

LUCY MUNETSI  
versus  
MUNJODZI JARAVANI  
and  
NURSE JARAVANI

HIGH COURT OF ZIMBABWE  
GARWE JP  
HARARE, 9 - 11 November 2005  
and 5 April 2006

### **Civil Trial**

GARWE JP: This matter commenced by way of application. In the application the plaintiff sought an order directing the two defendants to hand over the registration book of a Datsun Bluebird motor vehicle Registration number 400-802D and to sign all necessary papers to enable the transfer of the vehicle to the plaintiff. That relief was opposed by the two defendants. The defendants also filed a counter application in which they sought an order directing the plaintiff to surrender forthwith the Datsun bluebird motor vehicle to them and that failing for the Deputy Sheriff to be authorised to seize the same and surrender it to them. That counter application was opposed by the plaintiff. The matter came up on the opposed roll before BERE J who referred the matter to trial. At the commencement of the trial the parties agreed that there were two issues. These were (a) whether the vehicle was tendered to the plaintiff by the defendants in payment for her services and (b) whether the vehicle was left in the plaintiff's custody for safe keeping. Close scrutiny of the two issues shows that in fact there is only one issue and that is whether the vehicle was given to the plaintiff in settlement of her fee for treating the defendant's son.

It is common cause that the defendant's son became mentally unstable and was referred to the plaintiff for treatment. The plaintiff is a traditional healer. On the evidence it appears the son

was cured and in June 2003 the plaintiff and the defendants travelled to the defendant's rural home where the plaintiff formally handed the son back to the defendants.

The plaintiff gave evidence. She told the court she kept the defendant's son from April 2001 until 2003 when she finished the treatment. The defendant failed to pay for her services and instead handed over the motor vehicle to her to keep as hers. She admitted that in 2001 when the son was first brought to her she charged the sum of \$900,000 for her services as a traditional healer. The defendants were also expected to pay more money to her for taking care of the son and for the formal handing over of the son back to his family. The defendants failed to pay and instead surrendered the vehicle. She agreed to take the vehicle in place of the money. It was understood at the time that there would be no outstanding balance and that the surrender of the vehicle was in full and final payment. In June 2003 the first defendant then drove the vehicle to her residence and gave her what he called the registration book but which later turned out to be the manual of the vehicle. She denied the vehicle was left in her custody for safe keeping.

Under cross-examination she told the court that by the time she went with the defendants to their rural home to formally hand over their son, the vehicle had already been surrendered to her. In fact her son was driving the vehicle. She denied that the vehicle was handed to her so that some people who had attended the ceremony in the rural areas could find means to travel back to Harare. She denied threatening to harm the defendant's son.

The first defendant gave evidence. He told the court he approached the plaintiff because his son appeared possessed by evil spirits. He was asked to pay various sums in connection with the treatment. He did so. He told the court his son was under the custody of the plaintiff from April 2002 and not 2001. During the

period his son stayed at the plaintiff's residence he would contribute towards his upkeep. He would buy maize and groceries and leave money for other foodstuffs. He denied giving the vehicle to the plaintiff and told the court that when they proceeded to the rural areas he had custody of the vehicle. After the ceremony there were a number of people who were in a hurry to get back to work. It was then he released the vehicle to take these people and the plaintiff back to Harare. It was when he came back from the rural areas and asked for his vehicle that the plaintiff then demanded \$900,000. Although he did not agree, he decided to bring the matter to finality and agreed to pay \$900,000. The plaintiff was threatening to cast spells on his son. He then paid her a sum of \$400 000.00. He thereafter gave her brother Joshua a further \$400 000.00 after she had served a "peace order" on him. There remained a balance of \$100 000.00 which he is prepared to pay to the plaintiff. He therefore prays that the vehicle be returned to him. He told the court that he had purchased the vehicle in 2003 for \$2.5 million. At the time he gave evidence he estimated the value at \$120 million.

Under cross-examination he admitted that his son appeared to have been treated. He also admitted that the man to whom he gave the vehicle keys was a patient at the plaintiff's residence and that he had found him there. He asked the man to drive the vehicle and park it at the plaintiff's residence. He denied giving the plaintiff the owner's manual of the vehicle and told the court the manual was kept in the vehicle at all times.

I agree with Mr *Uriri* in his closing submission that there are two different causes of action arising from the same vehicle. The plaintiff on the one hand is suing on the basis of an agreement i.e. in contract whilst the defendant is suing as owner to vindicate his property. In essence there is but one issue and that is whether the defendant agreed to hand over the vehicle as payment for services

rendered by the plaintiff. If there was such an agreement then the defendant would have no right to claim the vehicle back.

The plaintiff says when the child was initially brought to her for treatment, she charged a fee of \$900,000. The defendant denies this but admits that at a later stage in 2003 the plaintiff demanded the sum of \$900,000. He decided to pay the sum to the plaintiff in order to get the matter out of the way. He initially paid her \$400 000.00 and thereafter a further sum of \$400 000.00 through her brother. He says he did so because the plaintiff had instituted proceedings against him for an order to keep the peace. The defendant's version is disputed by the plaintiff. Neither party led further evidence to prove their claim.

The question is whether there was an agreement as alleged by the plaintiff. To answer this question it is necessary to revisit the evidence which she gave during this trial in answer to questions put by court:-

- Q. Your evidence is that the vehicle was surrendered because the defendant had failed to pay your fee?
- A. Yes.
- Q. How much had he failed to pay?
- A. I stated that in 2001 it was \$900,000 .... He did not pay. I needed to finish my work at their rural home. They brought the vehicle as payment.
- Q. Payment in what sum?
- A. I had initially charged \$900,000 cash. It was not paid. I had spent a long time staying with their son. They then brought the vehicle in place of the money.
- Q. How much was the amount that they were supposed to pay at that stage.
- A. My evidence is that the defendant came and said he had failed to pay the fees. He was now going to pay in the form of a car.

- Q. How much were the fees he was supposed to pay and in respect of which he surrendered the vehicle?
- A. We discussed verbally. He said the vehicle was coming as payment for the entire job.
- Q. So you do not know how much he was to pay for your services?
- A. I would need to calculate.
- Q. You had not done so previously?
- A. No. I had only claimed for 2001.
- Q. He surrendered the vehicle in order to meet a figure that was unknown?
- A. Yes. We agreed payment was not in the form of money.
- Q. How was payment to be made?
- Q. In 2001, it was \$900,000.
- Q. In 2002?
- A. I was now keeping the child .... I did not discuss the amount. I knew we were still going to negotiate and he would pay....
- Q. When in 2003 did he agree that the vehicle be handed as payment.
- A. In June.
- Q. And before June 2003 you expected to be paid in cash.
- A. Yes. But I did not discuss the amount. It was still to be negotiated.

From the plaintiff's answers, it is clear that even on her version no clear agreement was established. The agreement, on her evidence, remained vague. She did not know how much was due to her. She did not know the value of the car. One cannot say that the value of the vehicle was commensurate with the fee which she was enlisted to charge for treating the child. The plaintiff is asking the court to find that in these circumstances there was a valid offer and acceptance and that the agreement be enforced. In

these circumstances I do not agree that the plaintiff has established on balance the existence of such an agreement.

The submission by the plaintiff's legal practitioner that the amount which the plaintiff was entitled to charge for her services is immaterial cannot be accepted. It is material because the vehicle, on the plaintiff's evidence, was being surrendered in lieu of payment of money. I accept that a "happy" client can offer more than the value of services rendered to him or her. But there must be clear evidence of such an offer. The plaintiff does not to this date know how much the defendant owed her. A mere claim is not sufficient. How she could mistake a vehicle manual for a log book remains unexplained. I also note that in her affidavit filed in the magistrates court the plaintiff clearly indicates that the bill for her services at the time the vehicle was offered by the defendant was \$900,000. In this court she says the figure of \$900,000 represents the amount she charged initially in 2001 and that there were further unknown sums still to be added. Her explanation as to why there is such a discrepancy is not believable.

In all the circumstances I was not persuaded that on balance an agreement had been established. The onus of doing so lay with the plaintiff. She has not discharged that onus. Even if one were to accept the submissions by the plaintiff's legal practitioner that there are aspects of the defendants' evidence which are not satisfactory, there is no evidence, on balance, to show the existence of such an agreement.

In all the circumstances, the plaintiff's claim cannot succeed.

It be and is hereby ordered as follows:-

1. That the plaintiff's claim be dismissed.
2. That the plaintiff surrenders the vehicle, a Datsun Bluebird Registration number 400-802D to the first defendant forthwith upon service of this order failing which the Sheriff or his lawful deputy be and is hereby

authorised to seize the same and restore possession of the same to the first defendant.

3. That the plaintiff is to pay the costs of these proceedings.

*Chinamasa, Mudimu & Chinogwenya*, plaintiff's legal practitioners  
*Honey & Blackenberg*, defendant's legal practitioners