IN THE HIGH COURT OF FIJI
AT SUVA
CIVIL JURISDICTION

Civil Action No. HBC 112 of 2024

BETWEEN:

RONITA PRAKASH
PLAINTIFF

AND:

UNIVERSITY OF THE SOUTH PACIFIC
DEFENDANT

BEFORE:

Acting Master L. K. Wickramasekara

COUNSELS:
R. Patel Lawyers for the Plaintiff
Haniff Tuitoga Lawyers for the Defendant

Date of Hearing:
19th March 2025

Date of Ruling:
10th September 2025

RULING

01. The current application before this Court is the Summons filed by the Defendant on 03/09/2024 to Set Aside Default Judgment entered on 23rd July 2024 and for Stay of Execution of the same. This application has been supported with two Affidavits of Agnes Kotoisuva sworn on 03/09/2024, one Affidavit of Mesake Waqa and one Affidavit of Avikash Jeet Singh both of which was sworn on 03/09/2024.

02. This application has been opposed by the Plaintiff and an Affidavit in Opposition as sworn by Ronita Prakash on 16/10/2024 was filed on behalf of the Plaintiff, as annexed to the Affidavit of Lemeki Sevutia which was filed on 17/10/2024. The original of the Affidavit in Opposition of Ronita Prakash was later filed on 25/10/2024.

03. Upon Court's direction, both parties have on 18/11/2024, filed comprehensive written submissions in support of their respective positions. At the Hearing of the Summons on 19/03/2025 both counsels relied upon the written submissions filed and did not make any further oral submissions. The Court having extensively considered the written submissions, and the affidavit evidence before it makes the following ruling.

04. The history of the proceedings reveals that the Plaintiff filed its Writ of Summons and the Statement of Claim on 12/04/2024 and had served the same on the Defendant on 15/04/2024. An Affidavit of Service, confirming the service, has been duly filed of Record on 16/04/2024.

05. There being no Acknowledgment of Service and no Notice of Intention to Defend been filed of Record within the time limited for acknowledgment of service as per Order 12 Rule 4 (a), the Plaintiff entered Judgment by Default as against the Defendant on 23/07/2024.

06. The Plaintiff's claim is for restitution of the cost of her medical expenses in the sum of NZD 119482.34 and FJD 9382.98 with general damages arising out of a breach of duty of care and negligence as the former employer of the Plaintiff. The Plaintiff had been employed by the Defendant as a Marketing Manager with the Defendant during the relevant period in time and was 'automatically' enrolled in the Defendant's 'Employee Life Insurance Scheme' for which a salary deduction was made from the Plaintiff's salary to pay the insurance premium.

07. The initial insurer for the said 'Employee Life Insurance Scheme' of the Defendant had been the BSP Life Insurance Company and by 01/01/2019 the insurer had been changed to be Fiji Care Insurance Company. The transfer of all insurance policies from BSP Life to Fiji Care had been handled by the Defendant.

08. On 30/01/2019 the Plaintiff had undergone surgery including chemotherapy to the value as claimed by the Plaintiff in her Statement of Claim. A claim had been made to the Defendant to restitute the above sum from the 'Employee Life Insurance Scheme' but had been rejected by the insurer, 'Fiji Care', claiming that the Plaintiff's initial insurance policy with 'BSP Life' had not been duly transferred to 'Fiji Care' as her

name had been omitted from the membership listing that was passed onto AON (the insurance broker for the Defendant) for 'Fiji Care'.

09. Thus, the Plaintiff alleges breach of duty of care and negligence on the part of the Defendant as causes of action against the Defendant and is claiming for the restitution of the cost of her medical expenses, damages and costs.

10. The Defendant's position, with regard to the failure to file an Acknowledgment of Service and Notice of Intention to Defend for over 03 months from the date of service, as per the Affidavits in Support, is that the employee authorized by the Defendant to attend to the matter was out of her office from 15/04/2024 to 20/04/2024 on work purposes in Vanuatu and had not noticed the email from another employee of the Defendant due to work commitments.

11. Having entered the Judgment by Default, it appears that the Defendant was only notified of the same on 13/08/2024 by way of a letter by the Plaintiff's solicitors and thereupon the current Summons had been filed on 03/09/2024, which is about 20 days delay in filing the same. This delay has been explained in the Supporting Affidavits on the backdrop of doing a file search through the High Court Registry, obtaining copies of the Writ and Statement of Claim and duly instructing the counsel on the matter.

12. With regard to the claim of the Plaintiff, the Defendant has submitted a draft Statement of Defence with the Supporting Affidavit of Agnes Kotoisuva sworn on 03/09/2024. According to this draft Statement of Defence, the position of the Defendant is that the Plaintiff's claim should have been made against the insurer, 'Fiji Care', and not against the Defendant. It alleges that the Plaintiff was insured with BSP Life previously and thereafter by 'Fiji Care' and hence the Plaintiff is entitled to make the claim from 'Fiji Care', as the current insurer at the time of the Plaintiff's claim, but not from the Defendant. It is also alleged that the Plaintiff did not make any claim from the Defendant but only from 'Fiji Care' to reimburse the cost of medical expenses.

13. The Defendant has also alleged that the reasons for 'Fiji Care' to refuse the Plaintiff's claim was firstly 'the Plaintiff's name was not in the relevant BSP Life list of persons insured' and secondly, 'that the Plaintiff failed to seek 'prior approval' from Fiji Care of her medical treatment'.

12. Having outlined the position of the respective parties, I shall now consider the relevant law relating to an application to Set Aside a Default Judgment. The law on Setting aside a Default Judgement is well established both in English Common Law and in the local jurisdiction. Order 13 Rule 10 and Order 19 Rule 9 of the High Court

Rules provides for setting aside or varying any judgment entered in default of Notice of Intention to Defend, and/or in default of pleadings, in such terms the Court thinks just.

13. It is clear that the provision in the Rule provides unconditional discretion to the Court. There are a number of authorities which are frequently cited by the Courts when exercising such discretion to set aside judgments entered in default of a party.

14. Some of the important foreign and local cases are *Anlaby v. Praetorius (1888) 20 Q.B.D. 764; Mishra v Car Rentals (Pacific) Ltd [1985] FJCA 11; [1985] 31 FLR 49 (8 November 1985); O'Shannessy v Dasun Hair Designers Ltd [1980] 2 NZLR 762; Evans v Bartlam [1937] 2 All E.R. 646; Burns v. Kondel [1971] 1 Lloyds Rep 554; Fiji National Provident Fund v Datt [1988] FJHC 4; (1988) 34 FLR 67 (22 July 1988); Eni Khan v. Ameeran Bibi & Ors (HBC 3/98S, 27 March 2003; Wearsmart Textiles Limited v General Machinery Hire limited and Shareen Kumar Sharma(1998) FJCA26; Abu 0030u.97s (29 May 1998) and Fiji National Provident Fund v Datt [1988] FJHC 4; [1988] 34 FLR 67 (22 July 1988).*

15. The Courts are given discretion to set aside any judgment entered for the default of any party. However, when exercising this discretion, the Courts have adopted two different approaches in dealing with regular and irregular judgments. This distinctive approach is clearly stated by **Fry L. J**. in ***Anlaby v. Praetorius*** *(1888) 20 Q.B.D. 764*. His Lordship held that:

> *"There is a strong distinction between setting aside a judgment for irregularity in which case the Court has no discretion to refuse to set it aside, and setting it aside where the judgment though regular, has been obtained through some slip or error on the part of the defendant in which case the Court has a discretion to impose terms as a condition of granting the defendant relief."*

16. In ***O'Shannessy v Dasun Hair Designers Ltd*** *[1980] 2 NZLR 762* ***Greig J*** *said at pg. 654*:

> *"The authorities are plain that where a default judgment is irregularly obtained the defendant is entitled ex debito justitiae to a setting aside. Accordingly, if the judgment was obtained irregularly, the applicant is entitled to have it set aside ex debito justitiae, but, if regularly entered, the Court is obliged to act within the framework of the empowering provision (see:* ***Mishra v Car Rentals (Pacific) Ltd*** *[1985] FJCA 11; [1985] 31 FLR 49 (8 November 1985). Thus, the defendant against whom an irregular judgment was entered in default has the right to have it set aside and the courts have no discretion to refuse to set aside."*

17. In the present matter, the Defendant does not contest that the Default Judgment entered on 23/07/2024 is irregular. Instead, as per the written submissions on behalf of the Defendant, the application is argued on the basis that the Default Judgment is regular.

18. It is settled law that the applicant must show a defence on merit if the judgment was regularly entered. ***Evans v Bartlam*** *[1937] 2 All E.R. 646* is an important case, among others, which sets out the principle of setting aside a Default Judgement entered regularly. In this case, **Lord Atkin** explained the nature of the discretion of the Courts and the rule that guides them in exercising such discretion. His Lordship held at *page 659,*

> *The discretion is in terms unconditional. The courts, however, have laid down for themselves rules to guide them in the normal exercise of their discretion. One is that, where the judgment was obtained regularly, there must be an affidavit of merits, meaning that the applicant must produce to the court evidence that he has a prima facie defence. It was suggested in argument that there is another rule, that the applicant must satisfy the court that there is a reasonable explanation why judgment was allowed to go by default, such as mistake, accident, fraud or the like. I do not think that any such rule exists, though obviously the reason, if any, for allowing judgment and thereafter applying to set it aside is one of the matters to which the court will have regard in exercising its discretion. If there were a rigid rule that no one could have a default judgment set aside who knew at the time and intended that there should be a judgment signed, the two rules would be deprived of most of their efficacy. The principle obviously is that, unless and until the court has pronounced a judgment upon the merits or by consent, it is to have the power to revoke the expression of its coercive power where that has been obtained only by a failure to follow any of the rules of procedure.*

19. There are several local authorities which recognized the above tests, and which have been often cited by Court. ***Fiji National Provident Fund v Datt*** *[1988] FJHC 4; [1988] 34 FLR 67 (22 July 1988)* is one of those judgments which clearly sets out the judicial tests. **Fatiaki J** in this case held,

> *The discretion is prescribed in wide terms limited only by the justice of the case and although various "rules" or "tests" have been formulated as prudent considerations in the determination of the justice of a case, none have been or can be elevated to the states of a rule of law or condition precedent to the exercise of the courts unfettered discretion.*
> *These judicially recognized "tests" may be conveniently listed as follows:*

(a) whether the defendant has a substantial ground of defence to the action;
(b) whether the defendant has a satisfactory explanation for his failure to enter an appearance to the writ; and
(c) whether the plaintiff will suffer irreparable harm if the judgment is set aside.

In this latter regard in my view, it is proper for the court to consider any delay on the defendant's part in seeking to set aside the default judgment and how far the plaintiff has gone in the execution of its summary judgment and whether or not the same has been stayed.

20. If a defence on merits is shown, a Court will not allow any such judgment entered without proper hearing, to stand. **Lord Denning MR** in ***Burns v. Kondel*** *[1971] 1 Lloyds Rep 554*, very briefly explained the principle and stated,

We all know that in the ordinary way the Court does not set aside a judgment in default unless there is an affidavit showing a defence on the merits. That does not mean that the defendant must show a good defence on the merits. He needs only (to) show a defence which discloses an arguable or triable issue.

21. **Legatt LJ** in ***Shocked v Goldsmith*** *(1998) 1 All ER 372* held at *p.379* that;

These cases relating to default judgment are authority for the proposition that when considering whether to set aside a default judgment, the question of whether there is a defence on the merits is the dominant feature to be weighed against the applicant's explanation both for the default and any delays, as well as against prejudice to the other party.

22. The Court shall now proceed to examine the factual circumstances of this matter in conjunction with the applicable legal principles governing the setting aside of a Default Judgment. Regarding the current application before the Court, it is apparent that the Defendant is attempting to dissociate itself from the actions or omissions of its agent or employee, who was duly tasked with attending to the Writ and the Statement of Claim filed by the Plaintiff. However, there is no legal basis to support such a stance. As a statutory body, the Defendant acts through its agents and employees, and pursuant to legal principles, the acts or omissions of such agents and employees shall be attributed to the Defendant itself.

23. Furthermore, based on the submissions contained in the Supporting Affidavits filed by the Defendant, there exists no permissible circumstance or legal window that would

justify treating the failure to file the Acknowledgment of Service and the Notice of Intention to Defend within the prescribed time, and indeed, for over three months, independent acts disconnected from the Defendant. These failures are legally attributable to the Defendant and cannot be solely ascribed to its agents or employees.

24. Moreover, it is noteworthy that the Defendant neglected to acknowledge receipt of the Writ and Statement of Claim as mandated by applicable law. The face of the Writ unequivocally stipulates that an Acknowledgment of Service, accompanied by a Notice of Intention to Defend, must be filed with the Court Registry within fourteen (14) days of service of the Writ. It also explicitly delineates the legal consequences attendant to non-compliance with this deadline.

25. The Acknowledgment of Service was duly and properly served upon the Defendant in conjunction with the Writ, thereby affording the Defendant due notice of the obligation to complete, sign, and file the same within the prescribed statutory period. Notwithstanding the explicit notice contained on the face of the Writ, the Defendant failed and/or refused to acknowledge service and to file a Notice of Intention to Defend within the stipulated time frame. The Defendant, being a scholarly body, cannot excuse or justify this serious procedural default on the grounds of misconduct or negligence attributable to its agent or employee, as such a failure constitutes a grave breach of lawful procedure.

26. This Court therefore finds the explanation given by the Defendant for failure to file an Acknowledgment of Service of the Writ and/or the Notice of Intention to Defend is highly unsatisfactory and without merit. The Court accordingly rejects the said explanation and finds that the Defendant has failed to reasonably explain the said failure.

27. In evaluating whether the Defendant has a meritorious defence to the Plaintiff's claim, this Court notes that the Defendant has failed to address the core allegations of breach of duty of care, and negligence as asserted by the Plaintiff. The Plaintiff's claim, as set out in the Statement of Claim, is fundamentally based on the Defendant's alleged negligence in failing to include the Plaintiff's name in the list of policyholders with BSP Life when the Defendant transferred its group insurance policy from 'BSP Life' to 'Fiji Care'.

28. The Plaintiff's cause of action hinges upon this conduct, which the Plaintiff contends directly resulted in the rejection of the claim for reimbursement of medical expenses incurred by the Plaintiff from 'Fiji Care'. Merely asserting that the Plaintiff was previously insured with 'BSP Life' does not constitute a substantive response to the allegations of negligence and breach of duty of care articulated by the Plaintiff against the Defendant.

29. Accordingly, this Court finds that the Defendant has unequivocally failed to provide a substantive or meritorious defence on the facts as a basis for contesting the Plaintiff's claim.

30. Finally, it is noteworthy that the Plaintiff underwent the relevant medical procedure and incurred the associated costs in January 2019. According to the Affidavit in Opposition, the Plaintiff contends that the Defendant acted with evident negligence and a lack of due care regarding her medical condition, even subsequent to her initial claim. She further asserts that the Defendant intentionally delayed responding to her enquiries and caused her unnecessary inconvenience by directing her to 'Fiji Care' without affording her appropriate assistance to secure recovery of her medical expenses. In the Court's considered view, such conduct is highly prejudicial to the Plaintiff. If the application to Set Aside the Default Judgment is granted, the Plaintiff will incur irreparable harm due to the undue delay and the nature of her claim, which seeks reimbursement for costs of medical treatment already incurred and paid by her.

31. Based on the foregoing discussion and findings, this Court concludes that the Defendant has failed to provide any sufficient justification for the setting aside of the Default Judgment entered against it on 23 July 2024. Accordingly, the application to set aside the judgment is hereby refused and dismissed.

32. Consequently, the Court makes the following orders,

1) The Summons filed on 03/09/2024 for Stay of Execution and Setting Aside of Default Judgment entered on 23rd July 2024 is hereby refused,

2) The Summons dated 03/09/2024 is accordingly struck out and dismissed.

3) The Defendant shall pay a cost of $ 2000.00 to the Plaintiff, as summarily assessed by the Court, as costs of this application.

4) Proceedings in this matter is accordingly concluded, and the file is closed.

HIGH COURT OF FIJI
SUVA

L. K. Wickramasekara
Acting Master of the High Court

At Suva
10/09/2025.