

**IN THE SUPREME COURT OF
THE REPUBLIC OF VANUATU**
(Civil Jurisdiction)

CIVIL CASE No.117 OF 2008

BETWEEN: DANIEL KALORIB
Claimants

AND: AMSTRONG MALA
Defendant

*Mr Henzler Vira for the Claimant / Respondent
Mr James Tari for the Defendant / Applicant*

RULING ON APPLICATION
TO SET ASIDE DEFAULT JUDGMENT

This is an application to set aside a Default Judgment filed 26 June 2009. It is filed with a sworn statement of the Defendant, Amstrong Mala filed on same date in support.

The reason for the application is that the Defendant never come to Court and does not know what to do.

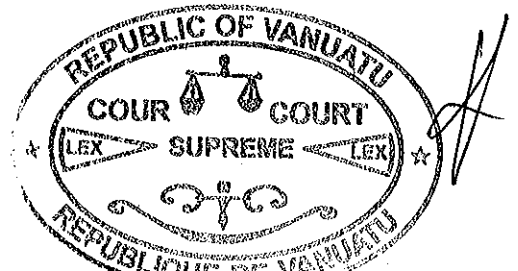
The background information shows the following:

- The Claimant filed his Supreme Court Claim against the Defendant on 14 July 2008, among other matters, for damages for removing parts of the Claimant's vehicle which is in the Defendant's garage for repair and used those as spare parts for other vehicles and consequential losses.

The Claimant serves his claim on the Defendant.

The Defendant files no response nor defence as required by the Rules.

A conference was called on this matter on 2 January 2009. Another conference was called on 29 January 2009. The Defendant was advised to get a lawyer and filed a response or a defence before the next conference on 19 February 2009.



On 19 February 2009, the Claimant was present. The Defendant was also present. The Claimant requested a Default Judgment.

The Court issued a Default Judgment on 14 February 2009.

On 26 June 2009, the Defendant/Applicant filed the present application to set aside the Default Judgment of 19 February 2009 with a sworn statement in support on the same date.

The ground of the application is that the Defendant does not know about the process of the Court and does not know about his rights.

I have heard Mr James Tar for the Defendant / Applicant on the application. I have also heard Mr Henzler Vira for the Claimant / Respondent on his response to the application. I strike out the application for two reasons.

First, the application does not challenge any irregularity made by the Court when the Court entered the Default Judgment on 19 February 2009. The Default Judgment was made pursuant to Rule 9.1 and 9.2 of the Civil Procedure Rules. The sworn statement of the Defendant does not disclose any evidence of irregularity.

Second, there is no defence filed nor any intended defence filed, despite an assertion at paragraph 6 of the Defendant's sworn statement of 26 June 2009 that he has a strong defence. The sworn statement of the Applicant, Armstrong Mala of 2009 does not show any evidence that the Defendant / Applicant has a strong defence warranting for the Default Judgment to be set aside.

For these reasons, the application is struck and I made no order as to costs.

DATED at Port-Vila this 3rd day of July 2009

BY THE COURT

**Vincent LUNABEK
Chief Justice**

