



**IN THE HIGH COURT OF MALAWI  
PRINCIPAL REGISTRY  
PERSONAL INJURY CAUSE NO. 878 OF 2019**

**BETWEEN  
IBULA WILSON (THROUGH MRS WILSON)  
AND  
FRANK MTISUNGANE KAULEMBE  
PRIME INSURANCE COMPANY LIMITED**

**CLAIMANT  
  
1<sup>ST</sup> DEFENDANT  
2<sup>ND</sup> DEFENDANT**

**CORAM : MATAPA KACHECHE Deputy Registrar  
Mr. Domasi for the Claimant  
Sawerengera Counsel for the Defendant  
Mtegha (Mrs) Official Interpreter**

**ORDER ON ASSESSMENT OF DAMAGES**

1. By an order dated 25<sup>th</sup> May, 2021, following mediation, judgment was entered on liability against the defendants herein. The honourable judge adjourned the matter to allow the parties to discuss the issue of compensation. They were to report back by close of business on 4<sup>th</sup> June, 2021.
2. On 1<sup>st</sup> September, 2021 the claimant filed a notice of assessment of damages. The matter came before me on 5<sup>th</sup> November, 2021 at 8:30 a.m.
3. I proceeded with the assessment by hearing the plaintiff's testimony.
4. At the close of the plaintiff's case the second defendant sought adjournment to parade a witness to testify on the limit of its policy. The claimant, through counsel said that she did not have problems with the court finding as a matter of fact that the 2<sup>nd</sup> defendant's policy limit is K5,000,000.00.
5. I adjourned the matter to a date to be fixed while directing the defendant to make up her mind to call the witness within 14 days.

*Ibula Wilson v Frank Kaulembe and another*

6. The defendant has not filed a notice of adjournment since.
7. While preparing to write my order on assessment of damages I have made two observations.
8. The first one is the order entering judgment: it clearly stipulated that the parties should discuss the issue of compensation and were to report back on 4<sup>th</sup> June 2021. In my understanding this meant that mediation was continuing.
9. There is no indication on my file what happened by the close of business on 4<sup>th</sup> June 2021. While I am aware that mediation proceedings are not recorded on the main court file, the order indicating the outcome of mediation proceedings normally, and rightly so, is placed on the court file. In this case I do not have such an order.
10. The absence of an order indicating how the mediation proceedings/discussions ended means, in my opinion that the matter is still at mediation stage unless it is indicated otherwise.
11. While none of the parties raised this issue when the matter came for assessment, I still think that it is a very important issue and we cannot proceed with the assessment in the absence of a formal order terminating mediation and directing the Registrar to proceed with assessment.
12. I am fortified in my view as, under the Courts (High Court) (Civil Procedure) Rules, 2017, the Registrar's powers are exercised subject to directions of the Judge. In this case there is no such direction. The only direction from the judge is the one ordering the parties to report back on the progress of the discussions.
13. In the circumstances, it is not procedural for me to proceed with the order on assessment. I therefore dismiss the proceedings.
14. The proceedings may be restored in the event that the parties regularize the situation.

*Ibula Wilson v Frank Kaulembe and another*

15. At this point I am not obliged to make my second observation having already dismissed the proceedings. However, I think it is important to help in the future management of the action on the side of Counsel.
16. Counsel for the defendants stated that she intends to call a witness to testify on the issue of limit of liability. Counsel for the claimant had no issue and indicated that he would not mind if the Court took it as a fact that there is a limit of liability.
17. What exercised my mind though was what I would do if I found that the claimant deserves to be compensated with an amount higher than the limit- was I supposed to apportion the damages by making an order that the first defendant pays the remaining balance?
18. Counsel is representing both defendants- meaning that the defendants are coming to court as one front unless counsel tells me otherwise. In that case it would not be proper for the Court to do an apportionment of the damages payable by parties who are represented by one legal house.
19. In any event, the issue of how much a party is liable, in my view is supposed to be determined by the main judgment and not at the stage of assessment. In the absence of a final order terminating mediation by the judge and directions as to how the assessment should be done I do not understand how the issue of limits of liability would come into play.
20. Having already dismissed the proceedings I proceed to order that each party must bear its own costs.

Delivered this 20<sup>th</sup> day of May 2022



Chimbizgani Matapa Kacheche  
**DEPUTY REGISTRAR**