



IN THE HIGH COURT OF MALAWI

PRINCIPAL REGISTRY

CIVIL CAUSE NO. 1097 OF 2010

BETWEEN

MARK DOUGLAS ROELOFFZE 1ST PLAINTIFF

LESSLIE GEORGE SMITH 2ND PLAINTIFF

FIONA ROELOFFZE 3RD PLAINTIFF

AND

LIMBE LEAF TOBACCO CO. LTD DEFENDANT

CORAM : HER HONOUR MRS. BODOLE, ASSISTANT REGISTRAR

Msisha, of Counsel for the Plaintiffs

Njobvu, of Counsel for the Defendants

Ms. Kazembe, Court Clerk

RULING

Introduction

The 1st plaintiff commenced the action by Writ of Summons on 25th May, 2010. The 1st plaintiff was claiming damages for injuries sustained during the course of employment with the defendant as a result of inhaling tobacco dust.

The Evidence

The 1st plaintiff died on 23rd March, 2014 whilst the matter was still underway. On 6th September, 2010, the defendant brought an application to strike out the plaintiff's Writ of Summons and Statement of Claim and to dismiss action on the basis that the said Writ of Summons and Statement of Claim did not disclose any reasonable cause of action. The Assistant Registrar heard the application and delivered a ruling on 27th July, 2012. He stated as follows:

"I have carefully looked at the statement of claim in question. I am inclined to agree with the applicant because the said statement of claim does not disclose any cause of action. It just outlines the purported medical consultations. I have no choice but grant the prayer with costs. We accordingly grant the application and strike out the Statement of Claim with costs."

On 28th August, 2015, the 1st plaintiff filed a Notice of Intention to proceed with the action after a year's delay and also an application for leave to amend Statement of Claim. The application for leave to amend statement of claim was granted. On 14th September, 2015, the plaintiffs served the defendant an amended Statement of Claim which included the 2nd and 3rd plaintiffs.

In October, 2015, the defendant filed summons for rectification of the Assistant Registrar's ruling and/or to set aside the orders obtained by the 2nd and 3rd plaintiffs to carry on proceedings or for leave to amend the Statement of Claim. The reason for that was that the Writ of Summons and Statement of Claim were struck out by the order of the then Assistant Registrar made on 17th July, 2012 when he granted the defendant's application. It was a mere omission that the Assistant Registrar did not specifically state that he dismissed the action in his ruling. The defendant prayed to the court that the Assistant Registrar's ruling of 17th July, 2012 be rectified so as to expressly state not only that the Statement of Claim was struck out but also that the entire action was dismissed so that the manifest intention of the court is made clear. The defendant further prayed that the orders to carry on proceedings and leave to amend the Statement of Claim be set aside with costs to the defendant.

Applicable Law

Order 18 rule 19 of the Rules of the Supreme Court (RSC) (Striking Out Pleadings and Endorsements) provides that:

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

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

Practice Note 18/19/3 of the Rules of the Supreme Court expands on Order 18 rule of the Supreme Court, providing as follows:

“The rule empowers the Court to amend any pleadings or indorsement or any matter therein. If a statement of claim does not disclose a cause of action relied on, an opportunity to amend may be given, though the formulation of the amendment is not before a Court (CBS Songs Ltd v Amstral [1987] R.P.C. 417 and [1987] R.P.C. 429). But unless there is reason to suppose that the case can be improved by amendment, leave will not be given (Hubbuck v Wilkinson [1899] 1 Q.B. 86, p.94 C.A.). Where the statement of claim presented discloses no cause of action because some material averment has been omitted, the Court, while striking out the pleading, will not dismiss the action, but give the plaintiff leave to amend (see “Amendment” para 18/12/22, unless the Court is satisfied that no amendment will cure the defect (Republic of Peru v Peruvian Guano Co. (1887) 36 Ch.D 489).”

ANALYSIS

The Assistant Registrar in his ruling of 27th July, 2012 struck out the Statement of Claim having found that it did not disclose any cause of action. This was in accordance with Order 18 rule 19 of the Rules of the Supreme Court which empowers the court to strike out a pleading if it does not disclose any reasonable cause of action. The Assistant Registrar also granted the defendant’s application. The defendant’s application he granted was an application to strike out the 1st

plaintiff's Writ of Summons and Statement of Claim and to dismiss the action. By granting the defendant's application, it means that the Assistant Registrar, apart from striking out the Statement of Claim, he had also struck out the Writ of Summons and dismissed the action.

The court under Order 18 rule 19 of the Rules of the Supreme Court also has power to order amendment of the pleading. He did not grant leave to the 1st plaintiff to amend the Statement of Claim or file a fresh Statement of Claim. The Assistant Registrar just struck out the Statement of Claim. As such there was no Statement of Claim in existence it having been struck out. It follows, therefore, that there was no statement of claim to amend.

There is nothing in the Assistant Registrar's ruling to suggest that the action was still subsisting. This is because he had granted the defendant's application i.e. he had struck out the Writ of Summons and dismissed the action. There was, therefore, no need to order amendment of the Statement of Claim or filing of a fresh Statement of Claim.

It was indeed a mere omission that the Assistant Registrar did not specifically state that he dismissed the action in his ruling. I, therefore, grant the prayer by the defendant that the Assistant Registrar's ruling of 17th July, 2012 be rectified so as to expressly state not only that the Statement of Claim was struck out but also that the entire action was dismissed. In that vein, the manifest intention of the court will thus be made clear. The orders obtained by the plaintiffs to carry on proceedings and for leave to amend the Statement of Claim are set aside with costs to the defendant.

Made in court this 17th day of January, 2019 at Blantyre.



E. BODOLE (MRS.)

ASSISTANT REGISTRAR