



REPUBLIC OF MALAWI
IN THE HIGH COURT OF MALAWI
ZOMBA DISTRICT REGISTRY
CIVIL CAUSE NO 287 OF 2020
(Before Honourable Justice Mzonde Mvula)

BETWEEN

BATON FRIDAY.....1ST CLAIMANT

ISSA DANIEL.....2ND CLAIMANT

AND

ATTORNEY GENERAL (MALAWI POLICE SERVICE).....DEFENDANT

CORAM: HONOURABLE JUSTICE MZONDE MVULA

Mr. P. Chinguwo, of counsel for the Claimants;

Mr. D Zikagwa, of Counsel for the Defendant;

Mr. A. Nkhwazi, Court Clerk and Official interpreter.

RULING

MVULA, J.

1.0 Introduction

1.1 The claimants took out summons for an application for summary judgment pursuant to Order 12 rule 23 (1) of the Courts (High Court) (Civil Procedure Rules) 2017. The same, was set down for the 9th June 2021 at 10.00am. The claimant adopt the affidavit in support of the application, as well as skeleton arguments. The defendant did likewise. We shall recapture the material facts and we shall determine the application as follows:

- 1.5 The application for summary judgment lie on assault, disfigurement, as well as pain and suffering. The case for summary judgment does not lie against false imprisonment and malicious prosecution. The claimants so moved the court.

1.6. Response to the application by the defendant

- 1.7 The defendant filed a statement in opposition to the application deposed by Owen Chuma. Skeleton arguments were files in support of their application. The same were adopted as well.
- 1.8 Their position of departure is Order 12 Rule 23(1) of CPR. Their position is that the application for summary judgment stands where the defendant has filed a statement of defence, but, there are no real prospect of defending the claim. Their contention is that the defence they filed, raises triable issues. There are the claims which the clamant has to prove the same at trial.
- 1.9 The defendant is entitled to unconditional leave to defend the matter. The issues they raise in defence, can only be determined at trial and not at summary trial procedure. As such the application for summary trip should be dismissed.

2.0 The Law applicable

- 2.1 The issue under trial here is whether summary judgment ought to be entered. We begin with the stipulation under the civil procedure rules over matters of this nature. Order 12 rule 23 of the Courts (High Court) (Civil Procedure) Rules provides as follows:

"The Claimant may apply to the Court for a summary judgment where the Defendant has filed a defence but the Claimant believes that the Defence does not have any real prospect of defending the claim"

3.1 The claimants argue that the defence raised by the defendant herein under exhibit marked "PC1" is a sham. Let us therefore take a look at the statement of case before we assess the veracity of the defence.

3.2 On paragraph 3 it reads:

"3. During the course of investigations, the claimants were assaulted, beaten and tortured..."

4 Without prejudice to the burden on the Defendants to justify the Claimants arrest, the claimants were arrested wrongly and without reasonable or probable cause and were thereby falsely imprisoned..."

5. The Claimants were prosecuted by the defendant maliciously and without reasonable or probable cause for the alleged offence of robbery..."

3.3 The claimants take out action on three heads in the same cause seeking damages over three heads. There are first for assault which led them to suffering personal injuries, the second for false imprisonment and the third, for malicious prosecution.

3.4 The onus rests on the defendant that the facts as contained in exhibit PC1 are in dispute to amount to a proper defence. See **Rasi v Tutla 1992 15 MLR 419**. If a proper defence or real nature of the defence is not raised, there is no triable defence. It becomes the duty of the judge to enter judgment for the claimant in the circumstances. See **Anglo-Italian Bank v Wells [1878] 38 LT 197**. This happens because the court is satisfied that the defendant is unable to set up a *bona fide* defence.

3.5 Summary judgment allows speedy resolution of the matter, than waste court precious time and resources of a party which he has unreasonably been kept away from. See **Manica (Malawi) Ltd v Interocean Freight Service (Pty) Ltd (supra)**.

4.0 Conclusion

- 4.1 Having considered the grounds advanced by the claimant for summary judgment, the court finds that the defence herein indeed consists of general denials in the 6 paragraphs. In this regard, it has no support of the law as per Order 7 Rule 6 of the Courts (High Court) (Civil Procedure) Rules 2017. There are no arguable grounds in the statement of defence. Succinctly put, it is a sham. This court so finds. However, if we allow summary judgment to enter on the three heads alone, leaving out the last two, yet they form part of the same case, it would be synonymous with abuse of process.
- 4.2 It would not be prudent to segregate the heads and enter summary judgment over part of the claim yet over the other heads to let the case be tried over them. It is a waste of court time, space, resources and prudence in prosecution of the case. Let the case be determined as one for tidiness in the trial procedure.
- 4.3 The application for summary judgment, accordingly does not succeed only because of technicality. Each party bears own costs.

Made in Court this **14th** day of **July** 2021



JUDGE.