

THE REPUBLIC OF MALAWI
IN THE HIGH COURT OF MALAWI
LILONGWE DISTRICT REGISTRY
CIVIL CAUSE NO.1190 OF 2015

BETWEEN

James Singo Plaintiff

and

Prime Insurance Co..... Defendant

CORAM:	Madalitso K Chimwaza	ASSISTANT REGISTRAR
	ClaraKhaki, -	<i>Counsel for the Plaintiff</i>
	E. Chapo -	<i>Counsel for Defendant</i>
	Mpandaguta-	<i>Court Clerk</i>

RULING ON APPLICATION FOR SUMMARY JUDGMENT

Introduction:

This is summons for summary judgement filed by plaintiff pursuant to O14 RSC. It is supported by an affidavit and skeleton arguments. Counsel for the defendant did not file affidavits in opposition but was present during the hearing of the matter and opposed the application.

Briefly the history of the matter is important to put issues into perspective. The action was commenced in September 2015, and on 19th October defence was filed. After termination of mediation, the plaintiff filed for summary judgment on 4th October 2016. Matter was set down for hearing on 11th January, 2017, but on this day it was adjourned on account of counsel for defendants who were not ready. Matter was set down again to 8th February, 2017 but it was adjourned again on account of both counsel that they

were exploring an out of court settlement and that counsel for defendant wanted to investigate the allegation against the insured.

It will be noted that from February to July 2017 counsel had almost five months to investigate the alleged wrong doing of the insured in this matter. The defence on file does not mention anything about the insured being drunk at the time of the accident.

The plaintiff has argued in the affidavit in support of the application for summary judgment that the defense is general in nature and devoid of any merit as it is not supported by any particular facts.

The defendants through counsel argued during the hearing of the summons that the one before us is not the right case in which summary judgment should be entered owing to the fact that the defendant has a bona fide defense to the plaintiff's claim, the same being that the insured was drunk at the time of the accident an allegation which has not been substantiated with facts.

The issues for determination by the court are twofold:

- (i) Whether the plaintiff has proved their claim and therefore entitled to summary judgment
- (ii) Whether the defendant has raised a bona fide defense to the plaintiff's claim.

The Law and Analysis

A plaintiff is entitled to obtain summary judgment under Order 14 of the Rules of the Supreme Court if he can clearly establish his claim and the defendant is unable to set up a *bona fide* defense or raise an issue (s) against the claim which ought to be tried (See *Roberts v Plaintiff* [1985] 1BB 597; *Bowsprit Trading (Pty) Ltd v Namalunga Enterprises Ltd* [1992] 15 MLR 33).

Order 14 rule 1 provides as follows;

"where in an action to which this applies a statement of claim has been served on a defendant and that defendant has given notice of intention to defend the action, the plaintiff may, on the ground that that defendant has no defense to a claim included in the writ, or to a particular part of such a claim, or has no defense as to the amount of any damages claimed, apply to the court for judgement against that defendant."

The law allows a defendant to file and serve an affidavit in opposition to the summons. The defendant is entitled to show cause as to why summary judgment should not be entered. The defendant's affidavit must dwell upon particulars and should as far as possible, deal specifically with the plaintiff's claim and state clearly and concisely what

the defense is, and what facts are relied on to support it. It should also state whether the defense goes to the whole or part of the claim, and in the latter case it should specify the part: Practice note 14/4/5.

This court is aware that summary judgment is an exception to the norm and that it has to be exercised with caution. It is established principle of law that matters must be decided on merit and that is after hearing both parties. Therefore the court should not shut out defendant by entering summary judgment.

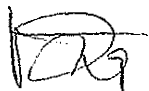
However, in the case of **Pereira vs Ndeule t/a Cenda Building Contractors [1993] 16(2) MLR 712**, in which Chipeta JA, sitting as Deputy Registrar made a distinction between an application for summary judgment under O.14 RSC, and application to set aside a default judgment where the rules allows the presiding officer in a summary judgment application to delve into questions of merits in order to decide whether any proposed defense is valid or only a sham.

This court has noted that the matter has been adjourned on a number of occasions but the defendants have not taken the step to either amend their defence to include the issue of drunkenness of their insurer which would raise a valid defence on their part. They have not filed affidavit in opposition to substantiate their defence with facts. Counsel instead appeared to give evidence in a bid to substantiate the allegation of drunkenness but still there not facts raised. If the defendants had a valid defence on merit, that should come for trial they could have brought facts to condensed on the defence. This court is satisfied that indeed the defence is a mere sham, general denial without facts not worthy taking the matter for trial.

This court is satisfied that the plaintiff have made out their case for summary judgement and the defendants defence is merely intended to delay the wheels of Justice. This court grants summary judgment in favour of the plaintiff on all claims as stipulated in the statement claim and costs of this action.

Right of appeal explained to both parties.

Made in Chambers this 19th day of October 2017



Madalitso Khoswe Chimwaza

ASSISTANT REGISTRAR