

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

**Civil**  
**Case No. 22/3125 SC/CIVL**

**BETWEEN: Alfred Tarimoliliu and Katherine  
Tarimoliliu**  
Claimants

**AND: Violet Aki**  
Defendant

*Date:* 30 November 2023  
*Before:* Justice V.M. Trief  
*Counsel:* Claimants – Mr P. Fiuka  
Defendant – Mr A. Bal

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**DECISION AS TO APPLICATION TO SET ASIDE DEFAULT JUDGMENT**

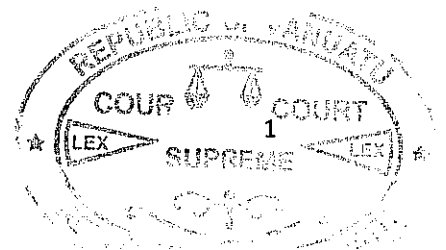
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A. Introduction

1. This was a contested Application to Set aside Default Judgment filed on 6 November 2023 (the 'Application'). That Default Judgment was entered on 3 February 2023 and quantum of damages assessed by Decision dated 7 August 2023: *Tarimoliliu v Aki* [2023] VUSC 125.

B. Background

2. The Claimants Alfred Tarimoliliu and Katherine Tarimoliliu were the registered proprietors of and vendors of leasehold title no. 11/OH34/049 (the 'lease') located at Freswota 4 area in Port Vila.
3. Subsequently, the lease was transferred to the Defendant Violet Aki who is paying off the mortgage that she obtained to fund her purchase of the lease.
4. Mr and Mrs Tarimoliliu filed the Claim seeking orders for payment of the VT1,100,000 balance of the purchase price for the leased property, for payment of outstanding rents from 1 July 2020 onwards, and for damages for improvements on the property without consent, and costs.



5. By the 7 August 2023 Decision, this Court ordered that Ms Aki pay Mr and Mrs Tarimoliliu the balance of the purchase price of VT1,100,000 and outstanding rents of VT846,000, totaling VT1,946,000. I held that Mr and Mrs Tarimoliliu were not entitled to damages for improvements made.

C. The Law

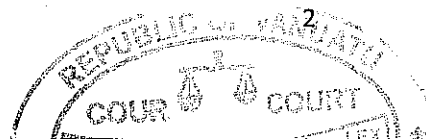
6. An application to set aside a default judgment can be made at any time: rule 9.5(2)(a) of the *Civil Procedure Rules* ('CPR'). The application must set out the reasons why the defendant did not defend the claim and give details of the defence to the claim: rules 9.5(2)(b) and (c), CPR.
7. The Court may set aside the 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 her liability for the Claim or about the amount of the Claim: rule 9.5(3), CPR.

D. The Application and Submissions

8. The Application is advanced on the grounds that Ms Aki did not defend the Claim because she had no knowledge about the procedures to follow to defend the Claim, and she has a valid defence as set out in the document titled, 'Defence' filed on 6 November 2023.
9. Ms Aki also filed on 6 November 2023 her Sworn statement in support.
10. Submissions opposing the Application were filed on 10 November 2023. Claimants' counsel Mr Fiuka submitted that not having knowledge about the procedures for defending the Claim is not reasonable cause for not defending the Claim because Ms Aki is educated and should have common sense to ask her workmates or find a lawyer or ask the Court Registry. He submitted that Ms Aki did not have an arguable defence as to liability or the amount of the Claim as the parties agreement was for first payment of VT2,700,000 which was paid and VT1,100,000 to be paid after one year. He submitted that his clients could not claim for improvements as Ms Aki made them after the lease was transferred to her on 8 August 2020.

E. Consideration

11. It is necessary that the reasons advanced for not defending the Claim be "good" reasons: *Temakon v Vanuatu Commodities Marketing Board* [2007] VUSC 20.
12. The reason given for not defending the Claim is Ms Aki's lack of knowledge about the procedures to follow to defend the Claim. She could have asked a lawyer for advice or asked others around her what to do. There is no suggestion that she did that. Instead, it is stated in the Application itself that she did not seek advice from a lawyer until she was served the summons to attend the enforcement conference on 2 November 2023

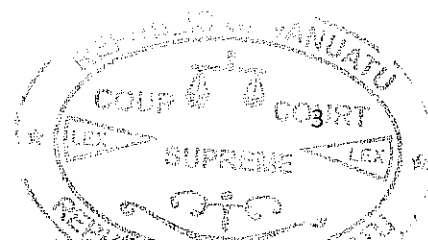


before the Deputy Master. She has not, in my view, shown reasonable cause for not defending the Claim.

13. It was submitted that Ms Aki has an arguable defence with reference to the 'Defence' filed on 6 November 2023. As I understand the Defence case, she asserts that there were a number of documents setting out what the sale and purchase price was and that she owes the Claimants, at most, VT500,000 or VT600,000 being the balance of the purchase price. It is alleged that the parties agreed by agreement dated 4 February 2021 that the total purchase price of the property was VT3,300,000.
14. However, the agreement sued on in the Claim was the one dated 22 April 2021 (3 months later) in which the parties agreed a purchase price of VT3,800,000 of which VT2,700,000 would be paid first and the balance of VT1,100,000 be paid one year later. It is accepted in the 'Defence' that the parties entered into the 22 April 2021 agreement. That agreement clearly provided for payments to the Claimants of purchase price totalling VT3,800,000. There is no denial in the 'Defence' that the 22 April 2021 agreement was entered into after the 4 February 2021 agreement, and that the latter agreement applies.
15. It was also alleged in the Claim that Ms Aki had not paid rents in breach of the parties' agreement that she would pay rent until she had paid the purchase price in full. It is denied in para. 3 of the 'Defence' that the parties had an oral agreement that she pay VT25,000 monthly but then in the next sentence, it is pleaded that she started paying rent in October 2020 when 'she was ordered to pay directly to the Bank.' Ms Aki's own pleadings accept that she was liable for and did pay rent from October 2020.
16. In the circumstances, I consider that there is no arguable defence as to the Defendant's liability for the Claim.
17. However, I consider that there is an arguable defence as to the quantum of the Claim in terms of the rent payable which will be subject to further evidence from the parties as to their agreement (if any) about payment of rent, and if this is impacted by the date on which the lease was transferred to Ms Aki. At the least, Ms Aki needs to file into evidence a copy of her registered Transfer of Lease.
18. Given there is no arguable defence as to liability, I **decline** to set aside the Default Judgment dated 3 February 2023 but **set aside** the Decision as to Quantum of Damages dated 7 August 2023. This matter must now be prepared towards assessment of quantum of damages.

F. Result and Decision

19. The Decision as to Quantum of Damages dated 7 August 2023 is **set aside**.
20. Costs of the Defendant's Application to Set aside Default Judgment filed on 6 November 2023 are reserved.



21. The document titled, 'Defence' filed on 6 November 2023 is declared **ineffectual**.
22. The Claimants are to file and serve sworn statements as to the quantum of damages **by 4pm on 15 December 2023**.
23. The Defendant is to file and serve sworn statements as to the quantum of damages **by 4pm on 31 January 2024**.
24. The Claimant is at liberty to file and serve sworn statements in reply **by 4pm on 15 February 2024**.
25. The Court will assess quantum of damages on the papers unless the parties request otherwise due to the need to cross-examine any witness.

**DATED at Port Vila this 30<sup>th</sup> day of November 2023  
BY THE COURT**

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Justice Viran Molisa Trief

