

The Law Society of Brunei Darussalam

Plaintiff

AND

Ong Jin Huat

Defendant

**(High Court of Brunei Darussalam)
(Originating Summons No. 34 of 2020)**

Haji Abdullah Soefri, JC

Dates of Hearing: 8th June 2021, 4th August 2021, 21st January 2022

Date of Decision: 3rd October 2022

Appeal to Judge in Chambers – both parties – against the decision of the Deputy Chief Registrar – to disallow Plaintiff application to disclose the identity of the person who had drawn or prepare on the Defendant’s behalf in relation to HCCS No. 36 of 2017 – Defendant – appeal decision to disallow counterclaim – whether in nature of judicial review – whether prohibited by Article 84C of the Constitution

Cases cited:

Evans v Bartlam (1937) AC 473

The Council of the Law Society of Brunei Darussalam v Sivabalan a/l Sankaran (CA No. 1 of 2012)

Ms Veronica from Messrs V. K. Rajakanu & Associates for the Plaintiff.

Mr Ong Jin Huat (In Person) for the Defendant.

RULING

Haji Abdullah Soefri, JC:

This is an appeal to Judge in chambers brought by both the Plaintiff and the Defendant against the decision entered on 17th December 2020 for the Defendant and for the Plaintiff of the then Deputy Chief Registrar.

The Defendant appeals against the Deputy Chief Registrar’s decision to dismiss his counterclaim entered on the 17th day of December 2020.

The Plaintiff appeals against the Deputy Chief Registrar’s decision to dismiss the Plaintiff’s application in the Originating Summons No. 34 of 2020 entered as 174 of 2020 for the Defendant

to be required to disclose the identity of the person or persons, who had drawn or prepared any or all instruments on the Defendant's behalf in relation to HCCS No. 36 of 2017.

I have given my decision on 3rd October 2022 in dismissing the Plaintiff's appeal and also dismissing the Defendant's appeal.

Section 25 of the Supreme Court Act, Cap 5 provides as follows:

"Section 25(1): The High Court and the Court of Appeal, as the case may be, shall pronounce a decision at the conclusion of the hearing or at some time thereafter."

Section 25(2): Such Court may give reasons for its decision, if it is so wishes, at the conclusion of the hearing or at any time thereafter."

This is the reasons for my decision that I gave on the 3rd of October 2022.

Applicable Principles on Appeal to Judge in Chambers

An appeal is a rehearing where the Judge has unfettered discretion save that such discretion is to be exercised judicially.

In ***Evans v Bartlam (1937) AC473*** it was stated:

"... I wish to state my conviction that where there is a discretionary jurisdiction given to the Court or a Judge, the Judge in Chambers is in no way fettered by the previous exercise of the Master's discretion. His own discretion is intended by the rules to determine the parties' rights and he is entitled to exercise it as though the matter came before him for the first time. He will, of course, give the weight it deserves to the previous decision of the Master but he is in no way bound by it..."

I will deal with the Plaintiff's appeal first. The Plaintiff has filed an Originating Summons (OS/34/2020) on the 8th July 2020.

The Originating Summons is an application by the Plaintiff that the Defendant be required to disclose the identity of the person or persons, who had drawn or prepared any or all instruments on the Defendant's behalf in relation to HCCS No. 36 of 2017.

This application is supported by an affidavit of Pg Izad Ryan bin PLKD Pg Haji Bahrin.

In paragraph 13 of his affidavit, he affirmed as follows:

"... the style and manner of pleading, drafting, preparation of arguments, submissions, knowledge of procedures, together with extensive research carried out to argue the Defendant's case and

generally the overall representation of the Defendant are well beyond the scope and capacity of an individual who is not legally trained.”

He further affirmed in paragraph 14 that:

“an unauthorised person or persons have drawn or prepared on behalf of the Defendant and this unauthorised person have in assisting the Defendant in HCCS No. 36 of 2017, wilfully or falsely represents to be duly qualified or authorised to act as an advocate and solicitor I am of the belief that such person are not qualified pursuant to sections 13 and 15 of the Legal Profession Act and/or cannot appear in Court and/or practice, pursuant to sections 17 and 18 of the Legal Profession Act.”

In paragraph 15, it was affirmed that:

“.... The ultimate wrongdoer has carried out an unlawful act in contravention of the Legal Profession Act (Cap 132) and is guilty of an offence pursuant to section 19 of the Legal Profession Act (Cap 132).”

The Defendant in his affidavit in opposition in paragraph 5 which states as follows:

“I refer to the decision of the Honourable Findlay J on 25th April 2018 who ruled that it was not necessary to disclose the identity of the person(s) assisting me. A copy of the Court Order dated 21st November 2019 is now shown to me and exhibited herein as ‘Exh1’.”

The Defendant further affirmed that in paragraph 6 as follows:

“I understand that once a decision has been made in a case, it is final. The only way to challenge the decision is by way of an appeal. As I can recall, the Defendant, Mr Lim Boon Khai (Mr Kelvin Lim) in HCCS 36 of 2017 did not appeal the said decision. Even today, the decision remains upheld.”

The Order that was given before Judicial Commissioner Jamer Kerr Findlay on 25th April 2018 in HCCS No. 36 of 2017 in paragraph 3 is as follows:

“3. The Plaintiff is not required to disclose the identity of his legal adviser/Lawyer.”

The Plaintiff in that case is the Defendant in the present case.

The Originating Summons that was filed by the Plaintiff in the present case is for an application to disclose the identity of the person or persons who had drawn or prepared any or all instruments on the Defendant’s behalf in relation to HCCS No. 36 of 2017.

I agree with the Defendant that this matter has been dealt with before Justice James Kerr Findlay in his order given on 25th April 2018. The said order is also in relation to HCCS No. 36 of 2017 and on the same matter. I agree with the Defendant that if they are not satisfied with the decision given by Justice James Findlay, they could challenge the decision by way of an appeal.

Having had said the above, I am satisfied that the Plaintiff's appeal against the Deputy Chief Registrar's decision for not allowing their application for the Defendant to be required to disclose the identity of the person or persons, who had drawn or prepared any or all instruments on the Defendant's behalf in relation to HCCS No. 36 of 2017 is hereby dismissed and costs to the Defendant, to be taxed if not agreed.

Now I would like to turn to the Defendant's appeal. As stated earlier, the appeal is against the Deputy Chief Registrar's decision in disallowing the Defendant's counterclaim.

The appeal is supported by the Defendant's affidavit. In his affidavit, the Defendant affirmed that he has a genuine counterclaim against the Defendant. He is entitled to file a counterclaim against the Plaintiff, as it saves time and costs, rather than file a separate action only for it to be consolidated later.

The Defendant further affirmed in paragraph 13 of his affidavit in support:

"My counterclaim is based on grounds that the Plaintiff did not have public interest in mind when the Plaintiff received my complaints on the 2 occasions in 2017 and 2019,...."

The Defendant in his submission for his appeal against the dismissal of counterclaim in paragraph B11 states as follows:

"Plaintiff has also referred to the Brunei Case of Law Society of Brunei Darussalam v Sivabalan a/l Sankaran in support of its claim that Section 71 is to exempt any of the named persons or bodies from liability for anything done by them. The Plaintiff is making assumptions of what was meant by the judgment as the Plaintiff seems to say that the exemption extends beyond any act done in bad faith or with malice, which cannot be correct as Section 71 clearly asserts in its heading 'No action in absence in bad faith'. Clearly in this case there is bad faith on the part of the Plaintiff who did not even bother calling Mr. K. Lim, Mr. R. Lee and Mr. Sheikh Noordin in for questioning before dismissing the complaint."

The main crux of the counterclaim is that when the Plaintiff received the Defendant's complaint, the Plaintiff has no public interest in mind and also that there is 'bad faith' in the part of the Plaintiff who did not even bother calling Mr. K. Lim, Mr. R. Lee and Mr. Sheikh Noordin in for questioning before dismissing the complaint.

In the Defendant's affidavit (counterclaim), he set out the counterclaim against the Plaintiff as:

- i) For an order that the complaint lodged against Mr. Kelvin Lim, Mr. Rudi Lee and Mr. Sheikh Noordin (the said lawyers) be reassessed and reinvestigated by a new panel of inquiry committee;
- ii) That the Plaintiff take disciplinary action against the said lawyers;
- iii) That the Plaintiff compensate me my losses arising out of the erroneous decision made by the Inquiry Committee;
- iv) Interests, costs and court fees; and
- v) Any other relief that this Honourable Court sees fit.

The Defendant who is not satisfied with the decision of the Inquiry Committee made a counterclaim and prayed for amongst others for the complaint against ‘*the said lawyers*’ to be reassessed and reinvestigated by a new panel of Inquiry Committee.

The issue before me is whether the nature of the counterclaim is of a judicial review and are therefore not permitted under Article 84C of the Constitution of Brunei Darussalam.

Article 84C reads as follows;

“(1) The remedy of judicial review is and shall not be available in Brunei Darussalam.

(2) For the avoidance of doubt, there is and shall be no judicial review in any court of any act, decision, grant, revocation or suspension, or refusal or omission to do so, any exercise of or refusal or omission to exercise any power, authority or discretion by His Majesty the Sultan and Yang Di-Pertuan, or any party acting on his behalf or under his authority or in the performance of any public function, under the provisions of this Constitution or any written law or otherwise, including any question relating to compliance with any procedural requirement governing such act or decision.

(3) In this Article, “judicial review” means proceedings instituted by any manner whatsoever ...”

In the case of ***The Council of the Law Society of Brunei Darussalam v Sivabalan a/l Sankaran (CA No. 1 of 2012)***, it was held that, in investigating a complaint through the Disciplinary Committee, the Law Society was performing a public function and any attempt to judicially review its proceedings was prohibited under Article 84C.

For the present case, investigating a complaint through the Inquiry Committee is one of the steps of the Disciplinary proceedings by the Society.

As stated by the Court of Appeal in *Sivabalan’s* case:

“There is no doubt, therefore, that the Law Society and its delegates, in pursuing the proceedings which we have outlined, were acting in the performance of a public function under the provisions of a written law.”

It is clearly held by the Court of Appeal in *Sivabalan’s* case that any relief sought which is in the nature of Judicial Review is prohibited under Article 84C.

In the present case, the relief sought by the Defendant as stated earlier amongst others that an order is to be made for the complaint against *‘the said lawyers’* to be reassessed and reinvestigated by a new panel of Inquiry Committee. The order sought is to judicially review the decision of the Inquiry Committee and this is prohibited under Article 84C.

The Defendant also raises the issue of *‘bad faith’*. The Defendant submitted that;

“Clearly in this case there is bad faith on the part of the Plaintiff who did not even bother calling Mr. K. Lim, Mr. R. Lee and Mr. Sheikh Noordin in for questioning before dismissing the complaint”

Section 71 of the Legal Profession Act (Law Society of Brunei Darussalam) states as follows:

“No action or proceeding shall lie against the Attorney General, the Society, the Council, a Disciplinary Committee or an Inquiry Committee or any member thereof for any act or thing done under this Order unless it is proved to the Court that the act or thing was done in bad faith or malice.”

The question is whether *‘bad faith’* that was submitted by the Defendant can override the prohibition in Article 84C?

The Defendant, who accused the Plaintiff of *‘bad faith’* has to prove that there is bad faith. There is no evidence of bad faith that was shown by the Defendant in this matter.

For the reasons that I have highlighted above, and that the relief sought is to judicially review the decision of the Inquiry Committee and which is prohibited under Article 84C, I hereby dismiss the appeal against the decision of the Deputy Chief Registrar and award costs to the Plaintiff, to be taxed if not agreed.

I therefore make the following orders:

- 1) Plaintiff’s appeal against the Deputy Chief Registrar’s decision is dismissed
- 2) Costs to the Defendant, to be taxed if not agreed.
- 3) Defendant’s appeal against the Deputy Chief Registrar’s decision is dismissed.

4) Costs to the Plaintiff, to be taxed if not agreed.

HAJI ABDULLAH SOEFRI BIN POKSM DSP HAJI ABIDIN
Judicial Commissioner