



IN THE SUPREME COURT OF NAURU
AT YAREN
CIVIL JURISDICTION

CIVIL SUIT NO. 22 of 2021

BETWEEN

ZITA CECIL of Yaren District, Nauru

PLAINTIFF

AND

DARLYNE HARRIS of Meneng District, Nauru

DEFENDANT

Before: Khan, ACJ
Date of Written Submissions by Plaintiff: 23 March 2022
Date of Written Submissions by Defendant: 23 March 2022
Date of Ruling: 20 April 2022

Case may be referred to as: *Cecil v Harris*

CATCHWORDS: Application to enter default judgement after pleadings closed – Whether the plaintiff is entitled to file the application.

APPEARANCES:

Counsel for the plaintiff: A Amwano
Counsels for the defendant: V Clodumar

RULING

INTRODUCTION

1. The plaintiff filed a claim on 2 August 2021 seeking orders to restrain the defendant from carrying out renovations of a house built under the Nauru Local Government Council scheme on land in Aratsi, Portion 127 Meneng District.
2. The defendant filed her statement of defence on 23 September 2021 and the plaintiff filed a reply thereto on 7 October 2021. In accordance with O15, r 20 of Civil Procedure Rules 1972 (Rules) the pleading was deemed to have closed within 14 days of the service of the reply.

APPLICATION TO ENTER DEFAULT JUDGEMENT

3. On 6 December 2021 Mr Amwano, pleader for the plaintiff, filed an application to enter default judgement. In the application the following orders were sought:
 - 1) A proper application to be filed/served for leave to enter default judgement as the Court directive of 6 December 2021;
 - 2) That for the heinous breach of Order 15, rule 2 of the Civil Procedure Rules 1972 when the defence finally submitted her (being a pleader) statement of defence 44 days overdue, also aggravated by continuous unresponsive behaviour of the defence party to 3 counts of awaited submissions, and 4 counts of missed opportunity to comply with the court's plea for PTC's;
 - 3) Mainly for breach of Civil Procedure Rules, Order 15, rule 2 as in real terms the defendant eventually served her statement of defence, 44 days after service of memorandum of appearance;
 - 4) A permanent injunction be instituted to prevent any future renovation work or building construction work on Aratsi, C.L. Portion 127, Meneng District, including subdividing by persons not being landowners of the aforementioned land;
 - 5) The defendant, her servants or workers cease from further utilization of the land described in (2) above;
 - 6) An order for vacant possession be granted for the plaintiff for legally genuine reasons eg rent free-use of plaintiff's land having originated by word of honour between the landowner and friend, temporary occupancy with arranged revisionary right, and ultimately unendorsed by the President as required by the Land Act 1976, s.3, and ss.(3) in other minor yet important matters;
 - 7) The costs of and incidental to this application to be paid by the defendant responsible for prolonging this case by excuses uncharacteristic of lawyers who are bound the Latin Doctrine of *Ignorantia Eorum Quae Quis Scire Tenetur Non Excusat* (English translation: Ignorance of those things which a person is held to know is no excuse);

- 8) Such other relief this Honourable Court may consider appropriate demise of the original land and tenant agreement based on honour.
4. Mr Clodumar, pleader for the defendant opposes the application for being an abuse of process of court.
5. In the written submissions filed by Mr Amwano on behalf of the plaintiff his main ground of complaint is that the statement of defence was filed 44 days after the memorandum of appearance was entered being in breach of:
 - 1) Civil Procedure Rules;
 - 2) Ethics and Code of Conduct of the legal profession;
 - 3) Provisions of the Civil Procedures Rules 1972;
 - 4) The Law of Equity;
 - 5) Legal Proprietary;
 - 6) The court process.
6. The memorandum of appearance was filed on 11 August 2021 and the statement of defence was filed on 23 September 2021, almost 42 days thereafter. Just looking at that in delay in isolation, the plaintiff would have been entitled to enter default judgement but he did not do so; and his counsel agreed to allowing the defendant further time.

PERUSAL OF MINUTES OF PROCEEDINGS

7. I shall refer to the minutes of the court proceedings to see how this matter progressed up to the time of the filing of this application on 6 December 2021. The minutes state as follows:
 - a) This matter first came before the court on 9 August 2021 and the defendant appeared in person and sought 2 days' time to file the memorandum of appearance and Mr Amwano had no objection and she was ordered to file the memorandum of appearance within 2 days and the matter was adjourned to 13 August 2021;
 - b) On 13 August 2021 the memorandum of appearance was filed on behalf of the defendant by Clodumar, Soriano and Associates, Lawyers. On 13 August 2021. Mr Soriano appeared on behalf of the defendant and informed the court that there was a death in the defendant's family and he was having difficulties in obtaining instructions and sought 14 days to file the statement of defence and affidavit in reply and there being no objection by Mr Amwano the defendant was granted 14 days to do so and the matter was adjourned to 3 September 2021;
 - c) On 3 September 2021 Mr Soriano sought further 7 days to file statement of defence and the affidavit in reply and there being no objection by Mr Amwano the defendant was granted a further 7 days to file the statement of defence and the affidavit in reply and the matter was adjourned to 20 September 2021;

- d) On 20 September 2021 there was no appearance of the defendant's counsel and the court was informed that her counsel was before the Chief Justice. Mr Amwano stated that the orders made on 3 September 2021 was not complied with and that he will be moving the court to enter default judgement. The matter was adjourned to 23 September 2021.
- e) On 23 September 2021 Mr Soriano informed the Court that the affidavit in reply was filed on 22 September 2021 and asked for time until 4pm to file the statement of defence. Mr Amwano confirmed that he was served with the affidavit in reply and reluctantly agreed to time being granted until 4pm for the statement of defence to be filed. I ordered that the statement of defence to be filed by 4pm on 23 September 2021 and ordered the plaintiff to file reply to defence when filed and adjourned the matter to 7 October 2021;
- f) The statement of defence was filed on 23 September 2021 at 3pm and the reply to defence was filed on 7 October 2021;
- g) On 7 October 2021 Mr Amwano advised the court that the pleadings were complete and asked for 14 days' time to have a pre-trial conference which was agreed to by Mr Soriano and the matter was adjourned to 22 October 2021;
- h) On 22 October 2021 Mr Amwano advised the court that the pre-trial conference could not take place as Mr Soriano was busy and the matter was adjourned to 5 November 2021;
- i) On 5 November 2021 Mr V Clodumar informed the court that he was waiting for Mr Amwano to submit the proposals for pre-trial conference. Mr Amwano complained that the trial was delayed and agreed to hold the pre-trial conference and he also informed the court that he would submit the proposal within 7 days; the matter was adjourned to 22 November 2021 to allow the parties to finalise the pre-trial conference;
- j) On 22 November 2021 Mr Amwano informed the court that he was unable to have the pre-trial conference as he was hospitalized for 2 weeks and sought further time to do so. The matter was adjourned to 6 December 2021 for pre-trial conference;
- k) On 6 December 2021 Mr Amwano advised the court that the pre-trial conference could not be finalized as Mr Clodumar had a death in his family and indicated that he will be filing an application for default judgement today. Mr Clodumar responded that Mr Amwano could not do so as the pleadings was complete, however I adjourned the matter to 10 December 2021 to allow Mr Amwano to file the application for default judgement;
- l) Mr Amwano filed the application for default judgement on 6 December 2021.

CONSIDERATION

8. Invariably all applications are made pursuant to the Civil Procedure Rules 1972 (Rules) or the inherent jurisdiction of the court. In this case it is correct that the statement of defence was filed some 44 days after the memorandum of appearance was filed as can be seen from the minutes of the proceedings that has been outlined above, however, it was filed with the consent of the plaintiff's counsel.
9. Not only was the statement of defence filed with the consent of the plaintiff's counsel, his counsel actively participated in the proceedings thereafter by filing a reply to defence and thus condoned the breach of Order 16 of the rules and was estopped from filing this application for default judgement.
10. Mr Amwano made some very disturbing and unwarranted comments about his colleagues as well as the court when he stated at [A.2] of his written submissions filed on 3 March 2022 as follows:

[a.2] Ethics and Code of Conduct of Legal Profession

- 9) First of all, the defendant Darlyne Harris is herself a pleader, including her legal representative, Vince Clodumar, Eggo Soriano of Clodumar, Soriano and Associates, Law firm all of whom were bound under the Doctrine of *Ignorantia Eorum Quae Quis Scire Tenetur Non Excusat* (lat) translation: "Ignorance of those things which a person is held to know is no excuse", yet knowingly not inadvertently allowed the statement of defence to be served 44 days overdue while possibly hearing of the plaintiff party's judge - stalled efforts to submit application to enter default judgement.
11. Firstly, there was no need for Mr Amwano to state that the defendant was a pleader including his legal representatives Mr Clodumar and Mr Soriano to suggest that they: "yet knowingly not inadvertently". Under rule 17 of the Legal Practitioners (Professional Conduct) Rule 2019 (the LPC rules) a practitioner must show courtesy and candour to other practitioners and Rule 17 sub-rule 2 states:

Sub-Rule 2 A practitioner shall not:

- a) in his or her professional dealings, use language which is abusive, offensive or otherwise improper.

12. Secondly, Mr Amwano suggested that:

"Allowed the plaintiff's party's judge stall effort to submit application to enter judgement".

13. Mr Clodumar submits that this suggested the defence counsel were working in cahoots with the court to delay the plaintiff's application. I draw Rule 13(i) of the LPC rules to Mr Amwano's attention where it is stated:

"(i) Not attribute to a judge's motive or not supported by the record of evidence."

CONCLUSION

14. The application was filed without any justification and is an abuse of process of court and is dismissed with costs summarily assessed in the sum of \$500.

DATED this 20th day of April 2022



Mohammed Shafiullah Khan
Acting Chief Justice

