

IN THE HIGH COURT OF MALAWI

PRINCIPAL REGISTRY

CIVIL CAUSE NO. 1292 OF 1998

BETWEEN:

SOPHIE MAGWEDE.....PLAINTIFF

-VS-

D E MWAPASA t/a P&.....DEFENDANT

CORAM: MRS I. KAMANGA, DEPUTY REGISTRAR

Mrs Movete, Counsel for the Plaintiff

RULING

This is the plaintiff's application for summary disposal of a case on a point of law under Order 14 of the Rules of the Supreme Court.

Order 14 of the Rules of the Supreme Court provides that a court may determine any question of law or construction of any document arising "without a full trial of the action" where it appears to the court that such determination will finally determine the proceedings that are before that court.

The Order also provides that the following requirements have to be met before an application can be entertained.

- (a) the defendant must have been given notice of intention to defend.

- (b) the question of law or construction is suitable for determination without a full trial or action.
- (c) such determination will trial as to the entire cause or matter or any claim or issue therein.
- (d) the parties had an opportunity of being heard on the question of law or have concerted to an order or judgment being made on such determination.

The background is as follows:-

A writ was issued against the defendant in which the plaintiff is claiming damages under the Workers Compensation Act of 1990 due to the death of the plaintiff's husband Alex Magwede. Alex Magwede was employed by the defendant as a bus driver. He died in a road accident in the course of his duties whilst driving the defendant's motor vehicle BK 3506. The plaintiff alleges that the motor vehicle, a Toyota Hiace Min Bus, which the deceased was driving from Blantyre Mangochi had a tyre burst and consequently overturned. The defendant disputes that the accident occurred due to a tyre burst. The defendant in his defence contends that the accident happened because the deceased was negligent. The particulars of the negligence include that the deceased was driving too fast in the circumstances and that he failed to stop, slow down, to swerve or in any other ways so as to manage or control the min-bus as to prevent it from overturning. The defendant claims that as the death of the deceased came about due to his negligence, the said death arose out of deliberate self-injury on the part of the deceased. Consequently, the deceased is not liable to pay any compensation by virtue of section 4(2)(b) of the Workers Compensation Act.

The plaintiff then made this application for summary disposal of the matter on appoint of law. A notice of adjournment was set to the defendant by post as per the affidavit of the plaintiffs. The defendant never put any appearance, nor did the defendant give explanation for his absence. Hearing of the application thereby proceeding in the defendant's absence. Before the proceeding to the application to the application, this court has to decide whether the application satisfies the requirements that are provided under Order 14. From the discussion on the background of the matter, it can be noted that a notice of intention to defend was given by the defendant. The parties were also given an opportunity of being heard and the defendant

opted not to make use of this opportunity. The other requirement is that the question of law or construction is suitable for determination without a full trial or action. The issue for consideration in this particular matter is whether the matter at hand is not based on evidence but a point of law, and whether the determination of that point of law shall result in trial determination of the whole case. The issue in this matter whether the accident was occasioned due to a tyre burst or due to the nature of driving of the deceased i.e. driving too fast in the circumstances so as to be said to be negligent. This is not a question of law. It is a question of fact. This matter does not solely rest on determination of whether under the Workers Compensation Act, the deceased is precluded from claiming Compensation under the said act, nor that death due to his negligence precludes him from claiming under the act. It also does not solely lie on whether the reading of section 4 of the Workers Compensation Act the nature of the alleged negligence of the deceased could be said to constitute serious and willful misconduct as envisaged by that section. This matter also lies on evidence, as already noted, the issue of whether the accident was caused due to the burst or driving too fast by the deceased. It therefore does not fall solely within the ambits of the Workers Compensation Act 1994. The matter therefore ought to go for full trial for better determination of the same.

The application for summary disposal on a point of law therefore fails.

MADE in Chambers this 23rd day of August, 2001.



Mrs I. Kamanga

DEPUTY REGISTRAR OF HIGH COURT AND
SUPREME COURT OF APPEAL