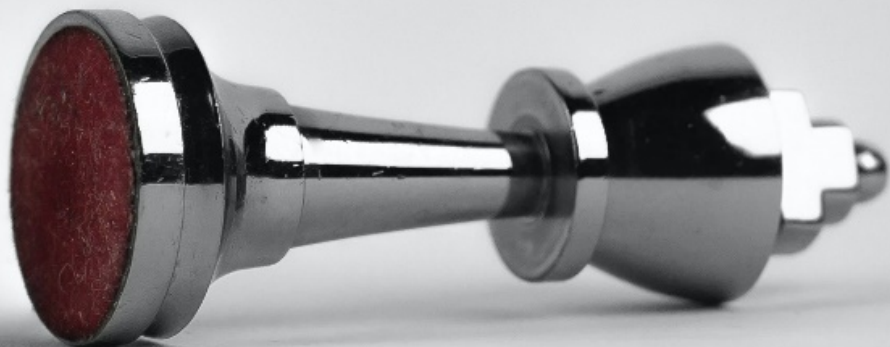




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Summary Judgement by Question of Law? The Application of Order 14A of the Rules of Court 2012





i. Introduction

Under Order 14A, the Court will evidently consider whether the questions of law posed are suitable for a determination of the whole case without having to undergo a full and lengthy trial.

Order 14A rule 1(a) Rules of Court 2012 states as follows:—"The Court may, upon the application of a party or of its own motion, determine any question of law or construction of any document arising in any cause or matter at any stage of the proceedings where it appears to the Court that—

(a) such question is suitable for determination without the full trial of the action; and
(b) such determination will finally determine the entire cause or matter or any claim or issue therein."

Hence, in this article, the discussion will focus on the key considerations of Order 14A together with the instances where the Court will grant Order 14A.

ii. Key Considerations for Court to Grant Order 14A

It is trite civil procedure that an issue is only suitable for determination under Order 14A in the following circumstances¹:-

- a. when points of law have been stated in clear and precise terms and the facts disclosed by the pleadings and affidavit evidence are sufficient for the Court to make such determination²; and
- b. when the facts involved in the determination of the said issues must not be in dispute and would not require further adjudication³.

iii. Key Case Highlight

The next discussion will be separated into two instant situations. Firstly, the situation in which the Court deemed it appropriate to grant Order 14A is when points of law have been clearly stated, the facts disclosed are sufficient and not disputed by parties. The High Court in *Eupe Bangsar South Development (Jv) Sdn Bhd V Lam Sai Yih*⁴ is an example where the Court has upheld the decision by the Sessions Court judge where the Court has granted Order 14A in answering the question of law that Section 35(1) of the COVID-19 Act cannot be read to exempt the appellant from paying the full LAD as

¹ *Jansi Rani @ Indrani v Lembaga Kumpulan Wang Simpanan Pekerja* [2020] MLJU 1335

² *Seloga Jaya Sdn Bhd v. UEM Genisys Sdn Bhd* [2008] 2 CLJ 686

³ *Petroleum Nasional Bhd v. Kerajaan Negeri Terengganu & Another Appeal* [2003] 4 CLJ 337

⁴ [2022] MLJU 2816



compensation to the respondent for the late delivery of vacant possession including the period from 18.03.2020 until the exact date of delivery of vacant possession.

Secondly, it is inappropriate to grant Order 14A when points of law have not been clearly stated, the facts disclosed are insufficient and disputed by parties, or the Court has decided that the material facts are disputed. This can be seen in *Yuda Water Sdn Bhd v State Government of Sabah*⁵ where the Court has concluded that application under Order 14A cannot be sustained as there were no other question of law pointed out in clear and precise terms inside the pleadings and affidavits. The Court in answering the issue of whether the Defendant has any defence to the Plaintiff's claims further elaborate that it would clearly need to peruse all available relevant evidence rather than just relying on the pleadings and affidavits. A reference in this case was also made to Zulkefli Makinudin JCA in *Dream Property Sdn Bhd v Atlas Housing Sdn Bhd*⁶ which states that "Order 14A of the ROC 2012 is not a vehicle for which the Court is required to interpret the statement of claim to decide what point of law arises before deciding on it as the application under this provision is to decide clear points of law or construction that are apparent on the pleadings".

To add to how pivotal it is to have undisputed facts disclosed inside the pleadings and affidavit before Order 14A can be granted, we can see the Court of Appeal decision in *Su'ot Tebari v Land Custody and Development Authority (LCDA) & Anor Appeal*⁷ which held that when the relevant facts were clearly in dispute, it was not appropriate to determine the questions of law by relying on affidavit evidence alone.

iv. Conclusion

Order 14A enables the Court to decide any question of law or construction of a document where it is visible to the Court that the question is satisfactory for a determination of the entire cause, claim, issues, and matters arising out of the case without having to go for a full trial. To simplify, if by virtue of Order 14 of the Rules of Court 2012, the Court needs only be satisfied that there is a triable issue before it can grant a Summary Judgement application, on the other hand, Order 14A requires the Court to determine questions of law or the construction of documents by looking at the points of law which should be stated in clear and precise manners in the pleadings and affidavit, and the parties shall not be in dispute over the said issues. Thus, the facts disclosed in the pleadings and affidavit evidence must be sufficient, as they will become the determining factors⁸ for the court to grant an application under Order 14A.

⁵ [2020] MLJU 1000

⁶ [2007] 6 CLJ 741

⁷ [2020] 10 CLJ 807

⁸ *Kerajaan Negeri Kelantan v Petroliam Nasional Bhd and other appeals* [2014] 6 MLJ 31

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