

DALAM MAHKAMAH TINGGI MALAYA DI KUALA LUMPUR  
DALAM WILAYAH PERSEKUTUAN MALAYSIA  
(BAHAGIAN SIVIL)  
GUAMAN SIVIL NO: S-23-NCVC-14-2011

ANTARA

NATIONAL UNION OF BANK EMPLOYEES

... PLAINTIF

DAN

NOORZEELA BINTI LAMIN

... DEFENDAN

Didengar bersama

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ZAYUDDIN BIN MOHAMED YUSOP

... DEFENDAN

**DECISION**

1. The defendants in S-23NCVC-14-2011 and S-23NCVC-20-2011 are **Noorzeela binti Lamin** ("the 1<sup>st</sup> defendant") and **Zayuddin bin Mohamed Yusop** ("the 2<sup>nd</sup> defendant") respectively. The plaintiff in both suits is the

**National Union of Bank Employees.** The plaintiff's claim against the defendants is for, *inter alia*, general and aggravated damages arising out of the publication by the defendants of alleged defamatory comments against the plaintiff and the plaintiff's National Executive Council members on Facebook and in a leaflet entitled "MAYNEU Maybank Non Executive Union".

2. The Writ of Summons and Statement of Claim in respect of the 1<sup>st</sup> defendant were filed on 2.3.2011 whilst that in respect of the 2<sup>nd</sup> defendant was filed on 3.3.2011. The 1<sup>st</sup> defendant filed her Memorandum of Appearance on 27.5.2011 and her Defence on 31.5.2011. The 2<sup>nd</sup> defendant's Memorandum of Appearance was also filed on 27.5.2011 but his Defence was filed on 30.5.2011. During the case management on 23.6.2011, the Court allowed the plaintiff's application for 23NCVC-20-2011 to be heard together with 23NCVC-14-2011 and fixed 10-11 October 2011 for the hearing of both suits.
3. The defendants were initially represented by the Law Firm of M Esuary. However on 12.9.2011, the Court was informed by Ms M Esuary that she had been discharged by the defendants on 5.9.2011. On 19.9.2011, Messrs C. Leo Camoens filed a Notice of Change of Solicitors dated 19.2.2011 although an Amended Notice of Change of Solicitors dated 28.9.2011 was only filed on 25.10.2011.

#### ***The Plaintiff's Case***

4. Hearing of the two suits commenced on 12.10.2011 in the presence of Mr. Alex De Silva with Mr. Vinesh M Varghese for the plaintiff and Mr. Cantius Leo Camoens for the defendants. The plaintiff's first witness was **Jeevan a/I M. Vijayan** (PW 1), a clerk with Maybank Plaza MWE. PW 1 testified as to his receipt of the leaflet at pages 1-5 of Part B in the Common Bundle ("CB") on the first day of the Maybank Annual Games held at Maybank's premises in Bangi from 3<sup>rd</sup> to 5<sup>th</sup> December 2010. The leaflet that he received consisted of a total of 5 pages stapled together.
5. According to PW 1, there were a few people distributing flyers at the opening ceremony of the Games on 3.12.2010. These leaflets were distributed to the

staff of Maybank and also to members of NUBE who were at the Annual Games. On his return to Penang, he reported the incident to the Hon Secretary of NUBE Penang as he felt that the distribution of the leaflets was not right but was damaging to NUBE. He identified his report (P1) appearing at page 94 of Part B in CB.

6. PW 1 identified the 1<sup>st</sup> defendant, Noorzeela Lamin, as the “fair Malay lady” described in paragraph 3 of his report as having approached the members table by table to talk about MAYNEU, the In-House Union, and to garner support. Although the 1<sup>st</sup> defendant did not approach PW 1’s table, she had approached the next table and had walked around the table so that PW 1 was able to see her from many angles.
7. The plaintiff’s key witness is **Sandagran Solomon s/o Joseph Pitchay** (PW 2). He describes himself as the General Secretary of the plaintiff since 19.7.2001. The plaintiff is a registered trade union registered on 30.6.1960 pursuant to the Trade Unions Act 1959 and represents the clerical and non-clerical workers in the banking industry in Peninsular Malaysia. It has approximately 29,000 members.
8. According to PW 2, the 1<sup>st</sup> and 2<sup>nd</sup> defendants were employees of Maybank Berhad and members of the plaintiff since 30.5.1998 and 1.12.1991 respectively. They are also Inter Relations Committee (“IRC”) members of the plaintiff in Menara Maybank and Bangunan Perkeso respectively. IRCs are appointed at each of the Bank’s branches to consider all matters submitted to them by their Branch, and to protect the interests of and to extend trade union organization amongst the staff. The 1<sup>st</sup> defendant was expelled from the plaintiff sometime in November or December 2010.
9. PW 2 explained that the plaintiff had commenced this suit against the defendants because of “the defendants’ defamatory publications against the plaintiff. He referred the Court to the leaflet entitled “MAYNEU Maybank Non Executive Union” (hereinafter referred to as “the Offending Leaflet”) allegedly

published by the defendants which were defamatory to the plaintiff and the National Executive Council members of the plaintiff.

10. According to PW 2, it was the defendants who had published or caused to be published the Offending Leaflet because the defendants' names and telephone numbers appear in the middle column of page 1, under the words "Sila hubungi kami:". The purpose of the Offending Leaflet was to run down the plaintiff and to promote MAYNEU. The Offending Leaflets were distributed to other employees of Maybank, including members of the plaintiff. The plaintiff has approximately 5000 members in Maybank. PW 2 explained that this figure of 5000 is not mere guesswork but is based on reports from the branch committees. He admitted that he did not witness the actual distribution of the Offending Leaflets between 3 and 5 December 2010.

11. According to PW 1, the Offending Leaflets were distributed between 3<sup>rd</sup> and 5<sup>th</sup> December 2010 at the Maybank Annual Games which were held at the Maybank premises in Bangi. The leaflets were also left at the dinner tables during the dinner held on the last day of the Annual Games. In total, the attendance at the Games and the dinner would be between 4,000 and 5,000 members.

*The First Defamatory Statement*

12. PW 2 testified in detail as to the defamatory statements in the Offending Leaflet. The **first defamatory statement** appears at CB, Part B, page 1 - right hand column, under the heading '80 BULAN BONUS' and reads as follows:

"Bonus berdasarkan prestasi kerja telah ditawarkan kepada **NUBE** semasa **RUNDINGAN PERJANJIAN BERSAMA 2006-2009 ...TETAPI MEREKA MENOLAK!!!** Mereka kata pihak Bank mahu merompak bonus mereka!!! Sekarang mereka mahu menuntut bonus prestasi kerja pula. Disebabkan mereka telah menolak Bonus Prestasi Kerja, kita telah kehilangan 16% kenaikan gaji semenjak 2006 dan juga bonus. Ini adalah

merupakan kerugian kepada kita semua disebabkan oleh NUBE.”

13. PW 2 testified that the above-stated comments are defamatory because they are untrue. NUBE members did not lose 16% in salary adjustments as a result of NUBE. He explained that a Collective Agreement is negotiated every 3 years between the plaintiff and the Malayan Commercial Banks Association (“MCBA”) which is the negotiating body on behalf of all commercial banks for the clerical and non-clerical categories in the banking industry. When a proposal is made by MCBA, the plaintiff, through its General Secretary, will announce the proposal to its members. The principal office bearers of the plaintiff would then go on a road show throughout Peninsular Malaysia to explain MCBA’s proposal and to obtain feedback as to whether the members accepted the proposal. PW 2 testified that at the road shows, the plaintiff’s members rejected MCBA’s proposal for a 14% salary adjustment **AND** to dilute the 2 months’ contractual bonus into salary and pay performance bonus at the discretion of the bank.

14. According to PW 2, at the conclusion of negotiations, the plaintiff had succeeded in negotiating a 17% salary adjustment with the 2 months’ bonus still intact. This was accepted by the membership and the Collective Agreement was concluded on 21.6.2008. As such, PW 2 states that it was false for the defendants to say that they had lost out on salary adjustments and bonus as a result of the negligence or incompetence of the plaintiff and that the defamatory words were deliberate said to put the plaintiffs in bad light.

15. During cross-examination, PW 2 was referred to a circular issued by him (CB, Part B page 13) entitled “*Maybank berhutang 80 bulan bonus kepada setiap ahli NUBE*”. He admitted that he issued the circular on behalf of the plaintiff to all NUBE members in Maybank on 18.11.2010. However, he claimed that the statement at the right hand column of page 1 of the Offending Leaflet did not address the same issues as in his circular. He maintained that NUBE had not claimed 80 months bonus from BCB although he was unsure if NUBE had claimed bonus of 10 years from any other bank based on the same Collective

Agreement as in the Maybank matter. PW 2 was also questioned about his computation of 80 months. His explanation is that based on 8 months bonus per year, there should be (8x10=) 80 months bonus for 10 years. The Collective Agreement between MCBA and NUBE was for the period from 1.1.2009 to 31.12.2011. Article 20 (1) provides for a contractual annual bonus of 2 months. Under clause (6), the Bank may also make a payment in excess of the 2 months. Thus, the total contractual bonus for the 3 years covered by the Collective Agreement is 6 months.

### *The Second Defamatory Statement*

16. The **second defamatory statement** which appears at CB, Part B, page 2, left-hand column, under the heading “EDISI SATU” reads as follows:

“Penubuhan kesatuan dalaman ini adalah atas usaha sekumpulan *Maybankers* yang mahukan sebuah kesatuan yang lebih elektif dan fokus dalam menyelesaikan permasalahan ahli-ahlinya berbanding ‘Kesatuan’ yang sibuk dengan percakaran dalaman berterusan merebut kuasa dan jawatan.

Dua dekad yang lepas kita kerap meyakinkan **kepimpinan Tertinggi NUBE** mempergunakan ahli-ahli dan Tabung Kesatuan sesuka hati untuk kepentingan peribadi. Tabung Kesatuan adalah dana hasil sumbangan gaji ahli-ahli, tetapi kepimpinan tertinggi NUBE telah secara cuai dan somborono menyalahgunakan Tabung tersebut. Masih ingatkan kita, pada akhir 90-an, kita dikejutkan dengan berita NUBE kerugian jutaan ringgit dalam pasaran saham? Selepas itu, NUBE memberi kita kejutan kedua tidak lama selepas itu. Projek Ecopark bernilai jutaan ringgit yang diusahakan oleh NUBE menemui kegagalan. Seramai 6,000 – 7,000 ahli-ahli kerugian sebanyak antara RM 1,500 – RM 2,000 seorang. Tujuan kita mengimbas kembali insiden ini kerana kita tidak mahu sejarah hitam berulang kembali. Kita perlu berhati-hati kerana kepimpinan tertinggi NUBE sekarang, Presiden, Setiausaha Agung dan Bendahari

Agung sekarang adalah sebahagian EXCO NUBE terdahulu yang meluluskan projek-projek jutaan ringgit yang gagal itu. Sekarang ini, mereka adalah penandatanganan Utama setiap transaksi NUBE.

**Setiausaha Agung NUBE sekarang** ini, dalam kempen pilihanrayanya, berjanji sekiranya dia dilantik, dia dan barisan exconya akan menyelesaikan isu Ecopark tersebut. Malangnya, apabila ahli-ahli telah memberi 'mandate' kepadanya dan kumpulanya memimpin NUBE, dia telah dengan sesuka hati menkhianati kepercayaan ahli-ahli. Apabila ahli-ahli bertanya tentang perkembangan isu Ecopark, dia sentiasa meletakkan kesalahan kepada kepimpinan sebelumnya dan mengatakan NUBE tiada dana untuk membayar gantirugi ahli atau meneruskan projek Ecopark tersebut. Tetapi yang anehnya, dia dan exco NUBE sesuka hati membelanjakan jutaan wang ringgit ahli-ahli untuk membeli Bangunan baru di Brickfields, membaikpulih Kompleks NUBE di Port Dickson, perbelanjaan pelancongan ke luar Negara, Majlis-majlis makan malam dan perjumpaan mewah. Exco NUBE sekarang tiada langsung rasa perihatin untuk menebus kerugian NUBE malahan terus menerus membelanjakan jutaan ringgit sesukahati kewangan NUBE dari yuran hasil titik peluh kerja keras ahli-ahli.

...Tujuan Utama cerita ini dibangkitkan adalah untuk menunjukkan betapa kepimpinan NUBE yang ada sekarang ini Tidak Amanah, Tidak Bertanggungjawab, Mementingkan Diri Sendiri, Bermotif Politik, Tiada ketelusam dan Tidak Demokratik. ...Edisi seterusnya akan tampil membawa pelbagai lagi penyelewengan yang telah dibuat oleh kepimpinan NUBE sekarang."

17. PW 1 testified that the second defamatory statement is defamatory because it is untrue. It accuses the plaintiff's leadership of using the members and the

funds of the plaintiff as it pleases for personal gains. It falsely accuses PW 2 of betraying the trust of the plaintiff's members. It also accuses PW 2 and the plaintiff's Exco of arbitrarily spending millions of ringgit belonging to the plaintiff's members without due process or consideration of the interests of the plaintiff's members.

18. During cross-examination, PW 2 admitted that at the election time, he did say on behalf of the Exco that the leadership would resolve the Ecopark problem. He admitted that the problem was NOT resolved. He explained that they first took over, there was a suit of more than RM 10 million against the plaintiff. They had negotiated with the main contractor and succeeded in bringing down the figure to about RM 3 million. Since then they had been paying and the balance is now about RM 1.9 million. As for the members, they had been issued with privilege cards where they would be able to enjoy facilities in 38 outlets.

19. PW 2 was referred to Rule 20 (1) (a) – (l) of NUBE's Constitution & Rules and he agreed that these provisions deal with the purposes for which the Funds of the plaintiff can be expended on. He had to concede that he did not see any provision in the Rules for the plaintiff to apply the funds for the purchase of land such as the Ecopark Project.

20. During cross-examination, PW 2 was referred to his police report (CB, Part B page 96) in relation to NUBE's losses in BBMB Securities amounting to RM 1,264,684.47. Whilst admitting that all expenditure above RM 1000-00 would require the approval of the Exco, he admitted that the Exco did not approve each and every share purchase. Although the Exco had given its approval for legitimate purchases of shares, it did not give its approval for contra trading. His police report was lodged against Johar Sulaiman, K. Sanmugam, G. Gopal Krishnan and Mohd Noor Basir. Following his Report, K Sanmugam was charged together with P. Ramani, the plaintiff's then accountant. K Sanmugam was sentenced to imprisonment but has appealed. P. Ramani was sentenced to a day's imprisonment and fined.

21. PW 2 was also cross-examined on the plaintiff's move from Jalan Ampang to Brickfields at a time when it was beset by financial woes. He offered the following reasons for the move:

- i. The location at Jalan Ampang was prone to floods;
- ii. The place was too small and narrow such that they did not even have sufficient place to conduct an Exco meeting for 28 persons;
- iii. There was no space for seminars.

Today, the plaintiff is housed in a 4-storey building with a hall that can accommodate 500 persons and an auditorium where courses can be conducted.

22. As regards the sale of the Jalan Ampang property, it was decided by the National Executive Council. It was advertised and sold to the highest bidder for RM 2 million.

23. In relation to the issue about "*membbaikpulih Kompleks NUBE di Port Dickson*", PW 2 admitted that renovation works costing about RM 1.2 million were carried out. The renovation works were undertaken because the Complex was in a run-down condition. The training centre was built in 1970 and only renovated in 2006. To the best of PW 2's knowledge, between 1970 and 2006, no renovations were carried out on the building. Approval for the renovation was obtained from the Exco. It is now used for NUBE training and also for renting out.

24. During cross-examination, PW 2 was referred to, and admitted receiving a letter dated 1.12.2010 (D1) from Messrs HK Sheela & Associates addressed to the plaintiff demanding a sum of RM 636,968.24 being a debt sum due and payable to OA Automation in respect of renovation works for the NUBE Training Centre. According to PW 2, the claim was disputed.

*The Third Defamatory Statement*

25. The third defamatory statement appears at CB, Part B, page 2, right-hand column under the heading “EDISI KEDUA” and reads as follows:

“...Jadi eloklah kita terangkan bagaimana kepimpinan NUBE yang seharusnya melindungi kerjaya ahli-ahlinya telah menyebabkan ahli NUBE kehilangan perkerjaan di bank.

Pada 2003, NUBE terlibat dalam pertikaian perindustrian dengan CIMB Bank. Bermula Oktober 2003, NUBE memulakan tindakan piket besar-besaran seluruh Negara terhadap CIMB Bank. Tanggal 21/10/2003, sewaktu tindakan piket dibuat di Bangunan CIMB Jalan Tun Perak, KL, Setiausaha Agung NUBE, J Solomon telah terlalu teruja lalu mengarahkan ahli-ahli untuk berpiket di dalam dewan lobi cawangan Tun Perak. Selaku pemimpin kesatuan, Setiausaha Agung tahu dan sedar bahawa berpiket di dalam dewan lobi bank adalah satu kesalahan dan tidak sah serta boleh membawa kesan buruk terhadap ahli yang terlibat, tetapi dia telah gagal untuk menjaga keselamatan dan kebajikan ahli-ahlinya.

...Sejak pihak Mahkamah berkeputusan bahawa pemecatan J Solomon adalah sah, ianya telah menyebabkan industri perbankan tanah air bergoncang. Ahli-ahli, bank-bank termasuklah pihak Kementerian Sumber Manusia mula mempersoalkan status J Solomon sebagai Setiausaha Agung NUBE. “BOLEHKAH J SOLOMON MEMEGANG JAWATAN TERSEBUT, SEDANGKAN DIA TELAH DIPECAT DARIPADA BANK???????” Dalam usaha agar dia terus berkuasa dan demi kepentingan peribadi, dia mengarahkan NUBE agar membuat rayuan ke Mahkamah Tinggi.

Sekitar April atau Mei 2010, J Solomon telah menggunakan Exco NUBE agar membayar gaji dan lain-lain elaun kepadanya

berjumlah RM 5,000 SEBULAN!!! Setelah mendapat kelulusan menerima jumlah gaji yang besar itu, dia mula melakukan pelbagai manipulasi. Dia sebaliknya memberitahu kepada 8 lagi ahli yang dipecat oleh CIMB bahawa pihak NUBE terpaksa memberhentikan bayaran gantirugi gaji yang dibayar oleh kesatuan dengan alasan NUBE TIADA DUIT!!! Bayangkan kekejaman yang dilakukan, 8 orang tersebut kehilangan kerja kerana arahan NUBE, sekarang ini NUBE pula menyisihkan mereka. Bagaimanakah ahli-ahli boleh mempercayai NUBE kerana NUBE enggan bertanggungjawab serta kerap memungkiri janji terhadap ahli-ahlinya. Kepimpinan NUBE kelihatannya hanya berminat untuk membelanjakan seluruh Tabung untuk kepentingan J Solomon dan exconya dan bermewah dengan gaji yang besar dan pakej pelancongan ke luar Negara. Tidak cukup dengan exco, kakitangan NUBE dibayar gaji yang tinggi dan dapat melamcong ke luar Negara menggunakan sumber daripada wang hasil yuran ahli-ahli. Bayangkanlah kawan-kawan semua, kita terpaksa bekerja keras bertungkus lumus di bank tetapi ramai daripada kita tidak mampu untuk melancong keluar Negara tetapi dengan yuran yang kita bayar, kakitangan NUBE dapat melancong 2-3 kali ke luar Negara.

NUBE sekarang sedang menghantar AJK mereka ke cawangan-cawangan Maybank untuk mengugut dan menakut-nakutkan kita agar tidak memberi sokongan kepada penubuhan kesatuan dalaman Maybank. Kita menyeru agar semua Maybankers tidak akan diperbodohkan lagi dengan penipuan dan ugutan mereka ini. Mereka dihantar oleh J Solomon kerana dia takut sekiranya Kesatuan Dalaman Maybank Berjaya ditubuhkan, dia dan exconya akan hilang segala kemewahan dan kemudahan yang selama ini mereka nikmati.”

26. PW 2 testified that the above statements were defamatory because they were untrue. They had falsely accused him of being manipulative, and the plaintiff's leadership of spending all the plaintiff's funds for PW 2's own interests and the interests of the plaintiff's Exco. It had also falsely accused the plaintiff of spending its funds for overseas holiday packages.

27. PW 2 was cross-examined about a Conference trip to New Delhi. About 10 people went for this trip which included a visit to the Taj Mahal and other places of interest. He agreed that the plaintiff's employees i.e. drivers/dispatch who were not members of the plaintiff also went for this tour. He confirmed that the Conference trip was not offered to all the members.

28. During re-examination, PW 2 disclosed that the Conference was organized by the banking union in India, the All India Banking Employees Association ("AIBA"). He claimed that it is the National Executive Council (NEC) who would decide on who would go for conferences although he admitted that he sat on the NEC. The NEC would normally select one employee of the plaintiff to go to the conference to give him exposure to trade union activities outside Malaysia. According to PW 2, all the tours to the Taj Mahal and the Agra, accommodation and food were paid for by the AIBA. Only the flight tickets were paid for by the plaintiff.

#### *The Fourth Defamatory Statement*

29. The 4<sup>th</sup> defamatory statement which appears at CB, Part B, page 3 under the heading "EDISI KETIGA" reads as follows:

"...Ketika sambutan terhadap MAYNEU semakin meningkat, 'kawan-kawan kita' di NUBE semakin 'gementar' dan telah mula menyebarkan penipuan bertujuan mengelirukan Maybankers dan ahli-ahli MAYNEU.

'Kawan-kawan' yang tidak bertanggungjawab ini turut berlagak gangster dan beberapa kali cuba mensabotaj pertemuan kita di beberapa cawangan Maybank. Mereka menyebarkan khabar yang

kita tidak akan mampu menubuhkan kesatuan dalaman di Maybank.

... Berdasarkan maklumat dan kajian yang telah kita jalankan, kepimpinan NUBE sekarang telah menggunakan sebahagian besar wang tabungan tersebut, yang sepatutnya milik ahli-ahli dan sepatutnya disimpan di dalam akaun Simpanan Tetap (Fixed Deposit). Jika kita membuat kiraan kasar, NUBE mempunyai lebih kurang 25,000 ahli seluruh Semenanjung Malaysia dimana kebanyakannya telah menjadi ahli lebih lima (5) tahun. Sepatutnya di dalam Akaun Simpanan Tetap "Benevolent Fund" ahli harus ada lebih RM 4.5 juta. **(25,000 ahli x 5 tahun keahlian x 12 bulan setahun x RM 3 sebulan = RM 4.5 juta)**. Wang Tabung ini mesti dikembalikan kepada ahli yang telah berhenti menjadi ahli NUBE. Tetapi adakah NUBE mempunyai jumlah ini di dalam Benevolent Fund' mereka?? Maklumat yang diperolehi, adakah di yakkini pemimpin NUBE sekarang telah menggunakan sebahagian besar wang tersebut untuk kepentingan peribadi mereka.

Anda fikir sendiri sampai bilakah ingin ditipu NUBE".

30. PW 2 states that the statement is defamatory because the contents are untrue. The Benevolent Fund is governed by the Benevolent Fund Rules which are attached to the plaintiff's Constitution and Rules. In accordance with the Rules. The plaintiff maintains a separate account for the Benevolent Fund. Its accounts are audited annually by both internal and external auditors who are appointed by the Triennial Delegates Conference. The audited accounts are then remitted each year to the Director General of Trade Unions in accordance with section 56 of the Trades Union Act 1959. There has been no query from the Director General of Trade Unions in respect of these accounts.
31. During cross-examination, PW 2 testified that there were ex-Union members to whom the plaintiff had refunded their Benevolent Fund subscriptions. He

agreed that the refund form did state that those who resigned could claim a refund. He told the Court that if a person resigns, provided that it is on a clean slate, the plaintiff would still refund him his Benevolent Fund subscription.

32. PW 2 told the Court that anyone reading the Offending Leaflet would think that the plaintiff's National Executive Council members, its President, General Secretary and Treasurer were all dishonest, irresponsible and mismanaging the plaintiff's funds and operations for their own personal gain. The Offending Leaflet embarrasses the plaintiff and its Exco and disparages its reputation as a trade union of workers.

33. PW 2 testified that he was aware that the Offending Leaflet was circulated to members of the plaintiff in some Maybank branches as he had received reports from the members to that effect. As such, PW 2 was of the belief that a large number of bank employees would have read the Offending Leaflet and the defamatory statements against the plaintiff and its exco. He referred to the report dated 6.12.2010 (P1) made by Jeevan s/o M Vijayan (PW 1) which can be found at page 94 of Part B in Bundle CB.

34. The plaintiff, upon discovery of the Offending Leaflet, through its solicitors, wrote a letter (CB, Part B, pages 53 and 92) to the defendants demanding-

- i. The publication of a full and unqualified public retraction and apology in terms to be agreed by the plaintiff's solicitors;
- ii. That the defendants make suitable proposals for the payment of damages to compensate the plaintiff, its General Secretary and the plaintiff's Exco for the damage to their reputation to, and to redeem their reputation; that the defendants immediately cease and desist from further publishing to causing the Offending Leaflet to be published;
- iii. To refrain from publishing similar libels in future; and

- iv. To be indemnified for legal costs which the plaintiff would have to incur.

35. When no response was received from the defendants, the plaintiff instructed its solicitors to file suit against the defendants.

36. The plaintiffs are thus claiming general damages, exemplary damages and interests, for the defendants to publish a full and unqualified retraction and apology in a major daily, and an order restraining the defendants from further publishing or causing to be published similar libels in future and costs.

37. In his Supplementary Witness Statement, PW 2 also referred to six comments made by the 1<sup>st</sup> defendant in her FACEBOOK profile page. The Comments are as follows:

- i. “NUBE cuba menghentikan penubuhan kami sb ada kepentingan peribadi dlm NUBE. Maka skrg nie ... walau mcm mane usaha diorang pown ... ahli tetap keluar dari NUBE ... (page 12 of C in CB)
- ii. “NUBE ini kesatuan menipu” (page 13 of C in CB);
- iii. “dengar cite CIMB nak buat IN HOUSE UNION ... betul ke?? ...huhh ... nmpk sgt org da malas nak layan NUBE kannn ... BYK SGT MENIPU ... lps nihhhh ... berkubur la NUBE ... for those yg pegang jawatan EXCO la, BRANCH COMMITTEE la, WORKING COMMITTEE la ... YANG ALA2 TANGKAP MUAT TUHH ... YG KNOWLEDGE POWN XDE ... “ (page 14 of C in CB);
- iv. “NUBE MENIPU KITA SELAMA INI ... SEBAB ITU DIA XKASI ORG DENGAR ... NNTI RAHSIA TERBONGKAR” (page 15 of C in CB); and

- v. “Kini NUBE membuka sendiri kesilapan demi kesilapan dasar menutup kesilapan NUBE. Kesatuan yang tidak tulus akan menyebabkan terbatalnya Kesatuan tersebut.” (page 19 of C in CB).

38. These comments were published to all the 1<sup>st</sup> defendant’s friends on ‘Facebook’ and also to all others who would have access to view the 1<sup>st</sup> defendant’s “Facebook” page. Anyone reading these comments would think that the plaintiff is a dishonest union who cheats its members; that the plaintiff’s Exco are all dishonest and have their own agenda; that the plaintiff does not pay its members from the Benevolent Fund; that the plaintiff misappropriates monies; that the plaintiff’s Exco misappropriates the monies of the plaintiff and are corrupt; that the plaintiff and its Exco are incompetent in serving its members.

39. PW 2 testified that he took steps to report the matter to the Facebook administrators and told them to remove the comments about the plaintiff. Whilst he did not personally ascertain the identity of the Facebook account’s owner, however, his office did so. It is his office which had compiled the Facebook pages. He claimed to have knowledge of who owns the account because it was shown to him. A Facebook page was shown to him and it had the name of the 1<sup>st</sup> defendant and that of several other people. He knew who operated that Facebook account because members had confirmed to him that it was the 1<sup>st</sup> defendant’s account. He admitted that he had not called these members as witnesses thinking that what he had was enough.

40. The Court notes that PW 2 was cross-examined at length. In respect of the registered address of the plaintiff at NUBE House which was purchased by the plaintiff in 2007 at a price of RM 4.2 million. PW 2 admitted that there was no mandate from the members to purchase the building. It was financed by HSBC with a loan of about 90% of the purchase price where the building was charged to secure the loan. He claimed that the plaintiff did not obtain the consent of the members to obtain the financing because it was unnecessary to do so.

41. PW 2 was asked about 'Members in Benefit' (MIB) and 'Members Not in Benefit' (MNIB). Members in Benefit refer to those members who pay their subscriptions promptly whereas Members Not in Benefit refers to those who are in arrears of more than 3 months' subscription. He agreed that Rule 4 (4) provides *inter alia* for those who are more than 3 months in arrears to be struck off the Membership Register. However, in 2002, the MCBA had stopped "check-off" which led to members not being able to pay their subscriptions promptly. In 2005, the plaintiff's Exco (which at that time included himself) decided to give the members time to pay. He admitted that the Exco were aware that its decision was not in compliance with Rule 4(4).

42. PW 2 was cross-examined at length about his appointment as General Secretary of the plaintiff. He explained that he was appointed by the then Exco of the plaintiff in 2001. He was referred to Rule 10(2) which provides for an Hon. General Secretary. He was also referred to a Notice of Extraordinary Delegates Conference dated 19.3.2010 (CB, Part B page 11) where Agenda 3 states as follows:

"3. To approve the decision made by the National Executive Council (NEC) on 1<sup>st</sup> March 2010 to employ and pay Bro. J Solomon as the General Secretary."

The principal office bearers of the NEC (the NUBE Exco) are the President, Deputy President, 4 Vice Presidents, the Hon General Secretary, the Assistant Hon General Secretary, and the Hon. General Treasurer. PW 2 confirmed that the Extraordinary Delegates Conference had approved Agenda 3.

43. PW 2 was referred to Rule 4 (1) (b) (iv) of the Rules and asked whether he was aware that under that provision, no person shall be elected to act as an officer of the plaintiff unless he has been engaged or employed for a period of at least one year in a trade or industry in which the plaintiff is connected. PW 2 admitted that this is still an effective Rule and maintains that he had been engaged or employed from 1980 to 2004. In 2004, he together with 9 others

were dismissed by the BCB over a picket in furtherance of a trade dispute. The dismissal was upheld by the Industrial Court. The High Court in a Judicial Review application upheld the Industrial Court award. The Court of Appeal upheld the decision of the High Court dismissing PW 2's appeal together with that of the 9 others over the sacking. He further informed the Court that about two years earlier, the High Court had decided against the Director General of Trade Unions in respect of his holding office. He told the Court that as Hon. General Secretary, he is paid RM 5,000-00 plus per month.

44. PW 2 agreed that between the years 1998 and 2003, he was an Exco member of the plaintiff. He was then questioned on various alleged scandals in the plaintiff.

45. In respect of the shares scandal, the estimated loss was RM 20 million. He had lodged a police report against various persons, three of whom were in the Exco of the plaintiff. One had been prosecuted but no restitution has been made.

46. It was put to PW 2 that the sole reason why he had alleged that the defendants had published the Offending Leaflet was because their names were two (2) out of the seven (7) names that were listed as contact numbers. Whilst he agreed that it was one of the reasons, he disagreed that it was the sole reason. He claimed that the Offending Leaflet was the work of the plaintiffs because their names appear together with the words: "*Sila hubungi kami:*" followed by the names. He agreed that the spelling of the 2<sup>nd</sup> defendant's name "Zayuddin bin Mohamed Yusop" is different from the spelling of "Zayuddin M Yusoff" in the Offending Leaflet. In any event, the 1<sup>st</sup> defendant was seen distributing the Offending Leaflets at the Annual Games. The other reason why PW 2 believes that the defendants were involved is because the 7 persons are members of the Protem Committee of the In-House Union, MAYNEU, and MAYNEU has been mentioned in the Leaflet. PW 2 contends that the defendants were promoting the In-House Union and degrading NUBE.

47. PW 2 admitted that he did not –

- i. Instruct his solicitors to perform discovery to find hard proof that the defendants were involved;
- ii. Conduct forensic linguistic analysis to ascertain if the Offending Leaflet was the work of one or more persons.

48. PW 2 confirmed that about 10 NUBE members were dismissed and that was because they were conducting meetings and disparaging the Union. He denied that the defendants resigned. As he remembered it, the defendants were expelled.

49. PW 2 agreed that between 2001 and 2005, there was a leadership struggle which led to there being 2 Excos and 2 offices. The dispute came to such a stage that the members did not know where to pay their membership dues and the check-off system was stopped. The dispute was referred to the Director General of Trade Unions (DGTU) but was not resolved as one faction did not want to have elections. Eventually, PW 2's faction had persuaded the Minister to form a caretaker committee and filed an application in Court to direct the DGTU to conduct elections. They lost in the High Court but won in the Court of Appeal. The DGTU conducted the elections in 2005. During that elections, PW 2 was elected as the Hon. General Secretary.

### ***The 1<sup>st</sup> Defendant's Case***

50. The 1<sup>st</sup> defendant, **Noorzeela Lamin** (DW 1) testified on her own behalf. The Court notes that she had furnished two witness statements. She admitted that they were both her witness statements and informed the Court that **she had nothing to add or to amend in them**. Following that, the Court had marked her witness statement and supplementary witness statement as WS PW 1 and WS PW 1A respectively. The 1<sup>st</sup> defendant states that she is employed as a clerk in Maybank Berhad since 16.1.1998 and had been a member of the plaintiff until she "*berhenti menjadi ahli*" on 2.11.2010.

51. In paragraph 5 of her Statement of Defence, the 1<sup>st</sup> defendant states that she is a member of MAYNEU. She describes MAYNEU as an In-House Union

representing the clerical and non-clerical workers in Maybank Berhad. She further contributed the following information as regard the formation of MAYNEU:

*“Pada 16/10/2010, pekerja-pekerja perkeranian dan bukan perkeranian di dalam Bank tersebut termasuk saya telah membuat keputusan untuk menubuhkan satu kesatuan dalaman dan mengadakan satu Mesyuarat penubuhan kesatuan.*

*Satu Jawatankuasa ‘Pro-tem’ telah dipilih semasa Mesyuarat tersebut yang dihadiri seramai 51 orang pekerja-pekerja perkeranian dan bukan perkeranian di dalam bank tersebut. Maka, kesatuan dalaman MAYNEU telah ditubuhkan pada 16/10/2010.”*

52. The 1<sup>st</sup> defendant sought to explain why a number of workers of Maybank had taken the decision to form an In-House Union. She maintained that they had the right to form the In-House Union. They had the right to join any union they chose. The advantage is that they would be able to negotiate directly with the bank without having to go through the MCBA. They would be better able to protect the rights of the clerical and non-clerical workers in Maybank and improve their welfare. They would have a more effective union than the plaintiff against whom there were many complaints and issues.

53. MAYNEU’s application for registration was sent to the Jabatan Hal Ehwal Kesatuan Sekerja (JHEKS) Selangor on 3.11.2010. The 1<sup>st</sup> defendant claimed that when the plaintiff learnt that the clerical and non-clerical workers of Maybank had made an application to register MAYNEU, they issued numerous Circulars (CB, Part B, pages 12-15) with the aim of preventing them from joining MAYNEU.

54. MAYNEU was registered on 3.1.2011. However the plaintiff is now disputing MAYNEU’s registration through an application for Judicial Review against the Director General of Trade Unions.

55. The 1<sup>st</sup> defendant denied typing, sending, publishing or causing to be typed, sent, or published any comments in Facebook. She admitted that she knew Mohd Faizal Mohd Salleh, Shahlan Azie, Yasir Radzi, Jesni Mahmood, Rahayu Abd Rahim and Mohd Razlan Ramlee as they were her Facebook friends. However, she denied making the comments to them as alleged by the plaintiff in the Statement of Claim.

56. In respect of the Offending Leaflet, the 1<sup>st</sup> defendant admitted having seen and read the leaflet when she attended the Maybank Games in Bangi from 3-5 December 2010. She admitted that she was present together with her family at the Maybank Annual Games Dinner that was held on 5.12.2010. She attended in order to meet with colleagues from Penang who had earlier asked her to meet up with them. However, she denied publishing the said leaflet. She further denied distributing the leaflet on 3-5 December 2010 during the Maybank Games. She claimed that she had read pages 1-5 separately when her friends gave them to her before she saw them in the leaflet.

57. The 1<sup>st</sup> defendant admitted that she had read the Offending Leaflet and knew that her name appeared on page 1 of the leaflet. She explained that she did not lodge or make any complaint about her name appearing in the leaflet because she did not know who the author of the leaflet was. When asked during cross-examination about the names that appeared below the words: "*Sila hubungi kami.*", she admitted that Wan Ahmad Nazrul bin Wan Nawi is the president of MAYNEU, Sazali Hj Mohamed is the Vice-President and Rajagopal a/l Rakkiah is the General Secretary. Norzeela Lamin is herself and the telephone number below her name is her number and Zarudin Johari is the Treasurer. However she claimed not to know who "Zayuddin M Yusoff" is. She denied that this is the 2<sup>nd</sup> defendant, claiming instead that the 2<sup>nd</sup> defendant's name is spelt differently (Zayuddin bin Mohamad Yusop). In any event, she admitted that the "Zayuddin" in her committee is a Committee member. Jesni Mahmood, the last name in the list, is also a Committee Member. During cross-examination, she agreed that the seven (7) names are the names of the members of MAYNEU and that her name and telephone number appears at page 1 of the offending Leaflet. Despite all that, she

nevertheless denied that EDISI SATU was issued by the Protem Committee and contends that there is no signature on it to indicate who had issued EDISI SATU.

58. The 1<sup>st</sup> defendant admitted that she is aware that NUBE had taken action against the 1<sup>st</sup>, second, third and seventh names in the list. She admitted that she was present during the trial of the other MAYNEU members and that she had talked with them. However she claimed that she could not remember if she was present in Court when Rajagopal Rakkiah gave evidence. She claimed that she did not know if Rajagopal Rakkiah had not only admitted to producing the leaflet but also to distributing it. She disagreed with Ragagopal Rakkiah that the leaflet was done by MAYNEU. She claimed not to know if the leaflet was widely distributed during the Maybank Annual Games in Bangi.

59. The 1<sup>st</sup> defendant was shown an Affidavit affirmed by Rajagopal Rakkiah on 3.2.2012 on behalf of all the other plaintiffs, including herself. She admitted authorizing him to affirm the affidavit on her behalf.

60. The 1<sup>st</sup> defendant was asked about paragraph 11 of her Statement of Defence which contains *inter alia* the following words:

*“Defendan menyatakan bahawa **sekiranya ia adalah benar** bahawa Defendan telah menedarkan risalah tersebut ...”*

but she claimed not to understand the meaning of the words “**sekiranya ia adalah benar**”. She was also referred to paragraph 14 of the Defence and admitted that in that paragraph she was pleading that the contents of the leaflet were true. The Court notes that paragraph 14 is more of a defence of justification, fair comment and qualified privilege.

61. According to the 1<sup>st</sup> defendant, the contents of the Offending Leaflet were on matters which had been raised by others many times before. Someone had compiled all those issues in the leaflet to be distributed at the Maybank

Games. During cross-examination, she disagreed that the leaflet was to promote MAYNEU and claimed not to know what the leaflet was for.

62. The 1<sup>st</sup> defendant was referred to the words "*Salam Hormat daripada MAYNEU*" appearing at page 3 of the Offending Leaflet. She denied that these words suggest that the Offending Leaflet was from MAYNEU. She claims that when she reads it "I do not know who it is from". The Court finds this to be a most ridiculous answer. She further denied that the words "*Terima kasih kerana sokongan padu yang diterima dari majority kakitangan diseluruh Semenanjung Malaysia di dalam penubuhan Kesatuan Pekerja-pekerja Bukan Eksekutif Maybank (MAYNEU)*" in EDISI KEDUA suggests that the leaflet was from MAYNEU. She further denied that the words '*Kebelakangan ini begitu kuat kedengaran khabar penubuhan "kesatuan dalaman Maybank" yang dikenali dengan nama "Kesatuan Pekerja-pekerja Bukan Eksekutif Maybank."*' and "*Sementara itu, kita merayu agar sahabat Maybankers terus memberi Sokongan didalam penubuhan "Kesatuan Pekerja-pekerja Bukan Eksekutif Maybank"*" in EDISI SATU suggest that the leaflet is a product of MAYNEU.

63. Whilst the 1<sup>st</sup> defendant denied defaming the plaintiff as she was neither the author nor the distributor of the Offending Leaflet, nevertheless she felt that there was basis in the statements contained in the leaflet.

64. In her 2<sup>nd</sup> witness statement (WS DW1A), the 1<sup>st</sup> defendant states that she saw the leaflet from a friend. The leaflet had 5 pages. The first page dealt with the formation of MAYNEU and the issue about the 80 months bonus. The second page dealt with issues about the failure of the Ecopark project, travel/holiday packages, the dismissal of the General Secretary and 9 other workers of CIMB Bank and the gangsterism of the plaintiff and its Exco. The third page dealt with problems concerning the Benevolent Fund. The fourth page contained questions and answers about MAYNEU and issues concerning the In-House Union. The fifth page showed photographs of the NUBE building and a banner with the words "Maniam 012-3716150". That page also dealt with the sale of the NUBE building at Jalan Ampang which had been left empty for nearly four years. According to the 1<sup>st</sup> defendant, Maniam is PS Maniam, an

owner of an insurance agency who acts as the middleman between the plaintiff and insurance companies such as Great Eastern and Etiqa Kad Perubatan Keluarga.

65. The 1<sup>st</sup> defendant denied that the statements In EDISI SATU, EDISI KEDUA and EDISI KETIGA were meant to promote MAYNEU. She denied that the word “*Kami*” in EDISI KETIGA refers to MAYNEU but claims that it refers to the writer of the statements.

66. The 1<sup>st</sup> defendant agreed that the role of Protem committee of MAYNEU is to take care of its members. Before MAYNEU could represent anyone, it had to gain recognition. She admitted that MAYNEU had not yet obtained recognition from Maybank. The Protem committee’s role was to get members so that it could gain recognition. Notwithstanding that, she denied that the Offending Leaflet was produced by the MAYNEU Protem committee, which included herself, in order to get more members. She further denied distributing the leaflets.

67. The 1<sup>st</sup> defendant was cross-examined about paragraphs 17 and 18 of her Statement of Defence in which she had admitted distributing the leaflets. The Court records the following exchange:

**Q:** According to your pleadings, you distributed the leaflets. How do you explain this?

**A:** No, I did not distribute.

**Q:** Are you saying that paragraph 17 of your defence is a lie?

**A:** Yes.

**Q:** Is paragraph 18 which states that you distributed but only to Maybank employees also a lie?

**A:** Yes.

68. The 1<sup>st</sup> defendant told the Court that she knew about the dismissal of PW 2 by BCB through an article in the Malay Mail dated 29.4.2004. According to the paper, he was dismissed for illegal picketing on 28.4.2004 together with 9 other workers of BCB. She knew that their application for judicial review was dismissed by the High Court through an article in The Star dated 22.10.2010.

69. In relation to the 80 months bonus issue, the 1<sup>st</sup> defendant stated that the statement is true. She claimed that she had been approached by a NUBE representative to sign a petition to claim 80 months bonus. According to her, the plaintiff had rejected an offer of a 33% pay increase and performance bonus during the negotiations for the 2006-2008 Collective Agreement. She claimed that compared with the 17% pay increase and 2 months contractual bonus accepted by the plaintiff, the workers would have lost 16%. Apart from the loss of 16%, the workers would have also lost in terms of overtime, EPF and housing loan entitlement. When queried as to the source of her evidence about the plaintiff rejecting a 33% pay rise, she claimed that it was from the NUBE website. She had to agree that there was no evidence or proof before the Court as to what she was saying. She claimed that she had voiced her protests against NUBE's alleged rejection of the 33% pay rise but was unable to furnish any proof of her protests.

70. In relation to the issue on the Ecopark project, the 1<sup>st</sup> defendant relied on an article in The star dated 14.8.2008 which states that more than 11,000 people had lost between RM 1,500 and RM 5,0000 as her basis for saying that the Ecopark project had failed. Those who had invested in the Ecopark project comprise NUBE members as well as members of the public. However, she agreed that she had no evidence to support her statement.

71. The 1<sup>st</sup> defendant was of the view that the purchase of the building in Brickfields was "*aneh*" because there was no mandate. When asked to show the provision in the Constitution which says that mandate from members was required for the purchase of the building, the 1<sup>st</sup> defendant was unable to find the provision. She was also queried as to her objections to the renovations to the Complex NUBE in Port Dickson. She claimed that most of the NUBE

members did not agree with it. When asked for proof of what she was saying, the 1<sup>st</sup> defendant could only offer: "They were talking".

72. The 1<sup>st</sup> defendant admitted that she was aware of the case between NUBE & Ors v The New Straits Times Press & Ors in Sivil Suit No. S 23-34-2007. She disagreed that the basis for the statements about the repairs to the NUBE building were based on the New Straits Times article on 4.9.2006 (CB Part B, page 10) which had been retracted by the maker who had also apologized (CB2, page 95).

73. In respect of the statement about the travel/holiday packages, the 1<sup>st</sup> defendant claimed that the statement had basis. She claimed that the New Delhi Conference was attended by 7 representatives from the plaintiff as well as an employee of the plaintiff. She raised the question as to why the plaintiff had to be represented by 7 persons when other unions were only represented by the President and the General Secretary. She also questioned as to why a non-member of the plaintiff (a driver/despatch) should also attend the Conference. Her proof of this issue was: "I have their pictures". However, she agreed that these pictures were not before the Court.

74. When asked during cross-examination for evidence or proof as to the "*Majlis-majlis makan malam*", "*perjumpaan mewah*", "*terus menerus membelanjakan jutaan ringgit sesukahati kewangan*", she had to admit that there was no evidence of this before the Court.

75. In relation to the statement at page 14 of the Bundle of Pleadings to the effect that the plaintiff had "*mengugut dan menakut-nakutkan kita agar tidak memberi sokongan*" to the In-House Union, the 1<sup>st</sup> defendant states that this is supported by police reports which had been made by Zulkifli bin Ali dated 10.2.2011 to the effect that the plaintiff had tried to prevent him and his friends in Malacca from campaigning about the In-House Union. Noorhashina bt Mohamed Tajuddin had lodged a police report dated 18.2.2011 after a representative of the plaintiff had shouted "You watch out Shina" when she and other workers in the Wisma Hangsam branch of Maybank had refused to

meet with him as they were not members of the plaintiff but members of MAYNEU. Azwan Hazrulniza bin Abu Hanipah lodged a police report dated 25.2.2011 about an incident at the Setiawangsa branch of Maybank where representatives of the plaintiff had “*memarahi, mengugut dan memaksa*” workers to listen to a talk to be given by a representative of the plaintiff. Noreffendi bin Hawi had lodged a report dated 23.2.2011 alleging that a representative of the plaintiff had visited the Wisma Hangsam branch of Maybank in an attempt to force the workers to rejoin the plaintiff. On arrival at the branch, one of the plaintiff’s representatives was alleged to have uttered the following words: “You watch up!! *Jangan sampai kena tangkap!!*”

76. Based on all these police reports, the 1<sup>st</sup> defendant testified that the plaintiff was attempting to prevent the formation of MAYNEU by threatening the workers. However, during cross-examination, she had to agree that all these reports were made in 2011 and as such, could have nothing to do with the Offending Leaflet.

77. Apart from sending representatives to the branches to threaten the workers, the plaintiff had also filed an application in the High Court to cancel or revoke the registration of MAYNEU. The plaintiff’s application was dismissed on 24.8.2011. On 25.8.2011, NUBE filed an application for “*semakan semula*” of the High Court decision as well as an interim stay against the decision of the High Court. As a result of the stay, MAYNEU was unable to continue operations and the rights of MAYNEU were thus affected.

78. According to the 1<sup>st</sup> defendant, the statement in the Offending Leaflet about the Benevolent Fund in the leaflet had basis. She claimed that as a former member of the plaintiff she had never been given the Statement of Accounts of the Benevolent Fund nor had she ever been told how much was in the Fund. On 3.11.2010, she had made a claim on the Fund but, to date, had not received a refund of her subscriptions. Many members including Ibrahim bin Norbit had also not received their claims. The 1<sup>st</sup> defendant was of the view that if the statement in the leaflet was defamatory, the plaintiff should provide proof of the Benevolent Fund to Court.

79. During cross-examination, the 1<sup>st</sup> defendant at first denied that she was alleging that the plaintiff was abusing the Benevolent Fund. However, when referred to Answer 44 of WS PW 1A, she agreed that there was a suggestion in her answer that NUBE was misusing the Benevolent Fund. She claimed that there is basis in the third last paragraph of page 3 of CB, Part B, that the monies in the Fund had to be placed in Fixed Deposit. However, she was unable to show any provision in the Benevolent Fund Rules which states that the monies had to be kept in Fixed Deposit. She eventually agreed that there was no such provision in the said Rules.
80. The 1<sup>st</sup> defendant states that her claim on the Benevolent Fund on 3.11.2011 was based on her resignation from NUBE. She was referred to Rule 6 of the Benevolent Fund Rules and had to admit that there is no provision for getting back a refund on her subscription upon resignation. She told the Court that she believed there were issues about the operation of the Benevolent Fund because she had sent in her claim and heard nothing.
81. The 1<sup>st</sup> defendant told the Court that the plaintiff's defamation suit was without basis because all the statements in the leaflet about the plaintiff were clear and true ("jelas dan benar"). She challenged the plaintiff to provide documentary proof to Court that the statements were untrue and defamatory.
82. The 1<sup>st</sup> defendant further alleged that a group of officers and employees of the plaintiff had attempted to start fights with the staff of Menara Maybank at Starbucks which was located at the foyer of Menara Maybank. There were quarrels with the security personnel. She was targeted by this group where a few of them had chased her and taken her photograph without her permission. She had lodged a police report in respect of that incident.
83. During cross-examination, the 1<sup>st</sup> defendant was referred to paragraph 6 of her Statement of Defence which cross-referred to paragraphs 5-9 of the Statement of Claim. Paragraphs 5-9 of the SOC relates to the 1<sup>st</sup> defendant's defamatory publication in Facebook. Notwithstanding the contents of paragraphs 6, 7, 8 and 9 in her Statement of Defence, the 1<sup>st</sup> defendant did not admit to placing

the comments in her Facebook. However, she admitted to having a Facebook account and 6 Facebook friends where all comments posted on her Facebook page could be read by her friends.

84. The 1<sup>st</sup> defendant was referred to the Facebook entries at CB, Part C, pages 4 – 47. Referring to page 4 (comment 1), the 1<sup>st</sup> defendant testified that she did not know Lisda Sadali. She claimed that she did not post the comment under her name on that page. She explained that although the Facebook account was opened under her name, however it was not operated by her but by her younger sister named Sufiah Lamin. Sufiah Lamin did not work with Maybank but with Telecoms. The question arises as to why Sufiah Lamin, an employee of Telecoms, should be posting comments about Maybank, MAYNEU and NUBE matters. Similarly, in respect of the Facebook comments at pages 6 (comment 1) and page 7 (comment 3), the 1<sup>st</sup> defendant claimed that it is her sister's posting. In respect of page 10 (comments 4 & 5) and page 12 (comment 8), it is her evidence that they are not her comments. She offered an explanation that "maybe someone hack my Facebook". In respect of page 10 (comment 6), page 11 (comment 7), page 13 (comments 9, 10 & 11), page 14 (comments 12 & 13), she again stated that these were not her comments.

85. The 1<sup>st</sup> defendant told the Court that she had reported to the Facebook administrators that somebody had hacked into her Facebook account. She was asked for her report:

**Q:** Where is the report?

**A:** Don't have it now.

Despite being told to produce it, and after time had been given to her to produce it, the 1<sup>st</sup> defendant was not able to produce the report that she made to the Facebook administrators. Much later, she offered the explanation that she had not brought the report because it was made on line.

86. During cross-examination, the 1<sup>st</sup> defendant was referred to CB, Part C, page 15, where the name Jesni Mahmood appears in the Facebook posting on

8.12.2010 at 11.43 pm. She admitted that there is a person named Jesni Mahmood in the MAYNEU Protem Committee. She claimed that comment 14 posted at 11.44 pm in response to Jesni Mahmood's posting was not her comment. She claimed that she did not know whose comment it was or who had hacked into her account and posted the comment in her name. Similarly, she claimed that comment (15) posted at 11.56 pm was not her comment and she did not know whose comment it was.

87. The 1<sup>st</sup> defendant was cross-examined over all the Facebook postings on 9.12.2010, 10.12.2010, 16.12.2010, 1.12.2010, 2.12.2010, 25.11.2010, 21.11.2010, 20.11.2010, 21.11.2010, 18.11.2010, 19.11.2010, 4.11.2010, 16.10.2010 and 20.10.2010. Her response quite simply was that they were all not her comments, she did not know whose comments they were and that someone must have hacked into her account. However, she admitted that she did not lodge any police report after she found out about the alleged hacking.

88. The 1<sup>st</sup> defendant claimed that she only realized that her account had been hacked when she received the photocopy of pages 4-47 of Part C of CB. She claimed that her sister (who had posted comments in late December 2010 to early January 2011) had never informed her that there were strange entries in the her Facebook account. The Court finds the 1<sup>st</sup> defendant's testimony about not knowing about the comments posted on her Facebook extremely difficult to believe.

### ***The 2<sup>nd</sup> defendant's Case***

89. The 2<sup>nd</sup> defendant, **Zayuddin bin Mohamad Yusop**, categorically denied making or publishing the Offending Leaflet or causing it to be published. He denied distributing the said leaflet at the Maybank Annual Games from 3-5 December 2010. Whilst he had attended the Opening Ceremony on the 3<sup>rd</sup>, he denied being present on the 5<sup>th</sup> of December. Whilst maintaining that he did not make or publish the Offending Leaflet, the 2<sup>nd</sup> defendant maintained that its contents were all true and as such the issue of defamation would not arise.

90. The 2<sup>nd</sup> defendant admitted having seen and read the Offending Leaflet which was given to him by a friend in Maybank whose name he could not recall.
91. Referring to the issue of the 80 months bonus, the 2<sup>nd</sup> defendant said that it was not true. He reiterated the 1<sup>st</sup> defendant's evidence about NUBE rejecting a 33% pay increase and accepting a 17% increase, thus causing NUBE members to lose 16%. The Court does not intend to repeat his evidence. During cross-examination, he admitted that he had no proof that the plaintiff had rejected a 33% pay rise.
92. The 2<sup>nd</sup> defendant also reiterated the testimony of the 1<sup>st</sup> defendant in relation to the dismissal of J Solomon together with 9 other workers of BCB for an offence of unlawful picketing on 28.4.2004. He knew about the dismissal from a newspaper article in The Malay Mail dated 29.4.2004.
93. The 2<sup>nd</sup> defendant reiterated the evidence of the 1<sup>st</sup> defendant in relation to the Ecopark Project and the promises of J Solomon during the elections campaign. The Court does not intend to repeat his evidence. During cross-examination, he admitted that he did not have any proof as to the amount of losses of the investors in the Project.
94. The 2<sup>nd</sup> defendant reiterated the evidence of the 1<sup>st</sup> defendant in relation to the threats and actions to frighten the plaintiff's members from giving their support to MAYNEU. He repeated what had allegedly happened to Noorhashina bt Mohamed Tajuddin, Zulkifli bin Ali, Azwan Hazrulniza bin Abu Hanipah and Noreffendi bin Hawi and the reports that were lodged by them. He agreed the these reports were lodged between 10.2.2011 and 25.2.2011 and thus had no connection with the Offending Leaflet in this case. The Court does not intend to repeat this evidence here.
95. The 2<sup>nd</sup> defendant told the Court that he stopped being a member of the plaintiff in November 2010. He complained that he had not received any refund from his Benevolent Fund subscriptions since the date he left the plaintiff.

96. The 2<sup>nd</sup> defendant was asked about what he felt was strange (“*aneh*”) about the purchase of the new building in Brickfields. He repeated almost exactly the same evidence as the 1<sup>st</sup> defendant about the Exco needing to get the consent of the members before buying the new building. When asked to show the provisions in NUBE’s Constitution which states that the Exco was required to obtain the mandate from the members, his response was that there was no such provision. He was also unable to furnish any proof that the purchase of the building in Brickfields was contrary to the NUBE Constitution.

97. The 2<sup>nd</sup> defendant was of the view that there was nothing wrong about renovating the NUBE Complex. However, in relation to buying a new building in Brickfields, he was of the view that NUBE should have returned the members’ investment in the Ecopark Project before buying the building since at that time NUBE already had its own building.

98. The 2<sup>nd</sup> defendant admitted that he had no proof as to the overseas holiday expenses incurred by Solomon and the NUBE Exco. He had also no proof in relation to the “*Majlis-majlis malam dan perjumpaan mewah*” which the plaintiff was alleged to have held. He had no proof that the NUBE Exco was spending millions of RM as they pleased. He had no proof that the NUBE leadership had used up a major portion of the funds from the Benevolent Fund. He agreed that there was nothing in the Rules of the Benevolent Fund which states that the monies of the fund have to be kept in Fixed Deposit. In light of these foregoing answers, the following exchange was recorded:

**Q:** *Tadi Encik Zayuddin telah tidak dapat menunjukkan bukti bahawa apa yang disebut dalam risalah ini benar. Kalau begitu, macamana Encik Zayuddin dapat kata segala maklumat dalam risalah ini benar?*

**A:** *(tidak dapat jawab)*

99. The 2<sup>nd</sup> defendant sought to distance himself from paragraph 13 of his own Defence on the grounds that it was “*dibuat oleh bekas peguam saya*”. Paragraph 13 reads as follows:

“Defendan menegaskan bahawa berdasarkan fakta yang benar, sebagai ahli jawatankuasa kerja MAYNEU untuk memenuhi tanggungjawab moral dan/atau sosial telah serahkan risalah-risalah tersebut yang mengandungi suatu komen tentang Plaintiff kepada pekerja-pekerja Maybank.”

The Court noted that if indeed the Defence filed was **NOT** his Defence, this would have very serious repercussions. On being queried by the Court as to whether he had lodged a report with Bar Council, the 2<sup>nd</sup> defendant admitted that he had not done so. He nevertheless maintained that paragraph 13 of his own Defence is untrue.

100. Similarly, the 2<sup>nd</sup> defendant sought to say that paragraph 14 of his Defence was not true. In Paragraph 14, the 2<sup>nd</sup> defendant pleads, *inter alia*, as follows:

“Defendan tidak serahkan risalah tersebut kepada orang awam dan penagihannya adalah terhad kepada pekerja-pekerja Maybank dimana sebilangan daripada mereka (yang layak) telahpun letak jawatan dari Plaintiff pada ketika itu.”

The 2<sup>nd</sup> defendant admitted that he had referred to his Statement of Defence at the time of preparing his witness statement, WS DW 2. The witness statement was prepared in September 2011 after discussions with his present solicitors. He further told the Court that at the time of preparing the Supplementary Witness Statement (WS DW 2A) in October 2011, he had again referred to his Statement of Defence.

101. During re-examination, he informed the Court that “*Saya baru submit pengakuan*”, referring to the fact that he had “*baru fail*” a “*Cadangan Pembelaan Terpinda*”.
102. The 2<sup>nd</sup> defendant was referred to CB, Part B, page 1 and to the name “Zayuddin M Yusoff” and the telephone number “019-3931487”. He was asked whether, apart from the spelling of “Yusoff”, that name and telephone number refers to him. His answer was a surprising: “*Tak pasti*”. However he admitted that the other names in the list all belonged to the Committee members of MAYNEU. He admitted that when he saw the leaflet and his name and handphone number on page 1 under “*Sila hubungi kami:*”, he did not take any steps to distance himself from the leaflet. He claimed not to be aware that Rajagopal Rakkiah, who is listed as No. 3 in the list of names, was then the Setiausaha Agong of MAYNEU or that he had, in an action against him by NUBE, affirmed an affidavit admitting that the Offending Leaflet was distributed by MAYNEU in order to promote MAYNEU.
103. However, the 2<sup>nd</sup> defendant admitted that he is aware that the seven (7) persons named in the list at page 1 had commenced a defamation suit against NUBE and J Solomon *vide* 22NCVC-1032/10-2011. When shown an affidavit affirmed by Rajagopal Rakkiah, the 2<sup>nd</sup> defendant confirmed that he had authorized Rajagopal to affirm that affidavit on his behalf. He was referred to paragraphs 7, 8, & 9 of Rajagopal’s affidavit and he confirmed that the 1<sup>st</sup> page of “RR-1” was issued by MAYNEU for the purpose of promoting MAYNEU. He also confirmed that page 1 in “RR-1” is the same as page 1 in the Offending Leaflet.
104. With reference to EDISI SATU and EDISI KEDUA, the 2<sup>nd</sup> defendant denied that reading the two Editions as a whole, it was obvious that they were published by MAYNEU and an appeal for support for the formation of MAYNEU. With reference to EDISI KETIGA, he denied that the Questions and Answers were meant to promote MAYNEU or that they were issued and published by MAYNEU.

105. The Court notes that in relation to the Offending Leaflet, the defendants had repeatedly sought to explain that they were not the authors of the leaflet. As correctly pointed out by learned counsel for the plaintiff, the issue is not the authorship of the Offending Leaflet but its distribution.

***Evaluation of the Evidence and Findings***

106. In coming to a decision in this case, the Court has carefully perused the evidence adduced by both parties, paying special attention to the documentary exhibits in this case.

107. The plaintiff's claim against the two defendants is based on defamation. The plaintiff alleged that the defendants had published or caused to be published the Offending Leaflet, comprising 5 pages, which contains defamatory comments about the plaintiff and the plaintiff's National Executive Council members. Against the 1<sup>st</sup> defendant, Norzeela binti Lamin, there is a further allegation of publishing or causing to be published defamatory comments against the plaintiff and its Exco in her Facebook webpage.

108. The Court admits to having some difficulty with the defendants' Defences. Both defendants have denied publishing the Offending Leaflets. This can be seen in paragraph 10 of the 1<sup>st</sup> defendant's Statement of Defence and paragraph 6 of the 2<sup>nd</sup> defendant's Statement of Defence. However, what adds difficulty to the equation is the fact that the 1<sup>st</sup> and 2<sup>nd</sup> defendants had, in paragraphs 14 and 10 of their respective Defences, gone on to plead Justification, Fair Comment and Qualified Privilege. These are defences which are normally pleaded where publication of the offending document is not in issue. To further compound matters, both defendants had, at paragraphs 17 & 18 and paragraphs 13 & 14 respectively of their respective Defences, actually **admitted distribution** of the Offending Leaflet to third parties, *albeit* limited to the employees of Maybank.

109. As far as the defamatory comments in the 1<sup>st</sup> defendant's Facebook webpage is concerned, the 1<sup>st</sup> defendant had in paragraphs 6 & 7 of her Statement of Defence **admitted to the publication** of the said defamatory

comments. The Court will, in due course, deal with each of the two areas of alleged defamation separately.

### **The Law**

110. What are the ingredients of a cause of defamation? In **Ayob bin Samad v TS Sambanthamurthi** [1989] 1 MLJ 315, His Lordship Mohamed Dzaidin J (as His Lordship then was) had held that in defamation cases, the burden lies on the plaintiff to prove that-

- i. The words are defamatory;
- ii. The words refer to the plaintiff; and
- iii. The words are published.

111. What is a defamatory statement? The answer can be seen in a number of cases which have dealt with this question. In **Tun Datuk Patinggi Haji Abdul-Rahman Ya'kub v Bre Sdn Bhd & Ors** [1996] 1 MLJ 393, His Lordship Richard Malanjum J (as His Lordship then was) stated that-

“As to whether the words complained of in this case were capable of being and were, in fact, defamatory of the plaintiff, the test to be considered is whether the words complained of were calculated to expose him to hatred, ridicule or contempt in the mind of a reasonable man or would tend to lower the plaintiff in the estimation of right thinking members of society generally (see *JB Jeyaretnam*). Mohamed Azmi J (as he then was) in *Syed Husin Ali v Sharikat Pencetakan Utusan Melayu Bhd & Anor* [1973] 2 MLKJ 56 at p 58 said:

Thus, the test of defamatory nature of a statement is its tendency to excite against the plaintiff the adverse opinion of others, although no one believes the statement to be true. Another test is: would the words tend to lower the plaintiff in the estimation of right-thinking members of society generally? The typical type of defamation is an

attack upon the moral character of the plaintiff attributing crime, dishonesty, untruthfulness, ingratitude or cruelty.

Words could still be defamatory even if they did not really lower a plaintiff in the estimation of those to whom they were published. The law looks only to its tendency (see *JB Jeyaretnam v Goh Chok Tong; Syed Husin Ali v Sharikat Pencetakan Utusan Melayu & Anor*).

112. In the Court of Appeal case of **Chok Foo Choo @ Chok Kee Lian v The China Press Bhd** [1999] 1 MLJ 371, His Lordship Gopal Sri Ram JCA held that-

“... the test which is to be applied lies in the question: do the words published in their natural and ordinary meaning impute to the plaintiff any dishonorable or discreditable conduct or motives or a lack of integrity on his part? If the question invites an affirmative response, then the words complained of are defamatory.”.

### ***The Alleged Defamatory Comments on Facebook***

113. The Court will now deal with the alleged publication of defamatory comments against the plaintiff and its Exco in her Facebook webpage by the 1<sup>st</sup> defendant.

114. The 1<sup>st</sup> defendant submits that all the contents of the Facebook entries at pages 4 to 47 of CB, Part C are hearsay and inadmissible and cannot therefore be accepted by the Court. In the first place, Part C consists of Non-Agreed documents. Further, the 1<sup>st</sup> defendant pointed out that PW 2 had admitted that the documents were given to him by one of the plaintiff's staff. In light of the fact that the said staff was not called as a witness before the Court to be cross-examined as to his recovery of the alleged defamatory comments, as to how and when the alleged defamatory statements were recovered, it is contended that the Facebook comments are inadmissible. To further

compound matters, the 1<sup>st</sup> defendant alleges that the said comments are unclear thus making the calling of the person who downloaded the comments to be infinitely necessary. Learned counsel for the defendants submitted that since the plaintiff had failed to call the said witness, section 114(g) of the Evidence Act 1950 is invoked and there is an adverse inference that if that witness is called, the evidence adduced would not have been favorable to the plaintiff.

115. In this regard, learned counsel for the 1<sup>st</sup> defendant had referred the Court to the case of **Nagandran Kalianna Gaunder v Melinda Alison Monteiro & Ors** [2011] 1 LNS 466 where the plaintiff was suing the defendants for defamation as a result of alleged statements made by the 1<sup>st</sup> defendant and published in the Internet. In that case, the plaintiff referred to ID3 (the alleged defamatory e-mail) which was marked as ID3 because the maker of the document was not called as a witness. The question arose as to whether oral evidence of the contents of ID3 is admissible without proving the contents of the said document. The Court in that case relied on the decision in **Allied Bank (M) Bhd v Yau Jiok Hua** [1998] 2 CLJ 33 in coming to a decision that because the maker of ID3 was not called to give evidence, ID3 is hearsay and cannot be admitted as evidence.

116. The 1<sup>st</sup> defendant further contends that the plaintiff had failed to take any steps to check the details of the owner of the Facebook account or the internet address with the Facebook administrator to confirm that the account belongs to the 1<sup>st</sup> defendant. And since this has not been done, the 1<sup>st</sup> defendant contends that the plaintiff's claim of defamatory comments in relation to the Facebook entries has not been proved.

117. The plaintiff's response to this is simple: In paragraphs 6 & 7 of her Statement of Defence, the 1<sup>st</sup> defendant had admitted to publication of the Facebook comments in her Facebook account. The plaintiff states that since parties are bound by their pleadings, the 1<sup>st</sup> defendant cannot now deny having published or caused to be published the Facebook comments.

118. The Court has carefully perused the Statement of Defence of the 1<sup>st</sup> Defendant. Notwithstanding the fact that Notice of Change of Solicitors had been filed on 19.2.2011 and an Amended Notice of Change of Solicitors dated 28.9.2011 filed on 25.10.2011, it was only on 26.3.2012, **after the hearing of all the witnesses**, including the evidence of both defendants, had been completed that counsel for the defendants filed an application *vide* Summons in Chambers for leave to amend and file Amended Defences in respect of both defendants. The Court had refused leave to amend, against which decision the defendants had lodged appeals. Grounds of Decision had duly been rendered by the Court in respect of that appeal and the Court does not propose to go into that matter again here.

119. In light of the stand taken by the Court in refusing leave to amend the Defences, the Court must take the Defences of the two defendants as they stand.

120. There is no dearth of authorities which have clearly stated the legal principle that parties are bound by their pleadings. In the case of **Anjali Ammal & Anor v Abdul Kareem** [1960] 1 MLJ 22, the Federal Court quoted page 31 of *Halsbury* (3<sup>rd</sup> ed.) Vol. 3 to the effect that-

“A party is bound by his pleadings unless he is allowed to amend them, and he is therefore bound by his particulars, which are, in effect, part of the pleadings under which they are delivered.”

121. The Court further notes the case of **Thian Oon Kin v Rekarya Consultant Group & Ors** [2010] 8 MLJ 726 cited by learned counsel for the plaintiff. There, the Court held that once the first defendant had admitted to receiving payments from Pernas Jaya Sdn Bhd, it was not open to him to deny it. The Court had further found that the first defendant's stance that no monies were received by them was not only unpleaded, but was in fact admitted.

122. So too in this case. The Court has carefully perused the Statement of Defence of the 1<sup>st</sup> defendant. Paragraphs 6, 7 and 9 of the Defence are very pertinent here and for ease of reference is reproduced below:

“6. Berkenaan perenggan 5 hingga 9 Pernyataan Tuntutan, Defendan menegaskan melainkan bahawa **beliau hanya meletakkan komen-komen tersebut di dinding halaman peribadi ‘FACEBOOK’ beliau**, segala pernyataan Plaintiff yang lain di perenggan-perenggan berkenaan adalah dipertikaikan dan Plaintiff diletakkan atas bukti yang kukuh.

7. Defendan menegaskan bahawa **komen-komen tersebut hanya di letakkan di dinding halaman peribadinya** dan tidak mempunyai niat untuk menyebarkan dan/atau menyedarkan kepada sesiapa pun termasuk enam (6) orang yang dinamakan di perenggan 10 Pernyataan Tuntutan.

9. Berkenaan perenggan 13 Pernyataan Tuntutan, melainkan bahawa **Defendan meletakkan dalam dinding halaman peribadi ‘FACEBOOK’ beliau** dimana hanya individu-individu yang terhad [dalam senarai rakan] yang dapat akses kepadanya, kandunagn perenggan 13 yang lain adalah dipertikaikan dan Plaintiff adalah diletakkan atas bukti yang kukuh.”

(Emphasis added)

123. The Court is satisfied that *vide* these two paragraphs, the 1<sup>st</sup> defendant had clearly admitted to placing the impugned comments on her Facebook page. The fact that she had placed those comments is NOT in issue. Her only qualification in paragraph 7 is as regards the lack or absence of intention to “*menyebarkan dan/atau mengedarkan*” the comments to **anyone**, including the 6 persons mentioned in paragraph 10 of the Statement of Claim. The Court notes that paragraph 7 contradicts paragraph 9 where the 1<sup>st</sup> defendant pleads

that the entries in her Facebook webpage were only accessible to her Facebook friends.

124. Apart from the 1<sup>st</sup> defendant's admission of publishing the comments on her Facebook page, the Court is also of the view that the very comments on the Facebook webpage would point to the 1<sup>st</sup> defendant being the author of, and the person who published the comments. The comments clearly refer to NUBE, MAYNEU and the events surrounding the formation of MAYNEU. The Court finds it unbelievable that the 1<sup>st</sup> defendant's sister, Safiah Lamin who works in Telecoms, would be interested in posting comments on NUBE and MAYNEU. Neither would she have the necessary knowledge. Further, the Court notes the various responses of the 1<sup>st</sup> defendant's Facebook friends to "zeela" which further points to the 1<sup>st</sup> defendant being the one who had posted the alleged defamatory comments.

125. In light of this finding, the Court agrees with learned counsel for the plaintiff that since the 1<sup>st</sup> defendant had admitted to publishing the impugned comments in her Facebook, there is no necessity for the plaintiff to prove the existence of those comments in pages 4-47 of Part C of CB. The only thing left to consider in respect of the Facebook comments is whether they refer to the plaintiff and the plaintiff's Exco and whether they are defamatory.

126. The Court has carefully scrutinized the Facebook comments under the name "Noorzeela Lamin". The Court has high-lighted a number of comments as follows:

- (i) "People do realize that **they have been cheated, they have been manipulated by J Solomon**. But they still hoping that betrayal J Solomon will get for them such as the 90 days maternity leave" (page 6);
- (ii) "NASIB BAIK LA NUBE NIE DITUBUHKAN MASA KITORANG BELUM LAHIR...KLU DITUBUHKAN MASA KITORANG DA LAHIR ... **DGN PEMIMPIN MCM NIE ...**

**CONFIRM ... NUBE BERKUBUR DA LAMA DA ...”**

(page 10);

- (iii) “NUBE cuba menghentikan penubuhan kami sb ada kepentingan peribadi dlm NUBE. Maka skrg nie ... walau mcm mane usaha diorang pown ... ahli tetap keluar dari NUBE...” (page 12);
- (iv) “**NUBE tu kesatuan menipu**. MAYNEU la kesatuan yg telus dan benar tulus ikhlas ...”(page 13);
- (v) “... nmpk sgt org da malas nak layan NUBE kannn ...BYK SGT MENIPU ...lps nihhhh ... **berkubur la NUBE** ... for those yg pegang jawatan EXCO la, BRANCH COMMITTEE la, WORKING COMMITTEE la, ... **YG KNOWLEDGE POWN XDE...**” (page 14);
- (vi) “YANG PEGANG JAWATAN KEBANYAKANNYA FULL TIME ... XKEJE KAT BANK ... SO **HARAP KAT DUIT YG KITA BAYAR TIAP2 BULAN LA ...DARI JAWATAN GENERAL SECRETARY SMPAILA JAWATAN DRIVER** ...” (page 14);
- (vii) MEREKA NIE SMUE MEMPERMAINKAN HAK KITA SEBAGAI AHLI MENIDAKKAN SESUATU YG BENAR ... SEBABNYA ... **MEREKA BERGANTUNG KPD YURAN BULANAN KITA UTK MENERUSKAN HIDUP**” (page 15);
- (viii) “**NUBE MENIPU KITA SELAMA INI ...** SEBAB ITU DIA XKASI ORG DENGAR ... NNTI RAHSIA TERBONGKAR ...” (page 15);

- (ix) “KLU 3 SOALAN NIE NUBE XBOLE JAWAB ... SAH LA **SEMUA ORANG KENE TIPU HIDUP2 DGN SOLOMON NIHH ...**” (page 16)
- (x) “CIRCULAR NUBE TERBARU ... TUNTUT BONUS 80 BULAN DR MAYBANK. NUBE SEMAKIN TIDAK WARAS” (page 29);
- (xi) “... orang klu nak menipu org lain ,,xyah la merepek sampai nak mintak bonus 80 bulan kat bank...” (page 30);
- (xii) “Lps nie mesti NUBE nak claim increment gaji 32% yang bank nak kasi tuhuh ,, kakakaka” (page 33)’
- (xiii) “NMPK SGT KESATUAN YG SEDIA ADA NI KESATUAN MENIPU ORG...” (page 41),

These comments placed by the 1<sup>st</sup> defendant clearly refer *inter alia* to the plaintiff, its Committees and to PW 2. They are variously described as cheats and liars, manipulating and lying to the members of the plaintiff for their own devious ends. The 2<sup>nd</sup> defendant is further described as an employee of the plaintiff who is living off the contributions or monthly fees of the plaintiff’s members. The Exco, Branch Committee and Working Committee are described as being unknowledgeable and imminently about to cause the downfall and demise of the plaintiff as its members were all leaving NUBE.

127. The Court has no hesitation in finding that these comments of the 1<sup>st</sup> defendant in her Facebook page are capable of defamation, that they refer to the plaintiff and its Exco and that they were published. The very presence of multiple comments by the 1<sup>st</sup> defendant’s Facebook friends who were engaging her in active dialogue constitutes undeniable proof of publication of the comments.

128. As regards the Offending Leaflet, the Court notes that whilst both defendants had denied publishing the Offending Leaflet, they had also both, in their respective Defences, admitted to distributing the Offending Leaflet to third parties. The Court refers to paragraphs 17 and 18 of the 1<sup>st</sup> defendant's Statement of Defence which reads as follows:

“17. **Defendan** menegaskan bahawa berdasarkan fakta yang benar, **sebagai Penolong Setiausaha MAYNEU** untuk memenuhi tanggungjawab moral dan/atau social **telah serahkan risalah-risalah tersebut** yang mengandungi suatu komen tentang Plaintiff **kepada pekerja-perkerja Maybank.**

18. **Defendan tidak serahkan risalah tersebut kepada orang awam dan pengagihan adalah terhad kepada pekerja-pekerja Maybank** dimana sebilangan daripada mereka (yang layak) telahpun letak jawatan dari Plaintiff pada ketika itu. Oleh itu, kandungan perenggan 19 dalam Pernyataan Tubntutan adalah dinafikan oleh Defendan dan meletakkan Plaintiff kepada bukti yang ketat berkenaan kandungannya.”

(Emphasis added)

The 2<sup>nd</sup> defendant's Defence contains almost similar provisions where he admitted distributing the leaflets, but only to the workers of Maybank.

129. In light of the admissions of both defendants in relation to the distribution of the Offending Leaflets in their respective Statements of Defence coupled with the evidence of Jeevan a/l M Vijayan (PW 1) as to the distribution of the Offending Leaflets at the Maybank Annual Games, the Court finds that there was publication of the leaflets by the defendants.

130. As to whether the contents of the Offending Leaflet was defamatory and referred to the plaintiff and its Exco, the Court will look at the leaflet under a number of headings or subject matters.
131. The defendants contend that the issue about the **80 months Bonus** was raised by the plaintiff through a Circular issued by PW 2 himself. The Court notes the existence of the Circular which appears at page 13 of Part B of CB. Learned counsel for the defendants has submitted that the 80 Months Bonus issue was so misleading as to amount to a blatant lie. However, the plaintiff has pointed out that it is not the 80 Months Bonus which the plaintiff is taking issue with the defendants but that portion of the leaflet which stated that the plaintiff's members had lost 16% pay increase as a result of the actions of the plaintiff.
132. In this regard, the Court recalls the explanation of PW 2 that what MCBA had proposed was a 14% salary adjustment **AND** to dilute the 2 months' contractual bonus into salary and to pay performance bonus at the discretion of the bank. The plaintiff had not agreed with the proposal but had managed to negotiate a 17% salary adjustment with the 2 months' bonus still intact. The proposal was accepted by the membership and in due course the Collective Agreement was signed. As such, there was no issue of a loss of 16% salary adjustment.
133. The Court notes that the 1<sup>st</sup> defendant's calculation of a 16% loss to members was based on the plaintiff's alleged rejection of a 33% pay increase and performance bonus during the negotiations for the 2006-2008 Collective Agreement and subsequently negotiating and signing a Collective agreement for only a 17% pay increase. However, the 1<sup>st</sup> defendant was unable to furnish any proof that the plaintiff had indeed rejected a pay increase of 33% but was only able to say that it was from the NUBE website. The 2<sup>nd</sup> defendant had only reiterated the evidence of the 1<sup>st</sup> defendant with regard to this issue.
134. The Court is of the considered view that in order to establish the defence of Justification, the defendants would have to do more than merely

saying that the source of their information was from the NUBE website. An allegation that a Union which is tasked with looking out for the interests of its members would have caused its members to suffer loss of pay is a very serious allegation indeed. Such an allegation, if untrue, would definitely be defamatory. The Court finds that the defendants have not succeeded in proving, on a balance of probabilities, the defence of justification. The Court thus finds that the statement in the Offending Leaflet under the heading “80 Bulan Bonus” about the plaintiff having caused its members to suffer a 16% loss to be both false and defamatory.

135. In relation to **EDISI SATU**, the plaintiff’s complaint is to found at the last paragraph where it is stated that –

*“Tujuan utama cerita ini dibangkitkan adalah untuk menunjukkan betapa kepemimpinan NUBE yang ada sekarang ini Tidak Amanah, Tidak Bertanggungjawab, Mementingkan Diri Sendiri, Bermotif Politik, Tiada Ketulusan dan Tidak Demokratik.”*

The plaintiff did not dispute that there was wrongful use of NUBE funds in the share market or the failure of the Ecopark Project. The Court finds that there is no serious dispute that the failure of the Ecopark Project had caused losses to those who had invested their monies in it. Whilst the plaintiff had not refunded monies to the investors, however, according to PW 2, they were given discount cards where they would be able to utilize and enjoy many facilities. As regards the losses from the improper purchase of shares, PW 2 had explained that a police report was lodged and certain individuals had indeed been brought to Court and sentenced. Whilst there was no reimbursement of the monies lost from the perpetrators, which would lead to more than a measure of discontent amongst some of the members, especially those who were lobbying for the formation of MAYNEU, however care must be taken when throwing out strong words such as “Tidak Amanah, Tidak Bertanggungjawab, Mementingkan Diri Sendiri, Bermotif Politik, Tiada Ketulusan dan Tidak Demokratik.” which would have the effect of lowering the estimation of the plaintiff both to its members as well as to the public at large.

136. In relation to the Echopark Project, the 1<sup>st</sup> defendant was only able to say that she relied on an article in The Star newspaper, which article was never produced before the Court. Whilst alleging that more than 11,000 persons had lost between RM 1,500 and RM 5,000, she was unable to furnish any proof whatsoever as to these figures in support of her statement.
137. In respect of her statement that the NUBE Exco was spending millions to buy the building in Brickfields, to renovate the NUBE complex in Port Dickson, for overseas travelling, and for grand dinners, the defendants were unable to provide any proof for the statement. As such, it would appear that the defendant's defence of Justification was premised merely on her explanation that "They were talking".
138. In this case, the Court finds that the plaintiff had provided a reasonable explanation for the purchase of the new building and the renovation of the Port Dickson Complex which had not been renovated since it was built in 1970. The plaintiff had also offered an explanation for an employee being given an opportunity to attend the New Delhi Conference. Whilst the side visits to the Taj Mahal and the Agra were not disputed, it was explained that the expenses for food, accommodation and sight-seeing were borne by the AIBA and that only the flight tickets were borne by the plaintiff.
139. As such, in light of the defendant's failure to prove that there was justification for their statement that the plaintiff and its Exco were "Tidak Amanah, Tidak Bertanggungjawab, Mementingkan Diri Sendiri, Bermotif Politik, Tiada Ketulusan dan Tidak Demokratik", the Court finds that the plaintiff has succeeded in proving that the afore-stated comments in EDISI SATU were directed at the plaintiff and its Exco and that they were defamatory.
140. In EDISI KEDUA, the thrust of the leaflet was against J Solomon, the plaintiff's General Secretary. The attack against him came from a number of fronts, namely –

- i. That he had instigated the plaintiff's members to picket in the lobby of CIMB bank and had caused them to be dismissed. As General Secretary, he should have known better and should have looked out for the interests of the plaintiff's members when organizing the picketing;
- ii. Although PW 2 was also dismissed, however he was employed by the plaintiff as General Secretary at a salary of RM 5,000 per month. However, those who had lost their jobs following his instructions to picket were not so fortunate. They soon lost the "*bayaran gangtirugi kehilangan kerja*" that they were being paid because NUBE allegedly had no money to continue payments;
- iii. The leaflet also questioned whether a person who had been dismissed could still be the General Secretary of the plaintiff.

141. On this issue, the Court finds that it is not disputed that PW 2 was indeed dismissed but had been appointed as the General Secretary of the plaintiff. PW 2 himself had admitted to receiving a salary of RM 5000 per month as salary. However, the Court finds the issue of the 8 other dismissed workers losing their compensatory payments to capable of being defamatory. The statement would point to the unfair, unethical, and ungrateful nature of the plaintiff and PW 2 in that the dismissed workers had followed the directions of the plaintiff in picketing but, after being dismissed, had been abandoned by their union. For a trade union which is tasked with fighting for and upholding the rights of its workers, this is a very serious allegation which would definitely lower the esteem of the plaintiff among its members and may well lead to its members turning away from the plaintiff to seek succor elsewhere. In the absence of any evidence from the defendants to prove the truth of its allegations about the plaintiff and PW 2's lack of concern, care and consideration for the fate of the 8 dismissed workers, the Court finds certain portions in EDISI KEDUA to be clearly defamatory.

142. In EDISI KETIGA, the plaintiff contends that the sting is in the third paragraph. It questions the "*maklumat and kajian*" of the defendants in stating that the plaintiff's leadership had spent a major portion of the monies in the Benevolent Fund "*untuk kepentingan peribadi mereka*". It states that the monies in the benevolent Fund must be kept in Fixed Deposit. There is even a direct allegation of cheating by the NUBE leadership.

143. The court notes that the 1<sup>st</sup> defendant had initially denied that she was alleging that there was misuse of the Benevolent Fund monies by the plaintiff. She subsequently claimed that the monies in the Fund had to be placed in Fixed Deposit. However, she was unable to show any provision in the Benevolent Fund Rules which states that the monies had to be kept in Fixed Deposit and eventually admitted that there was in fact no such provision in the said Rules. It would appear that the defendants' dissatisfaction would stem from the fact that after they had resigned from the plaintiff, they had put in applications for a refund of their subscriptions but had received no response.

144. In this context, the Court notes that the defendants were unable to furnish any proof of any misuse of funds from the Benevolent Fund. They were also unable to show any provision in the Constitution or Rules which state that upon resignation, a former member would be entitled to a refund of his subscription. They were unable to show any provision that states that the monies in the Fund had to be kept in Fixed Deposit. Their statement as to the misuse of the Fund monies by the plaintiff's leadership for their own use, which is a very serious allegation, is totally unsupported by any evidence.

145. The Court is of the considered view that to allege monetary misconduct in a union in respect of monies in their Benevolent Fund, which should be utilized for the benefit of its workers, is a very serious matter indeed. Such a suggestion or allegation would be tantamount to suggesting that the plaintiff is a fox which is tasked with guarding the chicken coop. Such allegation would have a tendency to lower the esteem of the members as well as all right-thinking members of society if the plaintiff union cannot even be relied upon to protect and safeguard its own Benevolent Fund. In the absence of any proof of

justification by the defendants for the impugned statement, the Court finds that the relevant portion in EDISI KETIGA to be clearly defamatory.

### **Conclusion**

146. After due consideration of the evidence adduced by both parties, the Court finds that the plaintiff has succeeded in making out its case against the defendants on a balance of probabilities. The defence of Fair Comment and Qualified Privilege are clearly not available to the defendants. As for the defence of justification, they have failed to produce any proof to back up the defamatory statements and as such, the Court finds the defendants have failed to prove justification.

147. In considering the amount of damages to be awarded in this case, the Court has considered that the defamatory words would have the effect of damaging the reputation of the plaintiff. This may well have the effect of causing members to leave the plaintiff and to join MAYNEU. The defamatory words alleging dishonesty, misuse of funds for personal benefit, non-compliance with the Constitution and Rules of the plaintiff can be considered as extremely serious and damaging for a Union which is holding itself out as representing and taking care of the interests of its union members.

148. As regards damages, the Court notes that the offending Leaflet was circulated during the Maybank Annual Games and would have reached a wide readership. The attendees at the Games and at the Dinner would predominantly be people in the banking industry and hence people whom the plaintiff represents. Such damaging statements circulated amongst this group of people would have a tendency to lower the esteem of the plaintiff in their eyes as well as subject the plaintiff and its Exco to hatred and contempt.

149. As regards the Facebook webpage with its defamatory comments, the Court is of the view that this is equally serious. In this day of social media networking, a comment posted on one's Facebook page has the ability to reach a large number of persons in a short space of time. The comments of

the 1<sup>st</sup> defendant which are read by her Facebook friends can in turn be read by their friends, depending on the privacy settings.

150. In deciding on the amount of damages to be awarded in this case, the Court has considered the fact that the defendants were at the material time attempting to gather support for their fledging MAYNEU in order to gain recognition from the bank. It cannot be gainsaid that in attempting to garner support, the defendants would naturally espouse the strengths and virtues of MAYNEU. However, there is a need to be cautious so as not to run down the existing union. There is a need to walk the path of truthfulness and honesty and to steer away from exaggeration and carelessness for truth in an attempt to gain support. Negative comments MUST be backed up by solid evidence. This is a lesson that the defendants must learn and this lesson does not come cheap.

151. The Court further notes that the defendants have not made any attempts to apologize to the plaintiff. On the contrary, the Facebook postings by the 1<sup>st</sup> defendant can be seen to be both quarrelsome and challenging in its tone, complete with name-calling.

152. The Court thus makes the following order-

- i. In respect of Guaman Civil No. S-23NCVC-14-2011, a sum of RM 150,000.00 to be paid by the 1<sup>st</sup> defendant to the plaintiff as damages;
- ii. In respect of Guaman Civil No. S-23NCVC-20-2011, a sum of RM 100,000.00 to be paid by the 2<sup>nd</sup> defendant to the plaintiff as damages;
- iii. An order restraining the defendants from publishing and/or causing to issue similar libels in future;

- iv. Interest at the rate of 4% per annum on the judgment sum from the date of filing the actions until the date of full realization;
- v. That the defendants do publish a full and unqualified retraction and apology in a major daily in terms to be agreed to by the plaintiff's solicitors within 30 days from the date of judgment; and
- vi. Costs of RM 100,000.00.

**(Amelia Tee Hong Geok bt Abdullah)**

Hakim

Mahkamah Tinggi

KUALA LUMPUR

03.05.2013

Mr. Alex De Silva with Vinesh M Varghese (Messrs Bodipalar Ponnudurai De Silva) for the plaintiffs.

Mr. Cantius Leo Camoens (Messrs C. Leo Camoens) for the defendants.