

**Sept 3 hearing for judge recusal in Najib vs Mkini
MalaysiaKini.com
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The Kuala Lumpur High Court has fixed Sept 3 for the hearing of Mkini Dotcom Sdn Bhd's application to recuse Judicial Commissioner Kamaluddin Md Said from hearing the suit filed by Prime Minister Najib Abdul Razak and Umno executive secretary Abdul Rauf Yusof against the news portal.

Judicial Commissioner Kamaluddin will hear the application at 2.30pm on that day.

The case came up today for case management where all parties met senior assistant registrar Norfauzani Mohd Nordin.

Mkini Dotcom's lawyer Ashok Kandiah also said senior assistant registrar fixed July 24 for case management before her.

Najib, along with Umno, filed the suit last month following readers comments which appeared in two articles in Malaysiakini over the short-lived Terengganu imbroglio.

The two articles are titled 'A case of the PM reaping what he sows' and 'How much will Najib spend to keep Terengganu?'.

Najib and Rauf named Mkini Dotcom along with editor-in-chief Steven Gan and chief editor Fathi Aris Omar as defendants

Mkini Dotcom, which operates the Malaysiakini news portal, filed the application on June 24 to remove Kamaluddin from hearing the suit following concerns over the danger of bias as the legal action is initiated by Umno and involved the ruling party and coalition.

The defendants are concerned that judicial commissioners do not enjoy security of their tenure since their position as High Court judges are not confirmed and the confirmation may depend on the second plaintiff (Najib).

Fundamental guarantee of free trial

Judicial commissioners, they said, are appointed by the Agong, and this is based on the advice of the prime minister after consultation with the chief justice.

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 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.

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