



**IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY
CIVIL CAUSE NO. 289 OF 2009**

BETWEEN

KONDI MSUNGAMA PLAINTIFF

AND

**HOLMAN MALIZANI 1ST DEFENDANT
TELESUPRECON LIMITED 2ND DEFENDANT
ZOOM CAR HIRE LIMITED 3RD DEFENDANT
CHARTER INSURANCE CO LTD 4TH DEFENDANT**

CORAM: HON. JUSTICE R. MBVUNDULA

Tembo, of Counsel, for the Plaintiff
Nyirenda, Counsel for the 1st and 2nd Defendants
Chipembere, Counsel for the 3rd Defendant
Makwinja, of Counsel, for the 4th Defendant
Minikwa, Official Interpreter

RULING

The plaintiff sued the four defendants for negligence. When the matter was called for hearing in open court counsel for the 1st and 2nd defendants informed the court that the parties had had discussions and had agreed that they would not call witnesses and asked the court to enter judgment for negligence and for damages to be assessed by the Registrar on all claims by the plaintiff. This was confirmed by defence

counsel, including counsel for the 4th defendant who said: “So far as the liability of the 4th defendant is dependent on that of the 1st, 2nd and 3rd defendants, I confirm”.

On the foregoing basis I entered judgment endorsing the parties’ said agreement for negligence, damages to be assessed by the Registrar.

The matter did go for assessment of damages and taxation of costs. Subsequent to that the 4th defendant filed before me an application titled “Application for Construction of Policy of Insurance” where it sought a determination whether under the policy of insurance issued by the 4th defendant the said 4th defendant was liable to pay costs in addition to damages. I heard the application and upon considering the same I have formed the opinion that the same was ill conceived for two reasons. The first is that in my judgment I made no order for costs as the issue was not raised by any of the parties. The second is that having delivered my final judgment I became *functus officio*.

On those grounds I dismiss the application with costs.

Made in chambers at Blantyre this 3rd day of June 2022.


R. Mbvundula
JUDGE