

**TRIBUNAL FOR CONSUMER CLAIMS
AT JOHOR BAHRU
IN THE STATE OF JOHOR MALAYSIA**

TTPM-J-(P)-154-2020

SULAIMAN BIN OSMAN - CLAIMANT

NANA BRIDAL HOUSE - RESPONDENT

JUDGEMENT

INTRODUCTION

1. This case was fixed for hearing in respect of a claim for refund of money paid by the Claimant for a wedding package.
2. The Claimant ordered a wedding package for his wedding solemnisation ceremony to be held on 20 March 2020 and for a wedding reception to be held on 22 March 2020. The wedding package included food catering and the preparation of the wedding gifts for the bride.
3. The Claimant informed the Respondent that he was unable to proceed with the event due to the declaration of the 2020 Mandatory Control Order ("MCO") by the Government of Malaysia. Pursuant to the MCO several

measures were imposed by the Government of Malaysia including an order to prohibit movement and mass assembly nationwide, including social and cultural activities. The MCO was announced on 16 March 2020 and took effect from 18 March 2020 and was subsequently extended to 14 April 2020 with further extensions thereafter.

4. The Claimant stated that he is a police officer and was assigned active duties during the MCO.
5. I delivered my decision and the initial grounds thereof on 22nd September 2020 allowing the Claimant's claim. I hereby deliver the full grounds of my decision of 22nd September 2020 in respect of this case.

FACTS OF THE CASE

6. The facts of the case are as follows—
 - (i) The Claimant ordered a wedding package for food catering and event preparation from the Respondent on 2nd December 2019 in respect of 2 events to be held on 20 March 2020 and on 22 March 2020;
 - (ii) The Claimant paid to the Respondent RM1,000 on 2nd December 2019, RM9,000 in cash on 15th January 2020 and RM RM5,000

on 8th March 2020 by bank transfer, bringing the total sum paid to the Respondent the amount of RM15,000;

- (iii) The Respondent issued a receipt numbered 002283 dated 2nd December 2019 to the Claimant indicating that the Claimant had paid the first deposit of RM1,000 to the Respondent;
- (iv) The Respondent issued a second receipt numbered 002314 dated 15th January 2020 to the Claimant acknowledging receipt of RM9,000 from the Claimant;
- (v) In both receipts there is a statement that no refund will be provided if cancellations are made at the last minute.
- (vi) The third payment of RM5,000 was made by bank transfer on 8 March 2020 and a copy was furnished to the Tribunal.
- (vii) The Claimant communicated with the Respondent on 18th March 2020 of his intention to withdraw from the event and his order due to the imposition of the MCO.
- (viii) The Respondent was made aware through social media that the Claimant had continued with the solemnisation event at home on 19th March 2020.

- (ix) The Claimant informed the Tribunal that he indeed had proceeded with the solemnisation ceremony with special permission from the authorities but it was carried out at home due to the prevailing MCO.
- (x) The Claimant communicated with the Respondent to discuss the request for the refund but the request was denied based on the term stated in the receipts.
- (xi) The Claimant lodged his complaint to the Tribunal on 26 May 2020 seeking a refund for the amount of RM15,000.

FINDINGS BY TRIBUNAL

- 7. During the hearing on 22nd September 2020, the Claimant and the Respondent were present in person. Both parties submitted their written Form 1 and Form 2.
- 8. The facts have been perused and Forms 1 and 2 by the Parties have been read and referred to.
- 9. Having considered the facts of the case, the Tribunal is mindful that the cancellation by the Claimant was entirely due to the imposition of the MCO.

10. The Tribunal has also noted that the Claimant did receive items in the order namely the gifts for the bride valued at RM675 and wedding invitation cards valued at RM247.
11. The Tribunal also noted that the Respondent offered to the Claimant an alternative for the Claimant to hold a wedding reception later after the MCO was lifted by utilising the sums already paid by the Claimant but this was declined by the Claimant. One of the reasons cited by the Claimant was that he is on active police duty and it would be difficult to obtain permission for such an event.
12. The Tribunal inquired from the Respondent whether she would have been able to provide the event on the dates requested by the Claimant and the Respondent informed the Tribunal that she would have had to seek special permission. The Tribunal is of the view that it was highly unlikely that such special permission would have been granted in time considering that the MCO had commenced on 18th March 2020 and the wedding event was on 20th March and 22nd March 2020.
13. The core issue in this case is whether it was lawful for the Respondent, in reliance upon the terms contained in the receipts to withhold the refund of the sums paid by the Claimant.

14. I have considered the relevant sections in the Contracts Act 1950, Act 136 ("Act 136") pertaining to the frustration of the contract. In light of section 57 of Act 136 it is stated as follows:

57. Agreement to do impossible act.

- (1) An agreement to do act afterwards becoming impossible or unlawful.

Contract to do act afterwards becoming impossible or unlawful.

- (2) A contract to do an act which, after the contract is made, becomes impossible, or by reason of some event which the promisor could not prevent, unlawful, becomes void when the act becomes impossible or unlawful.

Compensation for loss through non-performance of act known to be impossible or unlawful.

- (3) Where one person has promised to do something which he knew, or, with reasonable diligence, might have known and which the promisee did not know, to be impossible or unlawful, the promisor must make compensation to the promisee for any loss which the promisee sustains through the non-performance of the promise.

15. I have also considered section 66 of Act 136 which reads as follows:

66. Obligations of person who has received advantage under void agreement, or contract that becomes void.

When an agreement is discovered to be void, or where a contract becomes void, any person who has received any advantage under the agreement or contract is bound to restore it, or make compensation for it, to the person from whom he received it.

16. Based on the foregoing, I found that the contract between the Claimant and the Respondent was frustrated by the Government's declaration of MCO and it was not a willful act of cancellation by the Claimant.
17. In assessing the quantum to be repaid to the Claimant, some items and services had been received by the Claimant valued at RM1,922 being the deposit of RM1,000 and items valued at RM675 and RM247.
18. Consistent with the provisions of Act 136, I find that the Respondent has an obligation to refund an amount of money to the Claimant.

JUDGEMENT

19. In addressing the Claimant's claim for the refund of the money, the sum of RM13,078 was awarded comprising:

- RM10,000 to be paid in 2 equal instalments on or before 6th October 2020 and on or before 6th November 2020.

-The balance of RM3,078 was to be paid in kind as a donation to the event.

In the event that the first of the instalment is unpaid on the date scheduled, the total balance of RM10,000 outstanding shall be payable immediately.

AWARD

20. Since the Claimant and Respondent appeared before this Tribunal and had duly submitted their Form 1 and Form 2 prior to the hearing date fixed on 22nd September 2020 as instructed by the Tribunal, and having considered the case made out by both Parties, accordingly an Award in Form 10 in accordance with Regulation 23 of the Consumer Protection (The Tribunal For Consumer Claims) Regulations 1999 is issued.

Dated: 22 September 2020

t.t

RASHIDAH BINTI ABU BAKAR

PRESIDEN TRIBUNAL TUNTUTAN PENGGUNA

MALAYSIA