

## JUDGMENT Express

[2020] 5 MLRA

Peguam Negara Malaysia  
v. Mkini Dotcom Sdn Bhd & Anor

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### PEGUAM NEGARA MALAYSIA

v.

### MKINI DOTCOM SDN BHD & ANOR

Federal Court, Putrajaya

Rohana Yusuf PCA, Azahar Mohamed CJM, Abang Iskandar Abang Hashim CJSS, Mohd Zawawi Salleh, Nallini Pathmanathan, Vernon Ong, Abdul Rahman Sebli FCJJ

[Civil Appeal No: 08(L)-4-06-2020 (W)]

2 July 2020

**Civil Procedure:** *Committal proceedings — Setting aside application — Whether court should decide substantive merits of committal application — Whether 1st respondent published impugned comments and prima facie case made out — Whether failure to comply with requirement of notice under O 52 r 2B Rules of Court 2012 prejudicial to respondents — Whether this court the right forum to commence proceedings*

This was an application by the respondents to set aside the leave granted by this court regarding a contempt proceedings against the respondents. The subject of the contempt proceedings related to the following impugned comments which appeared in the 1st respondent news portal on 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.” The 1st respondent did facilitate the publication and the editorial policy did allow editing, removal and modification of comments. The 1st respondent removed the impugned comments only upon being made aware by the police. The evidence further revealed that the editors of the 1st respondent reviewed postings on a daily basis.

**Held** (dismissing the respondents’ application):

(1) The court was mindful that in the course of adjudicating on the setting aside application, it should not purport to decide the substantive merits of the committal application, which was properly the subject matter of the second stage of the adjudication. (para 2)



(2) By virtue of s 114A of the Evidence Act 1950, the respondents were presumed to have published the impugned comments. The presumption was a rebuttable one. Hence, a *prima facie* case had been made out as the impugned statements were contemptuous as agreed by both parties and *prima facie* there had been publication by the 1st respondent as these statements appeared on its news portal. (paras 3-5)

(3) On the requirement of notice pursuant to O 52 r 2B of the Rules of Court 2012 which had not been complied with, on the facts of this case, the non-compliance was not fatal or prejudicial to the respondents. (para 6)

(4) Looking at the nature of the impugned comments, which implicated the judiciary as a whole, which also included the Chief Justice of the Federal Court, this court was the right forum to commence these proceedings. (para 6)

**Legislation referred to:**

Evidence Act 1950, s 114A

Rules of Court 2012, O 52 r 2B

**Counsel:**

*For the applicant: Suzana Atan (Narkunavathy Sundareson with her); SFCs*

*For the respondents: Malik Imtiaz Sarwar (Surendra Ananth & Khoo Suk Chyi with him); M/s Surendra Ananth*

*Watching Brief (Bar Council): Joy Wilson Appukuttan; M/s KH Lim & Co*

*Watching Brief (Centre for Independent*

*Journalism and Gerakan Media): YB Senator Yusmadi Yusoff; M/s Fahda Nur Yusmadi*

*Watching Brief (International Federation of Journalists (IFJ)*

*and National Journalist Union of Malaysia (NJUM): New Sin Yew; M/s AmerBON*

**JUDGMENT**

**Rohana Yusuf PCA:**

**Decision On Encl 22**

**(Setting Aside of leave order by Mkini)**

[1] This is our decision on whether the application by Mkini in encl 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 Mkini 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 allows editing, removal and modification of comments;
- (c) Only upon being made aware by the police, the 1st respondent indeed removed the comments;
- (d) The evidence revealed 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 s 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 Mkini as these statements appeared on its news portal.

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

- (i) Order 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 the 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*.







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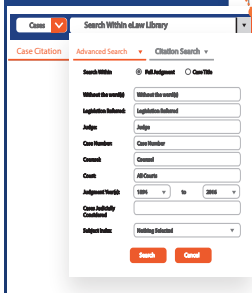
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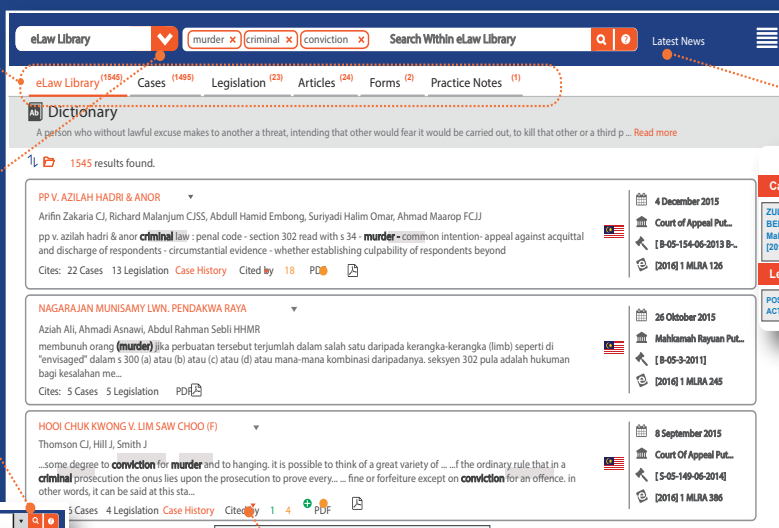
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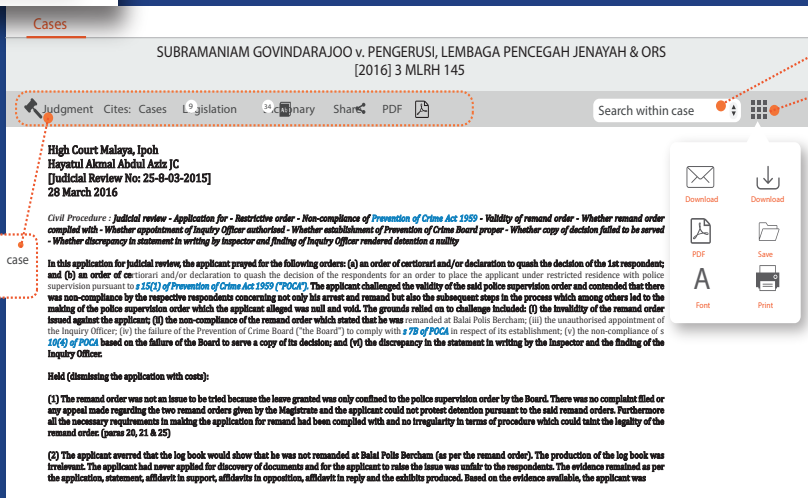
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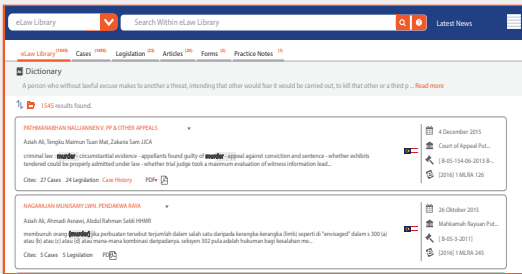
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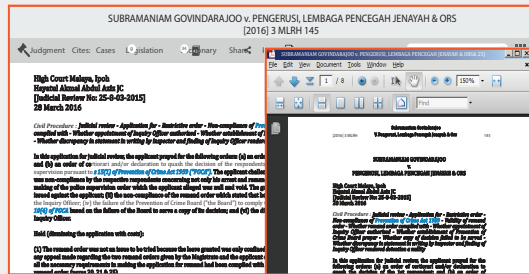


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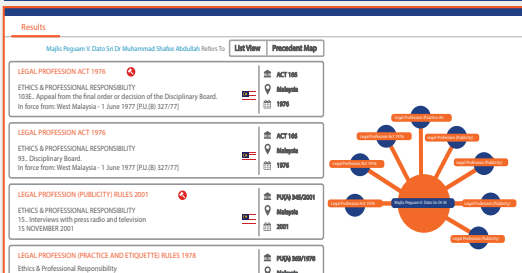
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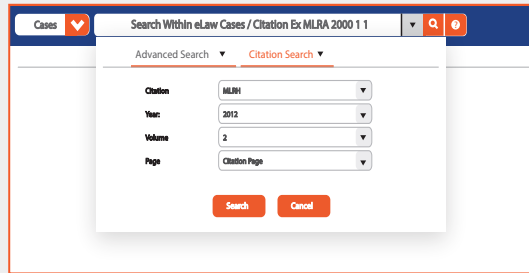
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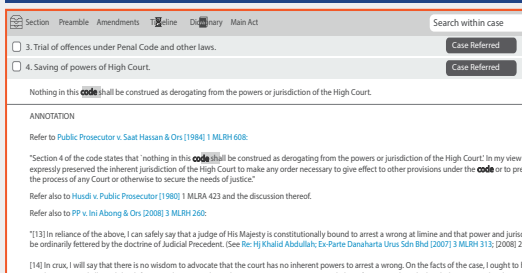
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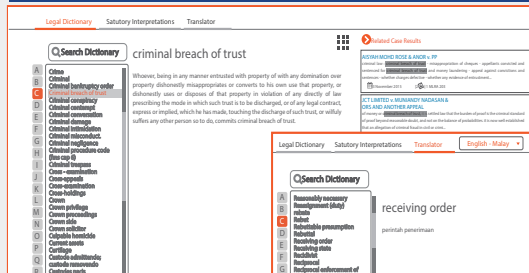
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