

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

Civil Case No.53 of 2014

BETWEEN: JENNECK SAMUEL PATUNVANU
Claimant

AND: REPUBLIC OF VANUATU
Defendant

Coram: Mr. Justice Oliver A. Saksak

Counsel: Kiel Loughman for the Claimant/ Respondent
Hardison Tabi for Defendant/ Applicant

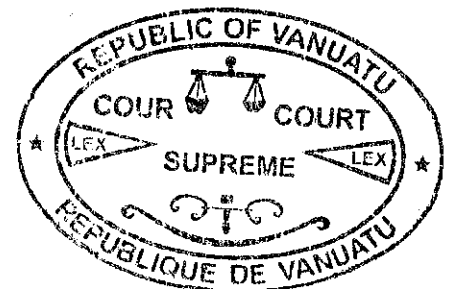
Date of Hearing: 18th August 2014

Date of Decision: 19th August 2014

DECISION

1. The application by the Republic for the setting aside of the default judgment entered on 6th June 2014 is allowed.
2. The default judgment dated 16th June 2014 is hereby set aside in its entirety.
3. The reasons: The Court is satisfied that-
 - a) The State Law Office filed at least a Response dated 7th April 2014 on 9th April 2014 indicating that the Defendant was disputing the entire claim. When the Claimant filed a request for default judgment on 20th May 2014, a period of 41 days had lapsed. Within that period the claimant has no evidence to show that he or Counsel had made any enquiries from the State Law Office pursuant to their Response whether a defence was forthcoming, and of a letter putting them on notice that in the event no defence was filed within the specified period, a request for default judgment would be filed.
 - b) From the evidence by sworn statement of Agnes Tari Siro the State Law Office was taking reasonable steps to seek necessary instructions to file a defence. They wrote a letter 7th April 2014 to the Police Commissioner. They telephoned the Public Prosecutor on 10th April 2014. They also wrote a follow-up letter on an urgent basis on 2nd May 2014 to the Police Commissioner. Those are reasonable causes for not filing any defence in time.
 - c) From their proposed draft defence the Defendant has shown they have an arguable defence by denying liability for-
 - I. Damages for unlawful arrest,
 - II. Damages for malicious prosecution, and
 - III. Any loss or damage suffered by the Claimant.

These are genuine defences.



4. The case of Gordon v. Cikay Development Ltd CAC 6 of 2010 submitted by MrTabi is distinguished in that a defence was filed in that case. It does not assist the Defendant's application.
5. The cases of ANZ Bank (Vanuatu) v. Dinh [2005] VUCA 3 and Westpac Banking Corporation v. Brunet [2005] VUSC148 are distinguished on their facts and circumstances and do not assist the Claimant.
6. In the circumstances there will be no award of costs. Costs will be in the cause.

DATED at Port Vila this 19th day of August 2014.

BY THE COURT


OLIVER.A.SAKSAK
Judge

