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JUDGEMENT



For Court Usage

Black Case No. 2769/2559

Red Case No Or 1351/2561

IN THE NAME OF THE KING

Don Muang District Court

11th July 2561 (2018)

Criminal Case

Between

Thammakaset Co. Ltd. (Plaintiff)

And

Mr. Ton Ton Win	1 st
Mr. Nun To	2 nd
Miss May Lin	3 rd
Mr. Miang Ong or Ong	4 th
Mr. Tuya	5 th
Mrs. San San	6 th
Mrs. Yin Yin or Yay Yay	7 th
Mr. Suyung	8 th
Mr. Mo	9 th
Mr. Nay Min Tone	10 th
Miss Ju	11 th
Mrs. Wa Wa	12 th
Mr. Nanwin	13 th
Miss Ka Ta Wa So	14 th

(Defendants)

Re: Offence against government official, defamation

[Stamp]
Certified true copy.
(Signed)
(Miss Sasitorn Meeyen)
Justice Court Officer

The plaintiff had launched a complaint and made an amendment to it by stating that on 7th July 2016, during the day, all 14 defendants made a false report to the National Human Rights Commission (NHRCT), a government official who has a power to conduct an investigation and report an action or omission of action which constitutes a human rights violation or is not in line with international human rights obligations that Thailand is a party to. The NHRCT also proposes appropriate measures to a person or government office committing such action or omission. The report made by the defendants has caused damage to the plaintiff. The report submitted to the NHRCT states that “all 14 defendants, of Myanmar nationality, are employees of the plaintiff who runs a chicken farm business in Koaktum subdistrict, Muangloburi District, Lopburi Province. They claim that their labour rights have been violated as the plaintiff ordered them to work from 7am to 5pm and that they also had to work overtime from 7pm to 5am. They claim that they did not have the weekend and public holidays off. They also claim that the plaintiff paid daily wage to the defendants only in the amount of 230 Baht. Furthermore, they claim that their freedom of movement had been limited by the fact that they were allowed to leave the farm only for two hours a week and they were all under the control of the agent of the plaintiff at all times. They claim that the plaintiff had also seized identification documents from the 14 defendants. The defendants would like to request the NHRCT to conduct an investigation in this matter. Such claims were all false as the defendants knew well that the plaintiff had not treated them according to the report. The truth is that under the rules of the plaintiff the working hours are from 8am to 5pm with one-hour break between 12 o’clock to 1pm. However, if the employees arrive before the working hours, the time is recorded immediately. It has become common in practice. The programme of raising chickens indicates that the lights in the coops must be turned off in the evening from 7pm for at least eight hours. If the employees would like to enter and take care of chickens under their responsibility, the plaintiff has no objection to that and will pay extra compensation if the chickens weigh more than the standard indicated by him. The system to raise chickens in the plaintiff’s farm is an automatic system. The lights must be turned off according to what is specified by trading partners in the European Union. It takes 35 to 45 days to raise chickens in each batch. After the plaintiff sells the chickens, the farm will enter into a break period for 30 to 35 days. In this period, all 14 defendants would have a break without working for a month and receive a normal wage. The plaintiff considers the period as weekly days-off, annual leave and traditional days-off. The plaintiff paid all the 14 defendants daily a minimum wage in the amount of 300 Baht per day according to the law which entered into force on 1 January 2013. Before the defendants started working, they had agreed with the plaintiff that each of them had to pay the plaintiff each month: namely, 1,600 Baht for accommodation, 400 Baht for electricity, 200 Baht for water supply and 80 Baht for drinking water. After the defendants had received their wage every month, they would pay those expenses to the plaintiff. However, all the defendants could not understand Thai well and the plaintiff put all the expense and wage information in a document so that they would understand. It is therefore not a fact that the plaintiff had deducted the defendants’ wage which led to the fact that they received a wage which was lower than the minimum legal rate. Furthermore, the plaintiff did not limit their right, restrain or detain the defendants. They all could enter or leave the farm freely. The fences around the farm are low wooden fences - therefore, if the plaintiff had restrained the defendants, they all could have escaped easily. The plaintiff did not seize the passports of the 14 defendants and they could travel back home. The fact that they submitted a false complaint to the NHRCT has defamed the plaintiff in writing to the Commission. It has led others to understand that the plaintiff was an employer who abused labourers, violated labour rights, forcing labourers, limited workers in respect of their freedom of movement. As a consequence, the plaintiff suffered damaged. Namely, his reputation was lost and he was insulted or hated. Furthermore, his trading partners held back orders from the plaintiff. The plaintiff had to close down the

farm. This action is a defamation of the plaintiff. This incident took place in Tungsonghong subdistrict, Laksi district, Bangkok. The plaintiff would like to request the Court to punish the defendants under the Criminal Code, Section 90, 137 and 326.

The Court has conducted preliminary examinations and found that the case is well-grounded and therefore accepted the complaint.

All 14 defendants have pled not guilty.

The plaintiff has attested that he is a legal entity – a company limited, see letter of certification, document jor. 4. He has authorized Mr. Charnchai Permphol to file a complaint on his behalf, see letter of authorization, document jor. 5. The plaintiff owned a business of chicken broiler farm and exported chickens. It is situated in Lopburi Province. All 14 defendants were employees of the plaintiff. On 7 July 2016 at 11am, all 14 defendants submitted a letter of complaint to the NHRCT, which is an official under the law. The letter of complaint has included statements claiming that “the plaintiff made the 14 defendants work from 7am to 5pm and they had to work overtime from 7pm to 5am. They did not have weekend off nor public holidays. The plaintiff paid daily wage to the defendants only in the amount of 230 Baht. Furthermore, their freedom of movement had been limited by the fact that they were allowed to leave the farm only for two hours a week and they were all under the control of the agent of the plaintiff at all times. The plaintiff had also seized identification documents from the 14 defendants.”, see letter of complaint, document jor. 1. The NHRCT assigned the Sub-Commission on Economic, Social and Cultural Rights to conduct an investigation. The assigned Sub-Commission asked the complainants and relevant government officers to clarify facts and show evidence, see a copy of minutes of meeting of Sub-Commission on Economic, Social and Cultural Rights. document jor. 2. Once the NHRCT considered a complaint letter, facts from complainants, the complained party, relevant government offices and opinions of Sub-Commission on Economic, Social and Cultural Rights, the NHRCT considered that there was no human rights violation or any incidents with the nature of forced labour according to the Prevention and Suppression of Human Trafficking Act. B.E. 2551. As stated in the report on human rights violation inspection, document jor. 3, the statements claimed by the 14 defendants in such letter of complaint were false. The truth is that the plaintiff’s rules specify that working hours are from 8am to 5pm. The break is between 12 to 1pm and no work at night time is required. This is due to the regulations of the Livestock Department which state that chicken farms need to turn the lights off so that the chickens can rest for six to eight hours. As stated in the document recording light off schedule in the building, document jor. 7, which is part of the programme for raising chickens. The programme requires the lights in the coop to be turned off from 7pm for at least 8 hours. During that time, the employees cannot enter to work and the plaintiff has no necessity to have the employees work during such period. Nonetheless, the plaintiff had set a condition that if the employees could raise chickens so they weigh more than the standard indicated by the plaintiff, they would receive extra money and prize money. As a consequence of this condition, the employees work outside working hours to take care of chickens. As the matter of fact the plaintiff needs to comply with regulations of the Livestock Department requiring the entrance and exit of the building to be recorded. The plaintiff allowed the employees who could understand Thai to log in and out by signing, see document jor.15. However, for Myanmar employees, they used a card to record instead. The plaintiff paid all the 14 defendants daily a minimum wage in the amount of 300 Baht per day. It had been agreed by the employees that they had to pay the plaintiff each month - namely, 1,600 Baht for accommodation, 400 Baht for electricity, 200 Baht for water supply and 80 Baht for drinking water. The plaintiff had advanced and paid those expenses estimating the number

of all employees. Due to the fact that the 14 defendants could not understand Thai, the plaintiff organized a document clarifying the details concerning their income, wage, and expenses and explained to all 14 defendants until they understood, see a daily wage receipt, document jor. 13. The plaintiff did not limit their freedom of movement and did not seize identification documents of the 14 defendants. As a result, all 14 of the workers could leave the farm to run errands, buy food and drinks and go to the market. Moreover, they could travel back to their home country. If the 14 defendants' rights had been violated and they had been suffering, they could have escaped as the fences around the farm were only low wooden ones. Some of the defendants even invited their relatives, husbands and wives to work in the plaintiff's farm. The 14 defendants provided a statement to a labour inspector, Office of Labour Protection and Welfare of Lopburi Province, that all 14 of them could leave the chicken farm to have a meal in their room during lunch time or they could have a meal outside the farm and the employer allowed them to go back to their country. See a copy of statement provided by 14 defendants, document jor. 18. The Migrant Worker Rights Network (MWRN) invited media and journalists to cover the complaint of the 14 defendants. The MWRN also disseminated information about the complaint on social media. The plaintiff filed a complaint against the MWRN to the Southern Bangkok Criminal Court as they had disseminated information on the complaint of the 14 defendants, see a copy of indictment, document jor. 22. The action of the 14 defendants has caused the public to believe that the plaintiff had abused labourers and violated labourers rights. As a consequence, damage has been caused to the plaintiff. He has lost his reputation, is insulted and hated. His trading partners both inside and outside Thailand have stopped purchasing chickens from him.

The 14 defendants have attested that they are of Myanmar nationality. They worked in the chicken farm with responsibility to look after chickens. They started working from 7am to 5pm and 7pm to 5am of the next day, except defendant no. 7 who work as a maid and did not have to work at night time. All 14 defendants had to use a card to punch in once they got to work and punch out when they finished work, see a copy of time record, document lor. 11. When chickens are one to eight days old, the defendants had the duty to look after chickens, feed them, provide them with medicine, throw away dead ones, prevent animals from coming and eating chickens or people from stealing them and to clean the farm. At night, the lights were turned on all night. They had to check the overall order of the farm. When the chickens are nine to 20 days old, the work schedule during the day remains the same. The lights in the coop are turned off from 7pm to 3am. However, the employees must be careful that animals might enter and eat the chickens and they have to check the overall order of the farm. When the chickens are 21 to 30 days old, the work during the day remains the same, at night, the lights in the coop must be turned off from 10pm to 3am. When the chickens are 30 days old until the day they are sold, at night the lights are on all night. The workers need to keep an eye on the food conveyor belt, to ensure that it is not stuck. At night, sleeping hours for workers are not certain. Once the plaintiff sells all the chickens, the employees would be allowed to rest for three days. For 25 to 28 days, there will be no chickens in the coop. However, all 14 defendants still had to work during the day in respect of tasks such as cleaning the coops, fans, water pipes and areas around the farm. All of them stay in accommodation in the farm without having to pay rent, water supply and electricity. They received 230 Baht as a daily wage. The plaintiff deducted 80 Baht monthly for the cost of drinking water, see salary payment slip, document lor, 8. The plaintiff did not arrange for weekly days off, annual leave and public holidays. All 14 defendants could not leave the farm since they did not have a passport. The plaintiff's staff took them to the market once a week from 5pm to 7pm. After the defendants had learned that by law the employees need to pay a minimum wage at 300 Baht per day they requested the plaintiff to pay according to the law. However, he refused. As a result, the 14 defendants made a complaint to MWRN who then informed the Ministry of Labour so that the

labour inspector would go and check. The plaintiff returned passports and identification documents to all 14 defendants on the day that the labour inspectors came to the farm, see photo lor. 16. The labour inspectors made an inquiry with regards to minimum wage payment and working overtime. The inspectors ordered the plaintiff to pay wage, compensation for working on days off, and overtime wage to the 14 defendants, see a copy of labour inspector's order, document lor. 4. Later on, the 14 defendants submitted a complaint to the NHRCT, see letter of complaint, document jor. 1.

The plaintiff brought a case against the Office of Labour Protection and Welfare of Lopburi Province and the labour inspectors as a defendant to the Labour Court of Region I. The plaintiff asked the Labour Court to revoke the order of the labour inspectors. The 14 defendants interpleaded as co-defendant. The Labour Court of Region I dismissed the case, see a copy of judgement, document lor. 5. The 14 defendants brought a case against the labour inspectors and the plaintiff and others as a defendant to the Labour Court of Region I. They requested the Court to revoke the order of the labour inspectors and to order the plaintiff to pay money and damages to the 14 defendants. The Labour Court of Region I decided that the plaintiff in this case pay the money to the 14 defendants, see a copy of judgement, document lor. 6. The Court of Appeal for Special Cases upheld the decision, see a copy of judgement, document lor. 19.

After having considered evidence and witnesses for the plaintiff and the 14 defendants the court finds the following facts attested by both parties which are consistent and not in conflict. The plaintiff owns a chicken broiler farm business and exports the chickens. The farm is located in Koktum subdistrict, Muanglopburi District, Lopburi Province. The 14 defendants are of Myanmar nationality. Before the incident, all 14 defendants were employees of the plaintiff with a duty to look after chickens, except defendant no. 7 who worked as a maid on the date, time and place that the incident took place according to this complaint. All 14 defendants and Mr. Ko Sein Htay, Chairperson of MWRN, submitted a letter of complaint to the NHRCT. The letter included statements "All 14 migrant workers are workers in the chicken farm of Thammakaset Co. Ltd. Their names and signatures are below. They would like to make a complaint that Thammakaset Co., Ltd. has gravely violated labour rights. All 14 workers had to work from 7am to 5pm and had to work overtime from 7pm to 5 am without weekly days-off. The employer did not arrange for annual leave. All 14 defendants received a daily wage 230 Baht and their freedom to movement was limited as they could leave the farm only two hours a week. They were under control of an agent of the employer at all times. Moreover, the employer seized identification documents of all 14 workers and did not allow them to carry their identification documents," see letter of complaint, document jor. 1. The NHRCT considered this case claimed by the complainants was related to labour rights. As a result, it is a case under an authority of the NHRCT. The Commission assigned the Sub-Commission on Economic, Social and Cultural Rights to investigate the case. The Sub-Commission asked the complainants and relevant government officers to clarify facts and show evidence, see copy of minutes of meeting of Sub-Commission on Economic, Social and Cultural Rights, document jor. 2 and jor. 27. Once the NHRCT considered the complaint letter, fact from complainants, the complained party, relevant government offices and opinions of Sub-Commission on Economic, Social and Cultural Rights and provided opinions, see report on human right violation investigation, document jor. 3.

It is important to consider whether the 14 defendants committed an offence as per the indictment or not. The plaintiff had Mr. Charnchai Permhol, an authorized person of the plaintiff, testify. Mr. Charnchai testified that the facts included in the complaint made by the 14 defendants to the NHRCT, according to the letter of complaint, document jor. 1, were not true. The truth was that the plaintiff set a rule that the employees' working hour were from 8am to 5pm and the break was for one hour. When the employees arrived before 8am and recorded

the time right after their arrival was a common practice of the employees. The plaintiff did not have them work at night since the chicken-raising programme complied with trading partners requirements, and the announcement of Ministry of Agriculture and Cooperatives on standard on agricultural products, which provide that the lights in the chicken coops must be turned off at night for six to eight hours. The 14 defendants could not enter the coops to work and the plaintiff had no necessity to have them work during such period. Nonetheless, it was because the plaintiff agreed with the 14 defendants that he would pay the defendants extra money if the chickens weighed above the standard set by the plaintiff. Therefore, the defendants may have entered to look after the chickens off working hours. In order to enter and leave the farm, it is necessary to record names of persons entering the area. However, all 14 defendants are migrants who do not understand Thai and need to enter and leave the coops several times a day; they then used a punch in/out card instead. The plaintiff paid 300 Baht as a daily wage and agreed with the 14 defendants that they had to pay monthly 1,600 Baht for a rent, 400 Baht for electricity, 200 Baht for water supply and 80 Baht for drinking water. The plaintiff didn't limit or restrain freedom of movement of the 14 defendants. They had freedom to travel outside the farm at any time and the plaintiff had never seized their passports. Defendant no. 2, no.4, no. 6, and no. 14 travelled back to their home country before.

For the offence of reporting false information to officials, it is necessary to analyse these following issues: working hours, overtime, and the fact that there was no weekly days-off and annual leaves. When the plaintiff claimed that the plaintiff set a rule that working hours were from 8am, the plaintiff had only Mr. Charnchi, authorized person, who only testified without claiming working rules between the plaintiff and 14 defendants as supporting evidence. When a lawyer of defendant no. 1 cross-examined Mr. Charnchai, he answered that for working condition, in general, all employees had to use a card to punch in when starting work and punch out when finishing work. A copy of time record, document lor. 11, shows a record of working hours of the 14 defendants. After having calculated wage from times punched in and out in the card, it is consistent with what the 14 defendants testified that they needed to record their working hours by using a card. In order to calculate their wage, a copy of time recording card, document lor. 11, is needed. In the copy, it shows that all 14 defendants punched in at 7am and punched out at 12pm. They punched in again at 1pm and punched out at 5pm. Furthermore, the Court has got some facts from the statement Mr. Charnchai gave to Miss. Kingkeaw Seesaohae, a labour inspector, Office of Labour Protection and Welfare of Lopburi Province, see a copy of statement date 13 June 2016, document lor.15. It was stated that working procedure of employees involved that before 8am they had to take a shower and wear clothes provided by the plaintiff. The plaintiff let them into the farm around 7.30am to 7.45am every day that they needed to raise chickens. During a cross-examination by lawyer of defendant no.1, Mr. Charnchai admitted that he gave a statement to a labour inspector, see document lor. 15. It could be concluded that the copy of statement Mr. Charnchai gave to Miss Kingkeaw, a labour inspector, took place before the 14 defendants submitted a letter of complaint to the NHRCT. Miss Kingkeaw is an official of the Office of Labour Protection and Welfare of Lopburi Province which is a government office. Miss Kingkeaw performed her duty as usual and did not share any interest with any party. Hence, there is a reason to believe that the statement given by Mr. Charnchai to Miss Kingkeaw is true. The claim made by the plaintiff that the 14 defendants, by themselves, punched in when they got to the coop before 8am, is in conflict with the statement of Mr. Charnchai and is not admissible. It could be admitted that the 14 defendants had to punch in before 8am and had a break for an hour. Since the plaintiff had the defendants to raise chickens they had to enter the coop at 7.30am and before entering that they needed to take a shower and wear clothes provided by the plaintiff. That is the reason why they needed to punch in since 7am. As the plaintiff claimed that there was no need to work at night as the plaintiff had to turn off the lights in the coop for six to eight hours, see document

showing light programme for chicken broiler farm, document jor. 7. As a result, it was claimed the defendants could not enter and work. However, the same document indicates different periods that the lights had to be turned off according to various age of chickens. For example, for chickens of one to seven days old, the lights are turned off for one hour which is from 7pm to 8pm. When the chickens are eight days old until four days before they are sold, light programme type 1 is used. There are 18 bright hours and six dark hours. The lights are turned off from 7pm to 1am. For light programme type 2, there are 16 bright hours and eight dark hours. The lights are turned off from 7pm to 3am. Three days before the chickens are sold, there are 23 bright hours and one dark hour which is from 7pm to 8pm which is inconsistent with what the plaintiff claimed. The plaintiff claimed that when lights are turned off, all 14 defendants could not enter and work. However, if the defendants with a duty to raise chicken would like to work in the coop, the plaintiff did not object to it as they wanted extra money. The Court considered that these facts are in conflict and it could be considered that the plaintiff admitted that the employees worked at night. This fact is consistent with time recorded in a copy of time-recording card, document lor. 11. It was recorded that there was a punch in in an overtime box on some days before 7pm and punched out at 5am, except defendant no. 7 who did not punch in in an overtime box. It should be noted that a copy of time-recording card in May 2016, sheet no. 22,39,85, 129, 151, 174, 197, 242, 264 and 286 two-sided, it is written in that writing in pen as the punch in/out machine is broken. There is handwriting in an overtime box on 15th, 17th and 18th "start work". If the defendants with duty to raise chickens enter the coop to look after chickens at night with mere expectation to receive extra money if the chickens weigh more than the standard, there is no need for the plaintiff's staff to have them punch in at night and to write in the card "start work". The plaintiff claimed that he needed to comply with regulations of Department of Livestock specifying it is necessary to record the entry and exit of the coops. Employees who could understand Thai would have to sign and put the date and time in the record of person entering, leaving the farm and receiving food, see document jor. 15. while Myanmar employees were required to use the time card instead. After having considered the copies of the farm visitor log book and the feeding records, there appeared only the names of visitors to the farm. No record of the names and the time log of the Thai employees were found, as claimed by Plaintiff. In addition, the fact was established that Mr. Samak Kingsakklang, a senior department manager in charge of the production project at B. Foods Products International Co., Ltd. and the chicken production of the Plaintiff, was responsible for the broiler contract farming project and for the supervision of the work of the employees working in the contract farming department at B. Foods Products International Co., Ltd. His role was to educate the employees and supervise the chicken production of the Plaintiff. According to the copy of the note of testimony, document marked Lor 15, dated 26 July 2016, he testified to Miss Kingdao, a labour inspector, that it takes approximately 70 days to raise a batch of chickens. A period when raising activities take place is approximately 40 days and is divided according to the age range of the chickens. The nursery period takes 1-7 days, which may require working at night, especially on the day the chicks arrive at the farm, due to the fact that every new batch of the chicks arrive after 6 p.m. It takes approximately 1 hour per coop to introduce the new chicks. After the chicks are introduced to the coops, they need to be taken care of. The employees are therefore required to work at night. During every dark period, the employees do not work. The coops are rested for approximately 30 days. The tasks during this period are taking the chicken waste out of the coops, washing the barn, disinfecting the factory, bringing in the chaff for the next batch of chickens, bringing the equipment into the coops, spraying disinfectant and closing the coops, and then waiting for the next batch of chicks to be introduced. While the coops are being rested, the employees are only required to work during the day. Even though the copy of the note of testimony made by Mr. Samak only acted as a hearsay evidence due to the fact that the Plaintiff and the fourteen

Defendants did not bring this witness to testify on their behalf, Mr. Samak works for the company which supervises the chicken production of the Plaintiff and manages the chicken raising project of the company which he works for. He should therefore have expertise in this subject. Alongside the fact that Mr. Samak Kingsakklang is a disinterested third party witness, there are reasonable grounds to believe therefore that he testified the truth. When taking into consideration the condition, nature, source of derivation and minor fact of this hearsay witness, it is believable that the fact is provable. In Accordance with the second paragraph (1) of Section 226/3 of the Criminal Procedure Code, the testimony given by Mr. Samak is therefore admissible. This, in combination with the fact testified by Mr. Charnchai to the labour inspector as stated in the copy of the note of testimony, document marked Lor 15, dated 13 June 2016, that the Plaintiff made his employees work for 38 consecutive days without weekly holidays, annual vacation, and traditional holidays, that the employees are tasked with monitoring and cleaning the coops while they were being rested, and that the Plaintiff offers overtime income as remuneration for raising the chickens to weigh more than the specified standard weight, which acts as an incentive for the employees to work at night without the Plaintiff specifying the working hours, the employees usually enter the coop around 8 p.m. and the Plaintiff sets up an accommodation room for the employees working at night to monitor the water and feeding systems. This information shows that the fourteen Defendants are required to work at night because they have to monitor the water and the feeding systems, especially whilst the chickens are aged 1 – 7 days and need to be taken care of. Thus, the claim that the Plaintiff made about the employees voluntarily working at night due to their desire for extra remuneration from making the chicken weigh more than the specified standard weight is inadmissible. Regarding the claim in the Plaintiff's complaint that the fourteen Defendants receive 1 month of holidays while the coops are being rested, which is counted by Plaintiff as weekly holidays, annual vacation, and traditional holidays, the Court finds that the claim made by Plaintiff is inconsistent with the testimony given by Mr. Charnchai to the labour inspector. The fact was established that the Plaintiff requires the fourteen defendants to work without weekly holidays, annual vacation and traditional holidays. The Defendants, who are tasked to raise the chickens, are required to work at night during light periods and they clock in to work overtime at 7 pm and clock out at 5am. While the coops are being rested, the fourteen Defendants are required to work only during the day. The facts that there is 1 hour lunch break, that the overtime work from 7 pm to 5 am is only done when there are chickens in the coops, and that the employees work only during the day while the coops are being rested is not specified in the petition. The document marked Jor 1 is noted, including the fact that the 1st, the 2nd, the 6th, the 7th, and the 14th Defendant notified the NHRCT Subcommittee on Economic, Social and Cultural Rights, as stated in the copy of meeting minutes, document marked Jor 2, that they receive 5-6 hours of sleep from 10 pm to 3 am. Such fact was neither specified in the document marked Jor 1. The Court finds that even though this is a substantial fact as it is an evidence showing that the fourteen defendants do not continuously work but receive a lunch break, that the defendants who are tasked with raising the chickens do not work all night long but receive about 5 hours of sleep, and that they work at night only when there are chickens in the coops, however the petition, document marked Jor 1, did state the enclosure 1.) note of testimony given to Lopburi Provincial Office of Labour Protection and Welfare dated 28 June 2016. This was not adduced by the fourteen Defendants, but there appears, in the document marked Lor 15, the copy of the note of testimony dated 28 June 2016, in which stated the fourteen defendants' testimony that is believable to be the same note of testimony attached with the petition, document marked Jor 1. The fourteen Defendants testified to the labour inspector that they received a lunch break from 12 pm to 1 pm, that they work at night when there are chickens in the coops, and that they rest from around 10 pm until 3 am. Thus, the statement made by the fourteen Defendants in the petition, document marked Jor 1, that they

have to work from 7 am to 5 pm and from 7 pm to 5 am, acts as a notification to the NHRCT to be aware of the problems arisen at work between Plaintiff and the fourteen Defendants while the NHRCT can investigate the absent details from the copy of note of testimony given by the fourteen Defendants to the labour inspector as aforesaid. When taken in consideration together the fact in the petition and the note of testimony, it can be seen that the fourteen Defendants have no intent to conceal such fact from the NHRCT. The absence of this fact from the petition does not make the statement stated in the petition a false claim. Thus, the statement made by the fourteen defendants in the petition, document marked Jor 1, that they are required to work from 7 a.m – 5 p.m. and work overtime from 7 pm – 5 am without weekly holidays and annual vacation, is not a false evidence due to insufficient evidence adduced by the plaintiff. Regarding the underpayment of the regulatory minimum wage of 300 Baht per day, the Court finds that Plaintiff only has Mr. Charnchai on its behalf testify that Plaintiff pays the fourteen Defendants the wage of 300 Baht per day through an agreement made with the fourteen Defendants that each of the Defendants must pay their monthly expenses. This includes 1,600 Baht for accommodation, 400 Baht for electricity charge, 200 Baht for water charge, and 80 Baht for drinking water as stated in the receipt of daily wage payment, document marked Jor 13. When taking in consideration the receipt of daily wage payment dated 6 June 2016 for the payment of the month of May 2016, regarding which Miss Kingdao, the 14 defendants' witness, testified that such date was the day that the Witness and the labour inspector investigated the Plaintiff's farm, and later on 13 June 2016, the Witness and others investigated the Plaintiff's farm again. This shows that the creation of the receipt of daily wage payment was only done by the Plaintiff during the days when the labour inspector investigating the farm while the receipts of daily wage payment of the previous months since the fourteen Defendants entered into employment with the Plaintiff were not shown by the Plaintiff to support the fact that the fourteen Defendants consented to the deduction of their wage for the expenses since the start of their employment. Thus, the fact as to only the aforementioned receipt of daily wage payment exists could not be deemed that the fourteen Defendants gave consent to the deduction of their wage for the expenses. The fourteen Defendants also counter-testified that before entering into employment, they were informed by the Plaintiff's agent that they were provided with accommodation without any charges, except for the drinking water which cost 80 Baht. In accordance with page 1 of the pay slip, document marked Lor 8, regarding which Mr. Charnchai testified to the Defendants' attorney when being cross-examined that the pay slip, document marked Lor 8, is believable to be created by the Plaintiff's employee to facilitate the payment, there is probable cause to believe that the document marked Lor 8 is the pay slips created by the Plaintiff for the fourteen Defendants. The deduction of other expenses as claimed by the Plaintiff is not found in the document, and the order of the labour inspector states that the labour inspector has considered some pay slips shown by the fourteen Defendants and has found that the daily wage shown is in the amount of only 229 to 274 Baht and that there is deduction of 80 Baht per person for drinking water while the deduction for other expenses as testified by Plaintiff is not found. After examining the payroll summary shown by the employer, the labour inspector found that the wage is separated into 2 items, which are wage and wage after rent. When calculating the wage with the number of working days and deducting the rent and utilities cost as testified by the employer, it appears that the net balance does not match the amount of wage after rent with the difference of 200 Baht per month. The net balance in the payroll summary shown by the employer is consistent with the pay slip created by the employer and given to the employees. Thus, it is believable that the employer pays the wage to the employees according to the amount appeared on the slip given to the employees which is less than the minimum wage rate. The belief is emphasized by the case in which the Plaintiff brought charges against Lopburi Provincial Office of Labour Protection and Welfare and Miss Kingdao, the labour inspector, as two defendants to the Labour Court Region 1, requesting for

the withdrawal of the order made by the labour inspector, with the fourteen Defendants interpleading as joint defendants in the decided case No. 381/2559. According to the copy of judgement, document marked Lor 5, the Labour Court Region 1 decided after considering that the fact was established that Plaintiff paid the fourteen Interpleaders, who are the fourteen Defendants, lower than the minimum wage. The pay was 229 to 274 Baht, which is lower than the 300 Baht minimum wage. In addition, in the case that the fourteen Defendants brought charges against Miss Kingdao and Plaintiff and others as defendants to the Labour Court Region 1, according to the decided case No. 33-46/2560, the Labour Court Region 1 after considering the evidences of the litigants, found that the fact was established that there was enough evidence to show that the amount of wage used by Miss Kingdao as a base amount in the calculation to support the order made to Plaintiff in the case to pay additional wage to the fourteen Defendants was right. Thus, there is no probable cause to withdraw the order made by Miss Kingdao to the Plaintiff to pay an additional wage according to the minimum wage rate to the fourteen Defendants in this case according to the copy of judgment, document marked Jor 6. The judgement was affirmed by the Court of Appeal for Specialized Cases according to the copy of judgment, document marked Lor 19. Regarding the opinion given by the NHRCT that there was enough evidence to show that Plaintiff deducted rent, electricity charge, water charge, drinking water cost, and other unidentified expenses from the 300 Baht daily wage of the fourteen Defendants, causing the net amount of their daily wage to reduce to 230 Baht, which is lower than the minimum wage rate set by the National Wage Committee, according to the report on the investigation of human rights violation, document marked Jor 3, after having considered the report on the investigation of human rights violation, the Court found that the details on the source of derivation of reasons and supporting evidences were not found. Thus, the statement made by the fourteen Defendants in the document marked Jor 1 that they receive 230 Baht for their daily wage, which was a misunderstanding, according to the evidences testified by the Plaintiff, is not admitted by the Court as a false claim. Regarding the issues concerning the fourteen Defendants' mobility rights being limited, the fourteen Defendants being permitted to leave the farm for only 2 hours per week, the fourteen Defendants being kept under the surveillance of the Plaintiff's agent at all times, and the fourteen Defendants' passports being confiscated by Plaintiff, the Court finds that Mr. Charnchai clarified the issues to the NHCRT Subcommittee on Economic, Social and Cultural Rights in its 22nd Meeting on 25th July 2016 according to the meeting minutes, document marked Jor 27. He stated that because the farm was kilometers away from the market, there is a policy of having the farm manager take the employees to the market to let them leisurely spend time there for about 2 hours each time. They spend about 2 hours each time. A pickup truck with a driver is provided for transporting the employees in different rounds and for picking them up and taking them back to the farm. Such practice has become the tradition of the farm. This is to be combined with the fact that the fourteen Defendants testified that the Plaintiff's employee take them to the market once a week during 5 pm to 7 pm. Regarding the claim made by the Plaintiff that the Plaintiff did not confiscate the passports belonging to the fourteen Defendants during their employment with the Plaintiff, the Plaintiff only had Mr. Charnchai, the Plaintiff's attorney-in-fact, testify without other supporting evidences, and the Plaintiff's employee handling the work related to this matter was not brought to give their testimony. Regarding the claim made by Mr. Charnchai that the fact that the 2nd, the 4th, the 6th, and the 14th Defendant traveled back to their home country during their employment with the Plaintiff showed that the Plaintiff did not confiscate the fourteen Defendants' passports, the aforementioned Defendants testified and testified when being cross-examined by the Plaintiff's attorney that they did travel back to their home country during the employment with the Plaintiff, but they had to ask for their passports from Plaintiff ahead of their leave and their leave must not happen during the time when the chicken raising activities were taking place.

In addition, the fourteen Defendants affirmed that after the investigation done by the labour inspector to the Plaintiff's farm on 8 June 2016, the farm administrative officer of the Plaintiff called for the fourteen Defendants to take back their passports or identity cards and asked them to sign their name to acknowledge the receipt of the passports or identity cards according to the picture marked Lor 16. According to the aforementioned picture, page 1, the 13th Defendant is signing his name to acknowledge the receipt of his passport while on the 2nd page, the farm administrative officer of Plaintiff is holding passports waiting to hand them to other Defendants. Miss Kingdao, the labour inspector and the fourteen Defendants' witness also testified that while investigating the farm, she was informed by her team that the fourteen Defendants were asked to show their passports or their work permits, which made the fact that such documents are with Khun Warunee, the Plaintiff's agent, known. This is consistent with the pictures and testimony given by the fourteen Defendants. Regarding the testimony given by Mr. Charnchai to the 1st Defendant's attorney when being cross-examined that according to the picture marked Lor 16, the 13th Defendant was being given back his passport because during that time, the Plaintiff was facilitating him in renewing the work permits renewal and once the renewal was completed, the passport was given back to the 13th Defendant, the Plaintiff did not bring the person appeared in the picture or show any documents to prove that during that time, the Plaintiff was facilitating the 13th Defendant in renewing the work permit. Thus, the fact was not established that the Plaintiff did not confiscate the passports or identity cards of the fourteen Defendants and the confiscation of the passports or identity cards of the fourteen Defendants inevitably caused the fourteen Defendants to become undocumented aliens when being asked to identify themselves to a police officer while travelling outside the farm and to understand that their freedom of movement was restricted. When the claim stated in the petition is consistent with the fact presented, it is not established that such claim is false. The NHRCT is of opinion in summary that in conclusion the fact was established that some of the Defendants traveled in and out of Thailand and the Republic of the Union of Myanmar during the time of their employment contract seeing from the testimony given by the Defendants, there were multiple immigration stamps on the Defendants' passports, and the Defendants' names appeared in the records of shops around the farm when they buy goods with their credit shown by the Plaintiff. In addition, the NHRCT concluded the farm is only surrounded by low fences such that If the Defendants tried to escape, they would be able to do so. Thus the NHRCT concluded there are probable cause to believe that the confiscation of the Defendants' passport was not done to confine or force Defendants to work for Plaintiff through restriction of movement or make them forced labour to the Plaintiff or to restrict the freedom of movement of the fourteen Defendants. Thus, the NHRCT was of the opinion that regarding the issues, there were no presence of human rights violations or any practices in the nature of forced labour according to the the Anti-Trafficking in Persons Act B.E. 2551. Regarding the copy of the report on the investigation of human rights violation, document marked Jor 3, it can be seen that the decision of the NHRCT was made through contemplating points of law that the confiscation of the passports done by Plaintiff was without the purpose of confining or forcing the fourteen Defendants to work for Plaintiff. However, the NHRCT was not of opinion that the fact claimed by the fourteen Defendants was false. With the above reasons the Court decided the Fourteen Defendants are not found guilty of perjury as accused.

Regarding the offence of defamation, the Court found that the above facts obtained from the Court's decision were established that that the fourteen Defendants are Myanmar nationality and have been employed by the Plaintiff's farm since 2012 to raise the chickens, except for the 7th Defendant who has been working as a maid. The fourteen Defendants are required to clock in before 8 o'clock. Defendants raising the chickens are required to enter the coops since 7.30 am and before that time they have to take a shower and change their clothes prepared by Plaintiff. A round of chicken raising takes approximately 70 days, the period when

the raising activities take place is approximately 40 days. At night, the fourteen Defendants are required to work in the coops, except for the dark period during each age range of the chickens. While the coops are being rested for approximately 30 days, the fourteen Defendants are required to work only during the day. After that the coops are closed waiting for the new batch of chicken to be introduced. The fourteen Defendants are required to continuously work without weekly holidays and annual vacation and receive lower pay than that specified in the law. In addition, while working for the Plaintiff, the Plaintiff confiscated the passports or identity cards belonging to the fourteen Defendants. According to fact that Defendants are employees under the Plaintiff, they are entitled to be treated by the Plaintiff in conforming to the labour laws, regarding their working hours, their rights to receive wage, overtime pay, weekly holidays and annual vacation as prescribed by the law, including the right to hold their passports or identity cards for identifying themselves as aliens who have lawfully entered, stayed, and worked in the Kingdom of Thailand when being investigated outside the farm. Since the statement made by the fourteen Defendants in the petition to the NHRCT according to the petition, document marked Jor 1, is not a false claim and the fourteen Defendants find that the evidence and circumstances produced by the Plaintiff are the cause of commission or omission of acts which are violations of rights or freedom and equality of a person guaranteed or protected under the Constitution of the Kingdom of Thailand or under the Thai laws, the fourteen Defendants have the right to file a petition with the NHRCT, an authorized body entitled to investigate and report the commission or omission of acts which violate human rights or which do not comply with obligations under the international human rights treaties to which Thailand is a party, to request for an investigation on the Plaintiff. Regarding the fact that the fourteen defendants receive 1 hour lunch break, that the defendants who are tasked with raising the chickens do not work all night long but receive about 5 hours of sleep, and that they only work at night during the time when there are chickens in the coops, but the petition, document marked Jor 1, did not clearly specify the fact, such fact is present in the note of testimony given by the fourteen defendants to Lopburi Provincial Office of Labour Protection and Welfare dated 28 June 2016, which was sent to the NHRCT together with the petition, document marked Jor 1, showing that the fourteen defendants has no intent to conceal the fact. This, in combination with the judgment made by the Labour Court Region 1 and the Court of Appeal for Specialized Cases that the plaintiff is liable for the payment of additional wage and overtime pay to the fourteen defendants, proves that the lodging of petition by the fourteen defendants is done in good faith, without any intents to defame the plaintiff. Nevertheless, even though it appears that the NHRCT is of opinion after examining the evidences that in accordance with The Anti-Trafficking in Persons Act B.E. 2551, neither human rights violation nor forced labour was found, the NHRCT is also of opinion that the plaintiff's deduction of the expenses from the employees' pay has caused the fourteen defendants to receive only 230 Baht for their daily wage, and that the plaintiff counting the 30-40 days of the coop resting period as holidays is violation of labour rights, and as such is violation of human rights of the fourteen defendants. Thus, the lodging of petition done by the fourteen defendants is believable to be an expression of statement in good faith and by way of self-justification or defense, or for the protection of a legitimate interest. Thus, the fourteen defendants shall be protected under Section 329 (1) of the Criminal Code and shall not be guilty of defamation.

The Court dismissed the case./
Mr. Rangsan Piboonkitsakul

Emblem of Don
Mueang District
Court