

**Nizar's appeal:
The judges verdict**

	Alauddin Mohd Sheriff President Court of Appeal	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>
	Arifin Zakaria Chief Judge of Malaya	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>
	Zulkefli Ahmad Makinuddin	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>
	Mohd Ghazali Mohd Yusoff	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>
	Abdull Hamid Embong	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>

Azlan Zamhari / Malaysiakini



**Perak MB - it's
Zambry!
Malaysiakini.com
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Hafiz Yatim**

The Federal Court, the highest in the country, has delivered a unanimous decision in declaring that Zambry Abd Kadir of BN is the rightful Perak menteri besar (MB).

In doing so just after 11am, it dismissed the appeal by Pakatan Rakyat's Mohammad Nizar Jamaluddin and delivered perhaps the final blow to his quest to be declared the MB. He can still apply to the court to review its own decision, if he chooses to.

President of the Court of Appeal, Justice Alauddin Mohd Sheriff, led a five-member bench in delivering the verdict.

The others were Chief Judge of Malaya Justice Arifin Zakaria and Justices Zulkefli Ahmad Makinuddin, Mohd Ghazali Mohd Yusoff and Abdull Hamid Embong of the Federal Court.

Justice Arifin who read the solitary judgment for about an hour from 10.15am, reaffirmed the Court of Appeal decision, that the Kuala Lumpur High Court was wrong in not determining that Nizar's seat was vacant.

He ruled that it is not necessary for a vote of confidence to be done in the state assembly, as the sultan can conduct his own inquiry to determine which party or coalition has the majority.

"This can be done through extraneous sources," he said.

The sultan would have had sufficient evidence as to who commanded the majority in the Perak assembly or who suffered a lack of confidence, noted the judge.

As such, the sultan would have been able to arrive at a decision (and call for the chief executive to vacate the post). Should an individual refuse to do so, the post can be deemed vacant.

Although Justice Arifin noted that the determination of who holds the majority can be done outside the state legislative assembly, he commented towards the end of the judgment that all is not lost for Nizar (*left in photo*).

"If he is not satisfied with the decision, he can seek a vote of no confidence against the respondent (Zambry) in the state legislative assembly."

In deriving the decision, the court also ruled that it would not levy costs on Nizar.

The attorney-general's (AG) chambers was represented by the head of prosecution division Tun Abdul Majid Tun Hamzah and Kamaluddin Md Said, the head of the Trial and Appeals



division.

AG Abdul Gani Patail (*right*), among those who commented immediately on the ruling, said this was a sound and crucial judgment which encompasses all the previous decisions.

He refuted the suggestion that it would lead to a situation of an "absolute monarchy" - as claimed by Nizar at a press conference - because the constitutional monarchy "and everyone including the judiciary, has a place in the system".

Nizar's lawyers were Philip Koh, Chan Kok Keong, Leong Cheok Keng, Edmund Bon, Miohd Hanipa Maidin, Ranjit Singh, and Razlan Hadri Zulkifli.

Zambry's lawyers are Cecil Abraham and Sunil Abraham. Zambry (*left*) himself was not present in court for the decision, but responded to the ruling later.

Cecil said the verdict is binding on the federal and state government.

Mohd Hafarizam Harun and M Reza Hassan held a watching brief for Umno.

Previous judicial decisions

BN was seen to have usurped power in Perak when three Pakatan Rakyat assemblypersons switched sides to become BN-friendly Independents in February last year, leading to Pakatan seeking legal recourse.

On May 11, Kuala Lumpur High Court judge Abdul Aziz Abdul Rahim had ruled that Nizar is the rightful menteri besar.

"He is, and was, at all material times the chief minister of Perak," Abdul Aziz told the court.

However, the appellate court's three-member bench unanimously overturned the decision in favour of Zambry, saying that the High Court judge had failed to properly and adequately appreciate the entire evidence before him.

"We hold the view that the granting or the withholding of the request for the dissolution of the state legislative assembly is royal prerogative," ruled Justice Md Raus Sharif.

The Federal Court had, on Nov 5 last year, heard Nizar's appeal and submission for more than six hours but defer its decision

The court had earlier dismissed Nizar's application for a full bench of 11 judges or an enlarged panel.

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