

# Najib again fails to adduce new evidence in SRC appeal

**DATUK** Seri Najib Razak has failed for the second time to adduce new evidence in his appeal over his 12 years jail sentence and fine of RM210 million for misappropriating RM42 million in SRC International Sdn Bhd funds.

This was after a five-member panel chaired by Chief Justice Tengku Maimun Tuan Mat unanimously dismissed the former premier's application after hearing the submissions by Najib's lead counsel Tan Sri Muhammad Shafee Abdullah and ad-hoc prosecutor Datuk V Sithambaram.

The other judges presiding on the bench were Court of Appeal President Tan Sri Rohana Yusuf, Chief Judge of Malaya Tan Sri Azahar Mohamed, Chief Judge of Sabah and Sarawak Tan Sri Abang Iskandar Abang Hashim and Federal Court Judge Datuk Seri Mohd Zawawi Salleh.

In her decision, Justice Tengku Maimun said the application to adduce additional evidence did not fulfil the requirements of the law.

"We are satisfied with the Court

of Appeal's decision in dismissing the application. We find that this application does not comply with the requirements of the law. There is no appealable error. In the circumstances, this appeal is hereby dismissed," said Justice Tengku Maimun.

Justice Tengku Maimun said the court did not see how the evidence sought to be adduced is relevant because the allegations in relation to the evidence relate to another trial pending in the High Court, namely, the 1Malaysia Development Bhd trial, and not the present case.

"We do not agree with the appellant (Najib) that the relevancy of the evidence must be assessed in light of the 'issues' only, without regard to the charge or charges. In our view, the issues in a given case are inextricably linked to the charge or charges.

"The issues are no different conceptually from the issues to be tried in a civil case which relate back to the 'cause of action' pleaded in the pleadings.

"The issues in a criminal case would, by analogy, relate back to the charge and the elements of the charge. Here, the issue in question is the knowledge of the appellant in relation to the sum of RM42 million.

"We do not see how the proposed additional evidence is relevant to the issue of knowledge," she said, adding that the fresh application to adduce new evidence failed to specify with certainty the type of evidence to be adduced.

In fact, she said, the affidavit in support and the further affidavit in support of the motion did not specify the rationale for calling the witnesses or to what fact exactly the witnesses would testify on.

Justice Tengku Maimun further said the court also found that the witnesses were available during the trial and in fact, were offered by the respondent (prosecution) for cross-examination and interview.

However, Najib declined to exercise those options, she added.

She said the Court of Appeal had given a fair hearing before dismiss-

ing the additional evidence bid, contrary to submissions from Najib's lawyer.

"On the facts, having perused the notes of proceedings at the Court of Appeal and having taken the liberty to examine the Court Recording Transcription (CRT), we find that Najib's counsel was given sufficient time to submit and address the court.

"To be exact, from the CRT, it is apparent that learned counsel for the appellant was given one hour and 22 minutes to submit, while on the other hand, learned deputy public prosecutor was given 63 minutes.

"We note that the appellant's one hour 22 minutes were spent on submission in reply. This is because counsel for the appellant, Tan Sri Shafee, declined the Court of Appeal's invitation to submit at the outset.

"We, therefore, find that the appellant suffered no prejudice and was not denied the right to be heard," she added.

Regarding the ruling to conduct

the proceedings purely virtually or partly via hybrid, she said the Court of Appeal had correctly exercised its discretion to invoke Section 15A of the Court of Judicature Act 1964.

Justice Tengku Maimun said the legal team that was under quarantine due to Covid-19 could still access court documents via modern technology.

"While we sympathise with the fact that certain members of learned counsel Tan Sri Shafee's team had tested positive for Covid-19 and that Tan Sri Shafee himself was in close contact, we find that Section 15A of the Court of Judicature Act 1964 was passed precisely to overcome this issue by enabling virtual attendance as opposed to physical attendance.

"Any technicalities relating to access to documents were capable of being resolved by using technology, bearing in mind that it was the appellant who filed the application so close to the date of the decision on the substantive appeals. — *Bernama*