



REPUBLIC OF MALAWI

IN THE HIGH COURT OF MALAWI

PRINCIPAL REGISTRY

PERSONAL INJURY CAUSE NO. 495 OF 2017

**BETWEEN**

MISHECK CHIPETA.....PLAINTIFF

**AND**

STEPHANO MIKELE.....1<sup>st</sup> DEFENDANT

A.J. ALMEIDA TRANSPORT.....2<sup>nd</sup> DEFENDANT

BRITAM INSURANCE COMPANY LIMITED.....3<sup>rd</sup> DEFENDANT

Coram: **WYSON CHAMDIMBA NKHATA** (ASSISTANT REGISTRAR)

Mr. Kumitengo - of Counsel for the claimant

Mr. Chitsulo- Court Clerk and Official Interpreter

**RULING**

Through a writ of summons issued by the court on the 30<sup>th</sup> of August 2017, the plaintiff commenced this action claiming damages for pain and suffering, loss of future earnings, loss amenities of life and costs of this action. The defendants filed their defence on the 3<sup>rd</sup> of October 2017. Subsequently, on the 29<sup>th</sup> of May 2018, the 3<sup>rd</sup> defendant filed a summons to strike out the 3<sup>rd</sup> defendant as a party to the proceedings. The application was made under Order X rule 1 as read with Order VI Rule 8 of the High Court Civil Procedure Rules 2017. I reserved my ruling which I must now consider.

The application is supported by an affidavit sworn by Reuben Nazombe of Counsel in which he averred that the action herein was commenced by way of summons and statement of claim issued on 30<sup>th</sup> of August 2017, wherein the plaintiff is claiming damages for pain and suffering, loss of future earnings, loss amenities of life and disfigurement arising from a road accident which occurred on the 11<sup>th</sup> of June 2017 involving motor vehicles registration number NA3917 Toyota Minibus Hiace and CK2486/TO6279 Freightliner Articulated Truck. He further stated that the 3<sup>rd</sup> defendant was served with the said court summons on 5<sup>th</sup> September, 2017 and they in turn duly served and filed their defence. It is his submission that the defendant got several claims arising from the same accident involving their insured motor vehicle. He contends the 3<sup>rd</sup> defendant managed to settle some of the claims until the policy limit for the insured motor vehicle was exhausted. He exhibited a copy of the Insurance Policy regarding the freightliner truck insured by the 3<sup>rd</sup> defendant marked "RN1". He further exhibited copies of payment regarding the insured motor vehicle in issue marked "RN2", "RN3", "RN4", "RN5", "RN6", "RN7", "RN8" and "RN9". He therefore avers that since the 3<sup>rd</sup> defendant's policy was exhausted he does not see the purpose of being involved as a party in this matter and prays that the 3<sup>rd</sup> defendant be struck.

The matter came for hearing on assessment of damages on the 24<sup>th</sup> of July 2018. The defendants never appeared for the hearing. However, there was evidence that the notice of hearing was duly served on them. For this reason this court ordered the hearing to proceed in their absence.

The issue for determination before this court is whether there is sufficient reason for the 3<sup>rd</sup> defendant to continue being party to these proceedings. As earlier stated the application is brought under Order X rule 1 as read with Order VI Rule 8 of the High Court Civil Procedure Rules 2017. The provision allows the Court, on an application by a party, to order that a party in a proceeding is no longer a party where the person's presence is not necessary to enable the Court to make a decision fairly and effectively in the proceeding; or there is no good and sufficient reason for the person to continue being a party.

In the present case, the affidavit by Counsel for the 3<sup>rd</sup> defendant is to the effect that the 3<sup>rd</sup> defendant was joined as a party to these proceedings in terms of s.148 of the Road Traffic Act. Essentially, the 3<sup>rd</sup> defendant was sued by virtue of the insurer of motor vehicle herein. It is contended that the accident in question attracted several other claims which were duly settled by the 3<sup>rd</sup> defendant. Apparently, the policy limit for the insured motor vehicle has been exhausted. The 3<sup>rd</sup> defendant exhibited a copy of the Insurance Policy and copies of proof of payment regarding the insured vehicle in relation to the accident in question. I believe they have discharged their part of the contract with regard to the limit of the amount of the company's liability as stipulated by the Insurance Policy with the insured. There is absolutely no

sufficient reason for the 3<sup>rd</sup> defendant to continue being a party to these proceedings. In view of this, I order that the 3<sup>rd</sup> defendant be struck out of these proceedings as prayed for by Counsel for the 3<sup>rd</sup> defendant.

Costs for this application shall be in the cause.

MADE IN CHAMBERS THIS 2<sup>nd</sup> DAY OF AUGUST 2018



**WYSON CHAMDIMBA NKHATA**

ASSISTANT REGISTRAR