



REPUBLIC OF MALAWI
IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY
PERSONAL INJURY CAUSE NO 1063 OF 2015

BETWEEN:

TADALA CHAZEWA PLAINTIFF

AND

ERICK MBINGWANI 1st DEFENDANT

BRITAM INSURANCE COMPANY LIMITED 2nd DEFENDANT

CORAM

Mrs T. Soko : ASSISTANT REGISTRAR

Plaintiff : absent

Mr Ngunde : Counsel for the defendant

Chikwati : Court Clerk

RULING

BACKGROUND

On 15th March 2017 the 2nd defendant herein brought summons to dismiss the action for failing to disclose a reasonable cause of action. The application was brought under Order 18 r. 19 of the Rules of the Supreme Court. Hearing of the application took place on 20th February 2018 and Counsel Ngunde held on brief for Counsel Nanthuru.

EVIDENCE

The application is supported by an affidavit which was adopted by Counsel Ngunde. In brief Counsel stated in the affidavit that the plaintiff brought an action against the defendant seeking damages for pain and suffering, loss of amenities of life, disfigurement and costs for the action. In paragraph 2 of the statement of claim the plaintiff alleged that the 2nd defendant was an insurer of the motor vehicle KA 3234 Toyota Saloon whose driver was allegedly negligent and caused the accident. Counsel stated that at the material time of the alleged accident, there was no valid contract of insurance between the 1st defendant and the 2nd defendant in respect of the said motor vehicle. Counsel further stated that Messrs Nanthuru and Associates wrote the plaintiff's lawyers letters requesting them to provide a proof of existence of the valid insurance policy between the 2nd defendant and the 1st defendant at the time of the accident but it was to no avail. Counsel tendered letters dated 21st January 2016 and 17th February 2016 as part of evidence. Counsel stated that in the absence of a valid contract of insurance between the 1st defendant and the 2nd defendant the plaintiff cannot sue the 2nd defendant under section 148 of the Road Traffic Act. Lastly Counsel stated in the affidavit that in the unlikely event that the plaintiff successfully proves that the 2nd defendant insured the motor vehicle at the material time, the limit of damages that the insurer may pay in an appropriate case is K5,000,000.00. Counsel prayed that the action be dismissed with costs to the 2nd defendant.

In Skeleton arguments the defendants argued that Section 148 of the Road Traffic Act clearly entails that there must be a valid policy of insurance between the insured and insurer at the time of the material time of the accident and the insured must be held liable for causing the accident. Counsel argued that in the present matter the plaintiff failed to produce a copy of insurance policy or disc and such failure leaves her in the lurch and without a cause of action against the 2nd defendant. Counsel cited a number of authorities to support the application which have been useful.

THE LAW

Order 18 r.19 of the Rules of the Supreme Court provides that:

(1) The Court may at any stage of the proceedings order to be struck out or amended any pleading or the indorsement of any writ in the action, or anything in any pleading or in the indorsement, on the ground that -

(a) it discloses no reasonable cause of action or defence, as the case may be; or

(b) it is scandalous, frivolous or vexatious; or

(c) it may prejudice, embarrass or delay the fair trial of the action; or

(d) it is otherwise an abuse of the process of the Court;

and may order the action to be stayed or dismissed or judgment to be entered accordingly, as the case may be.

In Drummond-Jackson v. British Medical Association [1970] 1 W.L.R. 688; [1970] 1 All E.R. 1094, CA)

Lord Pearson defined a reasonable cause of action as a cause of action with some chance of success when only the allegation in the pleading are considered. If when those allegations are examined it is found that the alleged cause of action is certain to fail the statement of claim should be struck out. It is enough if the pleading raises some question fit to be decided by a Judge or jury. See **Davey v. Bentinck** [1893] 1 Q.B. 185.

Practice Note 18/19/10 repeats the definition and adds some notes as follows:

A reasonable cause of action means a cause of action with some chance of success when only the allegations in the pleading are considered (per Lord Pearson in Drummond-Jackson v. British Medical Association [1970] 1 W.L.R. 688; [1970] 1 All E.R. 1094, CA). So long as the statement of claim or the particulars (Davey v. Bentinck [1893] 1 Q.B. 185) disclose some cause of action, or raise some question fit to be decided by a Judge or a jury, the mere fact that the case is weak, and not likely to succeed, is no ground for striking it out (Moore v. Lawson (1915) 31 T.L.R. 418, CA; Wenlock v. Moloney [1965] 1 W.L.R. 1238; [1965] 2 All E.R. 871, CA)...

DETERMINATION

In the present matter the Court finds that the statement of claim displays an issue which has to be decided by the Judge and the issue being whether the accident was caused by negligence on the part of the 1st defendant and as such the Court cannot dismiss the whole action based on the aforesaid ground. However after going through the statement of claim and the list of documents particularly a police report it shows that the Vehicle was insured by Real Insurance Company Limited at the material time of the accident not Britam Insurance Company Limited. Practice Note 18/19/2 gives the Court powers to amend any pleading or give the plaintiff an opportunity to amend the pleading. On that basis the Court orders the plaintiff to amend the pleadings and substitute Britam Insurance Company Limited with Real Insurance Company Limited within 14

days from the date hereof. Costs are in the discretion of the Court and the Court awards the defendant costs as prayed.

Pronounced in Chamber on this 12th day of March 2018



T. SOKO

ASSISTANT REGISTRAR