

BETWEEN: Nanjoo Kim
Claimant

AND: BCD Limited
Defendants

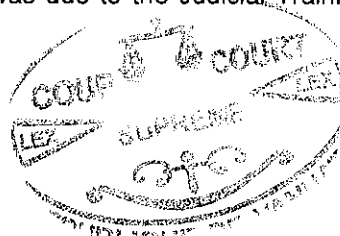
Dates of Conference: 15th February 2024
Date of Ruling: 29th February 2024

Before: Justice Oliver A Saksak

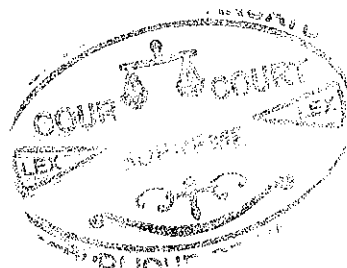
Counsel: Mrs Marisan Vire for the Claimant (In absentia)
Mr Nigel Morrison for the Defendant (In absentia)

RULING

1. By notice dated 2nd February 2024 this matter was returnable for show cause conference on 15th February 2024 at 0800 hour which was sent by email to both counsel on 6th February 2024.
2. There is no record on file showing that Counsel or parties attended Court on the returnable date.
3. In any event there is nothing on file by Mrs Vire showing any explanation or plea for the matter being struck out.
4. From the record this claim was filed on 4th November 2022 and defence was filed as late as 29th May 2023.
5. The matter was then listed for management first on 24/01/2023 when no parties or counsel appeared. It was adjourned to 03/02/2023 but adjourned again to 01/03/2023 and relisted for 30/03/2023 by notice dated 24/03/2022. This was due to the Judicial Trainings scheduled for 3rd February 2023.



6. The matter was relisted for 11/04/2023 by notice dated 4/4/2023. On that date Mr Morrison appeared via telephone to the Judge in chambers at the Court in Luganville. Mrs Vire did not attend. By that date it appeared the claim had not been served on Ridgeway Blake Lawyers. Direction was issued for service, within 7 days on that date with liberty to the defendant for a defence within 14 days. The matter was made returnable on 22nd May 2023.
7. On 29th May 2023 the defendant filed its defence.
8. Nothing seem to have happened from 22nd May 2023 until 24th August 2023 when the Court re-issued notice of conference by video-link returnable on 18th September 2023. Again there is no record of what occurred on 18/09/2023 and the Court re-issued a notice on 19th December 2023 returnable on 29th January 2024.
9. On 29 /01/2024 Mr Morrison appeared without Mrs Vire and proposed a notice to show cause be issued for the next returnable date. On 2/02/2024 the Court issued a notice for show cause returnable on 15th February 2024.
10. Following the non-appearances of Counsel for the claimant since the date of filing the claim, it appears even uncertain if the claim has been served pursuant to the direction dated 11/04/2023. However in light of the defence filed by the defendant's lawyer, it may be that service is a non-issue.
11. But there has been obvious lack of continuity and active steps taken by the claimant to ensure the proceeding progresses in any meaningful and serious way. This has happened since 4th November 2022 when the claim was filed. It has been more than 2 years without any active steps taken by the claimant to ensure the proceeding continues.
12. Rule 9.10 gives discretionary power to the Court to strike out a claim in circumstances where a claimant fails to take necessary steps in the proceeding to ensure the proceeding continues, and where there has been a failure to comply with a Court order.
13. Here, the claimant has failed in both criteria and circumstances. And it has been more than 6 months with the failures continuing.



14. Under those given circumstances, it has become necessary for the Court to utilize its powers under Rule 9.6 (2)(a) and (d) to order that the claim and proceeding of the claimant be hereby struck out in its entirety.

15. There will be no order as to costs. Each party bears its own costs.

**DATED at Port Vila this 29th day of February 2024
BY THE COURT**

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**Hon. Oliver A Saksak
Judge**

