

## **Media Release**

We, the undersigned, express our full support for the President of the Malaysian Bar in her defence of the independence of the Judiciary.

We wish to address certain other issues which we believe are important.

**The narrative that the former Prime Minister was not accorded due process in the Federal Court and was not heard.**

There is no doubt that due process is critical to our justice system. However, was the former prime minister (“Najib Razak”) deprived of due process as alleged widely by his supporters? Are the allegations that he was not given a chance to argue his appeal on the merits a correct representation of the facts?

It is pertinent to point out that all Federal Court appeals are scheduled in advance on dates that accommodate all parties, and directions are then issued by the Court for the filing of submissions prior to the date of hearing.

The appeal is then periodically managed at what are termed “case managements”. The parties therefore know when the relevant documents must be filed and it is incumbent on the lawyers to ensure compliance with all directions. All lawyers are familiar with these standard procedures. They are not unusual and are applicable to all litigants.

**Events prior to the Hearing of the Appeals in August 2022.**

The events stated below are not comprehensive but are confined to what we consider relevant to the issue. Some of the facts are gleaned from news reports and other public sources and we stand corrected if there are any errors.

Public reports show that Najib Razak had filed his appeal with 94 grounds on 25<sup>th</sup> April 2022. The hearing dates in August

2022\_were fixed on the 29<sup>th</sup> of April 2022 and the parties were directed to file their written submissions by 31<sup>st</sup> July 2022.

Najib Razak discharged Shafee & Co, his then lawyers, on 25<sup>th</sup> July 2022. New solicitors were then appointed, namely Zaid Ibrahim Suffian TH Liew & Partners. On 26<sup>th</sup> July 2022, Hisyam Teh Poh Teik was appointed as counsel. Apparently, the documents had been handed over to the new lawyers in early July 2022.

An application to adjourn the Appeals was then immediately made by the new solicitors.

At the case management on 28th July2022, parties were informed that the adjournment was denied and parties were given until 8<sup>th</sup> August 2022 to file their written submissions with regard to Najib Razak's application to adduce fresh evidence. (The same application was made in each of the three appeals)

At the next case management on 10<sup>th</sup> August 2022, parties were informed that the hearing for the application to adduce fresh evidence would proceed on 15th August 2022, and the Appeals hearing would proceed thereafter if the application was dismissed. Counsel for Najib Razak informed the Registrar that he will be applying again for an adjournment of the Appeals on the basis that they needed more time to prepare, as heavy issues were involved. The indication was that they would ask for an adjournment if the applications are dismissed.

The Court indicated for a second time on 10<sup>th</sup> August 2022 that there will be no adjournment of the main Appeals if the application for fresh evidence failed.

### **The Hearing in the Federal Court**

No Written Submissions were filed by the Appellant in respect of the main Appeals as at the first day of hearing before the Federal Court on 15<sup>th</sup> August 2022.

The Appellant proceeded with the application to adduce fresh evidence, which was dismissed by the Federal Court on what are very settled legal principles.

The remaining chronology appears in full in the Federal Court Judgment handed down on 23rd August 2022. A summary is as follows:-

- (1) Upon dismissal of the application for fresh evidence, Counsel for the Appellant informed the court that he was not prepared to argue the appeals and applied to adjourn them for 3 to 4 months.
- (2) The Federal Court considered the application for adjournment and refused the same, setting out their grounds for doing so. The hearing was fixed to continue two days later on 18<sup>th</sup> August 2022, to allow the Appellant time to prepare for the Appeals.
- (3) On 18<sup>th</sup> August 2022, Counsel for the Appellant moved again to adjourn the appeals. The application was rejected.
- (4) Counsel then proceeded to apply to discharge himself from acting for the Appellant, which the court, (quite correctly in our view), refused as it would have left the Appellant without representation.
- (5) Counsel then refused an invitation by the court to make his submissions.
- (6) The Court then proposed that the Respondent submit first to allow Counsel for the Appellant time to prepare his submission.
- (7) On 18<sup>th</sup> August 2022, Counsel for the Appellant requested for leave to file written submissions and to amend the petition of appeal. The Federal Court allowed Counsel to do so. The Respondent then concluded their submissions.

(8) On 19<sup>th</sup> August 2022, before the Respondent could continue their submissions, the Court was informed by Counsel for the Appellant that the Appellant had discharged his new solicitors, Messrs Zaid Ibrahim Suffian TH Liew & Partners.

(9) At the close of the proceedings on 19.8.2022, Counsel informed the court that he would not be making submissions on behalf of the Appellant.

(10) On the resumption of the appeal on 23.8.2022, Counsel again informed the court he would not be making any submissions.

Thus, it is abundantly clear that the Federal Court had given counsel for the Appellant, Najib Razak, every opportunity to make submissions on the merits but he repeatedly refused to do so. The Appellant through his counsel thus made a deliberate and considered choice NOT to make submissions on the merits.

Hence the narrative that there was no due process accorded to the Appellant is patently false. The correct position is that Counsel for the Appellant refused to submit on the Appeals despite various opportunities afforded to him to do so.

Ultimately the Federal Court relied on all the records of the Appeals that had been filed, which included the Court of Appeal submissions of both parties.

### **The simple truth**

Whilst due process is vital, it is also important to remind ourselves of the facts of the case as they were presented before the Courts. The Appellant did not deny RM42 million had entered his personal bank accounts. He, however, denied knowledge that the funds were from SRC. He also stated that the monies credited into his Am Islamic bank accounts were from Arab Donations.

The High Court and Court of Appeal concurrently found the explanations of the Appellant untenable. The Federal Court agreed that was a reasonable conclusion. It was not inherently improbable and is a conclusion that the courts were entitled to come to on the evidence and records before them.

No doubt the Appellant is entitled to pursue other legal avenues that may be open to him. But, for anyone to suggest that he was not given a chance to submit in the Federal Court is false.

### **The Bribery Allegation**

Quite apart from the events that transpired before the Court, mention must be made of the outrageous and spurious allegation of bribery against the High Court Judge. On 9<sup>th</sup> August 2022, this serious charge was nonchalantly withdrawn by the Appellant in an Affidavit filed in support of their application for fresh evidence. This was an allegation that had been widely published by the same discredited blogger mentioned earlier.

It is difficult to find a greater travesty occasioned upon the trial Judge that in our view has criminal consequences. Not only is this a baseless assault on the learned Judge, but it is an assault on the whole Judiciary.

The Attorney General must especially appreciate the ramifications of such assaults on the Judiciary, having been a former Judge of the Federal Court himself. We trust he will act on these false allegations.

### **Leaked Judgments**

A new and unhealthy phenomenon has emerged. Twice, judgments of the Federal Court and High Court have been leaked and carried by a discredited blogger.

These unhealthy events are unprecedented in our history and are a stain on the administration of justice. They are clearly an attempt to undermine confidence in the judiciary and can be seen as a means to threaten the Judges. These are potentially criminal acts.

This unhealthy and illegal practice must stop. We again urge the Attorney General to act swiftly and bring to book the persons involved in these heinous acts and ensure that they face the full force of the law. If left unchecked they will have a corrosive effect on the administration of justice.

### **Conclusion**

We stand with the Judiciary in these unprecedented times as they face an onslaught of attacks by individuals attempting to strike fear in the Judges and to undermine their independence.

We commend the Judges who have not flinched in the face of such appalling threats.

The Judiciary has shown that they are determined to do justice “though the heavens may fall”.

We thus stand with the Malaysian Bar who will defend the brave Judges for upholding their oath of office without fear or favour.

***Zainur Zakaria  
Past President  
Malaysian Bar***

***Mah Weng Kwai  
Past President  
Malaysian Bar***

***Kuthubul Zaman Bukhari  
Past President  
Malaysian Bar***

***Yeo Yang Poh  
Past President  
Malaysian Bar***

***Ambiga Sreenevasan  
Past President  
Malaysian Bar***

***Lim Chee Wee  
Past President  
Malaysian Bar***

***Steven Thiru  
Past President  
Malaysian Bar***

***George Varughese  
Past President  
Malaysian Bar***