Lai Swee Lin Linda v Attorney-General
[2005] SGCA 58

Case Number : CA 87/2005, NM 81/2005

Decision Date : 07 December 2005

Tribunal/Court : Court of Appeal

Coram : Chao Hick Tin JA; Andrew Phang Boon Leong JC; Yong Pung How CJ

Counsel Name(s) : The appellant in person; Leong Kwang Ian (Attorney-General's Chambers) for the respondent

Parties : Lai Swee Lin Linda — Attorney-General

Civil Procedure – Appeals – Notice – Whether extension of time to file and serve notice of appeal should be granted where substantial delay resulting from inability to furnish security for costs due to financial difficulty – Order 3 r 4, O 57 r 17 Rules of Court (Cap 322, R 5, 2004 Rev Ed)

Civil Procedure – Appeals – Whether consolidation of appeals against distinct orders arising from separate actions without order of court irregular – Whether irregularity may be cured through exercise of court's discretion – Order 4 r 1(1) Rules of Court (Cap 322, R 5, 2004 Rev Ed)

Civil Procedure – Striking out – Whether appeal against striking-out order barred due to appellant's non-compliance with s 34(1)(c) Supreme Court of Judicature Act – Section 34(1)(c) Supreme Court of Judicature Act (Cap 322, 1999 Rev Ed)

7 December 2005

Andrew Phang Boon Leong JC (delivering the judgment of the court):

Introduction

1 The appellant is no stranger to the courts. Indeed, as we shall see, she is, *inter alia*, now attempting to improperly "resurrect" the earlier proceedings (summarised at [8] below).

2 In so far as the present proceedings are concerned, the appellant had, in Civil Appeal No 87 of 2005, brought an appeal ("the consolidated appeal") against two orders in chambers made by Tan Lee Meng J arising from two separate actions – Suit No 995 of 2004 ("the employment action") and Originating Summons in Bankruptcy No 38 of 2005 ("the bankruptcy action"), respectively.

3 The respondent brought the present application to, *inter alia*, set aside one of the appeals mentioned in the preceding paragraph – in respect of the employment action. In particular, the respondent argued that this particular appeal was brought in breach of various procedural requirements.

4 We note, as an important preliminary point, that the rules of civil procedure constitute the basic structure within which the substantive merits of particular cases are ultimately determined. To this end, whilst the courts should not permit the application of the rules of civil procedure to be productive of unnecessary technicality and/or substantive injustice, they must, by the same token, also ensure that where contravention of these rules would in fact result in substantive injustice, such contravention should not be permitted.

5 In other words, everything depends, in the final analysis, on the context concerned (including, but not being limited to, the factual matrix in question).

6 As we shall see, the appellant in the present appeal clearly contravened several rules of civil

procedure. Indeed, we found that such contravention, if sanctioned by this court, would be productive of substantive injustice with regard both to the specific issues in the present appeal in particular and to the respective rationale underlying the relevant rules of civil procedure in general. In the circumstances we granted the present application by the respondent with costs. We now give the detailed reasons for our decision.

The background in brief

The appeal arising from the employment action

7 This particular action, though begun in 2004, had its roots (in part at least) in earlier proceedings against various government authorities (including the Public Service Commission ("the PSC")).

8 In *Lai Swee Lin Linda v Public Service Commission* [2000] SGHC 162, the appellant sought leave to apply, *inter alia*, for orders of *certiorari* and *mandamus* to quash the decision of the PSC to terminate her appointment as Senior Officer Grade III (Law) at the Land Office of the Ministry of Law and sought reinstatement to her original position ("the public law action"). The High Court granted the appellant the requisite leave for an order of *certiorari*, albeit not for an order of *mandamus*. However, this court, in *Public Service Commission v Lai Swee Lin Linda* [2001] 1 SLR 644 ("*PSC v Linda Lai*"), reversed this decision and refused the appellant leave to apply for the orders sought. It held that the appellant, not being a confirmed civil servant, could not avail herself of her rights through the public law route but ought to pursue her rights under the contractual route instead. It also ordered her to pay 50% of the costs of the appeal and of the hearing at first instance (see *Public Service Commission v Lai Swee Lin Linda* [2001] SGCA 10).

9 The appellant subsequently brought the employment action, seeking a declaration that the termination of her appointment (which was the subject of the public law action briefly described in the preceding paragraph) was *ultra vires* the Constitution and in violation of the rules of natural justice. This was just one part of her claim. She also sought damages against the respondent in contract law for wrongful termination of her employment contract. She further sought the costs of the earlier public law action.

10 The respondent then applied, by way of Summons in Chambers No 123 of 2005 to strike out certain parts of the appellant's Statement of Claim in the employment action as being scandalous or as constituting an abuse of the process of the court ("the striking-out order"). The learned assistant registrar allowed the respondent's application. He ordered that certain paragraphs be struck out and that a number of other paragraphs be amended within three weeks, failing which they, too, would be struck out. The appellant appealed against this decision to the judge in chambers. Tan Lee Meng J affirmed, with certain minor amendments, the assistant registrar's decision. As we have seen, one of the appeals in the consolidated appeal is against Tan J's decision.

The appeal arising from the bankruptcy action

11 The bankruptcy action also had its roots in the earlier proceedings (briefly described above at [8]). In particular, the respondent had served a statutory demand on the appellant following her failure to pay the costs she had been ordered to pay in the public law action (which, it will be recalled, constituted 50% of the costs of that particular appeal as well as of the hearing at first instance (see [8] above)).

12 The appellant applied for a stay of this action. The learned assistant registrar dismissed this

application ("the order refusing a stay"), and her decision was affirmed by the judge in chambers (and see, now, *Lai Swee Lin Linda v AG* [2005] SGHC 182). As we have also seen, this is the other appeal in the consolidated appeal.

The consolidated appeal

13 As already mentioned, the appellant brought the consolidated appeal (in Civil Appeal No 87 of 2005) against both the striking-out order (arising in the context of the employment action) and the order refusing a stay (arising in the context of the bankruptcy action).

The present proceedings

14 The respondent filed the present motion (Notice of Motion No 81 of 2005) before this court, asking that:

(a) the appeal against the striking-out order be set aside;

(b) reference to the employment action be removed from the Notice of Appeal; and

(c) the cost of this application be paid by the appellant.

The issues

15 The first issue arising in the present proceedings was whether or not there could, and (if so) whether there had been, proper consolidation of the appeals in the context of the employment action and of the bankruptcy action, respectively.

16 The second was whether or not the appeal against the striking-out order was, in any event, barred as the appellant had not complied with s 34(1)(*c*) of the Supreme Court of Judicature Act (Cap 322, 1999 Rev Ed) ("SCJA").

17 The third was whether the appellant had filed and/or served her Notice of Appeal against the striking-out order out of time and, if so, whether time ought to be extended in favour of the appellant.

The issue relating to the consolidation of the appeals

18 The relevant rule with regard to consolidation is to be found in O 4 of the Rules of Court (Cap 322, R 5, 2004 Rev Ed), r 1(1) of which reads as follows:

> Where two or more causes or matters are *pending*, then, if it appears to the Court —
>
> (*a*) that some common question of law or fact arises in both or all of them;
>
> (*b*) that the rights to relief claimed therein are in respect of or arise out of the same transaction or series of transactions; or
>
> (*c*) that for some other reason it is desirable to make an order under this Rule,
>
> the Court may order those causes or matters to be consolidated on such terms as it thinks just or may order them to be *tried* at the same time or one immediately after another or may order any of them to be stayed until after the determination of any other of them.

[emphasis added]

19 It is clear that the word "pending" italicised above refers to causes or matters that have *yet to be tried* (with a cause or matter becoming "pending" for the purposes of this rule as soon as the writ is issued: see *Singapore Civil Procedure 2003* (Sweet & Maxwell Asia, 2003) at para 4/1/2). It cannot, in our view, have been intended for O 4 r 1 to apply to appeals. "Causes" or "matters" do not, in any event, fall within the natural meaning of an "appeal"; they are, instead, concerned with *trials*. This point is in fact buttressed by the word "tried" (also italicised above). Order 4 r 1(2) also requires an order for consolidation to be in *Form 1*, and this particular form makes clear reference to the plaintiff and the defendant (and *not* the appellant and the respondent). On this point alone, therefore, the appellant's consolidation of the appeals concerned was irretrievably flawed.

20 Indeed, in a related vein, we agree with counsel for the respondent that the appellant was *not* at liberty to *unilaterally* consolidate the appeals without an order of court. The appellant simply consolidated the appeals without more and sought what was in effect *ex post facto* leave from the present court to consolidate the appeals pursuant to O 4 r 1. As already noted in the preceding paragraph, this was neither the spirit nor the intent of the rule. Nevertheless, the appellant persisted in arguing that the present court ought to allow consolidation under O 4 r 1 inasmuch as there was a common question of fact that justified consolidation of the appeals with regard to both the striking-out order and the order refusing a stay.

21 Even if we leave aside (for the moment) the threshold difficulties facing the appellant which we have already outlined above, it is important to note at the outset that the power of consolidation under O 4 r 1 is *discretionary*. In other words, there is no automatic right as such on the part of the applicant to consolidate proceedings the moment a common question of fact arises – assuming that the applicant falls within the scope of O 4 r 1 in the first instance.

22 Even a cursory examination of O 4 r 1 will reveal that it was not intended to cover situations such as those which existed in the present proceedings. The main rationale underlying the consolidation of proceedings under this rule is to ensure an efficient hearing of related actions under a common "umbrella", so to speak. As Lai Kew Chai J observed in the Singapore High Court decision of *Lee Kuan Yew v Tang Liang Hong (No 3)* [1997] 3 SLR 178 at [4]:

> These rules of procedure have been in place to save costs, time and effort and for reasons of convenience in the handling of the hearing of several actions which are linked by one of the common threads provided in the rules.

The appellant's avowed purpose for consolidating her appeals could not have been further from this rationale. In her own words, she consolidated the appeals to save costs as she did not have sufficient funds to furnish two sets of security for costs. One may sympathise with the appellant. However, financial hardship cannot be an excuse for the use of the rules of civil procedure (here, O 4 r 1) as a means of convenience whilst simultaneously ignoring the legal principles upon which they are based. It might also be observed, in passing, that the saving of costs in the context of O 4 r 1 is a reference to the possible (and general) reduction of costs that are properly payable and which would redound to the benefit of all concerned; it is clearly not a licence (still less a *carte blanche*) for one party to evade the payment of costs that are properly payable.

23 In any event, contrary to the appellant's view, there was *no* common issue of fact to begin with. The striking-out order related to the appellant's employment action, whilst the order refusing a stay related to bankruptcy proceedings against her arising from her failure to pay costs in the public

law action. The only common thread was that the appellant was the chief protagonist in both sets of proceedings. That was hardly a common question of fact.

24 Further, and as importantly, it should be noted that the Rules of Court require *separate* Notices of Appeal to be issued for each order appealed against. More specifically, as stated in *Singapore Civil Procedure 2003* ([19] *supra* at para 57/3/16), where a party wishes to appeal against orders made in different actions, a separate Notice of Appeal is required in respect of each action *even if the actions had been tried together*.

25 Could, however, this irregularity perpetrated by the appellant be cured pursuant to O 2 r 1(2) of the Rules of Court? It should be reiterated that the appellant's reasons for consolidating the appeals centred on financial convenience. As we shall see, the appeal against the striking-out order is also "hopeless" (see [49]–[69] below).

26 In the circumstances, it would not, in our view, be an appropriate case to exercise our discretion under O 2 r 1(2) to cure this particular irregularity.

Section 34(1)(*c*) of the SCJA

27 The second issue is this: Had the appellant complied with the requirements of s 34(1)(*c*) of the SCJA in so far as the striking-out order was concerned and, if not, what were the legal consequences? As no objection was taken by the respondent in this context with regard to the order refusing a stay, we do not propose to discuss the legal consequences arising from the appellant's failure to comply with these requirements and confine our analysis to the appellant's failure *vis-à-vis* the striking-out order only. Section 34(1)(*c*) itself reads as follows:

> **Matters that are non-appealable or appealable only with leave**
>
> **34.**—(1) No appeal shall be brought to the Court of Appeal in any of the following cases:
>
> …
>
> (*c*) subject to any other provision in this section, where a Judge makes an interlocutory order in chambers unless the Judge has certified, on application within 7 days after the making of the order by any party for further argument in court, that he requires no further argument; …

28 The relevant corresponding provision (O 56 r 2) in the Rules of Court reads as follows:

> **Further arguments on interlocutory orders (O. 56, r. 2)**
>
> **2.**—(1) An application to a Judge for further argument in Court pursuant to section 34 (1) (*c*) of the Supreme Court of Judicature Act (Chapter 322) shall, subject to the provisions of that section, be made in accordance with practice directions for the time being issued by the Registrar.
>
> (2) Unless the Registrar informs the party making the application within 14 days of the receipt of the application that the Judge requires further arguments, the Judge shall be deemed to have certified that he requires no further arguments.
>
> (3) Upon hearing further arguments, the Judge may affirm, vary or set aside the interlocutory order previously made or may make such other order as he thinks fit. Any such

hearing, if in Chambers, shall be deemed to be a hearing in Court for the purposes of section 34 (1) (*c*) of the Supreme Court of Judicature Act.

29 The purpose of s 34(1)(*c*) is clear. In the words of Karthigesu JA in a decision of this court in *Singapore Press Holdings Ltd v Brown Noel Trading Pte Ltd* [1994] 3 SLR 151 ("*SPH v Brown Noel*") at 166, [40]:

> The intent and purpose of s 34(1)(c) of the re-enacted Supreme Court of Judicature Act and O 56 r 2 of the Rules of the Supreme Court is to us abundantly clear and free from doubt. It is to prescribe a procedure for appeals in interlocutory matters heard by a judge-in-chambers being brought to this court, *which may have arisen from full arguments not being presented to the judge-in-chambers due to the shortness of time available for the hearing of such applications or due to the judge-in-chambers having to decide on an issue without the time available to him for mature consideration*. [emphasis added]

30 To like effect are the following observations by Chan Sek Keong J (as he then was) in the Singapore High Court decision in *JH Rayner (Mincing Lane) Ltd v Teck Hock & Co (Pte) Ltd* [1988] SGHC 104 at [9] (digested in [1989] Mallal's Digest 394; and which were in fact cited and applied in, *inter alia*, *SPH v Brown Noel Trading* ([29] *supra*)):

> Section 34(2) [the predecessor of the present s 34(1)] contemplates a situation where a party who is adversely affected by an interlocutory order may wish to appeal against that order but before so doing would like the judge to reconsider the order in the light of such further arguments as he may be able to put forward. If a judge agrees to hear further arguments, it must mean that he is prepared to change his mind if on hearing further arguments he comes to the conclusion that the original decision is wrong wholly or in some respects. In other words, until he has heard such arguments, his decision must remain tentative.

31 The appellant frankly admitted that she had been ignorant of the existence of s 34(1)(*c*) of the SCJA. She stated that she had had no access to statutes or to the LawNet database. She further requested that she now be allowed to comply with this provision.

32 If the appellant had, in fact, failed to comply with s 34(1)(*c*), then, having regard to the basic purpose underlying the provision (which was briefly recounted above), it is clear that such failure was not a mere technical breach that could be overlooked by the court. Indeed, if such a breach were overlooked, we would be setting a precedent that could well mark the beginning of a potential floodtide of contraventions which would ultimately undermine the very *raison d'étre*, indeed the very existence, of the provision itself.

33 Although it is a hard *dictum*, ignorance of the law is no excuse – for laypersons and, *a fortiori*, for a legally-trained person such as the appellant. In any event, s 34(1)(*c*) was in fact available either in the library or online (without charge and which is free to the public) at <http://statutes.agc.gov.sg>.

34 We also note that the appellant had not applied to the judge for further arguments within the stipulated time and could not therefore have had the *locus standi* to lodge her present appeal before this court if she had in fact failed to comply with this particular requirement under s 34(1)(*c*). It is equally clear that *this* court had *no* jurisdiction to extend the time in the context of the present proceedings in favour of the appellant: see this court's decision in *Denko-HLB Sdn Bhd v Fagerdala Singapore Pte Ltd* [2002] 3 SLR 357.

35 In point of fact, however, the more pertinent as well as substantive argument was *whether or not the appellant had in fact failed to comply with the requirements of s 34(1)(c) in the first instance.* Somewhat curiously, perhaps, the appellant did not in fact address this court on this particular point. Indeed, as we have seen, she had appeared to have all but conceded that she had failed to comply with these requirements. On the other hand, counsel for the respondent merely asserted that there had been a failure to comply with the requirements of s 34(1)(*c*), without considering whether or not such an assertion could in fact be justified based on the substantive criteria applicable in this particular context.

36 In this regard, it should be noted that s 34(1)(*c*) is only applicable in the context of interlocutory orders made by a judge in chambers. It is insufficient merely to prove that the order concerned was made in chambers (which was clearly the case here). The key focus in most cases (not least the present) is whether or not the order made was *interlocutory* in nature; only then would it fall within the purview of the provision.

37 It is pertinent to note that the test adopted in the Singapore context to distinguish between interlocutory orders on the one hand and final orders on the other is that laid down in the English Court of Appeal decision of *Bozson v Altrincham Urban District Council* [1903] 1 KB 547 ("*Bozson*"), where Lord Alverstone CJ stated the test to be applied as follows (at 548–549):

> Does the judgment or order, as made, finally dispose of the rights of the parties? If it does, then … it ought to be treated as a final order; but if it does not, it is then … an interlocutory order.

3 8 This test (popularly known as the "order" test) has been preferred to the "application" test laid down in the (also) English Court of Appeal decision of *Salaman v Warner* [1891] 1 QB 734, where Fry LJ was of the following view (at 736):

> [A]n order is "final" only where it is made upon an application or other proceeding which must, whether such application or other proceeding fail or succeed, determine the action. Conversely I think that an order is "interlocutory" where it cannot be affirmed that in either event the action will be determined.

39 The "order" test laid down in *Bozson* has been endorsed time and again in the Singapore context: see, for example (for a sample of just a few of the more recent decisions of this court), *Aberdeen Asset Management Asia Ltd v Fraser & Neave Ltd* [2001] 4 SLR 441; *Rank Xerox (Singapore) Pte Ltd v Ultra Marketing Pte Ltd* [1992] 1 SLR 73; *Jumabhoy Asad v Aw Cheok Huat Mick* [2003] 3 SLR 99 and *Lim Kok Koon v Tan JinHwee Eunice & Lim ChooEng* [2004] 2 SLR 322.

40 Applying the "order" test, it did *not* seem to us that the striking-out order was *clearly* an interlocutory one and, if so, the appellant's failure to comply with s 34(1)(*c*) would not have had an adverse impact on the case simply because the provision would not, *ex hypothesi*, be applicable in the first instance.

41 Although the order striking out the paragraphs concerned did not impact on the substantive issues which remained to be decided in subsequent proceedings (centring around an action in contract law) and could (in this sense) be construed as an interlocutory order, it seemed to us equally plausible to argue that this particular order did in fact finally dispose of the rights of the parties in the proceedings in so far as alleged liability with regard to administrative law was concerned and was, in that sense, a final order.

42 Given the fact, as noted above, that neither the appellant nor the respondent addressed us

on this particular issue, we do not propose to rule on the point now since we find that the appellant fails in her arguments with respect to the two remaining issues, the first of which (the wrongful consolidation of the appeals) has already been dealt with above. We turn now to consider the other issue – which relates to the filing and/or serving of the Notice of Appeal against the striking-out order by the appellant out of time. For reasons which we elaborate upon below, we hold that there were no grounds to merit the exercise of this court's discretion to grant an extension of time to the appellant to file and serve the Notice of Appeal out of time.

Filing and/or serving the Notice of Appeal against the striking-out order out of time

43 Even if the appellant could succeed on the preceding two issues (which we in fact decided she could not, at least in so far as the first was concerned), she would still face this third – and final – issue to the effect that she had clearly filed and/or served the Notice of Appeal out of time. In fact, the appellant filed and served her Notice of Appeal well beyond the stipulated period (in O 57 r 4) of one month from the date the striking-out order was made. This was in fact done, as counsel for the responded pointed out, after a lapse of three months and 19 days. The issue which arises is whether or not there are extenuating circumstances warranting an extension of time under O 3 r 4 read with O 57 r 17 of the Rules of Court.

44 Although the appellant did allege that she had filed a separate Notice of Appeal against the striking-out order on 3 May 2005, we were unable to locate any documentary evidence to this effect. During the appeal itself, the appellant *conceded* that although she had *attempted to* file a Notice of Appeal within time (on 3 May 2005), this attempt was ineffective as she had not furnished the requisite security for costs.

45 The applicable principles governing the jurisdiction of the court to extend the time for filing and/or serving a Notice of Appeal were laid down, most notably perhaps, by the decision of this court in *Pearson v Chen Chien Wen Edwin* ("*Pearson*") [1991] SLR 212. The court there held (at 219, [20]) that "the application … for an extension of time … should be on grounds sufficient to persuade the court to show sympathy to him". In this regard, four factors have been utilised by the courts to ascertain whether or not the court should be so persuaded. These include the length of delay; the reasons for the delay; the chances of the appeal succeeding if time for appealing were extended; and the prejudice caused to the would-be respondent if an extension of time was in fact granted: see *Pearson* at 217, [15]; *Hau Khee Wee v Chua Kian Tong* [1986] SLR 484 at 488, [14]; *Stansfield Business International Pte Ltd v Vithya Sri Sumathis* [1999] 3 SLR 239 at [24]; *Tan Chiang Brother's Marble (S) Pte Ltd v Permasteelisa Pacific Holdings Ltd* [2002] 2 SLR 225 at [27]; *AD v AE* [2004] 2 SLR 505 at [10]; as well as *Ong Cheng Aik v Dayco Products Singapore Pte Ltd* [2005] 2 SLR 561 at [8] and [11]. When applying these factors, the overriding consideration is that the Rules of Court must *prima facie* be obeyed, with reasonable diligence being exercised: see the Privy Council decision of *Thamboo Ratnam v Thamboo Cumarasamy and Cumarasamy Ariamany d/o Kumarasa* [1965] 1 WLR 8 ("*Ratnam v Cumarasamy*") at 12 and the Singapore High Court decision of *Tan Chai Heng v Yeo Seng Choon* [1980–1981] SLR 381 at 382, [5]. This court has also pointed out, in *The Melati* [2004] 4 SLR 7 at [37] that the "paramount consideration" is the need for finality. It should be borne in mind, in this regard, that the would-be appellant has already "had a trial and lost": see *Ratnam v Cumarasamy*, *supra* at 12. Hence, if no appeal is filed and served within the prescribed period (here, of one month), the successful party is justly entitled to assume that the judgment concerned is final: see *Ong Cheng Aik v Dayco Products Singapore Pte Ltd*, *supra* at [8].

46 Applying the principles (in particular, the four factors) stated in the preceding paragraph, we were not persuaded that the appellant ought to be granted an extension of time.

47 In the first instance, the period of delay in the present proceedings was *three months and 19 days*. This was more than four times the prescribed time period. By way of helpful comparison, a delay of 49 days in *AD v AE* was itself considered "by any standard … a very substantial delay" ([45] *supra* at [11]).

48 Secondly, the appellant did refer to her financial difficulties as a reason for her tardiness in filing and serving her Notice of Appeal – in particular, to her difficulties in furnishing the $10,000 security for costs as required under O 57 r 3(3). Whilst we sympathise with the appellant, financial difficulties *per se* are not, in our view, sufficient to justify an extension of time. The various rules centring around the provision of security for costs and the need to be prompt in filing and serving one's Notice of Appeal would otherwise be set at naught. We note that no other specific reason was given by the appellant for the delay.

49 Thirdly, we found that the chances of the appeal succeeding were – utilising the very low threshold laid down in *Nomura Regionalisation Venture Fund Ltd v Ethical Investments Ltd* [2000] 4 SLR 46 at [32] – "hopeless". In particular, we bore in mind the three principal parts of the appellant's Statement of Claim which were in fact struck out.

50 The first part related to the appellant's claim for costs in the earlier public law action. In point of fact, this issue had already been dealt with by this court in earlier proceedings (see *PSC v Linda Lai*) and was therefore *res judicata*. It is true that the costs of the public law action was technically against the PSC and other government bodies, as opposed to the Attorney-General, who was the respondent in the employment action. However, there was the requisite "privity of interest" between these statutory bodies (see, for example, the English High Court decision of *Gleeson v J Wippell & Co Ltd* [1977] 1 WLR 510 ("*Gleeson*") and the Singapore Court of Appeal decision of *Tohru Motobayashi v OR* [2000] 4 SLR 529 at [27]). In *Gleeson*, Megarry VC observed (at 515) that:

> [T]here must be a sufficient degree of identification between the two [here, the statutory bodies concerned] to make it just to hold that the decision to which one was party should be binding [here, on the appellant] in proceedings to which the other is party.

One must indeed look to the substance rather than just the form. Therefore, the appellant's attempt to reopen the matter in the employment action was an abuse of the process of court pursuant to O 18 r 19(1)(*d*) of the Rules of Court.

51 The second part concerned paragraphs relating to an application for *judicial review*. Once again, the very same issue relating to judicial review had already been determined in the same earlier proceedings in this court (see *PSC v Linda Lai*). Indeed, that court had expressly held (at [46]) that "the matters complained of by Ms Lai are not susceptible to judicial review". More specifically, it was held in that case that the appellant was not a confirmed officer and was thus not entitled to raise claims in an administrative law context. It was further held that the relevant provisions in the Instruction Manual did not have any legal effect. Hence, the appellant's claim lay, if at all, in the sphere of contract law, and not administrative law. The appellant's attempt in the employment action to essentially re-litigate this point in this second set of paragraphs in her Statement of Claim was clearly also an abuse of the process of court under O 18 r 19(1)(*d*).

52 We note, at this juncture, that the appellant was adamant that without consideration of the issues relating to administrative law, her whole case against the respondent failed. As we shall see, that was not, strictly speaking, correct, as the appellant could still mount her case under the law of contract. In any event, this court had, as we have seen, already held in *PSC v Linda Lai* that judicial review was inappropriate. The appellant could not therefore raise the point again in the employment

action. Litigants – particularly those who are unsuccessful before the courts – may feel strongly, as did the appellant in the instant proceedings. However, that alone is insufficient and, as in the present proceedings, is even irrelevant. All that justice and fairness requires is that the appellant had her day in court. That she did – right up to the highest appellate court in this land.

53 The appellant nevertheless persisted in raising the following arguments that (in her view) demonstrated that the doctrine of *res judicata* did not arise with respect to her application for judicial review in the employment action.

54 She argued, first, that the earlier public law action in *PSC v Linda Lai* was merely an *ex parte* application for leave to apply for *certiorari* and not a full hearing as such of the substantive *certiorari* action. We found this, with respect, to be a disingenuous argument. If the appellant could not, in these earlier proceedings, even get past the threshold (for leave), of what relevance was her raising the argument centring on a full hearing of the substantive *certiorari* action?

55 Secondly, the appellant argued that the remedy sought in *PSC v Linda Lai* was that of *certiorari*, whereas the remedy presently sought in the employment action was for a declaration. She relied, repeatedly, on this court's decision in *AG v Ng Hock Guan* [2004] 3 SLR 253, affirming *Ng Hock Guan v AG* [2004] 1 SLR 415 ("*Ng Hock Guan*").

56 It is true that, in *Ng Hock Guan*, the plaintiff, having brought his claim for judicial review by way of an application for a declaration, did not (unlike an application for *certiorari*) have to apply for leave first. The appellant argued that she was now bringing her claim by way of an application for a declaration and thus fell within the scope of *Ng Hock Guan* instead.

57 This was, with respect, an argument from technical form that ignored the crucial point that it is, in the final analysis, the substance of the matter that is all-important.

58 In the first instance, the point was not whether or not the application was brought by way of *certiorari* or declaration. The critical issue was whether or not the applicant (here, the appellant) was entitled to mount her claim in *judicial review* in the *first instance*. This was a threshold issue that would have had to be considered, *regardless* of the form in which the application was brought.

59 The criteria applied by the court in an application for leave to apply for *certiorari* should also be noted. This is an important point because the criteria applicable are *very low* (see, for example, the decision of this court in *Chan Hiang Leng Colin v Minister for Information and the Arts* [1996] 1 SLR 609 at 616, [22], affirming [1995] 3 SLR 644). *Even then*, the appellant was *unable to pass these very low threshold criteria*. As we have already pointed out above (at [54]), it would follow that her argument that she should have been afforded a *substantive* hearing on the issue with regard to her application for *certiorari* was, with respect, a *non sequitur*. If she could not succeed at the threshold level, it follows, *a fortiori*, that she could not proceed to (let alone succeed) at the next (and substantive) level.

60 The *same* reasoning applies to her argument that she was nevertheless entitled, on the authority of *Ng Hock Guan*, to succeed if her application was mounted in the form of a *declaration* instead. If she could not succeed in persuading this court that she had the *locus standi* to pursue her case in *administrative law* under the *low threshold criteria* for *leave* to apply for *certiorari*, it would follow, *a fortiori*, that she would *not* be able to persuade this court that she had the *locus standi* to now pursue her case in *administrative law* by way of a *declaration*. Indeed, similar reasoning in both this as well as the preceding paragraphs would apply to another case cited by the appellant – that of the Singapore High Court in *De Souza Lionel Jerome v AG* [1993] 1 SLR 882 ("*De Souza*").

61 Indeed, if we come down to brass tacks, what the appellant was attempting to do was to *re-litigate the same issue that this court held she could not do – that her action lay not in administrative law but, if at all, under the law of contract*. *This* issue had *already been decided* by this court in *PSC v Linda Lai*. The appellant was attempting to *re-litigate* this issue *under the guise of an application for a declaration instead*. Quite apart from the fact that the issue – and, hence, our decision – would have been the same even if we were minded to consider the appellant's present application for a declaration, we would go *further* and observe that it would be *wholly improper* for this court to *even entertain the possibility* of such a claim *in the first instance*. To do so would have been to sanction an abuse of the process of court. As Choo Han Teck JC (as he then was) aptly put it in the Singapore High Court decision of *Haco Far East Pte Ltd v Ong Heh Lai Francis* [1999] SGHC 152 at [4], "[t]he same party cannot re-litigate the same subject matter applying the same story by merely changing the title". Although the learned Judicial Commissioner's decision on this point was reversed on appeal (see [2000] 1 SLR 315), this was from the perspective of application rather than general principle. In point of fact, and returning to the present proceedings, notwithstanding the difference in the respective remedies sought in *PSC v Linda Lai* and in the employment action, the substantive issue in both these actions was *whether or not judicial review was available* in respect of the termination of the appellant's employment. *This* was the nub of both *PSC v Linda Lai and* the employment action. The doctrine of *res judicata* clearly applied. In this regard, the following observations by Lord Bridge of Harwich in the House of Lords decision of *Thrasyvoulou v Secretary of State for the Environment* [1990] 2 AC 273 at 289 might also be usefully noted:

> The doctrine of res judicata rests on the twin principles which cannot be better expressed than in terms of the two Latin maxims "interest reipublicae ut sit finis litium" and "nemo debet bis vexari pro una et eadem causa." These principles are of such fundamental importance that they cannot be confined in their application to litigation in the private law field. They certainly have their place in criminal law. In principle they must apply equally to adjudications in the field of public law.

62 But what about the fact that at least one party to the present proceedings (here, the respondent) was not apparently a party to the earlier litigation? We have, in fact, touched earlier on the fact that the defendant in *PSC v Linda Lai* was the PSC and other government bodies instead of the present respondent. However, once again, the *substance* of the matter is crucial and one has to bear in mind, once again, the application of the doctrine of "privity of interest" (see [50] above). Further, to allow such an issue to be litigated, even if we considered that it did not strictly speaking fall within the purview of the doctrine of *res judicata* (which we did not), would amount to an abuse of the process of the court – a doctrine that finds its roots in the seminal English decision of *Henderson v Henderson* (1842) 3 Hare 100; 67 ER 313. More recent cases include the Hong Kong Privy Council decision of *Yat Tung Investment Co Ltd v Dao Heng Bank Ltd* [1975] AC 581; the English Court of Appeal decisions of *Greenhalgh v Mallard* [1947] 2 All ER 255 and *Ashmore v British Coal Corporation* [1990] 2 QB 338; as well as the House of Lords decisions of *Hunter v Chief Constable of the West Midlands Police* [1982] AC 529 and *Johnson v Gore Wood & Co* [2002] 2 AC 1. In *Johnson v Gore Wood & Co*, Lord Bingham of Cornhill observed (at 31) that what is required is:

> [A] broad, merits-based judgment which takes account of the public and private interests involved and also takes account of all the facts of the case, focusing attention on the crucial question whether, in all the circumstances, a party is misusing or abusing the process of the court by seeking to raise before it the issue which could have been raised before

bearing in mind that:

> [A]s one cannot comprehensively list all possible forms of abuse, so one cannot formulate any hard and fast rule to determine whether, on given facts, abuse is to be found or not.

There is also the following helpful summary in The Honourable Mr Justice K R Handley, *Spencer Bower, Turner and Handley – The Doctrine of Res Judicata* (Butterworths, 3rd Ed, 1996) at p 263:

> Where one or more of the parties in the second action was not a successful party in the first, a second action by an unsuccessful party, who had a proper opprtunity [*sic*] of being heard in the first may be stayed or dismissed or a defence struck out as an abuse of process where:
>
> (a) it involves a collateral attack on the earlier decision, especially where aggravating features are present such as an ulterior purpose, the absence of fresh evidence or other special circumstances, or prejudicial delay since the earlier decision;
>
> (b) the later proceedings can be seen to be without merit (frivolous and vexatious) in the light of the earlier decision, *a fortiori* where the parties are the same.

63 Indeed, it has been expressly held that the court will not allow the same issue to be raised in separate proceedings arising out of identical facts and dependent on the same evidence, even if such proceedings are between different parties as to do so would constitute an abuse of the process of the court: see, for example, the Malaysian High Court decision of *Nanang International Sdn Bhd v The China Press Bhd* [1999] 2 MLJ 681 and the Singapore High Court decision of *Kwa Ban Cheong v Kuah Boon Sek* [2003] 3 SLR 644 at [31] and [32]. Far from there being "a danger of a party being shut out from bringing forward a genuine subject of litigation" (*per* Lord Wilberforce, delivering the judgment of the Board in the Privy Council decision (on appeal from the Full Court of the Supreme Court of Queensland) in *Brisbane City Council and Myer Shopping Centres Pty Ltd v Attorney-General for Queensland* [1979] AC 411 at 425), the appellant in the present proceedings had in fact already been afforded a more than ample opportunity to present her case but yet persisted in attempting to re-litigate her case under yet another guise (reference may also be made to the House of Lords decision of *The Rev Oswald Joseph Reichel, Clerk (Pauper) v The Rev John Richard Magrath, Provost of Queen's College, Oxford University* (1889) 14 App Cas 665). Unlike the situation in, for example, *Gleeson* ([50] *supra*) or in the decision of this court in *Ching Mun Fong v Liu Cho Chit* [2000] 1 SLR 517, the situation here not only concerned parties who had a "privity of interest" but also concerned an attempt by the appellant to re-litigate *identical* legal issues arising from *identical* facts. This was clearly impermissible.

64 Finally, the appellant argued that certain "important" facts and issues had not been raised before, and considered by, the court in *PSC v Linda Lai*. These facts and issues, assuming they existed and would be admissible in evidence, ought to have been raised in the public law action itself. To allow them to be raised now would be an abuse of the process of the court under the *broader* doctrine of *res judicata* referred to in the preceding two paragraphs.

65 Although it is, in the light of what we have stated, not critical to our decision in the present proceedings, we would also observe that the issue as to whether or not judicial review was available was – unlike *PSC v Linda Lai* and the present proceedings – *not even an issue to begin with* in *Ng Hock Guan*. This was because the plaintiff in *Ng Hock Guan* was, *unlike the appellant in the present proceedings*, a confirmed officer in the public service. Indeed, he was, at the material time, an officer of approximately a decade's standing who also received commendations and promotions for his work. Hence, we did not see how *Ng Hock Guan* was relevant to the present proceedings even if we adopted the most generous and flexible view we could towards the appellant's arguments. Similar reasoning would apply to *De Souza* ([60] *supra*), where the plaintiff was also a confirmed police

officer with many commendations and testimonials. The present proceedings are also distinguishable from the Malaysian Court of Appeal decision of *Abdul Majid bin Hj Nazardin v Paari Perumal* [2002] 2 MLJ 640 inasmuch as the claimant in that case, although neither confirmed nor shown the door after his probation period, was granted leave as if he were a confirmed employee. More importantly, the claim in that case was brought for *breach of contract*. As we have already observed, the appellant in the present proceedings, too, is entitled to mount her claim in contract.

66 There was, it will be recalled, a third set of paragraphs that were struck out as being "scandalous". These included references to, *inter alia*, the fact that information regarding the termination of the appellant's employment could easily be forwarded to all and sundry in Singapore due to the pervasiveness of the Internet and hence jeopardising her future; the fact that the appellant had had a difficult time finding a solicitor to represent her as the respondent was the Attorney-General; the fact that a new Commissioner of Lands was appointed as a result of the late President Ong Teng Cheong's alleged complaints about delays and backlogs; and the fact that the appellant's actions were directed not against the Government as such but, rather, at a few civil servants who had (in her view) abused their power.

67 In determining whether this third set of paragraphs was "scandalous", the sole question was whether or not the matter alleged to be scandalous had a tendency to show the truth of any allegation material to the relief sought: see *Christie v Christie* (1872–1873) LR 8 Ch App 499 at 503 (*per* Lord Selborne LC).

68 We have already seen that the appellant was not entitled to seek relief under the rubric of administrative law. Her rights lay, if at all, in the sphere of contract law. Looked at in this light, it is clear, in our view, that the material contained in this third set of paragraphs is clearly irrelevant to the appellant's contractual claim. Such material was in fact clearly intended to garner sympathy for herself (the appellant) whilst simultaneously casting what are in our view needless aspersions on her former superiors. The reference to the late President Ong Teng Cheong was particularly objectionable. As was held by T S Sinnathuray J in the Singapore High Court decision of *Pertamina v Kartika Ratna Thahir* [1982–1983] SLR 351 at 361, [39]:

> [G]enerally it is not proper to use the names of third parties in public proceedings, particularly when they are public officers or well-known and influential persons without scrupulously observing the rules of pleading and justifying the relevance of references to such persons.

It is clear, in our view, that this set of paragraphs was clearly scandalous and was therefore correctly struck out.

69 Drawing the various threads of analyses together, it is our view that the chances of the appeal succeeding were negligible at best. Indeed, we would venture to go so far as to say that the chances were "hopeless". In this regard, we find the following observation in *Pearson* ([45] *supra* at 218, [17]) of equal – if not more – importance when viewed in the context of the present proceedings:

> In particular, the chances of the appeal succeeding should be considered, as *it would be a waste of time for all concerned if time is extended when the appeal is utterly hopeless*. [emphasis added]

70 We turn, finally, to the fourth factor: Whether or not prejudice would result to the respondent in the present proceedings. In this regard, "[s]ome form of irreversible or permanent change of position" by the respondent in reliance on the judgment below is required: see *AD v AE*

([45] *supra* at [14]). We found that should an extension of time be granted to the appellant, no such prejudice would in fact result to the respondent.

71 However, it is clear that, taking all the circumstances as a whole and the application of the first three factors in particular, there were no grounds to merit the exercise of this court's discretion to grant an extension of time to file and serve the Notice of Appeal out of time.

Conclusion

72 Leaving aside (for reasons set out above) the issue as to whether or not the appellant had in fact failed to comply with the requirements under s 34(1)(*c*) of the SCJA, it was clear that the appellant had nevertheless breached a number of other significant procedural requirements. These were, as we have seen, not merely technical breaches. Condoning them would entail substantive injustice as well. And such substantive injustice would have occurred not merely on the level of the specific facts of the case at hand. There were inimical consequences on the broader level too. For example, the appellant would have been allowed to re-litigate matters already decided by this court in an earlier decision. We accordingly allowed the respondent's application and ordered the appellant to pay costs of $1,000 to the respondent.

73 Indeed, the order of costs against the appellant would ordinarily have been much higher. But we note that, despite her misguided attempts at seeking to save costs on appeal as well as reopening issues that she was not legally entitled to do, it is still possible for the appellant to base a claim by way of a contractual action. However, the route she insisted upon – that relating to administrative law – was a clearly inappropriate one, as this court had earlier held (in *PSC v Linda Lai*). It was inappropriate for the appellant to seek, in the employment action, to take the same route which this court had already held was not legally available to her. Hence, those parts of her Statement of Claim in Suit No 995 of 2004 that sought the inappropriate legal route by way of administrative law have been struck out. The appellant should not allow her own emotional feelings to cloud her objective judgment as to the correct legal procedures to adopt but should, instead, proceed in the appropriate manner and bring closure to this particular episode in her life.