KHAIRY JAMALUDDIN

v.

DATO' SERI ANWAR IBRAHIM & ANOTHER APPEAL

Federal Court, Putrajaya
Abang Iskandar Abang Hashim CJSS, Nallini Pathmanathan, Vernon Ong, Hasnah Mohammed Hashim, Rhodzariah Bujang FCJJ
[Civil Appeal Nos: 02(f)-43-04-2019(W) & 03-2-08-2020(N)]
1 June 2022

Civil Procedure: *Appeal — Notice of appeal — Striking out — Striking out of notices of appeal to Court of Appeal on grounds they were ambiguous, defective and bad in law — Interpretation of principles enunciated in Federal Court decision of Deepak Jaikishan v. A Santamil Selvi a/p Alau Malay @ Anna Malay — Whether filing of a single notice of appeal not in compliance with Rules of the Court of Appeal 1994 whenever there was more than one decision arising from separate interlocutory applications*

These two appeals emanated from two distinct and separate actions involving different parties. They were heard together since the questions of law in both appeals related to the striking out of the appellants' respective notices of appeal to the Court of Appeal on the grounds that they were ambiguous, defective and bad in law. The 1st Appeal related to the appellant's Notice of Appeal to the Court of Appeal which was struck out after the Court of Appeal upheld the respondent's preliminary objection on the grounds that the Notice of Appeal was ambiguous, invalid and unlawful as it was filed against two separate orders issued by the High Court. The appellant obtained leave of this Court to appeal on the following three questions of law: Whether the Federal Court's decision in *Deepak Jaikishan v. A Santamil Selvi Alau Malay @ Anna Malay & Ors* could be interpreted as prohibiting the filing of a single Notice of Appeal in relation to the following circumstances: (a) where there was the sole plaintiff and sole defendant in the suit concerned; (b) where the single judgment delivered on a date at the end of the whole trial in a defamation suit pertained to the judgment favouring the plaintiff's claim which included the rejection of the application by the defendant to amend the re-amended defence of fair comment; and (c) where the single Notice of Appeal specified in the said appeal pertained to the whole of the said judgment including the matter decided pertaining to the said application to amend, taking into consideration the adoption by the Federal Court of the opinion of the Court of Appeal in the written judgment of the latter emanating from the same case. The 2nd Appeal concerned the appellant's Notice of Appeal to the Court of Appeal which was struck out by the Court of Appeal upon upholding the preliminary objection of the respondent at the outset of the hearing of the appeal. The four questions of law in the 2nd Appeal were: (1) whether a Notice of Appeal that appealed against decisions arising from more than one appeal or application heard together

and decided on the same day, but which set out the details or particulars of each of the decisions against which appeal was made, was valid; (2) whether the answer to the second question by the Federal Court in *Deepak Jaikishan (supra)* was confined to a situation where the Notice of Appeal had not set out the details or particulars of each of the decisions against which appeal was made; (3) whether the decision of the Court of Appeal in *A Santamil Selvi Alau Malay & Ors v. Dato' Seri Mohd Najib Tun Abdul Razak & Ors* at para 31 of the judgment was still good law; and (4) whether the approval of the Record of Appeal by the respondent constituted a fresh step within the meaning of r 103 of the Rules of the Court of Appeal 1994 ("RCA 1994"). The issues in these appeals concerned the interpretation of the principles enunciated by this court in *Deepak Jaikishan (supra)*. The appellants and respondents in the 1st and 2nd Appeals took a contrary position and the Court of Appeal said it was bound to follow *Deepak Jaikishan (supra)* by virtue of the doctrine of *stare decisis*.

Held (allowing both appeals with costs):

(1) The decision of this court in *Deepak Jaikishan (supra)* should not be read as laying down a strict and absolute rule that whenever there was more than one decision arising from separate interlocutory applications, the filing of a single notice of appeal was not in compliance with the RCA 1994. The filing of a single notice of appeal was permissible subject to a caveat - all the decisions appealed against must be clearly and concisely set out with the relevant details and particulars of each decision in the notice of appeal. In situations where a preliminary objection was taken against a notice of appeal in the Court of Appeal or where a motion was filed to that effect, it was therefore incumbent upon the Court of Appeal to scrutinise the notice of appeal in question. It was for the Court of Appeal to consider whether the appeal related to a single decision, or more than one decision, or was against part of the decision or decisions given; and if so, whether the decisions in question had been clearly and concisely identified. There should not be any ambiguity or doubt relating to the decision appealed against. (paras 30-31)

(2) On a close scrutiny of the 1st Appeal's Notice of Appeal, the two decisions appealed against, ie the decision after full trial and the amendment decision had been concisely and clearly identified. As the two decisions had been clearly set out, there could not be said to be any ambiguity as to what decision was being appealed against. Therefore, the respondent had not suffered any prejudice or miscarriage of justice. Similarly, the decisions appealed against in the Notice of Appeal in the 2nd Appeal had also set out the specific details and particulars of that part of the decision of the High Court order which the appellant was appealing against. It could not be seen how the respondent could have been misled as to which part of the decision the appellant was unhappy with. Accordingly, the details and particulars of the decision after trial and the decision on the amendment application in the 1st Appeal and the details of that part of the decision in the 2nd Appeal had been clearly identified and set out in the respective Notices of Appeal. As such, there was

no ambiguity as to what was appealed against and the other parties were put on proper notice. The respondents in either appeal could not have been prejudiced nor had any miscarriage of justice been occasioned thereby. (paras 32-34)

(3) For the foregoing reasons, Questions (a), (b) and (c) of the 1st Appeal were answered in the negative. Question (1) of the 2nd Appeal was answered in the affirmative. In the circumstances, it was not necessary to answer Questions (2) to (4). (para 35)

Case(s) referred to:

A Santamil Selvi Alau Malay & Ors v. Dato' Seri Mohd Najib Tun Abdul Razak & Ors [2015] 4 MLRA 385 (refd)

Berjaya Development Sdn Bhd v. Keretapi Tanah Melayu Berhad [2013] MLRAU 448 (refd)

Datuk Aziz Ishak & Anor v. YB Haji Khalid Abdul Samad [2013] MLRAU 295 (refd)

Deepak Jaikishan v. A Santamil Selvi Alau Malay @ Anna Malay & Ors [2017] 4 MLRA 1 (distd)

Foong Yok Kok v. Prudential Assurance Malaysia Berhad [2020] 4 MLRA 207 (refd)

Jagdis Singh Banta Singh v. Outlet Rank (M) Sdn Bhd [2013] 3 MLRA 104 (refd)

Lim Choon Seng v. Lim Poh Kwee [2020] 5 MLRA 76 (refd)

Yap Fook Cheong & Anor v. Burkill (M) Sdn Bhd & Anor [1991] 1 MLRA 271 (refd)

Legislation referred to:

Courts of Judicature Act 1964, s 67

Rules of Court 2012, O 18 r 19(1)

Rules of the Court of Appeal 1994, rr 5(1), (3), (4), 103

Counsel:

For the Civil Appeal No: 02(f)-43-04--2019 (W)

For the appellant: Sarah Maalini Abishegam; M/s Shafee & Co

For the respondent: Leela J Jesuthasan; M/s Chambers of Leela J

For the Civil Appeal No: 03-2-08-2020(N)

For the appellant: SY Ng (HL Choon, Magdalene Soon & Loo Hui En with him); M/s Raja, Darryl & Loh

For the respondent: Krishna Dallumah (YH Yong with him); M/s Krishna & Indran

JUDGMENT

Vernon Ong FCJ:

Introduction

[1] These two appeals emanated from two distinct and separate actions involving different parties; one action (*Dato' Seri Anwar Ibrahim v. Khairy Jamaluddin*) was tried in the Kuala Lumpur High Court and the other action (*Man Seng Trading & Marketing Sdn Bhd v. Guinness Anchor Marketing Berhad*) was tried in the Seremban High Court. Khairy Jamaluddin's appeal to the Court of Appeal was struck out as was Guinness Anchor's appeal to the Court of Appeal. We heard the two appeals together since the questions of law in both appeals relate to the striking out of the appellants' respective notices of appeal to the Court of Appeal on the grounds that it is ambiguous, defective and bad in law.

[2] The questions of law for this Court's determination fall within the realm of adjectival law also called procedural law - the area of law that deals with the rules of procedure governing evidence, pleadings and practice. As such, we think that it is sufficient to set out the salient facts leading up to the striking out of the two notices of appeal in question.

Khairy Jamaluddin's Appeal No: 02(f)-43-04-2019 (1st Appeal)

[3] The 1st Appeal relates to the appellant's Notice of Appeal to the Court of Appeal which was struck out after the Court of Appeal upheld the respondent's preliminary objection on the grounds that the Notice of Appeal is ambiguous, invalid and unlawful as it was filed against two separate orders issued by the High Court.

Questions of Law

[4] The appellant obtained leave of this Court to appeal on the following three questions of law:

> Whether the Federal Court's decision in *Deepak Jaikishan v. A Santamil Selvi Alau Malay @ Anna Malay & Ors* [2017] 4 MLRA 1 can be interpreted as prohibiting the filing of a single Notice of Appeal in relation to the following circumstances:
>
> (a) Where there is the sole plaintiff and sole defendant in the suit concerned;
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> (b) Where the single judgment delivered on a date at the end of the whole trial in a defamation suit pertains to the judgment favouring the plaintiff's claim which included the rejection of the application by the defendant to amend the re-amended defence of fair comment; and

(c) Where the single Notice of Appeal specified in the said appeal pertains to the whole of the said judgment including the matter decided pertaining to the said application to amend, taking into consideration the adoption by the Federal Court of the opinion of the Court of Appeal in the written judgment of the latter emanating from the same case.

[5] In this case the appellant/defendant had filed an application to amend the Re-Amended Defence ('the Amendment Application') after the trial on the evidence had been concluded. Subsequently, the learned trial judge heard submissions in respect of both the Amendment Application and after trial together. After hearing of submissions, the learned trial judge delivered his oral decisions in respect of the Amendment Application and the trial. The Amendment Application was dismissed and the respondent/plaintiff's claim in damages for defamation was allowed with costs. Separate orders were issued by the High Court in respect of the decision after trial and the decision dismissing the Amendment Application. The appellant, dissatisfied with the two decisions filed a single Notice of Appeal to the Court of Appeal. The Notice of Appeal in question reads as follows:

> "SILA AMBIL PERHATIAN bahawa Khairy Jamaludin, perayu/defendan yang dinamakan di atas yang tidak berpuas hati dengan keseluruhan keputusan Yang Arif Tuan Azizul Azmi bin Adnan yang diberikan di Mahkamah Tinggi di Kuala Lumpur pada 29 haribulan September 2017, termasuk (tetapi tidak terhad) kepada Kandungan 129 (permohonan defendan untuk meminda "Pembelaan Terpinda Semula" bertarikh 11 Februari 2016, yang difailkan pada 14 Mac 2017), dengan ini ingin merayu kepada Mahkamah Rayuan terhadap keseluruhan keputusan tersebut di mana tuntutan plaintif telah dibenarkan ..."

[6] Incidentally, it is also on record that the appellant subsequently filed a second Notice of Appeal to the Court of Appeal against the High Court's decision on the Amendment Application. This second Notice of Appeal is, however, not in issue in this appeal.

[7] After the respondent had given written notice to the appellant of his intention to raise a preliminary objection to the Notice of Appeal, the respondent filed a Notice of Motion in the Court of Appeal to strike out the Notice of Appeal.

[8] The Court of Appeal agreed with the respondent that the Notice of Appeal was defective and bad in law and struck out the Notice of Appeal. The Court of Appeal held that (i) applying *Deepak Jaikishan* the issue was whether there was a distinct and separate application resulting in a distinct and separate order by the court; (ii) that if there was a distinct and separate application and a distinct and separate order of the court, then, there ought to be a separate notice of appeal filed in respect of the separate and distinct order appealed against; (iii) this case fell squarely within the principle enunciated in *Deepak Jaikishan* as there were two separate orders issued by the High Court; and (iv) there was some ambiguity as to whether the appellant was also appealing against the

dismissal of the Amendment Application. The particulars on the dismissal of the Amendment Application was conspicuously absent in the Notice of Appeal as being the decision appealed against, as opposed to the main trial where the appellant had set out the particulars of the judgment appealed against.

Guinness Anchor's Appeal No: 03-02-08-2020(N) (2nd Appeal)

[9] The 2nd Appeal concerns the appellant's Notice of Appeal to the Court of Appeal which was struck out by the Court of Appeal upon upholding the preliminary objection of the respondent at the outset of the hearing of the appeal.

Questions Of Law

[10] The four questions of law in the 2nd Appeal are:

(1) Whether a Notice of Appeal that appeals against decisions arising from more than one appeal or application heard together and decided on the same day, but which sets out the details or particulars of each of the decisions against which appeal is made, is valid?

(2) Whether the answer to the second question by the Federal Court in *Deepak Jaikishan* is confined to a situation where the Notice of Appeal has not set out the details or particulars of each of the decisions against which appeal is made?

(3) Whether the decision of the Court of Appeal in *A Santamil Selvi Alau Malay & Ors v. Dato' Seri Mohd Najib Tun Abdul Razak & Ors* [2015] 4 MLRA 385 at para 31 of the judgment is still good law?

(4) Whether the approval of the Record of Appeal by the Respondent constitutes a fresh step within the meaning of r 103 of the Rules of the Court of Appeal 1994?

[11] At the High Court, both the appellant and the respondent had filed their respective notices of appeals to the Judge in Chambers against the Deputy Registrar's decision on the assessment of damages. Both appeals were heard together by the learned judge and both appeals were allowed in part. Separate High Court orders were issued in respect of the appellant's and respondent's appeals.

[12] The appellant being dissatisfied with the High Court decisions, filed a Notice of Appeal at the Court of Appeal which reads as follows:

> "SILA AMBIL PERHATIAN bahawa Perayu yang dinamakan di atas yang tidak berpuas hati dengan sebahagian keputusan Yang Arif Tuan Muhammad Jamil Bin Hussin yang diberikan di Mahkamah Tinggi Malaya di Seremban pada 31 Julai 2018, merayu kepada Mahkamah Rayuan terhadap sebahagian sahaja keputusan tersebut yang:

(i) Menolak rayuan perayu terhadap kehilangan nama baik ("Goodwill") respondan sejumlah RM416,900.00 dan kehilangan keuntungan responden sejumlah RM500,885.97 terdiri seperti berikut:

(a) Jumlah RM175,125.64 bagi tahun 2002;

(b) Jumlah RM175,125.64 bagi tahun 2003; dan

(c) Jumlah RM150,634.69 bagi tahun 2004.

(ii) Membenarkan rayuan responden atas kehilangan keuntungan responden sejumlah RM648,000.00 bagi tahun 2005 hingga 2008."

[13] When the appeal came up for hearing in the Court of Appeal, the respondent mounted a preliminary objection arguing that the Notice of Appeal is bad in law because the appellant should have filed two notices of appeal instead of one notice of appeal as there were two separate orders issued by the High Court. The Court of Appeal agreed with the respondent's argument and struck out the appellant's Notice of Appeal.

1st Appeal - Submissions Of Parties

[14] Learned counsel for the appellant in the 1st Appeal advanced the following arguments:

(i) the Notice of Appeal is crystal clear that the appeal is against the whole decision which included the amendment decision which was made simultaneously by the learned judge;

(ii) the preparation and issuance of the two separate orders were an administrative decision by the Deputy Registrar. Consequently, the appellant filed the second Notice of Appeal on the amendment decision only in abundance of caution;

(iii) the learned trial judge delivered his decision on the amendment application and his decision at the end of the trial were given together. It is clear that the issue on the amendment application is incorporated seamlessly in part of the written judgment of the learned trial judge. As such, the judgment of the High Court is a composite judgment incorporating both the amendment decision and the decision after the end of trial;

(iv) the Court of Appeal had misread *Deepak Jaikishan* where there was one notice of appeal for multiple orders in respect of multiple applications involving nine defendants. There is only one defendant and one plaintiff in this case and one decision by the High Court of which the amendment decision is part of the main judgment;

(v) the precise ratio of *Deepak Jaikishan* is that a single notice of appeal is permissible but sufficient particulars must be stated;

(vi) the filing of a notice of appeal is to give the other side proper notice of the appellant's grievance. The purpose of the procedure is to facilitate a proper decision on the merits (*Jagdis Singh Banta Singh v. Outlet Rank (M) Sdn Bhd* [2013] 3 MLRA 104). There is no prejudice against the respondent. Sufficient particulars are stated in the Notice of Appeal;

(vii) even though the adjudged sum is less than RM250,000.00, leave to appeal to the Court of Appeal is not required as the threshold is the value of the subject matter and not the subject matter of the decision (*Yap Fook Cheong & Anor v. Burkill (M) Sdn Bhd & Anor* [1991] 1 MLRA 271 SC).

[15] In reply, learned counsel for the respondent argued firstly that the appeal is incompetent as the adjudged value was below RM250,000.00 and no prior leave to appeal had been obtained (*Foong Yok Kok v. Prudential Assurance Malaysia Berhad* [2020] 4 MLRA 207 CA; *Datuk Aziz Ishak & Anor v. YB Haji Khalid Abdul Samad* [2013] MLRAU 295). Second, at the High Court, the learned trial judge was called upon to decide on two separate and distinct matters - (i) the respondent/plaintiff's claim after full trial, and (ii) the appellant/defendant's interlocutory application filed after the conclusion of the trial to further amend the Re-Amended Defence to include a new defence. The learned trial judge had delivered his decisions in respect of both matters. Third, the appellant had filed a single notice of appeal purportedly against both decisions. As such the notice of appeal is bad in law, defective, ambiguous and uncertain. Instead, separate notices of appeal should have been filed. The question for which leave was granted does not address all the defects. The appellant failed to comply with the mandatory provisions and decided case-law on the filing of appeals (s 67 of the Courts of Judicature Act 1964 (CJA 1964); r 5(1) & (4) of the Rules of the Court of Appeal 1994; *Deepak Jaikishan*; *Lim Choon Seng v. Lim Poh Kwee* [2020] 5 MLRA 76. Lastly, it was submitted that the appellant failed to set out in detail each decision he is appealing in the Notice of Appeal. As such, the Notice of Appeal is ambiguous and uncertain.

2nd Appeal - Submissions of Parties

[16] The gist of the points submitted by learned counsel for the appellant was covered by the submissions of appellant counsel in the 1st Appeal. However, learned counsel stressed that the fact that there were two appeals and two separate orders is not determinative. *Deepak Jaikishan* is facts specific on its own and is distinguishable. In this case the Notice of Appeal clearly identified that portion of the High Court's decision appealed against. As such, there is no ambiguity since the respondent knew exactly what was being appealed against. Therefore, there was no prejudice or miscarriage of justice caused to the respondent.

[17] In reply, learned counsel for the respondent submitted that their preliminary objections were grounded on the Court of Appeal's decision in

Khairy Jamaluddin. As the 1st Appeal is in fact an appeal against this particular decision of the Court of Appeal, we will now discuss the said decision.

Court of Appeal's Decision In *Khairy Jamaluddin*

[18] The Court of Appeal opined that the principle to be distilled from the decision of the Federal Court in *Deepak Jaikishan*, was not so much about the number of applications or the number of parties but whether there was a distinct and separate application resulting in a distinct and separate order by the Court. If there was a distinct and separate application made and a distinct and separate order of the court issued, then, there ought to be a separate notice of appeal filed in respect of the separate and distinct order appealed against. This case fell squarely within the *Deepak Jaikishan* principle because there were two separate orders issued by the court, one in respect of the main trial and the other in respect of the dismissal of the amendment application. Accordingly, the Court of Appeal decided that the Notice of Appeal was bad in law due to the appellant's failure to file separate notices of appeal and to set out the details of each and every one of the decisions appealed against. The Court of Appeal also found that there was some ambiguity as to whether the appellant was also appealing against the dismissal of the amendment application; that whilst the notice of appeal stated that the appellant was not satisfied with the whole decision of the judge, it made no mention that the appellant wished to appeal against the dismissal of the amendment application. Further, the particulars of the dismissal of the amendment application were conspicuously absent in the notice of appeal as being the decision appealed against, as opposed to the main trial where the appellant had set out the particulars of the judgment appealed against.

Analysis And Decision

[19] The issues in this appeal concern the interpretation of the principles enunciated by this Court in *Deepak Jaikishan*. The appellants and respondents in the 1st and 2nd Appeals take a contrary position and the Court of Appeal said it was bound to follow *Deepak Jaikishan* by virtue of the doctrine of *stare decisis*.

***Deepak Jaikishan* - Revisited**

[20] It is, we think, necessary to revisit the salient facts and the pronouncement of this Court in *Deepak Jaikishan*. In the High Court, *Santamil* had sued nine defendants for damages for the tort of conspiracy to cause injury by unlawful means. Eight applications were filed by all the defendants to strike out the writ and statement of claim. The first application was filed jointly by the 1st and 2nd defendants, the second application by the 3rd defendant, the third by the 4th defendant, the fourth by the 5th defendant, the fifth by the 6th defendant, the sixth by the 7th defendant, the seventh by the 8th defendant, and the eighth application by the 9th defendant respectively. The learned judge heard the eight

applications together and set her decision down on another date. Later, the learned judge delivered her decision whereby she allowed all eight applications and struck out the writ and statement of claim. Dissatisfied with the High Court decision, *Santamil* filed a single Notice of Appeal in the Court of Appeal where it was pleaded that she was "... appeal[ing] to the Court of Appeal against the whole of the said decision granting the Order-In-Terms of all the Defendants' applications to strike out the Plaintiff's claims under O 18 r 19(1) of the Rules of Court 2012."

[21] Except for the 8th defendant, the rest of the defendants filed seven notices of motion to strike out the appeal on the ground that the Notice of Appeal was bad in law. They contended that as seven sealed orders were issued by the High Court, seven notices of appeal should have been filed by Santamil instead of only one. The Court of Appeal agreed with the arguments advanced by the defendant and struck out Santamil's notice of appeal. The Court of Appeal decision is reported in *A Santamil Selvi Alau Malay & Ors v. Dato' Seri Mohd Najib Tun Abdul Razak & Ors* [2015] 4 MLRA 385 CA. As the 8th defendant had not made a similar application, the appeal against the 8th defendant was set down for hearing before a different panel of the Court of Appeal.

[22] At the hearing of the appeal against the 8th defendant, counsel for the 8th defendant raised a preliminary objection on the ground that the appeal should be dismissed as the notice of appeal was bad in law. The Court of Appeal dismissed the preliminary objection and proceeded to hear the appeal which was eventually allowed.

[23] The 8th defendant who was dissatisfied with the decision of the Court of Appeal applied for leave to appeal to the Federal Court. Leave to appeal was granted on three questions of law, of which only one is pertinent for the purposes of this appeal and it is this:

> Whether the filing of a single notice of appeal in respect of a decision on eight separate and distinct interlocutory applications is in compliance with the procedural rules as set out in the Rules of the Court of Appeal 1994 (RCA 1994)?

[24] The question was answered in the negative. The Federal Court opined that the word 'shall' in r 5(3) of RCA 1994 is mandatory and as such, *Santamil* should have filed separate notices of appeal against the High Court decision allowing the defendants' separate applications to strike out the writ and statement of claim.

[25] The Federal Court stated that the main purpose of r 5(3) of RCA 1994 is to allow the opposing parties to be enabled to answer their cases respectively. The High Court judge had, in her grounds of judgment, explained in detail her decision in allowing the striking out application of each party in those separate applications. *Santamil* was in a position to identify the relevant points in the said judgment that she was dissatisfied with and thereafter file a separate notice

of appeal against all the defendants setting out the details of the decisions in the notice of appeal. It was also noted that all eight applications had different grounds in support of the respective application, different filing dates and even different counsels. Even though the learned judge delivered a single judgment encompassing all of the eight applications, by way of procedural rules there were eight separate orders made by the learned judge.

[26] The Federal Court agreed with the Court of Appeal decision in *A Santamil Selvi Alau Malay & Ors v. Dato' Seri Mohd Najib Tun Abdul Razak & Ors* [2015] 4 MLRA 385 CA. The Federal Court also cited the Court of Appeal's observations in paras [14] and [15] of the Court of Appeal's grounds of decision:

> [14] In our view, where the appeal is against one decision involving a single respondent or involving more than one respondent in a joint action, it will be in order for the appellant to state in a single notice of appeal that he is appealing against "the whole of the said decision". But where the appeal is against more than one decision arising from the separate interlocutory application made by different parties to the action, it is incumbent on the appellant to set out the details of the decision in the notice of appeal.
>
> [15] In the present case, since more than one decision was given by the High Court in favour of nine different applications arising from eight separate and distinct applications, it was imperative for the appellants to set out the details of each and every one of the decisions that they were appealing against. We do not think it was sufficient for the appellants to state in general terms in a single notice of appeal that their appeal was against the 'whole of the said decision' (in the singular) without specifying the particulars of the decision appealed against.

[27] In our considered view, the opinion of this Court expressed in *Deepak Jaikishan* should be read in the light of the peculiar facts of that case. There were altogether eight distinct and separate applications filed by nine defendants, each of the eight distinct applications were supported by the affidavits by different deponents on different grounds in support, the eight applications were heard together by the learned judge, and the outcome of the eight applications were delivered in a single decision by the learned judge which did not identify the separate orders issued by the High Court, the notice of appeal in question stated in vague and uncertain terms that it was an appeal '... against the whole of the said decision granting the Order-In-Terms of all the defendants' applications ...'.

[28] It is important to bear in mind that the primary objective of r 5(3) of the RCA 1994 is to enable the opposing party to be properly informed of the case they have to answer. If the opposing party is unable to fathom which decision or which part of a decision is being appealed against, it would lead to uncertainty and misapprehension on the part of the opposing party and as to what points they were required to answer to. Such a situation would undoubtedly cause prejudice and a miscarriage of justice to the opposing party.

[29] We think that it is also important to take a closer look at the Court of Appeal's decision in *A Santamil Selvi Alau Malay & Ors v. Dato' Seri Mohd Najib Tun Abdul Razak & Ors* [2015] 4 MLRA 385 CA. We note that in para. [27] of the Court of Appeal's grounds of decision the Court of Appeal referred to *Berjaya Development Sdn Bhd v. Keretapi Tanah Melayu Berhad* [2013] MLRAU 448 and observed that "[o]ne of the issues raised was whether it was possible for one notice of appeal to be filed for three decisions that were given on two different dates by the High Court. It was held that this was possible provided the applications were heard together and the decision on the applications was given on a single date and the notice of appeal clearly described the applications involved and the respective decisions". The notice of appeal in that case was held to be uncertain because it did not state which of the three decisions was decided on the date in question. The Court of Appeal then opined in para [30] that "[b]y way of comparison, the notice of appeal in the case before us, which was expressed to be against the whole of the "decision" and against "all" the respondents, gives the impression that the appeal was against one decision only and involving all the respondents. It does not convey with sufficient clarity which particular decision favouring which particular respondent were the appellants appealing against. That makes the notice bad for the ambiguity and uncertainty." The Court of Appeal then went on to opine in para [31] that "[w]hat the appellant should have done was either to file 7 separate notices of appeal or alternatively to file one notice of appeal setting out the details of each decision appealed against." More pertinently, the Court of Appeal went on to say that "[o]n our part we take the view that the second option is the more practical option as it will avoid the filing of multiple records of appeal".

[30] In the light of the abovementioned observations, we do not think that the decision of this Court in *Deepak Jaikishan* should be read as laying down a strict and absolute rule that whenever there is more than one decision arising from separate interlocutory applications, the filing of a single notice of appeal is not in compliance with the RCA 1994. We concur with the opinion of the Court of Appeal (see para [29] above) that the filing of a single notice of appeal is permissible subject to a caveat - all the decisions appealed against must be clearly and concisely set out with the relevant details and particulars of each decision in the notice of appeal.

[31] In situations where, a preliminary objection is taken against a notice of appeal in the Court of Appeal or where a motion is filed to that effect, it is therefore incumbent upon the Court of Appeal to scrutinise the notice of appeal in question. It is for the Court of Appeal to consider whether the appeal relates to a single decision, or more than one decision, or is against part of the decision or decisions given; and if so, whether the decisions in question have been clearly and concisely identified. There should not be any ambiguity or doubt relating to the decision appealed against.

[32] On a close scrutiny of the 1st Appeal's Notice of Appeal (see para [5] above) we are satisfied that the two decisions appealed against, ie, the decision after

full trial and the amendment decision have been concisely and clearly identified in the following words "... tidak berpuas hati dengan keseluruhan keputusan Yang Arif Tuan Azizul Azmi bin Adnan yang diberikan di Mahkamah Tinggi di Kuala Lumpur pada 29 haribulan September 2017, **termasuk (tetapi tidak terhad)** kepada Kandungan 129 (permohonan defendan untuk meminda "Pembelaan Terpinda Semula" bertarikh 11 Februari 2016, yang difailkan pada 14 Mac 2017) ..." [Emphasis Added] As the two decisions have been clearly set out, there cannot be said to be any ambiguity as to what decision was being appealed against. Therefore, we do not think it can be said that the respondent has suffered any prejudice or miscarriage of justice.

[33] Similarly, the decisions appealed against in the Notice of Appeal in the 2nd Appeal (see para [12] above) had also set out the specific details and particulars of that part of the decision of the High Court order which the appellant was appealing against. We do not see how the respondent could have been misled as to which part of the decision the appellant was unhappy with.

[34] Accordingly, we are of the view that the details and particulars of the decision after trial and the decision on the amendment application in the 1st Appeal and the details of that part of the decision in the 2nd Appeal have been clearly identified and set out in the respective Notices of Appeal. As such, there is no ambiguity as to what was appealed against and the other parties were put on proper notice. We do not think that the respondents in either appeal could have been prejudiced nor has any miscarriage of justice been occasioned thereby.

[35] For the foregoing reasons, Questions (a), (b) and (c) of the 1st Appeal are answered in the negative. Question (1) of the 2nd Appeal is answered in the affirmative. In the circumstances, we do not think that it is necessary to answer Questions (2) to (4). The 1st Appeal and the 2nd Appeal are therefore allowed with costs. We ordered the two cases to be remitted to the Court of Appeal to be heard on the merits.

Khairy Jamaluddin
v. Dato' Seri Anwar Ibrahim & Another Appeal

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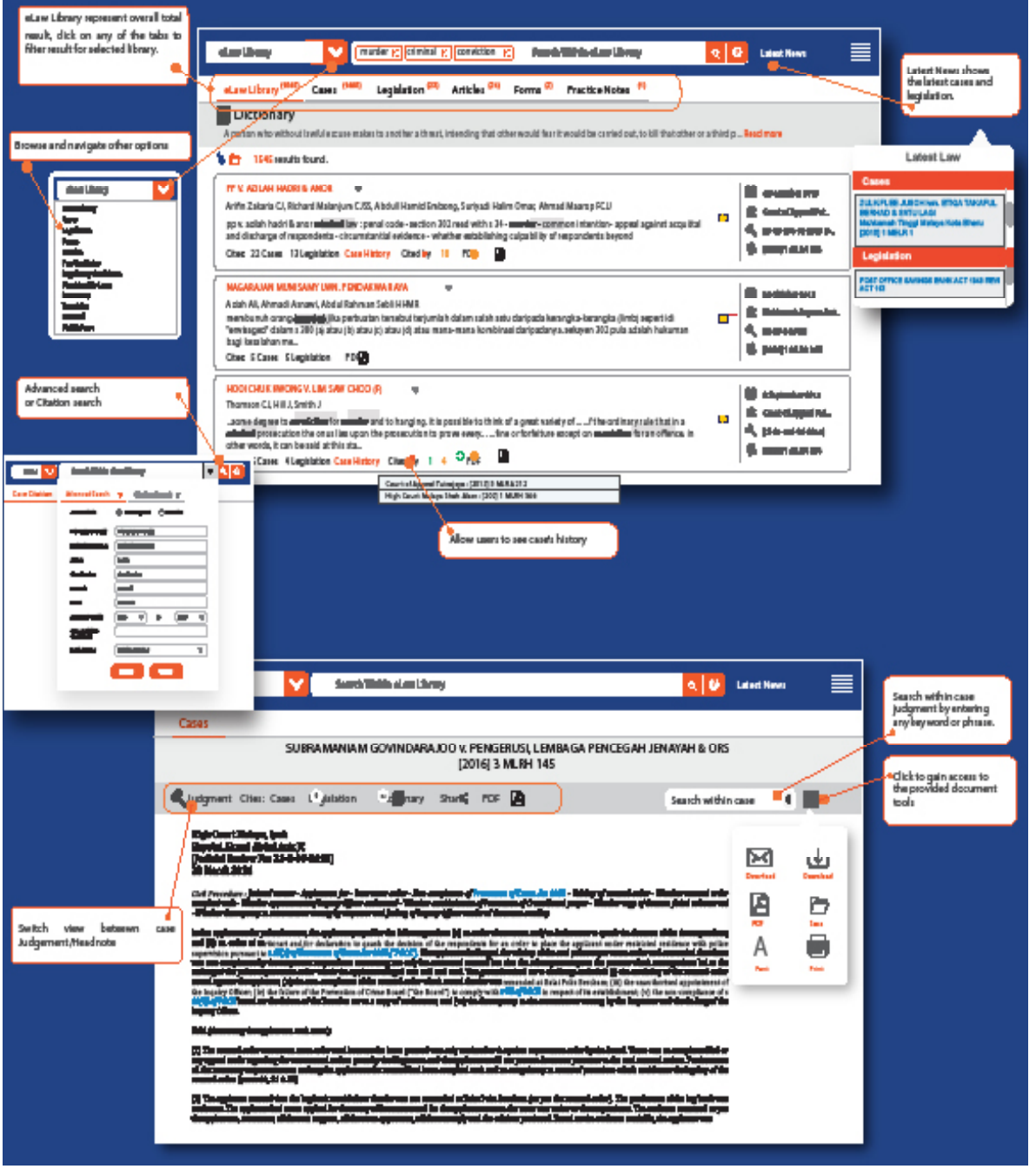

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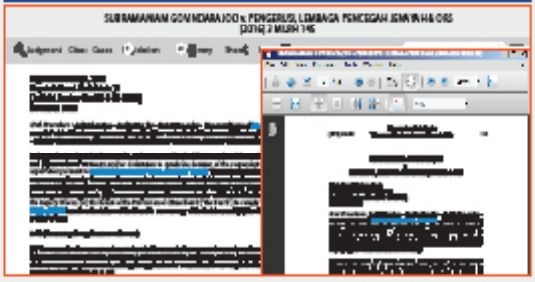

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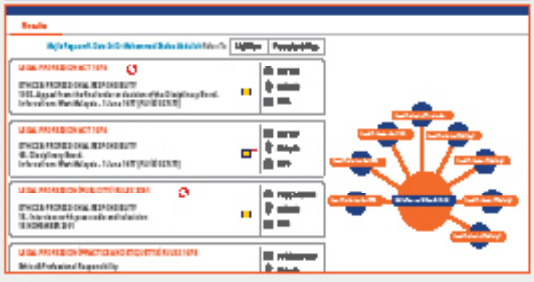

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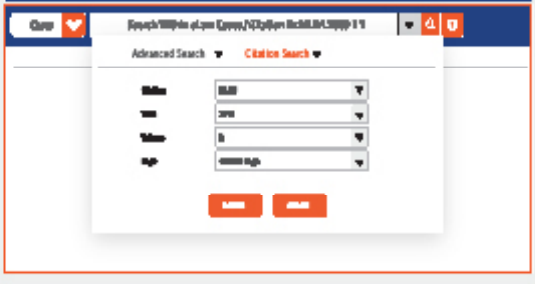

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