

THE BENEFITS OF PRELIMINARY CROSS-EXAMINATION WITNESS STATEMENT

Introduction

Order 35A of the Rules High Court 1980 which provides for evidence in chief by way of witness statement with parties' consent was introduced and incorporated in the Rules of the High Court 1980 in September 2000 but was left dormant as it was hardly used by the judiciaries and lawyers in Courts.

The legal profession in Sibu, however, had the privilege of being exposed to frequent use of witness statement in civil trials thus witnessing the extensive benefits derived thereof since the end of year 2007 when the Honourable Judicial Commissioner Dr. Haji Hamid Sultan Bin Abu Backer was appointed as the resident judge for the Sibu's High Court. Besides using the witness statements for evidence in chief, the said Honourable Judicial Commissioner has introduced Preliminary Cross-Examination Witness Statement to address on the peripheral evidences from the witnesses. This is well within the spirit and intent of the current Order 34 of the Rules of the High Court 1980 which provides the Courts to, *inter alia*, "make such order and give such directions as to the future conduct of the action to ensure its just, expeditious and economical disposal".

The Procedure

- (a) At Pre-Trial Case Management stages, the consent of the counsels would be sought in respect of the use of Preliminary Cross Examination Witness Statement. The Court always emphasizes that the parties are always at full liberty to conduct oral cross-examination and, if necessary, oral re-examination.
- (b) If the parties are agreeable to the use of Preliminary Cross Examination Witness Statement, the Judge would give direction as to the exchange of the Witness Statement and Preliminary Cross Examination Questions to each parties:-
 - (i) The Plaintiff would serve the **Witness Statement** to the Defendant;
 - (ii) Upon receipt of the Plaintiff's witness statement, the Defendant would prepare and serve **Preliminary Cross Examination Questions** to the Plaintiff;

- (iii) Upon receipt of the Defendant's preliminary cross examination questions, the Plaintiff would prepare the answers thereto viz. **Preliminary Cross Examination Witness Statement**;
- (iv) At the date of trial, the Plaintiff proceeds to call his witnesses just as in normal trials. The witness statement would be introduced through the witnesses and Plaintiff's counsel would request that the said witness statement to be marked as evidence. Before the Defendant starts the cross-examination, the question that needs to be first asked is "Have you answered my **Preliminary Cross Examination Questions**?" and the expected answer is "Yes";
- (v) The Defendant then requests the Preliminary Cross Examination Witness Statement be read and marked as evidence;
- (vi) The Defendant may thereafter proceed with further cross-examination by way of oral questionings;
- (vii) After the Defendant finishes the further cross-examination, the Plaintiff may then re-examine his witness whether by way of **Re-Examination Witness Statement** or oral questionings;
- (viii) The Defendant then follows the same procedure in respect of his witnesses.

It ought to be noted that for the subpoenaed witness, it is not mandatory for the use of the witness statement. Parties can always inform the Court that the cross-examination on some of the witnesses are to be conducted by way of oral examination in full or part after being served with witness statement pursuant to O.35A of the Rules of the High Court 1980.

If there is any objection as to any part of the witness statement or preliminary cross examination witness statement such as hearsay evidence and/or failure of the witness to answer any part of the cross-examination questions, it must be taken at the relevant stages on the day of the trial and cannot be way formal written application as all these statements come operative only during the trial. The witness needs only to answer preliminary cross examination questions which are relevant to the case.

Witness Statement - Expeditious and Economical Disposal of Litigations

By using Preliminary Cross Examination Witness Statement to address peripheral matters in the civil trials, at least 80% of the Court's trial's time could be saved for more meaningful purposes, the most obvious of which being for the Judges to write well-deliberated judgments which truly adhere to the notions of justice and for the Judges to attend to more cases thereby securing speedy disposal of the cases. Indeed, since 2008 the High Court in Sibuluan experienced extremely high rate of disposal of cases. The Honourable Judicial Commissioner Dr. Haji Hamid Sultan Bin Abu Backer has managed to deal and clear away all the pre-2006 backlog cases in Sibuluan during his one and half-years term as resident judge in Sibuluan.

On top of that, as the Preliminary Cross Examination Witness Statement forms the major part of the notes of evidence, the Court would save considerable time that would otherwise be needed to tally the notes of evidence between the bench and the bar. Parties are able to prepare their submission earlier as the parties would not need to wait for the Notes of Proceedings from the Court and this saves times and costs for the parties concerned.

The use of Preliminary Cross Examination Witness Statement does not contrary to the general perceptions that the quality of the evidence adduced may be compromised which may affect the result and/or outcome of the trial. Firstly, the parties are at liberty to decide whether to adopt to use Preliminary Cross Examination Witness Statement. Secondly, even if the parties consented to adopt such a method for the trial, the parties remain at full liberty to conduct oral cross-examination and oral re-examination (if necessary); the Preliminary Cross Examination Witness Statement will stand as interrogatories and answers thereto only.

In conclusion, the use of the Witness Statement and the Preliminary Cross Examination Witness Statement have not only saved the Court's time but also the lawyers' time in Court as the lawyers do not have to sit eight hours' a day in court especially when exposed to disorganised and "long-winded" lawyers who are putting irrelevant and/or wordy questions to the witnesses in handling the trial.

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