

AHQ v Attorney-General
[2014] SGHC 175

Case Number : Suit No 3 of 2014 (Registrar's Appeal No 108 of 2014)
Decision Date : 05 September 2014
Tribunal/Court : High Court
Coram : Woo Bih Li J
Counsel Name(s) : The plaintiff in person; Zheng Shaokai and Koo Zhi Xuan (Attorney-General's Chambers) for the defendant.
Parties : AHQ — Attorney-General

Civil Procedure – striking out – judicial immunity

5 September 2014

Woo Bih Li J:

Introduction

1 This action arose out of an appeal by the plaintiff, [AHQ] (“AHQ”), against the decision of a Senior Assistant Registrar (“the SAR”), who allowed an application for the Statement of Claim (“the SOC”) and the action against the defendant, the Government of the Republic of Singapore (“the Government”), to be struck out and dismissed respectively by way of Summons No 441 of 2014. After hearing the arguments, I dismissed the appeal. I was in agreement with the SAR that the claim against the Government did not contain a reasonable cause of action. AHQ has since filed an appeal against my decision. I now state the reasons for my decision.

AHQ’s claim

2 In the action brought by AHQ, damages in the sum of \$50m, interest and costs were claimed for a number of orders made by judges in the discharge of their responsibilities of a judicial nature. The orders arose out of a series of ancillary matters following the dissolution of a marriage between AHQ and his former spouse, [AHR] (“AHR”). In essence, AHQ was dissatisfied with the outcome of the orders made. He claimed that not only were the orders wrongly made, they were made with the malicious intent of “humiliat[ing], tortur[ing] and bull[ying]” him. [\[note: 1\]](#)

3 As background information, the following judicial acts and orders formed the subject of the action:

(a) Summons No 1239 of 2009: On 18 September 2009, District Judge Angelina Hing (“DJ Hing”) granted an interim Personal Protection Order (“PPO”) to restrain AHQ from using family violence against AHR and the daughter of the marriage, by way of PPO 926 of 2009.

(b) Summons No 8800 of 2009/P in Divorce Suit No D2883 of 2006/T: Pursuant to two court orders dated 29 October 2009 and 12 November 2009 respectively (the latter varying the terms made in the former), DJ Hing granted AHR interim care and control of the two children of the marriage. It was further ordered that AHQ be given supervised access to both children on Sundays from 10am to 12nn at the Centre for Family Harmony (“CFH”). Both parties were to bear

the costs of supervised access equally.

(c) Summons No 8800 of 2009/P in Divorce Suit No D2883 of 2006/T: On 8 April 2010, DJ Hing varied an interim judgment dated 4 September 2006 (presumably in relation to the divorce proceedings between AHQ and AHR) [\[note: 2\]](#) to effect the following changes:

- (i) AHR was awarded sole custody, care and control of the two children;
- (ii) AHQ was granted supervised access to the two children on Sundays from 10am to 12nn at the CFH with costs to be borne by AHQ and AHR equally;
- (iii) AHQ was ordered to pay maintenance of \$1,500 in total for both children; and
- (iv) AHQ was ordered to hand over the children's passports, birth certificates, and health booklets to AHR's counsel.

AHQ appealed against this decision of DJ Hing by way of District Court Appeal No 22 of 2010. On 6 October 2010, Kan Ting Chiu J dismissed AHQ's appeal. AHQ then applied to Kan J, by way of Summons No 350 of 2011, for leave to appeal against Kan J's decision. On 14 February 2011, Kan J made no order in regard to AHQ's application for leave to appeal.

(d) Maintenance Summons No 5866 of 2011: DJ Jocelyn Ong ("DJ Ong") issued a Warrant of Arrest against AHQ on 23 December 2011 for failing to fulfil his obligation to pay maintenance. [\[note: 3\]](#) On 15 March 2012, AHQ attended court and, according to him, was told to leave within ten minutes as the Warrant of Arrest was cancelled by District Judge Emily Wilfred ("DJ Wilfred") after AHR confirmed that AHQ had made payment. AHQ claimed that "this" was "intentionally humiliating, torturing and bullying". [\[note: 4\]](#) It was not clear from the SOC whether "this" referred to the issuing of the Warrant of Arrest, or the fact that DJ Wilfred told AHQ he was free to leave within ten minutes of his court attendance, or both. In the circumstances, it is likely that the complaint was directed solely towards DJ Ong for having issued the Warrant of Arrest against him.

4 The present action was AHQ's attempt to vindicate his dissatisfaction with the acts and orders made above. AHQ claimed that DJ Hing erred because she granted the PPO based on a report dated 14 December 2009 (from the Ministry of Community Development, Youth and Sports) which did not pinpoint any specific acts of violence committed by AHQ against the children. In my view, the proper method to pursue such a claim would be to either appeal against the DJ's decision or apply for the order to be varied, suspended or revoked under s 67(1) of the Women's Charter (Cap 353, 2009 Rev Ed). AHQ did neither of these. Instead, he came to the High Court and sought to use this purported error of law as a basis to claim that DJ Hing "intentionally or even planned to ignore" his rights. [\[note: 5\]](#)

5 In addition, he claimed that the judges mentioned above had acted maliciously and were biased against him. In particular, AHQ alleged that DJ Hing "intentionally plan[ned] to take away [the] children" by issuing the custody, care and control order in favour of AHR. [\[note: 6\]](#) It was his case that all the judges above plotted against him in issuing their respective orders.

6 It should also be noted that the Government, in its submissions, was of the view that AHQ's complaint was based on tort. Be that as it may, the specific cause of action under tort was not

properly pleaded. [\[note: 7\]](#)

The Government's bases for the striking out application

7 The Government advanced three independent grounds to strike out the SOC. First, it argued that the SOC disclosed no reasonable cause of action under O 18 r 19(1)(a) of the Rules of Court (Cap 322, R 5, 2006 Rev Ed) ("the ROC"). Secondly, the SOC was scandalous, frivolous or vexatious under O 18 r 19(1)(b) of the ROC as it was legally unsustainable (citing *The "Bunga Melati 5"* [2012] 4 SLR 546 at [39]). Thirdly, the SOC represents an abuse of process under O 18 r 19(1)(d) of the ROC. In this appeal, there are sufficient reasons to strike out the SOC on the first ground in that it disclosed no reasonable cause of action and therefore it is unnecessary for me to discuss the other two grounds.

8 The Government relied on the case of *Indah Desa Saujana Corp Sdn Bhd & Ors v James Foong Cheng Yuen, Judge, High Court Malaya & Anor* [2008] 2 MLJ 11 ("*Indah Desa*"), where the plaintiffs sought to recover damages from a Kuala Lumpur High Court judge for losses suffered due to the judge's "wilful, malicious (intentional) malfeasance and misfeasance, mala fide acts and omissions" (at [11]). The Malaysian Court of Appeal (Kuching) found that the facts and circumstances of the case attracted the application of judicial immunity, and as such, the plaintiffs' claim was an exercise in futility under O 18 r 19(1)(a) of the Rules of the High Court 1980 (P.U. (A) 50/1980) ("the RHC"), which is *in pari materia* with O 18 r 19(1)(a) of the ROC, there being no reasonable cause of action (at [68]–[69]). The Malaysian Court of Appeal (Kuching) hence struck out the plaintiffs' claim.

The issue

9 The real issue before this court was whether there was a reasonable cause of action against the Government for the acts and orders made by DJ Hing, DJ Ong and Kan J.

Reasons for striking out the SOC

10 AHQ's action to recover damages was without merit. Even assuming that the facts asserted were in AHQ's favour, AHQ still had no reasonable cause of action. It is one thing for the aggrieved party to apply for a quashing order to set aside a decision on the basis that the adjudicator was biased (*Sirros v Moore and Ors* [1975] QB 118 ("*Sirros v Moore*") at 132), but it is quite another for him to sue for damages on the basis that the judges were biased or malicious. There is plainly no reasonable cause of action in the latter as judges are immune from suits in relation to their exercise of judicial power and responsibility.

Judicial immunity at common law

11 The Malaysian court in *Indah Desa* observed, at [52(i)], that under the common law, no civil action is maintainable against a judge for anything said or done by him in the exercise of a jurisdiction that belongs to him (citing the landmark English decision of *Sirros v Moore*). Although the court in *Indah Desa* eventually applied a version of statutory judicial immunity to the facts (at [68]–[71]), the common law judicial immunity was given a ringing endorsement (at [52]–[56]). Indeed, the Australian and New Zealand cases cited by the court demonstrate that judicial immunity is a longstanding tradition within the common law and has been well-recognised across Commonwealth jurisdictions.

12 At common law, every judge of a superior or inferior court is immune from liability in damages for any act that is either (1) within jurisdiction, or (2) honestly believed to be within jurisdiction (J P L Ching and N W Taylor, *Smith, Bailey and Gunn on The Modern English Legal System* (Sweet and

Maxwell, 5th ed, 2007) ("*The Modern English Legal System*") at 4-039). In the same textbook excerpt referred to by the Government, the learned authors of *The Modern English Legal System* went on to elaborate that the protection applied even where malicious intent was present, citing *Anderson v Gorrie and others* [1895] 1 QB 668 ("*Anderson v Gorrie and others*") as authority for this proposition.

13 Since in the present case AHQ has also made allegations of maliciousness, *Anderson v Gorrie and others* is directly on point. The plaintiff in that case brought an action against judges of the Supreme Court of Trinidad and Tobago to recover damages for certain acts done by them in the course of judicial proceedings, which he alleged to have been done maliciously. All three judges of the English Court of Appeal dismissed the application. The court held that it was settled law that a judge cannot be made liable for an act done within a judge's jurisdiction, even if he had acted maliciously. Notably, in reaching this conclusion, Lord Esher MR examined a number of well-established authorities and the rationale behind this rule (at 670–671):

... [T]he question arises whether there can be an action against a judge of a Court of Record for doing something within his jurisdiction, but doing it maliciously and contrary to good faith. By the common law of England it is the law that no such action will lie. The ground alleged from the earliest times as that on which this rule rests is that if such an action would lie the judges would lose their independence, and that the absolute freedom and independence of the judges is necessary for the administration of justice. That is the ground stated in *Miller v. Hope* [2 Shaw Sc. App. Cas. 125], in the year 1824, by Lord Gifford in his judgment in the House of Lords ... Crompton J. in *Fray v. Blackburn* [3 B. & S. 576 at 578], said: "It is a principle of our law that no action will lie against a judge of one of the superior Courts for a judicial act, though it be alleged to have been done maliciously and corruptly. ... The public are deeply interested in this rule, which indeed exists for their benefit, and was established in order to secure the independence of the judges, and prevent their being harassed by vexatious actions."

...

To my mind there is no doubt that the proposition is true to its fullest extent, that no action lies for acts done or words spoken by a judge in the exercise of his judicial office, although his motive is malicious and the acts or words are not done or spoken in the honest exercise of his office. *If a judge goes beyond his jurisdiction a different set of considerations arise.* The only difference between judges of the Superior Courts and other judges consists in the extent of their respective jurisdiction.

[emphasis added]

14 In the present case, there was no allegation that the judges had acted outside their jurisdiction. There was no reason for judicial immunity not to apply to its fullest extent to all the judges involved. As Lord Denning MR held in *Sirros v Moore* (at 136):

... Every judge of the courts of this land – from the highest to the lowest – should be protected to the same degree ...

Statutory judicial immunity

Statutory judicial immunity for District Judges of the Subordinate Courts

15 Besides the common law, there are also statutes on judicial immunity. Judicial immunity for District Judges of the Subordinate Courts has been statutorily codified by virtue of s 68(1) of the

Subordinate Courts Act (Cap 321, 2007 Rev Ed) ("SCA"), which states as follows:

Protection of judicial and other officers

68.—(1) A judicial officer shall not be liable to be sued for any act done by him in the discharge of his judicial duty whether or not within the limits of his jurisdiction, provided that he at the time in good faith believed himself to have jurisdiction to do or order the act complained of.

A District Judge is a "judicial officer" as defined under s 2 of the SCA.

Statutory judicial immunity for judges of the Supreme Court

16 Has judicial immunity for judges of the Supreme Court received similar statutory codification? The provision in question is s 79(1) of the Supreme Court of Judicature Act (Cap 322, 2007 Rev Ed) ("SCJA"), which states as follows:

Protection of Registrar and other officers

79.—(1) The Registrar, the Deputy Registrar or an Assistant Registrar or *other person acting judicially* shall not be liable to be sued in any court exercising civil jurisdiction for any act done by him in the discharge of his judicial duty whether or not within the limits of his jurisdiction, provided that he at the time in good faith believed himself to have jurisdiction to do or order the act complained of.

[emphasis added]

17 The provision expressly covers the "Registrar, the Deputy Registrar or an Assistant Registrar". Interestingly, it is silent on whether judges are covered by the provision. On one view, it could be said that judges of the Supreme Court come within the ambit of "other person acting judicially" even though the provision does not expressly state so. An expansive construction of the phrase would be required to reach such a conclusion.

18 However, there appears to be a stronger case in favour of a narrow construction of the phrase in that it was not meant to include judges of the Supreme Court. It is pertinent to note that corresponding Indian and Malaysian statutes on judicial immunity make express reference to a "Judge" but s 79(1) of the SCJA does not. Instead, s 79(1) of the SCJA makes reference only to "Registrar, the Deputy Registrar or an Assistant Registrar". If the drafters of the SCJA had intended for it to encompass judges of the Supreme Court, the word "judge" would have been included in s 79(1), just as it was in the corresponding Indian and Malaysian statutes.

19 The corresponding Indian and Malaysian statutes are as follows. In India, the relevant provision is s 1 of the Judicial Officers Protection Act 1850 (Act No XVIII of 1850) ("JOPA") which reads as follows:

No Judge, Magistrate, Justice of the Peace, Collector or other person acting judicially shall be liable to be sued in any civil court for any act done or ordered to be done by him in the discharge of his judicial duty, whether or not within the limits of his jurisdiction, nor shall any order for costs be made against him, provided that he at the time in good faith believed himself to have jurisdiction to do so or order the act complained of.

20 In Malaysia, the relevant provision is s 14(1) of the Courts of Judicature Act 1964 (Act 91,

1972 Rev Ed) ("CJA") which reads as follows:

Protection of Judges and other judicial officers

14. (1) No Judge or other person acting judicially shall be liable to be sued in any civil court for any act done or ordered to be done by him in the discharge of his judicial duty, whether or not within the limits of his jurisdiction, nor shall any order for costs be made against him, provided that he at the time in good faith believed himself to have jurisdiction to do so or order the act complained of.

21 The narrow construction is also supported by the principle of *ejusdem generis*, which requires the phrase to be construed as subject to the preceding words, "Registrar, the Deputy Registrar or an Assistant Registrar". The *ejusdem generis* canon of construction is described as follows in *Bennion on Statutory Interpretation: A Code* (LexisNexis, 5th Ed, 2008) at p 1231:

The Latin words *ejusdem generis* (of the same kind or nature), have been attached to a principle of construction whereby wide words associated in the text with more limited words are taken to be restricted by implication to matters of the same limited character. The principle may apply whatever the form of the association, but the most usual form is a list or string of genus describing terms followed by wider residuary or sweeping-up words.

...

The *ejusdem generis* principle arises from the linguistic implication by which words having literally a wide meaning (when taken in isolation) are treated as reduced in scope by the verbal context. It may be regarded as an instance of ellipsis, or reliance on implication. The principle is presumed to apply unless there is some contrary indication.

22 In addition, extra-judicial comments made by Chan Sek Keong CJ may lend weight to the narrow construction (Chan Sek Keong, *Securing and Maintaining the Independence of the Court in Judicial Proceedings* (2010) 22 SAcLJ 229 at [11]):

There is one other important element in common law jurisdictions for facilitating the independence of judges in their decision-making that is sometimes not protected by legislation. It is that immunity from suit for acts or omissions in the discharge of judicial duties. This immunity is not the same as immunity from prosecution for criminal acts. *In Singapore, there is no legislation that grants such immunity (ie, immunity from suits for acts or omissions in the discharge of judicial duties) to the judges of the Supreme Court, although there are statutory provisions granting immunity to the lower judiciary* [citing s 79 of the SCJA and s 68 of the SCA]. This omission may be inconsequential, as it is a principle of the common law that judges are immune from suit.

[emphasis added]

23 Nevertheless, it is not necessary for me to decide whether s 79(1) of the SCJA extends to judges of the Supreme Court because the judges are, in any event, protected by common law judicial immunity (refer to discussion at [11]–[14]).

The Government is also immune from AHQ's action against the judges

24 In any event, in the present case, AHQ's claim was not against the judges in their *personal capacity*. It was actually against *the Government*. AHQ's claim was premised on s 5 of the

Government Proceedings Act (Cap 121, 1985 Rev Ed) ("the GPA"), which states as follows:

Liability of Government in tort

5. Subject to the provisions of this Act, the Government shall be liable for any wrongful act done or any neglect or default committed by any public officer in the same manner and to the same extent as that in which a principal, being a private person, is liable for any wrongful act done, or any neglect or default committed by his agent, and for the purposes of this section and without prejudice to the generality thereof, any public officer acting or purporting in good faith to be acting in pursuance of a duty imposed by law shall be deemed to be the agent of and to be acting under the instructions of the Government.

25 However, as the Government correctly pointed out, s 5 is qualified by s 6(3) of the GPA, which confers immunity to the Government for suits brought against acts committed by *any person* in the discharge of judicial duties. The provision quite clearly encompasses both judges of the Supreme Court as well as District Judges of the Subordinate Courts. Section 6(3) of the GPA reads as follows:

No proceedings shall lie against *the Government* by virtue of Section 5 in respect of anything done or omitted to be done by *any person* while discharging or purporting to discharge any responsibilities of a judicial nature vested in him, or any responsibilities which he has in connection with the execution of judicial process.

[emphasis added]

The Government would therefore be immune in the present action by virtue of s 6(3) of the GPA.

Conclusion

26 In these circumstances, it was plainly obvious that AHQ did not have a reasonable cause of action to recover damages against the Government. AHQ's request for an exception to be made in the present case [\[note: 8\]](#) was without merit. Therefore, the SOC was correctly struck out under O 18 r 19(1)(a) of the ROC as it disclosed no reasonable cause of action. For this reason, I dismissed AHQ's appeal.

Costs

27 After hearing the parties' submissions on costs, I ordered AHQ to pay \$500, inclusive of disbursements, forthwith to the Government for the appeal as there was another appeal by AHQ in Suit No [Y] with similar arguments.

[\[note: 1\]](#) Statement of Claim, paras 9, 11, 16, 19, 20, and 22.

[\[note: 2\]](#) The interim judgment was referred to in the Order of Court dated 8 April 2010 but was not exhibited in the Bundle of Documents.

[\[note: 3\]](#) Koo Zhi Xuan's affidavit dated 27 Jan 2014, Exh 8.

[\[note: 4\]](#) Statement of Claim, para 11.

[\[note: 5\]](#) SAR's Notes of Evidence dated 20 March 2014, p 6.

[\[note: 6\]](#) SAR's Notes of Evidence dated 20 March 2014, p 7.

[\[note: 7\]](#) Defendant's submissions, para 3.

[\[note: 8\]](#) AHR's affidavit dated 11 March 2014, p 4.

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