

**COURT OF APPEAL AFFIRMED THE DECISION ON TIME LIMIT TO  
FILE AN APPEAL TO THE HIGH COURT FOR STAMP DUTY CASES /  
COURT OF APPEAL CONFIRMED 21 DAYS PERIOD IS  
MANDATORY**

Case: GHFSB v Pemungut Duti Setem

On 16 May 2019, the Coram of three Judges, unanimously dismissed the appeal by the Appellant/duty payer against the decision of the Kuala Lumpur High Court on 11 July 2018 which dismissed the Appellant's application for abridgment of time to file an appeal to the High Court and simultaneously dismissed the Appellant's originating summons to appeal against the Collector's decision under subsection 38A (5) of the Stamp Act 1949 (the Act).

**Brief Facts**

GHFSB (the Appellant) who is dissatisfied with the decision of the Collector of Stamp Duty (the Collector) under section 38A (5) of the Stamp Act 1949 (the Act) dated 22.03.2017, which maintained the assessment made by the Collector *via* Notice of Assessment dated 1<sup>st</sup> March 2017, filed an appeal to the High Court after the expiration of 21 days. The Collector then, raised a preliminary objection against the appeal on the grounds that it was filed after the time limit prescribed under subsection 39(1) of the Act had lapsed. Subsequent to that, the Appellant filed an application under O. 3 r 5(1) & (2) and O. 92 r 4 of the Rules of Court 2012 for an abridgment of time to file an appeal under subsection 39(1) of the Act.

**The Law**

The Act provides the Appellant with a right to object to the assessment of stamp duty under subsection 38A (1) of the Act. The Appellant then, has further right to appeal against the decision of the Collector under subsection 38A (5) of the Act by filing an appeal to the High Court within 21 days of the decision as provided under subsection 39(1) of the Act.

## **Appellant's Contention**

1. The time limit of 21 days is permissive and directory and not mandatory as the word used in subsection 39(1) of the Act is "*may*" instead of "*shall*". It is trite law that the word "*may*" connotes that it is permissive and discretionary as opposed to the word "*shall*", which is mandatory.
2. In interpreting the provision of a statute, the cardinal rule is to adhere as closely as possible to the literal meanings of the word in the statute and to give effect to the same. Where the language is clear and unambiguous, it is not the function of the court to re-write the statute in a way which is considered reasonable.
3. The delay to file an appeal was because there were various discussions between the Appellant and the Collector to resolve the matter.
4. Paragraph 8 of Schedule 2 of the Court of Judicature Act 1964 cloaks the High Court with power to enlarge and abridge time prescribed by any written law.

## **The Collector's Reply**

1. The word "*may*" in subsection 39(1) of the Act confers the substantive right to the Appellant to appeal against the decision of the Collector. However, such right is subjected to the two conditions provided under the same provision which are, the appeal must be filed within 21 days of the decision and the duty charged must be paid first.
2. Hence, the Appellant who seeks to dispute the assessment and the decision of the Collector must exercise his right under subsection 39(1) of the Act by filing an appeal to the High Court within 21 days of the decision.
3. Failure to comply with the conditions of the appeal renders the appeal invalid/fatal as it is incompetent before the High Court.

4. The Court has no power under Rules of Court 2012 to extend the time limit provided under other written law. Under O.3 r. 5(1) of the Rules, the Court only empowered to extend the time limit prescribed under the Rules only.
5. The Court cannot exercise its general powers under paragraph 8 of the Schedule to the Court Judicature Act 1964 since the time limit under section 39(1) is mandatory and there is no express power under the Act to extend the time limit to appeal.

### **Conclusion**

The Court of Appeal's decision confirmed that the time limit to file an appeal under section 39(1) of the Stamp Act 1949 is mandatory. The rule is, provisions with respect to time are always mandatory unless a power of extending the time is conferred to the Court. As such, the High Court only has jurisdiction to hear an appeal under section 39 of the Act if the appeal is filed within 21 days of the decision. Failure to observe the time period is fatal and renders the appeal invalid.

Counsels for Revenue : Raja Kamarul Zaman Bin Raja Musa  
Ridzuan Bin Othman