



**IN THE SUPREME COURT OF NAURU**

**CIVIL SUIT No.32/2015**

**BETWEEN**

**JULIE OLSSON**

**}**

**PLAINTIFF**

**AND**

**SECRETARY FOR JUSTICE**

**}**

**DEFENDANT**

Before: Khan, J  
Date of Hearing: 1 May 2015  
Date of Ruling: 11 March 2016

**CATCHWORDS:** Under Order 50 Rule 8 of the Civil Procedure Rules 1972- Plaintiff can only enter judgment against the Republic as the defendant- with the leave of the Registrar- application for leave to be made 7 clear days before the return date.

**APPEARANCES**

For the Plaintiff: Mr. V. Clodumar (Pleader)  
For the Defendant: Mr. J. Rabuku

---

## RULING

---

1. In this matter the plaintiff on 24 April 2015 entered default judgment against the defendant pursuant to Order 16 Rule 2 of the Civil Procedure Rules 1972 (CPR). The matter was listed before the Registrar Mr. Toganivalu and on 1 May 2015 the parties appeared before me and I set aside the default judgment as it was irregular, in that the plaintiff had entered default judgment without the leave of the Registrar, as provided for in Order 50 Rule 8 of the CPR.
2. I had given an extempore ruling on that day and I overlooked to perfect my ruling which I do now.

### **BACKGROUND OF THIS MATTER**

3. The plaintiff was a member of the superannuation fund set up under Superannuation Ordinance 1966(Ordinance), and her contribution was in the sum of \$17385 when this action was commenced. The Ordinance was repealed by superannuation (Repeal Act) 2012 and all the assets under the Ordinance were vested in the Republic.
4. The Republic made a decision to payout all the members their superannuation entitlements including the plaintiff on condition that the members execute a discharge form, the content of which is as follows:

“

\_\_\_\_\_

*Full Name*

\_\_\_\_\_

*of Address*

*DECLARES THAT:*

- 1. I was an officer or a Contributor, (or an heir of an officer or Contributor), to the Superannuation Fund (the Superannuation Fund) established under the Superannuation Act 1966 (Nauru) (the original Act), which Act was repealed by the Superannuation (Repeal) Act 2012 (Nauru) (Repeal Act).*
- 2. I have never spoken to, asked or authorised Kinza Clodumar or anyone else to represent me, in relation to any rights or entitlements that I have or had in connection with the Superannuation Fund, the original Act or the Repeal Act. I do not give Kinza Clodumar or anyone else authority to act on my behalf.*
- 3. I have never asked or authorized Kinzar Clodumar or anyone else to represent me and I do not give him or anyone else authority to act on my behalf in relation to any legal proceedings in Nauru or Australia, and in particular, in relation to:*
  - (ii) Supreme Court of Nauru; Civil Case No. 24 of 2013 (the Nauru Civil Case); or*
  - (iii) Supreme Court of Victoria; Proceeding No. S CI 2013 03786 (the Victorian Proceeding).*
- 5. I do not want to participate in the Nauru Civil Case.*
- 6. I do not want to participate in the Victorian Proceeding.*
- 7. The Republic of Nauru has paid to me, a sum equivalent to any and all contributions by me or the ancestor or predecessor through whom I had any entitlement under the Superannuation Act 1966 prior to the Repeal Act, which was the 'A' Account representing contributions to the Superannuation Fund.*

8. *I have no interest or entitlement in any asset or funds formerly held by the Superannuation Fund including in any surplus funds from the sale by Receiver of the Downtowner Hotel in Carlton Victoria. I agree that any such asset or funds would have vested in the Republic of Nauru.*

9. *I also believe I am not affected or aggrieved by the repeal of the Superannuation Fund or by any vesting of the assets of the Superannuation Fund in the Republic of Nauru by the Repeal Act. I consider that the Republic of Nauru has acted fairly and justly in paying from funds of the Republic, equivalent monies to the Fund A contributions paid to the Superannuation Fund."*

5. The plaintiff refused to sign the discharge form and the defendant refused to pay her as a result of the stale mate, the plaintiff filed this action on 12 March 2015 and served the defendant on the same day.

6. The defendant entered an appearance on 12 March 2015. The defendant was also required to file its defence within 14 days of its appearance and it failed to do so. On 24 April 2015 and 9:57am, the plaintiff entered default judgment against the defendant under the provisions of Order 16 Rule 2 of the CPR.

7. The defendant filed its statement of defence on 24 April 2015 at 9:58am.

## **RULES WITH RESPECT TO FILING DEFAULT JUDGMENT**

### **GENERALLY**

8. Order 16 Rule 2 provides for entering of default judgment in default of defence. Order 16 Rule 2 reads as follows: “

*(1) Where the plaintiff's claim against a defendant is for a liquidated demand only, then, if that defendant fails to serve a defence on the plaintiff, the plaintiff may, after the expiration of the period fixed by or under these Rules for service of defence, enter final judgement against*

*that defendant for a sum not exceeding that claimed by the writ of summons in respect of the demand and for costs, and proceed with a suit against the other defendants, if any."*

Under Order 16 Rule 2 where the defendant has failed to file a defence for liquidated amount within the prescribed time then the plaintiff is at liberty to enter default judgment, and the act of filing of default judgment means that the default judgment has been entered against the defendant, and the matter comes to an end, unless it is set aside.

9. Order 16 Rule 2 only applies to ordinary defendants and does not apply to the Republic as a defendant.

**ENTERING OF DEFAULT JUDGMENT AGAINST THE REPUBLIC IS GOVERNED BY ORDER 50 RULE 8**

10. Order 50 Rule 8 provides as follows:

- (1) Except with the leave of the Registrar, no judgment in default of appearance of pleading shall be entered against the Republic in Civil Proceedings against the Republic or in third party proceedings against the Republic.*
- (2) Except with the leave of the Registrar, subparagraph (a) of Rule 5(1) of Order 13 shall not apply in the case of third party proceedings against the Republic.*
- (3) An application for leave under this rule shall be made by summons; the summons must be served not less than 7 days before the return date.*

11. Under this rule default judgment cannot be entered against the Republic without leave of the Registrar. Rule 3 quite clearly states that an application for leave shall be made by summons which must be served not less than 7 days before the return date.

12. The plaintiff has failed to comply with the provisions of Order 50 Rule 8 so the default judgment was irregular and was aside.

Dated this day of 11 March, 2016



Mohammed Shafiullah Khan

Judge

