

**Mohd Syamsul bin Md Yusof & Ors vs Elias bin Idris**

[2019] 4 MLJ 788

Federal Court  
Court Third Instance**Keywords:** Infringement**Type of Intellectual Property Rights:** Copyright**Legal Basis:**

Copyright Act 1987 ss 3, 7(1)(a), (3), 36(1), (2)

**Facts:**

The appellants were granted leave to appeal to the Federal Court against the Court of Appeal's decision. The respondent sued the appellants in the High Court for infringing his copyright in the novel named 'Aku Bohsia' by allegedly making a movie based on the novel without his consent. The appellants denied that the movie was based on the novel and said any similarities between the two works was purely coincidental since they both concerned a commonplace social problem called 'bohsia' among youths. The appellants counterclaimed for damages against the respondent for defaming them in two articles on his blog. The granted questions of law are whether publication itself sufficient satisfaction to the legal requirement of causal connection in order to succeed in a claim on infringement of copyright; and whether there is a legal duty for the court to examine and evaluate both the distinct materials being the subject matter under the claim on infringement of copyright in carrying out the test in *Megnaway Enterprise Sdn Bhd v Soon Lian Hock* [2009].

**Substance:**

The Court agreed with the approach adopted by the learned judge in dealing with the matter and in making the following findings: the trial judge found that the novel could not claim to have an exclusive right to deal with that subject matter and therefore that could not be a basis for comparison of similarities between the novel and the movie; the trial judge held that whatever similarities that existed between the novel and the movie were not substantial enough to satisfy the test of copyright infringement and therefore the respondent had failed to

prove his case on balance of probabilities. The approach was in line with the established principles dealing with copyright infringement. The issue as to whether the elements of 'commonplace, unoriginal and consist of general ideas' can be established or not is an issue of fact and circumstance of each case. The Court held that there is a legal duty for the court to examine and evaluate both the distinct materials being the subject matter under the claim of infringement of copyright. The Court was of the view that the learned judge was correct in her conclusion that the similarities in this case 'cannot be said to be substantial similarities that goes to the root of the novel and the movie'. Without substantial objective similarity between the novel and the movie, the first requirement or element as outlined in *Megnaway Enterprise Sdn Bhd*, following the principle adopted by Sir Rymond Evershed MR in *Purefoy Engineering Co Ltd* has not been established by the plaintiff in the present case. In the premise, the Court found that there was no necessity to answer on the issue of causal connection. The issue of causal connection arises only after the issue of substantial similarity between the two works has been established.

**Results:**

Appeal allowed with costs. The Federal Court affirmed the decision of High Court and set aside the decision of Court of Appeal.

Decision Date: 27/3/2019