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

[2021] SGHC 160

Civil Revision No 1 of 2021

In the matter of Section 25 and/or Section 27 of the Supreme Court of Judicature Act (Cap 322)

And

In the matter of DC/SUM 1272/2021 and DC/SUM 1311/2021 in DC/PHA 82/2020

Between

Balqis-Maimon Abd Rahman

… *Applicant*

And

(1) Soekiman Bin Parjo
(2) Rizman Bin Soekiman
(3) Fatimah Bte Abdullah

… *Respondents*

EX TEMPORE JUDGMENT

[Courts and Jurisdiction] — [High Court] — [Civil revision proceedings]

Balqis-Maimon Abd Rahman
v
Soekiman bin Parjo and others

[2021] SGHC 160

General Division of the High Court — Civil Revision No 1 of 2021
Vincent Hoong J
28 June 2021

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Vincent Hoong J (delivering the judgment of the court *ex tempore*):

1 The hearing before me today concerns two orders made by a Deputy Registrar of the State Courts in the context of proceedings in the District Court under s 12 of the Protection from Harassment Act (Cap 256A, 2015 Rev Ed) ("POHA"). These orders, which I will refer to collectively as "the Orders", implicitly and expressly granted leave for the applicant's gender to be changed from male to female.

2 The Orders were subsequently brought to my attention by the Deputy Registrar in a letter dated 7 June 2021 when he formed the view that he had no power to make any order permitting or endorsing a change of gender, either for the purposes of the proceedings before him or otherwise. I called for the record of the proceedings under s 27 of the Supreme Court of Judicature Act (Cap 322, 2007 Rev Ed) ("SCJA") to enable me to consider whether any orders or directions needed to be made in the interests of justice. Having considered the

record as well as the submissions of the applicant and the Attorney-General ("A-G"), it is clear to me that the Orders were made without any legal basis and ought to be set aside.

Background

3 The proceedings in the District Court were commenced by the applicant under s 12(1) of the POHA. In those proceedings, the applicant seeks orders that, amongst other things, the respondents be prohibited from harassing the applicant, stalking the applicant using tracking devices, and hacking the applicant's social media accounts.[1] The applicant filed a number of applications in the District Court, three of which are relevant for present purposes.

4 The first was an application to amend the applicant's name by deed poll. The Deputy Registrar made an order permitting the applicant to amend "his name" as stated in the cause papers to "Balqis-Maimon Abd Rahman" (the "December 2020 Order").[2] There is no dispute that this order was correctly made, as it was supported by an affidavit annexing the applicant's national registration identity card ("NRIC"), bearing that name, as well as a deed poll reflecting a change in name from "Mohd Bakhit Bin Abd Rahman" to "Balqis-Maimon Abd Rahman."[3]

5 The applicant thereafter filed an *ex parte* application seeking leave to amend "*her* name from Mohd Bakhit Bin Abd Rahman to Balqis-Maimon Abd Rahman" [emphasis added]. The Deputy Registrar granted the order sought

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1 Record of Proceedings ("ROP") at p 1.

2 ROP at p 58.

3 ROP at pp 36 to 40.

("the March 2021 order").[4] The A-G submits that the March 2021 order can be interpreted in two ways. Specifically, it can be interpreted as being limited to permitting the applicant's name to be amended, or alternatively, as implicitly recognising the applicant as a female. According to the A-G, the former interpretation would mean that the order was "entirely superfluous and should not have been made", whereas the latter interpretation would mean that the Deputy Registrar lacked jurisdiction, as well as the factual and procedural basis, to make the March 2021 Order.[5] In my view, the latter or "wider" interpretation is more consonant with both the terms of the order, which used the female pronoun, as well as the affidavit filed in support of the application, which provided the basis for the order to be granted. In particular, the supporting affidavit annexed medical reports from doctors whose opinions were that the applicant was a male to female transgender individual. In these reports, the doctors also asked that the applicant be treated as a female as this was what the applicant desired.[6] In this context, the order made implicitly endorsed or recognised a change in the gender of the applicant from male to female, and was not merely limited to granting leave to change the applicant's name in the proceedings.

6 On 30 March 2021, the applicant filed a further *ex parte* application seeking "[l]eave … to change the gender of the applicant from Male to Female". The Deputy Registrar similarly granted an order in terms of this application ("the April 2021 Order").[7] The applicant subsequently brought the April 2021 Order to the Immigration and Checkpoint Authority ("ICA") and asked for a

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4 ROP at p 59.

5 A-G's submissions at paras 19 to 26.

6 ROP at pp 45 to 47.

7 ROP at p 60.

change in the gender reflected on the applicant's NRIC. At a pre-trial conference on 13 April 2021, the applicant sought the Deputy Registrar's assistance to require the ICA to change what was reflected on the applicant's NRIC. The applicant told the Deputy Registrar: "now the court recognises me as a woman, I went to the ICA". The applicant recounted that "they [meaning the ICA] need a stronger reference from the court". The applicant thus asked the Deputy Registrar: "maybe the court order, you want to address to [the] ICA". The Deputy Registrar rejected the request and explained that the courts had recognised the applicant as a female "just for the purposes of [the POHA] proceedings."[8]

7 Under ss 24 and 27(2) of the SCJA, the General Division of the High Court ("General Division") may call for the records of any matter or proceeding in the State Courts on its own motion. Sections 25 and 27(2) then provide that the General Division may, having called for the record, remove the matter or proceeding into the General Division, give to the subordinate court such directions as to the further conduct of the matter or proceeding as justice may require, or give such orders as seem necessary to secure that substantial justice is done. On a perusal of the letter from the Deputy Registrar, it was clear to me that there were serious questions as to whether or not the Orders had been correctly made. I therefore called for the record of proceedings in respect of which the Orders were made. Having reviewed the record, it appeared that the Orders might have to be set aside in the exercise of my revisionary powers as a Judge sitting in the General Division.

8 Given that s 28(2) of the SCJA provides that no final order shall be made to the prejudice of any person unless that person has had the opportunity of

[8] ROP at pp 73 and 74.

being heard, I invited submissions on the questions as to whether there was any legal basis for the Deputy Registrar to grant the Orders and whether the Orders should be set aside by the General Division. Submissions were invited not only from the applicant, but also from the A-G, as it represents the ICA, which could potentially be prejudiced by any orders made in these revisionary proceedings.

My decision

9 In my view, two main questions arise for determination in the present case. First, whether there was any basis for the Deputy Registrar to grant the Orders; and second, whether the Orders should be set aside. I will address each of these issues in turn.

Whether there was any basis for the Orders to be made

10 For the purposes of the present proceedings, the applicant tendered documents such as medical reports and a letter from a Member of Parliament ("the MP") to the ICA, in which the MP stated that the applicant was requesting a change of gender on the applicant's NRIC and on the "records". The submissions made by the applicant, who is unrepresented, are directed at persuading me that it would be prejudicial to set aside the Orders, that the applicant should be recognised as a female, and that various other individuals and organisations have done so as well. These, however, do not address the key question as to whether there was any legal basis for the Orders to be made.

11 Aside from the argument that the March 2021 order was superfluous, the A-G also argues that the Orders were legally defective as:

(a) The courts do not have the power or jurisdiction to decide issues relating to a change of the applicant's gender, which instead lies with

the "registration officer" pursuant to reg 10 of the National Registration Regulations (Cap 201, Rg 2, 1990 Rev Ed) ("NRR").

(b) There was no factual basis upon which to make such an order as the applicant's NRIC stated the applicant's sex to be "male", and there was no evidence that this had been changed to "female" in accordance with the law. There was also no explanation provided regarding the exhibits to the supporting affidavit.

(c) The applications did not fall under any of the categories of interlocutory applications permitted under O 109 of the Rules of Court (Cap 322, R 5, 2014 Rev Ed) ("ROC"), were not connected to the main POHA action, and were improper or an abuse of process.

12 It is useful to begin by considering the nature of the orders made, which presents some difficulty. I readily accept that these cannot be properly characterised as interlocutory orders, in that they were not peripheral to the main hearing, nor did they deal with procedural matters that prepared the case for hearing (see *Dorsey James Michael v World Sport Group Pte Ltd* [2013] 3 SLR 354 at [58] and [59]). As I have noted above, while the March 2021 Order, on its face, gave the applicant leave to amend "her" name, it is clear both from the plain language of the order made, as well as from the supporting affidavit which provided the basis for the order, that this was not an ordinary application to amend, for instance, the *ex parte* originating summons. Equally, however, while it implicitly recognised the applicant as being a female, it stopped short of being a *declaratory* order. The March 2021 Order did not, for instance, purport to make a binding declaration of contested legal rights of the parties represented in the litigation (see *Salijah bte Ab Latef v Mohd Irwan bin Abdullah Teo* [1995] 3 SLR(R) 233 at [17]). In this connection, I note also that the Court of Appeal

explained in *Tan Eng Hong v Attorney-General* [2012] 4 SLR 476 at [132] that a requirement before declaratory relief can be granted is the existence of a real controversy between the parties to an action, citing *Russian Commercial and Industrial Bank v British Bank for Foreign Trade, Limited* [1921] 2 AC 438 at 448 for the proposition that "the person raising [the question] … must be able to secure a proper contradictor, that is to say, some one presently existing who has a true interest to oppose the declaration sought." In the present case, no binding declaration, much less of a contested legal right, was made by way of the March 2021 Order. The April 2021 Order was similarly not declaratory in nature: it instead granted *leave* to the applicant to effect a change in gender.

13 The difficulty that follows from the above is that there is simply no provision in the State Courts Act (Cap 321, 2007 Rev Ed), or indeed any written legislation I am aware of, that would have empowered the Deputy Registrar to grant the orders sought. The District Court is a creature of statute – its jurisdiction and powers are therefore subject to what has been conferred on it by the relevant applicable written laws (*Public Prosecutor v Quek Chin Chuan* [2000] 2 SLR(R) 138 at [9]; *Jeff Chou Enterprise Co Ltd v Ban Choon Marketing Pte Ltd and another* [2010] SGDC 13 at [16]; *The Redwood Tree Pte Ltd v CPL Trading Pte Ltd* [2009] SGDC 204 at [11]; *Shahab Uddin Miah Borkot Ali Matbor v Kao Lee Aluminium Industrial Pte Ltd* [2010] SGDC 151 at [13]). I have not been pointed to any authorities or statutes which would confer upon the Deputy Registrar the power to grant leave to the applicant to change gender from male to female, or to endorse a change in gender on the basis of the medical reports and deed poll produced. Indeed, it appears that no such authority, legislative or otherwise, exists.

14 In this specific case, where the Orders were made in the context of POHA proceedings, it is even clearer that the court had no such power. Nothing

in the POHA empowers the court to make an order granting leave for a change in gender of any of the parties to the proceedings. Further, under s 19(1) of the POHA, the Rules Committee constituted under s 80(3) of the SCJA is itself only empowered to make Rules of Court to regulate and prescribe the *procedure and practice* to be followed in respect of civil proceedings under the POHA. Consistent with this, O 109 of the ROC does not provide for any power to grant leave for a change in the gender of any party. For instance, O 109 r 2(7)(*a*), which provides that the court may give such directions for the hearing of the application as it thinks fit, does not confer powers to make the Orders, which are of a wholly different nature. In this regard, O 109 r 6 makes clear that the directions envisaged under O 109 r 2(7)(*a*) are in the nature of case management directions, such as the timelines for the filing of various documents or restrictions on the publication of certain information. As such, although the Deputy Registrar subsequently clarified that the Orders only meant that the applicant was recognised as a female for the purposes of the proceedings before him (see [6] above), this did not detract from the fact that he did not have the power to make even this more limited order. In any case, the Orders which were extracted did not contain any such qualification.

15 It further appears from the MP's letter produced (see [10] above), the applicant's attempts to have the ICA recognise the April 2021 Order and the request at the pre-trial conference of 13 April 2021 for an order addressed to the ICA, that what the applicant might have intended, by way of the Orders, was to seek a change of gender on the register maintained under the National Registration Act (Cap 201, 1992 Rev Ed) ("NRA") or on the applicant's NRIC. In so far as this may have been the case, it is evident from the legislative scheme in the NRA and the NRR that this would not be a decision for the courts, but rather, for the Executive. As the A-G notes, it appears that pursuant to reg 10(2)

of the NRR, it is the registration officer who, if satisfied that any particulars stated on an individual's identity card are incorrect, may issue him with a replacement. Further, under s 4(1) of the NRA, it is the Commissioner of National Registration ("the Commissioner") who must cause to be kept and maintained a register of all persons in Singapore who are registered or required to be registered. In particular, the register has to contain the name and gender of every person registered (see s 4(2) of the NRA). It is evident from these provisions that whether any changes ought to be made to an individual's gender, as stated either in the register or in his or her NRIC, is an Executive decision to be taken by the Commissioner and the officers appointed by him. The NRA and the NRR do not provide any avenue by which the court may compel or order a change in an individual's gender, and accordingly, the courts have no powers to make any such order.

Whether the Orders should be set aside

16 Having determined that the Deputy Registrar had no power to make the Orders, I turn now to consider whether the Orders should be set aside. Under s 25 of the SCJA, the General Division may give such orders in any civil proceedings in a subordinate court which seem necessary to secure that substantial justice is done. In *Ng Chye Huey and another v Public Prosecutor* [2007] 2 SLR(R) 106 ("*Ng Chye Huey*") at [46], the Court of Appeal referred to Tan Yock Lin, "Appellate, Supervisory and Revisionary Jurisdiction" in ch 7 of *The Singapore Legal System* (Walter Woon ed) (Longman, 1989) at pp 233–234) for the propositions that, *inter alia*, revision lies on errors of law and fact and is marked by complete flexibility of remedies. It is also well-established that the revisionary powers conferred by the SCJA are to be exercised sparingly and such powers should not be invoked merely because the court below had taken a wrong view of the law or failed to appreciate the evidence (*Ng Chye*

Huey at [73]). Rather, the revisionary jurisdiction of the General Division should only be exercised in exceptional cases where there is serious injustice and it is shown that there is something "palpably wrong in the decision that strikes at its basis as an exercise of judicial power by the court below" (see *Ang Poh Chuan v Public Prosecutor* [1995] 3 SLR(R) 929 ("*Ang Poh Chuan*") at [13] and [17] cited in *Ng Chye Huat* at [75]; *Oon Heng Lye v Public Prosecutor* [2017] 5 SLR 1064 ("*Oon Heng Lye*") at [14] and [15]).

17 I illustrate this by way of an example. For instance, if I had held that the March 2021 order was merely superfluous because the applicant had already executed a deed poll to effect a change of name and obtained the December 2020 Order (see the "narrow" interpretation proffered by the A-G at [5] above), this would not in my view have justified the exercise of this court's revisionary jurisdiction. While it is certainly correct to say that the courts do not entertain theoretical or hypothetical issues, as the A-G submits, the making of a superfluous order would almost by definition result in no injustice, in so far as such an order merely reiterates the *status quo*.

18 However, it is significant to note that, at least in the criminal context, a "usual area" for the exercise of revisionary jurisdiction is where it is alleged that the judge below had acted outside his jurisdiction (see K Muralidharan Pillai and Luo Qinghui, "Revisiting the High Court's Revisionary Jurisdiction to Enhance Sentences in Criminal Cases" (2009) 21 SAcLJ 135 at p 136). For instance, in *Public Prosecutor v Nyu Tiong Lam and others* [1995] 3 SLR(R) 788 (cited in *Ang Poh Chuan* at [20]), the District Judge applied to the High Court, seeking the exercise of its powers of revision on the basis that he had erred in imposing fines which exceeded the sentencing jurisdiction of a Magistrate's Court. The High Court in that case exercised its revisionary powers in, *inter alia*, ordering the refund of the fines paid in excess of the applicable

limit. Similarly, in *Public Prosecutor v Lee Wei Zheng Winston* [2002] 2 SLR(R) 800, the High Court reinstated the original sentence imposed on an accused person as the District Judge had altered and reduced the sentence without any power to do so. In holding that there was "sufficient injustice" (at [12]) to warrant the exercise of the court's revisionary powers, the High Court noted that the District Judge had no power to alter the sentence imposed, and that there was serious injustice as the amended sentence was not commensurate with the culpability of the respondent, which therefore violated the principle of parity (at [13]-[15]). However, it is clear that the mere fact that an order had been made by a subordinate court without the power to do so does not on its own necessarily mean that revisionary powers should be exercised (*Oon Heng Lye* at [42] and [43]). The touchstone for the exercise of the powers of revision remains serious injustice.

19 As it appears that there has been no published decision arising from the General Division's exercise of revisionary powers in civil matters, the established principles which apply in criminal revisions are instructive. In this regard, I note that the threshold of serious injustice is not legislatively provided for in ss 400 or 401 of the Criminal Procedure Code (Cap 68, 2012 Rev Ed), but has instead been established through the relevant case law, some of which I have highlighted above. I am of the view that the same approach ought to be taken in civil revision proceedings. This is consistent with the reference to the need to secure that "*substantial* justice is done" [emphasis added] in s 25 of the SCJA, which suggests that the exercise of revisionary powers is similarly rooted in the justice of the case.

20 I held above that the present case was one in which the Orders were made without legal basis and in the excess of the Deputy Registrar's powers. In this regard, I note that the A-G argues that the applicant would not be

substantially prejudiced by the setting aside of the Orders as they were made *ex parte* and were never binding on the Government or on any other non-party. The A-G also argues that a court order that grants "leave" to a party merely gives permission to the party to take the step prayed for, and does not in itself alter the substantive rights of the applying party or other parties.[9] While these arguments are purportedly made in an attempt to persuade me that the Orders should be set aside, with respect, they overlook the fact that, as I explained above, the touchstone for an order to be made in the exercise of this court's revisionary powers is serious injustice. This is seen from the cases cited above and also in the wording of s 25 of the SCJA, which states that the General Division may give such orders as seem *necessary to secure that substantial justice is done*.

21 Nevertheless, contrary to the suggestion which appears to flow from the A-G's written submissions, I do not think that the Orders can simply be ignored. *On their face*, the Orders, and in particular the April 2021 Order, purport to grant leave for changing the applicant's gender and, as such, potentially places some pressure on agencies to ***recognise*** the applicant's "new" gender. For instance, the applicant tendered a medical examination form (which I understand to have been obtained from the ICA) in these proceedings. In this form, the doctor who examined the applicant stated that he was satisfied the applicant had *not* undergone sex reassignment surgery but nevertheless made specific note of the fact that the "court order has granted leave to change the gender of [the] applicant from male to female". The applicant also tendered a letter from the MP, which similarly referred to the "Court Order" (presumably, the April 2021 Order), in reiterating the applicant's request that the ICA

[9] A-G's written submissions at paras 28 and 30.

urgently allow a change of the applicant's gender on "the [records]" and the applicant's NRIC. One thus sees the Orders being repeatedly surfaced to non-parties, including the ICA, in the applicant's quest to get them to officially recognise the change in gender contemplated by the Orders. The significance of the Orders, having been issued by no less than the court, clearly weighed on the minds of these individuals. It is apparent from this that notwithstanding the assertion in the A-G's written submissions that the Orders do not bind any non-party, allowing the Orders to remain is likely to result in various individuals or agencies having to contend with the possible legal implications of the Orders and being confronted with the choice of having to either proceed in a manner that is at variance with court orders that appear *on their face* to be valid, or commencing an action to set the Orders aside. Consequently, allowing them to remain would, in my view, cause serious injustice to non-parties, including government agencies such as the ICA. The A-G appears to make a similar point at the hearing before me. For this reason, I am persuaded that not only were the Orders made without any legal basis or power, but also that this is an appropriate case for me to exercise the General Division's revisionary powers to set aside the Orders.

22 For completeness, I observe also that if the Orders are interpreted to mean that the applicant has been granted leave to change gender in the register maintained under the NRA or in the applicant's NRIC, this would represent an impermissible encroachment into the fundamental principle of separation of powers. This is since I have held that, applying the existing framework of the NRA and NRR to the present facts, the determination as to whether any changes ought to be made to an individual's gender as stated either in the register or in his or her NRIC is a decision for the Executive.

Conclusion

23 For the reasons above, it is clear to me that the Orders were made without any legal basis and ought to be set aside. I therefore set aside the Orders in the exercise of my revisionary powers under s 25 of the SCJA and dismiss the underlying applications (see [5] and [6] above). I emphasise, however, that nothing in this judgment is intended to express any view as to whether the applicant should be recognised as a male or a female individual – as I have explained above, the courts in these proceedings have no power to make any order recognising the applicant as being of any particular gender.

Vincent Hoong
Judge of the High Court

The applicant in person;
Evans Ng and Darshini Ramiah (Attorney-General's Chambers) for the non-party.