

**DALAM MAHKAMAH TINGGI MALAYA DI KUALA LUMPUR  
(BAHAGIAN RAYUAN DAN KUASA-KUASA KHAS)**

**GUAMAN NO: R1-22-02 TAHUN 2000**

**ANTARA**

**IRENE NG**

**... PLAINTIF**

**DAN**

**THE MALAYSIAN KENNEL ASSOCIATION**

**... DEFENDAN**

**JUDGMENT**

**Background Facts**

The plaintiff was expelled as member of the Malaysian Kennel Association (MICA). Prior to her expulsion she had been a member of MKA for more than 30 years. For a few years prior to her expulsion, the plaintiff was an active member wherein she was the Chairperson of the Selangor/Federal Territory Branch and member of the Central Committee of MKA.

MKA, was incorporated under the Companies Enactment 1917. The objectives of MKA are to encourage and promote the importation, keeping and breeding of thorough breeds and other dogs and to protect and advance the interest of dog owners and importers to control dealings in dogs and generally to promote and advance canine interests in Malaysia.

MKA is a private non-profit organization. The governing body of MKA is a Central Committee comprising the Past President and six members of the association and co-opted members (if any) who shall hold office for two years except the Past President who shall hold office until he or she is replaced by the retired President. Prior to the Annual General meeting held on 29<sup>th</sup> February, 2000 the Central Committee was comprised of Ir. Toh Hock Choon, Mr. Tan Oo Hock, Datuk CGA Fonseka, Mr. Chan Weng Ho, Mr. Tan Teik Poh, Mr. Albert Cheam, Encik Mohd. Badri Mokhtar, Mrs. Lynne Lee and the plaintiff. MKA regulates its affairs in accordance with its Memorandum and Articles of Association and its by-laws.

The action against the plaintiff by MKA started on 9<sup>th</sup> November, 1999, where the Central Committee issued a show cause letter intimating to her

that disciplinary action was being taken against her under three charges. The charges read as follows:-

“(a) Handling over of Mock Cheque to PAWS.

On 26<sup>th</sup> September, 1999, at a Central Committee meeting, you, as a Chairperson of the Selangor/FT Branch invited the President of the Malaysian Kennel Association to hand over a mock cheque to PAWS. The President accepted the invitation as the money was collected on behalf of the Malaysian Kennel Association at a fund raising event which was approved by the Central Committee. However, the Central Committee of which you are a member, decided that the ceremony should take place at the Malaysian Kennel Association premises. You were present at this meeting and you agreed with the decision. The President was made aware vide minutes of your branch meeting held on 29<sup>th</sup> September, 1999 that 2 of your Central Committee members proposed that the invitation to the President be withdrawn. The President and the Central Committee felt it is

ridiculous as the branch has no power whatsoever to overrule the decision of the Central Committee. The President then wrote to you a letter requesting a full report on this issue. In the meantime, the President requested you to postpone the handing over ceremony.

However you defied the Central Committee's decision and ignored the President's letter and proceeded to hand over the cheque to PAWS on 15<sup>th</sup> October, 1999.

The Central Committee is of the opinion that such conduct on your part renders you liable to disciplinary action under Article 12 of the Article of Association of the Malaysian Kennel Association.

(b) Fees for obedience classes.

In your annual report presented at the Selangor/FT Branch Annual General Meeting held on 17<sup>th</sup> October, 1999, you

claimed among other things, that you and your branch committee were responsible for making obedience classes more affordable and that the Central Committee was responsible for raising the fees of RM100.00, thereby making it unreasonably expensive.

As a Central Committee member yourself, and having been in charge of obedience yourself for several years, you clearly knew that this statement was false. The Central Committee is of the opinion that your conduct in this case renders you liable to disciplinary action under Article 10A of the Articles of Association of the Malaysia Kennel Association.

(c) Formation of Obedience Chapter

In the annual report of your branch for 1988-1999 you accused the Central Committee of doing things as they deem fit when they allowed the formation of the Pro-tern Committee of the Obedience Chapter. You know this to be false as being a

Central Committee member and being in charge of obedience for several years, you were always aware that it was not the Central Committee who wanted the Obedience Chapter. On the contrary, the chapter was being formed at the request of the obedience people themselves and you were in fact instrumental in getting more than 50 obedience people to become Chapter members so that the Chapter could be formalised.

The Central Committee is of the opinion that your conduct in this instance had brought disrepute to the Central Committee and to the Malaysia Kennel Association and renders you liable to disciplinary action under Article 10A of the Articles of Association of the Malaysia Kennel Association.”

A hearing was conducted on 22<sup>nd</sup> November 1999, and was attended by all Central Committee members with the exception of Mrs. Lynne Lee. The inquiry was presided by the President of MKA Ir. Toh Hock Choon.

At the hearing, the plaintiff answered the charges made against her by submitting a written response. The plaintiff had handed over the response to all the members who attended the inquiry and then proceeded to read the response. The written response reads as follows:-

“Members of the Central Committee of MKA.

I have the following statement to make in response to the letter dated 9<sup>th</sup> November, 1999 sent to me by the Executive Secretary of MKA as directed by the Central Committee.

1. Handing over of Mock Cheque to PAWS

On the 26<sup>th</sup> September, 1999 I did in good faith suggest that the President of MKA, Ir, Toh Hock Choon, be invited to present the Mock Cheque to PAWS on the 15<sup>th</sup> October, 1999 at the Commonwealth House, Damansara but I was overruled and the Central Committee decided to hold the ceremony at the MKA

premises so it was not exactly correct to say I agreed with the decision.

When I reported the matter to the Committee of the Selangor/F.T. Branch at the 45<sup>th</sup> Meeting held on Wednesday, the 29<sup>th</sup> September, 1999 I was immediately shot-down and the Committee Members of the Branch strongly felt that it was inappropriate for the President to present the mock cheque for reasons stated in the minutes. A copy of which is attached herein and marked "IN 1".

The Committee then formally resolved that in spite of my protest the Chairperson of the Selangor/F.T. Branch of MKA to present the mock cheque to PAWS.

As can be seen from the Minutes I was also given the unpleasant duty of informing Ir. Toh Hock Choon, the President of MKA which I did by sending him a copy of the Minutes of



the 45<sup>th</sup> MKA Selangor/F.T. Branch Committee Meeting minutes.

As regards the portion:-

“The President then wrote to you in a letter requesting a full report on the issue. In the meantime the President requested you to postpone the handing over ceremony”.

The only letter I received from the President under the heading “Presentation of Mock Cheque to PAWS” was dated 30<sup>th</sup> September, 1999 which did not request a full report from me nor was there any request to postpone the handing over ceremony. A copy of the said letter is attached hereto and marked “IN 2”.

If I had received a request from the President of MICA to postpone the handing over ceremony I would certainly have acceded to his request and would not have proceeded with the

handing over ceremony on the 15<sup>th</sup> October, 1999d. There is therefore, no intention whatsoever on my part to defy the Central Committee or the President.

I categorically deny that my action in any way be interpreted to be conduct rendering me unfit to continue as a Member of the Association.

## 2. Fees for Obedience Classes

To say that in my annual report I claimed that I and my Branch Committee were responsible for making obedience classes more affordable and that Central Committee were responsible for raising the fee to RM1007- and thereby making it unreasonably expensive is not quite correct and quoted out of context.

In order to counter the false and malicious rumours that were circulating around that I and my team aimed to end Obedience

activities. I emphasised that Obedience was one of my pet projects and I and my committee had as far as price hike to RM1007- which is a fact. The Minutes of the Central Committee Meeting will show that a Central Committee Member even suggested the very high fee of RM1507- and only after protest from several members of the Central Committee was the fees eventually reduced to RM1007-. The word “incredulous” was over enthusiastically slipped in by one of the Committee Members and overlooked by me and if that word has offended anyone I sincerely apologize on behalf of my Committee and myself for having allowed the word to remain in my report. However, I emphatically deny that I have made any false statement or know that the statement was false.

### 3. Formation of Obedience Chapter

Under the 3<sup>rd</sup> allegation I was alleged to have in the Annual Report of my Branch 1998 - 1999 accused the Central Committee of doing things as they deem fit when they allowed

the formation of the Pro-tern Committee of the Obedience Chapter. This allegation is without basis.

What I said in my report was that “it is amazing how the Powers That Be saw it fit to take away this activity from the Branch and set up an Obedience Chapter currently run by the Pro-tern Committee”.

My contention was that it is amazing for the “Powers That Be” not the Central Committee, saw it fit to set-up an Obedience Chapter. I did not say or accuse the Central Committee of doing things as they deem fit when they allowed the formation of the Pro-tern Committee of the Obedience Chapter.

I totally agree with the allegation that it was not the Central Committee who wanted the Obedience Chapter but the suggestion came from one of the Committee Members to counter the action of several Members who had started obedience classes on their own in Petaling Jaya (hereinafter

referred to as the PJ Group) several years ago. At that time when it was first proposed I did not know whether such a Chapter was appropriate or not so I supported it because the PJ Group activities were not under the banner of MKA. My decision was influenced by my desire to support MKA. The MKA effectively countered the activities of the PJ Group by offering obedience classes free of charge. When the PJ Group ceased their activities the talk of founding the Obedience Chapter also died a natural death until it became evident that the obedience course of the Selangor/F.T. Branch became so popular that the enrolment for each course was close to or exceeded 100.

It was in or about August, 1999 that “Obedience Chapter” By-laws was first brought to light.

I have been a member of MKA for more than 30 years since 1965 and except for a couple of years in the 1970s. I became a life member several years ago. I have been active in the MKA

for the past several years as a member of the Central Committee and also the Chairperson of the Selangor/F.T. Branch of MKA. I have always defended the good name of MKA and not to the public or anyone unconnected with the Association.

I submit that I cannot be penalised under Article 10A or Article 12 because all I have said and done was constructive criticisms and were made in good faith for the improvement and betterment of MKA. I had not in any way tarnished and or denigrate nor have I ever had the intention to tarnish or denigrate the image, standing or reputation of the Association.

My submission is that the trend of events of the day I and my team filed our nomination papers for election to the 1999-2001 Central Committee of the MKA, show that these proceedings are brought and conducted in bad faith and contrary to the principles of natural justice.

The above is all I have to say in reply to the allegations contained in the letter dated the 9<sup>th</sup> November, 1999.

Dated this 22<sup>nd</sup> day of November, 1999.

Sgd.

Irene Ng''

After the hearing, by a letter dated 8<sup>th</sup> March, 2003, the Central Committee informed the plaintiff that the charges against her had been established and that they have made a decision to suspend her for a period of one year on certain conditions, mainly that she apologise failing which she would be expelled.

The plaintiff responded through her solicitors by a letter dated 24<sup>th</sup> May, 2001 by saying that the grounds of Central Committee decision were invalid, baseless and devoid of reasoning and that the proceeding were contrary to

the principles of natural justice. The plaintiff sought the Central Committee to retract their decision.

However, the Central Committee by its letter dated 30<sup>th</sup> May, 2000 informed the plaintiff that the Board of Directors of MKA have decided to expel her with immediate effect. Hence, this action by the plaintiff.

Basically, the plaintiff is claiming that the domestic inquiry as well as the findings of the Central Committee were null and void and thus she seeks for orders from this court that the resolutions passed to suspend and to expel her be set aside and that all records of the inquiry be expunged, thereby reinstating her as member with full membership rights. In addition she claims for all damages and costs incurred along with interest.

### **The Issues and Findings**

At the outset, it is important to note that MKA conceded that its whole case for the justification of the expulsion of plaintiff lies in the first charge. This is because the second and third charge relates to Article 10A of the



association which by themselves cannot warrant the expulsion of the plaintiff. Article 10A only provides for suspension and not expulsion.

Thus, it is very pertinent to examine the first charge as preferred against the plaintiff. The charge centered on an allegation that the plaintiff defied the Central Committee's decision and ignored the President's letter. The plaintiff's explanation with regards to defying the Central Committee's decision, was that she was immediately shot down by the committee members of her branch. With regards to the President's letter, she explained that the only letter she received from the President was the letter dated 30<sup>th</sup> September, 1999. She denied ever received the President memo dated 9<sup>th</sup> October, 1999.

The 30<sup>th</sup> September letter was a letter personally addressed to the plaintiff where the President sought the following:-

“As advised by you at the Central Committee on 25<sup>th</sup> September, 1999, the presentation is scheduled to take place on Friday 15<sup>th</sup> October, 1999. Please kindly confirm that the date is correct.

Please also kindly advise the MKA Secretariat of the details/mechanics of the presentation so that the appropriate and necessary arrangements can be made beforehand.”.

The President’s memo dated 9<sup>th</sup> October, 1999 was addressed to all members of the Central Committee expressing his regret with the attitude shown by some members of the organizing committee of the PAWS event towards the Central Committee. He concluded by saying:-

“....., I would recommend that Mrs. Irene Ng look into this matter and presented a report to the Central Committee on the actual situation, pending which the presentation ceremony should be postponed.”

It is submitted on behalf of the plaintiff that no evidence was tendered at all as to whether the plaintiff received the memo dated 9<sup>th</sup> October 1999 directing the plaintiff to postpone the mock cheque presentation ceremony. Thus, according to the learned counsel, the absence of any evidence at all contradicting the plaintiff, the finding that the plaintiff went ahead with the

presentation in spite of a directive from the President not to do so is not only perverse and devoid of plausible justification but also offends one sense of fair play.

According to the learned counsel, the facts of this case fall squarely within the principle stated by the Privy Council in *B. Surinder Singh Kanda v. The Government of the Federation of Malaya* [1962] 28 MLJ 169 at 172 where it was held:-

“If the right to be heard is to be a real right which is worth anything, it must carry with it right in the accused man to know the case which is made against him. He must know what evidence has been given and what statement have been made affecting him and then he must be given a fair opportunity to correct or contradict them.”

Based on the above principle, the learned counsel submitted that the Central Committee took into account the memo dated 9<sup>th</sup> October, 1999 behind the

back of the plaintiff. As the plaintiff was unaware of the memo, it is enough to constitute a breach of the right to be heard and therefore natural justice.

With greatest respect, I am unable to agree. The facts of this case do not fall squarely with *Surinder Singh's* case. The charge against the plaintiff was that “you defied the Central Committee’s decision and ignored the President’s letter”. The plaintiff written explanation, with regards to defying the Central Committee’s decision, is that she was immediately shot down by committee members of her branch. With regards to the President’s letter, she states that the only letter she received from the President is the letter dated 30<sup>th</sup> September, 1999. According to her, if she had received a request from the President of MKA to postpone the handing over ceremony she would certainly have acceded to his request and would not have proceeded with the handing over ceremony on 15<sup>th</sup> October, 1999. But I am of the view that the charge must be taken as a whole in light of what transpired at the MKA Central Committee’s meeting held on 26<sup>th</sup> September, 1999.

At the said meeting the plaintiff reported that PAWS Benefit Night organized by the Selangor/F.T. Branch had collected a total of RM6,800.00

for the society. The meeting rendered a vote of appreciation for the efforts of the branch on behalf of the association in raising the amount for PAWS. The plaintiff also informed the meeting that a cheque presentation would be held on 15<sup>th</sup> October 1999 and she proposed the presentation be made by MICA President. The proposal was unanimously agreed by the meeting. But the plaintiff informed the meeting that one of the donors of the prizes of the event had requested that the presentation be made at their function on 15<sup>th</sup> October, 1999 at the Commonwealth House in Damansara, Kuala Lumpur. The meeting decided that donors should not and cannot imposed conditions on MKA for their donations and refused the request. The meeting decided unanimously that the President would represent MKA at the ceremony for the handing over the mock cheque and the ceremony would be held at MKA's premises in TTDI on 15<sup>th</sup> October, 1999 and the plaintiff was requested to make the necessary arrangements (See minutes of meeting of the 26<sup>th</sup> September, 1999 marked as "MKA 8").

Thus, as a member of the Central Committee, the plaintiff, was well aware of the unanimous decision made by the Central Committee. Infact, the President had sent her a letter dated 30<sup>th</sup> September, 1999 asking her to

confirm the arrangement for the cheque presentation ceremony. The plaintiff did not reply to the said letter. Instead on 15<sup>th</sup> October, 1999, she handed a mock cheque personally to PAWS at PAWS premises, contrary to the unanimous decision and directive of the Central Committee.

To me, even if the President's memo dated 9<sup>th</sup> October, 1999 was not received by the plaintiff, the facts as narrated above, clearly support the charge that "you defied the Central Committee's decision and ignored the President's letter". Without doubt the plaintiff's action was in direct contravention of the Central Committee's directive and decision. Her action was an act of outright defiance of a decision by the governing body of MKA. Thus, the plaintiff's contention that there has been a breach of rule of natural justice based on the principle stated by the Privy Council in *B. Surinder Singh Kanda* is not supported by the facts.

Another main point raised by the plaintiff is the issue of likelihood of bias. According to the plaintiff, the accusers sat as judges. This is because the second and third charge were directed against the Central Committee. But the same Central Committee sat to adjudicate the guilt of the defendant.

Similarly, in the first charge, the allegation contained an element of disobeying a directive by the President. Yet the President sat in the inquiry to adjudicate on the guilt of the plaintiff. Thus, the plaintiff argued that the Central Committee was biased and that it could and should have delegated its power to a sub-committee formed from ordinary members of MKA.

But the Articles of the Association of MKA do not make it possible to delegate the said function. The duty is placed on the Central Committee. Surely, if any other body other than the Central Committee had made a decision, it would be *ultra vires* the Article of the Association. The Central Committee cannot delegate its function. Thus, the Central Committee was acting out of necessity.

In *Maclean v. Workers Union* [1929] 1 Ch D 602 Maugham J. said:-

“In many cases the tribunal is necessarily entrusted with the duty of appearing to act as prosecutors as well as that of judges; for there is no one else to prosecute. For example, in a case where a council is charged with the duty of considering the

conduct of any member whose conduct is disgraceful and of expelling him if found guilty of such an offence..... The member is summoned to appear before the council. The council's duty is to cause him to appear and to explain his conduct. It may be said that in so acting the council are the prosecutors. In one sense they are, but if the regulations show that the council is bound to act as I have mentioned and to that extent to act as prosecutors, it seems to be clear that the council is not disqualified from taking the further steps which the rules require.”

Similarly, in this case, the only body empowered to hear the charges against the plaintiff is the Central Committee. As such the contention by the plaintiff that the Central Committee and the President being biased is without merit.

I am fully aware of the current position of the law on judicial review. The Federal Court, in a majority decision in *R. Ramachandran v. The Industrial*



*Court of Malaysia & Anor.* [1991] 1 MLJ 145 has held *inter-alia* that in judicial review proceedings, the courts have the following powers:-

- (a) to review the decision of the tribunal on merits;
- (b) to substitute a different decision in place of the tribunal's decision without remitting it to the tribunal for re-adjudication;  
and
- (c) to order consequential relief.

Infact, I have reviewed the decision of the Central Committee on its merits. To me, there is no unreasonableness on the part of the Central Committee. The Central Committee has acted reasonably and within its powers. In this case, the plaintiff had the option to just be suspended for a year if she apologized. But she refused to do so, leaving the Central Committee with no choice. Thus, based on the evidence available, I have no justification to interfere with the decision of the Central Committee. To me, the evidence taken as a whole is capable of supporting the guilt of the plaintiff on the first charge. The decision of the Central Committee on the circumstances of this case was justified.

Accordingly the plaintiff's action is dismissed with costs.

Dated: 12<sup>th</sup> October 2004

**(RAUS SHARIF)**  
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