

**DALAM MAHKAMAH RAYUAN MALAYSIA
(BIDANGKUASA RAYUAN)**

RAYUAN SIVIL NO. W-01(NCvC)(W)-2109-11/2022

ANTARA

TUANKU NUR ZAHIRAH ... APPELLANT

LAWAN

1. CLARE LOUISE BROWN

2. CHONG TON SIN

3. VINLIN PRESS SDN BHD ... RESPONDENTS

(Dalam Perkara Guaman No: WA-23NCvC-66-11/2018

Di Mahkamah Tinggi Malaya di Kuala Lumpur)

ANTARA

TUANKU NUR ZAHIRAH ... PLAINTIF

LAWAN

1. CLARE LOUISE BROWN

2. CHONG TON SIN

3. VINLIN PRESS SDN BHD ... DEFENDAN –DEFENDAN



1 **CORAM:**

2 **YA DATO' HADHARIAH BINTI SYED ISMAIL, JCA**

3 **YA TUAN MOHAMED ZAINI BIN MAZLAN, JCA**

4 **YA DATUK AZHAHARI KAMAL BIN RAMLI, JCA**

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6 **GROUNDS OF JUDGMENT**

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8 **A. Introduction**

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10 [1] This is an appeal by the Plaintiff in the Court below against the
11 decision of the High Court on 31.10.2022 in dismissing her defamation
12 claim against the Defendants. We heard the appeal on 22.9.2022 and
13 reserved our decision to 12.12.2023. We unanimously allowed the appeal
14 and now provide the grounds of our decision. The parties will be referred
15 to as they were in the High Court.

16
17 **B. Back ground facts.**

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19 [2] The Plaintiff is the Sultanah for the State of Terengganu. The 1st
20 Defendant is and was at the material time the author of The Sarawak
21 Report: The Insight story of the 1MDB Expose (the said book). The 2nd
22 Defendant is the publisher of the said book whereas the 3rd Defendant is
23 the printer of the said book. The book was released in August 2018 and in
24 the words of learned counsel for the Plaintiff:

25
26 *“covering 1 Malaysia Development Berhad (1MDB) scandal from its*
27 *inception as Terengganu Investment Authority (TIA), the diversion of*



1 *funds from 1MDB under the central of Najib Razak and Jho Low and*
2 *the events, leading up to the May 2018 General Elections”*

3
4 [3] More than 2,000 copies of the said books were sold. The Plaintiff’s
5 claim is founded on the statement at page 5 of the said book whereby it
6 was stated:

7
8 *“In April he had netted himself an official advisory role at the newly set-*
9 *up sovereign wealth fund designed to invest the oil revenues from the*
10 *Malaysian State of Terengganu (since elections in this oil state had*
11 *just been won by the opposition, BN was ruthlessly looking for its*
12 *revenues into a friendly controlled entity). Jho was also friendly with a*
13 *key player in Terengganu, the wife of the Sultan, whose acquiescence*
14 *was needed to set up the fund and he later cited her support as having*
15 *been crucial to his obtaining the advisory position. This was the fund*
16 *that would shortly be converted into the scandalous entity known as*
17 *1MDB”*

18
19 [4] It is the Plaintiff’s case that these impugned statements are
20 defamatory of her. The Plaintiff’s pleaded case that the impugned
21 statements, in its natural and ordinary meaning and/or imputation is
22 capable of being defamatory as it brings the following imputations:-

- 23
24 (i) The Plaintiff interferes with the administration of the state
25 of Terengganu;
- 26 (ii) The Plaintiff used her position to influence and to establish
27 Terengganu Investment Authority and to set up the
28 sovereign wealth fund;



- 1 (iii) The Plaintiff consented to the establishment of the
2 sovereign wealth fund;
- 3 (iv) The Plaintiff used her position to assist and /or support Jho
4 in obtaining Jho’s advisory role in the sovereign wealth
5 fund of Terengganu Investment Authority;
- 6 (v) The Plaintiff is involved in corrupt practices;
- 7 (vi) The Plaintiff is associated with and has close ties with
8 persons with questionable character namely Jho, whose
9 reputation based on media reports is a playboy and one
10 who sought by authorities;
- 11 (vii) The Plaintiff has the ability to influence the administration
12 of the State of Terengganu and that is one who is running
13 the administration and affairs of the State of Terengganu.
14

15 **C. Summary of the High Court’s decision**

16

17 [5] It must be noted that the Plaintiff had earlier on obtained summary
18 judgement against the Defendants pursuant to O14A of the Rules of
19 Courts 2012 which was allowed by the then presiding judge. On appeal,
20 the Court of Appeal had, on 24.8.2021, allowed the appeal and ordered
21 that the case be heard by full trial by the learned Judicial Commissioner
22 (JC). After a full trial, the learned JC ruled that the Plaintiff had failed to
23 prove that the impugned statements is defamatory of her and dismissed
24 the claim. His Lordship stated that: -
25

26 *“no negative connotations can be made in reading the impugned*
27 *statements although this is obviously a matter of mistaken identity”.*



1 [6] In arriving at his finding, the learned JC had attempted to determine
2 the words “whose acquiescence” that appear in in impugned statements.
3 In his judgement, he had observed that none of the parties had provided
4 detailed explanation the linguistic or grammatical rules in determining the
5 impugned statements. The learned JC stated that as the issue before him
6 concerned English grammar, he had applied the established and normal
7 English grammar rules in determining the meaning of the said words. He
8 had also referred to the dictionary meaning of the said word before
9 concluding that the sentence “*Jho was also friendly with a key player in*
10 *Terengganu, the wife of the Sultan, whose acquiescence was needed to*
11 *set up the fund and he later cited her support as having been crucial to his*
12 *obtaining the advisory position”, the word “whose” refers to “the wife of the*
13 *sultan”, i.e. the Plaintiff, and it is used as a possessive pronoun to indicate*
14 *her ownership or association with the actions described in the sentence*
15 *namely, the acquiescence”.*

16
17 [7] Applying the above finding to the case before him, the learned JC
18 found that nothing in the impugned statements could suggest that in its
19 natural and ordinary meaning the alleged imputations as pleaded nor that
20 any negative connotation that can be drawn to arrive at the pleaded
21 connotation. The learned JC also found that the impugned statement “does
22 not in any way degrade the Plaintiff’s reputation”

23
24 [8] The learned JC also ruled that in the event that he was wrong in
25 finding that the impugned statements bears no defamatory connotation
26 against the Plaintiff, the Defendants have successfully established the
27 defence of justification.



1 **D. Appellant's Argument**

2

3 [9] Before us, learned counsel for the Plaintiff submitted that the learned
4 JC had erred in admitting extrinsic evidence in analysing the natural and
5 ordinary meaning of the impugned statements. It was contended that the
6 learned JC had made detailed and over-elaborated analysis of the
7 meaning of the words contained in the impugned statements by referring
8 to dictionary meaning of those words and also relying on the testimony of
9 a witness (John Ellison Khan, DW2) before finding that the impugned
10 statements are not defamatory. By doing so, it was submitted that the
11 learned JC had relied on inadmissible evidence in arriving at his finding. It
12 was further submitted that there is no evidence whatsoever to show that
13 the Plaintiff was involved in the establishment of TIA or affairs of the state
14 and supported Jho Low in obtaining the advisory position in TIA or involved
15 with Jho Low. In fact, the 1st Defendant admitted during the trial that there
16 was no basis for her to make any statement about the Plaintiff when the
17 first print of the said book was published in August 2018. Learned counsel
18 also pointed out that there was an amendment made by the Defendants in
19 the later print of the said book whereby reference to the Plaintiff was
20 substituted with the Sultan's sister. In this regard, it was submitted that the
21 impugned statements were indeed defamatory of the Plaintiff hence the
22 need to make the amendments. Further, it was submitted that the learned
23 JC ought to have ruled that the impugned statements, made at the height
24 of the "grotesque scandal" (i.e. the 1MDB scandal), a reasonable man
25 would have found the impugned statements linking to the Plaintiff as
26 having committed the guilty acts as alleged in the impugned statements.
27 In this respect, it was also submitted that the learned JC had failed to



1 properly consider the nature of comments found on social media that had
2 ridiculed the Plaintiff's character. On the defence of justification, it was
3 argued that since, during the trial, the Defendants had apologized on the
4 ground of an honest mistake or unintentional mistake, the Defendants are
5 precluded from raising the justification defence. On the issue of damages,
6 it was submitted that, in the event that this court finds the impugned
7 statements defamatory and the defence of justification fails, we are
8 empowered to assess and award damages to the Plaintiff.

9
10 **E. Respondent's argument**

11
12 [10] For the respondents, it was submitted that the learned JC did not
13 commit any appealable error which justifies appellate interference by this
14 court. It was submitted, among others, that the learned JC was correct in
15 holding that there was nothing sinister or derogatory in the use of a few
16 key words in the impugned statements namely "acquiescence", "key
17 player" and "support". Learned counsel also submitted that the learned JC
18 was correct in finding that it is too far-fetch to impute that the Plaintiff
19 interfered in the administration of the State as it was common knowledge
20 that Her Highness did not. It was further submitted that the appeal is mainly
21 on the finding of facts made by the learned JC; hence the appellate court
22 should be slow in disturbing such finding. It was highlighted to us that the
23 1st Defendant did issue a media statement apologising to the Plaintiff after
24 realising an error in referring to the Plaintiff, instead of the Sultan's sister,
25 in the impugned statements pertaining to her purported acquiescence with
26 Jho Low and her involvement in the administration of the State of
27 Terengganu. Further, the 1st Defendant had arranged for what was in effect



1 a “corrigendum” to be slipped into all books still on the shelves amending
2 the word “wife “appearing in the impugned statements to “sister” instead.
3 Be that as it may, the Defendants take the stand that the fact that the 1st
4 Defendant unwittingly and mistakenly referred to the Plaintiff in the
5 impugned statements.

6
7 **F. The issues in this appeal.**

8
9 [11] The main issues in this appeal are:

- 10
11 (i) Whether the learned JC was justified in finding that the
12 impugned statements is not defamatory of the Plaintiff.
13
14 (ii) Whether the learned JC was right in finding that the defence
15 of justification had been established by the Defendant.
16

17 **G. The Law**

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19 [12] While freedom of speech is one of the fundamental liberties
20 guaranteed by Article 10 (1) (a) of the Federal Constitution, it is also trite
21 law that this freedom is not absolute. The law prescribed certain limitation
22 to this freedom; hence section 500 of the Penal Code governs the offence
23 of criminal defamation, whereas the Defamation Act 1957 is the statute
24 that govern defamation law in Malaysia; and defamation is a cause of
25 action in the law of torts as in the present appeal.
26



1 [13] To succeed in her claim, the Plaintiff must prove, on the balance of
2 probability the following facts:

- 3
- 4 (i) There must be publication of the impugned statements.
 - 5 (ii) The impugned statements must refer to the Plaintiff.
 - 6 (iii) The impugned statements is defamatory.
- 7

8 [14] In proving whether the impugned statements is defamatory, the
9 Plaintiff must clear two hurdles: -

- 10
- 11 (i) Whether the impugned statements in it's natural and
12 ordinary meaning are capable of conveying a defamatory
13 meaning or concerning the Plaintiff.
 - 14 (ii) Whether the impugned statements are capable of being, and
15 were in fact, defamatory of the Plaintiff.
- 16

17 [15] In this regard, the court must carry out an objective test to determine
18 whether, under the circumstances in which the words are published, a
19 reasonable man to whom the publication was made would be likely to
20 understand it in a defamatory or libellous sense. The approach in the
21 construction of the words complained of is to consider the meaning of such
22 words would convey to ordinary reasonable person using their general
23 knowledge and common sense; it is not confined to strict literal meaning
24 of the words but extend to any reference or implication from which persons
25 can reasonably draw. It is irrelevant what the publisher intended the words
26 complained of to mean; it is also irrelevant what readers understood the
27 words complained of to mean for the purpose of deciding their ordinary



1 and natural meaning. There is no necessity for the Plaintiff to prove falsity
2 of the words complained of once they are found to be defamatory of him.
3 **(see Allied Physics Sdn Bhd v Ketua Audit Negara (Malaysia) & Anor**
4 **and other Appeals [2017]7 CLJ 347 and Raub Australian Goldmining**
5 **Sdn Bhd v Hue Shieh Lee [2019]3 CLJ 729,**

6
7 [16] There must be evidence that the impugned statements may tend to
8 “lower the Plaintiff in the estimation of right-thinking members of society
9 generally” or “to expose him to hatred, contempt or ridicule”. An imputation
10 may be defamatory whether or not it is believed by those to whom it is
11 published (see **Tun Datu Patinggi Haji Abdul Rahman Ya’kub v Bre**
12 **Sdn Bhd [1996] 1 MLJ 393).**

13
14
15 [17] As to whether the impugned statements is defamatory, the decision
16 in **Syed Husin Ali v Sharikat Perchetakan Utusan Melayu Berhad &**
17 **Anor [1973], 1 LNS 146; [1973] 2 MLJ 56** is of useful guidance: -

18
19 *“A defamatory imputation is one to man’s discredit, or which tends to*
20 *lower him in the estimation of others, or to expose him to hatred,*
21 *contempt or ridicule, or to injure his reputation, in office, trade or*
22 *profession, or to injure his financial credit. The standard of opinion is*
23 *that of right-thinking person’s generally. To be defamatory, the*
24 *imputation needs to have no actual effect on a person’s reputation, the*
25 *law looks only to its tendency”*

26
27 [18] We also remind ourselves that the words complaint of must be
28 viewed from the prevailing attitude of the society at the time of the



1 publication (see Raub Australian Goldmining Sdn Bhd (supra)).
2 Further, since the Plaintiff is relying on the natural and ordinary meaning
3 of the impugned statements, no extrinsic evidence is admissible when
4 interpreting the impugned statements.

5 6 **H. Our Analysis and findings**

7 8 **(i) Whether the impugned statements in it's natural and** 9 **ordinary meaning are capable of conveying a defamatory** 10 **meaning or concerning the Plaintiff.**

11
12 [19] At the risk of being repetitive, we remind ourselves that the Plaintiff
13 is relying on the natural and ordinary meaning of the impugned statements
14 thus making extrinsic evidence inadmissible in determining the defamatory
15 nature of the impugned statements. However, in his judgement the learned
16 JC had considered extrinsic evidence in arriving at his conclusion on the
17 true meaning of the impugned statements. The learned JC had referred to
18 the dictionary meaning for the words “acquiescence” “key player” and
19 “support” in Merriam Webster dictionary :
20 <http://www.merriam.webster.com/dictionary/acquiescence>, Cambridge
21 English Dictionary at
22 <http://dictionary.cambridge.org/dictionary/english/acquiescence>. Oxford
23 English Dictionary at
24 <http://www.oed.com/view/Entry/2928?redirectedFrom=acquiescence#eid>
25 and Lexico at “Support” Lexico.Oxford University Press 2021.
26 <http://www.lexico.com/definition/support>. (see paragraph [101], [103],
27 [104], and [107] of the Grounds of Judgement)



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[20] The learned JC also considered what the 1st Defendant meant by the word “key player” where at Q&A 18 of the witness statement the 1st Defendant testified:

18th Q: What about the facts that you referred to the Plaintiff as a “key player in Terengganu”?

A : ... I certainly do not mean by “key player” that she interfered with matters of state or used her position to influence matters of state or was running the state of Terengganu. The words “key player” are innocuous. I just meant someone of importance

[21] The learned JC also considered the evidence of DW 2 at page 57 of the Grounds of Judgment:

6th Q: Why did you interpret the word “acquiescence” to mean that of the Sultan?

A : ... The passage contains no suggestion that the Sultan’s wife, even as a “key player in Terengganu”, held any real power in the state, or was in a position to engage in “acquiescence”. So, I could not interpret the passage as referring to her acquiescence.

11th Q: In paragraph 11 of the Statement of Claim... the Plaintiff has also alleged that the passage imputed defamatory meanings. Were these imputed meanings what you understood from the passage?

A : ... The passage does state that Jho was “friendly” with the Plaintiff, but it cannot see how any reasonable reader would leap from



1 *that statement to the suspicious that the Plaintiff “is involved in corrupt*
2 *practice”. Nowhere in the passage is there any suggestion that the*
3 *Plaintiff know that Jho was a person of “questionable character” etc.*
4 *As far as I can tell, the passage simply contains no imputation of*
5 *corruption on the part of the Plaintiff or the Sultan.*

6
7 *The passage does refer to the Plaintiff as a “key player in*
8 *Terengganu”, but again, that is certainly not saying the same thing as*
9 *“she is the one who is running the administration and affair of the state*
10 *of Terengganu”. For someone to be a “key player”, it is necessary to*
11 *be a noteworthy person but, it is not necessary to be a person of*
12 *power. To call her “a key player” would not be to claim any powerful*
13 *role for her in state affairs or administration.*

14
15 [22] Further the learned JC also considered the following evidence of DW
16 2 (see page 106 of the Grounds of Judgment) as follows:

17
18 *10 Q: What is your understanding of the position of the passage that*
19 *reads “he later cited her support as having been crucial to his obtaining*
20 *the advising position”?*

21
22 *A : ... I understand it to mean that the person called Jho claimed*
23 *that his success in obtaining the advisory position was largely thanks*
24 *to the “support” of the Sultan’s wife. The word “support” denotes*
25 *assistance, in the sense of vouching for or favouring or endorsing. It*
26 *constantly doesn’t suggest anything determinative. Even the word*
27 *“crucial” doesn’t suggest that. A common-sense interpretation of the*
28 *passage might be that the Sultan’s wife provided a favourable*
29 *reference on behalf of Jho, and that this reference contributed to the*



1 *decision made by the person who actually makes the appointments*
2 *(perhaps the Sultan?) to appoint Jho”.*

3
4 [23] It must be noted that based on the dictionary meaning and the
5 evidence of DW 1 and DW 2, the learned JC ruled that the words “key
6 player” and “support” are not derogatory of the Plaintiff (see paragraph 104
7 and 105 of the Grounds of Judgment).

8
9 [24] In our opinion the learned JC had erred when considering
10 inadmissible extrinsic evidence in determining the ordinary and natural
11 meaning of the impugned statements. The impugned statements must be
12 considered and understood from its original printed form without the need
13 to carry out an extensive research of its meaning; but at the same time, a
14 reader should not rush to make a conclusion on whether or not the
15 statement is defamatory. We agree with the submission of learned counsel
16 for the appellant that “over-elaborate analysis should be avoided and the
17 court should certainly not take a too literal approach to the task”. (**Clerk &**
18 **Lindsell on Torts 23rd Ed**). In this a respect learned counsel for the
19 appellant also cited the case of **Stocker v Stocker [2019], 3 All ER 647**
20 where the United Kingdom Supreme Court states:

21
22 *“[25] Therein lies the danger of the use of dictionary definition to*
23 *provide a guide to the meaning of an alleged defamatory*
24 *statement. That meaning is to be determined according to how*
25 *it would be understood by the ordinary reasonable reader. It is*
26 *not fixed by technically, linguistically precise dictionary*
27 *definitions, divorced from the context in which the statement*
28 *was made.”*



1 [25] This in our view reflects the correct approach in determining the
2 issue before this court.

3
4 [26] We are of the opinion that in determining the ordinary and natural
5 meaning of the impugned statements, the court must only look at the
6 statement itself. Any interpretation based on extrinsic evidence, such as
7 dictionary definition as in the present case, would unnecessarily add the
8 burden of proving the defamatory nature of the impugned statements on
9 the Plaintiff.

10
11 [27] In this case the learned JC had considered the extrinsic evidence
12 before concluding at paragraph 104 and 105 that the words “key player”
13 and “support” are not defamatory. In our opinion this is not a correct
14 approach to be taken when determining the natural and ordinary meaning
15 of the impugned statements. Hence the learned JC had erred in his finding
16 that warrants appellate interference by this court.

17
18 **H(ii)-. Whether the impugned statements are capable of being, and**
19 **were in fact, defamatory of the Plaintiff.**

20
21 [28] The next issue is whether the impugned statements is defamatory of
22 the Plaintiff? In this respect, it must be noted that during the trial before the
23 learned JC as well as in this appeal, the Defendant had admitted that there
24 was a mistake in the impugned statements with regard to the identity. It
25 was admitted by the 1st Defendant that the Plaintiff had never introduced
26 Jho Low to the Sultan of Terengganu pertaining to the setting up of the



1 TIA. It was the Sultan's sister, Tengku Dato Rahimah who introduced Jho
2 Low to the Sultan.

3
4 [29] This fact, in our view, is relevant in determining whether the
5 impugned statements is defamatory. Another relevant fact to be
6 considered is the prevailing attitude at the time of the public action (**Raub**
7 **Australian Goldmining Sdn Bhd (supra)**).

8
9 [30] As stated earlier, based on the facts of this case, the Plaintiff must
10 show that on the construction of the impugned statements in its ordinary
11 and natural meaning, it bears the imputation ascribed to by the Plaintiff
12 and are defamatory of her.

13
14 [31] We have read the impugned statements and taking into
15 consideration the admission of mistaken identity of the Plaintiff by the 1st
16 Defendant as well as the prevailing attitude of the society at the time of
17 publication, the impugned statements were capable of being defamatory
18 of the Plaintiff in the way it was imputed by the Plaintiff in the statement of
19 claim.

20
21 [32] We take notice that the book that carries the impugned statements
22 was published in August 2018, some five months after the General
23 Election in May 2018. It is common knowledge that 1MDB was one of the
24 issues raised during the election campaign which led to the defeat of the
25 Barisan Nasional government. Jho Low is also named as one of the person
26 responsible for the scandal. Hence any connection between the Plaintiff
27 and Jho Low as described in the impugned statements, would convey, to



1 an ordinary reasonable person using their general knowledge and
2 common sense, the imputation of the words complained of as pleaded by
3 the Plaintiff (see **Tun Datuk Patinggi Haji Abdul Rahman Ya'kub**
4 **(supra)**).

5
6 [33] It must be noted that the law does not confine the strict and literal
7 meaning of the words but extends to any reference or implication from
8 which a person can reasonably draw. It is also trite that the impugned
9 statements must be considered as a whole bearing in mind, inter-alia, the
10 context in which they were used (see **Institute of Commercial**
11 **Management United Kingdom v The New Straits Times Press**
12 **(Malaysia) Bhd [1993], 1 MLJ 408**). Hence, on the facts of the case, we
13 are of the opinion that the impugned statements is defamatory. We are
14 also of the view that the impugned statements is defamatory of the Plaintiff.
15 The defamatory part of the impugned statements can be seen in the
16 allegation that the Plaintiff was said to have supported Jho Low to be
17 appointed the advisory position at the newly set-up sovereign wealth fund
18 (the Terengganu Investment Authority (TIA)). We are of the view that this
19 in the mind of a reasonable person, using their general knowledge and
20 common sense of the prevailing circumstances and the time when the
21 book was published, implied that the Plaintiff has used her position to
22 support Jho Low in obtaining Jho's advisory role in TIA, that the Plaintiff
23 has the ability to influence the administration of the State of Terengganu
24 and that the Plaintiff is involved in corrupt practice.

25
26 [34] In this respect, the law states that it is irrelevant what the Defendant
27 intended the impugned statements to mean (**AJA Peter v OG Nio & Ors**



1 **[1980] 1 MLJ 226**). In our view, no matter what the 1st Defendant intended
2 the impugned statements to mean, from on the facts of the case, at the
3 time of the publication of the book, the impugned statements were
4 calculated to expose the Plaintiff to hatred, ridicule or contempt in the mind
5 of a reasonable man or would tend to lower the Plaintiff in the estimation
6 of right - thinking members of society generally (see **Syed Husin Ali**
7 **(supra)** and **JR Jeyaretnam (supra)**).

8
9 [35] The magnitude of the impugned statements on the society can be
10 seen from the negative comments posted by the commentators in the
11 Malaysiakini News portal. One such comment clearly ridiculing the Plaintiff
12 is as follows: -

13
14 *“Dedak ridden cops trying to tarnish Clare whose expose of*
15 *1MDB saved the country. They should be questioning the*
16 *Sultanah (i.e the Plaintiff) how much she got from Jho Low. I’ll be*
17 *very shocked if she denied knowing Fatty Jho”*

18
19 [36] We are unable to agree with the learned JC that the negative
20 comments mainly commented on the Plaintiff’s action in filing this action
21 and has nothing to do with the publication of the impugned statements. In
22 our opinion the negative comments by the commentator were directed to
23 the Plaintiff on the purported corrupt practices by the Plaintiff. This is
24 evident when the commentator questioned how much the Plaintiff “got from
25 Jho Low”. This clearly shows that the Plaintiff’s reputation was being
26 ridiculed and degraded as being a person who is involved in corrupt
27 practices.



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[37] Hence, we are of the opinion that the learned JC fell into plain error when he ruled that the statement is not defamatory of the Plaintiff.

I. (iii) - Defendants' defence

[38] The learned JC had ruled that the Defendants had successfully proved the defence of justification and Lucas Box.

[39] It bears repetition that in the course of the trial and this appeal, the 1st Defendant admitted that there was an honest mistake on her part when writing the impugned statements in 2018. It was admitted by the 1st Defendant that the Plaintiff did not introduce Jho Low to the Sultan, Tengku Dato Rahimah, the Sultan's sister did. By raising the Lucas Box principle, the 1st Defendant must explain the meaning of the words that the Plaintiff makes of the impugned words. She must give an alternative meaning and give particulars to justify that meaning (see **Khairy Jamaluddin v Dato Seri Anwar Ibrahim [2015] 3 CLJ 1062**)

[40] In paragraph 12 (i) to (v) of the statement of defence, the 1st Defendant pleaded the alternative meaning of the impugned statements. However, upon reading the said paragraphs, we are of the opinion that those paragraphs are not related to the impugned statements. Those paragraphs explain the concerns of the Terengganu royal family in the management of the TIA resulting in the decision to abort the setting up of TIA. There was no reference to any of the impugned statements and the meaning the 1st Defendant meant.



1 [41] Obviously those paragraphs did not show any alternative meaning
2 intended by the 1st Defendant to the impugned statements. It did not
3 explain why the Plaintiff had been referred to in the impugned statements.
4

5 [42] Further, it was submitted by learned counsel for the Plaintiff that in
6 relying on the defence of justification, the 1st Defendant must show that the
7 impugned statements is actually the truth of the imputation of the overall
8 statement. (**Chong Swee Huat & Anor v Lim Shian Ghee t/a L & G
9 Consultant & Education Services [2009] 4 CLJ 113**). As stated earlier,
10 the 1st Defendant has failed to show the alternative meaning of the
11 impugned statements. Put it differently the 1st Defendant has failed to show
12 the truth of the impugned statements. Further, it was admitted by the 1st
13 Defendant that she did not verify the facts as to whether the Plaintiff was
14 involved in the setting up of TIA. Hence, we are of the view that the
15 impugned statements was published deliberately. In the circumstances the
16 Defendant has failed to establish their defence of justification (see **Dato
17 Seri Mohammad Nizar bin Jamaluddin v Sistem Televisyen Malaysia
18 Berhad & Another [2014] 3 CLJ 560**).
19

20 [43] For the above reasons, we are of the view that the learned JC was
21 plainly wrong in his finding when he ruled that the Defendant has
22 successfully raised the defence of justification which warrants appellate
23 interference.
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1 **J. (iv) - Damages**

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3 [44] The learned JC did not deal with the issue of damages. In view of
4 our finding that the impugned statements was defamatory of the Plaintiff,
5 it is our duty now to assess the damages to be awarded to the Plaintiff
6 (**see Raub Australian Gold Mining Sdn Bhd v MKINI Dotcom Sdn Bhd**
7 **[2018] 1 LNS 62**). In this respect, libel is a tort actionable per se, i.e.
8 without proof of actual harm. The law presumes that when a man's
9 reputation is assailed, some damage must result (see **MGG Pillai v**
10 **Vincent Tan [1995] 2 CLJ 912**).

11
12 [45] In assessing the damages, we take into account the following
13 factors:

14
15 (i) **Lack of Remorse**

16 While admitting that there was an honest mistake on her part
17 in publishing the impugned statements, the 1st Defendant did
18 not mention about this mistake during an interview with Free
19 Malaysia Today on 18.9.2018. She also did not mention about
20 the mistake during an interview with Sarawak Report on
21 27.9.2018. Further, despite the said mistake, the 1st Defendant
22 also did not apologize to the Plaintiff at any time before the
23 filing of the action in the High Court.



1 **(ii) Plaintiff's standing in society**

2
3 The Plaintiff is the Sultanah of Terengganu. Being the Sultan's
4 consort, she is well known by the people. The impugned
5 statements obviously had tarnished her image. The negative
6 comments that were published in the Malaysiakini news
7 referred to in paragraph 30 shows the extent of damage that
8 was inflicted on her by the impugned statements.

9
10 **(iii) Extend of the publication**

11
12 The 1st Defendant admitted that only 2,000 copies of the said
13 book were sold. We are of the view that the book was not
14 widely circulated even though we do not dismiss the possibility
15 that the said book or the impugned statements may have been
16 circulated via the internet or social media.

17
18 [46] Based on the above reasons, we award damages to the Plaintiff in
19 the sum of RM 300,000.00. In our view, since the 2nd and 3rd Defendants
20 are the publisher and the printer of the book that contains the impugned
21 statements, they are jointly liable for the damages caused by it. Hence, we
22 order that the damages awarded to the Plaintiff be paid by all Defendants
23 jointly.



1 **J. Conclusion**

2
3 [47] Based on the aforesaid reasons, we are of the opinion that the
4 learned JC was plainly wrong in dismissing the Plaintiff's claim. The appeal
5 is allowed. The order of the High Court is set aside. We order that the 1st,
6 2nd and 3rd Defendants to jointly pay damages in the sum of
7 RM300,000.00. In addition, we also allow the Plaintiff's claim in paragraph
8 29 (b) (ii) and (ii) against the 2nd Defendant and paragraph 29 (c) (ii), (iii)
9 and (iv) of the statement of claim.

10
11 **Dated: 12th December 2023**

12
13 - SGD -

14 **DATUK AZHAHARI KAMAL BIN RAMLI**

15 JUDGE

16 COURT OF APPEAL, MALAYSIA

17
18
19 *For the Appellant* : *Dato' Mohd. Haaziq Pillay bin Abdulah,*
20 *Vishnu Kumar A/L Athi Kumar, Mohd Hilmi*
21 *bin Hj Sarbini, Manisha A/P S*
22 *Sugunesegaran*
23 *(Tetuan J.S. Pillay & Mohd. Haaziq)*

24
25 *For the Respondents* : *Americk Sidhu, Mervyn Lai Wei Shiung,*
26 *Shara Jayapavan.*
27 *(Tommy Thomas)*

