

BETWEEN: **Walter Alatoa**
Appellant

AND: **Willie Koko, Moise Paise, Sandy Kaltabang**
Respondents

Date of Hearing: 4 May 2021

Coram: *Hon. Chief Justice V. Lunabek*
Hon. Justice R. Asher
Hon. Justice R. White
Hon. Justice D. Aru
Hon. Justice G. Andrée Wiltens
Hon. Justice V.M. Trief

Counsel: *Mr P. Fiuka for the Appellant*
Ms P.K. Malites for the Respondent S. Kaltabang

Date of Decision: 14 May 2021

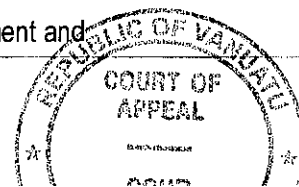
JUDGMENT

A. Introduction

1. This is an appeal against the striking out of the Claim on an application to set aside default judgment.

B. Background

2. The Appellant Walter Alatoa filed a Claim in the Supreme Court for eviction of the Respondents Willie Koko, Moise Paise and Sandy Kaltabang from leasehold title no. 12/0913,117.
3. On 15 April 2020, the Supreme Court entered default judgement and issued eviction orders against the Respondents.
4. On 13 May 2020, Mr Koko filed an application that the default judgment be set aside. Mr Kaltabang filed a similar application on 8 June 2020. The primary judge directed the parties to file submissions and indicated that he would make his decision on the papers.
5. By judgment dated 18 February 2021, the primary judge set aside the default judgment and then dismissed the Claim.



C. Discussion

6. Mrs Malites accepted from the outset that default judgment is not available in eviction claims. Part 9 of the *Civil Procedure Rules* provides for default judgment in only 2 specific circumstances: claims for a fixed amount and claims for damages. Accordingly, the matter had to be set down for hearing of the Claim, even on short notice, and a formal trial held: *Wilfred v Westpac Banking Corporation* [2012] VUCA 31.
7. In the circumstances, the primary judge correctly set aside the default judgment however he erred in then determining the Claim and dismissing it in the absence of a trial. The appeal must be allowed and the matter returned to the Supreme Court for hearing of the Claim.
8. Mr Paise was present in Court but unrepresented. Mrs Malites spoke with him and confirmed that he agreed that the matter be returned to the Supreme Court. Mr Koko was served the appeal documents and notice of the hearing and has chosen not to appear.

D. Result

9. The appeal is allowed. The orders in paragraphs 21 and 25 of the judgment dated 18 February 2021 dismissing the Claim are quashed.
10. The matter is returned to the Supreme Court, to Justice Saksak, for trial.
11. There is no order as to the costs of the appeal or of the Applications.

DATED at Port Vila this 14th day of May 2021

BY THE COURT

**Hon. Chief Justice
Vincent Lunabek**

