



(5) HBM/1/1/(i)
25 Oktober 2012

Semua Hakim/Pesuruhjaya Kehakiman
Mahkamah Tinggi Malaya

Semua Timbalan Pendaftar/Penolong Kanan Pendaftar
Mahkamah Tinggi Malaya
Semenanjung Malaysia

YA/Tuan/Puan,



**PEKELILING HAKIM BESAR MALAYA BIL. 3/2012
PENULISAN ALASAN PENGHAKIMAN TERHADAP
KEPUTUSAN PERMOHONAN INTERLOKUTORI**

Sehingga kini terdapat di kalangan YA Hakim/Pesuruhjaya Kehakiman yang tidak menyediakan Alasan Penghakiman bertulis apabila suatu Notis Rayuan difailkan oleh sesuatu pihak terhadap keputusan yang diberi bagi permohonan interlokutori. Ini adalah disebabkan adanya arahan yang pernah diberi sebelum ini yang membenarkan YA Hakim/Pesuruhjaya Kehakiman memilih sama ada mahu menyediakan Alasan Penghakiman bertulis ataupun tidak.

2. Adalah dengan ini diarahkan YA Hakim/Pesuruhjaya Kehakiman menyediakan Alasan Penghakiman bertulis apabila suatu Notis Rayuan difailkan terhadap keputusan yang diberi bagi semua bentuk permohonan yang dibicarakan termasuk permohonan interlokutori.

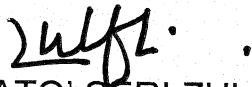
3. Untuk tidak membebankan YA Hakim/Pesuruhjaya Kehakiman, Alasan Penghakiman tidak perlu ditulis begitu panjang. Adalah memadai Alasan Penghakiman disediakan secara ringkas yang mengandungi pendapat YA Hakim/Pesuruhjaya Kehakiman terhadap isu-isu yang dibangkitkan serta alasan membenarkan atau menolak

sesuatu permohonan tersebut. Untuk tujuan itu, sebagai panduan bersama-sama ini disertakan contoh Alasan Penghakiman ringkas yang ditulis oleh YA Dato Jeffrey Tan, Hakim Mahkamah Persekutuan seperti di Lampiran "A".

4. Arahan ini hendaklah berkuatkuasa mulai 1 November 2012.

Sekian, terima kasih.

Yang ikhlas,



(TAN SRI DATO' SERI ZULKEFLI BIN AHMAD MAKINUDIN)
Hakim Besar Malaya

s.k.

1. YAA Ketua Hakim Negara
Mahkamah Persekutuan Malaysia
Putrajaya.
2. YAA Presiden Mahkamah Rayuan
Mahkamah Persekutuan Malaysia
Putrajaya.
3. YAA Hakim Besar Sabah dan Sarawak
Mahkamah Tinggi Kuching
Jalan Gersik, Petrajaya
Kuching
Sarawak.
4. Semua Hakim Pengurus
5. Ketua Pendaftar
Mahkamah Persekutuan Malaysia
Putrajaya.

6. Pendaftar Mahkamah Rayuan
Mahkamah Persekutuan Malaysia
Putrajaya.

7. Pustakawan
Mahkamah Persekutuan Malaysia
Putrajaya.



DALAM MAHKAMAH RAYUAN MALAYSIA DI PUTRAJAYA
(BIDANGKUASA RAYUAN)

RAYUAN SIVIL NO. W-02-1127-2009

ANTARA

Dato' Chong Kok Min

... Perayu

DAN

1. Haji Jaya J B Tan
2. Kamal Y P Tan
3. Tan Yet Meng
(Wasi dan Pemegang Amanah Harta
Pesaka Tajuddin J H Tan, simati)

... Responden-Responden

[Dalam Mahkamah Tinggi Malaya Di Kuala Lumpur
(Bahagian Dagang)

Guaman No. D5-22-298-1997]

Antara

1. Haji Jaya J B Tan
2. Kamal Y P Tan
3. Tan Yet Meng
(Wasi dan Pemegang Amanah Harta
Pesaka Tajuddin J H Tan, simati)

... Plaintif-Plaintif

Dan

1. Chin Yew Meng
2. Oh Seong Lye
3. Dato' Chong Kok Ming
4. Chong Yueh Sin @ Ching Kok Poh
5. Ng Pek Yuen
6. Wong Chooi Fan
7. Kuasa Etika Sdn Bhd

... Defendan-Defendan

JUDGMENT

Coram: Jeffrey Tan, JCA
Clement Allan Skinner, JCA
Aziah Ali, JCA

On the basis of a joint-venture, the Plaintiff sued 3rd Defendant, who was the principal defendant, and other defendants for *inter alia*, breach of the joint-venture, breach of fiduciary duties and conversion.

At the end of the trial, the learned Judge dismissed all claims against all defendants, except for 3rd Defendant.

There is no appeal by the plaintiffs/Respondents against dismissal of their claim. Hence, this appeal by 3rd Defendant, is the only live appeal.

In relation to the claim against 3rd Defendant, it was the finding below that there was a joint-venture as pleaded. The reasons of the court below are found at 53AR – 54AR.

We have perused the findings, which were of facts, and we can only agreed with them. Those findings were all supported by evidence from 3rd Defendant himself (360AR – 361AR are admissions in defence).

Further to the finding of joint-venture, it was the finding of the court below that there were fiduciary duties attached to 3rd Defendant and that there was a breach of that fiduciary duty by 3rd Defendant. The reasons of the court below are found at 58AR – 60AR.

We have also perused these findings. Again we find that the court below had correctly applied the principles of law to the facts as found.

On top of that, there was no argument before us to those findings at 59 – 60AR.

The 3rd Defendant indeed procured the appointment of 4th to 6th Defendants, thereby giving control of 7th Defendant, and increased the authorised capital of 7th Defendant, without the consent and or knowledge of the Plaintiffs/Respondents.

Thereafter, 3rd Defendant instructed 2nd Defendant to renounce the taking up of the rights issue, which affected the beneficial rights of the 2nd and 3rd Plaintiffs.

The rights of all plaintiffs were also gravely affected by the refusal to take up the offer of the plaintiffs to pay to redeem the subject land, which was the only asset of 7th Defendant.

The subject land was foreclosed, which in all probability would have been saved from forced sale, had the plaintiffs offer to subscribe for RM9 million been taken up by 7th Defendant in control by 3rd Defendant.

3rd Defendant had also failed to take steps to respond to 666 and 667, to obtain a transfer of the shares due to the plaintiffs.

All considered, we find that the court below was absolutely right that 3rd Defendant had denied the plaintiffs to their beneficial entitlement and to control of 7th Defendant, which had it not been so, resulted in the loss, which 3rd Defendant must have make good.

Unanimous decision. Appeal is dismissed with costs of RM35,000.00 to respondents. Deposit to respondents towards account. Order below affirmed.

Dated this 23rd day of March 2012.



Dato' Jeffrey Tan
Hakim
Mahkamah Rayuan
Malaysia

C O U N S E L

For the Appellant : Parameswary

Solicitors:
Tetuan Tay Tee & Nasir

For the Respondents: Prem Ramachandran

Solicitors:
Tetuan Kumar Partnership