

New judge sought in PM vs M'kini suit

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By Hafiz Yatim

Malaysiakini has yesterday applied for a judicial review to seek a new judge to hear Prime Minister Najib Abdul Razak's defamation suit against the news portal.

The application by Malaysiakini editor-in-chief Steven Gan said since Justice Kamaludin Mohd Said had been transferred to the Seremban High Court, another judge from the Kuala Lumpur High Court should hear the case.

Thus far, the case proper has not commenced - the judge has yet to hear Najib's application to strike out Malaysiakini's defence and a counterclaim, which has been fixed for June 26.

In his supporting affidavit, Gan said that on June 18 last year, Kamaludin (photo) was appointed to hear the case at a time when he was a judicial commissioner.

Following this, Malaysiakini filed an application to recuse Kamaludin on the grounds of possible conflict of interest as Najib is responsible in advising the Agong on the appointment of judges under Article 122B(1) of the Federal Constitution.

However, the application was withdrawn on Nov 14 after Justice Kamaludin was confirmed as a full High Court judge. But he was subsequently transferred to Seremban on Jan 1.

Despite this, Chief Judge of Malaya Zulkefli Ahmad Makinuddin insisted that the former continued to hear the case.

Chief Judge of Malaya was wrong

Justice Kamaludin had thus far only presided on the withdrawal of the recusal application, while other matters relating to the case were handled by the deputy registrar.

Gan's affidavit said that in view of this, there was no basis for Justice Kamaludin to continue hearing the matter and another judge in Kuala Lumpur High Court could have easily taken over the case.

"For this reason, I verily believe that there is basis for judicial review in respect of the decisions made by the CJM and his special officer," said Gan (photo).

"I am further advised by my lawyers and believe that the CJM was acting in an administrative capacity at the time he made the said directions.

"[...] Having regard to the facts above, the CJM had acted ultra vires of Section 20, of the Courts of Judicature Act (CJA) regarding the distribution of business among High Court judges, and or with no legal basis in making the decision.

"Consequently, the CJM did not have power to make the decisions," said Gan.

Unusual practice

Gan added that even if the CJM have the power to make the decisions, the third highest judicial officer in the country failed to take into consideration that a Seremban High Court judge had now been assigned to hear the matter.

"The decisions are inconsistent with usual practice and to that end this civil suit is being treated differently from other civil suits filed in the Civil Division of the KL High Court.

"In the circumstances of the case, the decisions would give rise to an impression that, for reasons that were not apparent, it was essential that only this judge hear this suit.

"This was an impression that was inconsistent with the due administration of justice. It would be unfair on Malaysiakini and in violation of their guarantees under Article 5(1) and 8(1) of the Federal Constitution and such move is deemed unreasonable," said Gan.

Article 5(1) states no person shall be deprived of his life or personal liberty save in accordance with law, while Article 8(1) stipulates that all persons are equal before the law and entitled to the equal protection of the law.

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