

**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
(NRIC NO: 291129-10-5173)**

... PLAINTIFF

AND

- 1. HANNAH KAM ZHEN YI
(NRIC NO: 911130-14-5118)**
- 2. MESSRS. THOMAS PHILIP,
ADVOCATES AND SOLICITORS
(Sued as a firm)**

... DEFENDANTS

GROUND OF JUDGMENT

(Enclosure 145 – Application to Produce Document for Inspection)

A) Introduction

i) Facts of the Case

- [1]** This is a case where Tan Sri Dato' Kam Woon Wah ("Plaintiff") filed an action ("this Case") suing his grand daughter, Hannah Kam Zhen Yi ("D1") and Messrs Thomas Philip ("D2").
- [2]** While this Case was still in its interlocutory stage, D1 and D1's father, Dato' Sri Andrew Kam Tai Yeow ("DSAK") sent a letter to the then Chief Judge of Malaya ("the Letter to CJM" and "the Honourable CJM respectively"), expressing serious concerns and grievances concerning the conduct of the High Court Judge ("HCJ")("the Serious Concerns & Grievances") in Kuala Lumpur High Court Civil Suit No. WA-22NCvC-822-12/2021 ("Suit 822"). In Suit 822 both D1 and DSAK were sued by Plaintiff as well.

- [3] Suit 822 is a suit by Plaintiff against DSAK and D1, in which Plaintiff had similarly commenced separate committal proceedings against D1. Believing that such conduct rendered the HCJ unsuitable to continue presiding over both actions, D1 sought for a new judge be appointed in the HCJ's stead.
- [4] Later, the Plaintiff in this Case received an email from the Special Officer to the Chief Justice of Malaya ("CJM"). The email was in response to the Letter to CJM. It informed the Plaintiff that the CJM refused to interfere with D1 and DSAK's complaint in the Letter to CJM.
- [5] Subsequently, the Plaintiff's solicitors wrote an email to the Special Officer of CJM to request for a copy of the Letter to CJM. However, the request was denied and the Plaintiff was advised to make the request from D1 and DSAK.
- [6] The Plaintiff then, vide his solicitors, wrote a letter to D1's previous solicitors requesting for a copy of the Letter to CJM. However, D1's solicitors were unable to provide the Letter to CJM as per the request.
- [7] Afterwards, D1 filed a Recusal Application ("Enclosure 138") to seek for the recusal of the HCJ.
- [8] The Plaintiff immediately thereafter, issued a "Notice to Produce" the Letter to CJM (Enclosure 141). In respond, D1 issued a Notice (Enclosure 142) to refuse the Plaintiff's request.
- [9] In due course, the Plaintiff file this application to produce document for inspection ("this Application") seeking to inspect the Letter to CJM.

ii) Submissions by the Plaintiff

- [10] The Plaintiff filed Enclosure 145 before this Court to compel D1 to produce the Letter to CJM for inspection. The Plaintiff submitted

that Plaintiff is at liberty to inspect and peruse the Letter to CJM, and to make notes of its contents, and be entitled to be supplied with the copies, at such place and time and in such manner as shall be directed by this Court.

[11] The Plaintiff argued that the test for discovery of documents for inspection can be found in Order 24 Rule 11 of the Rules of Court 2012 (“ROC”). This order is obvious and trite; the key factor is whether the discovery is necessary to dispose fairly the proceedings or it is crucial for saving costs purpose.

[12] The Plaintiff referred to the case of *Kanan A/L Murugesu v. Vichnsharan A/L Kannan* [2022] CLJU 1556; [2022] 1 LNS 1556, where Rozi Bainon JC stated as follows in Para 26 and 27:-

[26] The learned counsel for the Plaintiff cited the recent case of *Malaysia Debt Ventures Berhad v. Platinum Techsolve Sdn Bhd & Ors* [2020] CLJU 1252; [2020] 1 LNS 1252, where the Court of Appeal held that –

“The ultimate test is whether discovery is necessary for disposing fairly of the proceedings or for saving costs. An assertion that the documents are relevant will not good enough. Equally, an assertion that the documents are necessary because they are relevant will not be enough.”.

[27] As far as the ultimate goal is for smooth sailing of the full trial before this Court, the discovery for the documents as in the Lampiran ‘A’ are relevant and necessary. I believe that by exchanging, releasing and inspecting the said documents, the claims against the Defendant can be disposed fairly and saved the Court’s time.” [Emphasis added]

[13] The Plaintiff further argued that a party is entitled to inspect and take copies of document mentioned in the pleading and highlighted

the importance for the parties to be allowed to inspect the documents mentioned by fellow litigants. The Plaintiff referred to the cases of *Goh Yong Peow v. Goh Sok Choo & 3 Ors* [2014] CLJU 1407; [2014] 1 LNS 1407 and *Rubin v. Expandable Ltd and other* [2008] 1 WLR 1099 to support his argument on this.

- [14] The Plaintiff urged that the Letter to CJM is relevant and material for D1's recusal application in Enclosure 138. Hence, the Plaintiff has a right to inspect the Letter to CJM if this Application is to be allowed and the order is granted.

iii) Submissions by D1

- [15] D1 had rebutted the Plaintiff's argument that the Letter to CJM is purportedly relevant and material for D1's recusal application in Enclosure 138.

- [16] According to D1, the Plaintiff merely claimed that he had the right to inspect but there is neither explanation nor elaboration on the relevancy of the Letter to CJM to Enclosure 138.

- [17] In addition to that, D1 also argued that the Plaintiff's Affidavit in Support of Enclosure 145 (Enclosure 146) also does not provide any explanation. The closest one can get is paragraph 9(c) of Enclosure 146 which says:

“c) I have been advised by my solicitors and verily believe that disclosing the Letter to CJM will assist this Honourable Court in disposing Enclosure 138 expediently on whether elements for recusal of a learned Judge have been satisfied; ...”

- [18] D1 again asserted that there is no explanation by the Plaintiff on why the Letter to CJM is material to this Case and how it would assist the Court to ascertain whether the elements for the recusal of the HCJ have been satisfied.

- [19] In regards to the non-distribution of the Letter to CJM to the other

litigants, as mentioned in Enclosure 139, D1 submitted that at that time, a copy of the Letter to CJM was neither copied nor circulated to anyone else. This is due to her belief that it was best and more appropriate to present Serious Concerns & Grievances directly to the Honourable CJM.

- [20] This was done based on the supervisory authority and jurisdiction of CJM over the conduct of business by the judges in High Court of Malaya. Also, it was considered appropriate for the Honourable CJM to be appraised of the Serious Concerns & Grievances first, given the sensitive nature of the issue.
- [21] D1 pleaded to this Court that her conduct has no intention to act surreptitiously. She has clearly stated in Enclosure 139 of her willingness to disclose the copy of the Letter to CJM if, after a prior assessment of Serious Concerns & Grievances, the CJM subsequently directed them to do so.
- [22] The Honourable CJM had replied the Letter to CJM vide an email (“the CJM Response”) and the same was copied to various other person including the HCJ.
- [23] To date, D1 contended that neither the CJM nor HCJ has directed them to disclose the contents of the Letter to CJM. Again, D1 has already expressed her willingness to disclose the Letter to CJM if so directed by this Court.
- [24] D1 further premised that neither in D1’s submissions nor reply submissions for Enclosure 138 has D1 made any reference to the Letter to CJM whatsoever.
- [25] D1 brought the Court’s attention to the case of *Nguang Chan aka Nguang Chan Liquor Trader & Ors v. Hai-O Enterprise Bhd & Ors* [2009] 5 MLJ 40, the test is whether the non-production of the document would give D1 any advantage or cause the Plaintiff any unfair disadvantage in the litigation. Since D1 is not relying on the

contents of the Letter to CJM in Enclosure 138, the issue of gaining any advantage or the Plaintiff being unfairly disadvantaged should not arise.

- [26] D1 also argued that it is unfair for D1 to be expected to respond to such an application, and it would also be unfair for the Plaintiff to only provide his detailed explanation vide written submissions and not via sworn statement.
- [27] Nevertheless, the D1 submitted and elaborated to this Court that the contents of the Letter to CJM is neither material nor relevant to Enclosure 138.
- [28] D1 emphasized to this Court that D1 did not rely on the contents of the Letter to CJM to support her application in Enclosure 138. In fact, the exact grounds to support the recusal application have been specified and elaborated in Enclosure 139, and the Letter to CJM was not included.
- [29] D1 quoted the case of *Nguang Chan* (supra) where the Court observed that;-

“[11] Under r 13(1) an order for the production of documents for inspection is not to be made unless the court is of opinion that such order is necessary either for **disposing fairly of the case or matter or for saving costs**. It is for the party seeking production to satisfy the court that such production is necessary for the purpose specified in r 13(1) per Parker LJ in *Dolling-Baker v. Marrett & Ors* [1991] 2 All ER 890 and *Ventouris v. Mountain* [1991] 1 WLR 607.

[12] And in considering the application the court should bear in mind the words of Sir Thomas Bingham MR in *Taylor v. Anderton* [1995] 1 WLR 447 at p 462 that ‘the purpose of the rule is **to ensure that one party does not enjoy an advantage or suffer an unfair disadvantage in the litigation as the result of a document not being produced for inspection**.’ [Emphasis added]

[30] In that case, Tengku Baharudin Shah JCA, held that in an Order 24 Rule 11 application;-

- (a) the **burden lies on the applicant to satisfy the Court** that the production is necessary; and that
- (b) the purpose of such rule is to ensure “**one party does not enjoy an advantage or suffer an unfair disadvantage...as the result of the document not being produced**”: [Emphasis added]

[31] D1 supported her argument by referring to this Case to apply the test on whether the non-production would give D1 an advantage or cause the Plaintiff an unfair disadvantage in Enclosure 138 or this Case.

[32] D1 rebutted and concluded that as D1 did not rely on the contents of the Letter to CJM in Enclosure 138, the issue of gaining any advantage or the Plaintiff being unfairly disadvantaged should not arise.

[33] D1 thus contended that this Application should be dismissed with costs.

B. Finding and Decisions of the Court

[34] After perusing all the affidavits and all the submissions by the learned counsels for both parties before me, I hereby dismiss Enclosure 145. My decision is based on the following findings.

The Essential Elements for an Order of Discovery

[35] The essential elements for an order of discovery were set out in *Yekambaran s/o Marimuthu v. Malayawata Steel Bhd* [1994] 2 CLJ 581, where Edgar Joseph Jr. SCJ had laid out at p. 585:

“The essential elements for an order for discovery are threefold; namely, first, there must be a “**document**”,

secondly, the document must be "**relevant**" and thirdly, the document must be or have been in the "**possession, custody or power**" of the party against whom the order for discovery is sought." [Emphasis added]

i) Relevance

[36] With regards to relevancy, the principle is that a discovery should not be ordered for any document that is irrelevant and immaterial to the proceedings. A real probability of evidential materiality must still be established as decided by the English Court of Appeal in *O Company v. M Company* [1996] 2 Llyods Rep 347 at p.350-351:

“Although at the end of the spectrum of potential evidential significance it may be said that such documents fall within the letter of lord Justice Brett’s formulation or relevance for discovery purposes, in as much as classes of documents might, if disclosed, fairly lead the plaintiffs to a train of inquiry which might have the consequence that the plaintiff were enabled to advance their own case or damage the shipowners’ defence, that is not what the formulation means or how it ought to be applied. The principle was never intended to justify demands for disclosure of documents at the far end of the spectrum of materiality which on the face of it were unrelated to the pleaded case of the plaintiff or defendant and which were required to purely speculative investigation. The excessively wide application of Lord Justice Brett’s formulation of relevance has probably contributed more to the increase of the costs of English civil and commercial litigation in recent years than any factor other than the development of the photocopying machine. That formulation must not, in my judgment, be understood as justifying discovery demands which would involve parties to civil litigation being required to turn out the contents of their filing systems as if under criminal investigation merely on the off-chance that something

might be drawn. **On the contrary, the document or class of documents must be shown by the applicant to offer a real probability of evidential materiality in the sense that it must be a document or class of documents which in the ordinary way can be expected to yield information of substantial evidential materiality to the pleaded claim and the defence to it in the broad sense which I have explained. If the document or class of documents cannot be demonstrated to be clearly connected to the issues which have already been raised in the pleadings or which would in the ordinary way be expected to be raised in the course of the proceedings, if sufficient information were available, the application should be dismissed.”**

[Emphasis added]

- [37] Further to the requirement above, I have to agree with D1’s submission which mentioned that Order 24 Rule 8 of the ROC provides that the court’s discretion to order for discovery should only be exercised if the discovery sought is necessary to dispose of the cause or matter fairly, or for the purpose of saving costs.
- [38] The case of *Malaysia Debt Ventures Berhad v. Platinum Techsolve Sdn Bhd & Ors* [2020] CLJU 1252; [2020] 1 LNS 1252 is of great assistance to this matter. In this Case, it was articulated in detailed the test to determine the relevancy of the documents sought for discovery as follow:

“[198] ... Relevance cannot be conflated with necessary, as what is relevant may not be necessary.

[199] In our view, the question as to whether the document for which disclosure is sought is necessary is an important and we might, add pivotal component for the order of discovery under Order 24 Rule 7 ROC. Indeed, Order 24 Rule 8 ROC also

makes it imperative that the Court to refuse discovery if it is satisfied that discovery was not necessary.

...

[202] In our view, the proper approach to the question *of whether discovery is necessary may be gleaned from the case of Bayerische Hypo-und Vereinsbank AG v. Asia Pacific Breweries (Singapore) Pte Ltd and other applications* [2004] SGHC 155; [2004] 4 SLR (R) 39 (“Bayerische”) where the High Court of Singapore at paragraph [37] stated as follows:

“The ultimate test is whether discovery is necessary for disposing fairly of the proceedings or for saving costs. An assertion that the documents are relevant will not be good enough. Equally, an assertion that the documents are necessary because they are relevant will not be enough.”
[Emphasis added]

[39] The court then emphasised that the documents sought after in the discovery must be specific, where the contents must relate directly to the cause or matter in issue which will fulfil the purposes of discovery of fair disposal of the cause or saving costs.

“[206] We are fortified in our view that it matters not one jot what the DSA says as regards the terms of the purported settlement. The respondents are of course entitled to contend at the trial that the existence of the DSA supports their theory that there was a concluded contract of settlement. Beyond that, the respondents have to stand or fall on the several correspondence and discussion as pleaded in the Defence and Counterclaim.

...

[209] On that premise and analysis, it becomes quite clear that

the DSA is neither relevant nor necessary for the fair disposal of the trial. And most certainly, discovery of the DSA will not lead to savings of cost. Rather, it is more likely that costs will escalate as discovery of the DSA could well lead to further applications including but not limited to an application to amend the Defence and Counterclaim.”

[40] It is obvious that the ratio of **Malaysia Debt Ventures** (supra) is this: for a discovery application to succeed, the applicant is required to show how it would lead to fair disposal of the trial or savings of cost.

[41] The effect of **Malaysia Debt Ventures** (supra) is to elaborate the element of “necessary” to the second limb of the three-fold test. Considering this, the updated elements of discovery are as follows:

- (i) The document must be identified.
- (ii) The document must not only be relevant but also necessary to the disposal of the matter fairly.
- (iii) The document must be or have been in the possession, custody, or power of the party against whom the order is sought.

[42] The crucial factor for consideration in an application for discovery is relevancy, and is now coupled with necessity. I iterate the judgment in **Malaysia Debt Ventures** (supra) on this:

“[202] In our view, the proper approach to the question of whether discovery is “necessary” may be gleaned from the case of *Bayerische Hypothek und Vereinsbank AG v. Asia Pacific Breweries (Singapore) Pte Ltd And Other Applications* [2004] SGHC 155; [2004] 4 SLR (R) 39 (“Bayerische”) where the High Court of Singapore at paragraph [37] stated as follows:

The ultimate test is whether discovery is necessary for disposing fairly of the proceedings or for saving costs. An

assertion that the documents are relevant will not be good enough. Equally, an assertion that the documents are necessary because they are relevant will not be enough.

[203] Further, in paragraph [38] of the judgment, the Singapore High Court had considered O. 24 r. 7 which is *pari materia* with our O. 24 r. 8 and stated that:

The court is, by O. 24 r. 7, concerned with the discretion to refuse disclosure of a document unless the necessity for disclosure is clearly demonstrated.

[204] As stated earlier, the burden was on the respondents to establish to the satisfaction of the court that the DSA is not just relevant but also that it is necessary for disposing the matter fairly and for savings of cost as well.”.

[43] Therefore, the Court must assess whether the documents sought in the discovery application are necessary where obtaining those documents will undoubtedly improve the quality of the manner the matter is disposed. Assertion to relevance is no longer enough.

[44] In justifying the discovery for the Letter to CJM, the Plaintiff attempted to argue that the Letter to CJM is relevant. However, as submitted by D1, there has not been anything else to substantiate this argument. The burden is always on the Plaintiff/ Applicant. I refer to the case of *Selve a/p R Renganathan v. Sowbhagyavati a/p Renganathan & Ors* [2020] MLJU 1865 where it was held that:

“[13] Similarly, **the plaintiff in an application for specific discovery also has to prove** the specific documents sought are relevant to the issue in dispute as well as necessary for fair disposal of the suit or for saving costs.” [Emphasis added]

[45] I also refer to the case of *Billion Prima Sdn Bhd & Anor v Nutech Co Ltd & Anor* [2017] 10 MLJ 213 where the Court has held that the

applicant of the discovery order has the legal burden to satisfy the relevancy requirement:

“[10] My understanding of O. 24 r. 7A and 8 of the RC is that an applicant in a discovery application against third party (‘the applicant’), must fulfil the following six conditions before the court may exercise its discretion to order discovery against a third party (‘six conditions’):

...

b) the supporting affidavit shall ‘show, if practicable by reference to any pleading served’ that the Documents are ‘relevant to an issue arising or likely to arise out of the claim made’ (‘relevancy requirement’). Regarding the relevancy requirement:

...

(iii) **an applicant has the legal burden to fulfil the relevancy requirement.** Once, the relevancy requirement is satisfied, I do not think the discovery application against third party is frivolous, vexatious, speculative or a fishing expedition.” [Emphasis added]

[46] It is apt to note here the recent development of this Case whereby this Case is now transferred to my Court and will be heard before me and no more before the HCJ. The application in Enclosure 138 is now rendered academic. Thus, this Court find that there is no relevancy nor necessity in producing the Letter to CJM to the Plaintiff. The discovery for the Letter to CJM therefore must fail because it has not fulfilled the essential requirements mentioned earlier.

[47] Due to this conclusion, this Court hereby deny and dismiss the discovery of the Letter to CJM. Besides, it is my observation that

the granting of a discovery order for the Letter to CJM would not in any way fulfil the purpose of fair disposal of the cause or saving costs. Instead, it would further prolong the matter unnecessarily. The content of the Letter to CJM has nothing to do with this Case nor its cause of action.

C. Conclusion

[48] In conclusion, this Court find that this Application by the Plaintiff has no merits as it failed to fulfil the requirements under Order 24 of ROC. Thus, I agree with D1's submission that Enclosure 145 should be dismissed. Besides, it is now academic bearing in mind this Case has now been transferred to this Court and no more before the HCJ. Enclosure 138 is thus rendered academic and so does this Application.

[49] This Application in Enclosure 145 is hereby dismissed with no order as to costs.

Dated: 29 SEPTEMBER 2024

(JOHN LEE KIEN HOW @ MOHD JOHAN LEE)

Judge

High Court Malaya

Kuala Lumpur

Counsel:

*For the plaintiff - Michael Chow, Koh Chuan Zhan & Neoh Kai Sheng;
M/s Derek Chong*

For the 1st defendant - Lim Wei Jiet; M/s Lim Wei Jiet

For the 2nd defendant - Low Chi Cheng; M/s Low Aljafri & Associates

Cases referred to:

Bayerische Hypothek und Vereinsbank AG v. Asia Pacific Breweries

(Singapore) Pte Ltd And Other Applications [2004] SGHC 155; [2004] 4 SLR (R) 39

Billion Prima Sdn Bhd & Anor v. Nutech Co Ltd & Anor [2017] 10 MLJ 213

Dolling-Baker v. Marrett & Ors [1991] 2 All ER 890

Ventouris v. Mountain [1991] 1 WLR 607

Goh Yong Peow v. Goh Sok Choo & 3 Ors [2014] CLJU 1407; [2014] 1 LNS 1407

Kanan A/L Murugesu v. Vichnsharan A/L Kannan [2022] CLJU 1556; [2022] 1 LNS 1556

Malaysia Debt Ventures Berhad v. Platinum Techsolve Sdn Bhd & Ors [2020] CLJU 1252; [2020] 1 LNS 1252

Nguang Chan aka Nguang Chan Liquor Trader & Ors v. Hai-O Enterprise Bhd & Ors [2009] 5 MLJ 40

O Company v. M Company [1996] 2 Llyods Rep 347 at p.350-351

Rubin v. Expandable Ltd and other [2008] 1 WLR 1099

Selve a/p R Renganathan v. Sowbhagyavati a/p Renganathen & Ors [2020] MLJU 1865

Taylor v. Anderton [1995] 1 WLR 447 at p 462

Yekambaran s/o Marimuthu v. Malayawata Steel Bhd [1994] 2 CLJ 581