MARY CHOW –v- ATTORNEY-GENERAL

HIGH COURT OF SOLOMON ISLAND
(FRANK O. KABUI, J.)
Civil Case No. 127 of 2000

Date of Hearing: 20th March & 24th April 2002
Date of Judgment: 07th May 2002

Mr A. Nori for the Plaintiff
Mr F. Waleanisia for the Defendant

JUDGMENT

(Kabui, J): By a Writ of Summons filed on 28th April 2000 as Amended on 29th August 2000, the Plaintiff claims damages for negligence to be assessed and damages for mental stress and nervous shock to be assessed plus interest and interest on costs. From the start I was not too sure whether the Plaintiff had pleaded negligence adequately as a cause of action. The Defendant had not requested any further and better particulars before defence was filed. Pleading had closed. I regard paragraphs 27-31 of the Statement of Claim as barely adequate in alleging negligence in this case.

The Facts

The Plaintiff is the owner of the Amy's Snack Fast Food Bar "**the property**" situated at Point Cruz in Central Honiara. In or about November 1998 the Government of Solomon Islands through the Ministry of Works, Transport, Communication and Aviation "**the Ministry**" approved the Honiara Road Project "**the Project**" for the Honiara main road. The Project was carried out by a contractor under the supervision of the Ministry. On 4th January 1999, Mr. Virivolomo of the Ministry wrote to the Plaintiff informing her that her property would be affected by the Project. By letter dated 16th July 1999, Mr. Nori, the Solicitor for the Plaintiff told Mr. Wale of the Ministry that there was a need for a proper agreement before road work could be extended to the property. The same information was later communicated to the Plaintiff by the Commissioner of Lands **(the Commissioner)** by letter dated 4th August 1999. In that letter the Plaintiff was told that any damages caused by the roadwork would be paid for by the Government. By letter dated 8th August 1999, Mr. Nori, the Solicitor for the Plaintiff informed the Commissioner that the Plaintiff's claim was in the sum of $9,392,350.00. This sum was to be accepted within 14 days. If this proposed sum was accepted, the Government was to pay 50% down payment to be followed by the other 50% plus 15% interest per annum within 6 months thereafter. The settlement was to be done within 12 months. Lastly, no roadwork should start until an agreement was signed by the parties. By letter dated 15th September 1999, the Attorney-General informed Mr. Nori, the Plaintiff's Solicitor that the fence and huts needed to be removed to allow roadwork to commence. By letter dated 20th September 1999, Mr. Nori informed the Attorney-General that the Plaintiff was prepared to reduce her claim by $3,000.00. Following further correspondence between the parties, the Commissioner by letter dated 20th December

1999 informed the Plaintiff that sufficient part of her property was required for the footpath and had to be acquired for that purpose. He also said in that letter that the Surveyor-General would do the necessary subdivision and thereafter the Chief Valuer would value the land. Furthermore, he said that the Plaintiff must start scaling down her operation and to shut down completely by the end of January 2000. Following this the Plaintiff in an oral arrangement with Ruby Lee sold her kitchen items, furniture and stock etc. to facilitate the roadwork to commence. The agreement was later reduced to writing and signed on 10th February 2000. By letter dated 1st February 2000, the Commissioner informed the Plaintiff that there had been a change in the road design and so the Plaintiff's property was no longer needed for the roadwork as said before.

The Plaintiff's Case

The Plaintiff's case is that she sold her assets and closed down business as a direct result of the Commissioner's advice to scale down and to close down completely by the end of January 2000. She says she has suffered damages as a result of the subsequent advice by the Commissioner that after all there was no longer any need for her property to be acquired as previously intended by the Government. She says that she has also suffered mental shock and distress as a result of the sudden turn around of position by the Government.

The Defendant's Case

The Defendant's case is that the Government owes no duty of care towards the Plaintiff and therefore denies liability.

The law of negligence

Every lawyer knows about the case of **Donoghue v. Stevenson** [1932] A. C.562. That was the ginger ale case, which set the basis for the modern law of negligence. Lord Atkin's judgment on the neighbour principle was to be extended in later years to apply to new situations. This principle was extended in **Hedley Byrne & Co. Ltd. v. Heller & Partners, Ltd** [1964] A.C. 465 by the House of Lords to apply to economic loss arising from misstatements. Again, the neighbour principle was confirmed and applied in **Dorset Yacht Co. Ltd. v. Home Office** [1970] A.C. 1004 beyond the limits of Lord Atkin's formulation. The House of Lords, in **Anns v. Merton London Borough Council** [1978] A.C. 728 for the first time then formulated a two-staged test for negligence. In His Lordship's judgment, Lord Wilberforce said at pages 751-752, **..."Through the trilogy of cases in this House – Donoghue v Stevenson [1932] A.C. 562, Hedley Byrne & Co. Ltd. v Heller & Partners Ltd. [1964] A.C. 465, and Dorset Yacht Co. Ltd. V Home Office [1970] A.C. 1004, the position has now been reached that in order to establish that a duty of care arises in a particular situation, it is not necessary to bring the facts of that situation within those of previous situations in which a duty of care has been held to exist. Rather the question has to be approached in two stages. First one has to ask whether, as between the alleged wrongdoer and the person who has suffered damage there is a sufficient relationship of proximity or neighbourhood such that, in the reasonable contemplation of the former, carelessness on his part may be likely to cause damage to the latter – in which case a prima facie duty of care arises. Secondly, if the first question is answered affirmatively, it is necessary to consider**

whether there are any considerations which ought to negative, or to reduce or limit the scope of the duty or the class of person to whom it is owed or the damages to which a breach of it may give rise: see Dorset Yacht case [1970] A.C. 1004 per Lord Reid at p. 1027"... This two-staged test was applied again by the House of Lords in **McLoughlin v. O' Brian** [1983] A.C. 410 and in **Junior Books v. Veitchi** [1983] 1 A.C. 520. Then followed a re-assessment of Anns' approach. The House of Lords in **Governors of the Peabody Donation Fund v. Sir Lindsay Parkinson & Co. Ltd.** [1985] A.C. 210 said that it was concerned with the tendency of the Courts to take Anns' approach so literally that it would assume a definite character and create rigidity. It said this tendency should be resisted. Again, the House of Lords in **Leigh and Sillivan Ltd. v. Aliakmon Ltd.** [1986] 2 W L R 902 expressed fear of the potential risk that could arise if the Courts should apply the Anns' approach literally so that well established principles in precedents would be swept under the carpet in preference to the risk of opening the floodgates to all sorts of claims for negligence. Again, the House of Lords in **Curran v. Northern Ireland Co-ownership Housing Association Ltd.** [1987] 2 W.L.R. 1043 criticized the Anns' approach as being to be resisted. The Anns' approach was not followed by the High Court of Australia in Council of the Shire of **Sutherland v. Heymen** (1985) 59 A.L. J.564. The **Privy Council in Yuen Kun yeu and others v. Attorney-General of Hong Kong** [1987] 2 A.E.R. 705 did recognize the reservation expressed in the preceding decisions of the House of Lords. However, the Privy Council went further and criticized the Anns' approach as being defective in essence and could be misleading in determining the existence of the duty of care in negligence. The House of Lords in **Hill v. Chief Constable of West Yorkshire** [1988] 2 A.E.R. 239 went on to say that reasonable foreseeability was not to the exclusive factor to be looked at by the Court but other factors as well such as all the circumstances in the case as well as different categories of decided cases. In **Caparo Industries plc v. Dickmman** [1990] 2 W.L.R. 358, the House of Lords said that in novel cases the test should be a three staged test for imposing a duty of care. That is to say, there must be foreseeability of damage, proximity of relationship and reasonableness of the imposition of the duty of care. The House of Lords in **Murphy v. Brentwood District Council** [1990] 2 A.E.R. 908 finally said that the Anns' approach was wrongly decided and was therefore an unsatisfactory guide in the law of negligence. The House was therefore in favour of the approach taken by the High Court of Australia in **Heymen's case** cited above. (Also see **Department of the Environment v. Thomas Bates & Son (New Towns Commission, third party)** [1990] 2 A.E.R. 943). As Steven Offei says at page 87 in **Law of Torts in the South Pacific** 1997, the law of negligence is always changing track and therefore can cause uncertainty. Be that as may the duty of the Court is to decide each case on the facts before it. I think the central theme in each case is the quest for reaching justice within the scope of the principles so far known in the law of negligence. It is with this in mind that I approach the facts of this case.

What category of cases is this?

The law of negligence covers myriad situations. It is therefore useful to identify and then put into what category the case at hand falls in order to narrow down the scope of attention. In my view, this case falls into the category of cases involving economic loss suffered by the Plaintiff resulting from a statement intended to be acted upon by the Plaintiff. The other limb of the Plaintiff's claim for damages for

mental stress and nervous shock puts it into the personal injury category of cases also. I will first deal with the Plaintiff's claim for economic loss arising from the conduct of the Commissioner being an officer of the Government.

The Evidence in this Case

The Plaintiff was first contacted by Mr Virivolomo by letter dated 4th January 1999. This letter was official in nature because Mr Vrivolomo identified himself as acting for and on behalf of the Government of Solomon Islands representing the Ministry being responsible for the implementation of the Project. The Plaintiff was told in that letter that her property was to be affected by the Project. In particular, she was told that the part of her property fronting the road would be affected. She was asked for her co-operation and that after consultation with other authorities she would be notified. The Plaintiff responded through her Solicitor on 16th July 1999. She did so because she had not heard from the Commissioner for 6 months and roadwork was going on closer to the frontage of her property. The Plaintiff's Solicitor advised Mr. Wale, the Permanent Secretary of the Ministry that there must be proper negotiation for the acquisition of her property or else any intrusion by the Contractor would be regarded as trespass on the property. This letter was copied to Mr. Virivolomo and the Commissioner. By letter dated 4th August 1999, the Commissioner informed the Plaintiff that part of the fenced area of her property would be affected by the roadwork to facilitate a roundabout to be constructed. She was told in that letter that any damage caused or land taken away would be compensated. She was told that a valuer would be coming to assess the cost of any likely compensation. She was asked for her understanding and co-operation on the matter. The Plaintiff's Solicitor again wrote but this time to the Commissioner direct. The letter was dated 8th August 1999 informing the Commissioner of the Plaintiff's claim for the sum of $9,392,350.00 and the payment schedule intended by the Plaintiff should the Commissioner accept the Plaintiff's claim. There was no reply to this letter from the Commissioner. By letter dated 20th December 1999, the Commissioner informed the Plaintiff that the Surveyor-General would survey and subdivide the area required for access and that it would be valued by the Chief Valuer. She was then told to start scaling down her business operation and to completely shut down by the end of January 2000. This was to pave the way for negotiation to proceed and roadwork to commence. On the 10th February 2000 the Plaintiff signed an Agreement with Ruby Lee under which Ruby Lee **"the Purchaser"** took possession of the assets of the Plaintiff's business for the price of $220,000.00. This Agreement was deemed to have commenced on 1st February 2000. By letter dated 1st February 2000, the Commissioner informed the Plaintiff that there had been a change in the road design so that a tee-junction would now replace the roundabout previously intended. The effect of this recent change was that the Plaintiff's property was no longer required. The Commissioner simply apologized to the Plaintiff for the inconvenience caused. In her evidence in Court, the Plaintiff said having heard nothing from the Commissioner; she left for Australia on 3rd February 2000. She said she rang the Commissioner from Australia but was told to ring back. She did so and was told that nothing had changed though nothing was definite. She was told not to worry. She learned of the change of plan when she arrived back in Honiara from Australia. By that time, the sale of her assets had already been completed with Ruby Lee. The Defendant called 2 witnesses. The first was the Commissioner who

did not dispute the evidence by the Plaintiff. He did not dispute the letters he had written to the Plaintiff about the Government's intention to acquire part of her property. He said in evidence that he expected the Plaintiff to comply with his letter of 20th December 1999 in which he had asked the Plaintiff to scale down her business operation and to completely close down by the end of January 2000. The second witness was Mr. Virivolomo who did not also dispute the evidence of the Plaintiff. He said in evidence that the letter written to the Plaintiff by the Commissioner dated 20th December 1999 was normal practice in road construction cases. He said the Plaintiff was expected to comply with it. He said the change of plan was the result of the Plaintiff's excessive claim for $9,392,350.00. He said the delay in getting back to the Plaintiff about her claim was due to the slowness of the Ministry of Finance in dealing with the Plaintiff's claim. He said the Plaintiff's claim was excessive.

The Plaintiff's Stand

From the start, the Plaintiff did not wish to be disturbed in her business operation. This is understandable. She is a businesswoman. On the other hand, the road construction that was going on was in the public interest. The Constitution and the Lands and Titles Act (Cap.133) do allow the Government to compulsorily acquire private land in the public interest in return for reasonable compensation. The Plaintiff's attitude was demonstrated in her evidence when she said that she had told the authorities that traffic lights should be used than constructing a roundabout. She said she knew the Government had no money and that her claim for $9,392,350.00 was intended to discourage the Government to drop its plan to construct the roundabout. She said she had bought the property, as it did not know that part of the road frontage is Government land. The Government on the other hand, gave up on the roundabout option only because it could not afford to meet the claim made by the Plaintiff.

The Issue

The issue here is whether or not the Government was negligent in causing the Plaintiff to lose her business. If there are any negligent acts at all on the part of the Government, they were that letter of 20th December 1999 written by the Commissioner upon which the Plaintiff acted and closed her business operation plus the abandonment of the roundabout option communicated to her by the letter of 1st February 2000. In her evidence, she said that she had spoken to Ruby Lee about the deal between them after Christmas. She said Ruby Lee took over her stock on 1st February 2000. She said she had not received any information from the Commissioner by that time. She said she then left for Australia. It is clear that the abandonment of the roundabout option by the Government would not have caused any economic loss because her stock had already been taken over by Ruby Lee on 1st February 2000. The Agreement signed between them on 10th February 2000 was really the written version of their oral agreement reached after Christmas. It is however an important fact because of it the Plaintiff has found herself without compensation and her business. It meant that she would not be compensated, as her property remains intact as before. However, her business has gone.

The Letter of 20th December 2000

Clearly, this letter was intended to be acted upon by the Plaintiff. The Plaintiff did act upon it as expected by the Commissioner within the time limit specified by the Commissioner. The letter was not in any way defective nor misleading. There was nothing said in it that could be said to be negligent in nature. It correctly expressed the wish of the Government. It cannot be said to be a misstatement as in the case in **Hedley Byrne & Co. Ltd. v. Heller & Parners Ltd.** [1964] A.C. 465 or a valuation as in **Smith v. Eric S. Bush and Harris v. Wyre Forest District Council** [1989] 2 W.L.R. 790 or audit accounts as in **Caparo Industries Plc. v. Dickman** [1990] 2 W.L.R. 358.

The letter of 1st February 2000

The date of this letter was disputed by the Plaintiff who is said the letter must have been written much later because she received it in March 2000. This letter did not reach the Plaintiff until after she had returned from Australia. By chance or mistake this letter was dated the same day Ruby Lee took over the Plaintiff's stock under the oral agreement reached between the Plaintiff and Ruby Lee after Christmas. By telephone conversation with the Plaintiff whilst in Australia, the Commissioner told the Plaintiff to ring back again. When she rang back, the Commissioner hinted to her that there might be a change of plan but told her not to worry. It would appear that the Commissioner had forgotten about the possible negative effect of his letter of 20th December 1999 in the event that the Plaintiff had complied with his instructions contained in his letter of 20th December 1999 and incurred loss. In response to my questions after re-examination, the Commissioner said that due to lack of funds, the tee-junction design became the alternative choice for the Government. He said the 8 metres he required from the Plaintiff's property would have meant removing the whole Snack Bar. He said it did not occur to him that the change of design would have any legal consequences. The office of Commissioner is created under the provisions of the Lands and Titles Act cited above. Section 3 of the Lands and Titles Act "**the Act**" says the Act shall be administered by the Commissioner. Section 4 (3) of the Act says the Commissioner shall have the power to institute or defend any proceedings under his official title subject of course to section 42 of the Constitution, which says the Attorney-General is the principal legal adviser to the Government. Section 4 (4) of the Act empowers the Commissioner to hold and deal in interests in land for and on behalf of the Government including the execution of instruments on behalf of the Government relating to an interest in land. These powers are exercisable by the Commissioner subject to any general or special directions from the Minister. As I said in **Ramo Dausabea v. Attorney-General & Commissioner of Lands (Civil Case No. 153/2001),** the Commissioner may repossess Government land by surrender under section 141(4) as read with section 161 of the Act for a consideration. This can be translated and built into reasonable compensation under section 8 of the Constitution. The Commissioner does have the exclusive power under section 132 of the Act to transfer both perpetual estates as well as fixed term estates. The Commissioner is a senior Government officer being the Head of the Lands Division in the Ministry responsible for lands in Solomon Islands. Apart from a few cases of transfer of perpetual estates by the Commissioner, all other interests are fixed term interests granted for duration of 50 years. The

Plaintiff's interest is a fixed term interest granted for 50 years.

The Standard of Care

The standard of care expected of a professional Commissioner is that of a reasonable lands officer reasonably trained and experienced in the administration of lands in Solomon Islands. The first indication to the Plaintiff that the Government was serious about taking away part of her property was the letter by the Commissioner dated 4th August 1999. No valuer had gone to value the property as promised in that letter. No valuer had also gone to value the property as promised in the letter of 20th December 1999. No valuation was done of the property as an on going business concern. At that point in time, the Commissioner did not have the slightest idea how much it would cost the Government to acquire part of the Plaintiff's property. The only figure he saw was the Plaintiffs claim of $9,392,350.00, which he said was excessive. In his evidence in-Chief, the Commissioner said that valuation was imminent when difficulty arose. The difficulty being having to decide upon a tee-junction as the only alternative to the roundabout in order to avoid having to consider the Plaintiff's claim for which the Government had no funds. Also, in his evidence in- Chief, the Commissioner said that he had received the Plaintiff's claim in about August/September 1999. He would have known then whether the Government had funds to meet the Plaintiff's claim. If he had gone to the Ministry of Finance then he would have found out the true position of the Government on this matter. Again, in his evidence in-Chief, he said the directive to change plan had come from his Permanent Secretary. It would appear that the Commissioner was not in total control of the situation. His Permanent Secretary has no statutory function under the Lands and Titles Act apart from being the accounting officer under Financial Instructions. It was his duty to see to it that the surrender of any part of the Plaintiff's property under the Lands and Titles Act was done smoothly to the satisfaction of both the Plaintiff and the Government. Was the Plaintiff a neighbour within the meaning of Lord Atkin's guide in **Donoghue v. Stevenson** cited above? The answer is not always easy in some situations as admitted by Lord Atkin himself at page 582 of His Lordship's judgment. Lord Atkin described "**proximity**" as beyond physical proximity but to use His Lordship's own words, "**to extend to such close and direct relations that the act complained of directly affects a person whom the person alleged to be bound to take care would know would be directly affected by his careless act.**" After almost 60 years of review by the Courts as to what was meant by Lord Atkin the current position is far from being absolutely clear. However, as a general guide, Lord Bridge of Harwich in **Caparo Industries plc. v. Dickman** cited above at 365 said, ..."**What emerges is that, in addition to the foreseeability of damage, necessary ingredients in any situation giving rise to a duty of care are that there should exist between the party owing the duty and the party to whom it is owed a relationship characterized by the law as one of *"proximity"* or *"neighbourhood"* and that the situation should be one in which the court considers it fair, just and reasonable that the law should impose a duty of a given scope upon the one party for the benefit of the other. But it is implicit in the passages referred to that the concepts of proximity and fairness embodied in these additional ingredients are not susceptible of any such precise definition as would be necessary to give them utility as practical tests, but amount in effect to little more than convenient labels to attach to the features of different specific situations which, on a detailed examination of all the circumstances, the law recognizes pragmatically as giving rise to a duty of care of a given scope.**

Whilst recognition, of course, the importance of the underlying general principles common to the whole field of negligence, I think the law has now moved in the direction of attaching greater significance to the more traditional categorization of distinct and recognizable situations as guides to the existence, the scope and the limits of the varied duties of care which the law imposes. We must now, I think, recognize the wisdom of the words of Brennan J. in the High Court of Australia in Sutherland Shire Council v. Heyman (1985) 60 A.L.R. 1, 43-44, where he said:

> **"It is preferable, in my view, that the law should develop novel categories of negligence incrementally and by analogy with established categories, rather than by a massive extension of a prima facie duty of care restrained only by indefinable *'considerations which ought to negative,* or to reduce or limit the scope of the duty or the class of person to whom it is owed"...**

All the Lords agreed with the formulation of the general test laid down by Lord Bridge of Harwich. What would then be the result in this case applying this test? As I have said, the Commissioner said in evidence that he did not think by changing the roundabout to a tee-junction would have any legal consequence. In other words, he did not foresee that any damage would result from his action in informing the Plaintiff of the change of plan by the Government though he had earlier told the Plaintiff to scale down her business and to close down completely by the end of January 2000. The fact that the Plaintiff had complied with her detriment was not known by the Commissioner until the Plaintiff took action against the Government. I do not understand what the Commissioner meant when he said he foresaw no possible harm flowing from his action in informing the Plaintiff that the plan had changed. I do not also understand what he expected the Plaintiff to do when complying with his letter of 20th December 1999. Did he expect the Plaintiff to stop ordering new perishable stock or sell all perishable stocks immediately? What about cooking equipment, plates, cutlery, sundry items and fixtures etc.? He must have expected the Plaintiff to do something to comply with his directive. He had placed a time limit. I calculated the number of days available to her to comply to be 35 days excluding Christmas Day, Boxing Day and Sundays. The deal reached by the Plaintiff with Ruby Lee, which was later reduced to writing, was in place by the end of January 2000 as directed by the Commissioner. This deal was her act of compliance as intended and directed by the Commissioner but which now is regarded by the Plaintiff as a loss again due to the action of the same Commissioner. Is it reasonable to say that on these facts, the Commissioner could not possibly have foreseen any damage flowing from his actions? The answer must be no. The Commissioner must be taken to have known that some damage would result to the Plaintiff from his unthinking conduct towards the Plaintiff. The Commissioner had been dealing directly with the Plaintiff in his official capacity as the Commissioner under the powers vested in him by the Lands and Titles Act and under section 8 of the Constitution. His words in writing or otherwise in this regard was power under the law as far as the Plaintiff was concerned. There was an official connection between them at that time. There was therefore a proximate relationship between them. The Commissioner had a duty of care towards the Plaintiff in ensuring that in carrying out the wish of the Government, the Plaintiff was not unnecessarily exposed to damage. It might be that the Commissioner had forgotten about the legal implications of his actions. That in my view was not an excuse. There is no evidence to suggest that he had sought legal advice from the Attorney-General about the legal implications of his actions apart from correspondences from the Attorney-General's

Chambers about the removal of the huts and fence to facilitate roadwork to proceed. The letter by the Attorney-General written on 30th September 1999 addressed to the Plaintiff's Solicitor is pertinent as regards advice given by the Attorney-General. Paragraph 2 of that letter explained the approach the Government wished to take in the matter. That is to say, first of all, the fence must be removed and temporarily positioned along the correct boundary of the Plaintiff's property. Roadwork would then proceed without encroaching upon the Plaintiff's property. Upon the roadwork being completed and the construction of the footpath was about to commence then both parties would be in a better position to assess objectively the compensation claim of the Plaintiff. This letter was copied to the Commissioner. Had he followed this strategy the need for the letter he wrote on 20th December 1999 would have been unnecessary because at that point the need for the Government to negotiate for the reduction of the Plaintiff's claim would have become the important issue. If that issue could not be resolved in favour of the Government due to lack of Government funds then that would be the time to propose the tee-junction option. The tee-junction would not have caused any damage to the Plaintiff and her property apart from the dust coming from the roadwork. This strategy was put forward 2 months and 19 days before the Commissioner wrote his letter of 20th December 1999. There is no evidence to show that he heeded this advice and followed it or had gone to the Attorney-General to seek clarification if he was unsure of his position. He was negligent in his duty as a Commissioner performing his duty as such under the Lands and Titles Act. Is it therefore unreasonable to impose a duty of care on the Commissioner towards the Plaintiff? I think not. I think it is fair, just and reasonable to impose such duty on the Commissioner in this case. The Plaintiff therefore succeeds in her claim for damages.

The Claim for Mental Distress and Nervous Shock

I am rather confused with this claim. Whilst the Plaintiff made this claim in her Statement of Claim filed on 28th April 2000, the same did not appear in her Amended Statement of Claim filed on 29th August 2000. She however proceeded with this claim at the hearing without any objection from the Defendant. I would therefore take this as a legitimate part of the Plaintiff's case. Unfortunately, there is no evidence in this case showing any psychiatric illness being suffered by the Plaintiff as a result of the actions of the Commissioner. There is of course evidence of frustration experienced by the Plaintiff but that alone is not enough to sustain a cause of action in negligence for nervous shock. Grief, distress or any other normal emotion would not do. The authority on this issue is **McLoughlin v. O' Brian** [1982] 2 A.E.R. 298. The speeches by Lord Wilberforce and Lord Bridge of Harwich are pertinent in this regard. This part of the Plaintiff' claim is dismissed. As regards costs, I would reserve that until assessment of damages.

F.O. Kabui
Judge