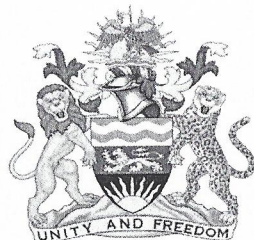


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IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY
PERSONAL INJURY CAUSE NO. 775 OF 2018

BETWEEN

JUDITH CHIKALUMA (suing on behalf of VANESSA CHIKABWERA AND
EVELYN MEDI, Minors).....CLAIMANT

AND

GEORGE MALIKEBU.....1st DEFENDANT

AND

PRIME INSURANCE COMPANY LIMITED.....2nd DEFENDANT

CORAM: HON. JUSTICE JACK N'RIVA

Mipande, Counsel for the Claimant

RULING

This is an *ex-parte* application by the claimant to exempt the matter from mediation pursuant to Order 13 rule 1 (2) (d) as read with Order 25(i) (a) of the Courts (High Court) Civil Procedure rules, 2017) "the CPR".

The claimant commenced this matter by Writ of Summons dated 10th of December, 2018 and the dDefendants have since served their defence denying

liability in this matter. The claimant is of the view that proceeding to mediation will be a mere waste of time considering that the 2nd defendant has already denied liability and that it is therefore doubtful if the defendant's position would change during mediation. Further, that the claimant has already tried to negotiate with the defendants amicably to no avail.

In her skeleton argument, the claimant stated that the law prescribes that this Court has the ultimate power and discretion to exempt a matter from mandatory mediation. The claimant further stated that under Order 13 rule 1 (2) (d) of the CPR, all matters have to undergo mandatory mediation, except where the court in its discretion orders otherwise.

The issue to be determined by this Court is whether or not the matter should be exempted from mediation. However, I have looked at the defence that is put forward by the defendants. The defendants have no arguable defence to the claim. In other words, the defence is blank. Under Order 7 rules 6 and 7 of the Courts (High Court) (Civil Procedure) Rules, 2017, a defendant is obliged to deal with each fact in the claim and not to give a general denial to the claim. If a defendant does not agree with a fact as alleged by a claimant, the defendant is required to provide an outline of what happened.

There has to be a real defence, challenging or giving the alternatives to what the claimant asserts without providing defences. Under the CPR, general defence is not a defence.

The rules require the defendants not to offer a general defence. Under order 7 rule 6 of the Courts (High Court) (Civil Procedure) Rules, 2017, a defendant must deal with each fact in the claim and must not deny a claim generally. Under order 7 rule 7 of Courts (High Court) (Civil Procedure) Rules, 2017, where the defendant does not agree with a fact that the claimant has stated in the claim, the defendant has to file and serve a defence that denies the fact and states what the defendant alleges happened.

When drafting a defence, the defendants should ensure that they address each of the issues raised in the particulars of claim. The structure of the defence should be such that it responds to each paragraph of the statement of case by either admitting or denying allegations. If an allegation made in the statement of claim is denied, the defendant is obliged to give reasons for the denial and put the side of the story of the defence. Thus, the defendant cannot simply deny a matter without stating how or why he or she or it is making the denial. The rules on

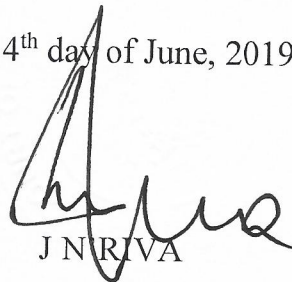
Order 7 rules 6 and 7 are in mandatory terms. I believe that where the defence does not amount to a defence, it has to be struck off on the ground that the defence has no prospects of a success. (See this Court's ruling in *Ibrahim and Others vs Blantyre City Assembly and Prime Insurance Company Ltd* Personal Injury Case NO 227 OF 2018 [JUNE 2018]).

Furthermore, from October 2017, we follow procedure under the CPR. These rules make reference to active case management. Active case management includes, among several other aspects, identifying issues for resolution at an early stage and deciding which issues require full investigation and trial by the court-Order 1 Rule 5 of Courts (High Court) (Civil Procedure) Rules.

All in all, even if this Court can use its discretion to exempt the matter from mediation, referring the matter to another Court for trial would be contradictory to the spirit of the CPR. This is because of the very fact that the defendants have failed to comply with the rules and/or that they do not have a defence at all. Identifying issues at an earlier stage require the defendants to put forward their defence to enable this Court to identify which issues would require full investigation and trial. The defendants have failed to do so. As was observed in *Ibrahim and Others vs Blantyre City Assembly and Prime Insurance Company Ltd*, where there is no defence, the Court has to enter judgment.

Accordingly, I find that the defendants have no defence to the claimants' claims. I therefore strike out the defendants' defence with costs and enter judgment for the claimant. The matter should be set down for assessment of damages.

Pronounced in CHAMBER this 4th day of June, 2019



J N RIVA

JUDGE