

IN THE HIGH COURT OF FIJI
AT SUVA
CIVIL JURISDICTION

Civil Action No. HBC 67 of 2023

BETWEEN:

MUNI PRASAD
PLAINTIFF

AND:

ISOA NATUI
1ST DEFENDANT

AND:

AMRIT LAL
2ND DEFENDANT

NIKLESH NAVIN CHAND
3RD DEFENDANT

THE COMMISSIONER OF THE FIJI POLICE FORCE

4TH DEFENDANT

ATTORNEY GENERAL OF FIJI
5TH DEFENDANT

BEFORE:

Acting Master L. K. Wickramasekara

COUNSEL:

Ms. P. Narayan for the plaintiff
Attorney General Chambers for the 4th and 5th Defendants

Date of Hearing:

No Hearing – Written Submission

Date of Ruling:

15 February 2024

RULING

01. Plaintiff has filed its Writ of Summons on the 08/03/2023 and the same has been served on the 4th and 5th Defendants on the 21/03/2023.
02. The claim is arising out of an alleged incident of illegal detention and arrest of the Plaintiff by the 1st to 3rd Defendants over an act committed by the Plaintiff whilst performing his duties as a registered bailiff under the Distress for Rent Act.
03. As per the Acknowledgment of Service filed by the Attorney Generals' Chamber on the 16/05/23, the service of the Writ had been duly acknowledged for both 4th and 5th Defendants and has confirmed their intention to defend the proceedings.
04. However, this Acknowledgment of Service has been filed after 55 days from the date of service of the Writ on 4th and 5th Defendants. Moreover, the Defendants have failed to file or duly seek leave to file a Statement of Defence till to date as stipulated by the High Court Rules, upon filing of the Acknowledgment of Service on the 16/05/2023.
05. Plaintiff, thereupon, on the 30/06/2023 filed Summons to enter Default Judgment against the 4th and 5th Defendants. This application was supported with an Affidavit of the Plaintiff sworn on the 29/06/2023. This application has been duly served on the Attorney Generals Chambers on the 20/07/2023 as per the Affidavit of Service filed on the 21/07/2023.
06. The 4th and 5th Defendants had then filed an Affidavit in Opposition deposed by one Tevita Cagilaba, Legal Officer at the Attorney General's Office on the 15/09/2023, in opposition of the Summons for Default Judgment filed by the Plaintiff.

07. As per the above Affidavit in Opposition, the deponent has averred that the reason for the delay in filing the Statement of Defence was “due to the need for further information and clarifications prior to filing of the defence. That in order for our office to finalize the Statement of Defence, it was required to clarify certain factual information with our client after which the final draft was to be finalized, before the instructions could be clarified, the Defendants were out of time”.
08. Further, the deponent of the Affidavit in Opposition has annexed the draft Statement of Defence as ‘TC 1’ to the Affidavit in Opposition and has prayed for the Plaintiff’s summons to be dismissed and to grant leave to the 4th and 5th Defendants to file a Statement of Defence out of time.
09. Thus, it can therefore be identified that the 4th and 5th Defendants request for leave to file a Statement of Defence out of time has only been made almost after 06 months from the date of service of the writ and after 04 months from the late filing of the Acknowledgement of Service for the 4th and 5th Defendants.
10. Plaintiff has filed an Affidavit in Response to the Affidavit in Opposition of the Defendants on the 21/09/2023.
11. Both parties on the 19/10/2023, agreed before this Court to deal with the Hearing on the application be conducted by way of Written Submissions.
12. Accordingly, the Court having read all relevant affidavits and written submissions of the parties now proceed to rule on the application for Default Judgment as follows.
13. As submitted in the Affidavit in Response of the Plaintiff, the Defendant’s excuse for the delay of almost 06 months of not filing a Statement of Defence or seeking leave to file a Statement of Defence out of time is not justifiable and the draft Statement of Defence discloses no defence on merit but a blanket denial of facts.
14. In the Written Submissions advanced for the Defendants it is argued that the Plaintiff has failed to specify the correct legal provisions under which the summons for Default Judgment have been filed and thus the summons is fundamentally defective. It is however to be noted that the Defendants have not been irretrievably prejudiced due to this error and thus I find that this is not a fatality to these proceedings.
15. It is further submitted for the Defendants that the Defendants have a meritorious defence as outlined in the draft Statement of Defence and as such the matter should not be dealt summarily. Furthermore, the defendants have submitted the legal context under an enlargement of time to be granted to file the Statement of Defence.
16. Plaintiff on the other hand has submitted that although the Defendants were duly served with the Writ of Summons, the Defendants from the commencement of these proceedings have ignored and neglected to abide by the rules of the Court and even

filed the Acknowledgment late, almost after 02 months. Moreover, it is submitted that the Defendants failed to file a Defence for over 06 months and that the draft Statement of Defence annexed to the Affidavit in Opposition is a mere denial of the facts and that there is no meritorious defence disclosed against the claim.

17. This Court having carefully considered the annexed draft Statement of Defence, finds that the Defendants have only blanketly denied the material facts of the claim and sort Plaintiff be put to strict proof of the facts. There are no facts submitted disclosing a meritorious defence in this draft Statement of Defence.
18. Order 77 Rule 6 governs the application for Entering Default Judgment against the State. For clarity, I shall reproduce the said Rule here,

Order 77 rule 6 Judgment in default

6.-(1) *Except with the leave of the Court, **no judgment in default of notice of intention to defend or of pleading shall be entered**, against the State in civil proceedings against the State or in third party proceedings against the state*

(2) *Except with the leave of the court, Order 16, rule 5 (1)(a), shall not apply in the case of third-party proceedings against the state.*

(3) *An application of leave under this rule may be made by the summons or, except in the case of an application relating to Order 16, rule 5, by motion; and the summons or; as the case may be, notice of motion must be served not less than 7 days before the return day.*

19. Order 3 Rule 4 of the High Court Rules governs the applications for Leave to Extend Time to File Pleadings. This Rule reads as follows.

Extension, etc., of time (O.3, r.4)

4.-(1) *The Court may, on such terms as it thinks just, by order extend or abridge the period within which a person is required or authorized by these rules, or by any judgment, order or direction, to do any act in any proceedings.*

(2) *The Court may extend any such period as is referred to in paragraph (1) although the application for extension is not made until after the expiration of that period.*

(3) *The period within which a person is required by these Rules, or by any order or direction to serve, file or amend any pleading or other document may be extended by consent (given in writing) without an order of the Court being made for that purpose. Provided that wherever the period for filing any pleading or other document required to be filed by these rules or by the Court is extended whether*

by order of the Court or by consent a late filing fee in respect of each extension shall be paid in the amount set out in appendix II by the Party filing the pleading or other document unless for good cause the Court orders that some or all of the same be waived.

20. There is not much case law on setting down the criteria for the Court in exercising its discretion under Order 77 Rule 6. However, it can be concluded that in a thorough reading of provisions relating to other instances of entering Default Judgment (Order 13 and 19 and Order 16 Rule 5) and the relevant case law on the same, the standard of satisfying the court to get the leave to enter the Default Judgment against the state must be separate from that of mere standard of formal proof under the above rules.
21. Master Azhar, in **Cecil Quai Hoi v Commissioner of Police and the Attorney General** Lautoka Civil Action No. 25 of 2018 [Ruling] on 03/12/2021 stated thus,
 9. *...It follows that, the standard of satisfying the court to get the leave to enter the default judgment against the state must be separate from that of mere standard of formal proof under the above rules against the ordinary defendants.*
 11. *The analogy and the comparative analysis of the rules as discussed above, logically conclude that, the standard to be adopted by the court in deciding a summons or a motion under Order 77 rule 6 should be higher than what is adopted under the rules of Orders 13, 14 and 16 as discussed above. It follows that, the court should grant leave to enter the default judgment against the state only to cases where there can be no reasonable doubt that a plaintiff is entitled to judgment and where, it is inexpedient to allow a defendant to defend for mere purpose of delay. When it is said that, there cannot be a reasonable doubt, it should not be meant and or understood in any way that, the court brought the standard of criminal law to the civil action. In fact, this was the highest standard adopted by Privy Council in a very old case of Jones v Stone [1894] A.C. 122 at page 124, which dealt with the summary judgement and I, having considered several rules of this court, of the view that, this higher standard should be appropriate for the summons and or motions under Order 77 rule 6. The reason being that High Court Rules make specific provision under this Order 77 rule 6 to enter the judgment for default in proceedings against the state and other rules, which deal with entering default judgments against ordinary defendants, are excluded in proceedings against the state.*
22. Pursuant to the affidavit evidence before this court and the draft Statement of Defence for the Defendants, it can clearly be seen that the reasons given for the delay are quite lame considered the extensive delay in this case for almost 06 months and that the

defendants have utterly failed to disclose a meritorious defence including any triable issues on behalf of the defendants.

23. Simply stating that the AG's Chamber had "the need for further information and clarifications prior to filing of the defence" without disclosing any such information or facts that needed such clarification is in my view a lame excuse bordering on contempt for the rules of the Court.
24. Further, by advancing a blanket denial of facts and to claim that the defendants have a meritorious defence against the claim of the Plaintiff and as such requesting leave almost after 06 months of delay to file a Statement of Defence is misleading and sheds no light in favour of the defendants.
25. As per above discussed facts and the findings of the Court, I do conclude that this application for Default Judgment has been established well within the higher standard of proof that requires to enter a Default Judgment pursuant to Order 77 Rule 6.
26. When arriving at the above conclusion this Court has given due consideration over the criteria for extension of time pursuant to Order 3 Rule 4 which is well settled. Pursuant to the relevant case authorities in this regard, the criteria in considering an application for extension of time pursuant to this Rule needs evaluation of the following factors,
 - i) length of delay
 - ii) reason for delay
 - iii) whether a party has a claim or defence on merits
 - iv) whether the respondent will be prejudiced.(See **Vanualevu Hardware (Fiji) Limited v Labasa Town Council** [2016] HBC 29/12B 10 February 2016 at [3.32])
27. I am in full agreement with the case of **Seru Taralailai & Tevita Seniviavia Volanacagi Taralailai** [2020] Civil Action No. HBC 89 of 2017 (Judgment) 24 July 2020, where it is stated that "*Extension of time in terms of Order 3 Rule 4 (1) of the High Court Rules 1988 needs careful exercise of discretionary power of the court, that can eliminate injustice, but if exercised wrongly can deny justice and or access to justice*" and later on "*The discretion of the court should not be in favour of refusal of extension of time when there are merits...prolonging the matter may serve justice than quick disposal of that without consideration of merits*".
28. As stated in the foregoing paragraphs of this ruling, there is no meritorious defence disclosed by the defendants and no justifiable reasons disclosed for the extensive delay. As such the interest of justice in these circumstances clearly favour the refusal of granting an extension to the defendants.

29. The Defendants ought to have and could have been more vigilant in promptly taking due steps to defend this action and as thus this inordinate delay has, in Court's view has caused irretrievable prejudice to the Plaintiff. Furthermore, the defendant's failure to disclose a meritorious defence against the claim even at this stage, demands that this summons for Default Judgment be allowed in the interest of justice.
30. Accordingly, I make the following orders.
- a. The Summons filed by the Plaintiff on the 30/06/2023, to Enter Default Judgment against the 4th and 5th Defendants is hereby allowed subject to a cost of \$ 2000.00 to be paid to the Plaintiff by the 4th and 5th Defendants, as summarily assessed by the Court.
 - b. Accordingly, a Default Judgment is entered against the 4th and 5th Defendants in favour of the Plaintiff pursuant to the Statement of Claim as per the Writ of Summons issued on 08/03/2023.
 - c. Damages and costs to be assessed.



L. K. Wickramasekara,
Acting Master of the High Court.

At Suva
15/02/2024