

**IN THE SUPREME COURT OF
THE REPUBLIC OF VANUATU**

(Civil Jurisdiction)

Civil Case

No. 23/32 SC/CIVL

**BETWEEN: Anthony Nial trading as BNE
Excavation**

Claimant

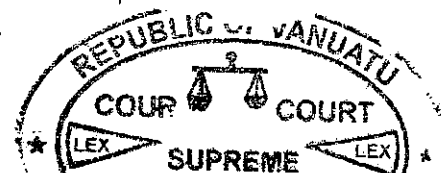
**AND: Jonas James trading as Elite Road
Repair & Maintenance**

Defendant

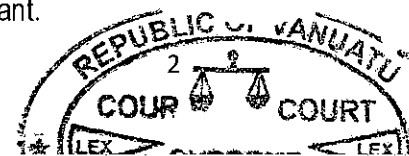
Date: 1 September 2023
Before: Justice V.M. Trief
In Attendance: Claimant – in person
Defendant – Mr E. Macreveth
Copy to: Mr T. Loughman/Mr S. Aron/Mr J.T. Wells

DECISION AS TO APPLICATION TO SET ASIDE DEFAULT JUDGMENT

1. The Claim filed on 13 January 2023 seeks payment for unpaid invoices. As no defence was filed, default judgment was entered on 3 May 2023 in favour of the Claimant Anthony Nial trading as BNE Excavation.
2. The Defendant Jonas James trading as Elite Road Repair & Maintenance filed the following:
 - a. Application to Set Aside Default Judgment filed on 3 July 2023 (the 'Application'); and
 - b. Sworn statement of Jonas James filed on 14 July 2023 in support.
3. By Minute and Orders dated 27 July 2023, the Claimant was given opportunity to file submissions in response to the Application and then the Court would determine the Application on the papers after that.
4. On 30 August 2023, the Claimant filed Memorandum that he cannot file submissions in response as the Defendant has not served the Application on him. There is no proof of service filed to show that the Application was served on the Claimant.



5. The Defendant has been represented by counsel since 3 July 2023. It reflects poorly on the Defendant that even after the Court's Minute and Orders dated 27 July 2023, he did not serve the Application on the Claimant.
6. I now proceed to determine the Application.
7. The grounds for the Application are that the Defendant is a lay person who does not understand the procedures involved to file the necessary documents in response to the Claim, that he was not served with any hearing date to attend the Court and that he disputes the Claim as he has paid the Claimant VT1,500,000 as per their agreement and therefore has an arguable case.
8. Accepting that the Defendant is a lay person with limited knowledge of court procedures, he is now represented by counsel and has filed the Application in accordance with the *Civil Procedure Rules* ('CPR') seeking that the Court set aside the default judgment.
9. The next ground of the Application is that Defendant was not served with any hearing date to attend the Court and dispute the Claim. The CPR provides that if a Claim is disputed, that the Defendant file and serve a response and/or defence. The CPR also provides that if neither has been filed, a claimant may file a Request for Default Judgment following which the Court may issue default judgment. The Defendant did not file a response or defence. A Request for Default Judgment was filed and the Court issued default judgment as it may without notice to the Defendant to attend Court. Accordingly, this ground of the Application lacks substance.
10. The final ground of the Application is that the Claim is disputed as the Defendant has paid the Claimant VT1,500,000 following their agreement. The Claim sets out that the Claimant undertook excavation work for the Defendant and presented 3 invoices. VT1,000,000 was paid towards the first invoice leaving a balance outstanding of VT3,618,400. The second invoice for VT1,500,000 was paid in full. Payment of VT500,000 was made some time after presentation of the third invoice for VT564,075 therefore the balance to be paid is VT3,682,475 plus interest. By the Claimant's own pleading therefore the Defendant has paid him VT3,000,000 and it is payment of the balance that is sought. In the circumstances, an alleged defence that VT1,500,000 has been paid to the Claimant does not present a defence with prospects of success. I reject the submission that the Defendant has an arguable case. This ground also lacks substance.
11. Given the matters set out above, the Defendant's Application to Set Aside Default Judgment must be **declined and dismissed**. I so **order**.
12. There is no order for the costs of the Application as the Claimant is not represented.
13. A number of third party disclosure orders were made. I acknowledge the disclosure by the Director of Customs and Inland Revenue by Sworn statement of Harold Tarosa filed on 3 August 2023 and by the Director of Lands by Sworn statement of Gordon Willie filed on 14 August 2023. I also acknowledge the response by letter dated 1 August 2023 from Wanfuteng Bank that it does not hold any accounts for the Defendant.



14. This matter is now transferred to the Master to conduct an enforcement conference and provide me with recommendations as to what enforcement orders to make **by 4pm on 25 January 2024.**
15. Today's Decision to be emailed to the Claimant.

DATED at Port Vila this 1st day of September 2023
BY THE COURT

VM Trief
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Justice Viran Molisa Trief

