

**IN THE SUPREME COURT
OF THE REPUBLIC OF VANUATU**
(Civil Jurisdiction)

**Civil
Case No. 17/3648 SC/CIVL**

**BETWEEN: ANITA KOANAPO, HELLEN BONG, FLAVIA
ISNO, EMMA VATOKO, NANCY PAUL, GRACE
BAHOR, JENNY ATHY**
Claimants

**AND: VANWODS MICROFINANCE COMMITTEE
(INC)**
First Defendant

AND: JULIE-ANN SALA
Second Defendant

Coram: *Justice Aru*

Counsel: *Edmond Toka for the Claimant
Garry Blake for the first and second Defendants*

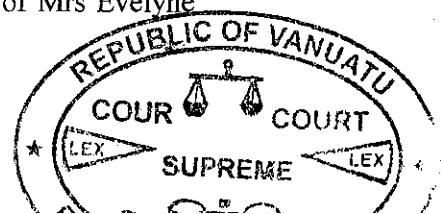
JUDGMENT

Introduction

1. This is an application made pursuant to rule 9.5 of the Civil Procedure Rules to set aside a default judgment entered on 22 June 2018 in favour of the claimant. The claimant is comprised of seven (7) individuals who are all former employees of VANWODS Microfinance Committee (INC).

Background

2. On 21 December 2017 the seven former employees filed their claim as a single claimant claiming various entitlements they claim were not paid to them upon termination of their employment. The claim was then served on the defendant on 5 February 2018. No defence was filed within 28 days and the claimant applied for default judgment.
3. On 22 June 2018 default judgment was entered for damages to be assessed.
4. On the day judgment was entered, I was unaware that a defence had been filed a day before on 21 June 2018.
5. On 17 July 2018 the defendants who were both represented by Ridgway Blake Lawyers applied to have the default judgement set aside. A sworn statement of Mrs Evelyne Blake was filed in support with written submissions.



6. On 31 July 2018 the claimant filed their response to the application with written submissions in response.

Application

7. The rules provide that such an application may be made at any time; and must set out the reasons why the defendant did not defend the claim; it must give details of the defendant's defence to the claim; and must have with it a sworn statement in support. Rules 9.5 (3) specifically provides:-

"(3) The court may set aside the default judgment if it is satisfied that the defendant:

(a) has shown reasonable cause for not defending the claim; and

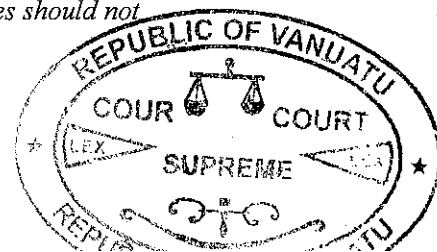
(b) has an arguable defence, either about his or her liability for the claim or about the amount of the claim."

Discussion

8. Rule 9.5 (3) sets out the requirements of what the Court needs to consider when dealing with an application to set aside a default judgment. I must be satisfied that the defendant has shown reasonable cause for not defending the claim and the defendant has an arguable defence about its liability.
9. Mr Toka in his submissions relies on **Sualo v Pipite** [2018] VUSC 112 to submit that I need to also consider whether the defendant has a substantial ground of defence; whether the defendant has a satisfactory explanation for the default judgment; the promptness of the application to set aside and lastly whether the setting aside would cause prejudice to the claimant.
10. I reject that submission. Under rule 9.5 (3), the main consideration is whether the defendant has shown reasonable cause for not defending the claim and whether he has an arguable defence. The position is made clear by the decision of the Court of Appeal in **ANZ Bank (Vanuatu) Ltd v Dinh** [2005] VUCA 3 where it said:-

"Suffice it to say that we think the language of rule 9.5(3) is plain. There are two requirements each of which must be considered on an application to set aside a default judgment. There may be some scope for taking into account the nature and strength of a defence advanced under paragraph (b) of that rule when considering what would constitute "reasonable cause" under paragraph (a) in the circumstances of a particular case.

If there were a case where an unanswerable defence was demonstrated, but reasonable cause was not demonstrated, the rules would permit the default judgment to be set aside, but not for the reasons advanced by counsel for the Respondent. The purpose of the rules is to further the administration of justice. The rules should not be applied so as to cause or perpetuate injustice."

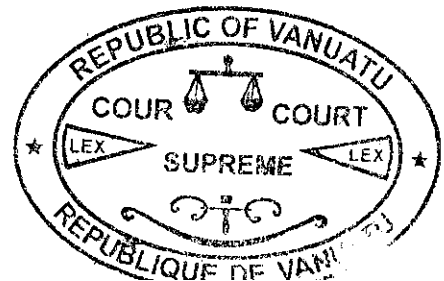


Reasonable cause

11. The defendants admit that they were late in filing a defence but submit that they did file a defence before judgment was entered. This is admitted by the claimant.
12. Mrs Evelyne Blake deposes in her sworn statement that Ridgway Blake Lawyers were instructed to act for the defendants around the 13 March 2018. A notice of beginning to act was then filed the same day.
13. She deposes that they then wrote to the claimant advising that they will need some time to take proper instructions before filing a defence. Reasons given were due to the fact that the claim was not a straight forward employment claim. Although the seven (7) former employees are suing as a single claimant, each individual had their own factual circumstance relating to how they were terminated. Time was needed to obtain proper instructions and as a result a defence was only filed on the 21 June 2018 denying the claim.
14. As a matter of courtesy, Mr. Blake submitted that the claimant should have notified the defendants that it was pursuing an application for default judgment.

Arguable defence

15. All that I am required to be satisfied of is that the defendants have an arguable defence not that it is likely to succeed. Mr Blake submits that on the material provided to the Court they have shown reasonable cause for not filing a defence on time and that the defence filed demonstrates an arguable defence regarding liability and quantum.
16. The claim asserts that all seven employees were employed by the first defendant under contracts of employment for the different positions held. At paragraph 7, the claimant alleges that those contracts were terminated by the second defendant without payment of their entitlements to outstanding salary, outstanding leave, maternity leave pay, and payment in lieu of notice. Jenny Athy, Grace Bahor and Emma Vatoko are claiming outstanding salaries, outstanding severance and payment in lieu of notice.
17. Nancy Paul is only claiming outstanding severance and Flavia Isno is also only claiming maternity leave pay. Anita Koanapo and Hellen Bong are both claiming Maternity leave pay and payment in lieu of notice. The relief claimed is for financial loss in the sum of VT 1, 983,745 and general damages in the sum of VT 800,000 with interest at 5%.
18. The defendants admit in their defence that the seven employees were all former employees of the first defendant. The defence discloses that the circumstances of employment for each employee are different and the circumstances of how each of their contracts came to an end are also different which would entail different outcomes for each one on the question of liability and quantum.



19. Given the nature of the claim, it was argued by Mr Blake that joining seven distinct claims into one is an abuse of process as the factual circumstances of each individual claimant is different. It was submitted that the claim should be struck out and pursued as separate claims. Mr Toka made no submissions on the point.
20. Rules 3.3 (2) provides that “*the court may order that several claims against the one person be treated and heard as separate proceedings if the claims can be more effectively dealt with separately*”. The manner in which the claim is pleaded and the defence in response highlights the difficulties of progressing the claim in its current form. Justice would not be served by continuing the claim as a single claim. The overriding objective of the Rules is to enable the courts to deal with cases justly.
21. I accept that the “*claims can be more effectively dealt with separately*”.

Result

22. I am satisfied that the application to set aside must succeed. The following orders are now issued:-
- (1) The default judgment entered on 22 June 2018 is hereby set aside.
 - (2) The claim is also struck out. Each claimant may file their own separate claim in the appropriate Court if they wish to still pursue the matter.
 - (3) The defendants are entitled to costs on a standard basis to be taxed if not agreed.

DATED at Port Vila this 6th day of August, 2020

BY THE COURT

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Dudley Aru
Judge

