

Bid to adduce new SRC evidence fails

Court dismisses Najib's final attempt

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PUTRAJAYA: Former prime minister Datuk Seri Najib Razak has failed in his final bid at the Federal Court to adduce new evidence in his RM42mil SRC International Sdn Bhd appeal.

After a two-day hearing, a five-member panel chaired by Chief Justice Tengku Maimun Tuan Mat unanimously dismissed the appeal, ruling that the defence team had in fact been given more time than the prosecution to submit and address the court in its application.

Based on the court recording and transcription (CRT) system, Tengku Maimun said the defence was given 88 minutes to submit while the deputy public prosecutor was given 63 minutes.

"We therefore find that the appellant (Najib) suffered no prejudice and was not denied the right to be heard," she said in court yesterday.

On Tuesday, Najib's lead counsel Tan Sri Muhammad Shafee Abdullah had submitted that the defence was deprived of a fair hearing at the Court of Appeal and had to scramble to submit after a team member tested positive for Covid-19.

The lawyer said they had requested for a 10-day adjournment as most of them were close contacts but this was denied.

They were not allowed to enter court premises, as per the Covid-19 SOP then, and were compelled to take part in hybrid proceedings.

The CJ said it was purely up to the court to grant an adjournment and this power must be exercised judiciously.

She said the Court of Appeal was correct in invoking Section 15A of the Courts of Judicature Act and call for a hybrid proceeding as the provision was passed to overcome such issues by enabling virtual attendance.

The court also noted that the motions which were the subject of the appeal were filed at the 11th hour (on Dec 2, 2021) when all parties had been informed on Nov 22 that a decision in the appeal would be delivered on Dec 8.

"Any technicalities relating to access to documents could be resolved 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.

"In these circumstances, we find that the appellant was not deprived of his right to be heard nor was his right to a fair trial infringed," she added.

On the application to adduce fresh evi-



Time check: Najib speaking with his aide at the Federal Court in Putrajaya.

dence, Tengku Maimun said it failed to specify the rationale for calling additional witnesses or to the facts that these witnesses would testify on.

"We find that the witnesses were available during trial and in fact, were offered for cross-examination and interview.

"The appellant, however, declined to exercise those options," she added.

"Based on the foregoing, we find the Court of Appeal was correct in its decision that application to adduce fresh evidence was of no merit. We do not find any appealable error. In the circumstances, these appeals are hereby dismissed," she said.

Other judges on the bench were Court of Appeal president Justice Rohana Yusuf, Chief Judge of Malaya Justice Azahar Mohamed, Chief Judge of Sabah and Sarawak Justice Abang Iskandar Abang Hashim and Federal Court judge Justice Mohd Zawawi Salleh.

Najib had on Dec 2, 2021 filed an application asking the Court of Appeal to allow the oral evidence of Malaysian Anti-Corruption Commission chief commissioner Tan Sri Azam Baki, among others, in his appeal against conviction in the SRC International case.

The application was dismissed on Dec 7 on grounds that Najib had failed to prove exceptional circumstances for the evidence to be adduced.

On Dec 8, the Court of Appeal affirmed a High Court decision to convict and sentence Najib on seven charges relating to the misappropriation of RM42mil from SRC's funds.

He was sentenced to 12 years' jail and a fine of RM210mil. The main appeal against the conviction and sentence has yet to be heard by the Federal Court.