



THE SUPREME COURT OF NAURU

[CIVIL JURISDICTION]

Civil Suit No. 18 of 2018

Between: Landowners of Portion 10 Denigomodu District

PLAINTIFFS

AND: EHCTS, Denigomodu District

RESPONDENT

Before: Judge Rapi Vaai

APPEARANCES:

Appearing for Plaintiff: Dale Cecil (Pleader)

Appearing for the Respondent: David Aingimea

Date of Hearing: 3rd of May, 2019

Date of Ruling: 3rd of May, 2019

Ruling

1. The claim by the plaintiffs as lessors against the defendants as lessees for outstanding rent monies, interests, damages and costs was on the 8th April, 2019 set down by the Registrar for formal proof as the defendant has taken no steps to defend the plaintiff's claim.

Background

2. In previous proceedings which commenced in 2018 the current defendants who were then plaintiffs obtained an interim injunction restraining the

current plaintiffs, who were the defendant's, from interfering with the defendant's use of land Portion 10 from threatening any of the defendant's employees, clients and families until the dispute is disposed of by the court.

3. The plaintiff upon receiving the injunctive orders filed an application and supporting affidavits to discharge the interim injunction. On the 7th November 2018 the Registrar ordered the defendants to file response by the 21st November 2018.
4. On the 21st November 2018 the defendants made no appearance; neither were any affidavit filed. No explanation was before the court for the non-appearance and non-compliance. The statement of claim, summons and Interim injunction were struck out and discharged.
5. The current plaintiffs then subsequently filed the present action. On the 1st March 2019 the plaintiff's claim was mentioned Affidavit of service dated 26th February 2019 indicated that the service on the defendant of the claim was affected through Linus Ika the shipping Manager, on the 22nd February 2019 at the defendant's office at Denig. The defendant made no appearance. With consent of counsel for the plaintiff, the court adjourned matter to the 18 the March 2019 for further mention. The plaintiff's pleader and the court were to notify the defendant of the mention date.
6. On the 18th March 2019 the defendant did not appear. No response was received in relation to the claim. The court refused to enter default judgment; it instead ordered the plaintiff to formally prove the claim. It was then adjourned to the 29th March 2019 before the Registrar to set a date for formal proof. The Registrar did make some orders on the 29th March and adjourned the matter to the 8th April and on that date it was adjourned to today for hearing before me.
7. Prior to this morning the defendant by Notice of Motion filed and dated 29th April 2019 sought leave of the court to :
 - (i) not to enter judgment by default
 - (ii) that the defendant has a defense which will be filed within 21 days.

In support of the motion, an affidavit sworn by one Alumita Lekenaua was filed. The affidavit deposed of the history of the dealings between the parties over the use by the defendants of the land in dispute and of the attempts to finalise a written lease. Alumita Lekenaua was the former in house counsel for the defendants. Mr Clodumar was then legal advisor for the plaintiffs before Mr Cecil took over.

8. The plaintiff object to the motion by the defendants. A memorandum was filed to support the entry of judgment by default against the defendants for the lease of the plaintiff's land.

A rate of \$ 8.50 per square meter per annum is proposed. A total area of 222.19 square meters is the rental area. July 2014 is the commencing date proposed. Total rent claimed is \$11,987-18

Interest and costs are also claimed, increasing the total award to \$22,427-26

9. There is also additional claim under the headings
 - (a) Estimated Damages (to be assessed), and
 - (b) Landowners Grievances (to be assessed).

10. The plaintiffs have not filed any memorandum, affidavit or document to prove the damages claimed under the two headings in paragraph 9 above. The order made on the 18th March 2019 for the plaintiffs to formally prove its claim was not complied with when this matter was called on the 29th March. It was then adjourned to the 8th April and again formal proof steps were not taken. On the 8th April it was adjourned to this morning.

11. The plaintiffs have before the court today a memorandum to formally prove the rents owing. Mr Cecil for plaintiff's advised the court the plaintiffs still wish to pursue the claims under the two heads referred to in paragraph 9 above.

The plaintiffs cannot proceed this morning to formally prove those two heads of damages.

12. The rental rates proposed by the plaintiffs support the substance of the contents of the supporting affidavit by Alumita Lekenaua that the defendant was always willing to pay those rates to the plaintiffs.

13. The total amount of \$22,427-26 now quantified by the plaintiff to be rent owing is substantially less than the \$177,700-90 claimed in the Statement of Claim as the amount of unpaid rent.

14. In any event the plaintiffs cannot proceed today to formally prove damages under the other two heads namely;
- (a) Estimated Damages; and
 - (b) Landowners Grievances

Whether the claims under the above two heads arise from contract, tort or whatever remains to be explained.

15. In any event having perused the file before the hearing I found on file a Memorandum of Appearances dated 11th March 2019 filed by the defendant's counsel. Which means that when the order was made on the 18th March 2019 as referred to in paragraph 6 above, the defendant had taken steps to defend the action.
It seems very likely the Memorandum of Appearance was not on the file on the 18th March 2019.

16. The progress to entry of judgment for the plaintiff has been delayed substantially by the non-performance of the plaintiffs themselves.

17. The application to set aside judgment is unnecessary as no judgment has been entered.

18. The plaintiff cannot proceed to formally prove its claim.

Results

- (1) This matter is adjourned to the 16/5/19 for the defendant to file Statement of Defense.
- (2) Costs are reserved.

Dated this 3rd day of May 2019



Judge Rapi Vaai

