IN THE SUPREME COURT OF WESTERN SAMOA

HELD AT APIA

C.P. 89/93

BETWEEN: PUNI TAFEA FIU of Vaitele-uta, Taxi Driver

PLAINTIFF

A N D: AIOLUPO IEREMIA FAUATEA of Vaimoso, Motor Mechanic

DEFENDANT

Counsel: Mr Fepuleai for Plaintiff
Mr V Vaai for Defendant

Date of Hearing: 20.10.1993

Date of Judgment: 22.10.1993

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JUDGMENT OF SAPOLU, CJ

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The plaintiff's claim for damages in this case arises out of a bailment.

The plaintiff says that he had wanted to have certain body repairs done to his car which was being operated as a taxi so that it will be fit for another warrant of fitness permitting his car to be driven on the roads. He met the defendant who is a mechanical engineer and a close acquaintance and the defendant offered to carry out repairs to his car at a convenient time free of any labour costs. Then on 11 December 1989 the plaintiff's car had an engine failure at Vaimoso and was pushed to the defendant's workshop which is also at Vaimoso. About a week later, the plaintiff visited the defendant's workshop and asked the defendant to carry out repairs to the body of his car. The plaintiff did not ask for repairs to the engine of his car. As it turned out the starter and the clutch cable were also repaired and a new battery was

also purchased by the plaintiff, all on the advice of the defendant with the consent of the plaintiff.

Then between the 20 of December 1989 and 20 March 1992 the plaintiff gave the defendant various sums of money amounting to $900 in total. Of that amount $100 was for a new clutch cable. In addition to the money, the plaintiff also purchased parts and materials like a new battery for $145, sand papers for $9.50, fuses for $6.00 and a 1½ gallon of filler for $67.50. So the total amount of the money given by the plaintiff to the defendant together with the costs of the new parts and materials comes to $1,208 and not $1,028 as the plaintiff says in his evidence.

The plaintiff also says that he had visited the defendant every month about his car and he found that there is no starter in the car. He was also told by the defendant that the clutch cable had rotten and that the tyres of his car had been used to tow in another vehicle from Saleimoa which is 11 miles from the defendant's workshop. Up to December 1992 when he ceased going to the defendant, the repairs to his car were still incomplete. That was the time when he decided to see a solicitor.

The evidence by the defendant is different. He says that he did not agree to repair the plaintiff's car without any remuneration. What happened was that he agreed to repair the plaintiff's car but after the repairs he will be paid some money for his service. He also says that the plaintiff wanted repairs to be done to the body as well as the engine of his car. He denies that the plaintiff visited him every month about his car. According to the defendant, the plaintiff only visited his workshop when he was present three times for the whole period between December 1989 and December 1992 when the plaintiff ceased coming to see him. The reason for the delay in completing the repairs is that he had to wait for the plaintiff for lengthy intervals to call in with the money or the parts and materials needed for the repairs to the car. As of now the only repairs which are still to be done are the painting and the clutch cable. The defendant also says that the total sum

already spend on buying parts and materials for the plaintiff's car is $1,091. He used his own money to buy what was in excess of the total amount of $1,028 given to him by the defendant. In particular, he spent US$145 which was about $306 tala at that time to buy a new starter. All these costs do not include the costs of the equipment and labour he used in carrying out the repairs to the plaintiff's car. He also says that he had removed the starter of the plaintiff's car in case it might be stolen.

Having considered the evidence and having observed the demeanour of the plaintiff and the defendant in the witness stand, I do not accept the evidence of the defendant. The evidence of the plaintiff is to be preferred. I also found the defendant's lack of satisfactory records to establish his claim that $1,091 was spent on parts and materials unbelievable. He says that he used his own money to top up the difference between the total sum of $1,091 that he paid for parts and materials. In view of the finding that I have made that the total worth of the money together with parts and materials which were given by the plaintiff to the defendant is $1,208. I do not accept that the defendant spent any of his own money on the repair work. If anything, he owes the plaintiff the difference which is $117 because that amount has not yet been spend on the repairs to the plaintiff's car. I also do not accept the defendant's evidence that he has removed the starter lest it may be stolen. The inference I draw is that there is now no starter for the plaintiff's car. I do not believe that the starter of a car can be easily stolen as it will take some effort to remove a starter from a car. It will be just as difficult to steal the starter of a car, as it is to steal a tyre, the headlights, or any other exposed parts of a car which are firmly affixed to a car.

As I have said, the plaintiff's claim for damages in this case arises out of a bailment: see for instance the decision of this Court in Lone Tagaloa v Kalati Aualiitia [1970-1979] WSLR 284 which seems to be the only Western Samoan decision reported so far on bailment. A bailment is usually based on a contract which will normally be referred to as a contract of bailment. But that is not always so, for a bailment may also exist independent of any contract. I need not say more about the situations where a bailment is based on a contract and where a bailment exists independent of any contract as that question was not raised in this case.

Turning now to the claim for damages, the plaintiff claims the sum of $2,914 for the value of his car after depreciation has been deducted. I am unable to accept this claim for that will be tantamount to compelling the defendant to take the plaintiff's car for himself even though the defendant does not want the car. The car is still at the defendant's workshop with only the painting to be done and the clutch cable to be repaired. In the circumstances of this case, I think the proper measure of the plaintiff's damages is the actual loss he has suffered subject to any questions of remoteness of damages and mitigation of loss.

As no damages are claimed for loss of use of the plaintiff's car, for example, the plaintiff having to use alternative transport during the time his car has been with the defendant, I make no award of damages for loss of use. Due to lack of evidence the claim for lost earnings arising from the loss of use of the plaintiff's car as a taxi was abandoned, so I also make no award for damages for lost earnings.

However damages are awarded to the plaintiff for $100 being the sum given to the defendant for a new clutch cable, $306 being the value of the starter and $117 being the difference between the total worth of the money together with parts and materials given by the plaintiff to the defendant and the amount the defendant says was spent on the repairs. So the total amount

of damages awarded to the plaintiff is $523. In the absence of evidence to support any other claim for damages I make no further award as to damages. The defendant is also ordered to return the plaintiff's car.

The defendant has also in his submissions claimed damages from the plaintiff. I am unable to grant that submission in the absence of a proper counterclaim. In any event I do not accept the defendant's evidence which includes what he says that he agreed to do repairs to the plaintiff's car at a remuneration. I accept what the plaintiff says that the defendant offered to repair his car free of any labour costs.

Judgment is therefore given for the plaintiff in the sum of $523.

T.F.M. Sakalia
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CHIEF JUSTICE