

# Mhango v Positi and National Insurance Company Limited Civil Cause Number: 1112 of 1990

## Summary

<b>Court:</b>	High Court of Malawi
<b>Registry:</b>	Principal Registry
<b>Bench:</b>	His Honourable Justice L Unyolo
<b>Cause Number:</b>	Civil Cause Number: 1112 of 1990
<b>Date of Judgment:</b>	December 08, 1995
<b>Bar:</b>	Mr. Mhango, Counsel for the Plaintiff Defendant unrepresented

The Plaintiff commenced an action in the High Court against the First Defendant, the employer of the pick-up driver, seeking damages for negligence arising from a rear-end road traffic collision that occurred on the Blantyre-Lilongwe Road near the Ministry of Works Training Centre. The Plaintiff, driving a Mercedes Benz, alleged that the Defendant's pick-up driver suddenly and without warning veered into the right lane as the Plaintiff was in the process of overtaking. Conversely, the Defendant's driver testified that he had signalled, moved slightly to the right over the centre line, and stopped to yield to an oncoming police vehicle before

turning into a nearby access road, at which point the Plaintiff's vehicle rammed into the rear of the stationary pick-up.

The writ was originally brought against the First Defendant and the National Insurance Company (NICO) as the Second Defendant, but the Second Defendant was later discharged after the Court determined the statement of claim disclosed no cause of action against them. Despite the First Defendant failing to appear at the hearing, Counsel continued to represent him. The Court was obliged to weigh the contradictory evidence of the Plaintiff and the Defendant's driver (DW1), ultimately disregarding the evidence of the Plaintiff's witness (PW2) due to poor demeanour and material contradictions with the Plaintiff's own account. The principal issue was determining which driver was at fault, considering the duties of a driver when overtaking and one intending to turn right. The Court preferred the evidence of the Defendant's driver, finding that the collision occurred while the pick-up was stationary, waiting to turn right, a finding supported by the sketch plan showing skid-marks close to the access road. The Court held that a driver must ensure it is safe to overtake, must not overtake at or approaching a road junction, and must maintain a proper lookout and safe stopping distance from the vehicle ahead. The Court concluded that the Plaintiff failed in these cumulative duties, causing the collision. The action was accordingly dismissed, and the Court made no order as to costs, noting the First Defendant's non-appearance at the hearing.