

**IN THE GENERAL DIVISION OF
THE HIGH COURT OF THE REPUBLIC OF SINGAPORE**

[2022] SGHC 140

Originating Summons No 825 of 2021

Summons Nos 4462 and 4680 of 2021

Between

- (1) Syed Suhail Bin Syed Zin
- (2) Moad Fadzir Bin Mustaffa
- (3) Hamzah Bin Ibrahim
- (4) Norasharee Bin Gous
- (5) Nazeri Bin Lajim
- (6) Rosman Bin Abdullah
- (7) Roslan Bin Bakar
- (8) Masoud Rahimi Bin Merzad
- (9) Zamri Bin Mohd Tahir
- (10) Fazali Bin Mohamed
- (11) Rahmat Bin Karimon
- (12) Ramdhan Bin Lajis
- (13) Jumaat Bin Mohamed Sayed
- (14) Muhammad Faizal Bin Mohd Shariff
- (15) Abdul Rahim Bin Shapiee
- (16) Muhammad Salleh Bin Hamid
- (17) Mohammad Reduan Bin Mustaffar

... Plaintiffs

And

Attorney-General

... Defendant

JUDGMENT

[Civil Procedure — Costs]

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Syed Suhail bin Syed Zin and others

v

Attorney-General

[2022] SGHC 140

General Division of the High Court — Originating Summons No 825 of 2021,
Summons Nos 4462 and 4680 of 2021

Valerie Thean J

16 December 2021, 18 May, 2 and 6 June 2022.

23 June 2022

Valerie Thean J:

1 This judgment deals with costs arising from Summons No 4462/2021 (“Sum 4462/2021”), Summons No 4680/2021 (“Sum 4680/2021”), and Originating Summons No 825 of 2021 (“OS 825/2021”, collectively with Sum 4462/2021 and Sum 4680/2021, the “three applications”). My reasons for these decisions were explained in my judgment on 2 December 2021 in *Syed Suhail bin Syed Zin and others v Attorney-General* [2021] SGHC 274 (“*Syed Suhail (OS 825/2021)*”).

2 In *Syed Suhail (OS 825/2021)*, parties were invited to submit on costs of the various applications within fourteen days. In written submissions dated 16 December 2021, the Attorney-General (the “AG”) sought for these costs to be borne personally, and jointly and severally, by Mr Ravi /so Madasamy (“Mr Ravi”) and Mr Cheng Kim Kuan (“Mr Cheng”). Both lawyers were from KK

Cheng Law LLC. Mr Ravi appeared for parties in the three applications while Mr Cheng had undertaken responsibility for Mr Ravi's work as a condition of Mr Ravi's practising certificate. Neither responded on behalf of the applicants. After a reminder from Registry, Mr Cheng responded by letter on 18 May 2022. A specific direction was thereafter sent to both Mr Cheng and Mr Ravi to show cause under O 59 r 8(1) of the Rules of Court (Cap 322, R 5, 2014 Rev Ed) (the "ROC") and to highlight any wish to be heard personally by the court. Mr Cheng responded on 2 June 2022 and the AG replied on 6 June 2022.

Background

3 The full facts are set out in *Syed Suhail (OS 825/2021)*. I recapitulate here in brief matters relevant to costs.

OS 825/2021

4 OS 825/2021 was filed on 13 August 2021 by 17 inmates of Changi Prison of Malay ethnicity. They were convicted of drug trafficking or drug importation under the MDA and sentenced to suffer death. The plaintiffs advanced allegations against both the AG, in the exercise of his prosecutorial discretion under Art 35(8) of the Constitution of the Republic of Singapore (1985 Rev Ed, 1999 Reprint) (the "Constitution"), and against officers in the Central Narcotics Bureau (the "CNB"), whom the AG represents in these proceedings under s 19(3) of the Government Proceedings Act (Cap 121, 1985 Rev Ed) ("the GPA").¹ The following declarations were sought:²

¹ Plaintiffs' Joint Affidavit at para 3.5.

² HC/OS 825/2021, Prayers 1–3.

- (a) a declaration that the AG acted arbitrarily against the plaintiffs as persons of Malay ethnicity, in breach of Art 9(1) of the Constitution, when prosecuting them for capital drug offences under the MDA;
- (b) a declaration that the AG discriminated against the plaintiffs as persons of Malay ethnicity, in breach of their rights to equal treatment under the law protected by Art 12(1) of the Constitution, when prosecuting them for capital drug offences under the MDA; and
- (c) a declaration that the AG exceeded his powers under Art 35(8) of the Constitution and/or ss 24–26 and 32 of the MDA, and acted unlawfully, through bias or by taking into account irrelevant factors when prosecuting the plaintiffs for capital drug offences under the MDA.

5 A supporting affidavit was filed jointly by the 17 plaintiffs on 13 August 2021. In response, the AG filed an affidavit from the AG and another from the Director of the CNB on 6 September 2021 refuting the allegations.

Sum 4462/2021

6 Sum 4462/2021 was filed on 24 September 2021. This was an application for leave to allow one Mr Muhammad Zuhairi bin Zainuri (“Mr Zuhairi”) to give oral evidence in support of the Plaintiff’s application in OS 825/2021.

7 The plaintiffs’ application was supported by an affidavit of the first plaintiff, Mr Syed Suhail bin Syed Zin (“Mr Suhail”). Exhibited in Mr Suhail’s affidavit were three police reports filed by Mr Zuhairi. These reports contained allegations that the CNB had adopted racially discriminatory practices in

investigating its *officers*. An affidavit affirmed by Mr Ravi (“Mr Ravi’s First Affidavit”) was also annexed, stating that Mr Zuhairi had informed Mr Ravi that he had “evidence on how the [CNB] management had generally discriminated against Malays and not just during internal investigations of officers”. If the application were granted, the plaintiffs would follow on with a request to issue a subpoena to secure Mr Zuhairi’s attendance in court. An affidavit in reply was filed by State Counsel Ms Regina Lim on 1 October 2021 (“Ms Lim’s Affidavit”), which exhibited a further five police reports filed by Mr Zuhairi between October 2019 and September 2021, including a police report filed by Mr Zuhairi on 24 September 2021 (“the Eighth Police Report”). In the Eighth Police Report, Mr Zuhairi denied making most of the statements attributed to him in Mr Ravi’s First Affidavit.

Sum 4680/2021

8 After Ms Lim’s Affidavit was filed, Sum 4680/2021 was filed on 8 October 2021. This was an application for leave to amend OS 825/2021 to include an additional prayer for a declaration that the AG and/or the State Counsel conducting OS 825/2021 had breached rr 15 and 29 of the PCR by filing Ms Lim’s Affidavit. It was contended this affidavit “occasion[ed] a breach of fair trial”. In support, Mr Suhail filed an affidavit on behalf of all the plaintiffs, contending that paragraph 9 of Ms Lim’s Affidavit, which stated that the Eighth Police Report “raises serious doubts about the veracity of the claims made in Mr Ravi’s affidavit and calls into question the entire basis for SUM 4462” (“Ms Lim’s Statement”), was an allegation that Mr Ravi had falsified the contents of the plaintiffs’ affidavits. He contended that, because of this, the State Counsel ought to have given notice to Mr Ravi and accorded him a chance to respond. Their not having done so, Mr Suhail deposed, raised questions about their impartiality.

Premise for costs orders

9 I heard and dismissed Sum 4462/2021 and Sum 4680/2021 with brief oral reasons on 14 October 2021, reserving the issue of costs to the hearing of OS 825/2021. OS 825/2021 was heard on 8 November 2021. In written judgment on 2 December 2021, I dismissed OS 825/2021 in *Syed Suhail (OS 825/2021)* and gave full reasons for the decisions in Sum 4462/2021 and Sum 4680/2021. I further directed counsel to address the court on costs of the various applications within 14 days.

10 Costs ordinarily follow the event. Arising from the various positions highlighted at [2], the issues were, first, whether either Mr Ravi and/or Mr Cheng ought to bear personal liability for those costs, and second, if so, the quantum of such costs.

Liability

11 Order 59 r 8(1) of the ROC empowers the court to direct solicitors to personally bear the costs of the opposing party where costs have been incurred “unreasonably or improperly” or have been “wasted by failure to conduct proceedings with reasonable competence and expedition”. The applicable three-step test was set out by Court of Appeal in *Munshi Rasal v Enlighten Furniture Decoration Co Pte Ltd* [2021] 1 SLR 1277 (“*Munshi Rasal*”) at [17], as follows:

- (a) Has the solicitor “acted improperly, unreasonably or negligently”?
- (b) If so, one moves on to the second consideration, which is whether such conduct by solicitor caused the other party to incur “unnecessary costs”?

(c) Again, if this is answered affirmatively, one proceeds to consider whether it is “in all the circumstances just” to order the solicitor to compensate the other party for the whole or any part of the costs incurred.

12 I consider the three applications with these principles in mind.

Was there unreasonable, negligent or improper conduct?

13 The first step involves a consideration of the three individual bases for personal liability, behaving “improperly”, “unreasonably”, or “negligently”. These words were interpreted as follows in *Ridehalgh v Horsefield* [1994] Ch 205 (“*Ridehalgh*”), at pp 232–233, and endorsed by the Court of Appeal in *Syed Suhail bin Syed Zin v Public Prosecutor* [2021] 2 SLR 377 at [20], as follows:

‘Improper’ ... covers, but is not confined to, conduct which would ordinarily be held to justify disbarment, striking off, suspension from practice or other serious professional penalty. It covers any significant breach of a substantial duty imposed by a relevant code of professional conduct. But it is not in our judgment limited to that. Conduct which would be regarded as improper according to the consensus of professional (including judicial) opinion can be fairly stigmatised as such whether or not it violates the letter of a professional code.

‘Unreasonable’ ... aptly describes conduct which is vexatious, designed to harass the other side rather than advance the resolution of the case, and it makes no difference that the conduct is the product of excessive zeal and not improper motive. But conduct cannot be described as unreasonable simply because it leads in the event to an unsuccessful result or because other more cautious legal representatives would have acted differently. The acid test is whether the conduct permits of a reasonable explanation. If so, the course adopted may be regarded as optimistic and as reflecting on a practitioner’s judgment, but it is not unreasonable.

...

... [The term] ‘negligent’ should be understood in an untechnical way to denote failure to act with the competence reasonably to be expected of ordinary members of the profession.

SUM 4462/2021

14 I explained in [11]–[15] of *Syed Suhail (OS 825/2021)* my reasons for dismissing Sum 4462/2021. In brief, Mr Suhail’s affidavit was irrelevant in many respects, covering Mr Zuhairi’s belief that there was racial discrimination by the CNB in relation to *officers of the Malay race* rather than the core issue in OS 825/2021, *ie*, discrimination in relation to *Malay capital drug offenders*: *Syed Suhail (OS 825/2021)* at [11]. The three police reports exhibited did not set out the full picture as evinced by all of Mr Zuhairi’s reports, which the AG then brought to the court’s attention by Ms Lim’s Affidavit. Mr Ravi’s First Affidavit contained sweeping generalisations that were unsubstantiated by any specific evidence. These bare allegations did not show that Mr Zuhairi was able to provide concrete evidence to address the issues in OS 825/2021, but reflected Mr Ravi’s unfounded assumptions: *Syed Suhail (OS 825/2021)* at [14]. That Sum 4462/2021 lacked proper foundation would have been apparent to a counsel exercising reasonable competence.

15 There were also various concerning features about the propriety of Mr Ravi’s conduct. *Ridehalgh* defined improper conduct as that which would be fairly stigmatised as improper according to the consensus of professional (including judicial) opinion whether or not it violates the letter of a professional code (at p 232). Mr Ravi chose not to rely on Mr Zuhairi’s evidence when OS 825/2021 was filed on 13 August 2021, despite having prior knowledge of Mr Zuhairi’s evidence. Instead, he waited until the AG filed reply affidavits to indicate that additional evidence was necessary.³ Further, Mr Zuhairi had

³ PWS at paragraph 5.

declined to depose an affidavit in support of OS 825/2021 on 12 August 2021 (the day before OS 825/2021 was filed), and had not agreed for the information he conveyed to Mr Ravi to be used in OS 825/2021. Mr Zuhairi's rejection on 12 August 2021 only came to light because of a subsequent affidavit made by an employee of the plaintiffs' law practice, Mr Kerk Cheng Yi @ Guo Rendi ("Mr Kerk's Affidavit"), which sought to discredit the Eighth Police Report. There, a WhatsApp conversation reflecting Mr Zuhairi's reluctance was exhibited.⁴ While this is not an application in which to make a definitive finding, there was certainly sound basis to the AG's contentions that Mr Ravi had flouted the Legal Profession (Professional Conduct) Rules 2015 (S 706/2015) ("PCR"): first, Mr Ravi breached the duty of confidentiality by disclosing privileged communications made to him by Mr Zuhairi under r 6 of the PCR; and second, Mr Ravi failed to address the issue of a potential breach of r 21 of the PCR by placing himself in a position of conflict of interest by seeking to discredit Mr Zuhairi, his former client, in favour of the plaintiffs in SUM 4462/2021, his current clients.

16 In my judgment, therefore, Mr Ravi had acted in a manner that was unreasonable, negligent *and* improper in the conduct of Sum 4462/2021.

SUM 4680/2021

17 I explained at [17]–[23] of *Syed Suhail (OS 825/2021)* how Sum 4680/2021 was misconceived. The proper authority to which a breach of the PCR should be directed would be the Law Society: *Then Khek Koon and another v Arjun Permanand Samtani and another* [2012] 2 SLR 451 at [22]. The assertions of disciplinary breaches against the filing of Ms Lim's Affidavit

⁴ Mr Kerk's Affidavit dated 8 October 2021 at Annex B.

were vague and speculative. Being allegations of disciplinary breaches, they were also irrelevant to the determination of OS 825/2021, which dealt with whether the prosecution of the Plaintiffs for capital drug offences was irrational, illegal or unconstitutional. Any legal practitioner should have researched the point and been aware of this prior to filing Sum 4680/2021.

18 Again, while this is not the forum for making a definitive finding on her conduct, Ms Lim's Statement was made in order to point out the evidential difficulties in the application and to highlight that the Eighth Police Report casts doubt on Mr Ravi's claims that he was authorised to disclose information that Mr Zuhairi purportedly related to him, rather than making a specific allegation against Mr Ravi. There was no sensible or rational explanation for the assertion that Ms Lim's Statement endangered a fair trial of the matter.

19 Sum 4680/2021 was simply a distraction from the proper adjudication of OS 825/2021. The application was unreasonable, negligent, and, when viewed against its factual background, improper.

OS 825/2021

20 The prayers for the various declarations were dismissed in *Syed Suhail (OS 825/2021)*. I explained at [39]–[99] why the application lacked basis. I further found, at [100] – [106], that OS 825/2021 was an abuse of process. These reasons were summarised as follows at [104]– [105]:

104. Nevertheless, it is well established that proceedings which are manifestly groundless or without foundation are an abuse of the process of the court: *Miya Manik* at [64]. It is in light of the speculative nature of this case that I consider the argument on abuse of process. First, an analysis of the statistical basis of the plaintiffs' case reveals that the premise of their case is logically flawed. The plaintiffs sought to argue that statistical disparities, without more, may suffice to establish a *prima facie* case of discrimination. This causal link is obscure. They have,

in essence, asked the court to act on conjecture. Second, the plaintiffs have made no genuine effort to consider or explain how the legal requirements for the grant of declaratory relief, as well as for each of the three declarations sought, are met. Instead, they have baldly mischaracterised *Eng Foong Ho* and cited foreign cases without any responsible attempt to argue how the reasoning in these cases applies within the legal framework set out in our local jurisprudence on the relevant provisions of our Constitution. And, prior to the hearing of OS 825, I dealt with two interlocutory applications which were also patently groundless (see [5]–[23] above).

105. In the multi-cultural setting that forms the background to this application, serious allegations concerning ethnicity and equality ought not to be made without due care and diligence, particularly in cases where life and liberty are at stake. Judicial processes furnish specific remedies to plaintiffs who seek recourse premised on specific evidence of unlawfulness. The court exists as a forum for the assessment of facts, inferences to be drawn from facts, and the grant of particular relief within the framework laid down by existing case law and statute. The law develops in the specific context of the evidence adduced in each case by the parties before the court. It is disrespectful to the court process to bring before the court speculative assertions, conjecture cloaked in general interest, and cases that a cursory reading would show to be irrelevant. Fundamental to such misuse of the court's process is the diversion of valuable public resources away from the deserving litigants whom the court exists to serve. Public resources are finite: the cost of manifestly unmeritorious claims is borne by the community as a whole.

21 Before I close on the first limb of the *Munshi Rasal* test, I would add that Mr Ravi's appearances on 14 October and 8 November 2021 were peppered with irrelevant social comment. These included, for example, whether Mr Ravi was barred from being Prime Minister on the ground of his ethnicity. Added to this were various inappropriate statements, such as that more care should be taken because the Malaysian government had an interest in the proceedings. On 8 November, such unhelpful remarks included a personal insult targeted at counsel for the AG (which does not bear repetition). Even more concerning is that Mr Ravi wholly failed to submit on the question of costs, despite his acknowledgment when I informed counsel on 8 November 2021 that I would

ask counsel to submit on costs in my judgment, which I thereafter followed on to direct on 2 December 2021. While his silence in the face of the court's later specific direction to him to show cause affects solely his own interest, his earlier silence on behalf of his clients was inexcusable, because costs ordinarily follow the event, and his clients were at risk of being disadvantaged on the issue of costs.

Were there unnecessary costs?

22 The second limb of the *Munshi Rasal* test is related to the first. I have found the three applications wholly unmeritorious, and that the lack of merit would have been patent to reasonable and competent counsel. As the AG's costs need not have been incurred but for the improper, unreasonable and negligent conduct of Mr Ravi, it follows that such costs were incurred unnecessarily.

What orders would be just?

23 There are two issues at hand on this question. First, what proportion of costs ought to be borne by counsel? Here, it is just for the whole of the costs to be borne by counsel. Guidance may be drawn from *Munshi Rasal*, where the Court of Appeal ordered a solicitor to bear the entire costs of a misconceived appeal personally in light of the vulnerabilities of his client, who was a foreign worker unfamiliar with the intricacies of the legal system and yet had to suffer a huge disservice at the hands of his solicitor who had given him false expectations that there was a legitimate basis for an appeal: *Munshi Rasal* at [14]–[16] and [21]. In the same way, inmates facing capital punishment ought not to be subjected to false expectations created without legal and factual foundation.

24 The second issue is whether these costs should be borne jointly and severally by Mr Ravi and Mr Cheng. As one of the terms of Mr Ravi's conditional Practising Certificate, Mr Cheng had given a professional undertaking to supervise Mr Ravi. His name was on the cause papers. The import of Mr Cheng's letters of 18 May 2022 and 2 June 2022 was that he had wholly failed to supervise Mr Ravi. While Mr Cheng asked for an order that he only bear a portion of costs, citing the order made by the Court of Appeal in *Nagaenthran a/l K Dharmalingam v Attorney-General* [2022] SGCA 44, the circumstances in that case were different. There, Mr Ravi and Ms Violet Netto had conduct of the case at different points in time. Thus, each was responsible for the period of time within his or her remit. In the present circumstances, where Mr Cheng was professionally bound to supervise the whole of Mr Ravi's work and appeared to not have been aware of any of it, it is just for liability to be joint and several.

Quantum

25 The three applications involved the consideration of affidavits filed in support of them and necessitated that affidavits be filed in reply, the preparation of written submissions for each application, the attendances at pre-hearing conferences before an assistant registrar and myself, and two oral hearings on 14 October 2021 and 8 November 2021. The AG asked for costs as follows:

- (a) in relation to OS 825/2021, costs fixed at \$14,000 and reasonable disbursements;
- (b) in relation to SUM 4462/2021, costs fixed at \$6,000 (inclusive of disbursements); and
- (c) in relation to SUM 4680/2021, costs fixed at \$2,000 (inclusive of disbursements).

26 While the proposal was largely reasonable, the three applications were related, and the two interlocutory summonses were heard together. In view of the various affidavits, submissions and attendances, I find it appropriate to order as follows:

- (a) for OS 825/2021, costs are fixed at \$14,000 (inclusive of disbursements);
- (b) for SUM 4462/2021, costs are fixed at \$4,000 (inclusive of disbursements); and
- (c) for SUM 4680/2021, costs are fixed at \$2,000 (inclusive of disbursements).

Conclusion

27 Costs of the three applications, fixed at \$20,000, are to be borne personally by Mr Cheng and Mr Ravi jointly and severally.

Valerie Thean
Judge of the High Court

Ravi s/o Madasamy and Cheng Kim Kuan (K K Cheng Law LLC)
for the plaintiffs;
Deputy Attorney-General Tai Wei Shyong, Ng Yong Kiat Francis
SC, Lim Siew Mei Regina and Ting Yue Xin Victoria (Attorney-
General's Chambers) for the defendant.