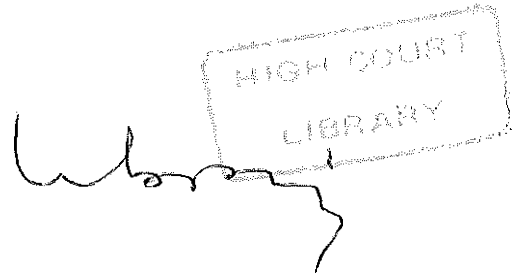




Republic of Malawi



**IN THE HIGH COURT OF MALAWI**

**PRINCIPAL REGISTRY**

**PERSONAL INJURY CAUSE NUMBER 418 OF 2021**

**CLIFFORD ISSA (Suing on behalf of IVY ISSA,  
A minor)**

**CLAIMANT**

**AND**

**INNOCENT KACHAPIRA**

**1<sup>st</sup> DEFENDANT**

**JOSEPH MIGELI**

**2<sup>nd</sup> DEFENDANT**

**PRIME INSURANCE COMPANY LIMITED**

**3<sup>rd</sup> DEFENDANT**

**CORAM: JUSTICE M.A. TEMBO**

Maliwa, Counsel for the Claimant  
Chisale, Counsel for the Defendants  
Mankhambera, Official Court Interpreter

**ORDER**

1. This is the order of this Court following the claimant's application for summary judgment on the claimant's claim against the defendant. The

application was made under Order 12 rule 23(1) of the Courts (High Court) (Civil Procedure) Rules.

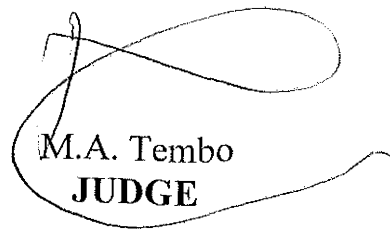
2. The claimant's claim is for damages for personal injuries that the minor herein suffered as a result of the alleged negligence of the defendant in that the 1<sup>st</sup> defendant negligently drove a motor vehicle owned by the 2<sup>nd</sup> defendant and insured by the 3<sup>rd</sup> defendant and caused injury to the minor. The claimant also seeks costs of this action.
3. In the defence on record, the defendants deny the claim and assert that the claim is statute barred on account of the fact that the appointment of the guardian ad litem herein is incurably defective. The defence further alleges that the driver of the motor vehicle was not negligent. It also alleges that it is the minor who was negligent and wholly caused the collision resulting in the injuries suffered. Particulars of the negligence of the minor are indicated.
4. On his application for summary judgment, the claimant filed a sworn statement in support of his application and alleged that the defendants had no arguable defence and that summary judgment be entered. The claimant asserted that the defendants' defence is a general denial defence with no particulars and that the allegation of negligence against a minor are untenable at law. The defendant also disputed the allegation that the appointment of the guardian ad litem was incurably defective.
5. On their part, the defendants contended that they have a defence worth taking to trial and sought a dismissal of the summary judgment application.
6. This Court agrees with the parties that this Court has power to enter summary judgment under Order 12 rule 23(1) of the Courts (High Court) (Civil Procedure) Rules where the defendant has filed a defence but the claimant believes the defendant does not have any real prospect of defending the claim.
7. In terms of Order 12 rule 24 of the Courts (High Court) (Civil Procedure) Rules, the procedure on such an application for summary judgment is that the claimant files a sworn statement which verifies the facts in the application and states that the claimant believes there is no defence to the claim. The specific orders sought must also be spelt out.
8. What is significant is that, on an application for summary judgment, the sworn statement must verify the facts in the application. Verifying the facts in the application entails that the claimant must substantiate the facts by sworn statement. When one reads Order 12 rules 25 and 26 it is clear that the

- claimant must substantiate, prove or establish his claim or case by sworn statement. The Court must be satisfied that there is no need for a trial of the application in view of such proof of the claim and lack of an arguable defence.
9. In the present matter, the claimant has not brought evidence to substantiate or prove his claim. This is clear beyond doubt because all that his sworn statement does is to refer to the defendants' defence which denies the alleged negligence. However, that is not the import of the procedure on summary judgment, namely, to enter summary judgment on the basis of the statement of case alone. Where a party is of the view that another party's statement of case in defence is irregular, as is alleged in this matter, then an appropriate application to strike out the defence for the alleged irregularity ought to be made in that regard to zero in on the impugned irregularity in the defence but not a summary judgment application.
  10. This Court is buttressed in its view above considering the discussion of a similarly worded English Rule, CPR 24, providing for summary judgment in the case of *Easyair Limited v Opal Telecom Ltd* [2009] EWHC 339 (Ch) [2.1] where Mr. Justice Lewison stated a number of points for the Court's consideration on a summary judgment application, namely, whether a claimant has a 'realistic' as opposed to a 'fanciful' prospect of success. 'Realistic' means a claim that is more than merely arguable, a claim that carries a degree of conviction. It was also stated that the Court must not conduct a 'mini-trial' in reaching its conclusion. Nor should the Court take everything a party says at face value without analysis. It was also indicated that under the Rule, the court should consider the evidence before it at the application and evidence that may reasonably be expected to be available at trial. And that the court should be hesitant to make a final decision without a trial (even if at trial the case may turn out to not be all that complicated) if a fuller investigation of the facts might affect the evidence available to a trial judge, and so affect the outcome of the case. And that, on the other hand, if the court is satisfied that all the necessary evidence has been put before it and the parties have had an opportunity to make submissions, the court is encouraged to 'grasp the nettle' and decide short points of law or construction.
  11. The claimant in his skeleton arguments interestingly alluded to case authority of *Robert v Plant* (1895) 1 QB 597, pointing to the position that on a summary

judgment application a claimant must prove his claim clearly. However, he never established his claim herein at all.

12. This Court is therefore compelled to decline the instant application with costs to the defendant. The matter shall be escalated to trial in the usual manner.

Made in chambers at Blantyre this 22<sup>nd</sup> March, 2022.



M.A. Tembo  
**JUDGE**