



Whether the 2<sup>nd</sup> defendant should be struck out for being wrongly added

**The Law**

**Order 15, Rule 6(2) RSC** entitles a party to apply to be removed if improperly added. In the present case the basis for the application is that the 2<sup>nd</sup> defendant did not have any policy of insurance for vehicle SA 8432 Steed pick up on behalf of their insured 1<sup>st</sup> defendant, Mr. Amreen Tayub but rather they had a policy for SA 8432, Toyota Corolla. The 2<sup>nd</sup> defendant's claim is on the basis of the police report which indicated that the accident involved SA 8432 Steed pick up.

It has to be appreciated that a police report is mostly considered to be hearsay evidence in as far as it is intended to prove that its contents are true. This court does not believe that at this stage the police report was intended to prove as truth the contents but rather to show that an accident happened and it was reported. If the contents are to be considered as truth then the author has to be brought to testify under oath about the contents of the report.

In this case it will be premature for the 2<sup>nd</sup> defendant to claim that they are a wrong party in the proceeding basing on a police report, in the absence of a full hearing to determine the issue. If the 1<sup>st</sup> defendant is a client for the 2<sup>nd</sup> defendant for a vehicle but the police report is indicating different make of vehicles but same registration number that is not conclusive that the 2<sup>nd</sup> defendant is a wrong party. After all the insurer is supposed to be in a better position to have details of the vehicle than a police officer who writes a police report based on a reported speech.

This matter can only be resolved upon hearing both parties and calling witnesses to testify. Should it transpire after trial that the 2<sup>nd</sup> defendant is wrongly added he has a remedy as to costs.

This application is not granted, the 2<sup>nd</sup> defendant will not be struck out from the proceedings.

Either party has the right to appeal.

Made in Chambers this.....12.....day of.....Mavala.....2018

  
Madalitso Khoswe Chimwaza

**ASSISTANT REGISTRAR**