

**Kha Seng Group Sdn Bhd**  
*(yang terdahulunya dikenali sebagai*  
*Mula Unggul Sdn Bhd)*

V

**Lee Mun Swee @ Lee Hing Chai & 9 Ors**

**High Court**, Kuala Lumpur – Suit No. 22NCVC-455-04/2012  
 John Louis O’Hara J

October 15, 2012

*Civil procedure – Setting aside – Judgment in default – Failure to enter appearance within specified time – Whether judgment in default properly obtained – Whether defendants had put forward defence on merits – Whether fact that case management date has been fixed, disentitled plaintiff from entering judgment in default or exonerates defendants from entering appearance*

The plaintiff had entered judgment in default against the fifth, sixth, seventh and eighth defendants. By way of encls 18 and 39, the sixth and fifth defendants respectively, applied to set aside the said judgment in default. The seventh and eight defendants, by way of encl 44, similarly applied to set aside the judgment in default that was entered against them.

In support of their respective applications, the fifth, sixth and seventh defendants, whilst not contesting the service of the writ and statement of claim on them, together with the eighth defendant who claimed to have not been served with the said writ and statement of claim, argued that the judgment in default ought to be set aside for not having been obtained on merit. The respective defendants also claimed to have a defence on the merits.

**Issue**

Whether the defendants had put forward a defence on the merits

**Held**, dismissing encls 18, 39 and 44 with costs of RM3,000 per enclosure

1. The time frame for entering appearance was clearly stated in the writ as being eight days and the failure to enter appearance within that time frame, entitled the plaintiff to enter judgment in default. The fact that a case management date has been fixed does not in any way disentitle the plaintiff from entering the judgment in default nor does it exonerate the defendants from entering their appearance. [see p 688 para 22 lines 32-38]
2. The service of the writ and statement on the fifth, sixth, seventh and eight defendants was proper and since no appearance was entered within the specified time frame, the judgment in default thus was properly obtained. [see p 690 para 31 lines 34-38]

- 1 3. None of the defendants had put forward a defence on the merits. The defendants  
argument that the fact that they are in occupation of the land of which the  
plaintiff is the registered proprietor, is a defence to the plaintiff's claim, cannot  
5 be sustained as mere occupation is insufficient to displace the plaintiff's right  
to vacant possession. [see p 690 para 32 lines 39-40; p 691 para 33 lines 5-8]

#### Cases referred to by the court

- Ahmed Abdul Rahman, Tuan Hj v Arab-Malaysian Finance Bhd* [1996] 1 AMR 215;  
[1996] 1 CLJ 241, FC (ref)  
10 *B Dialdars & Co (Pte) Ltd v Sin Sin & Co & Ors* [1984] 2 MLJ 223, HC (ref)  
*Evans v Bartlam* [1973] AC 473, HL (foll)  
*Fira Development Sdn Bhd v Goldwin Sdn Bhd* [1989] 1 CLJ (Rep) 32, SC (ref)  
*Hasil Bumi Perumahan Sdn Bhd & 5 Ors v United Malayan Banking Corp Bhd* [1994]  
1 AMR 297; [1994] 1 MLJ 312; [1994] 1 CLJ 328, SC (ref)  
15 *Mokhtar b Amin v Omar b Mat Ziki @ Mohd Ziki* [1998] 3 AMR 2524; [1998] 1 CLJ  
119, HC (ref)  
*Syarikat Amin Enterprises v Edwina Lau* [2007] 10 CLJ 743, HC (ref)

#### Legislation referred to by the court

- National Land Code 1965, s 340, 340(2)  
20 Rules of the High Court 1980, Order 13 r 8  
*Alvin Lai and Anson Liang* (Justin Voon Chooi & Wing) for plaintiff  
*Esther G Jayaraja and KS Chew* (Chew Das & Jayaraja) for fifth, sixth, seventh,  
eighth and 10th defendants

25 *Judgment received: November 2, 2012*

**John Louis O'Hara J**

#### Introduction

30 [1] This matter came before me on July 25, 2012 as the hearing of the following  
enclosures:

- (a) Enclosure 18 – the sixth defendant's application to set aside the  
judgment in default ("JID") entered against him on  
May 2, 2012.  
35 (b) Enclosure 39 – the fifth defendant's application to set aside the JID  
entered against him on May 2, 2012.  
(c) Enclosure 44 – the seventh and eighth defendants' application to set  
aside the JID entered against the seventh defendant  
on May 9, 2012 and against the eighth defendant on  
40 May 2, 2012.

[2] I had on July 25, 2012 dismissed encls 18, 39 and 44 and the fifth, sixth, seventh and eighth defendants now appeal against my decision. 1

[3] In handing down my decision I did state that proper grounds would follow if required. These then are my proper grounds. 5

### The factual matrix

[4] The plaintiff is the registered owner of land known as No. HS(D) 116300, No. PT661 Sek 92 Bandar Kuala Lumpur, with postal address of No. 6 Jalan Tiga Off Jalan Chan Sow Lin, Kuala Lumpur ("the land"), having been so registered since June 18, 2009. 10

[5] The fifth, sixth, seventh and eighth defendants all occupy various portions of the land. The following is a table showing the occupation of the defendants:

- |                             |   |                               |    |
|-----------------------------|---|-------------------------------|----|
| (i) the fifth defendant     | - | in occupation since 2003;     |    |
| (ii) the sixth defendant    | - | in occupation since 1978;     | 15 |
| (iii) the seventh defendant | - | in occupation since 1954; and |    |
| (iv) the eighth defendant   | - | in occupation since 1954.     |    |

[6] Service upon the seventh defendant was effected by AR registered post dated April 21, 2012 at the seventh defendant's postal address – see affidavit of service (encl 12). 20

[7] In regard to the fifth defendant, the plaintiff in his affidavit of service (encl 4) averred as follows:

- (8) Bahawa saya telah pada hari Sabtu bersama dengan kerani saya Fairul Rafiq Bin Uyub pada 21/4/2012 pada kira-kira pukul 10.30 pagi menghadirkan diri di alamat umum premis Defendan Ke 5 di No. 6, Jalan Tiga Off Jalan Chan Sow Lin, Sungai Besi, 55200 Kuala Lumpur untuk menyampaikan surat liputan bertarikh 20/4/2012 yang melampirkan sesalinan Writ Saman dan pernyataan tuntutan tersebut terhadap Defendan Ke 5 yang berada di alamat tersebut. Beliau telah mengakui kepada saya bahawa beliau adalah Defendan Ke 5 yang dinamakan di atas. Oleh itu, saya pun menyerahkan sesalinan Writ Saman dan Pernyataan tuntutan tersebut bersama dengan surat liputan tersebut secara kediri kepada Defendan Ke 5. Penyerahan ini telahpun disaksikan oleh kerani saya pada masa itu. 25
- (9) Saya menyatakan bahawa Defendan ke 5 tersebut enggan menandatangani akuan penerimaan Writ Saman dan Pernyataan Tuntutan tersebut pada salinan Writ Saman dan Pernyataan tuntutan saya walaupun beliau telah diserahkan dan menerima Writ Saman dan pernyataan Tuntutan tersebut. 35

Sesalinan surat liputan bertarikh 20/4/2012 yang melampirkan sesalinan Writ Saman dan pernyataan tuntutan tersebut adalah sekarang ditunjukkan kepada saya, dilampirkan di sini dan ditandakan secara kolektifnya sebagai Ekshibit "LCS-2". 40

1 [8] In regard to the sixth defendant, the plaintiff in his affidavit of service  
(encl 4) averred as follows:

5 (10) Bahawa saya telah pada hari Sabtu bersama dengan kerani saya Fairul Rafiq  
Bin Uyub pada 21/4/2012 pada kira-kira pukul 10.26 pagi menghadirkan diri  
di alamat umum premis Defendan ke 6 di No. 6 Jalan Tiga Off Jalan Chan Sow  
Lin, Sungai Besi, 55200 Kuala Lumpur untuk menyampaikan surat liputan  
bertarikh 20/4/2012 yang melampirkan sesalinan Writ Saman dan pernyataan  
tuntutan tersebut terhadap Defendan Ke 6 yang berada di alamat tersebut.  
10 Beliau telah mengakui kepada saya bahawa beliau adalah Defendan ke 6 yang  
dinamakan di atas. Oleh itu, saya pun menyerahkan sesalinan Writ Saman dan  
pernyataan tuntutan tersebut bersama dengan surat liputan tersebut secara  
kendiri kepada Defendan Ke 6. Penyerahan ini telahpun disaksikan oleh kerani  
saya pada masa itu.

15 (11) Saya menyatakan bahawa Defendan Ke 6 tersebut enggan menandatangani  
akuan penerimaan Writ Saman dan Pernyataan Tuntutan tersebut pada salinan  
Writ Saman dan Pernyataan Tuntutan saya walaupun beliau telah diserahkan  
dan menerima Writ Saman dan Pernyataan Tuntutan tersebut.

20 (12) Selain itu, saya juga pada hari Sabtu bersamaan 21/4/2012 melalui AP Berdaftar  
menyampaikan surat liputan bertarikh 20/4/2012 yang melampirkan sesalinan  
Writ Saman dan Pernyataan Tuntutan tersebut kepada Defendan Ke 6 di alamat  
terakhir yang diketahui Defendan Ke 6 di 19 Jalan Midah 11B, Taman Midah,  
Cheras, 56000 Kuala Lumpur, Wilayah Persekutuan. Penyampaian Writ Saman  
dan Pernyataan Tuntutan tersebut telahpun diakui terima oleh Defendan Ke 6  
dan beliau telah menurunkan tandatangannya di kad AP tersebut.

25 Sesalinan surat liputan bertarikh 20/4/2012 yang melampirkan sesalinan Writ  
Saman dan Pernyataan Tuntutan tersebut, bukti slip pengeposan dank ad AP  
yang ditandatangani oleh Defendan Ke 6 tersebut adalah sekarang ditunjukkan  
kepada saya, dilampirkan di sini dan ditandakan secara kolektifnya sebagai  
Ekshibit "LCS-3".

[9] In regard to the eighth defendant, the plaintiff in his affidavit of service  
(encl 4) averred as follows:

30 (13) Bahawa saya telah pada hari Sabtu bersama dengan kerani saya Fairul Rafiq  
Bin Uyub pada 21/4/2012 pada kira-kira pukul 10.43 pagi menghadirkan diri  
di alamat Defendan Ke 8 di No. 4N, Jalan Tiga Off Jalan Sungai Besi, 55200  
Kuala Lumpur Wilayah Persekutuan dan alamat umum premis Defendan Ke 8  
di No. 6 Jalan Tiga Off Jalan Chan Sow Lin, Sungai Besi, 55200 Kuala Lumpur  
35 untuk menyampaikan surat liputan bertarikh 20/4/2012 yang melampirkan  
sesalinan Writ Saman dan Pernyataan Tuntutan tersebut terhadap Defendan  
ke 8 yang berada di alamat-alamat tersebut. Beliau telah mengakui kepada saya  
bahawa beliau adalah Defendan Ke 8 yang dinamakan di atas. Oleh itu, saya  
pun menyerahkan sesalinan Writ Saman dan pernyataan Tuntutan tersebut  
bersama dengan surat liputan tersebut secara kediri kepada Defendan Ke 8.  
40 Penyerahan ini telahpun disaksikan oleh kerani saya pada masa itu.

(14) Saya menyatakan bahawa Defendan ke 8 tersebut enggan menandatangani akaun penerimaan Writ Saman dan Pernyataan Tuntutan tersebut pada salinan Writ Saman dan pernyataan tuntutan saya walaupun beliau telah diserahkan dan menerima Writ Saman dan Pernyataan Tuntutan tersebut. 1

Sesalinan surat liputan bertarikh 20/4/2012 yang melampirkan sesalinan Writ Saman dan Pernyataan Tuntutan tersebut adalah sekarang ditunjukkan kepada saya, dilampirkan di sini dan ditandakan secara kolektifnya sebagai ekshibit "LCS-4". 5

### The law

[10] When considering such an application, the court has first to identify whether the judgment in default is a regular or irregular judgment. It is well settled that if the judgment is irregular then it ought to be set aside *ex debito justitiae*. See *Tuan Hj Ahmed Abdul Rahman v Arab-Malaysian Finance Bhd* [1996] 1 AMR 215 at 228; [1996] 1 CLJ 241 at 249. 10

[11] If it is regularly obtained then the principle expounded in *Evans v Bartlam* [1973] AC 473 as confirmed by the Federal Court in *Hasil Bumi Perumahan Sdn Bhd & 5 Ors v United Malaysian Banking Corp Bhd* [1994] 1 AMR 297; [1994] 1 MLJ 312; [1994] 1 CLJ 328, applies in that the applicant must show that he has a defence on the merits. See also *B Dialdars & Co (Pte) Ltd v Sin Sin & Co & Ors* [1984] 2 MLJ 223. 15  
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[12] Delay is a factor to be considered. The court retains a discretion to set aside a judgment in default even after delay provided that there has not been occasioned prejudice to the plaintiff or even if there has been prejudice such prejudice can be compensated by costs. 25

### Consideration and decision

[13] The fifth, sixth and seventh defendants in their affidavits in support do not contest the service of the writ and statement of claim. They all as well as the eighth defendant argue that the JID obtained was not based upon merit and therefore the JID should be set aside. The eighth defendant in addition, avers that "saya tidak menerima writ saman dan pernyataan tuntutan tersebut daripada plaintiff?" 30

[14] The defendants severally refer to Order 13 r 8 of the Rules of the High Court 1980 ("the RHC"), *Evans v Bartham* (supra), *Syarikat Amin Enterprises v Edwina Lau* [2007] 10 CLJ 743, *Mokhtar b Amin v Omar b Mat Ziki @ Mohd Ziki* [1998] 3 AMR 2524; [1998] 1 CLJ 119, *Fira Development Sdn Bhd v Goldwin Sdn Bhd* [1989] 1 CLJ (Rep) 32. 35

[15] The fifth defendant's encl 39 was supported by his affidavit (encls 40 and 57). It was opposed by the plaintiff's affidavit (encl 52). In paragraphs 5 and 6 of encl 40 the fifth defendant avers as follows: 40

1 (5) Saya sesungguhnya percaya bahawa permohonan saya untuk mengenyepikan  
Penghakiman ingkar adalah sah dan boleh dipertimbangkan kerana saya  
mempunyai pembelaan yang bermerit atas alasan-alasan seperti berikut:

5 (i) Defendan Ke 5 pada semua masa material bukan menduduki di atas  
tanah tersebut secara tidak sah seperti didakwa oleh Plaintiff.

(ii) Defendan Ke 5 telah menduduki di atas tanah tersebut sejak tahun  
2003.

10 (iii) Defendan ke 5 telah memiliki sebuah kilang besi atas nama C & W Systems  
Mechanical Sdn Bhd, di atas tanah tersebut dan telah menjalankan  
perniagaan di tanah tersebut sejak tahun 2003 tanpa apa-apa kekacauan  
atau masalah.

Sesalinan Borang 9 dan Borang 24 akta Syarikat, 1965, dilampirkan  
disini dan ditandakan secara kolektifnya sebagai "Ekshibit CCC-1".

15 (iv) Kedudukan kilang besi saya tersebut jelas boleh dilihat dalam Pelan  
tanah dalam hakmilik Sementara Tanah tersebut.

Sesalinan Pelan Tanah tersebut dilampirkan disini dan ditandakan  
sebagai "Ekshibit CCC-2".

20 (v) Bil elektrik untuk tanah tersebut adalah didaftar atas nama Defendan  
ke 5. Sesalinan Bil elektrik yang bertarikh 23/5/2012 kini dilampirkan  
disini dan ditandakan sebagai "Ekshibit CCC-3".

Oleh itu, saya mempunyai pembelaan yang kukuh dan berhak untuk  
menuntut pampasan dari Plaintiff.

25 (6) Saya dinasihati oleh peguamcara saya dan sesungguhnya percaya bahawa  
hak saya akan diprejudikkan dan dijejaskan sekiranya permohonan ini tidak  
dibenarkan kerana penghakiman Ingkar tersebut telah dimasukkan tanpa  
pertimbangan ke atas hak saya.

30 [16] This to my mind is a bare assertion and not a defence because the fifth  
defendant neither claims to be the registered proprietor nor does he put  
forward any legal basis for his occupation.

[17] The fifth defendant in encl 40 at paragraph 4, the last sentence states that  
"Kegagalan saya untuk memasukkan kehadiran bukannya disengajakan dan  
saya memohon maaf daripada Mahkamah yang Mulia ini".

35 [18] This is neither legal cause nor reason for not filing his memorandum  
of appearance within the eight days' time period provided for under the  
previous RHC.

40 [19] The sixth defendant's encl 18 was supported by his affidavits (encls 19  
and 24) and opposed by the plaintiff's (encl 24). In paragraph 7 of encl 19, the  
sixth defendant avers as follows:

(7) Saya juga sesungguhnya percaya bahawa saya mempunyai pembelaan yang bermerit atas alasan-alasan seperti berikut: 1

(i) Defendan ke 6 pada semua masa material bukan menduduki di atas tanah tersebut secara tidak sah seperti didakwa oleh Plaintiff. 5

(ii) Defendan ke 6 telah menduduki di atas tanah tersebut dengan sah dan atas kebenaran sejak tahun 1978. 5

(iii) Defendan ke 6 telah memiliki sebuah kilang besi atas nama Lee Sang Engineering Works di atas tanah tersebut dan telah menjalankan perniagaan di tanah tersebut selama 34 tahun tanpa apa-apa kekacauan atau masalah. 10

Sesalanan Pendaftaran Perubahan-Perubahan Dalam Perniagaan bertarikh 17/10/2978 dilampirkan disini dan ditandakan sebagai "Ekshibit CYS-1".

(iv) Kedudukan kilang besi saya tersebut jelas boleh dilihat dalam Pelan Tanah hakmilik Sementara tanah tersebut. Oleh itu, saya dinasihati oleh peguamcara saya dan sesungguhnya percaya bahawa Plaintiff mempunyai "constructive notice" mengenai hak saya pada tanah tersebut. 15

Sesalanan Pelan Tanah tersebut dilampirkan disini dan ditandakan sebagai "ekshibit CYS-2". 20

Oleh itu, saya mempunyai pembelaan yang kukuh dan berhak untuk menuntut pampasan dari Plaintiff.

[20] This too is, to my mind, a bare assertion which does not disclose a defence because the sixth defendant neither claims to be the registered proprietor nor does he put forward any prima facie legal basis for his occupation. 25

[21] The sixth defendant also avers in paragraph 5 of encl 19 as follows:

(5) Saya sesungguhnya percaya bahawa Penghakiman Ingkar tidak seharusnya dimasukkan terhadap saya kerana menurut Writ Saman tersebut, saya telah diminta hadir di hadapan Yang Arif Hakim John Louis O'Hara pada 11/3/2012 pada pukul 9.00 pagi di Aras 3 Sayap Kiri. 30

[22] In the writ (encl 1), the time frame for entering appearance is clearly stated as being eight days. Since the eighth defendant had not entered appearance within the eight days period the plaintiff was fully entitled to enter JID. The fact that a case management date had been fixed for March 11, 2012 does not in any way disentitle the plaintiff from entering JID against the eighth defendant, nor exonerate the eighth defendant from entering his memorandum of appearance. 35

[23] The seventh defendant's encl 44 was supported by his affidavits (encls 45 and 56); and opposed by the plaintiff's affidavit encl 53. In paragraph 6 of encl 45, the seventh defendant avers as follows: 40

1 (6) Selanjutnya, saya dinasihati oleh peguamcara saya dan sesungguhnya percaya  
bahawa permohonan saya untuk mengenyepikan Penghakiman Ingkar adalah  
sah dan boleh dipertimbangkan kerana saya mempunyai pembelaan yang  
bermerit atas alasan-alasan seperti berikut:

5 (i) Saya pada semua masa material bukan menduduki di atas tanah tersebut  
secara tidak sah seperti didakwa oleh Plaintiff.

(ii) Saya telah menduduki di atas tanah tersebut bersama dengan bapa saya  
sejak tahun 1954 dan sehingga hari ini, saya menduduki di atas tanah  
tersebut bersama dengan anak perempuan saya.

10 (iii) Pada semua masa yang material, saya telah menduduki di tanah tersebut  
selama 58 tahun tanpa apa-apa kekacauan atau masalah.

(iv) Kedudukan rumah saya tersebut jelas boleh dilihat dalam pelan Lokasi  
yang diperolehi dari Dewan Bandaraya Kuala Lumpur.

15 Sesalinan Pelan Lokasi tersebut dilampirkan disini dan ditandakan  
sebagai "Ekshibit TKL-1".

Oleh itu, saya mempunyai pembelaan yang kukuh dan berhak untuk menuntut  
pampasan dari Plaintiff.

20 [24] The above averment is to my mind a mere bare assertion which does  
not disclose a defence. The reason for my saying so is because the seventh  
defendant neither claims to be the registered proprietor nor does he put  
forward any prima facie legal basis for his occupation.

[25] The seventh defendant in encl 45 at paragraphs 4 and 5 did aver as  
follows:

25 (4) Saya telah memberitahu perkara ini kepada Defendan Ke 2 dan beliau telah  
memberitahu saya bahawa beliau akan melantik peguamcaranya untuk  
mengendalikan kes ini.

30 (5) Saya baru-baru sahaja hanya dapat tahu bahawa saya tidak diwakili oleh  
peguamcaranya.

[26] This is to my mind is no reason nor legal cause for not filing his  
memorandum of appearance within the eight days' period allocated under  
the previous RHC.

35 [27] The eighth defendant's encl 44 was supported by his affidavit (encls 47  
and 56); and opposed by the plaintiff's affidavit (encl 53).

[28] In paragraphs 4 and 5 of encl 47, the eighth defendant avers as follows:

40 (4) Saya menyatakan bahawa saya tidak menerima Writ Saman dan Pernyataan  
Tuntutan tersebut daripada Plaintiff. Saya mendapati bahawa nama saya  
terdapat di dalam Writ Saman tersebut apabila diberitahu oleh Defendan ke 9  
baru-baru ini.



(5) Saya dinasihati oleh peguamcara saya dan sesungguhnya percaya bahawa permohonan saya untuk mengeneipkan Penghakiman Ingkar adalah sah dan boleh dipertimbangkan kerana saya tidak pernah menerima Writ Saman tersebut dan saya mempunyai pembelaan yang bermerit atas alasan-alasan seperti berikut: 1

(i) Saya pada semua masa material bukan menduduki di atas tanah tersebut secara tidak sah seperti didakwa oleh Plaintiff. 5

(ii) Saya telah menduduki di atas tanah tersebut sejak tahun 1954 dimana bapa saya yang bernama Kong Piew adalah pemilik lot tersebut. Saya sebagai anaknya, berhak untuk menduduki di atas tanah tersebut. 10

Sesalinan Deposit Bil Bekalan Air dan Surat akuan kerakyatan dilampirkan di sini dan ditandakan secara kolektifnya sebagai "Ekshibit KHY-1".

(iii) Kedudukan rumah saya tersebut jelas boleh dilihat dalam Pelan Lokasi yang diperolehi dari Dewan bandaraya Kuala Lumpur. 15

Sesalinan pelan Lokasi tersebut dilampirkan disini dan ditandakan sebagai "Ekshibit KHY-2".

Berdasarkan alasan-alasan yang dinyatakan di atas, saya sesungguhnya percaya bahawa saya mempunyai pembelaan yang kukuh dan berhak untuk menuntut pampasan dari Plaintiff. 20

[29] Now based upon the above, the eighth defendant's counsel in his written submission at p 5, paragraph 8(ii) had submitted that the said writ and statement of claim were not properly served on the eighth defendant and as such it is bad service and the JID could be set aside as of right. 25

[30] In comparing, contrasting and evaluating the respective evidence as pertaining to service in regard to the eighth defendant, I observe that the eighth defendant's evidence in regard to service is a bare denial. He has not gone further to refute the evidence of service as appears in my paragraphs above. For this reason I would hold that it is more probable than not that the events, pertaining to service on the eighth defendant are as per the plaintiff's version rather than that of the eighth defendant. 30

### Conclusion

[31] Based upon the above considerations, I come to the conclusion that the plaintiff's service of the writ and statement of claim upon the fifth, sixth, seventh and eighth defendants is proper and as such the JID had been regularly obtained, as no memorandum of appearance had been entered within the eight days' time period provided for under the RHC. 35

[32] It is also my conclusion that none of the defendants have put forward a defence on the merits. It is not disputed that the plaintiff is the registered 40

1 proprietor of the land. As such the plaintiff is entitled to obtain an indefeasible  
title in the land free of adverse claims pursuant to s 340 of the National  
Land Code 1965. None of the exceptions listed out in s 340(2) are found to  
be applicable.

5 [33] All the defendants argue that they have a defence and the defence is  
that they are in occupation of the land. But their defence cannot be sustained  
as mere occupation is not sufficient to displace the right of the plaintiff as  
registered proprietor to vacant possession.

10 [34] Neither has the plaintiff given any licence, consent or permission to the  
defendants to occupy the land. Now any issue in regard to whether or not  
the defendants are entitled to compensation and from whom is a separate  
and distinct issue which may be the subject matter of a separate and distinct  
suit depending upon whether in the first place it amounts to a cause of action.

15 [35] As such having regard to the matters pleaded by the defendants in their  
respective affidavits in support I conclude that the defendants have not put  
forward a defence on the merits. I therefore find for the plaintiff and I dismiss  
encls 18, 39 and 44 with costs which I fix at RM3,000 per enclosure.

**Order**

20 [36] So ordered accordingly.

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