

**IN THE SENIOR COURTS OF BELIZE**

**IN THE HIGH COURT OF BELIZE**

**CLAIM No. Civ 542 of 2020**

**BETWEEN:**

**GILDA ABADI**

**1<sup>st</sup> Claimant**

**GILDA ABADI**

**2<sup>nd</sup> Claimant**

**GILDA ABADI**

**3<sup>rd</sup> Claimant**

**and**

**ATTORNEY GENERAL OF BELIZE**

**1<sup>st</sup> Defendant**

**SUPERINTEDENT OF PRISONS**

**2<sup>nd</sup> Defendant**

**Appearances:**

Mr Leeroy Banner for the claimants

Mr Jorge Matus and Ms Imani Burgess for the 1<sup>st</sup> Defendant

Mr Philip Zuniga for the 2<sup>nd</sup> Defendant

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1 April 2025

19 June 2025  
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**JUDGMENT**

*Tort - Death in custody – Dependency claim for wrongful death under the Torts Act – Whether prison authorities have a duty of care for the health and safety of a prisoner – Whether prison authorities have a positive obligation to treat and provide medication to a prisoner with a serious health condition and to enable such a prisoner to secure necessary treatment at a public hospital – Prisons Act – Prison Rules*

- [1] **HONDORA, J.:** This is a death in custody matter in which the claimants seek damages under the Torts Act for what they allege was the wrongful death of Mr Jahangir Rahman Mahdi Abadi (Mr Abadi). At the time of his death on 31 August 2019, Mr Abadi was serving a six-year prison term at the Belize Central Prison<sup>1</sup> for the crime of abetment to murder. Mr Abadi had the misfortune of suffering from uncontrolled diabetes, uncontrolled chronic kidney disease, uncontrolled hypertension and other comorbidities. The claimants allege that Mr Abadi died as a result of the prison authorities' failure to provide him with adequate treatment and medication for his serious health conditions and their failure to refer him for necessary treatment at the public hospital, i.e., the Karl Heusner Memorial Hospital (KMHM).
- [2] The claimants instituted proceedings in 2020 for damages under the Torts Act. In support of their claim, the claimants relied primarily on the evidence of Mrs Abadi and several medical reports. The defendants relied on the evidence of Dr Javier Novelo, the medical officer of the Belize Central Prison and Mr Lester Gillet, the principal prison officer at the Belize Central Prison. Trial proceedings commenced on 18 June 2024.

### **I. Context**

- [3] I summarise below the parties' respective cases drawing on their pleadings, witness statements and oral evidence.
- (i) *Claimants' case*
- [4] The claimants' case is that pursuant to section 2 of the Prisons Act, the second defendant is

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<sup>1</sup> I note that in some of the documents presented in evidence, see notably the letter dated 29 August 2019 sent to Mr Virgilio Murrillo, the Director of Prisons by Dr Novelo, it is stated that the Kolbe Foundation Belize Central Prison is a "Limited Liability, Non-Governmental, Non-Profit Belizean Company managing the Prison System for the Country of Belize."

responsible for the Belize Prisons Service and as a consequence is vicariously liable for wrongful acts committed by the Belize Central Prison authorities, which they allege caused the death of Mr Abadi. Although not expressly pleaded by any of the parties, it is not in dispute that Mr Abadi who died at the KMH while serving his six-year jail term is deemed, consequent to section 51 of the Prisons Act, as having died in the custody of the Belize Central Prison.<sup>2</sup>

- [5] The claimants allege that the prison authorities as represented by Mr Virgilio Murrillo, the Director of Belize Central Prison and Dr Javier Novelo, the medical officer breached their duty to ensure the health and safety of Mr Abadi. They contend in particular that the prison authorities failed to ensure that Mr Abadi had access to medical treatment and drugs for his several serious health conditions and to ensure that he had at all material times, reasonable access to necessary medical care and treatment at the KMH.
- [6] Mrs Abadi was born in 1977. She got married to Mr Abadi in 2009. They had two children (the second and third claimants) who at the time proceedings were commenced were aged 16 and 17 respectively. At the time of his death, Mr Abadi was aged 68 years. Mr Abadi was a businessman while Mrs Abadi was a housewife.
- [7] Mr Abadi was convicted following a trial of the crime of abetment to murder on 28 September 2018. Within a week of her husband's conviction and before the sentencing hearing Mrs Abadi visited the Mr Virgilio Murrillo and Dr Novelo together with her then attorney, Mr Arthur Saldivar. Mrs Abadi testified that together with her attorney she informed Mr Murrillo and Dr Novelo about her husband's serious health issues including the fact that he was "*suffering from diabetes and had issues with his kidneys that required ongoing medical [attention]*" and that he would probably not survive his sentence if he was not provided with adequate medical care and treatment.
- [8] Mrs Abadi also testified that during the sentencing hearing held on 7 November 2018, her husband tendered into evidence a medical report dated 7 November 2018 produced by a Dr Rene Goody, which reflected that Mr Abadi had visited the Western Regional Hospital thirty-two (32) times

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<sup>2</sup> Section 51 of the Prison Act provides:

"Every prisoner while in a public hospital as provided in section 50 (1) and (3), or while being conveyed from the prison to the hospital or vice versa, shall be deemed to be in lawful custody in a prison.

between 23 January 2015 and 7 November 2018. That medical report reflects that Mr Abadi had uncontrolled diabetes, uncontrolled hypertension and recurrent fevers, respiratory issues, muscle pain and weakness.

- [9] It is common ground between the parties that Mrs Abadi frequently visited her husband at the Belize Central Prison. She avers that she visited her husband almost daily and would from time-to-time request meetings with Mr Murrillo and Dr Novelo regarding her husband's health conditions as well as his care and treatment. Whenever her husband was seriously ill, she made it a point to bring it to the attention of the prison authorities including Dr Novelo.
- [10] Following a request by Mr and Mrs Abadi, the prison authorities allowed Mr Abadi on **13 December 2018** to receive in prison a private medical assessment and treatment by Dr Eduardo Ortiz Bello. Dr Bello is deceased. In these proceedings, the parties refer to Dr Bello as Dr Ortiz. I shall refer to him as Dr Bello. The first time that Dr Bello saw Mr Abadi in prison was on **14 December 2018**. No medical report was produced in evidence relating to Dr Bello's attendance to Mr Abadi on 14 December 2018.
- [11] Dr Bello saw Mr Abadi a second time on **4 January 2019** and produced a report. That report shows that Mr Abadi informed Dr Bello that he was not feeling well and had been vomiting and suffering from diarrhoea. As appears in his 4 January 2019 medical report, Dr Bello diagnosed Mr Abadi as suffering from (a) uncontrolled type-2 diabetes mellitus; (b) uncontrolled arterial hypertension; and (c) chronic renal failure. He also indicated in his report that Mr Abadi was in "*a hyperosmolar procoagulant state*" and was under psychological stress.
- [12] Dr Bello also noted in his report that compared to the last time that he saw and assessed Mr Abadi, his health situation was "*clearly worse*" and that there was a "*greater degree of renal dysfunction*". He also opined that: "*This sadly means that in the last 4 months, there has been a worsening of renal function [...] that shorten the natural course of the disease and put[s] the patient in the 3<sup>rd</sup> phase of the disease.*" He went on to state: "*So, for me, it is necessary to emphasize in the post prandial glucose level (290 MG/DL) which is exorbitantly elevated for any diabetic in any clinical setting denoting a very high risk of developing two potentially fatal complications, [i.e.,] diabetic ketoacidosis and severe coagulation disorders.*" [Emphasis added]

[13] Dr Bello also noted that Mr Abadi's diabetes was not controlled and that in his consideration

“...this patient regardless of the cause for which [he] is [imprisoned], regardless of the type of hypoglycaemia treatment and even more so regardless of a medical group, is in the most critical phase of his condition as a sick human...really modifiable and improvable phase if the conditions of psychological stress to which he [is] tied at this time disappear, because according to the results and all the available scientific evidence we are only facing a patient with an extraordinary risk of exponential arithmetic multiplication of vascular damage in the more important organs (brain, heart and kidneys), which is even more aggravated by the arterial hypertension, clear insulin resistance and basically a hyperosmolar procoagulant state. That predicts without many readings life threatening situations.”  
[Emphasis added]

[14] In the concluding paragraph of his report, Dr Bello stated that Mr Abadi needed (i) a change in living conditions; (ii) strict control of his glycemia; (iii) use of platelet antiaggregant drugs; and (iv) use of antihypertensive drugs.

[15] He ended his report by warning that any medical emergency could “ruin” Mr Abadi's life because of his “*homeostatic state*” and that his conditions were life threatening. Dr Novelo accepts receiving a copy of Dr Bello's report on 4 January 2019.

[16] According to Mrs Abadi, her husband's health situation continued to deteriorate after his imprisonment. As a result in May and July 2019, Mrs Abadi requested from the prison authorities that her husband be examined by Dr Fernando Cuellar from the Belize Medical Associates. Dr Cuellar attended to Mr Abadi twice after which he produced a medical report dated **11 July 2019**. In that report, Dr Cuellar stated that he examined Mr Abadi using chest x-rays, EKGs, Doppler Studies, abdominal studies and “complete blood work”. He diagnosed Mr Abadi as suffering from (i) insulin dependent diabetes mellitus; (ii) severe diabetic neuropathy; and (iii) clinical depression. Dr Cuellar also stated that “*Mr Abadi's Optimal care can only be obtained in a home environment as opposed to being incarcerated.*” Mrs Abadi gave that report to Dr Novelo who, as he noted in his oral evidence, placed it on Mr Abadi's file.

[17] According to Mrs Abadi when she visited the prison and saw her husband on **15 August 2019**, she found him in a poorly state. She met with Dr Novelo on **16 August 2019** and complained about her husband's health. She says that he told her that “*the rules applied to everybody.*” Mrs Abadi visited her husband again on **22 August 2019** and in her opinion, he looked dehydrated and had difficulty walking. She says that she did not visit him on Friday, 23 August 2019 as the prison did not permit

visits as it was preparing for a celebratory event called “Kolbe Week”.

[18] On **26 August 2019**, Mrs Abadi visited her husband. However, she again was not allowed to see him because he was in poor health. On **27 August 2019**, Mrs Abadi went back to the prison and this time sought audience with Mr Murrillo and Dr Novelo. She says that Dr Novelo informed her that Mr Abadi had been in a medical cell since **26 August 2019**. In his evidence, Dr Novelo stated that Mr Abadi was placed in the Medical Centre on **25 August 2019**.

[19] Mrs Abadi visited the prison the next day, i.e. **28 August 2019** with the intention of seeing her husband but was denied access to him. Frustrated and concerned about her husband’s health and welfare Mrs Abadi went to Messrs Musa and Balderamos, a firm of attorneys. At **3:34 PM** on the same day (28 August 2019), Messrs Musa and Balderamos sent an email to Mr Murrillo bringing to his attention Mrs Abadi’s concerns about her husband’s deteriorating health situation and requested permission for Mr Abadi to receive treatment at a private hospital.

[20] At **3:40PM**, i.e., six minutes after receiving Messrs Musa and Balderamos’ email, Mr Murrillo wrote back via email and stated:

“Not a problem as long as the family is willing and prepared to pay the expenses associated with his visit to the private medical facility. Through this medium I am asking Dr. Novelo to outline how we go about doing this.”

[21] I pause here to note that Mr Murrillo’s response affirms that he was aware that Mr Abadi was seriously ill and that he needed hospital admission and treatment. Had that not been the case, he would not have agreed to Mrs Abadi’s request six minutes after Messrs Musa and Balderamos’ email.

[22] Mr Abadi was not in the end taken to a private hospital. He was transported by the prison authorities and was admitted to the KMHM on the same day, i.e., **28 August 2019 at 3:42 PM**. The triage sheet part of the “Hospital Admission and Discharge Report” submitted in evidence states that on admission Mr Abadi was in respiratory distress. It also contains the following notation:

“Referred from physician in Kolbe Prison due to severe dehydration and hyperglycaemia. Brought by prison ward unkempt.”

[23] The KMHM’s Hospital Admission and Discharge Report also notes that Mr Abadi was admitted as

an emergency patient and on admission, he was diagnosed as suffering from septic shock.

- [24] Attached to Mrs Abadi's witness statement is a memorandum written by Dr Novelo on **29 August 2019** to Mr Murillo in which he stated:

"At approximately 2:30pm yesterday, Officer Hyde, in charge of tango 6 location, informed me that one inmate Jahangir Abadi appeared to be weak and was not breathing adequately.

I visited tango 6 location where he was observed lying on his bed, presented shortness of breath and signs of dehydration; consequently, I informed the Security Department that he requires referral to KMHM for further evaluation and treatment. Adequate officer escort and transportation was quickly provided.

He presented high blood sugar, for which insulin was presented and he was referred to KMHM emergency."

- [25] Apparently, Dr Novelo wrote that memorandum in response to an email (not presented in evidence) from Messrs Musa and Balderamos to Mr Murrillo requesting Dr Novelo's most recent medical report on Mr Abadi.

- [26] Mr Abadi died at the KMHM on 31 August 2019.

*(ii) Defendants' case*

- [27] The defendant's case is that it did not cause Mr Abadi's death. They contend in the alternative that Mr Abadi contributed to his own death by not looking after himself, by declining to eat, by keeping himself unkempt and because he ate sweets when diabetics should know to not eat sweets.
- [28] The defendant's case is set out in Dr Novelo's witness statement in which he accepts that he knew about and had been informed prior to the sentencing of Mr Abadi to six years in prison that he was an insulin-dependent diabetic. Dr Novelo also testified that he medically examined Mr Abadi a few days after he was imprisoned and diagnosed him as being an insulin-dependent diabetic. He also noted that the medication used to manage Mr Abadi's medical conditions "*were prescribed to him by medical personnel in Guatemala.*" He added that "*It is important to note that I usually respect prescriptions/recommendations that is sent with an inmate upon admission to the Kolbe Foundation.*"
- [29] In his witness statement Mr Novelo affirms that at the request of Mr and Mrs Abadi he granted permission on 13 December 2018 for Mr Abadi to be examined by Dr Bello. Dr Novelo does not

dispute that Dr Bello wrote a medical report after his examination of Mr Abadi.

[30] At para. 16 of his witness statement, Dr Novelo states:

“At his (sic) time Dr. Novelo continued routine diabetic follow-up with Mr. Abadi and continuously found him fit to remain in prison. Consequently, Dr. Novelo informed the Director of Prison on the report of Dr E. Ortiz and on his professional opinion as the prison Medical Officer.”

[31] This paragraph, which is in the third person, shows that Dr Novelo did not write his witness statement. I shall return to the issue in my analysis (see para. **109-110 below**).

[32] Dr Novelo indicates that throughout the period of Mr Abadi’s imprisonment, “*we continued to administer insulin to Mr Abadi at the Medical Centre [at the prison], however, he began showing signs of mild depression and decreased his food consumption.*” I note that apart from analgesics, insulin is the only medication that Dr Novelo administered to Mr Abadi save for the “*one or two months*” when Mr Abadi took erythropoietin for his kidney ailment, which drug was provided by Mrs Abadi.

[33] In his witness statement, Dr Novelo further recounts that:

- (a) on **16 January 2019** at or around 7:40 PM Mr Abadi was reported to have fainted and that he was attended to and given oxygen and treatment – notably this incident occurred 12 days after Dr Bello’s 4 January 2019 report;
- (b) on **18 March 2019** at or around 8:10 AM, Mr Abadi was escorted from Tango 10 complaining of weakness and that he was disoriented and fainted – he adds that that was after a family visit and that after being kept for observation, Mr Abadi was discharged from the Medical Centre “*alive and well*”;
- (c) on **25 March 2019** at or around 1:30 PM Mr Abadi was admitted to the Medical Centre complaining of weakness and a headache and after Dr Novelo examined him and gave him an analgesic, he discharged Mr Abadi around 2PM “*alive and well*”
- (d) on **28 March 2019**, Dr Novelo evaluated Mr Abadi after he had complained about back pain, which information he accepts Mrs Abadi had brought to this attention on the same day;
- (e) on **29 March 2019**, Dr Novelo received a report that Mr Abadi had “*refused his meal*” and that he received numerous reports in April about Mr Abadi refusing to eat his meals;
- (f) on **10 April 2019**, at the request of Mr and Mrs Abadi, he permitted Dr Fernando Cuellar from the Belize Medical Associates to visit Mr Abadi in prison “*to conduct a physical examination*”

on Mr Abadi"; and

- (g) thereafter, i.e., after April, "*Mr Abadi's health began to deteriorate, and he became weaker*" consequent to which he was transferred to "*Tango 6 medic cell near the Medic Centre for medical care when necessary*".

[34] In his witness statement and in cross examination, Dr Novelo asserted that he ensured that Mr Abadi received two doses of insulin daily "*per his prescription.*" However, Dr Novelo did not say that he adjusted the two insulin doses to ensure the effective management and control of Mr Abadi's blood glucose levels. In cross examination, he also affirmed that prisoners on insulin are required to self-administer the drug – a practice I find surprising given that Mr Abadi is said to have been very ill, often fainted and appeared fatigued (**see para. 33 above**). In July and August 2019, there were weeks when Mrs Abadi did not provide insulin, which resulted in Dr Novelo ordering insulin from the Ministry of Health.

[35] Dr Novelo further reiterates that in July 2019, he warned Mr Abadi that "*to wilfully feign or endeavour to cause illness or obstruct the cure of any illness for which he is receiving medical attention*" constituted a breach of Rule 49 of the Prison Rules.<sup>3</sup> Dr Novelo made this assertion in relation to the reports he says he heard that "*Mr Abadi was refusing his meal[s].*" This suggests that Dr Novelo was of the view that Mr Abadi was feigning illness or causing himself to be ill by not eating. I note that Dr Novelo did not consider whether there were other reasons such as the episodes of illness set out in para. 33 above and Mr Abadi's serious underlying health conditions, which may have caused him to have a low appetite or that he was simply too weak to eat.

[36] Dr Novelo also states that on 25 August 2019, Mr Abadi was brought to the Medical Centre complaining of fatigue and he was "refusing to eat". On the day, Mr Abadi is said to have had low blood glucose levels for which, Dr Novelo states, he was given a dose of B-complex and IV at 25/ml, which lasted for an hour. Dr Novelo did not disclose the nature of the intravenous treatment.

[37] Dr Novelo further asserted that on **28 August 2019** at or around 2:30PM, he was informed that Mr

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<sup>3</sup> Rule 49 of the Prison Rules provides:

A prisoner shall be guilty of an offence against prison discipline if he---(t) wilfully feigns or endeavours to cause illness or obstructs the cure of any illness for which he is receiving medical attention."

Abadi “*was weak and was not breathing adequately*”. When he visited Tango 6 Cell Block on 28 August 2019, Dr Novelo say he “observed” Mr Abadi lying in bed and that he had a fever, shortness of breath and signs of dehydration. He ordered that Mr Abadi be taken to the Medical Centre where he says Mr Abadi’s “*vitals were taken, and he was given 10 units of insulin regular*”.

[38] Dr Novelo does not say that he took any action to treat Mr Abadi for the fever, shortness of breath and signs of dehydration, which he exhibited. He says, thereafter, Mr Abadi was taken to KMHM on the same day “*where he was admitted for four days.*” He adds further that he “*was informed on the 31<sup>st</sup> of August 2019 that Mr Abadi had passed away*” and that he was “*subsequently invited to sit on the (sic) Mr Abadi’s autopsy which was conducted by Dr. Estradaban who concluded that [Mr Abadi] died from lung failure and pneumonia.*” I note that in the KMHM admissions and discharge report, Mr Abadi is said to have died from multi-organ failure and sepsis, as well as bilateral pneumonia and acute pulmonary oedema.

## **II. Issues arising**

[39] Four key issues arise in these proceedings, i.e.:

- (a) whether the prison authorities were aware that Mr Abadi had serious life-threatening illnesses;
- (b) whether the prison authorities owed Mr Abadi a duty of care generally and a positive obligation to ensure that he received treatment for his serious health conditions; and
- (c) if so, whether the prison authorities breached their duty of care to Mr Abadi; and
- (d) if so, whether the defendant are liable in damages under the Torts Act for the wrongful death of Mr Abadi.

## **III. Discussion**

*i. Whether the prison authorities were aware that Mr Abadi had serious life-threatening illnesses*

[40] I can address this issue in short order. The defendants do not dispute that the prison authorities were aware both before and after Mr Abadi was sentenced and became an inmate at the Belize Central Prison that he suffered from uncontrolled life-threatening health conditions and related comorbidities. Dr Novelo affirmed in cross-examination that within a few days of his imprisonment, he assessed Mr Abadi and was aware of his serious health conditions. In addition, on at least two

occasions, the prison authorities permitted Mr Abadi to be examined by private medical doctors who wrote reports that were produced in evidence without demur as to their admissibility or and/or their accurateness as it pertains to Mr Abadi's health conditions. Dr Bello's report in particular confirms that Mr Abadi had serious life-threatening health problems.

[41] I also note that in his witness statement and oral evidence, Dr Novelo only ever referred to Mr Abadi as being a diabetic. I find this both surprising and concerning. It is unclear whether Dr Novelo decided to not refer to Mr Abadi's other serious medical conditions with the objective of minimising how seriously ill Mr Abadi was or because he disagreed with the diagnoses made by Dr Bello and Dr Cuellar. Whatever, the reason it is clear (and I find) that Dr Novelo (and by extension, the Superintendent of Prisons) had more than adequate information since at least Dr Bello's 4 January 2019 report that Mr Abadi suffered from: (i) uncontrolled diabetes and was insulin-dependent; (ii) severe diabetic neuropathy; (iii) uncontrolled chronic kidney disease; (iii) uncontrolled hypertension; (iv) unresolved clinical depression; and (v) uncontrolled high cholesterol. I also hold that the prison authorities knew that left untreated, these medical conditions were life-threatening.

[42] In addition, I hold as appears from para. 33 above, that Dr Novelo was aware that Mr Abadi was in a poorly state and that he and other prison staff attended to him on numerous occasions since at least 16 January 2019.

[43] I also find that Dr Novelo (and by extension, the Superintendent of Prisons) knew that prior to and after his imprisonment, Mr Abadi suffered from recurrent fever, respiratory problems, cramps in the extremities, and pain in the joints and abdomen, which were more likely symptoms related to his underlying health conditions all of which, save for diabetes, went untreated.

*ii. Whether the prison authorities owed Mr Abadi a duty of care*

[44] The claimants' case (and I summarise) is that the defendants owed Mr Abadi a duty of care and that in failing to ensure that he had appropriate, regular and prompt access to adequate treatment and drugs either at the prison or the public hospital, the defendants' breached their duty of care towards Mr Abadi.

[45] In their statement of case the defendants did not dispute the claimants' assertion that the prison

authorities owed Mr Abadi a duty of care. In their plea, they focused solely on causation, i.e., they alleged that Mr Abadi was the author of his own misfortune in that (i) “*he failed or refused to take reasonable care of himself*”; (ii) “*deliberately or negligently failed to observe or to take any sufficient steps to follow a proper diet for a diabetic*”; and (iii) “*ought to have known that his medical condition would worsen if he took deliberate acts of omissions to improperly care for himself ...to...follow the regime of treatment...afforded to him and the diet afforded to him.*”

- [46] In their written submissions the defendants pleaded for the first time that there was no special relationship between Mr Abadi and the defendants and that consequently the prison authorities did not owe him any duty of care.
- [47] The defendants did not in these proceedings apply for leave to amend their pleadings to include the plea that the prison authorities did not owe Mr Abadi a duty of care. I hold that in failing to state in their defence that the prison authorities did not owe Mr Abadi a duty of care, the defendants must be deemed to have admitted the claimants’ plea that the prison authorities owed Mr Abadi a duty of care.
- [48] The defendants may not contest the claimant’s plea, as they have done, only in their written submissions. Rule 10.5(1) of the Senior Courts (Civil Procedure) Rules (CPR hereafter) requires a defendant to set out all the facts on which he disputes a claim. In addition, a defendant is required to state which of the allegations in the claim form and/or statement of claim (a) are admitted; (b) are denied; (c) are neither admitted nor denied, because the defendant does not know whether they are true; and (d) which of the allegations the defendant wishes the claimant to prove.
- [49] In breach of CPR 10.5(5)<sup>4</sup> the defendants did not in their defence resist the claimants’ plea that the prison authorities owed Mr Abadi a duty of care. It is impermissible and more so without leave for a litigant to raise a defence only in their written submissions.

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<sup>4</sup> CPR 10.5(5) provides:

- If, in relation to any allegation in the claim form or statement of claim the defendant does not–
- (a) admit it; or
  - (b) deny it and put forward a different version of events,
- the defendant must state the reasons for resisting the allegation.

- [50] On this issue, I wish to draw on the apposite case of *Dil v Commissioner of Police of the Metropolis* [2014] EWHC 2184 (QB) in which Bean J considered Rule 16.5 of the England and Wales Civil Procedure Rules, which is similar in all material respects to our CPR 10.5. The police in England and Wales had a long-standing rule to neither confirm nor deny (NCND defence) in civil and criminal proceedings whether a particular person being sued was either an informer or an undercover police officer. In the matter, the claimant was suing an undercover police officer for damages for deceit, assault, misfeasance in public office and negligence arising out of long term and intimate sexual relationships. The defendant pleaded its usual NCND defence. Bean J held that that rule of practice could no longer be utilised in civil litigation to avoid giving an answer to an allegation contained in a claimant's statement of case.
- [51] In *Dil*, the issue relating to the adequacy of the defendant's plea and its compliance with the Rules was taken early in the proceedings in the context of a strike-out application of the defence. In view of the English law rule that the remedy of a strike-out is a remedy of last resort, Bean J ruled that if the defendant did not amend its defence in compliance with the Rules, it would be taken to have admitted the allegations made by the claimant (see para. 49 thereof). The option of an amendment is not available to the defendants in this matter as no application was made for leave to amend its defence.
- [52] Civil proceedings are and must be conducted on the basis that a party to litigation (be it a claimant or a defendant) is entitled to know in advance through a statement of case the essentials of its opponent's case (see also *Al Rawi v Security Service* [2010] EWCA Civ 482, [2012] 1 AC 531, at [18]). This long-standing rule promotes the overriding objective of the just and expeditious resolution of disputes at proportionate cost to the parties. It also facilitates active case management and the early identification of issues properly arising for resolution in any matter. Further, it removes the element of surprise and the unfairness of litigation-by-ambush.
- [53] In the circumstances, I hold that the defendants must be deemed to have admitted the claimants' plea that they owed Mr Abadi a duty of care.
- [54] That said, even if I had permitted the defendants to amend their defence and argue that prison authorities do not owe prisoners a general duty of care for their health and safety I would, in any event, have dismissed it. It is my view that prison authorities owe a general positive duty of care to

any person in their custody i.e., for that person's health and safety.

- [55] In this regard, I agree with the following proposition made in ***Orange v Chief Constable of West Yorkshire Police*** [2001] EWCA Civ 611, at [20], that:

“There is no doubt that a custodian owes a duty of care to those taken into custody...the duty of care is to take reasonable care for that person's health and safety.”

- [56] I would also refer to the case of ***Mitchell v Glasgow City Council*** [2009] AC 874 at 66, where the following principle of general application was enunciated, i.e.:

“where a State has assumed responsibility for an individual, whether by taking him into custody, by imprisoning him, detaining him under mental health legislation, or conscripting him into the armed forces, the State assumes responsibility for that individual's safety. So in these circumstances police authorities, prison authorities, health authorities and the armed forces are all subject to positive obligations to protect the lives of those in their care. The authorities must therefore take general measures to employ and train competent staff and to adopt appropriate systems of work that will protect the lives of the people for whose welfare they have made themselves responsible. These are general obligations, not directed at any particular individual, but designed to protect all those in the authorities' care. If, however, an authority fails to fulfil one of these obligations and someone in their care dies as a result, there will be a violation of his or her article 2 Convention rights. [Emphasis added]

- [57] The reference made in ***Mitchell*** to article 2 of the Convention rights refers to the right to life contained in the European Convention on Human Rights. In Belize, the right to life is set out in section 3 of the Constitution. I tend to agree with the proposition that if an individual in custody dies as a result of the failure by the authorities to take reasonable measures to ensure his health and safety, there would be a prima facie violation by the prison authorities of that person's right to life.

- [58] In the same para. Rodger LJ also stated and, in my view, correctly that:

“Authorities which are under these general obligations to persons in their care may also come under a distinct, additional, “operational” obligation to take special preventive measures to protect a particular individual in their care. That operational obligation arises only where the authority knows, or ought to know, of a “real and immediate risk” to the life of the particular individual. I refer generally to the discussion of these matters in the speeches in ***Savage v South Essex Partnership NHS Foundation Trust*** [2008] UKHL 74; [2009] 2 WLR 115.” [Emphasis added]

- [59] Drawing on the above, I hold that the claimants have demonstrated that (i) Mr Abadi was a prisoner at the Belize Central Prison; (ii) Mr Abadi had grave and life-threatening underlying health conditions; and (iii) the prison authorities and notably Mr Murrillo, the Director of the Belize Central Prison and

its medical officer, Dr Novelo, knew about and had sufficiently detailed information pertaining to Mr Abadi's serious health conditions and that they knew or ought to have known that left untreated those underlying health conditions were undoubtably life-threatening.

[60] In the circumstances, I find that the defendants had a general duty of care, if not an enhanced positive obligation to Mr Abadi, a prisoner whom they knew had several life-threatening underlying health conditions, to take appropriate measures to ensure that either (i) he had access in prison to the treatment and drugs, which he required for the treatment and control of his serious and life-threatening medical conditions; or (ii) he was referred to the KMHM for regular assessments of and treatment for all of his life-threatening underlying conditions, which they decided to not treat or due to limited resources and capacity were unable to properly diagnose and treat.

*iii. Whether the prison authorities breached their duty of care to Mr Abadi*

[61] The claimants contend that the prison authorities breached their duty of care to Mr Abadi in that:

- (a) in breach of Rule 99 of the Prison Rules, the medical officer (Dr Novelo) did not attend "every day" to Mr Abadi despite knowing that he had life-threatening medical conditions that required daily attention by Dr Novelo;
- (b) in breach of Rule 101(1) of the Prison Rules, the prison authorities did not attend to Mr Abadi as soon as reasonably possible upon receiving information that he was seriously unwell;
- (c) in breach of Rule 102, 104 and 107 the prison authorities did not inform the Minister about Mr Abadi's medical conditions, including the information provided by Dr Bello on 4 January 2019 that Mr Abadi was at a heightened risk of developing fatal complications; and
- (d) in August 2019, the prison authorities unreasonably and for unexplained reasons delayed in getting Mr Abadi hospitalised to get the medical attention he required.

[62] In their statement of case, the defendants admit the applicability of and that they are bound by the Prison Rules parts of which lay out the prison authorities' duty of care towards prisoners known to be or who exhibit signs of being medically unwell.

[63] It is the defendants' case that they did not breach Rules 99, 101(1); 102; 104 and 107 of the Prison Rules. Rather, the defendants blame Mr Abadi and say he caused his own death. They allege that Mr Abadi neglected to look after himself and that his self-neglect caused or materially contributed to

his death. In their particulars of the alleged negligent acts, which they say caused or materially contributed to the death of Mr Abadi, the defendants contend that Mr Abadi:

1. Deliberately or negligently failed to upkeep himself [by]:
  - i. not cleaning his cell
  - ii. not wearing clean clothes
  - iii. not showering/bathing
  - iv. urinating [on] himself or his sheets
  - v. not exercising, and/or
  - vi. laying in bed.
2. Deliberately or negligently failed to observe or to take any sufficient steps to follow a proper diet for a diabetic [by]:
  - i. Refusing to eat or eat any meal that is or is sufficient for proper nourishment
  - ii. Eating food that is not recommended for a diabetic
  - iii. Unlawfully participating in contraband goods for this consumption knowing that contraband is illegal and the goods if consumed are detrimental to the health of a diabetic.
3. In the circumstances [Mr Abadi] knew or ought to have known that his medical condition would worsen if he took deliberate acts or omissions to improperly care for himself or to improperly nourish himself or to not follow the regimen being offered to him and the diet offered to him.”

[64] I note that in their statement of case, the defendants did not make any averments demonstrating that they fulfilled their duty to provide Mr Abadi with all the treatment and/or provided him with access to treatment and the medication he required for the treatment and management of all of his health conditions.

[65] As I indicated above, it is my view that prison authorities have a positive obligation to provide treatment and/or access to treatment and medication to prisoners in need. In their defence, the defendants focus not on Mr Abadi’s need for treatment by them and/or access and treatment at the public hospital but on the allegation that Mr Abadi kept himself unkempt and ate sweets. However, they do not point to how those factors, if true, were in any way logically connected to or how they could have caused or materially contributed to Mr Abadi’s death.

*Claimant’s onus*

[66] Before the onus shifts to a defendant in a wrongful death matter, a claimant must demonstrate on the facts and the law a prima facie case, i.e., to say they have adduced adequate evidence, which supports the claim advanced against the defendant.

- [67] In these proceedings, the claimants have demonstrated that: (a) Mr Abadi is deceased; (b) the defendants owed Mr Abadi a duty of care; and (c) when he was imprisoned Mr Abadi suffered from: (i) uncontrolled diabetes and was insulin-dependent; (ii) severe diabetic neuropathy; (iii) uncontrolled chronic kidney disease; (iv) uncontrolled hypertension; (v) non-resolved clinical depression; and (vi) uncontrolled high cholesterol.
- [68] They have also demonstrated that save for a few weeks in July and August 2019, it was Mrs Abadi that sourced and gave the prison authorities the medication, which Mr Abadi required for his diabetes and kidney ailment. The prison authorities did not treat Mr Abadi for any of his other underlying medical conditions, i.e., save for diabetes and abdominal and joint pain.
- [69] Starting in January 2019, Mr Abadi's health situation started to deteriorate and with the authorisation of Mr Murrillo and Dr Novelo, Mrs Abadi was permitted to secure private medical assistance to Mr Abadi. That supports the conclusion that the prison authorities knew that Mr Abadi was seriously ill and in need of treatment and that the prison authorities did not themselves have the necessary diagnostic and treatment resources.
- [70] Dr Bello and Dr Cuellar produced two medical reports, the contents of which the defendants do not dispute. Those reports showed that if left untreated, which he was, Mr Abadi was at risk of developing fatal complications in a short period of time.
- [71] Relatedly, the claimants have demonstrated that although Mr Abadi required admission to the prison's medical centre on 25 August 2019, Dr Novelo did not attend to him until 28 August 2019, and no explanation was provided for Dr Novelo's failure to attend to Mr Abadi between 25 and 27 August 2019. According to the claimants' the delay coupled with the fact that on admission, Mr Abadi was diagnosed with septic shock caused or is the reason for his death.
- [72] Drawing on the above, I hold that the claimants have discharged their onus and have established a prima facie case that the prison authorities' failure to (i) treat Mr Abadi for all of his underlying life-threatening medical conditions over an extended period of time; (ii) refer him to KMHM for assessment and treatment at any point during the days when he was admitted to the medical cell (see para. 33 above); and (iii) refer Mr Abadi on 25 August 2019 to KMHM, when he was in respiratory distress and suffering from septic shock more likely than not caused his demise at the time and in

the manner in which it happened.

*Defendants' onus*

[73] The claimants having established a prima facie case, the onus shifts to the defendants to rebut the claimants' case and to prove, as outlined in their defence, that Mr Abadi caused his own death or that he contributed to his own death.

[74] In his witness statement, which he amplified through oral evidence, Dr Novelo did not allege or demonstrate that (i) the prison authorities had adequate capacity, expertise, resources and facilities to diagnose and treat Mr Abadi for each of the serious ailments from which he suffered; (ii) the prison authorities treated Mr Abadi for all the ailments from which he suffered; (iii) in relation to those of Mr Abadi's ailments, which they were unable to diagnose and treat, they ensured that he had adequate and relevant diagnostic opportunities at and treatment from the KMH; (iv) in their opinion (which would have needed expert opinion evidence, which was not adduced), Mr Abadi would have died anyway irrespective of or despite any treatment that he might have been given by the prison authorities or at the KMH; (v) Mr Abadi refused treatment offered by the prison authorities; and/or (vi) decisions taken by and/or the alleged acts of negligence, which the defendants attribute to Mr Abadi were the direct cause or materially contributed to his death.

[75] In sum, I hold that that the defendants have failed to rebut the claimants' case that the acts and omissions of the prison authorities caused or more likely than not caused the death of Mr Abadi.

[76] I also find on a balance of probabilities that it is more likely than not that the prison authorities' decisions, acts and omissions caused the death of Mr Abadi at the time and in the manner it occurred. I set out below the reasons for my decision.

*Reasons*

[77] In these proceedings, the defendants' case turned on the evidence of Dr Novelo. The defendants did not call Mr Murrillo, the Chief Executive Officer of the Belize Central Prison or any expert opinion evidence. They also did not produce any of Dr Novelo's medical notes pertaining to Mr Abadi, save for his 29 August 2019 memorandum to Mr Murrillo, which he wrote in response to Mrs Abadi's then attorneys email asking for the most recent medical report on Mr Abadi.

*(i) Dr Novelo's diagnosis and treatment of Mr Abadi only for diabetes*

[78] In his witness statement and oral evidence, Dr Novelo only ever diagnosed Mr Abadi as suffering from diabetes, and he treated him only for that condition with insulin and analgesics for pain. That is the total sum of the medication that the prison authorities administered to Mr Abadi notwithstanding that in addition to diabetes, he also suffered from (i) severe diabetic neuropathy; (ii) uncontrolled chronic kidney disease; (iii) uncontrolled hypertension; (iv) non-resolved clinical depression; and (v) uncontrolled high cholesterol. Dr Novelo did treat Mr Abadi for between four to eight weeks using erythropoietin, which is used to manage chronic kidney disease. Dr Novelo did not take any other action after the drugs supplied by Mrs Abadi ran out. He also did not himself take blood samples to monitor the progression of Mr Abadi's kidney disease. Neither did he treat him for high blood pressure and cholesterol.

[79] In the absence of any explanation by the prison authorities, I find that their failure to medically examine, or cause the medical examination of, Mr Abadi and to provide or secure treatment for him from the KMH for his kidney disease, hypertension and high cholesterol was either deliberate or grossly negligent. I also find that the prison authorities' non-treatment of Mr Abadi for all of his serious medical conditions more likely than not caused or were the material cause for his death. As noted by Dr Bello in his 4 January 2019 medical report, non-treatment of Mr Abadi's serious medical conditions were likely to lead in a short period to fatal complications.

*(ii) Access to medication and treatment regime*

[80] According to Dr Novelo, during the period that Mr Abadi was imprisoned at the Belize Central Prison, it was Mrs Abadi that sourced and provided the insulin which Mr Abadi required to manage his diabetes. He also indicated that for some weeks in July and August 2019, he requested insulin from the Ministry of Health as Mrs Abadi had not provided the required insulin. Dr Novelo also affirmed that it was Mrs Abadi that provided the erythropoietin medication, which Mr Abadi required for the management of his chronic kidney disease.

[81] As indicated above, the prison authorities did not prescribe and administer to Mr Abadi any medication for the control and management of his other life-threatening medical conditions nor did they refer him to the KMH for regular assessments and treatment. Mr Abadi was only ever attended

to by external doctors at the insistence of Mrs Abadi and it is from external doctors that medication was in the main prescribed to Mr Abadi (save for analgesics). Notably, on 29 August 2019, Mr Murillo was prepared to have Mr Abadi referred to external medical personnel only if Mrs Abadi agreed to pay for the cost. Drawing from Dr Bello's 4 January 2019 report, it is clear that Mr Abadi needed regular assessments and treatment for his health conditions. However, the prison authorities decided to not enable him to do so save on 28 August 2019 when it plainly too late to save his life.

[82] In his oral evidence, Dr Novelo indicated that the prison had limited resources and that that is the reason why it relied on, and accepted, medication provided by relatives of inmates with underlying health conditions. The problem of lack of resources is one that cannot be laid at the Dr Novelo's feet. That said, there would, of course, be no need for inmates or any third parties to provide medication if the prison authorities had adequate supplies of and/or had ready access to the same or better medication

[83] In the circumstances, I hold that the prison authorities failed in their duty to ensure the health and safety of Mr Abadi, i.e., they failed to provide and administer to Mr Abadi the medication that he required for the treatment and management of all the life-threatening conditions from which he suffered. In addition, the prison authorities did not refer Mr Abadi to the KMHM for regular medical examination and treatment save when it was plainly too late and he had developed sepsis. I also find that it is more likely than not that the prison authorities' decision and/or failure to provide and administer to Mr Abadi the treatment and drugs necessary to manage each of his several medical conditions caused or more likely than not were the substantial cause of his death since he went unmonitored and untreated for an inordinate period of time, i.e., January to August 2019. Dr Bello's 4 January 2019 medical report supports the conclusion that since Mr Abadi's serious medical conditions went unaddressed, he was more likely than not to suffer fatal consequences.

*(iii) Failure to attend to Mr Abadi everyday*

[84] In their statement of claim, the claimants contend that the prison authorities and in particular Dr Novelo breached Rule 99 of the Prison Rules, which provides:

"The Medical Officer shall have the care of the mental [and] physical health of the prisoners and shall every day see every prisoner, every prisoner who complains of illness...and every...prisoner to whom attention is specifically directed." [Emphasis added]

[85] Mr Abadi complained of illness throughout the period of his imprisonment as did his wife on his behalf. The defendants did not lead any evidence rebutting the claimants' assertion that the Medical Officer of the Belize Central Prison (Dr Novelo) did not see Mr Abadi every day although he knew from before Mr Abadi was imprisoned that he suffered from several life-threatening ailments one of which was uncontrolled diabetes, which required twice daily injections of insulin. As noted in Dr Bello's report, uncontrolled diabetes can lead to ketoacidosis – a potentially fatal complication.

[86] Under cross-examination, Dr Novelo admitted that during Mr Abadi's imprisonment, he did not see him every day. Critically, when Mr Abadi fell seriously ill on the following dates and was taken to the Medical Centre, Dr Novelo did not personally attend to Mr Abadi, i.e.: (i) 16 January 2019; and (ii) 25-27 August 2019. He did not give any reason for his failure to do so.

[87] In find that in failing to attend to Mr Abadi every day as required by Rule 99 of the Prison Rules, Dr Novelo breached a statutory duty, which he owed to Mr Abadi. I also hold that Dr Novelo's failure to attend to Mr Abadi between 25-27 August 2019 resulted in his non-timely referral to KMH and that that delayed referral more likely than not resulted in the ineffectiveness of any treatment for sepsis and caused or substantially contributed to his death at the time and the circumstances it occurred.

*(iv) Failure to act on Dr Bello and Dr Cuellar's medical reports*

[88] After examining Mr Abadi, Dr Bello gave his 4 January 2019 medical report to Dr Novelo. As noted in **para. 11-15 above**, Dr Bello's report makes for grim reading. Dr Bello noted in particular that "*in the [preceding] last four months*" there had been a deterioration in Mr Abadi's health and that without a change in his living conditions and treatment regime, Mr Abadi was at a heightened risk of developing fatal complications. In his **11 July 2019** medical report, Dr Cuellar also stressed that "*Mr Abadi's optimal care [could] only be obtained in a home environment as opposed to being incarcerated.*"

[89] In cross-examination Dr Novelo stated that he placed Dr Bello's report on Mr Abadi's file and that he did not recall if he sent Dr Bello's medical report to Mr Murrillo. He further stated that he did not consider it necessary to act on it because it was merely an opinion of, and contained recommendations made by, another doctor and that he had no duty to act on it. Dr Novelo also indicated that he may or may not have given Mr Murrillo a copy of the medical report produced by Dr

Cuellar and that he did not consider it necessary to share every medical report and recommendation made by other doctor pertaining to the health situation and treatment of any prisoners with Mr Murrillo.

[90] I do not share Dr Novelo's opinion on his and the prison authorities' statutory obligations. It is my considered view that as a medical officer at the Belize Central Prison, he had a statutory duty to consider and act on Dr Bello's 4 January 2019 report as well as Dr Cuellar's 11 July 2019 report. Rule 101(1) of the Prison Rules requires the Belize Central Prison's medical officer to act on "*information*" pertaining to the illness of a prisoner. That information may come from the prisoner, a fellow prisoner, or from any other person, including a doctor not affiliated with the prison. There has to be a good reason for a medical officer employed by the Belize Central Prison to not act on information provided by a doctor pertaining to the illness of an inmate. It does not mean that the medical officer is bound to follow or that he must agree with the opinion expressed by another doctor. Rather, the Belize Central Prison medical officer must demonstrate that they properly considered the information provided and in response took an informed decision on next steps, whatever those next steps are, which must be recorded in the prisoner's medical file.

[91] I am surprised that Dr Novelo decided to not act on the detailed diagnosis of Mr Abadi's medical conditions and prognosis made by in particular by Dr Bello. Dr Bello's report painted a dim prognosis of Mr Abadi's overall health and contained information on medical conditions which Dr Novelo had not himself diagnosed or treated save for diabetes.

[92] I conclude that in deciding to not act on Dr Bello and Dr Cuellar' reports, i.e., by not medically examining Mr Abadi to assess whether Dr Bello and Dr Cuellar's diagnoses of Mr Abadi were correct or sending Mr Abadi to the KMHM for a second opinion (i.e., if he had reasons to doubt or dispute Dr Bello and Dr Cuellar's professional opinions) Dr Novelo breached Rule 101 of the Prison Rules, which required him to act upon "*receiving information of the illness of a prisoner*".

[93] I also hold that Dr Novelo had a heightened duty to act on Dr Bello and Dr Cuellar's reports since those were reports made by other doctors who provided information to the effect that in their professional opinion, Mr Abadi had life-threatening illnesses and changes were needed to his living arrangements and treatment regime.

[94] The medical report produced by Dr Bello was clear on the fact that if there were no immediate

changes to Mr Abadi's living environment and treatment regime, he was at a heightened risk of developing fatal complications. In his report, Dr Cuellar as did Dr Bello affirmed that Mr Abadi could only receive optimal care from a home environment. I am also of the view that the information set out in Dr Bello and Dr Cuellar's medical reports engaged Dr Novelo and Mr Murrillo's obligations under Rule 103 of the Prison Rules, which provides:

"Whenever the Medical Officer has reason to believe that a prisoner's mental or physical health is likely to be injuriously affected [through] continued imprisonment or by any conditions of imprisonment or by any conditions of imprisonment [or] that a sick prisoner will not survive his sentence or is totally or permanently unfit for imprisonment, he shall without delay report the case in writing to the Superintendent and to the Chief Medical Officer with such recommendation as he thinks fit, and the Superintendent shall forward such report and recommendations to the Minister forthwith."

- [95] Those two medical reports should have given Dr Novelo pause for thought and to be concerned about (i) whether Mr Abadi's continued imprisonment would seriously affect his physical and mental health; and (ii) whether Mr Abadi would survive his sentence.
- [96] I also hold that both Mr Murrillo and Dr Novelo had a positive obligation, which they breached to report without delay to the Minister responsible for prisons and to provide recommendations regarding Mr Abadi's continued imprisonment considering the reports produced by Dr Bello and Dr Cuellar. They also had a duty to provide their own assessments of Mr Abadi's health considering in particular the admission made by Dr Novelo that the prison had limited resources to optimally diagnose, treat and care for Mr Abadi.
- [97] I find it incomprehensible that despite Dr Bello's grim diagnoses, Dr Novelo remained of the view after each of the numerous occasions when Mr Abadi fell ill and was brought to the Medical Centre that Mr Abadi remained "*fit for admission to Kolbe Foundation and [that he was] able to function as a regular inmate*". While it is not for me to speculate on Dr Novelo's reasons and motivations, his conduct and decision-making presented an unacceptable risk to the health and safety of Mr Abadi since he knew that the prison was unable to treat Mr Abadi for all of his life-threatening medical conditions.
- [98] In the circumstances, I find that Dr Novelo decided to turn a blind eye to and to not act on Dr Bello and Dr Cuellar's medical reports and that the prison authorities' failure to treat Mr Abadi for all of his life-threatening health conditions or to ensure that he was treated at KMHM caused his death at the

time and in the manner in which it occurred. And as noted by Dr Bello, the failure to change Mr Abadi's living conditions and treatment regime exposed him to the risk of fatal complications.

*(v) Dr Novelo's failure to attend to Mr Abadi on 25-27 August 2019*

[99] In his evidence, Dr Novelo testified that he was informed that Mr Abadi was brought to the Medical Centre on **25 August 2019 at around 6:30 AM**. Dr Novelo says, the "*complaint*" was that Mr Abadi was fatigued and was "*refusing to eat*". Given the time of the report, this suggests that Mr Abadi must have got seriously worse on or before 24 August 2019. Dr Novelo does not say that he attended to Mr Abadi at any point between 24 August 2019 and 27 August 2019.

[100] Rule 101(1) of the Prison Rules requires the medical officer to attend to a prisoner as soon as possible upon receiving information that he was medically unwell. In his evidence, Dr Novelo did not give any reason why he failed to attend to Mr Abadi between 25 and 27 August 2019 after he had been placed in the Medical Centre. I find that in failing to immediately personally attend to Mr Abadi, Dr Novelo breached Rule 101(1) of the Prison Rules and in so doing also breached the prison authorities' duty of care towards Mr Abadi.

[101] I also note that Dr Novelo admitted in cross-examination that the delay in referring Mr Abadi to the KMHM was due to "*internal bureaucracy*." I find that that delay of more than three days more likely than not resulted in the delayed diagnosis and treatment of Mr Abadi for sepsis, a condition that is invariably fatal is not promptly treated.

*(vi) Unfounded suspicion that Mr Abadi was faking illness*

[102] After his cross-examination by Mr Banner, I asked Dr Novelo why it was that Mrs Abadi was barred since 26 August 2019 from seeing her husband on the grounds that he was in the Medical Centre and why in his view, she had to secure legal assistance to request that Mr Abadi be sent to a private hospital. Dr Novelo did not answer the specific question I posed. He chose to explain that in his ten years at the Belize Central Prison, he receives a lot of requests from inmates or their family members for inmates to be released on medical grounds.

[103] I am prepared to accept that Dr Novelo gets a lot of requests for permission to be given for inmates to receive treatment from medical facilities outside the prison and potentially with a view to securing

early release. However, that response most likely explains why he improperly chose to ignore and to not act on the medical reports produced by Dr Bello and Dr Cuellar.

[104] Critically, however, Dr Novelo said that Mr Abadi was faking illness to secure early release from prison. Contradicting himself and ignoring or oblivious that the response engaged his duties under Rule 103 of the Prison Rules, Dr Novelo also said that in his view Mr Abadi had given up on life because he was depressed. Both responses, which undermine Dr Novelo's credibility cannot be true. Either Mr Abadi was faking illness, or he had given up on life and wanted to die by starving himself.

[105] In response to my question whether in his view Mr Abadi gave up on life and then developed septic shock, Dr Novelo stated that yes that resulted in Mr Abadi's immune system getting low. That, I must say, was an absurd response.

[106] Drawing on Mrs Abadi's evidence and the medical reports produced by Dr Bello and Dr Cuellar, I find that Mr Abadi was not faking illness. Dr Novelo's view that Mr Abadi was faking illness has no basis in fact and is contradicted by his witness statement, which clearly articulates that Mr Abadi was a seriously ill inmate. I must say that I find that it was improper of Dr Novelo to threaten Mr Abadi (see para. 29 of his witness statement) that in not eating, he was guilty of an offence against prison discipline. By that time, Dr Novelo knew very well that Mr Abadi was seriously unwell (see para. 33 above) and that he (Dr Novelo) was not treating Mr Abadi for his kidney disease, hypertension, depression and was failing to regulate Mr Abadi's high glucose levels.

[107] Whether it be Dr Novelo's attitude towards Mr Abadi or a general institutional culture at the prison, either or both of these factors most likely informed the decision to not treat Mr Abadi for all his health challenges and that this caused, in not an insubstantial way, Mr Abadi's death at the time and the manner it occurred. As noted by Dr Bello, left untreated and unmanaged, any of the medical conditions from which Mr Abadi suffered would have killed him.

*(vii) Information provided to KHMH on Mr Abadi's admission to the hospital*

[108] When the Belize Central Prison transferred Mr Abadi to the KHMH on 28 August 2019, KHMH recorded in its admissions form that Mr Abadi had been "*Referred from physician in Kolbe Prison due to severe dehydration and hyperglycaemia. Brought by prison ward unkempt.*" In his oral

evidence, Dr Novelo did not aver that KMHM incorrectly recorded the information they say he gave to them pertaining to the reasons for the referral of Mr Abadi to KMHM.

[109] I note that Dr Novelo informed KMHM that Mr Abadi had hyperglycaemia, which was one of Mr Abadi's underlying medical conditions. Dr Novelo did not inform KMHM that Mr Abadi also had uncontrolled chronic renal failure and uncontrolled hypertension. I have no reason to doubt that if Dr Novelo had informed KMHM about all of Mr Abadi's underlying medical conditions, the medical personnel at KMHM would have recorded it on the hospital's admission form. It would also appear that Dr Novelo did not inform KMHM that Mr Abadi was suffering from respiratory distress, since that too would have been recorded on the hospital's admissions form. That issue of respiratory distress is recorded on the part of the admission form reflecting KMHM's own diagnosis of Mr Abadi.

[110] In my view, this is additional proof that after deciding to not act on Dr Bello's **4 January 2019** report and Dr Cuellar's **11 July 2019** report, Dr Novelo was of the view that it was not necessary, notwithstanding his knowledge that Mr Abadi was critically ill from a host of medical conditions, to provide the KMHM full and complete information on Mr Abadi's underlying health conditions. I hold that Dr Novelo should have informed the KMHM of all of Mr Abadi's health conditions with the objective of assisting the hospital to provide appropriate emergency care and treatment. In his witness statement, Dr Novelo states that when he attended to Mr Abadi on 28 August 2019, he "*observed [that he was] lying in bed, presented with a fever, shortness of breath and signs of dehydration.*" It is unclear why he is recorded as having informed the KMHM only that Mr Abadi had hyperglycaemia and was dehydrated. I also note that although he indicated that he has been a doctor for over a decade, Dr Novelo failed to recognise or suspect that Mr Abadi has symptoms of sepsis. On admission to KMHM, Mr Abadi was immediately diagnosed as suffering from septic shock.

[111] I hold that in providing incomplete information on Mr Abadi's medical conditions and symptoms, Dr Novelo's actions constituted a breach of his duty to take reasonable care for the health and safety of Mr Abadi.

*(viii) The defendants' evidence*

[112] It is, of course, for a party to litigation to decide if it wishes to call evidence in support of its case and if so, which or what type of evidence. I note that the defendants opted to not call Mr Murrillo, the

Director of Belize Central Prison to give evidence on, among others, the following pertinent issues:

- (a) whether Belize Central Prison had adequate medical personnel and the resources it required to treat and manage all of Mr Abadi's medical health challenges and if so, why the prison had/has a policy that requires and/or relies on inmates to secure medication from family members and how, in view of its policies and/or practice it met its duty of care to seriously ill inmates like Mr Abadi;
- (b) why the only medication administered to Mr Abadi was insulin (for his diabetes) and analgesics for aches and pain and why it was decided to not treat him or refer him to the KMHM for the treatment of his other health conditions and whether that was appropriate and how those decisions served to meet the prison authorities' duty of care to Mr Abadi;
- (c) why the prison took no action on Dr Bello and Dr Cuellar's reports and how his non-action as the Director of Prisons complied with the Prison Rules and his duty under the common law for the health and safety of prisoners like Mr Abadi; and
- (d) why despite his knowledge that Mr Abadi had been seriously ill since 24/25 August 2019, he did not direct that he be immediately transferred to KMHM yet was apparently very agreeable to Mr Abadi being sent to a private hospital on the condition that Mrs Abadi paid for the cost.

[113] In short, I hold that the second defendant has not put forward any viable case that rebuts the claimants' case that as the statutory authority: (i) he was aware at all material times that Mr Abadi lived with life-threatening health conditions; (ii) he took reasonable precautions and ensured that Mr Abadi was treated at the prison for all his health problems or that he put in place facilities and measures to ensure that Mr Abadi was regularly assessed and treated at the KMHM.

[114] Although a procedural issue, it is important that I raise this matter. Rule 29.5(1) of the Senior Courts (Civil Procedure Rules) (CPR hereafter) provides that: "*A witness statement must- ...(b) so far as reasonably practicable, be in the intended witness' own words.*"

[115] Parts of Dr Novelo's affidavit were written in the third person (see para. 16 thereof), which points to a third party having given him a witness statement to sign. In response to my question whether someone else wrote that paragraph and other paragraphs his witness statement for him, Dr Novelo answered "*correct*". He also added (and to his credit) that he was guided by his superintendent and

the lawyers representing them. He further added that “*I just collaborated that whatever is in the witness statement is true to my knowledge.*” I make no findings on how Dr Novelo’s witness statement was drafted. However, I would emphasize that in practice attorneys should request intended witnesses to write or dictate to them what they intend to say and be included in their witness statement. Intended witnesses should never be presented with an already completed witness statement and be asked to read and sign the same.

### *Summary*

[116] This case turns on the following question: what is more likely to have caused Mr Abadi’s death between:

- (a) on the one hand, the prison authorities’ failure between November 2018 and August 2019 to treat Mr Abadi for his uncontrolled kidney problems, his uncontrolled hypertension, and uncontrolled high blood glucose and their failure to have him assessed at regular intervals at the KMHM for these serious life-threatening health conditions; and
- (b) on the other hand, the claim that Mr Abadi was unkempt, did not eat/had a low appetite, and was eating sweets?

[117] Drawing on all the evidence, I prefer Dr Bello’s report that the non-treatment of all of Mr Abadi’s underlying health conditions was likely to lead to fatal complications and that unfortunately this is what happened with Mr Abadi.

[118] I also find that the defendants have not demonstrated that Mr Abadi caused or contributed to his own death by not looking after himself, in declining to eat, by keeping himself unkempt and because he ate sweets when diabetics ought not to eat sweets. The defendants could have but did not lead expert opinion evidence demonstrating that any of the factors they cited could have led to Mr Abadi developing sepsis and suffering and dying from multi-organ failure, sepsis, acute pulmonary oedema and bilateral pneumonia.

[119] The contention that Mr Abadi died because he declined to eat the food given to him in prison is not credible because it does not take into account that he was seriously ill and his underlying health conditions were not being holistically treated and managed and that that was a more reasonable explanation for his low appetite or inability to eat. The allegation that Mr Abadi tried to kill himself

through starvation has not been established and on the facts is plainly unsustainable. If that had been the case, I would have expected Dr Novelo to have informed the KMHM that Mr Abadi was effectively on a hunger strike.

[120] Further, diabetics on insulin like Mr Abadi with no access to glucose tablets will use sweets as an alternative remedy to correct low blood glucose levels. Dr Novelo did not say he gave Mr Abadi any glucose tablets to use when he had low blood glucose. Consequently, eating sweets in such a context cannot be any credible evidence that Mr Abadi caused or contributed to his own death.

[121] In the circumstances, the defence offered, including the plea on contributory negligence, have no merit.

[122] Consequently, I find that Mr Abadi's death was caused by the wrongful acts of the prison authorities and that the defendants are vicariously liable. For completeness, I rule that prison authorities have a positive obligation to treat and provide medication to prisoners and where they do not have the capacity, resources and/or expertise, they have an obligation to ensure that prisoners have access to treatment and medication provided by public hospital system.

iv. *Whether the defendants are liable in damages under the Torts Act for the wrongful death of Mr Abadi.*

[123] As indicated in para. 1 above, the claimants' case is a dependency claim for wrongful death based on the Torts Act. In section 9, the Torts Act provides:

"Where the death of a person is caused by a wrongful act, neglect, or default which is such as would (if death had not ensued) have entitled the party injured to maintain an action for damages in respect of his injury thereby, the person who would have been liable if death had not ensued shall be liable to an action for damages, notwithstanding the death of the person injured, and although the death was caused under such circumstances as amount in law to felony."

[124] Section 9 should be read together with section 10, which provides:

"Every action shall be for the benefit of the wife or husband, and every parent and child of the person whose death has been caused, but notwithstanding anything contained in the Limitation Act, no such action shall be commenced at any time later than twelve months after the death of such deceased person."

[125] Section 10 sets out and limits the class of 'dependants' for whose benefit a claim may be initiated.

As accepted by the defendants, the claimants are the wife and children of Mr Abadi. Consequently, in view of my findings that the defendants had a duty of care to Mr Abadi, which they breached and that their actions and omissions were wrongful, which led to his death, I hold that the claimants have demonstrated that they are entitled to claim damages under the Torts Act for the pecuniary loss they suffered as a result of his wrongful death

#### **IV. Postscript**

- [1] On 1 April 2025, I informed the parties' attorneys of my decision on liability and asked them if, per the remarks I had made throughout the course of the proceedings, including at trial, they had considered entering into dispute settlement discussions or were willing to enter into such discussions. In response, the parties' attorneys informed me that they wished for an opportunity to explore the possibility of settlement.
- [2] On 4 June 2025, the parties' attorneys informed me that the defendants had settled the claimant's claim for damages and costs and that the terms were confidential. In view of the parties' settlement of the dispute on damages, this brings these proceedings to an end.

**HHJ Hondora  
Judge  
High Court**