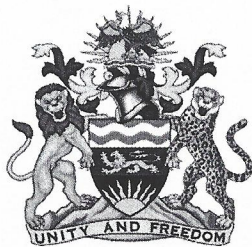


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REPUBLIC OF MALAWI
MALAWI JUDICIARY
IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY
PERSONAL INJURY CASE NO. 781 OF 2011

BETWEEN

MARGARET JAMES (AS ADMINISTRATRIX, ON HER OWN BEHALF
AND ON BEHALF OF THE ESTATE OF DAVIE
ALBERT)..... CLAIMANT

AND

GODFREY CHOWEZA..... FIRST DEFENDANT

AND

PRIME INSURANCE COMPANY
LIMITED.....SECOND DEFENDANT

CORAM: HON. JUSTICE JACK N'RIVA

Mr Mailosi Counsel for the Claimant

Counsel for the Defendants Not present

Ms D Nkangala, Court Clerk

RULING

The issue for determination in this application is whether or not to enter a summary judgment. The claimant asks this Court to order summary judgment in her favour arguing that the defendant has no arguable case. The claimant commenced this action for negligence against the defendants seeking damages

arising from the death that resulted thereby. The claimant claims that the first defendant was negligent in driving the vehicle. She sued the second defendant as the insurer of the said motor vehicle.

In making this application, the claimant argues that the defendant's defence is a general denial.

I have looked at the parties' statements at the commencement of this action. Indeed, the defence is denying all the allegations put across by the claimant. There is, thus, no response to the allegation of the first defendant being negligent. This is inconsistent with the procedure in the Court as well as the overriding principles of the procedure rules some of which is to identify issues timely, saving time and for the parties to cooperate. The second defendant argues that its liability is subject to the first defendant being found liable in negligent and subject to the limit of the policy.

According to Order 7 rule 6 of Courts (High Courts) (Civil Procedure Rules) 2017 provides that a defendant shall deal with each fact in the claim and shall not deny a claim generally. Under rule 7, where a defendant does not agree with a fact that a claimant has stated in the claim, the defendant shall file and serve a defence that denies that fact and states what the defendant alleges happened.

Under the rules the Court can use its power to knock out hopeless defences, such as those that simply do not amount to a legal defence to a claim. One way of doing that is under order 12 rule 23(1) of the Courts (High Court) (Civil Procedure) Rules, 2017, where

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.

In *Swain v Hillman* [2001] 1 All ER 91 Lord Woolf MR said that the words 'no real prospect of succeeding' did not need any amplification as they spoke for themselves. The word 'real' directs the Court to the need to see whether there was a realistic, as opposed to a fanciful, prospect of success. The phrase does not mean 'real and substantial' prospect of success. Nor does it mean that summary

judgment will only be granted if the claim or defence is 'bound to be dismissed at trial.' What the words mean in this context is that the defence offered does not show a forthcoming defence.

The rules require the defendants not to offer a general defence. Under order 7 rule 6 of the Courts (High Court) (Civil Procedure) Rules, 2017, *a defendant shall deal with each fact in the claim and shall not deny a claim generally*. Under order 7 rule 7 of Courts (High Court) (Civil Procedure) Rules, 2017, *where the defendant does not agree with a fact that the claimant has stated in the claim, the defendant shall file and serve a defence that denies the fact and states what the defendant alleges happened*.

When drafting a defence, the defendants should ensure that they address each of the issues raised in the particulars of claim. The structure of the defence should be such that it responds to each paragraph of the statement of case by either admitting or denying allegations. If an allegation made in the statement of claim is denied, the defendant is obliged to give reasons for the denial and put the side of the story of the defence. Thus, the defendant cannot simply deny a matter without stating how or why he or she or it is making the denial. The rules on Order 7 rules 6 and 7 are in mandatory terms. Therefore, I believe a claimant can apply to have summary judgment to have the defence struck off on the ground that the defence has no prospects of a success.

In Order 12 rule 23(1) of Courts (High Court) (Civil Procedure) Rules, 2017, a 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 real prospect of defending the claim. I believe that that rule is applicable in this matter. This is because first, the defence does not raise issues and secondly because the defence fails to meet the requirements of a defence under the rules.

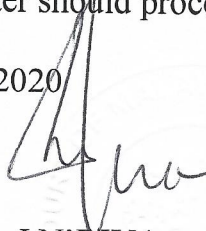
In Order 12 rule 25 (2) of Courts (High Court) (Civil Procedure) Rules, 2017,

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 part of the application, the Court shall
 - (i) give judgment for the application or part of the applicant; and
 - (ii) make any other order the court may deem appropriate.

In the present case, the defendant generally denied everything without specifically dealing with any of the substantive claims in the statement of claim. This offends the requirement on the law on the entry of defence in the matters civil in nature. I do not think this matter has to go all the way to a trial. Letting this matter to proceed to trial would cause a great injustice to the plaintiff as the defendant's defence is evidently loaded with unmitigated general denials. Therefore, I enter judgment in favour of the claimant, summary judgment should be granted as prayed in the statement of claim. The defendant should also bear costs of this application. The matter should proceed to assessment of damages.

MADE the 26th day of February, 2020

A handwritten signature in dark ink, appearing to read 'J N' RIVA', is written over a faint circular official stamp.

J N' RIVA

JUDGE