

IN THE SUPREME COURT OF
THE REPUBLIC OF VANUATU
(Civil Jurisdiction)

Civil Case No. 11 of 2013

BETWEEN : KWANG SING I
Claimant

AND: PUBLIC WORKS DEPARTMENT
First Defendant

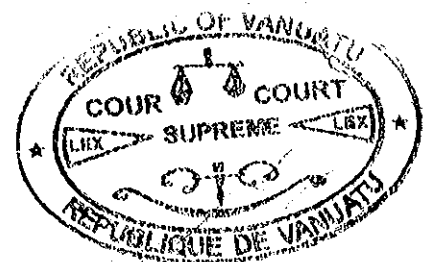
AND: REPUBLIC OF VANUATU
Second Defendant

Coram: Justice Aru

Counsel: Mr. C. Leo for the Claimant
Mr. T. Loughman for the Defendant

RULING

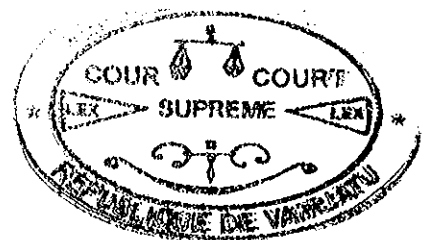
1. On 28 January 2013 the Claimant filed its claim against the Defendants claiming an amount of VT16, 057, 621 plus interest and costs. A proof of service was filed on 30 January 2013 indicating that the claim and response form were served on the State Law Office.
2. A request for Default Judgment was then filed on 26 February 2013 on the basis that no defence was filed by the Defendants.
3. The Defendants now apply to set aside the Default Judgment and filed the Application together with a sworn statement in support on 5 April 2013. The Claimant filed a response to the Application on 18 June 2013.



4. Rule 9.5(3) of the Civil Procedure Rules stipulates that the Court may set aside a Default Judgment if it is satisfied that the Defendant:
 - a) has shown reasonable cause for not defending the Claim; and
 - b) has an arguable defence either about his or her liability for the claim or about the amount of the claim.

Reasonable cause

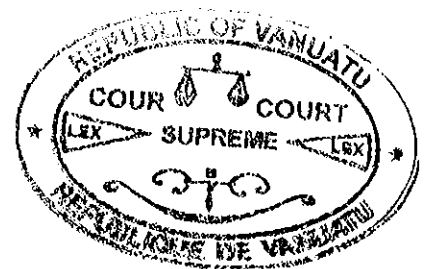
5. The Defendants submit that they have reasonable cause for not defending the claim as they were not served with the request for default judgment and no notice of hearing was served upon them or Counsel having carriage of the matter.
6. This argument finds no basis in the Civil Procedure Rules. Under rule 9.1 if no defence is filed within 28 days the Claimant is entitled to file proof of service that the claim and response form were served on the defendant. If the claim is for a fixed amount then rule 9.2 (2) and (4) provide that after the proof of service is filed, the Claimant may file a request for judgment against the defendant for the amount claimed together with interest and costs and the court may give judgment for the Claimant.
7. The Defendants submit that they wrote to the Claimant's Counsel on 12 December 2012 informing them that they were taking instructions but there is no evidence provided to support that assertion.



- [REDACTED]
8. Secondly, the file records show that the Defendants took no steps to file any defence within 28 days by 25 February 2013. After the 28 days had lapsed still no steps were taken up to the time a default judgment was entered on 6 March 2013. Further still, nothing was filed until 5 April 2013 when the Application to set aside the default judgment was filed. A draft defence was filed as annexure "TL1" to the sworn statement of Tom Loughman filed in support of the Application.
 9. Mr. Loughman in his sworn statement deposed to the fact that they received their instructions on 4 March 2013 and were in the process of drafting a defence. It took another month to file the draft defence. The Defendants have clearly not sworn any reasonable cause for not defending the claim.

Arguable Defence

10. The Defendants submit that they have an arguable defence as they dispute the total amount claimed stating that some of the contracts alleged have been settled and secondly that the Claimant failed to establish by way of evidence what they owe by providing the written contracts entered into by the parties.
11. The second limb of the argument finds little support in the rules as the Claimant is only required to file and serve the claim and response form. No evidence is required to be filed with the claim. After the 28 days if the proof of service is filed indicating that the claim and response form were served on the defendant then a request for default judgment may be filed.



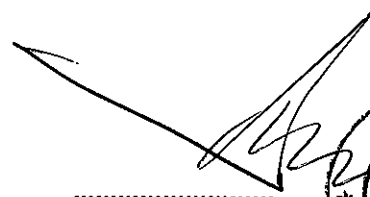
12. The only evidence offered in support of the argument that the Defendants have an arguable defence is a draft defence. At paragraph 7 of Mr. Loughman's sworn statement, he states that the proposed defence outlines the Defendants' defence to the statement of claim. In the draft defence at paragraph 4 g) the Defendants allege that the amount claimed has been paid in full but no evidence is provided in support of the application to set aside.
13. Having heard the parties, I am not satisfied that the Defendants have shown reasonable cause for not defending the claim and secondly I am not satisfied that they have an arguable defence. I therefore make the following orders:-

ORDERS

1. The Application to set aside the Default Judgment entered on 6 March 2013 is hereby dismissed.
2. An enforcement conference is listed for 12 August 2013 at 9.00 am.
3. The Claimant is entitled to costs on a standard basis to be taxed if not agreed.

DATED at Port Vila this 3 day of July, 2013.

BY THE COURT



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D. ARU
Judge

