

**MALAYSIA**

**IN THE HIGH COURT IN SABAH AND SARAWAK**

**AT KOTA KINABALU**

**CASE NO: BKI-24-53/6-2020**

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**BETWEEN**

**WONG HENG KIM @ KEVIN WONG ... PLAINTIFF/APPELLANT**

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**AND**

**TAN TAY VUI ... DEFENDANT/RESPONDENT**

**GROUND OF DECISION**

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This is an appeal by the Appellant against the decision of the Disciplinary Board (DB) which had found the Appellant guilty of misconduct under Rule 26 of Advocates (Practice and Etiquette) Rules 1998 (Rule 26) read with Section 12B(3)(k) of the Advocates Ordinance (Cap. 2) and the  
20 punishment of reprimand or censure was imposed against the Appellant;

The brief facts leading to the present appeal are as follows:

The Appellant is an advocate and solicitor and had acted for MC Global Sdn. Bhd. in a civil suit in the High Court of Sandakan. The Respondent is a self-represented litigant in the said case. The Respondent lodged a complaint to the DB for the Appellant's conduct during the examination of a witness during the trial. The said witness was a witness called by MC Global that was represented by the Appellant. The pertinent part of the evidence which is the core issue in the present appeal and before the DB is as follows;

It is the Appellant's case that during the trial, he tendered "a Witness Statement of Jebb Liew Kim Kiong ("said Witness Statement") to be marked as exhibit. [exhibit "KW-10"].

The examination-in-chief is reflected at Q20 in the Notes of Proceeding as follows:

“20 Q: *Please refer to page 15 of Bundle C. Can you please explain what this document is?*

A: *This is the Certificate of Practical Completion issued by me in respect of the said Development.*”

After having tendered and exhibited the said Witness Statement during trial,  
40 the Appellant proceeded to tender the documents referred to in the said  
Witness Statement, and prayed to the Court for those documents to be  
marked as exhibit accordingly. In doing so, one of the questions that the  
Appellant asked the Witness, is Question 185, and reproduced as follow:

45           “Q185       Refer to page 15 of Bundle ABC, is this the certificate  
of practical completion prepared by you?”

A:           Yes.

*(Mr. Wong (Appellant in this appeal): pray for this document be  
marked as exhibit.*

50           Mr. Tan (Respondent in this appeal):    No objection

Court:       page 15 ABC marked as exhibit ABC (15)”  
[exhibit “KW-13“].

55    **The Respondent’s complaint to the Inquiry Board.**

The Respondent’s complaint to the DB relates to the Appellants question to  
the witness in Q185 where the Appellant referred to Pg. 15 of Bundle ABC

as Certificate of Practical Completion. The Respondent contended that by  
60 referring to the said Page 15 as Certificate of Practical Completion when the  
said Page 15 is a Certificate on Stage of Work Done as reflected in the said  
document, the Appellant had breached Rule 26. The said Rule 26 reads as  
follows:

65 **Advocate 26. An Advocate shall avoid everything which may tend to  
mislead a party not represented by counsel.**

**Findings of the DB.**

In its decision given by the DB, the DB in arriving at its finding that the  
70 Appellant was in breach of the said Rule in summary stated as follows:-

1. The facts as appeared in the NOP are not in dispute.
  
2. In the Board's opinion the other defences raised by the  
Respondent are completely irrelevant to the issue at hand as the core  
75 issue here revolves round the status / identity of the document marked  
as exhibit at page 15 of Bundle ABC.

3. The complainant has proved beyond reasonable doubt the Respondent has committed a breach of Rule 26 of the Advocates (Practice and Etiquette) Rules 1998.

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**The contentions of the parties.**

The main contention by Respondent regarding Q185 was based on the arguments that the Appellant had asked leading question to Jebb knowingly  
85 that the said document was not a Certificate of Practical Completion but it was “certificate on stage of work done”.

This is because in the Bundle of Documents ABC-15, the said document is identified as “certificate on stage of work done” in the Index of the Disputed Bundle of Document. The title of the said document as found in page 15 of  
90 the ABC also reads as “certificate on stage of work done”.

In this case, the position of the Appellant is that he was merely repeating or referring to the answer of the witness who stated that the said document is a Certificate of Practical Completion.

I have given serious consideration on the position that was taken by the  
95 Appellant and I am of the view the said stance cannot be justified in view of  
the provision in Rule 26.

It is pertinent to note that Rule 26 specifically provided that an Advocate shall  
avoid everything which may tend to mislead a party not represented by  
counsel.

100 In my view, Rule 26 is clear in its terms and “that the phrase that an  
Advocate shall avoid everything which may tend to mislead” is wide and  
covers the present facts in this case. Here, from the evidence it was clear  
that the Appellant was aware that the said document was not a certificate of  
completion, yet he had decided to identify it based on what was testified by  
105 the witness.

By taking such a step, the Appellant had wrongly identified the said  
document and this act is caught by the provision in Rule. With respect, I do  
not think the arguments of the Appellant that he was merely referring or  
110 repeating the testimony of the witness would be sufficient to escape the  
provision of the said Rule. The Appellant in my view based on the facts did

not show that he had attempted or had taken all the necessary steps  
“to avoid everything which may tend to mislead” the Respondent who was  
not represented at the material time. In the circumstances, I do not find any  
115 reasons to interfere with the findings of the DB and the present application  
is dismissed with costs to the Respondent.

Signed,

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**-SGD-**

**(ISMAIL BRAHIM)**  
High Court Judge  
Kota Kinabalu.  
Dated: 16.6.2021

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**Counsel:-**

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For the Plaintiff : Ms. Liew Mei Yee & Mr. Kelvin Wong  
Messrs. W V & Partners  
Kota Kinabalu.

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For the Defendant : Mr. Chris Kwan  
Messrs. KH Kwan & Co.  
Sandakan, Sabah.