

**BETWEEN      BAIRIKI HOLDINGS LTD**  
Applicant

**AND             THE PROVIDENT FUND BOARD**  
Respondent

Date of Hearing: 18 February 2022

Appearances: Mr Berina for the Appellant  
Ms Taaira Timeon for the Respondent

Judgment: 21 February 2022

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**JUDGMENT OF HASTINGS CJ**

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[1] The applicant has applied to set aside the judgment by default entered against it on 7 July 2020 under Order 29 rule 12 of the High Court (Civil Procedure) Rules 1964.

[2] On 18 May 2020, the Provident Fund Board filed and served a statement of claim in which it sought a sum of \$90,773.69, consisting of \$36,687.62 in unpaid employee contributions, \$51,540.71 in penalties for late payment and \$2,545.37 in interest foregone, from Bairiki Holdings. The claim was for the 2016, 2017 and 2018 calendar years.

[3] On 5 June 2020, the Provident Fund Board reached an agreement with Bairiki Holdings. Bairiki Holdings agreed to pay over time to the Kiribati Provident Fund the sum of \$25,924.32 being outstanding contributions for the 2017, 2018, and 2019 calendar years. The payments were agreed to be no less than \$500 per month, commencing from June 2020.

[4] On 1 July 2020, the first payment of \$500 was made.

[5] On 7 July 2020, default judgment was signed for the sum of \$90,773.69 sought in the statement of claim, notwithstanding the agreement reached which covered some of that amount. Execution of the default judgment was also sought.

[6] Three considerations are of importance when deciding whether or not to set aside a default judgment: whether the defendant has a substantial ground of defence to the plaintiff's claim; whether the defendant's failure to take any steps to defend the claim or appear at the hearing was excusable; and whether the plaintiff will suffer irreparable harm if the judgment is set aside.<sup>1</sup>

[7] In this case, the agreement reached on 5 June 2020 covers at least some of the amount claimed and for that reason provides a substantial ground of defence to that part of the claim. Mr Berina alluded to the existence of other grounds of defence with respect to other parts of the claim. In her affidavit, Ms Lieven describes being "shocked" to have been served with a default judgment only six days after the first payment under the agreement was made, and only 32 days after the agreement was reached. I disagree with Ms Timeon's characterisation of this as "a lame excuse" to prevent the Provident Fund Board from enjoying the fruits of its judgment. The Provident Fund Board had been negotiating a settlement with the applicant only a month earlier in which it was willing to adjust both the amount it claimed, and the frequency of payment of the amount subject to the agreement. There is no evidence the respondent will suffer irreparable harm if the judgment is set aside. Setting aside the judgment will give the respondent the opportunity both to amend its statement of claim to refer only to those amounts not covered by the 5 June 2020 agreement and to negotiate an agreement that covers the amounts it claims to be outstanding over the relevant periods of time.

[8] I therefore grant the application to set aside the default judgment.

[9] I grant the respondent leave to file and serve an amended statement of claim within 14 days of this judgment following which the applicant will file its statement of defence within 14 days of service of the statement of claim.

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<sup>1</sup> *Waysang Kum Kee v Abamakoro Trading Ltd* [2001] KICA 9 at [13].

[10] The respondent will pay the costs of this application.



Hon William Kenneth Hastings  
Chief Justice