

**IN THE HIGH COURT OF MALAYA AT KUALA LUMPUR
(CIVIL DIVISION)**

[SUIT NO. WA-23NCvC-114-12/2021]

BETWEEN

TAN SRI DATO' KAM WOON WAH

... PLAINTIFF

AND

1. HANNAH KAM ZHEN YI

**2. MESSRS. THOMAS PHILIP,
ADVOCATES AND SOLICITORS
(Sued as a Firm)**

... DEFENDANTS

AND

1. HANNAH KAM ZHEN YI

(NRIC NO: 911130-14-5118)

2. ANDREW KAM TAI YEOW

(NRIC NO: 620202-10-6039) ... PROPOSED CONTEMNORS

JUDGMENT

(Enclosure 125)

INTRODUCTION

[1] This is the plaintiff's ex-parte application for leave to commence a committal proceeding in enclosure 125 filed under a certificate of urgency under O.52 r.3 Rules of Court (RC 2012), as follows:

*"1. That leave be granted to the Applicant to make an application for an order that **Hannah Kam Zhen Yi (NRIC No.: 911130-14-5118)** ("1st Contemnor"), the abovenamed 1st Defendant, be committed to prison and/or fined for scandalising this*

Honourable Court and/or the learned High Court Judge, Justice Puan Hayatul Akmal binti Abdul Aziz by issuing a letter dated 24.2.2023 to the Chief Judge of Malaya with the intention of lodging a complaint against Justice Puan Hayatul Akmal binti Abdul Aziz and having another Judge appointed to preside over this Suit. The 1st Contemnor has scandalised this Honourable Court, which lowered and/or undermined the authority of this Honourable Court and/or undermined and/or interfered and/or sought to interfere in the administration of justice and public confidence in the judicial system in Malaysia;

2. *That leave be granted to the Applicant to make an application for an order that **Andrew Kam Tai Yeow (NRIC No.: 620202-10-6039)** ("2nd Contemnor") be committed to prison and/or fined for scandalising this Honourable Court and/or the learned High Court Judge, Justice Puan Hayatul Akmal binti Abdul Aziz in aiding and abetting the 1st Contemnor to issue a letter dated 24.2.2023 to the Chief Judge of Malaya with the intention of lodging a complaint against Justice Puan Hayatul Akmal binti Abdul Aziz, and having another Judge appointed to preside over this Suit. The 2nd Contemnor has scandalised this Honourable Court, which lowered and/or undermined the authority of this Honourable Court and/or undermined and/or interfered and/or sought to interfere in the administration of justice and public confidence in the judicial system in Malaysia;*
3. *The 1st and 2nd Contemnors do jointly and severally pay to the Applicant costs of and occasioned by these committal proceedings; and*
4. *Such further and/or other orders and/or directions as this Honourable Court deems fit and just and proper."*

[2] On 21.03.2023, after perusing the cause papers and hearing the counsel's submissions, I dismissed enclosure 125, and my reasons are

as follows:

PREFACE

[3] The parties before this Court are related to each other.

3.1 The plaintiff (P) is the grandfather to the first defendant/proposed 1st Contemnor (D1); and

3.3 The father to the proposed 2nd Contemnor.

3.4 The P clarified that he had disowned the proposed 1st (D1) and 2nd Contemnor from his estate.

3.5 There are multiple proceedings filed by the parties against each other and other parties.

[4] In the present Suit, P is suing D1 and the second defendant for defamation and is seeking general and aggravated damages and other prayers. This Suit is pending a substantive hearing in this Court.

BRIEF FACTS

[5] From the contents of the plaintiff's statement of facts under O.52 r.3(2) RC 2012, it can be discerned that:

5.1 P took serious exception to the conduct of the proposed 1st Contemnor that was aided and abated by the proposed 2nd Contemnor in issuing a letter dated 24.02.2023 to the office of the Right Honourable Chief Justice of Malaya/CJM (the impugned letter) to make a complaint about my position as the sitting judge presiding over the present Suit to seek a change in the bench unknown to the P.

5.2 This conduct of the proposed 1st and 2nd Contemnors has scandalised and brought this Court into disrepute and/or undermined and/or interfered with the administration of justice and public confidence in the Malaysian Judicial System.

5.3 The P's counsel, on 02.03.2023, received an email from CJM Special Officer (the said email) in response to the impugned letter. The contents of the said email, in a nutshell, read:

5.3.1 That in response to the complaint against the sitting judge in the said impugned letter and to seek a change in the bench in presiding over the Suit, the CJM finds it inappropriate to intervene in the management of cases before the Court; and

5.3.2 If parties are insistent on a change in the forum, they are at liberty to apply to the Court concerned for a recusal to be determined judicially by the judge concerned.

5.3.3 P attempted to secure a copy of the impugned letter from the office of the CJM but was declined and was advised to get it from the proposed 1st and 2nd Contemnors.

5.3.4 On contacting the proposed 1st Contemnor solicitor for the impugned letter, P was informed by the solicitors that they did not know the impugned letter and would not be able to furnish a copy.

5.3.5 The conduct of the proposed 1st and 2nd Contemnors impedes or prejudices the administration of justice by (1) imputing bias or lack of impartiality, propriety or integrity in the exercise of judicial functions, (2) harming the public confidence in the administration of justice; and (3) lower or undermined the authority of this Court.

5.3.6 The proposed 1st and 2nd Contemnors are liable to be punished for Contempt.

THE PLAINTIFF'S CASE

[6] In canvassing for the leave to commence committal proceedings against the proposed 1st and 2nd Contemnors.

6.1 The counsel for the P argued:

- 6.1.1 Enclosure 125 is occasioned by the said email (02.03.2023) from the special officer to the CJM in response to the impugned letter by the proposed 1st and 2nd Contemnors against the sitting judge of this Court.
- 6.1.2 The counsel's letter to the solicitor of the proposed contemnors yielded no copy of the impugned letter for reference.
- 6.1.3 However it was argued that the P does not need that letter to proceed with enclosure 125. From the circumstances as to the nature of the letter, undoubtedly adverse allegation has been made against the sitting judge, and the proposed contemnors have sought a recusal. The counsel cited *Probil Sonati Development Sdn Bhd v Hodan-R And Bhd (Lt CDR (B) Mohammed Azmi bin Mohd Said, respondent)* [2009] 7 MLJ 726, HC:
 - (a) On 22 November 2006, the respondent, a solicitor, wrote a letter to the Chief Justice of Malaya ('CJ of Malaya') alleging, among other things, bias on the part of the High Court judge ('the judge') in a civil suit initiated by the respondent's client, which was still pending before another court, and of how the respondent's client had lost confidence in this Court. The letter's purpose was to request that the CJ of Malaya advise the judge to recuse himself from hearing this case and transfer the matter to another court. The contents of this letter gave rise to the present contempt proceedings against the respondent. By a notice to show cause dated 25 January 2007, issued according to art 126 of the Federal Constitution and s 13 of the Courts of Judicature Act 1964, the respondent was asked to show cause why he should not be committed for Contempt of Court.

(b) The Learned YA Hishamudin J held, amongst other things:

The contents of the respondent's letter to the CJ of Malaya constituted Contempt in the face of the Court or an act that scandalised the Court because an allegation of bias against a judge constitutes Contempt of Court. It is also settled law that where the act complained of is Contempt in the face of the Court, the judge in whose Court the Contempt occurred is empowered to hear and adjudicate over the contempt proceeding.

The respondent's explanation that he wrote the letter on his client's (the defendant's) instructions was highly unsatisfactory and did not exonerate him from the charge. If the respondent's client was dissatisfied with the judge's decision, he had the avenue of appeal as provided by the law and not the writing of a letter to the CJ of Malaya alleging bias on the judge's part. Further, since the writer of the letter was an advocate and solicitor, i.e., a person who knows the law, it showed that he was acting in bad faith.

6.2 However, cognisance is taken in the case of *Zainur Zakaria v PP* [2001] 3 MLJ 604, FC that unless it is absolutely necessary, in cases of Contempt in the face of the Court, the Court concerned should refrain from initiating Contempt Proceedings. It should be left to the parties in the proceedings or the Attorney General to take such action to protect the integrity of the Court. In that circumstance, this is precisely what the P is doing.

6.3 On the authority of **Probil Sonati Development Sdn Bhd**, it is clear that a prima facie case has been made out against the alleged contemnors. Indeed, an adverse allegation had been made against the sitting judge to move the two files pending before the Court to another Court. That is contemptuous, and leave should be granted against the

alleged contemnors to appear before the Court to explain their actions. Whether the Court will accept or reject their explanations, acquit or convict the alleged contemnors, or reprimand them are separate issues to be considered later.

- 6.4 The alleged contemnors are advocates and solicitors of the High Court of Malaya, and they know better. This factor makes their actions that much more severe. Leave should be granted, and they should be brought before this Court to explain.
- 6.5 The Counsel noted the concern of the Court on the possibility of delay in the prosecution of enclosure 1 before this Court in the event that leave is granted considering the advanced age of the P, but the counsel assured the Court that delay would not occur. Though the Court would want to tread with caution, the severity of the conduct necessitates leave to be granted. The actions of the alleged contemnors are not trivial and should not be brushed aside. It is an insidious way of conducting litigation on their part. It impacts the administration of justice.

THE LAW

[7] The legal position.

7.1 The Order for committal is penal in nature:

- 7.1.1 This Order is sought when a defaulting party refuses to obey a court order to do or abstain from doing an act. The disobedience constitutes contumacious conduct against the Order of the Court.
- 7.1.2 On the ex-parte application of any party to any cause or matter or on its motion, the Court may make an order for Committal in Form 107 (O.52 r.2 ROC 2012), governed by the procedure in Order 52 r.3 ROC 2012.
- 7.1.3 The Court's jurisdiction to issue an order for committal is

derived from the Federal Constitution, Article 126 and the Courts of Judicature Act 1964 (Act 91), section 13.

7.1.4 Being penal in nature, strict compliance with the rules and procedures governing committal proceedings must be observed at all times:

- (i) The ex-parte leave application must be supported by a statement setting out the name and description of the applicant, the name, description, and address of the person sought to be committed, and the grounds on which his committal is sought;
- (ii) An affidavit verifying the facts relied on; and
- (iii) After leave has been granted unless the Court otherwise directs, there must be at least eight clear days between the service of the notice of motion and the day named therein for the hearing.
- (iv) The application must be filed within 14 days from the grant of leave, failing which the leave shall lapse (see Order 52 r. 4 ROC 2012).

7.2 The Court's power to punish for Contempt ensures that the public will not lose confidence in the judicial authority leading to anarchy and disorder. The purpose is not to vindicate the dignity of the individual judge or other judicial officers of the Court or even the Court itself but to prevent an undue influence with the administration of justice in the public interest: *MBF Holdings Bhd & Anor v Houngh Hai Kong & Ors* [1993] 2 MLJ 516.

7.3 The standard of proof required is beyond a reasonable doubt (*Wee Choo Keong v MBF Holdings Bhd* [1995] 13 MLJ 549), similar to the prosecution in a criminal trial. This was because Contempt of Court is an offence of a criminal character where the Contemnor can be

imprisoned. Where there is doubt, the doubt must be resolved in favour of the person charged with Contempt. It must be shown that:

- (a) The procedural requirements have been complied with.
- (b) The respondents are guilty of Contempt as alleged beyond a reasonable doubt:

(Sivalingam a/l S Ponniah & Ors v Balakrishnan all S Ponniah & Ors [2003] 3 MLJ 353).

- (c) Criticism of the Court's decisions in exercising the right of free speech, even if it is inaccurate, is not Contempt of the Court:

(Re-Run Run Shaw & Anor [1949) MLJ Supp 16).

- (d) Conduct that is malicious and wicked or calculated to demean the dignity and standing of the Court is Contempt of the Court. Acts and words used to attempt to mislead the Court or any attempt to disrupt or interrupt court proceedings are Contempt. Similarly, concealment of a document by counsel may amount to Contempt:

(Dr Leela Ratos & Ors v Anthony Ratos (No. 3) [1991)1 CLJ Supp 115; Cheah Cheng Hoc v PP [1986) 1 MLJ 299; Attorney General & Ors v Arthur Lee Meng Kuang [1987) 1 MLJ 206).

7.4 An order for committal will only be made where no other recourse is available. Where a reasonable alternative is available instead of committing to prison, that alternative must be taken.

[8] The object of the law of Contempt (briefly):

8.1 Is not to protect Judges and their dignity but to protect the rights of the public by ensuring that the administration of justice is not obstructed or prevented.

8.2 To constitute Contempt of Court, there must be some "act done, or

writing published calculated to bring a Court or Judge of the Court into contempt or to lower his authority" or "calculated to obstruct or interfere with the due course of justice or the lawful process of the Courts".

8.3 Conduct that tends to bring the authority and administration of the law into disrespect or disregard or interferes with or prejudices parties, litigants, or their witnesses during litigation is generally what constitutes Contempt of the Court. It is an act of interference with the due administration of justice.

8.4 In *Tan Sri Dato' (Dr) Rozali Ismail & Ors v. Lim Pang Cheong & Ors* [2012] 2 CLJ 849, FC, Tun Ariffin CJ, in delivering the Federal Court decision, said:

"[24] Contempt of Court has traditionally been classified either criminal or civil...the general approach has been that criminal Contempt is an act that threatens the administration of justice that requires punishment whereas, by contrast, a civil contempt involves disobedience of a court order. However, O. 52 of the RHC is applicable for Contempt in criminal proceedings where the Contempt is in the face of the Court or consists of disobedience to an order or breach of an undertaking to the Court (see O.52 r.1(2) (a) (ii) of the RHC). One thing is clear, be it civil or criminal Contempt, the standard of proof required in either type is the same, which is beyond a reasonable doubt."

FINDINGS OF THIS COURT

[9] Considering the plaintiff's ex-parte arguments above, I am minded of the following legal position in my considered determination:

9.1 A baseless allegation of judicial bias might constitute Contempt of the Court by scandalising the Court and/or Contempt in the face of the Court. I take cognisance of *Probil Sonati Development Sdn Bhd v Hodan-R And Bhd (Lt CDR (B) Mohammed Azmi bin Mohd Said,*

respondent) [2009] 7 MLJ 726, HC where the learned Mohd Hishamudin J found that the content of the letter containing an allegation of bias against a judge, *prima facie*, constituted Contempt in the face of the Court or an act that scandalised the Court. The purpose of an application for recusal or disqualification is to "preserve the administration of justice from any suspicion, be it of the absence of impartiality or pre-judgment."

- 9.2 The Supreme Court in *Attorney-General v Arthur Lee Meng Kuang* [1987] 1 MLJ 206, SC noted:

"For the present ... any allegation of injustice or bias, however, couched in respectful words and even if expressed in temperate language, cannot be tolerated, particularly when such allegation is made for the purpose of influencing or exerting pressure upon the Court in the exercise of its judicial functions."

- 9.3 The Supreme Court in *PP v Seeralan* [1985] 2 MLJ 30, SC, concerning a lawyer's allegations that the Court was biased, unfair and prejudiced against the witness and that:

"There is absolutely no justification for him to make the accusation. Whilst we accept that counsel can plead for his client without fear and favour, he certainly has no right to abuse the Court and interrupt the proceedings. An allegation of bias, in our opinion, is not just a mere act of discourtesy but a contempt of the Court."

- 9.4 Gopal Sri Ram JCA of the Court of Appeal pointed out in *Hock Hua Bank (Sabah) Bhd v Yong Liuk Thin & Ors* [1998] 4 MLJ 352, CA that:

"In my judgment, it is a most serious matter to allege bias against a Judge whose sole function is to decide a case according to the evidence before him. I notice an unhealthy trend of late to allege bias too readily against a judicial arbiter on insufficient material. Nothing is capable of eroding public confidence in the judicial arm of the State than unwarranted and unfounded allegations of bias. It is, therefore,

to be avoided at all costs, if necessary, by having resort to the power to punish for Contempt.”

[10] Undoubtedly, the alleged contemnors' covert conduct is reprehensible and unbecoming of members of the honourable Malaysian Bar and officers of the Court. As rightly pointed out by the learned counsel for the plaintiff, the alleged contemnors are not lay persons. They are expected to observe appropriate decorum in keeping good taste and propriety, not chicanery. They must have the moral fortitude and courage to be transparent and honest with their conduct.

10.1 As rightly pointed out in the said email, there are rules and procedures to be followed. If there are legitimate concerns, then an application for recusal can be made openly, but not by circumventing that requirement, and covertly, without other parties' knowledge in the proceedings, issue a letter of unsupported complaint to the CJM with a view for a recusal. That is appalling behaviour for an advocate and solicitor.

10.2 My concern in this application is three-fold:

10.2.1 First, unlike the forgoing cases cited, I do not have a physical copy of the impugned letter for reference to its contents, which will render any findings speculative, and that would not hold;

10.2.2 Second, it is also a consideration that the 2nd proposed Contemnor is not a party in this Suit, which makes the presence of the said impugned letter all the more significant for nexus to this proceeding.

10.2.3 It is trite that leave would only be granted if a prima facie case of Contempt can be established: *Wee Choo Keong v MBF Holdings Bhd & Anor and another Appeal* [1993] 2 MLJ 217, SC, that the test to be administered is that the facts establish a prima facie case of Contempt before leave can be granted.

In the circumstances, I find that a prima facie case of Contempt had not been made out.

CONCLUSION

[11] All things considered and after closely scrutinizing the application and examining all materials adduced before me at this juncture, including the oral submissions of learned counsel for the plaintiff, I dismissed the plaintiff's application in enclosure 125.

Dated: 24 MAY 2023

**HAYATUL AKMAL ABDUL AZIZ
JUDGE
HIGH COURT OF MALAYA
KUALA LUMPUR, WILAYAH PERSEKUTUAN**

Counsel:

For the applicant/plaintiff - Mr Michael Chow, together with Mr Derek Chong, Mr Neoh Kai Sheng and Mr Koh Chuan Zhan; M/s Derek Chong

Cases referred to:

Attorney General v Arthur Lee Meng Kuang [1987] 1 MLJ 206

Cheah Cheng Hoc v PP [1986] 1 MLJ 299

Dr Leela Ratos & Ors v Anthony Ratos (No. 3) [1991] 1 CLJ Supp 115

Hock Hua Bank (Sabah) Bhd v Yong Liuk Thin & Ors [1998] 4 MLJ 352

MBF Holdings Bhd & Anor v Houng Hai Kong & Ors [1993] 2 MLJ 516

PP v Seeralan [1985] 2 MLJ 30

Probil Sonati Development Sdn Bhd v Hodan-R And Bhd (Lt CDR (B) Mohammed Azmi bin Mohd Said, respondent) [2009] 7 MLJ 726

Sivalingam a/l S Ponniah & Ors v Balakrishnan all S Ponniah & Ors
[2003] 3 MLJ 353

Tan Sri Dato' (Dr) Rozali Ismail & Ors v. Lim Pang Cheong & Ors [2012]
2 CLJ 849

Wee Choo Keong v MBF Holdings Bhd & Anor and another Appeal [1993]
2 MLJ 217

Zainur Zakaria v PP [2001] 3 MLJ 604, FC

Legislation referred to:

Judicature Act 1964 (Act 91), section 13

O.52 r.3 Rules of Court (RC 2012)