



THE REPUBLIC OF MALAWI
IN THE HIGH COURT OF MALAWI
LILONGWE DISTRICT REGISTRY
CIVIL CAUSE NO. 998 OF 2016

BETWEEN

Vanessa Magonya (a minor suing through Mercy Banda, Next friend)..... Plaintiff

and

George Lumbe1st Defendant

PRIME Insurance Company Ltd.....2nd Defendant

CORAM:	<i>Madalitso Khoswe Chimwaza,</i>	<i>ASSISTANT REGISTRAR</i>
	<i>Silungwe</i>	<i>Counsel for the plaintiff</i>
	<i>F. M'bwana</i>	<i>Counsel for the defendant</i>
	<i>Mpandaguta</i>	<i>Court Clerk</i>

Ruling on Summons for Summary Judgment

Introduction

This is a ruling on a summons for summary judgment filed by the plaintiff pursuant to **Order 14 rule 1 of the Rules of the Supreme Court (RSC)**. It is supported by affidavits and skeleton arguments. The application is opposed.

The brief facts are that on or around 29th June, 2016 at around 14:55 hours the first defendant was driving a motor vehicle Toyota Sprinter registration number LA 2255 from the direction of Area 49 going towards Kanengo along Chendawaka road in the city of Lilongwe. Upon arrival at Linya near Area 25 A road junction he so negligently drove the said motor vehicle that he left his lane and hit the plaintiff infant who was about to finish crossing the road from the left to the right.

The plaintiff commenced this action against the defendant claiming damages for the injury suffered by the infant due to the negligence of the 1st defendant who was over speeding at a busy area, failing to keep a proper look out and failing to manage and or/ to control the vehicle so as to avoid the accident. The plaintiff is claiming damages for pain and suffering, loss of amenities of life, disfigurement, future nursing care and special damages of K6000 for medical and police report and costs of the action.

The defendants served a defense to the claim in which they denied any negligence on the part of the 1st defendant and have requested the plaintiff to prove.

The plaintiff has argued in the affidavit in support of the application that the defense is general in nature and devoid of any merit as it is not supported by any particular facts disputing the negligence. The defendants defense did not condensend on the facts of negligence that were pleaded by the plaintiff.

The defendants through counsel argued during the hearing of the summons that the one before us is not the right case in which summary judgment should be entered owing to the fact that the defendant has a bona fide defense to the plaintiff's claim, the same being that the 1st defendant was not negligent.

The issues for determination by the court are twofold:

- (i) Whether the plaintiff has proved their claim and therefore entitled to summary judgment
- (ii) Whether the defendant has raised a bona fide defense to the plaintiff's claim.

The Law and Analysis

A plaintiff is entitled to obtain summary judgment under Order 14 of the Rules of the Supreme Court if he can clearly establish his claim and the defendant is unable to set up a *bona fide* defense or raise an issue (s) against the claim which ought to be tried (See *Roberts v Plaintiff* [1985] 1BB 597; *Bowsprit Trading (Pty) Ltd v Namalunga Enterprises Ltd* [1992] 15 MLR 33).

Order 14 rule 1 provides as follows;

"where in an action to which this applies a statement of claim has been served on a defendant and that defendant has given notice of intention to defend the action, the plaintiff may, on the ground that that defendant has no defense to a claim included in the writ, or to a particular part of such a claim, or has no defense as to the amount of any damages claimed, apply to the court for judgement against that defendant."

The law allows a defendant to file and serve an affidavit in opposition to the summons. The defendant is entitled to show cause as to why summary judgment should not be entered.

The defendant's affidavit must dwell upon particulars and should as far as possible, deal specifically with the plaintiff's claim and state clearly and concisely what the defense is, and what facts are relied on to support it. It should also state whether the defense goes to the whole or part of the claim, and in the latter case it should specify the part:
Practice note 14/4/5.

Counsel for the plaintiff cited the case of **Pereira vs Ndeule t/a Cenda Building Contractors** [1993] 16(2) MLR 712, in which Chipeta JA, sitting as Deputy Registrar made a distinction between an application for summary judgment under O.14 RSC, and application to set aside a default judgment where the rules allows the presiding officer in a summary judgment application to delve into questions of merits in order to decide whether any proposed defense is valid or only a sham.

In the present matter the defendants have not raised facts challenging the plea of negligence as pleaded by the plaintiff. There are no facts disputing that the 1st defendant was speeding at a busy place which led to his failure to control a vehicle that and left his lane to hit an infant who was about to finish crossing the on the other side of the road from left to right. The reading of the defense reveals that it lacks any particularity with regard to the facts of the defense. One can only see the general and usual statements that are raised in most statements of defense pleading negligence.

Conclusion

This court finds that the plaintiff has made out their case and the defendants has not raised a bona fide defense or any triable issues worthy allowing the matter to proceed to trial. The application is granted and it is ordered that summary judgment be entered against the defendants on all claims as particularized in the statement of claim. Costs are in the cause.

Either party aggrieved by the ruling has the right to appeal.

Made in Chambers on 28th day of November, 2017



Madalitso K. Chimwaza

ASSISTANT REGISTRAR