

**PRINCIPAL REGISTRY**

**PERSONAL INJURY CAUSE NO. 1007 OF 2015 BETWEEN**

**AARON FREDRICK..... PLAINTIFF**

**AND**

**CROWN AGRO-INDUSTRIES..... 1<sup>ST</sup> DEFENDANT**

**POLYPACK LIMITED..... 2<sup>ND</sup> DEFENDANT**

**CORAM : HER HONOUR MRS. BODOLE, ASSISTANT REGISTRAR**

Samuti, of Counsel for the Plaintiff

Kaduya, of Counsel for the Defendant

Mrs Ngoma, Court Clerk

**RULING**

This is an application by the plaintiff to strike out amended defence and for leave to enter judgment. Counsel from both sides filed affidavits and also made oral submissions.

**The Evidence**

By writ of summons dated 2<sup>nd</sup> December, 2015, the plaintiff brought an action against the defendants claiming damages for pain and suffering, loss of amenities of life and special damages in that the defendants were negligent and breached the duty imposed on them by statute. The defendants filed amended defence on 13<sup>th</sup> December, 2016. The plaintiff has brought this application claiming that the amended defence does not disclose reasonable cause of action and must be strike out.

Counsel for the plaintiff contended that under Order 18 rule 19 (1) (a) of the Rules of the Supreme Court, courts can strike out a defence if it does not disclose a reasonable defence. He further contended that the amended defence only makes general denials and does not discuss the ground upon which such denials have been made, so the defence cannot be said to raise a reasonable defence. The plaintiff relied on the case of **Yohane Samuel v Prime Insurance Company Limited** Personal Injury Cause No. 955 of 2016 (unreported) where the court struck out the defendant's defence because the defence was a general one and one could not see a triable issue in the matter.

Counsel for the defendants contended that the question before the court is whether or not the defendants were negligent. The defendant denied liability. By denying the particulars of negligence that have been pleaded, the burden of proof has been shifted to the plaintiff and it is only and until the evidential burden has been satisfied that a judgment should be entered for the plaintiff. He further contended that the plaintiffs claim that the defence does not contain particulars would have been rectified if the plaintiff asked for better and further particulars.

It would be prudent if I produce the amended defence as it is.

#### **“AMENDED DEFENCE**

1. The defendants make no admission on paragraph 1 of the statement of claim.
2. The defendant refer to paragraph 2 of the statement of claim and put the plaintiff to strict proof thereof.
3. The defendants deny the contents of paragraph 3 of the statement of claim and put the plaintiff to strict proof thereof.
4. The defendants deny the contents of paragraph 4 of the statement of claim together with its particulars and put the plaintiff to strict proof thereof.
5. The defendants deny the alleged injuries in paragraph 5 of the statement of claim together with its particulars and put the plaintiff to strict proof thereof.
6. The defendants deny the alleged special damages in paragraph 6 of the statement of claim and put the plaintiff to strict proof thereof.
7. Save as herein before expressly admitted the defendant denies each and every allegation of fact as if the same was herein set forth and traversed seriatim."

#### Applicable Law and Analysis

Order 18 rule 19(1) of the Rules of the Supreme Court provides that

"The court may, at any stage of the proceedings order to be struck out or amended any pleading or the indorsement of any writ in the action, or anything in any pleading or in the endorsement on the ground that-

- (a) it discloses no reasonable cause of action or defence, as the case may be; or
- (b) it is scandalous, frivolous or vexatious; or
- (c) it may prejudice, embarrass or delay the fair trial of the action; or
- (d) it is otherwise an abuse of the Court process."

Practice Note 18/19/10 with reference of rule 19 (1) (a) provides that

"A reasonable cause of action means a cause of action with some chance of success when only the allegations in the pleadings are considered (per Lord Pearson in **Drummond-Jackson v British Medical Association [1979] 1 WLR**

688; [1970] 1 ALL ER 1094, CA). So long as the statement of claim or particulars (**Davey v Bentinck** [1893] 1 QB 185 disclose some cause of action, or raise some question fit to be decided by a judge or a jury, the mere fact that the case is weak, and not likely to succeed, is no ground for striking it out (**Moore v Lawson** (1915 31 TRL 418, CA; **Wenlock v Moloney** [1965 1 WLR 1238; [1965] 2 ALL ER 871, CA);"

**In Chibwana t/a Tidalitseni Transport v Union Transport [2005] MWHC 94 the court held that**

"Lord Pearson in *Drummond-Jackson v British Medical Association* [1970 1 ALL ER 1094 C.A. defined a reasonable cause of action as one with some chance of success when only the allegations in the pleadings are considered. Similarly, a reasonable defence is one with some chance of success when only the allegations in the pleadings are considered. It is enough if the pleading raises some question fit to be decided by a Judge or jury."

The question in the allegations in the pleadings is whether or not the defendant was negligent. The defendant denies that he was negligent. With such denial the plaintiff has the burden of proving that the defendant was negligent. The plaintiff relied on the case of **Yohane Samuel v Prime Insurance Company Limited** (supra). In that case the defendant denied everything in their defence including the fact that they were the insurers of the motor vehicle in question. The defendant went on to state that if they are the insurers of the motor vehicle, their liability was limited to the limit under the policy. The plaintiffs pleadings, however, contained a certificate of insurance indicating that the defendant was the insurer. That case can be distinguished with this one because the plaintiffs pleadings showed that the defendant was the insurer of the motor vehicle which defeated their defence. So the defendant's defence was rendered useless. In the present case there is nothing in the statement of claim which defeats the defendant's denial of liability. Moreover, the defendant's defence raises some question fit to be decided by a Judge which question borders on whether or not the defendant was negligent.

I, therefore, find that the defendant's defence is reasonable. I dismiss the summons by the plaintiff to strike out the defendant's defence. The plaintiff has a right to appeal against the decision.

Pronounced in chambers this 11<sup>th</sup> day of September, 2017.

**E. BODOLE (MRS)**

**ASSISTANT REGISTRAR**