

**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**



**CORAM:**

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

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

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

**GROUND OF JUDGMENT**

**A. Introduction**

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

**B. Back ground facts.**

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

*“covering 1 Malaysia Development Berhad (1MDB) scandal from its 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.



**D. Appellant's Argument**

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



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

#### **E. Respondent's argument**

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

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



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

## **H. Our Analysis and findings**

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

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



1  
2 [20] The learned JC also considered what the 1<sup>st</sup> Defendant meant by the  
3 word “key player” where at Q&A 18 of the witness statement the 1<sup>st</sup>  
4 Defendant testified:

5  
6 *18<sup>th</sup> Q: What about the facts that you referred to the Plaintiff as a “key*  
7 *player in Terengganu”?*

8  
9 *A : ... I certainly do not mean by “key player” that she interfered*  
10 *with matters of state or used her position to influence matters of state*  
11 *or was running the state of Terengganu. The words “key player” are*  
12 *innocuous. I just meant someone of importance*

13  
14 [21] The learned JC also considered the evidence of DW 2 at page 57 of  
15 the Grounds of Judgment:

16  
17 *6<sup>th</sup> Q: Why did you interpret the word “acquiescence” to mean that of*  
18 *the Sultan?*

19  
20 *A : ... The passage contains no suggestion that the Sultan’s wife,*  
21 *even as a “key player in Terengganu”, held any real power in the state,*  
22 *or was in a position to engage in “acquiescence”. So, I could not*  
23 *interpret the passage as referring to her acquiescence.*

24  
25 *11<sup>th</sup> Q: In paragraph 11 of the Statement of Claim... the Plaintiff has*  
26 *also alleged that the passage imputed defamatory meanings. Were*  
27 *these imputed meanings what you understood from the passage?*

28  
29 *A : ... The passage does state that Jho was “friendly” with the*  
30 *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 23<sup>rd</sup> 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 1<sup>st</sup> 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 1<sup>st</sup>  
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 1<sup>st</sup> 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.



1  
2 [37] Hence, we are of the opinion that the learned JC fell into plain error  
3 when he ruled that the statement is not defamatory of the Plaintiff.  
4

5 **I. (iii) - Defendants' defence**  
6

7 [38] The learned JC had ruled that the Defendants had successfully  
8 proved the defence of justification and Lucas Box.  
9

10 [39] It bears repetition that in the course of the trial and this appeal, the  
11 1<sup>st</sup> Defendant admitted that there was an honest mistake on her part when  
12 writing the impugned statements in 2018. It was admitted by the 1<sup>st</sup>  
13 Defendant that the Plaintiff did not introduce Jho Low to the Sultan, Tengku  
14 Dato Rahimah, the Sultan's sister did. By raising the Lucas Box principle,  
15 the 1<sup>st</sup> Defendant must explain the meaning of the words that the Plaintiff  
16 makes of the impugned words. She must give an alternative meaning and  
17 give particulars to justify that meaning (see **Khairy Jamaluddin v Dato**  
18 **Seri Anwar Ibrahim [2015] 3 CLJ 1062**)  
19

20 [40] In paragraph 12 (i) to (v) of the statement of defence, the 1<sup>st</sup>  
21 Defendant pleaded the alternative meaning of the impugned statements.  
22 However, upon reading the said paragraphs, we are of the opinion that  
23 those paragraphs are not related to the impugned statements. Those  
24 paragraphs explain the concerns of the Terengganu royal family in the  
25 management of the TIA resulting in the decision to abort the setting up of  
26 TIA. There was no reference to any of the impugned statements and the  
27 meaning the 1<sup>st</sup> Defendant meant.



1 [41] Obviously those paragraphs did not show any alternative meaning  
2 intended by the 1<sup>st</sup> 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 1<sup>st</sup> 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 1<sup>st</sup> Defendant has failed to show the alternative meaning of the  
11 impugned statements. Put it differently the 1<sup>st</sup> Defendant has failed to show  
12 the truth of the impugned statements. Further, it was admitted by the 1<sup>st</sup>  
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.  
24  
25  
26  
27



1     **J.     (iv) - Damages**

2

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 1<sup>st</sup> 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 1<sup>st</sup> Defendant

22           also did not apologize to the Plaintiff at any time before the

23           filing of the action in the High Court.

24

25

26

27



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 1<sup>st</sup> 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 2<sup>nd</sup> and 3<sup>rd</sup> 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 1<sup>st</sup>,  
6 2<sup>nd</sup> and 3<sup>rd</sup> 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 2<sup>nd</sup> Defendant and paragraph 29 (c) (ii), (iii)  
9 and (iv) of the statement of claim.  
10

11 **Dated: 12<sup>th</sup> 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)*

