IN THE HIGH COURT OF MALAWI
LILONGWE DISTRICT REGISTRY
CIVIL CAUSE NO. 313 OF 2003

BETWEEN

MRS A.L. NTONYA t/a MUMS BAKERY ..... 1ST PLAINTIFF

BETEKESI KACHOLOLA ..... 2ND PLAINTIFF

AND

THE ATTORNEY GENERAL ..... 1ST DEFENDANT

EAGLE INSURANCE ..... 2ND DEFENDANT

CORAM : His Honour T.R. Ligowe, Assistant Registrar

Liwimbi : Counsel for the Plaintiff

RULING

This is a summons to strike out defence under O18 r 19 of the Rules of the Supreme Court.

The first and second plaintiffs commenced action against the defendants by writ of summons, the first plaintiff claiming damages for loss of profit of the use of her motor vehicle and the 2nd plaintiff claiming damages for personal injuries, pain and suffering and loss of amenities of life. Paragraph 5 of the statement of claim states that on or about 13th November 2002, at or about Wadyakale Village along the Salima / Nkhotakota road, the 1st defendant's servant or agent negligently drove motor vehicle registration no. 047 MG 041, assigned to the Forestry Department, and hit the 1st plaintiff's motor vehicle which was then stationery on the offside of the road.

Paragraph 6 states that the 1st plaintiff's motor vehicle was damaged to the extent that it was written off in value. That the plaintiff lost profits as the vehicle was used to ferry baked products of the 1st plaintiff to various destinations at a profit. It further states that the 2nd plaintiff sustained personal injuries.

Paragraph 7 states that the 2nd defendant has since compensated the 1st plaintiff for loss and damages to the vehicle in the sum of K503 300 which the plaintiff treats as an admission of liability on both defendants.

The 1st defendant filed a defence to the statement of claim. Paragraph 3 of the defence states that the defendant contends that the plaintiff before leaving for his studies was informed by the Malawi Army like his counterparts that he was to get only a third of his allowance. I find that this statement does not relate in any way to the matter in question and therefore I will disregard it. It must have been misplaced. Paragraph 4 states that the defendant denies negligence as claimed in the statement of claim. Paragraph 5 denies the contents of paragraph 5 of the statement of claim and puts the plaintiff to strict proof thereof.

Counsel for the plaintiff submitted that the defence can not succeed taking into account that liability was admitted by the insurers who should have been advised by the defendants to settle the claim. Counsel cited **M.Y. Chande vs Anwar A. Gani Civil Cause No. 22 of 2000** (Lilongwe District Registry) (Unreported) where the defendant's insurers had fully compensated the plaintiff for loss of value of the salvage. In that case the plaintiff had also sued for loss of profits. The defendants put a defence averting that the plaintiff was not entitled to the anticipated losses in profits. The court in that case found that the defence had no merit and could not be sustained.

In this case the 2nd defendant has already paid compensation for loss and damages to the vehicle, which is a clear admission of negligence on the part of the defendants. The 1st defendant however puts a defence denying negligence and the occurrence of the accident. I find this defence unreasonable, unsustainable and therefore should be struck out.

The plaintiff's application therefore succeeds with costs.

Made in Chambers this 13th day of January 2004.

T.R. Ligowe
ASSISTANT REGISTRAR