

HIGH COURT OF SWAZILAND

CIVIL CASE NO.362/2000

In the matter between:

LOLO XABA

PLAINTIFF

VS

THE ATTORNEY GENERAL N.O.

1st DEFENDANT

JETHRO SITHOLE

2nd DEFENDANT

CORAMMATSEBULA J

FOR PLAINTIFFMR.

MASANGO

FOR 1st DEFENDANT

MR. V. DLAMINI

JUDGEMENT 24TH AUGUST 2004

By combined summons issued by the plaintiff on the 16th February 2000, plaintiff sued first defendant, the Attorney General N.O. and the second defendant Jethro Sithole for the following relief;

- (a) Payment for a sum of E23 000 00;
- (b) Interest at the rate of 9% per annum tempore morae;
- (c) Costs of suit;
- (d) Further and/or alternative relief.

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The matter served before me on the 19th July 2004 and was viciously opposed and defended by the defendant. Because the action, as I can see from the papers is based on the second defendant's negligence as particularised in the particulars of claim and these are paragraphs 9.1 - 9.5. The afore said collision was caused exclusively by the negligence of the second defendant who was negligent in one or more or all respects:

- 9.1 He failed to keep a proper look out;
- 9.2 He failed to keep the said motor vehicle under proper or any control;
- 9.3 He travelled at an excessive speed in the circumstances;
- 9.4 He failed to apply brakes of the motor vehicle timeously or at all;
- 9.5 He failed to avoid the accident when by the exercise of reasonable care he could and should have done so.

Plaintiff gave evidence himself and he decided not to call any witnesses even though it subsequently turned out that in his motor vehicle he had a passenger. Defendant also gave evidence and surprisingly called the passenger who was in the plaintiff's motor vehicle to give evidence on his behalf DW2.

The court has listened to the two counsel addressing me. They seem to be more concerned about what time the accident happened and of what relevance that is, is to me difficult to understand because whether it 7 o'clock or 8 o'clock. That is not a material factor. It does not seem to me to be material. What is material which subsequently emerged from the evidence viva voce was that one of these motor vehicle failed to obey the red robot which was against it and entered the intersection and

hence caused the collision.

The defendant gave evidence that it was infact the plaintiff who failed to obey the robot and entered when the robots was against him. This is supported by DW2, the lady who was a passenger in the plaintiffs

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motor vehicle who also came in and said that the plaintiff failed to stop at the red robot and that was the cause of the accident.

The court has listened to the arguments and submissions made by the two counsel and as I said the court is indebted to their assistance and the court has also gone through decided cases in support of their submissions and the court has come to a well considered view that the plaintiff bearing the onus to prove on a balance of probabilities he has failed to do so. He has failed to discharge the onus and the court finds that the plaintiff's claim should be dismissed with costs and it so orders.

There was a claim in reconvention which was filed by the defendant however, counsel for the defendant subsequently abandoned the claim of reconvention and the court will therefore make no order thereon. With the result, the plaintiff's claim is dismissed with costs.

J.M. MATSEBULA

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In the event, the plaintiff's claim is ordered to be dismissed, with costs.

JACOBUS P. ANNANDALE

ACTING CHIEF JUSTICE