IN THE SUPREME COURT OF
THE REPUBLIC OF VANUATU
(Civil Jurisdiction)

Civil Case No. 282 of 2013

BETWEEN: PETER SIMON RANBEL
First Claimant

AND: RACHEL SIMON RANBEL
Second Claimant

AND: REPUBLIC OF VANUATU
Defendant

Coram: Justice Aru

Counsel: Mr. S. Stephen for the Claimants
Ms. J. Warren for the Defendant

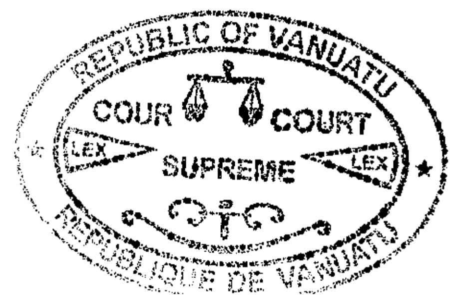
RESERVED JUDGMENT

Introduction

1. This is a claim filed by Mr. and Mrs. Ranbel as Claimants alleging negligence on the part of the Defendant and it's servants, the nurses and doctors at the Vila Central Hospital (VCH) resulting in the death of their child at birth. The Claimants are now seeking damages from the State.

Background

2. In 2007 Mrs. Ranbel had her first pregnancy. When she attended the VCH for delivery, the baby was delivered by a cesarean operation. Following the operation both mother and child survived. On the evening of 2 January 2011 Mrs. Ranbel was well into her second pregnancy and was again taken to the VCH and admitted. She remained at the VCH overnight and the following day another cesarean operation was conducted to deliver the baby but after

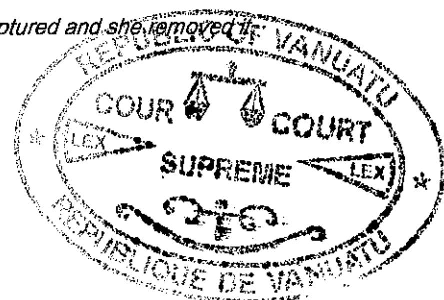


delivery the baby died. During the operation, Mrs. Ranbel's womb also had to be removed. She remained at the VCH for several days before being discharged on 11 January 2011.

Claim

3. The claim was filed on 10 December 2013 .It was later amended and an amended claim was filed on 7 July 2014. The claimants plead their claim at paragraphs 5,7,8, 9 and 10 and particularized as follows:-

> *".......*
>
> *5. The first claimant claims that as a result of the midwife's inexcusable conduct in delaying delivery, late Leonard Moilani Peter died and was therefore denying the right to life.*
>
> *Particulars*
>
> *(i) Midwife and theatre doctors failed to deliver him in due time*
>
> *....*
>
> *7. The second claimants claim that on 2 January 2011 at 4pm she had backaches and was in labor and was transported to the Vila Central Hospital and admitted at the maternity ward for the baby to be delivered by midwives but she was physically ignored as from 4pm until 9am the next day.*
>
> *Particulars*
>
> *a) At 9am her labor progressed and she had a ruptured membrane as there was blood seen on the floor.*
>
> *b) At 930pm a midwife put Rachel, the mother on cardio topography (CTG) to detect the baby's heart rate or contraction.*
>
> *c) It was noticed that the baby had distressed.*
>
> *d) midwife was advised by an off duty nurse to call the doctor and the dilation of the cervix was measured 2cm.*
>
> *e) labor pain increased and the contraction continued pass midnight but the cervix never dilated . By the time, the second claimant was screaming if she could be taken to the theatre to be operated upon to remove the baby.*
>
> *f) the midwife's response to the second claimant was the doctor had been notified .*
>
> *8. The second claimant further claims that on or about 9am the next day, a theatre surgeon arrived and examined the second claimant only to find the misfortune.*
>
> *Particulars*
>
> *i) the baby was delivered but unfortunately died.*
>
> *ii). The surgeon found that the uterus (womb) had been badly ruptured and she removed it.*



iii) The surgeon also found a bleeding artery so she packed it.

iv) .The surgeon also told the second claimant's husband that because of the rupture and the associated complication encountered by the baby's mother, she fell sick.

9. The second claimant claims that the servants of the Defendant namely the midwife and the theatre surgeon owed her a duty of care and that the duty was breached.

Particulars

i) the midwife had reasonably foresaw the damage that would be caused to the second claimant if no theatre doctor was immediately available thus failed to get the theatre doctor urgently attend on the second claimant .

ii) the theatre doctor failed to attend the second claimant on time after being advised by the midwife of the second claimant's deteriorating health condition.

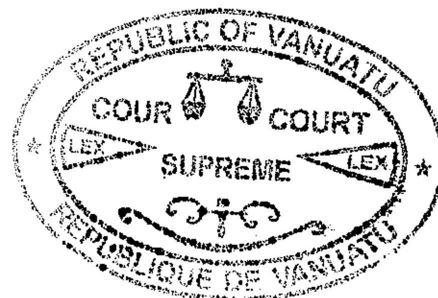
10. As a consequence of the midwives and the operating doctors negligence to attend to the second claimant on time and further coupled with the fact the uterus was badly ruptured, the second claimant after receiving treatment was admitted to the Intensive Care Unit (ICU) for three days and without knowing about the death of her child for a period of three days."

4. The total claim is for VT40 million being for general as well as aggravated damages. The Defendant on the other hand admits in its defence that it has a duty of care but denies that that duty was breached. It denies any liability. The trial then proceeded to determine the question of liability. If liability is established then the Clamant must also show that the breach of duty led to the harm suffered by the Claimants.

Summary of Evidence

5. The claimants rely on the following sworn statements which were also tendered into evidence:-

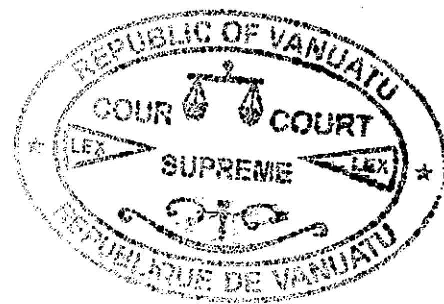
- Sworn statement of Peter Ranbel filed on 10 December 2013**[Exhibit C1]**
- Sworn statement of Peter Ranbel filed on 3 February 2013 **[Exhibit C2]**
- Sworn Statement of Lorraine Adams filed 10 December 2013 **[Exhibit C3]**
- Sworn Statement of Rachel Ranbel filed on 10 December 2013 **[Exhibit C4]**
- Sworn statement of Rachel Ranbel filed on 3 February 2015 **[Exhibit C5]**



6. In brief, Mr Peter Ranbel in his evidence says that his wife, Mrs. Ranbel was admitted into the VCH on 2 January 2011 at around 4 pm but was not attended to until 9 am on 3 January 2011. He acknowledges that in her first pregnancy the baby was removed by cesarean operation. He says upon her admission on 2 January his wife was unattended to for 11 hours even though she was in great pain and asked to be operated on. By the time she was operated on it was already too late. That his wife's womb was removed without his consent and the baby died as a result of the poor service provided to his wife. Under cross examination he admitted that it was not true that his wife was not attended to for 11 hours and agreed also that Mrs. Ranbel signed a consent form to agree to the operation.

7. Mrs. Ranbel said she arrived at the VCH with her husband on 2 January 2011 around 4 pm after feeling labour pains. That at 930 pm she says the baby's water broke. The nurse checked her twice and told her that the baby's passage was too small and they put her on the Cardiotograph (CTG) to monitor the baby's heartbeat. She says that because she was in great pain she asked to be operated on to remove the baby. She also says that she did not consent to the removal of her womb. Under cross examination she admitted that in her first pregnancy she was operated on because she has high blood pressure. With her second pregnancy she had high blood pressure every week and had to attend ante natal clinic. When he waters broke she agreed that the nurses checked her but that the baby's passage was small at 2 cm and they put her on CTG. She agreed that she had to undergo the operation as the baby's track was too small and agreed to the treatment she received after the operation until she was discharged.

8. Mrs. Lorraine Adams says that she is a nurse practitioner and went to the hospital at 7.30 pm on the 2 January 2011 to visit the Claimants. She says that at 9 pm Mrs. Ranbel has a ruptured membrane (waters broke) and from 930 pm onwards the midwife present placed Mrs. Ranbel on CTG to detect the baby's heart rate. She says she noticed that the baby had distressed and told the midwife. She asked about the dilation of the cervix and the midwife replied that it was 2cm. That during the night Mrs. Ranbel's cervix had not dilated and she was in great pain and asked to be operated upon. She says that in the morning the doctor

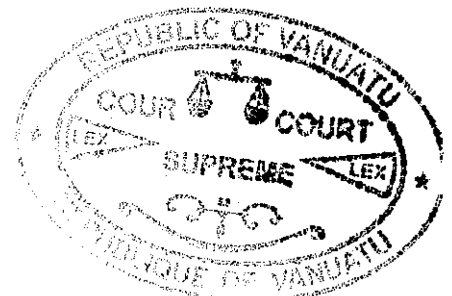


came and decided on the operation. Under cross examination she agreed that when Mrs. Ranbel was admitted at the VCH, the midwife checked her. She agreed that at 2cm the cervix had not dilated or opened for the baby to be born in the usual way. That the baby can only be born when the cervix is dilated to 10cm .She further agreed that if during the first pregnancy the baby was delivered by cesarean then the second pregnancy would be a high risk. She said she told the doctor to do something to save Mrs. Ranbel's life and agreed that the treatment due to loss of blood saved Mrs. Ranbel's life

9. For the Defendant it also filed a number of sworn statements as follows:-

- Sworn Statement of Dr. Tony Harry filed on 24 November 2014 **[Exhibit D1]**
- Further Sworn Statement of Dr. Tony Harry **[Exhibit D2]**
- Sworn Statement of Simone Tamashiro **[Exhibit D3]**

10. The evidence of Mr. Tony Harry is that he is an Obstetrician and Gynecologist and a registered medical doctor by profession and is based at the VCH. He says that he received a call at 6.45 am on 3 January and when he attended at the maternity ward, Mrs. Ranbel was on the CTG. He then did a vaginal examination and discovered that her cervix was 6 to 7 cm dilated which meant that she was in active labor and her conditions were normal but the baby was in distress. He says that he inserted hemoglobin of 14.1g/dl via intravenous cannula into Mrs. Ranbel's body to prepare her in advance for any emergency cesarean section operation and continued to monitor her condition. He explained to the claimants the risks that there was a 50 – 50 percent chance for loss of life of either the mother or the baby. They consented to the operation by signing a consent form before the operation was done. On 4 January Mrs. Ranbel was operated on again to remove the abdominal pack placed to stop the bleeding. The bleeding had stopped. Three days later Mrs. Ranbel was informed that her baby had died. On 12 January she was discharged from the hospital with some medication to assist with her full recovery. Under cross examination he confirmed that he performed the cesarean operation after finding that the baby was in distress. During the operation he discovered that the uterus had ruptured or torn therefore he removed the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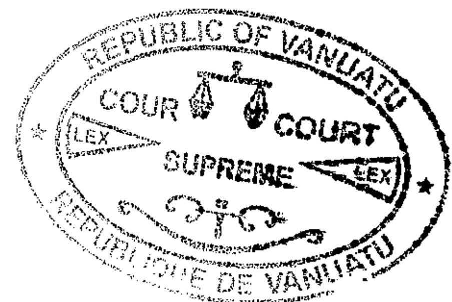
placenta. He was asked to explain the procedures applied and explained them as stated in his sworn statement tendered as **Exhibit D1**.

11. Mrs. Simone Tamashiro says that she is a midwife at the VCH maternity ward and has been working there since 2008. She says that during Mrs. Ranbel's first pregnancy, the baby had to be delivered by cesarean operation due to complications of pre-eclampsia, a multi systemic condition that arises during pregnancy after 20 weeks gestation with protein loss via urine and is characterized with blood pressure 140/90 to 150/100 mmhg (mild) and > 160/11mmhg (severe). She says that when Mrs. Ranbel was admitted to the VCH on 2 January 2011, at 5.50 pm she went into early labour. Upon vaginal examination, her cervix was 50% efface 2cm dilated with membrane intact which is an early sign of labour. She did a CTG but was not reassuring so the doctor on duty ordered a repeat of the CTG and hydration with normal saline. At 9.15 pm Mrs. Ranbel had a spontaneous rupture of her membrane, meconium and fetal heart rate was 136 beat per minute, normal. Labor progress remained the same as from the last assessment. The CTG was done with baseline of 140bpm with mild contraction and saline running. On 3 January at 12.50 am CTG was repeated and was reassuring as the baby was alright. She says that the medical care provided to Mrs. Ranbel was the same being applied to any pregnant woman who has had a previous cesarean operation with a fetal distress. She says that when Mrs. Ranbel was admitted on 2 January 2011 she was the midwife on duty with two other nurses and Mrs. Ranbel received medical attention during the night when she went into early labor. Under cross examination she confirmed that when Mrs. Ranbel went into early labor at 5.50 pm she checked her and took her temperature as she was in early labor but had no fever, her blood pressure was normal, the fetal heart rate was good as she put her on the CTG to detect the baby's heartbeat. At 915 pm she checked again when Mrs. Ranbel's water broke, the baby's heart was normal and she put her again on the CTG and informed Dr. Errolyne.

Discussions

12. The central issue in this matter is whether the duty of care owed by the Defendant was breached. In other words whether its servants, the doctors and nurses at the VCH were



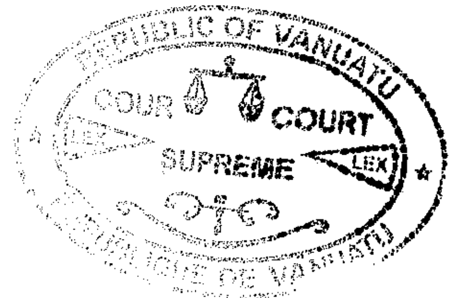
negligent in their duties thus resulting in the death of the claimants' baby. On the question of what is the duty of care of a medical practitioner, I adopt what the Court in **Rogers v. Whitaker** [1992] HCA 58; [1992] 67 ALJR 47, said as applied in **Tarilongi v Minister of Health** [2014] VUSC 64 that:-

> *"The law imposes on a medical practitioner a duty to exercise reasonable care and skill in the provision of professional advice and treatment. That duty is a "single comprehensive duty covering all the ways in which a doctor is called upon to exercise his skill and judgment"; it extends to the examination, diagnosis and treatment of the patient and the provision of information in an appropriate case. It is of course necessary to give content to the duty in the given case.*
>
> *The standard of reasonable care and skill required is that of the ordinary skilled person exercising and professing to have that special skill..."*

13. Whether the duty of care was breached is a matter for the court to determine upon consideration of the evidence before it. At the outset, as far as the parties are concerned, the first claimant claims that he represents the estate of the deceased, yet no evidence is put before the court that he has obtained letters of administration to be able to administer the deceased's estate.

14. The gist of the claimants' allegations are that the Defendants delayed delivery of the baby and as a result it died. Secondly they allege that Mrs. Ranbel was ignored and the doctor failed to attend to her on time and as a result her uterus badly ruptured requiring treatment in the Intensive Care Unit.

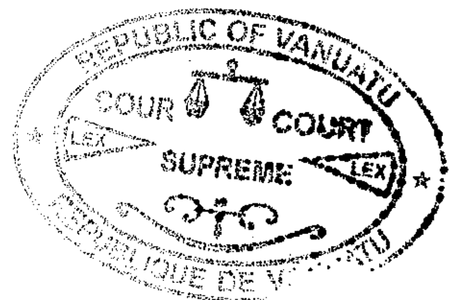
15. It was submitted by the Claimants that given the actions of its servants and agents, the Defendant should be found liable. Furthermore it was submitted that there was evidence that because the midwife and the operating doctor did not perform their duties with due care, the VCH should be held liable.



16. The Claimants did not call any expert medical evidence but relied on their own evidence and that of Mrs. Lorraine Adams, a nurse practitioner who was not a duty nurse at the maternity ward at the relevant time. The state of the Claimants' evidence is that Mr. Peter Ranbel admitted under cross examination that it was not true that his wife was not attended for 11 hours. He also agreed that Mrs. Ranbel signed a consent form to agree to the operation. At **Annexure TH4** to **Exhibit D1** is a copy of the signed consent form. Mrs. Ranbel when also cross examined admitted that during her first pregnancy she had had high blood pressure and her baby was delivered by a cesarean operation. During her second pregnancy she also had high blood pressure every week and had to visit the ante natal clinic. Further to that she accepted that when her waters broke the nurses checked her but the baby's passage was too small at 2cm and she was put on the CTG. This is confirmed by Lorraine Adams who in her evidence says that a baby can only be born when the cervix is 10cm dilated. Under cross examination Mrs. Adams agreed that the treatment received by Mrs. Rachel Ranbel saved her life.

17. The evidence of Mrs. Tamashiro details what she did in caring for Mrs. Ranbel when she was admitted at the VCH on 2 January. She says that the care Mrs. Ranbel received was the care any mother who had had a previous cesarean operation would receive. At **Annexure ST1** to **Exhibit D3** are notes of the different steps of medical attention and treatment given to Mrs. Ranbel upon her admission to VCH and prior to the operation.

18. At 12.50 am on 3 January, Mrs. Tamashiro says that the CTG was repeated and was reassuring as the baby was alright. Between that time and the time Dr. Tony Harry was contacted, Mrs. Ranbel's condition was normal. Dr. Tony Harry's evidence is that he was called at 6.45 am on 3 January and when he attended to Mrs. Ranbel she was still on the CTG .Upon doing a vaginal examination he found that the cervix was still 6 to 7 cm dilated which meant that she was in active labor and her conditions were normal but the baby was in distress.

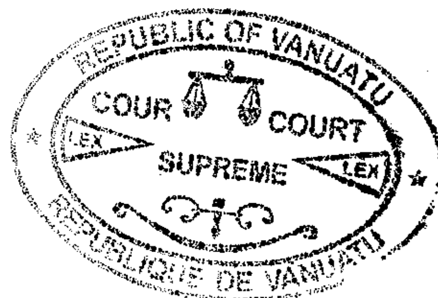


19. Dr. Tony Harry's evidence confirms the steps taken prior to the operation and the operation itself. In **Exhibit D1** at paragraph 11 sub paragraph i) to viii) he says:-

> *"....*
>
> *11. However at 8.25am of the same date 3 January, the emergency operation begins with the supervision of Chief Surgeon, Dr Samson Mesol. The following are different stages when carrying out the emergency operation on Mrs. Ranbel:-*
>
> *i) A pfannenstiel incision (operation allowing access to the abdomen was done along the old scar and met with a lot of adhesions. Rectus sheath opened with both rectus muscles cut for better exposure.*
>
> *ii) Upon opening the peritoneum (forma the lining of abdominal cavity, covers most of the intra-abdominal organs) there was a hematoma (collection of blood outside blood vessel due to blood vessel wall being damaged) (5cm x 5cm) seen over the bladder and extending to the left broad ligament and the head of the baby under the hematoma .*
>
> *iii) The hematoma extending to the left broad ligament and the head of the baby was seen under the hematoma.*
>
> *iv) Evacuation of the hematoma revealed a floppy baby boy with the placenta already separated and a lot of blood clots concealed with a torn uterus extending down the left broad ligament as far as the left lateral wall of the upper vagaina.*
>
> *v) The floppy baby boy was removed and handed to the Paediatrician for resuscitation, where blood clots were removed and an attempt to repair the uterus was carried out but unsuccessfully and hemostasis (process causing bleeding to stop, keep blood within a damaged vessel) cannot be achieved.*
>
> *vi) The chief surgeon Dr Samson Mesol assisted me to carry out a subtotal hysterectomy (uterus removed and cervix preserved) to control the bleeding which was consented for and explained to the Claimants , if it needs to be done to save the patient, it will be carried out.*
>
> *vii) The uterus was removed and the cervix was preserved with the right ovary but the second Claimant kept on bleeding and so we decided to pack the area with abdominal gauze as a form of tamponade and close the abdomen.*
>
> *viii) The resuscitation continued for 30 minutes but was unsuccessful in and he was pronounced dead."*

Findings

20. I have considered the evidence placed before me and I find that when Mrs. Ranbel was admitted she was attended to by the nurses at the VCH and she received the same attention



that any pregnant mother who had had a previous cesarean operation would have received. There is no evidence that delivery of the baby was delayed by the defendant. Up until Dr. Tony Harry arrived, Mrs. Ranbel was in active labor and her conditions were normal. The cervix had only dilated up to 6 to 7 cm not reaching 10 cm as yet for the baby to be born. On vaginal examination, it was found that the baby was in distress. Thereafter an operation was required for which the Claimants gave consent after being satisfied with the doctor's explanation of the risks involved. The treatment that Mrs. Ranbel received saved her life. Unfortunately although the baby was delivered alive could not survive.

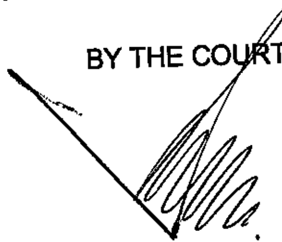
21. The Claimants' complaint of breach of duty is against the conduct of Mrs. Tamashiro and the nurses at VCH at the time of Mrs. Ranbel's admission and Dr. Tony Harry who conducted the operation. The Claimants' evidence when considered in its totality fails to show that the examination, diagnosis and treatment of Mrs. Ranbel was wrong to warrant a finding of negligence on the Defendant's part. I find that the evidence of Dr. Tony Harry and Mrs. Tamashiro was unchallenged.

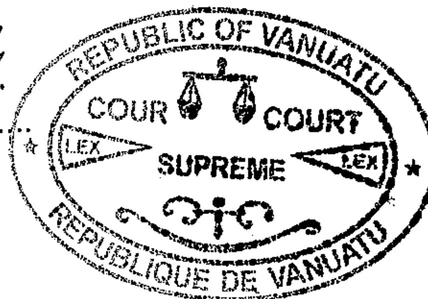
Conclusion

22. The Defendant has not breached its duty of care therefore the claim must be dismissed and the Defendant is entitled to costs on a standard basis to be agreed or taxed by the Master.

DATED at Port Vila, this 28 day of February, 2017

BY THE COURT





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Judge