

IN THE HIGH COURT OF SWAZILAND

HELD AT MBABANE

CASE NO. 785/04

In the matter between:

**WORLDWIDE INTERNATIONAL SECURITY
SERVICES (PTY) LTD**

PLAINTIFF

and

**SWAZILAND GOVERNMENT
ATTORNEY GENERAL**

**1ST DEFENDANT
2ND DEFENDANT**

CORAM

FOR THE PLAINTIFF FOR THE
DEFENDANTS

Q.M. MABUZA -J
MR. S.C. SIMELANE OF
S.C. SIMELANE
MR. J. MAHLINZA OF
ATTORNEYGENERAL'S
CHAMBERS

JUDGMENT 9/12/2009

[1] The Plaintiff, a private company issued summons against the Government of Swaziland for payment of E45,405.00 (Forty five thousand four hundred and five Emalangeni)

in respect of damages incurred to its motor vehicle as a result of a collision between its motor vehicle and that of the Swaziland Government (1st Defendant). Interest at 9% a ***tempore morae***; costs of suit and further and or alternative relief are also sought.

[2] The collision occurred between Plaintiffs motor vehicle SD 064 XH and the 1st Defendant's motor vehicle SG 087 TI at or near Gwamile Street, Mbabane on the 5th November 2003. Petros Mndzebele drove Plaintiffs motor vehicle and Elliot Nhlabatsi drove 1st Defendant's motor vehicle. The accident occurred at the intersection at the robots near the Deputy Prime Minister's offices.

[3] It is alleged that the accident was caused by the negligence of Elliot Nhlabatsi who was negligent in one or more of the following respects:

- He drove at an excessive speed
- He failed to apply his brakes timeously or at all;
- He failed to exercise a proper look out; and
- He failed to avoid an accident when by the use of reasonable care and skill he could and ought to have done so.

[4] The 1st Defendant denies that its driver was negligent and has pleaded that the collision was caused by the negligent driving of Plaintiffs driver. The 1st Defendant in pleading to the particularised negligence has stated that 1st Defendant's motor vehicle was heavily laden and this necessitated that measured speed, due care and skill be exercised. The 1st Defendant has further pleaded that it is not liable to the Plaintiff in the amount claimed or any amount whatsoever. The 1st Defendant has put the Plaintiff to strict proof of all Plaintiffs averments as set out in the summons.

[5] The Plaintiff called three witnesses to prove its case. The Plaintiffs director Jerry Pollen Dlamini (PW4) testified that SD 064 XH belonged to the Plaintiff and on the 5th November 2003 was driven by Petros Mndzebele an employee of the Plaintiff. The Plaintiffs business is to provide security services. The accident was reported to the witness. The whole front of the motor vehicle was damaged and it had to be towed because it could not start. The Plaintiff repaired and paid for the repair of the motor vehicle. A quotation was obtained and filed. It was prepared by Mc Franson Engineering (Pty) Ltd. It amounted to E22,520.00 (Twenty two thousand, five hundred and twenty Emalangeni) for the panel beating works. Another quotation obtained from Super BI-CA

Centre for the engine works amounted to E22,885.66 (Twenty two thousand, eight hundred and eighty five Emalangeni and sixty six cents). Together these amounts totalled E45,405.66 (Forty five thousand, four hundred and five Emalangeni and sixty six cents).

[5] I accept these figures as Mr. Mahlinza did not challenge their authenticity but merely denied liability therefore by the 1st Defendant and put the Plaintiff to the strict proof thereof.

[6] PW2, Petros Mfanzile Mndzebele testified that he was employed as a security driver for the Plaintiff. On the 5/11/2003 he was patrolling the sites in Mbabane where the Plaintiff provides security. He drove round the circle at the city centre and took the street towards the intersection robots. He was driving towards Multisave. He approached the robots and found that a truck which had come from the opposite direction, was about to cross the intersection. It

suddenly turned right at the robots instead of crossing them, without indicating its intention of doing so.

[7] The witness stated that he had been driving in the slow lane but when he saw the truck turn right he swerved to the right into the fast lane to avoid a collision. As a result he collided into the trucks left rear tyre. He was about 4 metres from the robots when he saw the truck. He was travelling at a speed of 45 km per hour. He tried to stop but could not because the tarmac was wet. He could not swerve towards the right because he feared that he would knock the truck on its sides. There was nothing else he could have done to prevent the accident. He informed the court that after the collision he spoke with the driver of the truck. The latter apologised and admitted that he was sleepy. The police were called and PW1, 1918 Petros Sibandze attended to the accident. This witness was travelling with a passenger PW3, Nelson Mndzebele.

[8] PW2 was cross-examined by Mr. Mahlinza. He revealed that the truck was between 5 - 6 metres in length. He was asked how it was possible for him to bump a 5 - 6 metre long truck which had suddenly turned in front of him on the left rear tyre. He responded that he was in the slow lane and when he saw that the truck was inside he braked but the truck was already in front of him causing him to swerve to the right. It was put to him that had the truck made a sudden turn the impact would not have been at the back but in front or middle side especially as the truck moved slowly. He responded that he was driving in the slow lane and in order to avoid the collision he swerved to the right lane and yet the truck was in motion. He re-iterated that he was travelling at 45 km per hour and that he had a right of

way. It was put to him that the truck driver had indicated before turning right and that the truck driver denied apologising to this witness.

[9] When Mr. Simelane re-examined him, he put the following question to him.

Q. "Were you negligent in any manner at the time of the time of the accident.' A.

"No, I had the right of way."

He informed the court that truck had two tyres in front and four tyres at the back.

[10] PW3, Nelson Mndzebele next gave evidence. He stated that he was the passenger in the Plaintiffs motor vehicle. He testified that on the 5/11/2003 he drove along with PW2 while patrolling some sites in Mbabane. He too is employed by the Plaintiff. Along the way to Multisave at the robots at the intersection the vehicle that he was in collided with a truck belonging to the 1st Defendant. The truck turned right without indicating its intention to do so. When it turned the vehicle that he was in was too

near the robot to stop. Consequently, PW2 who was driving in the left (slow) lane swerved to the right and hit the trucks rear left tyre. This witness does not know what transpired after that as he was rushed to the hospital due to certain injuries that he had sustained.

[11] Mr. Mahlinza challenged PW3 about his ability to see whether or not the truck was indicating from afar while a passenger. The witness maintained his stance.

[12] PW1 was the police officer 1918 Petros Sibandze who attended to the traffic accident. He testified that on the 5/11/2003 while he was on patrol duty at about 9.30 -9.45 pm he received a message to go and attend to a motor vehicle accident at Gwamile/Asakhe traffic lights. Upon arrival at the scene he found a government truck and the Isuzu van driven by PW2. DW1 was the driver of the truck. The truck had been moved away from the point of impact but the van remained as it had been severely damaged. He found both drivers at the scene. They showed him the point of impact which was on the right lane (fast) when facing Multisave Supermarket. The investigation revealed that the truck was coming from Multisave direction and turning right at the robots and going towards the old bus rank. The van was from the traffic circle and going towards Multisave direction.

The van was damaged on the front part, bumper and both headlamps. The truck was damaged on the rear left tyre. A passenger from the van who was injured was taken to the hospital. The witness ventured an opinion that it was the truck that was negligent. I shall disregard his opinion as he was not introduced as an expert witness and more so that he did not draw the mandatory police sketch plan. His excuse is that the weather was bad and it was drizzling and the tarmac was wet. In my view that is no reason for failing to draw a very necessary sketch plan.

He agreed with Mr. Mahlinza during cross-examination that the truck was heavily loaded because it was carrying bales of dry hay

from South Africa. He also agreed that the truck could not have been speeding because it was negotiating a corner when turning. He agreed with Mr. Mahlinza that because the truck was bumped in its left rear tyre this would mean that the truck had made a full turn. The Court put certain questions to PW1 and his response was that the road from the circle to the robots is uphill and there is a gradual incline. The road from Multisave towards the robots runs downhill. He stated that the truck's size was above a two tonner and was about 5 metres long. The police report was not compiled by this witness.

[15] The Plaintiff closed its case. The defence led one witness, DW1, Elliot M. Nhlabatsi. He was the driver of the Government truck. He testified that on the 5/11/2003 he was travelling downtown towards the robots near Asakhe House/Deputy Prime Ministers offices. He was driving a government truck SG 087 TI. The truck was carrying a load of bales of dry grass. His intention was to turn right at the robots and head towards the old bus rank. When he arrived at the robots he found them red and he stopped. The robot turned green, the lane diagonally opposite was clear and he turned right. Before he turned he indicated his intention of turning right. When he was about to complete the turn he heard a bang on the left side of the truck. He stopped to investigate the bang. He found that the Plaintiffs van had collided with the trucks left rear tyre. The impact had caused the van to face towards the bus rank, to where the truck was headed. The police arrived and took statements. He denied that he apologised to PW2 or that he admitted to being sleepy. He denied having driven negligently nor ever being charged for negligent driving.

[16] When Mr. Simelane cross-examined the witness he revealed that he turned slowly because he was afraid that the bales

of hay would fall. Consequently he was unable to estimate how long it took him to negotiate the turn. He was rather evasive in answering this question even though on the whole his demeanour was pleasant. It was put to him that the point of impact was on the inner lane. He denied this and stated that when the bang occurred the truck was about to complete passing the slow lane as the better part of the truck was off the road. He disclosed that the speed he travelled was very low almost zero because of the heavy load. Mr Simelane asked DW1 whether or not he had a conversation with PW2. The witness said yes. He asked PW2 why he had collided with him and PW2 also asked DW1 why he had collided with him. Mr. Simelane made much of the failure of counsel for DW1 to lead DW1 on this piece of evidence. My view is that DW1 cannot be blamed for the omissions of his attorney.


[17] Mr. Simelane made much of why he thought DW1 was trying to avoid admitting liability because he feared being surcharged by the government for the damage cause to the truck. Equally true is the reverse PW2 would be afraid of being fired or made to pay for the repairs effected on the van. Mr. Simelane put to the witness a question that any motor vehicle coming from the circle towards the robots would have seen DWI's truck and taken precautions to avoid it; he agreed. The witness denied that he entered the intersection when the Plaintiffs van was about 4 or 5 metres from the truck. He denied that he failed to keep a look out; or that he drove in a negligent manner; or that he acted in complete disregard of other road users.

DW1 stated that he would have seen the lights of an oncoming motor vehicle from his high vantage point in the truck before turning but he did not see any lights until he heard the bang.

The 1st Defendant closed its case.

In my considered view the evidence that Plaintiffs vehicle struck the 1st Defendant's vehicle on the rear left tyre suggests that the 1st Defendant's vehicle had completed the turn. There are street lights on that street especially at the Asakhe robots. The 1st Defendant's driver being in a high vantage point would have seen the Plaintiff's vehicle coming up the incline. But if the 1st Defendant's vehicle had already made the ninety-degree turn which I believe it had then the Plaintiffs driver would have suddenly come upon it snaking its way towards the bus rank; this in my view would explain the sudden swerve towards the extreme right.

[19] In my view it is the Plaintiffs driver who drove negligently; consequently the claim against the Defendant's is dismissed with costs.


Q.M. MABUZA -J