



IN THE HIGH COURT OF MALAWI
LILONGWE DISTRICT REGISTRY
CIVIL CAUSE NO: 348 OF 2021

BETWEEN:

HENRY JAILOSI.....1ST CLAIMANT

KENIASI CHIUZENI.....2ND CLAIMANT

AND

PRIME INSURANCE COMPANY LIMITED.....DEFENDANT

CORUM : JUSTICE RUTH M. CHINANGWA

Matumba Counsel for Claimants

Chikwakwa Counsel for Respondents

Chitao Court Clerk

RULING ON APPLICATION FOR SUMMARY JUDGEMENT

Introduction

1. The plaintiff claims the sum of mk3,200,000.00 being a sum the defendant agreed to pay through a written discharge voucher; interest at 5% over and above the commercial bank lending rate and costs of the action.

2. An oral judgement was pronounced in favour of the claimants on 31st August 2021. This ruling serves to provide reasons for the said decision.
3. The background to the claim as recorded in the statement of case is that on or about 3rd April 2020 motor vehicle registration number CA 9250 Toyota Hiace Minibus driven from Dedza heading towards Lilongwe with passengers on board hit and injured the claimants. It was argued that the accident was caused by the negligence of the driver of the motor vehicle quoted above.
4. In defence the defendnats admit that they are the insurers of the motor vehicle in question but argue that the cause of the accident was two pedestrians who abruptly started crossing the road while running from left side of the road to the right side. In a bid to avoid hitting the pedestrians the vehicle swerved to no avail despite the vehicle been driven at 50km/hr. It was argued that the 1st defendant denies ever failing to exercise due diligence to avoid the collision.

Affidavits in support and against the application for summary judgement

5. Following the defence being filed, the claimants applied for summary judgement. In the affidavit in support of the application sworn by the claimant's counsel, the claimants stated that on 15th March 2021 the defendnats executed a discharge voucher for payment of damages. The defendnats have since failed to honor the payment as agreed. It is argued that the defendants have no defence to the claimants claims.
6. In response to the application for summary judgement Counsel for the defendnats filed an affidavit in opposition. He stated that the discharge vouchers state that the sums were to be paid without admission of liability and the same were on without prejudice basis. It is argued that the defence clearly states that the driver drove the vehicle in question at the speed of 50km/hour and the pedestrians were crossing the road while running. It is further argued that the defence raises triable issues.

Issue for Determination

7. This court has to determine whether the application for summary judgement ought to be granted or not.

Analysis of Law and Evidence

8. Order 12 rule 25(2) and rule 26 of the Courts (High Court) (Civil Procedure Rules)

2017 states that a summary judgement can be entered by the court where:

- a) There is no arguable defence to the claim or part thereof
 - b) There is no need for a trial for the application or part thereof or
 - c) There is no relevant factual dispute or arguable question of law.
9. The basis for the application for summary judgement is the discharge voucher. That it was issued by the defendnats is not in issue. The issue is what does it contents legally mean against the law on summary judgment?
10. The discharge voucher reads as follows:

I/We: MIDDLETON CHAMBERS

Hereby acknowledge having signed a discharge from Prime Insurance Company LTD (hereafter called 'the company') for the sum of (Mk1,000,000.00) ONE MILLION KWACHAS to be paid without admission of liability in full and final settlement of any claim of whatsoever nature arising from an accident which occurred at/near AT AMPHATA - PAKAPEZELA which I/We may now or hereafter have against the Company or 9herein called 'the insure') or any servant, agent or other person who in any policy issued to the Insured was or purported to be indemnified by the Company against such claim.

And I/We hereby indemnify the Company and the Insured and the other persons aforesaid against any claim arising out of the accident aforesaid which may be made or preferred against them by any person to the extent to which such claims is maintainable by reason of his or her being my/our legal dependent.

And I/We acknowledge that the aforesaid payment has been made and the discharge and indemnity accepted by the Company not only on its own behalf but on behalf of the Insured and the other persons aforesaid.

And I/We finally agree that I/We have satisfied myself/ourselves that to the extent, if any to which this settlement has bene negotiated by any agent on my/our behalf such negotiations have been entirely in my /our interest.

Dated.....

Signed.....

From the wording this court first notes that the word or phrase 'on a without prejudice basis' does not appear anywhere in the text of the discharge voucher. That being the case the text will be construed as a contract as both parties signed to this agreement. It is trite that in construing a contract the words used are to be given their ordinary grammatical meaning with the intention of giving effect to what the parties purposed. The crucial part of the text reads, '*Hereby acknowledge having signed a discharge from Prime Insurance Company LTD (hereafter called 'the company') for the sum of (Mk1,000,000.00) ONE MILLION KWACHAS to be paid without admission of liability in full and final settlement of any claim of whatsoever nature arising from an accident which occurred at/near AT AMPHATA -PAKAPEZELA which I/We may now or hereafter have against the Company or I/herein called 'the insure') or any servant, agent or other person who in any policy issued to the Insured was or purported to be indemnified by the Company against such claim*'. This text says what it says. The amount of MK1,000,000.00 is to be paid without admission of liability in full and final settlement of any claim arising from an accident... This court finds that the respondents are merely being evasive to the truth for an unknown reason. It is quite disheartening that such a stance should be taken where legal Counsel is involved. The discharge voucher was signed by both parties and thus was legally duly executed.

11. It is this court's view that the discharge voucher presents no arguable defence nor disputes on fact or law. The discharge voucher is a contract and it ought to be enforced.
12. For the avoidance of doubt the discharge vouchers are for 3 persons in different amounts that is Mk1 million, Mk2 million and Mk200,000.00 as produced in Exhibit ZM1a to ZM1c. The total amount is as claimed and all documents have the same content as reproduced above and were legally duly executed by both parties.
13. Regarding interest it is trite that interest it was held in **Lenner Exports (Pty) Ltd v City Motors Ltd** [1998] MLR 153 (HC) in a case of summary judgement that where there is no express agreement as to payment of interest and no evidence of previous dealings interest

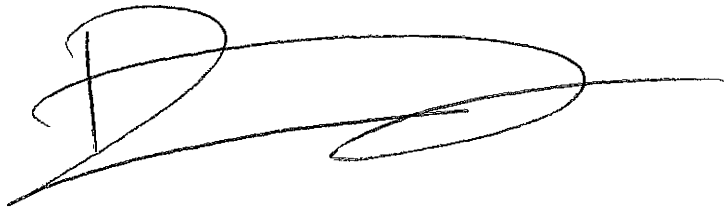
is not payable. This court finds that there was no express agreement as to interest and there is no evidence of previous dealings. Besides, it has not been shown that the defendants profited from the sums which were withheld from the claimants. The claim fails having not been substantiated.

14. Regarding costs, it is trite that costs are awarded at the discretion of the court. In this matter this court is of the view that the claimants were unnecessarily forced to commence legal action as the discharge voucher was executed on 12 March 2021 and this matter was commenced on 19th May 2021. Legal suit would have been avoided if the defendants had honored their side of the agreement.

Finding

15. The claimants claim succeeds. Costs are awarded to the claimants.

Pronounced on 22nd September 2021 in LILONGWE

A handwritten signature in black ink, consisting of a large, stylized 'C' followed by a horizontal line and a small loop at the end.

R.M CHINANGWA

JUDGE