

IN THE SUBORDINATE COURT OF THE FIRST CLASS  
FOR THE LUSAKA DISTRICT  
HOLDEN AT LUSAKA  
(CIVIL JURISDICTION)

2017/CRMP/791

BETWEEN:

MICHEAL NSAMA

PLAINTIFF

AND

AARON MITI

DEFENDANT

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JUDGMENT

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**CASES REFERRED TO :**

1. KHALID MOHAMED V ATTORNEY GENERAL AND ANOTHER (1982) ZR 49
2. WILSON MASAUSO ZULU V AVONDALE HOUSING PROJECT (1982) ZR 172

The plaintiff issued out of this court a writ of summons claiming against the defendant

- (i) Replacement of batteries of the vehicle namely canter registration No ALZ 9853 which were stolen in the car park of the defendant
- (ii) Loss of income
- (iii) Damages for inconvenience
- (iv) Costs of and incidental to these proceedings
- (v) Any other relief the court may deem fit.

In civil cases the standard of proof is on a balance of probabilities and he who asserts the claim must prove it.

In the case of Khalid Mohamed v Attorney General and another (1982) ZR 49 Ngulube DCJ as he was then stated that “..... a plaintiff must prove his case and if he fails to do so, the mere failure of the opponents defence does not entitle him to judgment”.

In wilson Masauso Zulu v Avondale Housing Project (1982) ZR 172 the supreme court stated that “ a plaintiff who has failed to prove his case cannot be entitled to judgment whatever may be said of the opponent’s case”.

PW 1 the plaintiff testified that on 31<sup>st</sup> May 2017 he parked his vehicle in the defendant’s car park. The following day his wife rang him to inform him that the people from the car park came to inform him that the battery was stolen. He then went to the car park with police officer from Kafue police and the guards were detained. The car park was well secured and they had vicious dogs. Defendant later came with a quotation for the batteries to replace the batteries todate he has never shown up. He does not owe the defendant any parking charges. He wants the defendant to pay him for loss of income from 31<sup>st</sup> May 2017 todate as the canter works in Lusaka and only came to Kafue for service.

He is cashed K 2000= every week and K 8,000= in a month. He wants to be paid damages for the inconvenience.

In cross examination he stated that he paid all the charges in 2011 by cheque. The defendant did not offer plaintiff to foot half the bill of the batteries as he was just shown the quotation.

There was no re-examination.

PW 2 was Alfati Kangandu Mujeli the driver for the plaintiff who testified that he used to drive the said canter which he took to Kafue on 31<sup>st</sup> May 2017. After 3 days he was rang by the owner that the batteries were stolen and he has been waiting since.

In cross examination he stated that PW1 got the vehicle for service and he was paid his May salary in June as Plaintiff had no money.

There was no re-examination and this was the close of the plaintiff's case.

DW 1 was the defendant who confirmed that the plaintiff had parked the vehicle in the car park and two batteries were stolen from the said vehicle. He was given this information by the guards whom he told to contact the owner and the matter reported at the police.

On 8<sup>th</sup> June 2017 he offered the defendant that he pays 50% of the amount of the batteries but plaintiff refused.

The car park has 3 books daily classified, account holders and general account and from these books plaintiff is not appearing as he never signs he just parks. There was a balance of K165=.

In cross examination he stated that the K165 is for the canter which was captured in the general ledger book. Plaintiff has a tendency to park without signing.

There was no re-examination



DW 2 was Offert Chilenje a record keeper at the car park who testified that on 1<sup>st</sup> June 2017 the canter for the plaintiff was parked outside the car park. Around 08hrs he was informed by one of the guards that the batteries were stolen which he confirmed. Defendant was informed and advised them to inform the owner and to move the vehicle inside the car park.

In cross examination he stated that the vehicle was parked outside the car park as the car park is in two the main and the outside one. The outside car park is also considered a car park as people park there. The Plaintiff is owing the car park money.

There was no re-examination and this was the close of the defendants case.

In this case there is no dispute that the canter had parked in the car park belonging to the defendant and there is no dispute that the batteries were stolen. There is no dispute that the car park charges for parking. There is no dispute that there is an outside car park.

The issue to be resolved is whether the defendant should replace the batteries. If the plaintiff owes the car park money there are remedies that the defendant can seek. In this case the batteries were stolen in the defendant's car park who had allowed the plaintiff to park there while knowing that according to them he owes the car park money.

The defendant is liable to replace the batteries which were stolen in his premises as the plaintiff was allowed to park the vehicle there.

So I order that the batteries be replaced by the defendant.

On the issue of loss of income there was no inventory shown how much the plaintiff was making apart from what he said. There was no evidence from PW 2 to confirm the monies made therefore I can not order that he be paid or compensated for the loss of income as nothing has been shown to that effect.

On damages for inconvenience suffered since the batteries have not been replaced from 1<sup>st</sup> June 2017 truly the plaintiff has to be paid as the canter is still in the car park. I order that the defendant pays the plaintiff the sum of K 2000= as

damages which sum will attract interest at current Bank of Zambia lending rate from today until liquidation of the debt.

Costs are awarded to the plaintiff in default of agreement to be taxed.

IRA within 30 days

**DELIVERED IN OPEN COURT THIS DAY OF 2017**

**IREEN TILISA WISHIMANGA  
SENIOR RESIDENT MAGISTRATE**

