

**IN THE HIGH COURT OF MALAWI**  
**LILONGWE DISTRICT REGISTRY**  
**CIVIL APPEAL NO. 58 OF 2007**

**BETWEEN**

**LAWRENCE KUNDAJE ..... APPLICANT**

**AND**

**DAVIE RAJAB MPAKANI ..... RESPONDENT**

**CORAM : HON. JUSTICE NYIRENDA**

: ..... Counsel for the Applicant  
: ..... Counsel for the Respondent  
Mrs. B.C.F. Jere, Court Reporter  
L.N. Msiska, Court Interpreter

**JUDGMENT**

On the 31<sup>st</sup> of May 2007, First Grade Magistrate, Banda in his judgment found for the respondent in a claim for damages resulting from a road accident involving the respondent and the appellant. Dissatisfied with the decision of the trial magistrate, the appellant appeals to this court against the entire judgment as to his liability and the magnitude of the damages that were awarded.

The case is simple on facts all of which are properly set out in the magistrate's judgment. On the 15<sup>th</sup> December 2006 at around 7.30 in the evening the

respondent was on a motor cycle registration number BM 2871 riding along the main road in Salima Township. As he was about to turn right a vehicle that was coming from behind hit him with its body as it was attempting to overtake him. The vehicle turned out to be that of the appellant, a three ton lorry, which was being driven by the appellant at the material time.

Upon the collision the admitted fact is that the appellant did not stop at the scene. Instead he drove to police and reported the accident. Police followed up the accident and their findings were that the appellant was at fault and he was fined for the offence. The decision of the lower court virtually followed the path of the established facts and the award for damages was basically based on simple proven loss namely:

- (a) Loss of a bank card which the respondent had to replace.
- (b) The cost of repairs of the motor cycle.
- (c) The cost of a lost cell phone.

I have myself carefully revisited the facts of the case and the evidence before the lower court. I find no basis for faulting the magistrate. The facts were simple and straight forward. The appellant simply took a wrong decision in overtaking when there was a stream of cars ahead of him and was in the process not able to properly assess the movement and direction that the respondent was going.

The appellant thinks this action should have been directed at his insurers. But surely that is up to the appellant himself to bring this matter to the notice of his insurer either directly to them or by drawing them in as third parties to the

action. The respondent was perfectly entitled to proceed against the appellant which he did.

In the end there is nothing to this appeal which I dismiss in its entirety. The judgment of the trial magistrate is upheld. It is further ordered that the appellant shall pay the full amount adjudged within two weeks of this judgment because it is now close to one year since the lower court pronounced its judgment which was not stayed. The full amount of the judgment should have been paid within three months of its pronouncement.

The respondent has sought further damages because he was not compensated for personal injuries. I have read the summary of the respondent's complaint before the lower court. Towards the end of the complaint, the respondent seeks damages for personal injuries. It is not clear from the lower court record why this aspect of the matter was not dealt with. It probably was because in the claim sheet the respondent only stressed on the cell phone, the bank card and the repairs to the motor cycle. In Open Court the respondent again raised only these matters and did not talk about personal injuries. It is therefore difficult now for this Court to dwell on these matters. The appellant will not be able to challenge these matters if they were to be accepted at this stage. I make no order for damages for personal injuries.

**PRONOUNCED** in Open Court at Salima this ..... day of May 2008.

A.K.C. Nyirenda

**J U D G E**