

**IN THE HIGH COURT OF ZAMBIA  
AT THE PRINCIPAL REGISTRY  
HOLDEN AT LUSAKA**

**2011/HP/296**

*(Civil Jurisdiction)*

**BETWEEN:**

**TEZA KAONGA**

**AND**

**SAULO MITI**

**SAVIOUR PHIRI**

**C. R. HOLDINGS LIMITED**

**ZAMBIA STATE INSURANCE  
CORPORATION LIMITED**

**PLAINTIFF**

**1<sup>ST</sup> DEFENDANT**

**2<sup>ND</sup> DEFENDANT**

**3<sup>RD</sup> DEFENDANT**

**4<sup>TH</sup> DEFENDANT**



*Before the Hon. Mrs. Justice F. M. Chisanga, this .....day of ..... 2018*

*For the Plaintiff:*

*Mr. H. Silweya of Messrs Silweya & Company*

*For the 1<sup>st</sup> Defendant:*

*Mr. A. Shonga, SC of Messrs Shamwana & Company*

*For the 2<sup>nd</sup> Defendant:*

*Mr. A. Shonga, SC of Messrs Shamwana & Company*

*For the 3<sup>rd</sup> Defendant:*

*Mr. A. Shonga, SC of Messrs Shamwana & Company*

*For the 4<sup>th</sup> Defendant:*

*Ms. K. Z. Kanyembo, Legal Counsel, Directorate of Legal Aid*

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**JUDGMENT**

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Cases referred to:

- 1. *Kabanda & Kajeema Construction vs Kasanga (1990/92) ZR 145***
- 2. *Mohammed v The Attorney General (1982) ZLR 49***
- 3. *Mazoka & Others vs Mwanawasa and Others (2005) ZR***
- 4. *Warren vs Henley's Ltd (1948) 2 All ER 935***
- 5. *Acropolis Bakery Ltd vs ZCCM Ltd (1985) ZR 232***
- 6. *Mutale & Another vs The People (1995-97) ZR 227***
- 7. *Dyer and Wife vs Munday & Another (1895) 1QB 742***

8. *Bayley vs Manchester, Sheffield and Lincolnshire Ry, Co. Law Rep. 8 C. P. 148*
9. *Symour vs Greenwood 6 H.& N. 359, 7 H. & N. 355*
10. *Bank of Zambia vs Anderson & Another. (1993/94) ZR P 47*
11. *Moeliker v Reyrolle and Company Limited [1977] 1 ALL. E.R 9.*
12. *Watkins vs Secretary of State for the Home Department (24) (2006)*

**UKHC**

Legislation referred to:

1. *Halsbury's Laws of England Vol 17, 4<sup>th</sup> Edn para 14*
2. *Charlesworth on Negligence 4<sup>th</sup> Edn by R. A. Percy at paragraph 115*

The plaintiff's claim is for general, liquidated and special damages for pain, loss of earnings, loss of promotions and suffering arising from an accident occasioned by assaults, careless and negligent driving, breach of statutory duty and common law duty of care at Isoka bus station on the 14<sup>th</sup> October 2005.

The statement of claim states that on the material date, the plaintiff was a passenger in the 3<sup>rd</sup> defendant's bus registration No. ABC 8507 Scania Marcopolo driven by the 1<sup>st</sup> defendant. The plaintiff boarded the bus at the junction of the Great North Road and Mbala Road, which is between Isoka and Nakonde. He disembarked at Isoka bus station to collect some belongings at that station, from someone.

He re-entered the bus when it was about to start off for Lusaka. He stood on the door, on his way to his seat. The 1<sup>st</sup> defendant suddenly started the bus

and began to drive off the Isoka bus station fast, while the passenger door was still open. After a short distance from the bus stop, the 2<sup>nd</sup> defendant pushed the plaintiff off the bus door steps on to the ground under the bus. All the while, the driver was driving fast and the left rear wheel of the 3<sup>rd</sup> defendant's bus ran over the plaintiff's left foot, causing the injuries, pain and suffering.

The 1<sup>st</sup> defendant did not stop to assist the plaintiff, by taking him to the nearest Isoka hospital despite cries from on-lookers about the accident. Nor did the 1<sup>st</sup> defendant report the accident. The plaintiff lost all his belongings, being a 50Kg bag of rice, shoes, money, two blankets, shirts, GRZ boots and combat to the value of K9,400,000.00. He also lost the bus ticket issued to him at K90,000.00 and incurred costs of travelling, and medical expenses for treatment at Isoka Hospital, University Teaching Hospital (UTH) and Italian Hospital.

The particulars of negligence against the 1<sup>st</sup> defendant are: failing to keep any or any proper lookout for the plaintiff, and driving off suddenly, failing to ensure that the passenger door of the bus was closed and locked and free of passengers before starting the bus from Isoka Bus Station, failing to ascertain or take any adequate precautions to ascertain that there was nobody behind and under or on the steps of the open door before continuing to drive off, driving off without first ascertaining that it was safe to do so and failing to report the accident to Police at Isoka. Other particulars are, colliding with the plaintiff and running over the plaintiff's left foot in the process of driving away,

failing to hoot and blow the horn to signal his motion or failing to drive and manage the bus in such a way as to avoid running over the fallen plaintiff under the bus and to avoid said collusion.

Particulars of negligence and assault against the 2<sup>nd</sup> defendant are the following: Not helping the 1<sup>st</sup> defendant in ensuring that the passengers were safely seated inside the bus and failing to help the 1<sup>st</sup> defendant close the door before the bus could start off, pushing and assaulting the plaintiff while the bus was in motion, not telling the 1<sup>st</sup> defendant to stop the bus for the plaintiff to alight safely. Other particulars are: not helping the 1<sup>st</sup> defendant ensure that the plaintiff whom the defendant had pushed away was safe before the bus and crew could continue with the journey, assaulting the exerting force on the plaintiff, and failing to recollect that the plaintiff had been in the bus and had a reserved seat and needed care instead of being bullied and brutalized.

Particulars of injuries are, fractured and dislocation of all the Tarso Megarsal Joints of the left foot with 30% permanent disability, laceration on the left foot, abrasion wound on the left knee posteriorly. Liquidated losses and specific damages are listed as K50Kg of rice valued at K200,000.00, two pairs of shoes at K150,000 each, two blankets at K150,000 each, two shirts at K15,000 each, a suitcase valued at K150,000 each, a cell phone at K500,000, Italian hospital expenses at K7,500,000 and pocket money in the sum of K300,000. Taxi fares from Zingalume to UTH between June 2006 and Mach 2007 are claimed, in the total sum of K10,270,000.00.

The 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> defendants filed a joint defence, in which they admit that the plaintiff boarded the 3<sup>rd</sup> defendant's bus between Nakonde and Isoka, but did not buy a ticket and was only carrying a travelling bag. Upon reaching Isoka, the plaintiff disembarked from the bus to the surprise of the 2<sup>nd</sup> defendant. When asked why he was disembarking at that station when he had initially indicated he would be travelling to Lusaka, the plaintiff informed the 2<sup>nd</sup> defendant that a friend who had the funds to purchase the ticket did not show up at Isoka bus station and as such he had to drop off. The plaintiff left the bus with his travelling bag.

After the bus had started off, the plaintiff tried to board the bus in motion, shouting and claiming that he now had the money to buy the tickets. In the process, he missed the step and fell to the ground. The allegation that the accident was caused by the alleged or any negligence on the defendant's part is denied. It is averred additionally or alternatively, that the accident was caused or contributed to by the plaintiff's negligence. The particulars of said negligence are: failing to keep any or any proper lookout for the 3<sup>rd</sup> defendant's bus, failing to take any or sufficient precautions and standing in a bad position in relation to the bus, and attempting to board a bus in motion. The alleged injuries, loss and damage are not admitted.

The 4<sup>th</sup> defendant's defence denies paragraphs 6 to 12 of the statement of claim, and avers that should the 3<sup>rd</sup> defendant be found liable, the 4<sup>th</sup> defendant should contribute only up to the policy limit.

