

**DALAM MAHKAMAH SESYEN SIVIL (2), SEREMBAN
DALAM NEGERI SEMBILAN DARUL KHUSUS, MALAYSIA
SAMAN NO: A53KP-04-11/2014**

5

ANTARA

NORFARIZA BINTI HARUN

... Plaintiff

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DAN

1. DR YUSAIDAH BINTI YUSOF

2. KLINIK AISYAH & YUSOF

... Defendan-Defendan

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ALASAN PENGHAKIMAN

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30 1. Plaintiff's claim is for damages arising from medical negligence alleged to have been committed by the First Defendant while treating the Plaintiff. The claim against the Second Defendant is on the basis on vicariously liable for the negligence by the First Defendant, ie the Second Defendant's employee at the material time.

Plaintiff's Witnesses

35 1. The Plaintiff's witnesses who testified for the Plaintiff in this claim are as follows:

- 40 a) Mohd Salleh bin Mohd Ghazalli (SP1 - Plaintiff's husband)
- b) Norfariza binti Harun (Plaintiff)
- c) Zanariah Abdul Rahim (SP3 - Medical Record Officer at Hospital Putrajaya)
- 45 d) Dr Alif Adlan Mohd Thabit (SP4 - Medical Officer at Hospital Putrajaya)
- e) Dr Nizam bin Amil (SP5 - Medical Officer at Hospital Putrajaya)

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55 **Defendants' Witnesses**

1. The Defendants' witnesses who testified for the Defendants' are as follows:

- 60 a) Dr Yusaidah bin Yusof (First Defendant)
b) Dr Aishah binti Mohd Zain (Defendants' expect)

Plaintiff's Case

65 1. According to the Plaintiff, she had on 24/11/2008 sought treatment at the Second Defendant clinic. Plaintiff complained of fever and back pain. She was taken to the Second Defendant Clinic by SP1.

70 2. First Defendant was the attending doctor at the Second Defendant Clinic on the said day. SP1 had informed First Defendant that she had been having fever and back pain for the past one week.

3. First Defendant thereafter diagnosed SP1 with 'unspecified back pain and fever' and prescribed with the following medications:

- 75 a) T. Prednisplone 2 BD (20)
b) T. Paracetamol 650 mg
c) T. Voren 50 mg PRIV (10)
d) T. Glucosamine 500 mg

80 4. As the fever did not subside, Plaintiff was taken to the Second Defendant Clinic by SP1 on the following day, 25/11/2008 at about 10.10 am. First Defendant was again the doctor on duty who attended to Plaintiff. Plaintiff had in her evidence stated that on 25/11/2008, she had complained of the following problems to First Defendant:

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- a) fever
- b) bilateral eye discharge
- c) vomiting

90 5. Upon clinical examination of Plaintiff, First Defendant had found that Plaintiff has enlarged tonsils with exudates and a temperature of 38°C and had diagnosed Plaintiff with URTI.

95 6. First Defendant advised Plaintiff to stop the medications prescribed to her on 24.11.2008 and prescribed the following medications to Plaintiff on 25.11.2008:

- a) Syp Uphaddyl 10 mls
- b) T. Maxlon 10 mg TDS
- 100 c) Celexin eye drop 2 hourly
- d) CMC eye ointment ON

105 7. According to SP1, since Plaintiff's temperature did not subside, he (SP1) had again on 25.11.2008 at about 12.30 pm returned to the Second Defendant clinic and requested for a referral letter to Hospital Putrajaya from First Defendant.

- 110 8. Upon getting the referral letter SP1 took Plaintiff to Hospital Putrajaya on 25.11.2008. Plaintiff was taken to the Accident and Emergency Department at the Hospital Putrajaya at about 2.40 pm and was allowed to return home at about 7 pm.
- 115 9. According to SP1, further he woke Plaintiff up at about 10 pm on 25.11.2008 and gave her the antibiotic prescribed by SD2 ie 'Celexin'. As Plaintiff's condition deteriorated and her fever was increasing SP1 took Plaintiff back to Hospital Putrajaya on the same night.
- 120 10. The Plaintiff had pleaded the following allegations of negligence against the Defendants:
- a) The Defendants had failed to carry out treatment and take appropriate steps to treat the Plaintiff;
 - b) The Defendants had failed to undertake investigations prior to diagnosing the Plaintiff;
 - c) The Defendants had prescribed the wrong medication;
 - 125 d) The Defendants had misdiagnosed the Plaintiff;
 - e) The Defendants had failed to inform the Plaintiff of the side effect of the Celexin medication;
 - f) The Defendants had failed to ascertain Plaintiff's allergies prior to prescribing the medication;
 - 130 g) The Defendants had failed to provide sufficient information to the Plaintiff to enable her to agree to the treatment provided ("there is no informed consent from Plaintiff").

The Law

135 1. It is well settled law that the Plaintiff bears the burden of proof in
cases of this nature. It is the Plaintiff's burden to prove negligence
against the Defendants on the basis that what was done was what a
reasonably competent practitioner skilled in that particular art would
have done or would not have done. (The case of **Wu Siew Wong v**
140 **Pulau Pinang Clinic Sdn Bhd & Anor [2011] 1 CLJ 255** is referred
to.)

2. The Federal Court in the landmark case of **Foo Fio Na v. Dr. Soo**
Fook Mun & Anor [2007] 1 CLJ 229; [2007] 1 MLJ 593 had opted to
145 follow the **Rogers v. Whitaker** test. In that case, the Federal Court
had held as follows:

"(1) The Bolam Test has no relevance to the duty and
standard of care of a medical practitioner in providing
150 advice to a patient on the inherent and material risks of
the proposed treatment. The practitioner is duty bound
by law to inform his patient who is capable of
understanding and appreciating such information of the
risks involved in any proposed treatment so as to enable
155 the patient to make an election of whether to proceed
with the proposed treatment with knowledge of the risks
involved or decline to be subjected to such treatment;

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(2) There is a need for members of the medical profession to stand up to the wrong doings, if any, as is the case of professionals in other professions. In doing so, people involved in medical negligence cases would be able to obtain better professional advice and the courts would be appraised with evidence that would assist them in their deliberations. On this basis, the **Rogers v. Whitaker** test would be a more appropriate and a viable test of this millennium than the Bolam Test. On that the question posed to this court was answered in the negative. The appeal was allowed and the orders of the High Court on quantum are to be restored."

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3. It is therefore the duty of the Judge to decide whether a doctor is negligent or not, and a Judge can reject or accept expert medical evidence, these authorities state that the Judge should evaluate the medical evidence very carefully before making a decision to reject the same. (**Chai Hoon Seong v Wong Meng Heong [2009] 10 CLJ 118.**)

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4. Based on the case **Chien Tham Kong v Excellent Strategy Sdn Bhd & 2 Ors [2008] 1 LNS 411**, the Plaintiff has the burden of proving the following:

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- (a) The Defendants owed the Plaintiff a duty of care;
- (b) The Defendants breached that duty;
- (c) As a result of the breach, the Plaintiff has suffered damages : and

185 (d)The damages are not too remote.

Decision of this Court

Duty of Care

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1. It is not disputed that the Defendants' owed Plaintiff a duty of care.

Breach of Duty

195 1. The issue that this Court has to consider next is whether the First Defendant had breached that duty of care as a doctor towards Plaintiff.

200 2. On the issue whether the First Defendant had undertaken proper investigations before diagnosing the Plaintiff, the Court finds as follows:

205 a) Plaintiff was diagnosed with unspecified back pain on 24/11/2008. It was put by the Plaintiff's counsel in cross examination that the First Defendant had failed to carry out proper investigations before diagnosing the Plaintiff on 24/11/2008. The Court refers to the cross examination of First Defendant by Plaintiff's counsel:

210 "Q: Setuju dengan saya untuk mendapatkan kepastian sama ada terdapat inflammasi pada bahagian

tersebut, satu x-ray terpaksa dijalankan? Untuk mendapat kepastian?

A: Kalau symptom berlanjutan, ya.

215 Q: But in this matter?

A: Ya

220 Q: The patient had informed you, telah menyatakan kepada Doktor bahawa dia mempunyai sakit belakang satu minggu, eh satu hari. That is what my instructions are. Satu hari sebelum dia datang jumpa. So, my question is that is it prudent for you to do an x-ray at the lower of the body?

A: At that time?

225 Q: At that time?

A: No.”

230 b) SD2 (The Defendant’s expert witness) had concurred with the First Defendant that there is no necessity to do an x-ray prior to the diagnosis. SD2 also agreed that there is no further investigations needed before diagnosing the Plaintiff on 24/11/2008.

235 c) The Court finds that although the Plaintiff had pleaded that the First Defendant had wrongly diagnosed her on 24/11/2008 with

unspecified back pain, there were no evidences whatsoever adduced by the Plaintiff on what is the proper diagnosis that ought to have been done on 24/11/2008. As such since no
240 medical evidence or opinion is put before the Court, the Court finds that based on the evidence given by first Defendant and SD2 that the First Defendant did not misdiagnose the Plaintiff on 24/11/2008.

245 d) The medication prescribed to Plaintiff on her first visit to the Second Defendant Clinic was not the appropriate medication for back pain. According to Plaintiff, Prednisolone and Glucosamine are not medication prescribed for such pain. Further this medication taken for prolonged period is harmful to the patients.
250 Plaintiff's counsel had referred to various medical articles obtained from websites such as Healthline.com and web MD in support of these contentions.

On the medications prescribed by First Defendant on 24/11/2008, again the Plaintiff failed to lead any evidence that the
255 medications prescribed by First Defendant is not proper. In fact the Plaintiff had only referred to Healthline.com and Web MD in support of this contention. The Court finds that there is no reason to disregard the evidence of First Defendant on her reasons in prescribing Plaintiff with T. Prednisolone and
260 T. Glucosamine. The Court further refers to testimony of First Defendant in regards of the prescription of these medications:

“Q: Can you explain to the Court why would you prescribe Prednisolone to the Patient when she only had pain of the lumbar.

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A: Because when there, saya cakap bahasa Malaysia. Bila ada sakit pada bahagian lumbar dan juga saya men-diagnose pada hari itu sebagai ‘unspecified back pain’. So biasanya kalau pada ‘unspecified back pain’ dia ada inflammation inside yang you cannot see outside and Prednisolone is the best medicine that act as anti-inflammation.

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Q: Then if it is not a pain-killer, why did you prescribe Prednisolone to her?

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A: Act as anti-inflammation. Sebagai anti-inflammasi untuk ‘unspecified back pain.’

Q: Then that is the purpose of you prescribing Voren?

A: Pain-killer

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Q: Alright, pain killer ah? So Paracetamol is also a pain-killer right?

A: Yes

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Q: Can also be taken. Why did you prescribe glucosamine?

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A: Glucosamine sebagai vitamin untuk supplements kepada tulang belakang dan joints. Hanya supplements.”

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e) In this regards, Court also finds that the Defendants’ expert witness (SD2) had testified that the prescribed medication by First Defendant on 24/11/2008 was appropriate given the signs and symptoms of Plaintiff.

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f) Since the Plaintiff had failed to adduce any medical evidence nor medical opinion on what medication ought to have been prescribed on 24/11/2008 nor any medical evidence or medical opinion that the medication prescribed on 24/11/2008 is wrong, the Court finds that the Plaintiff had failed to prove that the Defendant had misdiagnosed SP1 on 24/11/2008 nor Defendants had prescribed wrong or inappropriate medication on 24/11/2008.

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g) On the issue that the Second Defendant had misdiagnosed Plaintiff on 25/11/2008 and had prescribed the wrong medications the Plaintiff further contends that Second Defendant had within 24 hours had made a second diagnosis which is vastly different from the previous day when Plaintiff went to see her on 25/11/2008. On 25/11/2008 Plaintiff had complained of high fever, bilateral eye discharge and vomiting and upon clinical

315 examination by First Defendant, SP1 was diagnosed with URTI
and was prescribed with the following medications:

- i. Syp Uphadyl
- ii. T. Maxalon
- 320 iii. Celexin
- iv. Cmc eye drop
- v. Cmc eye ointment

325 h) The Plaintiff again contended that First Defendant had failed to
undertake proper investigations prior to diagnosis the Plaintiff
and that the First Defendant had prescribed the wrong
medications on 25/11/2008. The Court finds that the Plaintiff
failed to adduce any evidence as to what is the proper
investigation or examination that ought to been have done by the
330 First Defendant prior to diagnosing Plaintiff with URTI.

335 i) The Court finds that the expert witness for the Defendants (SD2)
had clearly testified in Court that there is no necessity for First
Defendant to conduct other test such as urine test and blood test
before diagnosing a patient with URTI. The Court finds no
reason not to accept the testimony of SD2 in the case as the
Plaintiff herself failed to forward any medical evidence nor
opinion as to this issue.

340 j) The Court also finds that First Defendant did not misdiagnos
Plaintiff on 25/11/2008 as the Plaintiff came with the complaints

of fever, bilateral eye discharge and vomiting and in her clinical examination the First Defendant found the Plaintiff had enlarged tonsils with exudates. Based on the evidence of First Defendant and SD2 the diagnosis of URTI was indeed correct. Again the Court must stress here that the Plaintiff did not at any time lead any evidence that there could be other diagnosis based on these signs and symptoms.

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- k) Based on the diagnosis of URTI, the First Defendant had prescribed the said medications of Uphadyl, Maxalon, Celexin and eye drop. The Plaintiff contends that the First Defendant had wrongly prescribed 'Celexin' as an antibiotic to the Plaintiff. According to Plaintiff, antibiotics are not prescribed to treat URTI unless it is a bacterial infection. The Plaintiff referred to an article **Medicine Net.Com** which states as follows:

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“Antibiotics are rarely needed to treat upper respiratory infections and generally should be avoided, unless the doctor suspects a bacterial infection”

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- l) Further the Plaintiff contended that 'Celexin' is a second tier antibiotic therefore other first tier antibiotics such as 'Pencilin', Amoxicilin and 'Erythromycin' ought to be prescribed by the First Defendant.

370 m) The Court again finds that no medical had been led by Plaintiff
that 'Celexin' is not the proper medication prescribed to a patient
with URTI. Although the First Defendant in her evidence during
cross examination, agreed with the Plaintiff's counsel that
375 Celexin is a second tier of antibiotics, the Court finds that First
Defendant had throughout her testimony in Court maintained her
position that Celexin is an appropriate medication to be
prescribed for URTI. Again SD2 (Defendants expert witness)
agreed with the First Defendant that Celexin can be used to treat
URT. That Court refers to SD2's evidence as follows:

380 "Q : Still on the 25.11.2008, the Patient was diagnosed
with Upper Respiratory Tract Infection and
prescribed with a few medication amongst them
Celexin.

385 My question to you is, in your opinion, was it
appropriate or not for Dr Yusaidah to give Celexin,
given the diagnosis of the Upper Respiratory Tract
Infection?"

A : Yes. Upper Respiratory Tract infection can be
caused by bacteria and you can use Celexin for
that condition."

390 n) Based on the above reasoning, the Court finds that the Plaintiff
had failed to prove that the First Defendant had misdiagnosed
Plaintiff's condition on 25/11/2008 and that prescribed the wrong
medications to her.

395 Failure to ascertain Plaintiff's Allergies

400 (a) According to the Plaintiff, the First Defendant did not at any time during her visit on 24/11/2008 asked her about her allergies to any medications prior to prescribing the antibiotics. However, this was denied by First Defendant who throughout her testimony in Court had maintained that she had asked Plaintiff of her allergies to medications and in fact written in her medical notes on 24/11/2008 that patient has no history of allergic to medication (**"No h/o - allergic to medication"**).

405 (b) The Court finds that throughout her cross examination by Plaintiff's counsel, First Defendant had been repeatedly questioned whether she has asked Plaintiff whether she had allergies to medications. First Defendant had maintained that she had asked Plaintiff that of her allergies before noting it in her clinical notes.

410 (c) Furthermore, based on **D15** and **D16**, provided by the Second Defendant Clinic. It is clearly stated on the bags the following:

415 On the sealed bag **(D15b)**:
"Perhatian : semua jenis ubat boleh menyebabkan alahan, sekiranya berlaku alahan disebabkan ubat seperti gatal, merah atau ruam, bengkak, pedih ulu hati dan lain-lain. Sila rujuk semula doctor."

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On the plastic bag **(D16)**:

“Jika timbul kesan alergi ataupun reaksi yang aneh terhadap sebarang ubat, hubungi doctor tuan dengan segera.”

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- (d) As such, the Court finds that the Plaintiff had failed to prove that the Second Defendant did not inquire about the Plaintiff's allergies before prescribing the medications.

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Failure to advise the side effects of Celexin to Plaintiff.

- (a) According to Plaintiff, the side effects of 'Celexin' are as follows (taken from **Drugs.com**):

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- i. abdominal pain;
- ii. blistering, peeling or loosening of the skin;
- iii. chills;
- iv. clay colored stools;
- v. sores, ulcers or white spots in the mouth or on the lips;
- vi. vomiting of blood;
- vii. dizziness.

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- (b) According to the Plaintiff, she was never informed of the side effects of 'Celexin' by the First Defendant.

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- (c) During her vigorous cross examination by Plaintiff's counsel the First Defendant had at all time maintained that she had explained the side effects of Celexin to the Plaintiff although

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she not minute it down in her clinical notes. The Court refer to testimony of the First Defendant as follows:

“Q : Now do you agree with me that the tablet known as Celexin was prescribed by the patient?

A : Yes

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Q : Did you explain to the patient that there are side effects to the medication that was given to her?

A : Yes.”

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Q : Now again I am looking at page 27,do you agree, again at page 27, there is nothing to say that you have warned the patient of the risk of Celexin tablets in your clinical notes, do you agree with me?

465

A : Yes

Q : Right. Now it is your evidence. Dr Yusaidah, that you have warned the patient of the side effects, right?

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A : Yes.

Q : Setuju ya. Now saya merujuk puan doctor kepada muka surat 2 soalan 2. Sorry soalan 3 jawapan 3. Setuju dengan saya bahawa apa yang dinyatakan dalam jawapan kepada soalan 3 adalah satu pemikiran semula. Saya memang menasihati

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480 pesakit secara verbal tentang kesan-kesan sampingan ubat celexin tapi saya tidak mencatatkan dalam nota-nota klinikal saya. This is actual after thought, In actual fact you have never explained to the patient the side effect of Celexin. Is an after thought. Do you agree with me?

A : No, I don't agree."

485 (d) The Court refers to the submission of the Defendant wherein the case of **Liew Sin Kiong v Dr Sharon DM Paulraj [1996] 5 MCJ 193** was referred to:

490 *"In any event the plaintiff cannot recover any damages because the plaintiff did not say that if he had been warned he would not have consented to the operation which proposition of law is supported by the case of*
495 ***Bolam v Friern Hospital Management Committee [1957] 2 All ER 118** where it was held that in order to recover damages for failure to give warning the plaintiff must show not only that the failure was negligent but also that if he had been warned he would not have consented to the treatment."*

500 (e) Similarly in this case, the Court finds that the Plaintiff did not lead any evidence on whether the Plaintiff would have

proceeded to take the antibiotics if she was aware of its side effects.

505 Based on the reasoning given above, the Court finds that the Plaintiff has failed to prove to this Court that the Defendants namely the First Defendant had breached her duty of care towards the Plaintiff.

Causation

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1. The next issue for this Court to consider is whether the Plaintiff's, damage and suffering is due to allergic reaction to 'Celexin' prescribed by the First Defendant on 25/11/2008. According to the evidence of the Plaintiff she took the antibiotics ie Celexin for the first time on 25/11/2008 at about 10pm when SP1 woke her up to take it. SP1 had earlier in the day had taken Plaintiff to seek treatment at Hospital Putrajaya on 25/11/2008 and Plaintiff was discharged and sent back home at about 7 in the evening of 25/11/2008.

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520 2. The Court finds that on the clinical notes of Dr Sariman Sidek dated 25/11/2008 **(P9)**, it is stated as the following in stated

"History/Remark

G/O High Fever on off x 2/7

O/E - Swelling at lips and Eyes Area"

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3. According to SD2, the Plaintiff's condition of swelling of lips and eyes area shows signs of an allergic reaction. The testimony of SD2 in this regards are as follows:

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“Q : Dr Aishah can you refer to the clinical notes that were provided to us by Hospital Putrajaya, P9, Puan Hakim.

A : P9, yes.

535

Q : Yes. I'm on the first page Puan Hakim. The entry by Dr Sariman Sidek 25.11.2008, 14:43:57, **the time is 14:43:57**. The first page Puan Hakim.

A : Yes

540

Q : At the bottom of the page, Dr Aishah, you will see a notation O/E which I'm told means on examination.

A : Yes

545

Q : It says swelling.

A : Yes

Q : At lips and eyes area.

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A : Yes.

555

Q : Can you explain to the Court the significance of this finding on examination?

A : These are signs of early, early signs of allergic reaction.

560

Q : *My next question is record, now having reviewed what was provided by Hospital Putrajaya, is there anything in your 2 expert reports that you wish to add or change?*

565

A : *Yes. With the provision of the clinical notes, from Hospital Putrajaya, Patient presented with swelling of the eyes, lower lips, eyes and the mouth, on the 25.11.2008.*

Q : *Wait, I need to write. Presented with swelling.*

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A : ***Swelling of the eyes and the mouth at the A&E, Emergency Hospital Putrajaya, on the 25.11.2008 which was not given to me before that. The record was not given to me before that. This shows that Patient already has an allergic reaction even before she took the antibiotics. The antibiotics.***

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This statement that I brought up is strongly support my report that the allergic reaction is not caused by antibiotic.”

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Q: *Dr Aishah, in your expert report, you stated the Patient's signs and symptoms was not cause by an allergic reaction to Celexin. Can you explain to the Court why you have said so?*

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A: *That's because the reaction, the allergic reaction occurred before she took the Celexin, according to the Patients' husband, Celexin was only given to her on the night of the 25.11.2008.*

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Q: *Can I now refer you to tab 2, the last page before tab 3. Now 1,2, 3, 3rd paragraph, can you inform this honorable court, how did you come to that conclusion that the SJS was presumed to be due to Celexin without any proof and ignorant of the sequence of the progression of the clinical condition an/or illness*

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A: *From the sequence of the events, the Patient did not take Celexin on the 25th, on her presentation at the Hospital Putrajaya.*

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On the 25th when she saw the doctor at the emergency Hospital Putrajaya. She only took it after she went back that night. And her allergic reactions was already seen on that morning, on that afternoon at the emergency.

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Q: *You were asked about the first paragraph where you have stated "As I find that Patient's symptoms*

and sign occur prior to intake of Celexin, it is unlikely that the Celexin is the cause of the medical condition Steven Johnson Syndrome”.

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Can you explain to the Court when you say prior to the intake of Celexin, where do you take this information from?

A : I got it from the police report by the husband. The husband says that she took the Celexin only on the night of the 25th, after she went home from Putrajaya. But the allergic reaction was already in the clinical notes of the Putrajaya Hospital.

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Q : So, and then you were asked extensively about your opinion at those paragraph is only based on the notes of Dr Yusaidah, your conversation with Dr Yusaidah, do you, the contents are not in any of the documents from Dr Yusaidah, you said “Yes”. I don’t quite follow that question, but basically my question to you Dr Aishah is this, do you stand by your finding, now that have actually been cross-examined on both your reports in the first one and the second one.

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A : Yes, I stand by my findings. As far as I am concerned, the allergic reaction developed before she took the Celexin.”

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635 4. Based on the evidence of SD2 above, it is evident to Court that the allergy reaction to antibiotics as alleged by Plaintiff is not due to Celexin as based on Plaintiff's own evidence the first time she consumed Celexin was on the night of 25/11/2008 whilst based on the clinical notes from Putrajaya Hospital, Plaintiff had already showing signs of allergic reaction earlier on the day even before taking of Celexin.

640 5. It is the submission of the Plaintiff that based on the medical report (P10) from Hospital Putrajaya the Patient was diagnosed with "localized Toxic Epidermal Necrolysis of the skin due to allergy to Cephalexin antibiotic". However, the Court finds that that Plaintiff failed to call the doctor who treated Plaintiff and diagnosed Plaintiff with allergy to Cephalexin.

650 6. The Court finds that based on SD2's evidence and the clinical notes from Putrajaya Hospital, it is clear the Plaintiff had as early as the afternoon of 25/11/2008 showed allergy reactions ie even before taking of the Celexin. As such the Court find that the Plaintiff had clearly failed to prove that Plaintiff's condition is due the side effect of Celexin as per the Plaintiff's pleaded case.

655 7. The Court also finds that the Plaintiff did not call any medical expert to provide medical opinion of her case. Court refers to the cases of ***Bolitho v City & Hackney Health Authority* [1997] 3 WLR 115**, Lord Browne Wilkinson stated the following:

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“...In the vast majority of cases, the fact that distinguished experts in the field are of a particular opinion...But if, in a rare case, it can be demonstrated that the professional opinion was incapable of withstanding logical analysis, the judge is entitled to hold that the body of opinion is not reasonable or responsible.

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I emphasise that in my view it will very seldom be right for a judge to reach the conclusion that views genuinely held by a competent medical expert are unreasonable. The assessment of medical risks and benefits is a matter of clinical judgement which a judge would not normally be able to make without expert evidence...”

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8. The Court also refers to the case of ***Payremalu Veerappan v Dr Amarjeet Kaur & Ors*** [2001] 4 CLJ 380 where it was held:

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“Medical Evidence to Support Plaintiff’s Case

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As to the issue raised by the learned Federal Counsel that the Plaintiff did not call any medical evidence to support his case, this court is of the view that it was important for the Plaintiff to have adduced medical or expert evidence to support the allegations contained in the statement of claim against the defendants and this could have also assisted the court or thrown some light in arriving at its decision but unfortunately there was no such evidence before the trial court.

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In Hong Chuan Lay v Dr Eddie Soo Fook Mun [1998] 5 CLJ 251, His Lordship James Foong J in dismissing the plaintiff's claim inter alia said:

690 “...no medical evidence was called upon to argue that
what was informed and advised by the defendant to the
plaintiff was inadequate and insufficient. Deprived of
this, I can only rely on what was presented, and consider
it in the light of all other evidence adduced. My
695 conclusion is that what was informed and advised by the
defendant to the plaintiff on the risk factor is
comprehensive, adequate and sufficient.”

700 *In this instant appeal, this court is of the view that the
testimony of a medical expert would have been most
material to the issue of causation but unfortunately the
plaintiff opted not to call such evidence...”*

9. In this case, the Court finds that in failing to call an expert witness
705 Plaintiff had failed to lead evidence what is the standard of care
expected of the First Defendant in diagnosing the sign and symptoms
exhibited by the Plaintiff on 24/11/2008 and 25/11/2008, and whether
there was a breach of that duty in diagnosing the Plaintiff. The Court
finds that Plaintiff's reliance on various websites to establish the
710 effects of medications, misdiagnosis of Plaintiff's symptoms and the
prescriptions given is insufficient to establish the Plaintiff's case
without calling any medical expert.

10. Based on the above, Plaintiff's claim is hereby dismissed with costs.
Costs to Defendants in accordance with the Rules of Court 2012.

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Kanageswari Nalliah
Hakim
Mahkamah Sesyen Sivil (2)
Bertarikh :

Counsel for the Plaintiff : **Mr. Joseph Matthews (Suba Jeyanthi with him)**
Solicitors for the Plaintiff : **Messrs Matthews & Associates**

Counsel for the Defendants : **Ms Maidzua (Christina Elvin with her)**
Solicitors for the Defendants : **Messrs Raja Darryl & Loh**

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