



REPUBLIC OF MALAWI  
IN THE HIGH COURT OF MALAWI  
PRINCIPAL REGISTRY  
CIVIL DIVISION  
CIVIL CAUSE NO. 435 OF 2020  
(Before Honourable Justice Mambulasa)

**BETWEEN:**

**JOHN CHAKWANA & 19 OTHERS..... CLAIMANT**

**-AND-**

**ILLOVO SUGAR (MALAWI) LIMITED..... DEFENDANT**

**CORAM: HON. JUSTICE MANDALA MAMBULASA**

Mr. Shepherd Chelufya C. Mumba, Advocate for the Claimant

Mr. Ackim Ulunji Ndhlovu, Advocate for the Claimant

Mr. Patrick George Khuleya, Advocate for the Defendant

Mr. Obet Chitatu, Court Clerk

**RULING**

## **MAMBULASA, J**

### **Introduction**

- [1] The Claimants are farmers by occupation based in Chikwawa District. The Defendant is a limited liability company and a leading, global, low-cost sugar producer and a significant manufacturer of high-value downstream products.
- [2] The Claimants brought action against the Defendant on or about 18<sup>th</sup> December, 2020 claiming damages for loss of agricultural yield to the total value of MK7,654,000.00, loss of exotic trees and costs of the action.
- [3] The Defendant filed with the Court and served its Defence in the matter on the Claimants. That was on 16<sup>th</sup> March, 2021. The Court must hasten to mention that the Summons was only issued by the Court on 24<sup>th</sup> February, 2021.
- [4] The Claimants brought an application for summary judgment against the Defendant on the ground that they believe that the Defendant does not have any real prospect of defending the claim pursuant to Order 12, rule 23 (1) of the Courts (High Court) (Civil Procedure) Rules, 2017. The application was supported by a Sworn Statement made by Advocate Ackim Ulunji Ndhlovu. There are also Skeleton Arguments that were filed in the matter in support of the application.

- [5] The Defendant opposes the application for summary judgment. It did so through a Sworn Statement in Opposition to the Application for Summary Judgment filed by Advocate Jimmy Mandauka. There are also Skeleton Arguments that were filed by the Defendant in support of its position.

### **Issue for Determination**

- [6] The only issue falling for determination before this Court is:

Whether or not this Court should enter summary judgment for the Claimants against the Defendant in this case for damages for loss of agricultural yield to the tune of MK7,645,000.00, loss of exotic trees and costs of action?

### **The Law**

- [7] Order 12, rule 23 (1) of the Courts (High Court) (Civil Procedure) Rules, 2017 provides that the claimant may apply to the Court for a summary judgment where the defendant has filed a defence but the claimant believes that the defendant does not have any real prospect of defending the claim.
- [8] Order 12, rule 25 (2) of the Courts (High Court) (Civil Procedure) Rules, 2017 states as follows:

Where the Court is satisfied that-

- (a) the defendant has no arguable defence to the claim or part of the claim as presented in the application; and
- (b) there is no need for a trial of the application or that part of the application, the Court shall-
  - (i) give judgment for the applicant for the application or part of the application; and
  - (ii) make any other order the Court may deem appropriate.

[9] Order 12, rule 26 of the Courts (High Court) (Civil Procedure) Rules, 2017 is to the effect that the Court shall not enter summary judgment 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.

### **Analysis and Application of the Law to the Facts**

[10] The Claimants argued that the Defendant does not have an arguable defence to the Claimants' claim. The Defendant filed and served its defence in which it admits in paragraph 3 that indeed the Defendant's agent sprayed on its cane fields a chemical called Triclon on or about 21<sup>st</sup> February, 2020. The Defendant generally denies many of the facts in the claim or makes no comment on a few and contends that the wilting of the claimants' crops was due to the pest attack without even mentioning the said alleged pest.

[11] The Claimants further argued that the Defendant generally denies the application of the rule in *Rylands -vs- Fletcher* while at the same time they

had already admitted to the spraying of the said chemical by its servant or agent. The spraying of Triclon was within the control of its servant or agent. The Claimants therefore prayed to the Court that summary judgment be entered for them against the Defendant for their claim with costs.

[12] The Defendant contends that summary judgment should not be entered against it because it has a *bona fide* defence that raises triable issues. These issues are: whether the Defendant is liable for its agent's act of spraying a chemical called, Triclon and whether the damage to the Claimants' yield was due to the Defendant's agent's act of spraying a chemical called, Triclon or pest attack. It prayed that the application be dismissed with costs.

[13] The Claimants' claim is backed by a report on the causes of wilting and drying of crops under Namatchuwa Agricultural Catchment Area which was independently produced by three officers from the District Agriculture Development Office of Chikwawa. These officers are Stanford J. Nkhoma, Emmanuel Chiputula and Mwawela Sapuwa. The report is dated 27<sup>th</sup> March, 2020. Even though a copy of the report which was exhibited to the Sworn Statement in Support of the Application for Summary Judgment as "AN1" was not signed, the Defendant did not have any issues with it. In fact, the report was addressed to its General Manager with copies to Group Village Headman Namatchuwa and Bwabwali Ward Councillor. In the conclusion, the report states that the wilting and drying of crop species under Namatchuwa Agricultural Catchment Area was largely (95%) caused by the Triclon chemical which was sprayed in the nearby cane fields and fell on farmers' fields as the aeroplane made some turns. Pigeon pea was also

affected by pests, Tip Wilters, which increased (5%) the number of plants that wilted and dried.

- [14] There is no any contrary report to the one from the District Agriculture Development Office, produced by any other office or institution exhibited to the Defendant's Sworn Statement in Opposition to the Application for Summary Judgment. Even in its List of Documents filed along with the Defence in this matter, it is not populated with any expert report or literature on a chemical called, Triclon or indeed any other documentary evidence.
- [15] As to the question whether the Defendant is liable for acts of its servant or agent, the answer must be in the affirmative. The law is settled requiring no citation of any authorities on the point that where the principal is disclosed or known such as in this case, the Defendant, the Claimants were perfectly entitled to sue it and it is liable for the acts of its servant or agent. It was open to the Defendant to take out a Third Party Notice if it wanted to bring in the alleged agent or servant to the proceedings<sup>1</sup> if it did not want to suffer any consequences of litigation. That, the Defendant did not do that.
- [16] On the question by the Defendant whether the damage to the Claimants' agricultural yield was due to the Defendant's agent's act of spraying a chemical called, Triclon or pest attack, the answer must also be in the affirmative. In paragraph 3 of its Defence, the Defendant admits that on or about 21<sup>st</sup> February 2020, the Defendant's agent sprayed on its cane fields a chemical called Triclon. In the report exhibited to the Claimants' Sworn

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<sup>1</sup> See Order 6, rules 15, 16 and 17 of the Courts (High Court) (Civil Procedure) Rules, 2017.

Statement in Support of the Application for Summary Judgment as, “AN1”, the conclusion was that wilting and drying of crop species was largely (95%) caused by the Triclon chemical which was sprayed in the nearby cane fields and fell on farmers’ fields as the aeroplane made some turns. The report also acknowledges that the effect of pest attack cannot be ruled out especially in pigeon pea. A pest known as Tip Wilter caused wilting of pigeon pea but only to the extent of 5%. In the view of this Court, 5% of pest attack to pigeon pea only is so negligible to overturn the tide of 95% causation of wilting and drying of all other agricultural yield by a chemical called, Triclon.

- [17] In view of the foregoing, this Court has no difficulty in concluding that it is satisfied that there is no relevant dispute between the parties about a fact or an arguable question of law in this matter. It is further satisfied that the Defendant does not have any real prospect of defending the Claimants’ claim. The Defendant does not have an arguable defence to the Claimants’ claim to allow this matter to proceed to trial. Its Defence is mostly general denials and offends Order 7, rules 6 and 7 of the Courts (High Court) (Civil Procedure) Rules, 2017 as it does not even offer the Defendant’s version of events or what actually happened. This Court is alive to the fact that it may not always be possible in all cases for defendants to put forward their version of events or what actually happened as was held in the case of *Ellina Silaju -vs- Electricity Supply Corporation of Malawi Ltd*<sup>2</sup>. However, the present case does not fall in that category. Allowing this matter to proceed to trial, would in this Court’s view, be a total waste of its time and resources.

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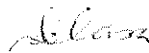
<sup>2</sup> Personal Injury Cause No. 348 of 2018 (High Court of Malawi) (Principal Registry) (Unreported).

[18] In the circumstances, this Court enters summary judgment in favour of the Claimants being damages for loss of agricultural yield for the claimed amount of MK7,645,000.00, damages for loss of exotic trees and costs of the action to be assessed by the Registrar of this Court, if not agreed by the parties.

**Finding and determination**

[19] Summary judgment is entered for the Claimants in respect of damages for loss of agricultural yield to the tune of MK7,645,000.00, damages for loss of exotic trees and costs of the action to be assessed by the Registrar, if not agreed by the parties.

[20] Made in Chambers this 13<sup>th</sup> day of December, 2021 at Blantyre, Malawi.



**M. D. MAMBULASA**  
**JUDGE**