

IN THE HIGH COURT OF FIJI
WESTERN DIVISION
AT LAUTOKA

[CIVIL JURISDICTION]

Civil Action No. HBC 246 of 2017

BETWEEN : **AO NAIKI** by her grandmother and next of kin **SHIGEMI NAIKI**
of Ishikawa, Japan, Retired Home Manager.

Plaintiff

AND : **SANDEEP VIKASH CHANDRA** of Namaka Park, Nadi, Driver.

Defendant

Before : Mr. Justice U.L. Mohamed Azhar.

Counsels : Mr. V. Mishra for the Plaintiff.
Mr. R. Singh with Mr. A. Nand for the Defendant.

Date of Ruling : 21.11.2025

RULING

01. The plaintiff Ms. Ao Naiki and her mother Ms. Sorami Naiki are Japanese nationals. The plaintiff's mother was working in Japan and had enrolled in Free Bird Institute in Fiji for an English course. On 30th July 2017, both the plaintiff and her mother Sorami were the pedestrians on the Queens Road, Namaka, Nadi. However, they did not know it was a depressing and sorrowful day for them. The car driven by the defendant ran into them. The plaintiff, who was 4 years old child at that time and her mother Sorami sustained serious and debilitating injuries. The plaintiff and her mother were first airlifted to New Zealand and then to Japan for treatment. However, the mother succumbed to injuries. The plaintiff was dependent on her mother at the time of the tragic accident. The plaintiff is a disable child now (crippled below the waist) and has been living in under the care of the grandmother, Ms. Shigemi Naiki.
02. The plaintiff then by her grandmother and next of kin, Ms. Shigemi Naiki commenced this action against the defendant, claiming general damages, special damages, costs of future

care, interest and costs. The plaintiff was represented by Baleilevuka & Associates and the defendant was represented by Diven Prasad Lawyers. The matter passed through all pre-trial steps and finally was fixed for three days trial on 28th and 29th of March and 1st of April in the year 2019 before Justice Nanayakkara. On the first day of trial, both counsels moved the court to vacate the trial on the ground that, the parties were negotiating to settle the matter. The trial was vacated and the matter was adjourned to 18 April 2019 for review of settlement.

03. However, Notice of Discontinuance signed by both solicitors was filed on 16 April 2019 – two days before the date assigned for review of settlement. On 18 April 2019 a solicitor appeared for the plaintiff on instruction and there was no appearance for the defendant. The record indicates that, the action was dismissed on the basis of notice of discontinuance. It is obvious from the record that, the court was not informed of the terms of settlement, nor they were approved by the court. Briefly, the settlement was entered in this matter without the approval of the court.
04. The plaintiff has now filed the current summons through the new solicitors. The summons is filed pursuant to Order 80 rules 1,2,3,8, and 9, Order 2 rules 1 and 2, Order 35 rule 3 of the High Court Rules and the inherent jurisdiction of the court. The summons primarily seeks to set aside the Notice of Discontinuance and to reinstate the proceedings. However, the summons seeks some additional orders as follows:
 1. Mr Hiroshi Taniguchi do be appointed the next friend guardian ad litem for Ms Ao Naiki for the purpose of conducting these proceedings.
 2. The notice of discontinuance filed herein and/or discontinuance of this action on the 18 of April, 2019 and any settlement and/or compromise reached be set aside as being a nullity and/or as being without authority or jurisdiction and/or as being irregular and/or void in that:
 - a. This action was discontinued in breach of Order 80 Rules 1 and/or 2 and/or 3 and/or 8 and/or 9 and/or 10 of the High Court Rules without an application being made to the Court for approval of settlement or compromise reached as the Plaintiff Ms Ao Naiki was an infant and a person under disability.
 - b. The action was discontinued in breach of the Order 80 Rules 1, 2 and 3 without a Guardian ad litem being appointed to look after the interest of Ms.Ao Naiki in this action who was an infant and a person under disability.

- c. The action was discontinued in breach of Order 80 Rules 1, 2, 3, 8, 9 and 10 of the High Court Rules without the Court having approved the settlement/compromise reached or being informed of the details of the settlement and/or having the opportunity to examine whether a Trust was set up for the Plaintiff and details of why an compromise or settlement was reached for the amount of \$170,000.00.
 - d. The settlement or compromise in this action in the sum of \$170,000.00 and the discharge was signed and/or entered into without the person signing the discharge having authority to do so.
 - e. The discharge in this action signed by Ms.Losalini Yabaki Ravulovulo to be set aside as the power of attorney to her did not authorize her to sign any settlement or discharge for the Plaintiff Ms Ao Naiki or to release either the Defendant or the Insurance Company from thirty party or other liability.
 3. This matter be reinstated and fresh trial dates to be set for a period of three days;
 4. The Plaintiff to be given 21 days to file an amended statement of claim;
 5. The Defendant to have 14 days to file an amended Defence;
 6. The Plaintiff to have 10 days to file a Reply to Defence;
 7. There be an order for speedy trial;
 8. Such further directions as the Court deems necessary for the efficient progress and disposal of this matter.
 9. Costs of this application be costs in the cause.
05. At hearing of the summons, the counsel for the plaintiff submitted that, the plaintiff was an infant at the time of the accident and she is still an infant. She has suffered serious injuries with her deceased mother. The plaintiff is currently disabled under her waist. The settlement that took place in this case was not put before the court as required by the rules and nor was it approved by the court. The counsel for the plaintiff further submitted that, two solicitors entered into a settlement in this matter for sum of \$ 170,000.00 as the full and final settlement of the claim of Ms. Ao Naiki. The discharge form was signed by one

Ms. Losalini Yabaki Ravulovulo. The counsel argued that, the next of kin, Ms. Shigami Naiki gave power of attorney to the said Ms. Losalini Yabaki Ravulovulo to conduct the proceedings only and she was not given power to settle or compromise the matter on behalf of the plaintiff, Ms. Ao Naiki. However, the said Attorney – Ms. Ravulovulo signed the discharge document in this matter without any power whatsoever. Most importantly, the counsel submitted that, none of these monies had been paid to the plaintiff Ms. Ao Naiki or to her benefit at all.

06. Therefore, relying on the Order 80 rule 8 and the authorities that were decided under that rule, the counsel moved the court to order that the said settlement was invalid; to set aside the notice of discontinuance; to set aside the discharge signed by Ms. Losalini Yabaki Ravulovulo; to reinstate the matter; to appoint Mr. Horishi Taniguchi as guardian ad litem; and to grant leave to amend the statement of claim.
07. On the other hand, the counsel for the defendant placed much emphasis on the appointment of guardian ad litem. Citing several authorities on the appointment of guardian ad litem, the counsel submitted that, Mr. Hiroshi Taniguchi is neither eligible to be appointed as guardian ad litem in this case, nor proper application is before the court to appoint guardian ad litem. Whilst opposing the leave to amend the claim, the counsel submitted that, the plaintiff failed to submit the proposed amendment to court, and the leave should not be granted. In the meantime, the counsel stated that, the matter was regularly discontinued and cannot be reinstated.
08. Precisely, the issues that arise out of the affidavits of the parties and the submission of their counsels for determination by the court are: (a) Is the settlement that was entered without the approval of the court, valid in law? (b) Is the discharge signed by Ms. Losalini Yabaki Ravulovulo valid in law? (c) If the said settlement and discharge are not valid in law, should notice of discontinuance be set aside and should the matter be reinstated? (d) Can Mr. Hiroshi Taniguchi be appointed as the next friend or guardian ad litem of Ms. Ao Naiki, replacing Ms. Shigami Naiki for the purpose of conducting these proceedings? (e) Should the leave be granted to amend the statement of claim?
09. The Order 80 of the High Court Rules provides for matters connected with the person under disability, and especially the mode of commencing the suit and the procedure for entering into settlement and compromise in a proceedings where the money is claimed by and on behalf of a person under disability. The Order 80 rule 8 specifically provides for the compromise by person under disability and it reads:

Compromise, etc., by person under disability (O.80, r.8)

Where in any proceedings money is claimed by or on behalf of a person under disability, no settlement, compromise or payment and no acceptance of money paid into court, whenever entered into or made, shall so far as it relates to that person's claim be valid without the approval of the court

10. The above rule in unambiguous words provides that, the approval of the court is the condition precedent for the validity of settlement or compromise or payment or acceptance of money paid into court in proceedings where the person is under disability. "Person under disability" means a person who is an infant or a patient (Order 80 rule 1). The section 2 of the Interpretation Act defines an infant or minor to mean a person under 18 years of age. The Order 80 rule 1 defines "Patient" to mean a person who, by reason of mental disorder is incapable of managing and administering his or her property and affairs. Accordingly, no settlement or compromise or payment whatsoever is valid without the approval of the court in proceedings where the money is claimed by or on behalf of a person under 18 years of age or a person who, by reason of mental disorder is incapable of managing and administering his or her property and affairs. The approval of the court is *sine qua non*.
11. The law requires that, a certain process should be followed in any proceedings where the money is claimed by or on behalf of such persons under disability. The above rule should be read with the subsequent rules 9 and 10 and Order 62 rule 16 to have comprehensive idea of this process required by the law. The rule 9 provides for the procedure to obtain the approval from the court. According to this rule, the application should be made by way of an originating summons for (a) the approval of the Court to the settlement and such orders or directions as may be necessary to give effect to it or as may be necessary or expedient; (b) alternatively, directions as to the further prosecution of the claim in the event the approval is refused.
12. In **Dietz v. Lennig Chemicals Ltd.**, (1967) 2 All E.R 282, Lord Morris of Borth –Y- Gest explained the process and held at page 285 as follows:

If approval to the settlement were given, then all matters connected with the carrying out of the terms could conveniently be settled. If approval were not given, then the directions could be given for trial of the claim in the same way as they would be given if the claim had been in a writ rather than in an originating summon; but the agreement "for the settlement of the claim" would depend for its validity on obtaining the approval of the court.
13. In the meantime, rule 10 specifically provides that, where in any proceedings (a) money is recovered by or on behalf of, or adjudged or ordered or agreed to be paid to, or for the benefit of, a person under disability; or (b) money paid into court is accepted by or on

behalf of a plaintiff who is a person under disability, the money shall be dealt with in accordance with directions given by the Court and not otherwise. The directions given under this rule may provide that the money shall, as to the whole or any part thereof, be paid into the Court and invested or otherwise dealt with there. The directions of the court as to how such money to be dealt with, has been made mandatory by rule 10. The only consideration by the court in this situation is whether the settlement is itself a reasonable one and for the benefit of the persons under disability, having regard all the circumstances of the case.

14. Moreover, the settlement and or compromise must be agreed first without reference to the costs of the solicitors. The Order 62 rule 16 provides that, unless the court otherwise orders, the costs payable to the solicitors acting for the persons under disability, who has claimed or received money, must be taxed and only the costs allowed on taxation should be paid. The said Order 62 rule 16 is as follows:

Costs payable to a solicitor where money claimed by or on behalf of a
minor or a patient (O.62, r.16)

- 16.– (1) This rule applies to any proceedings in which–
- (a) money is claimed or recovered by or on behalf of, or adjudged, or ordered, or agreed to be paid to, or for the benefit of, a minor or a patient; or
 - (b) money paid into court is accepted by or on behalf of a minor or patient.
- (2) The costs of proceedings to which this rule applies which are payable by any plaintiff to his or her barrister and solicitor shall, unless the Court otherwise orders, be taxed under rule 15(1) and (2).
- (3) On a taxation under paragraph (2), the taxing officer shall also tax any costs payable to that plaintiff in those proceedings and shall certify–
- (a) the amount allowed on the taxation of the solicitor’s bill to his or her own client;
 - (b) the amount allowed on the taxation of any costs payable to that plaintiff in those proceedings;
 - (c) the amount (if any) by which the amount mentioned in subparagraph (a) exceeds the amount mentioned in subparagraph (b); and

(d) where necessary, the proportion of the amount of such excess payable by, or out of money belonging to, respectively any claimant who is a minor or patient and any other party.

15. The above rule intends to prevent two dangers that could happen in proceedings involving persons under disability. First is to prevent the person under disability from being overcharged by his or her solicitors. Second is to prevent the solicitor from being influenced to recommend an unfavourable settlement by a tempting offer to agree his costs. The law generally requires to tax the costs of the solicitors unless it orders otherwise.
16. Accordingly, the above process should take place in cases where the settlement or compromise is reached in proceeding involving persons under disability. This process is mandatory and derives from *parens patriae* jurisdiction of the court. It is the jurisdiction that allows the court to play the role as the legal guardian of those who are unable to care for themselves, such as infants, minors or persons under disability. The powers of the court as *parens patriae* are more extensive than those of a parent [**Hewer v. Bryant** 3 All ER 578; **Department of Health & Community Services v JWB & SMB ("Marion's Case")** [1992] HCA 15; (1992) 175 CLR 218 (6 May 1992)]. The court which exercises *parens patriae* jurisdiction will only consider whether the settlement is itself a reasonable one and for the benefit of the persons under disability, having regard all the circumstances of the case.
17. The above rules are designed to enable the court to exercise its *parens patriae* jurisdiction in matters involving persons under disability. The ultimate objects of the above rules are (a) to protect the persons under disability from any lack of skill or experience of the their legal advisors which might lead to a settlement of a money claim for far less than it is worth; (b) to provide means by which a defendant may obtain valid discharge from the claim of persons under disability; (c) to ensure that, the solicitors acting for persons under disability are paid their proper costs and the persons under disability are not overcharged; and (d) to ensure that the money received by and on behalf of the persons under disability is properly looked after and wisely applied (**The Supreme Court Practice – The White Book 1988**, Vol. 1, page 1203).
18. If any settlement or compromise does not follow the above process, such settlement or compromise is not valid, because it circumvents *parens patriae* jurisdiction of the court and thereby defeats the ultimate objects of the rules.

19. There is no dispute that, the victim in this case is the person under disability and the above rules apply to this case. As alluded above, the trial was set in this matter for three days. i.e. 28th and 29th of March and 1st of April 2019. On 28th of March 2019, the solicitors for both the plaintiff and the defendant moved the court to vacate the trial as they were negotiating a settlement. The solicitor who appeared for the defendant confirmed to the court that, three weeks were needed to finalize the terms of settlement. The trial was vacated on such application and the matter was adjourned to 18 April 2019 for review on settlement. However, two days before the next date, i.e. on 16 April 2019, the notice of discontinuance was filed in court and it was signed by both solicitors. On 18 April 2019 one solicitor appeared on instruction of the solicitors for the plaintiff and there was no representation for the defendant. The notation of the judge reads that “Notice of Discontinuance filed, Action dismissed”.
20. It is evident from the record that, the settlement between the plaintiff and the defendant did not go through the mandatory process as required by the rule. No application was made pursuant to Order 89 rule 9 seeking approval of the court. The court did not have the opportunity to consider whether the settlement was itself a reasonable one and for the benefit of the child this matter. The validity of the any settlement depends on the approval of the court as it was held in Dietz v. Lennig Chemicals Ltd (supra). As such the settlement by and between two solicitors, namely, Baleilevuka & Associates and Diven Prasad Lawyers on behalf the plaintiff in this matter is invalid.
21. The next question is the validity of the discharge signed by Ms. Losalini Yabaki Ravulovulo on behalf of the plaintiff. Next friend is the officer of the court to take all measures for the benefit of the infant in the litigation in which he appears as next friend (*per*: Bowen LJ in **Rhodes v. Swithenbank** (1889) 22 QBD 577 at 579). For that reason, the law requires that, a person under disability must sue by next friend or guardian ad litem (Order 80 rule 2 (1)). The law also requires that, where a person has been or is next friend or guardian ad litem of a person under disability in any proceedings, no other person shall be entitled to act as such friend or guardian unless the court appoints such person. The Order 80 rule 3 (3) which contains such provisions is as follows:
 - (3) Where a person has been or is next friend or guardian ad litem of a person under disability in any proceedings, no other person shall be entitled to act as such friend or guardian, as the case may be, of the person under disability in those proceedings unless the Court makes an order appointing him or her such friend or guardian in substitution for the person previously acting in that capacity.

22. It is evident from the above rule that, all actions in proceedings involving the persons under disability must be taken up by the next friend or guardian ad litem. The rationale is that, it is the next friend and guardian ad litem who is liable and accountable to all such actions. Therefore the law prohibits others from acting in any capacity. This is to safeguard the best interest of the persons under disability. If the next friend or guardian ad litem is not in a position to act, it must be brought to the notice of the court and the court acting as the legal guardian should appoint another person. One next friend or guardian ad litem cannot delegate his or her power by way of a power of attorney when the rule specifically provides for separate appointment procedure. Ms. Losalini Yabaki Ravulovulo had acted in this matter without the appointment of the court, as such she lacked authority to act in any manner whatsoever on behalf of the child Ms. Ao Naiki in this matter. Accordingly, the discharge signed by Ms. Losalini Yabaki Ravulovulo has no validity at all.
23. I now turn to examine whether the notice of discontinuance should be set aside and the matter should be reinstated? Admittedly, the settlement breached the mandatory provisions of rule which requires the approval of the court and matter was discontinued contrary to the requirement of the rules. The counsel for the plaintiff cited the decision in **Shavina Kumari v. Kentia Clothing Co. Ltd.** Civil Action HBC 358. 97 L (unreported), and submitted that, the Notice of Discontinuance filed in this matter should be set aside and the matter should be reinstated. In fact, similar situation arose in that case. The settlement involving a person under disability was not approved by the court. The notice of discontinuance was filed without the approval of the court. The court set aside the notice of discontinuance and reinstated that matter.
24. Conversely, the counsel for the defendant submitted that, failure to follow the rules was mere irregularity and it did not nullify the proceedings. The counsel cited Order 2 rule 1 (1) in support of his argument. The said rule reads as follows:

Non-Compliance with rules (O.2, r.1)

1.-(1) Where, in beginning or purporting to begin any proceedings or at any stage in the course of or in connection with any proceedings, there has, by reason of anything done or left undone, been a failure to comply with the requirements of these Rules, whether in respect of time, place, manner, form or content or in any other respect, the failure shall be treated as an irregularity and shall not nullify the proceedings, any step taken in the proceedings, or any document, judgment or order therein.

25. The above rule generally provides that, non-compliance with rules is an irregularity and shall not nullify the proceedings. However, the succeeding sub-rules (2) and (3) provides how the court should handle such irregularity. Those sub-rules are as follows:

(2) Subject to paragraph (3), the Court may, on the ground that there has been such a failure as is mentioned in paragraph (1), and on such term as to costs or otherwise **as it thinks just, set aside either wholly or in part the proceedings** in which the failure occurred, any step taken in those proceedings or any document, judgment or order therein **or** exercise its powers under these Rules **to allow such amendments** (if any) to be made and to make such order (if any) dealing with the proceedings generally **as it thinks fit**.

(3) The Court shall not wholly set aside any proceedings or the writ or other originating process by which they were begun on the ground that the proceedings were required by any of these Rules to be begun by an originating process other than the one employed. (Emphasis added).

26. As highlighted in the above sub-rules, the court's approach in case of irregularity should be two fold. Firstly, **if the court thinks just** it has to set aside either wholly or in part the proceedings in which the irregularity occurred. Secondly, **if the court thinks fit**, it has to allow such amendments. However, the court shall not wholly set aside any proceedings on the ground that, the said proceedings began by a wrong originating process.
27. In this case, the solicitors who settled this matter out of the court had failed to comply with the mandatory rules which aim at best interest of the persons under disability. The solicitors, by settling the case out of the court, had ignored the *parens patriae* jurisdiction of the court. The solicitors who are obliged to ensure that, all relevant matters are put before the court, had in fact deprived the court from exercising its power, as the legal guardian of the persons under disability, to judicially scrutinize the settlement and to decide whether it was for the benefit of the child. It is now alleged in an affidavit filed in support of this summons that, the amount purportedly paid as the full and final settlement did not actually reach the next friend of the child. In nutshell, the very purpose of the rules was completely defeated.
28. In **Shavina Kumari v. Kentia Clothing Co. Ltd** (supra), His Lordship former Chief Justice Gates (as His Lordship then was) set aside the notice of discontinuance and held that:

No rule expressly deals with the setting aside of a notice of discontinuance. However, the inherent jurisdiction of the High Court to protect itself and litigant from abuse is sufficient foundation for the exercise of a discretion in an appropriate case.

29. In this case, mandatory rules have been overlooked. The *parens patriae* jurisdiction of the court has been by-passed. The court was ousted from exercising its role as the legal guardian of the child. In these circumstances, I decide that, it is not only just, but also beneficial for the child to exercise the inherent jurisdiction of this court, and to set aside the notice of discontinuance filed in this matter.
30. The next issue for determination is whether Mr. Hiroshi Taniguchi be appointed as the next friend guardian ad litem of Ms. Ao Naiki, replacing Ms. Shigami Naiki for the purpose of conducting these proceedings? The counsel for the plaintiff submitted that, the grandmother and next of kin of the child, Ms. Shigami Naiki has delegated her powers by way of a Power of Attorney to Mr. Taniguchi and stated that, he is unable to attend to legal matters concerning the child. The counsel further submitted that, she does not understand English and therefore moved the court to appoint Mr. Taniguchi as guardian ad litem.
31. The counsel for the defendant, whilst opposing the appointment of Mr. Taniguchi as guardian ad litem submitted that, Mr. Taniguchi does not meet the criteria to be guardian ad litem to the child, because he is a mere volunteer. He is neither related to the child nor is he connected with the child. The counsel further submitted that, there is no proper application before the court for removal of current next of kin and appointment of Mr. Taniguchi. The counsel highlighted that, the High Court Rules are silent on removal of the guardian ad litem and the English rules are applicable in such situation pursuant to Order 1 rule 7 of the High Court Rules. However there is no application pursuant to such English rules governing the removal of guardian ad litem.
32. Two questions to be determined in order to decide whether Mr. Taniguchi could be appointed as guardian ad litem. First is, does Mr. Taniguchi qualify to be the next friend and guardian ad litem to the child in this matter? Second is, has any reason been adduced to remove the current next of kin and guardian ad litem – Ms. Shigemi Naiki?
33. As submitted by the counsel for the defendant, the courts expressed the view that, the guardian ad litem should be a substantial person and it is desirable that he should be a relation or friend of the family or somehow connected with the person under disability. The courts do not seem to be in favour of mere volunteer (**Foster v. Cautley** (1853) 10 Hare App. 24). The courts also noted that, no discouragement ought to be thrown in the way of persons bona fide suing as next friend; but no undue facility should be given to mere volunteers (**Nalder v. Hawkins** (1833) 2 M. & K. 243).
34. Mr. Taniguchi is not related to the child in this matter, nor is the friend of the family. Mr. Taniguchi is also a Japanese national having business both in Fiji and Japan as he deposed

in his affidavit. He resides in Fiji. He is a mere volunteer who has come forward to help the child and her grandmother, the next of kin who are Japanese nationals. Ms. Shigami Naiki has delegated her powers to Mr. Taniguchi by of Power of Attorney and the application to appoint him as a guardian ad litem is based on the fact that, Ms. Shigami Naiki does not speak English. No other reason is adduced to remove Ms. Shigami Naiki – the grandmother and next of kin and to appoint Mr. Taniguchi in her place.

35. It is well settled that, the next friend or guardian ad litem is removed if the he has interest in the suit which is adverse to the person under disability or he is not acting properly in the interest of such person. The next friend or guardian ad litem may also be removed if he is refusing to accept a settlement which is clearly beneficial to the person under disability(**Re Taylor's Application** [1972] 2 All E.R 873)

36. Jessel, M.R. in **In re Birchall, Wilson v. Birchall** (1880) 16 Ch.D. 41 held at 42 that:

If the court saw that a guardian or next friend was acting improperly and against the infants' interest in refusing to assent to an arrangement which appeared clearly beneficial to them, steps might be taken to remove him and substitute some other persons.

37. In this case, there is nothing to show that, Ms. Shigami Naiki has been acting improperly against the interest of the child Ms. Ao Naiki. On the other hand, Ms. Shigami Naiki has instructed her solicitors to bring the current summons to set aside the settlement which was in her view not beneficial to the child. This shows that, she has been acting properly in the interest of the child in this matter. Accordingly, I decide that, Mr. Tanigichi, being a mere volunteer, is not qualified to be appointed as guardian ad litem and there is no reason either to remove Ms. Shigami Naiki whilst she has been acting properly in the interest of the child.

38. The last question is whether the leave should be granted to the plaintiff to amend the statement of claim. The Order 20 rule 5 of the High Court Rules provides for the court's power to grant leave to amend the pleadings. The rule reads that:

Amendment of writ or pleading with leave (O.20, r.5)

5.–(1) Subject to Order 15, rules 6, 8 and 9 and the following provisions of this rule, the Court may at any stage of the proceedings allow the plaintiff to amend his or her writ, or any party to amend his or her pleading, on such terms as to costs or otherwise as may be just and in such manner (if any) as it may direct.

39. The above rule in its plain meaning gives a broad discretion to the court to allow amendment of pleading at any stage of proceedings, and such discretion should be exercised in accordance with the well-settled principles. The Fiji Court of Appeal in Reddy Construction Company Ltd v Pacific Gas Company Ltd [1980] 26 FLR 121 (27 June 1980), succinctly summarized the test applicable and held that:

The primary rule is that leave may be granted at any time to amend on terms if it can be done without injustice to the other side. The general practice to be gleaned from reported cases is to allow an amendment so that the real issue may be tried, no matter that the initial steps may have failed to delineate matters. Litigation should not only be conclusive once commenced, but it should deal with the whole contest between the parties, even if it takes some time and some amendment for the crux of the matter to be distilled. The proviso, however, that amendments will not be allowed which will work an injustice is also always looked at with care. So in many reported cases we see refusal to amend at a late stage particularly where a defence has been developed and it would be unfair to allow a ground to be changed.

40. The primary consideration of the court in application for leave to amend the pleading is to allow the real issue between the parties be tried, whilst ensuring that no injustice is caused to them. For the court to come this conclusion, the party that applies for leave to amend its pleading must submit to the court and other party the proposed amendment. In this case, the plaintiff has not specified the proposed amendment. The plaintiff not only failed to annex the proposed statement of claim, but also failed to bring the current summons under the relevant rule of the court. The summons is not based on Order 20 rule 5 under which the discretion of the court is invoked when seeking leave to amend the pleadings. No party is allowed to seek a blanket leave to amend the pleadings without placing the proposed amendment before the court and giving an opportunity to the other party to respond to it. If the leave is granted as sought by the plaintiff in this summons to amend the statement of claim, it would be a fundamental flaw and a great injustice to the defendant. As such, the leave cannot be granted at this stage. If the plaintiff wishes to amend the statement of claim, she may apply to the court in a proper manner.
41. For the reasons adumbrated above, I make the following orders:
- a. The impugned settlement entered by and between two solicitors on behalf of the child is invalid as it did not follow the process required by the rules, and same is set aside,

- b. The discharge signed on behalf the child is invalid and is set aside,
- c. The Notice of Discontinuance filed in this matter is set aside,
- d. The matter is reinstated,
- e. The application to appoint Hiroshi Taniguchi as next friend and guardian ad litem is refused,
- f. The grandmother of the child and the next of kin, Shigemi Naiki should take all steps in this matter in her capacity as next friend and no other person is entitled to act in such capacity unless and until the courts appoints such person pursuant to Order 80 rule 3 (3),
- g. The plaintiff should file formal application for amendment of statement of claim annexing the proposed amendment for the court to consider and to make appropriate order,
- h. Parties to bear the costs, and
- i. The matter to be mentioned on 17.02.2026 to fix it for trial, if no application is made for amendment of statement of claim.



**At Lautoka
21.11.2025**


**U.L.Mohamed Azhar
Acting Judge**