

# Darlington Juma v Fyson Magalasi & Britam Insurance Company Limited

## Summary

<b>Court:</b>	High Court of Malawi
<b>Registry:</b>	Civil Division
<b>Bench:</b>	Justice M.A. Tembo
<b>Cause Number:</b>	Personal Injury Cause No. 645 of 2021
<b>Date of Judgment:</b>	May 16, 2023
<b>Bar:</b>	Darlington Juma v Fyson Magalasi & Britam Insurance Company Limited, S. Khan for the Claimant P. Sayenda and Kasinja for the Defendants

The Claimant applied to the High Court, Principal Registry, for judgment under Order 16 Rule 6(1) of the Courts (High Court) (Civil Procedure) Rules, contending that the issue of the Defendants' liability for negligence had already been determined in a separate, concluded case brought by his passenger arising from the same motor vehicle accident. The Claimant, a cyclist, and his passenger were injured when the 1st Defendant, insured by the 2nd Defendant, negligently caused a collision. The passenger successfully sued the Defendants in the Senior Resident Magistrate's Court, where the 1st Defendant was found negligent, and

the judgment sum was subsequently paid. The Defendants opposed the application, arguing that the cases were different and that the Claimant's and passenger's contributions to the collision might differ, also suggesting that the matters were to be consolidated.

The principal legal question before the Court was whether the Defendants were estopped from re-litigating the issue of negligence, given the prior judgment in the passenger's case.

The application was granted, and judgment was entered for the Claimant. The Court held that the issue of the Defendants' liability for negligence had been conclusively settled in the earlier proceedings before a court of competent jurisdiction. The Court found that it would be superfluous to proceed with a full trial on liability, as the Defendants had a full and fair opportunity to contest the negligence in the first action and were bound by its outcome. The fact that the present matter and the passenger's case were distinct was deemed inconsequential, as the core issue of the 1st Defendant's negligence causing the collision had been established without any finding of contributory negligence. The Court ordered that damages and costs be assessed by the Registrar if not agreed.