



**DALAM MAHKAMAH TINGGI MALAYA DI KUALA LUMPUR
DALAM WILAYAH PERSEKUTUAN, MALAYSIA
(BAHAGIAN SIVIL)
[GUAMAN NO: 22NCVC-191-02/2013]**

ANTARA

- 1. AMRAN AB RAHMAN**
- 2. ZAINAL ABIDIN ARSHAD**
- 3. CHE MOOD CHE MAMAT ... PLAINTIF-PLAINTIF**

DAN

- 1. DATO' HJ IKMAL HISHAM ABDUL AZIZ**
- 2. DATUK AB RAUF YUSOH**
- 3. PENDAFTAR PERTUBUHAN
MALAYSIA ... DEFENDAN-DEFENDAN**

GROUND'S OF DECISION

[In respect of Enclosure 9]

INTRODUCTION

- 1. The 1st Plaintiff was the former Secretary of the Tanah Merah Division of the United Malay National Organization (“UMNO”) and was stripped of his membership from UMNO on 10th February 2010.**

2. The 2nd and 3rd Plaintiffs were members of UMNO.
3. The 1st Defendant is the Ketua Bahagian of the UMNO Tanah Merah Division since 2009 whilst the 2nd Defendant is the Public Officer of UMNO with an address at Tingkat 38, Menara Dato' Onn, Jalan Tun Ismail, 50480 Kuala Lumpur.
4. The 3rd Defendant is the Registrar of Societies of Malaysia with an address at Jabatan Pendaftaran Pertubuhan Malaysia, Kementerian dalam Negeri, Aras 2 dan 3, Blok B, Bangunan Utama, Chancery Place, Jalan Diplomatic 2, Presint Diplomatik, 62542, Putrajaya.

THE PLAINTIFFS' CLAIM

5. In this Suit, the Plaintiffs' sought the following reliefs:
 - [a] Deklarasi bahawa UMNO Bahagian Tanah Merah adalah pertubuhan haram;
 - [b] Akibatnya Defendan Pertama tidak boleh memegang jawatan sebagai Ketua Bahagian UMNO Tanah Merah Kelantan;

[c] Defendan Ketiga mengambil tindakan di bawah peruntukkan-peruntukkan berkenaan di bawah Akta Pertubuhan 1966 terhadap UMNO Bahagian Tanah Merah, Kelantan;

[d] Defendan Pertama dan Kedua membayar Gantirugi Khas sebanyak RM205,285,504.00 atau sebagaimana yang ditentukan oleh Mahkamah Yang Mulia ini;

[e] Kos-kos bagi tindakan ini; dan;

[f] Relif-relif lanjut atau yang lain yang Mahkamah yang Mulia ini menyifatkan sesuai dan patut diberikan.

6. Enclosures 5 and 13 are filed by the 1st and 2nd Defendants whilst and Enclosure 9 is an applications by the 3rd Defendant to strike out the Plaintiff's Writ of Summons dated 21/3/2013 and Statement of Claim dated 21/3/2013 under Order 18 r. 19(1) Rules of Court 2012. All Enclosures are heard together. The 1st and 2nd Defendants are proceeding under Order 18 r. 19(1)(a), (b), (c) or (d) Rules of Court 2012 whilst the 3rd Defendant is proceeding

under Order 18 r. 19(1)(a), (b) or (d) Rules of Court 2012 on the following grounds:

[a] that the Plaintiffs have no cause of action against the 3rd Defendants;

[b] the Plaintiffs have no *locus standi* to bring this suit against the 3rd Defendants

7. In the 3rd Defendant's submission, it is stated therein that the 3rd Defendant shall only be proceeding on the 2nd ground ie, that the Plaintiffs have no *locus standi* to institute the action herein.

THE LAW ON STRIKING OUT UNDER ORDER 18 RULE 19(1) OF THE RULES OF COURT 2012 ("ROC 2012")

8. In the Supreme Court case of *Bandar Builder Sdn Bhd & Ors v. United Malayan Banking Corporation Bhd.* [1993] 3 MLJ 36, Mohamed Dzaidin bin Hj Abdullah SCJ [as he then was] held as follows:

"The principles upon which the court acts in exercising its power under any of the four limbs of O. 18 r. 19(1) of the RHC are well settled. It is only in plain and obvious cases that

recourse should be had to the summary process under this rule (per Lindley MR in Hubbuck & Sons Ltd v. Wilkinson, Heywood & Clark Ltd 7, and this summary procedure can only be adopted when it can be clearly seen that a claim or answer is on the face of it 'obviously unsustainable' (see AG of Duchy of Lancaster v. L & NW Rly Co 8). It cannot be exercised by a minute examination of the documents and facts of the case, in order to see whether the party has a cause of action or a defence (see Wenlock v. Moloney & Ors 9). The court must be satisfied that there is no reasonable cause of action or that the claims are frivolous or vexatious or that the defences raised are not arguable."

9. Further in the Supreme Court case of *Sim Kie Chon v. Superintendent of Pudu Prison & Ors* [1985] 2 MLJ 385, Abdul Hamid Omar CJ, at page 386, held as follows:

"The principle governing the striking out of pleadings is clear in that it is only in plain and obvious cases that recourse should be had to the summary process under Order 18 Rule 19 of the Rules of the High Court 1980: "the summary procedure under this Rule can only be adopted when it can clearly be seen that a claim or answer is on the face of it 'obviously unsustainable'." (Attorney-General of Duchy of Lancaster v. L & NW Railway Co) [1892] 3 Ch 274.(Supreme Court Practice 1985)."

CONSIDERATION OF THE APPLICATION [ENCLOSURE 9]

10. Having read and considered all the relevant pleadings and submission of learned counsels for the Defendants and the Plaintiffs, this Court finds that there are merits in the 3rd Defendant's application [Enclosure 9] on the following grounds.

Locus Standi

11. The Plaintiffs contended that on the issue of Plaintiff's *locus standi*, it is sufficient if the Plaintiffs can show their interests to institute and maintain this suit. The Plaintiffs relied on the case of *Affin Bank Berhad v. Mohd Kassim Ibrahim* [2013] 1 CLJ 465 where the Court held *inter alia* as follows:

“A declaration merely declares the right of the parties. As such, a person seeking for a declaratory judgment need not show or establish a cause of action. He merely needs to show his interest in the issue at hand”

12. On the issue of the 1st Plaintiff's *locus standi*, this Court finds that arising from the 1st Plaintiff's admission that he had terminated his membership in UMNO since 10/2/2013, the 1st Plaintiff lacks *locus standi* since he was no longer a member of UMNO at the time this Suit was instituted. As regards the *locus standi* of the 2nd and 3rd Plaintiffs, they are caught by Article 20.7 of the UMNO Constitution which states as follows:

“Seseorang ahli yang membawa apa-apa atau hak keahliannya ke Mahkamah sebelum mematuhi sepenuhnya peraturan-peraturan parti maka keahliannya di dalam parti gugur dengan sendirinya”

13. Applying the above Article 20.7 to this case, the 2nd and 3rd Plaintiffs' action in filing this Suit, would result in their membership in UMNO, being automatically terminated. Since their membership

in UMNO have been terminated, they thus lacked the *locus standi* to maintain this action.

14. The test of standing in a proceeding for a declaration was restated in *Tan Sri Hj Othman Saat v. Mohamed Ismail* [1982] 2 MLJ 177 where the Federal Court held:

“Although it is not necessary for a plaintiff who seeks relief by way of declaratory judgment to show that he has a present cause of action, he must be somebody with such an interest in the subject-matter of the action as to justify his seeking relief.

It cannot be doubted that the respondent had a legitimate grievance and there was a threat to his private right by the appellant. He certainly met the “real interest” test to acquire a *locus standi* to seek for the said declarations. The High Court too was aware of this limitation when it stated that “declaratory relief would be refused to spectators, speculators and busybodies”.

15. In *Government of Malaysia v. Lim Kit Siang* [1988] 2 MLJ 12, the Court dealt with the question of ‘*locus standi*’ of a private person seeking a declaration and an injunction for the enforcement of a public right purportedly for public interest. Abdul hamid CJ (Malaya) speaking for the Court said inter alia as follows:

“This appeal raises an issue of considerable importance. The central issue revolves round the question of” ‘locus standi’ of a private person seeking a declaration and an injunction in a case for the enforcement of a public right purportedly for public interest.

...

“*Locus standi*” is generally understood to mean the right of a party to appear and be heard by a tribunal. A litigant is said to have *locus standi*, in effect standing to sue in a court of law, if that court recognizes his or her ability to institute and maintain proceedings before it. The question of standing is thus separate and distinct from questions of the substantive merits and the legal capacity of the plaintiff. It follows, therefore, that a litigant may lack standing to bring a case which would succeed if brought by the right litigant.

Put in a nutshell, the law of standing to sue has two fundamental rules. First, apart from certain cases in which standing to sue is in the discretion of the court, the plaintiff must possess an interest in the issues raised in the proceedings. Second, where the private plaintiff relies on an interest in the enforcement of a public right and not of a private right, standing will be denied unless the Attorney-General consents to a relator action, or the plaintiff can demonstrate some special interest beyond that possessed by the public generally.”

16. Applying the principles enunciated in the above cases, it is clear that the Plaintiffs must establish the threshold requirement of *locus standi* to maintain this action and this Court finds that the 3 Plaintiffs herein lacked the requisite *locus standi*.
17. Another ground why the Plaintiffs’ action against the 3rd Defendant is struck out is because since the Plaintiffs’ relief sought against the 3rd Defendants is merely a consequential relief, requiring the 3rd Defendant to do the necessary action under the Societies Act 1966 in the event this Honourable Court grants the Plaintiffs’ relief on declaration that UMNO Bahagian Tanah Merah is unlawful.

18. Since this Court found in Enclosures 5 and 13 which were filed by the 1st and 2nd Defendants respectively herein against the Plaintiffs, that the Plaintiffs' action filed against the 1st and 2nd Defendants is frivolous, vexatious, discloses no reasonable cause of action and an abuse of the process of the court, with costs, the Plaintiffs' action against the 3rd Defendant, is similarly struck out.

ORDER

19. In the light of the above, this Court finds *inter alia* that the Plaintiffs have no *locus standi* to file and maintain this Suit filed against the 3rd Defendant, In the premises, this Court grant an order in terms of Enclosure 9 and the Plaintiffs Suit is struck out with costs.

Dated: 15 AUGUST 2013.

(LEE HENG CHEONG)
Judicial Commissioner
Civil Division
Kuala Lumpur High Court



Counsel:

For the plaintiff - Wan Hidayat (Fadiah Fikri together with him); M/s Kesavan

For the 1st & 2nd defendant - Fahmi Adilah (Choo Shi Jin together with him); M/s Hafarizam Wan & Aisha Mubarak

For the 3rd defendant - Nurul Farhana Khalid
Senior Federal Counsel