

**DALAM MAHKAMAH RAYUIAN MALAYSIA
(BIDANGKUASA RAYUAN)
RAYUAN SIVIL NO. W – 02– 206 – 2004**

ANTARA

MALAYSIA INTERNATIONAL
CONSULTANTS SDN BHD

... PERAYU

DAN

R.R. CHELLIAH BROTHERS
(DIDAKWA SEBAGAI SEBUAH FIRMA)

... RESPONDEN

(Dalam Perkara Mahkamah Tinggi di Kuala Lumpur
Petisyen Pemula R3-17-4-1999

Dan

Dalam Perkara R.R. Chelliah
Brothers, sebuah firma
Peguambela dan Peguamcara

Dan

Dalam Perkara Seksyen 126 Akta
Profesion Undang-Undang, 1976

Dan

Dalam Perkara Aturan 59 Kaedah-
Kaedah Mahkamah Tinggi, 1980

Antara

Malaysia International Consultants Sdn Bhd

... Pempetisyen

Dan

R.R. Chelliah Brothers
(Didakwa sebagai sebuah Firma)

... Responden)

Coram: Gopal Sri Ram, J.C.A.
Heliliah bt Mohd Yusof, J.C.A.
Sulong Matjeraie, J.C.A.

ORAL JUDGMENT

Gopal Sri Ram, J.C.A. delivering judgment:

1. This is the Judgment of the Court
2. The only issue in this appeal is whether a judge upon review of taxation is entitled to interfere with the quantum awarded by a taxing registrar in respect of getting up on a solicitor-client bill. The facts out of which this issue arises fall within a narrow compass. The appellant before us was the 2nd defendant in a suit brought by Negara Properties Sdn Bhd claiming, *inter-alia*, a sum of RM6 million as damages for negligent work carried out by the appellant. The 2nd defendant was engaged by Negara Properties as a consultant infrastructural engineer. Its duty was to provide services for the construction of earthwork, road, drainage and sewerage system for the development of the project called Taman Melawati. It is arising from that engagement that the charge of negligent arose. The appellant engaged the services of Mr. R.R. Chelliah a doyen of the Bar and counsel whose reputation preceded him. He prepared a defence for the appellant. If you look at it, you will see in what detail it met the charges made against the appellant. It is a specialist defence in the sense that it deals with matters relating to drainage system and the like at length, condescending into specifics. It is beyond peradventure that a great deal of work must have gone into its preparation. It is common ground between the parties before us that at some stage Mr. Chelliah's firm was discharged and new solicitors appointed. A dispute arose between the parties as to the fee payable for the work done. Accordingly a petition of course

under the Legal Profession Act 1976 was presented and an order obtained for taxation of the solicitors bill. A bill was duly presented and was taxed. For work done under the item of getting up the solicitors made a claim of RM140,000. The taxing registrar awarded a mere RM10,000. Dissatisfied with that award, the solicitors applied for review by the judge. He enhanced the taxing Registrar's award to RM140,000.

3. Before us, the appellant has argued that the learned judge was in error in making the award which he did. We were referred to the function of a review judge as stated by Aitken J in **M.C. Corbett v Ipoh Dredging [1936] MLJ (Rep) 222**. The following passage in the judgment in that case was read to us:

“Only so much should be allowed as would be regarded by a competent local practitioner as an adequate reward for his services as an advocate in the particular case under consideration. Opinions on such a point may differ, but it the opinion of the Registrar (or Assistant Registrar) that the law provides shall count unless, as I have said before, he can be shown to have made some obvious error, or to have exercised his in that regard capriciously or mischievously, or simply to have followed someone else's advice or instructions and not to have exercised any discretion at all.”

4. It was submitted that the Registrar in the present instance had committed none of the errors adverted to by Aitken J entitling the learned judge to intervene by way of review. Reference was also

made to the judgment of Abdul Malek Ahmad FCJ in **Gooi Hock Seng v Chuah Guat Khim [2000] 3 AMR 3683** where at page 3689 there appears the following passage:

“In *Coon v Diamond Tread Co. (1938) Ltd* [1950] 2 All ER 385, on an inquiry as to damages, an official referee awarded the plaintiff a sum of £10,541, together with costs which he directed should be taxed. A bill of costs brought in by the plaintiff was reduced by the taxing master in respect of sums included in the bill in respect of the items ‘instructions for brief,’ fees and refreshers to leading and junior counsel, and fees of accountants whose services the plaintiff had used at the inquiry. The plaintiff objected to the reductions on the grounds that the fees allowed were inadequate, and asked for the decision of the taxing master to be reviewed.

It was held that as the complaint went to quantum only, it had not been shown that the taxing master had erred on a question of principle and therefore the court had no jurisdiction to interfere with his decision.”

5. Complaint was also made before us that the learned judge had taken into account irrelevant consideration and extraneous factors when arriving at his decision. Mention was made of the fact that the learned judge had, in his judgment, dealt with the fact that there had been negotiations for settlement when that fact was not evidentially

before him.

6. We are conscious that we would be entitled to interfere in this case once we are satisfied that the review judge had exceeded the role assigned to him by law. In other words, appellate interference would be warranted if it can be shown that the judge had amended the registrar's allocatur or certificate in the absence of any error or principle on the part of the latter. In her certificate the learned registrar after setting out a brief statement of the facts rejects the claim for RM140,000 on the ground that it had not been justified before her. Having considered the material that was before the registrar which has been made available to us in the record provided by the appellant, we are satisfied that the learned registrar did in fact commit a serious error in point of principle. For, when she was seeking justification from the solicitors (respondents before us) for the claim for getting up the case, she obviously overlooked the nature of the claim, its seriousness, the importance of litigation to the client and the nature and extent of the work that must have been done in preparing the kind of defence that was made available to her. There you have the justification staring one in the face. In short, she asked herself the wrong question; failed to have regard to the material before her and looked for justification when it was there before her. Accordingly this is the case in which the learned review judge was entitled to intervene. He was entirely, in our opinion, within the limits prescribed by the principles law governing his function upon the review.

7. As for the complaint that the learned judge had taken into account extraneous considerations, we have carefully examined the

material placed before the registrar and before the judge and we find no substantial basis for this. Any error was *de minimis* at best.

8. For the reasons already given, we are of the view that this appeal is devoid of merit. It is dismissed. The appellant must pay the respondent their costs of this appeal. The deposit shall be paid out to the respondent solicitors to account of their taxed costs.

Delivered in Open Court at the conclusion of arguments on 4 February 2009.

Counsel for the appellant: Maidzuara Mohammed

Solicitors for the appellant: Tetuan Logan Sabapathy & Co.

Counsel for the respondent: Dato V. Sivaparanjothi

Solicitors for the respondent: Tetuan R.R. Chelliah Brothers

Verified with Y.A. Gopal Sri Ram, J.C.A. and certified by me to be correct.