



IN THE HIGH COURT OF MALAWI
LILONGWE DISTRICT REGISTRY
CIVIL CAUSE NUMBER 650 OF 2017

BETWEEN:

DOROTHY MACHIKI-----PLAINTIFF

AND

KEEGAN NGAJILO-----1ST DEFENDANT

REUNION INSURANCE COMPANY LIMITED-----2ND DEFENDANT

AND

HAZWELL ZOKE-----PLAINTIFF

AND

KEEGAN NGAJILO-----1ST DEFENDANT

REUNION INSURANCE COMPANY LIMITED-----2ND DEFENDANT

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

Nyanda, Counsel for the Plaintiffs

Dossi, Counsel for the Defendants

Itai, Court Interpreter

RULING

This is an application for summary judgment pursuant to Order 12 Rule 23 of the Courts (High Court) (Civil Procedure) Rules 2017. The applications are supported by affidavits sworn by Dorothy Machiki and Hazwell Zoke. There are also skeleton arguments filled in support of the application. The application is opposed by the defendants and in support of this, there are affidavits sworn by Khumbizeni Wawanya Dossi. Initially there were two separate case files which were Civil

Cause numbers 650 and 651 of 2017 respectively. These cases were however consolidated into one case which is now Civil case number 650 of 2017.

The plaintiffs' claim against the defendants is for damages for pain and suffering, damages for amenities of life and special damages plus costs of these actions. This case is anchored on the accident that was caused by the alleged negligence of the 1st defendant. Particulars of the negligence are over speeding whilst negotiating a bend, driving carelessly, failure to balance the motor vehicle and failure to act as a responsible driver in the circumstances.

The defendant denies that the 1st defendant was guilty of the alleged or any negligence as alleged. The defendants pleaded that the occurrence of the accident was solely or alternatively contributed by the negligence of the plaintiffs. The particulars of the negligence are failure to have due regard for his own safety, failure to keep any or any proper look-out or to have any sufficient regard for other road users particularly the first defendant so as to avoid the accident and failure to heed the presence of the first defendant's motor vehicle.

I have looked at the spirit of Order 12 Rule 23. Summary judgment is entered by the court where the court is satisfied that:-

- (a) The defendant has no arguable defence to the claim or part of the claim
- (b) There is no need for trial of the application or the part of the application.

In the event that there is a relevant dispute between the parties about a fact or question of law, the court shall not enter summary judgment.

I have looked at the defence that is put forward by the defendants. It is my considered view that the defendants have successfully disclosed the nature of the defence. The issue of contributory negligence which has been particularized in the defence does raise a relevant dispute between the parties and the defence raised is bona fide. I therefore find that this is not a proper case where I should enter summary judgment. This application is therefore dismissed with costs.

MADE THIS

DAY OF JANUARY 2018 AT LILONGWE

M.C.C. MKANDAWIRE

JUDGE