

Judgment No. S.C. 115/2000
Civil Appeal No. 290/98

TONA HOVE v S K CHANAKIRA

SUPREME COURT OF ZIMBABWE
GUBBAY CJ, McNALLY JA & SANDURA JA
HARARE, NOVEMBER 13, 2000

S M M Mandizvidza, for the appellant

C K Hungwe, for the respondent

McNALLY JA: This was a completely hopeless appeal which we dismissed with costs without even calling on Mr *Hungwe*.

Judgment was given in the High Court in the sum of \$67 736.17 with interest and costs in favour of the respondent. It is not necessary to go into great detail as to how the debt was made up. It is enough to say that Mr Chanakira claimed that he had, by arrangement with Mr Hove, paid the Customs duty on a vehicle Mr Hove had imported, paid the storage charges, and then, on the understanding that he had bought the vehicle from Mr Hove, paid for certain necessary repairs, principally replacing the battery and fuel pump. When Mr Hove resiled from the sale, Mr Chanakira wanted his money back.

Although Mr Hove denies all this, the fact is that there is a letter on the record from Mr Hove's former lawyers admitting that he owed Mr Chanakira \$57 800 (the Customs duty) and the storage charges (\$1 060).

The letter in which this admission was made is marked “without prejudice” but it is trite law that that alone does not mean it cannot be produced in evidence – see Hoffmann & Zeffertt on *Evidence* 4 ed at p 197. The letter was not part of the negotiations between the parties but merely a reply to the question: “What is your defence?”.

Given that Mr Hove was clearly not being truthful on this major part of the claim, the learned judge cannot be faulted for believing Mr Chanakira’s perfectly straightforward account as to how and why the repairs were effected.

This was an appeal that should not have been pursued.

GUBBAY CJ: I agree.

SANDURA JA: I agree.

Mandizvidza & Associates, appellant's legal practitioners

Dube, Manikai & Hwacha, respondent's legal practitioners