

**IN THE HIGH COURT OF MALAWI  
PRINCIPAL REGISTRY  
CIVIL CAUSE NO. 1093 OF 2002**

**BETWEEN:**

**JOSEPH ROSS NCHIZA .....1<sup>ST</sup> PLAINTIFF**

**LIVING WATERS CHURCH .....2<sup>ND</sup> PLAINTIFF**

**VERSUS**

**MALAWI TELECOMMUNICATIONS LTD .....1<sup>ST</sup> DEFENDANT**

**C G U INSURANCE LTD. ....2<sup>ND</sup> DEFENDANT**

**CORAM: M. A. TEMBO, ASSISTANT REGISTRAR**

Kalima, Counsel for the Plaintiff

Kaliwo, Counsel for the Defendant

**ORDER ON ASSESSMENT OF DAMAGES**

**This is an order on assessment of damages suffered by the plaintiffs herein due to the loss of use of a motor vehicle that was involved in an accident attributed to the negligence of an agent of the 1<sup>st</sup> defendant who was insured by the 2<sup>nd</sup> defendant.**

**Mr Kaliwo appeared on behalf of the plaintiff whereas Mr Kaliwo appeared for the defendants.**

Only one witness testified on the assessment of damages for loss of use of the motor vehicle.

That witness was Joseph Mbewe who informed this court that he is a Pastor at Living Waters Church and that he was the one driving the motor vehicle herein when the accident occurred. He further informed that the Car herein had been received by the 2<sup>nd</sup> plaintiff from the 1<sup>st</sup> plaintiff and had been dedicated to be used by himself.

Mr Mbewe informed the court that by the date of the accident he had only used the car for 8 days. And that since the accident he had no personal transport and had to walk or use public transport.

He said that the date of the accident was 1<sup>st</sup> January, 2002. Pastor Mbewe then told the court that he got the replacement value of the vehicle on 8<sup>th</sup> August, 2002.

He also informed the court that he was using the car for many purposes like ferrying his children to school as well as running his pastoral errands.

On Cross – examination by Mr Kaliwo Pastor Mbewe informed this Court that at the time of the accident the vehicle herein was not registered in his name nor in the name of the 2<sup>nd</sup> plaintiff. But that the vehicle had been brought in the country to be given to the 2<sup>nd</sup> plaintiff.

Counsel for the defendant's also Cross - examination Pastor Mbewe on the importation declaration made by the 1<sup>st</sup> plaintiff in relation to the vehicle. In relation to which Pastor Mbewe agreed that the vehicle had been imported temporarily into Malawi. But he added that it was in the power of the 1<sup>st</sup> plaintiff to donate the vehicle to the 2<sup>nd</sup> plaintiff.

In re - examination by Mr Kalima Counsel for the plaintiffs, Pastor Mbewe told the court that when the 2<sup>nd</sup> plaintiff received the vehicle herein it went to Malawi Revenue Authority to declare its receipt of the foreign registered motor vehicle. And he further said that by the true of the accident all the importation processes of the motor vehicle herein had not yet been cleared with the Malawi Revenue Authority. The Court observed that from the evidence of pastor Mbewe the 1<sup>st</sup> plaintiff was using his motor vehicle herein. By leaving it at the disposal of the Pastor. The fact that it had been temporarily imported to Malawi and that it bore foreign registration numbers has no bearing on its use by the 1<sup>st</sup> plaintiff.

The 1<sup>st</sup> plaintiff was still using the motor vehicle through the 2<sup>nd</sup> plaintiff in the person of Pastor Mbewe.

As such when Pastor Mbewe lost use of the motor vehicle that was tantamount to loss of use by the 1<sup>st</sup> plaintiff as well. As such the 1<sup>st</sup> plaintiff is entitled to damages for loss of use of the motor vehicle. This is an matter of fact.

The law on loss of use is clear.

General damages are awardable on proof of loss of use of a chattel including a motor vehicle.

On the quantum of damages Mtegha J (as he then was J had this to say in **P. J. Chinema v World Vision International** Civil cause Number 1097 of 1991:-

`It is conceded that the Courts are rather conservative in awarding damages for loss of use and the cases do not show a criteria for awarding damages for loss of use and the cases do not show a criteria for awarding such damages`.

He went on to state that:

` I have pointed out that awards for loss of use are not consistent and they depend on the circumstances of each case and the money depreciates in value all the time`.

The Court notes that herein the 1<sup>st</sup> plaintiff was deprived of the use of his vehicle from

1<sup>st</sup> January, 2002 to August 2002 representing a period of 8 months. The court notes that in **G.S. Gondwe v Mandala Limited** Civil Cause No. 1725 of 1994 decided on 3<sup>rd</sup> January, 2002, a sum of K250,000.00 was awarded as damages for loss of use of a motor, vehicle for a period of about 7 years. Upon consideration of all the circumstances in the instant case the court is of the view that an award of K40,000.00 is a fair and adequate as damages for loss of use occasioned herein.

Costs are also awarded to the plaintiff.

**MADE** in Chambers at Blantyre this 25<sup>th</sup> February, 2003.

**M. A. Tembo**

**ASSISTANT REGISTRAR OF HIGH COURT AND  
SUPREME COURT OF APPEAL**