

IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[2024] SGCA 23

Court of Appeal / Criminal Motion No 10 of 2024

Between

Magendran Muniandy

... Applicant

And

Public Prosecutor

... Respondent

JUDGMENT

[Criminal Procedure and Sentencing — Appeal — Recusal of appellate judge]

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Magendran Muniandy

v

Public Prosecutor

[2024] SGCA 23

Court of Appeal — Criminal Motion No 10 of 2024
Sundaresh Menon CJ, Tay Yong Kwang JCA and Steven Chong JCA
26 April 2024

30 July 2024

Judgment reserved.

Sundaresh Menon CJ (delivering the judgment of the court):

Introduction

1 CA/CM 10/2024 (“CM 10”) is a criminal motion filed by the applicant, Mr Magendran Muniandy (“Mr Muniandy”). Although filed as a motion, in substance it is an attempt to appeal against the decision of a High Court judge (the “Judge”) dismissing HC/CM 6/2024 (“CM 6”), which in turn was an application to the Judge seeking that he recuse himself from hearing any matter relating to the applicant. CM 10 is one of many applications Mr Muniandy has brought since he was convicted of and sentenced to 20 weeks’ imprisonment by the district judge (the “DJ”) below in *Public Prosecutor v Magendran Muniandy* [2023] SGDC 150 (the “Trial Decision”) for knowingly furnishing forged documents. He appealed unsuccessfully against the Trial Decision in HC/MA 9108/2023 (“MA 9108”) while his application in HC/CM 83/2023 (“CM 83”)

to adduce fresh evidence to support his appeal in MA 9108 was also dismissed by the Judge.

Background to the dispute

Facts

2 Mr Muniandy is a 35-year-old Malaysian national who was awarded a tuition grant by the Ministry of Education (the “MOE”) in 2008 for his undergraduate studies at the National University of Singapore (“NUS”). The MOE Tuition Grant Agreement required Mr Muniandy to serve a bond with the MOE upon graduating. This required that he be employed in Singapore for a minimum period of three years (the “Bond”) (Trial Decision at [8]). It is not disputed that he was employed by the Life Sciences Institute (“LSI”) of NUS for three years from 18 August 2014 to 17 August 2017, and was issued an employment pass (“EP”) in this connection. He had therefore served his bond by 18 August 2017, when his EP expired following the completion of three years of employment with NUS (Trial Decision at [10]-[11]). Following the expiry of his EP, Mr Muniandy applied for and was issued a long-term visit pass (“LTVP”) on 31 August 2017 for a period of validity of one year. A year later, he applied for an extension of his LTVP and it was in connection with this that Mr Muniandy was charged with knowingly furnishing certain forged documents to the MOE and the Immigration and Checkpoints Authority (the “ICA”). He was charged under s 471 read with s 465 of the Penal Code (Cap 224, 2008 Rev Ed) (the “PC”) with three counts of fraudulently using as genuine documents which he knew to be forged. The charges he faced, the details of the documents he is said to have forged and the sequence in which Mr Muniandy used and submitted them to the authorities are as follows.

3 The first two charges in terms of the chronological order relate to certain forged documents used and submitted by Mr Muniandy *to the MOE* on 13 April 2018 and 19 April 2018 respectively. By way of background, on 12 April 2018, Mr Muniandy sent an e-mail to the MOE Tuition Grant Section requesting a copy of the MOE Tuition Grant Agreement and a “Supporting Letter” from the MOE (the “support letter”) to apply for an extension of his LTVP. He further stated that he had yet to serve his Bond. On the same day, Ms Loh Yan Ting (“Ms Loh”), a senior executive with the MOE’s Tuition Grant Section, replied to Mr Muniandy and requested details of Mr Muniandy’s employment history after he graduated from NUS in 2012. In subsequent e-mail exchanges with Ms Loh, Mr Muniandy asserted that he had been hired by Proctor & Gamble and sent to Japan to work after he graduated from NUS in 2012, and lied that he had worked as a research assistant in NUS for only two months “from 10/01/2018–28/02/2018”. Crucially, it was not disputed that Mr Muniandy failed to reveal to Ms Loh that he had in fact worked for NUS for the full three years of his Bond.

4 On 13 April 2018, Ms Loh then requested that Mr Muniandy provide her with a “copy/photo of [his] previously-held LTVP”, and replied that the support letter and a copy of the MOE Tuition Grant Agreement would be prepared. That same day, Mr Muniandy e-mailed images of the front and back of his LTVP purportedly issued by the ICA to Ms Loh. It was the image of the back of the LTVP (the “Image”) that formed the subject matter of DAC-912013-2020 (the “Second Charge”) against Mr Muniandy. In particular, the Image showed the date of issue and the date of expiry of the LTVP as “31-06-2017” and “31-06-2018” respectively. A copy of the Image is reproduced below for ease of reference:



It was the Prosecution’s case that the number “6” appearing in both the date of issue and the date of expiry had been altered. In other words, the dates were falsely represented. As it transpired, Ms Loh did not notice the irregularity at that time. On 16 April 2018 at 4.52pm, Ms Loh e-mailed Mr Muniandy an MOE support letter dated 16 April 2018 (the “original MOE support letter”) and a copy of the MOE Tuition Grant Agreement as requested.

5 Subsequently, on 16 April 2018 at 5.14pm, Ms Loh requested from Mr Muniandy the provision of certain documents “to verify [his] employment status” following his graduation from NUS. On 19 April 2018, Mr Muniandy sent a letter of acknowledgement dated 3 February 2018 and purportedly issued by NUS (the “forged NUS acknowledgement letter”) to Ms Loh in connection with the latter’s request. The forged NUS acknowledgement letter stated, among other matters, that Mr Muniandy had been contributing to NUS since 10 January 2018 and that his last day of service in the university was 27 February 2018 (suggesting a duration of about two months), consistent with the lie that Mr Muniandy had been employed by NUS for a period of only two months. An assistant manager of the human resources office of NUS, Ms Nee Yuan Xiang, testified that the letter was indeed forged. The original unaltered letter dated 3 May 2017 (the “original NUS acknowledgement letter”) in fact stated, among

other matters, that Mr Muniandy's last day of service in NUS was 17 August 2017, and not 27 February 2018. The forged NUS acknowledgement letter submitted to the MOE formed the subject of DAC-929726-2020 (the "Third Charge") against Mr Muniandy.

6 Through a perusal of Mr Muniandy's employment history records and correspondence with NUS, the MOE subsequently found out by 4 July 2018 at the latest that Mr Muniandy had in fact worked for NUS for three years and that the forged NUS acknowledgement letter was a forgery. On 9 July 2018, the MOE informed the ICA that it would be revoking the original MOE support letter. The MOE also decided to discharge Mr Muniandy from the Bond since he had already worked in Singapore for three years.

7 The third charge in the chronology (DAC-912012-2020) (but referred to as the "First Charge") related to the use and submission of a forged MOE support letter by Mr Muniandy *to the ICA* on 24 August 2018. After the MOE had informed the ICA that it would be revoking the original MOE support letter, Mr Muniandy submitted an application to the ICA on 24 August 2018 seeking to extend his LTVP (the "Application"). The Application comprised the submission of several documents, including a support letter dated 20 August 2018 and purportedly issued by the MOE (the "forged MOE support letter"). The Application was reviewed by Ms Ng Bee Wah ("Ms Ng"), a processing officer with the ICA, sometime between 24 and 28 August 2018. Upon being contacted by the ICA to verify if the MOE was supporting Mr Muniandy's application to extend his LTVP, the MOE replied that the forged MOE support letter dated 20 August 2018 was not genuine and that they had already revoked the original MOE support letter dated 16 April 2018. The

MOE further informed Ms Ng about the irregularities surrounding the Image. Ms Ng then lodged a police report against Mr Muniandy.

8 Therefore, in summary, the charges faced by Mr Muniandy and the details of the documents he forged are as follows:

Charge	Particulars of offence
DAC-912012-2020 (First Charge)	On 24 August 2018, Mr Muniandy presented a “Letter of Support for Extension of Long-Term Visit Pass” dated 20 August 2018 purportedly issued by the MOE (the forged MOE support letter) to the ICA to support his application for an extension of the LTVP.
DAC-912013-2020 (Second Charge)	On 13 April 2018, Mr Muniandy presented an image showing the date of issue and date of expiry of a Visit Pass purportedly issued by the ICA (the Image) to the MOE to obtain a letter of support for an extension of the LTVP. The Image falsely represented both the date of issue and date of expiry of the said Visit Pass.
DAC-929726-2020 (Third Charge)	On 19 April 2018, Mr Muniandy presented a letter of acknowledgement dated 3 February 2018 and purportedly issued by NUS (the forged NUS acknowledgement letter) to the MOE to obtain its support for an extension of the LTVP.

The Trial Decision

9 Mr Muniandy’s case at trial was that he did not alter or tamper with the original MOE support letter dated 16 April 2018, and had submitted that letter

to the ICA. He further contended that he did not submit the forged MOE support letter as part of the Application (Trial Decision at [34]-[35]). Mr Muniandy also denied sending the forged NUS acknowledgement letter to Ms Loh. He denied having any knowledge of this forged document. Mr Muniandy disputed the chain of e-mails between Ms Loh and himself and asserted that some of the e-mails in the chain were somehow added in by the MOE officers (the “Disputed E-mail Chain”). He alleged that the forged NUS acknowledgement letter was concocted by Ms Loh and Mr Liang Jiewei, a manager with the MOE Tuition Grant Section. Mr Muniandy tendered his own version of the chain of e-mails which did not include the disputed e-mails enclosing the forged NUS acknowledgement letter (Trial Decision at [36]-[37]).

10 Mr Muniandy claimed that he had accidentally informed Ms Loh that he had worked at NUS for two months, instead of three years. He also claimed to have accidentally omitted to inform Ms Loh that he had worked at NUS for three years (Trial Decision at [38]-[42]). As for the Image, Mr Muniandy admitted to having submitted the Image, and that the dates on the Image were wrong, but he maintained that he did so without knowing that the Image reflected information that was inaccurate. He asserted that he had previously scanned his LTVP (for other purposes) and no longer had the original LTVP on hand. He denied altering the dates on the Image (Trial Decision at [43]-[44]).

11 After a trial lasting nine days, the DJ convicted Mr Muniandy of all three charges and imposed an aggregate sentence of 20 weeks’ imprisonment (Trial Decision at [155]-[159]). To make out the elements of each charge, the DJ was satisfied in relation to each charge that: (a) the document in question was forged; (b) Mr Muniandy knew that the document was forged; and (c) Mr Muniandy fraudulently used the said document as genuine. The DJ found that all three

documents, namely the Image, the forged NUS acknowledgement letter, and the forged MOE support letter, were forged. The DJ also found that Mr Muniandy knew that those documents were forged, and that he had fraudulently presented them as genuine.

12 In relation to the Image, the DJ rejected Mr Muniandy's theory that there was a printing error that affected the image of the original LTVP. According to Mr Muniandy, there could have been a printing error in the original LTVP, or that the scanner he had used to scan his LTVP might have incorrectly reproduced the digit in question as "6" instead of "8" (Trial Decision at [43]-[44]). However, the DJ found this speculative and inconsistent with his evidence. It was not disputed that Mr Muniandy had informed the ICA on 11 April 2018 that his LTVP was expiring on 31 August 2018. He was therefore aware that his LTVP was due to expire on that date and this cut against his contention that there had been a printing error affecting the image of the original LTVP (Trial Decision at [57]-[58]). Mr Muniandy's further contention that there may have been a scanning error which caused the digit "8" to appear as "6" was also rejected. The DJ observed that if such an error existed, it would result in the digit "8" appearing on the Image as "6" whenever it occurred, but this was not the case as the year of expiry was correctly reflected as "2018" (Trial Decision at [59]-[60]). The DJ found that the irresistible inference was that Mr Muniandy had altered the month of the validity dates shown on the Image and accordingly, he knew that the Image was a forged document when he sent it to Ms Loh (Trial Decision at [61]). The DJ also found that Mr Muniandy had sent the Image to Ms Loh so that she could prepare the requested support letter from the MOE, that he must have intended to deceive Ms Loh and that he had therefore used the Image fraudulently (Trial Decision at [62]).

13 In relation to the forged NUS acknowledgement letter, the DJ accepted that Mr Muniandy had sent the forged NUS acknowledgement letter with his e-mail to Ms Loh. The letter stated that Mr Muniandy had been employed by NUS for only two months. In fact, he had been employed by NUS for three years. The DJ inferred from Mr Muniandy's conduct of sending the forged NUS acknowledgement letter that he had intended to deceive Ms Loh and "to conceal the fact that he had already worked three years in Singapore and that he would have finished his Bond" (Trial Decision at [66]-[67]). Mr Muniandy's claim that he had made a "typographical error" where he stated in the e-mail to Ms Loh that he was employed by NUS for only two months from 10 January 2018 to 27 February 2018 was thus rejected. The DJ also rejected Mr Muniandy's suggestion that Ms Loh or Mr Liang had fabricated the Disputed E-mail Chain which included the e-mail sent by Mr Muniandy attaching the forged NUS acknowledgement letter. The DJ observed that it was Mr Muniandy who was being dishonest about his employment in Singapore, and it did not lie in his mouth to make disingenuous accusations (Trial Decision at [68]-[72]). In this regard, the DJ also accepted Ms Loh's testimony that the Disputed E-mail Chain was authentic. The DJ rejected Mr Muniandy's version of the events, in which he contended that the e-mail chain had been tampered with by officials at the MOE.

14 In relation to the forged MOE support letter, the DJ found that it was created and used by Mr Muniandy with the intent to deceive the ICA into approving the Application. The DJ rejected Mr Muniandy's contention that "someone could and must have switched the original support letter with the forged MOE support letter without his knowledge after he had handed the Application over to ICA". The DJ found that there was no reason for anyone in the ICA to have tampered with Mr Muniandy's Application. On the contrary, it

was Mr Muniandy who stood to benefit from using the forged MOE support letter (Trial Decision at [93]-[97]).

The appeal – CM 83 and MA 9108

15 Dissatisfied with the DJ’s decision, Mr Muniandy filed MA 9108 to appeal against that decision and also filed CM 83 on 31 October 2023 to adduce fresh evidence to support his appeal in MA 9108. In his affidavit in support of his application in CM 83, Mr Muniandy requested the court to order the investigation officer to produce various documents. The Judge dismissed Mr Muniandy’s application to adduce further evidence, holding that it was irrelevant to Mr Muniandy’s contention that the e-mails between him and the MOE were not accurate. Additionally, the Judge rejected Mr Muniandy’s application to recall one Ms Umikalsom binte Fadil (“Ms Umi”) as a witness, because he had already been afforded significant leeway at trial to recall witnesses for further cross-examination. Mr Muniandy had chosen not to recall Ms Umi then and there was no good reason to permit him to do so subsequently.

16 The Judge also dismissed the appeal, being satisfied that the DJ had not erred in convicting Mr Muniandy. First, in relation to the Image, the Judge agreed with the DJ’s finding that Mr Muniandy presented the Image, which he knew was forged, as genuine. Mr Muniandy had told the ICA in his e-mail dated 11 April 2018 that his LTVP was expiring on 31 August 2018. The fact that he knew this was inconsistent with his subsequent attempts to suggest that there was a printing error in the LTVP causing it to reflect a different date. There was also no forensic evidence to support his claim that certain data in the Image was the result of a scanning error. The Judge was satisfied that the Image had been

sent to Ms Loh to mislead her for the purpose of obtaining a letter of support from the MOE, which he did obtain.

17 The Judge was also satisfied that the DJ did not err in finding that the forged NUS acknowledgement letter was not genuine, and that Mr Muniandy knew this but nonetheless presented it as genuine. Mr Muniandy's defence that he had not submitted the forged NUS acknowledgement letter, and that he was falsely implicated by the MOE officers, was without merit. The e-mail correspondence between Mr Muniandy and the MOE showed that the forged NUS acknowledgement letter had been sent by Mr Muniandy to the MOE. It was not possible for the MOE officers to have forged the forged NUS acknowledgement letter because there was no evidence they had access to the original NUS acknowledgement letter (which was in Mr Muniandy's possession). There was also no evidence to support Mr Muniandy's claim that the e-mail correspondence between himself and the MOE which was adduced by the Prosecution at trial was not authentic.

18 Next, the Judge found that the DJ did not err in finding that the forged MOE support letter was forged, and that Mr Muniandy knew this, but presented it as genuine. The Judge agreed with the DJ that on the evidence there had been no manipulation or switch of the documents and the obvious conclusion was that the forged MOE support letter was submitted by Mr Muniandy to the ICA together with his LTVP extension application.

19 As for Mr Muniandy's appeal against the sentence, the Judge thought that the sentence of 10 weeks' imprisonment for each charge that the DJ had imposed was lenient. However, as the Prosecution did not cross-appeal, the Judge declined to interfere with the sentence that had been meted out.

Various other applications filed by Mr Muniandy

20 Dissatisfied with the dismissal of MA 9108 on 23 November 2023, Mr Muniandy filed four applications as follows:

- (a) HC/CM 1/2024 (“CM 1”) which was an application for permission to review filed on 2 January 2024;
- (b) HC/CR 3/2024 (“CR 3”) which was an application for criminal revision filed on 12 January 2024 for Mr Muniandy’s conviction and sentence to be set aside, or for a new trial to be ordered;
- (c) CA/CM 3/2024 (“CM 3”) which was an application for leave to refer questions of law of public interest to the Court of Appeal (the “CA”) filed on 17 January 2024; and
- (d) CM 6 which was an application filed on 26 January 2024 for the recusal of the Judge from hearing or deciding any matter filed in relation to MA 9108.

21 CM 1, CR 3 and CM 3 are pending. CM 6 was heard and dismissed by the Judge on 20 March 2024.

CM 6

22 In CM 6, Mr Muniandy sought the recusal of the Judge on the basis that the Judge: (a) had pre-judged MA 9108; (b) had breached natural justice by not according Mr Muniandy a fair trial; and (c) was conflicted from hearing MA 9108 by virtue of his capacity as the Presiding Judge of the State Courts.

23 The Judge dismissed the application. He explained that when he had delivered his decision in MA 9108 (the “Decision”) on 23 November 2023, there had been a typographical error in that the Decision was wrongly dated 21 November 2023. This was not an instance of pre-judgment. On the contrary, he had arrived at his decision after considering the submissions of both parties. Mr Muniandy’s dissatisfaction with some of his findings was not an appropriate basis for recusal.

24 Mr Muniandy’s complaint that he was not given enough time to prepare for MA 9108 after CM 83 was dismissed was also rejected. Mr Muniandy had been informed in advance that both CM 83 and MA 9108 were scheduled to be heard together. Despite this, the Judge had offered to stand the matter down for 20 minutes after dismissing CM 83, but Mr Muniandy had confirmed that he could proceed with the hearing of MA 9108. He was then given ample opportunity to present his case orally even though he had filed 49 pages of written submissions for MA 9108. He had also been afforded time to present his PowerPoint slides at the hearing.

25 Finally, the Judge dismissed Mr Muniandy’s argument that the Judge was infected by a conflict of interest given his capacity as the Presiding Judge of the State Courts. There was no basis at all for such a suggestion.

CM 10

26 Dissatisfied with the Judge’s dismissal of CM 6, Mr Muniandy filed CM 10 on 28 March 2024, which in essence may be understood as an appeal against the Judge’s dismissal of the recusal application brought in CM 6.

Issues before this court

27 There are two hurdles facing Mr Muniandy’s application:

(a) First, he must demonstrate that there is a legal basis for him to bring CM 10 as an appeal against the Judge’s dismissal of his recusal application.

(b) Second, assuming he can demonstrate that he has a legal basis for bringing CM 10, he must show that there is merit in his contention that the Judge had conducted the matter improperly and/or should have recused himself from hearing MA 9108.

28 For Mr Muniandy’s application to succeed, he must succeed on both issues. However, while it is not clear whether an appeal could be brought against the Judge’s dismissal of the recusal application, we only consider the second of the issues listed above because we are satisfied that there is no merit at all in the recusal application. We therefore dismiss CM 10 for the reasons that follow.

The merits of Mr Muniandy’s case

29 Mr Muniandy advances three broad grounds for his contention that the Judge conducted the matter improperly and/or should have recused himself from all matters relating to MA 9108. He argues that the Judge: (a) pre-judged matters; (b) failed to conduct the matter in accordance with the rules of natural justice and in particular, the fair hearing rule; and (c) was conflicted from hearing MA 9108 because of his position as the Presiding Judge of the State Courts. We address these grounds in turn.

Mr Muniandy’s allegation that the Judge had pre-judged MA 9108

30 Mr Muniandy makes various complaints about the Judge which he alleges showed that the Judge had pre-judged the matter:

- (a) The Decision was dated “21 November 2023” when the hearing only took place on 23 November 2023.
- (b) The Judge was able to compose a lengthy judgment in an implausibly short period of 15 minutes.
- (c) Mr Muniandy disagreed with the Judge’s findings, such as the finding that he had “not adduced an iota of evidence in support of his claim” that the forged NUS acknowledgement letter was concocted by the MOE officers and not sent by him.
- (d) The Decision was not comprehensive in addressing his arguments.
- (e) The Registry had informed him that the notes of evidence would not be provided to him, with what the Appellant terms the “minute of meeting of the hearing” instead being provided.

31 In our judgment, none of these grounds evidence any pre-judgment or improper conduct of MA 9108. We first observe that the Judge has explained that he had made a typographical error in dating the Decision incorrectly. We note in this connection that the same error was made in relation to the hearing date, which too was incorrectly reflected as “21 November 2023” as well.

32 But the more important issue is Mr Muniandy’s suggestion that because the Judge could not have composed the Decision in 15 minutes, he must have

prejudged the matter. This is misconceived. Judges are expected to come prepared for a hearing (*Prometheus Marine Pte Ltd v King, Ann Rita and another appeal* [2018] 1 SLR 1 (“*Prometheus*”) at [39]). This will almost invariably entail that before the hearing, a judge will have read the relevant submissions, evidence and other materials. We have previously observed on multiple occasions that while a judge must keep an *open* mind, in the sense that he must be open to being persuaded by the strength of all the material that is marshalled and presented to him, including the oral arguments, this is not the same as coming to the oral hearing with an *empty* mind (*Prometheus* at [39]; *BOI v BOJ* [2018] 2 SLR 1156 at [110]; see also *QBE Insurance (Singapore) Pte Ltd and another v Relax Beach Co Ltd* [2023] 2 SLR 655 at [45]). It is inevitable that as the judge reads into the case file, questions may arise, and impressions may form. In some instances, a judge will have formed a view of the merits of the case, or the lack thereof, and may even have prepared a draft of his remarks that reflect his view of what he had read and understood of the case at the time. There is nothing objectionable in this as long as the judge keeps an open mind, in the sense of being able to be persuaded to come to a different view, until the time the judge pronounces his decision. This is not remarkable because judges are trained to keep an open mind. That is one of the core attributes of sound judicial temperament; and it is necessary precisely because judges recognise that they may be persuaded to a different view after the oral arguments. Even if the Judge in this case had come to the hearing with a draft that reflected his provisional view after reading the papers, Mr Muniandy has not shown anything to suggest that the Judge had a closed mind. On the contrary, the patience demonstrated by the Judge in affording Mr Muniandy as much time as he did despite having already had access to the 49-page written submissions, and his willingness to permit Mr Muniandy to supplement his oral submissions

with a set of slides, demonstrate that the Judge was not closed to Mr Muniandy making his case as best he could.

33 In fact, it is evident that the real crux of Mr Muniandy’s unhappiness was with the substance of the Judge’s decision, which went against Mr Muniandy, and not with any pre-judgment. The fact that a judge rejects an argument says nothing about pre-judgment or bias; rather, it is simply a reflection of the judge’s view on the merits of that party’s arguments.

34 As for Mr Muniandy’s unhappiness at the alleged lack of details in the Decision, it was a matter for the Judge whether he wished to explicitly deal with every one of Mr Muniandy’s arguments in his Decision. Mr Muniandy can have no expectation of what a judge’s decision should contain, save that it should be sufficient to enable a reader to understand why the judge decided the way he did. The Decision was clear in explaining the reasons why the Judge dismissed MA 9108. Indeed, there is much to be said in favour of judges keeping their decisions concise, succinct and relevant because this makes for better understanding and also saves judicial time and resources in reproducing and responding to unmeritorious arguments.

35 For these reasons, Mr Muniandy’s complaint of pre-judgment is baseless and we dismiss it.

Mr Muniandy’s allegation that he did not have a fair hearing

36 Mr Muniandy next alleges that he did not have a fair hearing allegedly because of excessive judicial interference and unreasonable time constraints that were imposed on him by the Judge. In our judgment, these allegations too are untrue and baseless. The hearing for MA 9108 and CM 83 began on

23 November 2023 at 10.23am and ended at 12.45pm. His complaint that the hearing was scheduled at 10am, but only began at 10.23am is irrelevant to the question of whether there was a fair hearing. It is not uncommon that several cases may be fixed for hearing at the same sitting. The fact that the Judge chose to hear a shorter case before MA 9108 and CM 83 is irrelevant to whether the hearing of this matter was conducted fairly.

37 Next, Mr Muniandy falsely states that the Judge did not allow him to go through his prepared slides for CM 83. Mr Muniandy has referred to the transcript where the Judge told him to skip what appears to be an introductory slide but omits the rest of the transcript showing that he did then go on to present his slides. A reproduction of the relevant parts of the transcript shows this clearly:

...

Court: Please proceed on your criminal motion, please.

Applicant: Yes. I am trying to share my screen, Your Honour.

Court: Yes, I—you can skip this slide. I'm aware of the law.

Applicant: Alright.

Submissions by Applicant (CM 83/2023)

Applicant: Your Honour, this is the brief timeline of what has happened throughout from the—from—I'm looking at something else and it is flashing something else. I'm not sure why. Okay. So this is the brief trunk—timeline of the events that transpired that led to the criminal charges that has been tendered for to me. ***And the main point in this slide is basically to highlight that the FR—FIR was filed on 18th of October 2018.*** And the first the first investigation of the interview with me, the accused, was done on 27th of November 2018...

...

Applicant: ... It's not that I did not diligently prepare this call log, but I understand that you have read my slides as well as my submission. ***And the reason why I put up this slide is because to tell you that I discharged my first defence counsel*** 1 day prior to the trial because he was not—he was asking me to plead guilty instead of claiming trial... ***This is the reason why I'm showing you this slide.***

...

Applicant: ... But there are a lot of inconsistency in what the IO, Mr Ali, testified and the prosecution witness number 3, Ms Loh, has testified and it can be seen through these slides, Specifically, she mentioned that she provided emails starting from 12th April to 19th April to the IO...

[emphasis added in bold italics]

From this extract, it is plain that Mr Muniandy *was* allowed to make his arguments and present his slides during the hearing of CM 83.

38 Mr Muniandy next complains that he had to present his arguments for MA 9108 before hearing the Judge's reasons for dismissing CM 83 but nothing has been advanced to explain why or how the omission of those reasons affected Mr Muniandy adversely in presenting the arguments in MA 9108. MA 9108 and CM 83 had been fixed for hearing at the same sitting, and Mr Muniandy had come prepared to argue them both. Given the length of his written submissions (49 pages) for MA 9108, it is obvious that Mr Muniandy was prepared for MA 9018 and knew what he wanted to say. Moreover, the Judge had offered Mr Muniandy an extra 20 minutes to prepare for MA 9018 after the decision for CM 83 was given, but Mr Muniandy informed the Judge that he could "actually proceed with [his] argument" without taking the offered 20-minute break.

39 Additionally, Mr Muniandy falsely contends that the Judge had constantly interrupted him to remind him of the remaining time he had left for his oral argument. From the transcript, it is evident that after Mr Muniandy began his submissions for MA 9108, the Judge interjected briefly just twice to remind Mr Muniandy to be mindful of the time he had left. Based on the transcript, these interruptions were brief and not disruptive. Mr Muniandy was allowed to speak extensively without any interruptions. The Judge had also given Mr Muniandy extra time (without his having requested it), and then some when Mr Muniandy asked for yet more time. Far from conducting the hearing unfairly, as we have already noted, we think the Judge had been very patient with Mr Muniandy, and had tried to prompt him constructively so that his oral submissions could be more directed. The Judge had afforded Mr Muniandy considerable leeway notwithstanding that he was repeating much of what was contained in his written submissions.

40 For these reasons, it is clear to us that there was no unfair or improper judicial interference and that the Judge afforded Mr Muniandy ample time to make his submissions.

41 Mr Muniandy has raised various other points concerning the merits. As this is not an appeal against the merits of the Judge’s dismissal of MA 9108, we do not address these here, save to note that we have considered these points and find them irrelevant to the issue that is before us.

42 For these reasons, this ground for recusal also fails.

Mr Muniandy’s allegation that the Judge was conflicted from MA 9108 because of his position as the Presiding Judge of the State Courts

43 Mr Muniandy finally alleges that the Judge was conflicted from MA 9108 and CM 83 because of his position as the Presiding Judge of the State Courts. This is an utterly unmeritorious contention and we reject it out of hand. There is no conflict of interest simply because the DJ might have a reporting line to the Judge. Contrary to Mr Muniandy’s insinuation that the Judge and the DJ have a relationship that would “reasonably give rise to an appearance of a lack of independence or impartiality”, the fact is the Judge is not personally related to the DJ in anyway; nor does he have any personal interest in the matter. There is no relationship of any kind between the Judge and the DJ which could reasonably give rise to a perception of a conflict of interest.

44 While the analogy is not a perfect one, if Mr Muniandy was correct on this, it might suggest that the Chief Justice may not sit on appeals from the High Court. This is plainly an absurd proposition, since this is one of the primary functions of the Chief Justice.

Conclusion

45 For these reasons, we dismiss CM 10 summarily pursuant to s 238B(1) of the Criminal Procedure Code 2010 because it has been brought without any basis. If the Prosecution wishes to pursue costs, it is to write in within seven

days of this judgment and Mr Muniandy is to reply within a further period of seven days.

Sundaresh Menon
Chief Justice

Tay Yong Kwang
Justice of the Court of Appeal

Steven Chong
Justice of the Court of Appeal

The applicant in person;
Lu Zhuoren John and Mark Chia Zi Han (Attorney-General's
Chambers) for the respondent.
