

IN THE HIGH COURT OF MALAYA AT MELAKA
CIVIL APPEAL NO. MA-12ANCvC-10-09/2020

Between

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1. Zahari Bin Zainul
(NRIC No. 680903-08-6384)
2. Nor Hayati Bin Bakar
(NRIC No. 760421-06-5534)
- 10 3. Siti Zaharah Binti Said
(NRIC No. 500915-10-5830)
4. Mohd Shukri Bin Zainal
(NRIC No. 670706-07-5411)
5. Abu Bakar Bin Aziz
15 (NRIC No. T1081494)
6. Muhamad Taufik Bin Mohd Tamam
(NRIC No. T1155672)
7. Abdul Rahaman Bin Ahmad
(NRIC No. 650607-02-6181)
- 20 8. Mohamad Bin Jaafar
(NRIC No. 600508-04-5445)
9. Ramdzan Bin Hashim
(NRIC No. 680101-08-8585)
10. Suzanlenancy Bin Ismail
25 (NRIC No. 740409-05-5036)
11. Lokman Bin Ali
(NRIC No. 690102-08-9781)
12. Sarina Binti Ismail
(NRIC No. 680207-02-5216)
- 30 13. Ahmad Sufian Bin Husin
(NRIC No. 690519-04-5572)
14. Muhamad Fozzi Bin Zaidin
(NRIC No. 770828-02-5111)

... Appellants

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And

1. Khairul Azizi Bin Ramli
(NRIC No. 761127-03-5363)
2. Ifaziramzi Bin Ibrahim
40 (NRIC No. 780504-03-5603)
3. Nik Mohd Khairuddin Bin Ibrahim
(NRIC No. 790711-03-5511)

... Respondents

FOUNDATIONS OF JUDGMENT

[1] Enclosure 1 was the Appellants' appeal against the order of the
5 Sessions Court granted on 17.8.2020 dismissing the Appellants' application to amend the judgment in default of appearance ("Judgment") entered by the Appellants against the Respondents on 24.7.2015.

10 [2] The Appellants were the Plaintiffs while the Respondents were the Defendants in the proceedings before the Sessions Court.

[3] The Appellants will be referred to as the Plaintiffs and the Respondents will be referred to as the Defendants as they appeared
15 in the proceedings before the Sessions Court.

Events material to this Appeal

[4] On 25.6.2015, the Plaintiffs filed a writ against the Defendants.

20 [5] The Statement of Claim was dated 22.6.2015. In the Statement of Claim, the Plaintiffs prayed for the following relief:

“(a) *bayaran sebanyak RM167,624.00;*

25 (b) *faedah terhadap jumlah RM167,624.00 tersebut pada kadar 8% setahun dengan kiraan harian dikira dari tarikh writ dikeluarkan sehingga penghakiman;*

(c) *faedah terhadap jumlah penghakiman pada kadar 5% setahun dengan kiraan harian dikira 14 hari dari tarikh penghakiman ke tarikh penyelesaian;*

5 (d) *kos guaman ini; dan*

(e) *lain-lain perintah yang Mahkamah Yang Mulia fikirkan perlu dan patut.”*

10 [6] On 24.7.2015, when all the Defendants failed to enter an appearance, the Plaintiffs entered the Judgment against all the Defendants.

[7] The Judgment where material read as follows:

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“PENGHAKIMAN

20 *Tiada kehadiran telah dimasukkan oleh Defendan Pertama, Khairul Azizi Bin Ramli, Defendan Kedua, Ifaziramzi Bin Ibrahim, dan Defendan Ketiga, Nik Mohd Khairuddin Bin Ibrahim dalam tindakan ini.*

25 ADALAH PADA HARI INI DIHAKIMI bahawa Defendan-Defendan hendaklah membayar kepada Plaintiff-Plaintif jumlah Penghakiman sebanyak RM167,624.00 berserta faedah terhadap jumlah RM167,624.00 tersebut pada kadar 8% setahun dengan kiraan harian dikira dari tarikh writ dikeluarkan sehingga penghakiman, faedah terhadap jumlah penghakiman pada kadar 5% setahun dengan kiraan harian dikira 14 hari

dari tarikh penghakiman ke tarikh penyelesaian, kos atas dasar peguamcara-anakguam dan kos tindakan ini sejumlah RM1,322.00 seperti berikut:-

5	<u><i>KOS TINDAKAN</i></u>	
	1. <i>Kos Asas</i>	<i>RM1,000.00</i>
	2. <i>Fee memfailkan Writ Dan</i>	
	<i>Penyataan Tuntutan</i>	<i>RM 208.00</i>
	3. <i>Fee memfailkan Affidavit</i>	
10	<i>Penyampaian</i>	<i>RM 8.00</i>
	4. <i>Fee Pesuruhjaya Sumpah</i>	
	<i>untuk menanda ekshibit</i>	
	<i>Affidavit Penyampaian</i>	<i>RM 6.00</i>
	5. <i>Fee memfailkan Perakuan</i>	
15	<i>Ketakhadiran</i>	<i>RM 60.00</i>
	6. <i>Fee memfailkan Penghakiman</i>	<i>RM 40.00</i>
		<i>-----</i>
		<i>RM1,322.00"</i>
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[8] In the period thereafter, the Plaintiffs commenced bankruptcy proceedings against the first Defendant.

[9] The Court struck out the bankruptcy notice on the ground that
 25 the Judgment was “*kabur*”. The Court held the view that the bankruptcy notice was not clear as to the amount sought given that there were multiple Plaintiffs who sued, among others, the first Defendant.

[10] On 28.2.2020 (more than 5 years after the Judgment was entered, drawn up and sealed by the Court), the Plaintiffs filed an application to amend the Judgment (Enclosure 7).

5 [11] The proposed amendments to the Judgment were as follows:

“CADANGAN PENGHAKIMAN TERPINDA

10 *Tiada kehadiran telah dimasukkan oleh Defendan Pertama, Khairul Aziz Bin Ramli, Defendan Kedua Ifaziramzi Bin Ibrahim dan Defendan Ketiga Nik Mohd Khairuddin Bin Ibrahim dalam tindakan ini;*

15 ADALAH PADA HARI INI DIHAKIMI bahawa Defendan-Defendan hendaklah membayar kepada Plaintiff-Plaintiff jumlah Penghakiman RM167,624.00 disenaraikan seperti ketetapan pembahagian berikut:-

	<i>i. Plaintiff Pertama</i>	<i>RM22,659.00</i>
20	<i>ii. Plaintiff Kedua</i>	<i>RM14,659.00</i>
	<i>iii. Plaintiff Ketiga</i>	<i>RM15,099.00</i>
	<i>iv. Plaintiff Keempat</i>	<i>RM35,099.00</i>
	<i>v. Plaintiff Kelima</i>	<i>RM 5,099.00</i>
	<i>vi. Plaintiff Keenam</i>	<i>RM 5,099.00</i>
25	<i>vii. Plaintiff Ketujuh</i>	<i>RM 1,118.00</i>
	<i>viii. Plaintiff Kelapan</i>	<i>RM 3,099.00</i>
	<i>ix. Plaintiff Kesembilan</i>	<i>RM 3,099.00</i>
	<i>x. Plaintiff Kesepuluh</i>	<i>RM17,198.00</i>
	<i>xi. Plaintiff Kesebelas</i>	<i>RM 3,099.00</i>

xii.	<i>Plaintif KeduaBelas</i>	<i>RM17,099.00</i>
xiii.	<i>Plaintif KetigaBelas</i>	<i>RM 5,099.00</i>
xiv.	<i>Plaintif KeempatBelas</i>	<i>RM20,099.00</i>

5 *berserta faedah terhadap jumlah RM167,624.00 tersebut pada*
kadar 8% setahun dengan kiraan harian dikira dari tarikh writ
dikeluarkan sehingga penghakiman, faedah terhadap jumlah
penghakiman pada kadar 5% setahun dengan kiraan harian
10 *dikira 14 hari dari tarikh penghakiman ke tarikh penyelesaian,*
kos atas dasar peguamcara-anakguam dan kos tindakan ini
sejumlah RM1,322.00.”

[12] On 17.8.2020 and after hearing the parties, the Sessions Court dismissed Enclosure 7.

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Determination by the High Court

[13] The Plaintiffs stated in Enclosure 7 that the Plaintiffs filed Enclosure 7 pursuant to Order 20 Rule 11 of the Rules of Court (“ROC”) 2012.

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[14] Order 20 Rule 11 of the ROC 2012 states as follows:

“Amendment of judgment and orders (O. 20, r. 11)

11. *Clerical mistakes in judgment or orders, or errors arising*
25 *therein from any accidental slip or omission, may at any time*
be corrected by the Court by a notice of application without an
appeal.”

[15] The language of Order 20 Rule 11 of the ROC 2012 is plain and clear. Under this 'slip rule', the Court has the jurisdiction to amend "*clerical mistakes in judgment or orders, or errors arising therein from any accidental slip or omission*".

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[16] Enclosure 7 was supported by Enclosure 6. The reason put forward by the Plaintiffs in Enclosure 6 for the proposed amendments to the Judgment was that "*pindaan ini perlu dibuat bagi memudahkan tindakan perlaksanaan oleh Plaintiff-plaintif terhadap Defendan-defendan...*"

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[17] The reason advanced by the Plaintiffs clearly do not meet the requirements for an amendment under Order 20 Rule 11 of the ROC 2012.

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[18] The Plaintiffs submitted that the breakdown of the sum of RM167,624.00 in the Judgment was stated in paragraph 7 of the Statement of Claim.

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[19] This Court noted that notwithstanding the contents of paragraph 7 of the Statement of Claim, the Plaintiffs pleaded the aggregate amount of RM167,624.00 in the prayers in the Statement of Claim.

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[20] Thereafter, the Plaintiffs entered, drew up and sealed the Judgment as per the prayers in the Statement of Claim. The aggregate amount prayed in the Statement of Claim (RM RM167,624.00) was the aggregate amount (RM167,624.00) set out in the Judgment.

[21] These facts do not assist the Plaintiffs in advancing their arguments in favour of the proposed amendments for it is evident that the Judgment reflect the intention of the Court in granting the Judgment.

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[22] The Plaintiffs submitted that the proposed amendments do not prejudice the Defendants.

10 [23] This Court was unable to accept the Plaintiffs' submission that the proposed amendments to the Judgment do not prejudice the Defendants. This Court found that the proposed amendments do prejudice the interests of the Defendants and each of them as can be seen for example from the reason advanced by the Plaintiffs for the proposed amendments which is to enforce the Judgment against the
15 Defendants.

[24] There is also the issue of an inordinate delay by the Plaintiffs in making the application to amend the Judgment in Enclosure 7.

20 [25] In *Yamaha Motor Co Ltd v Yamaha Malaysia Sdn Bhd & Ors* [1983] 1 MLJ 213, the Federal Court held at 214 that:

25 *“Under Order 20 of the Rules of the High Court 1980, which is equivalent to Order 28 Rules of Supreme Court, a Judge has a discretion to allow leave to amend pleadings. Like any other discretion, it must of course be exercised judicially (see Kam Hoy Trading v Kam Fatt Tin Mine [1963] MLJ 248. The general principle is that the court will allow such amendments as will cause no injustice to the other parties. Three basic questions*

should be considered to determine whether injustice would or would not result, (1) whether the application is bona fide; (2) whether the prejudice caused to the other side can be compensated by costs and (3) whether the amendments would not in effect turn the suit from one character into a suit of another and inconsistent character. (See Mallal's Supreme Court Practice page 342). If the answers are in the affirmative, an application for amendment should be allowed at any stage of the proceedings particularly before trial, even if the effect of the amendment would be to add or substitute a new cause of action, provided the new cause of action arises out of the same facts or substantially the same facts as a cause of action in respect of which relief has already been claimed in the original statement of claim.”

[26] In *Hong Leong Finance Berhad v Low Thiam Hoe & Another Appeal* [2015] 8 CLJ 1, the Federal Court had the occasion to consider the issue of delay in the context of an application to amend and at Held [3], the Federal Court decided that:

“(3) When an application to amend a pleading is made at a very late stage, the principles in *Yamaha Motor* ought not to be the sole consideration. This was because an order for compensation by payment of costs in such a case may not be an adequate remedy and it would also disrupt the administration of justice.”

[27] This Court was cognisant that delay by itself is not a reason to deny the Plaintiffs leave to amend as sought in Enclosure 7. However, given the delay, coupled with all the other issues stated above, this Court is not with the Plaintiffs on this appeal.

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[28] Given the above, this Court found that the Sessions Court did not err in dismissing Enclosure 7.

Decision of the High Court

10 [29] On 20.5.2021, this Court dismissed the appeal by the Plaintiffs.

[30] This Court also ordered that costs in the sum of RM3,000.00 shall be jointly and severally paid by the Plaintiffs to the Defendants.

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-Signed-

(MAIDZUARA BINTI MOHAMMED)

Judicial Commissioner

High Court Melaka

20 3 Ogos 2021

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