

IN THE COURT OF APPEAL
HOLDEN AT NDOLA
(Civil Jurisdiction)

APPEAL NO 46/2017

MOTALA WHOLESALERS



APPELLANT

AND

PROFESSIONAL INSURANCE CORPORATION ZAMBIA PLC

RESPONDENT

Coram: Chisanga, JP, Chashi and Mulongoti, JJA

On the 2nd day of August 2017 and 6th November 2017

For the Appellant: L.C. Zulu, Messrs Malambo & Company

For the Respondent: Mrs B. Banda In-house counsel of PICZ

JUDGMENT

Chisanga, JP, delivered the judgment of the court.

Cases referred to:

1. *Kearney & Company Limited vs Agip (Z) Limited and others (1985) ZR 7*
2. *Omar vs Zambia Airways Corporation (1986) ZR 23*
3. *Munali Insurance Brokers & Author vs Attorney General and others (2010) 2 ZR 60*
4. *Evans vs Bartlam (1937) The Law Reports page 473*

Legislation Referred to:

1. *Order XXX Rule 10 of the High Court Rules CAP 27 of the Laws of Zambia*

This appeal arises from an order made by the learned judge in the court below, wherein she stated that she had no jurisdiction to hear an appeal from the deputy registrar, as the order appealed against had been executed by the respondent who is plaintiff in the court below.

The background to that order is that the plaintiff, now respondent, commenced an action against the defendant, now appellant, for recovery of the replacement value of a motor vehicle, namely Honda CRV registration number ALK 5214, belonging to the plaintiff's insured, one George Imbuwa. Said insured was involved in an accident with the alleged servant, employee or agent of the defendant, one Bauti Mwanza who allegedly negligently drove the defendant's vehicle, a volvo truck registration No ALC 5789. The plaintiff paid its insured the replacement value of his vehicle, and sought to recover the amount so paid by the action brought against the defendant.

Upon being served with the originating process the defendant's advocate entered conditional appearance and took out an application to set aside that originating process, on the grounds that the Writ of Summons and Statement of Claim were irregular, as the defendant had never owned motor vehicle volvo truck registration No. ALC 5789, and that therefore, the action disclosed no reasonable cause of action, was frivolous, vexatious and otherwise an abuse of court process. The other ground on which it was sought to set aside the process were that the defendant was a business name, thus wanting in capacity, and that the Writ of Summons was not endorsed with the electronic mail address.

The affidavit in support of the application was sworn by one Ahmed Ishmail Motala, proprietor of the defendant. He deposed that the defendant had never owned motor vehicle volvo truck registration No. ALC 5789, and that the defendant was a business name. He also deposed that he had been advised that

