

**IN THE FEDERAL COURT OF MALAYSIA  
(APPELLATE JURISDICTION)  
CIVIL APPEAL NO. 02(f)-46-09/2020(W)**

**BETWEEN**

**TAN SRI DR. MUHAMMAD SHAFEE  
ABDULLAH**

**.. APPELLANT**

**AND**

- 1. TOMMY THOMAS**
- 2. TAN SRI VADAKETH CHACKO GEORGE**
- 3. MALAYSIAN BAR**
- 4. CHRISTOPHER LEONG SAU FOO**  
**(SUED ON BEHALF OF ALL MEMBERS OF THE BAR  
OF MALAYSIA INCLUDING HIMSELF)**

**.. RESPONDENTS**

**PRESS RELEASE**

**[1]** This appeal concerns the procedure to be followed by the Malaysian Bar (third respondent) and its members in dealing with complaints of misconduct by fellow members.

**[2]** The appellant's claim against the respondents arose from the publication and dissemination of the motion titled "*Motion against Shafee Abdullah*" dated 28.2.2015 which was submitted to the Malaysian Bar by Tommy Thomas (first respondent) and seconded by Tan Sri VC George (second respondent).

**[3]** On 9.3.2015, the Malaysian Bar caused the motion to be published on its website at <http://www.malaysianbar.org.my> titled "*Agenda and Motions for the 69<sup>th</sup> Annual General Meeting of the*

*Malaysian Bar*” which was accessible to some 15,000 members of the Bar. The motion was slated to be tabled at the upcoming Annual General Meeting (“AGM”) of the Bar scheduled to take place on 14.3.2015.

**[4]** The appellant’s response to the motion was to file a civil suit against the respondents premised on defamation, the tort of breach of statutory duty and conspiracy to defame. At the same time the appellant applied *ex parte* for an interim injunction to restrain the tabling of the motion. His application was granted by the High Court on 13.3.2015, one day before the AGM was held.

**[5]** This appeal is only concerned with the question whether the respondents are liable in the tort of breach of statutory duty and not for the other causes of action, namely defamation and conspiracy to defame. Nor is this appeal concerned with the question whether the appellant has or has not been guilty of misconduct. That is a matter for the Disciplinary Board to determine in the ongoing disciplinary proceedings against the appellant.

**[6]** Section 99(1) of the Legal Profession Act, 1976 (“the LPA”) requires that any complaint concerning the conduct of an advocate and solicitor must be in writing and must first be made or referred to the Disciplinary Board. In breach of this requirement of the law, Tommy Thomas and Tan Sri VC George moved the Malaysian Bar under section 64(6) of the LPA for a resolution to condemn the appellant “in the strongest terms” for breach of discipline.

**[7]** Quite apart from the wrong procedure adopted by Tommy Thomas and Tan Sri VC George in lodging the complaint of misconduct by the appellant, the Malaysian Bar committed a far more serious breach of the law when it published the motion on its website and tabling it for resolution at the AGM. This is not only illegal but grossly unfair and highly prejudicial to the appellant as it amounts to a prejudgment of his guilt ahead of the disciplinary proceedings before the Disciplinary Board.

**[8]** To allow a member of the Malaysian Bar to lodge a complaint of misconduct by way of motion under section 64(6) of the LPA is to render section 99(1) completely devoid of meaning, for then any complaint concerning the conduct of an advocate and solicitor could just be made to the Malaysian Bar and to be summarily decided from the floor of the House without referring the complaint to the Disciplinary Board. This is not something that this court will countenance as it is a clear contravention of the law by the Malaysian Bar as guardian of the LPA.

**[9]** When the law entrusts a particular body to deal with a particular matter, that matter must be left to that body to deal with. In the context of the present case, the body that the law entrusts to deal with all matters concerning the conduct of advocates and solicitors is the Disciplinary Board and not the Malaysian Bar. With section 99(1) of the LPA in place, the Malaysian Bar has no business as a matter of fact and law to deal with any complaint of misconduct by an advocate and solicitor, either by way of motion under section 64(6) or by any other way.

**[10]** The power to discipline advocates and solicitors is vested in the Disciplinary Board and this power is to be exercised by the Board in accordance with the relevant rules. The Malaysian Bar is not bound by these rules and this works to the detriment of the advocate and solicitor who has the misfortune of being hauled up before the Bar for alleged indiscipline where his peers will be free to condemn him “in the strongest terms” from the floor of the House.

**[11]** The Malaysian Bar knew exactly what the correct procedure was in dealing with complaints of misconduct by its members. It therefore does not speak well of its action in the present case in allowing the motion submitted by Tommy Thomas and Tan Sri VC George to be tabled and decided from the floor of the House instead of referring it first to the Disciplinary Board for the Board’s action.

**[12]** The Malaysian Bar’s breach of section 99(1) of the LPA entitles the appellant to a remedy. We are unable to accept the Malaysian Bar’s contention that no damage has been established by the appellant for such breach of the law. Nor do we accept the argument that the appellant’s action has become academic on the ground that the motion was not discussed at the AGM and that the complaint of misconduct by the appellant has been referred to the Disciplinary Board.

**[13]** The appeal is therefore allowed with no order as to costs. The decision of the Court of Appeal is set aside and the appellant’s claim is allowed. The case is reverted to the High Court for

assessment of damages against the Malaysian Bar (third respondent) by a High Court Judge.

**[14]** We are not making the same order against Tommy Thomas (first respondent) and Tan Sri VC George (second respondent) as unlike the Malaysian Bar, they are not statutory bodies to be bound by section 99(1) of the LPA.

**The Federal Court of Malaysia**

**Dated: 20 October 2021.**