

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2017] SGHC 206

Originating Summons No 149 of 2017

Between

Nalpon Zero Geraldo Mario

... Plaintiff

And

Law Society of Singapore

... Defendant

GROUND OF DECISION

[Civil procedure] — [Extension of time]

[Administrative law] — [Judicial review] — [Application for leave]

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Nalpon Zero Geraldo Mario
v
Law Society of Singapore

[2017] SGHC 206

High Court — Originating Summons No 149 of 2017
Woo Bih Li J
5, 22 May 2017

23 August 2017

Woo Bih Li J:

Introduction

1 On 12 August 2016, the plaintiff, Zero Geraldo Mario Nalpon (“Mr Nalpon”) wrote to the Law Society of Singapore (“the Law Society”) to complain about the conduct of Thio Shen Yi, SC (“Mr Thio”) who had given a message in the February 2016 issue of the Singapore Law Gazette (a publication of the Law Society). Mr Thio was president of the Law Society then. His message was about police conduct in the investigation of a report about an alleged molestation of a girl by a 14-year old school boy (“the Student”). After the Student had been interviewed at the principal’s office and then at a police division, he was released on bail to his mother’s custody. However, tragically, he was found dead at the foot of the block of flats where he and his parents lived, a short while later on the same day as his release.

2 The Law Society appointed a Review Committee (“the RC”) on 4 October 2016. On 31 October 2016, the RC issued its report and directed the Council to dismiss the complaint.

3 On 15 February 2017, Mr Nalpon filed the present Originating Summons (“the OS”) for various reliefs:

1. That Leave be granted to extend the time for filing this application from 10th February 2017;
2. That Leave be granted to the Plaintiff to apply for a Quashing Order against the decision of the Review Committee No. 69 of 2016, constituted under Section 85(6) of the Legal Profession Act which dismissed the Plaintiff’s Complaints made against Mr Thio Shen Yi by way of the Plaintiff’s letter of Complaint to the Law Society of Singapore dated 12th August 2016;
3. That an Order be made that the Plaintiff’s Complaint against Mr Thio Shen Yi dated 12th August 2016 be reheard by a freshly constituted Review Committee; and
4. Such further or other relief as this Honourable Court deems fit.

4 I heard the OS. Eventually, I dismissed it on 22 May 2017. Mr Nalpon has filed an appeal to the Court of Appeal against my decision to dismiss the OS.

Chronology

5 I will now set out in some detail the chronology leading to the filing of the OS.

6 On 25 January 2016, the Student allegedly molested a girl.

7 On 26 January 2016, police officers went in plainclothes to the Student’s school. The Student was then brought to the principal’s office and was spoken to in the presence of the police. I will elaborate later as to the number of police officers involved as that was one of the main complaints of Mr Nalpon about alleged falsehoods in Mr Thio’s message. Before the Student was brought back to Ang Mo Kio (“AMK”) police division, the Student contacted his mother to inform her of the police investigation. The police also spoke to his mother.

8 While at AMK police division, the Student was interviewed by the police. He was then released on bail and went home with his mother that afternoon. Later that afternoon, he was found dead at the foot of their block of flats.

9 On 1 February 2016, the police released a statement. That statement stated that:

... Police officers went to conduct enquiries at a school. To keep investigations discreet, the officers went in plainclothes and in unmarked cars. ... [the Student] was brought to the Principal’s office by a school official and was spoken with in the presence of a Police officer. Before he was brought back to Ang Mo Kio Division, he contacted his mother to inform her of the Police’s investigations. The Police officer also spoke to the mother.

While at Ang Mo Kio Division, he was interviewed by one Investigation Officer at his workstation. ... He was fully co-operative during the interview. He was then released on bail and went back with his mother.

...

Police investigations have not been completed. A Coroner’s Inquiry will be held upon the conclusion of investigations ...

10 At around that time, the February 2016 issue of the Singapore Law Gazette was published. The President’s Message from Mr Thio referred to this

incident. I set out below two parts of the message which Mr Nalpon referred to in his complaint:

On 26th January 2016, five plain-clothes policemen visited his school and spoke to him at the principal's office.

...

The police could have considered a less intimidating way of approaching the investigation.

11 In the 18 February 2016 issue of *Today*, which is an English-language daily newspaper, there was an article on the incident written by a journalist called Valerie Koh. I set out below two parts of that article which Mr Nalpon referred to in his complaint:

The President of the Law Society of Singapore (LawSoc) has weighed in on the debate sparked by the death of a 14-year-old boy after he had been taken in for questioning, saying the police should have taken a “less intimidating way” of approaching the investigation.

...

The teenager, a Secondary Three student, was picked up by five plainclothes officers from his school on Jan 26. After about two hours at Ang Mo Kio Police Division, he was brought home by his mother. Within two hours, he was found dead at the foot of his Yishun block.

12 Subsequently, *Today* carried another article written by another journalist, Siau Ming En, in its issue of 2 March 2016. I set out below two parts of that article concerning the Minister for Law, M K Shanmugam (“the Law Minister”), and Mr Thio which Mr Nalpon referred to in his complaint:

[The Minister for Law] also chided Senior Counsel Thio Shen Yi, president of the Law Society of Singapore (LawSoc), for practically implying, in a commentary published last month in LawSoc's monthly newsletter, that [the Student] killed himself because of police intimidation. Adding that it was “surprising” that even a lawyer such as Mr Thio made “some comments

which should never have been made”, Mr Shanmugam said: “Mr Thio has a duty to be fair to the police officers.”

...

Turning his attention to Mr Thio, Mr Shanmugam noted that the lawyer’s commentary claimed that five police officers spoke to [the Student] and the police should have behaved in a less intimidating way. These are false, Mr Shanmugam said. He added that Mr Thio “seemed to make the assertion of intimidation, based on his other statements, which are themselves false”. ...

13 Mr Nalpon also said that Mr Thio was reported in that article to have said, “There was no intention to imply that [the Student’s] tragic death was caused by police intimidation”.

14 On 12 August 2016, Mr Nalpon made a written complaint to the Law Society. His letter set out five complaints in relation to Mr Thio:

(a) acting in a manner unbecoming of an Advocate and Solicitor as an officer of the Supreme Court and President of the Law Society of Singapore by making false statements in the February 2016 Law Gazette on a case which was being investigated by the police, in breach of s 67 of the Legal Profession (Professional Conduct) Rules (R 1, Cap 161, 2010 Rev Ed) (“the 1st Complaint”);

(b) acting in a manner unbecoming of an Advocate and Solicitor as an officer of the Supreme Court and President of the Law Society of Singapore by making false statements to the press or media on a case which was being investigated by the police, in breach of s 67 of the Legal Profession (Professional Conduct) Rules (“the 2nd Complaint”);

(c) acting in a manner unbefitting of an Advocate and Solicitor as an officer of the Supreme Court and President of the Law Society of Singapore by making comments in the February 2016 Law Gazette that may prejudice matters *sub judice* in breach of paragraph 61 of the 2013 Law Society Practice Directions and Rulings Guide (“the 3rd Complaint”);

(d) acting in a manner unbefitting of an Advocate and Solicitor as an officer of the Supreme Court and President of the Law Society of Singapore by making comments to the press or media that may prejudice matters *sub judice* in breach of the PDR 2013, paragraph 61 (“the 4th Complaint”); and

(e) acting in a manner unbefitting of an Advocate and Solicitor as an officer of the Supreme Court and President of the Law Society of Singapore by questioning the intelligence of the Law Minister and his command of the English Language by denying the clear meaning of his baseless comments (“the 5th Complaint”).

15 Although there were five complaints, they centred around three publications:

- (a) Mr Thio’s message in the February 2016 issue of the Singapore Law Gazette;
- (b) The Today issue of 18 February 2016; and
- (c) The Today issue of 2 March 2016.

I have already cited the relevant parts of each of these publications which Mr Nalpon was raising.

16 Mr Thio's message was the subject of the 1st and 3rd Complaints.

17 The Today issue of 18 February 2016 was the subject of the 2nd and 4th Complaints.

18 The difference was that in respect of the Today article of 18 February 2016, Mr Thio was alleged to have made the statements to the press or media.

19 The Today issue of 2 March 2016 was the subject of the 5th Complaint. In summary, Mr Nalpon was complaining that when Mr Thio responded to the Law Minister's comments and denied that he had any intention to imply that the Student's death was caused by police intimidation, Mr Thio was questioning the Law Minister's intelligence and understanding of the English Language as the Law Minister had been reported to have commented that Mr Thio was implying that the Student had killed himself because of police intimidation.

20 As mentioned above, an RC was constituted on 4 October 2016. The RC eventually issued a report dated 31 October 2016 to direct the Council to dismiss all his complaints ("the RC Report").

21 The Law Society received the report on 7 November 2016 and sent a copy to Mr Nalpon with a cover letter dated 8 November 2016.

22 Mr Nalpon eventually filed the OS on 15 February 2017 for various reliefs. It was common ground that he was out of time as he had three months to do so under O 53 r 1(6) of the Rules of Court (Cap 322 R5, 2014 Rev Ed)

(“the ROC”) from the date of the report. Even if the time began to run from the date he received the report, he was still out of time.

23 The OS sought the reliefs in [3] above.

24 On 21 February 2017, WongPartnership, acting for the Law Society, filed a Notice of Appointment of Solicitor. Presumably, this notice was served on Mr Nalpon shortly thereafter.

25 At a pre-trial conference before Assistant Registrar James Lee (“the AR”) on 6 March 2017, Mr Nalpon orally applied to the AR to direct WongPartnership to withdraw that notice. Mr Nalpon submitted that the Law Society was not entitled to be present or to be heard as the OS was an *ex parte* application. This oral application was resisted by WongPartnership.

26 Eventually the AR declined to make the direction sought by Mr Nalpon as the AR was of the view that the matter should be decided by the judge hearing the OS.

27 Consequently, Mr Nalpon filed Registrar’s Appeal No 75 of 2017 against the AR’s “decision” not to make that direction.

28 Both the appeal and the OS came to be heard before me on 5 May 2017. I informed the parties that as the AR had not rendered a judicial decision, there was no need for Mr Nalpon to have filed an appeal. Nevertheless, I continued to hear Mr Nalpon’s objection to the Notice of Appointment of Solicitor filed by WongPartnership.

29 Although the Law Society was not entitled to be heard on an *ex parte* application, I was of the view that it could be heard on an opposed *ex parte* basis. After hearing arguments, I allowed WongPartnership to attend at the hearing of the OS. Mr Nalpon then sought an adjournment as he had just received a written submission from WongPartnership. I granted an adjournment and the OS was eventually fixed for hearing again on 22 May 2017. After hearing arguments, I dismissed the OS.

The court's reasons

Extension of time

30 The primary relief sought in the OS was for leave to apply for a Quashing Order against the decision of the RC. Under O 53 r 1(6) of the ROC, an application for leave to apply for a Quashing Order is to be made within three months after the date of the proceeding. The RC's report was dated 31 October 2016. Therefore, the OS should have been filed on or before **31 January 2017**.

31 If I were to use the date of Mr Nalpon's receipt of a copy of the RC Report on 10 November 2016 as the relevant date from which time begins to run, the OS for leave should have been filed on or before **10 February 2017**.

32 It was filed on 15 February 2016 which was out of time. Hence, the OS also had a prayer for extension of time to file the application.

33 Order 53 r 1(6) also states that leave "shall not be granted" unless the delay beyond the three months period is "accounted for to the satisfaction of the Judge to whom the application for leave is made".

34 The Law Society submitted that in view of the express requirement that the delay is to be accounted to the satisfaction of the judge hearing the application for leave, such a requirement is even stricter than an application to apply for leave to file an appeal out of time.

35 I was of the view that even if the said requirement was not stricter, it was still for Mr Nalpon to account for the delay to my satisfaction. In paragraphs three to five of his first supporting affidavit for the OS, he said that after he had received a copy of the RC Report, he then sent a letter dated 23 November 2016 to the Law Minister who had chided Mr Thio for making false statements and unfounded allegations against the police. He received a reply from the Ministry of Law on 12 December 2016. In the light of such circumstances, Mr Nalpon said that he failed to note that the three months' timeline in O 53 r 1(6) "had started to run from the date [he] received the said Report".

36 I elaborate that Mr Nalpon's letter to the Minister was to inform the Minister of the complaint he had made to the Law Society and of the decision of the RC. He said in the letter that he wanted to give the Minister "the opportunity to address this grave error by the Review Committee who refused to find any cause for the Complaint to be further investigated". The Ministry's reply was that it did not have jurisdiction over appeals on decisions by the RC.

37 However, as the Law Society submitted, Mr Nalpon could not show how his letter to the Minister and the Ministry's reply had caused him to fail to note the three months' timeline in O 53 r 1(6).

38 I also noted that Mr Nalpon is a practising solicitor. Furthermore, this was not his first application for judicial review. In the affidavit he filed to

support his appeal against AR James Lee’s “decision” not to direct the Law Society’s solicitor to withdraw the Notice of Appointment of Solicitor, Mr Nalpon mentioned, at paragraph 14, that he had applied for leave to apply for judicial review in OS 308 of 2015 under O 53 r 1, which was “exactly the same provision”, to use his own words.

39 In the circumstances, Mr Nalpon failed to account for the delay to my satisfaction. For that reason alone, I would not have granted him an extension of time to make his application.

Merits of the application

40 As for the substantive merits of Mr Nalpon’s application for leave to apply for judicial review, the Law Society submitted initially that he was not criticising the RC’s decision for illegality, irrationality or procedural impropriety which are the established grounds for judicial review. His grievance was that the RC’s decision was erroneous on the merits.

41 After receiving a copy of the Law Society’s written skeletal submissions, Mr Nalpon then executed another affidavit on 22 May 2017 to say that he was challenging the RC’s decision on the grounds that it was: (a) unlawful, (b) biased and (c) irrational.

42 As I said in *Deepak Sharma v Law Society of Singapore* [2016] 4 SLR 192 at [21]:

The test for granting leave to bring judicial review proceedings is well settled. The court must be satisfied that (see *Jeyaretnam Kenneth Andrew v AG* [2014] 1 SLR 345 at [5]):

- (a) The matter complained of is susceptible to judicial review.

(b) The plaintiff has a sufficient interest or standing in the matter.

(c) The material before the court discloses an arguable case or *prima facie* case of reasonable suspicion in favour of granting the public law remedies sought by the plaintiff.

43 The third limb of the test was the relevant one here.

44 Before I address the substantive complaints, I would mention that the RC Report noted that Mr Nalpon had cited s 67 of the Legal Profession (Professional Conduct) Rules (R1, Cap 161, 2010 Rev Ed) and paragraph 61 of the PDR 2013 in his letter of complaint, but these provisions no longer applied at the time of Mr Thio’s message and conduct. With effect from 18 November 2015, the Legal Profession (Professional Conduct) Rules 2015 (S 706/2015) (“the 2015 Rules”) were applicable. In the RC’s view, principle (a) under r 8(1) of the 2015 rules was likely to be applicable. In Mr Nalpon’s first supporting affidavit for his application, he said he was unaware that the provisions he relied on had ceased to apply. However, he also suggested that principle (b) under rule 8(1) of the 2015 Rules was applicable. I now reproduce r 8(1) and principles (a) and (b) under that provision:

Conduct in relation to other persons

8.—(1) The following principles guide the interpretation of this rule.

Principles

(a) A legal practitioner who deals with any person must, regardless of whether that person is involved in any matter with which the legal practitioner is concerned, be honest and courteous, and behave in a manner befitting the legal practitioner’s professional standing.

(b) A legal practitioner must behave in a manner consistent with the public interest.

45 It may be that, strictly speaking, principle (a) does not apply as it refers to a situation where a legal practitioner deals with another person. However, it was not disputed that generally a legal practitioner should act honestly and in a manner befitting his professional standing.

46 I will deal first with the 5th Complaint, *ie*, that Mr Thio had questioned the intelligence of the Law Minister and his command of the English language when Mr Thio disagreed with the comments of the Minister. The RC considered this complaint to be “somewhat fatuous” and had no hesitation in dismissing it. In my view, this complaint was quite clearly a non-starter. Mr Thio was entitled to say that he had no intention to imply that the Student’s death was caused by police intimidation even if the Minister took a different view that that was Mr Thio’s implication. It was absurd to suggest that Mr Thio was guilty of improper conduct just because he expressed a different view. There was no basis to challenge the RC’s decision to reject this complaint.

47 I next address the 2nd and 4th Complaints in which Mr Thio is alleged to have made false statements to the press or media (see [14]). These items of complaint arose from the article mentioned in the Today newspaper as mentioned above. The RC Report noted at paragraph 8 that there was no evidence that Mr Thio had made the statements to the relevant reporter. It appeared that the reporter had merely picked up on and quoted the statements found in the Law Gazette. Mr Nalpon had conceded to the RC during their meeting with him on 24 October 2016 that he had no evidence that Mr Thio made the statements to the reporter in question. Indeed, in Mr Nalpon’s supporting affidavits for his OS, he still did not offer any evidence that Mr Thio

had made the statements to the reporter. Therefore, the RC did not err in any way in rejecting these two complaints.

48 I come back to the 1st and 3rd Complaints (see [14] above). They relate to the statements from Mr Thio's message in the Law Gazette.

49 The crux of Mr Nalpon's complaint was that Mr Thio's statements were wrong and therefore false. I have set out above the statements of Mr Thio which Mr Nalpon had referred to. However, Mr Nalpon did not specify clearly which part of the statements was wrong.

50 The first of the statements in question had two parts. The first part was that five plain-clothes policemen visited the Student's school. The second part was that these five plain-clothes policemen spoke to the Student.

51 There was no evidence that the first part was wrong. There was some evidence that the second part was wrong. This was because the police had issued a statement to say that the Student was brought to the principal's office by a school official and was spoken with in the presence of "a" police officer, *ie*, not five officers.

52 Furthermore, it was reported in the Today issue of 2 March 2016 that the Law Minister had said that Mr Thio's claim that five police officers had spoken to the Student was false.

53 The RC Report said at para 7 that Mr Nalpon did not give the RC evidence that this statement was false, apart from quoting what the Law Minister had said as reported in the Today newspaper.

54 It seemed to me that the RC did err on this point. However, this was not an error of law. The RC knew that there must be some evidence of misconduct. However, the RC erred on the facts in appearing to require more evidence from Mr Nalpon than what the Minister had said. The Minister's statement that it was false for Mr Thio to say that five police officers spoke to the Student was itself evidence that Mr Thio had gotten his facts wrong, *ie*, that it was not five police officers who were present in the principal's office when the Student was interviewed. Furthermore, the police statement was also evidence that only one police officer was present then. Whether the Minister's statement and the police statement were sufficient to establish that Mr Thio's statement was wrong, if the matter were to go up to an Inquiry Committee or to a Disciplinary Tribunal, was a different matter.

55 Mr Nalpon suggested that the RC was biased in disregarding the Minister's statement. While the RC had erred in not giving more weight to that statement, I am of the view that this error alone does not suggest any bias whatsoever.

56 In so far as Mr Nalpon said at paragraph 36 of his second affidavit that the RC had completely dismissed the official position of the Minister as "lacking in substance" and his reliance on it as being "misconceived and vexatious", I am of the view that Mr Nalpon had quoted from the RC Report out of context. The RC Report stated at paragraph 11 that the RC found his complaints to lack substance and such complaints were misconceived and vexatious. This was the last paragraph of the report and was a summary of its general conclusion on all his complaints. It was not addressed to the Minister's statement specifically. As mentioned above, the RC appeared not to have given

enough weight to the Minister's statement. However, that is quite different from saying that the RC was of the view that the Minister's statement was "lacking in substance" or "was misconceived and vexatious" as suggested by Mr Nalpon.

57 I also note that the RC did go on to consider the circumstances leading to Mr Thio's error, if indeed he had made an error. The RC noted (at paragraph 7 of the RC Report) that there was no evidence to show that Mr Thio had intended to make a false statement or had known he was making a false statement or had no reasonable grounds to believe that his statement was true.

58 Mr Nalpon said at paragraph 19 of his first supporting affidavit for the OS that the onus was not on him as a complainant to produce evidence of Mr Thio's intention and knowledge and inferences would be drawn.

59 However, the point is that it is not sufficient to allege that a solicitor said something wrong. I add that the use of the word "false" does not add much in substance although the word "false" sounds more serious than "wrong" and may give the incorrect impression that "false" necessarily implies an intention to communicate falsehood or a lack of care about whether one is telling the truth. Solicitors make mistakes and it cannot be that each time a solicitor makes a wrong or false statement that the complaint must be referred to an Inquiry Committee. Also, the mistake does not become more serious just because a Minister says that the statement was "false". There must be something more. Mr Thio's intention and knowledge, and the question whether he had reasonable grounds to believe that his statement was true, were all relevant factors for the RC to take into account.

60 If a complainant is not able to say what was exactly in the mind of a solicitor when that solicitor made a false statement, he should point to circumstances which may lead one to conclude that the solicitor intended to make a false statement or that the solicitor knew he was making a false statement or had no reasonable ground to make it. However, Mr Nalpon’s complaint did not even allege that Mr Thio had deliberately intended to make a false statement or knew he was making a false statement or that Mr Thio had no reasonable ground to believe that his statement was true. In the circumstances, all Mr Nalpon was saying in substance was that Mr Thio had made a wrong statement although Mr Nalpon preferred to use the stronger sounding adjective “false”. Accordingly, there was no error of law by the RC. Nor was there any bias or irrationality.

61 The second statement of Mr Thio which Mr Nalpon complained of was that, “The police could have considered a less intimidating way of approaching the investigation”. Again, Mr Nalpon appeared to rely on the Minister’s statement, as reported, that Mr Thio’s assertion of intimidation was false as it was based on other false statements of Mr Thio. Other than that, Mr Nalpon did not explain why this second statement was false.

62 The RC Report did not address this second statement specifically beyond mentioning it as part of the statements Mr Nalpon was complaining about.

63 Looking at Mr Thio’s message in its entirety, it was clear to me that in commenting that a less intimidating approach should have been taken, he was not relying solely on the assumption that five police officers were present at the interview. He mentioned other factors like the fact that the Student had been

taken back to AMK police division during school hours. Furthermore, Mr Thio was merely expressing his opinion. While one could argue that Mr Thio should have been more careful in stating his opinion, that is not the point.

64 There was no suggestion even by Mr Nalpon that Mr Thio was deliberately or recklessly making a comment without basis. In the circumstances, there was no reasonable suspicion in favour of granting Mr Nalpon's remedy of quashing the RC's decision.

65 As for the 3rd Complaint, *ie*, that Mr Thio's statements may prejudice matters *sub judice*, Mr Nalpon's point was that the cause of the Student's death was the subject of a pending Coroner's Inquiry.

66 The RC Report said at paragraph 9 that Mr Thio's message was not meant to discuss the cause of death but was a review of police investigation procedures when dealing with vulnerable suspects. Indeed Mr Thio did say in his message, "Why did he jump? Could his death have been prevented? We can never know for certain".

67 I agreed with the RC that Mr Thio's statement about a less intimidating way of approaching an investigation was not an attempt to say what had caused the Student to jump. It was an attempt to address a wider issue, *ie*, police investigations involving vulnerable suspects. As a solicitor and as President of the Law Society, Mr Thio's message was not gratuitous. It may be that others may think that Mr Thio was implying that the Student's death was caused by police intimidation but that was not the focus of the message. He was quite clearly not trying to suggest the cause of death.

68 In so far as the RC Report also stated at paragraph 9 that neither a Review Committee nor an Inquiry Committee is the proper forum to determine whether the statements complained of may prejudice court proceedings, I am of the view that that is too wide a statement and might therefore have constituted an error of law so as to amount to illegality. However it was only one of the reasons mentioned by the RC for its decision. As mentioned above, the RC did conclude that Mr Thio's message was not meant to discuss the cause of death.

69 In the circumstances, I was of the view that Mr Nalpon had not established his case for his application in respect of the 3rd Complaint.

70 Accordingly, I dismissed the OS.

Woo Bih Li
Judge

Plaintiff in person;
Andre Maniam, SC and Koh Jia Wen (WongPartnership LLP) for
the defendant.
