

**IN THE HIGH COURT OF SOLOMON ISLANDS**

**CIVIL JURISDICTION**

**Civil Case Number 226 of 2019**

**BETWEEN: HHD DEVELOPMENT LIMITED** - Claimant

**AND: JAMES MAEFEI** - Defendant

**Date of Hearing: 11<sup>th</sup> August 2022.**

**Date of Ruling: 2<sup>nd</sup> September 2022.**

*Counsel; Mr Ale and Ms Soaika for Claimant/Respondent.*


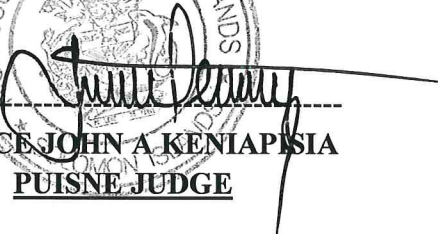
*Counsel; Mr Tovosia for the Defendant/Applicant.*

**KENIAPISIA; PJ:**

**RULINGS ON APPLICATIONS TO : SET ASIDE DEFAULT  
JUDGMENT, FILE DEFENCE OUT OF TIME AND STAY  
ENFORCEMENT – REASONS FOR ORDERS MADE**

1. Court made 3 main orders straight after hearing and promised to give reasons later. This ruling contains the promised reasons. An amended claim was filed on **15/10/2019**, with leave of the Court. Amended claim was to change the correct party name from **Sam Mae** to defendant, **James Maefei**. Amended claim was served on the defendant on **16/10/2019**, at BJS office. Default judgment was entered and perfected on **15/5/2020**. Early July **2022** defendant applied to set aside default judgment. Defendant also filed a defence out of time and furthermore applied to stay enforcement. Court struck out all applications on **19/7/2022**, for want of prosecution. Late in **July 2022** the same applications were again re-filed with payment of new filing fees.
2. Mr. James (defendant) says his real name is **James Wanefei**. His attempt to have his correct name on court documents did not succeed. He even called Counsel Rano in an attempt to include his correct name – **James Wanefei**.
3. The affected person and the one who dealt initially with Levers Solomons Limited and or Russell Islands Plantations Estate Limited about this disputed land, is **Rachel Wanefei**, wife of **James Wanefei**. There is evidence on this (See Sworn statement of James Wanefei, filed on **8/7/2022**, at Exhibit JW1). Court is satisfied **Rachel** and **James Wanefei** are the correct persons to name as joint defendants in this matter.

4. The amended claim was served at BJS, on the wife **Rachel Wanefei**. This was not personal service on **James Wanefei** (*Rule 6.4*). Court noted that the amended claim has no “response form” attached to it, rendering it as an invalid claim being served (*Rule 5.5 (d) read with Rule 6.4*). All these irregularities warrant that Court should insist on a new claim being filed (further amended claim).
5. Second important matters for consideration are reasons for delay, meritorious defence and prejudice. Because of the wrong naming of party, improper service of the claim and service of an invalid claim, reasons for delay are reasonable. On meritorious defence, issues for trial are disclosed from the defence filed without leave. One issue is overriding interest under *Section 114 (g) of the Lands and Titles Act (Cap 133) as amended in 2014*. And claimant has suffered delay to the timely closure of its case. But that is a prejudice that could be rectified by award of costs. So I award indemnity cost. I will assess that cost.
6. Court also encouraged Counsel to read the summary judgment decision and final judgment in *HDD –v- Vaike Civil Case Number 225 of 2019* by this Court, when pleading the amended claim and defence. That will help Counsel to make pleadings that will be sustained in law. The facts of this case are similar to the facts in *Vaike*. The orders already made are repeated as follows – (i) Claimant to file and serve Further Amended Claim; (ii) Stay any enforcement (iii) Indemnity cost against defendant to be assessed by Judge. Further Orders conveyed through email are (i) Further Amended Claim to be filed and served by end of August 2022, (ii) Defence to be filed and served by mid-September 2022, (iii) Reply filed and served by end of September 2022 and (iv) Mention on paper to check compliance on 3/10/2022, whilst on court circuit in Gizo.

  
**THE COURT**  
  
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**JUSTICE JOHN A. KENIAPISIA**  
**PUISNE JUDGE**