IN THE SUPREME COURT OF FIJI (WESTERN DIVISION)
AT LAUTOKA
Civil Jurisdiction
Action No. 94 of 1978

000269

BETWEEN:

NADI TOWN COUNCIL — Plaintiff

-and-

NADI BAY BEACH CORPORATION LTD. — Defendant

Mr. V. Chand, Counsel for the Plainitff
M. D. Benefield, Counsel for the Defendant

JUDGMENT

This is a summons under o.13 r.9 to set aside a judgment in action 94/78, Lautoka, which was entered by the Nadi Town Council in default of a defence to their claim for rates.

The statement of claim alleges that in 1974, '75, '76 & '77 the Council issued notices of assessment on the defendant company for rates owing under assessment No. 514. They have not been paid and it is alleged the total amount said to be due inclusive of interest is $4,368.

In another action 95/78 there is a similar judgment entered by the Council against the same judgment debtor for arrears of rates in respect of another property amounting to $44,309.66 and a similar application to set aside. The result of this application will determine the result of action 95/78 also.

On 11/4/78 the statement of claim was issued and an appearance was entered on 24/4/78. Judgment in default was entered on 10/5/78 and seven weeks later the judgment debtors, on 28/6/78, applied to set aside the judgment. No officer of the defendant company subscribed to any affidavit in support of that application. The application purports to be made under o.13 r.9.

O.13 r.9 relates to a judgment entered in default of appearance. Therefore on that basis the judgment

debtor's application is misconceived or somewhat haphazard.

Judgment in default of defence is entered under the provisions of O.19 rules 2 to 7 and an application to set it aside is governed by o.19 r.9. However, the judgment creditor in his submissions has made no reference to the error of the judgment debtor and there can be no harm in my proceedings as if the judgment debtor had made his application under the correct Order and rule. The actual requirements under either order cannot differ.

The supporting affidavit is sworn by the judgment debtor's solicitor who says that owing to pressure of work and because the judgment debtor's principal place of business is in Sydney he had difficulty in obtaining instructions and he overlooked that they were out of time for filing a defence. This is an understandable situation; it happens fairly frequently and one is loathe to condemn a litigant in such circumstances. Nevertheless, once judgment in default has been entered the judgment debtor has to satisfy the court that he has a reasonable defence to the claim, One should examine the merits of the proposed defence before depriving the plaintiff of the judgment which has, after all, been recorded in his favour.

The proposed defence admits the Council's assessment No.514 and admits receiving demands for rates in 1975, '76 & '77 for the years 1974 to 1977.

The rateable value of property is, by the terms of s.61(2) of The Local Government Act based upon its unimproved value which is estimated by a surveyor. The owner is informed of the valuation and if he is dissatisfied with a valuation he may appeal in accordance with the provisions of s.70 to a first class magistrate and an appeal lies therefrom to the Supreme Court and thereafter to the Court of Appeal in the ordinanry way of civil suits. However, the court of first instance is that of a first class magistrate and the Supreme Court has no jurisdiction in the first instance to decide whether any valuation was properly and lawfully arrived at.

Nowhere in the proposed statement of defence is

/3.

there any reference to the question of valuation. This is not really surprising because had there been any serious complaint concerning the amount fixed as the unimproved value it would no doubt have been raised several years ago in the magistrate's court by way of appeal. The correctness of the valuation cannot be raised in the Supreme Court in a claim of this nature because that would require my deciding whether or not the valuation had been carried out lawfully and calculated fairly. If I decided that it had not been properly valued any magistrate hearing an appeal against the valuation would be embarrassed especially if he had views to the contrary. Moreover, such a decision on my part would in this case virtually oblige a magistrate to grant leave to appeal against the valuation several years out of time.

Although the proposed defence and supporting affidavit made no reference to any valuation Mr. Benefield appeared to touch on this aspect during the hearing of the application. He made a brief remark that the land in question was agricultural land but there is no reference in the affidavit or the proposed statement of defence to any issue based on the use of the land for agriculture. He also referred to s.65 which provides that regard shall be had to such building as are on the land when determing its unimproved value. These are the kind of matters to be raised by way of an appeal against the Council's valuation to a magistrate's court in the first instance and if there has been no appeal how can the Supreme Court usurp the function of the magistrate's court? In any event the proposed statement of defence does not, as I have said, refer to valuation. Mr. Benefield also complained that L.N 4/73, which presumably brought the land within the municipality was ultra vires. Why endeavour to create such an issue after 5 years? In any event there is no reference to it is in the affidavit or the proposed defence. Mr. Benefield aruged that they were not estopped from pleading it was ultra vires. However, it is not pleaded in the proposed defence and in fact para 2 thereof admits that the land comes within the municipality.

The statement of defence confirms itself entirely to complaints about the assessment for rates which is quite

/4.

different from the question of valuation. The statement of defence is very uninformative and lacking in detail. It merely makes assertions without setting out any facts in support.

Para 4 denies that the rates were properly assessed, published and issued. No facts are pleaded to demonstrate that the rates were improperly assessed, such as complaining that they were never published or were wrongly published etc. The rates are assessed on the valuation at the rate approved and publised by the Council. Nowhere does the defence complain of the valuation, and if it had complained, this Court has no power to consider it in the first instance. Sections 72 & 73(1) set out the manner in which the rates are to be levied or imposed. The Council having decided what the rate shall be must under s.72 publish in a Fiji newspaper the amount of the rate. If the judgment debtor alleges this was not done then it should have been pleaded. Under s.73(1) the Council must issue a demand note to the owner stating:-

" (a) the property on which the rate is assessed;
(b) the unimproved value thereon;
(c) the period in respect of which the rate is made;
(d) The amount payable;
(e) the time or times of payment being not less than 30 days after the date of service upon him of the demand note. "

If any of these requirements are not complied with the demand, although accurate, will not be valid.

The statement of defence admits that the demands for rates have been served. It does not complain that the demands relates to a property which he does not use so presumably s.73(1)(a) is complied with. It does not complain that the Council's valuation has been misquoted and the Council's valuation is the legal and proper valuation untill a first class magistrate has, following the judgment debtor's appeal, declared otherwise. This would seem to dispose of s.73(1)(b). Nowhere does the statement of defence allege that the year relating to each assessment is one in respect of which he owes no rates e.g. on the ground that they were paid or some exemption granted.

/5.

Thus s.73(1)(c) appears to be not in issue. The amount payable is disputed, but the statement of defence does not indicate the extent of any over assessment. If the Council has erroneously based its calculations on a higher valuation than that which was notified to the judgment debtor several years ago then the statement of defence should set out what that valuation was. It it is due to quoting an incorrect rate is should set out what the rate is which the Council publised or other facts which show it is incorrect. No mathematical error is alleged. In my view s.73(1)(d) is desposed of. S.73(1)(e) does not provide a basis for complaining about the assessment but simply as to when payment can lawfully be demanded and the proposed statement of defence makes no allegations in that respect.

I do not know what para 4 of the statement of defence means in its reference to the rates set being properly issued. The Act makes no reference to rates being issued but it speaks of serving a demand rate on the owner; however; the judgment debtor admits that he received the demand.

Para 5 of the statement of defence complains that the assessemnt were not proper and valid and did not comply with the provisions of the Act and even if they were validly made they were wrongly assessed and are excessive.

Excessive rates may be due an over-valuation but as I have said it is not competent for this court to purport to determine whether there has been an excessive valuation in the first instance. It may be due to mis-quoting the valuation or the rate or to mathematical error. But these are matters provided for in sections 72 & 73 and can be grounds for resisting a demand for rates as I have already explained but no facts have been pleaded to reveal any such grounds.

In my opinion there is nothing in the affidavit or the proposed statement of defence which leads me to conclude that there is a triable issue in the Supreme Court in relation to the Council's demand for rates.

It is not sufficient when applying to set aside a judgment in order to defend to make general assertions denying liability. It should be apparent from the defence that specific facts are alleged which if proved would result in a determination in the judgment debtor's favour on an issue which would affect the matter of their liability in their favour. Not a single fact has been alleged in the proposed statement of defence.

The application is dismissed and the judgment debtor will pay the Council's costs which I fix at $100.00.

LAUTOKA,
4th August, 1978.

(sgd.) J.T. Williams,
JUDGE

Messrs. Vijay Chand & Co., Counsel for the Plaintiff
Messrs. Munro, Leys & Co., Counsel for the Defendant

Date of Hearing 7th day of July, 1978.