

IN THE HIGH COURT OF KIRIBATI 2020

MISCELLANEOUS APPLICATION NO 17 OF 2020
(ARISING FROM HIGH COURT CIVIL CASE NO. 60 OF 2019)

	[KAIEKIEKI BAATE	APPLICANT
	[
BETWEEN	[AND	
	[
	[SERGEANT BOATA TIERATA	
	[CORPORAL TIOTI TIRAE	
	[CONSTABLE TAMERI WAITAAKE	FIRST DEFENDANTS
	[
AND	[
	[THE ATTORNEY-GENERAL IN RESPECT OF	
	[COMMISSIONER OF POLICE	SECOND DEFENDANTS

Before: The Hon Chief Justice Sir John Muria

19 May 2020

Mr Banuera Berina for Applicant

Ms Taaira Timeon for 1st Defendants

Ms Eveata Maata for 2nd Defendants

JUDGMENT

Muria, CJ: The applicant/plaintiff is seeking leave to enter default judgment against the second respondent/defendant in this case. A default judgment has already been entered against the first respondent/defendant.

Brief background

2. The plaintiff was one of the persons residing at Abatiku in Bonriki. On 9 August 2019 at about 10.00 am, the first defendants who are Police Officers, went onto the land at Abatiku where the plaintiff and his family were residing and

removed and damaged the plaintiff's properties which include fence, corrugated iron roofing, timbers and PVC pipes, toilet block with cement blocks, a house still under construction, a 'kiakia' and steel mesh wires.

3. The first defendants took the plaintiff's properties and threw them into the sea. The actions of the first defendants were witnessed by other members of the village. The actions of the first defendants were said to be done in the course of their duties as police officers.

4. Prior to the incident, the plaintiff's lawyer had written to the defendants on 7 August 2019 notifying them of the plaintiff's dispute on the Government's claim over the land. Following the incident on 9 August 2019, the plaintiff took out a Writ of Summons against the first and second defendants.

Whether leave should be granted to enter default judgment against second defendant

5. Default judgment had already been entered against the first defendants. Since the second defendant is a Government authority, leave of the Court is required under O.29 r.14 of the *High Court (Civil Procedure) Rules* before judgment in default of pleadings can be entered against the second defendant.

6. There is no doubt that the second defendant was in default of filing defence in this case. The Writ of Summons was served on the second defendant on 26 September 2019. The last date of the time allowed for entry of Appearance was 10 October 2019. The second defendant entered Appearance on 9 October 2019. The time allowed for filing defence was 14 days from 10 October 2019 which lapsed on 24 October 2019. No defence was filed on behalf of the second defendant on or before 24 October 2019.

7. There is nothing on the record to show that the second respondent had taken any steps to ask for an extension of time to file a defence. The second defendant must be taken to have allowed the default to run without being bothered to do anything to remedy it.

8. Consequently, the plaintiff filed his application for leave to enter default judgment against the second defendant on 10 February 2020. It was not until after the application for leave to enter judgment against the second defendant was served on the second defendant on 19 March 2020 that a defence was said to have been filed on behalf of the defendant on 23 March 2020 which was five months after the default occurred. No explanation whatsoever has been given for the default, either in writing or orally, by Counsel in Court. None.

9. Again, the second defendant's default did not stop there. Even in the present application, the second defendant failed to file any reply to the affidavit filed on behalf of the plaintiff. Asked by the Court as to reasons for not filing a reply to the plaintiff's affidavit, Counsel for the second defendant replied that it was because the second respondent had already filed a defence on 23 March 2020. I am afraid that Counsel's explanation for failing to answer the plaintiff's affidavit is simply not acceptable and displays the lack of serious attention given by Counsel to cases where the interest of the Republic are at stake. This case is not the first. There were previous cases that this Court had dealt with that displayed similar trend.

10. As of 24 October 2019, no defence on behalf of the second respondent had been in existence. The defence said to be filed on 23 March 2020 was no defence at all in law. The time for filing defence expired on 24 October 2019. No extension of time to file defence had been sought before 24 October 2019. As such, no defence could have been lawfully filed after 24 October 2019. None has been filed in this case.

11. In the present application, since no defence had been filed by the second defendant on or before 24 October 2019, the plaintiff need only to show that the plaintiff's Writ of Summons and Statement of Claim had been properly served on the second defendant. That, the plaintiff had done and the second defendant had been in default in filing his defence.

12. The plaintiff is entitled to be granted leave as sought. Leave to enter judgment against the second defendant is granted.

13. The plaintiff is also entitled to costs in this application. Costs to be paid by the second respondent, to the plaintiff, to be taxed, if not agreed.

Dated the 20th day of May 2020

