

Najib fails to block govt appeal in 'house arrest' case

> Federal Court dismisses preliminary objection against attorney-general's application to obtain leave to appeal existence of additional document

PUTRAJAYA: The Federal Court has dismissed a preliminary objection (PO) by Datuk Seri Najib Abdul Razak's defence team that the prosecution's intended appeal in the former prime minister's "house arrest" case is incompetent.

The court dismissed the PO against the attorney-general's application to obtain leave to appeal the existence of an additional document in the case involving the former prime minister.

A three-member bench, chaired by Chief Judge of Malaya Datuk Seri Hasnah Mohammed Hashim, in a unanimous decision yesterday, said the seventh question of law proposed by the attorney-general is related to the issue of adducing

fresh evidence.

"Therefore, the preliminary objection is dismissed with no order as to costs," said Hasnah, who sat with Federal Court judges Datuk Zabariah Mohd Yusof and Datuk Hanipah Farikullah.

The panel then proceeded to hear the application for leave to appeal.

Earlier, Attorney-General Datuk Mohd Dusuki Mokhtar said the preliminary objection by Najib's counsel should not be entertained by the apex court.

"We oppose the PO raised by the counsel. Our application for leave to appeal is not an interlocutory matter."

Najib's counsel Tan Sri Muhammad Shafee Abdullah said the attorney-general's

application for leave to appeal was not competent and should be struck out by the court.

"The notice of motion should be dismissed because the questions of law do not meet the threshold required for leave to appeal under Section 96 of the Courts of Judicature Act 1964."

On Jan 6, in a 2-1 majority decision, the Court of Appeal remitted the case on Najib's claim of the existence of an additional document purportedly allowing him to serve the remainder of his six-year prison sentence under house arrest to the High Court to be heard on its merits.

This decision overturned the High Court's earlier ruling, which had dismissed his application for leave to commence a judicial review regarding the alleged additional document.

The 71-year-old is seeking a *mandamus* order compelling the respondents to confirm and disclose the existence of the alleged additional document dated Jan 29, 2024.

He named the home minister, commissioner-general of prisons, attorney-general, Pardons Board for the Federal Territories of Kuala Lumpur, Labuan and Putrajaya, minister in the Prime Minister's Department (law and institutional reform), director-general of the legal affairs division in the Prime Minister's Department and the government as respondents, Bernama reported.

The former Pekan MP also sought an order that, should the additional document be proven to exist, all respondents or any one of them should enforce it immediately and transfer him from Kajang Prison to his residence in Kuala Lumpur to serve the remainder of his sentence.

On July 3 last year, Justice Datuk Amarjeet Singh dismissed Najib's application for leave to initiate a judicial review, ruling that the four affidavits submitted in support of his claim, which included statements by Umno president Datuk Seri Dr Ahmad Zahid Hamidi and Umno vice-president Datuk Seri Wan Rosdy Wan Ismail, were hearsay and inadmissible as evidence in court.

Najib has been serving his sentence at Kajang Prison since Aug 23, 2022 following his conviction for misappropriating RM42 million from SRC International Sdn Bhd.

The High Court initially sentenced him to 12 years in prison and fined him RM210 million, a decision which was subsequently upheld by the Court of Appeal and the Federal Court.

However, his petition for a royal pardon on Sept 2, 2022 resulted in the Pardons Board halving his prison sentence to six years and reducing his fine to RM50 million.