

IN THE HIGH COURT IN MALAYA AT KUALA LUMPUR

CIVIL DIVISION

CIVIL SUIT NO. S5-23-43-2007

BETWEEN

Y.A.B. PEHIN SRI HAJI ABDUL TAIB MAHMUDPLAINTIFF

AND

1. MKINI DOTCOM SDN BHD

2. GAN DIONG KENGDEFENDANT

GROUND OF JUDGMENT

This is the Plaintiff's application under 0 18 r 19 (1) (b) (c) and (d) RHC to strike out certain paragraphs of the Defendants' amended Statement of Defence (Enclosure 6) on the grounds that the paragraphs which were pleaded are irrelevant facts to the case.

Brief Facts

The Plaintiff alleges that the Defendants have defamed him via the articles published in Malaysiakini website. The Plaintiff avers that the Defendants have extended their pleadings by citing facts which are unrelated to the issues of this case.

The Plaintiff have pleaded that the articles which were published by the Defendants were understood to mean that:

- (a) The Plaintiff has amassed illegal monies of RM32 million ringgit from unlawful activities pertaining to the timber trade in Sarawak, Malaysia;
- (b) The Plaintiff has accepted bribes from the Japanese shipping companies and has committed a criminal offence;
- (c) The Plaintiff has thereby committed a criminal act and is liable for criminal prosecution;
- (d) In the above circumstances, the Plaintiff is a corrupt person and a corrupt politician. He is an unfit person to be the Chief Minister of Sarawak and a Member of Parliament. Further, he is unfit to hold any Political office including as the President of the Parti Pesaka Bumiputra Bersatu.

The Plaintiff seeks to strike out the following paragraphs in the Amended Statement of Defence:

- a) Paragraphs 12 and 12.1 until 12.8;
- b) Paragraphs 16.3 until 16.7, 16.7.1 and 16.8;
- c) Paragraphs 18.3 until 18.5;
- d) Paragraphs 19.3 until 19.7

The Court's Findings

Paragraphs 12 and 12.1 until 12.8

The opening words of paragraph 12 of the Amended Statement of Defence contains the contention of the Defendant that the Plaintiff's claim is scandalous, frivolous and vexatious. Paragraphs 12.1 until 12.8 particularised what the defendants meant by "the claim by the Plaintiff as scandalous, frivolous and vexatious".

The paragraphs states that the Plaintiff had acquiesced to the republication of the said defamatory words by means of a personal statement to the Sarawak State Assembly. This personal statement was subsequently reproduced on 15.5.2007 in full in a local newspaper in Sarawak, The Borneo Post, which has a wide public circulation. This personal statement was also available online and thus was readily accessible to any internet user.

The defendants caused the personal statement to be published in full on 14.5. 2007.

From the paragraphs it also states that a similar article also appeared in Japan Times and Kyodo News in Japan.

The Plaintiff has not moved the court for any restraining order to prevent the 1st defendant from further publishing the said order.

These paragraphs in paragraph 12 is a defence for the defendant in saying that the Plaintiff had acquiesced in the publication of the articles.

I am of the view that it is relevant to the Defendants' defence and it should therefore be retained.

Paragraphs 16.3 until 16.7, 16.7.1 and 16.8

These paragraphs are relevant in so far as the defence of justification to the Plaintiff's claim which is in respect specific portions of Article which are:

“Taib, who is the country's longest serving chief minister...

His family has wide ranging business interests in Sarawak since Taib took office 25 years ago.

It has been estimated that Taib's family is worth at least RM 2 billion though it has not officially confirmed.”

Paragraphs 16 plead material facts to support the articles which shows the wealth of the Plaintiff during his tenure as the chief minister of Sarawak. These paragraphs are certainly relevant for the defence of justification for the Defendant. These facts are necessary to enable the Defendant to prove at trial later on that the facts are true in facts and substance, hence affording the defendant the complete defence of justification. The defendant cannot be shut out from establishing the truth of the alleged defamatory article, and for

this purpose a trial is necessary. (Refer to *Abbass Ismail Rowland v Institiut Analisa Sosial (INSAN) & 5 Ors* [1985] 1 CLJ 440).

Thus to strike out these paragraphs would deprive the Defendants of their defence which is crucial to its case and the court is not about to grant such order. Hence it should be maintained.

Paragraphs 18.3 until 18.5

These paragraphs is with regards to the genuine comment by a reader. The defendant is raising the defence of fair comment on matters of public interest, in that the due performance of the Plaintiff in his capacity as the chief minister of Sarawak.

These are not sham defence and it is to be allowed.

Paragraphs 19.3 until 19.7

This forms another defence of justification for the Defendant in respect of the Plaintiff's claim in the 3rd article. The facts pleaded are not extraneous to the facts in issue. The relevant portion of the article are as follows:

“ In addition the owner of the log carrier seeking to transport timber exports is required to appoint Taib family-linked shipping agency Archipelago Shipping as the sole agent for shippers to pick up logs from 3 key Sarawak ports-Tanjung Manis, Bintulu and Miri.

Paragraphs 19 contains the material facts which shows the link between Archipelago Shipping which is now currently known as Achi

Jaya Transportation Sdn Bhd and the Plaintiff's families. These facts are relevant to show that at all times Achi Jaya Transportation Sdn Bhd is the sole agent for shippers to pick up logs from the 3 places.

Thus based on the above reasons the paragraphs are basically defences of the Defendants to the claim by the Plaintiff. It would be prejudicial to the Defendant if the said paragraphs are struck out as this will deprive them of the defences which are available to the defendants. They are material facts which are relevant and are not frivolous or vexatious and neither is it an abuse of court's process. The defendants should be given the opportunity to have their day in a trial for the claim against them.

Therefore the application by the Plaintiff is dismissed with costs.

Datin Zabariah Mohd Yusof

Tarikh : 29.6.2009