

**IN THE HIGH COURT OF MALAYA AT KUALA LUMPUR  
(CIVIL DIVISION)  
IN THE FEDERAL TERRITORY OF KUALA LUMPUR  
CIVIL SUIT NO.: WA-23NCVC-13-05/2017**

**BETWEEN**

**MOHAMED FAHAMY BIN MOHAMED SUYUD      ... PLAINTIFF**

**AND**

**ISCADA NET SDN BHD                                      ... DEFENDANT**

**GROUND OF JUDGMENT**

**Introduction**

[1] This is an action based on defamation by the Plaintiff (“**P**”) against the Defendant (“**D**”). D in turn counterclaimed against P for defamation, breach of employment contract, forgery and fraud. I allowed P’s claim and dismissed D’s counterclaim. These are the grounds of my judgment.

**Background**

[2] On 31.12.2015, the headquarters of the Fire and Rescue Department of Malaysia (Jabatan Bomba dan Penyelamat Malaysia) (“**JBPM**”) appointed D as a service provider of Automatic Fire Monitoring System (Sistem Pengawasan Kebakaran Automatik) (“**SPKA**”). The period of appointment is for 5 years from 31.12.2015 to 31.12.2020.

[3] SPKA is a system that sends an alert when the fire alarm on the premises is triggered. Certain premises were required to install the SPKA in order to obtain the annual Fire Certificate.

[4] On 1.1.2016, D appointed P as a Special Officer to the Executive Chairman and Managing Director of the Defendant, one Dato' Saipuddin bin Ahmad ("**DW1**"). P was to receive a monthly salary of RM8,000.00.

[5] In February and March 2017, D issued the following 3 notices concerning P (collectively the "**Notices**"):

- (a) On 28.2.2017, D issued a notice ("**Notice 1**") on its letterhead and distributed it to 15 official vendors in Malaysia;
- (b) On 30.3.2017, D issued a second notice ("**Notice 2**") on its letterhead and distributed it to the Jalan Maharaja Lela Fire and Rescue Station in Kuala Lumpur. Notice 2 was served on Pusat Gerakan Operasi JBPM and sent to the email addresses of 17 vendors of D;
- (c) In February or March 2017 (actual date unknown), D issued a third notice ("**Notice 3**") and distributed it to a few Fire and Rescue Departments.

[6] The Notices contained the following statements ("**Impugned Words**") which P claims are defamatory of him:

- (a) In Notice 1:

*“Berhubung dengan perkara diatas, dukacita dimaklumkan bahawa encik Mohamed Fahamy bin Mohamed Suyud nombor pengenalan diri 790223-10-5029 beralamat di C-2-9, Sri Alam Condominium, Jalan Kelab Golf 13/1, Kampung Saas, 40300 Shah Alam, Selangor telah diberhentikan daripada jawatan Pegawai khas kepada Pengerusi Syarikat ini sejak akhir tahun 2016.*

*2. Beliau tiada kaitan lagi dengan urusan-urusan syarikat. ...*

*3. Satu laporan polis telah dibuat mengenai semua aktiviti beliau yang merosakkan syarikat ini. Pihak atasan KPKT dan JBPM telah dimaklumkan juga. Beliau telah merosakkan imej syarikat ibaratkan ‘Meludah di dalam periuk nasi iS.net yang mana tuan-tuan juga makan daripada periuk nasi yang sama’.”*

(b) In Notice 2:

*“2. Dimaklumkan bahawa En Mohamed Fahamy bin Mohamed Suyud bernombor pengenalan 790223-10-5029 telah diberhentikan daripada syarikat ini sejak bulan Oktober 2016 diatas masalah ketidak amanah dan disiplin pada syarikat Iscada.*

*3. Sehubungan dengan itu dipohon daripada pihak tuan supaya tidak akan membenarkan apa-apa lawatan dan juga atas tujuan berhubung dengan iscada mohon tuan minta penjelasan dari beliau. Beliau telah banyak membuat perkara-perkara yang memburukan syarikat Iscada. Satu laporan polis telah dibuat diatas perkara memburukan syarikat dan menyebarkan laporan palsu berhubung dengan syarikat. Bersama ini diedarkan perkara yang yang dilakukan oleh beliau untuk tindakan pada tuan.”*

(c) In Notice 3:

*“Berhubung dengan perkara di atas, dukacita dimaklumkan bahawa encik Mohamed Fahamy bin Mohamed Suyud nombor pengenalan diri 790223-10-5029 beralamat C-2-9 Sri Alam Condominium, Jalan Kelab Golf 13/1, Kampung Saas, 40300, Shah Alam, Selangor sebenarnya telah tidak datang kerja sejak Oktober 2016. Syarikat iScada Net Sdn Bhd telah pun menamatkan perkhidmatan beliau sebagai pegawai khas kepada*

*pengerusi syarikat tanpa notis di bawah klausa 10.5 kontrak perjanjian pekerjaan iScada Net Sdn Bhd pada penghujung Oktober 2016.”*

[7] Notice 3 contained 4 photographs with P’s face, of which 3 photographs showed P smoking a cigar (“**Photographs**”). The Photographs were taken from P’s own *Facebook* page.

### **Whether the Impugned Words are defamatory**

[8] P avers that the Impugned Words are defamatory. D, on the other hand, contends that the Impugned Words are not defamatory.

[9] P has to establish 3 elements in order to prove his case for defamation. Namely that (a) the Impugned Words are defamatory, (b) the Impugned Words refer to him, and (c) the Impugned Words were published to third parties. This was laid down in *Ayob Saud v T.S Sambanthamurthi* (1989) 1 CLJ (Rep) 321 at 324 which said:

*“In our law on libel, which is governed by the Defamation Act 1957, the burden of proof lies on the plaintiff to show (1) the words are defamatory, (2) the words refer to the plaintiff; and (3) the words were published.”*

[10] The second and third elements aforesaid are not in dispute. D admits that the Impugned Words refer to P. In any event, the full name and identity card number of P appear at the beginning of each of the Notices. Additionally, the Photographs of P appear in Notice 3.

[11] Further, D does not deny that the Impugned Words were published. D explained that as P was the contact person with JBPM, the Notices were issued to interested and relevant parties.

[12] Notice 2 was disseminated to a list of 17 email addresses. Among the recipients were PW2 (Managing Director of a vendor of D) and PW3 (Ketua Bomba of the Hulu Selangor zone JBPM). PW2 testified that he received Notice 1 and Notice 2. Whereas PW3 testified that he received Notice 2 and Notice 3.

[13] The only element to be decided then is whether the Impugned Words are defamatory.

### Plaintiff's case

[14] According to P, the Impugned Words in the plain and natural meaning, and further through innuendo, are defamatory of P. P contends that the Impugned Words with their plain and natural meanings and innuendos are as follows.

Impugned Words	Plain and Natural Meaning / Innuendo
Notice 1	
<p><i>"... telah <b>diberhentikan</b> daripada Jawatan Pegawai khas kepada Pengerusi Syarikat ini sejak <b>akhir tahun 2016</b>."</i></p>	<p>P was fired by D since the end of 2016.</p>
<p><i>"Satu <b>laporan polis</b> telah dibuat mengenai semua aktiviti beliau yang <b>merosakkan syarikat</b> ini. Pihak atasan KPKT dan JBPM telah dimaklumkan juga."</i></p>	<ul style="list-style-type: none"> <li>• P had committed a crime which warranted a police report.</li> <li>• P had violated the law.</li> <li>• P had committed acts that damaged D.</li> </ul>
<p><i>"Beliau telah <b>merosakkan imej syarikat</b> ibaratkan 'Meludah di dalam periuk nasi iS.net"</i></p>	<p>P had committed acts that damaged the image and/or reputation of D.</p>

Impugned Words	Plain and Natural Meaning / Innuendo
<i>yang mana tuan-tuan juga makan daripada periuk nasi yang sama'."</i>	
Notice 2	
<i>"Dimaklumkan bahawa En Mohamed Fahamy bin Mohamed Suyud bernombor pengenalan 790223-10-5029 telah <b>diberhentikan</b> daripada syarikat ini sejak bulan <b>Oktober</b> 2016 diatas <b>masalah ketidak amanah dan disiplin</b> pada syarikat Iscada."</i>	P had committed dishonest acts and undisciplined acts towards D.
<i>"Beliau telah banyak membuat perkara-perkara yang <b>memburukan syarikat Iscada.</b>"</i>	P had committed acts that damaged the image and/or reputation of D.
<i>"<b>Satu laporan polis</b> telah dibuat diatas perkara <b>memburukan syarikat dan menyebarkan laporan palsu</b> berhubungan dengan syarikat. Bersama ini diedarkan perkara yang dilakukan oleh beliau untuk tindakan pada tuan."</i>	<ul style="list-style-type: none"> <li>• P had committed a crime which warranted a police report.</li> <li>• P had disseminated false report about D.</li> <li>• P is a dishonest individual.</li> </ul>
Notice 3	
<i>"... sebenarnya telah <b>tidak datang kerja</b> sejak <b>Oktober 2016.</b>"</i>	<ul style="list-style-type: none"> <li>• P refused, neglected and/or failed to work since October 2016.</li> <li>• P is an irresponsible person.</li> </ul>
<i>"Syarikat iScada Net Sdn Bhd telah pun <b>menamatkan perkhidmatan</b> beliau sebagai pegawai khas kepada pengerusi syarikat tanpa notis di bawah klausa 10.5 kontrak perjanjian pekerjaan iScada Net Sdn Bhd pada penghujung <b>Oktober 2016.</b>"</i>	<ul style="list-style-type: none"> <li>• P had breached the employment contract.</li> <li>• Plaintiff is not a trustworthy employee.</li> </ul>
4 pictures with P's face, wherein 3 pictures showed P smoking a cigar.	P is an immoral person with bad behaviour.

## The Law

[15] The test to be applied to determine whether the words complained of are defamatory is this. A statement is defamatory if it – (a) tends to lower the plaintiff in the estimation of right-thinking members of society generally; (b) causes the plaintiff to be shunned or avoided; (c) exposes the plaintiff to hatred, contempt or ridicule; or (d) imputes to the plaintiff any dishonourable or discreditable conduct or motives or a lack of integrity on his part.

[16] In *Syed Husin Ali v Sharikat Penciletakan Utusan Melayu Berhad & Anor* [1973] 2 MLJ 56 at 58, the High Court 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.”*

[17] In *Chok Foo Choo @ Chok Kee Lian v The China Press Bhd* [1999] 1 MLJ 371 at 374, the Court of Appeal said:

*“In my judgment, 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 **dishonourable 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.”*

[18] The test is the tendency of the impugned statement to cause the plaintiff’s reputation to be lowered in the eyes of the ordinary reasonable man. The actual effect on the plaintiff’s reputation or the meaning of the

words actually understood by the readers or hearers is not imperative. (See *Syed Husin (supra)* at 59; *Datuk Seri Anwar bin Ibrahim v Utusan Melayu (M) Bhd & Anor* [2013] 3 MLJ 534 at 567).

[19] It is for the Court to determine the meaning of the impugned statement in their natural and ordinary meaning or innuendo meaning or both. The meaning of the words is determined based on an objective test, taking into account the context, the circumstances of publication and the statement as a whole. The relevant meaning is that as understood by the ordinary reasonable man. The meaning intended by the defendant and the meaning understood by the plaintiff is immaterial. (See *Tun Datuk Patinggi Haji Abdul-Rahman Ya'kub v Bre Sdn Bhd & Ors* [1996] 1 MLJ 393 at 402).

[20] As stated in *Chok Foo Choo (supra)* at 374:

*“... the first task of a court in an action for defamation is to determine whether the words complained of are capable of bearing a defamatory meaning. And it is beyond argument that this is in essence a question of law that turns upon the construction of the words published. As Lord Morris put it in Jones v Skelton [1963] 3 All ER 952 at p 958:*

*The ordinary and natural meaning of words may be either the literal meaning or it may be an implied or inferred or an indirect meaning; any meaning that does not require the support of extrinsic facts passing beyond general knowledge but is a meaning which is capable of being detected in the language used can be a part of the ordinary and natural meaning of words (see Lewis Daily Telegraph Ltd [1963] 2 All ER 151). The ordinary and natural meaning may therefore include any implication or inference which a reasonable reader, guided not by any special but only by general knowledge and not fettered by any strict legal rules of construction, would draw from the words. The test of reasonableness guides and directs the court in its function of deciding whether it is open to a jury in any particular case to hold that reasonable persons would understand the words complained of in a defamatory sense.”*

## Findings of the Court – Defamatory imputation

[21] I find that the Impugned Words are capable of bearing a defamatory meaning and that they are indeed defamatory of P. Specifically the following statements.

[22] In Notice 1, that **P's activities had damaged D** and its image. The natural and ordinary meaning of this statement imputes to P a dishonourable or discreditable conduct or motive. As it was alleged that P had committed acts that damaged D and its reputation.

[23] In Notice 2, that P was terminated from D since October 2016 due to **dishonesty and disciplinary issues**. The natural and ordinary meaning of this statement is that P is dishonest and indisciplined. As D had alleged that this was the cause of the termination of P's employment.

[24] Also in Notice 2 also, that **P had done many things which damaged D** and had **spread false report** regarding D. The natural and ordinary meaning of this statement imputes to P a lack of integrity on his part. As it was alleged that P had spread falsity.

[25] In Notice 3, that P **failed to come to work** since October 2016 and consequently D terminated his services without notice pursuant to the employment contract. The natural and ordinary meaning that can be inferred from this statement is that P is irresponsible and untrustworthy. As D alleged that P had failed to show up for work.

[26] In my opinion, the Impugned Words do tend to lower P in the estimation of right-thinking members of society generally. They impute to

P a conduct which is dishonourable or discreditable and a lack of integrity on his part. It is therefore my judgment that D has committed the tort of defamation against P.

[27] I should mention that I do not consider defamatory the statements regarding (a) termination of P's employment, per se, (b) lodgement of police report, and (c) the Photographs.

### **Defendant's case**

[28] D pleads justification and fair comment.

[29] D avers that the Impugned Words in Notice 1 are facts whereby P was indeed fired from his employment in October 2016 and a police report was indeed made by D regarding the matter.

[30] D also avers that the Notices are fair comment because the Impugned Words were based on facts, namely the fact that P was fired and a police report was made regarding the matter.

[31] D further avers that the Notices are fair comment because the Impugned Words involved government departments and public safety. SPKA is a project involving installation of fire monitoring system. Users of the SPKA system are premises involving national security such as the KLIA airports, Court buildings, government buildings and hospitals. Thus, according to D, the matter is of public interest. The Notices were necessary to warn relevant parties not to deal with the wrong person and to take precautionary measures.

## **Findings of the Court – Justification**

[32] As a general rule, the defence of justification is a complete defence to a defamation action. The burden is on the defendant to show that the defamatory imputations are substantially true. (See the Federal Court case of *Syarikat Bekalan Air Selangor Sdn Bhd v Tony Pua Kiam Wee* [2015] 8 CLJ 477 at 497). The burden does not lie on the plaintiff to prove that the defamatory words are false because the law presumes this in his favour. (See the Supreme Court case of *S Pakianathan v Jenni Ibrahim* [1988] 2 MLJ 173 at 177).

[33] In my opinion, the defence of justification was not proved in this case. D did not discharged the burden of showing that the Impugned Words are substantially true.

[34] If all that D had said was that P's employment had been terminated and stopped there, I would not consider it defamatory. Even if it was, such statement would be true in substance and fact, hence the defence of justification would avail. I observe that there is a separate issue regarding when the termination occurred, which will be addressed later.

[35] DW1 testified that the Notices were sent in order to inform the vendors of D and JBPM that P was no longer working for D. This was deemed necessary because whilst employed by D, P acted as an intermediary between D and its vendors. Another reason proffered was that P had continued to hold himself out as a representative of D after October 2016. If that was the objective, it could easily have been met by simply stating that P's employment had been terminated.

[36] However, D went beyond saying only that. In Notice 2, D went further to say that P was dismissed due to dishonesty and disciplinary issue. This is untrue. From the evidence, I find that the termination was probably due to a falling out between DW1 and P.

### **Termination due to Disciplinary issue**

[37] As regards termination due to disciplinary problem, D claimed that P was dismissed because he failed to be present in the office for 3 consecutive days without a valid reason. D relied on clause 10.5 of the employment contract (undated but signed by P on 7.3.2016) which states:

*“This Contract of Employment may be terminate by the Company **without notice** or any compensation whatsoever if you are found to be:- ... v. **Absent from work** for a period of three (3) consecutive working days without reasonable cause”.*

[38] It is noteworthy that the aforesaid clause states ‘absent from **work**’. Not ‘absent from the **office**’.

[39] The evidence show that P was not strictly required to be in the office on a daily basis, as the nature of his job did not require him to be physically present in the office. DW1 testified that he dictated P’s attendance at the office and that such physical attendance was irregular, given the nature of P’s job.

*P/C: Tak bersetuju? Saya juga cadangkan Dato, sebenarnya skop kerja En Fahamy ini sebagai pegawai khas ini, tidak terhad kepada kerja-kerja di office sahaja.*

*DW1: Tak setuju.*

*P/C: Tak setuju. Jadi kerja dia terhad kepada office? Mana satu ni, Dato?*

*DW1: No. Ada office, ada luar. Ada office, ada luar.*

...

*Saya explain? Saya explain sebab itu persetujuan saya. Dia pegawai khas saya. So, maknanya skop dia tu kalau saya kata you tak payah datang office dua bulan tak payahlah. Kalau saya suruh datang office, datang sahajalah.”*

[40] The evidence also show that prior to his dismissal, P was never reprimanded for being absent from the office.

*“P/C: Dato, dia, macam ini. Saya cadangkan ya, sebab konon-kononnya sebab En Fahamy ini diberhentikan ialah dia tak datang office tiga hari berturut-turut. Ya. Di dalam pelaksanaan kerja dia daripada Januari sehingga Oktober, saya cadangkan memang dia selalu tidak masuk ke pejabat, betul?*

*DW1: Ok.*

*P/C: Ya. Dan daripada Januari sehingga Oktober, tak ada tindakan yang diambil oleh pihak syarikat terhadap En Fahamy. Betul?*

*DW1: Betul.”*

[41] In cross-examination, DW1 conceded that the real reason behind the termination of P’s employment was due to differences which arose between him and P.

*“DW1: Dah ada dua, tiga masalah. Ketidakpersetujuan saya dengan Fahamy ini.*

*...*

*So, jadi itulah kita implement apa ni tanpa notis di sini bila, because I cannot prove in the Court that ada banyak perkaralah, kekecewaan saya terhadap dia sebenarnya.*

*...*

*P/C: Ok. So, jadi ada differences di antara En Fahamy dengan Dato ni, jadi oleh sebab itu, Dato menggunapakaikan terma di dalam surat pelantikan ini untuk tamat perkhidmatan dia Oktober 2016?*

*DW1: Betul.”*

[42] It seems to me that ordinarily P is not required to be in the office on a daily basis. As special officer to DW1, P had the freedom to work outside of the office. His absence from the office was merely used as an excuse

in an attempt to justify his dismissal. It is more probable that P's employment was terminated due to the deteriorating relationship between him and DW1. My finding in this regard is fortified by the following.

### ***3 consecutive working days absence***

[43] In paragraph 30 of the Counterclaim, D pleaded that P had "*failed to come to work for more than 3 consecutive days*". In his witness statement (Q/A 10), DW1 testified that P "*diberhentikan atas sebab kegagalan untuk hadir ke pejabat selama tiga hari berturut-turut tanpa alasan yang munasabah*". However, it was not specified when exactly were the 3 or more days in question during which P was purportedly absent from the office.

[44] P testified that on 29.10.2016, he told DW1 that P's son had been hospitalized. Further on 31.10.2016, he told DW1 that the doctor wished to see P and his wife that morning. This testimony is supported by a screenshot of a *Whatsapp* conversation between P and DW1 on 29.10.2016 and 31.10.2016.

[45] At the time of the aforesaid *WhatsApp* communication, DW1 did not raise any objection or issue with P being away from the office to attend to his sick son. In fact, DW1's reply in his *WhatsApp* message on 29.10.2016 was "*Take care anak ... nti free ambil lah cek*". This reinforces my view that using P's absence from the office as an excuse for terminating his employment was an afterthought on the part of D.

[46] Under clause 10.5 of the employment contract, the prerequisite for termination without notice or any compensation is "*absent from work for a*

*period of three (3) consecutive **working** days **without reasonable cause***". Two points to note here.

[47] First, the absence must be 'without reasonable cause'. P was absent from the office because his son was in the hospital. I would not consider such absence unreasonable. Especially since DW1 was informed of and did not raise any issue with this.

[48] Secondly, the absence must be for 3 consecutive **working** days. Not simply 3 consecutive days. Under clause 6.1 of the employment contract, P's normal working hours are 8:30am to 5:30pm on Monday to Friday. Under clause 6.1 of the employment contract, P will usually have Saturday and Sunday as weekly holidays.

[49] It is unclear when were the 3 consecutive working days during which P was purportedly absent from the office. It is noteworthy that the days mentioned earlier pertaining to the *Whatsapp* conversation between P and DW1, namely 29.10.2016 and 31.10.2016, were a Saturday and a Monday respectively. If D is alleging that 29.10.2016 to 31.10.2016 were the 3 consecutive days during which P was absent from the office, those were not 3 consecutive 'working' days. P cannot be faulted for being absent from the office on Saturday 29.10.2016 and Sunday 30.12.2016. However since no evidence was adduced as to when P was absent from the office, I would not pursue this point.

[50] I am conscious that this case is not an employment claim for unfair dismissal. I dealt with P's dismissal only to show that it was not due to disciplinary problem. As such, D's averment that P was dismissed due to disciplinary problem is untrue. The defence of justification fails.

### ***Date of Termination of employment***

[51] There is ambiguity surrounding when P's employment was actually terminated. In paragraph 23 of the Amended Statement of Defence, D pleaded that P was fired "*from the month of October 2016*", but no specific date was mentioned. In his witness statement (Q/A 5), DW1 testified that P's services "*telah ditamatkan pada Oktober 2016*", again no specific date was mentioned. In submission, counsel for D said that P's employment was terminated on 31.10.2016.

[52] Notice 1 stated that P was terminated 'since end of 2016'. If this means December 2016, it would contradict the aforesaid references to October 2016. Later Notice 2 stated 'October 2016' and Notice 3 stated 'end of October 2016', but again no specific date was mentioned.

[53] The question as to exactly when P's employment was terminated becomes significant in view of D's averment that P continued to pretend to represent D after October 2016, even though he was no longer working for D then.

### ***Payment of salary***

[54] The documentary evidence does not support D's contention that P's services were terminated in October 2016. P's salary slips show that D continued to pay P's salary for the months of November and December 2016, albeit at a reduced sum of RM5,500.00 (contractually the monthly salary is RM8,000.00).

[55] In his witness statement (Q/A12), DW1 testified that the payments of RM5,500.00 in November and December 2016 to P were “*atas dasar belas kasihan dan bukan gaji*”. During cross-examination however, DW1 admitted that P’s salary was cut due to the following reasons – (a) payment of salary to one Encik Shukri; and (b) P’s workload was reduced.

*P/C: Ok, dan En Fahamy memberi keterangan bahawa pemotongan RM2,500 ini ialah untuk membayar En Shukri yang sepatutnya dia kata untuk menjadi pembantu kepada dia, betul Dato?*

*DW1: Tak betul.*

*P/C: Tak betul, ok tapi sekurang-kurangnya gaji dia dikurangkan, RM2,500 ini dipotong untuk membayar En Shukri?*

*DW1: Dua perkara yang berbeza.*

*P/C: Ok.*

*DW1: Satu jadi PA, salah tak betul.*

*P/C: Ok.*

*DW1: Untuk bayar gaji Shukri itu betul.*

*P/C: Untuk bayar Shukri itu betulah?*

*DW1: Ya.*

...

*Memang saya tak teringat apa ada black and white, masalah pertelingkahan saya tak ada WhatsApp, saya pun tak ada copy WhatsApp, inilah kita sudah daripada sini, daripada salary ini kita sudah boleh tengok bahawa tugas dia itu kita sudah reduce-kan. So jadi sudah ada masalah, kalau saya sebut sini panjang lagi tapi sudah ada masalah tentang masalah perkara-perkara yang melibatkan vendor, then saya buat keputusan perkara vendor diserahkan kepada apa nama ini Shukri.”*

[56] It is significant that the reduced sum of RM5,500.00 was also paid earlier for the month of October 2016. D had explained that the payments of RM5,500.00 in November and December 2016 were based on sympathy, and not salaries. That however does not explain why the same reduced amount was also paid for the month of October 2016 when, by D’s own admission, P was still employed by D.

[57] In view thereof, I am inclined to believe P's explanation that from October 2016 onwards, his salary was cut due to his reduced workload and some of his responsibilities being taken over by Encik Shukri (who was to be his personal assistant).

[58] D did not pay P any salary from January 2017 onwards. Isn't this a clear indication that P was no longer employed by D? Not necessarily so, as there was a pattern of late payment by D. The salary slips show that D was habitually late in paying P's salary as follows.

Period of Salary	Date paid
January 2016	4.5.2016 <i>(about 3 months late)</i>
February 2016	19.5.2016 <i>(about 2½ months late)</i>
March 2016	17.6.2016 <i>(about 2½ months late)</i>
April 2016	17.6.2016 <i>(about 1½ months late)</i>
May 2016	17.6.2016 <i>(about ½ month late)</i>
June 2016	13.7.2016 <i>(about ½ month late)</i>
July 2016	26.8.2016 <i>(about 1 month late)</i>
August 2016	30.9.2016 <i>(about 1 month late)</i>
	<i>[There was no salary slip which was tendered in evidence in respect of September 2016. But there is a WhatsApp message on 18.10.2016 which suggest that the salary for September 2016 was still outstanding at that time.]</i>
October 2016	14.11.2016 <i>(about ½ month late)</i>
November 2016	24.11.2016
December 2016	22.12.2016

### ***No Notice of Termination***

[59] DW1 confirmed that no written notice was given to P regarding his dismissal.

*P/C: Betul. Ok. Saya juga cadangkan tidak ada sebarang notislah, bukan setakat surat, tidak ada sebarang notis atau emel kepada En Fahamy bahawa dia diberhentikan kerja pada Oktober 2016. Setuju, Dato?*

*DW1: Dalam kontrak agreement –*

*P/C: Maaf, maaf, Dato. Saya faham apa Dato nak –*

*DW1: Ya. Setuju. Setuju. Ok.”*

[60] Also, there is doubt whether D verbally informed P of his dismissal. DW1 admitted that he cannot remember whether he informed P of the termination.

*“DW1: Saya sudah lupa sama ada saya bercakap dengan dia ke, saya dah lupa dah.*

*P/C: Dah lupalah.*

*DW1: Sebab tak ada dokumen. I cannot prove in the Court.”*

[61] D contends that clause 10.5 of the employment contract allows termination without any ‘written’ notice. I do not think so. The said clause 10.5 allows termination (for cause) *“without notice”*. I interpret this to mean that no time period is stipulated. That is to say, termination may be immediate, without having to give any prescribed period of notice.

[62] By way of contrast, clause 10.3 of the employment contract stipulates a 2 months’ notice period (for termination without cause). The said clause 10.3 states:

*“either party may terminate this Contract of Employment by giving the other two (2) months notice in writing, or two (2) months payment in lieu of notice”.*

[63] So whilst clause 10.3 requires a 2 month notice period for termination (without cause), clause 10.5 allows termination (for cause) to be immediate, without having to comply with any minimum notice period.

Clause 10.5 states “*without notice*”. It does not say without ‘written’ notice. In my view, clause 10.5 does not dispense with written notice of termination.

[64] It would be imprudent (to say the least) for an employer to terminate an employee without putting that in writing. D’s failure to give a written notice of termination has resulted in confusion regarding when P’s employment was actually terminated. D has only itself to blame for this. The onus is on D, who asserts that termination occurred in October 2016, to prove so and this they have failed to do.

[65] In paragraph 7.1 of his Amended Reply, P pleaded that he “*still worked with the Defendant until December 2016*”. In cross-examination, P testified that the last date of his employment was March 2017, after completing the Petronas job. At first blush, those two statements might appear contradictory. But I do not think that is necessarily so. The latter statement could be regarded as a supplementary information. That is to say, P worked for D until December 2016 and also till March 2017.

[66] During oral submission, counsel for P explained that the statement in paragraph 7.1 of the Amended Reply was made in the context of denying D’s allegation that termination occurred in October 2016. It was not to say that the termination of P’s employment occurred in December 2016 but to state that P was still paid until then. I accept this explanation as it is borne out by the context.

[67] The context in which paragraph 7.1 of the Amended Reply appear is as follows:

“7. The Notices stated that the Plaintiff was terminated since October 2016. In this matter:

7.1 However, in reality, the Plaintiff **still** worked with the Defendants until December 2016.

*Plaintiff was still paid by the Defendants”*

[68] I reject D’s contention that P’s services were terminated in October 2016. Based on the salary slips, I find that P was still employed by D in November and December 2016. Also noteworthy is the fact that D continued to pay statutory contributions to PERKESO (Social Security Organisation) in respect of P until December 2016. Although DW1 sought to excuse that by saying that PERKESO ordered D to do so.

[69] There is a *WhatsApp* message on 28.10.2016 from one Puan Nurul (marketing personnel of D) reminding of a meeting on 31.10.2016 to discuss SPKA installation and maintenance works. P was included in the list of attendees. There is also a *WhatsApp* communication on 18.10.2016 between DW1 and P regarding work-related matters. These indicate that P was still working for D as late as October 2016.

[70] There is yet another *WhatsApp* message from DW1 to P on 29.10.2016 whereby DW1 invited P to smoke cigar that night. P replied that he could not as his son was in the hospital. This indicates that things were still fine between DW1 and P at that point in time.

[71] D questioned why P did not file any legal action to challenge his dismissal. Especially when P had written these words on the November and December 2016 salary slips – “*without prejudice to take action of my right to the company*”. P explained that he could not afford to and did not wish to incur the cost of mounting a legal suit. I accept this explanation.

For practical reasons, it is not always feasible to sue even if one has a legitimate case. It is not incredulous that someone who was dismissed (like P in the present case) may wish to go separate ways rather than enter into protracted litigation.

### **Termination due to Dishonesty**

[72] As regards termination due to dishonesty, D referred to a meeting with Petronas Dagangan Bhd (“**Petronas**”) which took place on 28.2.2017. P attended that meeting and held himself out as an employee of D and gave out his Iscada name card. D maintains that P was dismissed in October 2016 (4 months earlier). Hence, according to D, P acted dishonestly in representing himself as an employee of D when that was no longer the case.

[73] However as discussed earlier, there is ambiguity surrounding when P ceased to be an employee of D. D has not proven that P was no longer its employee at the time of the Petronas meeting. But even assuming that P had acted dishonestly in representing himself as an employee of D at the Petronas meeting, it should be noted that this incident occurred on 28.2.2017. The termination of P’s employment, according to D, happened in October 2016 (4 months earlier).

[74] If so, when D dismissed P in October 2016, the Petronas meeting had not taken place yet. That meeting only occurred 4 months later on 28.2.2017. That being the case, any alleged dishonesty on the part of P in connection with the Petronas meeting could not have form a basis for his dismissal in October 2016.

[75] D also referred to 2 other meetings with Petronas which took place on 25.11.2016 and 13.12.2016, both of which were also attended by P as representative of D. Likewise these 2 Petronas meetings occurred after the purported termination of P's employment in October 2016. Similarly here, any alleged dishonesty on the part of P relating to these 2 Petronas meetings could not have form a basis for his dismissal in October 2016. In any event, based on my finding that P was still employed by D in November and December 2016, I reject D's contention that P had acted dishonestly in representing himself as an employee of D at these 2 meetings with Petronas.

[76] In the premises, D's allegation that P was dismissed due to dishonesty is untrue. The defence of justification fails.

### **Findings of the Court – Fair Comment**

[77] To succeed on the defence of fair comment, the defendant must establish that (a) the words complained of are comment, though it may consist of or include inferences of fact, (b) the comment is on a matter of public interest, (c) the comment is based on true facts, and (d) the comment is one which a fair minded person can honestly make on the facts proved. (See *Tun Datuk Patinggi Haji Abdul-Rahman* (supra) at 408).

[78] In a defence of fair comment, if the primary facts are true, in the absence of malice or falsehood, the defence of fair comment should ordinarily succeed. The true test of fair comment essentially is whether the comment is an honest expression of a genuine opinion. (See the Court

of Appeal case of *Mohd Rafizi Ramli v Dato' Sri Dr Mohamad Salleh Ismail & Anor* [2020] 1 CLJ 498 at 505).

[79] The defendant must plead with particularity (a) which words are comments and which words are facts, (b) the precise facts on which the comments in issue were based, and (c) the matters claimed to be of public interest. This is pursuant to Order 78 rule 3(2) of the Rules of Court 2012 (“**Rules of Court**”) which states:

*Where in an action for libel or slander the defendant alleges that, in so far as the words complained of consist of **statements of fact**, they are true in substance and in fact, and in so far as they consist of **expressions of opinion**, they are **fair comment** on a matter of public interest, or pleads to the like effect, he **must give particulars stating which of the words complained of he alleges are statements of fact** and of the facts and matters he relies on in support of the allegation that the words are true.*

[80] A failure to so plead with particularity is fatal to the defence of fair comment. In *Syed Nadri Syed Harun & Anor v Lim Guan Eng & Other Appeals* [2019] 2 CLJ 631 at 646, the Court of Appeal said:

*“... the **defence of fair comment is only applicable where the statement is first of all a comment, which is based on some true facts** (see *Joshua Benjamin Jeyaratnam v. Goh Chok Tong* [1989] 1 LNS 34; [1989] 3 MLJ 1 (PC)). The defendants had failed on this first requirement alone, to sustain such a defence because the impugned statements were not comments and were not based on any fact. Also, the defendants **failed to plead this defence as per the requirement of O. 78 r. 3(2) of the Rules of Court 2012**. Under this rule, the defendants are duty-bound to particularise the facts relied upon to support such a defence. This requirement was not adhered to by the defendants.”*

[81] I find that D has failed to plead with particularity as required by Order 78 rule 3(2) of the Rules of Court. The extent of D’s pleading with regards

to fair comment appears in paragraphs 25 to 27 of the Amended Statement of Defence which reads:

*“25. Alternatively, the Defendants also aver that the Notices issued by the Defendants are fair comments because the words published were based on **facts such as** the Plaintiff was fired, and a police report was made regarding this matter.*

*26. The Defendants also aver that the Notices issued by the Defendants are fair comments because the words published are fair comment and not malicious.*

*27. The Defendants also aver that the Notices issued by the Defendants are fair comments because the words published in this matter involved government departments and public safety because the SPKA project is a project involving installation work of fire monitoring system. Therefore, this matter is a public interest.”*

[82] D appears to rely on facts “such as” P was fired and a police report was made. It is unclear what other facts are relied on by D.

[83] Furthermore the Impugned Words, in my view, are not comments or expressions of opinion. Apart from the 2 facts pleaded namely that (a) P was fired and (b) a police report was made, the Impugned Words included other things which appear to be in the nature of facts rather than comments. Namely, (a) P’s activities damaged D and its image, (b) P was dismissed due to dishonesty and disciplinary problem, (c) P spread false report regarding D, and (d) P failed to show up for work since October 2016.

[84] Even if the Impugned Words aforesaid could be regarded as comments, they are not based on true facts. As discussed earlier, it is untrue that P was dismissed due to dishonesty. Any dishonesty arising from P’s attendance at the Petronas meetings (on 25.11.2016, 13.12.2016 and 28.2.2017) could not have played a part in the termination of his

employment in October 2016, occurring before the said Petronas meetings.

[85] Ostensibly P was dismissed due to his failure to attend office for 3 consecutive days. However, it is doubtful that such non-attendance can tantamount to indiscipline. As P is not ordinarily required to be physically present in the office on a daily basis. It is also doubtful that P had failed to show up for work, since the nature of his job is not confined to working in the office.

[86] Moreover, even if the Impugned Words aforesaid could be regarded as comments, they are not ones which a fair minded person can honestly make on the facts proved. It is my finding that the defence of fair comment cannot succeed in this case.

### **Police reports lodged by Defendant**

[87] On the matter of police reports lodged by D, I make the following observations.

[88] There were no police reports lodged against P before the issuance of the Notices, but merely against a company named D'Synergy Sdn Bhd ("**D'Synergy**") on 13.1.2017. No action was taken by the police against D'Synergy.

[89] D allege that P's actions had damaged D on the basis that D'Synergy had hacked D's system. But P was neither a director nor shareholder of D'Synergy, and P's involvement was not established.

[90] No evidence was led to prove that P had attempted to hack and spread D's information to third parties as alleged by DW1. DW1 made this allegation based solely on the fact that P had appointed D'Synergy to work for D as an independent contractor.

[91] The police reports against P were lodged on 7.4.2017 and 25.8.2017. These were made after the issuance of the Notices (which were issued in February and March 2017). It appears that these two police reports were made as an afterthought to justify the publication of the Notices. No action was taken by the police against P.

## **Defendant's Counterclaim**

### ***Defamation***

[92] In paragraph 37 of the Counterclaim, D pleaded defamation against P. D avers that P defamed D when P in a *WhatsApp* group conversation called on the vendors in that *WhatsApp* chat group ("**WhatsApp Group**") to "*BERSATU lah kita melawan pemerintah durjana ini*" ("**Disputed Statement**"). The *WhatsApp* Group was created to discuss matters relating to SPKA installation between the vendors and P.

[93] D pleaded that the words 'pemerintah durjana' in its plain and natural meaning and through innuendo meant that D is a liar, dishonest and malicious in business, acted like a bad bully in business, and conducted business unprofessionally. That seems to me to be quite a huge leap. In my opinion, the Disputed Statement is not capable of bearing the pleaded meaning above.

[94] More importantly, on a balance of probabilities I find that D has not proven that the Disputed Statement refers to D. An essential ingredient, namely that the words complained of refer to the claimant, is absent here. In *Morgan v Odhams Press Ltd* [1971] 1 WLR 1239 at 1261, the Court said:

*“In my view, a somewhat **more exacting test should be predicated where the question is one of identity**. It is not sufficient for the reader to say ‘I wonder if the article refers to Jonny Morgan’ **nor is pure speculation sufficient**. Nor it is sufficient that a reasonable person believes that the words refer to the plaintiff. **The 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.”*

[95] During cross-examination, DW2 (a vendor of D and a member of the WhatsApp Group) conceded that the Disputed Statement did not refer to anyone, including D. DW2 agreed that there were no other messages in the WhatsApp Group which showed P’s dissatisfaction against D or P’s attempts to incite vendors to act against D.

*P/C: Kejap En Nizam, sebab soalan saya tadi itu Soalan 17 ini dikatakan berkenaan kandungan perbincangan, kandungan group chat ini kan?*

*DW2: Ya.*

*P/C: Ok. Jadi ada ke tak, pertama sekali, ada ke tak di dalam dokumen di hadapan Mahkamah ini, muka surat 36 hingga 41 ini? Apa yang En Nizam cakapkan ini?*

*DW2: Cuma saya ada ini lah, yang muka surat 41 lah. Kenapa dia wujudkan ‘bersatulah yang melawan pemerintahan durjana ini’.*

*P/C: So ini lah yang –*

*DW2: Itu saja.*

*...*

*P/C: Tapi En Nizam ya, saya tengok kepada mesej ini, dia katakan ‘Bersatulah kita melawan pemerintah durjana ini’, saya cadangkan ini **tidak merujuk kepada mana-mana pihak, tidak merujuk kepada pihak Defendan secara terangnya**. Betul?*

*DW2: Dia, saya, saya boleh cakap saya setuju dengan pihak Tuan kerana dia masa ini, dia **tak membabitkan sesiapa** dan kepada siapa.”*

[96] DW2 merely speculated that the Disputed Statement might refer to D. This alone would not suffice to meet the threshold of an objective test which is required to prove that the Disputed Statement refers to D. The Disputed Statement could well have been a sentiment directed at villains in general and the injustices of the world at large. The fact remains that no one, much less D, was identified in the Disputed Statement. A vital prerequisite to found an action for defamation, namely that the words complained of refer to the claimant, was not satisfied in this case. As such, it is my finding that D has not proven his counterclaim for defamation against P.

### ***Breach of employment contract***

[97] In paragraph 32 of the Counterclaim, D pleaded that P breached clause 13.5 of the employment contract (entitled 'Confidentiality and Fidelity') which states:

*"During this Contract of Employment and anytime thereafter, you shall not disclose, communicate, publish, or disseminate whether orally, in writing or by any means all information, documents, materials, articles and communications which you obtain or become aware of during the services of the government-related projects, in accordance with the provisions of the Official Secrets Act 1972."*

[98] However, D failed to adduce evidence to prove that P had divulged information in breach of clause 13.5 of the Employment Contract. Moreover, during oral submission, counsel for D said that he was abandoning this counterclaim for breach of employment contract.

## ***Forgery***

[99] In paragraph 34 of the Counterclaim, D pleaded that P forged a letter purporting to be from D (“**Appointment Letter**”). The Appointment Letter dated 5.12.2016 on the letterhead of D appointed a company named Baharin & Jazz Ram Sdn Bhd (“**Baharin**”) as a vendor to install and maintain the SPKA for Petronas.

[100] However, D had acknowledged the authenticity and contents of the Appointment Letter as it was placed in Part A of the Common Bundle of Documents. (See Order 34 rule 2(2)(d) of the Rules of Court). This precludes D from saying that the Appointment Letter is a forgery. Anyway, during oral submission, counsel for D said that he was abandoning this counterclaim of forgery.

## ***Fraud – Baharin***

[101] In paragraph 39 of the Counterclaim, D pleaded that P influenced Baharin to accept payments from customers of D for the installation of the SPKA without the knowledge of D. Consequently, D was forced to install the SPKA without payment from vendors (who had made payments to P), in order to avoid legal action from the vendors.

[102] However, D failed to adduce evidence to prove that the vendors had paid P directly, forcing D to install the SPKA without payment.

[103] DW1 testified that P influenced Baharin to accept payment from D’s customers without D’s knowledge. However, this is a bare allegation which is unsupported by evidence. Moreover, the police report dated

7.4.2017 lodged by the General Manager of D implicated Baharin and not P.

[104] Further, there was a tax invoice dated 31.3.2017 issued to Baharin by D, which was verified and approved by an officer of D. This shows that there were dealings between Baharin and D directly, without P's involvement.

[105] DW1 testified that D suffered losses because Baharin did not pay the remaining balance of RM26,048.80. Again, this is a bare allegation which is unsupported by evidence. Even if this allegation is true, D's claim for the non-payment would be against Baharin and not P.

[106] Further, as testified by DW2, P was not involved with the installation of the SPKA as Baharin was the vendor. Hence P cannot be held accountable for Baharin's failure to fulfil its obligations (if any).

*"P/C: Dinyatakan di dalam penyata saksi saksi lain oleh pihak Defendan ini, katakan bahawa terdapat kerja-kerja yang tidak dilakukan oleh Baharin & Jazz. Jadi cadangan saya, kerja-kerja yang dilakukan oleh installer ataupun tidak dilakukan oleh installer itu, itu ialah kesilapan mereka sendiri. Maksudnya Baharin & Jazz ataupun installer yang dipilih untuk buat kerja itu. Betul?"*

*DW2: Ok. Baharin & Jazz –*

*P/C: Tidak ada kena mengena dengan En Fahamy. Betul?"*

*DW2: Betul. Baharin & Jazz melantik melakukan tugas, Baharin akan follow up pemasangan dilakukan atau tak dilakukan."*

### **Fraud – Petronas**

[107] In paragraph 36 of the Counterclaim, D pleaded that P committed fraud by providing false and inaccurate information regarding the price of installation of iFSP (iSnet Fire Safety Portal) to Petronas.

[108] However, D failed to adduce evidence to prove that P had provided such false and inaccurate information to Petronas. In any event, during oral submission, counsel for D said that he was abandoning the counterclaim of fraud.

### **General Damages**

[109] In actions for defamation, damages are awarded to compensate the plaintiff for the injury to his reputation and the hurt to his feelings. They operate to vindicate the plaintiff to the public and to console him for the wrong done. (See *Cassell & Co Ltd v Broome* [1972] 1 All ER 801). At the same time, the award of damages must not be exorbitant or excessive. Damages should be compensatory and not punitive.

[110] The following observation by the Court of Appeal in *Liew Yew Tiam & Ors v Cheah Cheng Hoc & Ors* [2001] 2 CLJ 385 at 395 is instructive.

*“In the process of making our assessment we have not overlooked the recent trend in this country of claims and awards in defamation cases running into several million ringgit. No doubt that trend was set by the decision of this Court in MGG Pillai v Tan Sri Dato Vincent Tan Chee Yioun (supra). It is a decision that has been much misunderstood. The underlying philosophy of that decision is that injury to reputation is as, if not more, important to a member of our society than the loss of a limb. But we think the time has come when we should check the trend set by that case. This is to ensure that an action for defamation is not used as an engine of oppression. Otherwise, the constitutional guarantee of freedom of expression will be rendered illusory.”*

[111] I considered the several factors that should be taken into account in assessing compensatory damages as discussed by the Court of Appeal in *Chin Choon v Chua Jui Meng* [2005] 2 CLJ 569 at 573. I also looked at the trend of awards discussed by the Federal Court in *Datuk Harris Mohd Salleh v Datuk Yong Teck Lee & Anor* [2018] 1 CLJ 145 at 207 and by the Court of Appeal in *Karpal Singh a/l Ram Singh v DP Vijandran* [2001] 4 MLJ 161 at 180 and in *Syed Nadri* (supra) at 649.

[112] P seeks a sum of RM500,000.00 as general damages based on the following factors. P was a well-known individual among the professionals within and out of the country especially in geotechnical industry, property and petrochemical. The Notices were published to at least 15 vendors and many firemen at the fire stations which received the Notices. P's goodwill and reputation were tarnished as the Impugned Words had brought hatred against him and made him into a public scandal. P was banned by JBPM from entering the fire stations. P lost clients who refused to continue business relationship with him.

[113] D submitted that P was less than forthright as he was reluctant to disclose his bankruptcy status. In cross-examination, P only said that he received clearance to go overseas. Counsel for D pointed out that the need for such clearance meant that P is a bankrupt.

[114] I concur that P was evasive about disclosing his bankruptcy status. In cross-examination, P refused to give a straight answer when asked when he became a bankrupt. One of the factors in evaluating damages is the position and standing of the plaintiff. That P is a bankrupt would have been a relevant consideration, but for the fact that P became a bankrupt only after the defamation in the instant case had taken place. I think it is

the position and standing of P at the time that he was defamed which is material. I therefore did not take into account P's current bankruptcy status.

[115] A relevant factor in the instant suit is that the Notices were not widely disseminated. This is not a case where the words complained of was published in the newspapers. Circulation of the Notices was restricted to about 15 or 17 vendors and a few fire stations. The size and influence of the circulation, and the effect of the publication, is limited to that extent. Furthermore P did not adduce evidence regarding the clients who are alleged to have refused to continue business relationship with him.

[116] In the circumstances of this case, I consider an award of RM50,000.00 to be fair and reasonable.

### **Aggravated Damages**

[117] P submitted that aggravated damages ought to be awarded based on the following factors. D failed to make any apology and retract the Impugned Words. The defences of justification and fair comment are bound to fail. There is express malice which can be inferred from the following. The relationship between DW1 and P had deteriorated which resulted in P's dismissal. D published the Notices claiming that P was dismissed since October 2016, knowing that P was still working for D in November and December 2016. D recklessly published the Notices alleging P's actions had damaged D on the basis that D'Synergy had hacked D's system without trying to ascertain P's involvement. After the publication of the Notices, police reports were made against P. The Photographs were not necessary to be inserted in Notice 3. If the purpose

was to identify P, D could have used photographs where P was not seen to be smoking a cigar.

[118] D argued that that there is nothing untoward in posting the Photographs of P smoking cigar. It just shows a luxurious lifestyle, not an immoral behaviour. DW1 himself is a cigar aficionado. I note that the Photographs were taken from P's own *Facebook* page. Since P himself posted the Photographs on social media where it is available to his followers or in the public domain, I do not think he can complain about the Photographs being re-posted. In any event, I do not consider this to be evidence of malice.

[119] In view of my finding that the defence of fair comment did not succeed in the instant case, it was unnecessary for me to consider whether there was express malice which would defeat such a defence. I will say however that I do not find there to be express malice on the part of D. The (a) relationship between DW1 and P having deteriorated resulting in his dismissal, (b) publication of the Notices, and (c) lodgement of the police reports, in themselves, are not malicious acts. From D's perspective, they were simply trying to protect their business and the integrity of the SPKA system. Especially after learning from Petronas that P was attending meetings as D's representative. It was perhaps an unfortunate misunderstanding and D may have been over-zealous, but they were not reckless or malicious. D did not behave in a high-handed or oppressive manner so as to aggravate the injury to P's feelings.

[120] In the circumstances of this case, I do not consider a separate award for aggravated damages to be warranted. The elements that warrant the making of an award of aggravated damages are lacking in the present

instance. Further it would over-compensate P due to overlap as some of the 'aggravating' factors submitted by P have already been taken into account in general damages. I therefore decline to award aggravated damages.

## **Conclusion**

[121] On a balance of probabilities, I find that P has proven its case for defamation against D. On a balance of probabilities, I find that D has failed to prove its defence of justification and fair comment. I ordered D to pay RM50,000.00 in general damages to P.

[122] On a balance of probabilities, I find that D has not proven its case for defamation, breach of employment contract, forgery and fraud against P. I therefore dismissed D's counterclaim against P.

[123] I awarded interest at the rate of 5% per annum on the judgment sum from the date of judgment until the date of payment. I ordered D to pay costs of RM20,000.00 to P.

Dated 2 July 2020

**Quay Chew Soon**

Judicial Commissioner

High Court of Malaya, Kuala Lumpur

Civil Division NCvC 10

### Counsel

Mohd Azinuddin bin Abd Karim and Rachel Chong Jia Wei (*Messrs Munawar & Associates*) for the Plaintiff.

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