

IN THE HIGH COURT OF FIJI  
AT SUVA  
CIVIL JURISDICTION

Civil Action No. HBC 79 of 2017

BETWEEN : ROBERT LEONARD KOROI of Lami Town, Lami, Unemployed.

PLAINTIFF

AND : PERMANENT SECRETARY FOR HEALTH Ministry of Health, Denem House, Amy Street,  
Suva.

FIRST DEFENDANT

AND : THE ATTORNEY GENERAL OF FIJI is being sued pursuant to Crown Proceeding Act  
Cap 24.

SECOND DEFENDANT

BEFORE: Master Vishwa Datt Sharma

COUNSEL: Mr. Maisamoa - for the Plaintiff  
Ms. Nazia Ali with Ms. Priscilla Singh - for the Defendants

Date of Hearing: 12<sup>th</sup> September, 2017

Date of Ruling : 21<sup>st</sup> November, 2017

RULING

[Summons by the Defendants seeking for transfer of the case to the High Court  
Labasa pursuant to Order 4 Rule 1 (4) of the High Court Rules, 1988 and  
the inherent jurisdiction of this Honourable Court]

## INTRODUCTION

1. The **Defendants** by its **Summons** filed on 23<sup>rd</sup> May, 2017 sought for the following order;-
  - (i) *That the current proceedings be transferred to the High Court Labasa.*
2. The Application is made pursuant to **Order 4 Rule 1 (4) of the High Court Rules, 1988.**
3. The **Plaintiff** strongly '**opposed**' the application for transfer.

## THE LAW

4. **Order 4 Rule 1 (1) and (4) of the High Court Rules, 1988** provides as follows-
  - r1 (1) *Proceedings must ordinarily be commenced in the High Court registry located in the Division in which the cause of action arises;*
  - (2).....;
  - (3).....
  - (4) *Any action commenced in the High Court may be transferred by the court from one High Court to registry to another or to a Magistrate's Court.*

## DEFENDANT'S CASE

5. That the alleged medical negligence occurred at the Labasa Hospital and all the witnesses reside in Labasa and therefore the trial of this matter would be more efficacious if it were proceeded with in Labasa.
6. Therefore, this file should be transferred to the High Court in Labasa.

## PLAINTIFF'S CASE

7. That the application for transfer of case to Labasa is opposed.

8. That the Defendants have all means at their disposal in which the Defendants can afford all the witnesses travelling expenses and accommodation during the hearing of this case. Therefore, the Defendants would need their witnesses attendance during the hearing only.
9. That the Plaintiff is unemployed and it would be difficult for him to pay the Lawyers travelling expenses to and from Labasa taking into consideration the procedures involved in the matters since the pleading is yet to be completed not to mention unforeseen circumstances in relation to the interlocutory proceedings by either party.
10. That the Plaintiff's mobility is limited and restricted taking into account that one of his leg has been amputated.

#### ANALYSIS and DETERMINATION

11. The Plaintiff commenced proceedings by way of a Writ Action claiming "*Tort of Negligence*" against the Defendants.
12. The incident is alleged to have taken place at the Labasa hospital.
13. According to the Defendants, all witnesses reside in Labasa and it would be judicious that this case is transferred to the High Court in Labasa.
14. In my considered view the principles that guide the Court in the exercise of its discretion to transfer cases are conveniently set out in *Halsbury's Laws of England (4th edition) Vol.37 at para.63* which reads:

*"The Court's power to transfer proceedings from one Court to another is a useful corrective to ensure that proceedings, wherever begun or whatever forum the plaintiff has initially chosen, should be dealt with or heard or determined by the Court most appropriate or suitable for those proceedings ... the Court will have regard to the nature and character of the proceedings, the nature of the relief or remedy sought, the interests of the litigants and the more convenient administration of justice. It is a discretionary power which will be exercised having regard to all the circumstances of the case."*

15. The Plaintiff's substantive claim against the Defendants is based on *Tort of Negligence*.

The Plaintiff claims that the 1<sup>st</sup> Defendant is liable in respect of any breach of duty or negligence on their part. The Plaintiff was admitted at the hospital on the complaint of injured left leg below the knee and was injected with pain killer. The Plaintiff was not consulted nor was advised by doctors that that a Labasa medical team together the visiting Australian medical team would amputate his left leg. When the Plaintiff woke up he noticed that and felt that his left leg below his knee was amputated and now has 28% disability. The Plaintiff claims damages accordingly.


16. The Plaintiff alleges that he was neither consulted nor was he advised by the doctors that a Labasa Team together with the visiting Australian medical team including Doctor Loeffler would amputate his left leg. He states that his left leg below his knee was amputated. There is no medical report tendered into evidence before this Court to establish *prima facie* medical evidence as to the alleged amputation and /or 28% disability resulting in the amputation of the left leg below the knee. Further there is no evidence to establish *prima facie* case of the Plaintiff's financial statutes as submitted by the Counsel representing the Plaintiff.
17. Bearing in mind all the above together with what the **Defendants** have submitted to court in my view has established a *prima facie case* for the **transfer** of this action to the High Court at Labasa. Further, all the witnesses to this proceedings reside in Labasa.
18. This case has remained pending in this Court since **28<sup>th</sup> March, 2017**, for some **8 months** now and the only way it can be **expedited** is to order a transfer of this case and move it expeditiously at the Labasa Court and a strict timetable be set for the Counsels representing the Parties to comply.
19. In the exercise of the **Court's discretion**, I hereby order that this action to be transferred to the **High Court**, in **Labasa** for completion of the **pleadings** and thereafter be **allocated** to a High Court Judge for **hearing and Determination** of the substantive action accordingly.
20. Following are the Final Orders of this Court:

**FINAL ORDERS**

- a. Defendants Summons seeking an order to transfer the case to the High Court At Labasa succeeds;
- b. The case stands adjourned at the Labasa High Court for further directions;
- c. Each party to bear their own costs at the discretion of this Court;
- d. Orders accordingly.

Dated at Suva this 21<sup>st</sup> Day of November, 2017



  
.....  
VISHWA DATT SHARMA  
Master of High Court, Suva

cc: Maisamoa & Associates, Rakiraki.  
Attorney Generals Chambers, Suva.