Re Caplan Jonathan Michael QC
[2006] SGHC 125

Case Number : OS 1176/2006

Decision Date : 19 July 2006

Tribunal/Court : High Court

Coram : Tan Lee Meng J

Counsel Name(s) : Christopher Tan Teow Hin and Paul Ong Min-Tse (Allen & Gledhill) for the applicants; Kelvin Tan Teck San for the Law Society of Singapore; Dominic Zou (State Counsel) for the Attorney-General

Parties : —

Legal Profession – Admission – Ad hoc – Application of Queen's Counsel – Three-stage test – Case must be of sufficient difficulty and complexity and court must have regard to the circumstances in the case – Whether application raised issues of law or fact of sufficient difficulty or complexity – Whether circumstances of the case justify admission of Queen's Counsel – Section 21 Legal Profession Act (Cap 161, 1990 Ed)

19 July 2006 *Judgment reserved.*

Tan Lee Meng J:

1 The applicant, Mr Jonathan Michael Caplan, a Queen's Counsel, applied under s 21 of the Legal Profession Act (Cap 161, 2001 Rev Ed) ("LPA") to practise as an advocate and solicitor for the purpose of arguing the appeal of one Mr Saimee bin Jumaat ("Mr Saimee"), a jockey with the Singapore Turf Club ("STC"), who had been suspended for one year following a disciplinary inquiry conducted by the STC's Stipendiary Stewards.

2 Mr Saimee was charged with breaching rule 144(2) of the Malayan Racing Association Rules of Racing ("MRA Rules"), which requires the rider of every horse to take all reasonable and permissible measures throughout the race to ensure that his horse is given full opportunity of winning or of obtaining the best possible placing in the race. It was alleged that he failed to take all reasonable and permissible measures to ensure that Diamond N Ace, the horse he was riding in the tenth race of the STC Meeting on 18 February 2006, was given every opportunity of winning that race or of obtaining the best possible placing in that race. As it turned out, his horse was placed fourth in that race.

3 A Stipendiary Stewards' inquiry was convened to investigate the case. The inquiry was held on 23 February 2006, 2 March 2006 and 23 March 2006. It was alleged that when riding Diamond N Ace at the material time, he failed to ride with sufficient vigour and determination from near the 450m mark until near the 300m mark and that he also failed to attempt to go to the outside of another horse, Little Wizard, from near the 450m mark until near the 300m mark when there was an opportunity and it was reasonable to do so.

4 Mr Saimee was not legally represented at the inquiry but he called an expert, Mr Ivan Allan, to testify at the inquiry. At the conclusion of the hearing, the Stipendiary Stewards found Mr Saimee guilty of breaching rule 144(2) of the MRA Rules. Pursuant to rule 144(5) of the MRA Rules, he was disqualified from riding for one year.

5 Mr Saimee exercised his right to appeal against the decision of the Stipendiary Stewards. His grounds of appeal are as follows:

(a) The Stipendiary Stewards erred in convicting the Appellant under MRA Rule 144(2) as there was no evidence that showed beyond any reasonable doubt that the Appellant had not taken all reasonable and permissible measures throughout the race to ensure that his horse is given full opportunity of winning or of obtaining the best possible place;

(b) The Stipendiary Stewards ought to have accepted the evidence and the explanations of the Appellant in respect of his riding of DIAMOND N ACE in the Race, which evidence and explanations clearly showed that he had ridden DIAMOND N ACE to the best of his ability taking into due consideration all the factors and situations prevalent throughout the race and the performance of DIAMOND N ACE[;]

(c) The Stipendiary Stewards failed to give due weight to the evidence and opinion of Mr Ivan Allan, who was called by the Appellant to testify as a defence witness when his said evidence was fair and credible; and

(d) The Stipendiary Stewards failed to consider that the fourth placing of DIAMOND N ACE in the race was the best result that the said horse could have achieved considering that the horse was inclined to hang in during the race and this important factor in no small measure contributed to his resultant fourth placing.

6 Mr Saimee's appeal will be heard by the STC's Racing Stewards on a date to be fixed. Rule 5B(3) of the MRA Rules provides that for the purpose of an appeal, the Racing Stewards may, in their absolute discretion, permit any person to be represented by "a member of the legal profession". Mr Saimee wishes to be represented at the appeal by Mr Caplan. Hence, this application for Mr Caplan to be admitted on an *ad hoc* basis to the Bar.

7 Section 21 of the LPA, which concerns the admission of Queen's Counsel, provides as follows:

(1) Notwithstanding anything to the contrary in this Act, the court may, for the purpose of any one case where the court is satisfied that it is of sufficient difficulty and complexity and having regard to the circumstances of the case, admit to practise as an advocate and solicitor any person who —

(a) holds Her Majesty's Patent as Queen's Counsel;

(b) does not ordinarily reside in Singapore or Malaysia but who has come or intends to come to Singapore for the purpose of appearing in the case; and

(c) has special qualifications or experience for the purpose of the case.

8 The purpose and ambit of s 21 of the LPA has been considered by the courts on innumerable occasions. In *Re Oliver David Keightley Rideal QC* [1992] SLR 400, Chan Sek Keong J (as he then was) said at 402, [8]:

The object of [s 21] was to lay the foundation for the development of a strong local bar by the imposition of more stringent conditions for the admission of Queen's Counsel to appear in our courts, but at the same time, to continue to allow litigants to avail of their services in appropriate cases.

9 When considering applications for the *ad hoc* admission of a Queen's Counsel, the courts

have adopted what has been termed a "three-stage test". In *Re Caplan Jonathan Michael QC (No 2)* [1998] 1 SLR 440, the Court of Appeal explained at [11]:

> The requirements of [s 21 of the LPA] were considered at length by the Court of Appeal in *Price Arthur Leolin v A-G & Ors* [1992] 2 SLR 972. In its judgment, the court articulated a three-stage test for admission under s 21(1). At the first stage, the applicant must demonstrate that the case in which he seeks to appear contains issues of law and/or fact of sufficient difficulty and complexity to require elucidation and/or argument by a Queen's Counsel. Such difficulty or complexity is not of itself a guarantee of admission, for the decision to admit is still a matter for the court's discretion. At the second stage, therefore, the applicant must persuade the court that the circumstances of the particular case warrant the court exercising its discretion in favour of his admission. Finally, he has to satisfy the court of his suitability for admission.

10 The problem with the present application is that it could not pass the test at the first stage. In *Price Arthur Leolin v Attorney General* [1992] 2 SLR 972, the Court of Appeal elaborated on what is required at the first stage and noted at 976, [8]:

> In our opinion, it is clear from the wording of s 21(1) that Queen's Counsel will not be admitted for the routine and the ordinary cases which require no special experience or knowledge and which can be competently handled by Singapore lawyers. The salutary effect of s 21(1) therefore is that litigants are assured of the specialized services of Queen's Counsel in cases of genuine complexity and difficulty, while the opportunities for specialization among Singapore lawyers are gradually developed.

11 In his affidavit filed on 14 June 2006 in support of the application, the instructing solicitor, Mr Christopher Tan Teow Hin, submitted that the issues of fact to be addressed at the appeal are sufficiently difficult and complex to warrant the admission and assistance of Mr Caplan. He pointed out that whether or not Mr Saimee's assertion that he had ridden Diamond N Ace to the best of his ability is to be believed involves many factors, including the following:

(a) the training that the horse received prior to the race;

(b) the natural behavioural patterns of the horse;

(c) the condition of the horse at the material time;

(d) the condition of the jockey at the material time;

(e) the weight of the jockey and its impact on the performance of the horse;

(f) the conduct of the jockey in the circumstances at the material time; and

(g) the conduct of the other competitors in the circumstances at the material time.

12 Mr Tan argued that in order to present an effective case on Mr Saimee's behalf, the counsel in question would have to possess a sound understanding of how the various factors listed above interact and affect the course of a race. In his view, Mr Caplan, who has been involved in a number of cases involving competitive horse racing, has extensive knowledge of this area and is well qualified to argue Mr Saimee's appeal against the decision of the STC's Stipendiary Stewards.

13 While the views of instructing solicitors are relevant, it is pertinent to note that both the

Attorney-General and the Law Society of Singapore opposed the application on solid grounds. State Counsel Mr Dominic Zou said that the Attorney-General opposed the application to admit Mr Caplan because the case is not one of sufficient difficulty and complexity. He pointed out that the affidavit filed by Mr Christopher Tan in support of the application did not contend that Mr Saimee's appeal is beyond the capabilities of local counsel and added that local counsel have appeared in a number of cases pertaining to horse racing, including *Kok Seng Chong v Bukit Turf Club* [1993] 2 SLR 388, *Ang Ah Lah Richard v Singapore Turf Club* [2001] SGHC 71 and *Bernard Desker Gary v Thwaites Racing Pte Ltd* [2003] SGHC 175.

14 Mr Kelvin Tan Teck San, who appeared for the Law Society, pointed out that the grounds of appeal do not raise any issues of law and also submitted that the Mr Saimee's appeal to the Racing Stewards of the STC does not raise any difficult or complicated issues. He added that considering the availability of local counsel and the nature of the appeal, "it would be excessive and contrary to the spirit and intent of section 21(1) of the LPA to admit any Queen's Counsel" to represent Mr Saimee.

15 All that the STC's Racing Stewards have to decide at the appeal is whether or not Mr Saimee took all reasonable and permissible measures throughout the race to ensure that his horse was given full opportunity of winning or of obtaining the best possible placing. If Mr Saimee wishes to be represented by counsel, I see no reason why his appeal cannot be argued by a local counsel, to whom Mr Caplan may offer his advice. It is worth noting that in *Re Flint Charles John Raffles QC* [2001] 2 SLR 276 at [9], Lai Kew Chai J rightly pointed out that the local Bar has matured and that there is now a body of Senior Counsel, potential Senior Counsel and an impressive group of young advocates and solicitors with excellent academic credentials. Taking all circumstances into account, this is clearly not a case for the admission of a Queen's Counsel. The application to admit Mr Caplan is thus dismissed with costs.