



**HIGH COURT OF NAMIBIA MAIN DIVISION, WINDHOEK
RULING**

Case No: I 1697/15

In the matter between:

JOHAN VAN WYK

PLAINTIFF

and

TERENCE LIND t/a AUTO EXEC

DEFENDANT

Neutral citation: *Van Wyk v Lind* [I 1697/2015] [2017] NAHCMD 144 (17 May 2017)

Coram: USIKU, AJ

Heard on: 18 April 2017

Delivered: 17 May 2017

Flynote: Evidence – Opinion evidence – Defendant raising objection to receipt of lay-opinion evidence on what reconstitutes ‘market value, alternatively, fair and reasonable replacement value’ of certain articles/items on account that the witness is not an expert on the subject – Court ruling that ‘value of things’ is a subject on which lay opinion may be received.

Summary: Evidence – Defendant raising objection to receipt of lay opinion on what constitutes ‘market value, alternatively fair and reasonable replacement value’

of certain articles/items – Court ruling that the concept of the ‘market value, alternatively, ‘fair and reasonable replacement value’ is not one that falls exclusively within the realm of experts. Court will place reliance on either expert or lay opinion if satisfied with the reasons which a witness advanced for his/her opinion – Inability to provide reasons affects weight and not admissibility of the opinion.

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1. The objection is dismissed.
2. Plaintiff may give lay opinion evidence on what constitutes the market value alternatively fair and reasonable replacement value of his equipment.
3. Costs are to be costs in the cause

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Introduction

[1] In this matter the Plaintiff initiated an action against the Defendant seeking, inter alia, payment of N\$ 445 608.20 which the Plaintiff claims represent the reasonable market value, alternatively, the fair and reasonable replacement value of the equipment he sold to the Defendant.

[2] During the Plaintiff's evidence in-chief, the Defendant raised objection to the admissibility of the evidence by the Plaintiff that the market value, alternatively, fair and reasonable replacement value of the equipment in question, amounts to N\$ 445 608.20.

Defendant's grounds of the objection

[3] The Defendant's grounds for the objection are that such evidence is inadmissible, in that it is irrelevant, opinion or hearsay.

[4] The Defendant further submits that:

(a) the concept of 'market value, alternatively fair and reasonable replacement value', requires expertise and assumes the nature of expert evidence;

(b) expert opinion is required with respect to what constitutes the "market value, alternatively, fair and reasonable replacement value" of the equipment. Lay-persons do not possess expertise regarding market value and/or reasonable replacement value of goods/items; and

(c) the Plaintiff is not an expert and has no expert knowledge concerning what constitutes "the market value, alternatively fair and reasonable replacement value" of the equipment in question. Therefore, his evidence on those aspects is irrelevant, inadmissible and/or amounts to hearsay evidence.

Plaintiff's contention

[5] In response to the Defendant's objection, the Plaintiff argues that the:

(a) Defendant agreed to purchase Plaintiff's equipment at market value alternatively, replacement value;

(b) Plaintiff obtained quotations for the equipment as proof of its value, and such quotations were duly discovered;

(c) Plaintiff has been practising as panel beater and spray painter for many years; and

(d) Objection to the evidence of the Plaintiff solely on the ground that he is not an expert is not sound in law and should therefore be rejected.

Status of Plaintiff's opinion: lay or expert opinion

[6] From the outline of the summary of the Defendant's and Plaintiff's arguments as set out above, it appears to me to be common-ground that the Plaintiff is not before court as an expert on the 'market value', alternatively, the 'fair and reasonable value' of the equipment in question. To the extent that the Plaintiff appears to hold himself out as a person with special skill or expertise in the determination of the market value and/or replacement value, on account of his many years of practice as a panel beater or spray painter, such evidence would be inadmissible.

[7] The crucial issue for determination is whether the concepts of 'market value', alternatively, 'fair and reasonable replacement value' are matters that require exclusively expert opinion for their determination.

Definition of 'market value' or 'market price'

[8] 'Market price' was defined in the case of *Garavelli and Figli v Gollach and Comperts (Pty) Ltd*,¹ as follows:

'The market price of an article at a particular place simply means the price which a person who wants the article at that place has to pay for it. If the article can be obtained in open market, the market price is its cost on the market. If it has to be bought at a shop, it is the retail price charged at the shop. If it has to be imported, then it is the cost of importation'.

[9] With the abovementioned definition in mind, it is trite that the onus is on the Plaintiff to show that the market value/price of his equipment in Windhoek is the price he is alleging in his evidence. If the equipment is obtainable in the open market, the market value/price is its cost on the market. If it can be bought at a shop its market value/price is the retail price chargeable at that shop.

¹ 1959 (1) SA 816, as cited in PJ Visser & JM Potgieter *Law of damages through the cases* 3rd ed (1993) at 234.

[10] The learned authors D T Zeffert and A Paizes state that 'the value of things' is one of the subjects, in a large category of examples, on which non-expert opinion evidence may be received.²

Conclusion

[11] Having regard to the meaning of market value/price as defined above, it appears to me that the concept of market value is not obscure or mysterious, so as to be confined exclusively to the opinion of experts. While expert opinion on the subject may be a bonus, it is not indispensable to the determination of what a market value of an article is.

[12] In the light of the foregoing considerations, I am satisfied that the concept of 'market value', alternatively, 'replacement value' is not one that falls exclusively within the realm of experts. Non-expert opinion can and may be received, in the determination of what the market value is.

[13] Having said that, I hasten to add that the court is not bound by either expert or lay opinion, but will place reliance thereon, if it is satisfied with the reasons which a witness has advanced for his/her opinion. The inability to provide reasons for the opinion would affect the weight and not the admissibility of the opinion.³

[14] In the premises, the objection raised by the Defendant to the effect that expert evidence is required with respect to what constitutes 'the market value alternatively fair and reasonable replacement value' falls to be dismissed.

Costs

[15] I have considered the submissions made by both counsel on the issue of the costs on this aspect. I am satisfied that the appropriate costs order in regard to the determination of the objection raised, should be costs in the cause.

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² D T Zeffert & A Paizes *Essential Evidence* (2010) at 111.

³ P J Schwikkard & S E Van der Merwe *Principles of Evidence* 2nd ed (2009) at 87-89.

[16] In the result the following ruling is made:

- (a) The objection is dismissed;
- (b) Plaintiff may give lay opinion evidence on what constitutes the market value, alternatively fair and reasonable replacement value of his equipment.
- (c) Costs are to be costs on the cause.

B Usiku
Acting Judge

APPEARANCES:

PLAINTIFF:

S Rukoro

Instructed by Directorate of Legal Aid, Windhoek

DEFENDANT:

A van Vuuren

Instructed by Kristen & Co, Windhoek