IN THE COURT OF APPEAL, MALAYSIA
AT PUTRAJAYA

APPELLATE JURISDICTION
[CIVIL APPEAL NO. W-02-2036-2010]

Between

MIRZA MOHAMED TARIQ BEG
MIRZA HH BEG ... APPELLANT

And

1. MARGARET LOW SAW LUI
2. ZULHISHAM AYOB
3. HANEDA OMAR
4. CARAT MEDIA SERVICES SDN BHD
5. CAREN FONG OI LIAN
6. NARUMIN ARUNAVARNONT
7. MOHAMMAD SULONG
8. PERUNDING PAKAR MEDIA SDN BHD ... RESPONDENTS

[In the Matter of High Court of Malaya at Kuala Lumpur
Commercial Division
[Petition No. D-26-7-2009]

Between

Mirza Mohamed Tariq Beg Mirza HH Beg ... Petitioner

And

1. Margaret Low Saw Lui
2. Zulhisham Ayob
3. Haneda Omar
4. Carat Media Services Sdn Bhd
5. Caren Fong Oi Lian
6. Narumin Arunavarnont
7. Mohammad Sulong
8. Perunding Pakar Media Sdn Bhd ... Respondents

CORAM:

ABDUL WAHAB PATAIL, JCA

CLEMENT ALLAN SKINNER, JCA

MOHAMAD ARIFF MD YUSOF, JCA

Date of Judgment: 14th November 2012

GROUNDS OF JUDGMENT

[1] On 29 January 2009, the Petitioner Mirza Mohamed Tariq Beg Bin Mirza HH Beg ("the Appellant") filed a petition under s. 181 of the Companies Act 1965 ("the Petition") in the Kuala Lumpur High Court alleging oppression by the Respondents in their conduct and management of Respondent No. 8 and that they have acted in a manner oppressive, discriminatory and prejudicial to him as a shareholder thereof. In his petition, the Appellant sought, *inter-alia,* the following orders:

(a) payment of his salaries, fees, remuneration and claims;

(b) production of Respondent No. 8's documents and records; and

(c) for the Respondents to purchase his shares in Respondent No. 8.

[2] On 23 June 2010, the High Court dismissed the Petition with costs. The Appellant appealed against the dismissal of his Petition.

[3] The basic question before this Court is whether the conduct the Appellant was subjected to was oppressive, discriminatory and prejudicial to him.

[4] Section 181 of the Companies' Act upon which his Petition is based provides:

Remedy in cases of an oppression

181. (1) Any member or holder of a debenture of a company or, in the case of a declared company under Part IX, the Minister, may apply to the Court for an order under this section on the ground:

(a) that the affairs of the company are being conducted or the powers of the directors are being exercised in a

manner **oppressive** to one or more of the members or holders of debentures including himself or **in disregard of his or their interests** as members, shareholders or holders of debentures of the company; or

(b) that some act of the company has been done or is threatened or that some resolution of the members, holders of debentures or any class of them has been passed or is proposed which **unfairly discriminates against or is otherwise prejudicia**l to one or more of the members or holders of debentures (including himself).

(2) If on such application the Court is of the opinion that either of those grounds is established the Court may, with the view to bringing to an end or remedying the matters complained of, make such order as it thinks fit and without prejudice to the generality of the foregoing the order may:

(a) direct or prohibit any act or cancel or vary any transaction or resolution;

(b) regulate the conduct of the affairs of the company in future;

(c) provide for the purchase of the shares or debentures of the company by other members or holders of debentures of the company or by the company itself;

(d) in the case of a purchase of shares by the company provide for a reduction accordingly of the company's capital; or

(e) provide that the company be wound up.

(3) Where an order that the company be wound up is made pursuant to paragraph (2)(e) the provisions of this Act relating to winding up of a company shall, with such adaptations as are necessary, apply as if the order had been made upon a petition duly presented to the Court by the company.

(4) Where an order under this section makes any alteration in or addition to any company's memorandum or articles, then, notwithstanding anything in any other provision of this Act, but subject to the order, the company concerned shall not have power without the leave of the Court to make any further alteration in or addition to the memorandum or articles inconsistent with the order; but subject to the foregoing provisions of this subsection the alterations or additions made by the order shall be of the same effect as if duly made by resolution of the company.

(5) An office copy of any order made under this section shall be lodged by the applicant with the Registrar within fourteen days after the making of the order.

Penalty: One thousand ringgit. Default penalty.

[5] An act is oppressive if it is harsh, wrongful or dishonest and a departure form the standards of fair dealing. In this case, the Appellant is a 35% shareholder of the 8th Respondent. The 1st Respondent, holding 10% was the Chief Executive Officer while the Appellant and the 2nd Respondent were Managing Directors Administrative and

Marketing respectively, and the 3rd Respondent the Financial Controller. The Appellant, 2nd and 3rd Respondents together held 60%.

[6] The alleged acts of oppression relied upon commenced in 2007-8. Even so, the Petition No. D-26-7-2009 was filed in January 2009 some 4 months after he had filed a Civil Suit No. D4-22-1417-2008 in August 2008, and under which he secured ad interim injunction to restrain his removal as a cheque signatory and as a Managing Director. The Appellant left as Managing Director of the 8th Respondent in March 2009.

[7] It was a case where the shareholders and the principal officers could no longer work together. But that alone is not necessarily oppression. The Appellant and the Respondents have their version of who was oppressing whom. The High Court accepted one version but, according to the Appellant, did not give any reasons. We make the observation that accepting that the High Court erred in failing to give its reasons why it accepted the Respondents' version, does not necessarily mean that the Appellant's version becomes right and must be accepted. Examining the record, we concluded that this was not a

case where the Respondents' version is so without foundation that the High Court was not entitled to accept their version. The record showed no complaint of oppression, discrimination and prejudice by either the Appellant or the Respondents until the Appellant commenced litigation and the petition and then left the company.

[8] We think it is unnecessary and inappropriate to speculate upon the motives for the litigation. When principal officers and shareholders fall out, it is not necessarily the case that the company be wound-up and the assets distributed. It is trite not all shareholders can expect to be directors and not everybody necessarily agrees with any particular shareholder or director or group of them all the time. A shareholder who is dissatisfied is entitled to sell his shares. His only obligation is to offer to sell to the remaining shareholders, and if they refuse he is then entitled to sell his shares to third parties. The company need not be wound-up and certainly it is equally an oppression to prevent the Appellant from selling as it is to force upon the other shareholders that the company be wound-up.

[9] It was submitted for the Appellant that the High Court erred in giving directions that differed from the previous Judge's directions. But

the submissions ended with the prayer that the case be remitted back to the High Court to be heard before another Judge before whom are 5 other overlapping cases. We observe it is not the High Court that created the overlapping cases but the parties. When a case is fixed before a Judge to be heard and there are other cases related to it, it is for the parties to inform the Judge and ask for another date. The parties are not entitled to proceed as if the trial is a test run, to be rerun if a party is not happy with the result. If no application is made, then it is for the current Judge before whom the matter is fixed to be heard, judicially to exercise his discretion to achieve a just result in the circumstances before him. See *Kong Hon Ming v. The Election Commission & Ors* [2000] 8 CLJ 262.

[10] From our review of the record, the High Court did what was possible in the face of two versions, and evidence and documents strewn before it, with rather little effort in analysis of the evidence and documents. We found no assistance to the High Court or to this Court for that matter, in the form of submission why that party's version is right and the other party's version cannot be right. When a party's case is presented simply as its version, with little or no effort to demonstrate why that version is correct and consistent with the facts

and why the other party's version cannot be right, the trial Judge cannot be faulted for making a decision on the basis of a choice. If it then becomes difficult for an appellate court to say why the High Court is right, we bear in mind that the issue before an appellate court is not whether the High Court is right, but whether it had erred. Comparing the versions and the submissions before us, we find no grounds to hold that the High Court had erred.

[11] Accordingly after having adjourned the appeal to the afternoon for decision, we dismissed the appeal with costs fixed in the sum of RM20,000.00 for the group of Respondents with the 1st Respondent and RM15,000.00 for the group with the 2nd Respondent. We ordered that the deposit be refunded.

(ABDUL WAHAB PATAIL)
Judge
Court of Appeal, Malaysia
Putrajaya

Dated: 9 OCTOBER 2014

Counsels:

For the appellant - Malik Imtiaz (Renu Zechariah & SC Ho with him) M/s Rosley Zechariah

17.5, 17th Floor, Oval Tower @ Damansara

(Menara Permata Damansara)

85 Jalan Damansara

60000 Kuala Lumpur

For the 1st, 4th, 5th & 6th respondents - S Y Ng; (Fadzilla Ismail with her): M/s Raja Darryl & Loh

18th Floor, Wisma Sime Darby

Jalan Raja Laut, 50350 Kuala Lumpur

For the 2nd & 3rd respondents - Alan Wong (Roger Leong with him) M/s Zain Megat & Murad

D2-5-1, Block D, Solaris Dutamas

No. 1, Jalan Dutamas 1

50480 Kuala Lumpur

For the 8th responden - G Ragumaren; M/s G Ragumaren & Co