IN THE COURT OF APPEAL OF LESOTHO

HELD AT MASERU

C of A (CIV) N0.18/2013

In the matter between

NCHELA MOTEMEKOANE **APPELLANT**

And

KHOPOLO KOPANO **RESPONDENT**

CORAM: SCOTT AP
FARLAM JA
THRING JA

HEARD: 8 OCTOBER 2013

DELIVERED: 18 OCTOBER 2013

SUMMARY

Vicarious Liability – Employer instructing employee not to drive lorry outside brickyard – employee disobeying instruction – driving lorry to collect crusher material used in brickmaking process – going about business of employer when collision occurred.

JUDGMENT

SCOTT AP

[1] The respondent sued the appellant in the High Court for damages arising out of a motor collision on 15 March 2008. It is common cause that the collision was occasioned by the negligence of the driver of a lorry who at the time was employed by the appellant as a driver. It is also common cause, or not in dispute, that the vehicle driven by the respondent at the time was damaged beyond repair and that the respondent sustained injuries which resulted in his being hospitalised for some months. The respondent claimed damages in the sum of M75 000 made up of M50 000, being the market value of his vehicle, and M25 000 for shock, pain and suffering. At a pre-trial conference the quantum of the respondent's damages was admitted and the only issue that required determination at the trial was whether the appellant was

vicariously liable for the negligence of the driver of the truck. Nomngcongo J held that he was and awarded the respondent damages in the amount claimed of M75 000.

[2] Counsel who drew the heads of argument for the appellant appears not to have read the record. The heads deal solely with the respondent's failure to prove the quantum of his damages. There was no need for him to do so in view of the admission made at the pre-trial conference.

[3] One of the grounds of appeal was that the Court a quo erred in finding the appellant to be vicariously liable. On this ground too, the appeal must in my view fail. The appellant carries on business as a brick-maker. It is common cause that he is the owner of the lorry involved in the collision and that its driver was employed by him as a driver. It also appears from the cross-examination of the appellant that at the time of the collision the lorry was carrying a load of "crusher" material which had been collected at Morija and which is used in the brick making process. The appellant's bone of contention was, however, that the driver was new in his employment and he, the appellant, had given him strict instructions not to venture beyond the brick-yard; these instructions he said, had been ignored and the driver was accordingly not authorised to collect a load of material at Morija. The fact that an employee

disregards his employer's instructions does not necessarily mean that the employer is relieved of vicarious responsibility. It is enough that the employee was doing something for which he was generally speaking employed to do (in this case drive a lorry) and was going about his employee's business. See **Viljoen v Smith 1997 (1) SA 309 (A)**; **Minister of Safety & Security v Jordaan 2000 (4) SA 21 (SCA)**. It follows that the appellant was correctly held to be liable for the respondent's damages.

[4] The appeal is dismissed with costs.

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D.G. SCOTT

ACTING PRESIDENT

I agree _____

I.G. FARLAM

JUSTICE OF APPEAL

I agree _____

W.G. THRING

JUSTICE OF APPEAL

For Appellant : K.M. Metsing

For Respondent : N. Nku