

**IN THE COURT OF APPEAL OF MALAYSIA**  
**(APPELLATE JURISDICTION)**  
**CIVIL APPEAL NO. Q-02-613-1998**

BETWEEN

LEONG SHAU NAM @ LEONG SIEW NAM  
(Administrator of Leong Keng, deceased) ... APPELLANT

AND

1. LEONG SIEW FUNG ... 1<sup>ST</sup> RESPONDENT  
2. LEONG MEE KHIUN ... 2<sup>ND</sup> RESPONDENT  
3. LEONG SIEW TING ... 3<sup>RD</sup> RESPONDENT  
4. LEONG SIEW KHIUN ... 4<sup>TH</sup> RESPONDENT  
5. LEONG WING KHON ... 5<sup>TH</sup> RESPONDENT  
(Administrators of Leong Shau Khiang, deceased)

[In the matter of Suit No. 22-17-96 (MR) in the High Court of Sabah and Sarawak at Miri

Leong Siew Fung & 4 Ors. ... Plaintiffs  
vs.  
Leong Shau Nam @ Leong Siew Nam ... Defendant

**High Court Originating Motion No. 25-03-96 (MR)**

Yong Yeu Sin ... Applicant  
vs.  
Probate Officer, District Office, Miri ... Respondent

**High Court Originating Summons No. 24-05-96 (MR)**

Lee Kuet Chin ... Plaintiff  
vs.  
Tan Kok Sen & Anor. ... Defendant]

Coram: Zulkefli Ahmad Makinudin, J.C.A.  
Raus Sharif, J.C.A.  
Abdull Hamid Embong, J.C.A.

## JUDGMENT OF THE COURT

1. This is an appeal against the decision of the High Court Miri, Sarawak on an interlocutory motion to set aside the finding of contempt against Mr. Tai Chou Yu (Mr. Tai) an advocate practising in Miri, Sarawak.
  
2. On 31 July 2007, we heard and dismissed the appeal. We now give our reasons. First, the relevant facts.
  
3. Twenty six cases were fixed for mention and hearing before Ian Chin J from 26 to 28 August 1998 at Miri High Court Sarawak. When Mr. Tai learnt that four of his cases were amongst the cases fixed before Ian Chin J, he immediately went to see the Senior Assistant Registrar (SAR) and requested for all his cases to be adjourned and rescheduled. The SAR asked him to write in, which he did. In the letter to the SAR dated 17 August 1998, Mr. Tai stated *inter alia* as follows:

“We shall be obliged if you will kindly re-schedule the above-captioned case on the ground that there is a strong likelihood of bias and partiality on the part of intended presiding judge, Mr. Ian Chin Hon Chong. It is an open secret that Mr. Chin had made many defamatory remarks on our Mr. Tai in his judgment in Takang Timber Sdn. Bhd. v The Government of Sarawak & Anor in Suit No. MR 26 of 1990. The said case has resulted in 3 appeals to the Court of Appeal pending hearing. It is our humble considered opinion that our client; interest in his pursuit for justice will be better served if his case be heard before another judge.”

4. The SAR did not reply to the letter. What transpired on 26 August 1998 is comprehensively set out by Ian Chin J in which are as follows:-

“I then began to sit on 26 August 1998 starting with those matters which were not contentious in order to avoid, as far as possible, lawyers having to wait a long time in court for orders which can be granted in a matter of minutes. The first of the matter handled by the Advocate that came up for hearing that morning was ORIGINATING SUMMONS NO. 24-94-98 (MR) (Wong Siew Ping v Credit Corporation Malaysia Sdn Bhd & Anor.) where the Advocate, acting for the plaintiff, had also written to the court by a letter of 17 August 1998 to ask for the matter to be re-scheduled and indicating that counsel for the other party had no objection but with no allegations as those contained in the other letter, *supra*. The court also did not reply the letter. When this matter (Originating Summons No. 24-94-98 (MR) was called, another counsel stood in for

the Advocate and requested an adjournment and referred to the letter whereupon I told counsel that there was no reason given for wanting an adjournment. I refused the adjournment and proceeded to hear the matter. The stand-in counsel was left with the unenviable task of having to reply why the Originating Summons should not be struck out as, learned counsel for the other party contended, it was wholly inappropriate. I upheld the submission and struck out the Originating Summons and stated that I will give my reasons if there is an appeal.

It was when the second matter, Originating Motion No. 25-03-96 (MR), which I have at the outset referred to that the Advocate himself appeared. This is what happened as the following notes of proceedings show:-

MALAYSIA  
IN THE HIGH COURT IN SABAH AND  
SARAWAK AT MIRI  
SUIT NO. 22-17-96 (MR)

LEONG SIEW FUNG & 4 ORS ... PLAINTIFFS

Vs

LEONG SHAN NAM ... DEFENDANT

Notes of Proceedings  
In Chambers  
26 August 1998  
12.27 p.m.

Coram : Justice Ian H.C. Chin  
For Plaintiffs : Florence Lam  
For Defendant : Tai Choi Yu

Tai: If this court pleases I would like to apply for your lordship to be disqualified from hearing this case on the ground that there is a real likelihood of bias or impartiality. This is because your lordship has made many defamatory remarks against me both in my personal capacity and in my capacity as a fit and proper person to act as an advocate and solicitor. That case is case no.

MR. 26 of 1990. That case is now presently under appeal to the Court of Appeal. Altogether there are three appeals to the Court of Appeal on that case and the defamatory remarks contain in the said case is also the subject-matter of the appeals to the Court of Appeal. In the circumstances I humbly submit that it will be in the best interest on my client if your lordship disqualify yourself from hearing any of my cases until the Court of Appeal has decided on the said defamatory remarks made by your lordship against me. Secondly on this particular case there is also an appeal to the Court of Appeal and that this case cannot proceed until the Court of Appeal has decided on that appeal. Thirdly, I have on the 17 August 1998 written to the SAR Miri for adjournment of all my cases fixed for hearing before your lordship and to that we have not been accorded the courtesy of a reply and response in writing. Fourthly, I have in my letter

dated 25 August addressed to Messrs Khoo & Co, cc to SAR, Miri, asked that Gabriel Kok to stand in on my behalf and I understand that your lordship to make a decision against him when he has no instruction to argue on our behalf. We feel that the decision in the earlier case 24-28-98 show the real likelihood of bias or partiality in respect to your lordship handling of my cases. For these reasons, I must submit for all the case before your lordship today I am unable to proceed.

12.35 a.m.

Court: Could you show me the part of the judgment, which is under appeal, where I am alleged to have said you are not “a fit and proper person to act as an advocate and solicitor”.

Tai: There is a remark that I should be prosecuted for my action which I did as a lawyer and solicitor in respect to my referral to the Chief Minister of Sarawak. I do not have the judgment. I have also written letter to your lordship and letter to the Chief Justice of Malaysia and to Chief Judge Sabah & Sarawak showing clearly those portions of your judgment which were defamatory of me. I am sure your lordship must have a copy.

Court: There are still two other cases involving Mr. Tai, are you going to say the same thing.

Tai: Yes, there are cases tomorrow and the day after also.

Court: In that case I will call the other counsel involve in the other cases. One other case is Originating Motion No. 25-03-96 (Yong Yeu Sin v

The Public Officer, District Office) and (Lee Kuet Chin v Tan Kok Sen & Anor.).

Susan Gau: I am for the Respondent in Originating Motion No. 25-03-96 of which Mr. Tai is for the Applicant.

Lin Swee Huat: I am for the 1<sup>st</sup> Defendant in Originating Summons No. 24-05-96 of which Mr. Tai is for the Plaintiff.

Tai: I make the same submission as I made earlier.

Court: For the benefit of the two learned counsel who had just joined us, I wish to read to them what Mr. Tai had said in seeking to disqualify me from hearing the cases. [Court read the submission.].

Tai: As for the latter two cases, there are no other grounds for adjournment and disqualification.

12.55 p.m.

Court: I need time to consider what Mr. Tai has said and I therefore adjourn to 27 August 1998 at 9.00 a.m. and all counsel are requested to be present. The said three cases which I have mentioned are adjourned to 27 August 1998 at 9.00 a.m.”

5. On the next day, i.e. on 27 August 1998, Ian Chin J informed Mr. Tai that he has on his own motion found Mr. Tai in contempt of court for what he had said in court the day earlier. He then informed Mr. Tai that he would give Mr. Tai an opportunity to make representations on 25 September 1998 before deciding what penalty he would impose on Mr. Tai.

6. However, on 4 September 1998, Mr. Tai filed three notices of motion each seeking the following reliefs and/or orders:-
- (i) that the purported “Finding of Contempt of Court by Court on its own Motion” made by Ian H. C. Chin, J and dated the 27<sup>th</sup> August 1998 be impeached and/or discharged and/or set aside;
  - (ii) and/or alternatively for a declaration that the said “Finding of Contempt of Court by Court on its own Motion” is void ab initio and/or null and void and/or is a nullity as being ultra vires and/or made without jurisdiction or power and/or in excess of jurisdiction or power and/or contrary to the established and elementary principles of Natural Justice;
  - (iii) that all proceedings hereafter including the purported imposition of penalty fixed for the 25<sup>th</sup> September, 1998 at 11.00 a.m. at Open Court at the Miri High Court on the

said “Finding of Contempt of Court by Court on its own Motion” be struck off and/or rescinded and/or dismissed;

- (iv) and/or alternatively, that, in the event that this honourable court should fail and/or refuse to impeach and/or discharge and/or to set aside the said “Finding of Contempt of Court by Court on its own Motion”, all proceedings hereafter including the purported imposition of penalty fixed for the 25<sup>th</sup> September 1998 at 11.00 a.m. at Open Court at the Miri High Court in the said “Finding of Contempt of Court by Court on its own Motion” be stayed and/or adjourned and/or postponed until the final adjudication and/or determination of this Motion and/or application by this honourable Court including the Court of Appeal and/or the Federal Court.
7. The notices of motions were heard jointly by Charles Ho J on 24 September 1998. The motions were dismissed. Hence, this appeal.

8. In his ruling, Charles Ho J ruled that he did not have the jurisdiction or power to set aside the final order of another High Court Judge. He also ruled that the procedure adopted by Mr. Tai was incorrect. Mr. Tai should have named himself as the applicant and not his clients as the order was made against him and not against his clients in the suits.
  
9. Mr. Tai's main argument before us was that Charles Ho J had erred in law and misdirected himself in declining to exercise jurisdiction to hear the notices of motions. In advancing his argument he relied heavily on the principle laid down by the Federal Court in **Badiaddin bin Mohd Mahidin v Arab Malaysia Finance Bhd. [1998] 1 MLJ 393**, which states –

“It is settled law that one High Court cannot set aside a final order regularly obtained from another High Court of concurrent jurisdiction. But one special exception to this rule is where the final judgment of the High Court could be

proved to be null and void on the ground of illegality or lack of jurisdiction. Apart from breach of rule of natural justice, in any attempt to widen the door of the inherent and discretionary jurisdiction of the superior courts to set aside an order of court *ex debito justitiae* to a category of cases involving orders which contravene 'any written law', the contravention should be one which defies a substantive statutory prohibition so as to render the defective order null and void on ground of illegality or lack of jurisdiction. The discretion to invoke the inherent jurisdiction should also be exercised judicially in exceptional cases where the defect is of such a serious nature that there is a real need to set aside the defective order to enable the court to do justice. In all cases, the normal appeal procedure should be adopted to set

aside a defective order, unless the aggrieved party could bring himself within the special exception.”

10. It was Mr. Tai’s submission that the finding of contempt by Ian Chin J on its own motion was illegal and/or unlawful and/or that it was wrong and/or improper procedurally and substantially. This is because, according to him, there is no procedure under the Rules of the High Court 1980 for the court to make such finding. Furthermore, according to him, the court was not competently convened when the order was made.
  
11. With utmost respect, we disagree. The power of the court to cite any person before the court for contempt is provided for by Article 126 of the Federal Constitution as well as section 13 of the Court of Judicature Act 1964. Both provisions are identical in stating that the Federal Court, the Court of Appeal or the High Court shall have the power to punish any contempt of itself. For the High Court, the procedure is provided by Order

52 of the Rules of the High Court 1980. Thus, the contention of Mr. Tai, that “the finding of contempt of court by court on its own motion” as null and void on the ground of illegally or lack of jurisdiction is devoid of any merit. To us, the principle in Badiaddin’s case has no application to the facts of this case.

12. It is also our considered view that in the circumstances of this case, the proper procedure is for Mr. Tai to appeal against the decision of Ian Chin J. In this respect, we were informed by Mr. Tai that a notice of appeal had in fact been filed. Mr. Tai will still have his day in court to ventilate his grievances against the decision of Ian Chin J. Thus, filing of the notices of motion are clearly an abuse of the process of the court.
13. For the reasons stated above, we dismissed the appeal. In fairness to the appellants who should not have been named as parties, we ordered that the deposit be refunded to them.

Dated 17 September 2007.

Raus Sharif  
Judge  
Court of Appeal Malaysia

Counsel for the appellant:

En. Tai Choi Yu  
En. Renbir Singh

Solicitors for the appellant:

Tetuan Tai Choi Yu & Co.