HARRIS ADVANCED TECHNOLOGY (M) SDN BHD *a*

v.

KETUA PENGARAH KESATUAN SEKERJA, MALAYSIA & ANOR

HIGH COURT MALAYA, KUALA LUMPUR *b*
ABDUL KADIR SULAIMAN J
[ORIGINATING MOTION NO: R1-25-45-97]
29 JUNE 1998

ADMINISTRATIVE LAW: *Remedies - Certiorari, application for - Change of union's name by Director General under s. 34 Trade Unions Act 1959 - Name change reflecting sister company on ground that members of union reinstated in sister company - Whether correct in law - Whether sister company a separate entity - Whether name change created a new trade union in sister company where there was none before - Whether rights, obligations and immunities of union changed - Trade Unions Act 1959, s. 36(1) - Whether s. 34 envisages a name change simpliciter - Whether registration required under Part III Trade Unions Act 1959* *c* *d*

LABOUR LAW: *Trade union - Closure of company - Members reinstated in sister company - Whether union could represent members in sister company - Whether name change to reflect sister company permissible - Trade Unions Act 1959, s. 34 - Whether registration required under Part III Trade Unions Act 1959* *e*

The applicant applied for an order of *certiorari* to quash the decision of the 1st respondent, the Director General of Trade Unions ('DG') in approving the 2nd respondent's application for a change of name under s. 34 of the Trade Unions Act 1959 ('the Act') from Kesatuan Pekerja-Pekerja Harris Solid State (M) Sdn Bhd ('KPPHSSM') to Kesatuan Pekerja-Pekerja Harris Advanced Technology (M) Sdn Bhd ('KPPHAT'). *f*

The applicant was Harris Advanced Technology (M) Sdn Bhd ('HAT'). KPPHSSM was an in-house union of Harris Solid State (M) Sdn Bhd ('HSSM'), a sister company of HAT. The DG claimed that the change of name was based on the ground that there was a change of employer's name from HSSM to HAT following the case of *Harris Solid State (M) Sdn Bhd v. Bruno Gentil Pereira & 21 Ors*. The Court of Appeal therein had ordered reinstatement of some dismissed workers of HSSM into HAT. As such, it was appropriate that the name of KPPHSSM be changed to KPPHAT to reflect the current name of the employer. Moreover, there had been no problems over an earlier change of name from KPPRCA to KPPHSSM on account of a *g* *h* *i*

change in the employer's name from RCA to HSSM. Apart from this, the change of name from KPPHSSM to KPPHAT would not result in the formation of a new union in HAT.

The 2nd respondent alleged that the applicant had failed to cite the 2nd respondent as a party to the proceedings from its inception to reflect the real intentions and conduct of the applicant.

Held:

[1] It was never the decision of the Court of Appeal in *Harris Solid State (M) Sdn Bhd v. Bruno Gentil Pereira & 21 Ors* that the name of HSSM be changed to HAT. All the said court stated was that both HSSM and HAT were of one entity for purposes of the proceedings under s. 20 of the Industrial Relations Act 1967. This was because the offer of employment of HSSM's workmen by HAT and the subsequent removal of the remaining workmen by HSSM was not done *bona fide* but for a collateral purpose to get rid of the in-house union in HSSM.

[2] Rule 3(6) of KPPHSSM clearly stated that the membership of the union ceased upon the member ceasing to be in the employment of HSSM. To have its previous workers who were now in HAT represented by a union, it must go through the process of registering itself as a new in-house union in HAT. It could not exist under the previous registration of KPPHSSM.

[3] The change of name from KPPHSSM to KPPHAT amounted to a formation of a new union in HAT where there was none before. The exhibits concerned and the minutes of the general meeting of KPPHSSM showed nothing but an attempt to create a new in-house union within HAT.

[4] RCA, HAT and HSSM were wholly-owned subsidiaries within the Harris Group. Except for RCA who had an in-house union known as KPPRCA, HAT and HSSM did not have any trade union to represent their workers. When RCA changed its name to HSSM to reflect the Harris name, it followed that there was a valid application of change of name from KPPRCA to KPPHSSM. The union remained the in-house union of the same employer or establishment. HAT, HSSM or their workers were not affected by that change of name. They still remained non-unionised.

[5] The applicant was challenging the act of the DG. The applicant was not challenging the act of the 2nd respondent in moving the DG into the making of the impugned decision. In the circumstances, the applicant should not be penalised for not bringing in the 2nd respondent as a party to the proceedings.

[6] Section 34 of the Act did not clothe the DG with the power to extend the legal standing of KPPHSSM to another establishment. KPPHSSM was an in-house union registered to represent only HSSM. By virtue of s. 36(1) of the Act, the change of name of a registered trade union shall not affect any rights or obligations of that trade union. The power envisaged by these sections is the power to affect a name change simpliciter, as when the name of KPPRCA was changed to KPPHSSM. The objects, rights and obligations of the union remained the same.

[6a] The same route, however, could not be followed in the change of name from KPPHSSM to KPPHAT. This was because the change of name sought was not a name change simpliciter. It would carry with it considerable changes in the union's rights, obligations and immunities.

[7] The DG's decision vested the union with rights, obligations and immunities without having to comply with the prerequisite of registration under Part III of the Act. Until the said decision, the union did not have the power to engage in industrial action against HAT. However, with the impugned decision, the union had such rights against HAT.

[8] A trade union is a legal person. It enjoys its existence separate from its members. The reinstatement of the dismissed workers from HSSM into HAT did not clothe the DG with the jurisdiction to alter and substitute the "establishment" which the union was registered to represent contrary to the Act. Further, the Court of Appeal in *Harris Solid State (M) Sdn Bhd v. Bruno Gentil Pereira & 21 Ors* distinguished the union and the individual respondents. The said court also recognised that HAT, HSM and HSSM were separate establishments with KPPHSSM's powers confined to HSSM only.

[Application for certiorari granted; decision of DG quashed with costs.]

Case(s) referred to:

Harris Solid State (M) Sdn Bhd & Ors v. Bruno Gentil Pereira & Ors [1996] 4 CLJ 747 ***(refd)***

Hong Leong Equipment Sdn Bhd v. Liew Fook Chuan and Another Appeal [1997] 1 CLJ 665 ***(refd)***

Legislation referred to:

Industrial Relations Act 1967, ss. 9(5), 20

Trade Unions Act 1959, ss. 4A, 31, 34, 36(1), Part III

For the appellant - VT Nathan (S Rutheran with him); M/s Shearn Delamore & Co
For the 1st respondent - Asmah Mohamad, SFC
For the 2nd respondent - B Lobo (R Sivarasa with him); M/s Daim & Gamany

Reported by Usha Thiagarajah

JUDGMENT

Abdul Kadir Sulaiman J:

This is an application by the applicant, Harris Advanced Technology (M) Sdn. Bhd. (HAT) for an order of *certiorari* to quash the decision made by the first respondent, Ketua Pengarah Kesatuan Sekerja, Malaysia on 25 January 1997 changing the name of Kesatuan Pekerja-Pekerja Harris Solid-State (M) Sdn. Bhd. (KPPHSSM) to Kesatuan Pekerja-Pekerja Harris Advanced Technology (M) Sdn. Bhd. (KPPHAT) upon the application of KPPHSSM under s. 34 of the Trade Union Act 1959 (the 1959 Act). Originally the application was against the Ketua Pengarah alone but subsequently KPPHAT applied to intervene in the proceedings after leave to apply for the order was granted to the applicant. With the leave of the court KPPHAT was added as the second respondent. On 29 April 1998 after considering the evidence and the submissions of all sides, I allowed the application of HAT with costs and I now state my reasons.

KPPHSSM was an in-house union to cater for workers working in Harris Solid-State (M) Sdn. Bhd. (HSSM) only, a sister company of HAT. When the union was first established it was known as Kesatuan Pekerja-Pekerja RCA Sdn. Bhd. (KPPRCA) to reflect the name of the employer, RCA Sdn. Bhd. (RCA), when it was first acquired by Harris Inc. of America, the holding company. RCA underwent a name change to HSSM whereby KPPRCA changed its name to KPPHSSM through the approval given by the first respondent. Then on 22 September 1996 KPPHSSM on the advice of the first respondent, applied to him for a change of the name to KPPHAT and also for amendments to the scope of its membership. This was said to be one on account of the decision of the Court of Appeal in *Harris Solid State (M) Sdn Bhd & 2 Ors v. Bruno Gentil Pereira & 21 Ors* [1996] 4 CLJ 747; [1996] 3 AMR 3546 in relation to a proceeding under s. 20 of the Industrial Relations Act 1967 (the 1967 Act) ordering the reinstatement of the former workmen of HSSM into HAT for unlawful dismissal of them by HSSM on the pretext of closing down its business. However, it was never the decision of the Court of Appeal that the in-house union in HSSM shall become the in-house union in HAT pursuant to the order for reinstatement, as that was never the issue before it. In fact the Court of Appeal agreed with the decision of Eusoff Chin J (as he then was) in originating summons No. R8-24-38-1990 that for the purpose of the 1959 Act as amended by Act A717 the subsidiaries within the Harris Group are separate entities. Therefore, KPPHSSM being an in-house union in HSSM should confine itself to serving the cause of employees of HSSM and should carry out its union activities within the premises of HSSM only.

The matter of this application before me now relates to a matter within the confines of the 1959 Act and not one under the 1967 Act. In the circumstances, the principle enunciated by Eusoff Chin J (as he then was) should be in the forefront of our mind *ie*, that HSSM and HAT are two separate entities. The union activities in HSSM cannot involve the workers in HAT, the union being an in-house union.

Back to the mainstream, upon the application of KPPHSSM as mentioned earlier, the second respondent gave its blessing by its decision of 25 January 1997. By the said decision KPPHSSM was from then on known as KPPHAT under its old registration number of 622. Before this HAT never had an in-house union within its establishment. HAT was naturally unhappy. Hence this application for *certiorari* to quash the said decision of the first respondent.

In response to this application for *certiorari* by HAT, the first respondent filed an affidavit in reply giving his reasons for doing so and exhibiting the various exhibits comprising the application of KPPHSSM to him. His reasons thereto will decide the fate of this present application by HAT. When a public decision-taker gives reasons, he reveals his mind and exposes for critical scrutiny the basis for his decision: *Hong Leong Equipment Sdn. Bhd. v. Liew Fook Chuan and Another Appeal* [1997] 1 CLJ 665; [1996] 1 MLJ 481.

According to the first respondent, on 7 December 1989 his branch office received an application by KPPRCA in Form G (exh. "MGAG-1") to change its name to KPPHSSM. Together with the Form, the office also received Forms K and U which are exhibited respectively as "MGAG-2" and "MGAG-3". Form K is an application for the alteration of KPPRCA'S rules. Form U is the return of the result of the ballot. The reason for the application for the change of name was because the employer changed its name from RCA to HSSM. He gave his approval in Form K(1) exhibited as "MGAG-4" with effect from 2 January 1990.

His evidence further states that on 21 September 1990, the operation of HSSM was taken over by HAT. On the same day HSSM terminated the services of its remaining workmen who were all committee members of KPPHSSM for the reason that HSSM would cease its operation on 22 September 1990. The said workmen made representations under s. 20 of the 1967 Act for reinstatement for wrongful dismissal. On these representations, ultimately the Court of Appeal in the case cited earlier, ordered that all the 21 workmen were to be reinstated into HAT and were required to report there on 1 October 1996 which they did.

Consequent upon that, on 26 September 1996, his office received Form G dated 22 September 1996, exhibited as "MGAG-6", from KPPHSSM to change its name to KPPHAT. Along with the said Form G, KPPHSSM also sent Form

K, exhibited as "MGAG-7", together with a copy of the minutes of the general meeting of KPPHSSM applying for the alterations of the rules of the union. According to the said minutes, it was unanimously agreed that the earlier notice of change and scope made to Ketua Pengarah, Jabatan Hal Ehwal Kesatuan Sekerja on 15 June 1991, be withdrawn and a fresh application to change the name of the union be made and accordingly, it was agreed that:

(a) In r. 1(1) replace the name –

Kesatuan Pekerja-pekerja Harris Solid-State (M) Sdn Bhd to

Kesatuan Pekerja-pekerja Harris Advanced Technology (M) Sdn Bhd

(b) In r. 3(1) replace the name –

Kesatuan Pekerja-pekerja Harris Solid-State (M) Sdn Bhd to

Kesatuan Pekerja-pekerja Harris Advanced Technology (M) Sdn Bhd dan pengganti-pengganti mereka, penerima hak atau penerima pindah milik.

According to the first respondent, KPPHSSM applied to change its name on the ground that there was a change in the name of their employer *ie*, from HSSM to HAT on account of the decision of the Court of Appeal. However, it must be pointed out right now that it was never the decision of the Court of Appeal that the name of HSSM had been changed to HAT. All it says is that they are of one entity for purposes of the proceedings under s. 20 of the 1967 Act as on the facts the offer of employment of HSSM's workmen by HAT and the subsequent removal of the remaining workmen by HSSM was not done *bona fide* but for collateral purpose to rid of the in-house union in HSSM.

Be that as it may, according to the first respondent on 25 January 1997 he sent the notice of the change of name from KPPHSSM to KPPHAT, exhibited as "MGAG-9" for gazetting. A copy of this notice together with Form K(1) were then sent to KPPHSSM confirming that the amendments to the rules of the union had been approved and registered. The notice states that the original name of the union was Kesatuan Pekerja-Pekerja Harris Solid-State (M) Sdn. Bhd. (KPPHSSM). The new name for the union is Kesatuan Pekerja-Pekerja Harris Advanced Technology (M) Sdn. Bhd. (KPPHAT) under registration number 622 and the date of registration being 31 January 1989. The notice was dated 25 January 1997. Form (K1) exhibited as "MGAG-10" is a certificate of the registration of the amendment to the rules of KPPHAT and annexed to it are the particulars of the amendments as follows:

PINDAAN KEPADA PERATURAN-PERATURAN
Kesatuan Pekerja-Pekerja Harris Solid-State (M) Sdn. Bhd.

Bil	Muka Surat	Peraturan	Baris	Pindaan
1.	Kulit Buku		3 & 4	Batalkan perkataan-perkataan "Kesatuan Pekerja-Pekerja Harris Solid-State (M) Sdn. Bhd. (KPPHSSM)" dan gantikan dengan perkataan-perkataan "Kesatuan Pekerja-Pekerja Harris Advanced Technology (M) Sdn. Bhd. (KPPHAT)"
2.	Muka dalam		3 & 4	Batalkan perkataan-perkataan "Kesatuan Pekerja-Pekerja Harris Solid-State (M) Sdn. Bhd. (KPPHSSM)" dan gantikan dengan perkataan-perkataan "Kesatuan Pekerja-Pekerja Harris Advanced Technology (M) Sdn. Bhd. (KPPHAT)"
3.	1	Nama	2	Batalkan perkataan-perkataan "Kesatuan Pekerja-Pekerja Harris Solid-State (M) Sdn. Bhd. (KPPHSSM)" dan gantikan dengan perkataan-perkataan "Kesatuan Pekerja-Pekerja Harris Advanced Technology (M) Sdn. Bhd. (KPPHAT)"
4.	1	1(1)	2	Batalkan perkataan-perkataan "Kesatuan Pekerja-Pekerja Harris Solid-State (M) Sdn. Bhd. (KPPHSSM)" dan gantikan dengan perkataan-perkataan "Kesatuan Pekerja-Pekerja Harris Advanced Technology (M) Sdn. Bhd. (KPPHAT)".
5.	3	3(1)	2	Batalkan perkataan-perkataan "Kesatuan Pekerja-Pekerja Harris Solid-State (M) Sdn. Bhd. (Ulu Kelang, Ampang)" dan gantikan

				dengan perkataan-perkataan "Kesatuan Pekerja-Pekerja Harris Advanced Technology (M) Sdn. Bhd. (KPPHAT)".
6.	37	CONTOH A	2	Batalkan perkataan-perkataan "Kesatuan Pekerja-Pekerja Harris Solid-State (M) Sdn. Bhd. (KPPHSSM)" dan gantikan dengan perkataan-perkataan "Kesatuan Pekerja-Pekerja Harris Advanced Technology (M) Sdn. Bhd. (KPPHAT)".
7.	39	CONTOH B	2	Batalkan perkataan-perkataan "Kesatuan Pekerja-Pekerja Harris Solid-State (M) Sdn. Bhd. (KPPHSSM)"dan gantikan dengan perkataan-perkataan "Kesatuan Pekerja-Pekerja Harris Advanced Technology (M) Sdn. Bhd. (KPPHAT)".

The first respondent further deposes that his action did not result in a new union being established in HAT. Under the circumstances KPPHSSM was entitled to change the scope of its membership to represent the workers of HSSM who were reinstated in their employment with HAT. The basis for the change was the change of employer from HSSM to HAT. I would pause here for a moment. I believe the first respondent equated his present action with that of the changing of the name of KPPRCA to KPPHSSM which took place in early 1990. If that is the basis, his reasoning is erroneous because in respect of the change in 1990, the act was perfectly valid because there was no change in the employer of the workers who were members of KPPRCA. RCA as the employer in fact changed its name into HSSM. Nothing else changed. There was no movement of workers as such from one establishment to another within the Harris Group. Therefore, to reflect this change of name of the employer, the union which associated its name with the earlier name of the employer could validly change its name to KPPHSSM. However, in the present case, there was a change of the place of employment of these workers entirely from HSSM to HAT. But for the reason given by the Court of Appeal that the dismissal of them by HSSM was not done *bona fide* and for collateral purpose amounting to an unfair labour practice carried out in order to victimise the workers for their trade union activities, and the closure of HSSM itself, the

two establishments remain as separate entities for the purpose of the 1959 Act. By the rules of KPPHSSM the membership of members in the union ceases upon leaving the service of HSSM. The order of reinstatement by the Court of Appeal would have been into HSSMM and not into HAT as it was HSSM which dismissed them. The Court of Appeal did not make an order that the in-house union in HSSM consequent upon the order of reinstatement of the workmen into HAT would become the in-house union in HAT. In fact at p. 3563 the Court of Appeal said:

> The effect of individual workmen of the first appellant (which is HSSM) accepting this offer would be to denude the union (which is KPPHSSM) of its membership to the point of non-existence, thereby rendering its presence in the first appellant academic. Mr. Nathan, with his customary frankness, conceded the point. He said that had the offer been accepted by all the workmen of the first appellant, the union would have ceased to exist.
>
> This offer by the second respondent (which is HAT) impaled the union upon the horns of a dilemma. The union was literally fighting for its life. But it could not do anything until the Minister decided on the question of its recognition. It had no standing to act before then. In the meantime, however, the Harris Group was free to effectively terminate the union.

Take an example where workers who are members of a union AX in a place of employment A move over to work with the place of employment B. Can the union AX change its name to union BX by this simple process of application for name change and not through the process of forming a union in the place of employment B? The answer must be in the negative because to start with the workers in the place of employment B had never been represented by any union of sort. Therefore, it is erroneous for the first respondent to contend that KPPHSSM was entitled to change the scope of its membership to represent the workers of HSSM who were reinstated in their employment with HAT on the basis that the change was the change of employer from HSSM to HAT. Eusoff Chin J (as he then was) in the above-cited Originating Summons No. R8-24-38-1990 has clearly said this as reproduced by the Court of Appeal at p. 3564:

> I note that w.e.f. 10.2.89 by Act A717, the Trade Union Act 1959 had been amended to enable a trade union to be formed within any particular establishment (see definition of 'trade union' in s. 2 of the Trade Unions Act).
>
> The word 'establishment' in s. 2 has been defined to mean:
>
> > any place of business or employment belonging to an employer, and includes any division or branch thereof.
>
> From this it would appear that the plaintiff being a union of workmen who are employed by the 1st defendant, should confine itself to serving the cause

of employees of the 1st defendant, and should carry out its union activities within the premises of the 1st defendant only.

The plaintiff alleged that both defendants are not separate establishments since Abdullah is the same human resources manager for both defendants.

I find that the two defendants may be in the same group *ie*, Harris Corporation, but they are different companies, having different places of business. The word 'establishment' as defined, has a wide meaning so that if, for example a company has different places of business or employment, and has branches all over the country, or has various divisions, employees working in each place of business, branch or division may get together to form a trade union. The activities of such union, however, are confined to such place, branch or division. As such, the activities of the plaintiff including recruitment of members, should only be confined to the establishment and the employees of the 1st defendant.

Therefore, KPPHSSM owes its survival upon the survival of HSSM with its workers being its members. Without any member remaining in HSSM the in-house union KPPHSSM if it ever existed it is so only in name. The workers upon leaving the employment with HSSM ceases to be members of KPPHSSM. Rule 3(6) of KPPHSSM Rules states clearly that the membership of the union ceases upon the member ceasing to be in the employment of HSSM. To have its previous workers who are now in HAT represented by a union, it must go through the process of registering itself as a new in-house union in HAT but cannot exist under the previous registration of KPPHSSM or for that matter KPPRCA. But by the action of the first respondent, he has allowed KPPHSSM to represent the workers in HAT which was not the purpose for which KPPHSSM was established and to make it worst, KPPHSSM was allowed to change its name to KPPHAT and also to change its scope of membership to cover workers in HAT. The workers in HAT were of two kinds. One was HAT's original workers who were not involved in the transfer of employment from HSSM and the other were those workers who were in HAT either through their acceptance of the transfer of employment from HSSM to HAT or those ordered by the Court of Appeal to be reinstated therein. Through the process of name change and the change in the scope of membership of the union, the original workers of HAT without being given their rights to make the decision became automatic members of KPPHAT. The first respondent by his affidavit suggests that the change of the name of a union would not result in the formation of a new union. Then what was the purpose of the change? Earlier he said that the change was in order, for the reason that the new employer is HAT which would signify that the union with the new name is a valid organization within HAT. Does this not amount to a formation of a new union in HAT when previously HAT had no workers who

were members of any union? The following exhibits – "MGAG-6","MGAG-9", "MGAG-10" – and the minutes of the general meeting of KPPHSSM are nothing but an attempt at creation of a new in-house union within HAT.

The second respondent in opposition to this application of HAT and in support of the action by the first respondent filed three affidavits but only two of them are of relevance. One was affirmed on 22 August 1997 and the other on 8 December 1997 both by Bruno Gentil Pereira, as the General Secretary of KPPHAT. In the latter affidavit he disclosed that in fact as early as 28 November 1990 KPPHSSM had made a similar application to the first respondent requesting for the change of name and the scope of membership of the union to Kesatuan Pekerja-Pekerja Harris Malaysia. However, no response was received from the first respondent to this application despite reminders. After the decision of the Court of Appeal ordering reinstatement of the workers of HSSM to HAT, the deponent went to see the first respondent and held discussion over the matter. The first respondent advised him to withdraw the said earlier application and in its place to forward a new application for a change from KPPHSSM to KPPHAT to be in line with the decision of the Court of Appeal. Thus the application of 26 September 1996 was made in pursuance of the advise of the first respondent. This explains the minutes of the general meeting of KPPHSSM concerning the statement that its application of 15 June 1991 be withdrawn and a fresh application be made. The second respondent further deposes that in line with the decision of the Court of Appeal in the above-mentioned case, KPPHSSM applied to the first respondent by its letter of 26 September 1996 for a change of name of the union to KPPHAT considering that the scope of membership of the union was only limited to a particular establishment only *ie*, HSSM. Since the Court of Appeal had ordered reinstatement of those dismissed workers of HSSM into HAT it was appropriate for the name change for the union to reflect the name of the employer where they were now being emplaced. He exhibited the letter of 26 September 1996 sent to the first respondent as "BP-5" as follows:

PERSATUAN PEKERJA-PEKERJA
HARRIS SOLID-STATE (M) SDN BHD
HARRIS SOLID-STATE (M) SDN BHD WORKER'S UNION (NOMBOR PENDAFTARAN 622) 42 JALAN 12/101, DESA AMAN, KM 9 JALAN CHERAS, 56100 KUALA LUMPUR, MALAYSIA.
TEL & FAX: (603) 931 5187

26hb. September 1996

Tuan Ketua Pengarah,
Jabatan Hal Ehwal Kesatuan Sekerja,
Aras 5, Blok B Selatan,
Pusat Bandar Damansara,
50542 KUALA LUMPUR

(U.P. Tuan Haji Mansor b. Lop Pahei)

Tuan,

Permohonan Untuk Menukar Nama Kesatuan dan Skop Keanggotaan Kesatuan

Dengan hormatnya kami merujuk kepada perkara diatas, dan mengemukakan bersama sama ini:

i. Dua salinan Borang G

ii. Tiga Salinan Borang K,

iii. Empat salinan Lampiran Pindaan kepada Peraturan-Peraturan,

iv. Senaskah Buku Peraturan Kesatuan dengan slip pindaan yang dikepilkan,

v. Bukti sokongan 2/3 anggota-anggota yang menyokong pertukaran nama kesatuan – dilampirkan. Lima belas dari dua puluh satu anggota telah bersetuju dan menyokong usul untuk menukar nama kesatuan dan meminda skop dengan secara persetujuan bertulis,

vi. Dua salinan Minit Mesyuarat (yang telah disahkan) yang ada kaitan,

vii. Satu salinan Borang Precipe bersetem RM10.00,

Alasan untuk mengemukakan permohonan pindaan ini adalah selaras dengan keputusan Mahkamah Rayuan yang diputuskannya pada 12hb Ogos 1996.

Harap dalam penerimaan tuan dan kerjasama tuan dalam hal ini adalah dihargai.

Sekian, terima kasih.

Yang benar,

Sgd:

(BRUNO G. PEREIRA)
SETIAUSAHA.

It is clear, therefore, that the intention of KPPHSSM and the first respondent was to have a union representing workers in HAT, where there was none before, on the ground that the workers of HSSM were now in HAT. Little did the first respondent realise that by his act, a new in-house union in HAT has been established, where there was none before which according to the decision of Eusoff Chin J (as he then was) that for the purposes of the 1959 Act as amended, HSSM and HAT are separate entitities and the in-house union in HSSM has no right to meddle with the affairs of the workers in HAT. KPPHSSM must confine its activities only within HSSM. If indeed there ought to be an in-house union in HAT a proper procedure under Part III of the 1959

Act must be taken *ie*, going through the process of registering the intended new in-house union in HAT. There is no shortcut to it. For the union the action of the first respondent was a welcoming exercise indeed but for HAT it is a clear violation of the rules of law against it. There is no consolation to HAT in the first respondent saying that HAT should accept what he has done and to deny recognition of KPPHAT which could be resolved by him in a separate exercise.

The learned Senior Federal Counsel for the first respondent submitted that s. 31 of the 1959 Act gives the discretion to any trade union to change its name subject to the approval of 2/3 of its members, and lays down the procedure to follow to achieve the purpose. Once the first respondent is satisfied that the requirements have been satisfied it is mandatory upon him to register the change of name. The learned counsel contends that in this case, the provisions of the Act had been complied with by the second respondent looking at the various exhibits tendered. Therefore, the first respondent was acting within his jurisdiction to make the decision he did on 25 January 1997, the impugned decision. The first respondent was guided by the decision of the Court of Appeal before he made the decision. The learned counsel also draws my attention to the provisions of s. 4A of the 1959 Act giving wide powers to the first respondent for the purposes of giving effect to and carrying out the provisions of the Act. He urges upon me to consider the failure of the Applicant to plead that the first respondent had failed to comply with the provisions of the 1959 Act. I will pause here to consider the submissions of the learned counsel. There is no doubt as to the operation of ss. 31, 34 and 4A of the Act. But the issue is whether the change of name from KPPHSSM to KPPHAT and the change of scope of its membership under the present circumstances, affects the purpose for which KPPHSSM was established? KPPHSSM is an in-house union established to serve the cause of employees in the employ of HSSM. If we look back into the history of KPPHSSM and HSSM, the latter was originally known as RCA. It was a wholly owned subsidiary within the Harris Group along with HAT and HSM. Workers in HAT and HSM were never members of any trade union. Only workers in RCA formed an in-house union known as KPPRCA. In the course of time, RCA changed its name to HSSM to reflect the Harris name. Following the change of name of their employer, KPPRCA validly made an application to change its name to KPPHSSM. This was approved and registered by the first respondent. No one ever quarrelled about that as it could validly be done under s. 34 of the 1959 Act. By changing the name there, nothing really has changed. The union remained the in-house union of the same employer or establishment. The change did not affect HAT or HSM or their workers who remained non-unionised. Does the same situation exist consequence upon the decision of the first respondent of 25 January 1997? In my view, it does not, because by the

change of name and the scope of membership of KPPHSSM to KPPHAT it shows that the name of the union is Kesatuan Pekerja-Pekerja Harris Advanced Technology (M) Sdn. Bhd. See exh. "MGAG-9" to the affidavit of the first respondent. Since when did the workers in HAT formed the in-house union in HAT and since when was this in-house union registered under the 1959 Act? Can the union and the first respondent side step the requirement of Part III of the Act by simply going through the back door to have the name of KPPHSSM changed to KPPHAT? KPPHSSM says it submitted such an application upon the advise of the first respondent. On the change of the scope of membership, it is a clear violation of the provisions of the Act. Can an in-house union in one establishment spread its wing into another establishment by merely having its scope of membership amended in accordance with s. 34 of the Act as is done in this case just because its members are now working in the other establishment? It is not so much as to whether HAT wishes to recognise this spread but more of a defiance against the requirement of law by the first respondent who had been entrusted with the duty to see that the requirement of the Act is being complied with. See the effect of the action of the first respondent from exh. "MGAG-10". He has given recognition that Kesatuan Pekerja-Pekerja Harris Solid-State (M) Sdn. Bhd. (KPPHSSM) is now Kesatuan Pekerja-Pekerja Advanced Technology (M) Sdn. Bhd. (KPPHAT). There was no new registration of KPPHAT under the Act but the registration of KPPRCA which subsequently became KPPHSSM was used instead. In the circumstances, the submissions by the learned Senior Federal Counsel lacks any merit at all. The decision of the Court of Appeal has been misconstrued. The decision was for a different purpose. All concerned ignored the decision of Eusoff Chin J (as he then was) in as far as the in-house union is concerned.

I dismiss the submission of the learned counsel that the applicant failed to disclose material particulars in making its application to this court. The application did not hide anything. The facts are clear to make this court come to a decision. The evidence of the second respondent after being made a party to this application does not in any way expose the purported non-disclosure of material particulars by the applicant. It merely discloses that it was not in conspiracy with the first respondent in the latter making the impugned decision. It acted on the advice of the first respondent who misconstrues the decision of the Court of Appeal. While it is true that the cessation of the business of an employer does not extinguish the union representing its workers. But the issue here is whether the union without members can cross its border to look for members outside it and have its name changed under the guise that its former members are in the territory outside its border. That is the effect of what the first respondent did. By the process under s. 34 of the Act, the workers in HAT are members of an in-house union in HAT when there was none before.

I now move to consider the submissions made on behalf of the second respondent. The learned counsel suggests that there was no averment by the applicant that the first respondent did not comply with the provisions of s. 34 of the 1959 Act. I see no relevance at all because the issue here is not one under s. 34 but whether the respondent has the power to establish an in-house union in HAT without going through the normal process of registering such a union in HAT pursuant to Part III of the Act. Was it sufficient merely to do so by changing the name and scope of membership of KPPHSSM under s. 34 of the Act to create an in-house union in HAT? The learned counsel put the blame on the applicant for the failure to cite the second respondent from its inception which would reflect the real intentions and conduct of the applicant. There is no merit to this. The applicant is challenging the act of the first respondent. The applicant is not challenging the act of the second respondent in moving the first respondent into the making of the impugned decision. So, why should the applicant be penalised for not bringing in the second appellant as a party to the proceedings?

The learned counsel for the second respondent submits that in pursuance to the rationale in the judgment of Eusoff Chin J (as he then was) a trade union can exist in an establishment as opposed to a corporate entity. Therefore, the application made by the second respondent to change its name is merely to reflect its members' or officers' new place of employment as ordered by the Court of Appeal. What is meant by "as ordered by the Court of Appeal"? As pointed out earlier the Court of Appeal did not order for the change of name of the in-house union in HSSM into in-house union in HAT. It would not do so, as pointed out earlier, because it was not the issue before it. The court ordered the ex-workers of HSSM to be placed in HAT for the reason that the dismissal of those workers was without just cause and excuse being done without *bona fide* and with collateral purpose. The same order would have been made even if those workers were not members of the union. Now that those workers were members of KPPHSSM it does not follow that the in-house union would automatically follow them wherever they were employed. The in-house union, KPPHSSM, was meant for workers of HSSM while in the employment of HSSM. Now that they were employed by HAT pursuant to the order of the Court of Appeal, having held for the purpose of the remedy under the 1967 Act that HSSM and HAT were of one entity, it does not mean that they are to be members of an in-house union in HAT because for the purpose of the 1959 Act as amended, HSSM and HAT remained separate entities as otherwise, KPPHSSM's authority could be extended to the workers in HAT, and for that matter in other subsidiaries of Harris Corporation, even during the time when HSSM was in existence with its complement of workers. That cannot be so. See the decision of Eusoff Chin J (as he then was) in Originating Summons No. R8-24-38-1990 dated 4 January 1991 mentioned earlier.

Finally, the learned counsel submits that it is in the interest of the applicant that the second respondent should function in its premises because the applicant should appreciate the union's contribution to modern industrial harmony and also the fundamental right of freedom of association and its existence would not have an adverse impact on the applicant. This is a tacit acceptance of the fact by the second respondent that the action of the first respondent was to create an in-house union in HAT. This is not for the second respondent to put to the applicant. The issue is whether the action of the first respondent attracts judicial review for quashing his action. As I have said earlier, the establishment of an in-house union in HAT is not through the process of s. 34 of the Trade Union Act 1959. Any attempt to do so in that fashion would receive a blow under judicial review for *certiorari*. Section 34 does not clothe the first respondent with the power to extend the legal standing of KPPHSSM, being an in-house union in HSSM to other establishment than that it was registered to represent. The first respondent should appreciate that in holding that the termination from service of the workmen by HSSM was without just cause and excuse and brought about by the desire to victimise them for their involvement in trade union activity, the Court of Appeal gave considerable weight to the fact that KPPHSSM was an in-house union which was confined to the establishment which constituted HSSM only. That being so, the court took the view that the offers of employment by HAT "impaled the union upon the horns of a dilemma". There would have been no dilemma if the process is as simple as getting the name and the scope of membership changed as approved by the first respondent in this case. The first respondent acted under s. 34 of the 1959 Act. By s. 36(1) thereof such change of name of a registered trade union shall not affect any rights or obligations of that trade union. Therefore, the power envisaged by these sections is the power to affect a name change simpliciter, as happened in the case of a change in name from KPPRCA to KPPHSSM in 1990, whereby the objects, rights and obligations of the union remained the same but for the change of name. But on the factual situation in the change from KPPHSSM to KPPHAT, the same route cannot be followed. Any reasonable person so circumstanced would have realised that the name change sought, and for that matter on the recommendation of the first respondent, was not a name change simpliciter as it would carry with it considerable changes in the union's rights, obligations and immunities. Any reasonable person so circumstanced would have appreciated that the application by KPPHSSM was in reality an attempt by its ex-members to enlarge its scope and competence beyond the limits given to it by law. By allowing the application by KPPHSSM the first respondent has conferred upon it for the first time the right to recruit as members persons in an establishment other than that for which it was registered to represent. Until the impugned decision made by the first respondent, the union did not possess immunities or privileges against HAT. By the said decision, the union was vested with

extensive immunities without having to comply with the pre-requisite of registration under Part III of the 1959 Act. Until such decision was made the union did not have the power to engage in industrial action against HAT. However, his decision at the behest of the ex-members of KPPHSSM in a general meeting purports to have the effect of clothing it with such right against HAT. Clearly the decision of the first respondent entailed a change in the very establishment the union was registered to represent, *ie*, from HSSM to HAT. The name change bore no nexus with the establishment KPPHSSM, which was registered to represent. Even the Court of Appeal did not say that HSSM is synonymous with HAT but that they are of one entity for the purpose of the proceedings before it. By the impugned decision of the first respondent, it has transformed the in-house union from one that was instituted by the workers of HSSM to cater for their interest in HSSM into another in-house union in HAT. Apart from being contrary to the scheme of the 1959 Act, the first respondent was not clothed with the power to make such a decision with such consequences under s. 34 of the 1959 Act.

The first respondent in his affidavit questioned the need for the applicant to make this application for it could refuse to recognise KPPHAT when the issue arises. But he failed to realise that by his impugned decision having regard that HSSM and HAT are one in entity even for purposes of the 1959 Act, having misconstrued the decision of the Court of Appeal concerning the 1967 Act, he has imposed upon HAT with an order to recognise KPPHAT which he has no power whatsoever under the 1959 Act to do. I say so because on 16 April 1990 the Minister pursuant to s. 9(5) of the 1967 Act accorded recognition to KPPHSSM, the predecessor of KPPHAT, which binds only HSSM being the employer of the workers who were members of KPPHSSM. Therefore, the first respondent by his action now has committed serious error which necessitates the intervention of this court in judicial review proceedings. He has failed to consider these crucial matters. Had he done so he would have realised that his decision went beyond the true bound of s. 34 of the 1959 Act. To him a change of name or for that matter a change in the scope of membership of a union is a simple matter of looking at the application and having a very wide power under s. 4A of the 1959 Act, he could give his approval without considering the consequences that would ensue arising out of his decision. By the implied recognition he has accorded to KPPHAT, if his decision is correct, he has enabled this "in-house union" to engage in collective bargaining with HAT while depriving HAT of its right under the law. Had the first respondent applied his mind to this issue he would have appreciated that what KPPHSSM really sought by its application, was not a name change simpliciter under s. 34 of the 1959 Act. To grant the application

sought would clearly be to offend the provisions of the 1959 Act. He cannot deny that the application is not only in respect of the change of name but also the change in the scope of membership of KPPHSSM. Had he properly considered the matter he would have been compelled to reject the application, what more to advise the union to submit such a nature of an application. In all circumstances the first respondent ought to have realised that it was not open to an in-house union to achieve such an end under the guise of a name change. In fact the limited scope of KPPHSSM as an in-house union took centre stage prominence when the Court of Appeal held that the offers of employment by HAT were made in bad faith. It so held because it inferred on a review of the substance of the matter that the offers were calculated to destroy the union whose competence was confined to HSSM only. See the *dicta* of the Court of Appeal cited earlier in this judgment.

A trade union is a legal person. It enjoys its existence that is separated from its members. It is not personal to holder to those who were reinstated into HAT. The fact of reinstatement of an individual person does not clothe the first respondent with the jurisdiction to alter and substitute the "establishment" which the union was registered to represent contrary to the 1959 Act with the attendant change to its objects, rights and liabilities. Before the Court of Appeal, KPPHSSM was a party in its own name. The court made a positive determination at the outset that it had no interest in the proceedings. The court was careful from the very outset in distinguishing the union and the individual respondents. The first respondent in considering the application or for that matter in advising KPPHSSM to submit such an application to him ought to have this specific determination of the Court of Appeal in the forefront of his mind. But he failed to do so. In failing to do so, the first respondent once again has fallen into error. The decision of the Court of Appeal as with any decision of any court or tribunal must be viewed in its factual nexus and context. The Court of Appeal was concerned with an appeal which commenced as a representation for reinstatement under s. 20 of the 1967 Act. The primary issue the Court of Appeal was confronted with was whether HSSM could reasonably be said to have been able to justify its decision to terminate the services of its workmen on grounds of *bona fide* closure of its business. The court in endorsing the decision of Eusoff Chin J (as he then was) in the context of the 1959 Act recognised that HAT, HSM and HSSM were separate establishments, with KPPHSSM's powers being confined to HSSM only. Whilst it is true that the decision of Eusoff Chin J (as he then was) ought not to be applied irrespective of its context, the same would apply to the decision of the Court of Appeal which was made in the context of the 1967 Act.

Therefore, having considered all matters put before me in this proceeding, for the above reasons, I granted the application of the applicant for *certiorari* and accordingly quashed the said decision of the first respondent of 25 January 1997 with costs.