



**IN THE HIGH COURT OF SWAZILAND**

**JUDGMENT**

Civil Case 216/2013

In the matter between:

**JUSTICE MAMBA**

**Plaintiff**

And

**SASCO AFRICA (PTY) LTD**

**Defendant**

**Neutral citation:** *Justice Mamba vs SASCO Africa (Pty) Ltd (216/2013)*  
*[SZHC 44] 4<sup>th</sup> March, 2016)*

**Coram:** **MAPHALALA PJ**

**Heard:** **2<sup>nd</sup> June, 2015**

**Delivered:** **4<sup>th</sup> March, 2016**

**For Plaintiff:** **M. M. Simelane**  
**(of Mbuso E. Simelane & Associates**

**For Defendant:** **not before court**

**Summary:** Civil Procedure – Plaintiff’s claim for damages after his motor vehicle collided in an oil spillage – the accident was caused by the Defendant – Defendant does not appear on the day of trial – the case proceeded in terms of rule 39 (1) of the High Court Rules – after hearing **viva voce** evidence of Plaintiff an order in terms of prayers (a) (b) and (c) of the Particulars of Claims granted by the court.

## **JUDGMENT**

### **The trial**

[1] Serving before this court is a trial on a Combine Summons filed by the Plaintiff Mr. Justice Mamba against the Defendant SASCO Africa (Pty) Ltd company registered in South Africa for orders in the following terms:

- a) **Payment of the sums of E65 900.00**
- b) **Interest thereon at rate of 9% per annum a tempore morae calculated from 3 July 2012 to date of payment.**
- c) **Costs.**
- d) **Further or alternative relief.**

### **The defence**

[2] The Defendant filed a Notice of Intention to defend through the offices of Currie Boxshall Smith Attorneys on the 18 February, 2013. The Defendant’s plea was filed in 25 March, 2013.

[3] Discovery affidavit were then file by the Defendant.

### **The chronicle of events**

- [4] The matter was then set for trial on the 21<sup>st</sup> to 22<sup>nd</sup> April, 2015 at 9.30 a.m. through a Notice of set down served on the 14 February 2013.
- [5] The Defendant's attorney filed a Notice of Withdrawal as attorney of record on the 17 March, 2015.
- [6] The Plaintiff on the 18 March, 2015 complained about the irregularity of the withdrawal when a matter has been set down for trial in a letter sent to attorneys Allan Levin & Associates who held a brief for the Defendant in annexure "C".
- [7] Through a Power of Attorney issued on 22 January, 2013 sent under cover of a letter dated 23 January 2013 discovered by Defendant in Schedule 1 of the discovery affidavit deposed to by Sharon Smith, which is annexed as "D", the Defendant authorized Currie Boxshall Smith Attorneys to receive notices and correspondences relating to the matter.
- [8] No evidence has been brought forth that the Power of Attorney has been revoked.
- [9] When the matter appeared on the 21 and 22 April, 2015 for trial the recording machine was not operational and the matter was postponed to the second session of the court.
- [10] The matter was subsequently allocated in the second session on the 1<sup>st</sup> June, 2015. A Notice of set down being annexure "E" was served upon Currie

Boxshall Smith Attorneys on the 29<sup>th</sup> May, 2015 but again there was no appearance when it was called at 9.30 a.m. on the 1<sup>st</sup> June, 2015.

[11] Eventually the Plaintiff was led in evidence on the 2<sup>nd</sup> June, 2015. The matter proceeded in terms of Rule 39(1) of the High Court Rules on Application made by the Plaintiff's attorney to lead oral evidence. The said Rule of Court provides the following:

**“Trial.**

**39. (1) If when a trial is called, the plaintiff appears and the defendant does not appear, the plaintiff may prove his claim so far as the burden of proof lies upon him and judgment shall be given accordingly, insofar as he has discharged such burden, but where the claim is for a debt or liquidated demand no evidence shall be necessary unless the court otherwise orders.”**

**The oral evidence of Plaintiff**

[12] The Plaintiff took the oath being lead in chief by his attorney Mr. Simelane where he related the sequence of events as stated in paragraphs 5 to 6 of his Particulars of Claim. The evidence is that his VW Golf registered JSD 550 AM overturned at MR3 highway at Malagwane near Bahai due to an oil spillage caused by Defendant's truck registered B687 AWW that had blasted its engine spilling the said oil on the tarmac.

[13] The Plaintiff further testified that there were no warning signs on the road showing that there was an oil spillage ahead. Plaintiff testified that he saw that the oil came from the truck of Defendant as the oil led straight to it. There was no other truck or vehicle in the vicinity that has an oil spill.

[14] The Plaintiff gave evidence of Consortium Motor Assessors (Pty) Ltd who assessed the pre-collision value of the motor vehicle to be the sum of E65 900.00 since the car was extensively damaged and has been written off.

[15] Lastly, Plaintiff testified that as soon as he was on the oil spill he lost control of his vehicle and it rolled twice thereafter landing on its wheels on the drainage by the side of the road. Since Defendant was not before court the Plaintiff was not cross-examined and he was then duly excused from the witness box.

### **The arguments**

[16] The court then heard the arguments of the attorney for the Plaintiff Mr. Simelane who also filed Heads of Arguments citing legal authorities to support his contentions.

[17] The offshoot of the argument on behalf of the Plaintiff is that had the truck of the Defendant blasted its engine and if proper cautionary measures had been put in place on the Malangwane road by the Defendant's driver the incident would have not occurred.

[18] In this regard the attorney for the Plaintiff cited the legal textbook by **W.E. Cooper, Delictual Liability in Motor Law (1996)** on the causation theory at page 222 to the following:

**“Causation is the relation of cause of effect. Philosophically speaking, cause is the sum total of the conditions, positive and negative, taken together”. The terms embraces “all things which have so far contributed to the result that without them it would not have occurred”. The *conditio***

***sine qua non* test thus postulates that every condition which cannot be eliminated from consideration without the consequence also being eliminated is a cause of that”.**

[19] The attorney for the Plaintiff contended at paragraph 20 of the said Heads Arguments that all theories of causation acknowledge that an act is the cause of harm if it was “**condition sine qua**” or a “**cause sine qua non**”.

[20] Further arguments are canvassed in paragraphs 21, 22 and in paragraph 33 where Plaintiff contends that Defendant is liable to the consequences that flow directly from his act and cited **Cooper (supra)** at page 230 who describes the direct consequence test as follows:

**“According to this theory (as we have seen) a defendant is liable for all the consequences flowing directly from his act. Direct consequences (it is said are those which follow in sequence from the effect of the defendant’s act upon conditions existing and forces already in operation at the time, without the intervention of any external forces which come into active operation later. A defendant’s liability is not limited to the probable or reasonably foreseeable consequences of his conduct.”**

[21] Lastly, the attorney for the Plaintiff contended that his client has made out a case to be granted judgment in this matter with costs.

### **The Court’s analysis and conclusions thereof**

[22] Having considered the evidence addressed by the Plaintiff the matter proceeded in terms of Rule 39 (1) of the High Court in the absence of the Defendant. The court only heard the evidence of the Plaintiff who was not cross-examines as a

result of Defendant's absence. In my assessment of the Plaintiff's evidence it is without question that the Defendant was negligent from the facts of the matter. Defendant's driver was negligent by not putting warning triangles of the road. The Defendant is vicariously liable for the damage as the driver was executing his duties within the cause and scope of his employment.

[23] Evidence was led by Plaintiff that other motor vehicles caused a pile up as they skipped on the road due to the oil spillage. In this regards I find the legal authority in **Cooper (supra)** on the direct consequences test outlined at paragraph [9] of this judgment to be apposite.

[24] In this result, for the foregoing reasons the Plaintiff has made out a case to be granted judgment in terms of prayers (a), (b), (c) of the Particulars of Claim in accordance with Rule 39 (1) of the High Court Rules.

**STANLEY B. MAPHALALA**  
**PRINCIPAL JUDGE**