

PLAYTIME MANUFACTURING (PVT) LTD
versus
TENDAYI MUSANGA

HIGH COURT OF ZIMBABWE
BHUNU J
HARARE 1st December and 8th December 2004

Unopposed Application

Mr *I.E.G. Musimbe*, for the applicant
No appearance for the respondent

BHUNU J: The applicant sued the respondent for damages arising from a road traffic accident in the sum of \$750 030.00.

The defendant did not enter an appearance to defend by due date thereby prompting the applicant to file an application for default judgment.

In an attempt to quantify the amount of damages the applicant has filed a brief and, most perfunctory supporting affidavit from a Mr Richard Mark Read. The affidavit reads:

"I Richard Mark Read do hereby make oath and state -

1. I am a qualified motor assessor.
2. I inspected the damaged motor vehicle of the plaintiff being a Mazda B2200 Pick Up registration number 618-617.
3. Having regard to the extent of the damages the motor vehicle was damaged extensively. The reasonable costs of repairing the motor vehicle is in the sum of \$750 030.00."

At the hearing I pointed out that the deponent ought to have stated his qualifications. Counsel's response was that it was sufficient to state that he was a qualified motor assessor.

I take the view that it is insufficient for one who claims to be an expert to simply state that he is qualified without stating his qualification and experience.

It is of vital importance that people, who claim to be experts should be prepared to divulge their qualifications and experience to the court. This information enables the court to assess and give due weight to the expert opinion

given. Without such information the court is unable to assess and determine the accuracy of the expert opinion given.

In his affidavit the purported expert motor assessor did not give a description and nature of the damages which he described as extensive. The term extensive damage is a relative term. In the absence of a description of the nature and extent of the damages it may mean different things to different people. The description falls far too short of painting an accurate picture in the mind of the court of the extent and quantum of damages.

Initially because of the paucity of evidence relating to the quantum of damages I intended to dismiss the application. On second thoughts I have decided against it for fear of unduly prejudicing the innocent applicant.

There being no sufficient evidence on which this court can make an informed reasonable assessment of damages I think the best solution is to grant an absolution from the instance.

I am constrained to state that counsel for the applicant did not help matters by refusing to submit heads of argument on the issue upon invitation by the court to do so.

There being no sufficient factual basis upon which this court can make a fair and just assessment of the quantum of damages suffered, this court retains a verdict of absolution from the instance with no order as to costs.

IEG Musimbe and Partners, the plaintiff's legal practitioners