IN THE SUPREME COURT OF NAURU

CIVIL SUIT No.52/2014

BETWEEN

VIOLA DETENAMO (nee Jeremiah) & Ors.	}	**1st PLAINTIFFS**
HAROLD JEREMIAH, Jr. & Ors.	}	**2nd PLAINTIFFS**
GRAHAM BAGUGA & Ors.	}	**3rd PLAINTIFFS**

AND

JALI BEADEN	}	**DEFENDANT**

Before: Khan, J
Date of Hearing: 14 December 2015
Date of Ruling: 19 January 2016

CATCHWORDS:

Courts- Practice and procedure- Judgment and order- Power to vacate before order passed and entered- Circumstances in which power exercised- Inherent jurisdiction of Court.
Application to set aside default judgment- whether the applicant has an arguable defence.

APPEARANCES

For the Plaintiff: Mr. V. Clodumar (Pleader)
For the Defendant: Ms. G. Hartman

RULING

INTRODUCTION

1. I delivered a ruling on 17 August 2015, in this matter, in which the defendant made an application to set aside a default judgment entered against him on 17 April 2015 for failure to file defence. I set aside the default judgment on the basis that the proposed defence raised triable issues with respect to the issue of jurisdiction. The property which is subject of the dispute was in Queensland, Australia; and in my ruling I stated that the issue for determination was: whether the distribution of the properties was to be governed by the laws of Queensland or Nauru.

2. When I delivered the ruling, I was not aware that Letters of Administration had been granted to the defendant on 20 July 2012 on the application of the beneficiaries in the Estate of Yukeida Jeremiah, Estate of Paul Jeremiah, Estate of Emwan Jeremiah, Estate of Eiyada Eoaeo (Estates). He was appointed as an administrator under the provisions of Section 29 of the Probate Succession and Administration Act 1976 to administer the remaining overseas (Queensland) properties of the estates of Murinae Jeremiah (deceased).He was specifically appointed to liquidate all the assets of the deceased in Queensland, and distribute the balance of the estate after expenses, to all the beneficiaries of the Estates in equal shares.

3 This matter was brought to my attention by the pleader for the plaintiff when I was in the midst of delivering my ruling on 17 August 2015, and upon his application I set aside the orders made in the ruling, as I had erred in my approach regarding the issue of jurisdiction; as to whether the laws of Queensland was applicable or the laws of Nauru. I set aside my ruling under the inherent jurisdiction of this Court.
In **Autodesk Inc V Dyason(No 2)(1993) 176 CLR 300** Mason CJ in his judgment made the following statement on the inherent jurisdiction of the High Court which are follows:

> *"1. The power is to be exercised "with great caution" in view of the public interest in the finality of legal proceedings.*

2. *The power may be exercised where, through no fault on the applicant's part, the applicant has not been heard on matter decided by the Court.*

3. *The jurisdiction also extends to cases where a court has good reason to consider it has proceeded on a misapprehension as to the facts or the law (such as a failure to recognise that a line of authority relied upon in the determination had been overruled or a mistaken assumption that certain evidence had not been given at an earlier hearing.)*

4. *The jurisdiction is not a back door for re-arguing the case. It is not to be used for the purpose of re-agitating arguments already considered by the Court or because a party has failed to present the argument in all its aspects or as well as it might have been put."*

4. Mason CJ [at 302] whilst speaking of the High Court inherent jurisdiction referred specifically to the power of the Court to recall a judgment or order on the judge's own initiative where the judge believed he had "erred in a material matter in his approach to the case."
Furthermore in the case of **Nominal Defendant v Livaja [2011] NSWCA 121** at [23] it was stated "where an apparent error can readily be addressed without the need to expensive and time consuming appeal proceedings, that course should be permitted and encouraged."

Further Submissions and Affidavits

5. Since my ruling on 17 August 2015, I have had the opportunity of considering all the documents relating to the appointment of the defendant as the administrator of the deceased's estate. At the material time the deceased's estate was represented by Mr. Pres Nimes Ekwona who made the application for the appointment of the defendant as the administrator of the estate of the deceased in relation to the properties in Queensland. Mr. Ekwona filed an affidavit in support of the application. In his affidavit dated 23 July 2012, he stated as follows:

"1. *That I am a legal Practitioner in the Republic of Nauru.*

2. *That through my association with certain family members of the Jeremia family, I have known for some time that Murinae Jeremia Snr had owned some properties in Australia.*

3. *That the families and heirs to the estate of the late Murinae Jeremiah have applied for the appointment of one of the beneficiaries Mr. Jali Nehemiah Murinae Beaden, to be administrator for the specific properties and overseas assets of the deceased Mr. Murinae Jeremia.*

4. *That to the best of my knowledge Murinae Jeremiah Snr who died intestate in 24-12-1978 was survived by his children whose names are attached to the application and that only one of children Mrs Irene Detsiogo is the sole surviving issue and that the others are all survived by their own children.*

5. *That to the best of my knowledge the properties and assets of the late Murinae Jeremia located overseas at the time of his death have not been administered and therefore still remain as part thereof of his estate and that of his immediate heir and his children's heirs are entitled to an interest in those assets.*

6. *That the children and their heirs to the deceased estate have all consented to have the properties lying overseas to be liquidated and proceeds to be distributed equally among the beneficiaries.*

7. *That all the beneficiaries of the Jeremiah estate have agreed to the appointment of one of their own Mr. Jali Nehemiah Murinae Beaden to be appointed Administrator to the part of the estate located overseas in Australia.*

He also listed the names of the various estates and its beneficiaries which are as follows:

Beneficiaries of the late Yukeida Jeremia

1. *Bugitamo Jeremiah*
2. *Viola Detenamo*
3. *Darlene Dabana*
4. *Jesse Jeremiah*
5. *Vili Kesa Jeremiah*
6. *Joshua Jeremiah*
7. *Micheal Jeremiah*

Beneficiaries of the late Paul Jeremiah

1. *Eididi Jeremia*

Beneficiaries of the late Emwan Jeremia

1. *Harold Jeremia*
2. *Dogabe Jeremia*
3. *Jedda Iwugia*
4. *Darkey Jeremia*
5. *Anvick Jeremia*
6. *Caroline Akubor*
7. *Roxanna Deluckner*
8. *Letha Herman*
9. *Asael Billiam*
10. *Nathaniel Billiam*
11. *Darius Billiam*
12. *Bill Billiam*
13. *Terrence Jeremia*
14. *Tyron Jeremia*
15. *Migail Jeremia*
16. *Candice Jeremia*
17. *Prima Jeremia*
18. *Sarah Jeremia*

Beneficiaries of the late Eiyada Eoaeo

1. *Margaret Eoaeo*
2. *Marieta Namaduk*
3. *Joseph Hamilton Eoaeo*
4. *Sarah Eoaeo*
5. *Celestine Eoaeo*

7. When Mr. Peter Law the Registrar of this Court appointed the defendant as the administrator he relied on Mr. Ekwona's affidavit and ordered that the defendant be appointed as the administrator of the deceased estate to liquidate all the overseas assets on behalf of the beneficiaries and to distribute the net proceeds to the beneficiaries of the estates. According to paragraph 6 of Mr. Ekwona's affidavit it was clearly stated that the proceeds is to be distributed equally amongst all the beneficiaries.

8. After the defendant's appointment as the administrator he left for Queensland. He went to the office of the Public Trustee of Queensland and was advised that the Letters of Administration from this Court would not suffice, and that he had to apply for Letters of Administration in the Supreme Court of Queensland to be able to complete the administration of the estate of the deceased. He obtained Letters of Administration in the estate of the deceased in the Queensland Supreme Court to be able to administer the estate of the deceased. Notwithstanding his appointment in Queensland as an administrator of the deceased, he was still bound by his appointment as the administrator in this Court and was obliged to distribute the funds equally between the beneficiaries of the estates in accordance with his appointment before he departed for Queensland.

Application for setting aside default judgment

9. The claim was filed on the 24 October 2014 and thereafter the defendant was given 21 days to file the defence. At that time the defendant was acting for himself. On 18 November 2014 Ms. Hartman came on record as the defendant's counsel and sought 14 days to file defence which was granted. On 4 December 2014 she again sought further 2 weeks to file the defence which meant that it was to have been filed by 18 December 2014.

10. On 16 January 2015 Mr. Clodumar filed an application pursuant to Order 35 r. 2 of the Civil Procedure Rules 1972. Ms. Hartman also filed the defence on 16 January 2015 and served a copy thereof on Mr. Clodumar.

11. On 17 April 2015 Mr. Toganivalu the Registrar entered default judgment against the defendant in favour of the plaintiff on the application of Mr. Clodumar. Ms. Hartman did not appear before the Registrar as she was attending a funeral. When the Registrar entered the default judgment he did not have a copy of the defence in the Court file which is very strange, but the fact remains that the defence was filed out of time and in breach of the Civil Procedure Rules and consequently there was no proper defence before the Court and that the plaintiff was entitled to enter default judgment pursuant to Order 16 r. 2.

In **Lambu v Torato [2008] PGSC 34; SC953 (28 November 2008)** it was stated [4] as follows:

> *"4. Before 17 October, 2007, the appellant conducted another search in the Court file and found that still no defence or an*

application for leave to file a defence out of time was filed by the respondent. As a result, the appellant on 17 October 2007 filed a Notice of Motion seeking default judgment with damages to be assessed.

5. *On 7 November, 2007, the appellant moved his Motion pursuant to O 12 Division 3 rr 24 and 25 (b) of the National Court Rules for a default judgment against the respondent for failing to file a defence. By then the respondent had also filed his defence, but it was out of time. On 7 November, 2007, the respondent also filed a cross Notice of Motion for leave to file his defence out of time."*

12. I stated earlier in my ruling on 17 August 2015 that the default judgment was regular. The principles for setting aside default judgment was set out in the case of **Adams v Kennick Trading (International) Ltd (1986) 4 NSWLR 503 at 506-507** as follows:

- *" The Court has to look at the whole of the relevant circumstances and decide whether or not sufficient cause has been shown*

- *The existence of a bona fide ground of defence and an adequate explanation for the default are the most relevant matters to consider*

- *The defendant must answer to facts which, if established at the trial, will afford a defence: Simspson v Alexander (1926) SR (NWS) 296 at 301*

- *If the judge concludes that the applicant is lying about the alleged defence and is thus dishonest in raising it, the defence is not "bona fide"*

- *The applicant does not necessarily fail for want of an adequate explanation for the default. It depends on the circumstances. "[I]f merits are shown, the Court ill not prima facie desire to let a judgment pass on which there has been no proper adjudication': Evans v Bartlam [1937] AC 473 at 489,*

- *The absence of an explanation for the default, particularly if it is coupled with prejudice to the plaintiff, may justify the denial of relief, but only when considered with other relevant circumstances."*

13. The defendant's defence raised two issues. Firstly, the issue of jurisdiction and secondly, that the deceased during his lifetime had gifted his properties in Queensland to Lydia Beaden and Lillian and therefore the defendant gave certain gifts to the family members of Lydia Beaden who assisted her to maintain the property in Queensland. That unfortunately is at odd with the defendant's appointment as the administrator of the deceased, which was that he was to distribute the deceased estates to all the beneficiaries as stated in Mr. Ekwona's affidavit in equal shares. So in my view there are no bona fide grounds of defence.

In Byron v Southern Star Group Pty Ltd t/ as KGC Magnetic Tapes (1995) 123 FLR 352, Priestly JA said at 364:

> *"Frequently, persons have been let into defend who have had little or no explanation for their delay but who have shown reasonable grounds of defence..."*

14. The defendant has no reasonable grounds of defence and the application to set aside the default judgment is refused.

15. The plaintiff is entitled to the cost of application which I summarily assess in the sum of $1500.

Dated this day of 19 January 2016.

Mohammed Shafiullah Khan
Judge