



REPUBLIC OF MALAWI
MALAWI JUDICIARY
IN THE HIGH COURT OF MALAWI

PRINCIPAL REGISTRY
PERSONAL INJURY CAUSE NO. 955 OF 2016

BETWEEN
YOHANE SAMUEL..... PLAINTIFF

AND

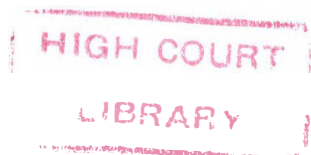
PRIME INSURANCE COMPANY LIMITED..... DEFENDANT

CORAM: His Honour Jack Nriwa Registrar
Mr. Ng'omba of counsel for the plaintiff
Mr. Kamangira of counsel for the second defendant
Mrs. Phombeya Court Clerk

RULING

This is an application by the plaintiff to have the defence by the defendant struck out on the grounds that the defence is a general denial of the claim made against them (the defendant). The motion is supported by an affidavit sworn by Mr. Mauya Msuku, of counsel for the plaintiff.

The plaintiff commenced this action for damages for negligence against the defendant on the ground that the defendant was the insurer of the motor vehicle that was involved in the said negligence. The plaintiff produced documents to show that the defendant insured the motor vehicle in question. The defendant denies that there was an accident against the



plaintiff in addition to denying being the insurer of the motor vehicle. The defendant says that in any event if they are liable, their liability would be limited to the extent of the insurance cover. The plaintiff argues that the documents in the matter show that the defendant insured the motor vehicle.

The plaintiff is of the view that the defence of the defendant is a general one and that it is merely aimed at delaying the course of justice. The plaintiff therefore asks the court to strike out the defence arguing that there is no dispute in this matter. Counsel of the defendant argues against the motion by the plaintiff. Counsel argues that the court should be slow to enter a judgement before hearing a party. Counsel argued that there is an issue for further investigation. Counsel argued that the prayer by the plaintiff is akin to entering a summary judgement. Counsel argued that there is a Supreme Court judgment against entering summary judgement in such a manner. However, counsel for the plaintiff argues that this is not an application for summary judgement. Counsel maintained that the defence in this matter is a general denial. He further stated that the defendants have not brought anything to dispute the assertions made against them.

The question is whether to strike is a defence or not. The plaintiff argues that there is no reasonable defence offered by the defendant. The defendant, on the other hand, argued that the court should be slow to strike out a defence. The defence argues that where there are triable issues the matter should proceed to full trial. The defendant made reference a decision of the Supreme Court.

Of course the decision is about entry of summary judgement and, as counsel for the plaintiff argues the motion in this matter is not for summary judgement.

One can argue that the effect is the same of either procedure in that summary judgement and striking out a defence are both aimed at avoiding a trial where there is no need for a trial. The procedure of trial in the High Court requires that the parties should put across their pleadings. From the pleadings, the court can decide whether the matter should proceed to a trial or be dealt with summarily. Therefore, not every defence would entitle the matter to proceed to trial. To proceed to trial, there ought to be a reasonable defence raising triable issues. The decision brought by the defendant in this matter, about summary judgements, is also on the same point. Whichever way, the court has to analyse the defence to determine whether the defence is raising a reasonable triable issue.

In the matter that was before the Supreme Court, the issue was whether there was a triable issue and whether there was a credible and bona fide defence or not. The question was whether summary judgement was properly entered. In this matter, however, what we have is, to say the least, a general defence. The defendant is generally denying the claims by the plaintiff, including that they are the insurers of the motor vehicle. However, the pleadings

by the plaintiff contains a certificate of insurance indicating that the defendant was the insurer.

The defendant further said that if they are the insurance of the motor vehicle their liability is limited to the limit under the policy. Looking at these statements, I believe that what the plaintiff is saying is true that the defendant's defence is a general denial. Indeed, the question one can ask is whether the defendants have a bona fide defence or whether the defence is raising a triable issue. In other words, the question is whether there is a legal dispute in this matter. During the oral arguments, counsel for the defendant intended to show that the defendant did not insure the motor vehicle in this matter. However, as counsel for the plaintiff observed, the defendants did not file an affidavit in support of that argument.

To that extent, it is indeed the case that the defence of the defendant is a general one. It is a defence of general denial. The defendant denies everything in this matter. I doubt if one can see a triable issue in this matter. If there is an issue about the extent of the liability of the defendant, that should be a question of assessment and not a full trial. The court has power to strike out a defence which, if allowed to remain on the file, would be an abuse of procedure. See *Remington v Scoles* (1897) 2 Ch. 1 where the court said at 4

...the court has power to strike out a statement of claim; but the power of the court is not confined that. It applies also to the statement of defence, which is frivolous and vexatious and an abuse of procedure.

In this matter, I had to find the defence to be worth it. In summary, I allow the summons by the plaintiff to strike out the defendant's defence. The defendant has a right to appeal against the decision.

Delivered at Blantyre this 30th day of May 2017


J N RIVA

REGISTRAR