

**BETWEEN:**

**ROLLAND TOURA**

C/o Jorge Jason Bogiri of Collin Bright Leo  
Lawyers

**Claimant**

**AND:**

**MACKLEN HAEBUHU  
LOREZO JELLY PAKOA  
ELIANE PAKOA  
NADINE LENGSAU**

Lugarville, Santo

**Defendant**

*Date of hearing:* 23.07.24

*Before:* Magistrate Toaliu

*Appearance:* none

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**STRIKE OUT ORDER**

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1. A Notice of show cause was issued by the court on 20<sup>th</sup> June 2024 requiring the attendance of the claimant today to explain why the matter should not be struck out. The claimant has failed to make appearance and no communication was made to the court to explain their absence today.

**Background**

2. The claimant filed a claim on February 10, 2024, along with an urgent application for an injunction order. On February 26, 2024, the court issued an ex-parte restraining order against the defendants, and scheduled a hearing for April 4, 2024, at 10:00 AM.
3. On April 4, 2024, counsel for the claimant Mr. Bogiri attended the court, but the defendants did not. Since there was no proof of service filed, the court could not determine whether the defendants had been served with the claim and the orders issued. The case was adjourned to April 26, 2024, at 2:00 PM.
4. On April 25, 2024, Mr. Bogiri informed the court via email of his inability to attend the hearing due to unforeseen circumstances. Consequently, the case was rescheduled to May 20, 2024, at 9:30 AM. The claimants were notified of this new hearing date via email to their counsel. However, neither party appeared on the rescheduled date.
5. The hearing was subsequently postponed to May 28, 2024, at 10:30 AM, with a notice sent to the claimant's counsel. Again, there was no appearance from either party. The case was then adjourned to June 20, 2024, at 2:30 PM, with a notice emailed to the claimant's counsel.

6. On June 20, 2024, both parties failed to appear once more. As a result, the Court directed that a notice to show cause be issued. This notice was emailed to the claimant's counsel on June 21, 2024. The show cause hearing was scheduled for today, July 23, 2024, at 10:15 AM, but again, neither party appeared.
  
  7. I consider rules 9.10(1) & 9.10(3) of the CPR. It states:
    - (1) *This rule applies if the claimant does not:*
      - a. *Take the steps in a proceeding that are required by these rules to ensure the proceeding continues; or*
      - b. *Comply with an order of the court made during a proceeding.*
  
  - (3) *If not steps have been taking in a proceeding for 3 months, the court may:*
    - (a) *Give the claimant notice to appear on the date in the notice to show cause why the proceeding should not be struck out; and*
    - (b) *If the claimant does not appear, or does not show cause, strike out the proceeding.*
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8. A notice to show cause has been issued by the court after no step was taken in the proceeding for 3 months. The claimant has not appeared today for show cause.
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9. Since the filing of the claim on February 10, 2024, the claimant has failed to take steps required by the civil procedure rules to progress the proceedings. A proof of service was not filed to show that the claim was served to defendants. Apart from the exchange of emails with the court, no concrete steps were taken to progress the proceeding.
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10. Accordingly, pursuant to rules 9.10 (1) and 9.10(3), the court hereby strikes out this proceeding in its entirety with no order as to costs.

**DATED at LUGANVILLE on this 23<sup>rd</sup> day of July 2024**

**BY THE COURT**



**MAGISTRATE**