

**DALAM MAHKAMAH RAYUAN MALAYSIA**  
**(BIDANG KUASA RAYUAN)**  
**RAYUAN SIVIL NO. W-02-1061-2006**

ANTARA

D.W. MARGARET A/P DAVID WILSON ... PERAYU

DAN

PERBADANAN KEMAJUAN KRAFTANGAN  
MALAYSIA ... RESPONDEN

**DALAM MAHKAMAH TINGGI MALAYA DI KUALA LUMPUR**  
**(BAHAGIAN SIVIL)**  
**NO. GUAMAN: S5-22-285-2003**

ANTARA

PERBADANAN KEMAJUAN KRAFTANGAN  
MALAYSIA ... PLAINTIF

DAN

D.W. MARGARET A/P DAVID WILSON ... DEFENDAN

CORAM: RAUS SHARIF, JCA  
HASAN LAH, JCA  
SULONG MATJERAIE, JCA

## JUDGMENT OF THE COURT

1. The plaintiff is a body corporate established under the Perbadanan Kemajuan Kraftangan Malaysia Act 1979 (“the Act”). The defendant is the plaintiff’s tenant. On 4 March 2005 the appellant obtained a judgment against the defendant. It was ordered *inter alia* that the defendant to deliver vacant possession of the premises that the defendant was renting to the plaintiff within 30 days from the date of said judgment.
2. The defendant reacted by filling an application to set aside the said judgment. An interim stay ex-parte order was obtained by the respondent on 5 April 2005. The defendant upon being served with the ex-parte order filed an application to set it aside.
3. At the hearing of both applications before the learned High Court Judge, the defendant raised a preliminary objection. The objection was against Messrs Zain & Co, Advocates and Solicitors for having representing the plaintiff. The defendant argued that the Messrs Zain & Co have no locus standi to act as solicitors for the plaintiff by virtue of section 35 of the Act. The learned High Court Judge dismissed the objection. Hence, this appeal.
4. We heard and allowed the appeal on 13 October 2008. We now give our reasons.

5. The single issue that called for determination is the interpretation of section 35 of the Act which reads as follows:

“35. Civil proceedings

Notwithstanding the provisions of any other written law –

(a) any person holding the appointment of Federal Counsel and authorized by the Attorney- General for the purpose; or

(b) any officer of the Perbadanan authorized by the Chairman or Deputy Chairman of the Perbadanan for the purpose,

may institute any civil proceedings on behalf of the Perbadanan or a subsidiary corporation and may, on behalf of the Perbadanan or a subsidiary corporation, appear in and conduct any such proceedings by or against the Perbadanan or the subsidiary corporation and make and do all appearances, acts, and applications in respect of such proceedings.”

6. The learned High Court Judge was of the view that the word “may” in section 35 of the Act is permissive and not mandatory. Therefore, he hold that Messrs Zain & Co. has the locus standi to represent the plaintiff. Accordingly, he dismissed the preliminary objection raised by the defendant.
  
7. With respect, we hold otherwise. The question whether the legislative intends section 35 of the Act to be mandatory or directory must depend upon the scope and object of Act. One noticeable feature of the Act is the absence of a general provision that provide the plaintiff the power to employ or appoint solicitors to transact any business or do any act required to be done in exercise of its powers or carry of its duties under the Act. In such absence, the question is how do the plaintiff institute civil proceedings or appear in and conduct such proceedings in light of the requirement of Order 5 Rule 6(2) and Order 12 1(2) of the Rules of the High Court 1980 (RHC), except as expressly provided by or under any written law, a body corporate may not begin or carry on any such proceedings in the High Court otherwise than by a solicitor. The answer is found in section 35 of the Act. Section 35 of the Act allows, notwithstanding the provisions of the RHC, a Federal Counsel authorised by the Attorney General for that purpose or any officer of the plaintiff as authorized by the Chairman or Deputy Chairman to represent the plaintiff in any civil proceedings.

8. Thus, reading together section 35 and other sections of the Act, it seems the intention of the legislative is clear. That is, proceedings by or against the plaintiff can only be instituted and proceeded with either by a Federal Counsel authorised by the Attorney General for that purpose or the plaintiff's officer authorised by the Chairman or Deputy Chairman.
  
9. In this respect, we would like to refer to the decision of Hishamudin J in the case of **Lembaga Kumpulan Wang Simpanan Pekerja v Shaharudin Omar & Ors [2008] 8 CLJ 648**. In that case, a similar argument was raised. It relates to the interpretation of section 67 of the Employment Provident Fund Act 1991 ("EPF Act") which reads:

"67. Notwithstanding the provisions of any written law, but without prejudice to section 65, in any civil proceedings by or against the Board:

- (a) any person holding the appointment of a Federal Counsel and authorized by the Attorney General for the purpose; or
  
- (b) any legal officer of the Board authorized in that behalf by the Chairman,

may, on behalf of the Board, institute, appear in and conduct such proceedings and may make and do all

appearances, acts and applications in respect of such proceedings.”

10. It was similarly argued that with the above provisions, the firm of solicitors, Messrs Pathma & Co, who has filed the writ action for the Board, had no legal authority to institute the suit against the 3<sup>rd</sup> defendant. Hishamudin J, however, rejected the argument. This is because of the existence of the following provisions under the EPF Act which reads:-

“14(3) The Board may employ and pay agents, advocates and solicitors, bankers, stockbrokers, or any other persons, to transact any business or do any act required to be transacted or done in the exercise of its powers or in the carrying out of its duties or for the better carrying into effect of the purpose of this Act.”

11. In the present case, there is no equivalent provisions in the Act. Accordingly, we reject the plaintiff’s argument that section 35 of the Act gives the plaintiff an additional option when it comes to legal representation apart from appointing solicitors to represent them, the plaintiff has the choice and privilege of seeking the assistance of the Federal Counsel or legal officer of the plaintiff to conduct or institute a legal proceeding on its behalf. On the contrary, we are of the view that the plaintiff is

restricted to use the services of the Federal Counsel as authorised by the Attorney General or its officers as authorised by the Chairman or Deputy Chairman.

12. No doubt section 35 of the Act used the word 'may' instead of the word 'shall'. But it has been decided by high authority that when a provision in a statute uses the word 'may', it is a question of legislative intent, dependent upon a number of factors whether the intended result is mandatory or directory. In the well known case of **Thanimalai & The Government of Malaysia v Lee Ngo Yew [1975] 1 MLJ 125**, the Federal Court has held that the word 'may' in section 17 of the Government Proceeding Ordinance 1956 is to be construed to mean 'shall'. In **Kekatong Sdn. Bhd. v Bank Bumiputra Malaysia Bhd. [1998] 2 CLJ 266**, Gopal Sri Ram JCA speaking on the same subject matter said as follows:-

“It is therefore wrong to assume as a matter of course that whatever Parliament uses the word 'may' it never means 'must'.”

13. The same is true in the present case. Having regard to the general scheme of the Act, it is quite clear that on the proper construction of the word 'may' in section 35 of the Act it must be construed to mean 'shall'. Thus, the plaintiff has no power to appoint solicitors to conduct or institute a legal proceeding on its behalf. The plaintiff has to rely on the services of a Federal

Counsel as authorised by the Attorney General or its officers as authorised by the Chairman or Deputy Chairman.

14. For the above reasons, we unanimously allowed the appeal with costs. The order of the High Court is set aside. The deposit paid be refunded to the defendant.

Dated 7 January 2009.

Raus Sharif  
Judge  
Court of Appeal Malaysia

<u>Counsel for the appellant:</u>	Dato' R. Kamalanathan En. Vinod R. Kamalanathan
<u>Solicitors for the appellant:</u>	Tetuan Vinod Kamalanathan & Associates
<u>Counsel for the respondent:</u>	En. Ameer Hamzah Arsad En. Rabini Muru Ghesan
<u>Solicitors for the respondent:</u>	Tetuan Zain & Co.