



IN THE HIGH COURT OF MALAWI

LILONGWE DISTRICT REGISTRY

CIVIL CAUSE NO 1059 OF 2020

BETWEEN:

**ZIONE PITALA (suing through her nextCLAIMANT
friend and father, PETER NKHATA**

AND

XIANG MENG.....DEFENDANT

BRITAM INSURANCE COMPANY LIMITED.....2nd DEFENDANT

CORAM: THE HONOURABLE JUSTICE CHINANGWA

- Chapo, Counsel for the Claimant

Mapemba, Counsel for the Defendants

Nyirenda Ms, Court Clerk

RULING ON APPLICATION FOR SUMMARY JUDGEMENT

1. Introduction

The claimant filed an application for summary judgement against the defendants. In the affidavit filed in support, the claimant states that the claim is for damages for pain and suffering, damages for loss of amenities of life, damages for disfigurement, special damages and costs of

the action. It is argued that the defendants defence has general denials and not any material facts that show that the defendants dispute the claim. As such the purported defence does not have criteria set out in the rules of procedure in that it does not state the alternative story; is merely intended to delay the proceedings and prevent the claimant from enjoying fruits of litigation.

In opposition to the the summons for summary judgement, the defendants through an affidavit state that the defence filed is not a sham; that the defendants defence is to the effect that this claim could be one of mistaken identity as the 1st defendant was not at the scene of the accident on the material date and place of the accident on 15th September 2020 as he was in Mziuzu from 10th to 20th September 2020. It is argued that this defence has merit and warrants the matter go for trial to prove that the 1st defendant was not at the scene of the accident on the material date.

2. Issue for Determination

This court has to consider whether summary judgement should be entered or not.

3. Analysis of Law and Evidence

Order 12 rule 25(2) 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.

Further **Order 12 rule 26 of the Courts (High Court) (Civil Procedure Rules) 2017** states that the court shall not enter summary judgement against a defendant where it is satisfied that there is a relevant dispute between the parties about a fact or an arguable question of law.

The law on summary judgements has been paraphrased above. The question is does the defendant have a plausible defence? Is there an arguable question of law or a dispute on the facts? It is not in dispute that the accident occurred. The fact which is in dispute is whether or not the 1st defendant was the person driving the vehicle that caused the accident as he claims he was in Mzuzu and not at the accident scene. This court finds that this is a plausible defence and ought to be tested at trial. There being a factual dispute Order 12 rule 26 applies to this application. The application cannot be sustained.

4. Finding

The application for summary judgement is dismissed. Each party is to bear its own costs. The matter is to proceed to mediation. The claimant is to file a mediation bundle within 7 days from date of pronouncement.

Pronounced this 8th February 2021 at LILONGWE



R.M CHINANGWA

JUDGE