

Attorney-General v Vellama d/o Marie Muthu
[2012] SGCA 64

Case Number : Civil Appeal No 35 of 2012 (Summons No 1817 of 2012)
Decision Date : 02 November 2012
Tribunal/Court : Court of Appeal
Coram : Chan Sek Keong CJ; Andrew Phang Boon Leong JA; V K Rajah JA
Counsel Name(s) : David Chong SC, Hema Subramaniam and Lim Sai Nei (Attorney-General's Chambers) for the appellant; M Ravi (L F Violet Netto) for the respondent.
Parties : Attorney-General — Vellama d/o Marie Muthu

Civil Procedure – Appeals – Costs

[LawNet Editorial Note: The decision from which this matter arose is reported at [\[2012\] 2 SLR 1033.](#)]

2 November 2012

Judgment reserved.

Chan Sek Keong CJ (delivering the judgment of the court):

1 The short question before us is whether the appellant, the Attorney-General, should pay the costs of the respondent, Vellama d/o Marie Muthu, in withdrawing the appeal against the decision of a High Court Judge (“the Judge”) granting leave to the respondent to bring judicial review proceedings for a declaration and a mandatory order against the Prime Minister.

Procedural History

2 The appeal was filed in the following circumstances. On 2 March 2012, the respondent filed Originating Summons No 196 of 2012 (“OS 196/2012”) under O 53 of the Rules of Court (Cap 322, R 5, 2006 Rev Ed) (“the Rules of Court”) for leave to bring the said judicial review proceedings for the following orders:

(a) declarations that “the Prime Minister does not have unfettered discretion in deciding whether to announce by-elections in Hougang Single Member Constituency (“SMC”)” and “the Prime Minister does not have unfettered discretion to decide when to announce by-elections in Hougang SMC and must do so within three months or within such reasonable time as [the] Court deems fit”; and

(b) a mandatory order enjoining the Prime Minister to (i) “advise the President to issue a Writ of Election mandating by-elections in Hougang SMC pursuant to Article 49(1) of the Constitution of the Republic of Singapore (1999 Rev Ed Sing) and Section 24(1) of the Parliamentary Elections Act (Cap 218, 2011 Rev Ed)” and (ii) “tender such advice ... within three months or within such reasonable time as [the] Court deems fit”.

3 On 3 April 2012, the Judge granted leave for the respondent to proceed with her substantive application (“the Leave Order”). On 4 April 2012, the appellant filed a Notice of Appeal against the Leave Order (registered as Civil Appeal No 35 of 2012 (“CA 35/2012”)) and also Summons No 1676 of 2012 (“SUM 1676/2012”) for the hearing of the appeal to be expedited.

4 On 5 April 2012 (“the 5 April hearing”), the parties attended before a Judge of Appeal for the hearing of SUM 1676/2012 and the respondent’s counsel, Mr M Ravi (“Mr Ravi”), argued that CA 35/2012 could only be heard after the Judge had issued his grounds of decision for OS 196/2012 (“the GD”). The Judge of Appeal adjourned the matter until after the Judge had issued the GD.

5 The GD was issued on 9 April 2012 (see *Vellama d/o Marie Muthu v Attorney-General* [2012] 2 SLR 1033) and parties attended before the Judge of Appeal on 12 April 2012. Mr Ravi raised the preliminary objection that the Notice of Appeal was improperly filed as the appellant had not obtained leave to appeal from the Judge. The Judge of Appeal did not rule on the preliminary objection on the ground that the proper procedure was for the respondent to take out a separate application to strike out the Notice of Appeal. Accordingly, the Judge of Appeal made an order for the hearing of CA 35/2012 to be expedited and heard in the week of 14 May 2012. The hearing of CA 35/2012 was subsequently fixed for hearing on 16 May 2012.

6 On 13 April 2012, the respondent filed Summons No 1817 of 2012 (“SUM 1817/2012”) to strike out the Notice of Appeal on the ground that no leave had been obtained from the Judge to appeal against the Judge’s decision in OS 196/2012.

7 On 9 May 2012, the President, upon the advice of the Prime Minister, issued the Writ of Election for the Single Member Constituency of Hougang (“the Hougang SMC”). On the same day, the Elections Department of the Prime Minister’s Office issued a press release announcing that 16 May 2012 would be Nomination Day and that Polling Day would be 26 May 2012 if more than one candidate stood nominated for the Hougang SMC by-election at the close of nominations on Nomination Day.

8 On 11 May 2012, the respondent offered by way of letter (“the conditional offer”) to the appellant to withdraw her proceedings for judicial review under OS 196/2012, and SUM 1817/2012, on the conditions that:

- (a) the appellant withdraws CA 35/2012; and
- (b) the appellant does not seek any costs against the respondent.

9 On 12 May 2012, the appellant was quoted in a Straits Times news report as having stated, *inter alia*, that the proceedings were ill-conceived and that if the proceedings continued, the respondent would risk being penalised in costs. On 13 May 2012, the respondent rescinded the conditional offer.

10 On 14 May 2012, the appellant informed the Court of Appeal and the respondent by letter that the appellant would be withdrawing the appeal against the Leave Order at the hearing on 16 May 2012.

11 At the hearing before us on 16 May 2012, counsel for the appellant, Mr David Chong SC (“Mr Chong SC”), made an oral application to withdraw his appeal on the basis that the Writ of Election had been issued and therefore the matter was effectively academic, and that no costs should be ordered against the appellant. It was contended that the respondent was not entitled to costs, and that the proper order should be that each party should bear her or his own costs. We allowed the application to withdraw the appeal against the Leave Order, with the consequence that SUM 1817/2012 was deemed to be withdrawn. The respondent did not object to the withdrawal of the appeal but contended that she be paid for costs thrown away.

12 We reserved judgment on the issue until after the substantive hearing under OS 196/2012 was

heard and decided. The substantive hearing under OS 196/2012 was eventually heard by the Judge under Summons No 2639 of 2012 ("SUM 2639/2012") which the respondent filed on 29 May 2012 in accordance with O 53 r 2(1)(a) of the Rules of Court.

13 On 1 August 2012, the Judge gave judgment for the substantive hearing under OS 196/2012 (ie, SUM 2639/2012) and dismissed the respondent's application. The Judge adjourned the hearing for costs to be determined in due course. The Judge heard parties' submissions on costs on 8 and 16 October 2012 and issued his decision on 1 November 2012 in *Vellama d/o Marie Muthu v Attorney-General* [2012] SGHC 221.

Costs of this appeal

14 Under s 29 of the Government Proceedings Act (Cap 121, 1985 Rev Ed), the court has power to order costs for or against the Government or the public officer in the same manner and upon the same principles as in proceedings between private persons. Costs are governed by O 59 of the Rules of Court. Order 59 r 3(2) states as follows:

If the Court in the exercise of its discretion sees fit to make any order as to the costs of or incidental to any proceedings, the Court *shall, subject to this Order, order the costs to follow the event, except when it appears to the Court that in the circumstances of the case some other order should be made* as to the whole or any part of the costs.

[emphasis added]

15 The general rule is that costs follow the event, but that rule applies only if the court in exercise of its discretion sees fit to make any order of or incidental to the proceedings. The question in this appeal is whether in the circumstances of this case, the court should make an order of costs in the proceedings.

16 In our view, the circumstances of this case do not justify this court in making a costs order. On 14 May 2012, the appellant notified the Registrar and the respondent that he would be withdrawing the appeal against the Leave Order. At the hearing on 16 May 2012 ("the 16 May hearing"), the appellant formally appeared before this court and applied for leave to withdraw the appeal. We granted leave to withdraw the appeal. In the circumstances, no costs would have been incurred by the respondent with respect to any preparation for this hearing.

17 There were no costs thrown away except for the filing fees incurred by the respondent in filing SUM 1817/2012 on 13 April 2012 to strike out the Notice of Appeal on the ground that no leave had been obtained from the Judge to appeal against the Judge's decision in OS 196/2012. This was an unnecessary application as the objection against the appellant's Notice of Appeal could also have been taken at the 16 May hearing as a preliminary point. Further, we are not satisfied the respondent would have succeeded in SUM 1817/2012, having regard to the recent decision of the Court of Appeal made on 15 October 2012 in *Opennet Pte Ltd v Info-Communications Development Authority of Singapore* (Civil Appeal No 81 of 2012) in relation to the same procedural objection.

18 In the circumstances, we make no order of costs in the proceedings before us.