



THE REPUBLIC OF MALAWI
 IN THE HIGH COURT OF MALAWI
 PRINCIPAL REGISTRY
 Civil Cause NO.1116 of 2016

Between

Jonathan Nyirenda..... Plaintiff

And

Mugeri Moyo.....1st Defendant

R. Gaffar Transport Ltd.....2nd Defendant

General Alliance Insurance Ltd.....3rd Defendant

CORAM: Madalitso Khoswe Chimwaza ASSISTANT REGISTRAR

D. Silungwe , Counsel for the Plaintiff

P. Mwenelupembe Counsel for 3rd Defendants

Mpandaguta, Court Clerk

RULING ON SUMMONS FOR SUMMARY JUDGMENT

This is a summons for summary judgment filed by the plaintiff pursuant to **Order 14 of Rules of Supreme Court (RSC)**. It is supported by an affidavit. The summons is not opposed by the defendants who did not file affidavits in opposition or skeleton arguments.

Brief Facts:

According to the statement of claim and affidavit in support the particulars of claim are that on or about the 11th August 2016, at around 22:00 hours, the 1st defendant was driving motor vehicle ERF Truck registration number MN 2064/BLK670 from the direction of Kasungu going towards Lilongwe along Kasungu /Lilongwe M1 road. Upon arrival at Kasungu National Park junction the 1st defendant so negligently drove the motor vehicle that he hit a pedal cyclist who was riding the bicycle on the far left side of the road with the plaintiff as a pillion passenger.

The particulars of negligence being that the 1st defendant failed to keep to his nearside, over-speeding, failure to keep a proper look out and failure to manage and or control the vehicle so as to avoid the accident.

As a result of which the plaintiff suffered serious injuries bimalleolar fracture of the right ankle, multiple cuts and bruises on the upper lip and face, deformity of the face.

The plaintiff therefore seeks damages for pain and suffering, loss of amenities of life damages for disfigurement and special damages of K6,000 for medical and police report and costs of the action.

The 2nd and 3rd defendants filed a defence which is marked exhibit DS1. A default judgment was entered against the 1st defendant.

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.

The basis for making this application is that the defendant has no valid defence taking the matter to full trial. The 3rd defendants defence are general denials which lack substantive specific facts and have actually not objected to the application for summary judgment. By law, liability of the insurer is vicarious. It is dependent on liability of the insured or his agent, that is to say if the insured or his agent is found liable, the insurer is liable as well. This means the only issue to be determined will be the quantum of damages as the issue of liability has been dealt with through a default judgment and this admission.

This court is mindful of the fact that **Order 14 RSC** is not intended to shut out a defendant from presenting his defense, but in this case the defense cannot withstand the test of trial therefore the court finds that the plaintiff have made out their case to be entitled to summary judgment.

This court proceeds to enter summary judgment in favour of the plaintiff for damages for pain, suffering, and loss of amenities of life, disfigurement to be assessed and special damages for medical and police report. Costs are in the cause.

Right of appeal

Either party aggrieved by the decision has the right to appeal .

Made in Chambers this 31st day of January, 2018.

Madalitso K. Chimwaza

ASSISTANT REGISTRAR