



**IN THE HIGH COURT OF MALAYA AT KUALA LUMPUR  
(COMMERCE DIVISION)  
[CIVIL SUIT NO.: WA-22NCC-245-06/2018]**

**BETWEEN**

**GLOBAL ROYALTY TRADING SAL  
(A company registered under the laws of Lebanon)**

**... PLAINTIFF**

**AND**

**1. DATIN PADUKA SERI HAJJAH ROSMAH MANSOR  
(NRIC No.: 511210-05-5558)**

**2. GOVERNMENT OF MALAYSIA**

**... DEFENDANT**

**GROUND OF JUDGMENT**

[1] By way of consignment, the Plaintiff delivered 44 items of jewellery to the 1<sup>st</sup> Defendant who is the wife of the former Prime Minister of Malaysia. The Plaintiff claims that the 1<sup>st</sup> Defendant has failed to return the items of jewellery to it. The Plaintiff filed an action against the 1<sup>st</sup> Defendant claiming the return of the jewellery, in the alternative, the value of the jewellery in the sum of USD 14,787,779.00.

[2] By way of defence, the 1<sup>st</sup> Defendant pleaded that the jewellery had been seized by the 2<sup>nd</sup> Defendant, the Government of Malaysia. The Plaintiff, after viewing photographs of the jewellery seized by the Government, has said that it could only identify 4 items out of the 44 items consigned to the 1<sup>st</sup> Defendant. The Government, on the other hand, has said that it could only identify one item out of the 44 items from the seized items of jewellery.

[3] Herein lies the factual quagmire. How many pieces of jewellery out of the 44 pieces are actually in the custody of the Government?

[4] The 1<sup>st</sup> Defendant submits that the answer lies within the provisions of Order 40 Rules of Court, 2012.

[5] Order 40(1) RC, 2012 reads as follows:

***“1. Appointment of expert to report on certain question (O. 40, r. 1)***

*(1) In any cause or matter in which any question for an expert witness arises, the Court may at any time, on its own motion or on the application of any party, appoint an independent expert or, if more than one such question arises, two or more such experts, to inquire and report upon any question of fact or opinion not involving questions of law or of construction.*

*(2) An expert appointed under this Order or under Order 32 rule 12 shall be referred to as a “Court expert”.*

*(3) Any Court expert in a cause or matter shall, if possible, be a person agreed between the parties and, failing agreement, shall be nominated by the Court.*

*(4) The question to be submitted to the Court expert and the instructions, if any, given to him shall, failing agreement between the parties, be settled by the Court.*

*(5) In this rule “expert”, in relation to any question arising in a cause or matter, means any person who has such knowledge or experience of or in connection with that question that his opinion on it would be admissible in evidence”.*

[6] Accordingly, the 1<sup>st</sup> Defendant has filed the application herein for the appointment of an expert to determine how many pieces of jewellery out of the 44 pieces are actually in the custody of the Government.

[7] In the case of *Lian Chen Fah @ Lian Chen Lee & 3 Ors. v. Gimo Holdings Sdn Bhd* [2008] 1 MLJ 135, the Court had stated:

*“It is my view that the plaintiffs have proven their case for encroachment. Not having objected to the application by the plaintiffs for the appointment of the court expert and not availing themselves of the opportunity to cross-examine the court expert, it is too late in the day for the defendant to contend that the court ought to look at the report with caution. After all, the very basis for the appointment of the court expert is for the just, expeditious and economical disposal of the action. (See *Abbey National Mortgages plc (formerly CIBC Mortgages plc) v. Key Surveyors Nationwide Ltd and Ors* [1995] 75 BLR 124). To ignore the court expert’s report would render the court order and the appointment of the court expert an exercise in futility. Above all, there is no reason for the court not to accept the finding in encl 10 that there was in fact encroachment by the defendant of the plaintiffs’ property given the defendant’s surveyor’s own admission as to the encroachment”.*

[8] In the case of *UEM Sunrise Berhad & Ors v. Majlis Perbandaran Johor Bahru Tengah* [2016] 1 LNS 245, the Court had stated that:

*“[16] It is worthy of emphasis that the primary role of the Court-appointed expert is to inquire and report on any question of fact or opinion not involving questions of law or of construction. The *raison d’etre* of Order 40 is to assist the Court to save costs and time for the litigants and also to ensure that a dispute is resolved expeditiously. The underlying rationale is thus to help litigants save costs of appointing individual experts particularly in cases like the present where experts of the parties have given what can be said to be conflicting evidence on points of valuation of the Said Lands. I should also add that it cannot be emphasized enough that the independence of the role of a Court-appointed expert is paramount*

*and of great utility. Sir Thomas Bingham MR in Abbey National Mortgages Plc v. Key Surveyors Nationwide Ltd [1996] 3 All ER 184 held that the court expert “with no axe to grind but a clear obligation to make a careful and objective valuation, may prove a reliable source of expert opinion.”*

[17] Further, Section 145(4) of the LGA clearly states thus:-

*(4) Every such appeal shall be heard before the High Court whose decision on questions of fact shall be final and conclusive*

*In my view, since this Court may, pursuant to Section 145(4) of the LGA make a finding of facts on hearing the appeal, and considering the potentially technical nature and complexity of the valuation of some 61 properties, the independent role of the Court-appointed expert will more than likely assist the Court in achieving an expeditious, economical and above all, just disposal of the appeal (see Lian Chen Fah @ Lian Chen Lee & 3 Ors v. Gimo Holdings Sdn Bhd [2007] 1 LNS 364; [2008] 1 MLJ 135).*

[18] *As such I allow the appointment of one registered valuer as a Court expert under Order 40, who should be a person agreed by the parties and whose scope of his expert report should also be agreed by the parties, (but in any event largely to inquire and report on the valuation reports previously prepared by the parties that had led to the decision of the Respondent now being appealed against), failing which shall be defined by the Court. It is instructive to note that other provisions of Order 40 shall apply accordingly, and these include the right of the parties to have the Court-appointed expert cross examined following receipt of the report by the parties pursuant to Order 40 r. 4 of the RC 2012, and for parties to call expert witnesses to give evidence on matters reported on by the Court-appointed expert under Order 40 r. 6”.*

[9] In the case of *Sri Paandi Restaurant Sdn Bhd & Anor v. Saraswathy Kesavan & Ors* [2017] 1 LNS 610, the Court had stated:

*“[23] I am of the view that this court should not appoint the Registrar as a court expert under O. 40 r. 1(1) RC. This decision is premised on the following reasons:*

*(1) a court expert can only be appointed in a case under O. 40 r. 1(1) RC when a “question for an expert witness arises” in the case. In this case, there is no question for an expert witness to assist this court. I refer to s. 45(1) and (2) of the Evidence Act 1950 (EA) as follows -*

*“Opinions of experts*

*s. 45(1) When the court has to form an opinion upon a point of foreign law or of science or art, or as to identity or genuineness of handwriting or finger impressions, the opinions upon that point of persons specially skilled in that foreign law, science or art, or in questions as to identity or genuineness of handwriting or finger impressions, are relevant facts.*

*(2) Such persons are called experts.”*

*(emphasis added).*

*In Junaidi Abdullah v. Public Prosecutor* {1993} 4 CLJ 201; [11993] 3 MLJ 217 at 229, Mohamed Azmi SCJ held as follows in the Supreme Court -

*“In our view, the test to be applied for the purpose of s. 45 [EA] is this. First, does the nature of the evidence require special skill?”*

*(emphasis added).*

[10] In this case, the knowledge in the science of ‘Gemology’ or ‘Gemmology’ and precious metals would be needed in order to ascertain whether the 44 pieces of jewellery are with the Government. Wikipedia states that:

*“Gemology or gemmology is the science dealing with natural and artificial gemstone materials. It is considered a geoscience and a branch of mineralogy (and many non-jewelers) are academically trained gemologists and are qualified to identify and evaluate gems.”*

[11] I am of the view that the Court has jurisdiction to appoint an expert to determine exactly how many pieces of the jewellery consigned by the Plaintiff are in the custody of the Government. The issue is whether it would be just, expeditious and economical to appoint such expert.

[12] The Plaintiff has no objection to the application herein but the Government opposes the application on two broad grounds namely:

- a) Security issues; and
- b) AMLA court issue.

### **Security Issues**

[13] Under this heading, the Government states that a court expert cannot be appointed because the materials seized from the 1<sup>st</sup> Defendant had been placed in a vault which is under the custody of Bank Negara Malaysia (“Bank Negara”) together with other national assets. The Government states that the location of the vault is secret and that Bank Negara will not give an approval to any party to carry out an inspection at the said location.

[14] Since the concern is that Bank Negara will not give its consent for the items seized to be inspected then the solution is to order the appointment of the expert to be subject to the consent of Bank Negara. The



1<sup>st</sup> Defendant is prepared to accept such an order. This will take care of the concern as to Bank Negara giving its consent.

**AMLA Court**

[15] Under this heading, the Government had stated that any claim against the 44 pieces of jewellery have to be made at the forfeiture court.

[16] I am of the view that this is not a good ground for not appointing an expert. Unless it is determined how many pieces of the jewellery had been seized by the Government, no one will know what to claim from the forfeiture court. In this case, it is the defence of the 1<sup>st</sup> Defendant to the Plaintiff's claim that the items claimed by the Plaintiff have been seized by the Government, as a result of which the 1<sup>st</sup> Defendant is not in a position to return the items claimed to the Plaintiff. There is a dispute of fact as to exactly how many items of the Plaintiff's jewellery have been seized by the Government. The Plaintiff says it can only identify 4 items out of 44 items. The Government says that it can only identify 1 item and the 1<sup>st</sup> Defendant says that all 44 items have been seized. It is therefore just and expeditious to appoint a court expert to determine the question, as it affects the conduct of the defence of the 1<sup>st</sup> Defendant. And if the order is made subject to the consent of Bank Negara, it will take into consideration all factors which are relevant. Accordingly, I make the order sought by the 1<sup>st</sup> Defendant subject to the consent of Bank Negara.

**Dated:** 17 SEPTEMBER 2019

**(WONG CHEE LIN)**

Judge

Kuala Lumpur High Court



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