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Employee-Shareholders – Can They Be Made Redundant?

Rajivalosana A/P Rajindra Kumar, Barani Kumar A/L Balasubramaniam and Vijay Anand A/L P Harivasagan v Syarikat V.K. Kalyanasundram Sdn Bhd (Industrial Court Award No. 2009 of 2023)

The dispute involved the dismissal of the General Manager and Executive, who were both shareholders of the Company and concurrently employed by the Company (“**the Shareholders**”). The other employee dismissed was the office clerk (“**the Clerk**”).

The Company is a family-owned oil palm estate business that was plagued with serious cash flow problems due to poor management. This resulted in the Company:

- a) taking loans from unlicensed money lenders at extravagant interest rates, which it then struggled to repay;

- b) struggling to make payment of dividends to shareholders;
- c) extending the term of the loan facilities from a bank to reduce monthly instalments; and
- d) being unable to afford fertilisers for its plantation.

The cash flow issues led to the appointment of new directors. These new directors were tasked to review the Company's operations and finances. Following the review, a decision was made to implement a cost-cutting exercise, which included making the Shareholders and the Clerk redundant.

In finding the dismissal of the Shareholders and the Clerk to be with just cause or excuse, the Industrial Court took into account that:

- a) The Company incurred high costs in maintaining the employment of the Shareholders, such as travelling costs and costs relating to the upkeep of vehicles driven by them.
- b) Full-time employees for the positions held by the Shareholders and the Clerk were not required.
- c) The functions of the Shareholders and the Clerk were absorbed and could be performed by the Company's directors without additional salaries or director's fees being paid.
- d) Any cost-cutting measure that benefited the Company similarly benefited the Shareholders. In fact, the measures resulted in increase of dividends by almost 300%.

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- e) Dismissing the Shareholders and the Clerk led to the reduction of the Company's overall staff salaries by nearly 50%.
- f) The Shareholders and the Clerk were also carrying out work for another business during their working hours, notwithstanding that they were drawing a salary from the Company.

The findings of the Industrial Court reaffirm trite principles that the fact that an employee's job or function was still in existence but was performed by other remaining employees (or directors in this case) does not necessarily mean that there was no redundancy - it can also arise where it requires fewer individuals. Significantly, the Industrial Court considered the applicability of this principle to shareholders of a company who wore dual hats as employees and shareholders, whereby the Industrial Court acknowledged that the true beneficiaries of the cost-cutting measure were the Shareholders themselves.

The Company was represented by Partner, Amardeep Singh Toor, and Associate, Wong Lien Taa, of Lee Hishammuddin Allen & Gledhill. The Industrial Court Award can be found [here](#). If you have any queries, please contact [Amardeep Singh Toor \(ast@lh-ag.com\)](mailto:ast@lh-ag.com) and [Wong Lien Taa \(wlt@lh-ag.com\)](mailto:wlt@lh-ag.com).

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