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Judgment No. S.C. 35/2002

Civil Appeal No. 93/01

WILFORD CHINENZURA v
THE MINISTRY OF ENVIRONMENT AND TOURISM

SUPREME COURT OF ZIMBABWE
EBRAHIM JA, SANDURA JA & CHEDA JA
HARARE, MARCH 4 & MAY 28, 2002

B Mufadza, for the appellant

Y Dondo, for the respondent

CHEDA JA: This is an appeal against the decision of the High Court awarding the sum of \$30 664.01 for damages to the rented residence that was occupied by the appellant on his tour of duty in Britain.

It is common cause that the appellant was a foreign attaché based in London from 18 July 1989 to May 1993.

At the end of his tour of duty he vacated a house that had been rented for him by the Zimbabwean High Commission.

When he left no check was carried out on the condition of the house and the property therein. The check-out inventory was only done after he had left. It is also common cause that attempts to have him on the premises for the purpose of carrying out a check were not successful and he left London with the keys to the property, only to send them back from Zimbabwe some days later.

The list on Annexure A shows that a lot of property was damaged in the house. This is confirmed by the evidence of Mr Chuma (“Chuma”), who also

detailed the damage that he saw in the house.

The trial court was therefore justified in finding that there was damage caused to the property.

In his evidence, the appellant admits the damage to the carpet but denies damages to other items. On the microwave, he said he left it in working condition. He could not explain how it could have got damaged within four days after his departure, especially as he had kept and taken the keys with him. He could not explain how some beds got broken. The trial court was therefore correct in accepting Chuma's evidence on the damage to the property.

There is therefore no doubt that the appellant was responsible for the damage and liability for it was sufficiently proved.

The next issue to be resolved is the amount of damages claimed.

The appellant argued that the damages were not proved. He quoted from the record where the trial judge said at p 4 of the cyclostyled judgment:

" ... I am unable to specify in detail the extent of the damages caused or indeed the cost of restoring all the loss that was occasioned and in most circumstances that inability would be fatal to a claim such as this ...".

The appellant also quoted the following cases in support of his argument – *Pillay v Krishna & Anor* (1946) at 591 (the citation of this case is

incomplete) and *Constantine Line v Imperial Smelting Corporation* (1942) AC at 174.

The appellant was aware before his departure from London that attempts were being made to inspect the property in his presence. He frustrated all efforts to carry out any checks. He kept the house locked until he took the keys with him to Zimbabwe. It is clear that he would not let either the owner of the house or the staff of the High Commission of Zimbabwe establish the extent of the damage to the property.

Even when confronted with particulars of the damage he could not give any explanation.

In his absence a representative of the High Commission, Chuma, went to check on the property with the owner and established that the items he mentioned at the trial were damaged. These are referred to in his evidence.

Mr Chuma said the original claim was above £10 000.00, but he negotiated with the owner and they settled on a compromise figure of £3 780.47 (three thousand seven hundred and eighty pounds and forty-seven pence).

While the appellant argues that this figure was not proved, I should point out that Chuma went and made a physical inspection of the property. The value of the damages was discussed in detail before a compromise was reached. The figure agreed is far less than what was claimed. There is no way of proving a figure that has been negotiated and agreed. In any case, all that the respondent seeks to recover is the amount that the respondent paid to the owner of the property. The voucher filed with the papers is sufficient proof of that amount.

Mr Chuma did not just consent to paying the above amount but first satisfied himself that it was in fact an appropriate figure to pay for the damages. He negotiated and settled the figure on behalf of the High Commission and this is what the respondent paid.

I cannot find any fault with this arrangement, neither has it been shown that his assessment was faulty. The appellant deprived himself of the opportunity to have the damages discussed in his presence. It does not assist him to simply argue against this amount in view of the details of the damages stated in the evidence.

The trial court was satisfied with Chuma's evidence and its credibility. Its finding cannot be faulted. On the other hand, there was nothing from the appellant to suggest that the value of the damages could have been less than this figure.

In the result, the trial court's findings and conclusion cannot be faulted or interfered with.

The appeal is dismissed with costs.

EBRAHIM JA: I agree.

SANDURA JA: I agree.

T H Chitapi & Associates, appellant's legal practitioners

Civil Division of the Attorney-General's Office, respondent's legal practitioners