IN THE GENERAL DIVISION OF
THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2024] SGHC 122

Originating Application No 306 of 2024 (Summons No 1124 of 2024)

In the matter of Order 4, Rule 7 of the Rules of Court 2021

And

In the matter of Articles 9 and 12 of the Constitution of the Republic of Singapore (2020 Rev Ed)

Between

(1) Iskandar bin Rahmat
(2) Masoud Rahimi bin Mehrzad
(3) Syed Suhail bin Syed Zin
(4) Roslan bin Bakar
(5) Rosman bin Abdullah
(6) Pausi bin Jefridin
(7) Mohammad Rizwan bin Akbar Husain
(8) Saminathan Selvaraju
(9) Ramdhan bin Lajis
(10) Jumaat bin Mohamed Sayed
(11) Lingkesvaran Rajendaren
(12) Mohammad Azwan bin Bohari
(13) Mohammad Reduan bin Mustaffar
(14) Omar bin Yacob Bamadhaj
(15) Muhammad Hamir bin Laka
(16) Jumadi bin Abdullah
(17) Muhammad Salleh bin Hamid
(18) Moad Fadzir bin Mustaffa
(19) Zamri bin Mohd Tahir
(20) Gunalan Goval
(21) Steve Crocker

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(22) Shisham bin Abdul Rahman
(23) Chandroo Subramaniam
(24) Mohd Akebal s/o Ghulam Jilani
(25) A Steven Raj s/o Paul Raj
(26) Sulaiman bin Jumari
(27) Mohamed Ansari bin Mohamed Abdul Aziz
(28) Sanjay Krishnan
(29) Chong Hoon Cheong
(30) Kishor Kumar a/l Raguan
(31) Pannir Selvam a/l Pranthaman
(32) Teo Ghim Heng
(33) Tan Kay Yong
(34) Roshdi bin Abdullah Altway
(35) Eddie Lee Zheng Da
(36) Shen Hanjie

… *Applicants*

And

Attorney-General

… *Respondent*

JUDGMENT

[Civil Procedure — Striking out]
[Constitutional Law — Fundamental liberties — Right to counsel]
[Constitutional Law — Equality before the law]

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Iskandar bin Rahmat and others
v
Attorney-General

[2024] SGHC 122

General Division of the High Court — Originating Application No 306 of 2024 (Summons No 1124 of 2024)
Dedar Singh Gill J
9 May 2024

20 May 2024 Judgment reserved.

Dedar Singh Gill J:

1 Each of the applicants is a person convicted of a capital offence and presently awaiting capital punishment.[1] The applicants allege that the Legal Aid Scheme for Capital Offences ("LASCO") has a policy to not assign LASCO counsel for the purposes of post-appeal applications (the "LASCO policy"). Originating Application No 306 of 2024 ("OA 306") is the applicants' application for a declaration that this LASCO policy is inconsistent with Arts 9 and 12 of the Constitution of the Republic of Singapore (2020 Rev Ed) (the "Constitution") and for damages.[2]

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1 1st Applicant's Affidavit (dated 28 March 2024) ("1st Applicant's Affidavit") at para 2.

2 1st Applicant's Affidavit at para 5; Respondent's Submissions on Striking Out Application (dated 24 April 2024) ("AG's Submissions") at para 1.

2 In turn, the Attorney-General ("the AG") has applied, under Summons No 1124 of 2024 ("SUM 1124"), to strike out their application pursuant to O 9 r 16(1)(*a*) of the Rules of Court 2021 ("ROC") for disclosing no reasonable cause of action.[3]

3 The applicable test is whether the action has some chance of success when only the allegations in the pleadings are considered (see *Iskandar bin Rahmat and others v Attorney-General and another* [2022] 2 SLR 1018 ("*Iskandar bin Rahmat"*) at [17]; *Gabriel Peter & Partners (suing as a firm) v Wee Chong Jin and others* [1997] 3 SLR(R) 649 at [21]). If that is found to be the case, the action will not be struck out. The applicant in a striking out application (*ie,* the AG in SUM 1124) bears the burden of proving that the claim (*ie,* OA 306) is "obviously unsustainable, the pleadings [are] unarguably bad and it [is] impossible, not just improbable, for the claim to succeed" (*Leong Quee Ching Karen v Lim Soon Huat and others* [2023] 4 SLR 1133 at [26]).

4 Strictly speaking, under O 9 r 16(1)(*a*) of the ROC, I cannot consider any affidavit evidence (see O 9 r 16(2) of the ROC). Order 9 r 16(3) of the ROC states that "[t]his Rule applies to an originating application as if it were a pleading". However, to ventilate this matter completely, I deal with all the arguments that the applicants have raised. Accordingly, I will consider the applicants' affidavit evidence in arriving at my decision.

The applicants' oral application for an extension of time

5 As of 9 May 2024 (*ie,* the date of the hearing for SUM 1124), the applicants had yet to file any written submissions for SUM 1124. This is despite

[3] AG's Submissions at para 2.

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the Senior Assistant Registrar's ("SAR") directions, on 23 April 2024, for the applicants to file their submissions by 6 May 2024. During the hearing, the applicants made an oral application for the hearing to be adjourned for a further four to five weeks for the applicants to file their written submissions. According to the applicants, the original two weeks' timeline was too short. The applicants alleged that the SAR had failed to consider that they were "jailhouse litigants" who required more time to prepare their case. This was due to them requiring the assistance of family and friends to make their submissions and the added difficulties of preparing their case in prison.

6 The AG took the position that the applicants' submissions did not withstand scrutiny. The AG emphasised that the applicants were able to tender a 238-page affidavit, to bring OA 306, just one day after the Court of Appeal dismissed their appeal against the High Court's decision to strike out their application in another matter (*ie*, Originating Application No 987 of 2023 ("OA 987")) (see *Masoud Rahimi bin Mehrzad and others v Attorney-General* [2024] SGCA 11; *Masoud Rahimi bin Mehrzad and others v Attorney-General* [2023] SGHC 346). Further, the applicants were able to file a further 60-page supplementary affidavit on 16 April 2024. This was just one week after permission was granted for them to do so on 9 April 2024. The AG contended that the applicants should be familiar with OA 306 as they were the ones who had brought the application in the first place.

7 I disallowed the application for an adjournment. Ultimately, OA 306 was filed by the applicants. When the applicants filed OA 306, they must have known of the basis for their application and whether they have a viable cause of action. In my view, even with all the aforementioned constraints, they would not have required more than two weeks to put in written submissions for SUM 1124.

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The LASCO policy

8 LASCO is a scheme which provides legal assistance to accused persons charged with capital offences. The conduct of capital cases by LASCO counsel is guided by the Guidelines for Appointment and Responsibilities of Assigned Counsel in Capital Cases (the "Guidelines").

9 The LASCO Case Assignment Panel (the "LASCO Panel") conducts the assignment of cases to counsel (Guidelines at para 3.1). According to the Guidelines, LASCO counsel will be assigned for all cases where the accused person faces trial for a capital charge (Guidelines at para 3.2). However, the LASCO Panel "*may* also extend the assignment of [c]ounsel to the conduct of appeals to the Court of Appeal where capital punishment is in issue" [emphasis added] (Guidelines at para 3.2). One such scenario where the LASCO Panel is likely to extend the assignment of counsel is "where an Accused person sentenced to capital punishment appeals against sentence and/or conviction" (Guidelines at para 3.2(a)). The Guidelines further qualify that in the case of LASCO assignments for the purpose of appeals or other applications before the Court of Appeal, the LASCO counsel's assignment will "cease immediately upon … the pronouncement of the verdict disposing of the appeal or application" (Guidelines at para 3.10).

10 The applicants challenge the non-assignment of LASCO counsel not at the trial or appeal stage, but for *post-appeal applications*. The principle of finality is an integral part of the justice system. However, because it is acknowledged that the cost of error in the criminal process is measured in terms of liberty and, sometimes, even the life of an individual, the principle of finality is not applied in as unyielding a manner in criminal cases as in civil matters (*Kho Jabing v Public Prosecutor* [2016] 3 SLR 135 ("*Kho Jabing*") at [1]–[2]).

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Part 20, Division 1B of the Criminal Procedure Code 2010 (2020 Rev Ed) (the "CPC") sets out the relevant procedures for an application for a review of an earlier decision of an appellate court. Part 20, Division 1A of the CPC provides that a sentence of death imposed by the High Court has to be reviewed by the Court of Appeal even where no formal appeal has been filed (see *Kho Jabing* at [50], referring to the equivalent provisions in the Criminal Procedure Code (Cap 68, 2012 Rev Ed)). Further, in *Kho Jabing* (at [77(a)]), the Court of Appeal held that it has the inherent power to reopen a concluded criminal appeal in order to prevent a miscarriage of justice.

11 The distinction between an appeal and a post-appeal application is, nevertheless, noteworthy (*Iskandar bin Rahmat* at [44]). Unlike an appeal which is available to accused persons as of right, a post-appeal review is a process that occurs *after* the merits have been reviewed not only at trial but on appeal (*Iskandar bin Rahmat* at [45]). It is "a discretionary process that is made available to avert possible miscarriages of justice in rare cases where there has been some development in terms of the law or the evidence" (*Iskandar bin Rahmat* at [45]).

12 The applicants raise various facts to evidence the existence of the LASCO policy. Most notably, the court e-mail correspondence dated 14 November 2017 to the 1st applicant's sister states that "the Supreme Court Registry's policy is not to assign LASCO Counsel for filing post appeal applications".[4] The applicants also draw my attention to responses from the court, between 18 May 2020 to 20 March 2024, rejecting some of the applicants'

[4] 1st Applicant's Affidavit at para 8 and p 30.

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requests to be provided with LASCO counsel in their post-appeal applications.[5] In particular, the applicants raise the fact that the 3rd applicant had received the reply four days after his request. They suggest that it was unclear whether the LASCO Panel had convened to decide on the 3rd applicant's request, or if the Supreme Court Registry had rejected the request on behalf of the LASCO Panel.[6] Finally, the applicants state that the consent forms for the assignment of LASCO counsel for accused persons facing capital charges include a clause stating that "the accused understands that upon conclusion of any appeal to the Court of Appeal, that no further LASCO counsel will be assigned for filing any post-appeal applications to re-open the matter".[7]

13 I make two observations. First, the evidence adduced by the applicants shows that the LASCO policy only came into force either in late 2017 or after 2017. Second, the AG does not contest the existence of the LASCO policy.

Declaratory relief sought by the applicants

14 Under O 4 r 7 of the ROC, the court may make a declaratory judgment or order whether or not any other relief is sought. The AG does not contest the procedural regularity of OA 306.

Article 9

15 It is not clear from the applicants' originating application or their affidavits, which specific provision, within Art 9 of the Constitution, they are

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5 1st Applicant's Affidavit at paras 9–13, and pp 34, 36, 40 and 48; 1st Applicant's Supplementary Affidavit (dated 16 April 2024) ("1st Applicant's Supplementary Affidavit") at para 6.

6 1st Applicant's Affidavit at para 24.

7 1st Applicant's Affidavit at para 14.

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relying on. During the hearing, the 1st applicant clarified that they were relying on the right to counsel under Art 9(3) and an alleged common law right of access to justice enshrined in Art 9(1). I understand the applicants' argument to be that the LASCO policy amounts to a "blanket ban" on the assignment of LASCO counsel for post-appeal applications, which consequently affects their ability to bring post-appeal applications, thereby infringing upon their "access to justice and right to legal representation".[8]

16 The applicants also raise other factual circumstances which, they say, magnify the breach of their Art 9 rights. For convenience, I term these to be "relevant considerations". These include:

(a) the fact that LASCO is the applicants' only available recourse to legal aid post-appeal;[9]

(b) the fact that some of the applicants faced financial hardship in engaging their own counsel to bring post-appeal applications;[10]

(c) that even for the applicants with the means to hire their own counsel, there have been difficulties engaging counsel for post-appeal applications due to counsel's alleged fear of reprisal from the Court and personal costs orders;[11] and

(d) the severity of the capital punishment faced by the applicants.[12]

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8 1st Applicant's Affidavit at paras 30–31.

9 1st Applicant's Affidavit at para 26; 1st Applicant's Supplementary Affidavit at para 9.

10 1st Applicant's Affidavit at para 28.

11 1st Applicant's Affidavit at para 29; 1st Applicant's Supplementary Affidavit at para 11.

12 1st Applicant's Affidavit at para 31.

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Article 9(3)

17 Article 9(3) of the Constitution provides that "[w]here a person is arrested, he … shall be allowed to consult and be defended by a legal practitioner of his choice". However, the right to counsel under Art 9 is not an unqualified right. The right is more accurately stated as a right to "consult and be defended by a legal practitioner of his choice *if that counsel is willing and able to represent him*" [emphasis added] (*Balasundaram s/o Suppiah v Public Prosecutor* [1996] 1 SLR(R) 853 ("*Balasundaram"*) at [9]–[11]; citing *Palaniappa Chettiar v Arunasalam Chettiar* CA 34/58, Malaya (quoted in *Practice Direction (Adjournment)* [1961] MLJ xxxiii)).

18 The thrust of the applicants' arguments is essentially that Art 9(3) entitles them to be represented by LASCO counsel not only at the trial and appeal stages but also for post-appeal applications. In oral submissions, the 1st applicant stated in definite terms that the main issue in OA 306 is whether the LASCO policy denies the applicants of legal aid, in light of the need for unconditional legal aid in capital cases.

19 In my view, the plain wording of Art 9(3) does not disclose any such right. In the Malaysian case of *Mohamed bin Abdullah v Public Prosecutor* [1980] 2 MLJ 201 ("*Mohamed bin Abdullah"*), cited by the Court of Appeal in *Balasundaram* (at [10]), Harun J dealt with the issue of whether the President of the Sessions Court had erred in proceeding with the hearing of a criminal case in the absence of counsel. In dismissing the appeal, Harun J said (at 203) that Art 5(3) of the Federal Constitution of Malaysia (which is equivalent to Art 9(3) of the Constitution) "does not confer a right to counsel in every case, that is to say, it does not mean that an accused person cannot be tried unless he is represented by counsel".

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20 Nowhere in the text of Art 9(3) does it state that there is a right to be *provided* counsel or legal aid. The right to counsel in Art 9(3) cannot be interpreted as a right to be *provided with* counsel, much less counsel that is given at no cost.

21 The LASCO Guidelines stipulate for the provision of legal assistance for the purposes of trial and, generally, appeal (see Guidelines at para 3.2). The LASCO policy prescribes that legal aid is not provided for the purposes of post-appeal applications. This policy may have been adopted for various reasons. One reason could be the LASCO Panel's decision to allocate resources to new accused persons who have yet to go through the trial or appeal process, unlike the applicants who have been through *both*. Another plausible reason is to prevent abuse of the system. Accused persons are given the opportunity at trial to challenge the evidence presented by the Prosecution through cross-examination and also present their own defence. After the trial judge's decision is rendered, accused persons have the right to appeal. For capital cases, Part 20, Division 1A of the CPC provides that a sentence of death imposed by the High Court must be reviewed by the Court of Appeal even where no formal appeal has been filed (see [10] above). However, after the Court of Appeal has reviewed the trial judge's decision, the law must take its own course. As acknowledged by the Court of Appeal in *Kho Jabing* (at [50]), "the principle of finality is no less important in cases involving the death penalty". Indeed, "once the processes of appeal and/or review have run their course, the legal process must recede into the background, and attention must then shift from the legal contest to the search for repose" (*Kho Jabing* at [50]). There is value in ensuring that the courts and the justice system are not abused with repeated, unmeritorious applications that are filed as a "stopgap" measure to delay the execution of sentences. Regardless of the reason behind the LASCO policy,

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there is nothing in the policy that runs afoul of Art 9(3). LASCO is perfectly entitled to adopt or change its policy regarding its provision of legal aid.

22 The applicants have not shown how the LASCO policy has breached their rights under Art 9(3). On this basis I find that their application, in relation to Art 9(3), discloses no reasonable cause of action and should be struck out.

23 The AG goes further to submit that the applicants "have demonstrated their ability to access the courts despite the LASCO policy by bringing application after application".[13] The applicants contend in their oral submissions that the applications listed by the AG were brought with the representation of two lawyers, both of which have been suspended as of the date of the hearing (see *Law Society of Singapore v Cheng Kim Kuan* [2023] SGHC 350 and *Law Society of Singapore v Ravi s/o Madasamy* [2023] 4 SLR 1760). On this basis, the applicants submit that the applications referred to by the AG do not definitively show that the applicants could access the courts in spite of the LASCO policy. For the present purposes, I simply acknowledge that numerous post-appeal applications have indeed been taken out by the applicants, either individually or collectively (in different permutations), even after 2017. I make further remarks on this point later (see [44] below).

24 For completeness, my above findings are also dispositive of the alleged "relevant circumstances". The reasons above at [17]–[23] address the arguments at [16(a)] and [16(b)]. In relation to the point of an alleged fear of reprisal and personal costs orders, I emphasise that the court has addressed this on numerous occasions. I need only raise two examples. In the case of *Iskandar bin Rahmat*, the Court of Appeal held that ss 356, 357 and 409 of the CPC (provisions

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13 AG's Submissions at para 7.

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relating to the imposition of costs orders) could not and did not reasonably deter lawyers from acting in *bona fide* applications or appeals for death row inmates (*Iskandar bin Rahmat* at [34]). In *Nagaenthran a/l K Dharmalingam v Attorney-General and another matter* [2022] 2 SLR 668 ("*Nagaenthran*"), the Court of Appeal rejected the argument that an order of personal costs against counsel would have a chilling effect on lawyers' willingness to act for accused persons (*Nagaenthran* at [19]). Turning to the point regarding the severity of the punishment faced by the applicants, the court has repeatedly accepted that criminal cases, especially those which have consequences on the lives of accused persons, must be treated with circumspection (see *Kho Jabing* at [50]). It is exactly because of this that numerous measures have already been implemented within the criminal justice system to prevent a miscarriage of justice. However, the fact that the punishment faced by the applicants is capital in nature does not allow the court to read additional rights into the Constitution which do not exist on its face. Article 9(3) does not go so far as to state that a person is entitled to be provided with counsel or legal aid.

The applicants' oral submissions

25 I turn to the two arguments raised by the applicants in the course of their oral submissions. First, the applicants stated that, in addition to Art 9(3) of the Constitution, they are also relying on Art 9(1). Second, the applicants also submitted that the LASCO policy amounts to LASCO fettering its own discretion.

26 I understand the applicants' argument regarding Art 9(1) to be as follows. The applicants cite the case of *Ong Ah Chuan and another v Public Prosecutor* [1979–1980] SLR(R) 710 ("*Ong Ah Chuan*") for the proposition that the reference to "law" in Art 9(1) includes the fundamental rules of natural

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justice enshrined in the common law. According to the applicants, as access to justice is one of the fundamental principles of the common law, there is a right of access to justice. The applicants aver that the LASCO policy, in denying counsel for post-appeal applications, derogates from this alleged common law right of access to justice.

27 Article 9(1) states that "[n]o person shall be deprived of his life or personal liberty save in accordance with law". The salient portion of *Ong Ah Chuan* that the applicants appear to rely on is as follows (at [26]):

> In a Constitution founded on the Westminster model and particularly in that part of it that purports to assure to all individual citizens the continued enjoyment of fundamental liberties or rights, *references to "law" in such contexts as "in accordance with law", "equality before the law", "protection of the law" and the like, in their Lordships' view, refer to a system of law which incorporates those fundamental rules of natural justice that had formed part and parcel of the common law* of England that was in operation in Singapore at the commencement of the Constitution …
>
> [emphasis added]

28 The applicants' two additional arguments face very serious legal obstacles. However, for the present purposes, I do not need to deal with these difficulties as the applicants' arguments fail on the facts.

29 In relation to the alleged right of access to justice point, I note that the applicants use the term "access to justice" in a limited sense to refer to ready access to counsel. There are two difficulties with their line of argument.

30 First, in so far as the provision relied on by the applicants is Art 9(1), I am unable to see how the non-provision of LASCO counsel for post-appeal applications deprives one of his right to life or personal liberty. The applicants have been convicted of their individual offences after having the merits of their

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case (in relation to those offences) heard at both the trial and appellate stages. It is on the basis of that conviction that capital punishment has been imposed upon them. They have not been sentenced to capital punishment on the basis of the LASCO policy. It thus cannot be seriously contended that the LASCO policy has deprived them of their right to life and personal liberty.

31 Second, I am of the view that the LASCO policy does not deprive the applicants of the alleged right of access to justice. A person is not deprived of access to justice or access to the courts just because he is not provided with free legal representation. Such a person still retains his right to obtain the representation of legal counsel on his own accord.

32 In relation to the alleged fetter of discretion, suffice it to say that there is nothing unreasonable about the LASCO policy. This argument fails on the facts.

33 Finally, I come to the 2nd and 23rd applicants' further oral submissions during the hearing. The 2nd applicant contended that the AG's arguments in relation to OA 987 fail to address the issue in the present case. I understand the 2nd applicant's argument to be that OA 987 was struck out because of a lack of standing and, hence, the fact that their application was dismissed in that case does not *ipso facto* mean that there is no merit in their present application. Be that as it may, my decision does not turn on the AG's arguments regarding OA 987.

34 The 23rd applicant stated that the appeal for his case had already been concluded. He thereafter raised the fact that there was evidence in his case, and that he had requested for the assistance of LASCO counsel for his post-appeal application but was denied such assistance. The 23rd applicant also

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subsequently contended that the applicants had evidence to present to the court. It is unclear what evidence the 23rd applicant is referring to. If he is referring to evidence that his request for LASCO counsel for post-appeal applications had been rejected,[14] then my decision in relation to Art 9 and the applicants' oral submissions is dispositive (see above at [17]–[32]). If he is instead saying that he has further evidence regarding the merits of the charges on which he was convicted, he did not explain what the further evidence was, or file any affidavit evidence in relation to this. In any event, both his trial and appeal have concluded.

Article 12

35 During the hearing, the applicants claimed that OA 306 is confined to Art 9 of the Constitution. However, OA 306 was filed in relation to a matter of Arts 9 *and* 12. On this basis, the AG assumed that the applicants also seek to challenge the constitutionality of the LASCO policy on the basis of Art 12.[15] Because OA 306 is indicated as being a matter concerning Art 12, I go further to consider whether OA 306 discloses a reasonable cause of action in so far as Art 12 is concerned.

36 The 1st applicant's affidavit states that the LASCO policy has been applied inconsistently, and is therefore "unfair, unreasonable and not in conformity with [their] rights".[16] The applicants raise two categories of examples of alleged inconsistent application of the LASCO policy:

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14 1st Applicant's Supplementary Affidavit at p 24.

15 AG's Submissions at para 1.

16 1st Applicant's Affidavit at para 25.

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(a) The first category concerns pre-2017 instances where LASCO counsel had been assigned for post-appeal cases.[17] Here, they rely on the appointment of LASCO counsel, on 12 January 2016, for Mr Abdul Kahar bin Othman's judicial review application and the appointment of LASCO counsel, on 26 August 2016, for Mr Datchinamurthy a/l Kataiah to adduce fresh evidence to re-open his criminal appeal.[18] The 1st applicant acknowledges that these two instances "pre-date [his] own request to LASCO in late 2017 after which [his] sister was … informed of the post-appeal policy" [emphasis in original omitted].[19]

(b) The second category comprises one instance where the applicants say that LASCO counsel was assigned in a post-appeal application post-2017. The applicants refer to the case of *Ilechukwu Uchechukwu Chukwudi v Public Prosecutor* [2021] 1 SLR 67 ("*Ilechukwu"*).[20]

37 Article 12(1) of the Constitution states that "[a]ll persons are equal before the law and entitled to the equal protection of the law". The appropriate test for determining whether the LASCO policy breaches Art 12(1) is: (a) whether it results in the applicants being treated differently from other equally situated persons; and (b) if so, whether the differential treatment is reasonable in that it is based on legitimate reasons (*Syed Suhail bin Syed Zin v Attorney-General* [2021] 1 SLR 809 ("*Syed Suhail*") at [62]). The applicants need to first discharge their evidential burden by showing that they are equally

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17 1st Applicant's Affidavit at para 15.

18 1st Applicant's Affidavit at paras 16–18.

19 1st Applicant's Affidavit at para 19.

20 1st Applicant's Affidavit at para 19.

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situated with the class of persons they say that they have been treated differently from. Only thereafter would the evidential burden shift to the decision-maker in question to provide justification for the differential treatment (*Syed Suhail* at [61]).

38 I agree with the AG that the applicants have not clearly identified the class of persons which they say they are equally situated with.[21] On the face of their affidavits, there are two possibilities. First, that the class of persons comprises all persons who made requests to LASCO for post-appeal representation *pre-2017*. Second, that the class of persons comprises all persons who made requests to LASCO for post-appeal representation *post-2017*.

39 I address the former classification first. It cannot be seriously contended that the applicants are equally situated with other persons who made requests to LASCO for post-appeal representation pre-2017. This is because, on the evidence adduced before me, the LASCO policy only came into existence in late 2017 or post-2017. The applicants cannot be considered to be in the same class as persons who requested for LASCO post-appeal representation prior to 2017, who would have been subject to a different policy.

40 I now turn to the latter classification. According to the applicants, the accused person in *Ilechukwu* was assigned a LASCO counsel in 2020.[22] On this basis, they seem to say that there has been unequal treatment between persons who requested for LASCO post-appeal representation post-2017. However, as the AG has rightly pointed out, the decision in *Ilechukwu* stemmed from

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21 AG's Submissions at para 10.

22 1st Applicant's Affidavit at para 19.

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Criminal Motion 4 of 2017, which was filed on 5 April 2017.[23] As the LASCO policy appears to have only come into force in late 2017 or post-2017, the applicants could not be in the same class of persons as the accused in *Ilechukwu*.

41 The applicants have not been able to show how they are equally situated with the accused persons mentioned in the 1st applicant's affidavits. In summation, the applicants have not been able to point to any case where accused persons awaiting capital punishment were provided with LASCO counsel for post-appeal applications *after* the introduction of the LASCO policy. Consequently, I find that the claim regarding Art 12 discloses no reasonable cause of action and should be struck out.

Claim for damages

42 As for the applicants' claim for damages in prayer two of OA 306, my understanding is that it rests on their main claims relating to Arts 9 and 12 of the Constitution. Given that I have found that the applicants' claim relating to Arts 9 and 12 discloses no reasonable cause of action and should be struck out, the applicants' claim for damages must similarly be struck out.

Conclusion

43 I conclude that OA 306 should be struck out in its entirety as it discloses no reasonable cause of action.

44 I make a final point. I note that this is not the first time that arguments of a similar tenor by the same applicants, either individually or collectively, have been canvassed before the court. In fact, the AG has brought my attention

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[23] AG's Submissions at para 11.

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to numerous post-appeal applications brought by largely the same group of applicants.[24] Some of these applications have been filed in close succession. Of course, applicants should not be deterred from the filing of *meritorious* applications so as to avoid a miscarriage of justice. However, as emphasised by the Court of Appeal in *Attorney-General v Datchinamurthy a/l Kataiah* [2022] SGCA 46 (at [41]):

> … actions brought at an eleventh hour and without merit in fact and/or law could lead to the inference that they were filed not with a genuine intention to seek relief, but as a 'stopgap' measure to delay the carrying out of a sentence imposed on an offender …

Where applications which disclose no reasonable cause of action are filed, they will be struck out.

45 The AG has not sought an order as to costs.[25] I therefore make no order as to costs against the applicants.

Dedar Singh Gill
Judge of the High Court

The applicants in person;
Timotheus Koh, Chan Yi Cheng and Darren Sim (Attorney-General's Chambers) for the respondent.

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24 AG's Submissions at para 7.

25 AG's Submissions at para 15.

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