

IN THE HIGH COURT OF FIJI
AT SUVA
CIVIL JURISDICTION

Civil Action No. HBC 243 of 2023

BETWEEN:

STEVE RATILA MOROVAN
PLAINTIFF

AND:

THE COMMISSIONER OF FIJI CORRECTIONS SERVICE
1ST DEFENDANT

AND:

THE MINISTER OF JUSTICE
2ND DEFENDANT

AND:

ATTORNEY GENERAL OF FIJI
3RD DEFENDANT

BEFORE:

Acting Master L. K. Wickramasekara

COUNSELS:

Messrs. Karunaratne Lawyers for the Plaintiff
Attorney Generals Chambers for the Defendants

Date of Hearing:

By way of Written Submissions

Date of Ruling:

21st February 2025

RULING

01. The Plaintiff in this matter has filed its Writ of Summons and the Statement of Claim on 09/08/2023. The claim is arising out of an alleged assault on the Plaintiff by the employees, agents and/or servants of the 1st Defendant, whilst the Plaintiff was remanded in the custody of the 1st Defendant. The claim is based on alleged negligence and breach of duty of care by the 1st Defendant.
02. The Writ and the Statement of Claim has been served on all the Defendants on 13/09/2023 and the Affidavit of Service has been duly filed of record on 19/09/2023.
03. The Attorney General's Chambers have filed Acknowledgment of Service on 27/09/2023 and has duly acknowledged the service of the Writ and the Statement of Claim on behalf of all the three Defendants and has confirmed their intention to defend the proceedings.
04. However, as stipulated by the High Court Rules, the Defendants thereafter failed to file their Statement of Defence within the stipulated time nor there were any summons filed for extension of time to file the Statement of Defence until 12/04/2024.
05. The Plaintiff, on 26/02/2024 filed Summons pursuant to Order 77 Rule 6 of the High Court Rules 1988, to enter Default Judgment against the Defendants. This application was supported with the Affidavit of the Plaintiff sworn on the same day. This application has been duly served on the Attorney Generals Chambers. However, no Affidavit of Service has been filed by the Plaintiff.
06. On the 12/04/2024, the Attorney General's Chambers filed an Affidavit in Opposition to the Order 77 Rule 6 summons and along with it filed a Summons to File the Statement of Defence Out of Time supported with an Affidavit from one Apakuki Qura, Deputy Commissioner of Corrections Services, sworn on the same day.
07. The Plaintiff has opposed the summons by the Defendants and has filed an Affidavit in Opposition on 09/05/2024.

08. The Court made directions for both the summons to be heard together and directed both parties to file written submissions. Accordingly, both the parties have filed comprehensive written submissions on the two applications and when the matter was called before this Court on 03/12/2024, both parties agreed for the Court to make ruling on written submissions.
09. Having duly considered the facts as submitted by the parties in their respective Affidavits and having considered the comprehensive written submissions, the Court now proceeds to make its ruling on both the Summons as follows.
10. As per the Affidavit of the Plaintiff, in support of the Summons to Enter Default Judgment, it is submitted that this application has been made in failure of the Defendants to file a Statement of Defence for over 05 months. Further, the Plaintiff has deposed all facts relevant to its claim in the said Affidavit.
11. Plaintiff, in the said Affidavit, avers that he was arrested by the police on 09/12/2022 in relation to an offence of Aggravated Robbery and was charged for this offence on 10/12/2022. He claims that he was remanded in the custody of the Fiji Corrections Services at Suva Remand Centre until he was bailed on 22/02/2023 for 02 months and 13 days.
12. It is further averred by the Plaintiff that on 26/12/2022, he was severely assaulted by the officers of Fiji Corrections Services whilst being held at the Suva Remand Centre. However, he had not received any treatment following this assault and only on 11/01/2023, he was admitted to the CWM Hospital where he had received extensive medical attention and undergone several surgeries. A copy of the Medical Assessment Report is annexed to the Affidavit marked 'SRM 2'.
13. The Plaintiff has claimed that he was admitted at the CWM Hospital for 02 months receiving treatment before being discharged. Further, it is averred that he had to be again admitted to hospital following a complication and underwent another surgery in late March 2023. A copy of the 'Discharge Summary' is annexed marked 'SRM 4'.
14. As per the Affidavit of the Plaintiff, it is also averred that the Plaintiff again was admitted to the hospital following a complication and was diagnosed with 'post cystogastrostomy due to pseudo pancreatic cyst'. A copy of the 'Discharge Summary' is annexed marked 'SRM 5'.
15. The Plaintiff has further highlighted how the medical condition he had suffered as a result of the alleged assault, has impacted him financially in the latter part of his Affidavit.

16. The Defendants, in their Affidavit in Opposition, have admitted the failure to file the Statement of Defence within the stipulated time as per the Rules and that there has been a delay of over 05 months.
17. Furthermore, the Defendants have denied the alleged assault on the Plaintiff by the 1st Defendants officers and has put the Plaintiff to prove the same at a trial. The overall contention of the Defendants is that the allegations of the Plaintiff are being denied and that such allegations need to be proven by way of evidence at a proper trial.
18. As per the Affidavit of the Defendants, in support of the Summons to file Statement of Defence Out of Time, the Defendants have submitted the following as the reasons for the delay,

Reasons for the Delay

7. *At the time of receiving the Writ, the Fiji Corrections Services (FCS) was undergoing heavy internal transitions which resulted in a backlog of various forms of work, including, delays within our legal department, and as such there was a delay in sending instructions in this matter to our counsels.*
 8. *The Acting Commissioner of Corrections, Ms. Salote Panapasa (Commissioner), was heavily engaged with various projects which required the Commissioner's personal presence, and to date the Commissioner is out of the country for official duties.*
 9. *FCS was also engaged with a weeklong event in October 2023 for the Fiji Corrections Service Week, and a lot of our resources and staff were engaged in the preparatory work.*
 10. *After instructions had been sent to our counsel, there were further documents and information which needed to be obtained for the defence which took time to obtain, as some of this information needed to be obtained from other ongoing cases pertaining to this dispute.*
 11. *Thereafter, the Defendant's received the proposed settlement offer from the Plaintiff and is in the process of considering the offer.*
19. Moreover, the Defendants have averred that they have a meritorious defence in the matter and had annexed a copy of the Proposed Statement of Defence as 'AQ 4'. Pursuant to this Proposed Statement of Defence, it is submitted that the Plaintiff first complained of fever, severe abdominal pain and headache to the medical orderly at the Suva Remand Centre on or about 02/01/2023. Upon this complaint, the Defendants have claimed that the Plaintiff was referred to the Senior Medical Officer at the facility and upon his recommendation the Plaintiff was referred to the Lami Medical Centre and thereafter was looked after at the Remand Centre.
 20. It is further claimed in the said Proposed Statement of Defence that the Plaintiff never complained of ill health and/or made any request to be taken to a hospital. It is further

submitted that upon examination by the Senior Medical Officer at the facility on 11/02/2023, the Plaintiff was admitted to the CWM Hospital by the Defendants and the Plaintiff had not alleged an assault at the time of admission.

21. It is also submitted in the Proposed Statement of Defence that after the Plaintiff made the allegations of assault the Defendants had set up a Board of Inquiry to investigate the said allegations, however, the Fiji Human Rights Commission also had carried an inquiry and had lodged a complaint to the Fiji Police Force. Upon this complaint, the Police have charged five officers in relation to the alleged assault and that criminal case is pending before the Court.
22. In opposition to the Defendants' summons for Leave to File Statement of Defence Out of Time, the Plaintiff has submitted that the Defendants were well aware of the timelines prescribed in the High Court Rules and that they had ample resources and avenues to comply with the rules. Further, the Defendants had failed to bring the delay to the attention of the Court on time and to make a proper application in Court to extend the time to file the Statement of Defence. As such the Plaintiff has submitted that the delay on the part of the Defendants is an absolute disregard of the Plaintiff's plight and his rights.
23. I shall now consider the relevant legal provisions in relation to the current applications before the Court. Order 77 Rule 6 governs the application for Entering Default Judgment against the State. For clarity, I shall reproduce the said Rule here,

Order 77 rule 6 Judgment in default

- 6.-(1) *Except with the leave of the Court, **no judgment in default of notice of intention to defend or of pleading shall be entered, against the State in civil proceedings against the State or in third party proceedings against the state***
- (2) *Except with the leave of the court, Order 16, rule 5 (1)(a), shall not apply in the case of third-party proceedings against the state.*
- (3) *An application of leave under this rule may be made by the summons or, except in the case of an application relating to Order 16, rule 5, by motion; and the summons or; as the case may be, notice of motion must be served not less than 7 days before the return day.*

24. Order 3 Rule 4 of the High Court Rules governs the applications for Leave to Extend Time to File Pleadings. This Rule reads as follows.

Extension, etc., of time (O.3, r.4)

- 4.-(1) *The Court may, on such terms as it thinks just, by order extend or abridge the period within which a person is required or authorized by these rules, or by any judgment, order or direction, to do any act in any proceedings.*
- (2) *The Court may extend any such period as is referred to in paragraph (1) although the application for extension is not made until after the expiration of that period.*
- (3) *The period within which a person is required by these Rules, or by any order or direction to serve, file or amend any pleading or other document may be extended by consent (given in writing) without an order of the Court being made for that purpose. Provided that wherever the period for filing any pleading or other document required to be filed by these rules or by the Court is extended whether by order of the Court or by consent a late filing fee in respect of each extension shall be paid in the amount set out in appendix II by the Party filing the pleading or other document unless for good cause the Court orders that some or all of the same be waived.*

25. There are not many case authorities which lay down the criteria for exercising Courts discretion under Order 77 Rule 6. However, it can be concluded that in a thorough reading of provisions relating to other instances of entering default judgment (Such as Order 13 and 19 and Order 16 Rule 5) and the relevant case law guiding the above provisions, the standard of satisfying the Court to get the leave to enter a Default Judgment against the State is obviously different from that of the mere standard of formal proof under the above stated rules as against the ordinary defendants.

26. Master Azhar, in **Cecil Quai Hoi v Commissioner of Police and the Attorney General** Lautoka Civil Action No. 25 of 2018 [Ruling] on 03/12/2021 stated thus,

9. *...It follows that, the standard of satisfying the court to get the leave to enter the default judgment against the state must be separate from that of mere standard of formal proof under the above rules against the ordinary defendants.*
11. *The analogy and the comparative analysis of the rules as discussed above, logically conclude that, the standard to be adopted by the court in deciding a summons or a motion under Order 77 rule 6 should be higher than what is adopted under the rules of Orders 13, 14 and 16 as discussed above. It follows that, the court should grant leave to enter the default judgment against the state only to cases where there can be no reasonable doubt that a plaintiff is entitled to judgment and where, it is inexpedient to allow a defendant to defend for mere purpose of delay. When it is said that, there cannot be a reasonable doubt,*

it should not be meant and or understood in any way that, the court brought the standard of criminal law to the civil action. In fact, this was the highest standard adopted by Privy Council in a very old case of Jones v Stone [1894] A.C. 122 at page 124, which dealt with the summary judgement and I, having considered several rules of this court, of the view that, this higher standard should be appropriate for the summons and or motions under Order 77 rule 6. The reason being that High Court Rules make specific provision under this Order 77 rule 6 to enter the judgment for default in proceedings against the state and other rules, which deal with entering default judgments against ordinary defendants, are excluded in proceedings against the state.

27. Pursuant to the affidavit evidence before this Court and the Proposed Statement of Defence for the Defendants, it is evident that the causation of the medical condition the Plaintiff is complaining of is a triable issue.
28. The Plaintiff himself has averred in his Affidavit in Support that he was punched by a police officer at the time of arrest. Moreover, the Plaintiff has not described the alleged assault by the officers of the 1st Defendant that had allegedly taken place at the Suva Remand Centre. Plaintiff has failed to submit any evidence as to the severity and the nature of the alleged assault in his Affidavit.
29. The Defendants at the same time submit that the Plaintiff had also failed to complain about the alleged assault and/or any complaint of ill health to the authorities prior to admission at the CWM hospital. Defendants have also submitted that the Plaintiff had received treatment at the Lami Medical Centre prior to being admitted at the CWM hospital, which the Plaintiff had not provided any details of.
30. All above matters, as discussed in the foregoing paragraphs, in Court's considered view, clearly forms triable issues. These matters cannot be considered as proven facts by way of the Affidavit evidence of the Plaintiff. These are matters which necessarily need to be proved by way of detailed evidence at a proper trial.
31. Furthermore, having carefully considered the Defendants' Proposed Statement of Defence *in toto*, the Court finds that the Defendants may have a meritorious defence in the matter, which essentially needs to be considered upon evidence at a fair trial.
32. In view of the above discussion, this Court does not find that the claim of the Plaintiff would fall within the higher standard of proof that requires entering a Default Judgment against the State pursuant to Order 77 Rule 6 of the High Court Rules.

33. When dealing with an application for extension of time pursuant to Order 3 Rule 4, the law is well settled. Pursuant to the relevant case authorities in this regard, the criteria in considering an application for extension of time pursuant to this Rule needs evaluation of the following factors,

- i) length of delay
- ii) reason for delay
- iii) whether a party has a claim or defence on merits
- iv) whether the respondent will be prejudiced.

(See **Vanualevu Hardware (Fiji) Limited v Labasa Town Council** [2016] HBC 29/12B 10 February 2016 at [3.32])

34. I have further considered at length the case authorities cited by both the counsels in this regard as per their comprehensive written submissions.

35. I am in full agreement with the case of **Seru Taralailai & Tevita Seniviavia Volanacagi Taralailai** [2020] Civil Action No. HBC 89 of 2017 (Judgment) 24 July 2020, where it is stated that “ *Extension of time in terms of Order 3 Rule 4 (1) of the High Court Rules 1988 needs careful exercise of discretionary power of the court, that can eliminate injustice, but if exercised wrongly can deny justice and or access to justice*” and later on “*The discretion of the court should not be in favour of refusal of extension of time when there are merits...prolonging the matter may serve justice than quick disposal of that without consideration of merits*”.

36. I have at paragraph 31 of this Ruling found that the Defendants may have a defense on merits which need to be duly determined upon evidence at a fair trial.

37. In respect of the length and reasons for the delay, it needs to be emphasized that the reasons given by the Defendants are just generalized reasons which fail to clearly outline any specific matters that had genuinely contributed to the delay in these proceedings.

38. In overall consideration of these reasons, the Court finds that these reasons are frivolous and vexatious and do not in any way justify the delay in filing the Statement of Defence on time. It is surprising that the Defendants have the audacity to submit to the Court that they have failed to file the Statement of Defence for over 05 months, basically due to the Defendants being busy with other work and related issues.

39. Moreover, the Court finds that a 05-month delay is a considerable delay in the proceedings and the Defendants failed to file this application for leave to file the

Statement of Defence out of time, until such time the Plaintiff filed its summons for Leave to Enter Default Judgment.

40. Although the Court finds that the reason for delay is frivolous and vexatious and clearly unjustified, that alone shall not be the consideration for the application for extension of time to file the Statement of Defence. As settled in case law, the Court needs to balance these findings against the factors of whether the Defendants may have a meritorious defence and whether the Plaintiff shall be prejudiced by allowing such further time.
41. In view of the above considerations, this Court is of the considered view that the Defendants may have a meritorious defence which needs to be duly tested at a fair trial by way of proper evidence. Further, it is the view of this Court that there is some prejudice caused to the Plaintiff having duly considered his medical and financial circumstances, as outlined in his affidavit evidence, but such prejudice, in the Court's considered view, can be duly compensated by way of costs.
42. Accordingly, it is the finding of the Court that it is justifiable to allow the application by the Defendants to file the Statement of Defence out of time subject to reasonable costs being awarded in favour of the Plaintiff.
43. In view of all the facts before this Court and pursuant to the foregoing discussion, I clearly reject the argument of the Defendants that there is no prejudice caused to the Plaintiff due to this unjustifiable delay and that no costs should be awarded at this stage. In the contrary, it is the finding of the Court that the Plaintiff must be duly compensated by way of costs for the lengthy undue delay caused by the Defendants in these proceedings.
44. Accordingly, the Court makes the following orders.
 - a. The Summons filed by the Plaintiff on 26/02/2024, For Leave to Enter Default Judgment is hereby dismissed and struck out subject to both parties to bear their own costs.
 - b. The Summons filed by the Defendants on 12/04/2024, for Leave to File Statement of Defense Out of Time is hereby allowed subject to following orders.
 - I. Defendants shall pay, within 21 days from today (that is by 14/03/2025) a cost of \$ 3000.00 to the Plaintiff, as summarily assessed by the court, as costs of this application.
 - II. Defendant within 07 days from today, that is by 04/03/2025, file and serve their Statement of Defence.
 - III. In failure to comply with the above order no. I and II, for payment of costs and for filing and serving of the Statement of Defence, any pleadings of the Defendants, hereinafter to be filed, shall stand struck out, subject to a further cost of \$ 4000.00, as summarily assessed by the Court.

c. Further, to expedite these proceedings, the following additional orders are made.

- I. 'Reply to the Statement of Defence' and the 'Summons for Directions' by the Plaintiff to be filed and served within 14 days after service of Statement of Defence, which is by 18/03/2025.
- II. In failure to comply with the above orders, the Plaintiff's pleadings shall stand struck out, subject to a cost of \$ 1000.00, as summarily assessed by the court, payable to the Defendants.



At Suva
21/02/2025.

L.K. Wickramasekara,
Acting Master of the High Court.