IN THE COURT OF APPEAL OF ZAMBIA **APPEAL NO. 112/2020**

HOLDEN AT KABWE

(Civil Jurisdiction)

BETWEEN:

STANBIC BANK ZAMBIA LIMITED **APPELLANT**

AND

BRUCE MWEWA **RESPONDENT**

CORAM: ***CHASHI, LENGALENGA AND NGULUBE, JJA.***
On 14th October, 2020 and 23rd October, 2020

For the Appellant *: Mr. L. Mwamba, Messrs Simeza, Sangwa and Associates*

For the Respondent*: Mr. C. Sianondo, Messrs Malambo and Company*

J U D G M E N T

NGULUBE, JA delivered the judgment of the Court.

Cases referred to:

1. *Gemstar Holdings Limited vs Afgri Corporation Limited, SCZ Appeal Number 183 of 2014*
2. *Livingstone vs Rawyards Coal Company (1880) 5 App Cas 25*
3. *Chrismar Hotel Limited vs Stanbic Bank Zambia Limited, SCZ Selected Judgment Number 6 of 2017*
4. *Finance Bank Zambia Limited and others vs Simataa Simataa, SCZ Selected Judgment Number 21 of 2017*

5. *Zambia National Building Society vs Ernest Mukwamataba Nayunda, SCZ Judgment No. 11 of 1993*
6. *Robinson vs Harman (1848) 1 Exch 850*
7. *Hadley vs Baxendale (1854) 9 Exch 341*

Legislation referred to:

1. *Value Added Tax Exemption Order 2014, Statutory Instrument Number 68 of 2014*
2. *Value Added Tax Act, chapter 331 of the Laws of Zambia*

Other works referred to:

1. *Mulenga, Muhamed, Taxation in Zambia, Law and Practice, Multimedia Zambia, 2003*
2. *Halsbury's Laws of England, 4th edition, Volume 9 paragraph 1174*

INTRODUCTION

1. This appeal emanates from a decision of the High Court delivered by Mwenda – Zimba, J. on 29th April, 2020, in which the court found that the respondent had largely proved his case on a balance of probabilities and entered Judgment in his favour. The court further found that the appellant had failed to prove its counterclaim as it ought not to have paid the entire VAT for the lease to the Zambia Revenue Authority at once. The court accordingly dismissed the counterclaim and awarded costs to the respondent.
2. The respondent commenced an action in the lower court by amended writ of summons and statement of claim seeking an

order and declaration that the purported debit above the legitimate amount to the respondent's account at the instance of the appellant was without authority and illegal. The respondent further sought an order and declaration that the purported withholding of the insurance gain was illegitimate, an order for the refund of ZMW51,005.39, damages for breach of contract, damages for mental anguish, aggravated damages, general damages, damages for loss of business with interest from the date when the amounts were deducted, with costs.

BACKGROUND FACTS

3. The respondent entered into a lease agreement with the appellant for the purchase of a ford ranger, registration number ALV 3349, which was later involved in an accident and was rendered irreparable. This terminated the first lease. In September, 2015, the appellant and the respondent entered into a second lease agreement for the purchase of another ford ranger, registration number BAA 8367, with a monthly repayment instalment of ZMW12,818.51.

4. In November, 2016, the second lease repayment was increased to the amount of ZMW14,846.82 and when the respondent inquired from the appellant regarding the increase, he was informed that it

was due to an amount of ZMW40,439.39 applied to the second lease which was as a result of the 16% Value Added Tax that was charged to the settlement capital of ZMW252,746.20 on the first lease.

5. The respondent sought guidance from the Zambia Revenue Authority and he was advised that the settlement capital balance on a finance lease account does not constitute a supply for VAT purposes. The Zambia Revenue Authority further guided that the appellant would have to refund the VAT to the respondent. It is averred that from November 2016 to October, 2017, the appellant issued instructions to the respondent's employer at the time to effect deductions from the respondent's salary and the sum of ZMW24,158.79 was debited from the respondent's account for the first lease. The respondent averred that subsequent to the accident, he gained ZMW26,846.60. from the insurance payout which was not credited to him and that the total amount for the insurance gain and the erroneous payroll deduction was ZMW51,005.39. In his witness statement, the respondent's evidence was a repetition of what was stated in the statement of claim.

6. The respondent filed a supplementary witness statement in which he stated that the Bank of Zambia lending rate was 15.5% in 2016 and that it was reduced to 10.25% in 2017. He further averred that a Zambia Revenue Authority leaflet indicates that termination of lease by accident does not constitute supply of service for VAT purposes.

7. The appellant filed a defence and counterclaim in which it averred that the accident did not terminate the lease which continued until the facility was fully settled by the respondent or the insurance company. It was further averred that the second lease was not fixed at ZMW12,818.51 per month but was dependent on the Bank of Zambia policy rate and consisted of a VAT component charged at 16% of the capital portion of the monthly instalment. The appellant stated that the refund of the ZMW40,439.39 was credited as capital reduction applied to the respondent's second lease and not as capital increase.

8. The appellant stated that the settlement capital balance on a finance lease is chargeable of VAT and that the VAT collected from the respondent would be remitted to Zambia Revenue Authority by the appellant. The appellant averred that the respondent was

paid the sum of ZWMW40,439.39 on the understanding that Zambia Revenue Authority would refund the sum earlier remitted as VAT charges on finance lease capital settlement but the Authority did not refund the same. The appellant claimed the sum of ZMW40,439.39 as money that was wrongly paid to the respondent as a refund of VAT charged on the first finance lease capital settlement with interest and costs.

9. At the hearing of the matter, the appellant's witness Horis Ngandu Mainza, the head of the vehicle and asset finance section at the appellant gave evidence to the effect that it was an express term of the second finance lease that monthly instalments would be subject to fluctuations due to the Bank of Zambia policy rate in terms of interest as well as VAT chargeable on the second lease.

10. The witness stated that he explained to the respondent how settlement capital is derived and that adjustment in instalment payments was due to an increase in the Bank of Zambia policy rate which affected interest. It was the testimony of the witness that the bank paid the sum of ZMW40,439.39 to the second lease as reduction in capital. According to the witness, the customer paying back a lease facility is subject to VAT charges together with monthly deductions as well as interest on the facility.

11. The respondent filed a reply and defence to counterclaim and averred that after the accident what was outstanding was a loan obligation and not a lease. He averred that VAT is only chargeable on the capital component of the periodic lease payment of the lease finance. He stated that the appellant did not reimburse any money and that the appellant remitted money to Zambia Revenue Authority due to lack of understanding of VAT regulations.

CONSIDERATION OF THE MATTER BY THE LOWER COURT

12. The lower court analysed the evidence before it and considered the submissions advanced by the parties. The court was of the view that the first lease was terminated when the motor vehicle registration number ALV 3349 was involved in an accident on 10th July, 2015. The court further found that the insurance claim was paid to the appellant in August, 2015 and that this fully settled the facility on the amounts that the respondent owed the appellant.

13. The court found that the Bank of Zambia policy committee statement of 16th November, 2016 maintained the policy rate at 15.5% and at its meeting of 20th and 21st February, 2017, the policy committee reduced the rate to 14%. The court was of the view that the increase in the respondent's monthly instalments

was not as a result of the change in the policy rate and found that the increase in the rental amount of the second lease was as a result of the VAT that was applied to the settlement capital of the first lease.

14. The court was of the view that the respondent was entitled to the insurance gain of K26,846.60 which was absorbed due to the appellant's wrong application of the VAT. It further found that the respondent proved that the increase in the rental amounts was as a result of the VAT that was charged on the settlement capital, which led to the deficit that was added to the second lease and absorbed the insurance gain. The court ordered the parties to conduct a reconciliation of the two lease accounts with the aim of coming to the position that the accounts would have been in if the appellant had not added VAT to the second lease and refunded the respondent directly. The court awarded interest on all the monies due to the respondent at short term deposit rate from the date of writ to the date of Judgment and thereafter at the current bank lending rate until date of full payment.

15. The court awarded damages to the respondent for breach of contract because the appellant charged VAT on settlement capital of the first lease and added the deficit to the second lease. The

said damages were to be assessed by the Registrar. Regarding the claim for mental anguish, the court was of the view that the respondent had not provided any evidence of mental anguish and accordingly dismissed it. On the claim for aggravated damages, the court was of the view that no evidence was adduced to disclose any aggravating circumstances and the claim was dismissed.

16. On the claim for general damages, the court found that the appellant's actions led to the respondent suffering general damages and awarded the claims to be assessed by the registrar. The court dismissed the respondent's claim for loss of business because it was not specifically outlined in his pleadings and no evidence was led to show the exact loss that he suffered. The court dismissed the appellant's counterclaim as it was of the view that the appellant should not have paid the entire VAT amount for the lease to the Zambia Revenue Authority at once. The court found that the appellant had failed to prove its counterclaim and it was accordingly dismissed.

GROUNDS OF APPEAL AND THE SUBMISSIONS OF THE PARTIES

17. It is against the above Judgment that the appellant has now appealed to this court advancing four grounds of appeal, namely that-

1. **The lower court erred in law and fact by holding that VAT was not chargeable on the settlement capital of the Finance Lease because there was no option of goods on lease.**
2. **The lower court erred in law and fact by refusing the defendant's plea that VAT had already been refunded to the respondent.**
3. **The lower court erred in law and fact by awarding the respondent damages for breach of contract and general damages.**
4. **The lower court erred in law and fact by holding that VAT cannot be recovered from the respondent thereby dismissing the counter-claim.**

THE APPELLANT' ARGUMENTS

In support of the above grounds of appeal, the learned Counsel for the appellant filed written heads of argument. When the matter came up before us for hearing, Counsel submitted that he would rely on the heads of arguments filed.

18. The gist of Counsel's submissions on the first and fourth grounds of appeal was that the appeal raises a novel point of law, whether VAT is chargeable on the settlement capital of a finance lease agreement. According to Counsel, the respondent's argument was that the capital settlement (the sum payable after destruction of goods) is not taxable because when the vehicle is destroyed, there is no provision of a service. However, the appellant contended that a finance lease is a supply of a service within the meaning of

section 2 of the VAT Act and that every transaction or payment attracts VAT.

19. According to Counsel, the appeal raises the question whether or not VAT is applicable to a finance lease agreement and further whether settlement capital attracts VAT. Counsel submitted that the lower court misdirected itself when it took the view that the lease is provided monthly. The lower court found that-

> ***"Once the vehicle is involved in a road accident, there was no provision of any goods on a lease. The provision of the goods on lease ended..... no VAT is chargeable in accordance with section 7 above."***

20. The court was referred to section 7 of the Value Added Tax Act which provides that-

> ***(1) "For purposes of this Act, any supply of goods or services made by a taxable supplier in the course of furtherance of a business, that takes place in Zambia on or after the tax commencement day, other than an exempt supply, is a taxable supply."***

According to Counsel, section 2 of the aforementioned Act defines what constitutes a "supply of a service for VAT purposes" as

(a) The provision of goods on lease, hire or loan;

(b) A treatment of goods;

(c) Any other activity which the Minister, by regulation declares to be supply of a service for purposes of this Act.

21. It was submitted that the Value Added Tax Act provides that VAT is applicable to finance lease agreements and that all payments under a finance lease agreement attract VAT. It was contended that since the settlement capital is a payment under a finance lease agreement, it ought to attract VAT. Counsel argued that the lower court misdirected itself when it found that VAT was not applicable on the settlement capital and misapplied the provisions of the VAT Act regarding the application of VAT on financial leases.

22. It was argued that goods are provided on lease at the time of execution of the agreement and not monthly. Counsel further submitted that an agreement does not change its character once the goods are destroyed and that the finance lease remains the same whether goods are destroyed or not. According to Counsel, the lower court ought to have given effect to the agreement as intended by the parties.

23. Counsel contended that the lower court erred when it dismissed the appellant's counter-claim on the grounds that VAT cannot be recovered because it is not chargeable on settlement capital. It was submitted that grounds one and four have merit and that they ought to succeed.

24. Coming to the second ground of appeal, Counsel asserted that the unchallenged evidence led by the appellant before the lower court is that when the appellant received the letter from Zambia Revenue Authority (ZRA), it paid the sum of K40,349.39 which was charged as VAT to the respondent's lease as VAT refund. In Counsel's opinion, the sum of K40,349.39 was actually refunded to the respondent as a result of which he obtained a benefit as he paid less than he would have actually paid under the second lease facility.

25. According to Counsel, there is a nexus between the first and second lease and that the appellant added the VAT refund of K40,349.39 to the second lease which was not a separate and distinct agreement from the first lease. Counsel contended that the lower court would not have ordered a reconciliation of the two lease accounts if there was no link between them. It was submitted that to award the respondent a sum that has already been refunded is unjust enrichment. To reinforce his submissions, Counsel referred to the case of ***Gemstar Holdings Limited vs Afgri Corporations Limited***[1] in which the Supreme Court held that -

> ***"It is clear that any civilized system of law is bound to provide remedies for cases of what has been called unjust enrichment or unjust benefit, that is to prevent a man***

> ***from retaining the money of, or some benefit derived from, another which it is against conscience he should keep."***

26. Counsel submitted that the respondent is not entitled to any of the reliefs because the insurance gain was encompassed in the K40,349.39 that was paid to the second lease by the appellant. It was submitted that for the foregoing reasons, ground two has merit and ought to succeed.

27. As for the third ground of appeal, Counsel faulted the learned trial Judge for not following the laid down principles for awarding damages. He relied on the case of ***Livingstone vs Rawyards Coal Company***[2] where the court held that-

> ***"I do not think that there is any difference of opinion as to its being a general rule that, where any injury is to be compensated by damages, in setting the sum of money to be given by reparation of damages, you should be nearly as possible get that sum of money which will put the party who has been injured or who has suffered, in the same position he would have been if he had not sustained the wrong for which he is now getting compensation or reparation."***

28. Counsel submitted that the lower court unjustly enriched the respondent by awarding damages for breach of contract and general damages in addition to an award for payment of the sum

of K40,349.39. According to Counsel, the lower court contradicted itself when it awarded damages for breach of contract having found that the contract was terminated before the alleged breach occurred.

29. It was argued that damages are only awarded when the wrong complained of is actionable and that no particulars of damage were pleaded nor was evidence led regarding the said damages. Counsel contended that the lower court erred when its awarded damages as the wrong complained of was not actionable. He prayed that the appeal be allowed and that the lower court's Judgment be set aside with costs.

RESPONDENT'S ARGUMENTS IN OPPOSITION

30. In response to the grounds of appeal and the appellant's heads of argument, the learned counsel for the respondent Mr Sianondo filed written heads of argument which he relied upon. The crux of Counsel's submissions is that the issues in this appeal revolved around the question whether the motor vehicle accident terminated the lease and whether VAT is chargeable on settlement capital of a finance lease.

31. Responding to grounds one and four, Counsel submitted that the business transaction between the appellant and the respondent

was the provision of a good on lease and was a supply of a service. According to Counsel, capital settlement represents the future lease services which are yet to be provided and that VAT is only chargeable on the capital portion of the monthly lease payment.

32. According to Counsel, since there were no corresponding services or goods that were provided because of the accident, the loan or financial obligation is exempt from VAT purposes as prescribed in paragraph 7(e) of the schedule to the Value Added Tax Exemption Order 2014, which is Statutory Instrument Number 68 of 2014. The said Statutory Instrument provides as follows:

> ***(e) The provision of credit and the interest component of finance leases, excluding the -***
>
> ***(i) Principal and other finance charges on finance leases and;***
>
> ***(ii) Principal, interest and other financial charges on granting leases.***

It was submitted that the capital settlement is a provision of credit that does not constitute a taxable supply for VAT purposes, whose payment does not attract VAT.

33. Counsel contended that the respondent was paying for the provision of goods on lease on a monthly basis and that this attracted VAT. He argued that after the accident, there was no

service that was provided by the appellant because the motor vehicle was no longer in existence as it was destroyed.

34. According to Counsel, the issue is whether VAT is payable on capital settlement when the good through which a service was rendered is no longer in existence. It was submitted that the lower court was on firm ground when it held that capital settlement was neither a supply of goods or services by the appellant as it represented future services which were not yet provided by the appellant.

35. Counsel further argued that capital settlement cannot attract VAT in line with sections 2, 7 and 13 of the VAT Act and contended that if the goods are damaged, there is no service provided and no VAT was applicable on the capital settlement as it did not constitute a supply for VAT purposes. In Counsel's opinion, what remained was a financial obligation in the form of capital settlement which is payable by the insurance company.

36. It was further argued that the lower court was on firm ground when it dismissed the appellant's counter claim because capital settlement is not a supply of a service under sections 2 and 7 of the VAT Act. It was submitted that section 13 of the VAT Act provides for when VAT is due on the provision of services and that

the Zambia Revenue Authority gave guidance that capital settlement is not a supply of service for VAT purposes. It was further submitted that the lease was paid for on a monthly basis as the instalments were monthly.

37. According to Counsel, when the motor vehicle was damaged due to the accident, no VAT was applicable on the capital settlement as it did not constitute a supply for VAT purposes. Counsel submitted that there was only a financial obligation in the form of capital settlement which was paid by the insurance company. Counsel contended that the lower court was on firm ground when it dismissed the counterclaim because capital settlement is not a supply of a service under sections 2 and 7 of the Value Added Tax Act. It was submitted that grounds one and four lacked merit and that they be accordingly dismissed.

38. Responding to ground two, Counsel submitted that the appellant increased the monthly lease payments in an effort to recover the K40,439.39. It was further submitted that the appellant added several extra finance charges to the second lease on the misunderstanding that the insurance company had not settled the insurance claim for five months. According to Counsel, the appellant misapplied the monthly repayments to the first lease

due to the misunderstanding that the insurance company did not settle the claim for five months. It was submitted that the evidence on record shows that the insurance company made the payment on 13th August, 2015, a month after the accident which occured on 10th July, 2015.

39. Counsel submitted that the appellant imposed the outstanding VAT when no supply was given and further increased the monthly instalment when there was no change in the Bank of Zambia policy rate. The court was referred to the case of ***Chrismar Hotel Limited vs Stanbic Bank Zambia Limited***[3], in which the Supreme Court stated that-

> ***"It is incumbent upon the banker when challenged to explain why it has taken a certain course of action in regard to a customer's account without the customer's concurrence to justify its action by pointing to a legally sanctioned reason empowering it to do so."***

Counsel contended that the first and second lease were two different contracts and should have been treated as such. It was argued that the court was in order to order that a reconciliation of the respondent's accounts be done to determine the actual amount of money on each account and ascertain the outstanding

amount on the second lease. Counsel submitted that there is no case of unjust enrichment on the part of the respondent.

40. Responding to ground three it was submitted that the court found that the appellant did not handle the two accounts independently and further misrepresented the facts relating to the settlement of capital on the first lease. According to Counsel, the resultant finance charges on the second lease account was due the appellant's breach and lack of due care, resulting in the increased monthly payments and interest charges which amounted to a breach of contract. Counsel referred to the case of ***Finance Bank Zambia Limited and other vs Simataa Simataa[4],*** where the court stated that-

> ***"A breach of contact usually, but not always causes a loss. In either cases, there is a right of action against the contract breaker."***

41. Counsel argued that the issue is what the consequence of the breach was. It was argued that the infringement by the appellant affects both leases and that the lower court was on firm ground when it awarded the remedies. We were urged to dismiss the appeal in its entirety for lack of merit.

APPELLANT'S ARGUMENTS IN REPLY

42. The appellant filed heads of argument in reply on 18th August, 2020. Responding to the respondent's arguments on grounds one and four, it was submitted that as long as there is money due under a lease, it ought to attract VAT. Counsel argued that what constitutes supply of a service under a finance lease is the supply or provision of goods on lease. According to Counsel, the service is the lease and that VAT ought to be charged for any payment under the lease. It was contended that destruction of goods does not negate the fact that goods were provided on lease. It was further argued that when goods are destroyed, the principle becomes payable immediately and is paid at once, which is referred to as the settlement capital. Counsel submitted that it is the outstanding payment for the service provided to the customer.

43. According to Counsel, the service was provided when the lease was actuated by making the goods available to the respondent and that at the time of the accident, the service would have already been provided, thus making the lessee obligated to pay the settlement capital. Counsel maintained that the capital settlement of a finance lease agreement is not exempted from VAT. It was argued

that section 13(2) of the Value Added Tax Act deals with supply of services in relation to goods provided on lease.

44. On ground two, the appellant's Counsel submitted that there is a link between the first and the second leases which is that the VAT from the first lease was applied to the second lease. The appellant later paid the sum of K40,439 to the second lease. Responding to issues raised under ground three, Counsel submitted that the award of damages was not justified because the first lease agreement was already terminated at the time VAT was charged. Counsel submitted that the award of damages for breach of contract as well as general damages was unjustified and contended that the respondent's arguments are devoid of merit. He prayed that the appeal succeeds, with costs to the appellant.

DECISION OF THIS COURT

45. In determining this appeal, we are of the view that grounds one and four question findings of fact relating to the interpretation made by the learned High Court Judge of the vehicle and asset finance Interim agreement between the appellant and the respondent. The said grounds question whether VAT is chargeable on settlement capital and whether the respondent was under an obligation to pay VAT on the settlement capital for the vehicle

which was damaged under the first lease. We however note that the lower court and the parties did not refer to the vehicle and asset finance interim agreement. A perusal of the interpretation clause of the agreement reveals that-

Clause 1.1.1 defines disbursements as-

> ***"All and every amount disbursed or to be disbursed by the Bank or set aside by the Bank on behalf of or for the direct or indirect benefit of the customer in connection with or arising out of the procurement of the Goods, and shall include but shall not be limited to the stated sum, customs and excise duties, fiscal and other charges, VAT and customs duty, local and foreign bank charges. . ."***

46. Further clause 11.3 of the agreement stipulates that if the goods are damaged or destroyed, the Bank shall be entitled to cancel the interim agreement and claim in terms of clause 12.2 and 12.3, as if an event of default would have occurred.

47. A perusal of clause 12.2.1.1. reveals that the Bank will then claim immediate payment of all disbursements made by the Bank in terms of this interim agreement plus interest calculated at the AFCR from the date on which such disbursements were made to date of the Bank's claim for disbursements, less any interim payments made by the customer in terms of the interim agreement.

48. In the Book Taxation in Zambia Law and Practice Mohamed Mulenga discusses the treatment of VAT on finance and operating leases. On termination of lease by default, Mulenga states that -

> ***"In the event of default, the lease can be terminated at the option of the lessor, in which case the lessee returns the asset that was the subject of the lease to the lessor, such transfer of asset and any financial loss associated with such transfer will not constitute a supply for VAT purposes."***

49. The main issue in grounds one and four is whether the lower court erred when it found that VAT was not chargeable on the settlement capital of the finance lease. Having considered the interim agreement between the parties as well as the Value Added Tax Act, we are of the firm view that the VAT treatment of payments under a settlement capital relating to the loss that the respondent suffered subsequent to the motor vehicle accident is not subject to VAT as there is no supply of goods for consideration.

50. We further form the view that the appellant was entitled to recover VAT when it provided the motor vehicle on lease to the respondent, which terminated when the motor vehicle was involved in the accident. It is not in dispute that the insurance company settled the amount that was due to the appellant in August, 2015.

Notably, the existence of the lease constituted the supply of a service as provided for in section 2 of the VAT Act.

51. We accordingly opine that no VAT would accrue on the settlement capital as the supply of the service under the interim lease agreement was prematurely terminated. We note that the appellant erroneously paid VAT on the first lease to the Zambia Revenue Authority. Notwithstanding that, the respondent is not liable for the said payment as it was made by the appellant erroneously. We therefore do not find merit in grounds one and four of the appeal and they are accordingly dismissed.

52. In the second ground of appeal the appellant has taken issue with the court's rejection of the appellant's plea that VAT had already been refunded to the respondent. From the submissions of the appellant the argument being advanced is that the appellant paid the sum of K40,439.39 which was charged as VAT to the respondent's lease as capital reduction. The appellant contends that the said sum was applied to the respondent's second lease as VAT refund.

53. The lower court, in rejecting the defence raised by the appellant stated that the credit was a benefit which the respondent ought to have received for the first lease. The court went on to find that the

first and second lease were separate agreements which were supposed to be treated differently. Counsel for the appellant argued that there is a nexus between the first and second lease as the court ordered the reconciliation of the two lease accounts. It was argued that the lower court awarded the respondent a sum that had already been refunded, which was unjust enrichment. We have noted that the appellant credited the amount of K40,439.39 to the respondent's second lease without seeking the client's approval.

54. We agree with the lower court that the two leases were distinct and separate from each other. We are of the view that the appellant erred when it applied the insurance gain to the second lease as it acted outside the contractual provisions in the finance agreement and did not adhere to the banker-customer relationship between the parties. We note that the appellant's representatives, Chola Kafula in email correspondence with the respondent stated that the increase in the rental amount for the second lease was due to the VAT component on the settlement capital of the first lease. She further stated that when the VAT component was added to the settlement capital, this raised the

amount owing as there was a deficit which the appellant then applied to the second lease.

55. In our view, the lower court was on firm ground when it found that the increase in the rental amount of the second lease was as a result of the VAT that was applied to the settlement capital of the first lease. A perusal of the email that Chungu Chanshila, the appellant's representative sent to the respondent shows that there was a reversal of the interest accrued to the capital as a result of the delayed application of the funds to the running lease account. The record further shows that the appellant issued instructions for the refund to the respondent's FNB account for the deferential of the amount deducted from the respondent's payroll against the amortization schedule. Clearly, the appellant was in breach of its contract with the respondent.

56. In light of the foregoing, we form the view that the lower court was on firm ground when it ordered a reconciliation of the two accounts so as to ascertain the outstanding amount on the second lease and the amounts that ought to be refunded to the respondent. Clearly, the appellant was in breach of its contract with the respondent.

57. Having followed the sequence of events in this case, we agree with the lower court that the respondent's account should be treated the way it should have been had the VAT not been applied to the second lease. We have come to the conclusion that there is no merit in ground two and we accordingly dismiss it.

58. Coming to the third ground of appeal the appellant argued that the award of damages for breach of contract and general damages ought to be set aside because the lower court did not adhere to the laid down principles for award of damages. The appellant's argument on this point is that the purpose for an award of damages is to place the injured party in the position he would have been had the breach not occurred. We were referred to the case of ***Zambia National Building Society vs Ernest Mukwamataba Nayunda*** [5], where the Supreme Court held that-

> ***"The essence of damages has always been that the injured party should be put as far as monetary compensation can go in about the same position he would have been had he not been injured. He should not be prejudiced or be unjustly enriched."***

59. Counsel submitted that the court should have awarded the respondent the sum of K40,349 and that it did not follow the basic principle for award of damages when it awarded the respondent

the said damages. The respondent's Counsel on the other hand submitted that the appellant dealt with the transactions relating to the two different agreements as one without the respondent's consent. According to the respondent, resultant finance charges on the second lease were due to the appellant's breach and lack of due care as evidenced by increased monthly instalments and interest charges on the second lease. It was the respondent's Counsel's submission that he was injured and that he ought to be placed in the position he would have been in had the breach not occurred.

60. We have considered the arguments advanced by both parties on this point and the various authorities which we have been referred to. Damages are awarded for the invasion of rights to tangible immovable or movable property and are intended to provide compensation for loss.

61. Paragraph 1174 of Volume 9 of Halsbury's Laws of England, 4th edition states that –

> ***"In cases of breach of contract, the contract breaker is responsible for resultant damage which he ought to have foreseen or contemplated when the contract was made as being unlikely."***

The injured party under the contract should recover that which ought to have been due to him as a result of the breach. In the case of ***Robinson vs Harman***[6], it was held that –

> ***". . . the rule of the common law is that where a party sustains a loss by reason of breach of contract, he is, so far as money can do it, to be placed in the same situation with respect to damages as if the contract had been performed."***

62. In the case of ***Hadley vs Baxendale***[7], the court of Exchequer held that –

> ***". . . where two parties have made a contract which one of them has broken the damage which the other party ought to receive in respect of such breach of contract should be such as may fairly and reasonably be considered either as arising naturally."***

63. Having already found that the appellant breached its contact with the respondent in the manner that it handled the two lease accounts and further effected erroneous deductions to the respondent, we are of the view that the lower court was on firm ground when it awarded the respondent damages for breach of contract, to be assessed by the Registrar. We further opine that the lower court was on firm ground when it awarded general damages, as these were a consequence of the appellant's acts.

64. The net result is that this appeal fails in its entirety for lack of merit. Costs are awarded to the respondent in this court and in the court below. The costs are to be agreed or taxed in default of agreement.

J. CHASHI
COURT OF APPEAL JUDGE

F. M. LENGALENGA
COURT OF APPEAL JUDGE

P.C.M. NGULUBE
COURT OF APPEAL JUDGE