

BETWEEN

Yong Teck Sang And Three Others

Plaintiffs

AND

Pg Hj Abd Rahman Bin PSI Pg Hj Ismail

Defendant

**(High Court of Brunei Darussalam)
(Civil Suit No. 20 of 2013)**

Before: Commissioner James Findlay In Chambers

Date of Hearing: 3rd September, 2014.

Date of handing down Judgment: 4th September, 2014.

Constitution – proceedings against public officer.

Mr Lt.Col. (R) Hj Harif Bin Hj Ibrahim (M/S Lt Col (Rtd) Harif Eric Advocates & Solicitors for the Plaintiffs.

DPP Mr Haji Ahmad Nizam Bin Dato Paduka Haji Ismail for the Defendant.

Case cited in the Judgment:

Duraman v Umar (2011) JCBD 29

JUDGMENT

Findlay, J.C.:

The plaintiffs are taking proceedings against the defendant who is the chairman of a municipal board. Plaintiffs allege that he heads an office of public function responsible for overseeing business operating licences.

At this stage it is sufficient to say that the plaintiffs make various allegations against the defendant regarding the wrongful use of his power. There is no specific allegation by the plaintiff that the defendant acted out of malice or spite but I am told that this may be alleged in an amendment to the statement of claim.

The defendant applied to strike out the action and the Senior Registrar granted that application. The plaintiffs wished to appeal against that decision but failed to lodge that appeal within the time allowed, albeit they failed by only one day. Plaintiffs applied for an extension of time but this was refused by the Senior Registrar. I have no doubt that the Senior Registrar would have

allowed this extension but for the fact that the Senior Registrar decided that an appeal would be hopeless.

I have to agree that any appeal would be hopeless because I have already decided the issue in this matter in the case of *Duraman v Umar* (2011) JCBD 29.

In that case I said -

“In seeking to show that this clear defence exists, Mr Jefri relies heavily on Article 84B (2) of the Constitution of Brunei Darussalam. This says –

“Any person acting on behalf, or under the authority, of His Majesty the Sultan and Yang Di-Pertuan shall not be liable to any proceedings whatsoever in any court in respect of anything done or omitted to have been done in his official capacity.”

Article 84C of the Constitution provides that the remedy of judicial review is not available in Brunei. In this context, judicial review includes any decision by any party acting on behalf of his Majesty or any party acting on his behalf or under his authority in the performance of any public function including any question relating to compliance with any procedural requirement governing such decision. Further, that Article makes it clear that the prohibited proceedings cover any suit or action relating to or arising out of any decision of any party acting on behalf of his Majesty or under his authority or in the performance of any public function.

On the face of it, those provisions provide, as a matter of law, a complete defence to the action by the appellant. I note that Articles 84B and 84C say that the immunity is **to** any proceedings, not **in** any proceedings. In other words, the law says that the complainant may not take the proceedings, not just that, the complainant having taken proceedings, the officer cannot be found liable.

The appellant argues, however, that because His Majesty can do no wrong, he cannot authorise a wrongful act and a wrongful act cannot be done on behalf of His Majesty.

It is argued by the appellant that the respondents’ position could lead to the highly undesirable situation that a government servant committing acts of wrongdoing while purportedly acting under His Majesty’s authority would be protected. It is suggested that, on this approach, government servants committing acts of corruption would be immune. This, of course, is not so. A government servant taking a bribe for his personal benefit could not say the act was done in his official capacity or he was acting on behalf of His Majesty or under his authority or in the performance of any public function.

The appellant says that the immunity is only available to those who have carried out their duties under His Majesty’s authority in accordance with the provisions of the

law in force. So, it is argued that the respondents must show that in making the recommendation to His Majesty they were acting in accordance with the law.

When the appellant argues that the making of the recommendation should have been in accordance with law, what they are saying, I believe, is that the respondents should have followed the proper procedure before deciding to make the recommendation. But an allegation of failing to follow the proper procedure in reaching a decision is the hallmark which identifies an application for judicial review.

Article 84C of the Constitution makes it perfectly clear that no litigation may be brought against any decision by any party acting on behalf of His Majesty or any party acting on his behalf or under his authority in the performance of any public function *including any question relating to compliance with any procedural requirement governing such decision.*

In advising His Majesty regarding whether or not an officer's service was any longer required, the respondents were acting on behalf of His Majesty or under his authority. That was one of their functions as servants of His Majesty. They were certainly not acting on their own behalf, as would be the case of a government servant taking a bribe, nor were they acting on behalf of any other person. The words I have emphasised above make the situation beyond doubt. The words "procedural requirement" must include a requirement of a law, otherwise it would not be a *requirement*.

The question that arises is: Do the provisions I have mentioned protect the respondents if, as alleged, they were acting together, not objectively and impartially, but motivated unlawfully by personal malice and spite?

I have to say that Article 84B(2) alone does just that. It cannot be doubted that the respondents were acting on behalf of His Majesty and under his authority, and what they did, they did in their official capacities. That being the case, they cannot be held liable *to* any proceedings for *anything* done in those capacities. There is no "subject to" or "except" in the provision; it is absolute. To allow the claim to proceed would, I believe, involve the court in a proceeding to inquire whether or not there are grounds for finding the respondents are liable for what they did, and that is precisely what the law says the court may not do: I may not even allow the proceedings, let alone inquire into whether or not the respondents have some liability."

This case went on appeal. The appeal was dismissed, but the Court of Appeal decided that it was not necessary to deal with my view of the law as stated above; there were other grounds requiring the dismissal.

However, nothing Mr Ibrahim had to say, or anything else, leads me to change my view of the matter. Mr Ibrahim concedes that the defendant was a public officer acting under the authority of His Majesty so, it follows, in my view, that he cannot be liable in these proceedings.

Accordingly, I believe the Senior Registrar was correct in her ruling and the appeal is dismissed, with costs to the defendant to be taxed if not agreed.

A handwritten signature in black ink, appearing to read "Hidley". The signature is written in a cursive, flowing style with a large initial 'H'.

Judicial Commissioner