

IN THE SESSION COURT AT SHAH ALAM
IN THE STATE OF SELANGOR, MALAYSIA
CIVIL SUIT NO: BA-A52NCVC-314-09/2022

BETWEEN

TENAGA NASIONAL BERHAD

...PLAINTIFF

[No. Syarikat: 199001009294/200866-W]

AND

LAM SAU TAI

[No. K/P: 651201-06-5652]

(DISAMAN SEBAGAI PENTADBIR HARTA PUSAKA
SIEW NYUK SANG, SI MATI)

SIEW KENG SEONG

[No. K/P: 920121-05-5625]

(DISAMAN SEBAGAI PENTADBIR HARTA PUSAKA
SIEW NYUK SANG, SI MATI

...DEFENDANTS

GROUND OF JUDGMENT
(FULL TRIAL)

A. INTRODUCTION

1. The Plaintiff (Tenaga Nasional Berhad, or TNB) claims losses under Section 38(3) of the Electricity Supply Act 1990 (ESA 1990), asserting tampering caused unrecorded electricity use between November 2017 and July 2019.



2. The claim arises from an inspection where bypass wiring was discovered at the premises of the deceased, who was the registered account holder.

B. SALIENT FACTS

3. The Plaintiff is a licensee under the ESA 1990.
4. The Deceased, Siew Nyuk Sang was the owner of a three-story office building located at No. 14, Jalan U3/6 (BK), Pusat Perniagaan Subang, 40150 Shah Alam, Selangor, where electricity was supplied by the Plaintiff.
5. The First and Second Defendants are the Administrators of the Estate of the Deceased. The Deceased had an electricity account with the Plaintiff for the said premises (admitted by the First Defendant- wife of the Deceased, see page 224 of the Notes of Proceeding).
6. On 9 November 2017, the Deceased when visiting the premises discovered that the electric meter and box were missing from the premises. He subsequently filed a police report and contacted the Plaintiff for a replacement (please refer to pages 126-127 - police report no. Kg Baru Subang/009583/17 and 128 – 133 – Permohonan Servis – “meter hilang from Siew Nyuk Sang”, documents under Part B, Bundle B). The Plaintiff stated that the meter was replaced the following day, on 10 November 2017.
7. On 16 November 2017, the Deceased entered into a tenancy agreement with Ng Choon Hing to rent the first and second floors of the premises at a monthly rental of RM2,500.
8. On 27 November 2017, the Deceased was admitted to Sunway Medical Hospital and later passed away on 7 January 2018. The Defendants were appointed as



administrators of his estate on 26.6.2018, through an order from the Shah Alam High Court (Originating Summons No. BA-31NCVC-263-04/2018).

9. On 31 July 2019, the Plaintiff conducted an inspection of the meter installation at the premises and found evidence of tampering, including discrepancies in current values and direct wiring bypassing the meter. The Plaintiff recorded the irregularities, carried out necessary corrections, and lodged a police report on 1 August 2019 (see page 1 of Bundle B – report Kg Baru Subang/005191/19).
10. On 16 October 2019, the First Defendant visited the premises to collect outstanding rent for August to October 2019, amounting to RM7,500, but found the premises vacant and cleared out. The Tenant was uncontactable. The First Defendant discovered a notice from the Plaintiff on the floor of the premises.
11. Upon visiting the Plaintiff's office, the First Defendant was informed of an outstanding electricity charge of RM399,541.65. Suspecting illegal tampering of the electric meter, the First Defendant lodged a police report on 10 November 2019 (see page 170 -171 bundle B).
12. On 28 May 2021, the Plaintiff's lawyers issued a letter of demand addressed to the late Siew Nyuk Sang, claiming RM398,914.05 for alleged tampering of the electric meter from 23 August 2016 to 31 July 2019.
13. After being informed of Siew Nyuk Sang's passing and the earlier report regarding the missing electric meter, the Plaintiff's solicitors issued a revised claim on 14 July 2022, for RM299,707.50, covering the period from 10 November 2017, (after the reported meter replacement) to 31 July 2019, when the alleged tampering was detected.
14. Subsequently, the Plaintiff filed a Writ of Summons and Statement of Claim against the First and Second Defendants based on the ESA 1990, seeking RM299,707.50.



C. AGREED ISSUES TO BE TRIED

15. Agreed issues to be tried (**filed vide Enclosure 20**) are as follows:

- (i) Whether there was any tampering with the meter/meter installation at the Premises located at 14-2, Jalan U3/6 (BK), Pusat Perniagaan Subang, 40150 Shah Alam, Selangor;
- (ii) Whether Siew Nyuk Sang, the Deceased, was the account holder for the electricity supply to the above Premises;
- (iii) Whether the Plaintiff is entitled to claim from the Deceased, represented by the Defendants as Administrators, the amount of RM229,707.50 for loss of revenue and other expenses due to the tampering of the meter installation for the period from 10.11.2017 to 31.07.2019; and
- (iv) Whether the Plaintiff is entitled to make a claim under the ESA 1990 against the Deceased for loss of revenue for the period after his death on 07.01.2018.

D. PLAINTIFF'S SUBMISSION

- 16. The Plaintiff contended that the Defendants, as administrators of the estate, are liable for debts owed by the Deceased pursuant to the Civil Law Act 1956 (CLA 1956) and Probate and Administration Act 1959.
- 17. Plaintiff relied on **Lim Lip Eng v Ong Ka Chuan [2022] 5 MLR 208** which confirms causes of action vested before death can be pursued against the estate.
- 18. Plaintiff further cited **Abdul Majeed v Official Administrator, FMS [1937] 1 MLRH 302** which establishes that if a claim was valid during the deceased's lifetime, it survives their death.



19. Plaintiff emphasized that the Deceased was the registered consumer where meter tampering occurred, making the Plaintiff's claim valid.
20. Plaintiff urged this Court to adopt purposive approach in interpreting Section 8 of the CLA 1956 and submitted that CLA 1956 is derived from UK laws allowing claims against deceased estates. Plaintiff cited **Sambu Pernas Construction v Pitchakkaran Krishnan [1982] 1 MLRA 143** and **Post Office v Official Solicitor [1951] 1 ALL ER 522** which confirm that claims against a deceased's estate remain valid, regardless of when the cause of action arose.
21. Plaintiff submitted that prima facie evidence of loss, supported by Section 38(4) of the ESA 1990, is sufficient to substantiate the claim.
22. Plaintiff cited **TNB v. Asia Knight Bhd (previously known as Pahanco Corp Bhd) [2017] 5 MLJ 681** which affirmed that subjective findings of TNB personnel, supported by evidence, are sufficient to establish tampering.
23. Plaintiff further relied on **TNB v. Ichi-Ban Plastic (M) Sdn Bhd and other appeals [2018] 3 MLRA 1** and argued that calculations based on approximations are acceptable where precise measurements are unavailable.
24. The Plaintiff emphasizes that the Defendants failed to provide contrary evidence or challenge the credibility of the Plaintiff's witnesses or calculation methods.
25. Plaintiff said that the contract of supplying electricity is a Commercial Contract and such contracts carry statutory obligations (**Maybank Trustees Bhd v CIMB Bank Bhd [2014] 4 MLRA 677**) and TNB need not prove personal involvement in meter tampering (**Thomas Thomas @ Mohan K Thomas v Tenaga Nasional Berhad [2017] 6 MLRA 504**). There is statutory right to claim under the purview of **Section 38(3) ESA 1990** which grants TNB the right to recover losses from meter tampering, as confirmed in **TNB v Ichi-Ban Plastic (M) Sdn Bhd and other appeals [2018] 3 MLRA 1**.



26. Plaintiff argued that the estate of a Deceased person remains liable for debts as they too owed an obligation to monitor the meter after the demise of the Deceased. It was said that Section 38(1) of the Contracts Act 1950 extends obligations to representatives unless stated otherwise. Therefore, the estate administrators must ensure compliance and compensate TNB for losses.
27. With reference to the procedural objections regarding the inspection and equipment used raised by the Defendants, the Plaintiff replied that there is no legal requirement for the consumer's representative to be present during inspections. Plaintiff cited **TNB v. Long Heng Plastic Manufacturing Sdn Bhd [2017] 4 MLRH 597**, which held that the absence of a defendant's representative only affects credibility, not the validity of the inspection.
28. Thus, it was argued that the Plaintiff's claim is valid against the Deceased's estate, and compensation is due.
29. The Plaintiff sought full recovery of RM229,707.50 and cost to be borne by the estate.

E. DEFENDANT'S SUBMISSION

30. Defendants' position is that the Plaintiff's claim under Section 38(3) ESA 1990 only arose after the Deceased's death, which contradicts Section 8(1) CLA 1956, as it only applies to causes of action vested before death.
31. According to the Defendants, the Plaintiff incorrectly cited **Abdul Majeed v Official Administrator, FMS [1937] 1 MLRH 302** as it did not refer to Section 8(4) CLA 1956 or its UK equivalent.
32. Under Section 8(4) of the CLA 1956, a claim must involve actual damage suffered due to an act or omission. The Defendants argued that the Plaintiff's claim for estimated loss of revenue is not actual damage and meter tampering alone does not cause loss of revenue; actual electricity usage must be proven. Therefore, it was submitted that the Plaintiff's claim under Section 8(4) CLA 1956



fails as no actual damage was proven. It was said that Plaintiff also referred to **Post Office v Official Solicitor [1951] 1 ALL ER 522** which supports the need to prove actual damage.

33. It was submitted that the Plaintiff's claim depends on the Deceased's status as a "consumer" under Section 38(3) ESA 1990, which could have changed after death, making liability uncertain.
34. Defendants submitted that the Plaintiff has not met the burden of proof under Sections 101-103 Evidence Act 1950.
35. Defendants averred that the Plaintiff failed to prove that the Deceased was the registered consumer for the meter. Evidence relied upon, such as internal records (E-CIBS and BCRM systems), was inconclusive and unverifiable.
36. Defendants further argued that the Plaintiff's evidence of tampering, including meter inspections and photographs, was undermined by lack of consumer representation during inspections and procedural irregularities, including unverifiable meter replacement dates. The Plaintiff failed to adhere to its own guidelines for fair inspection.
37. Defendants asserted that there is insufficient proof linking the Deceased to tampering.
38. According to the Defendants, the Plaintiff's claim is based on Sections 38(3), (4), and (5) for revenue loss due to tampering under Section 37. While Section 40 ESA 1990 provides presumptions of liability, the Defendants successfully rebutted these based on the Deceased's hospitalization and subsequent death.
39. The Plaintiff sought to hold the Deceased liable for loss of revenue after his death on 7 January 2018. The Defendants argued that this is unreasonable as the Deceased could not perform duties or prevent tampering posthumously.



40. The Defendants submitted that even approximation of loss must be reasonable (**Tenaga Nasional Berhad v. Ichi-Ban Plastic (M) Sdn Bhd & Other Appeals [2018]** referred)
41. Defendant cited **Lai Kam Seong v. Tenaga Nasional Bhd [2022] 9 CLJ 681** to argue that loss must be proven on balance of probabilities, particularly when the claim spans less than five years.
42. Further, Defendant contended that the Plaintiff failed to meet the established principles for unjust enrichment (**Dream Property Sdn Bhd v. Atlas Housing Sdn Bhd [2015] 2 CLJ 453**)
43. Defendant submitted that the Plaintiff failed to prove that the estimated loss of revenue directly resulted from the alleged breach.
44. Defendant further stressed that the claim for loss of revenue from 10.11.2017 – 31.07.2019 is excessive, as the administrators only obtained the Grant of Letters of Administration nearly seven months after the Deceased's death.
45. Defendant averred that the Plaintiff did not plead breach of contract in its original submissions, violating **Order 18 rule 7(1) & (2) of the Rules of Court 2012**. Based on **Iftikar Ahmed Khan v Perwira Affin Bank Berhad [2018] 1 MLRA 202**, unpleaded issues cannot be introduced at a late stage.
46. Defendant argued that no contract was submitted as evidence, nor were any contractual terms identified.
47. It was said that the Plaintiff's reliance on **Maybank Trustees Bhd v CIMB Bank Bhd [2014] 4 MLRA 677** is irrelevant, as no statutory implied obligations exist under ESA 1990. Defendant pointed out that the Plaintiff's claim under Section 38(3) ESA 1990 does not automatically create a contractual breach.
48. The Defendants submitted that there is no legal obligation for administrators to assume the deceased's responsibilities, including actively monitoring the electric



meter after their passing. If Parliament had intended for such duties to continue, it would have explicitly provided for them under the ESA 1990, similar to how section 37A of the ESA 1990 imposes liability on managing officers for corporate offences.

49. According to the Defendants, under Section 38(2) of the Contracts Act 1950, obligations may survive death, but only if explicitly stated in a contract, which was not proven.
50. The Defendants contended that the Plaintiff failed to prove the existence of a contractual obligation to maintain an untampered meter or that the Defendants, as estate administrators, had the capacity to perform such obligations.
51. The Defendants pray for the Plaintiff's claim to be dismissed with costs.
52. Alternatively, the Defendants argued that liability, if any, should be limited to the 59 days between meter replacement (10 November 2017) and the Deceased's death (7 January 2018). Using the Plaintiff's formula, this equates to RM17,972.40.

F. THE FINDINGS AND ANALYSIS OF THE COURT

Cause of Action Accrued After the Deceased's Demise

53. Liability under the ESA 1990 is tied to the "consumer," defined as the registered account holder for the premises. Plaintiff's case is premised on **section 38 (3)** of the ESA 1990 which stipulates that:

*"The licensee may require the **consumer** to pay him for the loss of revenue due to the offence committed under subsections 37(1), (3) and (14) and any reasonable expenses directly incurred by the licensee under this section*



including expenses incurred in respect of reconnection of electricity in the manner as have been directed by the Commission”

54. In the case of **Tenaga Nasional Bhd v Evergrowth Aquaculture Sdn Bhd and other appeals [2021] MLJU 1742**, the Federal Court provided clarity on when a cause of action arises or accrues in meter tampering cases under the ESA 1990.
55. The Federal Court held: *“that the cause of action starts from the discovery of meter tampering. Limitation period starts therefrom onwards.”*
56. Hence it is clear that discovery of tampering is the trigger point. A cause of action under Section 38(3) ESA 1990 accrues from the date the tampering is discovered, not from the date when the tampering allegedly started. This principle aligns with the statutory framework that focuses on the point of discovery for TNB to claim loss of revenue due to tampering.
57. The cause of action under Section 38(3) of the ESA 1990 accrues only upon the discovery of tampering, which in this case occurred on 31.7.2019, more than a year after the Deceased’s demise on 7.1.2018.
58. From my reading, section 8(1) of the CLA 1956 permits claims against a deceased’s estate only if the cause of action existed prior to death and subsisted after. For reference purpose, section 8 of the CLA 1956 is reproduced below:

“Section 8. Effect of death on certain causes of action.

*(1) Subject to this section, on death of any person **all causes of action subsisting against or vested in him shall survive** against, or, as the case may be, for the benefit of, his estate:*

Provided that this subsection shall not apply to causes of action for defamation or seduction or for inducing one spouse to leave or remain apart from the other or to any claim for damages on the ground of adultery.



(2) Where a cause of action survives as aforesaid for the benefit of the estate of a deceased person, the damages recoverable for the benefit of the estate of that person—

(a) shall not include any exemplary damages, any damages for bereavement made under subsection 7(3A), any damages for loss of expectation of life and any damages for loss of earnings in respect of any period after that person's death;

(b) in the case of a breach of promise to marry shall be limited to such damage, if any, to the estate of that person as flows from the breach of promise to marry; and

(c) where the death of that person has been caused by the act or omission which gives rise to the cause of action, shall be calculated without reference to any loss or gain to his estate consequent on his death, except that a sum in respect of funeral expenses may be included.

(3) No proceedings shall be maintainable in respect of a cause of action in tort which by virtue of this section has survived against the estate of a deceased person, unless proceedings against him in respect of that cause of action either—

(a) were pending at the date of his death; or

(b) are taken not later than six months after his personal representative took out representation.

(4) Where damage has been suffered by reason of any act or omission in respect of which a cause of action would have subsisted against any person if that person had not died before or at the same time as the damage was suffered, there shall be deemed, for the purposes of this section, to have been subsisting against him before his death such cause



of action in respect of that act or omission as would have subsisted if he had died after the damage was suffered.

(5) The rights conferred by this section for the benefit of the estate of deceased persons shall be in addition to and not in derogation of any rights conferred on the dependants of deceased persons by section 7 and so much of this section as relates to causes of action against the estates of deceased persons shall apply in relation to causes of action under the said section as it applies in relation to other causes of action not expressly excepted from the operation of subsection (1).

(6) In the event of the insolvency of an estate against which proceedings are maintainable by virtue of this section, any liability in respect of the cause of action in respect of which the proceedings are maintainable shall be deemed to be a debt provable in the administration of the estate, notwithstanding that it is a demand in the nature of unliquidated damages arising otherwise than by a contract, promise or breach of trust."

59. A brief examination of the provision indicates that section 8(1) of the CLA 1956 applies only to causes of action that accrued before a person's death, except in cases falling under section 8(4). Under this deemed provision, if a person commits a wrongful act or omission that would have given rise to a legal claim, the cause of action is considered to have existed even if the person dies before or at the same time as the damage is suffered, in other words, before the damage is fully materialized.

60. The Federal Court in **All Malayan Estates Staff Union v Rajasegaran & Ors [2006] 6 MLJ 97** has succinctly set out the guidelines for interpreting a statute. The Federal Court said the following as regards rule of construction:

"In summarising the principles governing the application of the purposive approach to interpretation, Craies on Legislation (8th Ed) says at p 566:



(1) Legislation is **always to be understood first** in accordance with its **plain meaning**.

(2) Where the plain meaning is in doubt, the courts will start the process of construction by attempting to discover, from the provisions enacted, the broad purpose of the legislation.

(3) Where a particular reading would advance the purpose identified, and would do no violence to the plain meaning of the provisions enacted, the courts will be prepared to adopt that reading.

(4) Where a particular reading would advance the purpose identified but would strain the plain meaning of the provisions enacted, the result will depend on the context and, in particular, on a balance of the clarity of the purpose identified and the degree of strain on the language.

(5) Where the courts conclude that the underlying purpose of the legislation is insufficiently plain, or cannot be advanced without any unacceptable degree of violence to the language used, **they will be obliged, however regretfully in the circumstances of a particular case, to leave to the legislature the task of extending or modifying the legislation.**

[12] The choice prescribed in s 17A of '... a construction that would promote the purpose or object underlying the Act ... shall be preferred to a construction that would not promote that purpose or object ...' **can only arise** when the **meaning of a statutory provision is not plain and is ambiguous**. If, therefore, the language of a provision is plain and unambiguous s 17A will have no application as the question of another meaning will not arise. **Thus, it is only when a provision is capable of bearing two or more different meanings** can s 17A be resorted to in order to determine the one that will promote the purpose or object of the provision. Such an exercise must be undertaken without doing any violence to the plain meaning of the provision. This is a legislative recognition of the purposive approach and is in line with the current trend in statutory interpretation."



61. Based on the principle outlined above, this Court finds that the language of section 8(1) of the CLA 1956 is clear and unambiguous. When the wording of a law is explicit and free from ambiguity, it must be interpreted as written, without resorting to purposive interpretation. It is trite that the court's role is simply to apply the plain meaning of the provision and decide accordingly, regardless of the consequences.
62. **Section 8(1) of the CLA 1956** stipulates that upon an individual's death, only causes of action that subsisted against or were vested in them prior to their demise survive for or against their estate. This means that any cause of action must have existed before the person's death to be maintainable against their estate. Since the cause of action in this case arose posthumously, the suit filed based on Section 38(3) of the ESA 1990 is obviously unsustainable and inapplicable under section 8 (1) of the CLA 1956.
63. Consequently, this claim cannot be sustained, and the case should be struck out.

Alternative Ground:

64. Alternatively, if TNB intended to rely on section 8 (4) of the CLA 1956, then we must determine whether TNB is able to prove that section 8 (4) of the CLA 1956 can be applied under the circumstances of the case.
65. This court is of the considered view that even if TNB attempted to argue that the cause of action subsisted based on section 8 (4) of the CLA 1956, TNB is unable to prove when the tampering took place, the date put is an assumed date based on meter replacement. TNB alleged tampering from 10.11.2017 but could not substantiate this claim with direct evidence. Bearing in mind meter replacement was conducted by TNB themselves on 10.11.2017 (please refer to paragraph 6 of this judgement), and now TNB just record this date as the starting period where TNB suffered loss of revenue due to tampering (see paragraph 13 of this judgement). Is this logic?



66. The inspection conducted on 31.7.2019 revealed signs of tampering, but no evidence established that it occurred before the Deceased's death on 7.1.2018. Witnesses' testimony confirmed a lack of clarity regarding when or by whom the tampering was conducted.
67. Assuming that the tampering indeed took place before the Deceased's demise, and take into account section 8 (4) of CLA 1956 which deals with the survival of causes of action in cases where the person responsible for the damage (the wrongdoer) has died before or at the same time as the damage was suffered, then the Plaintiff needs to prove that it was the Deceased who had committed a wrongful act or omission during his lifetime that would have led to a legal claim against him. For ease of reference, section 8 (4) of the CLA 1956 is reproduced below:

*"(4) Where damage has been suffered by reason of any act or omission in respect of which a cause of action would have subsisted against any person if that person had not died before or at the same time as the damage was suffered, there shall be **deemed**, for the purposes of this section, **to have been subsisting against him before his death such cause of action in respect of that act or omission as would have subsisted if he had died after the damage was suffered.**"*

68. I must emphasize that this court is aware that in normal cases of tampering, case authorities outlined the proposition of the law that there is no necessity for TNB to prove who actually tamper the meter, as long as the person is registered account holder, certain presumption can be applied. See section 40 of the ESA 1990:

"Onus of proof

S. 40. In any prosecution for an offence under **subsection 37(3)** proof of—

- (a) the existence of artificial means which, either alone or in conjunction with additional artificial means not found, could be used for altering, or facilitating***



the alteration, of the index of any meter or instrument used for registering the quantity of electricity supplied;

(b) the existence of artificial means which, either alone or in conjunction with additional artificial means not found, would prevent, or facilitate the prevention of, any meter or instrument from duly registering the quantity of electricity supplied, or would facilitate the dishonest abstraction, consumption, or use of electricity; or

(c) (i) the fitting of any mechanical or other means to;

(ii) the absence or removal of any part or connection from; or

(iii) the interference with any part or connection of,

any apparatus in the circumstances that the fitting, absence, removal or interference would prevent or facilitate the prevention of any meter or other instrument from duly registering the quantity of electricity supplied, or would facilitate the dishonest abstraction, consumption or use of electricity,

shall be prima facie evidence that there has been dishonest alteration of the index of any meter or instrument, or prevention, abstraction, consumption or use of electricity, as the case may be; and

(A) that the dishonest alteration, prevention, abstraction, consumption or use, as the case may be, has been carried out by—

(a) the person fitting the artificial, mechanical or any other such part or connection as aforesaid;

(b) the person removing any such part or connection as aforesaid;



(c) the person interfering with any such part or connection as aforesaid;

(d) the consumer using the meter or instrument;

(d) the person having control of the installation where it is fixed; or

(e) the occupiers of the premises on which the meter or instrument is installed; or

(B) that the person or **consumer has abetted the offence** of the alteration, prevention, abstraction, consumption or use, as the case may be."

69. Section 2 of the ESA 1990 defines a "consumer" as "a person who is supplied with electricity or whose premises are for the time being connected for the purpose of receiving electricity."

70. Section 40 in the ESA 1990 grants to the Plaintiff effectively a *prima facie* case for committing an offence under section 37(3) against any person simply due to them being a consumer.

71. The court in **Perumahan Kinrara Bhd v Tenaga Nasional Bhd [2022] CLJU 689** adopted a purposive approach and read the meaning of a consumer as a person who was supplied with electricity as the person who applied to be supplied electricity. In paragraph 19 and 20, the court held:

"[19] I am therefore of the view that a registered customer is a person to whom electricity was supplied, and ipso facto, a consumer. The argument of the Defendant that it was not a consumer because at the material date of tampering it was not supplied with electricity would suggest that the Plaintiff is put to making the necessary enquiries at all times to ensure that electricity was in fact supplied to the registered customer.

[20] The definition of a consumer is not to be given a literal interpretation. Otherwise the Plaintiff, who has many consumers, would have to constantly



verify and ascertain if electricity was supplied to its registered customers at the material time before action can be taken under section 38(3). I would therefore adopt a purposive approach and read the meaning of consumer as a person who was supplied with electricity as the person who applied to be supplied electricity. This would be the registered customer of the Plaintiff. To my mind, adopting a purposive approach would promote the object of the Act 447 and must prevail over the literal interpretation.

(See: section 17A of the Interpretation Act 1967, Tebin bin Mostapa (as administrator of the estate of Hj Mostapa bin Asan, deceased) v. Hulba-Danyal bin Balia & Anor (as joint administrators of the estate of Balia bin Munir, deceased) [2020] 7 CLJ 561; [2020] 4 MLJ 721).

[21] In the circumstances, I am of the view that the finding of the learned Magistrate that the Defendant was a consumer is correct."

72. Notwithstanding the above, this court is of the considered view that in a case of this nature - where tampering is discovered only after the registered account holder's demise - the identity of the person who tampered with the meter is a material fact. If TNB can establish that the Deceased either directly tampered with the meter or failed to monitor it, constituting an act or omission as contemplated under Section 8(4) of the Civil Law Act 1956, the cause of action would be deemed to have arisen before the damage was suffered.
73. In such a scenario, the law treats the cause of action as if it had already existed prior to the Deceased's death. The actual timing of TNB's financial loss becomes immaterial; what matters is whether TNB can prove that the Deceased was responsible for the tampering or failed in his duty to prevent it. If this is proven, this Court has no hesitation in holding the Deceased's estate liable for the losses incurred due to the tampering, even after his demise.
74. After considering all the evidence, I am not convinced that the Plaintiff had discharged its burden in this regard. Clearly, TNB is unable to bring their case under section 8 (4) of the CLA 1965.



75. Even assuming that the Plaintiff, TNB is able to discharge their burden of proof in this regard, then we have to determine whether the Defendants are able to rebut the claim made against the Deceased.
76. Notably, from 27.11.2017 until his death, the Deceased was hospitalized. This timeline makes it improbable that the Deceased could have tampered with the meter. This fact was well supported by all the hospital documentation tendered in court and was never disputed by the Plaintiff.
77. Furthermore, even before hospitalization, the Defendant's health condition was already deteriorating. This is evident from the report submitted on pages 182–183 of Bundle B. According to the death certificate, the cause of death was recorded as "*severe bronchopneumonia and multiple myeloma.*"
78. The wife SD1 testified in court (see page 219 of the Notes of Proceeding) that while the Deceased was ill, he intended to rent out the Premises as he was in need of money (*sebab dia sakit mahu pakai wang*). In her witness statement, she further stated that:

"S25 Adakah suami anda mengusik meter elektrik di lot kedai?

*J 25 Dari apa yang saya tahu, tidak. Dia telah pun sakit pada November 2017 dan telah **memaksa dirinya mencari penyewa** untuk Premis tersebut. Malah, ia menjadi sangat teruk dia dimasukkan ke hospital pada 27.11.2017, dan tidak pernah sembuh..."*

S26: Apakah punca kematiannya?

*J26 **Kanser darah yang merebak ke sumsum tulang dan tulang belakangnya...***

S27 Bagaimana anda boleh pasti suami anda tidak mengusik meter elektrik?

*J27 Saya **tidak rasa dia akan tahu bagaimana**, kerana dia hanya seorang pekerja kebun durian. Tambahan pula, tiada gunanya kerana kami **tidak***



menggunakan elektrik di Premis itu. Lagipun suami saya memang telah sakit tenat pada masa itu, dan tidak mampu untuk membuat apa-apa kerja pengusikan. Selepas masuk hospital, dia memang tidak boleh berjalan dan tidak mungkin boleh pergi ke Premis itu untuk mengusik meter elektrik."

79. Judging from the condition of the Deceased before his death and the fact that the premises was rented to third party was never disputed which was supported by documentary evidence (a stamped tenancy agreement), and the premises is accessible to others and linked to bitcoin activities which has no connection with the Deceased, such evidence suggesting alternative tampering actors. To my mind, this possibility weakens any presumption against the Deceased.
80. Overall, this court is satisfied that on the balance of probabilities the Deceased is not the person who tampered the meter, his worsen health condition also makes him unable to exercise his duty of care to ensure that no activities of meter tampering at his rented premises.
81. Evidence from the Plaintiff's own witnesses suggested that the premises was used to run bitcoin activities and this is further corroborated by all the photographs which shows equipment and facilities connected to bitcoin mining operation were found at the premises. There is no proof that the Deceased had enjoyed or derived any unjust enrichment from the Plaintiff's alleged loss of revenue. Therefore, the presumption under Section 40 of the ESA 1990 is rebutted, even if Section 8(4) of the CLA 1956 were to apply. Consequently, TNB has failed to establish liability on the part of the Deceased.

Claims Post-Death is invalid

82. To reiterate, this court is of the considered view that no liability should be attributed to a registered account holder after his/her demise unless TNB is able to prove that the deceased was the one who tampered the meter/failed to exercise his duty of care in meter monitoring.



83. Now, in the event the tampering is found to have taken place after the registered account holder's demise, or as decided in the Federal Court case, the cause of action accrued at the time when tampering was discovered and, in this case, after the Deceased's demise, the next issue to be considered is whether the Deceased's estate shall be held liable for post-death claim.
84. This court is of the view that naturally, when a person is dead, the contract between him or her with another party shall be considered as void as it is impossible for a deceased to carry out his part of duty or obligation or to enforce the contract. Hence, unless it is specifically provided under the law that an obligation shall sustain after the demise of the person, the contract shall be considered void and there is no basis for the other party to enforce the contract further. **Section 57 of the Contract Act 1950** states as follows:

"(1) An agreement to do an act impossible in itself is void.

ILLUSTRATIONS

(e) A contracts to act at a theatre for six months in consideration of a sum paid in advance by B. On several occasions A is too ill to act. The contract to act on those occasions becomes void."

85. A deceased registered account holder does not owe a continuing duty of care to TNB to ensure no tampering or unjust enrichment, whether by themselves or third parties. This position is supported by the fact that the law does not impose an ongoing obligation on a deceased individual to monitor or safeguard an electric meter after death. The Deceased cannot exercise any control or take any action to ensure compliance with statutory duties after their death. The principle of liability tied to unjust enrichment also fails, as the Deceased cannot have benefited posthumously.
86. Furthermore, neither the ESA 1990 nor any related statutes impose such duties on the administrators of the estate. This Court concurs with the Defendants' submission that if Parliament had intended for such an obligation to extend



beyond the deceased's lifetime, it would have expressly provided for it under the Electricity Supply Act 1990 (ESA 1990).

87. The absence of such a provision is telling, particularly when contrasted with Section 37A of the ESA 1990, which explicitly imposes liability on managing officers for corporate offences to ensure that corporate leadership and those in positions of responsibility cannot evade liability by attributing offences solely to the company or its employees. This distinction underscores the legislative intent that personal obligations of a registered account holder do not automatically transfer to administrators in the absence of a clear statutory mandate.
88. In **Ooi Poh Chin v. Tenaga Nasional Bhd [2016] 1 LNS 1024**, the court held that a registered consumer has a duty to monitor the meter. However, the High Court also affirmed that based on the doctrine of privity of contract, only the account holder (not the tenant or a third party) has contractual obligations with TNB. It was held in **Ooi Poh Chin** that occupants who are not the registered consumers do not have legal standing to challenge disconnections. Based on the above principles, this court is of the considered view that the duty to monitor clearly ceases upon death, as the Deceased/registered consumer can no longer perform this duty, nor can any liability for posthumous tampering logically attach.
89. The Defendants made reasonable efforts to trace the tenant but was unsuccessful. Despite attempting to contact the tenant via phone, the call was disconnected, and further attempts to locate the tenant's residence proved futile.

See page 221 of the Notes of proceeding:

“MAH: Bila kamu buat panggilan itu, apa jadi dengan panggilan itu? Kamu kata kamu ada call dia.

SD1: Sudah putus phone dia, tak ada sambung lagi.

MAH: Kamu tahu dia tinggal dekat mana?



SD1: Tak. Saya tak ada fotostat dia punya IC. Lepas tu saya angkat dia punya nombor IC cek kat dalam alamat, cari sampai rumah dia. Itu rumah pun tak ada orang duduk.

MAH: Macam mana kamu dapat alamat rumah dia? Kamu cek macam mana?

SD1: Orang tolong kita cek dekat JPJ lah. Saya tak tahu, itu anak bikin.

MAH: Kamu bagi nombor telefon dia?

SD1: Bukan. IC nombor sama nama dia, pergi cek dekat JPJ apa saya punya anak yang tolonglah tapi cari itu rumah sana tak ada itu orang. Itu rumah kosong."

90. The Defendant even went to the extent of checking the tenant's details through available records, but the address obtained led to an unoccupied house. In any event, a report has been lodged, and as the appropriate authority, the police should conduct further investigations into this matter.
91. In fact, the issue of whether the Deceased's family should be held liable for failing to monitor the meter was not pleaded in this case and falls outside the scope of the issues to be tried. Similarly, questions regarding the existence of a commercial contract under the circumstances, the implied obligations arising from such a contract, and whether these obligations extend to the Deceased's family or estate administrator were not included in the "Agreed Issues to be Tried." It is trite that parties should adhere to the agreed issues to be tried. It is also not in dispute that the Plaintiff never plead breach of contract in their pleadings. Any departure from the agreed issues without prior leave of the court is improper and constitutes procedural unfairness.
92. This principle was reinforced by the Court of Appeal in **Qi Qiaoxian & Anor v. Sunway Putra Hotel Sdn Bhd [2024] 4 MLRA 49**, which emphasized that once parties have agreed on issues to be tried, they must adhere to them. The judgment stated:



"[19] Secondly, in accordance with O 34 r 2(2)(k) RC, all the parties in this case had agreed to the 3 Agreed Issues to be Tried. During pre-trial case management of this case, if the Defendant had raised an issue of law and/or fact which was not agreed to by the Plaintiffs, the Defendant could have applied for and obtained leave of the Sessions Court to file the 'Defendant's Issue(s) to be Tried'. The Defendant did not however file the Defendant's Issue(s) to be Tried in this case."

93. The Court in **Qi Qiaoxian** further held that a party cannot introduce new issues at trial that were not initially pleaded or agreed upon:

"[20] With respect, both the learned Sessions Court and High Court Judges had committed an error of law in failing to consider that the Defendant was bound by the Defence and the 3 Agreed Issues to be Tried ('1st Legal Error'). The Defendant should not be allowed to raise any new issue which - (1) had not been pleaded by the Defendant in the Defence; and (2) had been previously agreed to by all the parties in this case pursuant to O 34 r 2(2)(k) RC."

94. The ruling also explained the rationale behind this restriction:

"If the Defendant were allowed to raise any issue, legal and/or factual, which had not been pleaded in the Defence and which had not been previously agreed to by the Defendant in the 3 Agreed Issues to be Tried –

(a) This would be tantamount to a carte blanche for the Defendant to conduct the Trial by ambush; and

(b) This would cause an injustice to the Plaintiffs because the Plaintiffs would be blindsided by the Defendant's 'new' issue to be tried."

95. This principle was reaffirmed by the High Court in **Lim Mei Jin v. Loh Yuen Tuck** [2024] 4 MLRA 49, which similarly held:



"[32] The Court of Appeal decision in Qi Qiaoxian & Anor v. Sunway Putra Hotel Sdn Bhd [2024] 4 MLRA 49 further underscores the importance of parties being bound by their pleadings and the agreed issues for trial. The court held at paragraph [20] that a defendant should not be allowed to raise any issue which was not pleaded in the defence or which had not been previously agreed to by parties in the agreed issues to be tried, as this would be tantamount to the Defendant conducting a trial by ambush and would cause injustice to the Plaintiff. Similarly, the Defendant here should not be permitted to depart from his pleaded case and the agreed issues for trial by raising the defences of accord and satisfaction and lack of cause of action for the first time in submissions, when these defences were neither properly pleaded nor identified as issues for determination at trial."

96. Both the Court of Appeal and High Court have consistently affirmed that parties are strictly bound by their pleadings and the agreed issues. Any attempt to introduce new issues without prior leave of the court is improper, constitutes trial by ambush, and should be rejected.
97. In any event, I find that the Defendants' obligation as Estate Administrator does not extend to maintain an untampered meter. The Defendants are not privy to the contract, if any, or do they have the capacity to perform the alleged obligation on behalf of the Deceased.
98. The question of whether the Deceased's family was obligated to report the death to TNB is irrelevant, as TNB is not pursuing a claim against them for negligence or any failure to update the registered account holder's details. The Plaintiff has not cited any legal provision requiring a deceased account holder's family to notify TNB. Moreover, the issue of whether such an obligation exists falls outside the scope of the agreed issues to be tried.
99. The Plaintiff contended that there is no legal requirement for a consumer's representative to be present during inspections, citing **TNB v. Long Heng Plastic Manufacturing Sdn Bhd [2017] 4 MLRH 597**, which held that the



absence of a defendant's representative only affects credibility, not the validity of the inspection. However, this Court has reservations about the inspection conducted in this case. Had the consumer's representative been present, TNB would have been made aware of the Deceased's passing, allowing for more accurate information to be relayed to their legal department. Notably, in this case, TNB revised the amount of losses and adjusted the loss recovery period only after being informed by the Defendants' solicitor of the Deceased's demise. This demonstrates that the absence of a consumer representative can have substantive implications beyond mere credibility concerns.

100. While there may be established authorities that largely favor TNB in discharging its burden of proof, this should not afford TNB the latitude to take procedural safeguards for granted when setting up its claim. The integrity of an inspection—and consequently, the reliability of the claim—must be scrutinized to ensure that procedural shortcomings do not unduly prejudice the Defendant.
101. To my mind, TNB bears the responsibility of exercising greater vigilance in monitoring unpaid bills, unusual consumption of electricity or any irregularities. When outstanding amounts exceed the deposit or remain unpaid, TNB has the right to terminate electricity supply, regardless of whether the registered account holder is alive or deceased. Allowing a debt to accumulate to the extent of hundreds of thousands of Ringgit - far exceeding the initial deposit - before taking action reflects a clear lack of due diligence on TNB's part.
102. While the authorities impose an obligation on the registered account holder or consumer to monitor their electricity meter usage, it is equally imperative that TNB, as the electricity supplier and a contracting party, fulfils its corresponding duties. The obligation to ensure proper monitoring and accountability in electricity consumption cannot rest solely on the consumer; rather, it must be mutual and reciprocating.
103. TNB, with its access to advanced technology including Smart Meters, Advanced Metering Infrastructure (AMI) and Artificial Intelligence (AI) is uniquely positioned



to detect irregularities in electricity consumption at an early stage. Given these capabilities, there is little doubt that TNB possesses the capability to detect unusual electricity consumption in any given area. TNB should take proactive measures to identify and address anomalies, including cases of power theft, meter tampering, or excessive consumption, rather than allowing debts to accumulate before initiating legal action.

104. A fair and balanced contractual relationship requires that both parties, TNB as the supplier and the consumer as the user, actively fulfil their respective obligations. Just as consumers are expected to monitor their usage and settle their bills, TNB must exercise due diligence in ensuring that its monitoring systems are effectively utilized to prevent disputes and financial burdens from escalating unnecessarily.

G. CONCLUSION

105. In light of the above reasoning, this Court finds that:

- (i) the cause of action arose after the Deceased's demise, making section 8(1) of the CLA 1956 inapplicable, and the case should be struck out.
- (ii) Alternatively, even if the cause of action subsisted, TNB has failed to prove that tampering occurred during the Deceased's lifetime or that the Deceased was the person who tampered the meter/failed to exercise his duty of care in monitoring the use of the meter.
- (iii) in a case of this nature i.e discovery of tampering was found after the registered account holder's demise, the fact about the actual wrongdoer is material.
- (iv) Judging from the condition of the Deceased before his death and circumstantial evidence that premises was rented to third party, accessible to others and linked to bitcoin activities, this court is of the view that on the balance of probabilities, the Deceased is not the person who tampered the meter, his



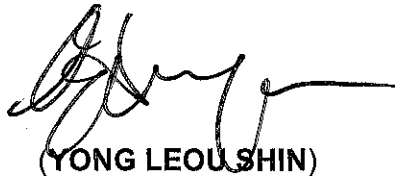
deteriorating health condition also rendered him unable to fulfil his duty of care in ensuring that no meter tampering occurred at his rented premises.

(v) There is no liability for the deceased after his death, and any claims arising posthumously are void.

(vi) Issue regarding the Deceased's family obligation to report the death and change the account holder's name, breach of commercial contract or alleged failure to perform the implied obligation to monitor the meter is not pleaded and outside from the scope of issues to be tried.

106. The Plaintiff's claim is dismissed with costs RM25,000.

Dated: **25 Mac 2025**



(YONG LEOU SHIN)

Judge

Session Court

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