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

Company
Case No. 685 of 2018

BETWEEN: MALANI VAKALOLOMA
Applicant

AND: ADRIAN MAURICE MOONEY
Respondent/Claimant

Date: ***12 April, 2018***
Delivered: ***07 June, 2018***
Before: ***The Master Cybelle Cenac***
In Attendance: ***Viska Muluane holding papers for Marie Noelle Patterson counsel for the Applicant, Mark Fleming counsel for the Respondent/Claimant***

JUDGMENT

Headnote
Liquidation of a company - Application to add a Party - Extension of time to file defence under Companies Insolvency & Receivership Act No. 3 of 2013 - distinguishing case of Iririki Holdings Ltd. V Mocha Ltd.

INTRODUCTION

An application to put the defendant company Adventures in Paradise Limited by way of claim under Section 15 of the Companies (Insolvency and Receivership) Act No. 3 of 2013 (hereinafter called the Insolvency Act) was filed on the 9th March, 2018 with a sworn statement in support verifying said claim, together with unsigned copies of a Notice of Proceeding and Public Notice to put the company into liquidation. An appearance in opposition to application with sworn statement in support was filed by Malanie Vakaloloma (hereinafter called the Applicant) on the 27th March, 2018 and 5th April, 2018 respectively, and an Application for an extension of time with sworn statement in support to file a defence was filed on the 3rd April, 2018.

A notice of hearing scheduled for the 24th May, 2018 to hear the application for liquidation was issued on the 6th April, 2018. The Applicant subsequently filed an application with sworn statement in support to be made a party to proceedings on the 10th and 11th April, 2018 and the matter was rescheduled for the 12th April, 2018.

The application being determined by the court at the hearing was for the Applicant to be added as a party to proceedings and the application for an extension of time to file defence. Consequently, the Application to put the company into liquidation was stayed pending the outcome of this hearing.

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BACKGROUND

Based on the documents before the court there appear to be certain undisputed facts:

1. That the claimant and the Applicant were married but divorced in 2015 and are still in ongoing matrimonial issues with regard to child custody and matrimonial assets.

2. That the claimant and the Applicant are the directors of a company known as Adventures in Paradise Limited which was established in 1998.

3. That the company is currently solvent.

The claimant has stated that on account of the ongoing personal disputes between the parties as aforementioned, there remains no mutual cooperation or trust and considers the professional relationship to have irretrievably broken down, and consequently, the company cannot continue to flourish under the joint leadership of the parties and must, therefore, be liquidated in order to salvage both the good name of the company and financial investment of the parties.

The Applicant opposes the claim (for now), on the ground that she must be added as a party and given the opportunity to ventilate her opposition in full, as she is of the belief, that to liquidate would be against the interest of the company and the parties as it would render the company insolvent.

APPLICATION TO BE ADDED AS A PARTY

The Applicant asserts that she has the right to be added as a second defendant to the claim on the ground that she is the second director of the defendant company and a shareholder and that she derives financial benefits and has a financial interest in the company as this is her sole source of income to support herself and her family. Corroboration of her financial interest in the defendant company is borne out at paragraphs 5 and 15 of the claim: *"the two directors purchased the defendant company, including all its rights and assets in 2006,"* and *"the two directors are controllers of the defendant company and receive all financial benefits and income by means of dividends."*

The Applicant posits, that without a direct intervention in the case, by way of being a defendant, she will be unable to defend herself and her interest in the company, as the effect of her exclusion would be to remove all opposition to the claimant's action to liquidate the company.

The Applicant calls CPR 3.2 to her aid and the cases of:

- **News Limited & Ors. V Australian Rugby Football League Ltd. & Ors; Brisbane Broncos Rugby League Football Club Ltd. And Ors. V Australian Rugby Football League Ltd. And Ors.; Cowboys Rugby League Ltd. V the Australian Rugby Football Club Ltd. & Ors;**[1]
- **Rarua V Electoral Commission of the Republic of Vanuatu;**[2]

[1] [1996] FCA 870 (4 October 1996)

[2] (Majority Judgment) [1999] VUCA 13; Civil Appeal Case 07 of 1999 (7 October 1999)

- **Maurice Michel V President of the Republic of Vanuatu & Ors.;**[3]
- **Iririki Island Holdings Ltd. V Mocha Ltd.;**[4]

in putting forward the argument that it would be against natural justice and her rights as an affected person not to be added as a party.

The Applicant goes on to state, that even the claimant recognises her right to be added as a defendant by his own reference to her in his claim as *"second defendant"* at paragraph 20(H & I).

The claimant's argument is that the Applicant's application is misconceived under CPR 3.2 as the Companies Act[5] and Insolvency Act do not permit the CPR to be used in substitution of or in addition to the said Acts *"except in so far as they are modified by or are inconsistent with Schedules 2 and 3 of this Regulation or the Act, as the case may be."*[6]

Notwithstanding the above, the claimant goes further by stating, that any right which the Applicant may have had, though not entirely extinguished by her failure to file a defence within the required 14 days under **Clause 14, Schedule 2 of the Insolvency Act** has nonetheless been significantly limited, in that her filing of the form 11 appearance gives her only the right to appear. Counsel referred to **Clause 17 and 19(1)(a) of Schedule 2 to the Insolvency Act,** indicating, that while the Applicant can apply for an extension of time to put in an appearance she could not file a defence. Counsel referenced the case of **Mocha Limited V Iririki Island Holdings Limited,**[7] specifically paragraph 51 in which he cited the learned judge who found that the procedure under the Insolvency Act was "robust", with strict time limits to be applied. Counsel went on to state, that the only relevant question for the court therefore, is whether it is just and equitable for the company to be liquidated. He went on further to add, that the Applicant could be given an opportunity to file a sworn statement as to why she objects to the liquidation as was granted **Iririki Holdings** under the named case.

He concluded by adding that the cases put forward by the Applicant are distinguishable on the basis that they are not in relation to insolvency and liquidation and pre-date the Insolvency Act.

Counsel for the Applicant rebutted these arguments by asserting that the claim had to be served on her client, which it was not, and maintained that while the registered office could be served, service was not limited to only the registered office.

She distinguished the case of **Mocha V Iririki** put forward by the claimant, by arguing that the Iririki company was represented by its Directors who had the right of defence which,

[3] [2015] VUCA 14; CAC 39 of 2014 (8 May 2015)
[4] [2017] VUSC 158; Company Case 3841 of 2016 (12 October 2017)
[5] No. 25 of 2012
[6] Company Case 3841 of 2016, para.5; Judgment of Justice Paul Goeghegan delivered on the 12th August 2017
[7] Ibid

when served, did not exercise that right to file a defence. She maintained that her client has the right of defence, but unlike Iririki was not served.

She further argued that **Regulation 5 of the Insolvency Act** gives the court some flexibility in the application of the CPR, stating that the CPR is merely to be adverted to as a way of proceeding. She accepts that it cannot overrule the Insolvency Act, eg. as it relates to timelines for service, but its general operation is retained and the overriding objective of the court remains the same.

DISCUSSION

So as to bring some ordered thought to the discussion the court poses the following questions:

1. Does the Applicant qualify as a person with an interest in the claim?

2. Is it possible to determine the claim without doing injustice to the Applicant by excluding her as a second defendant?

Does the Applicant qualify as a person with an interest in the claim?

The claim identifies the Applicant as not only a Director of the company [para.2 of claim], but also as one of the two directors who purchased the defendant company including all its rights and assets [para. 5 of claim], and as a controller of the company together with the claimant, receiving all financial benefits and income by means of dividends [para. 15 of the claim].

The Applicant, apart from the above, has indicated in her sworn statement of the 10th April, 2018, that both she and the claimant are beneficial owners of the company on an equal basis [para. 2] and that the effect of not being added as a party would essentially operate to deprive her of her livelihood, as the liquidation will cause the now solvent company to become insolvent by the very act of liquidation [para. 6, 9, 10 & 13]. She goes on further to add that her interest also extends to her legitimate offer to purchase the claimant's shares [SEE: Exhibit MV4 to sworn statement] in an effort to avoid insolvency by a termination of the cruise contracts which the company currently enjoys, which would devalue the company assets.[8]

The court also notes that the claim substantially refers to the Applicant as an obstacle in the way of the company in its bid for liquidation, that is, in contributing to or causing the difficulties between the two directors which have led to the present action.

To the extent that the Claim acknowledges the opposition of the Applicant, this leads the court to assume that the claimant recognised that the Applicant's opposition effectively

[8] Exhibit MV2 to sworn statement of Applicant filed 11 April 2018; para. 3.4, "Any party may terminate this Agreement .....if any application is made for the appointment of a receiver."

harnessed his ability to proceed with voluntary liquidation without the court's intervention. His entire claim is littered with cogent examples of why the breakdown in the personal and working relationship of the directors and/or investors was hampering the growth of the company. It is clear that the claimant recognises the Applicant's interest in the company, albeit he may perceive her opposition as misconceived and/or malicious.

It would appear, on the face of it, that the Applicant is a person with an interest in the proceeding for the following reasons:

1. It is an undisputed fact that the Applicant is a Director of the company with the right to ensure that the business of the company is dealt with in such a way as not to diminish its assets or bring it to insolvency and therefore, she would be within her rights, as Director, to enquire or defend any action she legitimately believed would offend against the best interests of the company. Section 64 of the Companies Act[9] provides that:

   A Director of a company must, when exercising powers or performing duties as a director, act;
   (a) In good faith; and

   (b) In a manner that the director reasonably believes to be in the interests of the company.

2. She is, by the admission of the claimant, a controller of the company, together with himself and this could justify any action by her to protect the assets and solvency of the company.

3. By the admission of the claimant in his claim, the Applicant is a person who receives financial benefits and dividends from the company, and by the account of the Applicant it is her sole source of income. Together, this would qualify her as a person with interest in guaranteeing there was no diminution of the assets.

4. It is an undisputed fact that the Applicant is a person who has made a legitimate offer to purchase the shares of the claimant to avoid insolvency brought on by a court declared liquidation or voluntary liquidation through termination of cruise contracts which would effectively devalue the share capital and consequently the saleable value of the company, making it difficult to impossible to meet its financial commitments or to continue as a viable, profitable business capable of financially sustaining its directors and shareholders.

5. That while the record reflects that the Applicant is not a legal shareholder, there appears to be some evidence, by way of admission by the claimant that the Applicant, together with himself may have some beneficial interest in the shares of the defendant company, *"the two directors purchased the defendant company, including all its rights and assets in 2006,"* and *"the two directors ..... receive all financial benefits and income by means of dividends."*

[9] Section 63 and 64 of the Companies Act, No. 25 of 2012

6. Further to paragraph 5 above, the Applicant had offered to purchase the shares of the claimant, though the shares, on the surface, appear to be owned by a trustee company. The letter of John Malcolm, then company lawyer, addressed to both directors clearly states at paragraph 2, that the matrimonial issues between the shareholders of the company have now crossed over to become company issues. And, at the final paragraph, counsel suggested that an option could be for one or the other of the shareholders to buy out the other. The court understands this writing to refer to the parties in matrimonial dispute and the shareholders as one and the same people. It appears quite clear therefore, that in spite of the shares being held by a trustee company there was an understanding by the company lawyer and the parties that the shares were inevitably owned by the claimant and the Applicant. That while they may not have legally held the shares there certainly is a clear intent and understanding between the two directors that leads the court to conclude that the shares were beneficially owned by the claimant and the Applicant.

I therefore find that the Applicant is a person with interest in this matter.

Consideration will now be given to whether she can or should be added as a second defendant.

IS IT POSSIBLE TO DETERMINE THE CLAIM WITHOUT DOING INJUSTICE TO THE APPLICANT BY EXCLUDING HER AS A SECOND DEFENDANT?

Counsel for the claimant opines that the Applicant cannot seek to be added as a party to the proceeding under CPR 3.2. He does not offer anything further beyond stating that the Applicant was served with the proceeding but failed to file her defence in time and therefore has lost any right she may have had to defend her opposition, and, that His Lordship in **Mocha V Iririki**, at paragraph 10 espoused, that the CPR did not apply if it sought to modify or was inconsistent with the Act and schedules 2 and 3 of the Regulations of the Act. Counsel did not assist the court by showing how the application of CPR 3.2 in this matter was inconsistent with or modified the Act or Regulations in keeping with His Lordship's finding. Without counsel's application of that finding to the present circumstances to demonstrate how the Applicant's application of CPR 3.2 is anathema to the Regulations or Act, I am at a loss to understand his application of the finding to this case.

Counsel does not go further to state whether, had the Applicant filed a defence in time, she would have been entitled to be added as a party.

The claimant also failed to inform the court, by way of sworn statement of service in what capacity the Applicant had been served, that is, whether as a director, shareholder or other person with interest. This would have gone some way in assisting the court in its decision as to the undisputed interest of the Applicant and whether her request to be added as a party, with a right to file a defence is legitimate.

I will deal first with the issue of whether the Applicant can be procedurally added as a party under the CPR.

The claimant has stated that the CPR cannot be invoked in the Applicant's favour since she filed a form 11 appearance and failed to file a defence within the time prescribed. His reason is gleaned from the aforementioned judgment of Justice Goeghegan, at paragraph 10 which stated that the CPR could not apply if it sought to modify or was inconsistent with the Act or the Regulations to the Act.

I am of the opinion that the invocation of the CPR in this case would not be inconsistent with the Regulations or the Act for the following reasons:

1. Neither the Act nor the Regulations speak to the addition or removal or substitution of a defendant and therefore an application under the CPR, in the absence of such a provision and its procedure could be dictated by the CPR as it would neither modify nor be inconsistent with the provisions of the Act and Regulations. Further, it would behove the court to be placed in a situation where it deemed that a party had an interest in proceedings but due to a lack on the part of the legislation was unable to give bloom to that right of the individual, thereby denying the inherent power and jurisdiction of the court to ensure fairness and justice in all matters was done.

2. Regulation 6 of Schedule 2 of the Insolvency Act provides for the mandatory publication of public notice of a claim, which allows any person who wishes to be heard to file an appearance no later than the second working day before the day appointed for the hearing of the claim. While the modus of the Regulation is not stated, it is clear to the court that its purpose could only be to one end, that is, to bring to the attention of ANY persons outside of the defendant company, who may be neither creditor, shareholder or director, who may have some legitimate interest in the proceedings, to come forward to be heard, thereby preserving any right they may have. And while the section may not directly speak to the filing of a defence, the court understands that that right would be preserved for the following reasons:

   (i) At said appearance the court would determine whether in fact the appearer has a legitimate interest in the claim, and

   (ii) If said legitimacy is established to the satisfaction of the Court, then the appearer could be added as a party under the court's inherent jurisdiction to ensure convenience and fairness and to prevent an abuse of process and in so doing could allow the appearer to file the necessary defence.

I refer to the aforementioned case of **News Limited & Ors. V the Australian Rugby Football League Limited & Ors.**[10] put forward by the Applicant in which His Lordship Justice Diplock, in delivering the opinion of the Committee of the Privy Council said this:

The cases illustrate the great variety of circumstances in which it may be sought to join an additional party to an existing action. In their Lordships' view, one of the principal objects of the rule is to enable the court to prevent injustice being done to a person whose rights will be affected by its judgment by proceeding to adjudicate upon the matter in dispute in the action without his being given an opportunity of being heard.

[10] Supra, note 1 at p. 57

Further to the above, the court asserts that the purpose of such a rule exist in and of itself to avoid *"where reasonably practicable a multiplicity of proceedings."*[11]

While counsel for the claimant is correct in his assertion that the above case pre-dates the Companies and Insolvency Act and does not address the issue of liquidation, I would disagree that it is irrelevant because it deals with the time honoured equitable principle of natural justice, that every person who may be affected by a decision has the right to be heard.[12] This right is enshrined in the **Constitution of the Republic of Vanuatu at Article 5(1)(k).**[13] Further, CPR 3.2 is a rule that clearly recognises the court's inherent jurisdiction by granting the court the power to add or remove parties at its own discretion without application by a party if the court considers it fair and just to do so.[14]

The court is of the view that the claimant was more than aware that the Applicant was not just a director but also a beneficial shareholder and/or a person with an interest in the company and a person entitled to be added to the proceedings, especially in light of all the statements in his claim as to the defiant opposition put up by the Applicant, and that his omission not to include the Applicant as a party was not an error but a calculated and deliberate attempt to exclude her from the proceedings and to use the letter of the law to do so in an effort to successfully argue his claim unopposed.

In the circumstances, I do not believe it would be fair and just to exclude the Applicant from the proceedings as a named party as it would essentially leave the claimant unopposed in his bid to liquidate the company.

The court therefore finds that it would be impossible to determine the claim without doing injustice to the Applicant if she is not added as a defendant to the action.

APPLICATION FOR AN EXTENSION OF TIME

The claimant contends that the Applicant cannot be granted an extension of time to file a defence as she failed to file within the time under the Regulations and therefore her right only extends to putting in an appearance. His argument was supported by the use of the Case of **Mocha V Iririki Holdings**[15] in which the learned judge was adamant that the timelines stated in the Regulations had to be strictly complied with.

The Applicant states in her application that she is a director and 50% shareholder of the defendant and that she filed her form 11 appearance within time, that is, more than two days before the hearing of the claim. Her application is not specific as to whether she was applying for an extension to file her appearance or defence, but at the hearing, counsel for the Applicant clarified that the extension was sought to file a defence.

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[11] Ibid

[12] Supra, note 2 at p. 9, 10 & 11; and Supra, note 3 at para.24 & 25

[13] Laws of the Republic of Vanuatu, Consolidated Edition 2006

[14] CPR 3.2(1 &2)

[15] Supra, note 6

The Applicant continues to maintain that though she filed an appearance she was never served with the proceedings. The court must now examine the evidence before it to determine whether this assertion is a matter of fact, which would dictate whether the Applicant had the right to be served and if she was in fact not served what the implications would be.

Should the Applicant have been served with the claim?

Notwithstanding the court's finding that on the face of it the Applicant appears to be a beneficial shareholder and a person with an interest in the present proceedings, I will nonetheless, for extreme clarification set out my reasons for my findings in the present application for an extension of time.

The Application of the Applicant states that she is a Director and a 50% shareholder of the defendant.

The directorship of the Applicant is undisputed and therefore accepted as a fact by the court. The Applicant being a shareholder has been more difficult to ascertain as the particulars of the company's annual return exhibited to the Applicant's application at exhibit MV1 show the shares to be held by Garde and Tenir Limited.

At paragraph 2 of the Applicant's sworn statement in support of appearance to opposition she states that she is the shareholder and beneficial owner of 50% of the shares in the defendant company. There is no sworn evidence by the claimant challenging this statement. Exhibit MV2 to the Applicant's sworn statement is a letter penned by then counsel for the defendant company to the two directors which was unambivalent in its description of the directors and the shareholders as being one and the same persons. There is no sworn evidence by the claimant challenging the content of this letter. At exhibit MV4 of the same statement the Applicant made an offer to the claimant to purchase his 50% shares in the defendant company. There is no sworn evidence of the claimant challenging this statement. And at paragraphs 5 and 15 of the claim the claimant states that both directors receive dividends from the company.

Without delving behind the trust company in possession of the shares of the defendant company there appears to be a clear understanding on the part of both directors that the shares are beneficially owned by them. How else, other than as a shareholder could dividends be paid to directors.[16] The court is therefore left to conclude, based on the statements of the parties, corroborated by each's admission and the attached documents, the unchallenged evidence of the Applicant, that the claimant and the defendant appear to be beneficial shareholders, and for the purpose of this hearing the court considers them to be so.

Having therefore established that the Applicant is not only a director but a beneficial shareholder it now remains to be asked; was it legally necessary that the Applicant be served with the proceedings?

[16] Supra, note 5 at section 29(1)

Section 9(1) of the Regulations of the Insolvency Act provides, that unless a defendant company and the claimant are the same then the defendant company must be served at its registered office no less than 21 days before the hearing, and the claim must be accompanied by a notice of proceeding in form 5 of schedule 3 and a sworn statement in form 6 of schedule 3 or form 7 of schedule 3 verifying the allegations in the claim. The claimant must, before the hearing, file a sworn statement of service in form 10 of schedule 3 showing proof of service of the claim, sworn statement and notice of proceeding on the defendant company. This provision does not apply if the claimant IS the defendant company or is a person who could be served, but prior to the hearing filed a defence.

Let us examine the use of the phrase "the defendant company." Neither the Acts nor the Regulations define the term "defendant company" and the court is therefore left to discern, from the statute what would make up the defendant company.

Section 9(1) and 10(2)(a) of the Regulations are clear that the claimant is not required to do a particular thing if he and the company are one and the same person. This would make perfect sense because the law would not ask the claimant to engage in a farce, wherein he filed suit against his company of which he was sole director and shareholder and then served himself. Therefore, one must reasonably conclude that if the claimant is to serve the defendant company it must be made up of a person or persons other than the claimant which would then justify.him being moved under the Regulation to serve the defendant company's registered office.

In the present case, counsel for the claimant represented that the defendant company was served on the 12th March, 2018 though there was no direct evidence of this by way of sworn statement. Assuming this to be a matter of fact, the court could therefore conclude that the claimant was aware that the defendant company was made up of more than just himself and included the Applicant, and that by serving the registered office of the defendant company he was ensuring that the claim came to the notice and attention of the Applicant.

Now, while the Regulations require the registered office to be served, satisfying the requirement of good and proper service, the peculiarity of this case is that the parties were divorced and in ongoing matrimonial dispute, and the Applicant having at some point obtained a restraining order against the claimant, further compounding the relational breakdown between the parties, the court could therefore reasonably assume that the parties no longer co-habited at the same residential address, which incidentally was the same address of the registered office for the defendant and the claimant, and therefore, when counsel for the claimant indicated that the defendant company was served at the registered office it could only mean that the claimant served himself at the registered office and would have known that the Applicant, also making up the defendant company would not have been adequately notified or notified at all of the proceedings. **Section 201(a) of the Companies Act** makes allowance for not only the registered office of a company to be served but also a director.

The court is of the opinion that the peculiar circumstances of this case dictated that the claimant brought the claim to the specific attention of the Applicant and not relied on the letter of the law by serving just the registered office in order to achieve this designated

outcome of having effected service but having failed to effectively notify the one person who would be most directly affected by his claim.

The claimant went on to add, that he not only served the defendant company but also served the Applicant on the 13 and 14th March, 2018, but again no evidence of this fact was filed before the court, save for the unsworn evidence of counsel from the Bar that service had been undertaken. With no proof of service, the court could not determine in what capacity the Applicant was served.

If the claimant wished to maintain, by his action of not adding the Applicant as a party that the Applicant was not a person of interest to be added and therefore rightly served the registered office and not the Applicant, but then served the registered office and also served the Applicant, then his very action of having served her would give further credence to her sworn statements that she is a person of interest to have been added and that the claimant knowingly and deliberately excluded her as a party to the claim.

According to **section 13 of the Regulations**, the only persons entitled to put in a defence to a claim are the defendant company, a creditor or shareholder. The claimant has sidestepped whether the Applicant makes up the defendant company together with himself, she is obviously not a creditor and he has made no direct admission in his claim that she is a shareholder. By this, he has attempted to place her outside section 13 of the Regulations with a right to file a defence. If she is placed outside the Regulations then what else is she left with other than to file an appearance, without, possibly more. Without a defence she is left near defenceless to place her opposition before the court and must seek to invoke the court's discretion by either requesting an extension of time or hoping, as was done in **Mocha v Iririki** that she would be allowed to file a sworn statement as to her reasons for opposition. Her right to file a defence as a director, shareholder or creditor is a legislated one, anything else would be at the court's discretion.

The court is of the opinion that the Applicant was entitled to have been served with the proceedings in her capacity as director and beneficial shareholder but that she was not served with the proceedings and/or not served in the manner that would qualify as effective service under the legislation as required under section 10 of the Regulations.

With a denial of service by the Applicant, bolstered by the lack of evidence of service on the part of the claimant, the court must conclude that service was ineffectual and/or did not comply with the rules of service under the Insolvency Act and therefore the Applicant cannot fall foul for having failed to act to file a defence, thereby triggering a request for an extension of time.

The Applicant did not file a defence and there was no requirement to have done so at the time of hearing for the following reasons:

1. She was not served, and

2. She put in an appearance under section 15 within the time prescribed on the 27th March, 2018 and the hearing was scheduled for the 12th April, 2018, and therefore there was no need to have yet filed a defence.

Counsel for the claimant has made heavy weight of the fact that the court has found the Insolvency Act to adopt a very "robust" approach with strict guidelines to be followed. This court agrees and accepts that position, but goes further to add that a "robust" approach with adherence to strict guidelines can never be interpreted with the intent of depriving an interested party its legitimate right to be heard. If the Regulations and the Act had intended to service only a select few there would have been no need for the publication of a mandatory public notice[17] to bring to the attention of any interested persons their right to appear before the court. How much more therefore would the court view a person like the Applicant with clearly defined interests in the cause of action.

In the case of **Iririki Holdings V Mocha**[18], Justice Goeghegan found that even a director, following liquidation, with his limited capacity and powers had standing to file a stay of proceedings.

And while counsel for the claimant pressed the point that the Applicant no longer has a right of defence but only appearance, as she was served and failed to file her defence, the court would agree, that had she been served as a Director, shareholder or creditor she would have been out of time for filing her defence, but unlike Iririki, who was made a defendant to the proceedings and their capacity clearly designated, and served, but failed to file a defence, the Applicant was not served and therefore cannot be said to have failed to file.

It is hereby ordered:

1. The Applicant is added as a second defendant to the action.

2. That the Application for an extension of time to file defence is dismissed on the ground that it is premature.

3. That the service of the claim on the defendant company and the public notice of service were ineffectual and/or defective and is to be served following amendment to the claim adding the Applicant as a party.

4. That Costs to the Applicant.

5. That costs to be addressed on the 5th July, 2018 at 2:30 p.m.

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[17] Companies (Insolvency & Receivership) Act, Reg. 6 & 11 of Schedule 2

[18] Supra, note 4 at para. 41 & 56

6. The Application to amend the claim and remove parts of it and Application to Stay proceedings is scheduled for hearing on the 5th July, 2018 at 2:30 p.m.

7. That hearing of Application for liquidation scheduled for the 17th July, 2018 at 9:30 a.m. for 1 day

DATED at Port Vila this 7th day of June, 2018

BY THE COURT

CYBELLE CENAC
MASTER

REPUBLIC OF VANUATU
COUR COURT
LEX SUPREME LEX
REPUBLIQUE DE VANUATU