IN THE HIGH COURT OF MALAYA AT KUALA LUMPUR

(COMMERCIAL DIVISION)

CIVIL SUIT NO. WA-22NCC-21-01/2022

BETWEEN

ZAKRI AFANDI BIN ISMAIL
(NRIC NO. 670101-11-5767) … PLAINTIFF

AND

1. **IKWAN HAFIZ BIN JAMALUDIN**
   (NRIC NO. 870412-14-5185)

2. **ALPINE MOTION SDN BHD**
   (COMPANY NO. 201301042101/1071926-W) … DEFENDANTS

HEARD TOGETHER WITH

IN THE HIGH COURT OF MALAYA AT KUALA LUMPUR

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ZAKRI AFANDI BIN ISMAIL
(NRIC NO. 670101-11-5767) … PLAINTIFF

AND

1. IKWAN HAFIZ BIN JAMALUDIN
(NRIC NO. 870412-14-5185)

2. NUR ANIS BINTI JAMALUDIN
(NRIC NO. 850516-14-6272)

3. IVORY INSIGHTS SDN BHD
(COMPANY NO. 201201021076/1005568-W)

4. TENGKU ZAHAIMI BIN TUAN HASHIM
(NRIC NO. 690402-01-5979) … DEFENDANTS

JUDGMENT

A. Introduction

[1] There are two suits before this court, namely WA-22NCC-21-01/2022 ("Suit 21") and WA-22NCC-23-01/2022 ("Suit 23"). They are heard together, as the issues in both suits are similar.

[2] The parties are referred to in the following manner:

a. The plaintiff in Suit 21 and Suit 23, Zakri Afandi bin Ismail, is referred to as "Zakri";

b. The 1st defendant in Suit 21 and Suit 23, Ikwan Hafiz bin Jamaludin, is referred to as "Ikwan";

c. The 2nd defendant in Suit 21, Alpine Motion Sdn Bhd, is referred to as “Alpine Motion”;

d. The 2nd defendant in Suit 23, Nur Anis binti Jamaludin, is referred to as “Nur Anis”;

e. The 3rd defendant in Suit 23, Ivory Insights Sdn Bhd, is referred to as “Ivory Insights”; and

f. The 4th defendant in Suit 23, Tengku Zahaimi bin Tuan Hashim, is referred to as “Tengku Zahaimi”.

[3] The defendants in both Suit 21 and Suit 23 filed the following applications to strike out the writ of summons and statement of claim in these suits:

a. An application by way of enclosure 87, filed by Ikwan and Alpine Motion in Suit 21;

b. An application by way of enclosure 118, filed by Nur Anis in Suit 23;

c. An application by way of enclosure 119, filed by Ikwan and Ivory Insights in Suit 23; and

d. An application in enclosure 119, filed by Tengku Zahaimi in Suit 23.

The applications are collectively referred to as the "Striking Out Applications".

[4] I allowed the Striking Out Applications, and provided brief reasons for my decision. These are the full grounds of my decision.

B. Background Facts

[5] Zakri and Tan Sri Jamaludin Jarjis ("TSJJ"), who tragically passed away in April 2015, were in business together. Ikwan and Nur Anis are the children of TSJJ.

[6] The history of Ivory Insights and Alpine Motion began with the acquisition of NUR Power Sdn Bhd ("NUR Power") from its receivers and managers by Dulang Ekuiti Sdn Bhd ("Dulang Ekuiti") in 2012. As part of the acquisition, 40% of the shares in Dulang Ekuiti were issued to NUR Power's lenders, namely Malayan Banking Berhad, CIMB Bank Berhad, RHB Bank Berhad and AmBank (M) Berhad (collectively, the "Lenders"). The remaining 60% of the shares in Dulang Ekuiti were held by Teras Dara Sdn Bhd, a company owned by TSJJ.

[7] Ivory Insights and Alpine Motion are special purpose vehicles acquired to purchase shares of the Lenders in Dulang Ekuiti. As a result of the purchase of the Lenders' shares, Ivory Insights held 10.94% of the shares in Dulang Ekuiti, while Alpine Motion held 29.06% of the shares.

[8] Zakri was initially a shareholder and director of both Ivory Insights and Alpine Motion. He and Tengku Zahaimi held one share each in Ivory Insights ("Ivory Insights Shares"). These shares are said to have been

held on trust for individuals identified in a trust deed dated 13 May 2015 ("Ivory Insights Trust Deed"). Zakri also held 2,040,000 shares in Alpine Motion ("Alpine Motion Shares").

[9] However, the Ivory Insights Shares and the Alpine Motion Shares (collectively, the "Subject Shares") were transferred to Ikwan and Nur Anis. This was reflected in directors' circular resolutions, as well as transfer forms dated 27 January 2017. Zakri did not sign the resolutions. He also denied signing forms to effect the transfer of the Subject Shares.

[10] Zakri was also said to have resigned as a director of Ivory Insights and Alpine Motion on 26 January 2017. Ikwan was appointed as a director of both companies, on the same date. Zakri claimed that he was wrongfully removed as a director.

[11] The transfer of the Subject Shares and his removal as a director prompted Zakri to commence Suit 21 and Suit 23. In these actions, he sought to recover the Subject Shares and to be reinstated as a director of Alpine Motion and Ivory Insights. In Suit 21, Zakri named Ikwan and Alpine Motion as defendants, while in Suit 23, Ikwan, Nur Anis and Ivory Insights were named as defendants. Tengku Zahaimi applied to intervene in Suit 23, on the ground that orders made in the proceedings will directly affect him. I allowed his application, and he was made the 4th defendant in Suit 23.

[12] The defendants filed the Striking Out Applications to strike out the claims filed by Zakri.

C. <u>The Striking Out Applications</u>

[13] The Striking Out Applications are filed pursuant to order 18 rule 19(1) of the Rules of Court 2012 ("ROC"). The relevant provision reads:

> *"(1) The Court may at any stage of the proceedings order to be struck out or amended any pleading or the endorsement, of any writ in the action, or anything in any pleading or in the endorsement, on the ground that –*
>
> *(a) it discloses no reasonable cause of action or defence, as the case may be;*
>
> *(b) it is scandalous, frivolous or vexatious;*
>
> *(c) it may prejudice, embarrass or delay the fair trial of the action; or*
>
> *(d) it is otherwise an abuse of the process of the Court,*
>
> *and may order the action to be stayed or dismissed or judgment to be entered accordingly, as the case may be."*

[14] The defendants contend that:

a. Zakri's claims are barred by *res judicata*, as his claims raise the same issues as that in the suit filed by Nur Anis and Ikwan's grandmother, Aminah binti Abdullah ("Aminah") against Nur Anis and Ikwan in Kuala Lumpur

High Court Suit No. 22NCVC-7-01/2019 ("Aminah Suit"); and

b. Zakri is bound by the Aminah Suit, as he failed to intervene in the Aminah Suit.

[15] Based on the contentions above, the defendants' stand is that Suit 21 and Suit 23 are obviously unsustainable, and that this is a plain and obvious case where the court should exercise its power to strike out the claims.

D. The Aminah Suit

[16] The Aminah Suit was commenced against Nur Anis and Ikwan (named as the 1st and 2nd defendants in the suit) in their capacities as the administrators of the estate of TSJJ ("Estate"), and in their personal capacities. Aminah claimed, *inter alia*, that Nur Anis and Ikwan held shares in Alpine Motion and Ivory Insights in trust for the benefit of the Estate. The position taken by Nur Anis and Ikwan is that the shares were rightfully transferred to them and do not form part of the Estate.

[17] On 13 August 2021, after a full trial, the High Court dismissed Aminah's claim for a declaration that the shares in Alpine Motion and Ivory Insights (which include the Subject Shares) form part of the Estate. The learned High Court judge, Mohd Firuz Jaffril J held as follows:

> *"[81] **When Alpine was incorporated in 2013, both D1 and D2 had proper footing and have been in its operations for approximately 4 years (since 2009).***

The evidence adduced by both D1 and D2 showed that ***they were involved in the re-structuring of the 2 companies*** *not only in name but also in person.*

…

[84] In light of the fact that the very existence of Alpine was to enable D1 and D2 to own the 40% shares of Dulang, ***I can see no wrong with the act of DW-2 and Dato Zakri transferring the Alpine shares to both D1 and D2 for a nominal sum of RM4-00.***

…

[95] Similarly with the case of the Alpine shares, ***the very existence of Ivory was to enable D1 and D2 to own the entire 40% under Dulang which was held by the financiers. Therefore, there was nothing wrong when the Ivory shares were eventually transferred to both D1 and D2,*** *bearing in mind that the Plaintiff herein did not seek to lift the corporate veil of the companies involved in the present case.*

[96] Based on the testimony given by DW1, DW2 and DW7, ***I am prepared to accept that the shares of both Alpine and Ivory were purchased for the benefit of the DW3 and DW4 (the 1st and 2nd Defendants respectively).*** *In 2011-2012, they were indeed involved in the operations and management of the 2 companies under the guidance*

of their late father ... ***By the time the acquisition of NUR Power took place, both DW-3 and DW-4 were already deeply involved in the running of the companies mentioned above.****"*

(emphasis added)

[18] From the relevant paragraphs of the judgment as set out above, the findings of the High Court are essentially as follows:

a. The shares in Alpine Motion and Ivory Insights were purchased for the benefit of Nur Anis and Ikwan;

b. Nur Anis and Ikwan were involved in the operations of Alpine Motion and Ivory Insights, including their restructuring;

c. There was nothing wrong in the transfer of the shares in Alpine Motion and Ivory Insights to Nur Anis and Ikwan; and

d. Nur Anis and Ikwan owned the shares in Alpine Motion and Ivory Insights.

[19] On 19 August 2022, the Court of Appeal affirmed the decision of the High Court in the Aminah Suit. The Court of Appeal found that the shares in Alpine Motion and Ivory Insights belonged to Ikwan and Nur Anis, and did not form part of the Estate.

E. Claims by Zakri

[20] In Suit 21, Zakri claimed that he has rights and/or interests in the Alpine Motion Shares pursuant to an agreement between him and TSJJ. Zakri sought, *inter alia*, declarations that the transfer of the Alpine Motion Shares to Ikwan on 27 January 2017 is null and void, and that he is the rightful legal owner of the Alpine Motion Shares.

[21] In Suit 23, Zakri claimed that he has rights and/or interests in the Ivory Insights Shares as a trustee pursuant to the Ivory Insights Trust Deed. Zakri sought, *inter alia*, a declaration that the transfers of the Ivory Insights Shares to Ikwan and Nur Anis on 27 January 2017 are invalid, null and void, and an order that the Ivory Insights Shares be transferred to the trustees named in the Ivory Insights Trust Deed.

F. Issues and Considerations

[22] I considered the Striking Out Applications by taking into account the following issues raised by the defendants in support of the applications:

a. That Zakri's claims are barred by *res judicata*, as his claims raise the same issues as that in the Aminah Suit; and

b. That Zakri is bound by the Aminah Suit, as he failed to intervene in the Aminah Suit.

Are Suit 21 and Suit 23 barred by res judicata?

[23] The law on *res judicata* is set out in ***Asia Commercial Finance (M) Bhd v Kawal Teliti Sdn Bhd [1995] 3 MLJ 189***. The Supreme Court held as follows:

> *"What is res judicata? It simply means a matter adjudged, and its significance lies in its effect of creating an estoppel per rem judicatum.* ***When a matter between two parties has been adjudicated by a court of competent jurisdiction, the parties and their privies are not permitted to litigate once more the res judicata, because the judgment becomes the truth between such parties, or in other words, the parties should accept it as the truth; res judicata pro veritate accipitur. The public policy of the law is that, it is in the public interest that there should be finality in litigation – interest rei publicae ut sit finis litium. It is only just that no one ought to be vexed twice for the same cause of action – nemo debet bis vexari proeadem causa.*** *Both maxims are the rationales for the doctrine of res judicata, but the earlier maxim has the further elevated status of a question of public policy.*
>
> *…*
>
> *The starting point ought to be the celebrated passage by Wigram VC in the case of* ***Henderson v Henderson (1843) 3 Hare 100*** *at p 115 which is:*

The plea of res judicata applies, except in special cases, not only to points upon which the court was actually required by the parties to form an opinion and pronounce a judgment, but to every point which properly belonged to the subject of litigation and which the parties, exercising reasonable diligence might have brought forward at the time.

…

To revert to that famous passage set out above, the next step is to state our view on its scope of operation or approach towards such scope which has given rise to certain controversial aspects referred to earlier. Bearing in mind the well-known relevancy of a previous judgment in barring a second suit, eg please see s 40 of the Evidence Act 1950, ***it will be readily understood that when Wigram VC spoke of 'points', the points should actually include causes of action, or all causes of action which one of the two parties has against the other, based on, or substantially on the same facts or issues, and not just all issues of law or of fact that are in dispute between the parties …***"

(emphasis added)

[24] From ***Asia Commercial Finance*** (supra), *res judicata* would apply not only to prevent the re-adjudication of issues that had already been adjudicated by a court of competent jurisdiction. It would also apply

to all issues that could have been brought forward by parties exercising reasonable diligence.

[25] In the Aminah Suit, the High Court found the shares in Alpine Motion and Ivory Insights (including the Subject Shares) were purchased for the benefit of Nur Anis and Ikwan, and that there was nothing wrong in the transfer of the shares to Nur Anis and Ikwan. This finding was affirmed by the Court of Appeal. The Court of Appeal held that the shares in Alpine Motion and Ivory Insights belonged to Nur Anis and Ikwan.

[26] In the present suits, Zakri's claim is that he has legal rights and/or interests in the Subject Shares. Essentially, his stand is that Ikwan and Nur Anis do not rightfully own the Subject Shares.

[27] The issue of who rightfully owns the Subject Shares had been determined by the High Court in the Aminah Suit, and affirmed by the Court of Appeal. I am therefore of the view that Zakri is barred by the doctrine of *res judicata* from raising the same issue in Suit 21 and Suit 23.

[28] The doctrine would apply notwithstanding the fact that Zakri is not a party to the Aminah Suit. In ***Masri Ahmad v Neoh Tong Hock & Anor [2014] 1 LNS 1929***, the Court of Appeal found that an appellant who was not a party or was not involved in previous proceedings that dealt with the same subject matter was still bound by *res judicata*, by virtue of him being a privy to the earlier proceedings. The court held as follows:

*"**[42]** In our considered opinion, **the question as to whether persons who are in law identified with those who are parties in two or more sets of proceedings should depend upon the facts of each case and should not only apply to the specific person or persons against whom judgment had been obtained.** The "same parties" requirement was not immutable and may in appropriate case be relaxed or adapted to address new factual situation that a court may face. **The principle of res judicata is founded on the policy considerations that there should be finality in litigation and avoidance of a multiplicity of litigation or conflicting judicial decisions on the same issue or issues. Rigid adherence to the requirement of the same parties would defeat the purpose of res judicita.**"*

(emphasis added)

[29] The term "privy" was defined by the High Court in ***Heng Hang Guan & Ors v Perumahan Farlim (Penang) Sdn Bhd & Ors [1988] 3 MLJ 90*** in the following manner, at page 95D of the judgment:

*"… By definition, **privies include any person who succeeds to the rights or liabilities of the party** upon his death… or insolvency… or who is otherwise identified with his or her estate or interest… but it is essential that **he who is later to be held estopped must have had some kind of interest in the previous litigation or its subject matter** (per Lord Reid in **Carl-Zeiss Stiftung v Rayner and Keeler Ltd [1966] 2 All ER 536** (HL) at p 550).*

(emphasis added)

[30] There has since been a multitude of cases that have held that *res judicata* can apply even though the parties to the earlier suit may not be the same as the parties in the later suit (see ***Dato' Sivananthan a/l Shanmugam v Artisan Fokus Sdn Bhd [2016] 3 MLJ 122***; ***Ng Kong Ling & Anor v Low Peck Lim & Ors [2017] 4 MLJ 21*** and ***ECH Development & Management Sdn Bhd v Prabagaran a/l Perumal & Anor [2020] MLJU 516***).

[31] In the present cases, having had an interest in the subject matter of the Aminah Suit (namely, the Subject Shares), I find Zakri to be a privy to the Aminah Suit. Thus, he is bound by the findings in the Aminah Suit, and the doctrine of *res judicata* would apply to prevent the re-litigation of the issues that had been raised in the Aminah Suit, namely whether the Subject Shares rightfully belonged to Nur Anis and Ikwan.

[32] I will conclude my findings on the application of *res judicata* by addressing an argument raised by Zakri, namely that the issues in Suit 21 and Suit 23 extend beyond the issues adjudicated in the Aminah Suit.

[33] In Suit 21 and Suit 23, Zakri also claimed that the Subject Shares were fraudulently transferred to Ikwan and Nur Anis, and that he was wrongfully removed as a director of Alpine Motion and Ivory Insights. It is not in dispute that the first claim was not fully canvassed and the second claim was not raised in the Aminah Suit.

[34] However, I must again highlight that the High Court in the Aminah Suit had found that the shares in Ivory Insights and Alpine Motion were

purchased for the benefit of Nur Anis and Ikwan, and that Nur Anis and Ikwan were involved in the operations of Ivory Insights and Alpine Motion. Consequent to these findings, the learned judge held that:

a. *"… I can see no wrong with the act of DW-2 and Dato Zakri transferring the Alpine shares to both D1 and D2 for a nominal sum of RM4-00 …"* (paragraph 84 of the judgment); and

b. *"… there was nothing wrong when the Ivory shares were eventually transferred to both D1 and D2 …"* (paragraph 95 of the judgment).

[35] The learned judge reached these findings after a detailed consideration of the evidence before the court, including testimonies of witnesses. These findings can only point to one conclusion, that Nur Anis and Ikwan lawfully owned the shares in Alpine Motion and Ivory Insights, including the Subject Shares. With such conclusion, the question of the fraudulent transfer of the Subject Shares cannot arise.

[36] Further, with the finding that the Subject Shares rightfully belong to Nur Anis and Ikwan, it follows that the issue of Zakri's wrongful removal as a director has become academic. The shareholders of Alpine Motion and Ivory Insights would be able to lawfully remove Zakri as a director, and any decision that the court may make in this regard if Suit 21 and Suit 23 were to be kept alive, will be in vain.

Is Zakri bound by the Aminah Suit?

[37] In ***Tradium Sdn Bhd v Zain Azahari bin Zainal Abidin & anor [1995] 1 MLJ 668***, the Court of Appeal held that the applicant, who had an interest in proceedings between the respondents, but did not intervene in the proceedings, was bound by the findings in the proceedings. Gopal Sri Ram JCA (as His Lordship then was) held:

> *"I think that there is merit in the submission made on behalf of the first respondent. The applicant admittedly did not wish to face an order for costs.* ***Nevertheless, while enjoying that protection, it attacked the first respondent's arguments before the judge.*** *In my view, the applicant was no better than a sniper who, whilst concealed and protected by the foliage in which he hides, proceeds to take pot-shots at his unsuspecting opponent.* ***He was not prepared to take on all the risks of a full battle and, when the event went against him, decided to change his role. Ought he to be permitted to do this? I think not: for both principle and authority are against him.***
>
> *In* ***Nana Ofori Atta II v Nana Abu Bonsra II [1958] AC 95; [1957] 3 All ER 559; [1957] 3 WLR 830*** *the appellant claimed certain lands belonging to the respondent. Both were chieftains in what was then known as the Gold Coast, now Ghana.* ***Some 16 years earlier, a chieftain subordinate to the appellant had laid claim to the same lands. That action had been decided in the respondent's favour. The appellant, who was the person really interested in those lands, had knowingly stood by while the earlier action was fought out.*** *The Privy Council when*

affirming the decisions of the court below dismissing the appellant's claim, applied the principle formulated by Lord Penzance in ***Wytcherley v Andrews (1871) LR 2 P & D 327*** *at p 328 and stated in the following terms:*

> *There is a practice in this court, by which* ***any person having an interest may make himself a party to the suit by intervening; and it was because of the existence of that practice that the judges of the Prerogative Court held, that if a person, knowing what was passing, was content to stand by and see his battle fought by somebody else in the same interest, he should be bound by the result, and not be allowed to reopen the case.*** *That principle is founded on justice and common sense, and is acted upon in courts of equity, where, if the persons interested are too numerous to be all made parties to the suit, one or two of the class are allowed to represent them; and if it appears to the court that everything has been done bona fide in the interests of the parties seeking to disturb the arrangement, it will not allow the matter to be reopened."*

(emphasis added)

[38] ***Tradium*** (supra) is authority for the proposition that a party who has an interest in proceedings, who is aware of such proceedings and the effect of the proceedings on his interest, would be bound by the results of the proceedings if he elected not to be involved in the

proceedings. He cannot be allowed to re-open the issues in the proceedings at a later stage.

[39] In the cases before this court, it is not in dispute that Zakri became aware of the Aminah Suit sometime in 2019. He was served a subpoena, but did not eventually give evidence in the suit. Zakri was also aware of the decision given in the Aminah Suit.

[40] The Aminah Suit concerned the ownership of the Subject Shares. Zakri has an interest in the ownership of the Subject Shares and the Aminah Suit affected his interest. However, he chose not to intervene in the Aminah Suit.

[41] I find that Zakri, having elected not to intervene in the Aminah Suit, is bound by the findings in the Aminah Suit. Specifically, he is bound by the findings that there was nothing wrong in his transferring the Subject Shares to Nur Anis and Ikwan, and that Nur Anis and Ikwan owned the Subject Shares. I further find that it is now not open to Zakri to attempt to re-litigate the issues that had been raised in the Aminah Suit, by raising the very same issues in Suit 21 and Suit 23.

Res judicata as a basis for striking out

[42] With the findings that *res judicata* applies to Suit 21 and Suit 23 and that Zakri is bound by the findings in the Aminah Suit, I then considered whether Zakri's claims ought to be struck out following these findings.

[43] The courts have exercised the power to strike out actions pursuant to order 18 rule 19(1) of the ROC upon finding that a claim is barred by *res judicata*.

[44] In ***Sungai Dinar Sdn Bhd v Koperasi Pekebun Kecil Wilayah Johor Selatan Bhd [2016] 5 MLJ 823***, the Court of Appeal found that the issues raised were the same as issues that had been litigated in an earlier case, and as such, the later case was barred by *res judicata*. Idrus Harun JCA (as His Lordship then was) held as follows:

> *"**[17]** In our judgment, **one of the grounds upon** which an application under O 18 r 19 of the Rules of Court 2012 can be made is provided in para (1)(b) which states that **an action is scandalous, frivolous as vexatious and the most common instance of matters which are struck out on this ground are those which are res judicata** (see Malaysian Court Practice, 2007 Desk Ed, Lexis Nexis at p 246) …"*
>
> (emphasis added)

[45] His Lordship went on to refer to ***Bandar Builder Sdn Bhd & Ors v United Banking Corporation Bhd [1993] 3 MLJ 36***, and held that the case was a plain and obvious case that would allow recourse to the summary procedure under order 18 rule 19 of the ROC. His Lordship then continued with the following:

> *"Similarly, in **Sim Kie Chon v Superintendent of Pudu Prison & Ors [1985] 2 MLJ 385**; **[1985] CLJ Rep 293**, the Supreme Court held that:*

On an application to strike out a statement of claim under O 18 r 19 of the Rules of the High Court, the right course for the court to take is ***to strike out the claim if it is satisfied that the claim does not disclose a reasonable course of action****."*

(emphasis added)

[46] The doctrine of *res judicata* was also examined in the context of an abuse of the process of the court. In ***Mayban Allied Bhd (formerly known as Phileo Allied Bank (M) Bhd) v Kenneth Godfrey Gomez & Anor [2011] 5 MLJ 219***, Ramly Ali JCA (as His Lordship then was) held as follows:

"[12] ***In determining whether a statement of claim discloses a reasonable cause of action or itself constitutes an abuse of process, the state of affairs to which the court must have regard is that which prevailed at the date the action is filed*** *(see Court of Appeal decision in* ***Gasing Heights Sdn Bhd v Aloyah bte Abdul Rahman & Ors [1996] 3 MLJ 259****). The court is entitled to look at the history of the case,* ***where there is likelihood of the action being res judicata,*** *to determine if there is a cause of action (see* ***Jamir Hassan v Kang Min [1992] 2 MLJ 46 and Abdul Hamid bin Hj Rahmat & Anor v Development & Commercial Bank Bhd & Anor [1993] 1 MLJ 306****).*

[13] The plea of res judicata applies not only to points which the court was required to form an opinion on but also to every

point in the litigation which the parties could have brought up at the time (see ***Othman & Anor v Mek [1971] 2 MLJ 214****).*

[14] In addition, ***the court possesses an inherent jurisdiction to prevent an abuse of its process*** *(see* ***Raja Zainal Abidin bin Raja Haji Tachik & Ors v British-American Life & General Insurance Bhd [1993] 3 MLJ 16*** *(SC)). The use of the court process must be bona fide …"*

(emphasis added)

[47] In ***Kerajaan Malaysia v Mat Shuhaimi bin Shafiei [2018] 2 MLJ 133***, the Federal Court went further in holding that the doctrine of the abuse of the process of the court would apply to prevent the re-litigation of issues that could and therefore should have been litigated in earlier proceedings. The question to ask is *"whether the claimant could or should have brought his claim as part of the earlier proceedings?"* (paragraph 45 of the judgment).

[48] In the present cases, I would answer this question in the affirmative, as it was within Zakri's power to intervene in the Aminah Suit and raise issues that he had raised in these proceedings in the Aminah Suit. As such, I find the commencement of Suit 21 and Suit 23 to be an abuse of the process of the court.

[49] From the totality of the evidence before this court. I am of the view that Zakri's claims, being claims barred by *res judicata*, would not disclose a reasonable cause of action, as the cause of action is prevented

from being re-litigated. The claims are also scandalous, frivolous and vexatious, and an abuse of the process of the Court,

G. Decision

[50] With my findings as set out, I find this to be a clear and obvious case for the court to exercise its powers to strike out Suit 21 and Suit 23. It is on this basis that I allowed the Striking Out Applications, with costs.

Dated 31 May 2023

- sgd -

Adlin Abdul Majid
Judicial Commissioner
High Court of Malaya
Commercial Division (NCC6)
Kuala Lumpur

Counsel:

Plaintiff in Suits 21 and 23	:	Idza Hajar Ahmad Idzam (together with Nan Muhammad Ridhwan Rosnan, Muhammad Hibri Nazim and Aiesyah Mohd Mustafa Kamal) of Messrs. Zul Rafique & Partners
Defendants in Suit 21 and 1st and 3rd defendants in Suit 23	:	S Suhendran (together with Rodney Gan) of Messrs. Sanjay Mohan

2nd defendant in Suit 23	:	Louis Ambrose (together with Damian Kiethan and U Sashiraj) of Messrs. Raj, Ong & Yudistra
4th defendant in Suit 23	:	P Gananathan (together with Olivia Loh and Lai Ann Xing) of Messrs. Gananathan Loh