

MALAYSIA
DALAM MAHKAMAH TNGGI MALAYA DI JOHOR BAHRU
DI DALAM NEGERI JOHOR DARUL TAKZIM
RAYUAN SIVIL NO. JA-12A-24-07/2021

5

ANTARA

10

PACIFIC & ORIENT INSURANCE CO. BERHAD
...PERAYU/PENCELAH
YANG DICADANGKAN

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DAN

20 **1. GUNALAN A/L PECHIMUTU ...RESPONDEN/PLAINTIF**

2. JEYA PRAKASH A/L ARASAN ...RESPONDEN/DEFENDAN

25

(DALAM MAHKAMAH SESYEN DI JOHOR BAHRU
DALAM NEGERI JOHOR DARUL TAKZIM, MALAYSIA
GUAMAN SIVIL NO: A53KJ-894-10/2015

30

ANTARA

GUNALAN A/L PECHIMUTU ...PLAINTIF

DAN

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JEYA PRAKASH A/L ARASAN ...DEFENDAN

DAN

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PACIFIC & ORIENT INSURANCE CO. BERHAD
...PEMOHON/PENCELAH
YANG DICADANGKAN)



JUDGMENT

5 [1] This appeal by the first respondent arose out of my **ruling** to allow the appeal by the appellant (the proposed intervenor in the court below) to intervene in the proceedings in the Sessions Court and to apply to set aside the judgment in default which was obtained against the second respondent. The appellant was the insurer for the second respondent. In my considered view taken under advisement, the **ruling** I made is not a decision which finally disposes the rights of the parties herein and ergo
10 not appealable. My reasons are as follows.

The Law

15 [2] In the **COURTS OF JUDICATURE ACT 1964 (ACT 91)** it is stated:

"Section 3 -

"decision" means judgment, sentence or order, but does not include any ruling made in the course of a trial or hearing of any cause or matter which does not finally dispose of the rights of the parties;

Non-appealable matters

20 68. (1) No appeal shall be brought to the Court of Appeal in any of the following cases:

25 (a) when the amount or value of the subject-matter of the claim (exclusive of interest) is less than two hundred and fifty thousand ringgit, except with the leave of the Court of Appeal;

30 (b) where the judgment or order is made by consent of parties;



(c) where the judgment or order relates to costs only which by law are left to the discretion of the Court, except with the leave of the Court of Appeal;

5 (d) where, by any written law for the time being in force, the judgment or order of the High Court is expressly declared to be final;

10 (e) where a High Court dismissed any application for a summary judgment;

(f) where a High Court dismissed any application to strike out any writ or pleading; and

15 (g) where a High Court allowed any application to set aside a judgment in default.”

[3] Paragraphs (e), (f) & (g) of the above section were inserted very recently vide Act A1661 which was given the royal assent on 31st August 2022 and published in the gazette on 5th September 2022. The date of coming into operation of the amendment was 1st October 2022. The appeal in this case was lodged on the 18th October 2022 which was after the coming into operation of the amendments to the Courts of Judicature Act 1964. I’m aware that my decision was given on 26th September 2022 which was before the coming into operation of the amendments but to my mind this is irrelevant as at the time the appeal was lodged, the amendments had already come into operation.

[4] Moreover in this case, I only allowed the proposed intervenor to intervene and apply to set aside the judgment in default which was obtained against the second respondent. To my mind, when the law



doesn't allow an appeal against a setting aside of a judgment in default, *a fortiori* the same should pertain to a ruling allowing a party to apply to set aside a judgment in default. To hold otherwise would render the recent amendments to the Courts of Judicature Act 1964 otiose as it is a *sine qua non* or prerequisite to setting aside a judgment in default that an application has to be made.

[5] Furthermore my ruling is not a decision which finally disposes of the rights of the parties. The proposed intervenor will still have to convince the Sessions Court to set aside the judgment in default and if he succeeds, then have the matter heard on the merits.

[6] The Malaysian Civil Procedure (White Book) 2018 edition states:

“ **“decision”**—The definition must be given its ordinary and natural meaning: *Dato' Seri Anwar bin Ibrahim v PP* [2011] 5 AMR 11 at 28, CA, *per* Abdul Malik Ishak JCA. The definition was applied in an action under s 226(3) of the Companies Act 1965 to determine whether leave of the winding-up court is mandatory (*Mechanalysis Sdn Bhd (In Liquidation) v Appraisal Property Management Sdn Bhd* [2017] 3 MLRH 98, HC).

A decision must have the effect of finally disposing of the rights of the parties: *Dato' Seri Anwar Ibrahim v PP* [1999] 1 AMR 846 at 853; [1999] 1 MLJ 321 at 326, CA, *per* Lamin PCA; *Dato' Seri Anwar bin Ibrahim & Anor v PP* [2000] 3 AMR 2899; [2000] 3 MLJ 638, CA; *Kee Yeh Maritime Co Ltd v Coastal Shipping Sdn Bhd* [2000] 4 AMR 4190, HC; *Richard Teoh Poh Keong Sdn Bhd v Shinhan Engineering & Construction Co Ltd* [2001] 2 AMR 1782; [2001] 2 MLJ 50, HC; *Thong Guan Construction Sdn Bhd v Shencourt Properties Sdn Bhd* [2001] 2 AMR 1515, HC; *Re Abu*



Bakar b PC Kuaya; *ex parte Navaratnam a/l Sivasambo* [2002]
 2 AMR 1293; [2002] 7 MLJ 528, HC; *Letchumanan a/l Suppiah v*
PP (and Another Appeal) [2010] 1 AMR 657; [2009] 5 MLJ 597,
 FC; *PP v Dato' Seri Anwar bin Ibrahim (and Another*
 5 *Appeal)* [2010] 3 AMR 1; [2010] 2 MLJ 353, CA; *Dato' Seri Anwar*
bin Ibrahim v PP [2010] 4 AMR 292; [2010] 6 MLJ 585,
 FC; *Malaysia British Assurance Berhad v Chung Choi Yoke*
 [2003] 4 AMR 124, HC; *EON Bank Berhad (dahulu dikenali*
sebagai Oriental Bank Berhad yang mana EON Bank Berhad
 10 *telah mengambilalih hak dan liabiliti Oriental Bank Berhad*
menurut Perintah bertarikh 5.12.2000) v BH Steel Sdn Bhd
(dahulunya dikenali sebagai Vest Hong Enterprise Sdn Bhd)
(Guan Seng Steel Sdn Bhd–Intervener) [2005] 2 AMR 335, HC;
 [2005] 2 MLJ 753, HC; *Chong Su Kong & Ors v Sia Hiong Tee &*
 15 *Ors (Messrs Johari & Zalika, third party)* [2013] 10 MLJ 317,
 HC; *John Willibrod Concisom a/l Willie Brod v PP* [2014] 2 MLJ
 284, HC; *PP v Dato' Seri Anwar bin Ibrahim* [2014] 4 MLJ 495;
 [2014] 4 MLRA 97, FC; *Christopher ak Bandi @ Josay v*
Tumbung ak Nakis & Anor (Jamil bin Sindi, third party) [2015] 11
 20 MLJ 597, HC; *Hong Leong Bank Berhad v PP* [2016] 5 AMR 497;
 [2016] 5 MLJ 450; [2017] 3 MLRA 115, CA; *Norhazeni b Ahmad*
v PP [2017] 1 AMR 555, HC. A “decision” is said to be final if in
 effect it has determined the principal matter before the court
 thereby concluding the main dispute. Consequently, it does not
 25 require further hearing or decision of the case to be made by the
 court on the whole of the proceedings (*Tetuan J&S Holdings Sdn*
Bhd v A Karim bin Hasan & Anor [2001] 1 AMR 79 at 91; [2000]
 6 MLJ 739 at 747, HC, *per* VT Singham J). For example, a
 judgment from a striking-out application (*Sitrac Corporation Sdn*
 30 *Bhd v Lim Siew Eng (p)* [2002] 3 AMR 3748; [2002] 3 MLJ 315,
 HC; *Samsudin bin Ismail & 4 Ors v Yeoh Oon Theam (sebagai*
pentadbir harta pesaka Lim Mah Ee @ Baba Mahee, simati) & 3
Ors (and Another Suit) [2003] 6 AMR 201; [2003] 6 MLJ 596,
 HC; *PP v Utrakumaran a/l Samivel* [2007] 1 MLJ 529, HC) or a



summary judgment application (*Alexander John Shek Kwok Bun v WAB Keluarga Realty Sdn Bhd* [2002] 1 MLJ 570, HC; *Seabance Ge Capital Sdn Bhd v Dynabuilders Sdn Bhd dan satu lagi* [2002] 5 MLJ 152, HC; *Malaysia British Assurance Berhad v Chung Choi Yoke* [2003] 4 AMR 124, HC; *MBf Factors Sdn Bhd v Keh Hua t/a Jag Trading* [2004] 4 AMR 22, HC; *Ahmad Hashim v Tetuan Johari, Nasri & Tan* [2013] 2 MLRA 14, CA) or judicial review application (*Ringgit Exoticka Sdn Bhd v Pengarah Tanah & Galian Selangor & Ors* [2014] 8 MLJ 111, HC) or a decision on the reduction of a charge (*PP v Tang Kheng Teong & Anor* [1997] 3 MLJ 637, CA) or where the judge recuses himself on his own motion without giving the parties an opportunity to address him (*Wong Kie Chie & Ors v Kathryn Ma Wait Fong (as the personal representative, executrix and trustee of the estate of the late Wong Kie Nai) & Anor and other appeals* [2017] 3 MLJ 350, CA) is a “decision” which is appealable.

It is clear from the definition that it has the intention of excluding decisions in interlocutory appeals made in a pending suit. Examples would be a decision from a bail application (*Dato’ Seri Anwar Ibrahim v PP* [1999] 1 AMR 846, CA) or from a preliminary objection depending on the facts of the case (*Tetuan J & S Holdings Sdn Bhd v A Karim bin Hasan & Anor* [2001] 1 AMR 79, HC; *Haris Fathillah Mohd Ibrahim v PP* [2016] 3 MLRA 433, CA; *c.f. Perak Hanjoong Simen Sdn Bhd v Perindustrian Tenaga Mix Sdn Bhd* [2009] 3 AMR 270; [2008] 8 MLJ 567, HC) or from a ruling of the court (*Takang Timber Sdn Bhd v Syarikat Tingan Lumber Sdn Bhd* [2001] 4 AMR 4974, HC; *Teo Kim Huatt v Aetna Universal Insurance Berhad (No 1)* [2002] 2 AMR 2242, HC; *Drilltech Oilfield Services Ltd & Anor v Witech Sdn Bhd* [2003] 6 MLJ 650, HC; *Dato’ Seri Anwar Ibrahim v PP* [2011] 4 AMR 201, CA; *Santeran a/l Arumugam & Anor v PP* [2015] 3 AMR 600, HC; *PP v Datuk Hj Wasli bin Mohd Said* [2015] 3 MLJ 35; [2014] 3 MLRA 487, CA; *PP v Jarau Anak Kerukar &*



Ors [2015] 4 MLRA 88, CA; *Tiong Kiong Choon v PP (and 2 Other Appeals)* [2016] 4 AMR 858; [2016] 5 MLJ 233, CA; *Pentadbir Tanah Kuala Selangor v Maybank Islamic Berhad; Menteri Besar Selangor (Pemerbadanan) (Pencelah) & Lain-Lain Rayuan* [2016] 1 MLRA 163, CA) or from that of an Election Judge (*Yong Teck Lee v Harris Mohd Salleh & Anor* [2002] 3 AMR 2752 at 2768, CA, *per* Abdul Hamid Mohamad JCA; *Datuk Seri Tiong King Sing v Datuk Seri Ong Tee Keat & Anor* [2014] 6 AMR 179; [2015] 1 MLJ 847, CA, where Azahar Mohamed JCA followed the decision in *Syarikat Tingan Lumber Sdn Bhd v Takang Timber Sdn Bhd* [2003] 3 AMR 13; [2003] 2 MLJ 495, CA; *Ahmad Zubair @ Ahmad Zubir bin Hj Murshid v PP* [2015] 1 AMR 105; [2014] 6 MLJ 831; [2014] 6 MLRA 269, FC) or a ruling of the trial judge in refusing to recuse himself from hearing or continuing to hear the trial (*Dato' Seri Anwar bin Ibrahim v PP* [2011] 5 MLJ 535, CA) or an order of transmission by a Magistrate under s 41A of the Dangerous Drugs Act 1952 (Act 234) (*PP v Punanesvaran a/l Kesavan (and 3 Other Cases)* [2007] 5 AMR 702; [2007] 3 MLJ 203, HC) or a finding on *prima facie* case against a defendant at the end of the prosecution's case (*Saad bin Abas & Anor v PP* [1999] 1 MLJ 129, CA; *Lim Hung Wang & Ors v PP* [2011] 9 MLJ 752, HC; *Karpal Singh a/l Ram Singh v PP* [2012] 5 MLJ 293; [2012] 4 MLRA 511, FC; *PP v Hii Tiong Hsia & Anor* [2015] 2 AMR 673, CA) or a discharge order not amounting to an acquittal (*PP v Tiong King Guan & Anor* [2015] 2 AMR 742; [2015] 4 MLJ 235; [2015] 3 MLRA 180, CA) or an extension of time granted by the registrar to a bidder to offer his bid in a public auction (*EON Bank Berhad (dahulu dikenali sebagai Oriental Bank Berhad yang mana EON Bank Berhad telah mengambil alih hak dan liabiliti Oriental Bank Berhad menurut Perintah bertarikh 5.12.2000) v BH Steel Sdn Bhd (dahulunya dikenali sebagai Vest Hong Enterprise Sdn Bhd) (Guan Seng Steel Sdn Bhd– Intervener)* [2005] 2 AMR 335; [2005] 2 MLJ 753, HC) or issuance



of notice under s 61 of the Anti-Money Laundering and Anti-Terrorism Financing Act 2001 (Act 613) (*Azmi bin Osman v PP (and Another Appeal)* [2016] 2 AMR 597; [2016] 3 MLJ 98, CA) or a decision on an application to amend the Writ of Summons and Statement of Claim (*Christopher ak Bandi @ Josny v Tumbung ak Nakis @ Anor (Jamil bin Sindi, third party)* [2016] 4 MLJ 100, CA)."

[7] In the case of ASIA PACIFIC HIGHER LEARNING SDN BHD (registered owner and licensee of the higher learning institution Lincoln University College) v MAJLIS PERUBATAN MALAYSIA & Anor [2020] 2 MLJ 1 the Federal Court, speaking through YAA Azahar Mohamed CJM (as he then was), held as follows:

"The right to appeal in civil matters under s 67 of the CJA is subject to the definition of 'decision' as found in s 3 of the CJA. Although s 67(1) of the CJA provides that the Court of Appeal has jurisdiction to determine appeals from any 'judgment' or 'order' of any High Court in civil matters, it is clear from a plain reading of s 3 of the CJA that a 'decision', 'judgment' or 'order' excludes a ruling made in the course of a trial or hearing that does not finally dispose of the rights of the parties. Further, the Federal Court in *Kempadang's* case held that it was clear and unambiguous that the definition of 'decision' as per s 3 was applicable to civil appeals inasmuch as it applied to criminal appeals. Hence, the uncertainty on whether s 3 applied to civil appeals in the absence of the word 'decision' in s 67(1) has been laid to rest in *Kempadang's* case where the Federal Court held that the principles underlying the application of s 3 in criminal appeals were applicable in civil appeals. The decision is a clear authority to support the proposition that s 67(1) read with s 3 and s 68(1) of the CJA precluded a litigant's right of appeal against a High Court decision in an amendment application made in the course



of trial that does not finally dispose of the rights of parties. Otherwise, it would allow parties in civil matters to circumvent the restrictions imposed by the definition of 'decision' in s 3 of the CJA and thereby appeal against every decision of trial court, which would indisputably delay the administration of justice. At the same time it is important to realise that reading s 68 with s 3 of the CJA to limit the jurisdiction of the Court of Appeal to hear and determine civil appeals would accord with the constitutionally entrenched principle that the Court of Appeal's jurisdiction is intended to be narrowly defined. As such, the reason for reading the additional exclusion to the jurisdiction of the Court of Appeal is within the four corners of the Act in the form of the definitions of 'decision', 'cause', 'matter', 'action' and 'proceeding' as well as the presence of the words 'judgment' and 'order' in the definition of 'decision' and ss 67-68 of the Act. On the other hand, declining to read s 3 as instilling an additional exclusion of the appellate jurisdiction of the Court of Appeal would offend the rule that permits additional words to be read into statutory provisions to prevent an absurdity from resulting. As such, the decision made by the High Court in the amendment application was not appealable. Since the decision of the High Court in the amendment application was not appealable, the defendants' appeal against the decision of the High Court was incompetent and not properly brought before the Court of Appeal. Therefore, the Court of Appeal had no jurisdiction to hear and determine the appeal and it committed a jurisdictional error when it heard the appeal."

[8] Therefore, based on the matters discussed and adumbrated above, the first respondent's appeal is misplaced and incompetent as the ruling to allow the proposed intervenor to intervene and apply to set aside the judgment in default which was obtained against the second respondent is not a final decision which is appealable. The matter was merely sent back



to the Sessions Court for the application to set aside the judgment in default to be made & heard.

[9] *Ergo cadit quaestio.*

Dated 13th March 2023

-Signed-

.....
(ASLAM B ZAINUDDIN)
Judge
High Court in Malaya
Johor Bahru

Note: Grounds of judgment is subject to correction of typographical errors, grammatical mistakes and editorial formatting, if any.



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