

**Court throws out Anwar's appeal to recuse judge**  
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The Court of Appeal in Putrajaya, today unanimously dismissed opposition leader Anwar Ibrahim's appeal to recuse the High Court trial judge in the sodomy trial.

The three-member panel led by Justice Low Hop Bing allowed a preliminary objection that the matter is not appealable as it does not constitute a decision within the definition under section 3 of the Courts of Judicature Act (CJA).

The issue revolves around the jurisdiction to hear the appeal and the accused's right to appeal.

Low said, "Upon a true construction of the word decision under section 3 of the CJA, we are of the view the High Court ruling was made during the course of the trial."

Low said this is outside the ambit of section 51(c) of the Courts of Judicature Act.

"The court rules that the accused has no right to appeal at the interlocutory stage," Low said.

"We sustain the preliminary objection by the prosecution and dismiss the appeal."

The other members in the panel were Justices Abdul Malik Ishak and Ahmad Maarop.

Immediately after the decision, Anwar remarked to reporters, "You all look surprised."

On Dec 6, High Court judge Justice Mohd Zabidin Mohd Diah refused to recuse himself following a complaint brought by Karpal Singh that he did not abide by a Supreme Court decision in not allowing the defence access to medical notes of the sodomy examination on the victim.

While this was going on Justice Zabidin (left) had also allegedly intimidated Karpal with contempt.

**This led to the application.**

Anwar is charged with sodomising his former aide Mohd Saiful Bukhari Azlan at the Desa Damansara condominium sometime on June 26, 2008.

The PKR de facto leader was represented by Karpal, Sankara Nair, Param Cumaraswamy and Ram Karpal.

The prosecution is led by deputy public prosecutors Mohd Hanafiah Zakaria, Nordin Hassan, CK Wong and Noorin Badaruddin.

Solicitor-general II Mohd Yusof Zainal Abiden was not present as he is still recuperating from his leg fracture. Yusof is still on medical leave.

Karpal, when approached by reporters after the decision, said they may not appeal today's decision and would continue on with the trial.

### **Case to revert to Kuala Lumpur High Court**

With today's decision, Anwar's case will revert to the Kuala Lumpur High Court on Monday for case management to fix trial dates.

The trial will resume with the cross-examination of the third Kuala Lumpur Hospital doctor, Dr Khairul Nizam Hassan.

Earlier, DPP Mohd Hanafiah raised the preliminary objection that the matter is not appealable as it was made during the course of the trial and it did not dispose of the rights of the accused.

Citing the case of Saad Abas, Mohd Hanafiah said there was a decision by the Federal Court that a decision which does not dispose of the rights of the accused cannot be appealed.

However, Karpal submitted that just because Justice Zabidin decided not to recuse himself, it does not mean it is not appealable.

"If this appellate court decides otherwise, then the trial will be placed before a new judge," he said, adding that following this, the appeal application should proceed with merits being heard.

This was Anwar's second application to recuse the judge as earlier he wanted Justice Zabidin removed for not issuing a warning to Utusan Malaysia.