

**IN THE HIGH COURT OF MALAYA AT KUALA LUMPUR
IN THE FEDERAL TERRITORY OF KUALA LUMPUR
[CIVIL SUIT No: WA-24NCvC-2376-06/2024]**

BETWEEN

- 1. TAN SRI DATO' KAM WOON WAH**
[NRIC No.: 291129-10-5173]
 - 2. RAUB MINING & DEVELOPMENT
COMPANY S/B**
[Company No.: 196201000202 (4708-A)]
 - 3. RAUB MINING OIL MILL SDN BHD**
[Company No.: 197601000324 (26175-P)]
 - 4. BERJAYA REALTY SENDIRIAN BERHAD**
[Company No.: 197301000726 (14266-A)]
 - 5. COASTAL REALTY SDN BHD**
[Company No.: 197501001912 (23606-X)]
 - 6. GRANDFOODS SDN BHD**
[Company No.: 1988010074628 (174825-D)]
 - 7. GRANNY'S KITCHEN SDN BHD**
[Company No.: 198801007469 (174826-A)]
 - 8. LEAD ENTERPRISES SDN BHD**
[Company No.: 198301002857 (105236-T)]
 - 9. UNITED RAUB OIL PALMS SDN BHD**
[Company No.: 196601000212 (6598-V)]
 - 10. WAHBUNG A REALTY SDN BHD**
[Company No.: 197501001166 (22613-P)]
 - 11. YUM SDN BHD**
[Company No.: 1961010000021 (4076-A)]
- ... PLAINTIFFS**

AND

DATO' SRI ANDREW KAM TAI YEOW

... DEFENDANT

[NRIC No.: 620202-10-6039]

JUDGMENT

Enclosure 23: The Defendant's application to convert the Plaintiffs' OS into a writ action

- [1] Out of the legal web of suits filed in our courts since 2017 by the Defendant against his father (the 1st Plaintiff) and Raub Mining & Development Group of Companies (RMDC Group), and *vice versa*, another appeal is borne from this Court's decision on 4.3.2025. This Court had dismissed the Defendant's application to convert the Plaintiffs' originating summons (OS) into a writ action. The OS was filed to move this Court to declare the Defendant a vexatious litigant.
- [2] At the arguments of the Defendant's application to have the OS converted into a writ action, he claimed that the deponent of the Plaintiffs' affidavit in support of their OS had no personal knowledge of the contents therein. The deponent, one Edward Kam Tai Keong, a director of the 2nd to the 11th Plaintiff, had adduced the purported shareholder's agreement between the father and son, company searches, the pleadings involved, and the respective judgments and orders by the High Court, Court of Appeal and Federal Court. Also exhibited were the relevant grounds of judgments by the courts. The Plaintiffs' OS was premised on the claim that the Plaintiff vide his fresh actions before the Kuala Lumpur High Court in WA-22NCC-103-02/2024 (Suit 103) attempted to revisit the same issues already adjudicated by our courts including the apex court. Except for the case of WA-22NCC-352-09/2017 (Suit 352), the Defendant cited the lack of personal knowledge on the part of Edward Kam Tai Keong, which warranted the OS to be converted into a writ action.

- [3] The Defendant submitted that at a trial, he would be able to cross-examine Edward Kam Tai Keong and also one Linda Kam Thai Eng, another director of the 2nd to the 11th Plaintiff and also the Defendant's sister, who had affirmed an affidavit in reply to the Plaintiff's application under Enclosure 23. The Defendant claimed that Linda Kan Thai Eng also possessed no personal knowledge of the averments she deposed in response to the Defendant's contentions. The Defendant repeatedly stated that there were contradictions of facts. It was submitted that although the documents may be enough, viva voce evidence was required to see the intention of the Plaintiffs.
- [4] The learned counsel for the Plaintiffs responded by highlighting that the issue before this Court was whether in view of the Court of Appeal's decision in 2022 that struck out the Defendant's suit and also having ruled on the concept of indirect shareholdings held by the 1st Plaintiff was non sequitur which was affirmed by the Federal Court in 2023, to raise again and revisit those same issues through suits filed before Justice Wan Muhammad Amin Wan Yahya and Justice Mohd Radzi Harun make the Defendant a vexatious litigant. The Plaintiffs maintained that there were no factual disputes as this Court's determination would rely on the documents – all of which were exhibited in the affidavits. This Court heard the Plaintiffs submitted that as personal knowledge was secondary – and with no factual dispute in existence, there was no justification by the Defendant to convert the Plaintiffs' OS into a writ action. The Plaintiffs implored this Court to consider the Defendant's subsequent conduct after the decision by the Court of Appeal and the Federal Court which were evident via his filing of subsequent lawsuits in our courts.
- [5] This Court then considered the Defendant's response that in the alternative, he be allowed to cross-examine Edward Kam Tai Keong and in return offered himself to be cross-examined as a middle ground. The Defendant's counsel submitted that the issue of recusal of judges and garnishee proceedings cannot be taken into account to find the

Defendant a vexatious litigant. But, submitted the Defendant's counsel, it ought to be on the finding of repeated litigation on subject matter that had little prospect or no chance of success. The only relevant issue according to the Defendant is the indirect shareholding matter which was settled by the High Court in Suit 352. Nevertheless, the Defendant had failed to point out any factual disputes regarding those adduced via affidavits for the OS.

Basis of this Court's decision

- [6] Order 28 Rule 8 and Order 5 Rule 2 Rules of Court 2012 (RoC) offered this Court the power to convert the OS into a writ action where there was likely to be a substantial dispute of facts. However, the Defendant had failed to particularise the alleged inconsistencies. This Court had only heard bare allegations that the facts were '*substantially disputed*' with no information or inkling as to what those facts are. The Court of Appeal in *Kundang Lakes Country Club Bhd v. Garden Masters (M) Sdn Bhd* ruled that bare allegations held no merit.
- [7] Upon scrutiny of the Plaintiffs' OS and the Defendant's contentions in his application to convert the OS into a writ action, this Court found no concerns similar to those demonstrated in the Supreme Court case of *Ting Ling Kiew & Anor v. Tang Eng Iron Works Co Ltd* [1992] 2 MLJ 217 that concerned allegations of fraud and the affidavits were demonstrably inconsistent where matters were not satisfactorily explained. Here, this Court is of the considered view that the documents spoke for themselves. They consist of official confirmations/searches by the relevant authorities, court pleadings, orders, and grounds of judgment. All of which Edward Kam Tai Keong and Linda Kam Thai Eng, who were both authorised by the Plaintiffs to affirm on their behalf, had access to records of. See *Tang Kim Thai & Ors v. Langkah Cergas Sdn bhd & Ors* [2005] 7 MLJ 605.
- [8] The Defendant's argument that the Plaintiffs have little chance of success to move this Court to declare the Defendant vexatious litigant

ought to be reserved for the main arguments of the OS, which if and when submitted, this Court will definitely consider at that point in time. However, for the Defendant's application to convert the Plaintiffs' OS into a writ action, he had failed to satisfy this Court that there were material factual disputes that required examination via viva voce evidence.

- [9] The Defendant's submissions questioned whether there was indeed a finding by the Court of Appeal on the indirect shareholding issue and thus the doctrine of res judicata was inapplicable. This, it was argued crippled the Plaintiffs' application for a declaration of vexatious litigant. All these this Court was of the considered opinion could be ventilated at the arguments of the OS without converting it into a writ action as the court papers would speak for themselves.
- [10] On that note, based on the facts disclosed and the submissions by all the parties, this Court was further not minded granting the Defendant's alternative prayer to cross-examine Edward Kam Tai Keong and Linda Kam Thai Eng. There was a failure on the part of the Defendant to identify the scope and purported relevance and basis for the cross-examination. The Defendant's submission that Edward Kam Tai Keong was not the signatory to the purported shareholder's agreement between father and son was misplaced as the determination by this Court of the Plaintiffs' OS primarily rested on the decisions by the High Court, the Court of Appeal and the Federal Court. There were no proposed areas of relevant issues to be cross-examined offered by the Defendant. This Court is bound by the decisions of the Court of Appeal in *Tetuan Kumar Jaspal Quah & Aishah v. The Co-Operative Central Bank Ltd* [2007] 4 CLJ 487 and *Indrani Rajaratnam & Ors v. Fairview Schools Bhd* [2002] 1 CLJ 1.
- [11] The Defendant's argument that there was not enough basis in the Plaintiffs' OS for this Court to declare him a vexatious litigant is an argument that this Court is open to consider at the hearing of the submissions for the OS. As for this application, the Defendant had

failed to satisfy this Court that this case warrants a conversion from an OS into a writ action. Enclosure 23 was dismissed with costs of RM5,000 to be paid forthwith to the Plaintiffs. Directions for the filing of the submissions for the Plaintiffs' OS were given. This Court will hear oral arguments by parties next week – 15 April 2025.

- [12] The counsel for the Defendant made an oral application to stay the proceedings of the OS pending his confirmation or rather his appeal to the Court of Appeal against this Court's decision that dismissed his application to convert the Plaintiffs' OS into a writ action. There were no special circumstances cited. So, this Court had refused the oral application for a stay of these OS proceedings.

Dated: 8 APRIL 2025

(ROZ MAWAR ROZAIN)

Judge

High Court Of Malaya

Kuala Lumpur

Counsel:

For the plaintiffs - Michael Chow & Neoh Kai Sheng; M/s Michael Chow

For the defendant - Mark Ho & Venkat Ram Dasarathara (PDK); M/s Chellam Wong