



**Order 18 Rule 7, Order 18 Rule 7A of the Rules of
Court of Appeal 1994**

SELECTCOOL SDN BHD

v.

**KETUA PENGARAH HASIL DALAM NEGERI
[W-01(A)-135-03/2022]**

 **COURT OF APPEAL**



**YA DATUK HAJJAH AZIZAH BINTI HAJI NAWAWI
YA DATUK AZIMAH BINTI OMAR
YA DATUK SERI MOHD FIRUZ BIN JAFFRIL**



23rd SEPTEMBER 2024

The Court of Appeal unanimously dismissed the Applicant's application to file out of time the Record of Appeal, Memorandum of Appeal and Supplementary Record of Appeal.

The Applicant had filed an appeal to the Court of Appeal following the decision of the High Court in allowing the appeal by the Director General of Inland Revenue ("Revenue") against the decision of the Special Commissioners of Income Tax ("SCIT").

The Revenue had raised issues in its written submission dated 8.5.2024 regarding the Applicant's failure to observe the mandatory provisions in the Rules of Court of Appeal 1994 ("ROCA") when read together with Article 152(3) of the Federal Constitution, Section 84 of the National Language Acts 1963/67 as well as Section 3 of the Interpretation Acts 1948 and 1967.

Despite having the benefit of being informed of the non-compliances as early as 8.5.2024, the application was only filed when the notice of preliminary objection was issued by the Revenue on 20.5.2024. There was no explanation as to the following delays and non-compliances:

- (a) not filing the Record of Appeal within time;
- (b) not filing the Memorandum of Appeal together with the Record of Appeal; and
- (c) not filing the Supplementary Record of Appeal containing the Grounds of the High Court within time.

The Applicant had not complied with Order 18 Rule 7 and Rule 7A ROCA that required the Record of Appeal together with the Memorandum of Appeal to be filed within 90 days, regardless of whether or not the Grounds of Judgment had been received. Thus, the Applicant's act of non-compliance in filing the Record of Appeal within time as well as not incorporating the Memorandum of Appeal in the Record of Appeal (that had been later filed out of time), must not be condoned as this would create a precedent contrary to the intention of ROCA.

Further, since the Memorandum of Appeal was not filed in Bahasa Malaysia, the record of appeal does not qualify as a record of appeal and thus rendering the appeal incompetent and ought to be struck off.

The only explanation proffered by the Applicant's counsel was that the non-compliance was an unintended mistake, which they had not realised at the time of filing.

It had been the responsibility of the Applicant's counsel to comply with the law. The Applicant's counsel ought not to be allowed to abscond from its professional duty of ensuring compliance of its own appeal.

The Court of Appeal held that there was no reasonable explanation on the delay and thus dismissed the application with costs of RM5,000 to the Revenue.