

**IN THE COURT OF APPEAL OF
THE REPUBLIC OF VANUATU**
(Civil Appellate Jurisdiction)

Civil Appeal
Case No. 25/1944 COA/CIVA
[2025] VUCA 27

BETWEEN: SINGIAU DANIEL
Appellant

AND: JOHNNA TAO
Respondent

Date of Hearing: 5th August 2025

Coram: *Hon. Chief Justice Vincent Lunabek*
Hon. Justice Mark O'Regan
Hon. Justice Anthony Besanko
Hon. Justice Dudley Aru
Hon. Justice Viran Molisa Trief
Hon. Justice Edwin P Goldsbrough
Hon. Justice Maree Mackenzie

Counsel: *Mr Willie Kapalu for the Appellant*
Mr Roger Rongo for the Respondent

Date of Decision: 14th August 2025

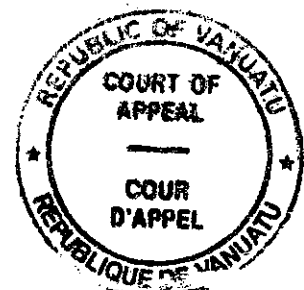
JUDGMENT OF THE COURT

Introduction

1. This is an appeal against a decision of the primary judge in the Court below dismissing an application to set aside a default judgment obtained by the respondent Johnna Tao.

Background

2. On 2 January 2019 the respondent allegedly purchased Lease Title No 12 /0914/157 at Erakor Half Rod from the appellant Singiau Daniel for a sum of VT 3,000,000. Following the purchase, it is also alleged that the parties signed a transfer of lease document to formally transfer the lease to the respondent and he began developing the land. Sometime in January 2023 the respondent alleges that he noticed other people clearing the same land and upon enquiry was informed that the land had been sold to a third party.
3. On 14 February 2023 the respondent filed a Supreme Court claim seeking a permanent injunction as well as restraining orders against the appellant and his agents from entering onto the land or disturbing works being carried out by his workers.



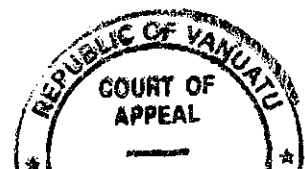
4. The respondent also filed an urgent ex parte Application seeking restraining orders. The application was supported by a sworn statement of Urgency, a sworn statement of Mr Tao and an undertaking as to damages. On 5 April 2023, the application was heard ex parte and the orders sought were granted restraining the appellant and his agents from entering upon the lease or causing any disturbances to the respondent, his family and workers developing the land. A proof of service was filed on 15 May 2023 stating that a copy of the claim and restraining order was personally served on the appellant on 18 April 2023.
5. On 19 March 2023 the respondent filed a request for default judgment on the basis that no response to the claim was filed within 14 days and no defence was filed within 28 days of being served with the claim.
6. On 18 August 2023 a **Judgment by Default** was issued. The primary judge noted at paragraph 2 of the judgment that there was a formal proof hearing in chambers. The only party present was the respondent's Counsel. There was no appearance recorded for the appellant.
7. The appellant maintains that he was not served with a copy of the claim and was not aware that judgment had been entered against him until he received a response to his letter of 24 March 2025 putting the respondent on notice not to enter the land. In his response which was undated, the respondent informed the appellant that judgement had been entered against him and enclosed a copy.

Supreme Court Decision

8. On 23 April 2025 the appellant filed his application to set aside the default judgment. This was heard on 16 May 2025 and on the 12 June 2025 the primary judge issued his decision declining and dismissing the application. In his reasons the primary judge said: -
 1. *"First, the application is made some 22 months after the default judgment was issued. It is very late.*
 2. *Second, the applicant's main ground is that he was not served. The reality is that he refused to be served and he cannot use that refusal to be an excuse for non-service.*
 3. *Third, from the facts and evidence the applicant has purchased the same land and sold it illegally to other buyers without following the lawful procedures.*
 4. *Fourth, he asserted that the lease is not yet registered. That ground alone cannot be sufficient to set aside a valid judgment by default which is a final judgment. The defendant could have appealed against the judgment but did not.*
 5. *For those reasons the application is misconceived and is dismissed with costs.*
 6. *The applicant will pay the claimants' costs of the application on the standard basis as agreed or be taxed."*
9. This is the decision which is now the subject of this appeal.

The Appeal

10. The appellant's notice of appeal contained a number of grounds which were reduced to two main issues before the hearing began. The two issues relate to findings of the primary judge that the appellant was very late in making his application to set aside the default judgment and secondly



the non-service of the claim on the appellant. During the hearing, another issue emerged, namely whether an application for default judgment was appropriate in a case other than a claim for a fixed monetary amount or a claim for damages (r9.2 and 9.3 of the Civil Procedure Rules).

11. The appellant submitted that he was never served with any Supreme Court claim. He also asserts he was not served with the default judgment. He submitted that the only document served on him was a copy of the ex parte restraining orders issued on 5 April 2023. He was served on 18 April 2023.
12. The appellant also submitted that the delay in filing the application to set aside the default judgment was because he was not served with the default judgment and he was not aware that judgment had been entered against him until sometime in late March 2025 when a copy was forwarded to his lawyers by the respondent's Counsel. The appellant further submitted that he got a copy of the claim from the Court file when preparing the appeal book.
13. The respondent on the other hand maintains that the appellant was served with the claim and copy of the restraining orders. Furthermore, it was submitted that the decision to dismiss the application to set aside the default judgment was correct as the appellant had slept on his rights and did nothing for 22 months. However, the respondent's counsel accepted during the hearing that there was no evidence that the default judgment had ever been served on the appellant.

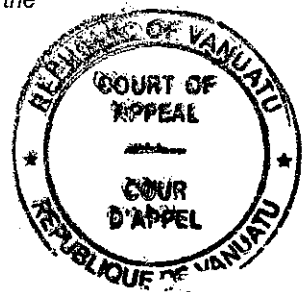
Discussion

14. Under the Civil Procedure Rules, r 9.2 deals with **Default – claim for fixed amount** and r9.3 **Default – claim for damages**. In both instances, it is mandatory for the claimant once judgement is entered to serve a copy on the defendant. (r9.2 6) and r9.3 6)
15. Rules 9.5 deals with **Setting aside default judgment** and provides in subrules (1), (2) and (3) as follows: -

"9.5 Setting aside default judgment

- (1) *A defendant against whom judgment has been signed under this Part may apply to the court to have the judgment set aside.*
- (2) *The application:*
 - (a) *may be made at any time; and*
 - (b) *must set out the reasons why the defendant did not defend the claim; and*
 - (c) *must give details of the defendant's defence to the claim; and*
 - (d) *must have with it a sworn statement in support of the application; and*
 - (e) *must be in Form 14.*
- (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.*

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16. Default judgments under rules 9.2 and 9.3 can only be entered on claims for fixed money amounts or claims for damages where the defendant fails to file a response or defence to the claim. The claim filed by the respondent was seeking to enforce a purported entitlement to Lease Title No 12/0914/157 which is disputed by the appellant. It is not a claim for a fixed amount or a claim for damages therefore judgment by default was not available to the claimant as a remedy. The respondent in our view adopted a wrong approach which led to the primary judge issuing a judgment by default. Faced with the judgment, the next procedural step under the rules was for the appellant to apply to have it set aside rather than appealing which he did.
17. Contrary to the primary judges' reasoning, we are of the view that there was no delay in filing the application as there was no evidence that the judgment was served on the appellant. When a copy was finally made available to him, the appellant promptly applied to have it set aside.
18. In summary: -
- a) The use of the default judgment procedure was inappropriate in this case.
 - b) There was no evidence that the respondent had served the default judgment on the appellant. So, the only evidence was that the appellant had received a copy of the default judgment in March 2025 and had promptly applied to set it aside.
 - c) An application to set aside was the correct procedure to adopt. It was not possible to appeal against the judgment as the primary judge suggested (and, as there was no proof of service of the judgment, the appellant could not have been expected to appeal against a judgment he did not know about anyway).
 - d) The application to set aside and the sworn statement in support established the grounds for setting aside a default judgment under r9.5(3).
 - e) The application to set aside the default judgment should therefore have been successful in the Supreme Court.

Result

19. The appeal is allowed and the default judgment is set aside. The matter is returned to the Court below to list the matter for a proper trial. We make no order as to costs.

DATED at Port Vila this 14th day of August, 2025

BY THE COURT

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Hon. Chief Justice Vincent Lunabek

