

High court cannot transfer proceedings to another high court of coordinate jurisdiction

ganpartnership

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Litigation, Malaysia

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Introduction

Since the introduction of the Rules of Court 2012 and the decision in *Asia Debut Sdn Bhd v Kementerian Pendidikan Malaysia*, it has been perceived that there is a provision allowing one high court to transfer proceedings to another high court of coordinate jurisdiction. For example, it was believed that the Malaya High Court in Kuala Lumpur had the power to transfer a suit in Kuala Lumpur to the High Court of Sabah and Sarawak and vice versa.

However, in the recent case of *Hap Seng Plantations (River Estates) Sdn Bhd v Excess Interpoint Sdn Bhd* the Federal Court disagreed with the above proposition and held that Order 57 of the Rules of Court 2012 did not give the high court jurisdiction to transfer proceedings from the Malaya High Court to the High Court of Sabah and Sarawak, and vice versa.

Facts

Hap Seng Plantations (River Estates) Sdn Bhd filed an action against Excess Interpoint Sdn Bhd and Heng Chin Hing @ Wong Chin Hing in the Kuala Lumpur High Court. Thereafter, Excess Interpoint applied to the court for the suit be transferred to the Sabah High Court and an order granting the transfer was subsequently given.

After the case was transferred to Sabah, the Kota Kinabalu High Court observed that the transfer was potentially unconstitutional and thus referred the issue to the Federal Court. The question posed to the Federal Court was as follows:

"Whether, in view of Article 121(1) of the Federal Constitution, Order 57 of rule 1 of the Rules of Court 2012 and paragraph 12 of the Schedule to the Courts of Judicature Act 1964 (CJA), the High Court of Malaya has the power or jurisdiction to transfer proceedings to the High Court of Sabah and Sarawak, or vice versa?"

Decision

After due consideration, the Federal Court came to the conclusion that the power to transfer proceedings to any other court as stated in Paragraph 12 of the Schedule of the Courts of Judicature Act must be read in light of Section 3 of the act, wherein 'local jurisdiction' is defined to mean the territory comprising of the states of Malaya in the case of the Malaya

High Court, and the territory comprising of the states of Sabah and Sarawak in the case of the High Court in Sabah and Sarawak, respectively. Therefore, the power to transfer any proceeding must be confined to transfers within a particular jurisdiction and not between two local jurisdictions.

In regards to Article 121(1) of the Constitution, the Federal Court held that the Constitution allows high courts to have jurisdiction only as conferred by federal law. As the Rules of Court are not considered a federal law *per se*, Order 57 does not grant the power to transfer proceedings between two high courts.

In short, the Federal Court ruled that the Malaya High Court in Kuala Lumpur has no power to order the transfer of a suit in Kuala Lumpur to the High Court of Sabah and Sarawak and vice versa and thus the decision in *Asia Debut* was wrongly decided.

Comment

The Federal Court ruled that Order 57 of the Rules of Court 2012 does not confer power to the high courts to transfer proceedings to another high court of coordinate jurisdiction. The true position of the law is that a high court has power to transfer proceedings to another high court of coordinate jurisdiction only within its territorial jurisdiction.

For further information on this topic please contact Gan Khong Aik at Gan Partnership by telephone (+603 2201 1130) or email (khongaik@ganlaw.my). The Gan Partnership website can be accessed at www.ganlaw.my.

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Gan Khong Aik