Dato' Kanagalingam a/l Velluppillai v Majlis Peguam Malaysia (Civil Appeal No. 02(f)-48-09/2021(W))

BROAD GROUNDS

The Grounds of Appeal

The Allegation of Misconduct

[1] The first point to note is that the appellant likened the complaint made against him and the proceedings that ensued thereafter respectively to 'charge' or criminal proceedings. The Federal Court has reminded in emphatic terms that disciplinary committee proceedings are not to be regarded as criminal proceedings. See: *Majlis Peguam Malaysia v Rajehgopal a/l Velu & Anor* [2017] 1 MLJ 596 ('Rajehgopal'):

[2] The same case also highlighted the importance of the right to be heard. What is important is that the advocate against whom the complaint is made is given the right to be heard and to address the complaint against him.

[3] In this regard, the appellant maintains that the charge against him was one of conspiracy. In the first place, we do not agree that it is a charge. The specific allegation made against him was that he had interfered with judicial appointments which is an allegation of misconduct that relates directly to his conduct irrespective of whether he was acting alone or in concert with others.

[4] It is undisputed that the DC, the DB, the High Court and the Court of Appeal all made concurrent findings of the appellant interfering in fact with judicial appointments. Counsel for the respondent has also highlighted that the appellant was unable to contradict the account of Loh Gwo Burne (CW3) who heard the appellant attempting to interfere with judicial appointments. In the circumstances it is our view that it does not matter which judicial appointments exactly the appellant attempted to interfere with and findings to that extent are not relevant.

[5] The important point is that findings were made on the appellant's attempt to interfere and these findings were not rebutted.

The Admissibility of Evidence

[6] The next point taken by the appellant is the admissibility of the video which was used to prove the misconduct against the appellant. This video was marked as Exhibit C1 and was originally marked as ID-C1. We shall refer to it as Exhibit C1.

[7] The appellant argued on the propriety of Exhibit C1 in that it was not the original video, that it was a downloaded copy and that it did not amount to secondary evidence capable of admission under section 65 of the Evidence Act 1950. With respect, we do not agree.

[8] The argument of the appellant relates to the form of the evidence without any comment or submission on the substance of the video itself. The fact remains that the maker of the original video itself (which was said to be made in 2001) was called to testify on the video. This was Loh Gwo Burne, CW3. In other words, quite apart from the veracity of the video

itself, CW3 as the witness who directly witnessed the appellant speaking on the phone as alleged in the video confirmed that the facts as alleged were witnessed by him. This is direct evidence.

[9] We have perused the notes of evidence and we are satisfied that CW3 did in fact testify on the video and confirmed that the contents of C1 were in fact uttered by the appellant. The DC, the DB and the Courts below relied on the evidence of CW3 to confirm the contents which formed the basis of the finding of misconduct. The appellant did not and has not challenged these points.

[10] In this regard, the appellant made a submission on the transcript of the video and how it was also inadmissible. We have already stated our observations on the video and how CW3 confirmed the contents of the video. It is therefore not necessary to consider the admissibility of the transcript.

Validity of the DB Order dated 6.11.2015

[11] The final primary argument of the appellant was that the DB order dated 6.11.2015 striking out the appellant of the Rolls is null and void for its failure to comply with section 103D(1) of the LPA 1974.

[12] Here, the appellant's argument is that the DC originally recommended a lesser punishment than that which was imposed by the DB. Where the DB rejects the recommendation of the DC, then section 103D(1) of the LPA 1974 mandatorily requires the DB to state its reasons for doing so, in the order.

[13] The respondent submits that section 103D(1) in its present form was inserted via Act 1444 which came into force on 3.6.2014. The complaint was lodged in 2007 and the DC hearing commenced in 2010 and the recommendations of the DC were forwarded to the DB sometime between 2013 to 2014. In that sense, the provisions do not apply to the DB.

[14] The appellant's response is that the DB order was issued after the amendment to the LPA 1974 took effect and as such the DB was bound to comply with them. Having been bound by the new law mandatorily requiring it to state its reasons and the fact that the DB did not state its reasons renders its order a nullity.

[15] With respect, we agree with the appellant that the DB order was issued after the amendments came into force and as such, the DB was mandatorily required to comply with the requirements of the amended section 103D(1). However, we are unable to agree with the appellant how this failure to comply with the section renders the DB order dated 6.11.2015 a nullity and that the reasons had to be stated in the order itself.

[16] In point of fact, we find that the DB had duly given its reasons for its decision and the order of the DB dated 6.11.2015 is not a nullity.

Conclusion

[17] In the circumstances, we are not persuaded that appellate intervention is warranted in this case. The appeal is hereby dismissed with costs and the order of the Court of Appeal is affirmed.

Dated: 30 March, 2022.

(TENGKU MAIMUN BINTI TUAN MAT)
Chief Justice,
Federal Court of Malaysia.

(MARY LIM THIAM SUAN)
Judge,
Federal Court of Malaysia.

(MOHAMAD ZABIDIN BIN MOHD DIAH)
Judge,
Federal Court of Malaysia.