



BIMAL PILLAI v WU KHAI WOON (BERAMAL DI BAWAH TETUAN KEVIN WU & ASSOC)

CaseAnalysis

[2026] MLJU 241

Bimal Pillai lwn Wu Khai Woon (Beramal di bawah tetuan Kevin Wu & Assoc) [2026] MLJU 241

Malayan Law Journal Unreported

MAHKAMAH SESYEN (KUALA LUMPUR)

SITI FATIMAH TALIB HMS

GUAMAN SIVIL NO WA-A52NCvC-725-09 TAHUN 2022

23 January 2026

Siti Fatimah Talib HMS:

ALASAN PENGHAKIMAN

A. PENDAHULUAN

[1] Plaintiff telah memulakan tindakan guaman ini ke atas Defendan dengan memfailkan writ saman dan pernyataan tuntutan bertarikh 23.9.2022.

[2] Defendan telah memasukkan kehadiran dan telah memfailkan pernyataan pembelaan beserta tuntutan balas terhadap Plaintiff bertarikh 21.10.2022.

[3] Pada 22.3.2024, mahkamah ini telah membatalkan tuntutan utama Plaintiff (kini merupakan Defendan-Defendan dalam tuntutan balas) atas

kegagalan Plaintiff untuk mematuhi arahan PTCM mahkamah ini dibawah Aturan 34 Kaedah-Kaedah Mahkamah 2012 [rujuk kandungan 88].

[4] Beberapa pengurusan kes telah dijalankan dengan kehadiran pihak-pihak secara e-review. Pada 29.5.2025, melalui pengurusan kes secara e-review mahkamah ini telah memberikan arahan untuk pihak-pihak memfailkan pernyataan saksi pada atau sebelum 8.10.2025.

[5] Pada pengurusan kes secara e-review bertarikh 8.10.2025, mahkamah ini sekali lagi mengarahkan pihak-pihak untuk mematuhi arahan PTCM yang telah diberikan dan sekiranya gagal, unless order akan terpakai.

[6] Kes ini telah ditetapkan untuk perbicaraan pada 17 sehingga 19 November 2025. Prosiding perbicaraan ini

hanyalah untuk tuntutan balas semata-mata mengambil kira tuntutan asal Plaintiff yang telah pun dibatalkan pada 22.3.2024.

[7] Pada hari perbicaraan yang ditetapkan pada 17.11.2025, sebelum perbicaraan dimulakan, peguamcara Plaintiff dalam tuntutan balas telah membangkitkan bantahan awalan berkenaan ketidakpatuhan arahan *pre-trial case management (PTCM)* oleh Defendan-Defendan dalam tuntutan balas yang mana Defendan-Defendan dalam tuntutan balas telah gagal menyerahkan dan/atau memfailkan penyata saksi Defendan-Defendan dalam tuntutan balas pada atau sebelum 8.10.2025.

[8] Peguamcara Defendan-Defendan dalam tuntutan balas hanya memfailkan dan menyerahkan penyata saksinya pada 13.11.2023. Selanjutnya pada 14.11.2025, Plaintiff dalam tuntutan balas kemudian telah memfailkan satu permohonan interlokutori di kandung 93 yang memohon untuk suatu perintah membatalkan pembelaan Defendan-Defendan dalam tuntutan balas di kandungan 7 atas kegagalan mematuhi arahan PTCM untuk memfailkan penyata saksi pada atau sebelum 8.10.2025 dan memohon mahkamah ini untuk menggunakan *unless order*.

[9] Defendan dan/atau peguamcara Defendan langsung tidak memaklumkan alasan kelewatan memfailkan pernyataan saksi ini sama ada kepada pihak Plaintiff atau kepada mahkamah ini.

[10] Tindakan kelewatan serahan penyata saksi oleh peguamcara Defendan-Defendan dalam tuntutan balas ini telah memprejudiskan Plaintiff dalam tuntutan balas bagi penyediaan perbicaraan kes ini. Plaintiff dalam tuntutan balas juga tidak diberi kesempatan dan masa yang mencukupi untuk menyemak kandungan penyata saksi dan membuat persediaan dengan saksi-saksinya.

[11] Plaintiff dalam tuntutan balas menghujahkan bahawa ini bukanlah kali pertama Defendan-Defendan dalam tuntutan balas gagal mematuhi arahan PTCM mengambil kira perintah yang telah mahkamah ini berikan terdahulu pada 22.3.2024 atas kegagalan yang sama.

[12] Peguamcara Defendan-Defendan dalam tuntutan balas hanya memberikan alasan bahawa kes ini telah dikendalikan oleh beberapa peguam lain dan beliau baru kini mengambil alih kes ini. Peguamcara Defendan dalam tuntutan balas mengakui berdasarkan rekod mahkamah ini, dirinya dan firmannya yang mengendalikan dan/atau menghadiri pengurusan kes secara e-review sebelum perbicaraan ini. Peguamcara Defendan dalam tuntutan balas bersedia menerukan perbicaraan.

[13] Peguamcara Plaintiff dalam balas menghujahkan bahawa peguamcara Defendan dalam tuntutan balas hendaklah bertanggungjawab mematuhi arahan-arahan PTCM yang diberikan oleh mahkamah ini dan bersedia lebih awal untuk perbicaraan kes ini untuk berjalan dengan lancar namun sebaliknya. Peguamcara Defendan dalam tuntutan balas mempunyai peluang yang panjang meneliti penyata saksi Plaintiff dalam tuntutan balas namun Plaintiff dalam tuntutan balas tidak mempunyai masa yang munasabah meneliti penyata saksi Defendan dalam tuntutan balas ini.

[14] Atas perkara ini, Plaintiff memohon kepada mahkamah ini untuk menggunakan A.34 K.2 (3) KKM 2012 bagi membatalkan pembelaan dan tuntutan balas Defendan serta membenarkan tuntutan Plaintiff.

[15] Mahkamah ini merujuk kepada *DIONG HIEW KING @ TIONG HIEW KING v. LAU SWEE NGUONG @ LAU SUI GUANG* [2012] CLJU 1086 ; [2012] 1 LNS 1086 ; [2014] 8 MLJ 575 yang menyatakan seperti berikut:

“Decision of the court in striking out the defendant’s Defence

On 10 August 2012, during the case management of the plaintiff’s action, upon the failure of the defendant to comply with the direction of the court given on 21 June 2012 to file and exchange his witness statement with the witness statements of the plaintiff, the court struck out the defendant’s Defence. The court entered judgment on the issue of liability in favour of the plaintiff against the defendant.

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Being dissatisfied with the said decision the defendant has filed a notice of appeal to the Court of Appeal against the said decision.

Below are the reasons why the court made the said decision.

The court agreed with and accepted the submissions of the learned counsel for the plaintiff that the failure of the defendant to comply with the direction of the court given on 21 June 2012 constituted an abuse of the process of the court.

The reasons are, firstly, it had obstructed the smooth administration of justice by the court in respect of the plaintiff's action. Secondly, it has caused the bona fides of the defendant's Defence to the plaintiff's claim as set out in his Defence to be highly questionable. Thirdly, the court was of the impression that the defendant was not really sincere in defending the plaintiff's claim.

The defendant could not show any reason for his non-compliance of the previous direction of the court to file and exchange his witness statement with the learned counsel for the plaintiff on or before 27 July 2012 let alone a good reason.

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Order 34 of the RC 2012 contains elaborate provisions for pre-trial case management which are in essence similar to Order 34 of the RHC 1980. Rule 1(1) of the Order confers power and discretion on the court to make orders and give directions, at any time after the commencement of proceedings for their just, expeditious and economical disposal.

Where any party fails to comply with any order made or direction given by the court under Rule 1(1) of the Order, then rule 1(3) of the Order empowers the court to, inter alia, strike out the defence or make such other order as it thinks fit.

Rule 2 of the Order deals with pre-trial case management which is directed by the court. It encompasses a very wide range of matters which the court can consider including the appropriate orders and directions that should be made by the court to secure the just, expeditious and economical disposal of the action or proceedings. In my view this provision applies to the instant case.

Rule 2(3) of the Order confers discretion on the court to, inter alia, strike out the defence or enter judgment or make such order as it thinks fit.

The rule reads as follows:

“(3) The Court, having given directions under rule 2(2) or rule 3 may either on its own motion or upon the application of any party, if any party defaults in complying with any such directions, dismiss such action or proceedings or strike out the defence or counterclaim or enter judgment or make such order as it thinks fit.”

B. ATURAN 34 KAEDAH 2 (3) KAEDAH-KAEDAH MAHKAMAH 2012

[13] Mahkamah ini merujuk A.34 K.2 (3) KKM 2012 yang memperuntukkan seperti berikut:

“2. Pre-trial case management when directed by the Court (O. 34 r. 2)

(3) The Court, having given directions under rule 2(2) or rule 3 may either on its own motion or upon the application of any party, if any party defaults in complying with any such directions, dismiss such action or proceedings or strike out the defence or counterclaim or enter judgment or make such order as it thinks fit.”

[14] Di dalam kes *HOW HOCK SING @ LOW KIM CHWEE V. LEE SAY PENG* [2015] 6 AMR 381 ; [2015] 9 CLJ 368 ; [2015] MLJU 712 ; [2015] MLRHU 856, Mohd Nazlan JC menjelaskan berkenaan *unless order* seperti berikut: “*is an order of the Court that directs a party to perform some process requirement by a specified date and states the consequences of transgression*”.

[15] Mahkamah Tinggi di dalam kes yang sama *DIONG HIEW KING @ TIONG HIEW KING v. LAU SWEE*

NGUONG @ LAU SUI GUANG [2012] CLJU 1086 ; [2012] 1 LNS 1086 ; [2014] 8 MLJ 575, memutuskan seperti berikut:

"It is trite law that a counsel has three duties. The first duty which a counsel owes is to the court. I understand this duty to mean that a counsel must assist the court in the expeditious, just and economical administration of justice by the court which encompasses the compliance with all directions given by the court unless there is good reason shown.

Rule 12 of the LP (P & E) Rules 1978 expressly provides that an advocate and solicitor shall not conduct a civil case or make a defence which is intended merely to delay proceedings or to harass or injure the opposite party or to work oppression or wrong.

The second duty which a counsel owes is to his profession. It means that he must conduct himself in an appropriate manner when handling a case before the court so as to uphold the dignity and high standing of his profession. This is clearly provided in rule 31 of the LP (P & E) Rules 1978. The third duty which a counsel owes is to his client. It means that a counsel must fearlessly uphold the interest of his client. In other words, he must present his client's case in the best possible light before the court with all due courtesy to the court. This is expressly provided in rule 16 of the LP (P & E) Rules 1978.

In the instant case since the new counsel ie Mr. Micheal Chow has agreed to take over the brief from the previous counsel ie Mr. Ahmad Moodeen without the preparation and filing and exchange of the defendant's witness statement with that of the plaintiff by the previous counsel on record then he (Michael Chow) must make sure that he is able to comply with the court's directions and to carry them out before or on 27 July 2012.

Otherwise he ought not to have agreed to take over the brief. In my view, Rule 6(a) of the LP (P & E) Rules 1978 is applicable here as well. I have construed it to mean that an advocate and solicitor shall not accept any brief unless he is able to comply with the directions given by the court in regard to the pre-trial case management of the case.

In my view, the delay and failure on the part of the defendant to comply with the court's directions has prejudiced the plaintiff and this prejudice cannot be compensated by an order for costs. The plaintiff's learned counsel has duly complied with the court's directions and has prepared the witness statements of the plaintiff's 6 witnesses. She is ready to exchange it with the defendant's one witness statement. She is ready to proceed with the conduct of the plaintiff's case during the full trial.

In view of the reasons as set out above, the court is of the view that the said decision is just and fair to both parties and was within the discretion of the court to make pursuant to Order 34 rule 2(3) of the RC 2012."

[16] Mahkamah ini mendapati berdasarkan rekod, peguamcara Defendan- Defendan dalam tuntutan balas sepatutnya memfailkan pernyataan saksi pada atau sebelum 8.10.2025. Namun, pemfailan dan serahan penyata saksi kepada Plaintiff dalam tuntutan balas hanya dibuat pada 3 hari sebelum perbicaraan. Alasan yang diberikan oleh peguamcara Defendan- Defendan dalam tuntutan balas adalah tidak munasabah kerana sejak dari awal Defendan-Defendan dalam tuntutan balas telah hadir semasa pengurusan kes dan mengetahui arahan-arahan mahkamah ini bagi persediaan perbicaraan.

[17] Menjadi tanggungjawab peguamcara Defendan-Defendan dalam tuntutan balas untuk memastikan semua kertas kausa dan dokumen perbicaraan dalam keadaan bersedia dan merancang untuk memastikan perbicaraan ini berjalan dengan lancar. Berdasarkan rekod mahkamah ini, peguamcara Defendan dalam tuntutan balas sendiri yang telah mengendalikan dan/atau hadir pengurusan kes secara e-review yang sepatutnya peka dan tahu setiap arahan PTCM yang perlu dipatuhinya. Kegagalan ini telah mengganggu kelancaran prosiding perbicaraan sekaligus memprejudiskan Plaintiff dalam tuntutan balas.

[18] Selanjutnya mahkamah ini juga merujuk kepada keputusan Mahkamah Tinggi di dalam kes *ALLIANZ GENERAL INSURANCE COMPANY (MALAYSIA) BHD v. BEST RE (L) LTD* [2018] 2 CLJ 431, Khadijah Idris PK memutuskan yang berikut:

[45] The reasons given for not filing the witness statement on 4 April 2016 is simply unacceptable. The defendant's solicitor, although fully aware that they were in breach for not filing the witness statement on 4 April 2017 and served with

an application by the plaintiff to have their defence strike out for such breach was content to only file an affidavit resisting the plaintiff's application without taking any step to rectify their breach, at least by filing an application, on urgency basis, to extend the time to file the witness statement.

[46] The defendant's conduct under such a situation, and the previous failure to comply with the court directions, to my mind, display a nonchalant attitude of the defendant's solicitor towards the court directions. The court was prepared to allow the defendant space and opportunity when they failed to comply with the directions made on 2 March 2017 and 13 March 2017. Having given the opportunity to redeem itself, the defendant ought to be vigilant in the manner how they manage their case. However, this is not to be. Having considered the defendant's latest breach and their conduct in relation to complying with the direction to file the witness statement, I am constrained to construe such conduct as intentional and contumelious. Such conduct has cast serious doubt on the defendant's sincerity to discharge its duty to assist the court in the expeditious, just and economical disposal of the writ action.

[47] At the risk of repetition, whether to invoke O. 34 r. 2(3) of the ROC 2012 is a question of facts. In the instant case, premised on the facts and reasons stated above it is my considered opinion that the defendant has deliberately disregarded the court directions contumeliously and intentionally. As such, I took the stand that it is appropriate for the court to invoke O. 34 r. 2(3) of the ROC 2012. Such order may be drastic but it is crucially necessary to ensure the underlying objective of a robust case management system which does not easily tolerate lax enforcement of case management directions (*How Hock Sing v. Lee Say Peng & Ors* [2015] 9 CLJ 368). I therefore allowed the plaintiff's application encl. 59 and ordered that judgment be entered in favour of the plaintiff for the sum claimed as stated in the amended statement of claim with interest and costs."

C. DAPATAN MAHKAMAH

[19] Tiada pada bila-bila masa peguamcara Defendan-Defendan memohon lanjutan masa bagi memfailkan penyata saksi. Kegagalan Peguamcara Defendan-Defendan dalam tuntutan balas untuk mematuhi arahan PTCM yang telah diberikan adalah suatu penyalahgunaan proses mahkamah, tidak menghormati perintah mahkamah dan menyebabkan perjalanan prosiding tidak dapat diteruskan dan berjalan dengan lancar sebagaimana yang telah dijadualkan.

[20] Mahkamah ini mengambil pendekatan dan dapatan YAA HMP Abu Bakar Jais di Mahkamah Persekutuan dalam kes *KETUA PENGARAH JABATAN PENYIARAN MALAYSIA & ANOR v. VERTEX BLUE CONSULTING SDN BHD* [2026] 1 CLJ 859 ; [2025] CLJU 3135 yang memutuskan seperti berikut:

"[55] The action of the defendants in not complying with the terms of the order is quite clear. If the unless order is not given effect, the defendants not only could avoid obligation to disclose the documents, but also has the effect of allowing the defendants to ignore the directions of the courts. This among others would directly hamper and frustrate the ability for courts to issue directions to properly manage the case before the trial as provided by O. 34 of the ROC for pre-trial case management. It is common knowledge that the courts now have increasing cases for disposal and this provision is a fundamental tool for the courts in managing these cases before trial. This includes giving pre-trial directions such as in the present appeal for the production of the documents by the defendants as required by the order.

[21] Berdasarkan otoriti di atas adalah jelas untuk arahan PTCM mahkamah ini hendaklah dipatuhi dan tidak diabaikan sewenangnyanya oleh mana-mana pihak untuk memastikan prosiding guaman di mahkamah ini diteruskan dan/atau berjalan dengan lancar.

[22] Atas imbalan kebarangkalian dan disebabkan kegagalan Defendan- Defendan dalam tuntutan balas mematuhi dan.atau mengabaikan arahan PTCM yang telah diberikan, Mahkamah dengan ini menggunakan A.34 K.2(3) KKM 2012 dan otoriti di atas adalah dirujuk dan diikuti dengan ini membenarkan permohonan Plaintiff dalam tuntutan balas di Kandungan 93 dengan membatalkan pembelaan Defendan-Defendan dalam tuntutan balas serta membenarkan tuntutan Plaintiff dalam tuntutan balas terhadap Defendan-defendan dalam tuntutan balas dengan kos RM4K.