

IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY
CIVIL DIVISION

PERSONAL INJURY CASE NUMBER 594 OF 2018

BETWEEN

CHISOMO SULUMA..... CLAIMANT

AND

EDWARD BANDA..... FIRST DEFENDANT

AND

PRIME INSURANCE COMPANY LIMITED.....SECOND DEFENDANT

Coram: Hon Justice Jack Nriwa
Mr Mwabungulu for the claimant
Mr S Chisale for the second defendant
Ms D Nkangala, Court Clerk

RULING

The question in this application is the application of section 148 of the Road Traffic Act to the claim in this matter. That section is in the following terms:

(1) Any person having a claim against a person insured in respect of any liability in regard to which a policy of insurance has been issued for the purposes of this Part shall be entitled in his own name to recover directly from the insurer any amount, not exceeding the amount covered by the policy, for which the person insured is liable to the person having the claim:

Provided that: -

(a) the rights of any such person claiming directly against the insurer shall, except as provided in subsection (2) be not greater than the rights of the person insured against such insurer;

b) the right to recover directly from the insurer shall terminate upon the expiration of a period of two years from the date upon which the claimant's cause of action against the person insured arose; or

c) the expiration of such period as is mentioned in paragraph (b) of this proviso shall not affect the validity of any legal proceedings commenced during such period for the purpose of enforcing a right given under this section.

The claimant commenced this action jointly against the insured and the insurer, the first and second defendants respectively. He commenced the case two and a half years after the occurrence of the accident. The insurer relies on section 148(1)(b) of the Act which provides that an affected person has a right to commence directly against the insurer within two years of the occurrence of the event giving rise to the claim. Counsel argued that having commenced the action later than two years, the action is caught by the limitation period in that provision of the Road Traffic Act.

Counsel for the claimant argued that the provision does not apply to this claim. He argued that in this case, the claimant commenced the case concurrently against the insured and the insurer. In other words, counsel's argument was that the claimant's action not merely, or directly, against the insurer.

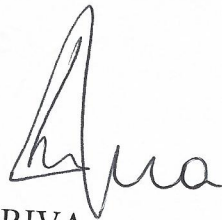
Now, I have to resolve whether the claimant's action is barred by section 148 of the Act.

Section 148 provides that any person, having a claim against an insured in relation to liability, may recover directly from the insurer an amount not exceeding the policy cover. The provision provides for the limitation period within which one may make that claim directly on the insured-two years. The plain reading of that provision is that the limitation applies where the claimant chooses to directly sue

the insurer. In this matter the claimant commenced the action against the insurer together with the insured. It is not a case in which the claimant is merely claiming directly from the insurer. The claimant is claiming from the insured alongside the insured. I believe that that provision is plain and unambiguous that it applies in cases where a claimant chooses to claim directly from an insurer. The golden rule in statutory interpretation is that the words of a statute must, prima facie, be given their ordinary meaning. Where words of a statute are unambiguous, they must be construed accordingly and be given effect (Unyolo JA, as he then was, in *National Insurance Company Limited v Mzimu and others* MSCA Appeal No 20 of 2001. In this case, the limitation does not arise and the second defendant cannot rely on it. I dismiss the application to dismiss the claim against the second defendant.

I make no order of costs at this point.

Made the 22nd day of October, 2019



J N'RIVA

JUDGE