



DALAM MAHKAMAH TINGGI MALAYA DI KUALA LUMPUR

DALAM WILAYAH PERSEKUTUAN

BAHAGIAN RAYUAN DAN KUASA-KUASA KHAS

**[PERMOHONAN BAGI SEMAKAN KEHAKIMAN NO: WA-25-
276-10/2017]**

Dalam perkara mengenai permohonan untuk semakan kehakiman di bawah Aturan 53 Kaedah-Kaedah Mahkamah 2012

Dan

Dalam perkara s. 107 hingga s. 124 dan khususnya tetapi tidak terhad kepada ss. 105, 117(2), 120, 121 dan Jadual Keempat Bahagian 1, item 1 dan Bahagian 2 item 1, 3, 5, 6, 8 dan 9 Akta Pengurusan Strata 2013 Akta 757

Dan

Dalam perkara kes Tribunal Perubahan dan Pengurusan Strata Tuntutan No: TPA/S-0431-2/17 antara Thankavelu a/l Perumal Gounder (No KP: 510504-11-5099) dan Fraser Towers melalui awad bertarikh 27.07.2017

Dan

Dalam perkara keputusan Tribunal
Perubahan dan Pengurusan Strata
yang diberikan melalui surat
bertarikh 24.08.2017

ANTARA

THANKAVELU A/L PERUMAL GOUNDER ... PEMOHON

DAN

1. TRIBUNAL PERUMAHAN DAN PENGURUSAN STRATA

2. FRASER TOWERS JOINT MANAGEMENT BODY

**... RESPONDEN-
RESPONDEN**

JUDGMENT

- [1] The applicant filed an application for judicial review of the decision of the Strata Management Tribunal (1st respondent) dated 27.7.2017 in which the applicant's claim against Fraser Towers Joint Management Body (2nd respondent) was dismissed with no order as to costs.
- [2] The applicant in its application is seeking the following reliefs:
- (i) an order of *certiorari* to quash the said 1st respondent's decision dated 27.7.2017.
 - (ii) an order for the 1st respondent to rehear and reconsider the applicant's claim against the 2nd respondent.
 - (iii) alternatively, for this court to exercise its jurisdiction and

power to determine the applicant's claim.

- (vi) an order of *certiorari* to quash the decision of the 1st respondent in refusing to deliver the ground of decision vide the 1st respondent's letter dated 24.8.2017.
- (v) an order for the 1st respondent to deliver the written grounds of decision within a period of one month from the date of the court's order.

The Background Facts

- [3] The applicant is the owner of parcel No. 1-1, Phase A (Fraser West Tower), Frasers Tower Condominium ('the main parcel').
- [4] The 2nd respondent is the Joint Management Body of Fraser Towers Condominium which was formed to carry out the duties stipulated under the Strata Management Act 2013.
- [5] The said main parcel was bought by the applicant from its former owner Maryk Corporation Sdn Bhd on 11.4.2016. The applicant also claims to have the right to use the accessory parcel at Block 1B identified as LVL 1A and LVL 1B ('the accessory parcels'). This accessory parcels according to the applicant, were purchased by the previous owner from Gasing Heights Sdn Bhd, the developer, by a supplemental agreement dated 20.12.2012.
- [6] This accessory parcels are located in front of the condominium's generator set room.
- [7] In regard to this generator set room, the 2nd respondent had received two letters from the authorities which are as follows;
 - (i) Letter dated 26.8.2013 from the Energy Commission which

informed the 2nd respondent that, upon complaint received by the Commission and a visit made on 20.8.2013, the Commission found that there was an obstruction in front of the generator set room which is in breach of the Electricity Regulations 1994. The 2nd respondent then was given 14 days from the date of the letter to ensure easy and safe access to the generator set room.

(ii) Letter dated 6.5.2016 from the Fire and Rescue Department of Selangor informing the same that there should not be any obstruction to the generator set room to enable easy access in emergency situation.

[8] However, the applicant had used the accessory parcels in front of the generator set room as car park space and parked his car.

[9] In connection to this, the 2nd respondent has extended a copy of the Energy Commission's and the Fire and Rescue Department's letter to the applicant vide the 2nd respondent's letter dated 20.1.2017.

[10] Before the applicant bought the said main parcel, the previous owner had authorised the applicant to use the accessory parcel in which from 18.7.2013, the applicant had parked his car registration number WKL 3617 at the said accessory parcels.

[11] On the said 18.7.2013, the 2nd respondent had caused the applicant's car to be clamped.

[12] The accessory parcels were also cordoned by the 2nd respondent.

[13] The applicant thereafter, brought an action against the 2nd respondent before the Strata Management Tribunal for damages for trespass. The particulars of trespass as stated in the applicant's statement of claim are the following:

- (i) clamping the car and refusing the applicant's car free ingress and egress to the carpark and the use of the carpark for its intended purpose;
- (ii) removing all marking demarcating the boundaries of the carpark;
- (iii) denying the applicant possession of his carpark and treating the same as common property.

[14] Having heard the case, on 27.7.2017, the President of Strata management Tribunal dismissed the applicant's claim with no order as to costs. The decision as stated in Borang II is as follows:

*"Tindakan ini setelah didengar di hadapan **TUAN ANOOP SINGH A/L JAGIR SINGH, PRESIDEN TRIBUNAL** pada 27 Julai 2017 di **PUTRAJAYA**, Tribunal dengan ini memerintahkan:*

Tuntutan Pihak Yang Menuntut ditolak tanpa kos.

Bertarikh 27 hari bulan JULAI 2017."

The applicant's grounds to challenge the decision of the 1st respondent

[15] The applicant's grounds for the judicial review as stated in the statement pursuant to Order 53 rule 3(2) Rules of Court 2012 are as follows:

- (i) the President of the Strata Management Tribunal has erred in law and fact and had failed to take into account relevant considerations and had taken into account irrelevant considerations when he made his decision.

- (ii) there is serious irregularities affecting the award made.
- (iii) the merits of the applicant's claims favour the grant of the reliefs sought by before the Tribunal.
- (iv) the Tribunal failed to give its reasons for the decision made.

The 2nd respondent's submission

[16] On the other had, the 2nd respondent contends the following:

- (i) the Strata Management Tribunal has no jurisdiction to hear and determine the applicant's claim which is based on the cause of action of trespass.
- (ii) the award by the Tribunal is legal.
- (iii) the applicant is estopped from claiming for damages due to the applicant's own illegal act for obstructing the generator set room by parking his car at the accessory parcels which contravened Regulation 37(b), Electricity Regulations 1994.

Findings of This Court

[17] The legal position with regard to application for judicial review is settled that the decision of a Tribunal may be reviewed on grounds of illegality, irrationality, procedural impropriety and also disproportionality.

(R. Rama Chandran v. Industrial Court of Malaysia & Anor [1997] 1 CLJ 147; [1997] 1 MLJ 145, Ketua Pengarah Hasil Dalam Negeri v. Alcatel-Lucent Malaysia Sdn Bhd & Anor

[2017] 2 CLJ 1).

[18] In the present case, the main issue raised by the respondent is the issue of jurisdiction of the Strata management Tribunal to hear a claim for damages for trespass. Clearly, if this court finds the Tribunal has no such jurisdiction, the application for judicial review must fail.

[19] Firstly, the jurisdiction of the Tribunal is provided for under *subsection 105(1) of the Strata Management Act 2013* which states:

“(1) The Tribunal shall have the jurisdiction to hear and determine any claims specified in Part 1 of the Fourth Schedule and where the total amount in respect of which a award of the Tribunal is sought does not exceed two hundred and fifty thousand ringgit or such other amount as may be prescribed to substitute the total amount.”

[20] *Part 1 of the Fourth Schedule* provides as follows:

“FOURTH SCHEDULE

PART I

JURISDICTION OF THE TRIBUNAL

[Subsection 105(1)]

1. A dispute of complaint concerning an exercise or the performance of, or a failure to exercise or perform, a function, duty or power conferred or imposed by this Act the subsidiary legislation made under this Act, except for those specifically provided for in this Part.

2. *Subject to subsection 16N(2) of the Housing Development (Control and Licensing) Act 1966 [Act 118], a dispute on costs or repairs in respect of a defect in a parvel, building or land intended for subdivision into parcels, or subdivided building or land, and its common property or limited common property.*
3. *A claim for the recovery of Charges, or contribution to the sinking fund, or any amount which is declared by the provisions of this Act as a debt.*
4. *A claim for an order to convene a general meeting.*
5. *A claim for an order to invalidate proceedings of meeting where any provision of the Act has been contravened.*
6. *A claim for an order to nullify a resolution where voting rights has been denied or where due notice has not been given.*
7. *A claim for an order to nullify a resolution passed at a general meeting.*
8. *A claim for an order to revoke amendment of by-laws having regard to the interests of all the parcel owners or proprietors.*
9. *A claim for an order to vary the rate of interest fixed by the joint management body, management corporation or subsidiary management corporation for latepayment of Charges, or contribution to the sinking fund.*
10. *A claim for an order to vary the amount of insurance to be provided.*



11. A claim for an order to pursue an insurance claim.

12. A claim for compelling a developer, joint management body, management corporation or subsidiary management corporation to supply information or documents.

13. A claim for an order to give consent to effect alterations to any common property or limited common property.

14. A claim for an order to affirm, vary or revoke the commissioner's decision."

[21] The jurisdiction of the Tribunal as stipulated in Part 1 of Fourth Schedule is clear and as the Tribunal is a creature of statute, it is not cloth with any inherent jurisdiction.

[22] Having perused all the 14 matters whereby claim can be made to the Tribunal under this Part 1, Fourth Schedule, I do not see trespass is one of the matter that can be brought before the Tribunal. The argument by the applicant that the applicant's claim for trespass falls under paragraph 1 of the Fourth Schedule is devoid of any merit. The wordings and the meaning of paragraph 1 does not directly or indirectly covers an action for trespass.

[23] In view of this, the decision of the President of the Tribunal in dismissing the applicant's claim is legal for want of jurisdiction. This issue of jurisdiction is a question of law and it is not necessary for the Tribunal to furnish its written reasons to assist parties in their submission and for this court to arrive to its decision.

[24] In any event, as to the failure of the President of the Tribunal to deliver the written reasons for the Award, the relevant provision is *section 117 of the Strata Management Act 2013* which provides:

“117. (1) The Tribunal shall make its award without delay and, where practicable, within sixty days from the first day the hearing before the Tribunal commences.

(2) The Tribunal shall in all proceedings give its reason for its award in the proceedings.”

[25] The wordings of subsection 117(2) above does not states the requirement for written reason for its award. An oral reason is sufficient to fulfill the requirement of this provision.

[26] In this regard, the Court of Appeal in the case of *Hazlinda Hamzah v. Kumon Method of Learning Centre* [2006] 1 MLRA 624 has interpreted the provision of section 114 of the Consumer Protection Act 1999 which requires the Tribunal to furnish its reason for an award and held as follows:

“[10] In the first place, all that s. 114 says is that the Tribunal must give reasons for making its award. The section does not say that the reasons must be in writing. Nor does it fix any time limit for the delivery of reasons. Having regard to the general scheme of the Act is sufficient if the Tribunal gives oral reasons. What is important is the speedy disposal of a dispute with oral reasons for the decision. If the need arises, the Tribunal may deliver written reasons at a later point in time. If the Tribunal refuses to deliver any reasons – which is certainly not the case here – then the obvious remedy open to the respondent was to move the High Court for

*mandamus requiring the immediate production of the reasons. As it happens, there was here a claim for mandamus. But it was never pursued. The judicial commissioner's attention was not drawn to it. Instead, the respondent stood by while the High Court kept adjourning the proceedings to await written reasons. **This was certainly unnecessary as there is no requirement for the Tribunal to produce written reasons.** It follows from what has been said thus far that there was no breach of s. 114 of the Act. There was therefore certainly no warrant for the grant of certiorari in this case."*

[27] Likewise in the present case, the applicant admitted that oral reason was given by the President of the Tribunal when he delivered his award on 27.7.2017. As such, the requirement of subsection 117(2) of the Strata Management Act 2013 has been complied with.

[28] For completeness, the facts as alluded to earlier shows that the accessory parcels is in front of the generator set room and the applicant's action to park his car in front of the said room constitutes his and obstruction to easy access of the room especially in an emergency situation.

[29] This is in breach of **regulation 37(b) of the Electricity Regulations 1994** which provides:

"Any part of an installation where the switchboard or equipment is installed in any premises –

...

(b) shall be free from obstruction to facilitate the safe working of the switchboard or equipment."



- [30] In this regard, I agree with the respondent's submission, that the *maxim ex turpi causa non oritur* action applies in the circumstances which is from immoral cause, no action arises.
- [31] Having considered the cause papers and submission by both parties, I find there is no illegality, irrationality or procedural impropriety in the award by the President of the Tribunal.
- [32] Premised on the above, the application for judicial review by the applicant and other reliefs sought is dismissed with costs of RM2,000.00. Cost is subject to payment of allocatur fee.

Dated: 24 MAY 2018

(NORDIN HASSAN)

Judge

High Court Special and Appellate Powers

Kuala Lumpur High Court.

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[2018] 1 LNS 963

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Case(s) referred to:

*R. Rama Chandran v. Industrial Court of Malaysia & Anor [1997] 1
CLJ 147; [1997] 1 MLJ 145*

*Ketua Pengarah Hasil Dalam Negeri v. Alcatel-Lucent Malaysia Sdn
Bhd & Anor [2017] 2 CLJ 1*

*Hazlinda Hamzah v. Kumon Method of Learning Centre [2006] 1
MLRA 624*

Legislation referred to:

Consumer Protection Act 1999, s. 114

Strata Management Act 2013, ss. 117, Fourth Schedule

Electricity Regulations 1994, reg. 37(b)

Rules of Court 2012, O. 53 r. 3(2)