

Malaysiakini wants judge in Najib's suit replaced
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Online news portal Malaysiakini has filed an application for judicial commissioner Kamaluddin Md Said to be taken off the hearing of the suit brought against it by Prime Minister Najib Razak and Umno in the Kuala Lumpur High Court.

The application, which was filed on Tuesday, has been fixed for case management on July 8 before a deputy registrar of the High Court.

In the application, Mkini Dotcom, which runs online news portal Malaysiakini, along with its editor-in-chief Steven Gan and chief editor Fathi Aris Omar, have sought for the case to be heard before a High Court judge instead of a judicial commissioner, and for the current proceeding to be halted until this application is heard.

The grounds for the application follow concerns over a real danger of bias as the legal action is initiated by Umno through its executive secretary Abdul Rauf Yusof, and Najib, who is president of Umno and chairperson of the ruling BN coalition.

The defendants said there are concerns that judicial commissioners do not enjoy security of their tenure since their position as High Court judges are not confirmed.

“The appointment of the learned judicial commissioner as a judge in the period before the next general election would ... depend on the 2nd plaintiff (Najib) endorsing such appointment,” the notice of the application states.

It said that while judicial commissioners are appointed by the Agong, this is based on the advice of the prime minister after consultation with the chief justice.

The need for fair trial

Gan, in his supporting affidavit for the application, said the independence of the judiciary is vital and entrenched in the constitution.

“Judicial independence is a prerequisite to the rule of law and a fundamental guarantee of a fair trial,” he said.

He added that it is a constitutional right and legitimate expectation for everybody to be given a fair trial.

“JCs (judicial commissioners) do not enjoy security of tenure. Further, there is no certainty that they will be appointed judges of the High Court. When appointed as such, JCs are

appointed for such a period (until they are confirmed).

“This state of affairs may cause a fair-minded and informed bystander to entertain a fear of real danger of bias on the part of the JC. The other defendants and I are uncomfortable with the situation,” Gan said in his affidavit.

Najib and Abdul Rauf filed the suit earlier this month, over comments made by Malaysiakini readers in two Yoursay articles over last month's short-lived Terengganu political imbroglio.

Editor's note: Based on advice from our lawyers, Malaysiakini has disabled the comment section for this report. We apologise for the inconvenience caused.

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