

**IN THE HIGH COURT OF FIJI**

**AT SUVA**

**CIVIL JURISDICTION**

**CIVIL CASE NO. HBC 363 OF 2023**

**BETWEEN** : **AK**  
**Plaintiff**

**AND** : **PAULINE GUCAKE**  
**First Defendant**

**JOPE KORODUADUA**  
**Second Defendant**

**SARAFINA WAINIBULI**  
**Third Defendant**

**ROBERT LINGHAM**  
**Fourth Defendant**

**WAINIKITI ROUNDS**  
**Fifth Defendant**

**THE LEARNING CENTRE**  
**Sixth Defendant**

**Counsel** : **Mr M Saneem for the Plaintiff**  
: **Mr W Clark and Mr S Koya for the Defendants**

**Hearing** : **16 January 2026**

**Judgment** : **19 January 2026**

## EXTEMPORE JUDGMENT

- [1] I will make an order suppressing the name of the Plaintiff who is a juvenile. He will be referred to as AK in this judgement.
- [2] This matter is scheduled for trial today (19 January), tomorrow (20 January), and Thursday (22 January). The trial was set down on 6 August 2025, some 4 to 5 months ago. The plaintiff has sought an adjournment, the application being made orally on 16 January, the working day prior to today's trial. The reason provided by counsel for the plaintiff in respect to the adjournment is that on the evening of 15 January, counsel was informed by his client that the mother of the plaintiff is in Australia recovering from surgery performed in November 2025, and is not able to travel to Fiji for the trial. The plaintiff is in Australia with his mother and, being a child, is remaining with his mother. This explanation for the application was provided from the bar as Mr Saneem has not been able (in the short time) to secure any evidence, medical or otherwise, to support the application. Mr Saneem states that the plaintiff and his mother are key witnesses and that without this evidence the plaintiff cannot make out his case.
- [3] It appears that Mr. Saneem informed counsel for the defendants the week earlier of the prospect of an application for adjournment, but as no formal application was made (at least not until 16 January 2026) the defendants have prepared for trial, and, according to Mr Clark, are ready to proceed. Four of the defendants' witnesses are young, aged only 13 or 14 years. The witnesses have been briefed.
- [4] I heard the application for the adjournment on 16 January. Mr. Saneem argued that the plaintiff should have his day in court, and that the responsibility for the late application is with the plaintiff's mother, and the plaintiff should not be disadvantaged. He argues that the fair and just outcome should be an adjournment.
- [5] The defendants 'strongly' oppose the application. As I have stated, they are ready for trial. Their witnesses are briefed. Particular emphasis was made to the fact that the four young persons providing evidence have had their school vacation ruined by the stress of these proceedings hanging over them. One of the four witnesses is schooling

overseas. If the case is adjourned, counsel for the defendants states that the matter cannot be rescheduled until the same time next year due to the need to accommodate the witnesses schooling circumstances.

[6] In my earlier decision of 29 August 2024<sup>1</sup>, I considered a strikeout application by the defendants. I set out in that decision the nature of the claim brought by the plaintiff. It involves events that occurred in 2020 and 2022 at AK's school, in particular three events pertaining to the plaintiff allegedly not being permitted by teachers to go to the bathroom, and on one of those three occasions, wetting his pants. He has claimed damages and compensation for the harm, both emotional and psychological, caused by the events.

[7] These proceedings have taken their natural course. There was, of course, the strikeout application which I declined in August of 2024, but neither party has unduly, or unnecessarily, delayed these proceedings. As Mr Saneem has pointed out, this is the first occasion that the case has been set down for trial.

[8] Under Order 35, Rule 3, of the High Court Rules the Court has a discretion to adjourn a trial, as the circumstances justify. It is a wide discretion, but it must be exercised judicially. In *Raji v. Permanent Secretary of Health* [2023] FJCA 202, Gunaratne P. provided the following comments on the exercise of the discretion:

*[10] Consequently, it is a balancing exercise a court is required to perform. From a 'legal-philosophical' perspective, courts in search of justice find the means to accomplish the search in the law in striking that essential balance for as it is often said, 'justice must be done according to law'. It is that law which one finds in the established legal principles in the statute book as judicially interpreted, taken in the circumstances of a given case. The relevant principles in their application in the circumstances of the instant case were recounted in the foregoing discussion.*

---

<sup>1</sup> *AK v Gucake* [2024] FJHC 529 (29 August 2024).

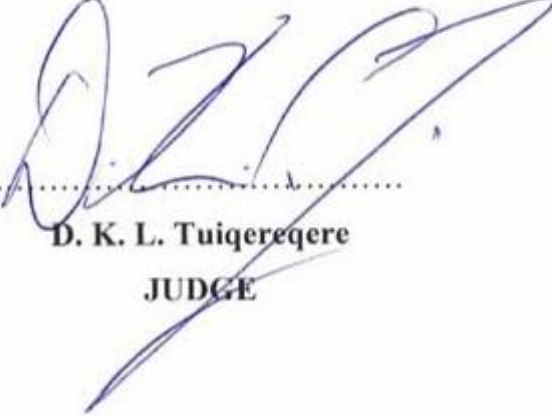
*[11] Although it could be said that whether to grant or refuse an adjournment of a trial date is a matter of exercise of discretion for the court, that discretion is not absolute. It is one that must be exercised judicially. How that discretion is to be exercised must necessarily be in the light of established legal principles as articulated above.*

[9] Ordinarily, the plaintiff may well have been granted the adjournment. As Mr. Saneen stated, this is the first trial date fixed. The proceedings have moved in a manner that, while not expeditious, certainly not prolonged either. The proceedings were filed in 2023, and we are at the beginning of 2026.

[10] The concern that weighs heavily for the Court is the impact of an adjournment on the four young witnesses for the defendant, including, of course, the delay on the plaintiff, who is also a young person. The events in question occurred four to six years ago, and there will be some impact on their recollection, although not significant, with a further delay. The concern is the psychological impact on the young persons putting off the proceedings for potentially a further year. They have had this school vacation ruined by the prospect of providing evidence this week. They will have only been advised last Friday, 16 January, of the application for an adjournment. They will be required to endure the same stressful exercise on another date, whether it is in several months or a year. I have to weigh up the impact on them as against the plaintiff's right to his day in court.

[11] I am satisfied that that balance tips in favour of not granting the adjournment due to the impact of a further delay on the four young witnesses. What tips the balance even more strongly in favour of the defendants is the plaintiff's failure to make the application earlier and to provide proper supporting medical and lay evidence. There is no evidence before this Court of the plaintiff's mother's current medical circumstances. There is no evidence before this court of the surgery in November 2025, although I accept Mr Saneem's advice from the bar. The application itself was made verbally at the 11th hour. I am satisfied that the plaintiff's mother will have been aware much earlier than 15 January 2026 of her difficulties travelling to Fiji for the trial.

- [12] While Mr. Saneem argues that the plaintiff should not be prejudiced by his mother's circumstances. I am satisfied, given the plaintiff's age, that the instructions for the plaintiff are coming from the plaintiff's parents. As such, it is incumbent on the parents to be ready for trial and provide timely instructions to their counsel. On that note, no criticism is made of Mr Saneem for this late development. His clients should have provided earlier instructions.
- [13] The other matter raised by Mr. Saneem is to question whether the four young persons were necessary witnesses for the defendants. That, of course, it is a matter for the defendants to decide. So long as the evidence is relevant the Court will permit their evidence to be heard. Nevertheless, given the allegations and the pleadings regarding events that occurred at the plaintiff's school, it is not difficult to accept that students that witnessed the material events or the plaintiff's behaviour at the material time will provide helpful evidence for the Court.
- [14] Accordingly, the plaintiff's application to adjourn the trial is declined.
- [15] The trial is scheduled for today. The plaintiff does not have any evidence to support his case and as such his claim against the defendants is dismissed.
- [16] That leaves the issue of costs. Mr. Clark has sought the rather modest figure of \$4,000 (modest given that the proceedings are at the trial stage and all the preparation has been undertaken). Mr. Saneem urges the Court to make a minimal award. The Court has a wide discretion. I am conscious that in declining the plaintiff's adjournment he cannot offer any evidence. Having regard to all the circumstances, I am satisfied that it is fair, and reasonable, that costs lie where they fall. There will be no award of costs.



D. K. L. Tuiqereqere  
JUDGE

**Solicitors:**

**Saneem Lawyers for the Plaintiff**

**Howards Lawyers for the Defendants**