IN THE HIGH COURT OF FIJI AT LAUTOKA CIVIL JURISDICTION

HBC 237 OF 2016

BETWEEN:

KITIONE WAQA WILKINSON

PLAINTIFF

AND

THE PERMANENT SECRETARY FOR HEALTH

1ST DEFENDANT

AND

THE ATTORNEY GENERAL OF FIJI

2ND DEFENDANT

Appearances:

Mr. Maisamoa K. for the Plaintiff

Mr. Mainavolau J. for the Defendants

Date of Hearing:

03 August 2022

Date of Ruling:

26 October 2022

RULING

- 1. Before me is a Summons for Stay of Execution of Order Pending Appeal filed by the office of the Attorney-General on 11 February 2022.
- 2. The Orders which the A-G's Office wishes to stay were made by Mr. Justice M.H Ajmeer on 07 December 2020. The Orders in question were:

(a) Costs - \$ 3,000 - 00 (b) General Damages - \$ 25,000 - 00 (c) Loss of Earnings - \$132,600 - 00 (d) Exemplary Damages - \$ 10,000 - 00 (e) Special Damages - \$ 660 - 00

TOTAL -

\$171,260 - 00

- 3. The above orders were made following a three-day split trial in June 2020 in a medical negligence case filed by Viliame Tiko in his capacity as beneficiary interested in the estate of his late infant son, Kitione Waqa Wilkinson.
- 4. On 13 April 2015, Tiko took his infant son to Ba Health Centre for medical attention and examination due to an injury caused by a small piece of stick which had pierced the infant under the tongue on 12 April 2015.
- 5. At the hospital, the infant was seen by a nurse, was given some medicine and then was sent back home.
- 6. At home, the infant's condition became worse overnight. On the morning of 15 April 2015, Tiko took his infant son again to Ba Health Centre where he was seen by the same staff nurse who had seen him on 13 April 2015. The staff nurse then referred the infant to a medical doctor who following an x-ray referred the infant to Lautoka Hospital for surgery.
- 7. Following surgery at Lautoka Hospital, the infant later developed complications. He died later as a result of these.
- 8. I will not repeat here the principles of stay pending appeal. These are set out succinctly in <u>Stephen Patrick Ward v Yogesh Chandra</u> CBV 10 of 2010, 20th April 2011 per Gates CJ; <u>Natural Waters of Viti Limited v Crystal Clear Mineral Water (Fiji) Ltd</u>, ABU 11 od 2004, 18 March 2005 per Calanchini J and <u>Emosi Silikiwai v The Attorney-General</u> FJCA Civil Appeal No. 0074/16.
- 9. I have perused the grounds of appeal and I am satisfied after hearing submissions from counsel and the issues raised that I should grant stay.

10. Parties to bear their own costs.

Anare Tuilevuka

JUDGE Lautoka

26 October 2022