

IN THE HIGH COURT OF FIJI
WESTERN DIVISION AT LAUTOKA

DISTRICT REGISTRY

HBC No. 358 of 2002

BETWEEN : **PRIYADARSHANI NAIDU** (an infant) by her tutor SARWAN KUMAR of 2/22 Helen Street, Westmead, New South Wales, Australia.

PLAINTIFF

A N D : **THE MEDICAL SUPERINTENDANT OF LAUTOKA HOSPITAL**, Hospital Road, Lautoka.

FIRST DEFENDANT

A N D : **THE MEDICAL SUPERINTENDENT OF THE COLONIAL WAR MEMORIAL HOSPITAL**, Waimanu Road, Suva.

SECOND DEFENDANT

A N D : **THE CHIEF EXECUTIVE OFFIER FOR HEALTH** as executive representative of the **MINISTRY OF HEALTH** in right of the **REPUBLIC OF THE FIJI ISLANDS**. Dinen House, 88 Amy Street, Toorak, Suva.

THIRD DEFENDANT

A N D : **THE ATTORNEY GENERAL OF THE REPUBLIC OF THE FIJI ISLANDS**, Suvavou House, Victoria Parade, Suva.

FOURTH DEFENDANT

Counsel : Mr J. Pickering for defendants
: Mr S. Nacolowa for the plaintiff

Date of Hearing : 19 January 2016

Date of Ruling : 19 January 2016

R U L I N G

1. This matter is set down for hearing from today (19.1.16) for 3 days trial.
2. When the matter came up for hearing today – 19.1.16, Mr Nacolowa, counsel appearing for plaintiff seeks adjournment on the ground that Mr D S Naidu (counsel who has conduct of the case) is unable to appear in court to conduct the trial since he is indisposed. A last minute Notice of Motion, which is yet to be served, has been filed by the Plaintiff this morning. The Notice of Motion attaches a Medical Report issued to Mr D. S. Naidu which states that he (Mr D.S.N.) has got neck swelling and the doctor who issued the report advises 3 days rest for Mr Naidu from 20.1.16. The medial report has been obtained on 18.1.16.
3. Last occasion also, the plaintiff was not ready to proceed with the trial as the plaintiff as well as witnesses are away overseas. Then the court granted adjournment with reluctance with cost to the Defendants to be paid in the cause.
4. When obtaining adjournment last time the plaintiff sought leave of the court to file affidavit evidence in chief of the plaintiff and the witnesses who are residing in Australia and stated that witnesses will be available for cross examination via Skype, if necessary. The court granted that application. However, the plaintiff never filed any affidavit evidence of the witnesses as ordered by the court. There has been non-compliance on the part of the plaintiff with the direction of the court.
5. The writ of summons in this matter has been taken in November 2002. Not only the plaintiff but also the witnesses (all) had migrated to Australia. The plaintiff is facing some difficulty to get down the witnesses and unable to bring the matter to an end.

6. It will be noted that the plaintiff is in the habit of making application to adjourn the hearing. This is clear indication that the plaintiff cannot bring the matter to termination.
7. The Medical Report submitted today for Mr Naidu does not suggest that he is unfit and unable to appear in court but it recommends 3 days' rest for Mr Naidu
8. It would not be prudent to adjourn the matter as there is no likelihood that the plaintiff will bring the matter to conclusion.
9. I cannot satisfy myself with the medical report tendered on behalf of Mr Naidu as it appears to have been obtained for the purpose of seeking an adjournment of today's hearing. Further, the medical report does not state that Mr Naidu has been hospitalized. I therefore reject the medical receipt and refuse to vacate the trial to adjourn the matter to another date. Too many cases pending in court awaiting trial date. The court will not grant adjournment as a matter of course. The court may grant adjournment of trial or hearing, if cogent reason were adduced by a party.
10. The plaintiff is not present in court today, and she is unable to call any witness to support her claim. As a result the matter is non-suited. I therefore dismiss the plaintiff's action with summarily assesses cost of \$2,000.00 payable to the defendants.



M H Mohamed Ajmeer

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M H Mohamed Ajmeer
JUDGE

At Lautoka
19.1.16