

**Jurisdiction:** MALAYSIA  
IN THE HIGH COURT IN SABAH & SARAWAK  
AT KOTA KINABALU

**Parties:** Plaintiff : Salleh Berindi Bin Hj Othman  
Defendants: Abdul Hamid Ahmad & 4 Others

**File Number:** K-22-134-2011

**Issues:** (a) Whether words expressed in Libel 1, Libel 2, Libel 3 and Libel 4 were referring to the Plaintiff?  
(b) Whether Libel 1, Libel 2, Libel 3 and Libel 4 are defamatory of the Plaintiff; and  
(c) If the Libel 1, Libel 2, Libel 3 and Libel 4 are defamatory as claimed by the Plaintiff, whether they are true in substance and in fact (a defence of justification)?

**Hearing Dates:** 22 – 23 October 2012  
1 – 2 November 2012

**Date of Decision:** 25 March 2013

**Judge:** HONOURABLE JUSTICE DATUK DAVID WONG  
DAK WAH

**Representation:** For Plaintiff: In Person  
For Defendant : Mr Rizwan Burhan  
Messrs Yusri & Rizwan  
Kota Kinabalu, Sabah

## **JUDGMENT**

### **Proceeding**

- 3 The Plaintiff's claim against each of the 5 Defendants is for the sum of RM10 million, being damages resulting from publications of several entries and comments made at four different occasions on the Defendants' facebook page.
- 6 The claim is denied by all the Defendants on the ground that the publications of the entries and comments were not defamatory, even if defamatory it was true.

### **Background Facts**

- 9 The Plaintiff and the 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Defendants were schoolteachers and colleagues at a school called SMK Pulau Gaya, Kota Kinabalu from the period of 2009 to 16 May 2011. The 1<sup>st</sup> Defendant is the husband to the 3<sup>rd</sup> Defendant.
- 12 Both 1<sup>st</sup> and 2<sup>nd</sup> Defendants work at University Malaysia Sabah (UMS).

All the Defendants like many in this world have individual facebook account where people upload their activities in the form of photos and writing to keep  
15 friends (or to the whole world depending on the privacy setting) updated of their minute to minute account of their status. At the same time, friends are free to comment on their status update. There is little doubt this medium of social  
18 media is not only fashionable but a very much part of life for some and also an efficient and powerful way in spreading news of any nature.

The Defendants between the period of 4<sup>th</sup> May 2011 to 16<sup>th</sup> May 2011 had  
21 posted various updates and comments on their facebook page (Exhibit A, pages  
18-27) which the Plaintiff alleges are defamatory. The Plaintiff in his  
reamended statement of claim has divided the allegations into four different  
24 occasions which he named them as Libel 1, Libel 2, Libel 3 and Libel 4.

**Libel 1:**

The Plaintiff in his reamended statement of claim alleges that the entry and the  
27 comments are defamatory and in their natural and ordinary meaning show that  
(paragraph 9 of the reamended statement of claim):-

- 30 (1) The Plaintiff was causing nuisance while singing during the  
school's recess time;
- (2) The Plaintiff was causing 'noise pollution'; and
- (3) The Plaintiff was crazy.

33 **Libel 2:**

The Plaintiff in his reamended statement of claim alleges that the entry and the  
comments are defamatory and in their natural and ordinary meaning show that  
36 (paragraph 17 of the reamended statement of claim):-

- (1) The Plaintiff was a psychopath;

(2) The Plaintiff was a narcissist; and

39 (3) The Plaintiff was a hypocrite.

**Libel 3:**

The Plaintiff in his reamended statement of claim alleges that the entry and the  
42 comments are defamatory and in their natural and ordinary meaning show that  
(paragraph 24 of the reamended statement of claim):-

(1) The Plaintiff had performed oral sex and had tried to harass “Z”;

45 (2) The Plaintiff was a Maniac; and

(3) The Plaintiff was “pig-headed”.

**Libel 4:**

48 The Plaintiff in his reamended statement of claim alleges that the entry and the  
comments are defamatory and in their natural and ordinary meaning show that  
(paragraph 30 of the reamended statement of claim):-

51 (1) The Plaintiff had engaged in other occupations;

(2) The Plaintiff was sleeping during working hours; and

(3) The Plaintiff was crazy.

54 Also, the Plaintiff claimed that all the statements and comments made in all four  
occasions were referred to him.

### **Issues**

57 Having heard the evidence and submissions from counsel, I agree with learned  
Counsel for the Defendants that there are in essence three issues which are as  
follows:

60 (a) Whether words expressed in Libel 1, Libel 2, Libel 3 and Libel 4  
were referring to the Plaintiff?

63 (b) Whether Libel 1, Libel 2, Libel 3 and Libel 4 are defamatory of  
the Plaintiff; and

66 (c) If the Libel 1, Libel 2, Libel 3 and Libel 4 are defamatory as  
claimed by the Plaintiff, whether they are true in substance and in  
fact (a defence of justification)?

### **The Law**

69 Before I deal with the issues, let me state that there are four basic elements of  
defamation that must be proved:

72 1. The statement must be "published" — meaning that someone else  
has heard or seen it, whether through printing, speaking, gesturing,  
or some other method;

2. It must be false, not an opinion or a fact;
- 75 3. The statement must be injurious, meaning that it causes damage to  
the person's reputation;
4. It must not be privileged, or published in a situation that has  
78 specific protections.

### **Issue 1**

**Whether the words expressed in Libel 1, Libel 2, Libel 3 and Libel 4  
81 referred to the Plaintiff?**

I agree with Learned Counsel for all the Defendants that statements made must  
expressly refer to the Plaintiff or that the statements are understood to refer to  
84 the Plaintiff. For the sake of clarity, I hereby reproduce the relevant comments  
found in Libel 1, Libel 2, Libel 3 and Libel 4 below:-

#### Libel 1 (paragraph 6 of the Reamended Statement of Claim)

87 *Paragraph 6(i) “Abdul Hamid Ahmad (1<sup>st</sup> Defendant)*

*Hati bagai digaru[ada orang saman rakan sepejabatnya sebab rakannya itu tutup  
suis PA System semasa dia sedang kepayahan menyanyi depan budak-budak di waktu  
90 rehat (he he!). Samannya bernilai (he he) RMI juta! (he he). Entahlah.] May 4 at  
7.31am via Mobile Web*

*6(ii) Rd Shamsul Tak patut betul org yg tutup PA system tu ... he he he  
93 May 4 at 7.36am*

*6(iii) Abdul Hamid Ahmad (1<sup>st</sup> Defendant) Memang! Memang patut disaman sejuta!*

May 4 at 7.38am

96

6(iv) **Asmiaty Amat** (2<sup>nd</sup> Defendant) Patut orang yang disaman tu menyaman kerana orang menyaman tu telah membuat pencemaran bunyi..

99

May 4 at 7.40am

102 6(v) **Ruslili Nurzaharah Hassan** (3<sup>rd</sup> Defendant) teramatlah setuju dgn ko As. Sebenarnya dah tersumbat lubang telinga hari tu... nasib baik ada penyelamat. Dah kena saman pulak dia. Deal dgn orang gila memang susah.. kena buat gila sama baru ngam.

May 4 at 7.43am

105

6(vi) **Jurry Foo** Adoiiiiiiiiii sabar sajalah.. ini macam pun bolehkah

May 4 at 8.42am

108 6(vii) **Fariruslanbin Mustapha** menyosal den tak jadi lawyer dulu.. kalau tak 20 percent dari 1 juta... banyak tu..kompom menag punya lah pada orang yang menyanyi tu

May 4 at 8.46am

111

114 6(viii) **Asmiaty Amat** (2<sup>nd</sup> Defendant) kalau eden yang jadi lawyer, den pi jerut leher yang menyanyi tu supaya suaranya tak keluar-keluar lagi.. ko ingat dengan melalak macam tu orang sonang hati ko? Jeritan batin orang yang mendengar tu patut didengar!

May 4 at 11.33am

6(ix) **Abdul Hamid Ahmad** (1<sup>st</sup> Defendant) Kepayahan = bokolelong

117

May 4 at 12.05pm

120 6(x) **Fariruslanbin Mustapha** AS.. yak ah suara yang menyanyi tu pitching lari..saman pulak yg menyanyi tu.. untung kalau den jadi lawyer ..kiri kanan den dapat..40 percent jadinya.. hahahahahaha

May 4 at 1.59pm”

123

Libel 2 (Paragraph 16 of the Reamended Statement of Claim):-

126

**16(i)** Psychopath : a person with an antisocial personality disorder, manifested in aggressive, prevented, criminal or amoral behaviour without empathy or remorse. May 4 2011 at 3.40pm (3<sup>rd</sup> Defendant)

**16(ii)** Fit dgn some 1 yg kita kenal. May 4 2011 at 9.19pm (4<sup>th</sup> defendant)

- 129 **16(iii)** *Rasa macam nak tampal definition ni kat bilik guru. May 4 2011 at 9.20pm (3<sup>rd</sup> defendant)*
- 16(iv)** *Sukung, klu blh di KPM spy blh knalpasti bakal2 guru. (4<sup>th</sup> defendant)*
- 132 **16(v)** *Narcist*
- Narcissistic personality disorder. Definition By Mayo Clinic staff Narcissistic personality disorder is a mental disorder in which people have an inflated sense of their own importance and a deep need for admiration. May 4 2011 at 3.48pm (3<sup>rd</sup> defendant)*
- 135 **16 (vi)** *SB, SB, SB, Sb. May 4 2011 at 8.48pm (4<sup>th</sup> defendant)*
- 138 **16(vii)** *He he he he sama pulak dengan jawapan I.... May 4 2011 at 9.17pm (3<sup>rd</sup> defendant)*
- 16(viii)** *Hypocrite a person who pretends to have virtues, moral or religious beliefs, principles etc that he or she does not actually possess, especially a person whose actions belie stated beliefs. Synonym Deceiver, dissembler, pretender, Pharisee. May 5 2011 at 6.23pm (3<sup>rd</sup> defendant)*
- 141
- 144 **16(ix)** *Jangan main-main memberikan erti perkataan barat yang belum tentu betul atau tidak-nanti saya saman 1 juta, baru tau. May 5 2011 at 6.47pm (1<sup>st</sup> defendant)*
- 16(x)** *A gud pretender but not gud enough. May 5 2011 at 9.23pm (3<sup>rd</sup> defendant)*
- 147 **16(xi)** *Kalau saya terkena kasih masuk dalam kurungan, kemudian saya dapat lari keluar, tapi ada pula orang jahat di sana luar, saya lari masuk balik dalam itu kurungan. Saya takut bah. May 5 2011 at 9.26pm (1<sup>st</sup> defendant).*

150

### Libel 3 (paragraph 23 of the Reamended Statement of Claim)

- 153 **23(i)** *Resjudicata or res judicate (RJ) also known as claim preclusion, is the latin term for “a matter (already) judged”, and may refer to two concepts , in both civil law and common lawlegal systems, a case in which there has been a final judgment and is no longer subject to appeal;[1] and the legal...*
- 156 *May 15 2011 at 4:17pm (3<sup>rd</sup> Defendant)*
- 23(ii)** *Banyak kali sangat merayu dah ada keputusan, lebih pandai dari yg yang arif la bangkali.*
- 159 *May 15 2011 at 4.19 pm (3<sup>rd</sup> defendant)*
- 23(iii)** *dr 2005 lg 2, x slasai2 x malu ka, ada kes lain, mo lg saman bnda\_lain tpi aku ngeriiii. (4<sup>th</sup> defendant)*
- 162 **23(iv)** *Oral sex tu bah....*

- 165  
23(v) *2 la, x sangka kn\_maniac pula dia 2.*  
*May 15 2011 at 4.21pm (3<sup>rd</sup> defendant)*
- 168  
23(vi) *Nasib baik pelajar ku dulu dapat diselamatkan lebih awal... ada juga guna Kak Ti. Dia yang panggil budak tu, si benda tu pun ada, dia tanya juga.....dia bilang dia main main ja... pala botak dia la...*  
*May 15 2011 at 4.44pm (4<sup>th</sup> defendant)*
- 171  
23(vii) *Skrng ni dia minat dgn kwn kita Z, kita ingt main 2, rupa2nya...*  
*May 15 2011 at 4.50pm (3<sup>rd</sup> defendant)*
- 174  
23(viii) *I nak study doc mahkamah jap..esok buli buat kajian dan huraian sikit.*  
*May 15 2011 at 4.52pm (4<sup>th</sup> defendant)*
- 177  
23(ix) *Ngam la 2, aku dn pija, BI nya kurang ckit, bc 2 3 kali bru phm. Correct, Pija and I I reading now. As our English not so good. We have to read 2 or 3 times.*  
*May 15 2011 5:01pm (4<sup>th</sup> defendant)*
- 180  
23(x) *Korang baca kat mana?*  
*May 15 2011 at 4.58pm (3<sup>rd</sup> defendant)*
- 183  
23(xi) *Jez taip nama, keluar la 2, ada 3, tpi kes yg sama.*  
*May 15 2011 at 5.06pm (3<sup>rd</sup> defendant)*
- 186  
23(xii) *Pjg lebar ni doc hakim buat.*  
*May 15 2011 at 5.15pm (4<sup>th</sup> defendant)*
- 189  
23(xiii) *KES APE PLAK NI....HABAQ MAT?MCM BEST JE.*  
*May 15 2011 at 5.16pm (3<sup>rd</sup> defendant)*
- 192  
23(xiv) *Best..sabo ye Selamat hari guru.*  
*May 15 2011 at 5.40pm (Abdul Aziz Ab Razak)*
- 23(xv) *ERMMM EA LA*  
*May 15 2011 at 6.09pm (3<sup>rd</sup> defendant)*
- 23(xvi) *SLMT ARI GURU SMUA*  
*May 15 2011 at 6:21pm. (Abdul Aziz Ab Razak)*

May 15 2011 at 6.12pm (Abdul Aziz Ab Razak)

195 23(xvii) Selamat hari guru!!!!!!!!!!!!

May 16 2011 at 6.36pm (Zakiroh Ahmad)

198 Libel 4 (Paragraph 29 of the Reamended Statement of Claim)

201 29(i) A writ of summons is a document issued by a court which orders a person to answer a legal complaint a specified time. The document may also command a person to appear in court. A court typically issues this document when a plaintiff files a lawsuit. Fo..

204 May 8 2011 at 7:58pm (3<sup>rd</sup> Defendant)

29(ii) Wallamak aii!!Lily, I learned a lot from this. Thank u. Tapi..Apa hal ni? Takkan ada subjeck ni kat sekolah? Hahaha.

207 May 8 2011 at 8.22pm (Nordin Daud)

29(iii) Saja...tambah pengetahuan...mana tau kot kena sue pulak.

May 8 2011 at 8.32pm. (3<sup>rd</sup> defendant).

210 29(iv) Oooh..hahaha..kalau ada raso, jangan sign atau terimo surat. Not being served...hahaha.

May 8 2011 at 8.34pm (Nordin Daud)

213 29(v) Dah tau dah nak buat apa, esp kalau yang sue to orang yg kepala otak biul.

May 8 2011 at 8.40pm (3<sup>rd</sup> defendant)

29(vi) Hahaha...U r rite. Cikgu!haha BIUL..haha.

216 May 8 2011 at 8.51pm (Nordin Daud)

29(vii) Tq, fhm dh den, smua yg bold 2 xdpt d laksanakan krn kkurangan bajet.

May 9 2011 12.31am (4<sup>th</sup> defendant)

219 29(viii) Siapakah urang itu? Guru, lawyer, mat dispatch atau pun penyanyi? Banyak Sgt keje kot sampaikan tertdo bila tugas rasminya sepatutnya dilaksanakan. Apa kata tuan hakim? How is that? Teacher, lawyer, dispatcher or singer? He sleep during working our as he have a lot of job. What is you saying judge?

222

May 9 2011at 1.21am (5<sup>th</sup> Defendant)

225

228                   29(x)    *tuan hakimpun, penat hari ini, nak tidur sekejap dibangku panjang, kalau tidak, mungkin tuan hakim ini akan tidur saja di surau. Nanti bila orang ramai nak solat, tuan hakim akan jadi imamlah, sedia siap-siap disana dululah.*

231    *May 9 2011 at 7.56 am (1<sup>st</sup> Defendant)*

29(xi)   *Hehehe...Hakim pun perlukan oksigen utk sel2 otak..Lolap lah, smentario bangku tu takponoh dek keropai...*

234    *May 9 2011 at 9.11am (Nordin Daud)*

237    In the case of *Kesatuan Kebangsaan Pekerja-pekerja Bank & Ors v The New Straits Time Press (Malaysia) Bhd & Ors and another* suit (2013) MLJU 14, Datuk Lau Bee Lan J in dealing with this issue, held the following:-

240                    *"On the issue of whether the 4 Articles refer to the Plaintiffs, i.e on the question of identity, the test to be applied is as propounded in -*

243                    *(a) Knupffer v London Express Newspaper, Limited [1944] A.C. 116 at p. 121 on the 2 staged process -"There are two questions involved in the attempt to identify the appellant as the person defamed. The first question is a question of law - can the article, having regard to its language, be regarded as capable of referring to the appellant? The second question is a question of fact - Does the article, in fact, lead reasonable people, who know the appellant, to the conclusion that it does refer to him? Unless the first question can be answered in favour of the appellant, the second question does not arise, and where the trial judge went wrong was in treating evidence to support the identification in fact as governing the matter, when the first question is necessarily, as a matter of law, to be answered in the negative. I move that this appeal be dismissed."*

252

*(b) Morgan v Odhams Press Ltd & another [1971] 2 All ER 1156 (HL) at p.1176-1177 (which referred to Knupffer (supra)) -"... But here the question is not whether*

255 *the words are defamatory. It is conceded they are, if they refer to the plaintiff. The*  
*question is one purely of identity. 'Are the words capable of being understood to refer*  
*to the plaintiff?' In my view, a somewhat more exacting test should be predicated*  
258 *where the question is one of identity. It is not sufficient for the reader to say 'I wonder*  
*if the article refers to Johnny Morgan' nor is pure speculation sufficient. Nor is it*  
*sufficient that a reasonable person believes that the words refer to the plaintiff. The*  
261 *test is an objective one. The ordinary reader must be fair-minded and not avid for*  
*scandal. He must not be unduly suspicious. The ordinary reader must have rational*  
*grounds for his belief that the words refer to the plaintiff."□□(See Gatley on Libel*  
264 *and Slander, 10th Edition at pp. 182-184 wherein it is stated that the claimant must*  
*also identify himself as the person defamed and the test is whether the claimant may*  
*reasonably be understood to be referred to by the words.)*

267 *On a perusal of the 4 Articles, it is observed that they expressly refer to NUBE and*  
*expressly stated the decisions in NUBE made were "not approved by the NEC",*  
*"without the endorsement of the exco", "must seek the exco's approval first", "without*  
270 *the endorsement of the NEC", "without the approval of the NEC" and "without...*  
*getting the approval of the NEC." There is evidence that NUBE is one of the largest*  
*trade union in the country has a membership of about 29,000 members (according to*  
273 *PWI) and more than 34,000 members (according to DWI). The sting of the 4 Articles*  
*is that the one senior official in NUBE's Exco was "running the affairs in NUBE in a*  
*manner that he solely desired".*

276 *Although the words as contained in the Articles do not specifically refer to the 2nd to*  
*8th Plaintiffs, a reasonable person reading the Articles would, in the opinion of this*  
*Court infer that reference was made to the Plaintiffs as the 2nd to 8th Plaintiffs were*  
279 *all members of the 1st Plaintiff at the material time."*

Applying the test above to the factual matrix in the present case, it is my  
282 considered view that none of the comments made in Libel 1, Libel 2, Libel 3  
and Libel 4 had specifically referred to the Plaintiff in that no name was

mentioned in those postings. A reasonable person reading those postings would  
285 only conclude that there is a problematic teacher in school.

Accordingly the Plaintiff has failed to prove that the words published were  
referring to him.

288 **Issue 2**

**Whether Libel 1, Libel 2, Libel 3 and Libel 4 are defamatory of the  
plaintiff?**

291 In view of my answer to Issue 1, it is not necessary for me to answer this issue  
but in the event that I may be wrong and for completeness I will do so.

Gatley on *Libel and Slander 9<sup>th</sup> edition 1998* at pg. 7 describes defamation as  
294 follows:-

“What is defamatory? There is no wholly satisfactory definition of a defamatory  
imputation. Three formulaes have been particularly influential: (1) Would the  
297 imputation tend to “lower the plaintiff in the estimation of right thinking members of  
society generally”?; (2) Would the imputation tend to cause others to shun or avoid  
the plaintiff?; and (3) Would the words tend to expose the plaintiff to “hatred,  
300 contempt or ridicule”?

Malanjum J (as he then was) in *Tun Datuk Patinggi Haji Abdul-Rahman Ya’kub  
v Bre Sdn Bhd* [1996] 1 MLJ 393 had this to say:-

303 “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

306 *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 Jeyaratnam). Mohamed Azmi J*  
*(as he then was) in Syed Husin Ali v Sharikat Perchetakan Utusan Melayu Bhd &*  
309 *Anor [1973] 2 MLJ 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*  
312 *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*  
315 *plaintiff attributing crime, dishonesty, untruthfulness, ingratitude or cruelty.”*

### **Libel 1**

For Libel 1, it concerns an incident in school where it referred to a teacher  
318 singing during the recess time. Only the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants were  
involved in Libel 1. The postings merely referred to the fact that the Plaintiff  
was singing with the microphone during the recess time and the 4<sup>th</sup> Defendant  
321 had turned off the volume in PA system.

The Plaintiff contended that such postings in their natural and ordinary meaning  
infer that the Plaintiff was crazy and was causing noise pollution. I agree with  
324 the Learned Counsel for the Defendants that the comments made under Libel 1  
were not defamatory because the context of the comments itself did not in  
anyway impute to the plaintiff of any dishonourable or discreditable conduct or  
327 motive or lack of integrity. I had in the case of *Chan Cheen Ken & Anor v*

*Cristlina Korok & Anor* [2012] 6 CLJ 503 discussed that one should take into account of the context or the words used in determining whether the words used  
330 are defamatory and this is what I said:-

*“I am mindful too that in determining whether the words complained of are defamatory one must take into account not only the actual words but the context in which they were used. This  
333 is because there may be other words which take away the sting.”*

As for the posting of the 2<sup>nd</sup> Defendant, it was a reply to the posting made by  
336 the 1<sup>st</sup> Defendant and it simply says that “the person who sues should also be sued because the person had caused noise pollution”. The Plaintiff had not denied that he was singing during a program of ‘Tunjuk Ajarku Ustaz’ and he  
339 explained in paragraph 7 of the Reamended Statement of Claim that the 4<sup>th</sup> Defendant switched off the microphone through the PA system.

An opinion of someone’s singing quality cannot be by any stretch of  
342 imagination defamatory and I so hold. In any event the Plaintiff had filed a suit against the 4<sup>th</sup> Defendant in Kota Kinabalu High Court Suit No. KK-22-100-2011 for switching off the microphone.

345 **Libel 2**

In relation to Libel 2, it concerned the definition of summons, Narcist, Psychopath and Hypocrite. After reading the relevant comments (as the same  
348 have been reproduced above), they were merely the definitions of different

words or jargons found in the internet. How they could be defamatory is beyond me.

351 **Libel 3**

The Plaintiff contended that the comments made in Libel 3 showed that the Plaintiff had oral sex with someone, he had tried to harass Z, he was a maniac  
354 and he was ‘pig-headed’.

I shall first deal with the allegation of harassment and ‘pig-headed’. The posting was this:

357 *“skrg ni dia minat dgn kwn kita Z, kita ingat main2, rupa2nya...”*.

There is no mention of ‘harassment’ or ‘pig headed’ in that posting. The comment that the Plaintiff is interested in someone cannot be defamatory.

360 As for the posting that the Plaintiff had oral sex with someone and a maniac, if untrue would be defamatory and I so hold subject to my deliberation whether there is justification for this posting.

363 **Libel 4**

With regard to Libel 4, after going through the entries as reproduced above, any ordinary reader would not have come to the conclusion that the Plaintiff had  
366 engaged in other occupations which as a result would cause the Plaintiff into

disrepute. Also, in relation to the comment regarding the Plaintiff was sleeping during the working hours, I do not find such comment from the exhibit. The 1<sup>st</sup> Defendant merely said “(tuan hakimpun penat hari ini, nak tidur sekejap di bangku panjang...)”. Such comment was made under the posterity of the definition of Writ of Summons by the 3<sup>rd</sup> Defendant. Therefore, considering this comment in its context and assuming that the comments were referring to the Plaintiff, they merely carried out the meaning that the Plaintiff was sleeping, which by itself, it was not defamatory.

375 **Issue 3**

**If Libel 1, Libel 2, Libel 3 and Libel 4 are defamatory in the way as claimed by the Plaintiff, whether they are true in substance and in fact (a defence of justification)?**

Section 8 of the Defamation Act 1957 gives a complete defence if defamatory publication is proven to be true or published with justification. It states as follows:-

384 *“8. In an action for libel or slander in respect of words containing two or more distinct charges against the plaintiff, a defence of justification shall not fail by reason only that the truth of every charge is not proved if the words not proved to be true do not materially injure the plaintiff’s reputation having regard to the truth of the remaining charges.”*

387 I will not deal with Libel 1, 2 and 4 as I have found them to be non defamatory. As for Libel 3 which I found to be defamatory, the Defendants had relied on the

case which the Plaintiff was involved in Kuching. That case is Suit No. 21-3-  
390 2008-III where the learned Judge found as follows:

393 *“In 2002, one of his female students made a very serious allegation against the plaintiff. She  
alleged that the plaintiff had been sexually harassing her and had even forced her to perform  
oral sex on him. At about the same time, a female colleague of the plaintiff also complained  
that he had made sexually suggestive and offensive remarks to her.”*

396 In that case, the Plaintiff’s employment with UITM was terminated as a result  
of those allegations. He sued UITM for wrongful dismissal but it was struck  
out by the court.

399 What we have here is a finding of fact of another Court on the conduct of the  
Plaintiff and this finding had not overturned by any appellate Court. Libel 3  
read in its context was referring to this finding of a Court.

402 Section 11 of the *Defamation Act 1957* states as follows:

***“11. Reports of Judicial proceedings***

405 (1) *A fair and accurate and contemporaneous report of proceedings publicly heard  
before any court lawfully exercising judicial authority within Malaysia and of the  
judgment, sentence or finding of any such court shall be absolutely privileged, and  
any fair and bona fide comment thereon shall be protected, although such judgment,  
408 sentence or finding be subsequently reversed, quashed or varied, unless at the time of  
the publication of such report or comment the defendant who claims the protection  
afforded by this section knew or ought to have known of such reversal, quashing or  
411 variation.”*

It is my view that the above section 11 provides full protection to the postings.

Accordingly it is my view that the Defendants have proved on a balance of  
414 probability that the defence of justification.

**Conclusion**

Accordingly for all the reasons sated above, the plaintiff's claim is dismissed  
417 with costs in the sum of RM10,000.00.

Order accordingly.

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**(DAVID WONG DAK WAH)**  
**Judge**

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432 *Notice: This copy of the Court's Reasons for Judgment is subject to formal  
revision.*