

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

Civil Case
No. 22/1309 SC/CIVL

BETWEEN: **Cyrille Mainguy trading as Mainguy
Consulting Engineer and Project
Management**

Claimant

AND: **Republic of Vanuatu**

Defendant

Date: 2 August 2023
Before: Justice V.M. Trief
Counsel: Claimant – Mr D.K. Yawha
Defendants – Mrs F.W. Samuel

DECISION AS TO DEFENDANT'S APPLICATION TO SET ASIDE DEFAULT JUDGMENT

A. Introduction

1. The Claimant Cyrille Mainguy trading as Mainguy Consulting Engineer and Project Management filed Claim for debt recovery. The Defendant the State did not file a defence therefore default judgment was entered.
2. The State now seeks an order setting aside the default judgment. This is the decision.

B. Background

3. In or about April 2022, Enterprise Dinh Van Tu Ltd constructed 3 new buildings known as the Vila Central Hospital ('VCH') New Containment & Transitions Facility Building at the VCH premises in Port Vila.
4. The Claimant provided services in relation to this project including providing building designs, and the supervision and management of the construction works.
5. He presented two invoices for payment. These remain unpaid. Subsequently, on 7 December 2022, Mr Mainguy filed the Claim in this matter seeking payment on the two invoices.
6. No Defence was filed resulting in Default Judgment (Fixed Amount) dated 29 May 2023.

C. Application and Submissions

7. On 28 June 2023, the State filed Application to Set Aside Default Judgment (the 'Application') and supporting Sworn statement of Johnson Binaru, Director General of the Ministry of Public Utilities. The State's proposed Defence was attached to Mr Binaru's sworn statement. The grounds of the Application are that the State's officers were caught up in other official duties and overlooked providing instructions in time for a Defence to be filed; and that the State has an arguable defence as to the quantum of the Claim.
8. The Application was opposed. On 20 July 2023, Mr Mainguy filed submissions in response and on 21 July 2023, his Sworn statement in support. It was submitted that no adequate reasons have been given for the delay and failure to file a Defence, that carelessness and neglect of duty are insufficient to satisfy the Court why the Claim was not defended, and that the State does not have an arguable defence.

D. Discussion

9. Rule 9.5 of the Civil Procedure Rules ('CPR') provides as follows:

9.5 (1) *A defendant against whom a default 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.*

10. The only reason given for the non-filing of a defence is that the State's officers were caught up in other official duties and overlooked providing instructions in time for a Defence to be filed. Mr Binaru apologised for not progressing the matter after a meeting held on 6 April 2023 with State counsel however there is no information given as to when the Claim was first forwarded to him (presumably not in April 2023, 4 months after the Claim was filed) and other public officers for instructions, why a defence was not filed within 14 or 28 days of receipt of the Claim, nor why the Court's Orders dated 5 April 2023 requiring a Defence to be filed were not complied with. The explanation given for the delay is woefully bereft of detail.
11. It is alleged in the draft defence that liability is accepted but quantum disputed, and that Mr Mainguy should be entitled to an assessment based on *quantum meruit*.



12. The State has not in the Application or the proposed defence referred to the Judgment dated 5 June 2023 in *Enterprise Dinh Van Tu Limited v Republic of Vanuatu*; Civil Case No. 2290 of 2022 ('CC 22/2290') however Mr Yawha did in his submissions. I consider that the State is bound by the findings made in that Judgment as to the existence of and value of the contract between Enterprise Dinh Van Tu and the State, for which Mr Mainguy provided services that by the Claim, he is seeking payment for.
13. Given the existence of the Judgment in CC 22/2290, I consider that there is an arguable issue as to the quantum that Mr Mainguy is entitled to and that I must be assisted by submissions from counsel. Accordingly, I consider that notwithstanding the inadequate explanation given for the delay, the just course is to set aside the Default Judgment, grant leave for the State to file its Defence in the terms proposed, and then list the matter for assessment of quantum given the State's acceptance of liability. I will so order.

E. Result and Decision

14. For the reasons given, the Defendant's Application to Set Aside Default Judgment is **granted** and the Default Judgment (Fixed Amount) dated 29 May 2023 **set aside**.
15. The Defendant is granted leave to file and serve Defence in the terms proposed, **by 4pm on 11 August 2023**. Liability is not disputed therefore I order as follows:
 - a. The Claimant is to file and serve any further sworn statements as to quantum **by 4pm on 25 August 2023**;
 - b. The Defendant is to file and serve any further sworn statements as to quantum **by 4pm on 8 September 2023**;
 - c. The Claimant is to file and serve any sworn statements in reply and submissions as to quantum with reference to the Judgment dated 5 June 2023 in CC 22/2290 **by 4pm on 22 September 2023**;
 - d. The Defendant is to file and serve sworn statements and submissions as to quantum with reference to the Judgment dated 5 June 2023 in CC 22/2290 **by 4pm on 6 October 2023**; and
 - e. The Claimant is to file and serve submissions in reply **by 4pm on 20 October 2023**.
16. The Court will determine quantum on the papers after that.

DATED at Port Vila this 2nd day of August 2023
BY THE COURT


Justice Viran Molisa Trief

