

IN THE HIGH COURT OF FIJI  
AT SUVA  
CIVIL JURISDICTION

Civil Action No. HBC 219 of 2016

**BETWEEN:**        **ABHINDRA SINGH** of Lot 6 Draiba, nr. Levuka, Ovalau, Businessman.

PLAINTIFF

**AND:**            **WATER AUTHORITY OF FIJI** a commercial statutory authority duly constituted  
under the provision of the Water Authority of Fiji Promulgation 2007.

DEFENDANT

**Before:**            **Master Vishwa Datt Sharma**

**Counsel:**        **Mr. R. Harper** for the Plaintiff/Respondent  
                      **Ms. A. Matakaca** for Defendant/Applicant

**Date of Hearing:** 26<sup>th</sup> July, 2017

**Date of Ruling:** 21<sup>st</sup> September, 2017

**DECISION**

*(Notice of Motion seeking an order for Default Judgment to be entered against the  
Defendant pursuant to Order 19 Rules 6 of the High Court Rules, 1988).*

## INTRODUCTION

1. This is the Plaintiff's Motion seeking for the following orders:
  - a) *That Default Judgment be entered against the Defendant upon the grounds the grounds contained in the Affidavit of Abhindra Singh sworn and filed herein;*
2. The application is made pursuant to the *Order 19 Rules 6 of the High Court Rules, 1988.*

## THE LAW

3. *Order 19 Rule 6 of the High Court Rules, 1988* deals with *Default of Defence: Mixed claims (O.19, r.6)* and provides as follows:

*'Where the plaintiff makes against a defendant two or more of the claims mentioned in rules 2 to 5, and no other claim, then, if that defendant fails to serve a defence on the plaintiff, the plaintiff may, after the expiration of the period fixed by or under these Rules for service of the defence, enter against that defendant such judgment in respect of any such claim as he would be entitled to enter under those rules if that were the only claim made, and proceed with the action against the other defendants, if any'.*

## PLAINTIFF'S CASE

4. The Plaintiff in his Affidavit in Support deposed as follows-
  - (a) That the Plaintiff filed an Amended Writ of Summons dated the 15<sup>th</sup> August, 2016 which was filed on the 26<sup>th</sup> August, 2016;
  - (b) The same was served on the Defendant on 01<sup>st</sup> September, 2016 and an affidavit of service for the same was filed on the 13<sup>th</sup> September, 2016;
  - (c) The Defendant filed An Acknowledgment of Service on the 13<sup>th</sup> September, 2016;
  - (d) That since the filing of the Acknowledgment of Service more than 14 days has expired and the Defendant has not filed a Statement of Defence or sought leave for an extension of time to file the same;
  - (e) That the Plaintiff do believe that the Defendant has defaulted in filing its Statement of Defence under the High Court Rules, 1988 and that he now seeks an order for Default Judgment be entered against the Defendant.

**DEFENDANT'S CASE**

5. The Defendant only filed his Acknowledgment of Service and not the Statement of Claim but in its Affidavit in Reply deposed as follows:
- (a) That the Defendant acknowledges receiving the Amended Writ of Summons served by the Plaintiff;
  - (b) That the Defendant acknowledges having filed an Acknowledgment of Service on the 13<sup>th</sup> September, 2016;
  - (c) That the Defendant confirms that the 14 days had elapsed. However, craves leave as the information pertaining to the case needs to be gathered from Levuka Office and correlated with the Suva Office and compiled before a Statement of Defence is filed proper;
  - (d) That the Defendant be given time to file and serve its Statement of Defence as it has merits on the substantive matter;
  - (e) That the Defendant seeks the indulgence of the Court in allowing time for filing its Statement of Claim;

**ANALYSIS and DETERMINATION**

6. It is not in dispute that the Defendant was properly served with the Amended Writ of Summons.
7. The Defendant filed its Acknowledgment of Service on 13<sup>th</sup> September, 2016 expressing its intention to contest the proceedings but failed to file any Statement of Defence as was required of it in terms of *Order 18 Rule 2(1) of the High Court Rules, 1988*.
8. Order 12 Rule 4(a) provides the time limited for acknowledging service:  
*"(a) in the case of writ served within the jurisdiction, to fourteen days after service of the writ (including the day of service) or where that time has been extended by or by virtue of these Rules to that time so extended;" and*
9. Order 18 Rule 2(1) provides (so far as relevant) as follows-
- Service of defence (O.18, r.2)**
- 2.-(1) Subject to paragraph (2), a defendant who gives notice of intention to defend an action must, unless the Court gives leave to the contrary, serve a defence on the plaintiff before the expiration of 14 days after the time limited for acknowledging service of the writ or after the statement of claim is served on him, whichever is the later.*
10. Following propositions are clear from the foregoing Rules :



Firstly, a defendant has **13 clear days**, after service of a writ on him, in which to enter an appearance; and

Secondly, that a defendant who has properly entered an appearance has an additional **14 clear days** within which to serve a **Statement of Defence** on the plaintiff i.e. a total of **27 clear days** from service of the writ to service of a defence.

11. In this latter regard, I am fortified in my view by the wordings of Order 3 Rule 2(2) which provides:  
  
"(2) Where the act is required to be done within a specified period after or from a specified date, the period begins immediately after that date."
12. In particular the "act" there envisaged is the 'service of defence' by a defendant after the occurrence of an event, namely, the expiration of the time limited for acknowledging service of a writ.
13. The Plaintiff in this case served the Defendant with the Amended Writ of Summons together with the Statement of Claim on 01<sup>st</sup> September, 2016.
14. The Defendant filed its acknowledgement of service of the writ on 13<sup>th</sup> September, 2016 which was within the timeframe allowed by *Order 12 Rule 4 (a) of the High Court Rules, 1988*.
15. Hereafter, the Defendant had **14 clear days** after the 13<sup>th</sup> September, 2016 of the filing of the Acknowledgment of Service within which to serve its **Statement of Defence**. The Defendant failed to file any **Statement of Defence** to date.
16. The Defendant's failure to file any **Statement of Defence** in terms of the abovementioned Rules prompted the Plaintiff to file the current **Motion** together with an **Affidavit in Support** on 09<sup>th</sup> December, 2016 and sought for an order for the **Default Judgment** be entered against the Defendant.
17. This **Motion** by the Plaintiff was filed some **3 months** later from the time the Defendant's **14 clear days'** timeframe to file its **Statement of Defence** expired on 27<sup>th</sup> September, 2016.
18. Subsequently, the Defendant only filed its **Affidavit in Reply** to the Plaintiff's **Motion and Affidavit** seeking an order for the **Default Judgment** against the Defendant, rather than making any appropriate application required of it in these circumstances.
19. The Defendant instead should have expeditiously filed and served an application to the Court and sought for the **extension of time** for the filing of the **Statement of Defence** and/or seek an order for the **late filing of the Statement of Defence** from the Plaintiff, which the Defendant failed to do for the reasons best known to her.

20. Further, it is also noted that when the Defendant filed its Affidavit in Reply to the Plaintiff's Motion and Affidavit in Support, failed to annex any draft or intended Statement of Defence to show the Plaintiff and the Court that the Defendant had a Defence which had merits and/or a valid Defence to the Plaintiff's claim in this proceedings. The Defendant again failed to do the same.

21. The Defendant in its written submissions to this Court submitted that the *'substance of the claim is as such that Water Authority of Fiji has defence on merits and seeks indulgence of the Court if the Motion on entering default judgment be set aside; and*

*"That the Defendant be given time to file its Statement of Defence given the damages is an un-liquidated amount and for the Court to assess the damages and allow its discretion on the merits of the Defence.*

22. No application whatsoever in terms of the abovementioned written submission was made and filed in respect of this proceedings currently before this Court.

23. *Order 19 rule 6 of the High Court Rules, 1988*, permits the Plaintiff to take further action against the Defendant in respect of his impending claim before this Court and I paraphrase the same hereunder-

*'where a Defendant fails to serve a defence on the Plaintiff, the Plaintiff may after the expiration of the period fixed by or under these Rules for service of the defence, enter against that defendant such judgment in respect of any such claim as he would be entitled to enter under those rules if that were the only claim made, and proceed with the action against the other defendants, if any.*

24. I wish to reiterate at this instance that the nature of the substantive Claim filed by the Plaintiff before this Court is a mix claim and that is the very reason for the Plaintiff to file the current Notice of Motion pursuant to *Order 19 Rule 6 of the High Court Rules, 1988* and seek an order for the Default Judgment to be entered against the Defendant in default of Defence in respect of the *Liquidated claim only and nothing more.*

25. In light of above, I hold that the Plaintiff succeeds with his Notice of Motion seeking an order for the Default Judgment in default of defence against the Defendant in respect of the liquidated claims only as set out in his Statement of Claim at prayers (b)- An Order that the Defendant Re-instate its waiver of the deceased's arrears and (f)-Costs of this Action accordingly.



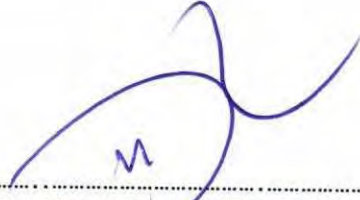
26. The Plaintiff is at liberty to pursue his remainder of the Claim which are not liquidated in nature in terms of the Reliefs sought at prayers (a), (c) to (e) and (g) as may be appropriate in the circumstances in terms of the Law accordingly.
27. Following are the orders of the Court;

**FINAL ORDERS**

- A. Plaintiff's Motion for Default Judgment in default of Defence against the Defendant succeeds in terms of the liquidated claim only.
- B. Each party to bear its own costs at the discretion of this Court.
- C. Orders accordingly.

Dated at Suva this 21<sup>st</sup> Day of SEPTEMBER, 2017.



  
.....  
MR VISHWA DATT SHARMA  
Master of High Court, Suva

cc: O'Driscoll & Co., Suva  
Water Authority of Fiji, Suva