.

It was PW2's testimony that DW2 joined the filter road heading to Jan Japan. PW2 recollected that some taxi drivers and other concerned members of the public chased after DW2 and thereupon, he abandoned the forklift and fled into Misisi Compound.

He said at that point, the driver of the bus was standing on the pavement. He informed the court that there were no passengers on the bus.

PW2 stated that he knocked on the window of the Fortuner and when the plaintiff opened the door, he noticed that her face and mouth were bleeding. According to the witness, the plaintiff asked him what had transpired and he explained that she had been involved in an accident. He told the Court that the plaintiff was still in a state of confusion when the police arrived and took her to the hospital. PW2 said he remained at the scene to ensure that nobody tampered with the plaintiff's vehicle.

He said later two more police officers arrived at the scene and the plaintiff's vehicle was towed to Embassy Police Post. He also said that he accompanied the police officers to the police post where he was interviewed and asked to leave his contact details. He said around 16:00hours to 17:00hours, he received a phone call from the plaintiff who requested to meet him. PW2 went on to say that he

later met with her and they proceeded to the police post together. The witness recollected that the police recorded a statement from him two days later.

In cross-examination, the witness said that he was about 3 to 4 meters from where the accident occurred. He stated that he saw the Toyota Fortuner for the first time when it hit into the forklift. PW2 also said the Fortuner hit into the forks which had been lowered to about 30cm above the ground and were protruding into the road. When asked how high or low the forks should have been at the time, his response was that he was unable to determine this.

In re-examination, the witness said he could not tell whether the tyre on page 3 of the plaintiff's bundle of documents was a front or rear tyre. He reiterated that the forks were in the road. He said the Fortuner did not hit into the bus and the blue paint was as a result of it scratching the bus.

The defendant's first witness (**DW1**) was its operations manager, **Fred Wamala**. DW1 said on the date in question, he was two vehicles behind DW2 as he was trying to join Kafue road. It was DW1's testimony that when the forklift went to the island, the blue Hiace bus also joined it there. He said the Fortuner which was heading towards Kafue hit into a light truck that was waiting to join Kafue road. The witness told the Court that the people at the accident scene were saying it was the forklift that caused the accident. He said he informed the police officers that the forklift

belonged to him and that it had proceeded to Jan Japan. He narrated that the police later retrieved the forklift from Jan Japan and took it to the police station.

DW1 stated that he informed the police that the Fortuner had collided with a bus which then sped off. DW1 told the Court that at the time of the accident the forks were about 1.5 metres from the ground and at that height, they could have only damaged the Fortuner's fender and doorway. He refuted that the fortuner hit into the forks because if it had, the forks would have come off the slippers.

With regards to his refusal to sign the insurance documents, the witness explained that he did not sign them because the forklift did not cause the accident. He emphasised that the Fortuner hit into the blue bus and then hit into the light truck. He said the front tyre had blue paint as shown on page 3 of the defendant's bundle of documents and there was no sign of scraping from the forklift which was yellow in colour.

In cross-examination, DW1 clarified that he was unable to see the forks because he was behind the forklift. He said he saw the Fortuner first hit into the bus and then into the light truck but there was no impact with the forklift. He also said the forks were not on the road. DW1 further said that after causing the accident, the bus driver ran away and no one had a record of the bus. He stated that he went with the driver of the forklift (DW2) to the police

post. He was disputing the police report and refuted paying the admission of guilty. He stated that the tyre in the photo on page 3 of the defendant's bundle of documents was a front tyre because of the mud flap and the mud guard. He confirmed that the forks were not yellow in colour.

In re-examination, the witness clarified that he was able to observe what transpired because he was paying attention to see whether the forklift had crossed the road so that he could also drive onto the island.

The defendant's second witness (**DW2**) was the driver of the forklift, **Godfrey Mwenya Kangwa**. DW2's version of events was that on 1st June, 2015 on his way to Jan Japan, he joined Kafue road at Jack Kawinga and stopped at the island. He recalled that a blue bus joined him on the left side and slowly moved in front of the forklift. He stated that he then heard a bang on the left and right side and later saw the Fortuner hit into another vehicle. He said the Fortuner did not hit into the forks.

DW2 said that he proceeded to cross Kafue road and joined the side road leading to Jan Japan. He went on to say that when he reached Jan Japan he parked the forklift and went inside to check on his assignment. PW2 narrated that when he went back to where he had parked the forklift, he found some people who alleged that he had caused an accident. He said he discovered that the forklift had

already been taken to embassy police post and he returned to the workshop.

It was DW2's evidence that two days later he was called to the police station to give a statement and the forklift was released. He said the police did not charge him with any offence and he did not pay an admission of guilt fee.

In cross-examination, the witness said the Fortuner passed in front of the forklift but it did not make contact with the forks. The witness told the Court that at the time the accident occurred he merely heard the noise but was not aware of what had caused it.

He affirmed that the forklift was a high and open vehicle therefore he was able to clearly see the oncoming vehicles. He stated that despite the advantageous height of the forklift, he did not see where the Fortuner hit. The witness said that after he was informed that he had caused an accident, he returned to the workshop to report on what had transpired. In further cross examination, the witness denied running away from the accident scene. PW2 confirmed that a statement was later recorded from him at the police station and thereafter the police handed over the forklift keys. He said he was not aware of any payment of an admission of guilt fee.

There was nothing of significance in re-examination.

After the close of the case, counsel for both parties filed written submissions for which I am greatly indebted.

Having considered the evidence in this matter, I have found as common ground that the accident in which the plaintiff was involved occurred along Kafue road on 1st June, 2015. It is common cause that just before the accident, the defendant's Komatsu Forklift operated by its employee was at the intersection of the two main lanes of Lusaka Kafue roads trying to join the filter lane to Jan Japan. It is also common cause that when the accident occurred, the plaintiff's vehicle proceeded to hit into a truck on the opposite side of the road. I find that the plaintiff thereafter sustained injuries and received medical treatment at various medical institutions. I find also that at the time of the accident, PW2 was at the scene. It is my further finding that as a result of the accident, the tyres of the Fortuner were pierced and that the vehicle was damaged beyond repair.

I have carefully analysed the evidence on record and the submissions by counsel and the issue to be resolved in this matter is whether or not the accident that occurred on 1st June, 2015 in which the plaintiff sustained injury and loss was caused by the negligence of the defendant's employee. Before I make any determination in this matter, it is convenient to first make general observations about the law relating to negligence and the elements that constitute it. **Black's Law Dictionary**¹ defines negligence as follows:

“The failure to exercise the standard of care that a reasonably prudent person would have exercised in a similar situation; any conduct that falls below the legal standard established to protect others against unreasonable risk of harm, except for conduct that is intentionally, wantonly or wilfully disregarding of others rights. The term denotes culpable carelessness.”

The learned authors of **Winfield and Jolowicz on Tort**² at page 51 aptly state that negligence refers to a failure to take as much care as a hypothetical reasonable person in the defendant's position would have taken in the circumstances. It is in other words, a falling short of the standard of care set by the reasonable person.

Furthermore, in **Blyth v Birmingham Waterworks Co**³, Alderson B succinctly stated that:-

“Negligence is the omission to do something which a reasonable man, guided upon those considerations which ordinarily regulate conduct of human affairs, would do, or doing something which a prudent and reasonable man would not do.”

Put differently, a defendant will be in breach of his duty of care if he takes less care than the reasonable person would have taken. For the purposes of determining whether the defendant is guilty of negligence, it is irrelevant whether the defendant fell well below the standard of the reasonable person or just short of it. (**See Nolan**

(2013) 72 C.L J 651 at 672-687)⁴. It must be pointed out that the gravity of the defendant's negligence can be relevant in various other ways. For example, it can have a bearing on whether exemplary damages should be ordered, and their quantum.

Anderson. K, J in the case of **Neil Lewis v Astley Baker**⁵ correctly put it that:

"It should be carefully noted, that where the defendant's negligence has created a dilemma for the claimant, the defendant cannot escape full liability if the claimant in the agony of the moment tries to save himself by choosing a course of conduct which proves to be the wrong one, provided the plaintiff acted in a reasonable apprehension of danger and the method by which he tried to avoid it, was a reasonable one."

The **Road Traffic Act No.11 of 2002** makes it an offence for a motorist to drive without due care. *Section 154 (1)* provides that:

"If any person drives a motor vehicle on a road without due care and attention or without reasonable consideration for other persons using the road, that person commits an offence and shall be liable upon conviction, in the case of a first offender, to a fine not exceeding seven hundred and fifty penalty units and in the case of a second or subsequent offence, to a fine not exceeding one thousand five hundred penalty units".

To find an action on negligence, three elements require to be established as follows:-

1. That the defendant owed a duty of care to the plaintiff
2. That the duty was breached
3. That the said breach has led to damage.

Having outlined the elements of the tort of negligence, the critical issue to be resolved at this stage is who caused the accident in the present case.

The plaintiff contends that the accident that occurred on 1st June, 2015 along Kafue road was caused by the careless and negligent driving of the defendant's employee. It has been submitted on behalf of the plaintiff that the fact that the accident was caused by the defendant's employee has been supported by the Police Report produced at pages 1 and 2 of the plaintiff's bundle of documents.

The defendant, on the other hand, has vehemently refused having caused the accident. The defendant had further asserted that the road traffic accident was caused as a result of the plaintiff's Toyota Fortuner colliding with a blue minibus. Counsel for the defendant submitted that the pictures exhibited on pages 1 to 3 of the defendant's bundle of documents showed that the blue paint seen on the body of the plaintiff's vehicle confirmed that the collision was between the Toyota Fortuner and the blue minibus. Counsel for the defendant has further urged this Court to consider PW2 as a witness with a possible interest to serve in favour of the plaintiff.

It is apparent from the testimonies adduced on record that almost all the evidence of the plaintiff's witnesses is in conflict with that of

the defendant's witnesses, as such, the issue of credibility is crucial to the decision of this matter. The question of credibility of a witness must be approached in light of whether there appears to be a reason why a witness could not have been telling the truth.

The learned authors of **Archbold Criminal Pleading, Evidence and Practice**⁶, state in **paragraph 8-137** at page **1359** that:

"The credibility of a witness depends upon: (a) his knowledge of the facts to which he testifies; (b) his disinterestedness; (c) his integrity; (d) his veracity; and his being bound to speak the truth by such an oath as deems obligatory, or by such affirmation or declaration as may by law be substituted for an oath. The degree of credit his testimony deserves will be in proportion to the jury's assessment of these qualities."

I will now, therefore, set out my views on the credibility of the witnesses. It is my immediate observation that the most important witness for the plaintiff with regard to the cause of the accident was PW2 who was at the scene when the mishap occurred. I took the greatest care to observe his demeanor while giving evidence and formed a definite opinion that PW2 was a composed and reliable witness.

PW2's testimony pertaining to his reconstruction of the accident in question was unambiguous and remained unshaken under cross examination. His testimony was given in a straight forward manner with no inconsistencies. It is also apparent to me that Mr Banda (PW2) did not know the plaintiff prior to the accident and

that he only discussed the incident with the plaintiff after he had already been interviewed by the police. I must mention here that apart from asserting that PW2 was a witness with a possible interest to serve, the defendant has not adduced any cogent evidence which would justify me in coming to the conclusion that PW2 had been compromised by the plaintiff. In view of the foregoing, I have no hesitation in accepting PW2 as a substantial witness of truth.

The evidence of DW1 is of little or no probative value. I say so because in his testimony DW1 confirmed that his vehicle was way behind the forklift, waiting to join the island when the accident happened. Given his evidence, I am convinced that there is no possibility that he perceived what had happened at the front of the forklift.

DW1 forcefully insists that the blue paint seen on the plaintiff's vehicle serves as evidence that it collided with the blue minibus and not the forklift. I find that this argument cannot stand on account that the testimony of PW2 categorically states that the accident occurred when the tyres of the plaintiff's vehicle were pierced by the forks of the defendant's forklift which were not yellow in colour as shown on page 1 of the defendant's bundle of documents.

Further, I am satisfied that there was no sign of yellow scuffing from the body of the forklift seen on the Toyota Fortuner because

the point of first contact was between the forks and the tyres of the plaintiff's vehicle.

I also take cognizance of the fact that DW1 being the owner of the forklift may be a witness with an interest to serve. Generally it is my considered opinion that DW1's narration of what transpired required independent evidence in order to exclude the dangers of his testimony being fashioned in a way that exculpates his forklift's role in the accident.

The evidence of DW2 the driver of the forklift is unreliable in my view because it was deliberately given in an ambiguous or unclear manner in order to mislead or withhold information from the Court. The conduct of DW2 immediately after the occurrence of the accident equally attests to the fact that he was not a witness of truth. Contrary to his assertion that he proceeded to Jan Japan just after the accident, it is clear to me as per the evidence of PW2 that DW2 abandoned the forklift upon being pursued by the onlookers and left the key in the ignition. This explains why the police were able to drive the forklift to Embassy Police Post in the absence of DW2.

This Court views the insinuation by DW2 of the blue minibus being responsible for the occurrence of the accident to be an afterthought aimed at misguiding the Court. This is so because firstly, the witness in his own evidence said that the onlookers who immediately followed him stated that he was the cause of the

accident. Secondly, there is no evidence to suggest that the driver of the said minibus was equally confronted and questioned by either the members of the public or the police in connection with the said accident.

Regarding the payment of the admission of guilt fee, DW2 admits having given a statement to the police concerning the accident but refutes paying the admission of guilt fee and being charged with any offence. In a nutshell DW2's evidence merely cast doubt on the veracity of the police report. I must affirm that the police report which is produced at page 1 and 2 of the plaintiff's bundle of documents clearly shows that DW2 was charged for careless driving and accordingly fined. It must be observed that apart from casting aspersions on the police report there is no tangible evidence led by the witness to justify why Inspector Moono would concoct falsehoods against DW2 in the report. The burden to lead sufficient evidence to substantiate DW2's claims in respect of the veracity of the police report squarely rests on the defendant. There being no valid evidence to impeach the authenticity of the report, I hold the contents of the police report to be credible. In addition I find that the cause of accident as stipulated in the police report is fully supported by the evidence of PW2.

Therefore, wherever there is a conflict between the plaintiff and the defendant's witness I am more inclined to believe the evidence of the plaintiff's witnesses as a depiction of what transpired on that day.

From the foregoing and the police report submitted into evidence, I am satisfied that the accident was caused by the negligence of the defendant's employee, as such, by the principle of vicarious liability, the defendant is liable. This court views the issue of negligence in the present case, from the point of view of what a reasonably prudent driver would have done, in the given circumstances which prevailed in respect of the plaintiff and the defendant on the relevant occasion. There is no doubt, in my view that the defendant's negligence was as a matter of both law and fact, the primary cause of motor vehicle accident.

Having stated this, it is clear to me that the defendant's employee (DW2) as a motorist owed a duty of care towards other motorists and pedestrians. DW2 was duty bound to keep a proper lookout at all times. By failing to observe that the forks had protruded into the road and posed a danger to fellow motorists, DW2's driving fell below the standard of a reasonably skillful and careful driver. DW2 accordingly breached his duty towards other motorists. The carelessness of the defendant's employee in this regard undoubtedly caused the claimant's loss and/or damage and the plaintiff has proven this, well beyond a balance of probabilities. I hold that because of this breach the plaintiff is entitled to damages.

Thus, I award compensatory damages to the plaintiff for the personal injuries sustained namely; a cut on the hand, left knee injury, bruises on the hand and nose, permanent facial damage,

mental shock, pain and suffering to be assessed by the learned Deputy Registrar. The damages that shall be found due by the Deputy Registrar shall attract interest at short term deposit rate from the date of writ to date of judgment, thereafter at the current lending rate as determined by Bank of Zambia until date of payment.

I also award the sum of US\$ 50, 212.50 as replacement value of the plaintiff's damaged Toyota Fortuner. I accept evidence in support of the claim being the valuation report from Toyota Zambia at page 6 of the plaintiff's bundle of documents, which has not been objected to by the defendant.

In relation to the special damages claimed by the plaintiff, I draw guidance from the learned authors of **Kemp and Kemp, The Quantum of Damages**⁷ in **paragraph 5-011**, on pecuniary loss as follows:

"A plaintiff is entitled to recover damages in respect of all reasonable expenses incurred as a result of his or her injuries which may include care, rehabilitation, and in attempting to enable the injured plaintiff to overcome or mitigate his or her disabilities."

The authors further state in paragraph 5-014 that:

"All reasonable medical expenses reasonably incurred as a result of the injuries can be recovered."

The plaintiff in this case suffered pecuniary loss when she sought medical treatment for the injuries which she would not have sustained had it not been for the accident. I am satisfied that the particularised claim for special damages in the sum of US\$15, 000 have been substantiated by the evidence produced on pages 19 to 24 of the plaintiff's bundle of documents. The special damages of US\$15, 000 therefore succeeds.

As regards the claim of exemplary damages it must be noted that exemplary damages or punitive damages come into play whenever the defendant's conduct is sufficiently outrageous to merit punishment, as where it discloses malice, fraud, cruelty, insolence or the like. (**see the case of Bell v Midland Ry**⁸)

The case of **Simon Kapwepwe v Zambia Publishing Company Limited**⁹ has been cited by the plaintiff in aid of her claim for exemplary damages. Significant features of the said authority are that:-

In Zambia exemplary damages may be awarded in any case where the defendant has acted in contumelious disregard of the plaintiff's rights.

Simply because a defendant has acted in contumelious disregard of a plaintiff's rights does not mean that the Court must automatically add to the compensatory award an additional sum by way of exemplary or punitive damages; the Court should consider first what

sum to award as compensation, and that this sum should take into account the whole of any aggravating conduct of the defendant (i.e. any conduct in contumelious disregard of the plaintiff's rights), and it should then turn to consider whether the proposed award is sufficient to punish and deter the defendant.

The exemplary element is and should be included in every compensatory award.

Similar, in the present case I am not inclined to add to the compensatory award an additional sum by way of exemplary damages. The exemplary element shall be encompassed in the compensatory award to be assessed by the learned Deputy Registrar.

The plaintiff's claim for loss of business is also unsuccessful as the record does not show that she was a practicing medical doctor at the time of the accident.

The costs in this matter are awarded to the plaintiff to be taxed in default of agreement.

Leave to appeal is granted.

Dated at Lusaka this 23rd day of August, 2018



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M. CHANDA
HIGH COURT JUDGE