

**IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY
CIVIL CAUSE NO. 2891 OF 2002**

BETWEEN:

Y. N. LUHANGA.....PLAINTIFF

- and -

CODA & PARTNERS.....DEFENDANT

CORAM: KATSALA J.

Mr Mzunga/

Mr M. Nkhata of Counsel for the plaintiff

Mr Tomoka of Counsel for the defendant

Mr Beni – official interpreter.

RULING

Katsala J,

In this action the plaintiffs claims the sum of K471,177.00 being compensation money allegedly due to him under the Workers Compensation Act, notice pay, legal practitioner's collection charges, interest and costs of the action. The defendant denies the claims.

When the matter was called for hearing, the defendant raised a preliminary objection to the trial on the ground that the matter had been wrongly commenced in this court and or that it has been brought to this court prematurely.

The history of the matter is that the plaintiff was employed by the defendant as a surveyor. He was based in Kasungu at the defendant's site office. On or about 23rd October 2000 the plaintiff was asked to travel to Lilongwe to meet the defendant's Resident Engineer. Unfortunately, the vehicle he was traveling in was involved in an accident and he sustained injuries. He filed a claim for compensation under the Workers' Compensation Act. It is alleged that the Workers' Compensation Commissioner assessed his compensation at K471,177.00 which the defendant was required to pay but did not up to date. The plaintiff then instituted the present action to recover this amount among other claims as earlier indicated.

The defendant argued by way of preliminary objection that these proceedings have been brought to this court prematurely and that the procedure laid down in the Workers' Compensation Act has not been complied with. Workers' Compensation is a creature of statute as such it must be pursued in terms of the statute that created it, the defendant so argues. The Act does not provide for the bringing of actions as the plaintiff has done and the action should therefore be dismissed.

On the other hand, the plaintiff urges the court to exercise its discretion to entertain the action under its inherent jurisdiction in the event that it is found that indeed the action has been wrongfully brought to this court.

I have read the Workers' Compensation Act and have noted the following. An appeal against the determination by the Worker's Compensation Commissioner (herein after "the Commissioner") lies to a Chief Resident Magistrate court. A further appeal lies to the High Court. Further, the Commissioner can, at the request of any interested party to any proceedings under the Act state a case (or a decision of the Workers' Compensation Tribunal) on any question of law for the decision of the High Court. I have also noted that the Act provides that determinations or orders of the Commissioner may be enforced as if they were orders or determinations of a Chief Resident Magistrate in civil cases irrespective of the value involved.

It is therefore clear from a reading of the Act that indeed in as far as, this action seeks to enforce the Commissioner's alleged determination of compensation payable to the plaintiff, it is misconceived. In my judgment, the plaintiff cannot commence an action claiming for the compensation as determined by the Commissioner. All he can do is to enforce the alleged determination in the same way he would enforce a civil judgment in the Chief Resident Magistrate's court. I do not think a determination of compensation by the Commissioner gives an injured person a cause of action which can be pursued in this court.

Let me mention that under Section 63 an injured person is entitled to commence legal proceedings against the employer if he thinks that the injury was caused by the negligence on the part of such employer, his agent and or servant. Obviously, in such an action the injured person would be seeking an award of damages and not enforcement of the Commissioner's determination of compensation.

All in all, it is my considered judgment that the plaintiff cannot maintain this action in as far as it relates to his claim for the sum of K471,177.00 the alleged determination by the Commissioner. And obviously the claims for interest and legal practitioner's collection charges automatically fall away. To this extent the preliminary objection is sustained and thee three claims are struck out. In the result the plaintiff remains with his claim for notice pay which he may wish to proceed with. Costs are the defendant.

PRONOUNCED this.....day of April 2005.

Katsala J
JUDGE