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**IN THE HIGH COURT OF MALAWI
CIVIL DIVISION
PRINCIPAL REGISTRY
PERSONAL INJURY CAUSE NO. 1011 OF 2020
(Before Justice Rachel Sophie Sikwese)**

BETWEEN:

THINDWA.....APPLICANT

AND

LEGAL AID BUREAU.....RESPONDENT

CORAM

HON. JUSTICE RACHEL SOPHIE SIKWESE

TJM & Associates; Counsel for the Applicant

Counsel for the Respondent

Mithi; Official interpreter

ORDER ON AN APPLICATION FOR DEFAULT JUDGMENT

Under Order 12 Rule 7 (1) and (12) of Courts (High Court) (Civil Procedure) Rules 2017

SIKWESE J

Procedural and Factual Background

1. On 25 March 2021, the Applicant filed this application for a default judgment to be entered against the Respondent for failure to file a response and or defence to the Applicant's action, claiming damages for personal injuries.

2. On 8 July 2020, it is alleged, the Applicant sustained injuries in the course of his employment as a result of the Respondent's negligence.
3. The Applicant commenced proceedings claiming damages for pain and suffering, loss of amenities of life, disfigurement and costs.
4. On 8 February 2021, the Respondent was served with summons and accompanying documents. The prescribed 28-day period within which the Respondent was required to file and serve either a response or defence has since elapsed.
5. The application is therefore a result of the failure by the Respondent to comply with the 28-day rule for a response or defence.

Considerations

6. Order 12 rule 7(1) of the Courts (High Court)(Procedure) Rules, 2017, (CPR) provides that, "an application for a judgment in default for liquidated claims, unliquidated monetary claims, including claims for damages, the detention of goods, the recovery or delivery of possession of land in an application for possession of land, may be made by filing a draft of the judgment together with a sworn statement in support of the application".
7. The Applicant's sworn statement in support of this application cites the claims as damages for pain and suffering, loss of amenities of life, disfigurement and costs.
8. On the other hand, the draft of the judgment filed together with the sworn statement cites damages for false imprisonment and damages for malicious proceedings over and above the damages that are cited in the sworn statement.
9. It is this Court's view that the draft judgment in default referred to above, shall reflect the precise remedies sought in the sworn statement. The inclusion of damages in the draft judgment that are not cited in the sworn statement renders the application inadmissible and should be rejected.

ORDERS

10. The application for default judgment is rejected.

11. Pursuant to Order 1 rule 4, CPR, the Court shall further the overriding objective of the rules of procedure by active case management, which includes, “ dealing with as many aspects of the proceeding as the Court can on the same occasion”, see rule 5(i):

12. **It is Ordered** that this Ruling should be served personally on the Chief/ Director of the Legal Aid Bureau who shall have 14 days from the date of the service within which to file a response and or defence if any, to the claim giving reasons for the delay.

Made this 12th day of April 2021 at **High Court (Civil Division) Blantyre.**



Rachel Sophie Sikwese

JUDGE