

# Anwar's suit thrown out

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## Court decides defamation claims against Mahathir are unsustainable

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**KUALA LUMPUR:** Tun Dr Mahathir Mohamad has succeeded in his bid to strike out the second defamation suit filed against him by Datuk Seri Anwar Ibrahim.

In allowing the former Prime Minister's application with costs, Judicial Commissioner Datuk Tengku Maimun Tuan Mat ruled yesterday that Anwar's civil suit action was unsustainable.

On Jan 27 last year, Anwar filed a subsequent suit against Dr Mahathir, 81, for allegedly portraying him as a man of no morals who was dangerous to Malaysian society.

Anwar alleged that Dr Mahathir had publicly uttered such words to journalists at a conference organised by Suhakam on Sept 9, 2005, knowing that he (Anwar) had been

acquitted and discharged by the Federal Court on Sept 2, 2004 on charges of sodomy, and also after the Kuala Lumpur High Court had ruled in his favour on Aug 18, 2005 on a defamation suit he had brought against the author of the book *50 Dalil Mengapa Anwar Tidak Boleh Jadi PM*.

Dr Mahathir, in his defence, said Anwar had abused the court process by suing him for defamation twice, adding that a similar suit had been struck out by the High Court in August 1999 on the grounds that he was justified in making those comments as well as protected by qualified privilege.

Elaborating on her grounds, Tengku Maimun said based on the background, facts of the case and judgments by the appellate courts, it was apparent that the defence was bound to succeed.

"The whole of the plaintiff's case was con-

sidered, albeit by affidavit evidence whereby the court concluded that it was obviously unsustainable.

"Therefore, it is my view that *issue estoppel* would apply in the present case and the plaintiff's present action is clearly an abuse of the process of the court," she said.

(*Issue estoppel* is the statute that an issue which has already been determined earlier cannot be tried again)

She said it was also her view that having regard to the judgments of the High Court, Court of Appeal and Federal Court in the 1999 defamation action, the defences of justification and qualified privilege were similarly available to the defendant.

"Although the conviction of Sukma Darmawan Sasmitaat Madja (Anwar's adopted brother) has since been set aside, there is in existence a judicial finding that the plaintiff had

indeed taken part in homosexual acts.

"The finding was made by the Kuala Lumpur High Court whereby the plaintiff (Anwar) was convicted on a charge of sodomising Azizan Abu Bakar (his former family driver).

"This conviction was upheld by the Court of Appeal and although the plaintiff's appeal was allowed by a majority of the Federal Court, there was a specific finding by the majority over this," the judge said.

Anwar's counsel, S.N. Nair, told reporters that his client had instructed him to file an appeal.

"There are legal reasons such as under Section 42 and 43 of the Evidence Act which state that you cannot bring past convictions or past cases that is related to the current matter to prove a conclusive evidence," he said.

Both Dr Mahathir and Anwar were not present in court.