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THE REPUBLIC OF MALAWI  
IN THE HIGH COURT OF MALAWI  
LILONGWE DISTRICT REGISTRY  
CIVIL CAUSE NO.160 OF 2015  
BETWEEN

Friday Wailesi..... Plaintiff

AND

Prescious Billy..... 1<sup>st</sup> Defendant

Real Insurance Co. Ltd.....2<sup>nd</sup> Defendant

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CORAM: *Madalitso Khoswe Chimwaza, Assistant Registrar*  
*C. Mhone, Counsel for the 2<sup>nd</sup> Defendant*  
*Plaintiffs not present but duly served with notice*  
*Mpangaguta Court Clerk*

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RULING ON SUMMONS TO STRIKE OUT A PARTY

This is a ruling following a summons to strike out a party filed by the 2<sup>nd</sup> defendant pursuant to **Order 15,R6(2) RSC**. The plaintiff commenced action against the 1<sup>st</sup> and 2<sup>nd</sup> defendants claiming inter alia, damages for personal injury arising from a road accident which occurred on 7<sup>th</sup> September 2014 involving a motor vehicle registration No. BP 6083 in which the plaintiff was travelling as a passenger. In their defence the 2<sup>nd</sup> defendants specifically pleaded that that the plaintiff, being a passenger in the said motor vehicle, was not covered by the policy of insurance which was issued in respect of the same.

The summons to strike out a party is supported by an affidavit sworn by counsel Clara Khaki to the effect that since the 2<sup>nd</sup> defendants policy of insurance did not provide cover for the plaintiff, at the material time, the said 2<sup>nd</sup> defendant cannot be found liable to compensate the plaintiff and the plaintiff has no right to sue the 2<sup>nd</sup> defendant. The plaintiff has no cause of action against the 2<sup>nd</sup> defendant and therefore was wrongly joined as a party to the action and ought to be struck out. The 2<sup>nd</sup> defendant filed skeleton arguments with case authorities to which am grateful.

**Issue for Determination**

Whether the 2<sup>nd</sup> defendant is a wrong party since the policy of insurance excluded liability for passengers although it was a commercial vehicle insurance.

### **The Law**

**Section 147 of the Road Traffic Act** sets out conditions which would render a clause in a policy ineffective and carrying a fee paying passenger is not one those conditions.

According to **section 144 of the Road Traffic Act**, it restrict liability as follows:

A policy of insurance shall not be required to cover:

- (a) Any liability in respect of the death of or bodily injury to a person in the employment of a person insured by the policy if such death or bodily injury arises out of and in the course of his employment.
- (b) Except in the case of a motor vehicle in which passengers are carried for hire or reward...

Clearly the exception under **Section 144(b) of the Road Traffic Act** is referring to a commercial vehicle which is in the business of carrying passengers for hire or reward. It follows therefore if a person carries a person in his vehicle who is not for hire or reward automatically, the exception does not cover the passenger.

Looking at the proposal form for policy of Insurance attached hereto, it is a proposal for insurance of a commercial motor vehicle, however its cover did not include passengers as per clause under paragraph (c) under the heading Exceptions to section II of the policy document.

In the case of *General Alliance Insurance Co. Ltd vs Andrew Chirwa* [2014] MLR 114, the court held that the law does not make the insurance of passengers generally compulsory.

The court went on to state that premiums for policy are calculated and determined according to the usage of the vehicle and the risks that are involved. Some usages have high risk than others. It is not surprising that when a goods vehicle is to be used to carry passengers, there is need for extra money in order to cover that particular risk of carrying passengers which is more risky since human life is involved than goods.

### **Reasoned Analysis of Law and Facts**

This court believes in the sanctity of a contract and a party should not be allowed to benefit on terms which were not intended in the contract. The issue is should the defendant be liable for acts done by 1<sup>st</sup> defendant outside the insurance policy. The answer is in the negative.

Pursuant to **Order 15, r.6(2) of the Rules of the Supreme Court**, which mandates the court to strike out a party to proceedings who has been improperly or unnecessarily made a party, the 2<sup>nd</sup> defendant is hereby strike out as a party to these proceedings with costs to the 2<sup>nd</sup> defendants.

Any party aggrieved by the decision of this court has the right to appeal.

Made in Chambers this 16<sup>th</sup> day of November, 2017



Madalitso K. Chimwaza

**ASSISTANT REGISTRAR**