

BRITISH VIRGIN ISLANDS COURT OF APPEAL

Anison Rabess and Joyce Rabess -v- National Bank of Dominica HCVAP 2011/30

JUDGMENT IN DEFAULT - JUDGMENT NOT SERVED - MASTER DISMISSING APPLICATION TO SET ASIDE DEFAULT JUDGMENT ON THE BASIS THAT THE APPLICATION WAS NOT TIMELY NOR WAS A DRAFT DEFENCE EXHIBIT - WHETHER MASTER RIGHT TO APPLY CPR 13.3 AND 13.4

In this case the Appellant, Anison Rabess and Joyce Rabess sought to appeal the Master's refusal to set aside Judgment in Default. The Judgment in Default was never served on the Appellants and in any event was for the wrong amount. In allowing the appeal Mitchell JA (AG) held that if a default Judgment is to be capable of being enforced it must be personally served on the defendants: Civil Procedure Rules ("CPR") 42.6 applies.

Further that if it is alleged by a defendant that a default judgment has been entered against him for an excessive amount and that the judgment ought to be set aside, CPR 13.3 and 13.4 do not apply to limit the discretion of the Master. The Learned Justice of Appeal found that CPR 13.3 merely limited a defendant's right to set aside a default judgment when it is intended to file a defence.

Applying the reasoning in *Anthony Eugene -v- Joseph Jn Pierre and Joseph Jn Pierre (No.1) et al -v- The Attorney General et al* Saint Lucia High Court Claim Nos. SLUHCV 2004/0097 and SLUHCV 2006/0708 (delivered 21 February 2007), the Judge held that a claimant who observes that he has obtained a default judgment in an excessive amount has the duty to apply to set it aside and to enter in its place a corrected judgment. A defendant who has not had the default judgment served on him is entitled, *ex debito justitiae*, to apply at any time up to and including an application for the enforcement of the Judgment, to have the Judgment set aside on the same basis.

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