

Court rules by law, even if unpopular, says judge in Najib suit

Free Malaysia Today

April 29, 2017

By V Anbalagan

In striking out a suit brought by Dr Mahathir Mohamad and two others, judge says they could not show Najib is public officer, as Constitution proves otherwise.

PETALING JAYA: The High Court which struck out a suit for abuse of power by the prime minister said cases should be decided based only on applicable law, no matter how unpopular the judge becomes.

Justice Abu Bakar Jais said in this regard, it was trite that a court of law should not usurp the function of the legislature by imposing its own words or ingeniously interpreting and stretching the clear words of provisions to say Najib Razak is a public officer.

He said the plaintiffs, Dr Mahathir Mohamad, former Umno members Khairuddin Abu Hassan and Anina Saadudin could not prove that Najib was a public officer in public office to sustain their action.

“Our own legislative provisions must come as first preference in interpreting whether the defendant (Najib) is a public officer in public office,” he said in the judgment to allow the prime minister’s application.

He said the constitution could not come secondary to the common law even though the foreign source of law was to elaborate and clarify the legislative provisions.

“There is no need for such elaboration and clarification or preference for common law when the provisions in the Federal Constitution are crystal clear,” he added.

Bakar said the suit was without reasonable cause of action and was frivolous and vexatious.

“There may be millions who would support and understand why the plaintiffs are suing the defendant.

“But for all and sundry, it is fundamental to appreciate that a suit can only stand based on law that is applicable,” he said.

The judge said the local law, no matter how unreasonable it may be perceived did not permit the plaintiffs' suit.

Bakar in his 31-page ruling said the terms, public officer and public office, in the Interpretation Act was only applicable to the class of civil servants as stated under Article 132 (1) of the Constitution.

"Clearly the defendant (Najib) is not a member of any services listed in the Constitution," he said.

Further, he said Article 132(3) stated that the public service excluded the office of any member of the administration in the Federation or state.

He said Article 160 (2) further states that a member of the administration in Putrajaya is meant to be a person holding the office of minister (which includes prime minister), deputy minister or parliamentary secretary and political secretary.

"These provisions, he said, cumulatively would indicate that Najib was not a public officer and did not hold public office.

"It may be most surprising and quite unpalatable to swallow for many on the street that the defendant in his capacity as prime minister or minister of finance is not a public officer in public office," he said.

He said the provision highlighted clearly indicated the Malaysian legislature in their own wisdom had thought it fit and proper not to categorise the defendant as a public officer.

In their statement of claim filed in March last year, Mahathir, Khairuddin and Anina said they were among the rightful parties to take action against Najib.

They traced the chronology of the 1MDB investigations dating back to March 2015, from the formation of a special task force, to then attorney-general Abdul Gani Patail's sudden resignation, and the sacking of former deputy prime minister Muhyiddin Yassin.

They said Najib has continuously interfered with the due process of the law to ensure all the relevant authorities discontinued from carrying out and concluding the investigations into his alleged misconduct over the RM2.6 billion donation and RM42 million from SRC International.

The plaintiffs want a declaration that Najib had committed the tort of misfeasance and breach of fiduciary duty in public office.

They also want Najib to return to the government the money found in his private bank accounts.

However, Najib filed the action to strike out the suit on grounds that it is unsustainable, frivolous and vexatious.

Copyright (C) 2009-2016 MToday News Sdn. Bhd. All Rights Reserved.

Source: <http://www.freemalaysiatoday.com/category/nation/2017/04/29/court-rules-by-law-even-if-unpopular-says-judge-in-najib-suit/>