

# Court throws out Anwar's suit against Mahathir

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**KUALA LUMPUR:** Tun Dr Mahathir Mohamad yesterday succeeded in striking out a RM100 million defamation suit brought against him by Datuk Seri Anwar Ibrahim for his remarks on the former deputy premier's alleged sexual orientation at a conference in 2005.

Judicial Commissioner Datuk Tengku Maimon Tuan Mat said Anwar's case was "unsustainable" and allowed the former premier's application with costs.

Both Anwar and Mahathir were not present in court.

Anwar filed the suit against Mahathir on Jan 26 last year, claiming that the remarks were defamatory.

The remarks were made at a Malaysian Human Rights Commission (Suhakam) conference on Sept 9, 2005.

On Jan 5, Mahathir applied to strike out the suit, claiming that it was scandalous, frivolous or vexatious.

In his statement of defence, he said he relied on qualified privilege as former premier.

Tengku Maimon said the words Anwar complained of were said in response to questions posed by journalists.

She said the words were identical to those he had complained of in a 1999 defamation action.

In that suit, she said, Mahathir pleaded the defences of justification and qualified privilege.

She said the defamation action was struck out by the High Court on the ground that it was unsustainable, having considered the defences of justification and qualified privilege, and the convictions of Anwar's adopted brother, Sukma Darmawan Sasmitaat Madja, and former speech writer Munawar Anees.

She noted that Anwar's appeal to the Court of Appeal was dismissed, and leave to appeal to the Federal Court was also refused.

"It is my view that having regard to the judgment of the High Court, the Court of Appeal and the Federal Court in the 1999 defamation action, the defences of justification and qualified privilege are similarly available to the defendant here," she said.

She said the issue of *estoppel* (preventing a matter from being started all over again after it has been adjudicated) would apply in the case and Anwar's action was an abuse of the process of the court.

Anwar's counsel, S.N. Nair, had argued that for *estoppel* to apply in the present case, the issues in the 1999 defamation action would have to be litigated and decided and the judgment should not be just on preliminary issue.

Tengku Maimon said Nair had relied on the fact that Sukma's conviction had been set aside and Munawar's confession could not bind Anwar as he was not a party to that confession.

"Although the conviction of Sukma 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 High Court (in) Kuala Lumpur whereby the plaintiff was convicted on a charge of sodomising Azizan Abu Bakar (plaintiff's former 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 that 'we find evidence to confirm that the appellants (Anwar and Sukma) were involved in homosexual activities.'"

Nair said Anwar will appeal against the decision.