

IN THE SUPREME COURT OF NAURU AT YAREN **CIVIL JURISDICTION**

Civil Suit No.14 of 2020

BETWEEN:

ANGELA GAIROE of Yaren District

Plaintiff

AND:

MILTON ROSS DUBE of Aiwo District

Defendant

BEFORE:

Keteca J

DATE OF HEARING:

11th October 2024

DATE OF RULING:

18th October 2024

CITATION:

Gairoe v Dube

KEYWORDS:

Order 30 Rule 2 application to set aside judgment

APPEARANCES:

Counsel for the Plaintiff:

Mr R. Tagivakatini

Counsel for the Defendant: Mr T. Tannang

RULING

A. BACKGROUND

- 1. The substantive matter was listed for hearing on 22nd August 24. This was after several previous adjournments due to the non-compliance of court directions by Counsel for the Defendant. When the matter was called on 22nd August 24, Mr Tannang did not turn up. Ms Sariah, our court clerk informed the court that Counsel for the Defendant had called another clerk, Ordell, that he would not be coming to court. He would be seeing a specialist instead. Specialist in what is not known.
- 2. Counsel for the Plaintiff, Ms Hazelman informed the court that she had been speaking to Mr Tannang since Monday 19th August. She reminded him via email that he needed to file an affidavit in response. Mr Tannang said that he would file the affidavit by Wednesday 21st August. The Plaintiff has come in from overseas for the hearing.

- 3. Mr Tannang has not formally informed Ms Hazelman nor the court of his supposed specialist visit. Counsel for the Plaintiff asked that the matter proceed for formal proof. I agreed. The claim was formally proved.
- 4. I have yet to deliver my judgment on this matter.

B. MOTION TO SET ASIDE

- 5. On 10th October 2024, Counsel for the Defendant filed a Motion to Set Aside Judgment and the matter be re-heard. He relies on Order 30 Rule 2 of the Supreme Court Rules and the inherent jurisdiction of the Court.
- 6. Mr Tannang has filed an affidavit in support and says:
 - i. At 0917 on the 22nd of August, he had emailed Ms Sariah Ika, clerk of the Supreme Court and Ms Hazelman 'if we could vacate the hearing as I was called in to see gastroenterologists.'(sic)
 - ii. He attached a copy of this email.
 - iii. The email also shows the response from Ms Hazelman at 1158am that the email was received late. Based on her client's instructions, she had objected to any further adjournments. The matter proceeded on an undefended basis.
- 7. It is noteworthy that there is no evidence that Mr Tannang did see the specialist as per his email.

C. PLAINTIFFS RESPONSE

8. Mr Tagivakatini submitted that the application is premature as there is no judgment yet.

D. ORDER 30 RULE 2

- 9. It provides:
 - '(1) Any judgment, order or verdict obtained where one party does not appear at the trial may be set aside by the court, on the application of that party, on such terms as it thinks just.
 - (2) An application under this rule shall be made within 7 days after the trial.

E. DICUSSION

- 10. I agree with Mr Tagivakatini that the application before the court is premature. Order 30 Rule 2 refers to "any judgment, order or verdict.." There is no judgment yet.
- 11. The application is dismissed with costs in the cause.

DATED this 18th day of October 2024.

Kiniviliame T. Keteca

Acting Chief Justice

Page 2 of 2