IN THE HIGH COURT OF SWAZILAND

CASE NO. 3781/2004

BETWEEN

ASHLEY LITTLER... PLAINTIFF

AND

THE COMMISSIONER OF POLICE... FIRST DEFENDANT
THE ATTORNEY GENERAL ... SECOND DEFENDANT

CORAM AGYEMANG J
FDR THE PLAINTIFF: M.SIMELANE ESQ.

FDR THE DEFENDANT: M. VILAKATI (ESQ.)

DATED THE 30TH DAY OF OCTOBER 2009

JUDGMENT

In this suit the plaintiff is claiming the following reliefs from the defendant:

1. Payment ofthe sum of£80,000;
2. Interest on the aforesaid sum t the rate of 9 % a tempore morae;
3. Costs of suit;
4. Further and/or alternative relief.

It is common cause that sometime before September 2000, the plaintiff was the owner of a motor vehicle described as a Mazda 323 with Engine number TP A 340027115025, Chassis No. TPA 940027115525, and Registration: FDV 348 GP. The said vehicle was impounded by the Police in connection .with criminal investigations involving the plaintiffs brother: Leon Littler. On or about 23rd June 2003, the Manzini Magistrate's Court issued an order for the release of the vehicle from custody. The Police in whose custody the vehicle had been failed to produce the vehicle.

In the present suit that was instituted for the court to determine the defendants' liability for the loss of the plaintiff's vehicle as well as damages therefor, the defendants submitted to judgment regarding liability for the loss of the plaintiff's vehicle and also for damages to the tune of E20,000 said to be the book value of the said vehicle.

Since the plaintiff claimed E80,000 for the loss of his vehicle, this left the question of the quantum of damages beyond the E20.000 admitted by the defendants, the sole issue upon which evidence was led.

The plaintiff testified that he bought the vehicle from an outfit called Jafta Tune-ups and Auto Repairs in Johannesburg and that its value at the time he was deprived of it by the act of the Police, was E80,000.

Expatiating on this, the plaintiff who admitted that the book value of a Mazda 323 with standard specifications at the time of loss was E20, 000, alleged that the value of his vehicle was enhanced by reason of add-ons placed on it. He alleged the said add-ons to be those listed as the vehicle's specifications in a document admitted in evidence as exhibit B, purporting to be a receipt emanating from the said Jafta Tune-ups and Auto Repairs. The said specifications as appearing in exhibit B are the following: 2.0 DOHC overhauled engine with super-charged turbo, « Seventeen inch Razor Alloy Wheels with tyres,

- Sony Tape and Shuttle 2x 6x9 260 W
- Pioneer Speakers,
- 2 x 500W Pioneer Sub Woofers
- 2000W Audio Bank AMP.

All these enhancements he said, resulted in his paying the sum of E67,000 as the purchase price of the vehicle instead of the acknowledged standard book value of E20,000.

Although the plaintiffs case was solely based on the document exhibit B, he acknowledged that exhibit B did not state the prices of the individual items alleged to have been placed on the vehicle as enhancements. He also acknowledged that the said exhibit B did not emanate from a car dealership, but from a company that did not have its business address at the physical address contained in exhibit B. His explanation was that the owner of the company known as Dooza Jafta, operated from that address which was a residential one.

Although the plaintiff did not adduce documentary evidence of the further value claimed in this court, he alleged that he had had the vehicle re-sprayed, thus enhancing its value to E80, 000. ' The plaintiff closed his case without calling other witness.

At the close of the plaintiffs case, learned counsel for the defendant made an application on the defendants' behalf for absolution from the instance. In argument in support of the application, learned counsel contended that the plaintiff had not proved the damages sought, and that this failure entitled the defendant to make the present application. To buttress his argument, learned counsel averred that in a claim for damages for patrimonial loss such as the plaintiff is claiming by this action, the plaintiff bore the onus to prove on the balance of the probabilities that at the time of the loss of the vehicle, the value thereof was the E80,000 claimed in the action. Learned counsel 'contended that this was even more imperative as the book value of a standard Mazda 323 had been declared to be E20.000, a quarter of the sum claimed by the plaintiff as the vehicle's value. Learned counsel pointed out that the plaintiff acknowledged the E20,000 book value during cross-examination. He thus submitted that since the enhanced value was solely attributed by the plaintiff to add-ons which purportedly enhanced the vehicle's worth, evidence ought to have been led by the plaintiff on the prices of the add-ons but that the plaintiff had failed to do so.

In reply, learned counsel for the plaintiff contended that the plaintiff had led sufficient evidence in proof of the damages sought in the sum of E80.000 by .tendering exhibit B which listed the add-ons. He contended that the failure of that document to list the prices of the add-ons could not be fatal to the claim. He contended that the plaintiff had been deprived of the opportunity of presenting the evidence of a proper professional valuation of the vehicle, by the fact of its loss while in the custody of the first defendant. He submitted that the plaintiff already placed at such disadvantage by the act of the first defendant, ought not to be penalised for not providing a more exact valuation of the vehicle. In an argument that was vehemently resisted by opposing counsel, learned counsel contended that damages in the present instance were at large as they could not be proved with precision by the plaintiff. In that regard, he invited the court to assess the value of the vehicle at its ■discretion.

Upon hearing both counsel and after evaluating the evidence led by the plaintiff in proof of his claim for damages of E80.000, I arn minded to and hereby refuse the defendants' application for absolution from the instance. My reasons are the following:

The standard of proof of at the close of a plaintiffs case, is that it has made a prima facie case, see: ***Gascoyne v. Paul & Hunter 1917 TPD 170.*** The import of this is that the plaintiff who assumes the burden of adducing evidence in meeting his burden of proof of what he alleges on the preponderance of the probabilities, has adduced sufficient evidence such as could merit a ruling in his favour. If the plaintiff does not adduce such evidence at the close of his case, the defendant is entitled to absolution from the instance.

Before I delve into a discussion of the merits of the application , I must point out that in a claim for damages for patrimonial loss sustained in the loss (alteration or destruction) of a chattel, the plaintiff has a burden to prove the value of the item lost (or the extent if its alteration or destruction). Unless the claim includes other components such as a claim for general inconvenience and loss of use, such damages are not at large and the court may not assess damages beyond the loss alleged by the plaintiff and proven by him.

In the present instance, the plaintiff who claimed E80.000 damages did not say that the said claim included any such component. The evidence led related solely to the value of the vehicle which the plaintiff (who acknowledged its book value to be E20.000), claimed was worth E80.000 at the time he was deprived of it, by reason of its add-on specifications. The plaintiff thus assumed the burden of adducing evidence in proof of the value as claimed by him. In this adventure, the plaintiff tendered exhibit B. Although during cross-examination the authenticity of exhibit B was challenged, it did not detract from the fact that ex facie, exhibit B was a receipt for the purchase of the vehicle with the same particulars (including its engine and chassis numbers) as the plaintiff's vehicle. It also purportedly emanated from the company the plaintiff said he bought the vehicle from. Exhibit B contained a list of specifications and stated the price of the vehicle to be E67.000.

Although the plaintiff did not adduce further documentary evidence regarding the E13,000 which would make up the E80,000 claimed in this action (adding almost as an afterthought that he had the vehicle repainted thus further enhancing its value), at the close of his case, he had per exhibit B, adduced enough evidence which unless rebutted by the defendant, would be enough to merit a finding in his favour that the vehicle's value was over and above the E20.000 book value, infact, E67.000. Admittedly the evidence led by the plaintiff regarding enhanced value was not up to the E80,000 claimed, since •exhibit B was with regard to E67,000 only. Even so this circumstance may

not prevent this court whose jurisdiction to provide further and/or alternative relief To that which has been claimed has been invoked, to find in the plaintiffs favour.

It is settled law that at this stage of the trial, the court's duty is not to evaluate and reject the plaintiffs evidence, see: ***Atlantic Continental Assurance Co of SA v. Vermaak 1973 (2) SA 525,*** it simply has to determine whether a prima facie case (which might merit a ruling in the plaintiff's favour although it may later be rebutted by the defendants), has been made regarding an enhanced value of the plaintiffs vehicle. It seems to me that the plaintiff has succeeded in making a prima facie case to merit a ruling with regard to the enhanced value evidenced by exhibit B.
The defendant's application must therefore fail. No order as to costs. The defendants are hereby called upon to open their defence.

MABEL AGYEMAND (MRS)

HIGH COURT JUSTICE