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

[2025] SGHC 20

Originating Application No 972 of 2024
(Summons No 2898 of 2024)

In the matter of Order 9, Rule 16(1)(*a*) 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) Masoud Rahimi bin Mehrzad
(2) Roslan bin Bakar
(3) Rosman bin Abdullah
(4) Iskandar bin Rahmat
(5) Mohammad Rizwan bin Akbar Husain
(6) Ramdhan bin Lajis
(7) Jumaat bin Mohamed Sayed
(8) Lingkesvaran Rajendaren
(9) Mohammad Azwan bin Bohari
(10) Mohammad Reduan bin Mustaffar
(11) Omar bin Yacob Bamadhaj
(12) Muhammad Hamir bin Laka
(13) Jumadi bin Abdullah
(14) Muhammad Salleh bin Hamid

(15) Zamri bin Mohd Tahir
(16) Gunalan Goval
(17) Steve Crocker
(18) Shisham bin Abdul Rahman
(19) Chandroo Subramaniam
(20) Mohd Akebal s/o Ghulam Jilani
(21) Sulaiman bin Jumari
(22) Mohamed Ansari bin Mohamed Abdul Aziz
(23) Sanjay Krishnan
(24) Chong Hoon Cheong
(25) Teo Ghim Heng
(26) Tan Kay Yong
(27) Roshdi bin Abdullah Altway
(28) Eddie Lee Zheng Da
(29) Pannir Selvam a/l Pranthaman
(30) Kishor Kumar a/l Raguan
(31) Azuin bin Mohd Tap

… *Applicants*

And

The Attorney-General

… *Respondent*

JUDGMENT

[Civil Procedure — Striking out]
[Constitutional Law — Equality before the law]
[Constitutional Law — Fundamental liberties — Right to life and personal liberty]

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Masoud Rahimi bin Mehrzad and others
v
Attorney-General

[2025] SGHC 20

General Division of the High Court — Originating Application No 972 of 2024 (Summons No 2898 of 2024)
Hoo Sheau Peng J
20 January 2025

5 February 2025 Judgment reserved.

Hoo Sheau Peng J:

Introduction

1 HC/OA/972/2024 ("OA 972") is an application by 31 prisoners awaiting capital punishment (the "Applicants") for declarations that ss 60G(7)(*d*), 60G(8), 60H(6) and 60I(1) of the Supreme Court of Judicature Act 1969 (the "SCJA"), as well as s 313(2) of the Criminal Procedure Code 2010 (the "CPC") (collectively, the "Impugned Provisions"), are void for being inconsistent with the right to fair trial and access to justice expressed in Art 9 of the Constitution of the Republic of Singapore (2020 Rev Ed) (the "Constitution") and also inconsistent with Art 12 of the Constitution.

2 The four provisions under the SCJA were introduced by way of s 2(*b*) of the Post-appeal Applications in Capital Cases Act 2022 (the "PACC Act"). These provisions set out a procedure for prisoners awaiting capital punishment

("PACPs") to make post-appeal applications in their respective capital cases ("PACC applications" and "PACC Act Regime" or "PACCA regime" respectively). Section 313(2) of the CPC was introduced by way of s 3 of the PACC Act and is concerned with, *inter alia,* the effect of PACC applications on the execution of death sentences. I will elaborate more on the PACC Act Regime and these provisions below (at [10]).

3 By way of HC/SUM/2898/2024 ("SUM 2898"), the Attorney-General (the "AG") applies under O 9 r 16(1)(*a*) of the Rules of Court 2021 (the "ROC 2021") to strike out OA 972 in its entirety, on the ground that it discloses no reasonable cause of action.

4 The AG's case is that the Applicants lack the standing to commence OA 972 and that there is no chance of success in arguing that the Impugned Provisions are unconstitutional.[1] The Applicants disagree, arguing that they have the requisite standing, and that there is at least an arguable case that the Impugned Provisions violate Arts 9 and 12 of the Constitution.[2]

5 Having considered the matter, I allow the AG's application. I thus strike out OA 972 in its entirety. These are my reasons.

Procedural history

6 By way of background, 29 of the Applicants, with five other PACPs, previously filed HC/OA/987/2023 ("OA 987") on 26 September 2023, seeking declarations that ss 60G(7)(*d*) and 60G(8) of the SCJA violate Arts 9 and 12 of the Constitution. Pursuant to the AG's application in HC/SUM 3096/2023

[1] Respondent's Written Submissions ("RWS") at para 3.

[2] Applicants' Written Submissions ("AWS") at para 54.

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("SUM 3096"), I struck out OA 987 on 5 December 2023. My reasons are contained in *Masoud Rahimi bin Mehrzad and others v Attorney-General* [2024] 4 SLR 331 ("*Masoud (HC)*").

7 An appeal was filed against my decision. On 27 March 2024, in *Masoud Rahimi bin Mehrzad and others v Attorney-General* [2024] 1 SLR 414 ("*Masoud (CA)*"), the Court of Appeal affirmed the decision on the ground that the applicants of OA 987 lacked the requisite standing since at the time of that application, they were not and would not be affected by ss 60G(7)(*d*) and 60G(8) of the SCJA (*Masoud (CA)* at [7]). The appeal was thus dismissed.

8 On 28 June 2024, the Impugned Provisions came into force.[3] The Applicants filed OA 972 on 19 September 2024.

Background

9 As I previously explained in *Masoud (HC)*:

> 4 The PACC Act was enacted to deal with any post-appeal application in a capital case ("PACC application") by a prisoner awaiting capital punishment ("PACP") by introducing a new procedure for such PACC applications within the SCJA.

10 The background surrounding the introduction of the new regime has already been set out in *Masoud (HC)*, which I shall not repeat here. Since more provisions are being challenged in this case than in OA 987, I will now provide a more thorough explanation of how the Impugned Provisions operate within the PACC Act Regime:

[3] RWS at para 5; AWS at para 8.

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(a) A PACP seeking to make a PACC application must first apply to the Court of Appeal for, and obtain, the permission of that court to do so ("PACC permission"): s 60G(1) of the SCJA.

(b) In deciding whether to grant an application for PACC permission, the Court of Appeal must consider four factors:

(i) whether the PACC application to be made is based on material (being evidence or legal arguments) that, even with reasonable diligence, could not have been adduced in court before the relevant date: s 60G(7)(*a*) of the SCJA;

(ii) whether there was any delay in filing the application for PACC permission after the PACP or counsel for the PACP obtained such material and the reasons for the delay: s 60G(7)(*b*) of the SCJA;

(iii) whether the PACC applicant complies with the requirement to file written submissions in support of his application, and such other documents as are prescribed in the ROC 2021, within such periods as are prescribed in the ROC 2021: s 60G(7)(*c*) of the SCJA; and

(iv) whether the PACC application to be made has a reasonable prospect of success: s 60G(7)(*d*) of the SCJA.

(c) An application for PACC permission may, without being set down for hearing, be summarily dealt with by a written order of the Court of Appeal: s 60G(8) and s 60H(6) of the SCJA.

(d) However, before summarily refusing an application for PACC permission, the Court of Appeal, in addition to the abovementioned four

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factors, must also consider the applicant's written submissions, if any: s 60G(9)(*a*) of the SCJA

(e) Where any application for PACC permission, or any PACC application, made by a PACP is pending determination, the PACP cannot make a subsequent application for PACC permission or a subsequent PACC application unless the PACP has the permission of the Court of Appeal dealing with the specified application to do so: s 60I(1) of the SCJA.

(f) Finally, although s 313(1)(*ia*)(ii) of the CPC provides that a warrant of execution may not be carried out when there is an application for permission to apply for a stay of execution, or an application for a stay of execution, filed in the Court of Appeal and served on the Singapore Prison Service, the warrant may, pursuant to s 313(2) of the CPC, nonetheless be carried out if:

> (a) the application mentioned in that provision has been filed by a PACP who had previously been found —
>
> > (i) by the Court of Appeal to have abused the process of the court in relation to a relevant application that was filed on or after the date of commencement of the Post-appeal Applications in Capital Cases Act 2022; or
> >
> > (ii) by the Court of Appeal to have abused the process of the court in order to delay or frustrate the carrying out of the sentence of death in relation to an application (other than a relevant application) or an action that was filed on or after the date mentioned in sub-paragraph (i); and
>
> (b) the PACP does not have the permission of the Court of Appeal to make a PACC application under section 60G of the

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> Supreme Court of Judicature Act 1969, or to make a review application under section 394H.

OA 972

11 As stated at [1] above, OA 972 is a constitutional challenge seeking declarations that the Impugned Provisions are void for being inconsistent with Arts 9 and 12 of the Constitution.

12 In support of the application, Mr Masoud Rahimi bin Mehrzad ("Mr Masoud") filed an affidavit. His assertions with respect to ss 60G(7)(*d*) and 60G(8) of the SCJA (as well as s 60H(6) of the SCJA, which is similarly worded as s 60G(8) of the SCJA) mirror those which he had previously stated in his affidavit for OA 987 (see *Masoud (HC)* at [9]). Specifically, the assertions are as follows:

(a) That s 60G(7)(*d*) of the SCJA:[4]

> … places upon an applicant the burden of showing that the applicant has a 'reasonable prospect of success' in order to obtain the PACC permission to commence the relevant challenge to conviction or sentence or for a stay of execution. This condition denies an applicant recourse to the processes of the court on grounds of a predictive exercise at the outset of the proceedings. This requirement is onerous, oppressive and in breach of the right to fair trial and access to justice contained in [Art 9 of the Constitution] and inconsistent with [Art 12 of the Constitution].

(b) That s 60G(8) of the SCJA:[5]

> … allows the application for PACC permission to be dismissed summarily without being set down for hearing. This prevents the applicant from addressing the court or effectively canvasing [*sic*] his arguments before the court on an application upon which his life hinges. This is onerous, oppressive and in breach

[4] Mr Masoud's affidavit ("Affidavit") at para 7.

[5] Affidavit at para 8.

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> of the right to fair trial and access to justice contained in [Art 9 of the Constitution] and inconsistent with [Art 12 of the Constitution].

(c) That s 60H(6) of the SCJA:[6]

> … allows the PACC application to be dismissed summarily without being set down for hearing. This prevents the applicant from addressing the court or effectively canvasing [*sic*] his arguments before the court on an application upon which his life hinges, despite permission having been granted for the PACC application to proceed This is onerous, oppressive and in breach of the right to fair trial and access to justice contained in [Art 9 of the Constitution] and inconsistent with [Art 12 of the Constitution].

13 In addition, Mr Masoud also asserted:

(a) That s 60I of the SCJA:[7]

> … further restricts the [PACP] applicant from accessing the Court even where there are matters to be brought before the Court on legitimate or proper grounds, requiring permission to bring an application for PACC permission. This is onerous, oppressive and in breach of the right to fair trial and access to justice contained in [Art 9] of the Constitution and inconsistent with [Art 12] of the Constitution.

(b) That s 313(2) of the CPC:[8]

> … allows the Government of Singapore to proceed with an execution despite an ongoing application for PACC permission or leave application under Section 394 of the CPC, regardless of the propriety of the application in question, if the applicant in the legal proceeding in question has been found to have previously committed an abuse of the Court's process under Section 60M of the SCJA. This is in breach of access to justice

[6] Affidavit at para 9.

[7] Affidavit at para 10.

[8] Affidavit at para 11.

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> and the right to life contained in [Art 9] of the Constitution and inconsistent with [Art 12] of the Constitution.

SUM 2898

14 After the filing of OA 972 but before the hearing of SUM 2898, the death sentences for five of the Applicants, including Mr Masoud, were carried out.[9] Of these five Applicants, four had, after the commencement of OA 972, sought permission from the Court of Appeal to make PACC applications in their respective cases under the PACC Act Regime.[10] The applications were all dismissed with written decisions. Thereafter, Mr Iskander bin Rahmat filed written submissions on behalf of the remaining Applicants, and he also made certain oral submissions on their behalf at the hearing.

The applicable law

15 Parties have not made new arguments on the law concerning striking out applications under O 9 r 16(1)(*a*) of the ROC 2021 that were not already raised in SUM 3096 previously. For ease of reference, I reproduce my decision in this regard from *Masoud (HC)*:

> 21 … for a striking out application based on the ground that the pleading discloses no reasonable cause of action, the ***applicable test is whether the action has some chance of success***. This also applies to an originating application.
>
> 22 As to the *legal onus in a striking out application*, I agree with the Applicants that *it falls on the AG*, as the applicant in SUM 3096, and not the Applicants, to show that there is no reasonable cause of action … That said, although an application on this ground must be very clearly justified by the party applying to strike out, given that the test under O 9 r 16(1)(a) is whether the pleading discloses a reasonable cause of action, the *respondent nonetheless bears some onus of demonstrating that*

[9] AWS at para 5.

[10] AWS at para 18.

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> *theirs is a reasonable cause of action with a prospect of success* … Indeed … to begin with, a viable claim must be shown.
>
> 23 For completeness, I should add that the court's power to strike out is a draconian one, to be *exercised only in plain and obvious cases*. It should not be exercised too readily unless it is clearly shown that the case is wholly devoid of merit …
>
> [emphasis added]

The AG's case

16 The AG rests its case on two grounds. First, the Applicants have not met the threshold issue of standing to commence OA 972, because the Applicants have not brought *any* application which are subject to the Impugned Provisions. The challenge is therefore theoretical.[11]

17 Second, and in any event, the Impugned Provisions are clearly consistent with Arts 9 and 12 of the Constitution. The Applicants' arguments to the contrary are bound to fail.[12]

The Applicants' case

18 The Applicants' case is that they have the requisite standing because they have a proper interest that is sufficient to found standing and their case is not merely theoretical.[13] Alternatively, the Applicants rely on, *inter alia*, the Court of Appeal's decision in *Jeyaretnam Kenneth Andrew v Attorney-General* [2014] 1 SLR 345 ("*JKA*") to argue that the court should nonetheless exercise its discretion to accord them with *locus standi*.[14]

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[11] RWS at paras 2, 15 and 18.

[12] RWS at paras 23 and 42.

[13] AWS at paras 11–16 and 17–20.

[14] AWS at paras 22–27.

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19 On the substantive issues, the Applicants also argue that there is at least an arguable case that the Impugned Provisions violate Art 9 and Art 12 of the Constitution.[15]

Issues to be determined

20 Based on these arguments, there are two main issues to be determined:

(a) whether the Applicants have met the threshold requirement of standing for the application; and

(b) whether there is a viable claim that the Impugned Provisions are inconsistent with Arts 9 and 12 of the Constitution.

Issue 1: whether the Applicants have met the threshold requirement of standing for the application

The applicable law

21 Parties do not dispute the requirements for establishing standing to bring an action for declaratory relief in constitutional challenges. These requirements are:

(a) The applicant must have a "real interest" in bringing the action (*Karaha Bodas Co LLC v Pertamina Energy Trading Ltd and another appeal* [2006] 1 SLR(R) 112 ("*Karaha Bodas*") at [19]). Sufficiency of interest is *prima facie* made out once there is a violation of constitutional rights (*Tan Eng Hong v Attorney-General* [2012] 4 SLR 476 ("*Tan Eng Hong*") at [83] and [115]).

[15] AWS at para 54.

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(b) There must be a "real controversy" between the parties for the court to resolve (*Karaha Bodas* at [19]). This is a matter that goes to the court's discretion and not jurisdiction. It ensures that the person seeking declaratory relief has a real interest in doing so, that they are able to secure a proper contradictor who has a true interest to oppose the declaration sought. Further, it prevents the court from being distracted by having to deal with theoretical issues from deciding real, subsisting problems (*Tan Eng Hong* at [115] and [132]).

(c) The declaration must relate to a right which is personal to the applicant and which is enforceable against an adverse party to the litigation (*Karaha Bodas* at [15], [16] and [25]). As every constitutional right is a personal right, demonstrating that a constitutional right has been violated will suffice (*Tan Eng Hong* at [80] and [115]). Further, a violation of constitutional rights may be brought about by the very existence of an allegedly unconstitutional law in the statute books and/or by a real and credible threat of prosecution under an allegedly unconstitutional law (*Tan Eng Hong* at [115]).

Parties' arguments

22 As earlier alluded to, the AG's position is that none of the three requirements are satisfied. To elaborate, the AG argues as follows:

(a) The Applicants have no real interest in commencing OA 972 because they make a bare claim that the Impugned Provisions are "onerous, oppressive and in breach of the right to fair trial and access to justice contained in [Art 9] of the Constitution and inconsistent with [Art 12] of the Constitution". However, they have not shown any actual or

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arguable violation of their personal, constitutional rights even after the PACC Act has come into force.[16]

(b) There is no real controversy in OA 972 because the Applicants have not brought any applications which are subject to the Impugned Provisions. Their constitutional challenge is therefore purely theoretical.[17]

(c) For similar reasons why the Applicants have no real interest in commencing OA 987, the declaration sought does not relate to a right personal to the Applicants which is enforceable against an adverse party to the litigation.[18]

23 On the other hand, the Applicants argue that they have the requisite standing.

24 They submit that they have a real interest in commencing OA 972, giving two reasons. First, the PACC Act "affects the legal rights of the Applicants in bringing applications on which their life hinges upon". Citing the Court of Appeal's observation in *Syed Suhail bin Syed Zin v Attorney-General* [2021] 1 SLR 809 ("*Syed Suhail*") (at [48]) that "the prisoner's loss of his right to life under Art 9(1) at the end of the criminal process does not extinguish his other legal rights", the Applicants argue (quoting from various SCJA provisions introduced by s 2(*b*) of the PACC Act) that:[19]

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[16] RWS at paras 19–20.

[17] RWS at para 18.

[18] RWS at paras 19–20.

[19] AWS at paras 13–15.

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> The PACCA regime affects any legal proceeding that '*may* call into question [emphasis added]' the propriety of the Applicant's conviction, the imposition of the sentence of death on the PACPS.' [*sic*] Examples of a 'PACC application' listed in Division 60F of the PACCA include, amongst other things, 'an application challenging the President's order' and 'an application challenging the imposition of the sentence of death as a form of punishment'.
>
> Properly understood, the wide scope of the PACCA regime includes applications for judicial review or a constitutional challenge by the Applicants that potentially affect the Applicants' conviction or sentence. The PACCA regime imposes constraints on *how* the Applicants would bring such cases.
>
> The legal rights of the Applicants that the Impugned Provisions engages [*sic*] are therefore the Applicants' right of access to justice and access to the Courts, and the protections of procedural fairness which which [*sic*] are accepted parts of the fundamental rules of nature justice [*sic*] as enshrined in Article 9 of the Constitution (*Ong Ah Chuan and another v. Public Prosecutor* [1979-1980] S.L.R.(R.) 710).
>
> [emphasis in original]

This was re-emphasised during the hearing, although it was couched as an argument "[o]n the substantive issue", presumably of the constitutionality of the Impugned Provisions.[20]

25 Second, the Applicants argue that their interest in OA 972 "flows from the fact that PACCA regime [*sic*], on the facts, affects a narrow class of individuals that the Applicants fall under, namely, those facing capital punishment and have completed their criminal trial and appeal". They also submit that I did not, in *Masoud (HC)*, place sufficient weight on "this specific targeting of the Applicants" under the PACC Act Regime.[21]

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[20] Transcript of 20 January 2025 ("Transcript") at p 26 line 28–p 27 line 7.

[21] AWS at para 16.

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26 Next, with regards the requirement for real controversy, the Applicants seem to make three arguments. First, after highlighting that four of the Applicants who were executed had their applications for stay of executions determined under the PACC Act Regime (which was re-emphasised during the hearing)[22], they argue that:[23]

> … The PACCA regime shapes both the procedure and substance (in the bar for leave to be granted under Section 60G(7)) by which their applications for stay of execution were determined. For the AG to claim that the challenge to the PACCA regime is 'merely theoretical', is out of step with the reality that the PACCA regime has clear effects on the rights of the Applicants in OA 972.

27 At the hearing, the Applicants further argued that:[24]

> … it is not for the AG to speculate what other applications the applicants in this case have or have brought. This is not relevant to the legal question before the Court, which is the analysis of the impact of the PACC regime on the rights of applicants.

28 Second, the Applicants argue that it would be illogical if a PACP could not challenge the law without first needing to have filed an application for PACC permission or a PACC application. They further explain that:[25]

> … This would place the PACP in the invidious position of having to file an application on which their life hinges upon under a procedure alleged to be unconstitutional – having directed their minds to the requirements of the PACCA regime – and then

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[22] Transcript at p 26 lines 15–21.

[23] AWS at para 18.

[24] Transcript at p 26 lines 22–26.

[25] AWS at para 19.

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> subsequently challenge the PACCA regime's constitutionality in Court.

29 Finally, the Applicants cite *Tan Eng Hong* (at [142]–[146]) for the proposition that "the Court may hear a case and grant declaratory relief as long as there is real legal interest, if the Court is of the view that 'the declaration will be of value to the parties or to the public'", and argue that "there is no strict requirement to show a violation of constitutional right", contrary to what I held in *Masoud (HC)* (at [28]). This was re-emphasised during the hearing, when the Applicants cited the case of *Syed Suhail bin Syed Zin and others v Attorney-General* [2024] 2 SLR 588 (at [45], citing *Tan Eng Hong* at [143]). The Applicants also highlight that "if declaratory relief is granted, the [Impugned Provisions] will no longer apply to [them]".[26]

30 As an alternative to the above arguments, the Applicants also quote the following passage from *JKA* (at [64]):[27]

> 64 … in the rare case where a non-correlative rights generating public duty is breached, and the breach is of sufficient gravity such that it would be in the public interest for the courts to hear the case, an applicant *sans* rights may be accorded *locus standi* as well, at the discretion of the courts.

31 Relying on this passage, they argue that:[28]

> The Court has a duty under Art 162 of the Constitution to construe or modify legislation that may conflict with a provision of the Constitution in order to bring it into conformity with the Constitution. Constitutional review is meant to vindicate the rule of law, and overly [*sic*] rigid application of the rules of

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[26] AWS at para 20.

[27] AWS at para 22.

[28] AWS at para 23.

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> standing is inconsistent with the purpose and the duty of the Courts in this regard.

32 They then submit that I was overly rigid in applying the rules of standing in *Masoud (HC)* at [30]. They highlight that they are not the mere "busybodies and social gadflies" contemplated in *Vellama d/o Marie Muthu v Attorney-General* [2013] 4 SLR 1 ("*Vellama*"), which they argue is the group of persons which the rules of standing intend to sift out. Instead, "they are the very persons the PACCA regime targets, and thereby their access to constitutional justice is at stake".[29]

33 Further, the Applicants argue, quoting *IRC v National Federation of Self Employed and Small Businesses* [1982] AC 617, that if OA 972 is struck out, this would create "'a grave lacuna in our system of public law' where no one may bring the attention of the matters in OA 972 to the Court and seek to vindicate the rights at stake".[30]

34 Finally, the Applicants emphasise that OA 972 is a matter "where, if a breach of the Constitution is found, it is one of sufficient gravity that warrants the constitutional remedies sought *ex debito justitiae*".[31]

My decision

The relevant point in time to determine the issue of standing

35 Before I deal with parties' substantive arguments, there is a preliminary issue which I must address: the relevant point in time to determine if the Applicants had standing. This is material because at the time when OA 972 was

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[29] AWS at para 25.

[30] AWS at para 26.

[31] AWS at para 27.

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commenced on 19 September 2024, no PACC application or application to seek PACC permission had been filed yet. However, four of the 31 Applicants had then filed applications for PACC permission *subsequently* (see [47] below). The analysis of whether the Applicants have standing to commence OA 972 will therefore be different depending on my determination of this preliminary point of law.

36 During the hearing, the AG appears to have adopted the position that the relevant point in time to determine the issue of standing is at the time of their application. Further, even if the Applicants had standing on this date, they must continue to have the requisite standing at the point of hearing.[32]

37 I agree with the AG's position. I note that in *Vellama*, the Court of Appeal held (at [14]) that "the applicant's standing does *not* crystallise at the point when proceedings are initiated, but remains subject to review until the courts arrive at a final determination" [emphasis in original]. This must, however, be understood in context.

38 In *Vellama*, the Court of Appeal's finding was made in the context that the applicant, at the time of her application, *did possess* the requisite standing (at [11]). However, following that, circumstances changed which rendered her application factually moot (at [38]). It was in this context that the Court of Appeal found that although an applicant might have the requisite standing *at the time of the application*, if subsequent events render the factual substratum of the application moot, the courts can review and reverse their previous decision on standing (at [14]).

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[32] Transcript at p 11 line 24–p 12 line 19.

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39 However, the converse does not follow. As observed by the Court of Appeal in *Vellama*:

> 15 It is trite that an applicant **cannot apply for declaratory relief if there is no factual basis for such an application**. However, the English case law suggests that the courts do exercise significant discretion in relation to the question whether the applicant ***continues* to have standing** following a change of circumstances which renders the matter factually moot. [emphasis in original in italics; emphasis added in bold]

40 In other words, if, at the time of the application, there is no factual basis for such an application, the applicant will not have standing *from the outset*, let alone continue to have standing subsequently. I hence find that the relevant point in time to which reference should be made to determine whether the Applicants had standing should *first* be the time of the application. Only if the Applicants have the requisite standing at this point in time will it become relevant to decide if they subsequently *continue* to possess the same.

The Applicants had no standing

41 I accept the AG's submissions that the Applicants do not have standing. When OA 972 was commenced on 19 September 2024, none of the Applicants had made applications under the PACC Act Regime. They were not affected by any of the Impugned Provisions.

42 Put another way, since none of the Applicants had made applications under the PACC Act Regime when OA 972 was commenced, there was not even an *occasion* for any of their rights to be violated by, or for any real controversy to arise with regards, the Impugned Provisions, let alone the actual possibility of the same. As such, none of the three requirements set out in *Karaha Bodas* is satisfied.

43 In this regard, the present case is analogous to *Chee Siok Chin and others v Minister for Home Affairs and another* [2006] 1 SLR(R) 582 ("*Chee Siok Chin*"). In *Chee Siok Chin*, the applicants complained, *inter alia*, about "the 'discriminatory attitude' of the police and the respondents in relation to the grant of permits for assemblies" (at [114]). In dismissing this contention, the High Court explained (at [114]) that "the applicants themselves do not have the *locus standi* to raise this issue in the present proceedings as there is no evidence pointing to any of them ever having applied for any permits to hold assemblies or 'protests' in the first place or to any consequential discrimination as a result of any such application". Similarly, as explained below, this is also the case here.

44 First, the Applicants' reliance on *Syed Suhail* (see [24] above) is misplaced. The Impugned Provisions (and the PACC Act Regime for that matter) do nothing to extinguish their legal rights. They merely provide a procedural framework for PACC applications to be made. In other words, they merely prescribe *how* PACC applications should be made.

45 Importantly, I would highlight that where PACC permission is sought under the PACC Act Regime from the Court of Appeal, the applicant is given an opportunity to be heard, and the merits of the application are considered. In fact, this is *mandated* by the PACC Act Regime, in that, *inter alia*, the Court of Appeal must consider the applicant's written submissions, if any (see [10(c)] and [10(d)] above). I digress to observe that the rules of natural justice do not require that a hearing must be oral (*Jeyaretnam Joshua Benjamin v Attorney-General* [1988] 2 SLR(R) 571 at [32], citing *Najar Singh v Government of Malaysia* [1976] 1 MLJ 203).

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46 Next, I do not agree that the PACC Act Regime affects a narrow class of individuals, *ie*, PACPs, that the Applicants fall under. As pointed out by the AG during the hearing, some PACPs may not have any PACC applications to bring, and they may never do so.[33] It is only when a PACP actually files a PACC application, that he can be said to have been actually engaged with, and be actually affected by, the PACC Act Regime. Thus, he might successfully argue standing if he can show how, on the facts, his constitutional rights have been violated by the procedure, or at least arguably so.[34] The regime only affects PACPs who intend to make post-appeal applications, and who *seek to make applications seeking PACC permission*. The Applicants do not fall under this category.

47 While it is true that four of the Applicants in OA 972 had filed applications for PACC permission, these applications were only filed after OA 972 was commenced on 19 September 2024. The fact thus remains that no PACC applications which would come under the PACC Act Regime had been made when OA 972 was commenced. In this regard, there is nothing illogical or speculative about needing to first make an application for PACC permission and satisfying the court, *inter alia*, that one has the requisite standing to challenge the constitutionality of the PACC. In fact, this is the very rationale underpinning the threshold requirement of standing. To hold otherwise would render this requirement otiose. As observed by the Court of Appeal in *Masoud (CA)* (at [7]):

> … in the absence of an actual or arguably, at least an intended application which it is said will be or has been fettered by the PACC procedure, we cannot meaningfully assess whether any of the appellants do in fact have a basis to object to the validity

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33 Transcript at p 8 lines 13–14.

34 Transcript at p 8 lines 24–29.

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> of the impugned provisions or whether they are in fact prejudiced in any way.

48 I emphasise that OA 972 presents a different situation from that in *Tan Eng Hong*, which concerned an offence-creating provision that could potentially be invoked to prosecute the applicant. Neither the Impugned Provisions nor the PACC Act Regime can be invoked to prosecute the Applicants. As explained in *Masoud (CA)*:

> 5 It is important to note that the statements in *Tan Eng Hong* were made in the context of offence-creating provisions. In that context, the point being made was that the effect of such a provision could be felt even if the applicant was not yet being prosecuted (*Tan Eng Hong* at [110]). To put it another way, the very existence of such a law may cast a shadow that affects the conduct of those affected by it, such that they may be found in such circumstances to have standing to bring a challenge against the law, even if it has not been invoked against them. While this may be true in principle, it is a fact sensitive inquiry. The true nature of that inquiry is whether and how the law being challenged *has actually affected the applicant*. In that light, the statements in *Tan Eng Hong* are irrelevant to the present case, which does not concern offences. Rather, these are procedural provisions that regulate the way in which certain applications may be made and they can only become possibly relevant if one is constrained to abide by those procedures. It does not assist the appellants to say that their rights have been violated by the very existence of the impugned provisions ostensibly on the basis that they are the target of the PACC Act. As noted above, the inquiry in this context is whether the appellants *have actually been affected by the provisions*. [emphasis in original]

49 Further, as to the Applicants' contention that there is no strict requirement to show a violation of an applicant's constitutional rights, this is based on a misreading of *Tan Eng Hong* at [143]. The cited passage (see [29] above) was quoted out of context. In fact, in *Tan Eng Hong,* the Court of Appeal took pains to emphasise that it was:

> 144 … in no way stating that the court will always hear cases even where there is no *lis* between the parties *inter se*, but

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> merely that the court may exercise its discretion to do so in a proper case.

50 While there is still the subsequent "issue of *how* the court should exercise its discretion in this regard" [emphasis in original] (at [144]), the Court of Appeal cautioned against exercising this discretion too freely, and emphasised that the key factor is that it should be in the public interest to do so (at [145]). This case is not one that calls for such discretion to be exercised. It remains open to the Applicants to seek PACC permission (during which they can put forth their cases through written submissions, and their cases *will* be considered by the Court of Appeal: see [44]–[45] above). It also remains open to the Applicants to raise their constitutional challenges when seeking PACC permission.

51 I turn now to the Applicants' other alternative arguments on standing. First, I find that the Applicant's reliance on *JKA* is misplaced. As highlighted by the AG during the hearing,[35] that case is clearly distinguishable, since it involved a breach of public duties which do not generate correlative public or private rights (*JKA* at [51]). This is not the case here. The Court of Appeal's remarks in that case therefore are not applicable.

52 Next, I find that the Applicants' reliance on Art 162 of the Constitution is off the mark (see [31] above). Article 162, which falls under Part XIV of the Constitution titled "Transitional Provisions", applies only to an existing law or a law which had already been enacted but not yet brought into force at the commencement of the Constitution on 9 August 1965 (see also *Tan Eng Hong* at [61]). Since the Impugned Provisions do not fall into this category of laws, Art 162 has no application here.

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[35] Transcript at p 9 line 31–p 10 line 5.

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53 As for the Applicants' remaining alternative arguments, they are all premised on the Applicants having been affected by the Impugned Provisions. However, as earlier explained (at [41]–[42] above), this is not the case. For these reasons, I find that the Applicants lack the requisite standing.

Issue 2: whether there is a viable claim that the Impugned Provisions are inconsistent with Arts 9 and 12 of the Constitution

54 Even if I am wrong, and the Applicants have standing to commence OA 972, the AG's application in SUM 2898 should still be granted if the Applicants' case in OA 972 is bound to fail. I turn now to consider this issue, and deal with the contentions in relation to Arts 9 and 12.

Article 9 of the Constitution

The applicable law

55 Article 9(1) of the Constitution states:

> **Liberty of the person**
>
> **9.**—(1) No person shall be deprived of his life or personal liberty save in accordance with law.

Parties' arguments

56 The AG makes four arguments on why the Impugned Provisions are clearly not unconstitutional.

57 First, the "reasonable prospect of success" limb in s 60G(7)(*d*) of the SCJA and the Court of Appeal's power to summarily deal with applications, are familiar features in Singapore's legal system. For example, in respect of the

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preliminary assessment of whether an application is likely to succeed, the AG highlights that:[36]

(a) in applications to commence judicial review under O 24 r 5(3)(*b*)(ii) of the ROC 2021, permission is needed, and "the court will consider whether there is *an arguable case of reasonable suspicion* in favour of granting the remedies sought" (*Gobi a/l Avedian and another v Attorney-General and another appeal* [2020] 2 SLR 883 ("*Gobi*") at [44]); and

(b) in applications for permission to file an appeal out of time due to the applicant's oversight, the court will consider *the prospects of the appeal* when deciding whether to grant permission (*Adeeb Ahmed Khan s/o Iqbal Ahmed Khan v Public Prosecutor* [2022] 2 SLR 1197 ("*Adeeb*") at [17(c)]).

58 Relatedly, the AG also argues that the filtering of unmeritorious claims is especially important in the context of PACC applications. Such applications would only be made at the tail end of the criminal process after a PACP's conviction and sentence are affirmed by the Court of Appeal. The principle of finality must thus be accorded greater prominence.[37]

59 Second, nothing in s 60G(7)(*d*) of the SCJA prevents PACPs from filing their applications and presenting their full materials and arguments to the Court of Appeal, which is obliged to consider them. It thus does not violate the right to a fair trial.[38]

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[36] RWS at para 24.

[37] RWS at para 27.

[38] RWS at para 31.

60 Third, the Court of Appeal's power to summarily deal with applications for PACC permission and PACC applications pursuant to ss 60G(8) and 60H(6) of the SCJA do not infringe on a PACP's right to a fair trial, since a fair hearing need not necessarily be oral, and there are in any event safeguards under the SCJA to protect a PACP's right to be heard.[39]

61 Fourth, the Impugned Provisions do not impede access to justice since PACPs continue to be able to file their applications and put forth their strongest case for the Court of Appeal's consideration. Access to justice does not require a criminal system to allow unmeritorious applications brought at the tail end of the criminal process to progress "to the fullest extent", but must be balanced with the proper utilisation of limited judicial resources.[40]

62 In response, the Applicants have raised arguments challenging each of the AG's four arguments.

63 With regard to the AG's first argument, the Applicants submit that:

(a) The same test for seeking permission to commence judicial review proceedings, *ie*, an arguable or *prima facie* case of reasonable suspicion, should apply to PACC permission applications, since the PACC Act contemplates proceedings that are for leave for judicial review by PACPs.[41]

(b) *Adeeb* is "not an apt comparison to the PACCA regime, as it deals with circumstances where the applicant is treated as 'having

[39] RWS at paras 34–37.

[40] RWS at para 38–39.

[41] AWS at para 29.

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elected to accept the merits of the original decision' … in failing to invoke their right of appeal", which thus justifies a stricter approach. In contrast, the Impugned Provisions cover fresh proceedings brought by a person facing capital punishment. The applications covered by the PACC Act Regime are thus fundamentally different in nature.[42]

(c) The test of "reasonable prospect of success" is higher than that for seeking leave for judicial review, "which was first articulated in *Chan Hiang Leng Colin v Minister for Information and the Arts* [1996] 1 SLR 609 as a 'very low threshold'". It thus "substantially raises the bar" before permission will be granted.[43]

(d) The Applicants also allege that:[44]

> … it is clear from the AG's submissions that the AG accepts the basic premise that the Impugned Provisions constraints [*sic*] the Applicants' access to justice and the Courts, relative to the state of the law before the PACCA regime. The notion that a feature may be *familiar* or 'not novel ones' (*Masoud (HC)* at [45]) should not overwhelm the assessment by the Court of the constitutionality of the Impugned Provisions based on the effect of the provisions on the Applicants' constitutional rights. And, even if each provision may be similar to others, the question before the Court is also whether the cumulative effect of Impugned Provisions renders the provisions unconstitutional. [emphasis in original]

(e) The standard applied in s 60G(7)(*d*) goes further than required in the objective of filtering out cases wholly without merit or which amount to an abuse of the Court's process, when no justification for doing so was tendered, and this "unfairly limits the ability of PACPs to bring even meritorious claims after their appeal and denies recourse to

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[42] AWS at paras 30–32.

[43] AWS at para 33.

[44] AWS at para 34.

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the court processes". The Applicants also purport to cite the following passage from *Ong Ah Chuan and another v Public Prosecutor* [1981] 1 AC 648 ("*Ong Ah Chuan*") (at 654) for the proposition that "fundamental rights should be interpreted broadly to convey their full measure of protection, and that restrictions on rights must be interpreted narrowly":[45]

> … The reasoning in *Minister of Home Affairs v. Fisher* [1980] A.C. 319 shows that the guarantees in article 9 (1) should be generously interpreted in favour of life and liberty of the individual and that any derogation from the guarantee must be justified by some pressing social need on the part of the state. The onus is on the state to show such a need.

64 With regard to the AG's second argument, this is interpreted by the Applicants to mean that:[46]

> … the individual seeking PACC permission ought to present their strongest case in bringing the application, and having done so, have had the opportunity to canvass their arguments fully before the court and have been heard on those arguments.

According to the Applicants, if, as a consequence, an applicant seeking PACC permission "would effectively need to litigate the permission application as if it were a full and substantive hearing, it would render [his] ability to bring the permission application illusory."[47]

65 With regard to the AG's third argument, the Applicants argue that the ordinary safeguards under s 60G(8) of the SCJA are insufficient. They elaborate as follows:[48]

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[45] AWS at paras 35–38.

[46] AWS at para 39.

[47] AWS at para 40.

[48] AWS at paras 41–42.

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> An application for PACC permission, not being an application under s 394 of the CPC for the re-opening of a criminal case, may deal with issues beyond the scope of the correctness of the conviction of the Applicant. In that regard, it is submitted that the appropriate comparator to an application for PACC permission is standards for due process under the rules of judicial review and not that of proceedings under s 384H CPC that seek to re-open a criminal proceeding. Notably, in such proceedings, there are no provisions for summary dismissal.

66 Finally, in response to the AG's last argument, the Applicants argue that the Impugned Provisions do not strike a fair balance between access to justice and the integrity of the judicial process:[49]

(a) First, the Applicants argue that:

> … executions may irreversibly terminate legal proceedings on which a person's life is predicated on, without the Court's proper determination, is fundamentally inconsistent with the principle of legality. That a person had brought a previous application ultimately found to be an abuse of process, is not an indicator that any subsequent application would with certainty also be an abuse of process of wholly without merit.

(b) Second, the Applicants seek to draw an analogy with s 74 of the SCJA on vexatious litigants. Specifically, they explain that:

> … Under s 74(1), such a vexatious litigant may not proceed to institute proceedings without permission of the High Court if they have found to have '*habitually and persistently* and without any reasonable ground instituted vexatious legal proceedings *(emphasis added)*". [*sic*] As a safeguard, such an order may <u>only</u> be made 'after hearing that person or giving him or her an opportunity to be heard'. S 74(2) makes clear that if a person does not have the means to retain a solicitor for this purpose, the Court is to assign one. [emphasis in original]

The Applicants then highlight that:

> However, s 60M of the SCJA which prescribes the procedure by which the Court of Appeal may make a finding of an abuse of

[49] AWS at paras 45–47.

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> process on its own motion or where sought by the public prosecutor lacks the same safeguards, and applies a lower standard, despite the graver consequences that the Applicant could face execution despite seeking legal remedy from the Courts against his execution.

My decision

67 By way of observation, the AG's arguments largely mirror those which were raised previously in SUM 3096. As set out above, the Applicants have, however, raised several fresh arguments to counter the AG's position, which the AG responded to during the hearing. I therefore deal in turn with the Applicants' arguments.

68 The Applicants' first set of arguments are raised in response to the AG's first argument that the "reasonable prospect of success" limb in s 60G(7)(*d*) of the SCJA and the Court of Appeal's power to summarily deal with applications are familiar features of our legal system, and the AG's emphasis on the importance of finality in the context of PACC applications.

69 I am unable to accept any of the Applicants' responses. While the PACC Act does contemplate proceedings that are akin to seeking leave for judicial review, such as applications to challenge the President's order (see s 60F of the SCJA), it does not follow that the test for PACC permission should be the same as that for judicial review, which I accept is one of an arguable or *prima facie* case of reasonable suspicion (*Gobi* at [44(c)]).

70 Any application brought under the PACC Act Regime involves different considerations given its unique context. As explained by the Court of Appeal in *Masoud (CA)*:

> 11 First, it is imperative to note that *the PACC procedure concerns a very limited category of applications, namely, those*

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> *brought by PACPs who have already had the merits of their cases ventilated on at least two occasions – at trial and on appeal.* Moreover, the PACC procedure does not affect applications to review a concluded appeal, for which permission must be sought pursuant to a separate and independent procedure under s 394H of the Criminal Procedure Code 2010 (2020 Rev Ed).
>
> 12 Second, it is clear from the tenor of the speech by Senior Parliamentary Secretary Ms Rahayu Mahzam at the second reading of the Post-appeal Applications in Capital Cases Bill (Bill No 34/2022) that *the PACC procedure was designed to cover situations where new material (whether in the form of evidence or legal arguments) is raised that could not have been brought earlier, whether at the trial or on appeal. The PACC procedure is not a means to re-open the merits of the case generally.*
>
> 13 In that light, ***the expectation of what due process requires for a PACP who has exhausted all his avenues of appeal is very likely to be different when compared to the very different situation of an accused person who is being tried for the first time.***
>
> [emphasis added]

71 Next, I also disagree with the Applicants that *Adeeb* is clearly distinguishable from cases involving PACC applications. It is true that *Adeeb* involves a situation where a prospective appellant had missed the deadline for appeal and is thus treated as having elected to accept the merits of the original decision (*Adeeb* at [2] and [28]). However, PACC applications involve PACPs seeking to raise fresh applications after exhausting all avenues of appeal. Both sets of circumstances present a justification to impose a higher standard before permission will be granted: the importance of finality in proceedings (see *Adeeb* at [3]).

72 In fact, I would observe that the standard applied in *Adeeb* was higher than that contemplated under s 60G(7)(*d*). In *Adeeb*, the Court of Appeal held (at [29]) that "permission would therefore not be granted unless we were satisfied that the Judge's decision was based on a fundamental misapprehension

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of the law that had a significant bearing on the sentence that was imposed". In contrast, the standard contemplated under s 60G(7)(*d*) is merely a "*reasonable* prospect of success" [emphasis added]. This is, contrary to what the Applicants have suggested, not a particularly high standard, and certainly not so high that it goes further than needed to filter out wholly unmeritorious cases or would sift out applications with some merit. In any event, as argued by the AG, it is for Parliament to enact the threshold for the filtering process under the PACC Act Regime, and there is no need for the threshold to mirror that in other contexts. Certainly, this alone does not render the PACC provisions unconstitutional.[50]

73 Finally, I am unable to understand the Applicants' argument that the AG's submissions suggest that the AG accepts that the Impugned Provisions constrain the Applicants' access to justice and the Courts, relative to the state of the law before the PACC Act Regime was introduced. Neither can I see how this is actually the case. As I have previously emphasised, the PACC Act Regime merely sets out the procedure for making PACC applications; it does not deny an applicant of actually putting forth its case for consideration before the Court of Appeal, which is in fact obligated to consider any written submissions tendered by the applicant in applications for PACC permission. For the same reasons, *Ong Ah Chuan* does not assist the Applicants. I am unable to see how an applicant's rights under Art 9 of the Constitution would be curtailed by the PACC Act Regime.

74 The Applicants' second broad argument appears to be that the need to litigate an application for PACC permission, as if it is a full and substantive hearing, would "render the ability to bring the permission application illusory". This is raised in response to the AG's second argument that the PACC Act

50 Transcript at p 18 line 30–p 19 line 12.

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Regime does not prevent PACPs from making their strongest cases in their applications for PACC permission. Again, I reject the Applicants' position.

75 As the AG pointed out at the hearing, PACPs should put forth the full material which they are relying on at the permission stage, and should not drip-feed the material, or reserve the material they may have for a later stage. Indeed, this addresses a specific point made by the Applicants (previously in SUM 3096 and repeated here) that the permission stage forces the court to engage in a predictive exercise.[51] I agree with the AG's position. In fact, it would be curious if a party does not present its strongest case to the court from the outset. Indeed, the courts have repeatedly frowned upon the practice of drip-feeding arguments: see, *eg*, *Nagaenthran a/l K Dharmalingam v Attorney-General and another matter* [2022] 2 SLR 211 at [17]; *Kingsmen Exhibits Pte Ltd v RegalRare Gem Museum Pte Ltd and another matter* [2024] SGHC 238 at [24].

76 The Applicants' third set of arguments are raised to counter the AG's third argument that there are safeguards under the SCJA to protect a PACP's right to be heard, which also need not be done orally. Again, I reject the Applicants' arguments.

77 For reasons already explained above (at [69]–[70] above), the standard for seeking judicial review in a non-PACC case need not be adopted as the applicable threshold for applications under the PACC Act Regime, even if the PACP is facing impending capital punishment. To reiterate, insofar as the Applicants appear to disagree with the formulation that Parliament has settled on for the applicable test for PACC permission, this is no basis for an Art 9 challenge (see [72] above). Further, even in non-PACC judicial review cases,

51 Transcript at p 21 lines 9–14. See Affidavit at para 7.

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the AG can summarily seek to terminate proceedings by making a striking out application under O 9 r 16(1)(*a*) of the Rules of Court 2021, which will be granted if no reasonable cause of action is disclosed.

78 I will also again highlight three points which I have earlier mentioned:

(a) the right to fair hearing does not require an oral hearing (see [45] above);

(b) when an application for PACC permission is made, the Court of Appeal does in fact hear and consider the applicant's arguments thoroughly (see [45] above); and

(c) the standard for obtaining permission under the PACC Act Regime is not particularly high (see [72] above).

It would thus be untenable for the Applicants to argue that the ordinary safeguards for summary dismissal under s 60F(8) of the SCJA are insufficient.

79 The Applicants' final set of arguments are made in response to the AG's position that the Impugned Provisions do not impede access to justice. I again reject these arguments.

80 First, and importantly, prior to the PACC Act Regime, it was not the case that an application filed to the court for a stay of execution would automatically operate as a stay of the same (*Panchalai a/p Supermaniam and another v Public Prosecutor* [2022] 2 SLR 507 at [15]). As pointed out by the AG, the PACC Act Regime clarifies the process, and in fact, provides some statutory protection to PACPs.[52] Furthermore, there is a caveat to s 313(2) of the

[52] Transcript at p 17 line 3–p 18 line 7.

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CPC. Even if a PACP had previously been found to have abused the court's process, under s 313(2)(*b*) of the CPC, for a warrant of execution to be carried out, the PACP must also *not* have obtained the permission of the Court of Appeal to make a PACC application or to review an earlier decision of an appellate court.

81 Second, the Applicants' reliance on s 74 of the SCJA is misplaced. Pursuant to s 74, the AG initiates an action against a person for being a vexatious litigant, and seeks to impose fresh restraints on him. In contrast, the PACC Act Regime applies where a PACP brings a PACC application, and the Court of Appeal's response is in relation to that application. As the AG argues, no express provision is required to set out the right to be heard because the PACP would already be a party to the action he brought, and would have the opportunity to address the court.[53]

82 Finally, the Applicants' reliance on s 60M misses the mark. This is so for two reasons. To begin with, s 60M is not one of the Impugned Provisions in OA 972. It is therefore irrelevant in the present proceedings. Moreover, and in any event, s 60M does not in any way deny PACPs the full right to be heard. In fact, s 60M(4) allows the Court of Appeal to take additional evidence if it thinks it necessary before making a finding of abuse of process.

83 For all these reasons, I find that any challenge based on Art 9 of the Constitution is plainly without any chance of success. I turn next to consider the contentions in relation to Art 12 of the Constitution.

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[53] Transcript at p 16 lines 18–28.

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Article 12 of the Constitution

The applicable law

84 Article 12(1) of the Constitution states:

> **Equal protection**
>
> **12.**—(1) All persons are equal before the law and entitled to the equal protection of the law.

85 The test for whether a piece of legislation breaches Art 12(1) of the Constitution remains the "reasonable classification" test, under which a statutory provision which prescribes a differentiating measure will be consistent with Art 12(1) only if: (a) the classification prescribed by the provision is founded on an intelligible differentia (the "first limb"); and (b) that differentia bears a rational relation to the object sought to be achieved by the provision (the "second limb") (*Tan Seng Kee v Attorney-General and other appeals* [2022] 1 SLR 1347 ("*Tan Seng Kee*") at [305]).

86 In applying the reasonable classification test, the courts have thus far adopted two approaches:

(a) The first approach is that adopted in *Lim Meng Suang and another v Attorney-General and another appeal and another matter* [2015] 1 SLR 26 ("*Lim Meng Suang*"). Under this approach, the test serves the "minimal *threshold* function of requiring logic and coherence in the [statutory provision] concerned" [emphasis in original] (*Lim Meng Suang* at [66]):

(i) The relevant inquiry under the first limb is whether the relevant differentia can be understood or apprehended by the intellect or understanding, or is so unreasonable as to be illogical

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and/or incoherent so that no reasonable person would ever contemplate the differentia concerned as being functional as an intelligible differentia (*Tan Seng Kee* at [309]–[310]).

(ii) As for the second limb, the inquiry is whether the differentia bears a "rational relation" to the legislative object of the statutory provision in question. Such a rational relation will, more often than not, be found, as a perfect relation or complete coincidence between the differentia and legislative object is not required (*Tan Seng Kee* at [311]).

(b) The second approach is that adopted in *Syed Suhail*, which contemplates a higher level of scrutiny when evaluating whether a statutory provision satisfies the "reasonable classification" test, particularly if the provision has a significant bearing on an individual's life and liberty (*Tan Seng Kee* at [328]):

(i) Under the first limb, the inquiry is directed towards identifying the purported criterion for differential treatment, "so that its legitimacy may then be assessed properly" under the second limb (*Tan Seng Kee* at [314]). Unlike the approach in *Lim Meng Suang*, it is not concerned with the reasonableness (or any lack thereof) of the differentia in question, even in cases where the differentia is extremely unreasonable (*Tan Seng Kee* at [315] and [318]).

(ii) Under the second limb, the inquiry is whether the differential treatment is, or whether it bears, any rational relation to any conceivable object of the law in question (*Tan Seng Kee* at [318]–[319]). Unlike the approach in *Lim Meng Suang*, however, the court considers the context in determining how

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> stringently a statutory provision should be scrutinised. While the relationship between the differentia and the object need not be perfect, the court would be averse to any framing of the object of a law which would be tantamount to saying that its object is to introduce the differentia which it embodies, as such circular reasoning would render the reasonable classification test purely formalistic and effectively denude Art 12 of the Constitution of real force (*Tan Seng Kee* at [320] and [325]–[327]).

87 In *Tan Seng Kee*, the Court of Appeal left open the question of which approach should be preferred (*Tan Seng Kee* at [329]).

Parties' arguments

88 The AG's position is that the reasonable classification test is satisfied. It seems to have adopted a hybrid approach, merging the more stringent first limb under the *Lim Meng Suang* approach and the more stringent second limb under the *Syed Suhail* approach. With regard to ss 60G(7)(*d*), 60G(8), 60H(6), and 60I(1) of the SCJA, the AG submits that:[54]

(a) the first limb is satisfied because the differentia, namely, PACPs seeking to make PACC applications, is an intelligible one;

(b) the second limb is also satisfied because this differentia bears a rational relation to the legislative object of the PACC Act and these provisions, namely, to set out and clarify the procedure for making PACC applications and to ensure that safeguards are put in place to

[54] RWS at para 44.

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prevent an abuse of process by PACPs when making PACC applications.

89 As for s 313(2) of the CPC, the AG adopts a similar approach by submitting that:[55]

(a) the first limb is satisfied, because the differentia, namely, PACPs who have previously been found to have abused the process of the court, is an intelligible one;

(b) the second limb is also satisfied because this differentia bears a rational relation to the legislative intent to curb abuse of process by PACPs.

90 In response, the Applicants argue that "it is not evident that the rational relation between the differentia and the object of the PACC Act is capable of withstanding scrutiny, because non-capital prisoners may also file frequent or frivolous applications post-appeal". To substantiate this point, they cite nine cases which involved s 394H of the CPC "that have been filed in non-capital cases, where there was a finding that the review application was made without merit, or where there was an explicit finding of abuse of the Court's process, and ultimately summarily dismissed".[56]

91 Given this, the Applicants argue that:[57]

> Given the preponderance of matters where other prisoners in non-capital file [*sic*] applications to relitigate matters, and which are found to be wholly without merit or an abuse of the

[55] RWS at para 45.

[56] AWS at paras 50–51.

[57] AWS at para 52.

> Court's process, the Applicants submit that the real issue before the Court is whether the *further curtailment of the Applicants' rights relative to the existing regime to prevent abuse of process or to sift out unmeritorious litigation, which includes the regime under the CPC and for JR [judicial review] under the rules of court, is reasonably justifiable.* [emphasis in original]

92 The Applicants hence submit that it is "not immediately obvious that the PACC regime passes muster under the reasonable classification test in this regard, and that the Applicants have an arguable case under [Art 12] of the Constitution".[58]

My decision

93 As I have previously observed in *Masoud (HC)* (at [60]), the *Syed Suhail* approach, especially the second limb, is more favourable to the Applicants. Since the Court of Appeal in *Tan Seng Kee* has left open the question of which approach should be preferred (*Tan Seng Kee* at [329]), I will adopt the *Syed Suhail* approach.

94 With regard to the first limb, the Applicants do not appear to dispute the AG's position that the relevant differentiae would respectively include:

(a) in relation to ss 60G(7)(*d*), 60G(8), 60H(6), and 60I(1) of the SCJA – PACPs seeking to make PACC applications; and

(b) in relation to s 313(2) of the CPC – PACPs who have previously been found to have abused the process of the court.

95 The Applicants however seem to argue that to complete the analysis on the differentiae, these respective groups of people should be assessed against (a)

[58] AWS at para 53.

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"non-capital prisoners" (see [90] above); or, more broadly, (b) all litigants who come under the CPC or who wish to apply for judicial review (see [91] above). Be that as it may, the inquiry directed towards identifying the purported criterion for differential treatment is clearly satisfied, and this would effectively conclude the analysis under the first limb of the *Syed Suhail* approach. When discussing the second limb at [99]–[100] below, I will say more of the comparison the Applicants seek to make with these two groups of people.

96 For completeness, I also find that even under the first limb of the *Lim Meng Suang* approach, either differentia set out in [94] above can clearly be understood or apprehended by the intellect or understanding. Neither are they so unreasonable as to be illogical and/or incoherent so that no reasonable person would ever contemplate them as being functional as intelligible differentiae.

97 Next, the Impugned Provisions clearly pass muster under the second limb on either differentia. As I have previously found in *Masoud (HC)* (at [63]), the object of the PACC Act Regime (which contains the Impugned Provisions) is to address the trend in recent years of "PACPs fil[ing] last-minute applications in capital cases, after all avenues of appeal have been exhausted" (*Singapore Parliamentary Debates, Official Report* (29 November 2022) vol 95 (Rahayu Mahzam, Senior Parliamentary Secretary to the Minister for Law (for the Minister of Law).

98 This is not tantamount to saying that the object of the Impugned Provisions is to introduce the differentiae which it embodies. On the contrary, there is a legitimate trend of concern which Parliament was trying to address by introducing the Impugned Provisions. And there is clearly a rational relation between this object and the Impugned Provisions, which allow for the quicker

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disposition of prospective PACC applications which do not bear any reasonable prospect of success, as well as prevent the courts' processes from being abused to stay executions through the repeated filing of patently unmeritorious post-appeal applications. For these reasons, the second limb under the *Syed Suhail* approach is satisfied.

99 I now turn to address the Applicants' arguments, all of which I reject. First, their comparison made to prisoners in non-capital cases who have filed wholly unmeritorious applications under s 394H of the CPC is misplaced. Section 394H of the CPC falls *outside* the scope of the PACC Act Regime. It is meant to govern a wholly different set of proceedings, *ie*, permission to make applications to review an earlier decision of an appellate court, which would in fact be equally accessible to the Applicants and other PACPs should they wish to seek such relief. These points were also highlighted by the AG during the hearing.[59] There does not even exist any differentia between PACPs and other offenders in non-capital cases in this regard.

100 It follows that I also disagree with the Applicants' characterisation of "the real issue before the Court" as one of whether there is any "further curtailment of the Applicants' relative rights". (see [91] above). The test for whether a statutory provision is inconsistent with Art 12 of the Constitution is well-established, and it is this test which I have applied. I would add that for all the reasons stated above, I also disagree that there is any further curtailment of the Applicants' relative rights which is objectionable.

101 Accordingly, any challenge based on Art 12 of the Constitution is plainly without any chance of success.

[59] Transcript at p 24 lines 1–20.

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Additional points raised by the Applicants during the hearing

102 Before concluding, I note that at the hearing, the Applicants raised three general points. First, the Applicants argued that "a PACC application based on new evidence or new material or new expert reports, *et cetera*" would "be also considered as a first instance case […] since it has never been canvassed before". It would thus be unfair "for the application to be subjected to a Judge's opinion if it has a reasonable prospect of success" or of being "denied an oral hearing to address any misunderstandings, *et cetera*". instead of being "tried robustly".[60]

103 Second, the Applicants emphasised that the AG has, in the course of arguments, cited the Parliamentary Debates during the second reading of the Post-appeal Applications in Capital Cases Bill by Senior Parliamentary Secretary to the Minister for Law Rahayu Mahzam ("SPS Mahzam"), but that certain portions of the debates have been omitted in the Bundle of Authorities tendered by the AG. Specifically, they highlighted that Mr Pritam Singh and Mr Louis Ng had "asked for clarification on the term 'reasonable prospect of success'", which response by SPS Mahzam has not been provided.[61] This prevented the Applicants from properly applying the framework for statutory interpretation as established in *Tan Cheng Bock v Attorney-General* [2017] 2 SLR 850 (see [54]), and to "make submissions based on [SPS Mahzam's] response as well as the previous debates".[62]

104 Third, in relation to the AG's argument that applicants for PACC permission ought to put forth their strongest case for the Court of Appeal's

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[60] Transcript at p 27 line 29–p 28 line 18.

[61] Transcript at p 28 line 19–p 30 line 4.

[62] Transcript at p 30 lines 5–15.

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consideration (see [61] above), the Applicants understood this to mean that they had to "put in all [their] points and present [their] best and strongest case".[63] The Applicants however highlighted that this was not feasible and "far-fetch[ed]" since "no lawyers are willing to represent [them] on a PACC application and [they] would have to file the application on [their] own",[64] observing that Parliament had, in enacting the PACC Act, assumed that "an applicant is represented by a lawyer".[65] Relatedly, the Applicants also re-emphasised the importance of an oral hearing, arguing that "a case [cannot] be best put forward if it is not set down for an oral hearing" because "there is no substitute to the value of an oral hearing".[66]

105 I am unable to accept these arguments. The first argument is untenable because it is premised on several wrong assumptions, which I have already addressed earlier (see, *eg*, [77]–[78] above). Moreover, as I have explained (at [70] above), and as the AG has re-emphasised in its reply during the hearing,[67] it is not accurate to treat PACC applications as first instance hearings.

106 Next, the second argument does not assist the Applicants, because it does not concern the legality or constitutionality of the *existence* of a threshold standard. Instead, it merely goes towards a concern regarding the *interpretation* of the standard, which is not a point of dispute in the present proceedings, and is, in any event, a matter for Parliament to decide (see [72] above).

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[63] Transcript at p 30 lines 18–19 and p 31 line 7–27.

[64] Transcript at p 30 line 21–p 31 line 3.

[65] Transcript at p 31 line 27–p 32 line 26.

[66] Transcript at p 31 lines 3–6.

[67] Transcript at p 37 line 31–p 38 line 8.

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107 Finally, the Applicants' third argument is based on a misunderstanding of the AG's argument, which is not so much concerned with the *technical quality* of the arguments raised in an application for PACC permission. Instead, the AG's point is that when making an application for PACC permission, an applicant ought, from the outset, *not to withhold material* from the court with a view to only presenting the full material during an oral hearing.[68] As previously explained, such a practice has, whether or not in the context of PACC applications, been frowned upon by the courts (see [75] above).

Conclusion

108 Since the Applicants have no standing to bring OA 972, and, in any event, their challenges have no chance of success, no reasonable cause of action is disclosed. Therefore, I strike out OA 972 in its entirety pursuant to O 9 r 16(1)(*a*) of the ROC 2021.

Hoo Sheau Peng
Judge of the High Court

The applicants in person;
Chew Shi Jun James, Teo Meng Hui, Jocelyn and J Jayaletchmi
(Attorney-General's Chambers) for the respondent.

[68] Transcript at p 40 lines 13–25.

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