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The Judiciary

IN THE HIGH COURT OF MALAWI

CIVIL DIVISION

PRINCIPAL REGISTRY

PERSONAL INJURY CAUSE NUMBER 1194 OF 2006

Between

ALFRED CHALE CHIWAMBO CLAIMANT

-and-

LIZZY ALPHA MPINGANJIRA 1ST DEFENDANT

TEMBANI GONDWE 2ND DEFENDANT

NATIONAL BANK OF MALAWI LIMITED 3RD DEFENDANT

CORAM: Austin Jesse Banda, Assistant Registrar

Mr. Mlenga, for the Claimant

Mr. Semphani, for the Defendants

Ms. Makhambera, Clerk/ Official Interpreter

RULING

Introduction

The matter herein was scheduled for assessment of costs to be heard on 4th February, 2020 before the Registrar. Incidentally, the Defendants had filed a notice of preliminary objection and a sworn statement in support of the preliminary objection against the assessment of costs. The Defendants state that the proceedings are an abuse of the due process of the Court as the Claimants had discharged the 4th Defendants from any claims of whatsoever nature arising out of the claim. The Claimants herein have filed a sworn statement in opposition to preliminary objection on the assessment of costs. The matter came before this Court on hearing of the same.

Issues

Whether the matter should continue on assessment of costs to be paid by the Defendant.

Analysis

A consent order on assessment of damages was entered on 21st June, 2017, indicating that the Defendants pay the Claimant the sum of **MK 67,018,290.00** in damages as full and final settlement of the matter. In addition, the consent order stated that the defendants pay party and party costs, which were to be taxed if the parties failed to agree on the same.

On 29th November, 2017, the Defendants managed to pay the Judgement sum. The Claimant upon receipt of the assessed compensation, discharged and indemnified the 3rd Defendant from any claims of whatsoever nature arising out of the claim by the Claimant. Prior to this, the parties made an attempt to agree on the amount of party and party costs to be paid and the Claimant prepared a bill of costs which was sent to the Defendant for its consideration.

Consequent to payment of the compensation, on 27th March, 2019, the Claimant wrote a letter to the Defendant as they had not heard from them on the issue of party and party costs after the negotiations they had and the taxation bundle they filed. The Defendants replied on 20th May, 2019, asking the Claimant to file a taxation bundle.

The Defendants claim that they only asked the Claimant for the taxation bundle for review and that they had not read the discharge notice by the Claimant. Upon reading the same, they withdraw attempts to pay for the said costs. In support of this, the Defendant cited the case of **Bagus v Shire Ltd [1993] 16(1) MLR 21 (HC)**. In the case, the Claimant was awarded the sum of MK 1,000,000.00 for repair costs for his motor vehicle. After he was given the same he signed a discharge form discharging the Defendant of all claim resulting from the discharge. The issue that whether the Claimant could claim for loss of use after he had signed the release. Justice Unyolo , as he then was, held that the Claimant could not claim for loss of use due to the discharge and release.

Determination

Taking into consideration the facts of the case, the evidence attached therein and the authorities used, it is the considered view of the Court it would be used as an instrument of fraud that where one receives compensation under one head and acknowledges the same, discharging the

defendant from any other claim arising from the matter, in connection with the compensation paid, striking out other claims that the defendant was ordered to pay by the court.

Looking at the maxim that the facts speak for themselves, where the Claimant wrote a letter to the Defendant, it clearly shows that the claimant only intended to discharge the defendant from any new action they should and to claim and not necessarily striking out the ordered costs and also taking into consideration that the defendant replied to the claimant's letter and further asked the Claimant to file a taxation bundle.

The Claimant herein is not bringing a new action but claiming that which was ordered by the court. I hereby order that the matter proceed for assessment of costs, with costs for this matter, to the Claimant.

Made in Chambers this Wednesday, the 26th day of February, 2020, in Blantyre.



Austin Jesse Banda

ASSISTANT REGISTRAR