

INHERENT JURISDICTION OF THE COURT

It is trite law that the Court may, at any stage of the proceedings order to strike out any matter in any pleading which may be unnecessary, scandalous, frivolous or vexatious, or which may tend to prejudice, embarrass or delay the fair trial of the action, or which is otherwise an abuse of the process of the Court under Order 18 rule 19(1) of the Rules of the High Court 1980. It is often argued by litigants that by virtue of Order 18 rule 19(2), averments in affidavits should totally be disregarded or if any at all, given minimum consideration in striking out applications, as ‘the only issue for determination in such applications should be whether the pleading on the face of it discloses a reasonable cause of action or defence as the case may be’.¹

His Lordship Dato’ Vincent Ng in *Suppulechimi v Palmco Bina Sdn Bhd [1994] 2 CLJ 561* was however of the opinion that the statement of law above mentioned ‘is not of absolute application; not entirely correct.’² It was His Lordship’s considered opinion that the above mentioned position of law ‘governs only if the Court does not decide to invoke its inherent jurisdiction under Order 92 rule 4. Even though Order 18 rule 19(2) provides that no evidence shall be admissible on an application under paragraph (1)(a), yet it would appear that the Court has always the inherent jurisdiction to make any order as may be necessary under Order 92 rule 4, to prevent injustice or to prevent an abuse of the process of the Court.’³

The general rule in a striking out applications is that it must be heard upon the facts pleaded in the pleading, and evidence by way of affidavits in support of the applicant’s case is not admissible. However, His Lordship Dato’ Vincent Ng in *Suppulechimi* held that ‘affidavits are admissible by virtue of the inherent jurisdiction of the Court. The Court is entitle to look at the affidavits to ask itself whether from the affidavit evidence before the Court, it is satisfied that the claim discloses a reasonable cause of action or defence as the case may be.’⁴

His Lordship laid down a guideline that ‘the crucial question the Court would have to ask itself in summary applications proceedings is firstly, whether the piece of evidence essential to make out a reasonable *prima facie* cause of action or a *prima facie* triable issue of fact are of the nature such that they are adduceable by affidavit evidence; and secondly, if the answer to the first question is in the positive, whether such essential *prima facie* evidence had been so adduced in the supporting affidavits.’⁵

¹*Suppulechimi v Palmco Bina Sdn Bhd [1994] 2 CLJ 561* at page 566, paragraph e-g of the right column

²*Suppulechimi v Palmco Bina Sdn Bhd [1994] 2 CLJ 561* at page 566, paragraph g-h of the right column

³*Suppulechimi v Palmco Bina Sdn Bhd [1994] 2 CLJ 561* at page 566, paragraph h-i of the right column

⁴*Suppulechimi v Palmco Bina Sdn Bhd [1994] 2 CLJ 561* at page 567, paragraph b-d of the left column

⁵*Suppulechimi v Palmco Bina Sdn Bhd [1994] 2 CLJ 561* at page 568, paragraph f-i of the left column

His Lordship had in *Suppuleetchimi* held that the ‘minimum evaluation approach in the past, of affidavit evidence when deciding the issue of whether there is a reasonable cause of action in the claim, or triable issue in a defence, would have to give way to the optimum evaluation approach; optimum and not maximum; no doubt because of the probative limitations attendant upon such summary procedure applications.’⁶

The approach taken by His Lordship in *Suppuleetchimi* regarding summary application proceedings is applauded for it prevents irresponsible litigants making baseless claims or filing shame defences as a tactic to delay proceedings. His Lordship explained the necessity to invoke the discretion of the Court within the inherent jurisdiction of the Court in summary application proceedings in *Suppuleetchimi* to avoid accusations from the public for administering ‘hurried justice’. His Lordship emphasized that by invoking the inherent jurisdiction of the Court under Order 92 rule 4, ‘the Court cannot be accused of doing hurried justice when public policy and administration of justice would not condone an abuse of process of the Court and the Court is clearly clothed with inherent jurisdiction under Order 92 rule 4 to prevent such abuse.’⁷

His Lordship has consistently repeated the same principle in cases which were heard before His Lordship on the same pertinent issue *inter alia* in *Tay Choo Foo v Tengku Mohd Saad & Ors [2003] 6 CLJ 295* and *Abas Hoh Sdn Bhd v Longgain Sdn Bhd [2003] 1 LNS 419*, where His Lordship had applied the principles ‘adumbrated’⁸ in *Suppuleetchimi* in perusing the affidavits when he made a decision with respect to summary application proceedings.

This judgment charted new territories for age old concept for striking out pleadings. Hence, it is to be expected and not at all surprising that the principle of inherent jurisdiction of the Court in hearing summary applications proceedings laid down in *Suppuleetchimi* has been and will be widely followed by other judges in a substantial number of cases.

List of cases quoting

⁶*Suppuleetchimi v Palmco Bina Sdn Bhd [1994] 2 CLJ 561* at page 568, paragraph h-i of the right column

⁷*Suppuleetchimi v Palmco Bina Sdn Bhd [1994] 2 CLJ 561* at page 569, paragraph a-c of the left column

⁸*Tay Choo Foo v Tengku Mohd Saad & Ors [2003] 6 CLJ 295*