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THE COURT OF APPEAL UPHELD RESPONDENT'S PRELIMINARY OBJECTION UNDER SECTION 68 (1) (a) OF THE COURTS OF JUDICATURE ACT 1964

CASE: CWH V. PEMUNGUT DUTI SETEM

On 16 July 2019, Panel of the Court of Appeal judges led by YA Dato' Umi Kalthum Binti Abdul Majid together with her, YA Datuk Hasnah Binti Dato' Mohammed Hashim and YA Datuk Hanipah Binti Farikullah unanimously allowed the preliminary objection raised by the Senior Revenue Counsel on the grounds that a prior leave under Section 68 of the Courts of Judicature Act 1964 is required for the present appeal. Since no leave obtained, the Court held that the appeal is incompetent and accordingly struck out the appeal.

FACTS OF THE CASE:

1. One CCT died intestate;
2. A Grant of Letter of Administration was granted by the High Court, Muar, Johor;
3. The Appellant, CWH was appointed as the administrator of the Deceased's estates;
4. Other than the Appellant, there are two more beneficiaries which is the wife and daughter of the Deceased;
5. Based on the Distribution Act 1958, all of the beneficiaries are entitled to 1/3 of the Deceased's estates;
6. The wife and daughter, by consensus documents had consented to release and renounced their entitlement in the Deceased's estates to the Appellant;
7. The Appellant had applied for an order to transfer the Deceased's estates to the Appellant as agreed by the said beneficiaries;

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8. The Memorandum of Transfers were submitted to the Respondent for the purpose of stamp duty adjudication;
9. The Collector of Stamp Duty raised the assessments as follows:
 - a. Nominal assessment under item 32(i) of First Schedule of the Stamp Act 1949 for 1/3 part of each Property as the transfer is based on the Distribution Act 1958; and
 - b. *Ad Volarem* duty under Item 66 (c) of First Schedule of the Stamp Act 1949 for 2/3 part of each property which was released and renounced by the other two beneficiaries to the Appellant;
10. Being aggrieved with the assessments, the Appellant appealed against the assessments by way of Case Stated to the High Court as provided under section 39 of the Stamp Act 1949.
11. The High Court dismissed the appeal on 27.11.2018 and dissatisfied with the decision, the Appellant filed an appeal to the Court of Appeal.

ISSUE ON MERIT

Whether the stamp duty for the Memorandum of Transfers should be assessed for *ad valorem* stamp duty under Item 66(c) of the First Schedule of the Stamp Act 1949 or nominal stamp duty under Item 32(e) of the First Schedule of the Stamp Act 1949.

PRELIMINARY OBJECTION BY THE RESPONDENT

Respondent's Submission

1. Respondent argues that the Appeal filed by the Appellant in this case is incompetent because the subject matter of the appeal is

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the stamp duty charged by the Respondent *vide* Notices of Assessment amounting to RM18,860.05 which is less than RM250,000.00. Therefore, the Appellant should obtain leave to appeal from this Court in accordance with Section 68 (1) (a) of the Courts of Judicature Act 1964.

2. Even though the Court of Appeal Practice Direction No.1 Year 2017 exempts the application for the declaration from obtaining leave to appeal, but it applies only to matters of appeals which have no value attached or where the value cannot be quantified.
3. Thus, the failure of the Appellant to obtain leave to appeal before filing the Notice of Appeal is fatal.

The Applicant's Submission

1. The Appellant does not have to obtain leave to appeal from the Court because based on the Case Stated, the issue in this appeal is whether the stamp duty on the Memorandum of Transfer (Form 14A) shall be assessed under Item 32 or Item 66 (c) of the First Schedule of the Stamp Act 1949.
2. There is no value attached to the issue in this case.

Decision

Respondent's preliminary objection was upheld and the appeal was dismissed with a cost of RM5000.00.

Revenue Counsels for the Respondent

1. Mohd Harris Bin Hanapi
2. Zul-Hasymi Bin Mohamad