

NORHADZA TAN SRI HJ AHMAD RAZALI v MUHAMMAD EZANIE
NOORAZMAN & 4 ORS

[CaseAnalysis](#)
| [2022] MLJU 821

[Norhadza bt Tan Sri Hj Ahmad Razali v Muhammad Ezanie bin Noorazman
\(disaman sebagai Pentadbir kepada estet Dato' Hj Noorazman bin Adnan,
Arwah\) & Ors \[2022\] MLJU 821](#)

Malayan Law Journal Unreported

HIGH COURT (SHAH ALAM)

ROZI BAINON JC

GUAMAN NO BA-21NCvC-1-01/2022

8 May 2022

*Afiqah Adena Mutiara Abdullah (Dylan Yeap Kar Jun with her) (Firdaus Chelva & Co) for the plaintiff.
Zaidi Abdul Hamid (Zaidi & Assoc) for the second defendant.*

Rozi Bainon JC:

GROUND OF JUDGMENT

Introduction

[1] The Plaintiff's application to strike out the Second Defendant's counter claim is filed on 24-2-2022 (**Enclosure 31**) pursuant to Order 18 rule 19 (1)(a) and/or (1)(b) and/or (c) and/or (d) Rules of Court 2012 [*P.U(A) 205/2012*] against the Plaintiff and also for the following orders:

- (a) Tuntutan Balas Defendan Ke-2 bertarikh 14.2.2022 adalah dengan terang tidak dapat dikekalkan kerana ia tidak mendedahkan kausa tindakan yang munasabah; atau
- (b) Tuntutan Balas Defendan Ke-2 bertarikh 14.2.2022 adalah remeh dan menyusahkan dan merupakan suatu salahguna proses mahkamah atas alasan-alasan –
 - (i) Tuntutan Plaintiff terhadap Defendan Ke-2 dibuat melalui saluran undang-undang yang sah dan proses kehakiman yang tersedia kepada mana-mana orang yang hendak mendapatkan keadilan dan adjudikasi daripada Mahkamah yang Mulia, oleh demikian, tuntutan tersebut adalah dilindungi oleh perlindungan mutlak ("*absolute privilege*")
 - (ii) Plaintiff berhak dan mempunyai justifikasi untuk membaca tuntutan ini terhadap Defendan Ke-2 atas alasan-alasan di perenggan-perenggan 31 Pernyataan Tuntutan Terpinda bertarikh 3.2.2022;
 - (iii) Tuntutan Balas Defendan Ke-2 bertarikh 14.2.2022 adalah pramatang kerana tiada keputusan telah dibuat oleh Mahkamah ini yang memutuskan bahawa tuntutan Plaintiff terhadap Defendan Ke-2 adalah tidak berasas dan tidak boleh dikekalkan, *inter alia*, untuk memberi dakwaan yang berbangkit kepada apa-apa tuntutan terhadap Plaintiff; dan

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- (iv) Tuntutan Balas Defendan Ke-2 bertarikh 14.2.2022 adalah tidak dapat dikekalkan kerana ianya terlampau cacat ("*grossly defective*"), tidak teratur dan tidak diperbetulkan ("*incurable*") kerana gagal mematuhi keperluan-keperluan di bawah Aturan 15 kaedah 2, Aturan 18 kaedah 2, Aturan 18 kaedah 12 (1A) dan Aturan 18 kaedah 12 (1) and (2).

The Plaintiff's claims against the Defendants

[2] The writ and statement of claim filed by the Plaintiff on 5-1-2022 against all the Defendants are for various reliefs.

[3] The Plaintiff pleaded that she is the true and rightful owner of the property at Changkat Ukay, Villa Sri Ukay, Ampang, Selangor ("the Sri Ukay property").

[4] The First Defendant is the Plaintiff's son with the late Dato' Haji Noorazman bin Adnan ("Arwah" / "the deceased") and the Second Defendant is the second wife of Arwah. On 3-1-2020, both of the First Defendant and the Second Defendant were appointed as joint administrators of Arwah's estate.

[5] The Plaintiff pleaded that the Second Defendant is the mastermind and architect behind the fraudulent execution of the Memorandum of Transfer (MOT) and fraudulent transfer of the Sri Ukay property.

[6] The Plaintiff's claims against the First Defendant and Second Defendant are for the orders, namely–

- (a) a declaration that the estate of the deceased has no rights and/or authority to enter into any transactions in relation to the Sri Ukay property;
- (b) a declaration that the deceased has no authority to use the Power of Attorney dated 19-1-2006 to execute the MOT dated 9-5-2019 and/or enter into any transactions in relation to the Sri Ukay property, in view of the Deed of Revocation dated 31- 1-2013;
- (c) a declaration that the Power of Attorney dated 19-1-2006 is also rendered invalid and unenforceable to register the MOT for the Sri Ukay property, as a consequence of the death of Arwah on 30-7-2019; and
- (d) a declaration that the bankruptcy of the deceased on 4-1-2011 renders him incapable of executing the MOT or entering into any agreement and/or any transactions in relation to the Sri Ukay property.

The consent judgment between the Plaintiff and the Third, Fourth and Fifth Defendants

[7] On 14 April 2022, the consent judgments were entered into and recorded *via* proceedings Zoom between the Plaintiff and the Third, Fourth and Fifth Defendants.

[8] The suit now only between the Plaintiff and the First Defendant and the Second Defendant.

The counter claim and the objection by the Second Defendant

[9] The Second Defendant objected and opposed on the application by the Plaintiff to strike out the counter claim.

[10] The version of facts laid down by the Second Defendant are as follows:

"Fakta sebenar kes ini adalah seperti yang berikut:

- (a) *Plaintif adalah seorang warganegara Malaysia yang cukup umur dan merupakan bekas isteri arwah Dato' Hj. Noorazman Bin Adnan.*
- (b) *Defendan Kedua adalah balu serta salah seorang Pentadbir Bersama kepada estet arwah.*
- (c) *pada 5-1-2022, Plaintif telah memfailkan saman terhadap Defendan Kedua dan menuntut perintah deklarasi terhadap Defendan-Defendan, perintah pembatalan Borang Pindahmilik bertarikh 9-5-2019, perintah pengembalian hakmilik hartanah Sri Ukay kepadanya, ganti rugi am, ganti rugi keterlalaan, ganti rugi teladan, kos dan relief lain atau perintah selanjutnya sebagaimana Mahkamah ini anggap adil dan sesuai.*
- (d) *susulan daripada pemfailan Pernyataan Tuntutan bertarikh 5- 1-2022 dan Pernyataan Tuntutan Terpinda bertarikh 3-2- 2022, Defendan Kedua telah memfailkan Pembelaan dan Tuntutan Balas Defendan Kedua bertarikh 3-2-2022.*

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- (e) tuntutan Balas terhadap Plaintiff adalah berasaskan kenyataan Plaintiff pada Pernyataan Tuntutan yang bersifat defamatory secara keseluruhan. Pernyataan Tuntutan Plaintiff terhadap Defendan Kedua tersebut adalah tuduhan, rekaan, agakan, telahan dan pemikiran semula (afterthought) serta suatu fitnah semata-mata terhadap Defendan Kedua.
- (f) namun, pada 24-2-2022, Plaintiff telah memfailkan pembatalan tuntutan balas Defendan Kedua di bawah Aturan 18 Kaedah 19 (1)(a) atau (b) dan/atau (c) dan/atau (d) Kaedah-Kaedah Mahkamah 2012.
- (g) kenyataan Plaintiff secara keseluruhan dalam Pernyataan Tuntutannya tersebut mengandungi fitnah palsu serta melulu sahaja oleh Plaintiff telah memalukan Defendan Kedua kepada waris-waris arwah, keluarga Plaintiff dan semua keluarga waris-waris arwah serta semua orang yang berkaitan dan yang mempunyai akses kepada Writ Saman dan Pernyataan Tuntutan ini.
- (h) selain itu, kenyataan Plaintiff yang berasaskan dakwaan dan anggapan beliau semata-mata secara keseluruhannya adalah serius menyebabkan Defendan Kedua dilihat antara lain, melakukan tindakan jenayah, tidak amanah, tidak mempunyai kredibiliti, kehalobaan dan menipu. Dakwaan-dakwaan ini amat memfitnah Defendan Kedua dan menyebabkan Defendan Kedua mengalami kecederaan yang serius kepada maruah, kredibiliti, tekanan perasaan dan gangguan emosi serta fikiran selalu terganggu, hilang fokus, hilang selera makan, bersikap murung dan mengalami migrain dan tekanan/stress dan serta malu untuk berhadapan orang ramai selepas kejadian tersebut.
- (i) Namun, adalah ditegaskan bahawa Defendan Kedua sememangnya mempunyai kausa tindakan yang **terang, jelas dan nyata** di mana elemen-elemen utama dan teras kepada tindakan 'Saman Fitnah' (Defamation) ini telah pun dibangkitkan dan akan dibuktikan dengan lebih terperinci semasa perbicaraan kelak.
- (j) terdapat isu dan fakta yang dipertikaikan yang perlu diputuskan di dalam suatu perbicaraan penuh melalui pemanggilan saksi-saksi dan pengemukaan dokumen- dokumen di Mahkamah ini.
- (k) Kausa tindakan Defendan Kedua dalam Tuntutan Balas tersebut terhadap Plaintiff adalah wujud dan munasabah tidak mengaibkan, remeh atau menyusahkan; dan/atau bukanlah boleh menjejaskan, menghalang atau melengahkan perbicaraan tindakan itu dengan adil; dan/atau bukan suatu penyalahgunaan proses Mahkamah.

The Law

[11] Order 18, rule 19 provides –

“Striking out pleadings and endorsements (O. 18, r. 19)

“19. (1) The Court may at any stage of the proceedings order to be struck out or amended any pleading or the endorsement, of any writ in the action, or anything in any pleading or in the endorsement, on the ground that—

- (a) it discloses no reasonable cause of action or defence, as the case may be;
- (b) it is scandalous, frivolous or vexatious;
- (c) it may prejudice, embarrass or delay the fair trial of the action; or
- (d) it is otherwise an abuse of the process of the Court, and may order the action to be stayed or dismissed or judgment to be entered accordingly, as the case may be.

(2) No evidence shall be admissible on an application under subparagraph (1)(a).”.

[12] In order for this case to be strike out, this Court must diligently follow the principle of laws as decided in judgment of YAA Mohamed Dzaidin SCJ i.e in the case of *Bandar Builder Sdn Bhd v. United Malayan Banking Corporation Berhad* [1993] 4 CLJ 7–

“The principles upon which the court acts in exercising its power under any of the four limbs of O 18 r 19(1) of the RHC are well settled. It is only in plain and obvious cases that recourse should be had to the summary process under this rule (per Lindley MR in Hubbuck & Sons Ltd v. Wilkinson, Heywood & Clark Ltd 7, and this summary procedure can only be adopted when it can be clearly seen that a claim or answer is on the face of it ‘obviously unsustainable’ (see AG of Duchy of Lancaster v. L & NW Rly Co 8). It cannot be exercised by a minute examination of the documents and facts of the case, in

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order to see whether the party has a cause of action or a defence (see Wenlock v. Moloney & Ors 9). The authorities further show that if there is a point of law which requires serious discussion, an objection should be taken on the pleadings and the point set down for argument under O 33 r 3 (which is in pari materia with our O 33 r 2 of the RHC) (see Hubbuck & Sons Ltd v. Wilkinson, Heywood & Clark Ltd 7). The court must be satisfied that there is no reasonable cause of action or that the claims are frivolous or vexatious or that the defences raised are not arguable.”

[13] The issue to be decided is whether the Second Defendant’s counter claims are “*plain and obvious*”, whether there is any credible evidence to prove the claims as stated in the defence had occurred or not in order for the Second Defendant to say there is a cause of action against the Plaintiff. Next, this Court must decide the Plaintiff’s application whether the Plaintiff is protected under the provision of Order 18 rule 19 to protect them from vexed by hopeless litigation.

Defamation Law

[14] There are 4 steps for Court’s determination in the defamation action (*refer to presentation by YA Dato’ Faizah Jamaludin, “Defamation Law”, at Persidangan Tahunan Majlis Hakim-Hakim Malaysia 2018, Hotel Le Meridien, Kuala Lumpur, 30 April- 2 May 2018*), and in particular for this case–

Step 1:

- (a) The Second Defendant must show that she has been defamed. No cause of action if Second Defendant cannot show she has been defamed.
- (b) The Second Defendant must prove that impugned words published by Plaintiff.
- (c) Second Defendant must prove the statement is defamatory that if it tends to –
 - (i) lower the Second Defendant’s reputation in the esteem of right-thinking members of society generally
 - (ii) cause the Second Defendant to be shunned or avoided;
 - (iii) expose the Second Defendant to hatred, contempt or ridicule; and
 - (iv) alleges dishonourable or discreditable conduct or motives or lack of integrity on the part of the Second Defendant.

2 types of meaning: Natural and ordinary meaning; and Innuendo meaning.

Second Defendant must plead exact words used. No cause of action if fails to plead exact words used.

The court determine the meaning of words based on the objective test, considering the context; the circumstances of publication; and the speech as whole.

Step 2:

If Second Defendant succeeds to prove the elements to found her cause of action, the Plaintiff must establish a valid defence that are justification; fair comment; absolute privilege; and qualified privilege.

Step 3:

If the Plaintiff has established the defence of fair comment or qualified privilege, the Second Defendant has to prove express malice in order to defeat the defence of qualified privilege or fair comment. The Second Defendant must plead particulars of express malice in the statement of claim. Failure to plead particulars is fatal to allegation of express malice.

Step 4:

To determine quantum of damages, the Court to consider the seriousness of the libel; the extent of publication; the Second Defendant’s standing and reputation; the Second Defendant’s conduct; and the trend of past award of damages in similar defamation cases.

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[15] In the case of *Raub Australian Gold Mining Sdn Bhd V. Hue Shieh Lee* [2019] 1 LNS 134 the Federal Court held –

The Law on Defamation

29. *Defamation is committed when the defendant publishes to a third person words or matters containing untrue imputation against the reputation of the plaintiff. Liability for defamation is divided into two categories, that of libel and slander. If the publication is made in a permanent form or is broadcast or is part of a theatrical performance, it is libel. If it is in some transient form or is conveyed by spoken words or gestures, it is slander (see: Gatley on Libel and Slander, 9th edn at p. 6).*

Evaluations and Findings of this Court

[16] A key challenge by the Plaintiff to striking out the claim instituted by the Plaintiff is that the Second Defendant counter claim has no cause of action. I disagree. By just reading the affidavits and written submission, to shut out the counter claim is not fair and justify.

[17] In order for the Second Defendant to succeed in her claim, she has the burden of proof as decided in Federal Court's case *Raub Australian Gold Mining Sdn Bhd V. Hue Shieh Lee* [2019] 1 LNS 134 –

30. *In Ayob bin Saud v. TS Sambanthamurthi* [1989] 1 CLJ 152; [1989] 1 CLJ (Rep) 321, his Lordship Mohamed Dzaiddin J (as he then was) has clearly laid down the necessary procedure in establishing claim for libel (with which we agree), when he said at p. 155:

"In our law on libel, which is governed by the Defamation Act 1957, the burden of proof lies on the plaintiff to show–

- (1) *the words are defamatory;*
- (2) *the words refer to the plaintiff; and*
- (3) *the words were published.*

[18] And for the Plaintiff, as decided by Federal Court's case *Raub Australian Gold Mining Sdn Bhd V. Hue Shieh Lee* [2019] 1 LNS 134 has the burden of proof –

"Where a defence of qualified privilege is set up, as in the present case, the burden lies on the defendant to prove that he made the statement honestly, and without any indirect or improper motive. Then, if he succeeds in establishing qualified privilege, the burden is shifted to the plaintiff in this case to show actual or express malice which upon proof thereof, communication made under qualified privilege could no longer be regarded as privileged: Rajagopal v. Rajan."

31. *In other words, the plaintiff must prove (3) elements of the tort of defamation, which are:*

- (i) *the plaintiff must show that the statement bears defamatory imputations;*
- (ii) *the statement must refer to or reflect upon the plaintiff's reputation; and*
- (iii) *the statement must have been published to a third person by the defendant.*


32. *What is "defamatory imputation"? There is no precise test to be applied to determine whether or not any given words are defamatory. His Lordship Mohamed Azmi J (as he then was) in the case of Syed Husin Ali v. Syarikat Percetakan Utusan Melayu Berhad & Anor [1973] 2 MLJ 56 at p. 58, quoting Gatley on Libel and Slander, 6th edn. P. 4, stated the following:*

"There is no wholly satisfactory definition of a defamatory imputation. Any imputation which may tend "to lower the plaintiff in the estimation of right-thinking members of society generally", 'to cut him off from society' or 'to expose him to hatred, contempt or ridicule', is defamatory of him. An imputation may be defamatory whether or not it is believed by those to whom it is published." It was further quoted that: "A defamatory imputation is one to a man's discredit, or which tends to lower him in the estimation of others, or to expose him to hatred, contempt or ridicule, or to injure his reputation in his office, trade or profession, or to injure his financial credit. The standard of opinion is that of right-thinking person's generally. To be defamatory an imputation need have no actual effect on a person's reputation; the law looks only to its tendency."

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33. *Whether the words are defamatory lies in the nature of the statement in that it must have the tendency to effect the reputation of a person. Therefore, the question arises in whose eyes the words complained of must have the tendency to affect the plaintiff's reputation. In the Law of Defamation in Singapore and Malaysia, 2nd edn by Keith R. Evans (at p. 10), it is stated that, in applying these various tests, the court must look to a particular control group that is, in whose eyes must the estimation of the plaintiff be lowered before the words are said to be defamatory. In determining the issue, the court does not look to the actual effect of the allegations on the person's reputation, or the meaning of the words actually understood or taken by the listeners (see: JB Jeyaretnam v. Goh Chok Tong [1985] 1 MLJ 334). It is not enough that the listeners actually take the words in a defamatory sense, for they must be reasonably justified in so understanding the words before they are found to be defamatory (see: The Straits Times Press [1975] Ltd. v. The Workers' Party & Anor [1987] 1 MLJ 186).*

34. *Assuming the plaintiff in a defamation suit has shown that the words bear some sort of defamatory imputation, he must then proceed to establish that the defamatory words in question were published of and concerning him. The words must be capable of referring to him or of identifying him.*

35. *On this point, the Privy Council in the case of Knupffer v. London Express Newspaper Limited [1944] AC 116 , had this to say: "It is an essential element of the cause of action for defamation that the words complained of should be punished "of the plaintiff", where he is not named the test of this is whether the words would reasonably lead people acquainted with him to the conclusion that he was the person referred to. The question whether they did so in fact does not arise if they cannot in law be regarded as capable of referring to him."*


The Law on Malicious Falsehood

39. *In order to establish a claim under malicious falsehood, it is trite law that the plaintiff bears the burden of proving the following elements:*


(i) that the defendant published about the plaintiff words which are false;

(ii) that the words were published maliciously; and

(i) that special damage followed as the direct and natural result of the publication. (see: Tan Chong & Son Motor Co Sdn Bhd v. Borneo Motors (M) Sdn Bhd & Anor [2001] 3 MLJ 145; Ratus Mesra Sdn Bhd v. Shaik Osman Majid & Ors [1999] 3 MLJ 539; Kaye v. Robertson [1991] FIO 62 (EWCA)).

40. *"Malice" has been judicially interpreted by the courts as being reckless, unreasonable, prejudice or unfair belief in the truth of the statement. "Malice" may be established by showing that the defendant did not believe in the truth of what he uttered (see: Harrocks v. Lowe [1974] 1 All ER 662 and Watt v. Longsdon [1930] 1 KB 130  at 154, [1929] All ER 284 at 294).*

41. *As defined in the Osborn's Concise Dictionary (7th edn.), the word "malice" means:*

"Ill-will or evil motive: personal spite or ill-will sometimes called actual malice, express malice or malice in fact. In law an act is malicious if done intentionally without just cause or excuse. So long as a person believes in the truth of what he says and is not reckless, malice cannot be inferred from the fact that his belief is unreasonable, prejudiced or unfair (Horrocks v. Lowe [1972] 1 WLR 1625 )."

42. *In law an act is malicious if done intentionally without just cause or excuse. So long as a person believes in the truth of what he says and is not reckless, "malice" cannot be inferred from the fact that his belief is unreasonable, prejudiced or unfair (see: Anne Lim Keng See v. The New Straits Times Press (M) Bhd & Anor [2008] 3 MLJ 492, Horrocks v. Lowe (supra).*

54. *We agree with learned counsel for the respondent that: "The number "1000" clearly refers to the population of the village, and not to the number of workers employed by the appellant. It would not be possible for the said words to convey the meanings alleged by the appellant, or any meaning implying dishonesty or deceit or misrepresentation of facts. At the very most, it may imply a difference between the appellant and the villagers regarding the number of workers from the village at the appellant's plant. This cannot be construed as defamatory."*

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This well-established principle is summarized in Gately on Libel and Slander (twelfth edition) at paragraph 13.1 as follows: 'The law recognizes that there are certain situations ("privileged occasions") in which it is for the public benefit that a person should be able to speak or write freely and that this should override or qualify the protection normally given to reputation by the law of defamation. In most cases the protection of privilege is qualified, i.e. the defence is displaced by "malice", but there are certain occasions on which public policy and convenience require that a person should be wholly free from even the risk of responsibility for the publication of defamatory words and no action will therefore lie even though the defendant published the words with full knowledge of their falsity and even with the express intention of injuring the claimant. A statement of case, which alleges publication on any such occasion of "absolute privilege" will be struck out as disclosing no legally recognizable claim (or as it would formerly have been said,

[19] As the principles laid down by the Federal Court, any imputation which may tend to lower the second defendant in the estimation of right-thinking members of society generally, to cut him off from society or to expose him to hatred, contempt or ridicule, is defamatory of him, the Second Defendant has the burden to prove it.

[20] Before this Court hear the whole story *via* the full trial, the Plaintiff has filed striking out made under Order 18, rule 19 (1)(a), and/or (1)(b), and/or (c) and/or (d) Rules of Court 2012 [P.U(A) 205/2012] against the Second Defendant. The Plaintiff pleaded that the counter claim discloses no reasonable cause of action; and/or is scandalous, frivolous or vexatious; and/or is otherwise an abuse of the process of the Court.

[21] In this regard, this Court finds that the Second Defendant who asserts must prove such allegations that the Plaintiff had defamed her. In order for this Court to dispose and hear which versions are indeed true, let the Plaintiff and the Second Defendant tell the truth *via* the full trial. Are the wordings defamatory or not, the onus is on the Second Defendant.

[22] In this regard, reference to the following passage from the judgment of the Court of Appeal in *Pernec Ebiz Sdn Bhd v. CCI Technology Sdn Bhd & Ors* [\[2015\] 2 MLJ 117](#) would not be out of place –

"Even though the burden upon a plaintiff in a civil suit is only to prove its case upon a balance of probabilities, it must present its case sufficiently clearly to do so. It cannot merely file pleadings, file bundles of documents, proceed to trial, call witnesses to testify and argue on the various issue and expect the court to make out the case on its own for one party or other. ... Where the party upon whom the burden of proving its case lies fails to do so, it fails to prove its case and its action must be dismissed."

[23] This Court is satisfied upon a balance of probabilities that the Plaintiff is not qualified to strike out the Second Defendant's counter claim.

Conclusion

[24] In view of the foregoing, it is my judgment that having evaluated the application and its supporting documents, I find that the Second Defendant's counter claim is not fall under O. 18 rule 19 (1)(a), (b), (c) and (d). As such, I dismiss the Plaintiff's application with costs to the Second Defendant.

[25] This Court is ready to hear the case be it the main suit or the counter claim. To dispose the counter claim summarily is not justified.

[26] This Court agrees that–

tuntutan balas Defendan Kedua adalah bermerit dan terdapat isu yang perlu dibicarakan dalam suatu perbicaraan penuh.

tuntutan Balas Defendan Kedua tidak bersifat skandal, remeh dan menyusahkan; atau memudaratkan, memalukan dan melambatkan perbicaraan yang adil tindakan ini; atau pun adalah suatu penyalahgunaan proses Mahkamah.