IN THE SOLOMON ISLANDS COURT OF APPEAL

NATURE OF JURISDICTION:	Appeal from Judgment of The High Court of Solomon Islands (Kouhota J)
COURT FILE NUMBER:	Civil Appeal Case No. 38 of 2019 (On Appeal from High Court Civil Case No. 9 of 2014)
DATE OF HEARING:	25 July 2022
DATE OF JUDGMENT:	12 August 2022
THE COURT:	Goldsbrough P Palmer CJ Hansen JA
PARTIES:	TATALANI BUILDERS LTD -V- JASON BOBBY
ADVOCATES: APPELLANT: RESPONDENT:	 Nimepo, D Tovosia, R
KEY WORDS:	Default judgment Discontinuance
EXTEMPORE/RESERVED:	RESERVED
ALLOWED/DISMISSED	Dismissed
PAGES	1 - 5

JUDGMENT OF THE COURT

1. This is an appeal against the orders of the Court dated 27th September 2019, in which the judge dismissed an application made by the Applicant (Appellant) to re-instate proceedings pursuant to rule 9.70 of the Solomon Islands Courts (Civil Procedure) Rules 2007 ("**the Rules**").

2. The appeal raises three grounds of appeal as follows:

    1) His Lordship erred in law and fact by failing to consider the Appellants argument and evidence that in 2012 there were actually three (3) surviving directors and shareholders of Tatalani Builders namely Bobby Taribo (2,000 shares), Bobby Fika (4,000 shares) and Chris Kenny (4,000 shares). Hence, Chris Kenny was not the only director of Tatalani Builders Limited at the time when he executed the Deed of Settlement of with the Respondent on August 26, 2015.

    2) His Lordship erred in law and fact by failing to consider the Appellant argument that the Appellant is a registered company under the Companies Act 2009. Hence, any significant decision undertaken Chris Kenny (managing Director) to discontinue the High Court case No. 9 of 2014 must endorsed and passed through a resolution from the Board of Directors.

    3) His Lordship erred in fact and law to consider on evidence that the Appellant Company is encountering financial difficulty as result of the Respondent and Chris Kenny's fraudulent and malicious actions against the Company. Hence, on evidence the action to revive the proceeding was done in the best interest of the Company.

Brief background of the case.

3. The Claimant / Appellant had filed a Category B Claim in the High Court against the Defendant (Respondent) on the 16 January 2014 for *inter alia* losses incurred by the business as a result of mismanagement and conversion to the sum of $1,197,581.96, plus interest and costs.

4. This was followed up with an urgent application filed 7th February 2014 to require *inter alia* the Defendant to deposit the sum claimed into the Claimant's account with immediate effect. On the 10th of February 2014, the application was heard by Faukona J., the Defendant did not attend, and orders were issued accordingly.

5. On 26 March 2014, the Applicant applied for default judgment. They say that the claim had been personally served on the Defendant on the 16 January 2014 at around 5:55 pm but he had not filed any response or defence as required by the Rules.

6. The Application for Default Judgment had been accompanied by a sworn statement from Junior Ramo filed 26 March 2014 in which he deposed that he had personally served a copy of the claim on the Defendant at his residence at Mbaranaba.

7. That application came before Apaniai J. on the 22nd May 2014, in which he set aside the order of 10 February 2014 and referred the application for default judgment for listing by the Registrar. The Defendant again did not appear.

8. The application for default judgment came before Maina J. on the 20th February 2015, in which judgment in default was entered against the Defendant for the sum claimed, plus interest and costs on indemnity basis. The order was perfected on 24 February 2015.

9. Six months later on 28 August 2015 an application was filed by the Claimant to discontinue proceedings.

10. Approximately three years and six months later, on 28 February 2019, an application was made to reinstate proceedings pursuant to rule 9.70 (a) of the Rules. The judge heard this application and dismissed the application, giving rise to this appeal.

What is the effect of a default judgment?

11. The issue of default judgments is amply covered by the Rules in Chapter 9 starting from Rule 9.17.

12. Rule 9.17 provides that a Claimant may apply for a default judgment to be entered as follows:

> "9.17 *If a defendant:*
>
> *(a) does not file and serve either a response or a defence within the time required in rule 5.37; or*
>
> *(b) files a response within that time but does not file and serve a defence within the time required in rule 5.37;*
>
> *then the claimant may file a sworn statement (a 'proof of service') that the claim and response form was served on the defendant as required by Chapter 6; and*
>
> *(i) may apply to the court for default judgment to be entered under this Chapter against the defendant;*"

13. It is not denied on the facts in this case, that the Claimant/ Appellant was entitled to apply for default judgment to be issued. No response or defence had been filed within the period required in rule 5.37. The claim had been served on the Defendant on 16 January 2014 and an application for default judgment filed 2 months later on 26 March 2014. No issue is taken on those facts.

14. Rule 9.22 provides that the Court may enter judgment in favour of the claimant without a hearing. Rule 9.24 provides that the Court may enter judgment for the claimant not only for the judgment sum claimed, but also interest with costs. That is what has happened in this case. Judgment was entered on the 24th February 2015 by the Court for the sum of $1,197,581.96 plus interest and costs on indemnity basis.

15. It is important to note that the Rules not only gives power on one hand to enter a default judgment, but it also gives power to the court on the other hand, to set aside default judgments on application where necessary.

16. Rule 9.52 expressly provides for this outcome as follows:

> "*9.52 A defendant against whom default judgment has been entered may apply to the court to have the judgment set aside.*"

17. Rule 9.53 in turn provides for certain requirements to be fulfilled for such an application.

> "*9.53 The application:*
>
> *(a) must set out the reasons why the defendant did not defend the claim; and*
>
> *(b) must, if the application is made more than three months after the judgment was entered, explain the delay—and the court shall not set the judgment aside unless it is satisfied that it is in the interests of justice so to do; and*
>
> *(c) must give details of the defendant's defence to the claim; and*
>
> *(d) must have with it a sworn statement in support of the application.*"

18. There is no material in the court below or on appeal, to suggest that the Respondent made any attempt or effort to have the default judgment set aside.

19. This raises therefore the important question as to the effect of a default judgment. According to the rules the order will take effect immediately. In essence it means that the case is at an end, the issue of liability becoming *res judicata*[1]. The court below was no longer required to consider and could not make any findings on issues relating to liability.

20. In Halsbury's Laws of England[2], it states:

> "*As the law stands, a default judgment creates* ***cause of action estoppel*** *in just the same way as a judgment after trial because it finally disposes of the cause of action*[3] *, but such estoppel is confined strictly to the precise cause of action upon which default judgment was given*[4]." (Emphasis added).

21. The material in this case revealed clearly that the issue of the default judgment brought the matter to an end, there being no further step or action taken pursuant to the rules, to set aside the default judgment.

---

[1] Lux Locations Ltd v Zhang [2021] 2 LRC 620
[2] Civil Procedure (Volume 12A (2020), paras 1207–1740) at para. 1579
[3] New Brunswick Rly Co v British and French Trust Corpn Ltd [1939] AC 1, [1938] 4 All ER 747, HL; Palmer v Durnford Ford (a firm) [1992] QB 483, [1992] 2 All ER 122. • As to the principles of cause of action estoppel see PARA 1570 et seq.
[4] New Brunswick Rly Co v British and French Trust Corpn Ltd [1939] AC 1, [1938] 4 All ER 747, HL; Kok Hoong v Leong Cheong Kweng Mines Ltd [1964] AC 993, [1964] 1 All ER 300, PC (party not estopped by default judgment from pleading money-lending statute as a defence in later proceedings).

Notice of Discontinuance.

22. According to the chronology of events on the file in the High Court and materials provided, surprisingly on 28 August 2015, some six months after the default judgment was taken out, the Claimant filed an application to discontinue proceedings.

23. It appears there were some transactions that occurred after the default judgment was issued between the Directors of the Company and the Respondent and which resulted in a confused application for a Notice of Discontinuance to be filed. We do not understand what was sought to be achieved by this application, but the court below was not alert enough as well to pick up on the pointless application to have a notice of discontinuance filed. We would have thought that once an application had been brought to an end or finality, that there was nothing more to be done, *a fortiori* discontinue.

24. Once the matter had been concluded, there was nothing more to discontinue thereafter. The cause of action being at an end, the parties are prevented from re-agitating the matter before the court, unless it was for an application to set aside the judgment as provided for in the rules. That application therefore was an abuse of process and should have been struck out therewith.

25. That did not happen and approximately three years and six months later on 28 February 2019, another pointless application was made to reinstate proceedings pursuant to rule 9.70 (a) of the Rules. The confusion was further compounded by the inattention to detail and the orders earlier taken out and counsel misleading the court to agitate matters which were clearly *res judicata* and had not been enlivened, further accumulating unnecessary costs to the parties in the case.

Decision on the appeal.

26. We are satisfied accordingly that this is one of those matters that had been allowed to persist and continue resulting in unnecessary costs having to be borne by the parties in the case. We express our concerns that as a result of lack of due diligence on the part of counsel, this appeal and proceedings in the Court below had been misguided and the court being misled by counsel after the default judgment had been issued which brought the proceedings to an end. The appeal is dismissed with costs to be taxed if not agreed.

.....

Goldsbrough (P)

.....

Palmer (CJ)

.....

Hansen (JA)