

Najib, son fail in bid for Federal Court hearing over tax arrears appeal

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The appellate court will cover the constitutional issues and other issues raised

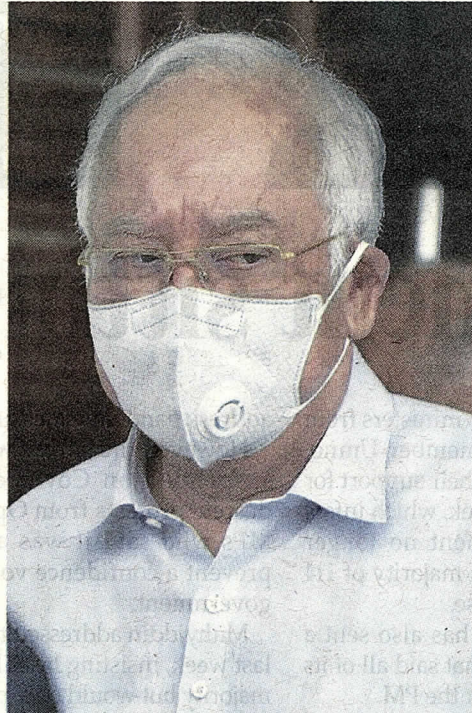
by RAHIMI YUNUS

FORMER prime minister Datuk Seri Mohd Najib Razak and his son Datuk Mohd Nazifuddin have failed to get constitutional issues referred to the Federal Court relating to his RM1.69 billion tax arrears appeal.

The Court of Appeal has dismissed an application by lawyer Tan Sri Muhammad Shafee Abdullah, who represented for Najib and Mohd Nazifuddin, to refer constitutional issues involving Section 106 (3) of the Income Tax Act 1967 to the Federal Court.

Justice Datuk Abdul Karim Abdul Jalil, who led a three-member bench, ruled to hear the appeal brought by Najib and his son in connection with the Inland Revenue Board's (IRB)'s suit to recover the income tax arrears and penalties.

"We are not with you in respect of this application in bringing the matter to the Federal Court to determine the alleged constitutional issues of Section 106 (3)," Abdul Karim said during the virtual proceeding yesterday.



Najib is appealing against a High Court's decision pertaining to his RM1.69m tax arrears

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Abdul Karim, who presided with Justices Datuk Vazeer Alam Mydin Meera and Datuk Supang Lian, said the appellate court would

prefer to proceed with the appeal proper which would cover the constitutional issues and other issues.

Subsequently, the Court of Appeal has fixed Sept 9 for hearing the appeals.

Earlier, Muhammad Shafee sought the Court of Appeal to refer five questions of law including the validity of Section 106 (3) to the Federal Court.

The counsel said he would seek a quorum of five to seven at the Federal Court to hear the appeal over the constitutional questions.

He, among others, intended to bring up a question on whether Section 106 (3) is unconstitutional and ultra vires as it usurps the judicial power of the court guaranteed by Article 121 of the Federal Constitution.

Senior revenue counsel Dr Hazlina Hussain disagreed, saying there was no ambiguity on the interpretation of Section 106 (3) and nothing unconstitutional of that section.

She also said Najib and Mohd Nazifuddin could bring the matter to the Special Commissioners of Income Tax (SCIT).

Section 106 (3) states that in any proceeding under this section, the court shall not entertain any plea that the amount of tax sought to be recovered is excessive, incorrectly assessed,

under appeal or incorrectly increased.

Najib and Mohd Nazifuddin are appealing against the decisions of two separate High Courts, which allowed IRB's applications to enter summary judgment to recover tax arrears of RM1.69 billion and RM37.6 million, respectively.

In mid-June, Kuala Lumpur High Court had rejected Najib's application to suspend the court judgement for the tax payments pending a court appeal and tax assessment at the SCIT, a special tribunal that handles tax appeals on the amount of tax assessed.

IRB had on Feb 4 this year, issued a bankruptcy notice against Najib after he failed to pay the amount, as the summary judgment was not stayed.

On July 22 last year, the court ruled that Najib had to pay IRB RM1.69 billion in additional tax and penalties for the assessment years from 2011 to 2017 after allowing IRB's application to enter a summary judgement against him.

Mohd Nazifuddin was served with a bankruptcy notice on April 30 over failure to pay the amount.

A summary judgment is when the court decides a particular case summarily, without calling witnesses to testify in a trial.