IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[2020] SGCA 17

Civil Appeal Nos 33 and 112 of 2019

Between

Ong Wui Teck

… *Appellant*

And

The Attorney-General

… *Respondent*

In the matter of HC/OS 871/2017
(Summons No 3979 of 2017)

Between

The Attorney-General

… *Applicant*

And

Ong Wui Teck

… *Respondent*

JUDGMENT

[Contempt of Court] — [Scandalising the court]
[Contempt of Court] — [Contempt in the face of the court]
[Contempt of Court] — [Sentencing]

Ong Wui Teck
v
Attorney-General

[2020] SGCA 17

Court of Appeal — Civil Appeal Nos 33 and 112 of 2019
Judith Prakash JA, Steven Chong JA, Quentin Loh J
19 February 2020

24 March 2020 Judgment reserved.

Judith Prakash JA (delivering the judgment of the court):

Introduction

1 These appeals arise out of a court finding that Mr Ong Wui Teck, the appellant herein, was guilty of contempt of court in relation to statements made by him in two affidavits. These affidavits ("the OS 165 Affidavits") were filed by the appellant in support of his recusal application in Originating Summons No 165 of 2016 ("OS 165"). In OS 165, the appellant had sought to disqualify Justice Woo Bih Li ("Woo J") from hearing all actions relating to the estate of the appellant's mother. In the OS 165 Affidavits, the appellant had made a number of allegations of bias, dishonesty and impropriety against Woo J ("the Allegations"). The Allegations led the Attorney-General, the respondent in these appeals, to apply for an order of committal against the appellant for contempt of court.

2 The committal proceedings were heard in the High Court in August 2018. After consideration of the evidence and the submissions, the High Court Judge ("the Judge") found the appellant guilty of scandalising contempt and contempt in the face of the Court. Her reasons can be found in *Attorney-General v Ong Wui Teck* [2019] SGHC 30 ("the *Contempt Judgment*"). The Judge sentenced the appellant to seven days' imprisonment for the reasons found in *Attorney-General v Ong Wui Teck* [2019] SGHC 147 ("the *Sentencing GD*"). The present appeals were lodged by the appellant against liability and sentence. It should be noted that in all proceedings leading to the committal application, and in that application and these appeals, the appellant has acted in person.

The Background

3 The facts have been set out in detail in the *Contempt Judgment*. We set out only those facts that are necessary to come to our decision.

The Father's Estate proceedings

4 The appellant was the administrator of the estates of his father ("the Father's Estate") and of his mother ("the Mother's Estate"). Due to this appointment, he had been involved in various disputes with his sister, Ms Ong Wui Soon ("the Sister"), in Suit No 385 of 2011 ("Suit 385") concerning the Father's Estate. These disputes were adjudicated by Woo J, who found in favour of the appellant in relation to the most valuable assets in the Father's Estate. Woo J also held, however, that the appellant had failed to give a proper account of the assets of the Father's Estate. He thus ordered an inquiry to determine the net total value of the Father's Estate for distribution to the beneficiaries ("the Inquiry"). Woo J's grounds of decision can be found in *Ong Wui Soon v Ong Wui Teck* [2013] 1 SLR 733 ("the *2012 Judgment*"). No appeal was filed

against the *2012 Judgment*. On 3 March 2014, Woo J fixed costs of Suit 385 at $10,000 in favour of the Sister ("the Suit 385 Costs Order").

5 The Inquiry was conducted by an Assistant Registrar ("the AR"). The AR found that the Father's Estate had a positive value of $15,756 and ordered the appellant to pay the Sister her one-twelfth share of the Father's Estate and her costs of the Inquiry. The appellant was granted an extension of time to appeal out of time against the AR's decision in the Inquiry and filed his appeal ("RA 54"). The Sister in turn appealed against the grant of an extension of time to the appellant ("RA 72"). We shall hereafter refer to RA 54 and RA 72 collectively as "the Registrar's Appeals".

6 The Registrar's Appeals came on for hearing together before a Judicial Commissioner ("the JC"). At the hearing, counsel for the Sister submitted that both appeals should be heard before Woo J as he was more familiar with the matter. The appellant did not object and the Registrar's Appeals were then adjourned to be heard before Woo J. In May 2014, Woo J heard the Registrar's Appeals. He held that the appellant should not have been granted an extension of time. RA 72 was, therefore, allowed while RA 54, the appellant's appeal against the outcome of the Inquiry, was dismissed. Woo J, however, changed the costs' order made by the AR in respect of the Inquiry from costs to be taxed to fixed costs of $400. This part of the decision was in the appellant's favour. The grounds of this decision can be found in *Ong Wui Swoon v Ong Wui Teck and another matter* [2014] SGHC 157 ("the *2014 GD*").

7 The appellant appealed against the findings in the *2014 GD* but both his appeals were struck out by this Court. This meant that the appellant could no longer dispute the findings made in the Inquiry. The appellant remained deeply

unhappy at the outcome of the Inquiry as he could not accept the basis on which the Father's Estate had been found to have a positive value.

The Mother's Estate proceedings and the recusal application

8 In 2013, the Sister sought a revocation of the appellant's appointment as the executor of the Mother's Estate. The Sister's application in the District Court was dismissed, and she appealed to the High Court by District Court Appeal No 21 of 2015 ("DCA 21"). The appellant then filed Originating Summons No 11 of 2016 ("OS 11") to, *inter alia*, compel the Sister to apply for an extension of time to serve the appeal documents in DCA 21 on him.

9 The appellant and the Sister's counsel attended a pre-trial conference in the High Court on 26 January 2016 ("the PTC"). They were informed by an Assistant Registrar that Woo J was scheduled to hear DCA 21 and OS 11. Two days later, the appellant sent a letter to the Chief Justice of Singapore, alleging that Woo J's "independence is compromised". On 22 February 2016, the appellant filed OS 165 seeking an order that Woo J be recused. On 4 March 2016, Woo J heard OS 165 and, while he found that the appellant's allegations of bias were baseless, he recused himself as he intended to lodge a formal complaint against the appellant for contempt. Woo J's reasoning can be found in *Ong Wui Teck v Ong Wui Swoon* [2016] 2 SLR 1067 ("the *Recusal GD*").

The Allegations

10 In May 2016, the respondent informed the appellant that the Allegations made in the OS 165 Affidavits were in contempt of court. The respondent requested that the appellant withdraw the Allegations and apologise to both Woo J and the Supreme Court. The appellant refused to do so. After a

preliminary leave application was heard and allowed, the respondent applied for an order of committal against the appellant under O 52 r 2(2) of the Rules of Court (Cap 322, R 5, 2014 Rev Ed). As the focus of these appeals is on whether the Allegations constitute fair criticism made in good faith, it is necessary for us to set them out in some detail. The Allegations can be grouped into five categories.

11 First, allegations of extreme bias:

(a) "there is extreme biasness [*sic*] in the way Woo J had conducted the trial of [the Father's Estate]";

(b) "although it was brought up to Woo J in [Suit 385], he vehemently refused to recognise the material fact that the opposing party had obstructed the accounting of the estate";

(c) Woo J "was steering towards a biased finding of failure to give proper account in any event" and "[e]ither … failed to recognise … relevant material evidence … or … biasedly [*sic*] chose to ignore it". Woo J "was clearly biased in favour of the opposing party/solicitor" and "was granting the solicitor impunity on a silver platter";

(d) "Woo J must have recognised that the arguments of the opposing party are clearly devoid of merit and, hence, by deciding not to proceed with the substantive appeal of the inquiry, [Woo J] had allowed this matter of fraud to be swept under the carpet";

(e) Woo J "had allowed the nature and function of the court to be transformed from a court dispensing justice into an instrument of injustice, condoning oppression by the opposing party in subjecting

[the appellant] to unnecessary time, effort and costs at the main trial and at the inquiry";

(f) "Evidence in [the Mother's Estate] that are in [the appellant's] favour but which impinges on [Woo J's] findings and rulings on [the Father's Estate] will be disregarded [by Woo J] at [the appellant's] expense". Woo J "would not bring an impartial mind to the issues relating to his prior findings [in the Father's Estate Proceedings], thereby making fair hearings [in the Mother's Estate actions] unattainable";

(g) "Woo J has a vested interest to uphold his rulings in [Suit 385], even though they are plainly wrong against the weight of the evidence, which he biasedly refuse [*sic*] to acknowledge";

(h) "Woo J had conducted himself [such] that a high probability arises of a bias inconsistent with the fair performance of his duties". "There is a miscarriage of justice in [Woo J's] conduct of the action on [the Father's Estate] and given [Woo J's] vested interest to uphold his ruling, he would, in all likelihood, rule to [the appellant's] detriment and to the detriment of [the Mother's Estate]";

(i) "Woo J, in this instance, has morphed from a judge into a supernumery [*sic*] opposing lawyer." He cannot "fully remove all trace of odour from the air of impartiality. Indeed, the more he seeks to justify his position, the stronger the smell may grow"; and

(j) "The perception of bias is more real than apparent. The stench from the air of impartiality is overbearing".

12 Second, allegations that the Suit 385 Costs Order was made for an ulterior purpose:

> (a) the sham [Suit 385 Costs Order] that [the appellant] pay the [Sister] $10,000 was intended to influence the course and the outcome of the hearing before [the JC]";
>
> (b) "with the sham [Suit 385 Costs Order] made on the finding of a so-called improper account at the main trial, [Woo J] was steering the appeal of the inquiry towards an outcome unfavourable to [the appellant] by influencing [the JC];
>
> (c) "Woo J must have acknowledged the strength of [the appellant's] case to the extent that he had to intercept with a sham [Suit 385 Costs Order] on the basis of a so-called improper account ruling, to prevent an award of accounting costs to [the appellant] and to steer towards an outcome in the opposing party's favour, and in so doing, also relieve the solicitor from culpability for her various acts of impropriety";
>
> (d) Woo J's "sham [Suit 385 Costs Order] is a means to remove [the appellant] as executor of [the Mother's Estate] as $10,000 was the threshold for bankruptcy action to be instituted against [the appellant]". With [Woo J's] nuanced approach and its ensuing corollary, [Woo J] was in fact, killing the proverbial two birds with one stone, *albeit* four birds in this instance"; and
>
> (e) "To uphold his finding of improper account [in the Father's Estate Proceedings] and to sustain his sham [Suit 385 Costs Order] … in favour of the opposing party, Woo J would disregard evidence".

13 Third, an allegation of a "falsified" order of court. The recital to the Order of Court No 4561 of 2014 in RA 54 ("the Order of Court") erroneously identified the Sister as the appellant in the appeal. The appellant alleged that since Woo J "did not see fit to order a correction" of a "falsified Order of Court" which "was presented in the [Sister's] Affidavit to strike out [the appellant's] Notice of Appeal]", "this [was] complicity" by Woo J.

14 Fourth, an allegation that Woo J procured that the cases be fixed before him. The appellant alleged that the system of allocating cases in the Supreme Court had been "violated" by Woo J's "procurement" of cases relating to the Father's and Mother's Estates. Further, that Woo J had "violated" the principle of judicial impartiality in his "conduct of the trial/hearings … in the action on [the Father's Estate] as well as in his attempt to hear the appeal on the action of [the Mother's Estate] in [DCA 21] regardless of the outcome in [OS 11]".

15 Fifth, an allegation that there was a lack of impartiality in relation to DCA 21 and OS 11. The appellant alleged that the fixing of OS 11 and DCA 21 to be heard on the same date showed "a prejudgment or predetermination of a dismissal" of OS 11, and "clear biasness [*sic*], not to mention the obstruction of justice being condoned".

Decision below

16 The Judge found the appellant guilty of scandalising contempt and contempt in the face of the Court. The Judge held that the appellant intentionally affirmed and filed the OS 165 Affidavits in court proceedings, and that these actions amounted to publication. The Allegations made serious aspersions of extreme bias on the part of Woo J, a judge of the Supreme Court of Singapore. These allegations reflected on the integrity, propriety and impartiality of the

Supreme Court as a whole and served to lower the authority of the judiciary. Therefore, the Allegations posed a real risk of undermining public confidence in the administration of justice (*Contempt Judgment* at [42] and [44]).

17 The Judge found the Allegations to be baseless and not made in good faith. The Allegations contained invective and accusations that went far beyond what was reasonable in a recusal application and were deliberately designed to undermine public confidence in the judiciary. The appellant, though unhappy with some substantive findings made by Woo J, did not truly think that Woo J had been biased. The appellant had made the Allegations to procure Woo J's recusal in the Mother's Estate actions (*Contempt Judgment* at [69], [84], [91] and [94]).

18 The Allegations were wilful insults made within the personal view and knowledge of Woo J. These insults interfered with and undermined the judicial function of the judge and the course of justice. Therefore, the appellant's act of filing of the OS 165 Affidavits and using the affidavits at the recusal hearing before Woo J constituted contempt in the face of the Court (*Contempt Judgment* at [98]).

19 The Judge sentenced the appellant to seven days imprisonment and ordered him to pay the respondent's costs. The Judge found that the appellant was motivated by the improper purpose of judge-shopping: *Sentencing GD* at [5]–[6] and [19]. She found, further, that the appellant was an intelligent man, understood the gravity of the contempt proceedings and had no difficulty conducting his defence. The appellant was not remorseful. He had the opportunity to purge his contempt but refused to do so: *Sentencing GD* at [18].

The Judge acknowledged that the appellant was a first-time contemnor and that was a mitigating factor: (*Sentencing GD* at [19]).

The parties' cases on appeal

20 The appellant's case on appeal is substantially the same as it was below. He submits that Woo J had made a finding in the *Recusal GD* at [81] that the Allegations were not *bona fide* and the appellant was in contempt of court. Therefore, Woo J was acting as a judge in his own court. Without setting aside the *Recusal GD*, any deliberation made within the same Court (*ie*, the High Court) would have to be aligned with the *Recusal GD* as the Judge could not overturn the rulings of her peers.

21 The appellant submits that if Woo J was of the view that there was no merit in the Allegations, he should not have recused himself. Further, the appellant argues that he had reasonable grounds to support the Allegations:

(a) the Father's Estate was clearly negative. Woo J failed to take this into account by ordering a distribution to the beneficiaries out of a negative estate. This was "an affront to logic and numeracy" which could only be explained if Woo J was incompetent or biased;

(b) Woo J made the Suit 385 Costs Order of $10,000 so that it could be used to initiate bankruptcy proceedings against the appellant and remove him as the executor of the Mother's Estate;

(c) Woo J knew about the "falsified" Order of Court, chose to do nothing about it, and acted in the interests of the opposing party; and

(d) it was probable that Woo J procured the hearing of the Mother's Estate as he had a vested interest in upholding his rulings in the Father's Estate. Woo J would not deviate from his previous findings in the Father's Estate when ruling on the Mother's Estate.

22 As regards sentencing, the appellant submits that the Judge's imposition of a seven days' imprisonment is manifestly excessive. The appellant, however, does not make any suggestion as to the appropriate sentence.

23 The respondent submits that the Allegations were devoid of any rational or credible basis and were not made in good faith. Further, Woo J's observations in the *Recusal GD* that the Allegations were in contempt of court were views only and were not legally binding findings. Woo J's decision to recuse himself was not relevant and these committal proceedings are not the forum for the appellant to re-litigate OS 165.

24 The respondent also submits that the appellant is liable for contempt in the face of the Court. The appellant filed the OS 165 Affidavits with the intention of placing them before Woo J. As regards sentencing, the respondent submits that the Judge's custodial sentence of seven days is not manifestly excessive as the appellant had shown stubborn defiance and a lack of remorse.

Liability for scandalising contempt

25 The applicable law and principles in respect of liability for scandalising contempt were set out by this Court in *Shadrake Alan v Attorney-General* [2011] 3 SLR 778 and reaffirmed in *Au Wai Pang v Attorney-General* [2016] 1 SLR 992 ("*Au Wai Pang*") at [17]–[18]. It is not necessary to repeat them. In summary, the appellant would be liable for scandalising contempt if the

Allegations posed a real risk of undermining public confidence in the administration of justice, and do not constitute fair criticism.

Real risk of undermining public confidence in the administration of justice

26 The Oath of Office which every Judge, Judicial Commissioner and Senior Judge of the Supreme Court of Singapore must take pursuant to Art 97(1) of the Constitution of the Republic of Singapore (1985 Rev Ed, 1999 Reprint), emphasises how vital the qualities of judicial independence and impartiality are to the role and function of a judge. The Judge rightly concluded that the Allegations, which are allegations of bias, impropriety and dishonesty, impugn these qualities. This undermines public confidence in the judiciary and its administration of justice (see *Au Wai Pang* at [36]–[37]).

27 The appellant contends that the OS 165 Affidavits were filed within the confines of the Court and were not readily accessible to the public. Hence, there could not have been a real risk that public confidence in the administration of justice would be undermined. The Judge held that there was indeed such a risk since the OS 165 Affidavits were documents available for public inspection. We agree. The focus in this inquiry is on the *potential audience* of the alleged contemnor for the conduct in question (see for example, *Attorney-General v Wham Kwok Han Jolovan and another matter* [2018] SGHC 222 at [51] and [63]–[64]). In this case, the potential audience would include the duty registrar, parties involved in this case and interested members of the public (including the press) who could have access to the OS 165 Affidavits. This constitutes a sufficient audience to establish a real risk that the Allegations would undermine public confidence in the administration of justice.

Fair criticism made in good faith

28 Fair criticism must be premised on objective facts and be founded on a rational basis (*Au Wai Pang* at [34]). The factors that this Court may consider in order to determine whether the Allegations constitute fair criticism are (*Attorney-General v Tan Liang Joo John* [2009] 2 SLR(R) 1132 at [14]–[20]):

(a) whether there is some reason or basis for the criticism, and the extent to which it is supported by such reason or basis;

(b) the manner in which the criticism is made. The criticism must generally be expressed in a temperate and dispassionate manner. An intention to vilify the Courts is easily inferred when outrageous and abusive language is used;

(c) the party's attitude in Court; and

(d) the number of instances of contemning conduct.

29 The Allegations arose out of the appellant's recusal application. An applicant in a recusal application would naturally be required to set out the reasons he thinks justify a recusal. This may include an apprehension of bias. A recusal application is, however, not *carte blanche* or a "get out of jail free" card for an applicant to say what he pleases without any consequence. Any allegation made by an applicant in a recusal application must be backed by some evidence, or at the minimum, supported by rational basis. If so, such allegations will not attract liability for contempt, though whether they will actually succeed in securing a recusal would be another issue. An applicant cannot exploit a recusal application as an opportunity to engage in sarcasm or to violently abuse or ridicule a judge. The Judge opined, and we agree, that criticisms coloured to

the extent that they attract the law of contempt will not be protected under the realm of recusal.

30 We move on to consider whether the appellant had a rational basis which supported the Allegations.

Allegations of bias

31 The Judge rightly concluded, based on a comprehensive evaluation of the objective evidence and circumstances, that the appellant's allegations of bias against Woo J were groundless. It is not necessary to rehash the Judge's reasons found in the *Contempt Judgment*. We focus instead on the nub of the appellant's perception of bias, which is his obstinate belief that the Father's Estate had a negative value, and anyone who held a different view was wrong. The appellant submits that Woo J had the opportunity to address this issue when the Registrar's Appeals were heard in May 2014 but chose not to do so which constitutes evidence of bias. We find this assertion to be baseless.

32 First, at the hearing of the appeals, the appellant *conceded* that he had *no objective evidence* to support his allegations of bias. Second, in Suit 385, Woo J ordered an inquiry to be conducted and made no findings as to the value of the Father's Estate. The appellant did not appeal against Woo J's decision. The appellant also conceded that it was the AR, and not Woo J, who valued the Father's Estate as having a positive value. Third, RA 72 was not concerned with the valuation of the Father's Estate and while RA 54 could have had a bearing on this issue, for it to be heard, the hurdle of RA 72 had first to be overcome. RA 72 concerned the issue of whether an extension of time should have been granted to allow the appellant to file RA 54. Once Woo J held that there were no grounds to justify an extension of time to appeal, RA 54 had to be dismissed

without any consideration of its merits. Therefore, Woo J did not have the jurisdiction or, in the appellant's words, the opportunity to address the issue of the valuation of the Father's Estate. That was, however, entirely due to the appellant's own failure to appeal within time.

33 Basically, the appellant is aggrieved that RA 72 succeeded and RA 54 was dismissed. This Court, however, struck out the appellant's further appeals against the decisions in the Registrar's Appeals and stated that it could "see no basis on which [Woo J's] decision and exercise of discretion can be interfered with". As a result, the matter was closed and the appellant had no rational basis on which to criticise Woo J for not re-looking into the holding in the Inquiry that the Father's Estate had a positive value.

34 The appellant also submits that had Woo J genuinely believed that there was no merit in the Allegations, he should not have recused himself. The appellant claims that Woo J's recusal was an "incontrovertible acceptance of the rational basis of [the appellant's] case of apprehension of bias". It is clear that Woo J recused himself "not because there was any merit in [the appellant's] allegations", but because he was "contemplating making a complaint about [the appellant's] conduct to the appropriate authorities" (the *Recusal GD* at [81]). The appellant had no rational basis for or evidence supporting his allegations of bias against Woo J. We also agree with the Judge that there was no reason to set aside the *Recusal GD* since Woo J did not make a finding of contempt against the appellant in that decision.

35 In a recusal application where the judge considers that the applicant's assertion of bias has no basis and the applicant has made contemptuous allegations, the judge is placed in a very difficult position. If the judge dismisses

the application, he may have reservations that the public may think he is biased. Yet, a judge will not want to be a judge in his own cause especially when the assertions of bias are so repeated and vituperative as to cause the judge to suspect that there has been a contempt of Court. In these circumstances, it may be prudent for a judge intending to file a formal complaint of contempt against a party, to recuse himself from hearing matters relating to that party. This is at least until the conclusion of the inquiry or any proceedings arising from that complaint. It is prudent because it removes any suspicion of bias on the part of the judge, strengthens public perception of judicial impartiality and prevents the unnecessary protraction of litigation and wastage of resources arising from further recusal applications. This is not to say that in all situations where an application for recusal is made that the Judge should recuse himself or herself. It all depends on the circumstances of the case.

The allegation that the Suit 385 Costs Order was a sham

36 We agree with the Judge's finding that there was no basis for the appellant to allege that the Suit 385 Costs Order was a sham made for an ulterior purpose, specifically, so that it could be used to initiate bankruptcy proceedings against the appellant. Woo J, after hearing arguments from both sides, justified his decision to award the Sister the costs of Suit 385 fixed at $10,000 (see the *Contempt Judgment* at [76]). There was no evidence that Woo J's decision was arbitrary, or worse, made for the improper purpose of allowing it to be used to initiate bankruptcy proceedings against the appellant. The appellant chose not to appeal against the Suit 385 Costs Order and that was the end of the matter.

The "falsified" Order of Court

37 We do not accept the appellant's submission that Woo J knew about the error in the Order of Court, condoned such an error, and by doing so, acted in the Sister's interests. We agree with the Judge's findings on this issue. First, Woo J had not been involved in the approval of the Order of Court. The Order of Court was drafted by the Sister's counsel and was approved, in the usual way, by the Registrar of the Supreme Court. The appellant claims that based on his experience, when a litigant-in-person is involved in a dispute, a judge will sign off on an order of court. When we repeatedly told the appellant that this was not the case, he said that he would withdraw his allegation *only if* this Court affirmed the stated position to be true. That was not a true withdrawal or an apology. A withdrawal of a contemptuous allegation should not be contingent on any affirmation by the Court. In any event, the appellant conceded that it was the Registrar, and not Woo J, who had signed the Order of Court. This renders his argument, and any rational basis for his *suspicion* of bias, moot.

38 Second, we reject the appellant's submission that he was prejudiced by the error in the Order of Court. As the Judge pointed out, the appellant knew about the error as early as July 2014 but chose not to file any application to correct it. In his Appellant's Case, he argues that the appellant in RA 54 would have been allowed to appeal against the entirety of the AR's decision in the Inquiry but the respondent would be restricted to an appeal on costs. He was prejudiced because the Order of Court erroneously specified the Sister to be the "applicant" instead of him. Accordingly, she would also be the appellant in RA 54. We find this argument to be incredible. It was never disputed that RA 54 was the appellant's appeal. The appellant also admitted that the *2014 GD* at [8] correctly reflected that RA 54 was his appeal. This Court in the appeals arising

out of the decisions in RA 72 and RA 54 was also not misled by the clerical error in the Order of Court.

Allegation of procurement of hearings

39 The appellant submits that based on his observation that different judges were assigned to the estate of each parent in two other unrelated cases, Woo J must have procured that the proceedings involving the Mother's Estate were fixed before him for hearing. Further, in hearing those proceedings, Woo J would be "severely constricted" as he "cannot deviate from his previous rulings" in the Father's Estate. We agree with the Judge that the appellant had no rational basis for such an allegation. A judge does not decide and pick the cases that he or she wants to hear. These cases are allocated by the Registrar. At the hearing of the appeal, the appellant conceded that he made no effort to find out how the Supreme Court allocates cases. He could have made an enquiry at the Registry of the Supreme Court or asked a lawyer about the process but he chose not to do so. The appellant therefore had no basis to allege that Woo J had improperly exercised his judicial function to procure the hearing of cases in order to decide the same according to his allegedly "vested interests".

40 The appellant further submits that at the hearing of Summons No 3500 of 2014 ("SUM 3500"), an application to merge certain appeals, Woo J had offered to recuse himself from hearing the Mother's Estate actions. The appellant based his belief on the following statement made by Woo J:

> Ct: If I adjourn the matter, both of you would have to come back again and also go into the background of the appeals. That may take more time as the next judge is not as familiar with the background as I am …

41 Woo J clearly did not make any express or implied representation to the appellant that he would recuse himself from hearing the proceedings relating to the Mother's Estate. In SUM 3500, the appellant had requested that a Judge of Appeal hear his case, and Woo J merely considered his request. There was no rational basis for claiming that Woo J had made an offer to recuse himself. In fact, Woo J's reference to the possibility of "the next judge" hearing the case directly contradicts the appellant's allegation that Woo J had procured the proceedings involving the Mother's Estate to be fixed before him.

Allegation of lack of impartiality in relation to DCA 21 and OS 11

42 The appellant had alleged that there was prejudgment of OS 11 because OS 11 and DCA 21 were fixed to be heard on the same date. The Judge found that to be baseless and we agree. At the PTC, the AR had explained to the appellant that DCA 21 and OS 11 were fixed on the same day for expediency. He had also explained that "[i]n the event [OS 11] [was] granted in [the appellant's] favour, then the hearing of [DCA 21] [would not] take place until the orders in [OS 11] [were] complied [with]". The appellant agreed and stated that it was "fine by [him]".

43 The appellant submits that he had agreed to the fixing of OS 11 and DCA 11 on the same day because he had assumed that Woo J would have recused himself from hearing the Mother's Estate. We have found above that the appellant had no rational basis for such an assumption. In any event, we do not see how Woo J's recusal would support the appellant's allegation that fixing DCA 21 on the same day as OS 11 meant that there had been any pre-judgment in OS 11.

Conclusion on scandalising contempt

44 For the reasons above, we affirm the Judge's finding that the appellant is guilty of scandalising contempt.

Liability for contempt in the face of the court

45 Contempt in the face of the Court generally comprises the "unlawful interruption, disruption or obstruction of court proceedings" (*You Xin v Public Prosecutor and another appeal* [2007] 4 SLR(R) 17 at [17]). This may arise from any act, slander, and contemptuous utterance (*Koperasi Serbaguna Taiping Barat Bhd v Lim Joo Thong* [1999] 6 MLJ 38 at 55) and includes insulting or disrespectful behaviour (*Attorney-General v Chee Soon Juan* [2006] 2 SLR(R) 650 ("*Chee Soon Juan*") at [16]).

46 The appellant submits that he neither referred to the OS 165 Affidavits nor verbalised the Allegations made therein at the recusal hearing. Further, the Judge erred in finding that there were wilful insults to Woo J during the hearing of OS 165. We agree with the Judge that the appellant's filing of and reliance on the OS 165 Affidavits at the recusal hearing constitute contempt in the face of the Court. This is because the OS 165 Affidavits contained wilful insults which were placed before Woo J. There is no requirement that contemptuous statements have to be verbalised to constitute contempt in the face of the Court. The Allegations had caused Woo J to recuse himself for the purposes of filing a formal complaint against the appellant. This disrupted the recusal proceedings and delayed the hearings in relation to the Mother's Estate. As we have found above, the Allegations were baseless and do not constitute fair criticism. Therefore, we affirm the Judge's finding on liability for contempt in the face of the Court.

Sentence

47 The appellant submits that the Judge's imposition of a custodial sentence is manifestly excessive for the following reasons:

(a) the Judge's reliance on *Chee Soon Juan* and *Secretary for Justice v Choy Bing Wing* [2005] HKCU 1726 as sentencing precedents was misplaced as those cases are distinguishable;

(b) there was no evidence that he was defiant;

(c) there was no verbalisation of the contents of the OS 165 Affidavits at the recusal application; and

(d) the Allegations were neither outrageous or violent abuses, though they might be outspoken and strongly-worded.

48 We affirm the Judge's decision to sentence the appellant to seven days' imprisonment. First, the appellant is not a remorseful contemnor. The respondent had given him an opportunity to purge his contempt in May 2016 but he refused to do so (see [10] above). At the hearing of the appeals, the appellant said he would withdraw his contemptuous allegation in relation to the Order of Court only if this Court made certain affirmations to him (see [35] above). That is not a true apology or withdrawal. Further, in his Appellant's Case, he repeated the contemptuous allegations against Woo J and made criticisms of the Judge. Some of these criticisms include allegations that the Judge made "lame excuses" and "manufactured evidence" to justify his conviction. The appellant was clearly seeking to justify his conduct rather than accept that it was blame-worthy.

49 Second, the Allegations were not merely strongly-worded or outspoken as the appellant claims. They were allegations of dishonesty, impropriety and bias made in vituperative language. Each of the Allegations impugns the qualities of judicial independence and integrity, and the appellant had made a total of 18 of them.

50 Third, the sentencing precedents referred to by the Judge at [11]–[17] of the *Sentencing GD* support her imposition of a seven days' custodial sentence for contempt. Cases of this nature are very fact sensitive and distinguishing features can always be pointed out. However, the overall trend of the cases and the principles expressed in the same supported the conclusion the Judge came to. Indeed, the serious nature of the Allegations was such that some might think that if at all the Judge was in error on sentence, she erred on the side of leniency.

51 The appellant is a first-time contemnor, and the Judge took this mitigating factor into account. Had the appellant deliberately read out the Allegations in court (*eg*, as was done in *Chee Soon Juan*), it would undoubtedly have been an aggravating factor. The absence of such verbalisation, however, is not a mitigating factor.

Conclusion

52 We accordingly dismiss the appeals. We will hear the parties on costs.

Judith Prakash Judge of Appeal	Steven Chong Judge of Appeal	Quentin Loh Judge

The appellant in person;
Khoo Boo Jin, Elaine Liew, Lee Hui Min and Ashley Ong
(Attorney-General's Chambers) for the respondent.
