



THE REPUBLIC OF MALAWI
IN THE HIGH COURT OF MALAWI
LILONGWE DISTRICT REGISTRY
CIVIL CAUSE NO. 1022 OF 2016
BETWEEN

Dasten Kapalamula..... 1st Plaintiff
Willard Magombo..... 2nd Plaintiff

AND

Stanford Kulumba..... 1st Defendant
NICO General Insurance Company Ltd 2nd Defendant

CORAM: *Madalitso K. Chimwaza, Assistant Registrar*

Papano Dalla,

Counsel for the 2nd Defendant NICO

Mpandaguta,

Court Clerk

RULING ON SUMMONS TO STRIKE OUT A PARTY

These are summons to remove a party from proceedings filed by 2nd defendant pursuant to **Order 15 rule 6 Rules of the Supreme Court (RSC)**. They are supported by an affidavit and both were duly served on the plaintiff on 13th June 2017. The plaintiff did not file or serve an affidavit in opposition to the summons neither did they attend court despite being served with notice of today's proceedings.

The brief facts are that the plaintiff sued the second defendant as an insurer of motor vehicle registration number CZ 1923, Toyota Corolla under certificate of insurance number 140325478. The second defendant alleges that the said certificate of insurance does not exist in the serial numbers of their system as such the said certificate was not issued by the second defendant. In that regard the second defendant claims to have been wrongly and improperly added as a party since there was no contract of insurance

between the first and second defendant to attach liability in damages to the plaintiff, hence the application to be removed as a party.

Pursuant to **Order 15 rule 6** RSC a defendant who has been improperly joined to the proceedings may be struck out. This has to be done promptly.

In the present matter the plaintiffs were served with notice to strike out a party on 13th June 2017 at 11:40am. They did not file affidavits in opposition neither were they present on the date for hearing the summons despite being served with notice. No reason was furnished for their absence.

Without prejudice to the plaintiff's case this court strike out the 2nd Defendant from the proceedings with liberty to the plaintiff to add any party it deems fit for complete and effective determination of the matter. Costs are in the course.

Made in chambers this 29th day of August, 2017



Madalitso Khoswe Chimwaza (Mrs)

ASSISTANT REGISTRAR