

LEGAL ARTICLE

Can an Irregularity in a Notice of Application Ground the Setting Aside of a Default Judgment?

An Analysis of the Effect of Omitting the Rules of Court 2012 Citation

Usman & Partners

April 2026

I. INTRODUCTION

A recurring question in Malaysian civil litigation is whether a procedural irregularity in a Notice of Application (“NOA”) — specifically, the omission of a citation to the relevant provision of the Rules of Court 2012 (“ROC 2012”) — can serve as a ground for setting aside a judgment entered in default. This article examines the statutory framework and judicial authorities bearing on this question, and concludes that a mere omission of this nature is, in the vast majority of cases, insufficient to sustain an application to set aside.

The inquiry is distinct from the question of whether such an irregularity can ground a striking-out application against the NOA itself. The latter is relatively well settled: Order 2 Rule 1 of the ROC 2012 treats non-compliance as an irregularity that does not nullify proceedings.¹ The present article addresses the more consequential question — whether the same irregularity, once judgment has been entered, can be deployed to unravel that judgment.

II. THE STATUTORY FRAMEWORK

A. Order 2: Non-Compliance as Irregularity

Order 2 Rule 1 of the ROC 2012 provides that where there has been non-compliance with the Rules, “the non-compliance shall be treated as an irregularity and shall not nullify the proceedings, any step taken in the proceedings, or any document, judgment or order therein.”² This provision establishes a strong default position: procedural non-compliance does not, without more, vitiate proceedings or their outcomes.

Order 2 Rule 2 then prescribes the conditions under which a party may seek to set aside proceedings or any judgment on grounds of non-compliance.³ Two cumulative conditions must be satisfied. First, the application must be made within a reasonable

¹Rules of Court 2012 [P.U.(A) 205/2012], Order 2 Rule 1.

³Rules of Court 2012 [P.U.(A) 205/2012], Order 2 Rule 2.

time and before the applicant has taken any fresh step after becoming aware of the irregularity. Second, the applicant must demonstrate that the non-compliance has “occasioned a substantial miscarriage of justice or occasioned prejudice that cannot be cured either by amendment or an appropriate order for costs.” This is a deliberately high threshold.

Order 2 Rule 3 reinforces this position by providing that a court “shall not allow any preliminary objection” on the ground of non-compliance unless the same standard of substantial miscarriage of justice or incurable prejudice is met.⁴

B. Order 1A: The Overriding Objective

Order 1A of the ROC 2012 directs that “in administering these Rules, the Court or a Judge shall have regard to the overriding interest of justice and not only to the technical non-compliance with these Rules.”⁵ This provision crystallises the modern approach to procedural law in Malaysia: substance prevails over form, and technical defects should not defeat substantive rights where no genuine prejudice has been occasioned.

C. Setting Aside Default Judgments: Orders 13 and 42

Order 13 Rule 8 of the ROC 2012 confers upon the court a general discretion to “set aside or vary any judgment entered in pursuance to this Order” on such terms as it thinks just.⁶ Order 42 Rule 13 provides that a party intending to set aside a judgment must apply within thirty days of receipt.⁷ The exercise of the court’s discretion under these provisions is, however, governed by well-established principles that distinguish between irregular and regular default judgments.

III. THE IRREGULAR/REGULAR DISTINCTION

The critical analytical framework is the distinction between an *irregular* default judgment and a *regular* default judgment. This distinction determines both the standard of review and the burden borne by the applicant seeking to set aside.

A. Irregular Default Judgments

An irregular default judgment is one entered “otherwise than in strict compliance with the rules or some statute or is entered as a result of some impropriety which is considered to be so serious as to render the proceedings a nullity.” This formulation was

⁴Rules of Court 2012 [P.U.(A) 205/2012], Order 2 Rule 3.

⁵Rules of Court 2012 [P.U.(A) 205/2012], Order 1A.

⁶Rules of Court 2012, Order 13 Rule 8: “The Court may, on such terms as it thinks just, set aside or vary any judgment entered in pursuance to this Order.”

⁷Rules of Court 2012, Order 42 Rule 13.

established by the Federal Court in *Tuan Haji Ahmed Abdul Rahman v Arab-Malaysian Finance Bhd.*⁸ Where a default judgment is irregular in this sense, the defendant is entitled to have it set aside *ex debito justitiae* — as of right — without needing to demonstrate any defence on the merits.

The types of irregularities that have been held to render a default judgment irregular are, characteristically, fundamental procedural breaches: defective service of the originating process on the defendant; premature entry of judgment before the time for entering appearance has expired; failure to serve the Statement of Claim; or service at a wrong address. These are defects that go to the root of the defendant's right to notice and opportunity to be heard.

B. Regular Default Judgments

A regular default judgment is one that has been entered in compliance with the Rules. To set aside a regular default judgment, the defendant bears a heavier burden: he must demonstrate a *prima facie* defence on the merits. The court will also consider factors such as the reason for the default, the length of delay, and whether the plaintiff would suffer irreparable prejudice if the judgment were set aside.

This distinction was affirmed in *Ching Yik Development Sdn Bhd & Anor v Wordware Distributors (M) Sdn Bhd & Anor*,⁹ and has been consistently applied by Malaysian courts since.

IV. APPLICATION TO THE OMISSION OF A ROC CITATION

The question is therefore whether the omission of a ROC 2012 citation in the NOA renders the resulting default judgment *irregular* (and thus liable to be set aside as of right) or whether it is merely a technical defect that does not disturb the *regular* character of the judgment.

A. The Irregularity Does Not Render the Judgment Irregular

It is submitted that the omission of a ROC 2012 citation in the NOA does not, and should not, render the resulting default judgment irregular. The reasons are as follows.

First, the omission does not go to the root of the defendant's right to notice. Unlike defective service or failure to serve the Statement of Claim, the absence of a rule citation does not deprive the defendant of knowledge of what is being sought or the factual and legal basis of the claim. The substance of the application remains apparent from the NOA itself.

⁸Tuan Haji Ahmed Abdul Rahman v Arab-Malaysian Finance Bhd [1996] 1 MLJ 30 (FC).

⁹Ching Yik Development Sdn Bhd & Anor v Wordware Distributors (M) Sdn Bhd & Anor [2012] 10 MLJ 611.

Second, the Federal Court’s definition of irregularity in *Tuan Haji Ahmed Abdul Rahman*¹⁰ requires the impropriety to be “so serious as to render the proceedings a nullity.” A missing citation is manifestly not of this character. It is a formal deficiency, not a substantive one.

Third, the principles in *Badiaddin bin Mohd Mahidin & Anor v Arab Malaysian Finance Bhd*¹¹ draw a clear distinction between fundamental breaches affecting jurisdiction or statutory requirements and mere irregularities. The omission of a citation falls squarely within the latter category. There is no jurisdictional defect; the court’s power to hear the application is unaffected by the presence or absence of a rule number on the face of the NOA.

Fourth, *Lee Kok Kee v Ooi Chee Wee*¹² confirmed that an irregularity must be “of sufficient seriousness to amount to a fundamental breach” before it can render proceedings a nullity. A missing citation plainly does not meet this standard.

B. The Order 2 Rule 2 Threshold Is Not Met

Even if the applicant were to rely on Order 2 Rule 2 as the basis for setting aside, he would face the formidable requirement of demonstrating that the omission “occasioned a substantial miscarriage of justice or occasioned prejudice that cannot be cured either by amendment or an appropriate order for costs.”¹³

It is difficult to conceive how the absence of a rule citation could satisfy this test. The court would ask: did the omission actually mislead the defendant? Did it prevent the defendant from understanding the nature and basis of the application? Did it contribute to the defendant’s failure to appear or respond? In the overwhelming majority of cases, the answer to each of these questions will be no. The substance of the application would have been apparent from the NOA, the supporting affidavit, and any accompanying documents.

Moreover, the defect is eminently curable by amendment. Order 1A reinforces that such technical non-compliance should not defeat the overriding interest of justice.¹⁴ A court would be entitled — and, it is submitted, would be inclined — to permit amendment of the NOA rather than set aside a judgment that was otherwise properly obtained.

V. THE LIMITED EXCEPTION

A qualification is warranted. If the applicant relied on a provision that was not merely omitted but *fundamentally wrong in nature* — for instance, citing an ex parte provision for what was properly an inter partes application, or invoking a provision that conferred

¹¹*Badiaddin bin Mohd Mahidin & Anor v Arab Malaysian Finance Bhd* [1998] 1 MLJ 393 (FC).

¹²*Lee Kok Kee v Ooi Chee Wee* [2020] MLJU 285.

no jurisdiction on the court to grant the relief sought — the position may be different. In such a case, the defect arguably goes beyond form and touches upon the court’s jurisdiction or power to act. A judgment obtained on the basis of a fundamentally misconceived procedural footing may, in exceptional circumstances, be vulnerable to challenge.

However, even in such cases, the court would likely examine whether the substance of the application was otherwise in order and whether any genuine prejudice was occasioned, rather than setting aside mechanically on the basis of the citation error alone.

VI. CONCLUSION

The omission of a ROC 2012 citation in a Notice of Application is a procedural irregularity, not a fundamental defect. Under the framework established by Order 2 Rules 1 to 3 and Order 1A of the ROC 2012, and as interpreted by the Federal Court in *Tuan Haji Ahmed Abdul Rahman and Badiaddin*, such an irregularity does not render a default judgment *irregular* for purposes of the setting-aside jurisdiction. The defendant cannot rely on the omission alone to obtain a set-aside *ex debito justitiae*. He must instead satisfy the court that he has a *prima facie* defence on the merits, as for any regular default judgment.

Where the defendant seeks to invoke Order 2 Rule 2, the high threshold of substantial miscarriage of justice or incurable prejudice will, in the vast majority of cases, prove insurmountable for a defect of this nature. The modern approach to procedural law in Malaysia, underpinned by the overriding objective in Order 1A, firmly favours substance over form and the determination of disputes on their merits.

TABLE OF AUTHORITIES

Legislation

Rules of Court 2012 [P.U.(A) 205/2012], Orders 1A, 2, 13, 32, and 42

Cases

Badiaddin bin Mohd Mahidin & Anor v Arab Malaysian Finance Bhd [1998] 1 MLJ 393 (FC)

Ching Yik Development Sdn Bhd & Anor v Wordware Distributors (M) Sdn Bhd & Anor
[2012] 10 MLJ 611

Lee Kok Kee v Ooi Chee Wee [2020] MLJU 285

Tuan Haji Ahmed Abdul Rahman v Arab-Malaysian Finance Bhd [1996] 1 MLJ 30
(FC)

This article is intended for general informational purposes only and does not constitute legal advice. For advice on specific matters, please consult a qualified legal practitioner.

© 2026 Usman & Partners. All rights reserved.