

**Hulu S'gor petition: Round 1 to Kamalanathan  
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MIC's P Kamalanathan has won the first round in his bid to strike out Zaid Ibrahim's petition against the Hulu Selangor by-election result.

In dismissing Zaid's preliminary objection against Kamalanathan's application to strike out the petition, election judge Justice Azahar Mohamed ruled against the claim that Election Court had no jurisdiction to hear the matter.

"So tomorrow, I will hear the preliminary objection (to strike out Zaid's suit) and the merits of the election petition," said the judge.

He cited three case laws, including the recent Ahmad Jamaluddin Abdul Majid vs Rafidah Aziz, in ruling that the election judge must have the power to strike out an application.

Kamalanathan's counsel Firoz Hussein said the "main battle" will begin tomorrow when his team will attempt to convince the judge to throw out Zaid's election petition.

NONEBoth Zaid (right) and Kamalanathan, who had wrested the seat back from PKR, were in court earlier today.

Kamalanathan was present when the decision was read out.

Tomorrow justice Azahar will hear the Election Commission's preliminary objection on the grounds that Zaid failed to provide sufficient proof over his allegations of corrupt practice.

Zaid, a PKR supreme council member, had filed the election petition on May 24 to declare the result of the April 25 Hulu Selangor by-election null and void. He lost by a 1,725-vote margin.

He named Kamalanathan, returning officer Nor Hisham Ahmad Dahlan and the Election Commission as respondents.

Zaid alleged that corruption had taken place in the form of bribery, including promises made by Prime Minister Najib Abdul Razak to provide allocations to the voters if BN wins.

NONEHe alleged that Kamalanathan (left) knew of the promises. The focal point of the case is Najib's promise of RM3 million to SRJK (C) Rasa School and the presentation of cheques to the Felda settlers.

Kamalanathan applied to strike out the petition on the grounds that it was trivial and an abuse of the court process. He said Zaid had failed to identify those said to have been offered bribes.

Zaid now faces an uphill battle as 98 percent of election petitions filed in the past have been struck out.

'Judge does not have power'

During submissions this morning, Zaid's counsel Azahar Azizan Harun attempted to raise a novel preliminary objection to Kamalanathan's application.

azlanHe told the court that an election judge does not have the power to strike out or dispose of the petition by allowing Kamalanathan's preliminary objection.

(Striking out is also a form of preliminary objection).

The lawyer submitted that as an election judge, Justice Azahar does not possess the novel power or statute as a normal High Court judge.

"An election judge's power is derived from the Election Offences Act 1954 (EOA) and not based on the Courts of Judicature Act 1964 (COJA) which governs most of court application and cases. Our federal constitution is very specific on who may exercise the High Court's jurisdiction of power," submitted Azahar.

"It is clear therefore that the jurisdiction to adjudicate election matters is a special one. It is a separate and distinct jurisdiction from those conferred under the COJA."

The lawyer said an election petition must be heard in a full trial, so that it does not discriminate against a particular party.

To stress his point, Azahar posed a hypothetical situation and asked what the court would do if it allows the striking out application but on appeal, the Federal Court orders a re-trial.

"Who will then hear the re-trial as the power of an election judge is derived from the petition filed. Furthermore, there is a question that under the EOA a petition must be disposed of within six months. What if the time frame has lapsed?" he asked.

Another defence counsel Malik Imtiaz Sarwar strengthened Zaid's arguments in saying that the election judge is like a tribunal, and hence it does not have the inherent jurisdiction to allow a striking out application.

He said such is the special nature of an election petition that the matter will proceed directly to the Federal Court on appeal, unlike other cases which go before the Court of Appeal and Federal Court.

BN lawyers cite precedent

Firoz submitted that since 1967, the court which heard election petition cases has allowed striking out applications to be heard before the trial.

He cited a 2007 Federal Court case, and pointed out that this court would violate the principles of stare decisis (to stand by things decided) if it acts otherwise in allowing Zaid's preliminary objection.

Firoz also submitted that the striking out application can be made in this case via a notice of motion.

NONEAzizan Mohd Arshad, from the attorney-general's chambers and appearing for the Election Commission, submitted that COJA can be adopted within the powers of EOA.

In addition to Firoz, Kamalanathan is represented by Mohd Hafarizam Harun (right), while senior federal counsel Suzana Atan and Mohd Azhar Mohd Yusof are appearing for Nor Hisham and the Election Commission.

Zaid is also represented by Ang Hean Leng and Leong Sher How.

He said the petition should be heard in the interests of justice and that the case must not be disposed of on a technicality.

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