

DEVELOPMENT BANK OF SOLOMON ISLANDS -V-. PAUL KUKITI (*trading as or under the name Sustainable Saw-milling Service*)HIGH COURT OF SOLOMON ISLANDS
(KABUI, J.).

Civil Case No. 109 of 2003

Date of Hearing: 29th July 2003Date of Ruling: 30th July 2003*Mr G. Fa'aitoa for the Plaintiff**Mrs. A. N. Tongarutu for the Defendant***RULING****Kabui, J.** This is an application by Notice of Motion filed on 24th July 2003, seeking the following orders-

1. Leave be granted to the Defendant to enlarge time for filing Memorandum of Appearance.
2. The Defendant is granted enlargement of time to file statement of defence and counter-claim.
3. Such other Orders as the Court deems fit to make.

The Background.

A Writ of Summons and Statement of Claim were filed on 14th May 2003. The Writ of Summons was specially indorsed for the claim of \$ 209,355.58 as monies owing to the Defendant under loan agreements signed between the parties. The Plaintiff also claims interest commencing on 31st March 2003 until payment plus costs. Due to difficulty in effecting personal service upon the Defendant, I ordered on 11th July 2003 that service be effected by service message on SIBC and advertisement in the Solomon Star Newspaper. Service was effected on 16th July 2003 on SIBC and on 17th and 18th July 2003 in the Solomon Star respectively.

Extension of time for appearance to the Writ of Summons.

Rule 11 of Order 12 of the High Court (Civil Procedure) Rules 1964, 'the High Court Rules' states-

"...A defendant may appear at any time before judgment. If he appears at any time after the time limited by the writ for appearance, he shall not, unless the Court shall otherwise order, be entitled to any further time for delivering his defence, or for any other purpose, than if he had appeared according to the writ..."

In this case, the Plaintiff did receive the Writ of Summons. Mr. Jonathan Bana, an officer of the Plaintiff, gave him the Writ of Summons on 15th May 2003. Nothing is however said about whether or not Mr. Jonathan Bana also gave him the Statement of Claim. Obviously, the Solicitor for the Plaintiff did not know about this fact for he applied for an order for substituted service at a hearing on 11th July 2003. I granted that order accordingly. Mr. Jonathan Bana did not file any affidavit evidence to prove this service. I therefore take no notice of it. Rule 1 of Order 10 of the High Court Rules sets out the

ways in which service can be effected if personal service proves to be difficult for some reason. These ways are in the alternative to each other. In this case, the Plaintiff had chosen two ways of substituted service. Firstly, substituted service-by-service message over the SIBC was effected on 16th July 2003 and secondly, the second substituted service was effected on 17th and 18th July 2003 by publication in the Solomon Star. If effective service was dated 16th July 2003 or 17th and 18th July 2003, appearance would have ran for a period of 14 days from each of the these dates. The Writ of Summons stipulates 14 days from the date of service. Clearly, the filing of the Memorandum of Appearance on 18th July 2003 was well within the period of 14 days required by the Writ of Summons after service. There is therefore no need to make any order under Order 12, rule 11 of the High Court Rules.

Extension of time for the delivery of defence.

The Writ of Summons also stipulates 14 days within which defence may be delivered. The period of 14 days is to run from the last day of the time limited for appearance. The last day for appearance to be entered in this case ends on 1st August 2003. The 14 days period for the delivery of defence and counter-claim, if any, begins to run from the 1st August 2003. Again, there is no reason for extending time to deliver defence in this case or file a counter-claim, if any. The Defendant still has the full 14 days to file a defence and a counter-claim. The defendant still has the 14 days to file a defence.

The decision of the Court.

I think the problem in this case, as I have said above, is that personal service was effected on the Defendant on 15th July 2003 but that fact for some unknown reason was not known to the Solicitor for the Plaintiff who told me at the hearing on 11th July 2003 that the Defendant had not yet been served due to difficulty in locating him in Honiara. On that basis, counsel applied for an order for substituted service and I granted it. The case was then adjourned to a date to be fixed. As I have said, the personal service on the Defendant on 15th July 2003 by Mr. Jonathan Bana was not proven service. No affidavit of service had been filed by Mr. Jonathan Bana to prove that fact. The dates of effective service were 16th July 2003 and 17th and 18th July 2003. This service was proven by affidavit evidence filed by Jonathan Bana on 28th July 2003. This case does show that there was lack of communication between the Solicitor for the Plaintiff and the instructing officials regarding the matter of effecting service on the Defendant. It also shows that the Solicitor for the Defendant erroneously regarded the date 15th July 2003 as being the date of effective service of the Writ of Summons upon the Defendant. This application has been mistakenly brought and must be refused with costs.

F.O. Kabui
Judge