

**BETWEEN:** Hans YQ Han  
Claimant

**AND:** Gracia Shadrack  
Defendant

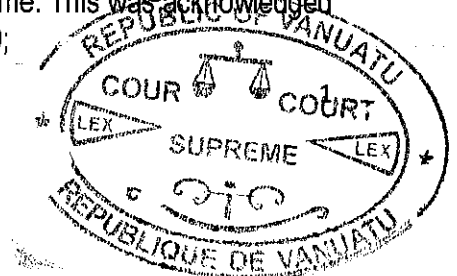
Date of Hearing: 20 May 2022  
Before: Justice V.M. Trief  
In Attendance: Claimant – Mr R. Rongo  
Defendant – no appearance (Mr J. Tari)  
Date of Decision: 23 May 2022

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**DECISION AS TO APPLICATION TO SET ASIDE DEFAULT JUDGMENT**

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1. Having considered the Reply to Application and Sworn statement of Mr Hans filed on 19 May 2022, and having heard Mr Rongo, I hereby **decline and dismiss** the Application to Set Aside Default Judgment filed on 8 February 2022 (with supporting sworn statement filed on 17 February 2022) for the following reasons:
  - a. The Claimant alleges in the Claim filed on 15 July 2021 that he and the Defendant had a contract for the Defendant to borrow VT5,000,000, to be repaid in a month's time. Only VT200,000 has been repaid therefore he seeks recovery of the debt of VT4,800,000;
  - b. The Defendant in para. 3 of the Application to Set Aside Default Judgment accepted that he requested to borrow funds from the Claimant:
    4. *The Defendant requested funds to be borrowed from the Claimant.*
  - c. The Defendant also accepted in para. 5 of the Application that the funds were given to an unnamed third party who in turn only gave the Defendant VT2,000,000 but not VT4,800,000 as the balance was allegedly kept by that third party;
  - d. There is no question then that the parties had a contract for the Defendant to borrow VT5,000,000, to be repaid in a month's time. This was acknowledged by the Defendant in already repaying VT200,000;



- e. I consider it telling that the Defendant has not put before the Court a proposed Defence as to liability;
- f. The only submissions made were in the Application itself in which Mr Tari submitted that, 'There is a need for the Court to decide on the appropriate amount to be refunded by the Defendant to the Claimant'. In other words, that he should repay only VT2,000,000;
- g. In the circumstances, I consider that the Default Judgment should stand and the correct procedure if the Defendant believes that he should only pay a certain amount (and presumably others pay the balance owed) is for the Defendant to file a Third Party Notice against person(s) not yet party to the proceeding: see rule 3.7(1) of the *Civil Procedure Rules*:

3.7 (1) *If a defendant claims a contribution, indemnity or other remedy against a person not a party to the proceeding, the defendant may file and serve a notice (a "third party notice") on that person stating:*

*(a) that the defendant claims the contribution, indemnity or other remedy; and*

*(b) that the person is a party to the proceeding from the date of service;*

- h. Mr Tari also submitted that the Defendant was self-represented therefore thought the claim against him was only for VT2,000,000. Mr Rongo submitted that this was a mere excuse as at the material times, the Defendant retained not one but two lawyers to represent him in his Constitutional application. That may be so however I accept that the Defendant did not retain any lawyer to advise him as to this matter therefore he did not understand that any default judgment would be for VT4,800,000 and not VT2,000,000. The Defendant now has the opportunity to serve a Third Party Notice against the persons who he claims a contribution or other remedy from so that he need repay only the balance of VT1,800,000, not VT4,800,000; and
2. For the reasons given, the Default Judgment dated 12 November 2021 **stands**.
  3. The Defendant is to file and serve any Third Party Notice together with a copy of today's Decision **by 4pm on 20 June 2022**.
  4. The Third Parties are to file and serve any Defence to Third Party Notice **by 4pm on 11 July 2022**.
  5. The Defendant is to file and serve sworn statements in support of the Third Party Notice **by 4pm on 21 July 2022**.
  6. This matter is listed for Pre-Trial Conference at **8am on 22 July 2022**.

DATED at Port Vila this 23<sup>rd</sup> day of May 2022  
BY THE COURT

*V.M. Trief*  
Justice V.M. Trief

