

IN THE HIGH COURT OF MALAWI

LILONGWE DISTRICT REGISTRY

CIVIL CAUSE NUMBER 1165 OF 2015

BETWEEN

BELINDA BANDA-----PLAINTIFF

AND

DAENG LUKE HOSPITAL-----DEFENDANT

CORAM: HON. JUSTICE M.C.C. MKANDAWIRE

Soko, Counsel fr the Plaintiff

Mphote, Counsel for the Defendant

Itai, Court Interpreter

### JUDGMENT

This is an appeal from the ruling of the Assistant Registrar made on 11<sup>th</sup> April 2017 in respect of an application for summary judgment/Judgment on admission pursuant to Order 14 or 27 of the Rules of the Supreme Court. It is trite practice that appeals of this nature are by way of re-hearing.

In arguing this appeal, counsel for the appellant submitted that the appellant had abandoned arguing the first ground of summary judgment but concentrated on judgment on admission. Since the submissions herein had both limbs, I found no problem in entertaining the sudden change of tactics by the appellant's counsel.

It is clear from the evidence on record that on the 22<sup>nd</sup> of July 2013 the appellant Belinda Banda was admitted at the respondent's hospital where she underwent a hysterectomy conducted by Dr Etete and his team. Thereafter she experienced a lot of problems and she was re-admitted. She was later treated as an outpatient. On 11<sup>th</sup> August 2013, the appellant was referred to Kamuzu Central Hospital as her condition was not improving. In between the appellant also went to MASM clinic for some treatment. She was later taken to Gauteng Provincial Hospital in

the Republic of South Africa. Upon examination there, an x-ray showed that she has a swab in her abdomen and the same was removed through an operation. She got discharged on 23<sup>rd</sup> September 2013.

It is from the foregoing narrative that the appellant decided to sue the respondent claiming damages for pain, suffering, costs for travel and medical expenses to the tune of K2,000,000.00, damages for inconvenience plus costs of the action.

As this appeal is now focusing on judgment on admission, it is imperative to look at the affidavit evidence that was before the Assistant Registrar. Before I do that, it is also incumbent on me, to refresh my memory on the law that deals with judgment on admission. Order 29 of the Rules of the Supreme Court provides:

“Where admissions of fact or of part of a case are made by a party to a cause or matter either by his pleadings or otherwise, any other party to the cause or matter may apply to the court for such judgment or order as upon those admissions he may be entitled to without waiting for the determination of any other question between the parties and the court may give such judgment or may make such order on the application as it thinks just.”

In the present case, the appellant says that after having filed a case against the respondent on allegations of negligence that led to damages, the respondent made part payment of the claim covering the medical and transport costs for the South African Hospital where the appellant was treated.

Before I further delve into this matter, I have looked at the point of contention by the respondents as to why summary judgment/judgment on admission should not be entered. From the affidavit of Dr Etete Nkura who had operated on the appellant at the respondent's hospital, exhibit BB2 showed that there was a guage swab in the appellant's abdomen yet at the respondent's hospital they use abdominal pack swab for the procedure which the appellant underwent. What is however interesting to note is that apart from the respondent's hospital, the appellant did not undergo that similar procedure at any of the hospitals she visited before the swab was detected in South Africa.

Reverting to the judgment on admission, the affidavit of Godfrey Soko is very crucial. Mr Soko is the Principal Hospital Administrator at the respondent's



hospital. He deponed that the appellant came in person to deliver her claim charges and verbally informed him that she was willing to settle the matter out of court. The matter was then referred to the respondent's lawyers who even responded to the appellant's claim. The hospital Board was also briefed about the impending case. The matter went for mediation which failed and the Board was further briefed on this. In paragraph 8, the deponent said that he invited the appellant to meet the Board so that the appellant could explain to the Board as to what actually happened and if there could be another way to resolve the matter. It is clear from the affidavit of Mr Soko that the appellant had explained to the Board that she had incurred a lot of expenses to meet her travel, accommodation and other expenses. It is Mr Soko's evidence through this affidavit that the Board asked the appellant what she was looking for to be ably compensated for her claim. The appellant informed the Board to only pay her K2 million and scrap off other claims. The Board instructed the hospital to immediately pay the appellant the K2 million and further instructed the hospital administration to instruct its lawyers to cancel the process with the mediator. The appellant was paid and asked to sign in the hospital books.

In her findings, the Assistant Registrar found that there was no admission by the respondent as the appellant herself did not bring any evidence to show under what circumstances the K2 million was paid. In her opinion, the Assistant Registrar found that there was a dispute as to the facts surrounding the purported settlement which the court could not justly settle at that stage.

I have looked at the facts surrounding the payment of the K2 million. This K2 million was actually part of the original claim and it's the only part that was in liquidated form. I take it that at the time when the appellant was invited by Mr Soko to come to the hospital for a discussion, the hospital authorities including Mr Soko himself were aware that this matter was already in court. They were also aware about the mediation. If indeed the payment of the K2 million was a full settlement of the matter, one would have expected Mr Soko to be very enthusiastic to have it documented that a breakthrough was made. It is the same Soko who said that the appellant pleaded with the Board that she was under pressure from the people who had lent her the money for the South African trip and that she urgently needed to pay these people their money.

The respondent could not produce the evidence where they alleged the appellant had signed as full settlement of this matter. As they are the ones who were alleging the full settlement and since the book was theirs and in their custody, they should have produced or attached that evidence. The payment of the k2 million I find was part payment of the claim made by the appellant. That payment signaled an admission by the respondent.

I therefore find that this appeal succeeds with costs to the appellant. The Assistant Registrar's ruling is hereby set aside.

**DELIVERED THIS      DAY OF JUNE 2017 AT LILONGWE**

**M.C.C. MKANDAWIRE**

**JUDGE**