

**DALAM MAHKAMAH PERSEKUTUAN MALAYSIA DI PUTRAJAYA
PERMOHONAN SIVIL NO.: 08(L)-4-06/2020 (W)**

Dalam perkara komen-komen dalam
suatu artikel bertajuk *CJ orders all
courts to be fully operational from July 1*

Dan

Dalam perkara suatu permohonan
minta kebenaran untuk memulakan
prosiding komital kerana menghina
Mahkamah selaras dengan Perkara
126 Perlembagaan Persekutuan dan
Aturan 52 Kaedah-Kaedah Mahkamah
2012

Dan

Dalam perkara mengenai Seksyen 13
Akta Mahkamah Kehakiman 1964

Dan

Dalam perkara mengenai Kaedah 3
Kaedah-Kaedah Mahkamah
Persekutuan 1995

Dan

Dalam perkara Aturan 92 Kaedah-
Kaedah Mahkamah 2012

PEGUAM NEGARA MALAYSIA

... PEMOHON

DAN

- 1. MKINI DOTCOM SDN BHD
(No Syarikat: 489718-U)**

- 2. KETUA EDITOR, MALAYSIAKINI ... RESPONDEN-
RESPONDEN**

CORAM:

ROHANA BINTI YUSUF, PCA

AZAHAR BIN MOHAMED, CJM

ABANG ISKANDAR BIN ABANG HASHIM, CJSS

HAJI MOHD ZAWAWI BIN SALLEH, FCJ

NALLINI PATHMANATHAN, FCJ

VERNON ONG LAM KIAT, FCJ

ABDUL RAHMAN BIN SEBLI, FCJ

DECISION ON ENCL. 22

(Setting Aside of leave order by Malaysiakini)

[1] This is our decision on whether the application by Malaysiakini in Enclosure 22 to set aside the leave granted by this Court should be allowed. The subject of the contempt proceedings relates to the following comments which appeared in Malaysiakini on the 9 June 2020:

- (i) **Ayah Punya kata:** *The High Courts are already acquitting criminals without any trial. The country has gone to the dogs;*
- (ii) **GrayDeer0609:** *Kangaroo courts fully operational? Musa Aman 43 charges fully acquitted. Where is law and order in this country? Law of the Jungle? Better to defund the judiciary!*
- (iii) **Legit:** *This Judge is a shameless joker. The judges are out of control and the judicial system is completely broken. The crooks are being let out one by one in an expeditious manner and will running wild looting the country back again. This Chief Judge is talking about opening of the courts. Covid 19 slumber kah!*
- (iv) **Semua Boleh – Bodoh pun Boleh:** *Hey Chief Justice Tengku Maimun Tuan Mat - Berapa JUTA sudah sapu - 46 kes corruption - satu kali Hapus!!! Tak Malu dan Tak*

Takut Allah Ke? Neraka Macam Mana? Tak Takut Jugak? Lagi – Bayar balik sedikit wang sapu – lepas jugak. APA JUSTICE ini??? Penipu Rakyat ke? Sama sama sapu wang Rakyat ke???

(v) **Victim:** *The Judiciary in Bolihland is a laughing stock.*

[2] We are mindful that in the course of adjudicating on the setting aside application, we should not venture into or purport to decide the substantive merits of the committal application, which is properly the subject matter of the second stage of the adjudication.

[3] In respect of this issue we are of the view that the following facts as revealed:

- (a) The 1st respondent facilitates publication;
- (b) The editorial policy allowing editing, removing and modifying comments;
- (c) Only upon being made aware by the police, the 1st respondent indeed removed the comments;
- (d) Evidence revealing that the editors of the 1st respondent review postings on a daily basis.

[4] Based on all these facts *inter alia*, we are of the view that the respondents had published the impugned comments and that a *prima facie* case had been made out.

[5] We are also of the view that, furthermore by virtue of section 114A of the Evidence Act 1950 the respondents are presumed to have published the impugned comments. The presumption is a rebuttable one. Hence, we find a *prima facie* case has been made out for the following reasons:

- (a) The words read out above are contemptuous as agreed by both parties;
- (b) *Prima facie* there has been publication by Malaysiakini as these statements appeared on their news portal.

[6] The other grounds relied upon by the respondents to set aside the leave are the followings:

- (i) O. 52 r. 2B of the Rules of Court 2012 – Procedural requirement

On the requirement of notice pursuant to O. 52 r. 2B which has not been complied with, on the facts of this case, we agree that the non-compliance is not fatal or prejudicial to the respondents.

- (ii) Commencement at Federal Court

Looking at the nature of the impugned comments earlier elaborated, which implicate the judiciary as a whole, which also include the Chief Justice of the Federal

Court, we are of the view that this Court is the right forum to commence these proceedings.

- [7] On all the above reasons, the application is, hereby unanimously dismissed, and we will hear the merits of the Attorney General's application in Encl. 19 on another date.
- [8] Pending the final disposal of the matter, we hereby direct parties not to make any comment on this case to avoid sub judice.

signed
ROHANA YUSUF
President of the Court of Appeal
Putrajaya

Dated: 2nd July 2020

- Counsel for the Applicant:** Puan Suzana binti Atan (SFC),
(Puan Narkunavathy Sundareson (SFC),
with her)
Attorney General's Chambers
45, Persiaran Perdana, Presint 4,
62100 Putrajaya
- Counsel for the Respondents:** Malik Imtiaz Sarwar (Surendra Ananth
And Khoo Suk Chyi with him)
Messrs. Surendra Ananth
No. 4, Jalan Dalaman Tunku
Bukit Tunku
50480 Kuala Lumpur
- Watching Brief (Bar Council):** Datuk Joy Wilson Appukuttan
Messrs. KH Lim & Co.
Unit T3-22-01, 22nd Floor, Tower 3
Pusat Perdagangan Icon City
No. 1B, Jalan SS 8/39
47300 Petaling Jaya
Selangor
- Watching Brief (Centre for Independent Journalism and Gerakan Media):** YB Senator Yusmadi Yusoff
Messrs. Fahda Nur Yusmadi
Unit 5-05-03A, Blok 5, VSQ @ PJ City
Centre, Jalan Utara
46200 Petaling Jaya
Selangor
- Watching Brief (International Federation of Journalists (IFJ) and National Journalist Union of Malaysia (NJUM):** New Sin Yew
Messrs. Amer BON
B2-2-13A, Solaris Dutamas
No. 1, Jalan Dutamas 1
50480 Kuala Lumpur