

Kota Siputeh seat appeal to be heard on Sept 20
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After nine months in limbo, the highly anticipated Kota Siputeh state seat appeal case has been fixed for hearing in the Court of Appeal on Sept 20.

The appeal was filed by assemblyperson Abu Hassan Sarif and the Election Commission (EC) against the ruling by the Kuala Lumpur High Court, which had last year declared the seat vacant.

NONEUmno lawyer Mohd Hafarizam Harun, representing Abu Hassan (right), relayed the date to Malaysiakini today.

Edmund Bon and Razlan Hadri Zulkifli will represent Kedah state assembly speaker Abdul Isa Ismail, who is from PAS.

The issue arose when High Court (Special Powers and Appellate division) judge Alizatul Khair Osman Khairuddin on Nov 16 last year ruled the seat vacant after finding that Abu Hassan's absence from two state assembly sittings in a year, without the consent of the speaker, had forfeited him of the seat.

Justice Alizatul in her decision said the EC had acted irrationally in declaring Abu Hassan as still the rightful assemblyperson, and that the declaration should be quashed.

"While I agree that the EC has the power to determine the casual vacancy, I do not think the EC can override the power of the speaker under Article 51 of the Kedah constitution," she said.

"In my view, Article 51 sets out the conditions which render the seat to be vacant and the first respondent (Abu Hassan) had satisfied the conditions."

azlanThe EC's refusal to declare the seat vacant resulted in Abdul Isa filing a judicial review application.

Following the High Court ruling, the EC, which is duty-bound to call a by-election, obtained a reprieve at the last minute - a day before it was due to issue a writ for the by-election - through a stay order on the High Court decision issued by the Court of Appeal on Nov 24.

Justice Sulong Matjeraie, who headed the three-member Court of Appeal panel, said they took into consideration public interest and public policy in arriving at their decision, as the matter could have far-reaching effects on the constitution of the other states.

The panel stated in its decision that calling for a by-election when someone is still holding office would be a waste of public funds.

The Kedah speaker has maintained that the seat is vacant, despite the stay order, leaving the seat in limbo.

'Transfers not punitive actions'

After her landmark decision, Alizatul Khair was transferred to the KL High Court's commercial division.

Her situation mirrors the transfer orders issued to two other High Court judges from her division after they too handed down landmark decisions.

Justice Mohamad Ariff Mohd Yusof, who heard the Malaysian Anti- Corruption Commission (MACC) case and ruled that the commission could not interrogate witnesses after office hours, was transferred to the commercial division.

Justice Lau Bee Lan, who had earlier made another ground-breaking ruling over the 'Allah' issue, was subsequently sent to the civil division of the High Court.

In her decision on Dec 31 last year, Justice Lau allowed a motion by the Catholic Church to set aside the home minister's order banning the use of the term 'Allah' by the Catholic weekly Herald. She ruled the order as "illegal, null and void" since the term is not exclusive to Islam.

Justice Mohamad Ariff's ruling on the MACC case has since been overturned by the Appellate and Federal Court respectively, while Justice Lau's order now rests in limbo, awaiting hearing before the Court of Appeal.

Chief Justice Zaki Azmi has since denied that the transfers were punitive actions against the respective judges, saying this was "normal procedure" to enable judges to gain experience.

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