

BETWEEN: HONIARA CONSUMERS CO-OP SOCIETY LTD Plaintiff

AND: SAPEON POLOSO (On behalf of HM Sale
Defendant Store)

JUDGMENT

This is an application by the Defendant to set aside judgment in default upon the grounds as set out in a summons dated the 25/11/87.

The writ was issued on the 23/9/87, served by the Bailiff on the 30/9/87, and judgment in default was signed on the 2/11/87.

The Defendant has set out three irregularities and then in the alternative should the Court not find an irregularity, the Court should exercise its discretion.

I propose to deal with the third matter of irregularity as if this is found to be a proper ground the Court need go no further.

The defendant pleads that the judgment was irregularly entered in that it was not entered by a 'legal practitioner' as required by the Legal Practitioners Act 1987. The Act came into effect on the 11/9/87, that is, the date of publication in the Gazette.

S.14(1) states:-

"No unqualified person shall act as a legal practitioner or as such issue out any writ or process or commence, carry on or defend any action, suit, other proceeding, in the name of any other person, in any court of civil or criminal jurisdiction or act as a legal practitioner in any cause or matter civil or criminal"

Ss.14(2) provides for an exception and ss 14(3) deals with the effect and penalty.

The Section is mandatory, that is, ^{VA} No qualified person shall act as a legal practitioner or as such issue out any writ ... or defend any suit, in the name of another person. The definition of Legal Practitioner and unqualified person can be found in S.2.

An unqualified person means a person who is not admitted to practise, and includes a body corporate, company or partnership unless that person is a law firm.

The Plaintiff in this action is Honiara Consumers Co-operative Society Limited. The Writ was issued by Mr Rangi an employee of the Limited Company duly authorised by the Company.

The section is clearly drafted to prohibit unqualified person from acting as legal practitioners or acting as such i.e. holding themselves out as legally qualified and acting in the name of another.

A company is a separate legal entity. It must act through its proper officers, by its very nature a corporation cannot act in person but only through an agent.

The High Court (Civil Procedure) Rules 1964 Order 5 rule 2. states that Writs of Summons shall be prepared by the Plaintiff or his advocate. There is no further restriction. The Supreme Court Practise (White Book) O.5 r.6 (2) states that with exceptions a body corporate may not begin or carry on proceedings i.e. act in person, otherwise than by a solicitor. The Rules in operation here do not contain a similar prohibition.

Miss Corrin has referred me to the Legal Profession Practice Act 1958 (Victoria). The essence of this Act as with the Solomon Islands Act is to prohibit and prevent lay persons holding themselves out as legally qualified or drafting legal documents or appearing before courts for financial gain.

I have also been referred to Hubbard Association of Scientologists International v. Anderson [1971] VR 588.

McInerney J. stated that:-

"A corporation or a company can only act through a natural person. It cannot appear personally in court or personally

conduct litigation in Court. It must of necessity perform these acts through an agent If the act is one which, according to the relevant statute or rule or practice by the Court, can only be done by an agent who is a barrister or solicitor, then the corporation can only act through that class of agent."

In that case leave was refused to the Plaintiff to proceed and the action struck out.

S. 14(1) is a prohibition on persons acting as legal practitioners or in that capacity taking certain steps in proceedings. It does not prohibit persons acting 'in person' nor in my opinion prohibit an employee acting as an agent for his principal i.e. his company. The agent is not acting as a legal practitioner nor holding himself as such. He is merely acting on behalf of the company and is not receiving any reward for that aspect of his work over and above his usual salary.

If Parliament wished to place an absolute prohibition it should use clear words. The section is qualified by including 'as such' and is not an absolute prohibition. This interpretation is supported by looking at the Act as a whole and the mischief sought to be prohibited. It is clearly an Act to regulate the legal profession and to make provisions in respect of its members. The offences it creates are to protect the public from lay persons from holding themselves out and preparing certain documents as lawyers.

Order 3 rule 3 states that indorsement of claims shall be to the effect of such of the Forms as shall be applicable to the case, if none be found, then such other similarly concise form.

The indorsement on this Writ is a liquidated claim for goods supplied during 1982. The Claim is clear and precise. Whilst it could refer to invoice numbers, if there were more than three pages court practise has been just to state more than three folios. Current practise in other jurisdiction has been to do away with any prescribed indorsements. What is required is "a concise statement of the nature of the claim made or the relief or remedy required"

Where an indorsement lacks particularity the defect does not render the writ a nullity. The defect can be cured by amendment or by service of a request for fuller and better particulars of claim.

The Plaintiff has failed to enter his address on the writ. The omission can be remedied by simply making an order to amend or a stay. There is no question of the Plaintiff not stating the address with intent to deceive and it was an innocent act. The fact that the Plaintiffs are known by all in a small town must be relevant.

The effect of both grounds 1 and 2 that is non compliance with the rules does not render any proceedings void unless this Court so orders. The Court can set aside either wholly or in part or amend R. 69 r.1. O. 69 r.2 also states that that no application to set aside shall be allowed unless made within a reasonable time.

The writ was served on the 30th September 1986. This application was filed some two months later i.e. 30/9/87 - 24/11/87. The defendant has had knowledge of the matter for some five years. There have been copy invoices, letters, and direct contact with the General Manager. He cannot be said to have been taken by surprise yet he has still waited two months before raising these irregularities.

The alternative ground of application is if judgment was regularly entered the defendant was not informed of the significance of the writ and unaware of his obligation to enter an appearance and the Court should exercise its discretion. The writ was served by the Bailiff and the obligation to enter an appearance is on the face of the writ. Again the issue of the writ cannot be said to have taken the defendant by surprise in view of the lead up to its issue. I can find no merit in this ground of application.

* Having considered all matters, the applications, on all grounds, to set aside have not been made out sufficiently for me to set aside judgment. ~~Summons~~ dismissed.

THE HIGH COURT
SOLICITORS
Registrar of High Court

31/12/87