



IN THE HIGH COURT OF MALAWI LILONGWE DISTRICT REGISTRY CIVIL CAUSE NO.902 OF 2013

BETWEEN

RULING ON APPLICATION TO STRIKE OUT A PARTY (2ND DEFENDANT)

This is a ruling on the application to strike out the 2nd defendant as a party to the procEedings. The plaintiff commenced action by way of writ of summons claiming damages for pain and suffering, loss of amenities of life disfigurement, cost of bicycle, cost of police and medical report and coasts of the action.

Brief Facts

The plaintiffs statement of claim allege that on or about 20th April 2013 the plaintiff was lawfully cycling his bicycle along Kamuzu Procession road in the city of Lilongwe where he was hit by a motor vehicle Registration no. SA 8432 Steed pick up. The accident took place at Maula Filling station. The 2nd defendant was at all material times the insurer of the said vehicle SA 8432 Steed Pick up.

In their defence the 2nd defendant deny being the insurers of the said SA 8432 Steed Pick up at the material time or at all. The defendant further denied that the accident or collision did not happen on 20th April 2013 but it was on 20th April 2011.

In support of the present application the defendant claim that since the 2nd defendant was sued as insurer of the vehicle SA 8432 Steed pick up at the date of the accident, the 2nd defendant did not hold any insurance policy for the vehicle SA 8432 Steed Pick up rather they had a policy for SA 8432 Toyota Corolla. For this reason the 2nd defendant cannot indemnify SA 8432 Steed Pick up and they are wrongly added to the proceedings.

Issue for determination

Whether the 2nd defendant should be struck out for being wrongly added

The Law

Order 15, Rule 6(2) RSC entitles a party to apply to be removed if improperly added. In the present case the basis for the application is that the 2nd defendant did not have any policy of insurance for vehicle SA 8432 Steed pick up on behalf of their insured 1st defendant, Mr. Amreen Tayub but rather they had a policy for SA 8432, Toyota Corolla. The 2nd defendants claim is on the basis of the police report which indicated that the accident involved SA 8432 Steed pick up.

It has to be appreciated that a police report is mostly considered to be hearsay evidence in as far as it is intended to prove that its contents are true. This court does not believe that at this stage the police report was intended to prove as truth the contents but rather to show that an accident happened and it was reported. If the contents are to be considered as truth then the author has to be brought to testify under oath about the contents of the report.

In this case it will be premature for the 2nd defendant to claim that they are a wrong party in the proceeding basing on a police report, in the absence of a full hearing to determine the issue. If the 1st defendant is a client for the 2nd defendant for a vehicle but the police report is indicating different make of vehicles but same registration number that is not conclusive that the 2nd defendant is a wrong party. After all the insurer is supposed to be in a better position to have details of the vehicle than a police officer who writes a police report based on a reported speech.

This matter can only be resolved upon hearing both parties and calling witnesses to testify. Should it transpire after trial that the 2nd defendant is wrongly added he has a remedy as to costs.

This application is not granted, the 2nd defendant will not be struck out from the proceedings.

Either party has the right to appeal.

Made in Chambers this.....day of...

Madalitso Khoswe Chimwaza

ASSISTANT REGISTRAR