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

Civil Appeal
Case No. 25/3193 COA/CIVA
[2026] VUCA 13

BETWEEN: GEORGE BOAR
Appellant

AND: ALLAN PAMAVARI and TAHE PAMAVARI
First Respondents

AND: URELAPA LIMITED
Second Respondent

Date of hearing:	***5 February 2026***
Coram:	***Hon. Chief Justice Vincent Lunabek*** ***Hon. Justice Mark O'Regan*** ***Hon. Justice Michael Wigney*** ***Hon. Justice Dudley Aru*** ***Hon. Justice Viran Molisa Trief*** ***Hon. Justice Maree MacKenzie*** ***Hon. Justice Beverleigh Kanas Joshua***
Counsel:	***Applicant- in person*** ***Mrs Corinne Hamer for the First Respondents***
Date of Decision:	***13 February 2026***

JUDGMENT OF THE COURT

Introduction

1. On 26 September 2025 the Supreme Court set aside a default judgment of VT 19,751,617 entered on 26 January 2016: *Boar v Pamavari* [2025] VUSC 345. The primary judge ordered that the default judgment be set aside as he found that service of the claim was incomplete, and there were some real issues as to the amount of costs owing to the applicant.

2. The applicant, Mr Boar was a legal practitioner. He claims that the respondents have failed to pay legal fees of VT18,767,017 for legal services rendered to them over a number of years up to 2015. In the Supreme Court claim, it is acknowledged that the respondents paid VT1 million towards the initial VT19,751,671 he claimed was owing to him. Part of the outstanding legal fees is a "*commission*" Mr Boar contends is owing to him which relates to the sale of Urelapa island, Santo.

3. Mr Boar did not take any steps to enforce the default judgment until 2025. When the first respondents became aware of the demand for outstanding legal fees in 2025, they applied to set aside the default judgment on the basis that they were never personally served with the Supreme Court claim. Further, they challenged both the liability for some of the legal fees claimed, and the amount of some of the fees.

4. It is not in dispute that the second respondent, Urelapa Limited, was validly served with the claim. Nor is it in dispute that the default judgment was never properly served on either of the first respondents. Mr Boar accepted during the appeal hearing that the default judgment had never been served on any respondent. He did not appear to understand that lack of service of the default judgment was in and of itself fatal to a successful grant of leave to appeal, as we now explain.

Leave to appeal an interlocutory order is required

5. Mr Boar filed a notice and grounds of appeal. However, the decision to set aside the default judgment is interlocutory in nature, as it does not finally dispose of the proceeding. Thus, Mr Boar was required to seek leave to appeal, but did not do so. Leave to appeal against an interlocutory order is required by rule 21 of the Court of Appeal Rules 1973, which relevantly provides that no notice of appeal against an interlocutory order can be filed, unless leave to appeal has first been obtained from a Supreme Court judge. If leave is refused, then leave must be obtained from the Court of Appeal.

6. Mr Boar did not seek leave to appeal from the primary judge. He did not make an application for leave to appeal to the Court of Appeal, despite a direction made by the Court of Appeal review management judge on 15 December 2025 requiring Mr Boar to file such an application.

7. Despite Mr Boar's failure to comply with the Rules and the judge's direction, we treat the notice of appeal as an application for leave to appeal.

The approach to an application for leave to appeal

8. Whether or not to grant leave to appeal is a matter of discretion. As this Court said in *Stage Four Ltd (as Trustee for the Montreal Trust) v 100% Pur Fun Ltd* [2024] VUCA 3:

> *"26. Generally, when considering whether an applicant should be granted leave to appeal, this Court considers whether there is sufficient reason to doubt the correctness of the decision of the primary judge so as to warrant the matter being reconsidered by this Court and whether, assuming the judgment in question to be wrong, the applicant will suffer substantial injustice if the decision stands".*

Discussion

9. Pursuant to rule 9.5(3) of the Civil Procedure Rules ("CPR") the Court has a discretion to set aside a default judgment in certain circumstances. Rule 9.5 (3) provides:

> *"9.5(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."*

10. The primary judge held that service was incomplete which in itself was sufficient to justify setting aside the default judgment. For reasons we will now explain, we see no error in the primary judge's finding.

11. A Supreme Court claim must be personally served on a defendant: rule 5.2 CPR. Rule 5.8 (1) of the CPR sets out what constitutes personal service on an individual. Personal service on an individual is valid if a person is given a copy of the document. If a person refuses the document, the document must be put down in their presence and the person must be told what it is. This will constitute personal service. Further, there must be evidence of what the person serving the document actually did to serve a party in order to prove service has been properly undertaken. Merely stating that a document has been served does not constitute proof of service.

12. There is no evidence that the first respondents were personally served with the claim. There is a sworn statement of Sakary Faithful confirming that the second respondent company was personally served. That statement is silent as to personal service on the first respondents. There is a purported service report relating to service of the claim on the first respondents in the appeal books. It is unclear to us why that document was included. It is not evidence. It does demonstrate that Allan Pamavari was never served with the claim, and that at best, there was an attempt to serve Tahe Pamavari, who refused to accept the documents. There is nothing in that document to show that the document was put down in Tahe Pamavari's presence and an explanation given to Tahe Pamavari about the document.

13. Even more significant is that there is no evidence that the default judgment was ever served on the respondents, as is required by rule 9.2(6) of the CPR. Rule 9.2(6) provides:

> ***"Default judgment-claim for fixed amount***
> *9.2*
> ....
> *(6) The Claimant must serve a copy of the default judgment on the defendant."*

14. It is mandatory for a default judgment to be served on a defendant. As we have said, Mr Boar conceded that the default judgment had never been served on the respondents. That is fatal to a grant of leave to appeal, because the appeal would have no prospect of success, given this fundamental failure to serve the default judgment. Natural justice requires that a defendant with a judgment against them must have knowledge of it, before any enforcement action is taken.

15. Further, we concur with the primary judge's finding that there may be some real issues about the amount of the outstanding legal fees. We do not need to go into detail about this matter, because that lack of proof of service of the claim on the first respondents and the lack of service of the default judgment mean that the primary judge was correct to set aside the default judgment.

16. The respondents raise issues about the legal costs rendered which appear to have merit. They dispute the VT11 million "*commission*" claimed for the sale of Urelapa island, on the basis that the applicants did not sell Urelapa island, so deny any liability to pay a "commission". Some of the bills of costs rendered relate to Supreme Court proceedings where costs were awarded in the respondents' favour. There is no evidence as to whether the costs awarded in the Supreme Court cases were received by Mr Boar and then defrayed against the amount owing by the respondents. Further, a review of the bills themselves would indicate that some of the amounts charged by Mr Boar for individual tasks seem excessive, as contended by Mrs Hamer, particularly as lawyers must not charge clients more than a fee that is fair and reasonable: See s 50 of the Rules of Etiquette and Conduct of Legal Practitioners Order No. 106 of 2011. It is also unclear from some

of the bills exactly who the client was. We would also note that since Mr Boar's claim was filed and default judgment entered, Allan Pamavari has died and the second respondent, Urelapa Ltd, has been deregistered.

17. For the reasons set out above, the primary judge was correct in setting aside the default judgment. The application for leave to appeal is misconceived given the conceded lack of service of the default judgment on the respondents. That is a fatal flaw in the leave application. In such circumstances, there is no merit in the proposed appeal.

18. Therefore, leave to appeal is declined.

Costs

19. Mrs Hamer seeks indemnity costs. This is on the basis that seeking leave to appeal was firstly, misconceived and hopeless, and secondly, Mr Boar's conduct in filing an appeal without having first obtained leave. He failed to seek leave to appeal from the primary judge, and failed to file an application for leave to appeal when directed. As Mrs Hamer said, Mr Boar had been directed by the review management judge to file an application for leave to appeal, but he failed to do so.

20. We agree that Mr Boar should pay indemnity costs. The application for leave was hopeless, for the reasons set out above. Further, Mr Boar filed an appeal without first having obtained leave to appeal. He did not seek leave to appeal from the primary judge as required by the Court of Appeal rules. He then failed to comply with a direction to file an application for leave to appeal.

Outcome

21. Leave to appeal is declined.

22. Mr Boar is to pay indemnity costs to the respondents within 14 days of a bill of costs being rendered to him.

Dated in Port Vila, on this 13th day of February, 2026

BY THE COURT

REPUBLIC OF VANUATU COURT OF APPEAL COUR D'APPEL REPUBLIQUE DE VANUATU

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Honourable Chief Justice Vincent Lunabek