

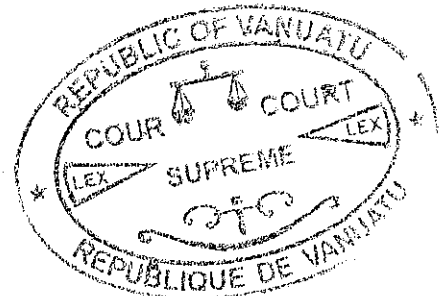
BETWEEN: Patison Toungen
Appellant

AND: Kayson Aru and Sam Philion
Respondents

Date of HEARING: 15th day of July, 2022 at 9:00 AM
Before: Justice Oliver Saksak
In Attendance: Appellant in person- unrepresented
No appearances for the respondents

DECISION


1. This appeal is dealt with on the record.
2. Both the appellant and the respondents are not represented. This factor contributed to the claim being struck off in the Magistrates Court.
3. The Magistrates Court struck out the appellant's claims on 1st December 2020 because the appellant failed to comply with the Court's direction and also that he failed to take necessary steps to ensure the proceeding continued.
4. The appellant seeks an order to reinstate his case. He argues there was injustice in striking out his claim when he claims he has good prospect of success.
5. The respondents were not present for the hearing. I did not think it necessary that they should. They did not show any seriousness in the Magistrate's Court in defending the claim although they had through Mr Tasso filed a defence on 31st October 2019.
6. The Magistrate recorded at paragraph 2 that the defendant had failed to file a response, defence and sworn statements. That was in error.



7. There was in fact a defence but no sworn statements. The defence was filed well outside of the period required by the Court.
8. The appellant filed his claim on 13th March 2019. He effected service on the first defendant on 1st April 2019 and on the second defendant on 2nd April 2019. Subsequently on 13th June 2019 he filed his request for default judgment.
9. The appellant was entitled to his default judgment but was made to wait without good cause to 31st October 2019, when the defendant filed their defence then asked to have the default judgment set aside. And they had and never have any evidence to support their defence. Therefore to strike out the claim under those circumstances was unfair and unjust.
10. The appellant as claimant had done his part. He filed his claim, application, undertaking and a supporting statement. Those documents were served on the defendants. They did nothing even when the Court below required them to file sworn statements but they did not. And all the blame fell on the appellant. That is a clear error.
11. The appeal is allowed.
12. The case is remitted to the Magistrates Court for a rehearing.
13. The Registrar of the Magistrate's Court is required to reinstate this proceeding and have it relisted for hearing.

DATED at Port Vila this 18th day of July, 2022.

BY THE COURT

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Oliver Saksak
Judge

