

The Judiciary

**IN THE HIGH COURT OF MALAWI**

**CIVIL DIVISION**

**PRINCIPAL REGISTRY**

**CIVIL CAUSE NUMBER 3492 OF 2006**

**Between**

**ALLAN NYAHODA .....CLAIMANT**

**-and-**

**BLANTYRE NEWSPAPERS LIMITED .....DEFENDANT**

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**CORAM: A.J. Banda, Assistant Registrar**

Mataka, for the Claimant

Mpaka, for the Defendants

L. Chintengo, Clerk

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**RULING**

This a ruling on an application by Allan Nyahoda (Claimant) for leave of the Court to amend a statement of case and also for leave to amend summons under Order 7 Rule 23(1) and Order 25 rule 1 of the Courts (High Court) (Civil Procedure) Rules, 2017 (CPR). The application is supported by a sworn statement by Gift Dick Chimowa. The application is opposed by Blantyre Newspapers Limited (Defendant).

The facts of the matter are found in the sworn statement of Gift Chimowa. He stated that the proceeding was commenced on 10<sup>th</sup> January, 2007 by a Specially Endorsed Writ claiming aggravated or exemplary damages for defamation arising out of an article in the defendant's owned newspaper, The Daily Times. The

claimant obtained Judgment on liability on 10<sup>th</sup> April, 2015. The matter was set down for assessment of damages on 15<sup>th</sup> November, 2018.

Gift Chimowa deponed further that whilst the Claimant was preparing for the assessment of damages he got hold of definitive information regarding specific losses that he had suffered as a result of the defendant's defamatory statements and intended to plead the specific sums so that he can prove them as special damages at the hearing. He stated that this would not be possible before the assessment of damages as he would not have had definitive figures then and he would have to be constantly amending his pleadings, hence the application.

Gift Chimowa stated that it became prudent to amend the Summons and Statement of Case to add loss of earnings and future loss as a way of allowing the claimant to provide better facts about the issues that will be before the Court on the day of the assessment of damages. He stated that if leave to amend is granted, they will have to amend the Summons and also to align the reliefs being sought in the Summons with the Statement of Case. He exhibited the proposed Amended Summons and Statement of Claim.

In his argument, the claimant stated that even though it appeared that there was a delay in making the application for leave to amend, the need to amend only came apparent in the year 2017/2018 when the claimant had attended three interviews in which he was successful but he was categorically not given the job on the basis of the article by the defendant, hence the application.

The defendant on the other hand asked the Court to dismiss this application based on the following grounds: That changes to the framework or introduction of fresh aspects after a three year old trial does not further the overriding objective of the Court; that the parties and the Registrar are subject to the directions of the Court in the conduct of the assessment, and the directions to the Registrar does not include the task of amending pleadings to introduce new heads of claim in the assessment; that the Registrar has no jurisdiction to entertain the application for amendment here-in or at all.

The issue that the Court has to determine therefore is whether the Court should allow the claimant to amend pleadings at this stage of trial.

The law under which the application was made is Order 7 rule 23. It reads as follows:

- (1) A party may amend a statement of case to\_\_
  - a. better identify the issues between the parties;
  - b. correct a mistake or defect; or
  - c. provide better facts about each issue.

(2) After closure of the statement of case, an amendment may only be made with the permission of the Court or the consent of the parties.

(3) In deciding whether to allow an amendment, the Court shall have regard to whether another party would be prejudiced in a way that cannot be remedied by-

- a. awarding costs;
- b. extending the time for anything to be done; or
- c. adjourning the proceeding.

It is clear from the cited law that amendment of the statement of case is allowed. It is also clear that upon closure of the statement of case, amendment of the statement of case can only proceed with the permission of the Court. This application is way after the closure of the statement of case. This amendment is being sought after the Court passed judgment, finding for the claimant, and after the Court directed the Registrar to assess damages. The Court is implored by the law that when deciding whether to allow an amendment, the Court should consider whether another party would be prejudiced in a way that cannot be remedied by awarding costs, extending the time for anything to be done, or adjourning the proceeding. But before I can consider whether the defendant will be prejudiced there is a fundamental issue whether the Registrar has jurisdiction to determine whether to allow the claimant to amend his case or not.

The defendant argued that the jurisdiction of the Registrar is “*as the Chief Justice may, by Rules prescribe, from time to time*” under section 5(1) of Courts (Amendment) Act. It is the defendant’s argument that the CPR are the only Rules that the Chief Justice promulgated. The argument goes further that in the CPR, Court is the High Court of Malawi, which means a Judge of the High Court and the Chief Justice, but not a Registrar, ordinarily unless as directed by the Judge

or Chief Justice under the CPR or the Courts Act. It was therefore the prayer of the defendant that the Registrar, who was only directed to assess damages, is without jurisdiction on questions concerning amendments.

In response, the claimant pointed out that jurisdiction was a non-issue as under Order 25(1)(c), this Court has powers to amend the statement of case as argued.

The Courts Act should be the first point of call. The offices of the Registrar, Deputy Registrars and Assistant Registrars are created in section 7. The Registrar, and his deputies and assistant registrars under his superintendence, are to exercise jurisdiction, powers and duties as the Chief Justice may by Rules prescribe-section 8 of the Courts Act. The Chief Justice is empowered by section 67 of the Courts Act to make rules for the Courts. The Chief Justice made the Rules for the High Court which took effect on the 3<sup>rd</sup> of October, 2017, essentially replacing the Rules of the Supreme (RSC) which were then in use pursuant to section 29 of the Courts Act (before its amendment under Act Number 7 of 2017).

The CPR does provide powers and functions of the Registrar in Order 25. It should be pointed out that under the RSC, a judge could proceed to assess damages payable and make an order from the evidence. The Registrar could also assess damages. Order 25 of the CPR has made it that the jurisdiction of the Registrar is subject to the direction of a Judge, who has been assigned that case. This is so because right after the issuing of the initial process, the summons, by the Registrar, the case is assigned to a specific Judge by the Judge in Charge, by the Initial Directions (in Form 3) under Order 5 rule 19 of the CPR. The initial directions provide that the matter is before that Judge and every future document filed in that case must bear that Judge's name beneath the case number in the caption, among other directions.

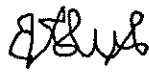
It is therefore a specific Judge assigned to a particular case that must preside over each and every step in the proceeding unless the Judge delegates to the Registrar any matter falling within the matters in which the Registrar may exercise jurisdiction, powers and functions of the Judge. It is my reading of Order 25 (1) CPR therefore that the CPR has taken away the automatic jurisdiction of a Registrar in assessment of damages as well as all other steps in a proceeding that are listed under Order 25 of the CPR, including amendment of documents, in which under the RSC the Registrar may have had automatic jurisdiction.

This matter was commenced in the year 2006, long before the CPR came into force. Even though that is the case, by the dictate of Order 35 (6)(3) of the CPR,

the issue of jurisdiction of the Registrar as in amendment of the statement of case, which is a new step taken after the commencement date of the CPR still arises, and the application ought to have been made to a Judge.

It is therefore the Judge seized of the matter who has jurisdiction to hear and determine the issue of amendment of the statement of case in this matter, the instruction for the Registrar only being that he assesses damages after the Court's judgment. This issue of jurisdiction being a fundamental issue, and having found that the Registrar does not have jurisdiction, I dismiss the application. Costs are for the Defendant.

Made this 28<sup>th</sup> day of January, 2022.



**Austin Jesse Banda**

**ASSISTANT REGISTRAR**