

**IN THE HIGH COURT OF FIJI
AT SUVA
CIVIL JURISDICTION**

CIVIL ACTION NO.: HBC 155 of 2019

BETWEEN : TF JAN BULLDOZING COMPANY LIMITED

PLAINTIFF

AND : FIJI ROADS AUTHORITY

DEFENDANT

APPEARANCES/REPRESENTATION

PLAINTIFF : Mr. D. Toganivalu [Toganivalu Legal]
DEFENDANT : Mr. Volau [Siwatibau & Sloan]
RULING BY : Master Ms Vandhana Lal
DELIVERED ON : 25 April 2023

RULING

1. On or about 06th June 2019, the Plaintiff filed an amended writ of summon against the Defendant.
2. As per the affidavit of service filed on 11th June 2019, the writ of summon was served on the Defendant on 07th June 2019 at its registered office.
3. On or about 11th June 2019, the Defendant acknowledged service.
4. Pursuant to Order 12 Rule 4(a), the Defendant was to acknowledge service by 20th June 2019 and serve its defence before 04th July 2019.

5. The Defendant failed to serve its defence, hence on 03rd September 2019 the Plaintiff moved this court via its summon of 03rd September 2019 for leave to enter interlocutory judgment.
6. Order 19 rule 2 relates to default of pleading in case of liquidated demand, where the Plaintiff can enter final judgment if the Defendant fails to serve a defence within the requisite period under the rules.
7. The Plaintiff's claim relates to various contracts between the Plaintiff and Defendant for supply and delivery of road materials for various roads in the Western Division:

- *Contract WSC 149/2011 – Re-gravelling of Monasavu and Nadarivatu Road*

For this the Plaintiff claims \$301,993.61 for works completed and release of retention; loss of profit \$217,246.43 as the Defendant engaged another contractor to do part of the work; interest on delayed payment \$345,806.61; loss of income for crusher and quarry \$1,204,875.00

- *Contract CTN 73/2011 – Supply of road materials for Western Division.*

The Plaintiff claims \$1,415,376.19 as the Defendant did not order material from the Plaintiff between 2011 to 2013 loss of income \$569,454.08 for supply of material; unpaid sub-base material totaling 6820 cubic meters. The Defendant failed to pay \$339 636 for material supplied; Interest for delay payment.

- *Contract CTN 14/2011*

The Defendant was to hire drilling machine from 2011 to 2013. The Defendant only hired the equipment in 2011 and 2012 but not in 2013. Hence Plaintiff claims \$66,122.59 as loss of income for 2013.

- *Contract CTN 97/2011 – Supply of Pavement Materials for Monasavu and Wailoa Roads.*

The contract value was for \$1,940,340.00 and the Plaintiff was required to issue Performance bond to the Defendant which the Plaintiff did on 10th January 2012.

The Defendant is said to have retract the contract causing loss in profit to the Plaintiff.

Loss was calculated as per clause 12.3 and 12.4 of the contract.

- *Construction of Valele Bridge and Road works.*

The Plaintiff claims to have carried out construction of the bridge by June 2012 and submitted its claim to the Defendant under the “claim back” scheme the Defendant through its servant and agent had advertised.

The value of the construction is \$487 581.82 which remains unpaid. The Plaintiff also claims interest on the said sum.

8. Though certain aspect of the claim is liquidated claim but claim for loss for profit were not agreed for between the parties. Furthermore, the statement of claim does not outline how the interest claimed was calculated. Hence a final judgment cannot be entered on the Plaintiff's claim.
9. What the Plaintiff could have done was enter an interlocutory judgment for damages to be assessed. I fail to understand why it was required to make a formal application for leave to enter judgment.

10. Hence leave is granted for interlocutory judgment to be entered and damages be assessed.
11. Since the Plaintiff ought to have entered interlocutory judgment with damages to be assessed, I make no order for costs.



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Vandhana Lal [Ms]
Master of the High Court
At Suva.

25 April 2023

TO:

1. **Suva High Court Civil File No. HBC 155 of 2019;**
2. **Toganivalu Legal, Solicitors for the Plaintiff;**
3. **Siwatibau & Sloan, Solicitors for the Defendant.**