

PROFILE

**Partner**

Employment & Administrative Law

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Qualifications

LL.B (Hons), University of Glamorgan, Wales

Certificate in Legal Practice

Advocate & Solicitor, High Court of Malaya

Languages

English, Malay

REENA ENBASEGARAM

ABOUT REENA

Reena provides legal advice across a wide range of matters in her area of expertise including disciplinary action procedures, managing unsatisfactory performance, dealing with employment issues in restructuring exercises as well as drafting and vetting employment related documents. She also gives talks and conducts hearings and trials in her area of practice.

EXPERIENCE

- The High Court in **KLHC Case No. WA-25-394-07/2019** affirmed the decision of the Industrial Court in **THAMIL CHELVAM SUBRAMANIAM v. SINGAPORE AIRLINES LIMITED [2019] 2 LNS 1532** Which upheld the termination of the services of an employee on 3 charges of misconduct whereby apart from breaching the Company's regulations, the said former employee's conduct was also tantamount to a breach of his implied terms of employment/fiduciary duty to serve the Company with good faith and fidelity. The Court held that the misconducts - which involved the Company's passengers - were serious in nature and indicated that the former employee was lacking in trustworthiness, and that termination was justified in the circumstances.
- **KLHC Judicial Review Case No. WA-25-105-03/2019 between Hong Leong Islamic Bank Berhad v WAN AHMAD FIRDAUS BIN WAN ROSSMAN**
The High Court overturned the decision of the Industrial Court in **Award No. 3196/2018** which had held that the termination of the former employee was without just cause. The Industrial Court had failed to appreciate that absenteeism was a serious misconduct and in this case, the former employee was repeatedly instructed by his superiors to meet them. The fact that the employer failed to take disciplinary action in the past did not deprive it of the right to take action moving forwards when the said former employee repeated the misconduct.

- The High Court in **YAZMAN HAFITH ISMAIL v. PANTAI MANAGEMENT RESOURCES SDN BHD [2012] 1 LNS 895** struck off the civil claim of the plaintiff who was a former employee of the defendant on the basis that the dismissal was purely a contractual matter. The High Court agreed with the defendant's argument that in the event the plaintiff wished to invite the Court to go into issues related to the basis for the said termination, then the proper forum for him to seek relief would be the Industrial Court.
- The High Court in **JUDICIAL REVIEW CASE NO. R2-25-194-08/2012 BETWEEN CHOR CHOY YOOK V- MINISTER FOR HUMAN RESOURCES & 2 ORS** dismissed the applicant's application for judicial review challenging the ministerial non-reference. Vide its decision, the High Court confirmed that the former employee's status as a contract employee post-retirement was not converted into the status of a permanent employee by virtue of the fact that her fixed-term contracts had been renewed continuously. The High Court agreed that the fixed-term contracts post-retirement were genuine fixed-term contracts issued pursuant to the employer's business requirements at the material time and the employee's tenure was not secure. The fixed-term contracts in question expressly provided that the contracts in question would expire on a specified date and the renewal would be upon the discretion of the employer.
- In the case of **CONSOLIDATED PLANTATIONS BHD –V- BALASUBRAMANIAM A/L SINGARAJOO & 14 LAIN [TINDAKAN SAMAN MAHKAMAH SESYEN BATU PAHAT NO. 52-1046-2005]**, the defendants were former employees of the plaintiff who, pursuant to the terms of the prevailing collective agreement, were given the license to stay at staff quarters on the plaintiff's premises while they were employees of the plaintiff or any other companies under the Sime Darby Berhad group. The plaintiff then took the decision to close the palm oil plant at the CEP Rengam Plantation and the services of the defendants were terminated. They challenged their termination and filed a claim for reinstatement pursuant to Section 20 Industrial Relations Act 1967. In the interim, the plaintiff sought to have the defendants evicted. The Sessions Court firstly did not grant the defendants a stay pending the outcome of the adjudication of their claim of unfair dismissal at the Industrial Court. The Sessions Court then allowed the plaintiff's claim for summary judgment and allowed the plaintiff's prayer for *inter alia*, possession of the said premises. The Court agreed that there was no certainty that the Industrial Court would firstly, hold that the termination was unjust, and secondly, that even if it found in favour of the defendants, would order reinstatement.
- **In the Federal Court of Malaya (Appellate Jurisdiction) Civil Application No. 08(f)-426-09/2015(A) (assisting lead counsel Sivabalah Nadarajah)**

The employee had been charged with submitting false claims, the nature of which was to purport that he had purchased apparel and he had submitted dubious receipts to support his claims. In reality, the Applicant was seeking reimbursement for entertainment claims for which he had no receipts to support his contention that such expenses (amounting to tens of thousands of Ringgit); were in fact incurred on behalf of the Bank. The Bank deemed that in so doing, the employee had breached the Bank's express guidelines governing the submission of false claims; and terminated his services. The employee's defence was that he was merely following the instructions of his superior as there was purportedly no specific guidelines covering a situation no receipts were issued. The Industrial Court dismissed the employee's claim, and the decision was upheld by the High Court and Court of Appeal. This decision is important as it reaffirms the position that an employee cannot rely on the defence of complying with the instructions of his superior to commit a wrong; and if he does so, he bears the risk if it is later found that the instructions are unlawful.
- **KLHC Originating Summons No : WA-24-98-08/2016 between NUBE v Bank Muamalat Malaysia Berhad & 1 Ors**
(Assisting lead counsel Sivabalah Nadarajah)

NUBE had filed an action in the High Court seeking an injunction against the Bank's transfer instruction issued against some of its clerical staff, transferring them to KL. The employees had proceeded to transfer under protest. NUBE succeeded in obtaining an *ex-parte* injunction, ordering them back from the Bank's headquarters in KL to their respective original branches. However, the High Court Judge declined to extend the injunction when the matter came up for *inter partes* hearing.

The High Court noted that the application before it was to maintain the position of the 3 employees pending the determination before the Industrial Court, related to 3 articles in the collective agreement.

In dismissing the application, the High Court was of the view that the provisions of Article 15 on transfer was quite clear and, in any event, even if the Industrial Court were to decide differently, there was also the issue of the remedy sought vide an application for interpretation under Section 33 of the Industrial Relations Act 1967, albeit that it would not adequately address the grievances of the 3 employees.

The High Court further took into account that the said employees had already been terminated whereby the letters of termination clearly state the grounds of termination and the attempts taken by the Plaintiff.

The Judge also noted that there were other recourses available including a complaint of unfair dismissal under Section 20 of the Industrial Relations Act 1967.

- **COA Civil Appeal No. W-02(A)-1601-09/2015 Crystal Crown v Kesatuan Kebangsaan Pekerja-pekerja Hotel, Bar & Restoran**
(assisting lead counsel Sivabalah Nadarajah)

This is a test case for the Court of Appeal on the implication and interpretation of the Minimum Wages Order 2012 and the National Wages Consultative Council Act 2011 in respect of the restructuring of salaries by utilising service charge to top-up the current salary in order to meet minimum wage requirements. It also involves the interpretation of the powers and jurisdiction of the Industrial Court when dealing with a trade dispute under Section 26 of the Industrial Relations Act 1967.

The matter is now pending hearing before the Federal Court - Federal Court Appeal Case No. 02(f)-4-01/2018(W) between CrystalCrown v Kesatuan Kebangsaan

- **Court of Appeal Civil Appeal No. W-02(A)-991-05/2017 between NATIONAL UNION OF BANK EMPLOYEES, STATES OF MALAYA and HSBC BANK MALAYSIA BERHAD**
(assisting lead counsel Sivabalah Nadarajah)

The NATIONAL UNION OF BANK EMPLOYEES, STATES OF MALAYA ("NUBE") had filed an application at the High Court vide Originating Summons No: WA-24-6-02/2017 for injunctive and declaratory relief in respect of a Voluntary Separation Scheme (VSS) carried out on the employees of the Bank who are members of NUBE, by relying on the Bank's purported obligations under the "One HSBC, Outsourcing & Restructuring" MOU dated 24.6.2010 entered into by the parties.

Issues raised for the Court's consideration included the validity of the MOU (which had not been taken cognizance of by the Industrial Court), in light of the prevailing collective agreement binding the parties, whether the application filed by NUBE was in breach of the Specific Relief Act 1950 as well as the Federal Constitution as it compelled the employees to remain in the employment of the Bank, and NUBE's failure to avail itself of the various provisions of the Industrial Relations Act 1967 in the event it was of the view that the Bank was compelled to comply with the MOU.

The High Court dismissed NUBE's application on 11.4.2017, and its decision was upheld by the Court of Appeal.

This case is important as it confirmed that an aggrieved party cannot seek injunctive and declaratory reliefs when the Industrial Relations Act 1967 provides for sufficient remedies to avail affected parties. The Court of Appeal dismissed NUBE's appeal on 22.2.2018. NUBE that after withdrew its Notice of

Motion for leave to appeal to the Federal Court - Federal Court Civil Application No. 08(f)-145-03/2018(W).

- **Civil Application Case No. 08(f)-437-09/2014**
(assisting lead counsel Sivabalah Nadarajah)

The Federal Court declined to grant NUBE leave to appeal to the Federal Court. The Federal Court upheld the decision of the Court of Appeal namely that, in a judicial review application, the reviewing court must have before it, all the material upon which the impugned decision of the decision-maker had been premised upon. The Minister cannot rely on the bare averments in his affidavit.

ACCOLADES

The Legal 500 Asia-Pacific (2019 - 2022)

“Recommended Lawyer” in Labour and Employment

The '*accommodating*' Reena Enbasegaram provides '*prompt follow-ups*' - The Legal 500 Asia-Pacific 2019

APPOINTMENTS/MEMBERSHIPS

- Member, Malaysian Bar
- Member, International Bar Association (IBA)

PUBLICATIONS

- A contributor to the *Lexis Nexis Practical Guidance* service in Malaysia under its Employment Module.