

**A Teu Shek Fai v Aarolyn Yip Yu Ming (sole ownership of Messrs  
Azlinda & Agnes Chan)**

**B** HIGH COURT (KUALA LUMPUR) — PETITION NO 26NCC-47-05  
OF 2013  
HANIPAH FARIKULLAH J  
27 SEPTEMBER 2013

**C** *Legal Profession — Remuneration — Bills of costs — Whether solicitor's  
unsigned bill enforceable — Whether solicitor's bills sent with unsigned cover letter  
enforceable — Whether client estopped from disputing unsigned bill after having  
acquiesced and acted upon the bill — Legal Profession Act 1976 s 124*

**D** The petitioner had appointed Messrs Azlinda & Agnes Chan ('the firm') to act  
on her behalf in a High Court suit. The petitioner contended that the  
respondent had agreed for the professional fee to be paid on a contingency  
basis. However, the petitioner later decided to terminate the respondent's  
services. The respondent then sent the petitioner an unsigned purported bill  
**E** for the sum of RM30,000. The respondent allowed the petitioner to pay a  
monthly installment of RM1,000 per month and up to date the petitioner had  
paid a total sum of RM4,000 to the respondent by way of installments.  
Subsequently, the respondent sent another unsigned purported bill to the  
**F** petitioner claiming for RM85,600 for the legal fees and disbursement. The  
petitioner thus commenced the present proceedings, disputing the unsigned  
bills on the grounds that the bills were unsigned and the bills were on  
contingency basis. The petitioner claimed that the unsigned bills were not  
enforceable as they did not comply with s 124 of the Legal Profession Act 1976  
**G** ('the LPA').

**Held**, allowing the petition:

- H** (1) The word 'shall' in s 124(1) of the LPA is mandatory and must be strictly  
complied with. By failing to sign the bill of costs, the respondent  
therefore failed to comply with the mandatory provisions of the law (see  
para 7).
- I** (2) Even though the respondent resent the unsigned bills to the petitioner by  
email on 8 May 2013, after the date of filing of this petition with a cover  
letter dated 3 May 2013, the bills remained unenforceable as they were  
not accompanied by a signed cover letter as required under s 124(1) of the  
LPA (see para 9).
- (3) The petitioner had commenced payment on the bill by way of  
installment in the amount of RM1,000. The petitioner had paid

RM4,000 from December 2012 to March 2013 out of the RM144,428 payable, and receipts were furnished to the petitioner by the respondent. Therefore, the petitioner had acquiesced and acted upon the said bill. Hence, the petitioner was now estopped from abandoning her obligation to pay for the services rendered by the respondent (see para 11).

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**[Bahasa Malaysia summary]**

Pempetisyen telah melantik Tetuan Azlinda & Agnes Chan ('firma') untuk bertindak bagi pihaknya dalam tindakan Mahkamah Tinggi. Pempetisyen berhujah bahawa responden telah bersetuju untuk fi profesional dibayar atas dasar kontingensi. Walau bagaimanapun, pempetisyen kemudiannya memutuskan untuk menamatkan khidmat responden. Responden kemudiannya menghantar kepada pempetisyen bil yang tidak ditandatangani untuk sejumlah RM30,000. Responden membenarkan pempetisyen membayar bayaran ansuran bulanan sebanyak RM4,000 kepada responden melalui bayaran ansuran. Kemudiannya responden menghantar satu bil yang tidak ditandatangani kepada pempetisyen menuntut untuk sebanyak RM85,600 bagi fi undang-undang dan pembayaran. Pempetisyen oleh itu memulakan prosiding ini, mempertikaikan bil-bil yang tidak ditandatangani atas alasan bahawa bil-bil tidak ditandatangani dan bil-bil adalah atas dasar kontingensi. Pempetisyen mendakwa bahawa bil-bil yang tidak ditandatangani tidak boleh dikuat kuasa kerana ia tidak mematuhi s 124 Akta Profesion Undang-Undang 1976 ('APU').

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**Diputuskan,** membenarkan petisyen:

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- (1) Perkataan 'shall' dalam s 124(1) APU adalah mandatori dan mesti dipatuhi dengan ketat. Dengan kegagalan menandatangani bil-bil kos, responden oleh itu gagal untuk mematuhi peruntukan mandatori undang-undang (lihat perenggan 7).
- (2) Walaupun responden menghantar semula bil-bil yang tidak ditandatangani kepada pempetisyen melalui e-mel pada 8 Mei 2013, selepas tarikh pemfailan petisyen ini dengan surat pengiring bertarikh 3 Mei 2013, bil-bil kekal tidak boleh dikuat kuasa kerana ia tidak dikepulkan dengan surat pengiring yang ditandatangani seperti yang dikehendaki di bawah s 124(1) APU (lihat perenggan 9).
- (3) Pempetisyen telah memulakan bayaran atas bil melalui bayaran ansuran dalam jumlah RM1,000. Pempetisyen telah membayar RM4,000 dari Disember 2012 hingga Mac 2013 daripada jumlah yang kena dibayar sebanyak RM144,428, dan resit diberikan kepada pempetisyen oleh responden. Oleh itu, pempetisyen telah bersetuju dan bertindak atas bil tersebut. Maka, pempetisyen sekarang ini diestop daripada meninggalkan tanggungjawabnya untuk membayar khidmat yang diberikan oleh responden (lihat perenggan 11).]

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**A Notes**

For cases on bill of costs, see 9 *Mallal's Digest* (4th Ed, 2014 Reissue) paras 1982–1995.

**Cases referred to**

- B** *Liew Jui Hua & Ors v Johor Property (M) Sdn Bhd* [1996] MLJU 454; [1998] 2 CLJ Supp 34, HC (refd)

**Legislation referred to**

- C** Legal Profession Act 1976 s 124, 124(1)  
Rules of Court 2012 O 7 r 7

*Justin Voon (Teoh Chen Yee with him) (Justin Voon Chooi & Wing) for the petitioner.*

- D** *GK Ganesan (KN Geetha with him) (GK Ganesan) for the respondent.*

**Hanipah Farikullah J:**

[1] The plaintiff vide encl (1) seeks for the following declaration:

- E** (a) that the purported bills dated 8 November 2012 and 1 April 2013 respectively issued by Messrs Azlinda & Agnes Chan to the petitioner ('the unsigned bills') are void and unenforceable; or
- F** (b) alternatively, the unsigned bills be taxed by the court; and
- (c) directions for taxation of the unsigned bills be given by the court and the petitioner be allowed to pay the respondent after taxed legal fees by a monthly instalment of RM1,000 per month.

**G BACKGROUND FACTS**

[2] The brief facts as submitted by the petitioner are as follows:

- H** (a) on or about October 2012, the petitioner appointed Messrs Azlinda & Agnes Chan ('the firm') to act on her behalf in Kuala Lumpur High Court Suit No 21NCVC-195–08 of 2012 ('the suit 195');
- (b) the respondent informed the petitioner the total legal fees is about RM70,000 (including full trial). Due to the petitioner inability to settle that much of fees, the respondent wanted that the legal fees be paid out of the 'surplus' obtained from HSBC Bank Malaysia Bhd upon winning the case (ie on a 'contingency basis');
- I** (c) the petitioner paid RM3,000 to the respondent as a deposit for the firm to act on her behalf;

- (d) on or about November 2012, the petitioner being not satisfied with the respondent's services informed the respondent that she wished to change the solicitor; **A**
- (e) the respondent upon being notified by the petitioner of her wish to change solicitor, informed the petitioner that she has to settle the legal fees totalling to RM30,000; **B**
- (f) the respondent sent an unsigned purported bill dated 8 November 2012 to the petitioner by an email for the sum of RM30,000;
- (g) the respondent allowed the petitioner to pay a monthly installment of RM1,000 per month to deal with the matter. Up to date the petitioner has paid a total sum of RM4,000 to the respondent ie RM1,000 per month from December 2012–March 2013; **C**
- (h) subsequently on or about 2 April 2013, the respondent sent another unsigned purported bill dated 1 April 2013 to the petitioner claiming for RM85,600 for the legal fees and disbursement; and **D**
- (i) upon seeing the other defendants in the Suit 195 successfully striking out the Suit 195, the only respondent advised the petitioner was to apply to strike out, and quoted the petitioner for another sum of RM30,000. The petitioner did not agree to it. **E**
- [3] In gist, the petitioner disputed the unsigned bills on two grounds:
- (a) these bills were unsigned; and **F**
- (b) these bills were on contingency bills.
- [4] Learned counsel for the petitioner submitted that the unsigned bills are not enforceable as it did not comply with s 124 of the Legal Profession Act 1976 ('the LPA'). **G**
- [5] Learned counsel for the respondent on the other hand contended that s 124 of the LPA will not apply in this present case as the petitioner is not a solicitor but a client. **H**
- [6] It is noted that by virtue of s 124 of the LPA, any bill of costs shall be signed either by the advocate and solicitor, or in the case of a partnership, by any of the partners, either with his own name or with the name or style of the partnership, or by another advocate and solicitor employed by the first-named advocate and solicitor or the partnership, or be enclosed in or accompanied by a letter, signed in the like manner, referring to the bill. **I**
- [7] In my view, the word 'shall' in s 124(1) of the LPA is mandatory and

A must be strictly complied with. By failing to sign the bill of costs, the respondent therefore failed to comply with the mandatory provisions of the law.

B [8] In *Liew Jui Hua & Ors v Johor Property (M) Sdn Bhd* [1996] MLJU 454; [1998] 2 CLJ Supp 34 Abdul Malik Ishak J (now JCA) at p 52 held that:

C A statutory requirement spelling out a particular procedure to be followed must be enforced strictly. A statute which creates a duty is called ‘imperative’ and ‘mandatory’. There is no option left to take but to follow the duty that is imposed by the statute.

D [9] Even though the respondent resent the unsigned bills to the petitioner by email on 8 May 2013, after the date of filing of this petition with a cover letter dated 3 May 2013, in my view, the bills remains unenforceable as it was not accompanied by a signed cover letter as required under s 124(1) of the LPA. The phrase used in s 124(1) of the LPA is ‘signed in the like manner’ namely any cover letter used must also be signed just like the bill.

E [10] Vide exh E of Aarolyn’s second affidavit, the respondent submitted and filed the bill of costs for the service that she had rendered to the petitioner. Since it is not disputed that the petitioner had appointed the respondent to act on her behalf in the suit 195, I ordered the bill of costs to be taxed. It appears to me that the bill of costs has been particularised in accordance with O 7 r 7 of the Rules of Court 2012.

F [11] The evidence shows that the petitioner has commenced payment on the said bill by way of instalment in the amount of RM1,000. In relation to this, the petitioner has paid RM4,000 from December 2012–March 2013 out of the RM144,428 payable, and receipts were furnished to the petitioner by the respondent. The letter dated 3 May 2013 enclosing the bills were delivered by registered post. Therefore, I accept the respondent’s submission that the petitioner has acquiesced and acted upon the said bill. Hence the petitioner is now estopped from abandoning her obligation to pay for the services rendered by the respondent.

#### CONCLUSION

I [12] In the light of the above reasons, prayer 10(ii) and (iii) of the petition is allowed.

*Petition allowed.*

Reported by Kanesh Sundrum

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