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Is One Notice Of Appeal Sufficient To Appeal Against Several Decisions Delivered By The Court?

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Pursuant to Rule 5(1) and Rule 5(3) of the Rules of Court of Appeal 1994, appeals to the Court of Appeal shall be brought by giving a notice of appeal which shall be substantially in Form 1 of the First Schedule. Whilst this procedural rule appears to be straightforward, an issue arises when the High Court delivers several decisions in relation to the same matter on the same date. Particularly, can the appellant only file one single notice of appeal to appeal against the several decisions delivered by the High Court?

This was the key issue being discussed in the recent Federal Court case of *Khairy Jamaluddin v Dato' Seri Anwar bin Ibrahim and another appeal* [2022] 4 MLJ 194.

Background

There were in fact two appeals before the Federal Court which emanated from two distinct actions involving different parties; one action being *Dato' Seri Anwar Ibrahim v Khairy Jamaluddin* and the other being *Man Seng Trading & Marketing Sdn Bhd v Guinness Anchor Marketing Bhd*.

Nonetheless, the two appeals essentially relate to similar issues i.e. whether the notice of appeal is bad because the appellant has only filed a single notice of appeal when there were separate orders issued by the High Court.

The respondents in both the cases have succeeded in striking out the said appeals in the Court of Appeal by relying heavily upon the Federal Court case of *Deepak Jaikishan v A Santamil Selvi a/p Alau Malay @ Anna Malay (as the executrix of the estate of Balasubramaniam a/l Perumal, deceased) & Ors* [2017] 4 MLJ 11 (*Deepak Jaikishan*), which held that if there were distinct and separate applications made, and distinct and separate orders of the Court issued, then there ought to be a separate notice of appeal filed in respect of the distinct order appealed against.

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Federal Court's Decision

In analysing the said issue put forth to it, the Federal Court was of the view that:-

- (a) The decision in *Deepak Jaikishan* should not be read as laying down a strict and absolute rule that whenever there is more than one decision arising from separate interlocutory applications, the filing of a single notice of appeal is not in compliance with the Rules of Court of Appeal 1994.
- (b) In fact, the filing of a single notice of appeal is permissible subject to a caveat that all the decisions appealed against must be clearly and concisely set out with the relevant details and particulars of each decision in the notice of appeal.
- (c) In situations where, a preliminary objection is taken against a notice of appeal in the Court of Appeal or where a motion is filed to that effect, it is incumbent upon the Court of Appeal to scrutinise the notice of appeal in question and to consider whether the appeal relates to a single decision, or more than one decision, or is against part of the decision or decisions given.
- (d) If so, whether the decisions in questions have been clearly and concisely identified. There should not be any ambiguity or doubt relating to the decision appealed against.

Applying the above principles, the Federal Court stated that the notice of appeal filed by both the appellants had set out the specific details and particulars of the decision of the High Court order which the appellants were appealing against.

Therefore, it was of the view that the respondents the appeals could not have been prejudiced and/or suffered any miscarriage of justice and hence, the notices of appeal were held to be valid and the matters were remitted back to the Court of Appeal.

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Commentary

Prior to this decision and premised on the case of *Deepak Jaikishan*, solicitors had to file several notices of appeal for inter-related appeals and/or separate orders granted by the High Court on the same date. This in turn resulted in the further hassle to file separate Record of Appeals to the Court of Appeal (when most of the documents included overlap with each other).

As such, this recent Federal Court ruling is welcomed given that practitioners no longer need to file not only separate notices of appeal but also separate records of appeal. Having said this, one must take note of the caveat laid down by the Federal Court i.e. that all the decisions appealed against must be clearly and concisely set out with the relevant details and particulars of each decision.

Authored by Clament Tay, a senior associate from the firm's Dispute Resolution practice.

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