

IN THE HIGH COURT FOR ZAMBIA
AT THE PRINCIPAL REGISTRY
AT LUSAKA

2014/HP/0868

(Civil Jurisdiction)

BETWEEN:

CECILIA MWENGWE

AND

MUYAMBANGO (MALE SOLE)

JEFF MUYAMBANGO



PLAINTIFF

1ST DEFENDANT

2ND DEFENDANT

Before the Hon. Mrs. Justice A. M. Sitali in Chambers.

For the Plaintiff : *Mrs E. M. Chanda of*
Messrs Chanda Chizu and Associates

For the Defendants : *In Person*

JUDGMENT ON ADMISSIONS

Case referred to:

1. Ellis v. Allen [1914] 1 Ch. 904

Legislation referred to:

1. The High Court Rules, Chapter 27 of the Laws of Zambia, Order 21 rule 6.
2. The Rules of the Supreme Court, 1999 edition, Order 27 rule 3.

The plaintiff commenced this action by writ of summons accompanied by a statement of claim on 5th June, 2014 claiming for the following:

- i. Damages for negligence.
- ii. Compensation for loss of use of motor vehicle Corona Premio registration number ALF 6085.
- iii. Special damages in the sum of K39,917.00.
- iv. Damages for current and future pain and suffering.
- v. Damages for loss of amenities of daily life.
- vi. Damages for future anticipated medical expenses.
- vii. Interest on money found due.
- viii. Costs.

The facts of the case as stated in the statement of claim are that on 20th December, 2013 around 17:00 hours the plaintiff was driving her motor vehicle a Toyota Corona Premio registration number ALF 6085 in the inner lane along Kafue road which is a public road from Kupark Lodge in the northern direction heading to her home in Woodlands Extension in Lusaka. At a point near the Makeni Mall opposite the Zambia National Service premises, the second defendant while driving motor vehicle Hino Truck registration number ALL 121 belonging to the first defendant heading to the southern direction, on the other side of the road, negligently crossed lanes and hit into the plaintiff's motor vehicle causing damage and injury to the plaintiff.

The plaintiff averred that it was subsequently discovered that the second defendant did not possess a valid driving licence to drive the motor vehicle on a public road and that the motor vehicle was uninsured and not in a good condition to be driven on a public road. The second defendant admitted being in the wrong and paid the admission of guilt fine at the police station. The plaintiff

further averred that the accident was caused by the negligence of the defendants particulars of which are set out in paragraph 7 of the statement of claim.

On 18th June, 2014, the defendants entered a conditional memorandum of appearance and at the same time filed summons for leave to liquidate debt in monthly instalments. The affidavit in support of the application was sworn by Christopher Muyambango, the first defendant, who acknowledged receipt of the writ of summons and statement of claim in which the plaintiff claimed for, among other claims, special damages in the sum of K39,917.00. The first defendant stated in paragraph 5 of the affidavit that the defendants did not dispute the plaintiff's claim and proposed to liquidate the special damages in five monthly instalments commencing the month end of June, 2014 as set out in paragraph 7 of the affidavit on the ground that the defendants do not have a fixed source of income.

On 27th June, 2014, the plaintiff filed summons for judgment on admissions supported by an affidavit deposed to by Cecilia Mwendwe, the plaintiff. In that affidavit the plaintiff stated that she had issued process against the defendants claiming for liquidated and unliquidated damages arising from an accident caused by the negligence of the first and second defendants. She further stated that by an affidavit dated 18th June, 2014 the defendants accepted liability and proposed a payment schedule for the said liability and that she had been advised by her advocate that this amounts to an admission of liability by the defendants. The plaintiff therefore seeks an order for judgment on admissions for special damages in the sum of K39,917.00 with interest and costs and for the unliquidated damages as endorsed on the writ of summons, to be referred for assessment.

The defendants did not file any affidavit in opposition to the application.

At the hearing of the application, Mrs Chanda, counsel for the plaintiff relied on paragraphs 3 to 9 of the affidavit in support of the application filed on 27th June, 2014, and submitted that the issues in this matter are common cause and that the plaintiff commenced an action against the defendants as a result of an accident caused by the defendants and claimed both liquidated and unliquidated damages and that upon being served with the process the 1st defendant filed an affidavit in which he admitted owing the sum of K39, 917.00 and proceeded to suggest how he would liquidate the special damages and that it is on this basis that the plaintiff seeks that judgment on admissions be entered in her favour for the sum of K39,917.00 with interest and costs. Counsel further submitted that since the defendants have admitted liability for the accident I should refer the general damages for assessment.

In response to the application, the first defendant submitted that the second defendant was at fault in his driving and went on to state that he would have difficulty in paying the admitted sum of K39,917.00 without including the interest and costs which the plaintiff is claiming for as he is unemployed.

In reply Mrs Chanda reiterated that in addition to the special damages admitted by the defendants, the plaintiff suffered general damages including pain and suffering due to the accident and that the general damages arising from the accident must be referred for assessment.

I have considered the affidavit evidence and the parties' submissions. Order 21 of the High Court Rules, Cap. 27, and Order 27 of the Rules of the Supreme Court, 1999 edition, clearly set out the applicable law on admissions. The

plaintiff herein has applied to enter judgment on admissions pursuant to Order 21 rule 6 of the High Court Rules, Cap. 27, which provides that:

"6. A party may apply, on motion or summons, for judgment on admissions where admissions of facts or part of a case are made by a party to the cause or matter either by his pleadings or otherwise."

Similarly, Order 27 rule 3 of the Rules of the Supreme Court 1999 edition provides that:

"3. Where admissions of fact or of part of a case are made by a party to a cause or matter either by his pleadings or otherwise, any other party to the cause or matter may apply to the Court for such judgment, or order as upon those admissions he may be entitled to, without waiting for the determination of any other question between the parties and the Court may give such judgment or make such order, on the application as it thinks just."

From the foregoing provisions of the law, it is clear that where an admission of fact is made by a party to a matter or cause, the other party to the cause, that is the plaintiff or defendant, may apply to the Court for such judgment, based on the admission, as he may be entitled to without waiting for the court to determine any other question between the parties. This is because when a fact is admitted, it ceases to be an issue and neither party to the matter or cause is required or permitted to advance evidence about the fact at trial. According to Ellis v. Allen (1) an admission may be express or implied but it must be clear.

An admission may be made expressly in a defence or in a defence to a counterclaim, or it may be an admission arising as a result of the rules, as in the case where a defendant fails to traverse an allegation of fact in a statement of claim (see Order 18 rule 13 and paragraph 23/3/4 of the Rules of the Supreme Court, 1999 ed.). The jurisdiction of the Court to enter judgment on admissions is discretionary but in the absence of reason to the contrary, the Court will make the order in order to save time and costs (see para 23/3/7 of the RSC, 1999 ed.).

In the present case, the defendants have admitted liability for the special damages arising from the accident in their affidavit in support of the summons for leave to liquidate the debt in monthly instalments filed into court on 16th June, 2014. In paragraph 5 of that affidavit, the first defendant expressly admitted that the defendants do not dispute the plaintiff's claim but proceeded to propose a plan for the liquidation of the special damages in paragraph 7 of his affidavit. Based on that admission the Plaintiff seeks that I enter judgment in her favour in respect of the admitted special damages. As the defendants' admission of the fact that the defendants are liable to the plaintiff for the special damages of K39,917.00 is made expressly and clearly in paragraph 5 of the affidavit in support of the application to settle the debt in instalments, I hold that this is a proper case for me to exercise my discretion to enter judgment on admissions in respect of the admitted sum. I, accordingly, enter judgment in favour of the plaintiff in the sum of K39,917.00 with simple interest at the rate of 10 per cent per annum from the date of the writ till payment.

The plaintiff further seeks that judgment on admissions be entered in respect of the unliquidated damages since the defendants have admitted liability for the accident and that I should refer the general damages for assessment. I agree with counsel for the plaintiff that in admitting liability for the special damages

arising from the accident, the defendants have essentially admitted liability for the accident. In fact at the hearing of the application, the first defendant clearly stated that the second defendant was at fault in his driving. Further, the first and second defendant have not traversed the plaintiff's averment in paragraph 6 of the statement of claim that the second defendant admitted liability for the accident and paid the admission of guilt fine at the police station.

That being the case, the defendants are deemed to have admitted liability for the accident which the plaintiff asserts resulted from the defendants' negligence and the resulting injuries and damages suffered by the plaintiff. I, therefore, enter judgment for the plaintiff in respect of the other claims set out in the statement of claim. In short I award the plaintiff further damages as follows:

- i. Damages for negligence;
- ii. Damages for loss of use of motor vehicle Corona Premio registration number ALF 6085.
- iii. Damages for pain and suffering; and
- iv. Damages for loss of amenities.

The foregoing damages are to be assessed by the Deputy Registrar.

I award the costs of this application to the plaintiff to be agreed and taxed in default of agreement. Leave to appeal is granted.

Dated the 5th day of August, 2014.



.....
A. M. SITALI
JUDGE