

**DALAM MAHKAMAH TINGGI MALAYA DI KUALA LUMPUR  
(BAHAGIAN SIVIL)**

**GUAMAN SIVIL NO: S2-21-8-2005**

**ANTARA**

**MOHAMMAD SUHAIMI BIN ABU BAKAR .....PLAINTIF**

**DAN**

- 1. NORDIN BIN AHMAD**
  - 2. AFENDI BIN NORHISHAM**
  - 3. RAMASUNDAN A/L GOPALAN**
  - 4. FAIZAL BIN LOKMAN**
  - 5. ZULYAHYA BIN MOHD SALLEH**
  - 6. ENG BUANG CHUAN**
  - 7. HISHAM BIN ABDULLAH**
  - 8. SALLEHUDDIN BIN MOHAMAD**
  - 9. ZAKI BIN ZAKUAN**
  - 10. KERAJAAN MALAYSIA .....DEFENDANT**
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**GROUND OF JUDGMENT**

This is an application by the 1<sup>st</sup> and the 10<sup>th</sup> Defendants (hereinafter referred to as the Defendants) to strike out the Plaintiff Writ and Statement of Claim under 0 18 r 19 (1) (b) and/or (d)RHC.

Brief facts:

The Claim of the Plaintiff against the Defendants is for the injuries sustained by the Plaintiff which was caused by the Defendants on 13.3.2003.

The Plaintiff claimed that the injuries was caused by the Defendants after a sparring boxing training. He claimed that after the said training, while he was on his way to the toilet, he was surrounded by the Defendants and was assaulted with an iron object which resulted in him sustaining injuries.

The defence of the Defendants is that:

- a) the 1<sup>st</sup> defendant was a member of the “ 12 Rejimen Askar Melayu Di Raja Malaysia (RAMD) at Kem batu 10, Kuantan, Pahang. The 1<sup>st</sup> defendant was not at the place of the incident when it happened.
  
- b) the injuries of the Plaintiff was sustained during the sparring boxing practice in preparation for the “Pertandingan Tinju Tentera”. Paragraph 5 of the Statement of Defence avers that whilst training, the Head Coach found that Plaintiff was not able to continue with the boxing training as the Plaintiff was seen to be not able to stand being punch in the stomach. The Head Coach had stopped the boxing training for the group which Plaintiff was in and proceeded with the next group, when he saw the Plaintiff was unconscious. The Plaintiff was then taken to the Tengku Ampuan Afzan Kuantan, Pahang;

- c) The Defendants pleads the statutory defence under section 14 of the Government Proceedings Act 1965.

The Courts Findings:

a) Delay in filing Affidavit by the Plaintiff

This application was supported by the affidavit in Enclosure 20 and was replied to by the Plaintiff in Enclosure 28. Enclosure 28 was filed out of time ( a delay of 1 year) and no leave from the court was obtained. This is in contravention of O 32 r 13 (2) RHC.

This procedural requirement by the rules must be adhered to strictly. Although the court has a discretion to allow the abridgement of time, however in this particular case the delay is certainly inordinate added with the fact that there has been no application by the Plaintiff for an extension of time to file the said affidavit out of time. There has not been placed before this court as to the reasons as delay in the filing of the affidavit and hence there is no material before this court for the court to exercise its discretion in allowing the affidavit to be used in the application herein. (Refer to ***Malayan Banking Bhd v Lim Tee Yong & Ors*** [1994] 3 MLJ 715 at page 719)

Therefore I do not take cognizance of the affidavit of the Plaintiff in Enclosure 28 for the purpose of this application.

b) Statutory Defence under Government Proceedings Act

Defendants submits that the incident was covered under section 14 of the Government Proceedings Act 1956, and hence the

defendants cannot be subjected to any liability in tort for the said personal injury sustained by the Plaintiff.

Support for this contention is found in the Federal Court case of Mohamed Hussin & Anor v Hashim bin Said [1978] 1 MLJ 127 at page 128 :

"On a reasonable and proper interpretation of section 14 (1), it seems to me that the right of a member of the armed forces to sue the Government in tort is taken away when two conditions are together satisfied. He must first under section 14(1)(a) either be on duty as a member of the forces or if not on duty be on a vehicle used at the relevant time for the purposes of the forces. Secondly, under section 14( 1) (b), the Minister of Finance must certify that he has been or will be compensated for his injuries under service regulations. "

In our present case the Minister of Finance had issued out a certificate under section 14 (1) (b) of the Government Proceedings Act 1956 which certifies that that the injuries were sustained in the course of service for the purpose of entitlement of an award under the Peraturan-Peraturen Angkatan tentera tetap (Pencen, ganjaran dan Faedah-Faedah Lain) 1982. This particular section states as follows:

“(b) the Minister of Finance certifies that his suffering that thing has been or will be treated as attributable to service for the Purposes of entitlement to an award\_under any written law relating to the disablement or death of members of the force of which he is a member”

This certificate had been issued as evidenced in exhibit “ZEM-2” in enclosure 20.

Further, the Minister of Finance had also issued out a certificate under section 14 (3) (a) of the Government Proceedings act 1956 (Refer to exhibit “ZEM-3 of enclosure 20). This particular section of the Act states:

“(3) The Minister charged with the responsibility for Defence and Internal Security, if satisfied that it is the fact-

- (a) that a person was or was not on any particular occasion on duty as a member of the forces; or
- (b) .....

may issue a certificate certifying that to be the fact; and any such certificate shall, for the purposes of this section, be conclusive as to the fact which it certifies.”

Therefore, following the certificates in “ZEM-2” and ZEM-3” which have issued, and by virtue to section 14 of the Government Proceedings Act 1956, the action by the Plaintiff is unsustainable as against the Defendants.

The Certificates issued are conclusive evidence of the facts stated therein.

Therefore, the Plaintiff's claim is unsustainable. The claim is frivolous, vexatious and is certainly an abuse of court process. I therefore allow the application by the defendants with costs.

Datin Zabariah Mohd Yusof

Tarikh 3.7.2009

Bagi pihak Plaintiff : Puan S. Santhi  
( Tetuan M. Monaharan & Co)

Bagi pihak Defendan : Puan Zureen Alina  
(Peguam Kanan Persekutuan)