

**VICSUN INTERNATIONAL -v- ATTORNEY-GENERAL**

HIGH COURT OF SOLOMON ISLANDS.  
(KABUI, J.).

Civil Case No. 004 of 2004.

Date of Hearing: 27<sup>th</sup> May 2004.

Date of Ruling: 4<sup>th</sup> June 2004.

P. Tegavota for the Plaintiff.

F. Waleania for the Defendant.

**RULING**

**Kabui, J.** There were two applications which came before me for hearing. The first was filed by the Defendant on 18<sup>th</sup> May 2004 seeking leave to extend time within which to file the defence in response to the Writ of Summons and Statement of Claim filed by the Plaintiff on 12<sup>th</sup> January 2004. An amended Statement of Claim was filed on 17<sup>th</sup> February 2004. The amended Statement of Claim was served on the Defendant on 17<sup>th</sup> February 2004. The Writ of Summons and the original Statement of Claim were also served on the Defendant on 17<sup>th</sup> February 2004. By Notice of Motion filed on 26<sup>th</sup> March 2004, the Plaintiff applied for leave to apply for judgment in default of defence. The Defendant finally filed his defence on 28<sup>th</sup> March 2004. The Notice of Motion was heard by Palmer, C.J. on 5<sup>th</sup> May 2004 who adjourned it for a date to be fixed and directed that the Defendant file his application for extension of time within 7 days. The second application was an amended Notice of Motion filed by the Defendant on 20<sup>th</sup> May 2004 for leave to apply for judgment in default of defence under Order 29, rule 14 of the High Court (Civil Procedure) Rules 1964 "the High Court Rules".

**Brief background.**

The Plaintiff is a local business entity operating in the country. In January, 2002, the Defendant invited tenders from the public for the supply of vehicles for the use of the Defendant. The Plaintiff was the successful applicant and was awarded the contract to supply the vehicles for the Defendant. However, the Defendant had not made the deposit as agreed by the parties being \$1,500,000.00 before the Plaintiff placed the order. The Plaintiff has not

ordered any vehicles in the meantime. The Plaintiff sues for specific performance or in the alternative for damages for breach of contract.

### Decision of the Court.

Dealing with the application for extension of time first will determine whether the Defendant is entitled to a defence despite its lateness in filing on 6<sup>th</sup> May 2004. The case here is that there is indeed a defence but was filed late by the Defendant. The application for extension of time was really unnecessary here because a defence had been filed. What needs to be asked is whether it can be accepted as a defence. That question is answered after the hearing of the Plaintiff's application for leave to enter judgment in default of defence. The Defendant ought to have done nothing after filing his defence and simply waited for the Plaintiff's next move. The practice is that a defence already filed cannot be disregarded by the Court though out of time. (See **Lawrence Lae and Willie Karejama v. Valahoana Company Intregrated Development & Others**, Civil Case No.269 of 1999, **Nelson Koroï v. Transwest Company Limited**, Civil Case No.007 of 2001 and page 612 of The Annual Practice 1961, Volume 1 and page 318 of The Supreme Court Practice 1973, Volume 1). The gist of the defence by the Defendant is frustration of the contract thus making the performance of the contract impossible. I think the justice of the case calls for attention of the Court to ensure that the Defendant puts his case fairly at trial. In this regard, it would be futile to grant leave sought by the Plaintiff in its Notice of Motion to apply for judgment in default of defence. The application by the Plaintiff is therefore dismissed. The next step in the pleading process may now commence. I feel that the Defendant should pay the Plaintiffs costs of this application. The orders of the Court are-

1. The Plaintiff's application is dismissed.
2. The Defendant pays the Plaintiff's costs.

F.O. Kabui, J.  
Puisne Judge