



IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY
CIVILCAUSE NO. 3064 OF 2001

BETWEEN:

GEORGE WAYA

PLAINTIFF

AND

T. MATUMULA

1ST DEFENDANT

PRIME INSURANCE COMPANY LTD

2ND DEFENDANT

RULING

This is the ruling made upon hearing the plaintiff's application for summary judgment which was taken under Order 14 of the Rules of the Supreme Court. The plaintiff commenced this action by way of writ of summons claiming damages for personal injuries, special damages, interest and costs of this action.

The plaintiff filed an affidavit in support of the application in which the legal practitioner for the plaintiff deposes that the defendant in their defence do not deny negligence but only the particulars thereof in the statement of claim and that the defendant attribute the accident to an act of God. The plaintiff argues that to be an act of God the circumstances in question must be the result of natural causes and not human agency. The plaintiff asserts that the defence cannot stand as a copy of the police report which is exhibit marked PJSC 6 blames the 1st defendant for misjudging clearance, distance or speed and that the 1st defendant was fined for careless driving and he paid a fine. The plaintiff contends that hitting a pedestrian on the road is not an act of God. The plaintiff also argues that the judgment should not have been set aside by consent as at the time of execution of the consent order Messrs Golden and Law and Messrs Chagwamnjira and Company who were representing the plaintiff and defendants respectively, were both under the management of one partner. The plaintiff submits that the defendants' defence is a mere sham which is meant to delay the course of justice and that since he has no defence, then summary judgment should be entered. Alternatively, the plaintiff prays that the original judgment should be restored as there was no capacity to set it aside by consent.

In opposition to the application the counsel for the 2nd defendant in his oral arguments states that some of the parties to the action might be required to give oral evidence as the defendants deny the claim and have a good defence on merits. In regard to the consent order the counsel for the 2nd defendant submits that there is a conflict of interest on the part of the plaintiff's legal practitioners because he also acted for the defendant when he was a partner in the firm of Messrs Chagwamnjira and Company. The prayer of the defendants is that the legal practitioner should recuse himself from representing the plaintiff due to the conflict of interest.

Upon hearing the legal practitioners for both parties, considering the circumstances of this case and the nature of the defence that has been put across by the defendants, this court is of the view that this claim is not suitable for disposal in a summary manner. As the legal practitioner for the defendants has noted, it may be necessary for the defence to give oral evidence to support their defence. This court finds that triable issues have been raised which cannot be effectively resolved by way of affidavit evidence.

The submissions in regard to the manner in which the parties have been represented and the integrity in setting aside of the consent judgment raises issues pertaining to the professional ethics and code of conduct for legal practitioners which are better off lodged with the head of the bar or the disciplinary committee of the Malawi Law Society to handle than being presented before this court in such an awkward manner.

The plaintiff's summons is dismissed with costs to the defendants.

The summons having been heard when I was a Registrar any appeal will lie to another Judge of the High Court.

Delivered this 4th day of October, 2018 at Chichiri, Blantyre.


Dorothy nyakaunda Kamanga
JUDGE

Case information:

Mr. P. Chirwa (deceased),
Mr. Kalaya,
Ms. Million,

Counsel for the Plaintiff.
Counsel for the 2nd Defendant.
Court Clerk.