

IN THE KIRIBATI COURT OF APPEAL] Civil Appeal No. 2 of 2023
CIVIL JURISDICTION]
HELD AT BETIO]
REPUBLIC OF KIRIBATI]

BETWEEN ROYAL CROWN ENTERPRISES LTD
Iro OTINTAAI INTERNATIONAL HOTEL **APPELLANT**

AND PUBLIC UTILITIES BOARD **RESPONDENT**

Before: Salika JA
Nelson JA
Khan JA

Counsel: *Taaira Timeon* for appellant
Reiati Temaua for respondent

Date of Hearing: 12 December 2024

Date of Judgment: 13 December 2024

JUDGMENT OF THE COURT

Background

[1] At all material times, the Respondent supplied electricity and water to the Appellant's Hotel and private residence. Both accounts went into arrears and eventually the Respondent disconnected supply and initiated recovery proceedings in the High Court by Statement of Claim dated 04 October 2016. This was duly served on 25 October 2016 on the appellant and the required affidavit of service was lodged with the court.

[2] The appellant says it gave all relevant documents to its lawyer who unfortunately took no action whatsoever. A default judgment was accordingly issued against the appellant on 09 December 2016. The resulting Writ of *Fieri Facias* was issued on 04 October 2017 to enforce said judgment and after various

steps were taken to execute said writ, the appellant on 20 February 2023 filed an application to stay the Writ and on 24 February 2023 an application to set aside the default judgment.

[3] The appellant argues it has a substantial defence to the Claim and the delay was the fault of their various lawyers, not theirs. It is beyond dispute the Respondent has been prejudiced by the appellant's inaction and will be further prejudiced if the judgment is set aside.

Discussion

[4] The grounds for setting aside a default judgment are well established in many Pacific jurisdictions and in Kiribati is governed by the Court of Appeal decision in *Waysang Kum Kee v Abamakoro Trading Ltd* [2001] KICA 9 where it said:

"The principles to be applied

[12] Rule 12 of the High Court (Civil Procedure) Rules 1964 provides that any judgment by default may be set aside by the Court, upon such terms as to costs or otherwise as the Court may think fit. As it does not set out the grounds upon which the discretion is to be exercised, the common law approach is to be adopted.

[13] The Court has unfettered discretion to set aside a judgment obtained in accordance with the Rules. In determining the essential question whether there may have been a miscarriage of justice, and where the overall justice lies, three considerations have long been considered of dominant importance: whether the defendant has a substantial ground of defence to the plaintiff's claim, whether the defendant's failure to take any steps, or to appear at the hearing, was excusable, and whether the plaintiff will suffer irreparable harm if the judgment is set aside: *Alpine Bulk Transport Company Inc v Saudi*

Eagle Shipping Company Inc, The Saudi Eagle (1986) 2 Lloyd's Rep. 221, 223 (CA). Paterson v Wellington Free Kindergarten Assn Inc [1966] NZLR 975, 983 (CA). The onus of establishing a substantial ground of defence is on the defendant. The defendant must show a defence of sufficient substance to justify delaying the plaintiff in obtaining the fruits of the judgment”.

This has been followed in many subsequent cases.

[5] The application by the appellant cannot succeed for the following reasons:

(i) it is clear from the affidavit of the Respondents Customer Service Manager para. 4 that the appellant acknowledged the debt and entered into arrangements for repayment. This evidence was not challenged by the appellant in the High Court and the Court relied thereon saying:

“At the time, they acknowledged their outstanding bill and made an agreement with the Respondent to reconnect their electricity and water as they would meet their debts. They never complain about the unreasonableness of their readings”.

Appellant’s counsel referred us to their affidavits filed in the High Court in support of their application but neither of these affidavits addressed this critical issue.

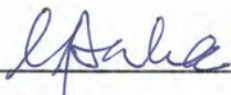
(ii) An acknowledgement of debt means defending the claim is no longer an option available to the appellant. This is quite apart from the difficulties the appellant would face in almost a decade later trying to establish on a balance of probabilities that the charges levied by the respondent up to early 2016 were unreasonable and technically defective. Even our limited experience in Kiribati reveals that accurate record-keeping is not accorded high, sometimes any priority.

(iii) As to delay, problems between the appellant and his retained legal advisors are not the concern of the respondent or indeed the court. The point


was made to counsel in oral argument that the appellant's solutions to that lie elsewhere. The respondent should not be a casualty of that conflict.

Conclusions

1. There is no basis for interfering with the judgment of the High Court, the appeal is dismissed.
2. Costs follow the event, these are accordingly awarded to the respondent. If not agreed upon then as taxed by the Registrar.



Salika JA



Nelson JA



Khan JA