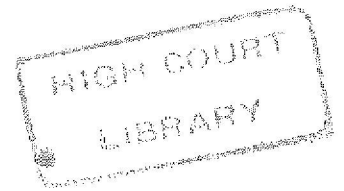


REPUBLIC OF MALAWI



IN THE HIGH COURT OF MALAWI

LILONGWE DISTRICT REGISTRY

CIVIL CAUSE NO. 488 OF 2019

BETWEEN

SAMSON KAZEMBE.....CLAIMANT

AND

PETERKINS JANUARY1STRESPONDENT

MULLI BROTHERS LIMITED.....2ND RESEPDNENT

LIBERTY GENERAL INSURANCE COMPANY LIMITED.....3RD DEFENDANT

CORAM: ATHONY.P KAPASWICHE

ASSISTANT REGISTRAR

Mr. Silungwe

Counsel for the Claimant

Mr. Kalampa

Counsel for the 2nd Defendant

Mr. Kumwenda

Counsel for the 1st Respondent

ORDER ON PRELIMINARY OBJECTION

On the 28th June 2019, the Claimant commenced the present action seeking damages for pain and suffering; damages for loss of amenities of life; damages for disfigurement; loss of earnings and earning capacity; medical and police report and costs of the action. On 6th April 2020; the parties signed an agreement endorsed by the Court on liability. The said Judgment on liability was entered against the 2nd Defendant and damages were to be assessed by the Assistant Registrar if not agreed by the parties. The matter was then set down for assesment of damages. Before the assesment proceedings were heard; the 2nd Defendant made an Ex-parte application for an order for stay of proceedings on the basis that they signed the consent order on liability by mistake and as a result, the 2nd Defendant filed an application before the Judge to set aside the consent order. This Court, on the 23rd February 2021 directed that the application for stay of proceedings should come Inter-parties. The 2nd Defendant did not file the Inter-parties' application and the matter was then set for assesment of damages on 9th August 2021 after a number of adjournments.

On the date of hearing of the assesment of damages; the 2nd Defendant raised a preliminary objection to the hearing on the basis that the consent order upon which these proceedings rise was entered under mistake of fact and is now subject to the proceedings before a Judge to have the said consent order set aside. I do not understand as to why the 2nd Defendant failed to adhere to my directions on made on the 23rd February 2021 as I had directed that their application to stay proceedings should come inter-parties. Instead of bringing an Inter-party application for stay of proceedings; the 2nd Defendant decides to stop the proceedings by bringing a notice of preliminary objection. The issue raised in the notice of preliminary objection is the same issue raised in the Ex-parte application for stay of proceedings which this Court had directed that the application should come Inter-parties. The 2nd Defendant simply needed to proceed as per the directions of this Court and it is on this basis that I dismiss the preliminary objection with costs. The Claimant should file a notice of assesment of

damages as the purported preliminary objection has been dismissed.

Delivered on the 23rd day of June 2022 at LILONGWE.



ANTHONY PITILIZANI KAPASWICHE

ASSISTANT REGISTRAR