

**IN THE HIGH COURT OF FIJI
AT SUVA
CIVIL JURISDICTION**

CIVIL ACTION NO.: HBC 164 of 2015

BETWEEN : GOINDAMA **PLAINTIFF**

AND : VIJYAN CHAND **DEFENDANT**

APPEARANCES/REPRESENTATION

PLAINTIFF : Ms. P. Kete [Nilesh Sharma Lawyers]

DEFENDANT : Not Present [MC Lawyers]

RULING BY : Acting Master Ms Vandhana Lal

DELIVERED ON : 19 AUGUST 2022

INTERLOCUTORY RULING

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1. On 23th April 2015 the Plaintiff through her solicitors caused a writ to be issued against the Defendant.

The Plaintiff initiated the proceeding as the Executor and Trustee of the Estate of Fred Edward.

2. The writ was served on the Defendant who did not enter an appearance or filed his notice of intention to defend and/or a defence thereafter.
3. On 10th May 2016 an Order 25 Rule 9 notice was issued by the Registry as the Plaintiff failed to take action after serving the writ on 24th April 2015.
4. On 13th June 2016 the Plaintiff's solicitors filed the Plaintiff's affidavit showing cause.

5. Later, on 04th July 2016 her solicitors filed a summons to enter judgment under Order 19 Rule 7 of the High Court Rules.
6. On 01st August 2016 the Defendant's then solicitors filed a defence on behalf of the Defendant.
7. On 18th August 2016 following orders (amongst other orders) was made as counsels for both parties informed court there was a talk of settlement between the parties:
 - (i) Defence is put on abeyance;
 - (ii) Order 25 rule 9 by court is struck out.
8. On 16th February 2017 Plaintiff's solicitors informed her instruction was to proceed and she also raised objection to filing of the defence out of time.
9. The Defendant's solicitor informed the court he will regularize this and went on to file an application (filed on 27th February 2017 for leave to file defence out of time.
10. The Plaintiff's affidavit in opposition was filed on 04th April 2017.
11. On the Defendant's application a hearing date was assigned and vacated as follows 03rd October 2017; 05th June 2018; 16th October 2018; 15th May 2019 and 18th November 2019.
12. On 18th November 2019 the Defendants application dated 28th February 2017 was struck out for want for prosecution and on the Plaintiff's application matter was adjourned for ruling on notice as neither the Defendant nor his solicitor appeared.
13. On 12th December 2019, the Defendant's solicitors applied for reinstatement of the Defendant's application dated 28th February 2019.
14. On 08th December 2020, the application was struck out for want for prosecution as neither the Defendant nor his counsel was present.

15. Pending is the Plaintiff's application of 4th July 2016 to enter judgment.
16. Though objection was raised to the filing of defence out of time, the defence is still part of court records and was never struck out/dismiss for irregularity.
17. In **Gill v Woodfin (1884) 25 Ch. D 707 CA**, Earl of Selbourne, LC found that with nothing in the orders treating the defence as a nullity which is put in after the time has expired may be treated as a nullity.

He went on to state that *motion to enter judgment in default should be amended by altering it to a motion for judgment on admissions in the defence.*

18. With the defence and counterclaim still on records the Plaintiff's application fails and is dismissed.
19. Plaintiff is granted leave to file/serve its reply to defence and defence to counterclaim and proceed for trial under the rules. To be done in 14 days.

Or alternatively to make formal application for the defence to be struck out and thereafter proceed for next course of action under the rules. To be done in 14 days.

20. Parties bear own cost.





Vandhana Lal [Ms]
Acting Master
At Suva.

19 August 2022

TO:

1. **Suva High Court Civil Action No. HBC 164 of 2015;**
2. **Nilesh Sharma Lawyers, Solicitors for the Plaintiff;**
3. **MC Lawyers, Solicitors for the Defendant.**