

Anwar's appeal dismissed for second time
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PUTRAJAYA - The Court of Appeal on Monday dismissed an appeal by Opposition leader Anwar Ibrahim to strike out the sodomy charge against him, ruling that it had no jurisdiction to hear and determine the matter.

Justice Ahmad Maarop said the High Court's decision was unappealable by virtue of Section 3 of the Courts of Judicature Act (CJA) because the ruling was made in the course of the trial and did not finally dispose off Anwar's rights.

Justices Sulaiman Daud and Azhar Ma'ah both unanimously dismissed Anwar's appeal after accepting the preliminary objection raised by Solicitor-General II Mohamed Yusof Zainal Abiden without hearing the merits of the appeal.

In his preliminary objection, Mohamed Yusof argued that the ruling was not a final order but merely procedural and was excluded from the meaning of "decision" under Section 3 of the CJA.

The provision of Section 3 of the CJA states that the Court of Appeal does not have the jurisdiction to entertain appeals on interlocutory matters which are decided in the course of a trial because the ruling is considered not a final order and does not finally dispose off the rights of the party.

However, lawyer Karpal Singh, representing Anwar, submitted that the ruling made by the High Court was appealable because, if the High Court allowed Anwar's application to strike out the sodomy charge, it would be a final order as it would be the end of the prosecution.

"The merits of the appeal ought to be heard," said Karpal Singh, who questioned why the prosecution was afraid to delve into the merits of the appeal.

Anwar, 63, who is Parti Keadilan Rakyat (PKR) advisor, had appealed against the Aug 16 decision of the Kuala Lumpur High Court which had dismissed his application to strike out the sodomy charge.

It was Anwar's second attempt to strike out the charge.

This time it was based on the grounds that the impartiality of the entire prosecution team had been compromised because of an alleged affair between Anwar's accuser, Mohd Saiful Bukhari Azlan, and a member of the prosecution team, deputy public prosecutor Farah Azlina Latif.

Anwar claimed that as a result of the alleged affair, Mohd Saiful had access to information on the case and this deprived him (Anwar) of a fair trial.

Anwar's first application to strike out the charge was dismissed by the High Court and the decision was upheld by the Federal Court on May 4 this year.

Anwar had argued then that the medical report stated that there was no sign of penetration into Mohd Saiful's rectum.

Anwar is on trial for allegedly sodomising Mohd Saiful, his former personal aide, at unit 11-5-1, Desa Damansara Condominium, Jalan Setiakasih, Bukit Damansara, between 3.01pm and 4.30pm on June 26, 2008.

His case is scheduled for mention at the Kuala Lumpur High Court tomorrow.

Anwar and his family members were present in court today.

After the verdict, Karpal Singh told reporters outside the court that he would file an appeal against the decision to the Federal Court on Wednesday.

"The decision was unsupportive and illogical. Unfortunately, we are bound by it," he said. - Bernama

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